

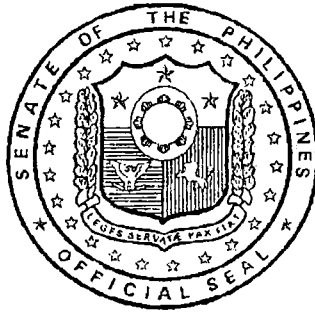
REPUBLIC ACT NO. 9160
ANTI-MONEY LAUNDERING ACT OF
2001

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SEPT. 2

Sept 24, 2001

Monday, September 24, 2001

RECORD OF THE SENATE

Sponsorship Speech of
Sen. Magsaysay re S. No. 1745

Senator Legarda Leviste. I am sorry, Mr. President. Yes, "June 31" to be amended as June 30, 1997.

The President. All right. May the sponsor accept an amendment which will make all the senators coauthors of the proposed measure?

MOTION OF SENATOR LEGARDA LEVISTE
(All Senators as Coauthors of P. S. Res. No. 146)

Senator Legarda Leviste. Yes, Mr. President. I move that all senators be made coauthors of this resolution.

The President. Is there any objection? *[Silence]* There being none, the *Record* will reflect that all the senators are coauthors of the proposed Senate resolution.

ADOPTION OF P. S. RES. NO. 146

Senator Legarda Leviste. I move that we adopt Proposed Senate Resolution No. 146.

The President. There is a motion for the adoption of Proposed Senate Resolution No. 146. Is there any objection? *[Silence]* There being no objection, the motion is approved.

SPECIAL ORDERS

Senator Legarda Leviste. Mr. President, I move that we transfer from the Calendar for Ordinary Business to the Calendar for Special Orders, Committee Report No. 1 on Senate Bill No. 1745, entitled

AN ACT DEFINING THE CRIME OF MONEY
LAUNDERING, PROVIDING PENALTIES
THEREFOR AND FOR OTHER PURPOSES.

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

BILL ON SECOND READING
S. No. 1745—Anti-Money Laundering Act

Senator Legarda Leviste. Mr. President, I move that we consider Senate Bill No. 1745 under Committee Report No. 1.

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

Senator Legarda Leviste. I therefore move, Mr. President, that Sen. Ramon B. Magsaysay Jr. be recognized for the sponsorship of Senate Bill No. 1745 as reported out under Committee Report No. 1.

The President. Sen. Ramon B. Magsaysay Jr. is recognized for the sponsorship speech of Senate Bill No. 1745.

MOTION OF SENATOR MAGSAYSAY
(Use of Audiovisual Aids Be Allowed for the
Sponsorship Speech)

Senator Magsaysay. Thank you, Mr. President.

May I also request that we use the slide, arrow point, so that some of our senators may be able to visualize more clearly what we are trying to set forth this afternoon.

The President. There is a motion to allow the audiovisual aids to be installed in the premises of the hall to enable the members of the Senate to follow the sponsorship speech more clearly.

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

SPONSORSHIP SPEECH OF SENATOR MAGSAYSAY

Senator Magsaysay. Thank you, Mr. President.

Mr. President, my fellow senators: As chairman of the Committee on Banks, Financial Institutions and Currencies, I rise today to sponsor the consolidated legislation on anti-money laundering, Senate Bill No. 1745. Originally, there were 11 various bills on the prevention of money-laundering transactions and similar concerns filed in the Senate. Since August 22, 2001, when the membership of the committee was completed, two public hearings, four exploratory meetings, at least one joint meeting with the Senate and the House panels, and a technical working group were called to synthesize the working draft of the legislation.

Mr. President, the enactment of the anti-money laundering bill is of primordial importance. Getting a reliable estimate of the amount of money laundered worldwide, while difficult, is perhaps the most significant indicator why we should pass this bill. Based on the available documents, the amount of money laundered worldwide would range from US\$300 billion to US\$500 billion annually or about two percent of the global gross domestic product or GDP. In 1998, the International Monetary Fund (IMF) placed the scale of money-laundering transactions worldwide to range between two percent and five percent of the world GDP. In 1999, the IMF estimated the global money-laundering activities to be worth at least US\$600 billion.

Thus far, there are no readily available statistics quantifying money-laundering transactions in the Philippines. The same is mirrored by the difficulties encountered by authorities in measuring

the scale of money-laundering activities. Hence, instead of getting money-laundering statistics, data have been collated on the extent of three of the most pervasive sources of laundering transactions. These are illegal trade of narcotics, kidnapping, and graft and corruption.

Illegal drug trade in the country has a captive market of about 1.8 million Filipinos or 2.2 percent of the Philippine population, which translates to a more than P265 billion a year. The said amount is already equivalent to eight percent of the country's economic output and, roughly, a third of our annual government appropriation.

Kidnapping, on the other hand, has become a profitable business in the country that we have been dubbed "Asia's Kidnapping Capital." With the increasing number of kidnapping incidents in the country, the Philippines has been included among the top 10 most dangerous nations for kidnapping along with Colombia, Mexico, Venezuela, Guatemala, Cambodia, Yemen, Nigeria, Angola and Russia.

This year alone, the Philippine National Police (PNP) recorded that a number of kidnapping nationwide rose by almost 100 percent as compared to the same period last year. The PNP recorded a total of 41 cases of kidnapping during the first half of 2001, almost double the 22 cases reported in the same period of 2000. These official figures do not include the many unreported cases of abductions where the victims' families would rather settle and pay for ransom and be silent than seek police assistance.

The Philippines is cited as one of the countries where graft and corruption is perceived to be very prevalent. The said fact is bolstered by the data provided by the Ombudsman that from 1988 to 1999, P1.4 trillion has been lost to corruption. On a daily basis, at least P100 million is lost to corruption.

Money laundering in the Philippines would seem to be a serious problem amounting to billions of pesos a year. The ease with which money from illegal activities can be converted into legitimate funds is a serious problem in this country. If left unchecked, criminals could soon push aside legitimate businessmen and dominate large segments of Philippine economy.

Mr. President, we cannot allow this to happen. We cannot simply do nothing while we see:

(1) An increase in crime. For money laundering has serious security, political and social consequences, and it allows criminals to preserve and enjoy the fruits of their crimes, thus providing them with both the incentive and the means to perpetrate their illicit

activities and at the same time expand and consolidate their forces. Organized crime can corrupt financial institutions, control sizable sectors of the economy through investments, even bribe and infiltrate governments.

(2) Money laundering can sabotage our economic system. It destabilizes our entire financial direction. It can make a country's financial system suffer from loss of integrity and investor confidence. It can have negative effects on currency exchange or money balances and interest rates, thus undermining national economies and economic growth.

(3) Money laundering destroys the integrity of governments and corrupts its people. With the increasing awareness of the ill effects of money laundering and the growing interdependence among global economies, countries that are known as havens of money launderers could be placed in a bad light, thereby adversely affecting their financial transactions and relations with regional and global economies. In the long run, money laundering will defile the values of our youth since they can emulate the path to easy money. The said scenarios are compelling on their own for us to pass an anti-money laundering legislation.

The Philippine banking and financial system has long been considered a pillar of professionalism comparable in efficiency and integrity with the banking systems of many of our first world neighbors. However, the integrity and reputation it has earned over the years is being questioned because of the possible influx of criminal money into its system. The reason for this is the lack of effective legislation to counter money laundering.

Despite our international commitments to counter money laundering, we have failed so far to institute lasting and effective anti-money laundering measures. Because of our failure to honor these commitments, and because of the need to curtail transnational money laundering, our banking and financial system risks countermeasures from the international community, including the following:

First, unnecessary inspection of all our foreign exchange trades;

Second, stricter surveillance, processing and verification of our international transactions;

Third, adverse advisories warning international banks to look at our banking institutions with suspicion;

And lastly, foreign banks requiring Philippine banks to waive bank secrecy before they deal with us.

In short, we risk being an outcast in the international financial community. Our move is forever suspect.

The Bangko Sentral ng Pilipinas has instituted measures to curb money laundering at its level. It is a step in the right direction, but it is not enough, Mr. President. If we want to truly stop money laundering and prevent the Philippines from becoming another violent, lawless narco-state, we need to act now.

Specifically, we need a law that deals directly with the issue of money laundering. One that not only makes it a crime to enter into a money laundering transaction but also one that will institute the systems and procedures to enable our law enforcement agencies to identify money launderers and track them down.

We believe that we have crafted such a law. The present anti-money laundering legislation provides the key elements to fight money laundering in our country. These elements are:

First, the criminalization of money laundering, such that a criminal will face imprisonment not only for the principal crime he committed, but for any attempt to enjoy the profits of such crime;

Second, the institution of a system of suspicious transactions reporting by business and financial institutions that are used by criminals to launder or hide their money;

Third, the relaxing of bank secrecy laws in order to track, and ultimately recover dirty money;

Fourth, the creation of an anti-money laundering council or task force, in the case of the House version, an office tasked to do financial intelligence activity and will also serve to maintain a data base of possible money laundering transactions, and that will have the expertise to analyze such data for use in arresting and prosecuting money launderers;

And, fifth, the institution of procedures for effective international cooperation, which will curtail and discourage transnational money laundering.

On the issue of bank secrecy, Mr. President, the present bill is revolutionary because it allows inquiry into bank accounts of suspected money launderers without having to obtain a court order. At first glance, this may seem brazen and undemocratic, but there is wisdom behind this feature. The removal of the courts from the picture will actually serve to protect private individuals, by ensuring that there will be as few people as possible who will be privy to their financial affairs. To require a court action on the matter would be to

authorize the publication of information that would otherwise have been kept confidential at an administrative level.

This is but one example of how the present bill seeks to address the concerns of our people, while at the same time complying with international standards for fighting money laundering.

Mr. President, distinguished colleagues, we believe that with this, and the other elements featured in the bill, the law, once passed, will provide a convincing solution to the burgeoning problem of crime in our country. Likewise, the Philippines joins the community of nations embracing the regime against money-laundering activities including the countries identified as the G-7 nations led by the United States; our Asian neighbors, China, Japan, Korea, Taiwan, Hong Kong, Singapore, Thailand, Malaysia, Sri Lanka and Pakistan; the island countries of the Pacific, including Papua New Guinea, Palau, Wallis and Futuna, St. Vincent and even Nauru; the countries of Australia, New Zealand and others.

As legislators, we have the special power to change the way our people live. I enjoin my colleagues to take advantage of this opportunity.

Thank you, Mr. President.

The President. Thank you, Senator Magsaysay. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, for the cosponsorship speech, I move that we recognize Sen. Francis N. Pangilinan, the chairman of the Committee on Justice and Human Rights.

The President. The chairman of the Committee on Justice and Human Rights, Sen. Francis N. Pangilinan, is recognized for the cosponsorship speech.

SPONSORSHIP SPEECH OF SENATOR PANGILINAN

Senator Pangilinan. Thank you, Mr. President.

Mr. President, honorable members of this august Body:

As chairman of the Committee on Justice and Human Rights, I stand to cosponsor the Anti-Money Laundering Bill as contained in Senate Committee Report No. 1.

From Moscow to Buenos Aires, money laundering scandals sap economies and destabilize governments. With

events of recent days, we can add New York and Washington D.C. to the list.

Even as we speak, authorities in the United States as well as in Europe are trying to trace the money trail that is believed to have funded what has now become known as the worst terrorist attack in world history. What was thus already a burning issue in international financial fora has now become a matter of even deeper concern — one which we can very well say affects world peace and the future of civilized society.

The issue is money laundering.

While banks remain the major avenues for money laundering, modern-day money launderers make use of the entire financial system through the use of new avenues, such as remittance centers, insurance companies, stock exchanges and brokerage houses, currency exchange houses, gold dealers, casinos, car dealers, real estate firms and trading houses. Launderers have also adopted new methods and techniques, such as international electronic fund transfer arrangements and new payment technologies. Examples of these are electronic money, loan-back arrangements, establishment of front or shell companies and trusts, the use of tax havens to hide beneficial ownership and the purchase of an existing legitimate business with dirty money to give illicit cash a semblance of legitimacy.

Allow me to cite some concrete examples of money laundering.

Money laundering takes place when a drug dealer sells drugs in the streets, deposits his drug money in a bank, and thereafter uses the money to purchase real assets. Money laundering takes place when the member of a criminal syndicate can make large cash deposits of his illicit money and then use these deposits as collateral to borrow money from the same bank to start a new venture.

What we want to accomplish is to make it difficult for these criminal elements to consummate what are, at present, very simple and very seemingly innocent transactions. At the same time, we want to be able to track down the trail of any illicit funds, connect these funds to their true source, and recover these funds. By doing so, we prevent the criminal from enjoying the fruits of his crime and possibly using such funds to expand his criminal operations. A law that criminalizes money laundering is therefore a law that combats crime by making it difficult for the criminal to enjoy the fruits of an illegal act. It also prevents the criminal from pursuing other criminal acts with the use of these resources.

How do we propose to do this? The answer is in passing an anti-money laundering bill.

This bill presents a concrete strategy against organized criminal activity by focusing on the financial aspect of that criminal activity. The first aspect of the strategy is the declaration that money laundering is a crime for which perpetrators will be held accountable. The second aspect is the enactment of changes in our bank secrecy laws in such a manner as to allow investigation into the affairs of possible money launderers without—and we reiterate—without compromising the interests of innocent and legitimate businessmen. The third aspect is the institution of a system of reporting suspicious activities and transactions in order to deter and detect money laundering. The fourth aspect is the creation of a centralized data-gathering unit with the expertise to analyze financial information. And, finally, the fifth aspect is the acknowledgment that money laundering is a transnational crime and the institution of a system of international cooperation to fight cross-border money laundering.

There are those who feel that the approval of this bill is simply another example of a foreign body interfering with our sovereign authority. Much has been said about the tyranny of the so-called FATF or Financial Action Task Force, with its threat of countermeasures and blacklisting. But the reality of it all is that it is we, the Filipino people, our government, that have voluntarily agreed to fight money laundering together with other countries. It is we who have agreed in principle to cooperate with the community of nations by instituting measures domestically to curb money laundering, thereby preventing the use of our country as a haven for criminal money. We are not acting because of pressure from the FATF. We are acting because we want to fight crime with the end in view of creating an atmosphere that is conducive to economic growth and development.

It cannot be emphasized enough that the enactment of anti-money laundering legislation is an international commitment of the Philippines both under the 1988 Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which our own Senate ratified in June of 1996 and the 1998 Political Declaration and Action Plan Against Money Laundering adopted by the United Nations General Assembly.

These conventions primarily addressed the laundering of money linked to drug trafficking. The introduction to the 1998 political declaration stated that "Drugs are a grave threat to the health and well-being of all mankind, the independence of States, democracy, the stability of nations, the structure of all societies, and the dignity and hope of millions of people and their families." The commitments contained in this declaration were, however, subsequently expanded to include money derived not only from illicit drug trafficking, but also from "other serious crimes."

These commitments include "the establishment of a legislative framework to criminalize the laundering of money derived from

serious crimes" and the "identification, freezing, seizure and confiscation of the proceeds of crime." With respect to the 1998 Vienna Convention, it was declared that bank secrecy laws must not serve as a barrier to asset forfeiture investigations.

To reiterate, the enactment of anti-money laundering legislation should not, therefore, be seen as a mere compliance with an unreasonable imposition by the richer, more powerful nations that comprise the FATF. Instead, it should be treated as a reaffirmation of our voluntary commitment as a nation to fight serious crime and the money-laundering activities that allow it to flourish.

It is believed that in order to solve a crime, one must "follow the money." It is this proposal that we now seek to follow in fighting the crime of money laundering. By following the money, the full scope of a crime can be discovered and a criminal organization can be destroyed. Money laundering is the companion of brutality, deceit and corruption. We must not allow criminal enterprises to wash the blood off profits from the sale of drugs, from terror or organized crime. If we want to truly stop money laundering and prevent the Philippines from becoming another violent, lawless narco-state, we need to take more resolute action. We need to have a national commitment to a coordinated, effective fight against money laundering.

We must ensure that criminals and their laundered money can find no safe haven anywhere and act now to destroy criminal organizations by taking the profit out of crime.

Last August 6 to 8, 2001, I, together with Sen. Juan M. Flavio and the Minority Leader, Sen. Aquilino Q. Pimentel Jr., had the opportunity to sit down for three days in Washington DC to attend an anti-terrorism seminar that focused on financial investigations and money laundering. There, we witnessed how important it is for the United States, as well as other countries, to battle terrorism, to battle money laundering. A timely undertaking and proof that the issue has indeed taken an international dimension. In addition, the recent horrendous and condemnable attack on the World Trade Center and Washington D.C. has further emphasized the need to look at the terrorist menace, whether local or foreign, straight in the eye by enacting measures that would deprive them of the resources to pursue their pernicious objectives. Passing an anti-money laundering law is one such act that the Senate can do as meaningful contribution to what is now a worldwide concern. Rather than cower in fear and self-doubt, we shall send a strong message to the international community that we too are in the forefront of the battle against terrorism and other criminal activities.

In closing, much has been said in our papers about the pros and cons surrounding the efforts to enact an anti-money laundering law. Let it be said that our Senate Committees on Banks, Financial Institutions and Currencies, as well as Justice and Human Rights,

do not have a monopoly of ideas that will make good and effective legislation in this area and that we are open to amendments of the bill as proposed in order to achieve the bottom line question of pressing an urgent need for effective efforts in addressing crime in the country.

With these thoughts in mind, let us work as one body for the expeditious passage of this bill on money laundering.

Thank you very much, Mr. President.

The President. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, we thank the two distinguished sponsors for their very comprehensive speeches on the Anti-Money Laundering Act. And for the interpellation, I move that we recognize the senator from Aurora, the birthday celebrant today, Sen. Edgardo J. Angara.

The President. Sen. Edgardo J. Angara is recognized.

Senator Legarda Leviste. I also move that we recognize the sponsor of the measure, Sen. Ramon B. Magsaysay Jr.

The President. Sen. Ramon B. Magsaysay Jr. is likewise recognized.

Senator Angara. Thank you, Mr. President.

Would the distinguished chairman of the Banks, Financial Institutions and Currencies Committee care to answer some questions for clarification, Mr. President?

Senator Magsaysay. Gladly, Mr. President.

Senator Angara. First of all, Mr. President, I congratulate the distinguished sponsor as well as the chairman of our Justice and Human Rights Committee for their eloquent and vigorous presentation and sponsorship of this measure.

Mr. President, the distinguished sponsor stated that passing this bill is of primordial importance. What does that mean, Mr. President? Does it mean that this bill takes precedence at this time over all legislative proposals?

Senator Magsaysay. In a way, that is what I meant, Mr. President. This measure seeks to focus on the importance of what we are facing in our society and the global situation today—that the large profits that come from crime and illegal activities entering into the banking system seek to overcome and overturn any other legitimate means and that will eventually lead to the collapse of our values, social orders, and other traditional virtues that we as Filipinos have been nurturing all these centuries.

Senator Angara. Well, I do not know about the centuries, Mr. President. But anyway, is the distinguished sponsor telling us that this bill, if not passed, will spell a life-and-death situation for the Philippine economy? Is that the import of his statement?

Senator Magsaysay. Not necessarily, Mr. President. We are just using the term "primordial" to show that our standing as a respected member of the world community, particularly the financial community, makes it necessary for us to look at this particular measure which, incidentally, has just been certified this afternoon at three o'clock, as one touchstone to show that we are doing our bit to partly solve the problem of what is happening around us.

Senator Angara. What is happening around us, Mr. President, as what has been dramatically demonstrated in the recent terrorist attacks on the World Trade Center and the Pentagon is that the greater and graver terror that confronts us is the devastation that the terrorists can inflict on the most powerful nation, and yet that powerful nation seems to be unable to immediately take action against the terrorists. Is that not, to quote the gentleman's phrase, of more primordial importance that at this time the Philippines should start planning, anticipating, and installing such measures that will cushion the impact of the surely forthcoming global recession? Is that not a more primordial action that we ought to take rather than rushing a measure like this that I am sure we can pass during the remaining days of our session, and yet, we are giving primordial importance to this measure rather than measures that will protect our people from the devastating consequences of the recent events of last week, Mr. President?

Senator Magsaysay. I agree with the gentleman, Mr. President. The gentleman from Aurora and Quezon has placed it very emphatically and our giving priority to this measure does not mean that we are not giving some equal importance to other even equally pressing issues like global terrorism or even the economy. These are all, in a way, interrelated. The tragedy that occurred last September 11, 2001 might not have happened if the money was not there to finance years of training, to finance all the planning and careful strategy to attain a certain dastardly and inhuman act of killing over 6,000 or almost 7,000 innocents on that day of infamy—September 11, 2001.

Senator Angara. Yes, Mr. President. But it is still farfetched to say that there is a connection between the bombing and laundered money.

Nonetheless, Mr. President, is it not of more immediate and pressing concern to us how we can cope with the global recession that is now over our head; how we are going to prevent companies from closing down; how we are going to cushion the impact of a negative export record; how we are going to cushion the impact

of our people returning to the Philippines as a result of the forthcoming war? That war will surely come.

Why is it that this administration is not even telling our people how to cope with this oncoming disaster that we are going to face, instead of certifying an anti-money laundering act which consequences are not even probably directly felt and immediately felt by our people, and yet the economic consequences of this forthcoming war, as a result of the bombing, will be immediate, swift and direct, Mr. President?

Senator Magsaysay. I can understand the deep concern of the gentleman, Mr. President. But these issues on preparing for a possible global war against global terrorists was already addressed by the President in her State of the Nation Address last July. She made mention of fighting poverty. This is part of the facets that we have to address even while we are passing new laws and new measures that will also address important concerns as a member of the global community.

Senator Angara. Yes, Mr. President.

Senator Magsaysay. One does not deprive the other activities of attention, because these are all somehow interrelated. Eventually, we will converge on certain standards that will improve our attraction as a place to invest and have the level of trustworthiness and integrity that a good banking system and a good economy can offer.

Senator Angara. Mr. President, I have to stretch my imagination, and one has to stretch his imagination to see the connection between the passage of this bill and the strengthening of our banking system.

On the contrary, that brings me to the next point I want to raise. While, we, to a man in the Opposition to a woman in the Minority, agree that there must be an anti-money laundering act, we would caution the Majority that such a law ought not to compromise the banks' secrecy because bank secrecy is at the center of the confidence of a depositor in his bank. Bank secrecy is like a contract. It is a right that the bank customer can demand and it is an obligation on the part of the bank to honor.

So, Mr. President, when the distinguished gentleman said that this measure will be revolutionary in that sense because it will now allow the opening or the looking into of bank accounts without court order, I was quite amazed at such a statement because I thought that is not revolutionary at all. I think it is frightening. We are going to frighten our bank customers especially the Chinese-Filipino among us, who are quite sensitive to this secrecy—which we all are, to the confidentiality of their bank transactions and their bank accounts.

So, again, I go back to what we call primordial importance. Primordial indicates priority in terms of content as well as time. And I am saying that trying to rush or being seen as rushing the passage of an anti-money laundering act seems odd at this time when the primary, fundamental and single concentration, singular concentration ought to be on measures that will cushion the impact of the global recession that will surely come as a result of the war that we are going to see in a day or two, Mr. President. And yet, we have not seen any such proposal or measure that we ought to debate right now rather than debating a... Sure, I grant that this is a worthy legislation. But this is a legislation that will hardly touch the lives of Filipinos, that will hardly help improve the lives of the Filipinos, that will hardly save the jobs that will be lost as a result of this terrorism.

Senator Magsaysay. Mr. President, the gentleman from Aurora and Quezon made mention that this measure will hardly touch the lives of the ordinary Filipino, and that is a fact. Because the basis of our putting some kind of conditions before a questionable or a suspicious account may be opened.

Basing on the statistics of the Philippine Deposit and Insurance Corporation, there are about, more or less, 20 million accounts in the country. This is coming from the commercial banking system and the thrift banks. And 200,000 and below of average account is 93 percent lower than 200,000, and those that are over 200,000 is not even seven percent.

When we look at the threshold of one million where there is some suspicion, that account might have to be opened for more information. We are not even looking at two percent of the total number of account holders. Meaning, 98 percent of all the individuals and corporations that have accounts are not even touched. In fact, it is the same old way and that is what the statistics show, Mr. President.

Senator Angara. Well, if we are only talking of two percent of bank depositors, why are we rushing this bill?

Senator Magsaysay. Because of the nature of dirty money coming from crime that is enumerated in our measure, going into the banking system and making the banking industry of the country suspect.

We had public hearings wherein even the Bankers' Association of the Philippines headed by Mr. Placido Mapa Jr. came forward and made a strong statement that they are as much concerned as the BSP and the whole government bureaucracy, that if we do not have this anti-money laundering legislation, they are going to be affected badly by the FATF which is going to give them so many requirements before they can transact business. So they are

one with us in trying to prioritize this particular measure, Mr. President.

Senator Angara. Yes, Mr. President. As I said, we do not object to having an anti-money laundering bill passed. What we will have to dispute and debate very seriously are the mechanisms that will ensure that excluding dirty money from entering the banking system is one that will protect and safeguard nonetheless the bank secrecy. Because if we destroy the bank secrecy, then we destroy the very banking system, and that is our principal worry.

Now, just picking out one item from this proposed measure, Mr. President, it will now appear that the proceeds from cockfighting bets—let us say, I won a million pesos or a million-and-a-half pesos, and I deposited it in a bank—are potentially laundered money under this proposal, is it not? Because under this proposal, unlawful activity refers to any act or omission or series or combination thereof, et cetera, involving gambling, betting and other offenses relating to cockfighting, sports contests and other forms of illegal gambling. What is the meaning of this, Mr. President? I thought that in the presentation of the gentleman, we are just talking of three principal unlawful illegal activities—kidnapping, drugs, and graft and corruption. Why are we now suddenly zeroing in on the average Filipino who goes to the cockpit every Sunday and bets on money? Is this the intent of this bill? That is one instance.

Senator Magsaysay. That is true, Mr. President. It is possible that the gambling is illegal.

Senator Angara. But I thought cockfighting is allowed in this country.

Senator Magsaysay. I think they allow cockfighting on certain days.

Senator Angara. Yes, on Sundays.

Senator Magsaysay. But the rest of the week, it could be illegal.

Senator Angara. But, Mr. President, there have been derbies even on weekdays. Does the gentleman mean to tell me that Dr. Flavio cannot now go to a derby and bet a million pesos because he will be charged with laundering money?

The President. Would the sponsor accept an amendment at the appropriate time on this point?

Senator Magsaysay. I will gladly accept.

Senator Angara. I am sure, Mr. President, because this is ridiculous. But what I am just trying to point out is that we must carefully write a money laundering bill that will not weaken the confidence of bank depositors in their banks. We should not make a law that will embrace practically every human activity conceivable under the criminal statute book because that is almost impossible to implement.

So what we are saying is, not only are we questioning the time priority we are devoting to this bill but also the content.

Again, referring to content and again referring to bank secrecy, it is hard enough to keep bank secrecy under the present law where bank secrecy is almost absolute especially in the case of foreign currency deposits, and yet they get disclosed. One's account gets known to other people. That is why some of our countrymen complain that some irresponsible bank officials are the ones providing the kidnapers with information who has got fat accounts in the bank.

Now we are introducing a body composed of three men. As we know in this country, if we tell one guy a secret, that is no longer a secret. If we tell three Filipinos a secret, that is going to be broadcast publicly. This I think is what this three-man council will do to the banking system and it will add to the uncertainty and lack of confidence in our banking system. Does the gentleman not agree, Mr. President?

Senator Magsaysay. I can understand the concern of the gentleman, Mr. President, but there are penalties if any or all of these three break the confidentiality. They can be jailed.

Senator Angara. Even nonexistent accounts get disclosed.

Anyway, Mr. President, even under existing law, there are already heavy penalties, and yet these have not deterred the unlawful disclosure of accounts. So, this is no guarantee.

Senator Magsaysay. We are open to amendments as the gentleman may wish, Mr. President.

Senator Angara. Mr. President, my impression is that this FATF, a task force created by the Group of Seven which is composed of three of the seven richest countries in the world, has reviewed our financial rules and regulations. It said that there are three principal deficiencies in our banking system as far as money laundering is concerned. First, we have not criminalized money laundering. Does the gentleman agree with me, Mr. President?

Senator Magsaysay. Yes, Mr. President.

Senator Angara. Second, there is no way that a bank account suspected of money laundered, the source of which is of

a suspicious activity, can be looked into administratively. We have to go to court to get a court order. They said that that is a big barrier to the discovery of laundered money. Is that also not true?

Senator Magsaysay. That is correct, Mr. President.

Senator Angara. Third, the way I read the analysis and review of our financial rules, there is no system of surveillance and monitoring of suspicious activity in an account. For instance, if there is heavy deposit and withdrawal in an account which we know that in the past had been a modest account and then suddenly millions of money keep turning over, there is no reporting system that will alert the banking authorities. Is that not true too?

Senator Magsaysay. That is correct also, Mr. President.

Senator Angara. And therefore, Mr. President, if we just have a bill that will respond to all these three loopholes that they find, does the gentleman not think that we would have already complied with this imposition?

Senator Magsaysay. That is exactly what we are trying to do here, Mr. President. There are actually five elements of the requirements by the FATF that we are trying to address which are contained in our measure. But the gentleman may improve on this, knowing his great skill having been Senate President twice over. We will certainly welcome the improvement on the requirements that the FATF has listed. We are open to suggestions.

Senator Angara. Yes, Mr. President, I will be addressing the main concerns expressed by this foreign body. I am not going to draw up and craft a bill that will make them happy. I will try to draw up or draft a bill that will suit our unique culture and customs in this country that will make banking in this country a pleasant activity and that will make depositors safe in the thought that their accounts will be protected.

I thought, Mr. President, that the simple version that we have in mind—I have in mind at the very least—should just be simple because it is important that what we pass is going to be implementable, and it is implementable because people will accept it.

Our problem, Mr. President, as politicians, is that we may think that we have drafted a fantastic law. And yet we cannot explain the implementation. We cannot explain the details and the purpose of that law to our people. And then that law is a dead law and we lose credibility in the process, Mr. President.

Senator Magsaysay. I agree, Mr. President. We want a simpler law. We want a law that we can explain to our people.

We want to have it as basic and as simple enough so that we can comply and also look at the culture of our people. We will take all these into account. That is why we are here so that we can accept these proposals and sage advice so that we can come up with something that is acceptable to as many sectors of our society as possible without losing sight that there are requirements by the international community that may have to be embedded in this measure.

Senator Angara. Can the distinguished senator tell us, Mr. President, why is it called "money laundering?" *Labada ba ito?*

Senator Magsaysay. Simply, Mr. President, this is the money that comes from criminal activities. They call it "laundered money" once it is deposited in the banking system or in any other institution for that matter. Even buying a car from a dealer. This is the way dirty money is deposited in the banking system or in other economic activities before it is layered to make it a little more legitimate or semi-legitimate, and then dividing it into so many accounts and then eventually being integrated into the whole economic system by going legit by investing in casinos or in any other economic activities. That is why this is laundered money because it is being processed through by the deposit, the layering and the integrating, and this is simply dirty money.

Senator Angara. Yes. But this does not assume, Mr. President, that one can launder it only through a bank. One can also launder it through other institutions.

Senator Magsaysay. That is correct. One can even launder it by just buying a property or just putting it in stocks or other securities, buying shares of stocks, but eventually coming out as legitimate after the whole process of exercise.

Senator Angara. Let me just wind this up, Mr. President, by leaving the thought to my distinguished colleague that the Philippine banking system right now is fragile not because it lacks money or liquidity but because of its tremendous nonperforming assets. And therefore as long as that nonperforming ratio is high as it is, then our banking system is vulnerable. Now it will become even more vulnerable and, perhaps, even weaker if there is cause for people withdrawing their deposits from banks. Does the distinguished gentleman agree?

Senator Magsaysay. That is correct, Mr. President.

Senator Angara. That is why, the signal that we must send out to our people about this bill should not be such that they will get frightened putting their money in the banks. As *Ka Blas Ople* said during our caucus, there was a time when

people put their money in bamboos or even under their pillows. We may go back to that. Perhaps, we may not go back to that because now there are more sophisticated ways of squirreling one's money. I think that will be a great detriment to our banking system. Our banking system is still plagued with many problems. I do not think we should add another problem to it, Mr. President.

With that, I would like to thank my distinguished colleague for his patience.

Senator Magsaysay. It is my pleasure, Mr. President.

The President. The Majority Leader is recognized. Who is the next interpellator?

Senator Legarda Leviste. Mr. President, I move that Sen. Noli "Kabayan" De Castro be recognized for the continuation of the interpellation.

The President. Sen. Noli "Kabayan" De Castro is recognized.

Senator De Castro. Thank you, Mr. President.

Will the distinguished and respected sponsor of this measure yield for some simple questions that need simple but important answers, Mr. President?

Senator Magsaysay. I am very much honored getting the questions from the topnotcher of the May 14 elections, without a party, carried by the whole Filipino people on their backs, the gentleman from Mindoro.

Senator De Castro. Thank you, Mr. President. That is why I am sure that the ordinary *kabayan* of ours will be asking if they will have their chance *dito sa mga katanungang ibibigay ko*.

It would appear, Mr. President, that in the Declaration of Policy, Section 2, it puts more emphasis on laundered money from illegal acts committed outside of the country, *at hindi po dito sa ating bansa. Mahalaga po ito dahil ang* Financial Action Task Force o ang FATF is putting pressure on us, the Philippine Congress, to pass this measure up to September 30.

Will the good senator agree with me *na may money laundering din na nagmumula dito sa ating bansa*, unlawful acts *na nangyayari dito sa ating bayan? At mahalaga po ito dahil* the Judiciary may be misguided in case of future judicial determination of the intent of the law.

Senator Magsaysay. *Totoo po iyan, Ginoong Pangulo, sapagkat nakalagay dito sa Section 2, "that the Philippines shall*

not be used as a money-laundering site for the proceeds of any unlawful activity." So, *may mga* local crimes *inyan sigurado*. At the same time, we are aware that a lot of these criminal activities are extranational or transnational in nature. That is why we have included in the Declaration of Policy the cooperation in this transnational investigation.

Senator De Castro. Does the gentleman have any evidence, Mr. President, *na kung saan sa mga* news items *ay sinasabing* haven *tayo ng mga* money launderers? Do we have any evidence *na talagang ginagamit ng mga* money launderers, especially *ng mga* foreigners, *ang ating* Philippine banking system?

Senator Magsaysay. *Wala pang matatag na ebidensiya ngayon*, Mr. President, although *may mga* warning signs *ang international financial community na dahil samasyadong mahigpit ang ating* Bank Secrecy Law, Republic Act No. 1405, *ay wala silang ano mang lakas na makakuha ng impormasyon sa data base dahil sa napakatinding probisyon ng* Republic Act No. 1405. *Kaya nga kailangan nating i-address ang isa sa mga puntos na iyan.*

Senator De Castro. *May posibilidad po, Ginoong Pangulo, na dahil mahigpit ang ating* Bank Secrecy Law, *ginagamit ng mga* money launderer *iyong kahigpitan ng* Bank Secrecy Law?

Senator Magsaysay. *Totoo po iyan, Ginoong Pangulo. Ako po ay binigyan ng aking technical staff sa FATF ng statistics kung saan ay nakalagay ang Pilipinas bilang isa sa mga noncooperative countries and territories, kaya napakataas ng ating mga* suspicious transaction. *Kaya kung titingnan natin itong* suspicious transactions between April 1996 to July 15, 2000, that is about 52 months. *Kung ang* Russia *ay may* 847 suspicious transactions, *tayo aymay* 566. *Ang* Panama *ay may* 435. *Ang* Israel *ay mataas din noong araw, 495, pero bumagsak sa 71. Pero tayo ay may* 566. *Kaya ito ang* 15...

Senator De Castro. Suspicious transactions, Mr. President. *Ano po ang naging basehan para ito ay maging* suspicious transaction?

Senator Magsaysay. These are transactions *na nagkaroon ng malalaking krimen kagaya ng* drugs, kidnapping, *pati na ang* carnapping at graft and corruption. These are the three basic—drugs, kidnapping, and graft and corruption. Not necessarily in that order.

Senator De Castro. How about terrorism?

Senator Magsaysay. *Kasama na rin iyon. Alam naman ninyo ang nangyayari sa* South. The Abu Sayyaf group has been terrorizing and kidnapping and doing violence to our whole country. *Kaya kasama na ang terorismo roon.*

Senator De Castro. *Kung sakali, Ginoong Pangulo, na maipasa natin ang panukalang batas na ito, ang isa sa kinataakutan ng mga mamamayan ay baka raw magkaroon ng bank run o panic among the domestic depositors, kung sakali mang mag-alisan ang* laundered money accounts *sa ating mga* bangko.

Mga ilang porsiyento kaya iyan ng laundered money *natin sa* bangko based on the report of the FATF on those suspicious transactions *sa mga* bangko *natin?* Do we have an idea?

Senator Magsaysay. *Ang tanong ay iyong* laundered money *na aalis, lalayas sa* ating mga bangko.

Senator De Castro. Yes, Mr. President.

Senator Magsaysay. *Wala po tayong* hard evidence *dito kung gaano kalaki*. But the fact *na mayroon tayong* suspicious transactions *na halos kapantay ng* Russia *at* Panama *at* Cayman Islands, *na kabilang sa* 15 noncooperative countries, *sa palagay ko ay* malaki rin.

Senator De Castro. Is it fair, Mr. President, to conclude that it could lead to the fall of our domestic banking system, just in case?

Senator Magsaysay. I am sorry, Mr. President?

Senator De Castro. Is it fair to conclude that that could lead to the fall of our domestic banking system?

Senator Magsaysay. I do not think that that would lead to the diminution of our banking system. On the other hand, if we do not pass the law, our banking system is expected to encounter a lot of difficulties. That is why even the Bankers Association of the Philippines has been moving everything so that we can pass the law before the deadline.

Their fear is that this will just about make them a pariah, a financial leper in consonance with the rest of the global financial community. That is why they are coming here and telling us to pass the law without any exception.

Senator De Castro. *At kung sakali pong hindi natin maipasa ang panukalang-batas na ito, itong anti-money laundering law, ano ang magiging repercussions?*

Senator Magsaysay. *Nabanggit nga natin na mayroon tayong mga* obligatory surveillance. *Sapagkat kapag nagbukas tayo ng* account *sa* CitiBank *o sa* malalaking bangko, *mayroon*

na tayong pipirmahang waiver. Ang ibig sabihin, hanggang wala pa tayong naipapasang batas to address this issue, ngayon pa lamang ay pinipilit na ang mga bagong nagdedeposito na pumirma ng waiver so that if and when their correspondent banks in other countries will say, "Will you please open the account of Mr. Joe dela Cruz," doon sa waiver na iyon ay binigyan ninyo ng kápangyarihan iyong bangko na buksan ang iyong account.

Ang ibig sabihin, Ginoong Pangulo, ang bangko na mismo, the private banks and even the government banks, are taking the initiative, short of having a law, to already protect themselves by asking for that waiver when one opens an account.

Senator De Castro. Mr. President, in Section 3, Definition of Terms, we enumerated all the institutions and entities under the supervision or regulation of BSP—Insurance Commission or IC, the Securities and Exchange Commission, Pagcor, and DTI. In the first place, *bakit po kasama ang Pagcor?*

Senator Magsaysay. Alam po ninyo, by its nature, iyan ay isang government corporation na nagbibigay ng atraksiyon sa mga gambler at speculator. Isinama natin iyan because that is one best way to launder money. Na kunwari ay nanalo siya ng ilang milyon, wala na, no questions asked.

Senator De Castro. Kaya, magsasara na rin ang Pagcor dahil wala nang magsusugal?

Senator Magsaysay. Hindi, hindi naman magsasara. Ang ibig sabihin, Pagcor is enjoined to show its information as to whether this person, in fact, won by so much or he was just making it an excuse for him to be carrying a certain amount to be deposited eventually in the bank. Information sharing.

Senator De Castro. So, why do we have to delegate our powers to the councils in identifying government agencies if we could already identify them? What I mean is, *bakit hindi na lamang natin lagyan ng period (.)* after the word "agencies" in line 17 of page 1 to make the enumeration exclusive? *Hindi po ba puwedeng ganoon,* Mr. President?

Senator Magsaysay. Ito po, Ginoong Pangulo, ay isa sa mga limang basic elements na hinihiling at ninanais ng FATF. This is the fourth of the five elements. Quoting again, "The creation of an Anti-Money Laundering Council or Task Force, an office tasked to do financial intelligence activity and will also serve to maintain a data base of possible money-laundering transactions, and that will help the expertise to analyze such data for use in arresting and prosecuting money launderers."

That is one of the five basic elements. *Nabanggit natin dito sa ating caucus na mayroon pong 40,* originally. I think Senator Pangilinan would like to expound further. Yes, Senator Pangilinan, my cosponsor, will expound further.

The President. With the permission of the two gentlemen on the floor, Senator Pangilinan is recognized.

Senator Pangilinan. Yes, Mr. President, if I may just add.

The question being raised is, why not put a period (.)? Why did we have to add the phrase "all other similar government agencies identified by the Council," and so forth and so on? Ito po ay inilagay natin base sa mga naging karanasan ng mga nag-iimbestiga sa criminal activities na isinasagawa ng mga kriminal. Very creative sila. Iba't ibang paraan ang kanilang isinasagawa. Kapag nakita nilang medyo naiipit sila sa bangko, pumupunta sila sa casino. Pag nakikita nilang naiipit sila sa casino, gumagawa sila ng paraan para dalhin iyon sa iba pang mga institusyon o iba pang mga gawain. Kaya inilagay natin itong clause na ito para mabigyan din iyong council ng adaptability sa mga posibleng estratehiya o palusot na gagawin ng mga nagma-money launder. Ang sabi nga nila, greed is an incentive to be creative. Ang ibig sabihin po, dahil sa kasakiman ay gagawa ito ng paraan para gumawa ng pera.

Dito ay bibigyan natin ng kapangyarihan iyong council upang sa darating na mga araw ay maharap nito ang problema tungkol sa money laundering.

Senator De Castro. All right. Mr. President, I would like to thank the gentleman from Pasay and Quezon City. Under Section 3, paragraph (d), on "Covered Transaction," *ano ang naging basehan,* or what made the committee decide to limit the transaction involving an amount in excess of P1 million?

Senator Magsaysay. *Ang dati po ay half-a-million pesos—*

Senator De Castro. Five hundred thousand.

Senator Magsaysay. —based on, more or less, \$10,000 which the US, I think, is triggering the query. *Noong makita namin ni Senator Pangilinan iyong House version na P1 million, gusto ito ngayong itaas.* In fact, some of our senators want P2 million; we settled for P1 million. Please note that in other countries like Hong Kong and nearby countries, there is not even a threshold. Open, *maski na* below US\$10,000 or above US\$10,000. So, this is basically a threshold wherein the ordinary depositor, the legitimate depositor will not feel that he has to answer to all these new changes in the banking system. *Binigyan natin ng kahalagahan iyong sinabi ni Senator Angara na huwag nating kalamagpin o bigyan ng concern iyong legitimate depositor.*

Senator De Castro. *Hindi po ba sa US, kapag nagdeposito kayo ng US\$10,000 ay ire-report ninyo lamang? At may discretion din ang bangko kung ire-report naman ito to whatever agency na nangangailangan ng report?*

Senator Magsaysay. *Totoo po iyan. Ang tawag nila riyon, under the Department of Treasury, ay Financial Investigative Unit or FIU.*

Senator De Castro. *Hindi po ba napakaliit na pera ngayon iyong P1 million? Dati-rati, 20 or 30 years ago, if one has P1 million in the bank, he is considered a millionaire. But now, after 30 years, I think P1 million is only equivalent to P500,000 or P100,000. Hindi po maliit iyong P1 million?*

Senator Magsaysay. *Mukhang maliit nga po. Pero nabanggit ninyo kanina na sa Philippine Deposit Insurance Corporation or PDIC, we have almost 93 percent of all the 20 million or such depositors in the banking system, P200,000 and below iyong mga 93 percent na. Kaya iyong seven percent ay P200,000 and up. Iyong P1 million, wala pa sigurong uma-average ng two percent or three percent of the whole total depositors in the country, Mr. President.*

Senator De Castro. And here is another simple question. If I have P10 million na ila-launders na pera, puwede ko po bang palusutin ito and look for 10 different banks, not branches, and deposit P1 million each on these banks?

Senator Magsaysay. Posible po iyan, Ginoong Pangulo. Ang sabi nga, iyong mga Pilipino ay creative. Pero may pagkakaisa iyang mga bangko. Kung hindi nila kilala iyong customer at nag-iiba-iba ito ng pangalan, gumagamit ng fictitious name, isang isyu na iyon. Dapat magpakita kayo ng customer identification. Kung mayroon kayong mga kamag-anak at ibubudbod ninyo iyong sampung tig-P1 million, iyong mga kamag-anak ay tetestingin sa Customer Identification Information kung ano ang kanilang hanapbuhay, saan sila nakatira, et cetera. Iyan ay isang malaking tulong doon sa discovering laundered money. "Know your customer." Kaya iyan po ay isa sa pinakamahalaga doon sa limang nakalagay sa listahan natin,—knowing the customer, customer identification.

Senator De Castro. Ginoong Pangulo, kung kilala ninyo ang customer pero hindi ninyo alam kung iyong perang idedeposito ay nanggaling sa illegal or laundered money, puwede bang maging basehan lamang ang depositor or client of the bank?

Senator Magsaysay. *Isang basehan po iyon. Makikita naman siguro ng bangko iyong galaw ng account at kung kilala nito ang depositor. Kung biglang tumaas, at alam ng bangko na isang supervisor lamang siya sa isang manufacturing company*

na kumikita ng beinte mil, at nagkaroon siya ng P1 milyon o P2 milyon, that will trigger a question. Kukuwestiyunin iyan ng bangko. At hindi naman magsasalita ang bangko kung legitimate ito after asking the client that it knows. Pero kung nakikita nilang mukhang malabo ang explanation, that might make the bank go to the FATF, to the local task force or council para sabihin na, "Mukhang may kaunting suspicion kami dito."

Senator De Castro. Is it automatic, Mr. President, that the bank will have to report it to the Anti-Money Laundering Council?

Senator Magsaysay. The bank is given the responsibility or accountability to report suspicious transactions when there is substantial evidence. Kaya mayroon silang mga level of suspicion. And bank employees are even penalized if they do not do such reports.

Senator De Castro. Let us go back to this P1 million. May data ba tayo to show kung ilang individual ang nagdedeposito ng above P1 million, Mr. President?

Senator Magsaysay. *Iyan ang wala tayo, Ginoong Pangulo, sapagkat ang alam lamang natin ay iyong sa PDIC. But that is the best we can do. The PDIC has statistics to show that both the FCDU and peso deposits have about 18.6 million depositors at ang thrift banks naman ay about 2.9 million depositors, so a total of about 21.5 million depositors. But over 93 percent of these are within the P200,000 and below average deposit at any one time.*

Senator De Castro. All right.

Senator Magsaysay. Now, I would project, Mr. President, that those who have an average deposit of, let us say, P800,000 and above or a million and above would not even be two percent or three percent at the most.

Senator De Castro. Is there any instance na ang government fund ay mahahaluan po ng laundered money, Mr. President?

Senator Magsaysay. Precisely, Mr. President. Senator Arroyo, during one caucus last week, before he signed the committee report—Senator Flavio was also there and the Senate President dropped in—removed the exemption of government departments and agencies. That means na wala nang exemption, because we know for a fact that some government agencies have that stigma of doing some level of corruption.

Senator De Castro. I ask this question, Mr. President, because government fund is subject to comprehensive audit, hindi po ba? Kung kaya parang mahirap mahaluan ng laundered money coming from illegal activity or activities.

Senator Magsaysay. *Totoo po iyan.* But some government agencies may accept donations.

Senator De Castro. *Hindi po ba isasama ito sa regular fund ng isang agency if it will accept some donation? Kasama po ba iyon sa regular fund, let us say, the budget approved by the Congress of a certain agency?*

Senator Magsaysay. *Mapupunta po siguro iyan sa Treasury.*

Senator De Castro. *Babalik sa Treasury?*

Senator Magsaysay. *Babalik sa Treasury.*

Senator De Castro. All right. How about funds from illegal sources *na ginagamit bilang contribution sa campaign funds ng mga kandidato tuwing eleksiyon? Kasama rin ba ito sa mga covered transactions under paragraph (d) of Section 3?*

Senator Magsaysay. *Puwede iyan ma-cover basta inireport doon sa... May batas tayo na we have to report to the Comelec our campaign expenses. Now, hindi natin kasalanan kung hindi inireport lahat. But that should be covered, Mr. President.*

Senator De Castro. Mr. President, let us go to "Unlawful Activity" on page 3, line 11, *partikular itong binabanggit na swindling and other deceits under Articles 315 and 316.*

Under Article 315 of the Revised Penal Code, *wala tayong problema roon.* However, I am putting some emphasis on subsection 2 (d) of Article 315, which I quote: "By postdating a check or issuing a check in payment of an obligation when the offender had no funds in the bank or his funds deposited therein were not sufficient to cover the amount of the check..."

Ginoong Pangulo, bukod po sa probisyong ito, mayroon tayong Batas Pambansa Blg. 22, or the Anti-Bouncing Check Law. Kung isasama natin ito sa ating panukala, in effect, magiging tatlo na ang posibleng maisasampang kaso. Tama po ba ako?

Senator Magsaysay. *Tama po iyan.*

Senator De Castro. *I-include po uli natin iyong Batas Pambansa Blg. 22 or the Anti-Bouncing Check Law?*

Senator Magsaysay. *Totoo po iyan.*

Senator De Castro. Mr. President, let us now go to the definition of money laundering under Section 4, on page 4, line 25. *Pinag-usapan ninyo kanina ni Senador. Angara ang tungkol sa definition ng "laundering." Pinag-uusapan namin ang*

definition ng "Laundering," coming from the word "launder," "laundry." *Hindi po ba pag sinabing "laundry" naglalaba tayo?*

Senator Magsaysay. *Totoo po iyan.*

Senator De Castro. *Nangangahulugan po ba na pag sinabing "launder" nilalabhan natin o nililinis natin iyong perang madumi o nanggaling sa illegal activities o illegal source?*

Senator Magsaysay. *Totoo iyan. Dahil ang ibig sabihin ng "launder" ay labhan. Sa Español, lavar, meaning "to wash." Kaya nililinis natin, naglalagay tayo ng kaunting detergent papasok sa laundry machine, at paglabas ay semi-clean na.*

Senator De Castro. Semi-clean.

Senator Magsaysay. *Iyan iyong deposit process.*

Senator De Castro. Wala nang kula-kula?

Senator Magsaysay. *Tapos iyong layering. Puwedeng magkula rin. Iyon ang layering, iyong pagkula, Mr. President.*

Senator De Castro. Mr. President, supposing a cash, which is the proceed of an unlawful activity, was placed in a bank, say, more than P1 million. So money laundering *na iyan.* The depositor, in depositing the cash in the bank, uses his true name. *Iyong tunay niyang pangalan ang ginamit niya.* In other words, *hindi niya itinago o hindi siya nag-disguise sa pagdedeposito ng pera sa bangko. Nangangahulugan bang may money laundering dito?*

Senator Magsaysay. *Posible po iyan kung hindi niya masasagot iyong kaniyang economic means, kung siya ay bagong depositor o siya ay may existing account. Pero nakikita ng mga teller ng bangko na iyong kaniyang existing account ay paakyat, maliit lamang at biglang naging P1 million. That will trigger the query, the report. Magtatanong ngayon ang teller, "Mr. Dela Cruz, bigla yata kayong sinuwerte. Saan ba galing ito?" Ngayon, puwede nang magsabi si Mr. Dela Cruz na nanalo siya sa lotto. Hihingin naman iyong ticket sa lotto.*

Senator De Castro. *Kaya sa tuwing tayo ay magdedeposito ng more than P1 million lagi tayong tatanungin?*

Senator Magsaysay. Not necessarily, Mr. President. Kung iyong account holder *ay korporasyon, pababa o paakyat ang account, the bank can easily see that because may mga resibo naman iyan.* Usually *ay may accounting standards ang mga korporasyon.*

Senator De Castro. *Ang mangyayari po niyan, pag hindi kilala ang depositor, that is the only time na kukuwestyunin: siya*

ng bank teller. *Pero kung kilala ng teller, halimbawa, si Sen. Juan M. Flavie, at magdedeposito siya ng more than P1 million, there will be no questions asked, Mr. President?*

Senator Magsaysay. *Depende po. Kung si Sen. Juan M. Flavie ang magdedeposito, sa tingin ko, no questions asked. Sapagkat alam naman ng mga tao na napakasimpleng senador ito.*

Senator De Castro. *Opo, pero more than P1 million ang idedeposito niya. Siya ay isang simpleng tao.*

Senator Magsaysay. *Doctor of Medicine din siya.*

Senator De Castro. *Ah, opo.*

Senator Magsaysay. *Malakas din ang kita ng isang Doctor of Medicine.*

Senator De Castro. *So, in a way, inaamin po natin na kapag hindi kilala ang isang nagdedeposito ng more than P1 million, puwede siyang kuwestyunin. Pero kung kilala ang isang tao, no questions asked.*

Senator Magsaysay. *Depende nga roon sa nakikitang galaw noong account. Ang tawag diyan ay monthly average. Maski kilala kayo pero biglang umakyat ang account ninyo at hindi ninyo nasagot ang tanong, baka mag-trigger ng suspicion.*

Senator De Castro. *Supposing I was requested by a person who was involved in unlawful activity to deposit the money in my own name without knowing that it came from unlawful activity, did I commit money laundering here, Mr. President?*

Senator Magsaysay. *Is the owner of the account guilty?*

Senator De Castro. *No, Mr. President.*

Senator Magsaysay. *O ginamit iyong kaniyang account in good faith?*

Senator De Castro. *Nagpadeposito sa akin. Ngunit hindi ko alam that the money came from unlawful source.*

Senator Magsaysay. *Correct.*

Senator De Castro. *Is there money laundering there?*

Senator Magsaysay. *Wala. Walang crime diyan dahil there is no knowledge. There is no evil intention. But if there is knowledge, it is an element of the crime.*

Senator De Castro. *Is there an instance that the ordinary teller of a bank who assisted in the deposit of laundered money will be liable for money laundering?*

Senator Magsaysay. *Yes, she may be liable. If she knew that this is dirty money and she assisted, then she becomes an accomplice.*

Senator De Castro. *Or if she did not report the money in question.*

Senator Magsaysay. *Or did not report, yes.*

Senator De Castro. *Ginoong Pangulo, kapansin-pansin po ang ginawa nating pag-amiyenda sa Bank Secrecy Law na kung saan ay binigyan natin ng kapangyarihan o powers ang council na mag-examine ng bank deposits. Tama po ba ito?*

Senator Magsaysay. *Totoo po iyan. Mayroon tayong ginawa upang mabuksan nang kaunti ang Bank Secrecy Law through an amendment bagaman may mga safeguard.*

Senator De Castro. *Naitanong ko po ito, Ginoong Pangulo, dahil wala pa tayong nakikitang contradiction dito sa Section 16 at sa naunang Section 9, kung saan ang korte ay binigyan natin ng jurisdiction upang mag-isyu naman ng search warrant.*

Senator Magsaysay. *Kung ang Monetary Board ay pumapayag na ituloy... Maybe Senator Pangilinan can expound.*

Senator Pangilinan. *Thank you, Mr. President. Kinakailangang paghiwalayin po natin iyong Section 9 at Section 16. Under Section 16 binibigyan natin ng kapangyarihan ang Monetary Board, matapos hilingin ng Council, na mabuksan ang mga bank record habang ito ay under investigation. Ang ibig sabihin, with the approval of the majority of the Monetary Board—four out of seven members—after the request has been done by the Council. Kinakailangang tatlo sa Council ang mag-request nito. Puwedeng ma-access iyong bank records. This is Section 16.*

Sa Section 9, pinag-uusapan na rito ang forfeiture ng mga assets. Kung titingnan po natin ang Section 7, ito ay tungkol sa Freezing of Assets; Section 8, Preservation of Assets; and Section 9, Search and Seizure of Assets. Ang ibig sabihin nito, nadetermina na mayroon nang unlawful activity, mayroon nang kasong money laundering na maisasampa sa korte. Ngunit sa Section 16, this is not in the case itself. It is pending investigation.

Senator De Castro. *How about iyong power ng Council na mag-examine na ng bank deposits? Mauuna muna iyong examination ng bank deposits bago mag-serve ng search warrant?*

Senator Pangilinan. *Hindi po. Ginoong Pangulo. Iyong pag-e-examine ng bank records ay maaari lamang gawin ng komite matapos itong maaprubahan ng Monetary Board. Kaya hindi korte kundi Monetary Board ang...*

Senator De Castro. *Ng Bangko Sentral.*

Senator Pangilinan. Yes. Four out of seven members *ng* Monetary Board *ang* kailangang bumoto *ng* pabor para mabuksan *ang* bank records *ng* isang depositor, *hindi* korte, according to Section 16.

In other words, administrative body *lamang ang* may access. *Sapagkat sa ilalim ng ating Bank Secrecy Law, maaari lamang mabuksan ang mga bank record kung may consent ang depositor o kaya ay may court order.*

Senator De Castro. Court order. Thank you very much, Mr. President.

Finally, Mr. President, aware ho ba tayo—and I am sure na aware tayo o baka lamang nakakalimutan natin itong cyber laundering. Posible po bang may nagaganap nang money laundering dito sa ating bansa, iyong tinatawag na "cyber laundering?" Nabanggit ko po ito sapagkat kailangang preparado tayo dito sa lumalaganap na cyber laundering.

Ayon sa isang artikulo, umaabot daw po sa US\$2 trillion sa Amerika ang illicit wire transfers na madaling maitago, Ginoong Pangulo.

Senator Magsaysay. *Totoo po iyan. Iyong tinatawag nating cyber laundering ay covered dito. Kahit noong wala pa tayong E-commerce Law ay nangyayari na iyan doon sa mga electronic transfer, wire transfer. Even through fax during those times in the 1970s—by fax machines or telex.*

Natatandaan ko na may isang foreign bank na tinamaan dahil nagkaroon ng kutsabahan. At napakalaki ang nawala doon sa foreign bank na iyon. I think the bank is Carnegie or Mellon Bank, Mellon Bank of the United States.

Nakalagay po dito sa page 4 iyong violations under the E-commerce Law. Kasama dito as one of the criminal activities.

Senator De Castro. This is the Electronic Commerce Act of 2000?

Senator Magsaysay. That is correct, Mr. President. On page 4, line 18(x).

Senator De Castro. Thank you very much, Mr. President. I

thank the honorable senator from Zambales for answering some of my clarificatory questions regarding money laundering.

Thank you very much. *Salamat po.*

Senator Magsaysay. Thank you, Mr. President.

The President. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, I move that Sen. Sergio R. Osmeña III be recognized for the continuation of the interpellation.

SUSPENSION OF SESSION

The President. Before the Chair recognizes Sen. Sergio R. Osmeña III, can the Chair request a one-minute suspension of the session, if there is no objection? [*There was none.*]

It was 5:55 p.m.

RESUMPTION OF SESSION

At 5:57 p.m., the session was resumed.

The President. The session is resumed.

Sen. Ramon B. Magsaysay Jr. and Sen. Sergio R. Osmeña III are recognized for the continuation of the interpellation.

Senator Osmeña III. Thank you, Mr. President. Will the distinguished sponsor yield for a few questions?

Senator Magsaysay. Certainly, Mr. President.

Senator Osmeña III. Mr. President, we are gratified that the distinguished sponsor has come up with a committee report so quickly. We are presently surprised and we are hopeful that this country will finally adopt a version of this bill into law in order to limit the activities of criminals in our country and in our society.

Now, Mr. President, under the proposed committee report, what is criminalized? Is money laundering criminalized alone? Or are there other acts or omissions criminalized also?

Senator Magsaysay. Mr. President, what is criminalized is the act of money laundering *per se*. When dirty money is deposited into the economic stream of the country, usually deposited in banks, and is going to other economic activities.

Senator Osmeña III. What about nonreporting of a transaction above the statutory amount of P1 million, is it not also criminalized?

Senator Magsaysay. Yes, this is also criminalized in the sense that there is willful withholding of information that could lead to a money-laundered account.

Senator Osmeña III. Suppose it does not lead to a money-laundered account?

Senator Magsaysay. Then the whole question is moot and academic, Mr. President.

Senator Osmeña III. Therefore, Mr. President, we would be encouraging people not to report because the chances are most of these transactions will not be the fruits of criminal activities.

In essence, Mr. President, what I am trying to point out is that the mere fact that a bank officer or an insurance officer does not report is criminal enough, regardless of whether the monies involved are the fruits of criminal activities.

Senator Magsaysay. Yes, Mr. President.

Senator Osmeña III. Failure to report. I thank the gentleman for that, Mr. President.

Now, there was outlined in the gentleman's proposed law, unlawful activities and felonies and offenses, but I failed to see the crime of the fruits from prostitution. Is prostitution one of the crimes that is subject to the anti-money laundering law?

Senator Magsaysay. In the original version, it was included but somebody from the House panel removed this. Although child prostitution is included--this is on page 4, line 7.

Senator Osmeña III. Yes, we see that, Mr. President, but unfortunately, first, why would somebody from the House be able to amend a committee report of the Senate?

Senator Magsaysay. This is not an amendment, but we were working together closely. We had the agreement that the House version and the Senate version will be as close as possible to each other, because the version that was given to us by the BSP, BAP, the interagency group, was the root of both the House and the Senate working bill that was the source of this committee report, Mr. President. So we were working quite closely with the House up to a certain level.

The President. May I invite the attention of the gentlemen on the floor to line 19 of page 3. The impression of the Chair is that white slavery is prostitution.

Senator Magsaysay. That is correct also, Mr. President.

The President. So it is included in the unlawful activities enumerated.

Senator Magsaysay. So the term "Prostitution" is covered by white slavery and thus the term is redundant.

Senator Osmeña III. All right. I thank the gentleman for that clarification, Mr. President.

What about counterfeiting? Is counterfeiting one of the offenses under the proposed law?

Senator Magsaysay. It used to be included, Mr. President.

Senator Osmeña III. It used to be included. Does the gentleman mean that it is now excluded?

Senator Magsaysay. Yes, Mr. President.

Senator Osmeña III. Is there any reason for that, Mr. President? Are we going to give exemptions to counterfeiters?

Senator Magsaysay. This was suggested by the House and we accepted it. We feel that counterfeiting is already covered by some other laws.

Senator Osmeña III. Some other laws that are listed hereunder? May we know which law would that be?

Senator Magsaysay. This must be a fraudulent practice. On page 4, No. 20.

Senator Osmeña III. Under Republic Act No. 8799?

Senator Magsaysay. That is right.

Senator Osmeña III. That would be the Securities Regulation Code, Mr. President.

Senator Magsaysay. Well, the counterfeit is part of securities.

Senator Osmeña III. May we get a clarification from the staff, or may we specifically ask for the provision in the Securities Regulation Code?

Senator Magsaysay. My staff made mention that it was originally there and the House panel sought to have it removed. If the gentleman wishes to put it back, we have no objection, Mr. President.

Senator Osmeña III. I thank the gentleman for that, Mr. President.

What about fruits from espionage?

Senator Magsaysay. It was never included, Mr. President. If the gentleman wishes to include that, we have no objection.

Senator Osmeña III. What about from insurance fraud?

Senator Magsaysay. It is never included.

Senator Osmeña III. What about bank fraud?

Senator Magsaysay. I beg your pardon, Mr. President?

Senator Osmeña III. The fruits of bank fraud, fraudulent banking practices.

Senator Magsaysay. According to our legal staff, this is covered by swindling.

Senator Osmeña III. Swindling. I guess that also covers embezzlement, estafa and the like.

Senator Magsaysay. Yes, Mr. President.

Senator Osmeña III. All right. I would like to thank the gentleman for that. What about tax fraud, tax evasion?

Senator Magsaysay. This was removed.

Senator Osmeña III. Is there any particular reason tax fraud was removed, Mr. President?

Senator Magsaysay. Well, this was removed ostensibly because this is a crime that has its own penalty. This is covered by the Comprehensive Tax Reform Program (CTRP) law. In fact, during the caucus this noon, some of our colleagues wanted to even reduce the coverage because we are concentrating on the basic major crimes that are large and transnational, like terrorism, drugs, kidnapping and the like.

But if the gentleman wishes to include this tax evasion, we have no objection, Mr. President. We also removed this, I think. Some of the observations is that a lot of our small and medium businessmen, our ethnic Filipinos, deem this to be used as a reason for harassment, and we know that this will be a disincentive for them to do business in the sense that they can be harassed by including this tax evasion. I think that is one of the major reasons we accepted the House proponents' version excluding that particular crime.

Senator Osmeña III. Mr. President, I always hear that excuse. First, I would like to preface my next remark that I understand the

dilemma that the good sponsor finds himself in. We are trying to get a law on the statute books and there have to be compromises no matter how unpalatable, as we know, laws are crafted.

But still I just want to put on record, Mr. President. I always hear that excuse from businessmen who do not like to pay their taxes and intend to block laws that would force them to pay the correct amount of taxes by saying they would be subjected to harassment. So why does the gentleman not walk us through that? How does the harassment take place?

Senator Magsaysay. Does the gentleman want to put his amendments? We have no objections.

Senator Osmeña III. No. We have to explain on record how such harassments take place.

Senator Magsaysay. I am not privy to that, Mr. President. I have not experienced that.

Senator Osmeña III. That is right. But it was something that the chairman accepted as a valid argument earlier.

Senator Magsaysay. I think it is known that like the Italians, the average Filipino small-scale or medium-scale businessman would rather work on a cash basis. Thus, there are no records, and that is one way to avoid taxes.

Senator Osmeña III. Would that be harassment?

Senator Magsaysay. I beg your pardon, Mr. President?

Senator Osmeña III. Where does the harassment come in when it is the businessman himself who elects to do business on a cash basis?

Senator Magsaysay. The harassment might happen if they see a businessman and he has no tax payments, so he might be harassed—"Why are you not paying your taxes when you are earning so much?"

Senator Osmeña III. Is that recommended or not recommended?

Senator Magsaysay. I do not know whether it is recommended or not recommended but tax evasion is illegal. If the gentleman wants to put his theory, we have no objections.

Senator Osmeña III. Again, Mr. President, I just wanted to make sure that we are able to explain or to spread in the *Record* the various reasons put forth by objectors to certain provisions that were under past versions of this proposed bill which have been deleted.

Mr. President, may we ask from the distinguished sponsor who do we intend to catch if we pass the anti-money laundering bill into law?

Senator Magsaysay. We intend to catch criminals, those who have done illegal activities, who are putting their dirty money, their ill-gotten money, into the banking or other economic systems. This is the dirty money that we are trying to trace, ferret out and maybe even confiscate so that he—the criminal—will not enjoy the fruits of his criminality, of the crimes he has committed.

Senator Osmeña III. And perhaps this is also a secondary way to nail those who we cannot nail on the primary offense.

Senator Magsaysay. That is correct.

Senator Osmeña III. In much the same way that Al Capone was nailed on tax charges but never on murder, bootlegging or other criminal activities that he was so notorious for.

Senator Magsaysay. That is correct.

Senator Osmeña III. Therefore, Mr. President, we intend to catch kidnapers through this, do we not? We intend to catch bribetakers.

May we just have the answer for the record, Mr. President?

Senator Magsaysay. Is the gentleman asking me a question?

Senator Osmeña III. Yes, we are.

Senator Magsaysay. I thought the gentleman is making a statement, Mr. President. Yes, on both counts.

Senator Osmeña III. We intend to catch *jueteng* lords.

Senator Magsaysay. Yes, Mr. President.

Senator Osmeña III. We intend to catch corrupt politicians.

Senator Magsaysay. That is correct.

Senator Osmeña III. We intend to catch tax evaders.

Now, Mr. President, that being the case, is there any peculiar reason under the definition of "Unlawful Activity" we have limited ourselves—and not being a lawyer, certainly I am not familiar with all the laws in our statute books or in our codes—to enumerating the crimes that would be covered by the term "Unlawful Activity." Would "unlawful activity" not be anything that is against our law?

Senator Magsaysay. Certainly, Mr. President.

Senator Osmeña III. Therefore, would it be an improvement on the bill if we just say something like "anything that is against the law will be unlawful activity as far as the anti-money laundering bill is concerned?"

Senator Magsaysay. For that matter, if that is introduced, we can consider that to make it sweeping. But as I said earlier, we wanted to concentrate on the major crimes, drugs being one of the most important sources of criminal money, and this was triggered by the problem with dirty money coming from drugs. But if the gentleman wishes to put his own amendments, we have no objection, Mr. President.

Senator Osmeña III. I would like to thank the gentleman for that. Let us pursue that line a little bit further. Let us say I am a drug lord from Burma. Let us say that the Philippines has just passed its anti-money laundering law and that the fruits of kidnapping are not included, only the fruits of drug money are included. Therefore, sitting on a pile of money I earned from my drug-manufacturing activities, can I not do a deal with the kidnapers, say, in Basilan and say, "I will pay you the money." Now it becomes kidnapping money and this is exempt from the anti-money laundering law?

What I am trying to point out is, if we have a small *lusot* as they say in Tagalog, then the monies can be funneled to that particular area which is exempt from the coverage of the money laundering law, and that is my fear, Mr. President. If we exempt, let us say, for example, the fruits of tax evasion, then I will just say, "Well, this money came from my tax-evading activities."

Senator Magsaysay. We have a provision here in line 23 that includes felonies.

Senator Osmeña III. On what page, Mr. President?

Senator Magsaysay. Page 4—Felonies or offenses of a similar nature.

Senator Osmeña III. That is another question I have. "Similar nature as the above..."

Senator Magsaysay. As the above, yes.

Senator Osmeña III. All right. I even have a particular question for line 24 on what are punishable. It reads, "...under the penal laws of the country where the felony or offense was committed."

Now, Mr. President, if it is not an offense in the Philippines but an offense in the United States, would that be covered by our anti-money laundering law?

Senator Magsaysay. Our cosponsor will answer that.

Senator Osmeña III. Certainly.

Senator Pangilinan. Thank you, Mr. President.

If the predicate offense is committed in the United States and the money is brought to the Philippines and the money is deposited in the Philippines and that offense is of a similar nature as the above, this is punishable under the penal laws of the United States. The offender can be prosecuted for money laundering here.

Senator Osmeña III. So therefore it must have both, as they say in poker.

Senator Pangilinan. Yes, Mr. President.

Senator Osmeña III. In other words, if it is an offense in the United States but not an offense here, we may not use the anti-money laundering law to confiscate, forfeit or even prosecute the person or persons charged therewith under the US law.

Senator Pangilinan. Yes. If it is punished under the foreign law, we can prosecute for money laundering here.

Senator Osmeña III. How is that so, Mr. President? If somebody in the United States is charged with tax evasion and we pass this bill as is wherein tax evasion is not a crime, how can we prosecute somebody under an offense which under our own statutes is not a crime? Would that not be unconstitutional or will we be implementing the laws of the United States of America instead of our own?

Senator Pangilinan. Mr. President, as long as the crimes mentioned are similar to the crimes committed or committed in other jurisdictions are similar to the crimes listed here, then they can be punished here.

Senator Osmeña III. That is correct. So therefore, my specific question is, if we pass this bill the way it is now written, this committee report where tax evasion is not a crime, where tax fraud is not a crime, this is not a crime under the definition of "unlawful activity" covered by this proposed law. In the United States, it is a crime. Therefore, do we accommodate the United States and do we arrest someone who has fled to the Philippines or at least used the Philippines as a money laundering haven for the fruits of his tax evasion?

Senator Pangilinan. If we follow the distinguished senator's line of argument, Mr. President, and tax evasion is not included in the list of predicate offenses, then he cannot be prosecuted here in the Philippines for tax evasion committed and eventual money laundering done here for tax evasion committed in the US.

Senator Osmeña III. Therefore, Mr. President, since tax evasion is indeed a crime in our country, as the distinguished sponsor earlier said, it would be good to include it already in the list of unlawful activities.

Senator Magsaysay. I mentioned that earlier that the distinguished gentleman may amend that as he wishes, Mr. President.

Senator Osmeña III. Yes, we heard that and we are grateful for that, Mr. President.

Let us go to another point. Which type of countries, Mr. President—in the studies done by the committee or the technical working group, the joint advisory committee with the Bangko Sentral—is normally the most attractive to money launderers?

Senator Magsaysay. Are attractive to money launderers?

Senator Osmeña III. Yes, Mr. President.

Senator Magsaysay. We have a list, Mr. President. But while my staff is looking at...

Senator Osmeña III. I am not asking for the specific countries. I am asking for the...

Senator Magsaysay. These are countries that have a very weak reporting. So, with most of the countries already complying with having their own anti-money laundering laws, it might be now Indonesia, which has also complied in any way, or the Philippines.

Senator Osmeña III. But I am just talking about the situation obtaining in those countries. I understand it would be countries with lax regulations.

Senator Magsaysay. Yes, Mr. President.

Senator Osmeña III. With weak institutions, Mr. President.

Senator Magsaysay. That is correct, Mr. President.

Senator Osmeña III. And with an inability to enforce laws.

Senator Magsaysay. Yes, Mr. President.

As of July 15, 2000, just over a year ago, we have been there among the 15 countries that are considered, identified as non-cooperative. So, the gentleman might have an idea what countries are with the Philippines, as he mentioned as lax in banking regulations. These are the Bahamas, Cayman Islands, Cook

Islands, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St. Kitts-Nevis, St. Vincent, and the Grenadines. These are the 15 countries, including Israel, at that time.

Senator Osmeña III. Mr. President, how many countries in the world have passed an anti-money laundering law?

Senator Magsaysay. Have passed?

Senator Osmeña III. Yes, have passed an anti-money laundering law.

Senator Magsaysay. Let me check with my staff, Mr. President.

Senator Osmeña III. Just give me a round number and the gentleman does not have to name every country.

Senator Magsaysay. From what I have read, it was hitting... They started as seven countries, the Group of Seven—FATF—and now there are 29 and I think that has been augmented by many more. In fact, Israel is no longer in the list as it was a year ago. So what is usually mentioned is it is the Philippines, Nauru has to amend its law, and maybe Russia has to amend its law.

So, these are the three countries that the FATF feels are worthwhile mentioning that must either amend their existing anti-money laundering law or have a new one, like in our case.

Senator Osmeña III. Mr. President, just for the record, the Group of Seven is now known as the "Group of Eight." Russia has been included for the past few years.

But, in any case, Mr. President, it seems to me that that list that the distinguished sponsor refers to is known as the Financial Action Task Force list on Non-Cooperative Countries and Territories or NCCT. Am I correct?

Senator Magsaysay. That is correct, Mr. President.

Senator Osmeña III. And because only 29 countries have passed an Anti-Money Laundering Law and the updated list of NCCTs is limited to 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, including the Philippines, what about the rest of the countries? How are they categorized?

Senator Magsaysay. I am not sure how they can be categorized at this stage, Mr. President.

The President. With the permission of the gentlemen. I think what is indicated is that there was a review of the financial systems in these 21 or so countries and what was indicated was that the

systems in these countries, including the Philippines, unfortunately, make the system attractive for deposit of so-called "dirty monies." Presumably, the laws of the other countries not enumerated are sufficient to serve as a deterrence for money launderers.

Senator Osmeña III. Therefore, Mr. President, if the distinguished sponsor accepts that as an answer, then it is possible to meet the qualifications of the Financial Action Task Force on money laundering and it reports the recommendations, not necessarily by passing an anti-money-laundering law but by revising our banking systems, the rules and regulations, in order to meet the minimum requirement set forth by the Financial Action Task Force.

Senator Magsaysay. That is possible, Mr. President.

Senator Osmeña III. Thank you very much, Mr. President.

Now, I failed to see here a comparison on our proposed anti-money laundering law with the anti-money laundering laws that have been passed by those 29 countries. Did the staff ever do a comparison or a matrix?

Senator Magsaysay. I saw a matrix, I think, among the Asia Pacific countries.

Senator Osmeña III. And may we be favored with a copy of that matrix?

Senator Magsaysay. We have a matrix on Asia Pacific countries on their anti-money laundering measures.

Senator Osmeña III. If I might be favored with a copy thereof—

Senator Magsaysay. Yes, Mr. President.

Senator Osmeña III. —I would like the opportunity to study that.

Now, do we also have a matrix as to how our anti-money laundering bill will compare with the anti-money laundering statutes of the United States, the United Kingdom, Japan and Switzerland? Just those four countries.

Senator Magsaysay. We have this in the matrix which we will give to the gentleman, Mr. President.

Senator Osmeña III. I thought that was only for Asian countries.

Senator Magsaysay. This includes Australia, the United States.

Senator Osmeña III. UK.

Senator Magsaysay. Japan.

Senator Osmeña III. And Switzerland. I am particularly interested in Switzerland.

Senator Magsaysay. Switzerland is not here. But we can furnish this, Mr. President.

Senator Osmeña III. We would be happy if we could get a copy thereof as soon as that would impact on my future interpellations on this bill.

Now, just giving us... Off the top of the gentleman's head, Mr. President. Is our anti-money laundering law, the proposed law, the committee report, stronger or weaker than those existing in other Asian countries?

Senator Magsaysay. We gave a statement of policy that as long as we comply with what the FATF requires, this is good for us. I believe it is comparable with the other countries.

Senator Osmeña III. Do they use the same P1,000,000 or \$20,000 statutory...

Senator Magsaysay. Some even have a lower threshold. I think Hong Kong does not have any specific amount. I think the US provides US\$10,000. Singapore has no specific amount.

Senator Osmeña III. Does the gentleman's bill cover also a pattern or frequency of deposits?

Senator Magsaysay. No, it does not cover that. That is already the option of the bank to find out if there is such a pattern.

I think Senator Pangilinan wants to be recognized.

Senator Pangilinan. Mr. President.

The President. With the permission of the two gentlemen on the floor, Senator Pangilinan is recognized.

Senator Pangilinan. Just an additional input to the queries raised by Senator Osmeña regarding comparing our money laundering provisions relative to other countries.

If we are to compare it with the United States, Mr. President, the United States has a more expansive anti-money laundering law in that, for example, it includes every conceivable federal white-collar crime as far as unlawful activity is concerned.

With respect to access to bank records, it is also a little more... In fact, there is a term that they call... The Bank Secrecy Act is a misnomer with respect to the United States because it is not really about keeping confidential bank records but rather how records may be accessed, particularly by the bank. Precisely, "bank disclosure" is a more appropriate term which was told to us during our seminar there. So, at least with respect to the US jurisdiction, the provisions of its money laundering laws are more expansive than ours, as proposed.

Senator Osmeña III. Well, I have always admired the US for plugging its loopholes, Mr. President, and we are always in the process of keeping our loopholes open, so to speak. Of course, we know where the pressures are coming from.

Now, walk me through this, Mr. President. Let us say I were a drug dealer in Hong Kong and I instruct my bank to deposit P2 million and course it through a bank in the Philippines, let us say, Bank XYZ, and instruct Bank XYZ to remit it onwards to my bank account in Grand Cayman Islands. At what point then would Bank XYZ be asked to intervene? At the point of its receipt of a telegraphic transfer from the Hong Kong Bank, is that right?

Senator Magsaysay. This is the same name as the owner of the account in Hong Kong, the Philippine account, the XYZ Bank?

Senator Osmeña III. Probably, yes.

Senator Magsaysay. I guess if the account had very little money before, that could trigger a query. Is the gentleman saying that from here it will go to Cayman?

Senator Osmeña III. That is correct.

Senator Magsaysay. So, it is like from Hong Kong to Manila, Manila to Cayman?

Senator Osmeña III. Let us say Mr. Wong in Hong Kong also happens to have an account with-

Senator Magsaysay. XYZ Bank?

Senator Osmeña III. —Urban Bank in Manila. His level of deposits and level of withdrawals give him an average monthly balance of about \$5,000. He deposits \$30,000 through Hong Kong Shanghai Bank in Hong Kong, remits it to Urban Bank in Manila and instructs Urban Bank to remit it to J.P. Morgan Chase in New York for account of his Grand Cayman account. So, when the US\$30,000 comes in, Urban Bank now is required to flag it and to record it in a general ledger that is then forwarded to the Bangko Sentral or the Anti-Money Laundering Council at the end of five days or within five days, is that correct?

Senator Magsaysay. That is correct, the alarm is set off because this is way beyond the US\$5,000 average and this is over P1 million.

Senator Osmeña III. So, the branch manager of that particular Urban Bank branch in Manila where Mr. Wong has his account, is he not required to call up Mr. Wong first and ask him: "Mr. Wong, where did you get this money? It is a little bit larger than your normal deposit."

Senator Magsaysay. Yes. In fact, it is important that the Urban Bank, let us say, is going to ask such questions.

Senator Osmeña III. So, he is required to call up Mr. Wong?

Senator Magsaysay. I think so. This is information seeking because that threshold has been reached and bridged. And this is something that can excite some kind of suspicion.

Senator Osmeña III. But it is not required under the law that that bank officer be required to confirm, is it?

Senator Magsaysay. Senator Pangilinan?

Senator Pangilinan. Yes, if I may be allowed, Mr. President?

Senator Osmeña III. Certainly.

The President. Senator Pangilinan is recognized.

Senator Pangilinan. The law provides for instances wherein transactions are covered. In fact, there are three transactions covered—P1 million. I mean the bill, I am sorry, provides for this. One million pesos and above, that is a covered transaction. That is No. 1.

No. 2, transaction having no credible purpose or origin underlying trade obligation, contract or economic justification; or

No. 3, unusually complex or large transactions.

So, in that example given by Sen. Serge R. Osmeña III, we can probably say that hypothetically, it could fall under No. 2. And because the banks will be required to make reports, it may either, one, make a report that it is P1 million and above, or two, make a report that this looks like a suspicious activity.

Now, as to the question whether or not they are required to ask and make clarificatory questions with respect to their client, the answer, I believe, is yes. For them to be able to ferret out information as to whether or not the transaction is legitimate or illegitimate, the only way or one such way is to ask questions. However, if after questioning there is justification for the particular

transaction, then there is no requirement to make a report. But if, after initial queries, it seems like this is a suspicious activity, then the bank, under the law, will be required to make such report.

Senator Osmeña III. Mr. President, may I request the gentleman from Quezon City to cite the page in his sponsorship speech where those three categories are mentioned?

Senator Pangilinan. Mr. President, is Senator Osmeña asking about the speech or the law, I mean, the bill?

Senator Magsaysay. The law.

Senator Osmeña III. Well, the gentleman mentioned that there would be three kinds of covered transactions. Would that be in the proposed law?

Senator Pangilinan. That is in the proposed law, page 2, letter (d), line 1 up to line 12.

The President. What page?

Senator Magsaysay. Page 2.

Senator Pangilinan. "Covered Transaction." Line 1 up to line 12.

The President. All right.

Senator Osmeña III. Page 2, letter (d), line 1 to line 12. Now, it is a good thing the gentleman mentioned that, Mr. President. Let me get to No. 2 later, but let me go back to No. 1. Again, the banker, the branch manager is now required to call up the depositor in Hong Kong to inquire about the source of the money, of the \$30,000 deposit. Am I correct? Would that be...

Senator Pangilinan. That would probably fall under No. 2, Mr. President.

Senator Osmeña III. Why not under No. 1 where it is simpler?

Senator Pangilinan. I am sorry. That is correct, it can also fall under No. 1. That is correct.

Senator Osmeña III. Because No. 1 is statutory, whether or not it is legal or illegal, he has to call and get an explanation. All right. Let us say, Mr. Wong says, "Oh, I just inherited some money from a relative in Xiamen and I am sending it to the United States to probably buy a house later on." What is the bank officer supposed to do? Is he supposed to take that at face value?

Senator Pangilinan. For so long as the bank is not negligent in its efforts to identify—and there have been efforts made to identify the nature of the account or the nature of the transaction—and that after these questions have been clarified, and it feels that, in fact, it is a legitimate transaction, then the bank will be free of any liability because it did so in good faith and without any negligence.

Senator Osmeña III. All right. Now that is only \$30,000. And of course, I do not think we should expect the bank manager to flag every \$30,000 deposit, because he will go crazy calling up clients all over the Philippines and Asia, trying to ask a question to which he will just be given a peremptory answer, and which he will not be interested in pursuing because of the small amount involved. So, therefore, that \$20,000 or \$30,000 is not really that important. It goes out the window. Am I correct?

What I am trying to point out is that there have been concerns over the low level of that P1 million limit. But it is my feeling that the P1 million limit is only there if it is part of a series of multiple transactions. I do not think any banker, for the salt, is going to call up any...

Senator Magsaysay. May I interject, Mr. President. The example of the senator from Cebu and Panay is an example which can trigger suspicion, because the remittance coming from Hong Kong goes to the Philippines and is remitted to the US. That kind of transaction in itself is going to...Not only because of the level of the \$30,000 which is over a million pesos, but also, why does it have to come to the Philippines? So, that is one alarm.

And second, rather than going direct to the US bank, it comes to Manila and gets a charge of maybe \$30 and goes to the US and gets another charge of \$30. So, there is some kind of laundering going on with this kind of roundabout of going to the final destination. So, I would think that if I were a bank teller, a manager or a supervisor, I would get to the more prudent decision and report and let the council decide on what to do with it.

Senator Osmeña III. Well, I am very glad...

Senator Magsaysay. So, there is a threshold. There is a very difficult issue to explain why it is going roundabout. And to protect my bank and myself I will report because, to me, it is a suspicious movement of over P1 million.

The President. May the Chair ask a few questions on that point, with the permission of Senator Osmeña?

If, after inquiries by the bank officer, there is suspicion that indeed these are proceeds of illegal activities, can the bank manager in that situation reject the proposed deposit?

Senator Magsaysay. The bill is silent on that, Mr. President, because the function of the council is merely to get information and to investigate.

The President. I am referring to the bank manager in the example of Senator Osmeña. Supposing after queries made, the bank manager is convinced that indeed the amounts of the deposits remitted to the Philippine bank are, in fact, proceeds of illegal activities, can the bank manager reject the deposit and return it to the origin?

Senator Magsaysay. He may reject but it will depend on the process of the council and the Monetary Board. But he may reject it.

The President. In this particular case, the council or the board is not yet involved. In the example given, the depositor remits what is suspected to be a proceed of an illegal activity and, therefore, he may get rid of that deposit by rejecting or returning the deposit. Is that feasible? I suppose it is.

Senator Magsaysay. That is feasible, yes, Mr. President.

The President. Now, the question is: Does the bank officer incur any liability, vis-a-vis the law having knowledge of or having suspected that the banking system is being sought as a haven for the proceeds of an illegal activity, if he rejects him with the deposit?

Senator Magsaysay. The bank officer will only have a liability if he does not report that suspicious movement of funds.

The President. But if he rejects--

Senator Pangilinan. Mr. President.

The President. —and reports, anyway the money is no longer there.

Senator Pangilinan. If I may be allowed, Mr. President.

The President. Yes. I just asked this question for the record.

Senator Pangilinan. My own understanding is, if he rejects it, then he has been able to prevent his institution from being used as an instrument of money laundering. And, therefore, that is precisely one such possible consequence of the bill if passed into law. The banks will now be more discerning with respect to the monies that come in and out and, therefore, the rejection may be a policy of sound business management on their part, precisely because to accept it could mean criminal liability.

The President. Now, could Mr. Wong be prosecuted in that example? Can he be prosecuted for violating the Anti-Money Laundering Law in the Philippines?

Senator Pangilinan. My understanding with that example, Mr. President, is that, having rejected it, money laundering did not occur and therefore, Mr. Wong will not be prosecuted here.

The President. But in the example of Senator Osmeña, the money was actually remitted to Philippine shores and therefore, there was a deposit.

Senator Pangilinan. That is correct. In this respect, if the deposit was made, then the banks, under the bill as proposed, will be required to make a report. And in this case, the example of Senator Osmeña is that it came from Hong Kong, went to the Philippines, to be transferred to Cayman Islands, that could actually fall under an unusually complex transaction which is number three of the proposed bill.

The President. The question that the Chair raised was: Can Mr. Wong now be prosecuted for violation of the anti-money laundering bill if it becomes law? Will there be a warrant of arrest served when he reaches Philippine shores?

Senator Magsaysay. For that matter, Mr. President, the fact that there is an information-sharing, the Philippine bank may inform the Hong Kong Council or task force at that end, and the information can trigger a case.

The President. Thank you, gentlemen.

Senator Pangilinan. Mr. President.

The President. Yes, Senator Pangilinan.

Senator Pangilinan. Mr. President, Section 4, letter (a) penalizes the attempt to conduct any transaction involving monetary instruments derived from unlawful activities. The answer to the Chair's question, therefore, would be yes. Mr. Wong can be prosecuted because he attempted to conduct a transaction.

The President. Thank you.

SUSPENSION OF SESSION

Senator Magsaysay. May I ask a one-minute suspension of the session, Mr. President.

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

It was 6:48 p.m.

RESUMPTION OF SESSION

At 6:52 p.m., the session was resumed.

The President. The session is resumed.

Senator Legarda Leviste. Mr. President, I move that we suspend the period of interpellations on Senate Bill No. 1745 under Committee Report No. 1.

The President. There is a motion to suspend the period of interpellations on Senate Bill No. 1745. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF CONSIDERATION OF S. NO. 1745

Senator Legarda Leviste. Mr. President, I also move that we suspend consideration of Senate Bill No. 1745.

The President. Is there any objection? *[Silence]* There being none, consideration of Senate Bill No. 1745 is hereby suspended.

ADJOURNMENT OF SESSION

Senator Legarda Leviste. There being no other business, Mr. President, I move that we adjourn today's session until three o'clock tomorrow afternoon, Tuesday, September 25, 2001.

The President. Is there any objection? *[Silence]* There being none, the session is adjourned until three o'clock tomorrow afternoon, September 25, 2001.

It was 6:53 p.m.

It was 3:50 p.m.

RESUMPTION OF SESSION

At 3:53 p.m., the session was resumed.

The President. The session is resumed.

With the permission of the two gentlemen on the floor, Sen. Loren B. Legarda Leviste, the Majority Leader, is recognized.

Senator Legarda Leviste. Yes, Mr. President. Earlier, we recognized Senator Sergio R. Osmeña III. We also have on the floor now the principal sponsor of the measure, Sen. Ramon B. Magsaysay Jr., who, I believe, wishes to make a manifestation.

Senator Magsaysay. Thank you, Mr. President. May I therefore now manifest that our working draft as of today, September 25, 2001, through substitution, be the basis of a new committee report of Senate Bill No. 1745.

The President. The Majority Leader is recognized.

SUSPENSION OF SESSION

Senator Legarda Leviste. Mr. President, I move that we suspend the session for one minute.

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

It was 3:54 p.m.

RESUMPTION OF SESSION

At 3:56 p.m., the session was resumed.

MANIFESTATION OF SENATOR MAGSAYSAY
(To Use the Shortened Version of Committee Report No. 1
of S. No. 1745 as Working Draft)

The President. The session is resumed.

Senator Magsaysay. Thank you, Mr. President.

As I was stating earlier, we have with us this afternoon a proposed substitute committee report, a shortened version of Committee Report No. 1 of Senate Bill No. 1745 and we would like to manifest that this shortened version that we have in front of us this afternoon be used as the working draft.

The President. The Chair would like to confirm the statement

of Senator Magsaysay. During the caucus this afternoon, the senators present agreed that the committee be allowed to file a substitute Senate Bill No. 1745, a working draft as of September 25, 2001 which will now be the basis of the interpellations.

During the break, the Chair requested the views of Sen. Sergio R. Osmeña III since Sen. Sergio R. Osmeña III was not in the caucus if that meets his approval. That is why, for the record, Senator Magsaysay is presenting a revised working draft of Senate Bill No. 1745.

Senator Osmeña III. Mr. President, I have no objection to—

The President. Working draft.

Senator Osmeña III. —Senate Bill No. 1745 with a new working draft which is dated September 25. But I would like also at this time to suspend my interpellation thereon and allow the other half-dozen senators to commence with theirs because I would like to study the differences between the two drafts.

The President. It is noted.

Senator Sotto. Mr. President.

The President. Sen. Vicente C. Sotto III is recognized.

PARLIAMENTARY INQUIRY OF SENATOR SOTTO
(On Amendment by Substitution of Bills)

Senator Sotto. Parliamentary inquiry, Mr. President. We would like to be clarified on certain points. First, is that a formal motion substituting the committee report with a new proposed bill or a revised working draft?

The President. During the caucus, the agreement was that the consolidated version of the various bills which was submitted as part of the committee report will now be amended by substitution which is now the version being presented as a working draft.

Senator Sotto. That is precisely my point, Mr. President. I would like to inquire because there was a precedent on this case. We would like to inquire on the relation of this point and this amendment by substitution to Section 82 of our *Rules* which then allows only one substitution thereafter—one amendment thereafter.

The President. A strict application of the *Rules*, yes, that is correct. This is the substitute draft. One amendment by the committee. But that does not prevent the individual senators from proposing amendments. That was the agreement during the caucus. Each senator will have his or her own amendment.

Sept. 25, 2001

THE VARIOUS RISKS OF ITS PLANNED RELOCATION, AND TO ENACT REMEDIAL MEASURES TO ADDRESS THE SAME

Introduced by Senator Cayetano

The President. Referred to the Committees on Environment and Natural Resources; and Health and Demography

The Secretary. Proposed Senate Resolution No. 152, entitled

RESOLUTION DIRECTING THE COMMITTEE ON PUBLIC SERVICES TO INVESTIGATE, IN AID OF LEGISLATION, THE POSSIBLE EXISTENCE OF A MONOPOLY, CARTEL OR COLLUSION BY CELLULAR PHONE COMPANIES IN THE IMPLEMENTATION OF THE FREE-TEXT REDUCTION SCHEME ADVERSELY AFFECTING MORE OR LESS EIGHT (8) MILLION SUBSCRIBERS, WITH THE END IN VIEW OF PROTECTING THEIR GENERAL WELFARE, RIGHTS AND INTERESTS AND TO COME UP WITH REMEDIAL AND SAFEGUARD MEASURES THEREFOR

Introduced by Senator Aquino-Oreta

The President. Referred to the Committees on Public Services; and Trade and Commerce

The Secretary. Proposed Senate Resolution No. 153, entitled

RESOLUTION EXTENDING CONGRATULATIONS AND COMMENDATION TO THE PHILIPPINE DELEGATION IN THE RECENTLY CONCLUDED XXI SOUTHEAST ASIAN GAMES IN KUALA LUMPUR, MALAYSIA

Introduced by Senator Legarda Leviste

The President. Referred to the Committee on Rules. The Majority Leader is recognized.

MOTION OF SENATOR LEGARDA LEVISTE
(Referral of S. No. 1024 to Environment and Natural Resources Committee as Secondary Committee)

Senator Legarda Leviste. Mr. President, I move that we refer Senate Bill No. 1024 to the Committee on Environment and Natural Resources as the secondary committee.

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

Senator Legarda Leviste. Mr. President, I move that we recognize Sen. Ramon B. Magsaysay Jr. for the continuation of the interpellation.

The President. All right. The Chair would entertain a motion to resume consideration of Senate Bill No. 1745.

BILL ON SECOND READING
S. No. 1745—Anti-Money Laundering Act of 2001
(Continuation)

Senator Legarda Leviste. Yes, Mr. President. I move that we resume consideration of Senate Bill No. 1745 as reported out under Committee Report No. 1.

The President. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 1745 is now in order.

Senator Legarda Leviste. Mr. President, before we adjourned yesterday, Sen. Sergio R. Osmeña III had the floor. I move that we recognize Senator Osmeña for the continuation of his interpellation.

The President. Sen. Sergio R. Osmeña III is recognized, and the principal sponsor, Sen. Ramon B. Magsaysay Jr., is likewise recognized for the period of interpellations.

Senator Magsaysay. Mr. President, before Senator Osmeña starts to continue his interpellation, I would just like to take note here that this noon, the entire Senate or almost the entire Senate, the 22 senators, had a caucus so that we can further simplify Committee Report No. 1 of Senate Bill No. 1745. And for the information of Senator Osmeña, we had in a way decided amongst us that in order to make things simpler but still complying with the required elements of criminalizing dirty money, we have adopted a new report by substitution based on today's working draft as of September 25, 2001.

And for the information also of the good senator from Cebu City, Cebu Province, and Panay, we are supposed to base our interpellations and debates and possible amendments eventually on the working draft that has been introduced to the senators as of this afternoon, Mr. President.

So with the approval of our colleagues here, I move that the working draft as of September 25, 2001, as revised, be adopted as the basis of our plenary discussions.

SUSPENSION OF SESSION

The President. Before that, with the permission of the Chamber, the session is suspended for a few minutes, if there is no objection. [There was none.]

SEPT. 25

Senator Sotto. What I am avoiding here is a precedent.

The President. That is correct.

Senator Sotto. That is why I would just like to clarify that.

The President. Yes.

Senator Sotto. I would like the Majority Leader, or most importantly the Senate President, to put that into the *Record*. Because I distinctly remember in the last Congress, Senator now Vice-President Teofisto Guingona brought out this issue.

The President. Yes, and we are going on record on that.

Senator Legarda Leviste. Mr. President, if I may respond to the good senator's query. Indeed, he is correct that Section 82 states that not more than one amendment to the original amendment shall be considered. The draft bill, or the working draft, as proposed by the principal sponsor now being deliberated on is an amendment by substitution, and that would mean that the rule to be strictly followed is that there can be only one additional amendment and that is the new substitute for this original bill. That is the reason later on we will request, with the consent of the Chamber, a suspension of the *Rules* in this regard so as to allow other amendments to this working draft.

Senator Sotto. Mr. President, that is a very dangerous thing to do.

The President. A query from the Chair. The individual senators are not barred from proposing individual amendments. The one-amendment rule would refer to the committee, if I recall the rules correctly.

Senator Legarda Leviste. Yes, Mr. President. That is correct.

Senator Cayetano. Mr. President.

The President. Yes, Senator Cayetano is recognized.

SUSPENSION OF SESSION

Senator Cayetano. Mr. President, with the permission of the two gentlemen and the lady on the floor, may I move that we suspend the session for one minute.

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

It was 4:01 p.m.

RESUMPTION OF SESSION

At 4:06 p.m., the session was resumed.

The President. The session is resumed.

Senator J. Osmeña. Mr. President.

Senator Sotto. Mr. President.

Senator J. Osmeña. Senator Sotto.

The President. Yes. We will just finish the point of Senator Sotto. Yes, Senator Sotto is recognized.

Senator Sotto. Yes, Mr. President. The explanation of the Chair is acceptable to this representation. Therefore, I do not think it is necessary for the Majority Leader to move that we suspend the *Rules* today or later.

Senator Legarda Leviste. Yes, Mr. President.

Senator Sotto. As long as that is the interpretation that we have on the *Rules*, in Section 82, which will be followed by the Body, Mr. President.

Senator Legarda Leviste. That is clear, Mr. President. We will entertain the amendments of the individual senators. We understand Section 82 that the committee has now introduced its only amendment, and therefore has complied with the provision of Section 82.

Senator Sotto. Thank you, Mr. President.

The President. Sen. John H. Osmeña is now recognized.

Senator J. Osmeña. Thank you, Mr. President.

I note that Senator Sotto said, "with the explanation of the Chair." But when people go over the *Record of the Senate*, there will be no explanation of the Chair on the record because that explanation was made privately, off the record.

The President. No, no. Senator Osmeña, I think Senator Sotto can confirm that the Chair did it on the record.

Senator J. Osmeña. I heard. I have been listening all along. So I do not know what the explanation of the Chair was being referred to by Senator Sotto. But in any case, I think all of this is premature because we are still in the period of sponsorship and we cannot entertain amendments even an amendment by substitution until we close the period of sponsorship and we go to the period of amendments.

The President. Technically, that is correct. But there were certain informal agreements—which the caucus had this noontime—which would have to be confirmed on the floor later on.

Technically, Sen. John Osmeña is correct, but we made a request just to proceed with our work expeditiously without sacrificing the full debate—that the revised version be allowed on the floor as a basis for the interpellation.

Senator J. Osmeña. There is a precedent, Mr. President.

The President. Yes.

Senator J. Osmeña. That the Chair and I are familiar with because I was the sponsor of the energy bill.

The President. Yes.

Senator J. Osmeña. We had several revisions. And in that precedent, we proceeded with the interpellation on the basis of the revised draft.

The President. Yes.

Senator J. Osmeña. But during the period of amendments, the revisions in the revised draft vis-a-vis the original draft were introduced as committee amendments. Is that my understanding that here in this particular bill, we are again going to do that?

The President. That is correct.

Senator J. Osmeña. That we are going to discuss the revised bill as a basis of interpellation.

The President. That is correct.

Senator J. Osmeña. And that there will be amendments which will make the original committee report... Because that committee report stands; it has not been withdrawn.

The President. That is correct.

Senator J. Osmeña. In parliamentary practice, if we were really to be strict, we would have to return that committee report to the committee and the committee would have to refer it back to the Chamber.

The President. That is correct.

Senator J. Osmeña. But we are not doing that; we are shortcutting it.

The President. Yes.

Senator J. Osmeña. So the amendments will be introduced during the period of amendments.

The President. That is correct. But for purposes of the interpellation, the working draft will be the basis.

Senator J. Osmeña. All right. Thank you, Mr. President.

The President. All right. So we can proceed on that basis. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, the principal sponsor is still on the floor and Sen. Sergio Osmeña requested that...

The President. Sen. Sergio R. Osmeña III requested that his interpellation be suspended to allow him to review the new draft. So the floor is open to other senators for interpellation.

Senator Legarda Leviste. The Minority Leader wishes to be recognized.

The President. Sen. Aquilino Q. Pimentel Jr., the Minority Leader, is recognized. The interpellation is based on the working draft as of September 25, 2001 which all of us have copies of.

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

Will the distinguished gentleman kindly yield for a few questions? But before I raise those questions, I would like to put on record certain preliminary observations, Mr. President, with the distinguished gentleman's permission.

Senator Magsaysay. Certainly, to the senator from Mindanao, Mr. President.

Senator Pimentel. Thank you very much, Senator Magsaysay.

I would like to start by saying that I am in favor of enacting an anti-money laundering legislation. I think that is a very important point to stress so that if there are developments in the course of our interpellation, that might give the impression that we are against an anti-money laundering legislation that would already be put to rest by this statement.

I believe, Mr. President, that the Republic of the Philippines should not be a haven for dirty money. I think that is the premise of this legislation so that we avoid the danger of the day whereby terrorists would benefit from money laundering or all kinds of

criminals would use our banking system to launder their dirty money.

Now, Mr. President, I would like to ask the distinguished gentleman. There are 189 members of the United Nations. Can he kindly tell us how many of the 189 members of the United Nations have anti-money laundering legislation?

Senator Magsaysay. From our record, Mr. President, to date we have about 30 countries with specific anti-money laundering laws. I understand that the others either do not have yet their laws in place or have already more specific laws that cover the elements against money laundering.

I have the regional statistics here, if the distinguished gentleman does not mind, Mr. President. In the Asia-Pacific region, there are 45 countries that have already anti-money laundering laws. These include Australia, Thailand, Pakistan, Hong Kong, China, Chinese Taipei, Japan, Malaysia, New Zealand, Singapore, et cetera.

Senator Pimentel. All right. Assuming, Mr. President, that 45 countries have anti-money laundering legislation, that means that if we deduct 45 countries from 189, we have 144 countries in the world that do not have anti-money laundering legislation. Would that not be correct?

Senator Magsaysay. These 44 countries are from the Asia-Pacific region, Mr. President.

Senator Pimentel. Yes, that is why my question was, how many countries in the world would have anti-money laundering legislation?

Senator Magsaysay. We do not have the complete list furnished us by the Bangko Sentral ng Pilipinas. We just have the Asia-Pacific region, including the United States, of course, Switzerland, among the European countries.

Senator Pimentel. In any event, Mr. President, I would like to thank the gentleman for that information. But the point I am really trying to point out is that the Philippines appears to be singled out, being pressured to enact this anti-money laundering legislation and threatened with sanctions when there are more than 144 nations that do not have anti-money laundering legislation.

So, if these countries are not threatened with sanction, why are we jumping to this beat of the drums of some faceless bureaucrats abroad, Mr. President, trying to tell us, "You enact an anti-money laundering legislation?"

Senator Magsaysay. That is quite true. The gentleman's

observation is accurate. Those countries that are not listed do not have a specific money laundering law in place. But it is the knowledge of this person that many of the provisions of such a law are already incorporated in their other legislation.

Senator Pimentel. And how would we know that, Mr. President, if the countries...

Senator Magsaysay. In other words, they have complied with the FATF.

Senator Pimentel. Yes. But how would we know that when, as a matter of fact, we do not even have a complete list of the countries that have anti-money laundering legislation? And when we ask the officials of Bangko Sentral ng Pilipinas to give us copies of the anti-money laundering legislation for comparative purposes, Mr. President, they have not done so.

Mr. President, I am not blaming the gentleman for this. I am just trying to put my frustration as a member of Congress, as a member of the Senate, in being confronted with a situation where the Senate is being asked to enact a very important piece of legislation, and yet the Executive department, particularly through the Finance Department and the Bangko Sentral ng Pilipinas, does not even furnish us with the required data upon which to base our actions.

That is what I am worried about, Mr. President. Because if we continue in this vein, if we allow people to stampede us to pass legislation without the proper data then, obviously, we will come up with a half-cooked or half-baked kind of law that will not be good for our country.

I know, Mr. President, that some arrangements can be done with the so-called Financial Action Task Force. But the point I am trying to assert is that it is bad for the Legislature of this country to just go along with the impositions of the Finance Department or by the Central Bank of the Philippines, saying: "We have talked to these people. They are threatening us with sanctions."

As a matter of fact, Mr. President, going to the sanctions, what kind of sanctions do we expect? I would like to put that on record. As far as the gentleman knows, what kind of sanctions will they impose on us?

Senator Magsaysay. That is a very appropriate strong statement from the gentleman. We have here with us statistics, a matrix for the Asia-Pacific countries on anti-money laundering measures.

I think the staff gave this to each senator yesterday afternoon.

Senator Pimentel. I am not aware, Mr. President. But can we put on record whatever sanctions are imposable against us?

Senator Magsaysay. Yes. The sanctions that are going to meet our countrymen and businessmen, including the depositors, are the following:

In the absence of an anti-money laundering law, there will be increased surveillance of all our foreign transactions—stricter surveillance—and the processing and verification of papers, for instance, in opening letters of credit in the banks, our own local correspondent banks will be basing their surveillance on a noncooperative country.

This is one way of sending the message that we are a member of the noncooperative countries which, I think, are now down to about three, including Indonesia and Nauru. I think Nauru, Mr. President, has a law but it has to go back to legislation because that law was not enough for Nauru to comply with.

So, the other sanction would even make it a little more difficult on dollar remittances—its way from overseas Filipino workers from abroad transferring here and vice versa.

In other words, the necessity of customers identification for some kind of information-sharing with other international institutions to trace any possible money laundering infractions would be looking at the country as not cooperative.

Senator Pimentel. I would like to thank the gentleman for that, Mr. President. But I hope he would not mind my being meticulous or *mabusisi* regarding this point.

Assuming that there is strict surveillance of financial transactions, in what form will this take, Mr. President, so that the application of strict surveillance on the financial transactions of this country would be prejudicial to our interest? In what way?

Senator Magsaysay. For instance, Mr. President, even at this stage, when Filipinos open their accounts here in the country, I understand that the private banks, particularly the international banks, would ask the new depositor—the one opening the account—to sign a waiver on the Bank Secrecy Law. That means that without waiting for our own anti-money laundering law, the banks, in effect, are telling their principal overseas that they have the waiver of secrecy from this individual new depositor and that the depositor has agreed that in case of queries or investigation, they waive the Bank Secrecy Law.

Senator Pimentel. Mr. President, this is what I would like to really avoid in discussions of this kind where we are given very raw information. Because the next question that I would like to ask

is: What is the data of people who have opened new bank accounts who have been subjected to this kind of questioning? Signing a waiver that in case of an investigation one would allow his bank account to be opened, does the gentleman find that wrong, Mr. President?

Senator Magsaysay. Mr. President, I find it less convenient.

Senator Pimentel. Now, how many of the 189 countries in the world are being subjected to strict surveillance because they do not have an anti-money laundering legislation? Do we have the figures, Mr. President?

Senator Magsaysay. We have no data on that, Mr. President.

Senator Pimentel. Now, let us talk about the dollar remittances from our OFWs. In what way will they be prejudiced by the nonpassage of an anti-money laundering legislation?

I hope the gentleman would understand where I am coming from. For example, in the US, I think a remittance of over \$10,000 would be subjected to some kind of scrutiny. But how many of our OFWs in the US would be sending \$10,000 in one throw?

What I am really trying to find out is, I am not too sure that the explanation of the Chair regarding the difficulties that will be encountered by our OFWs would necessarily be true. I wonder how correct that assertion is, Mr. President.

Senator Magsaysay. The objective of having a law against money laundering, meaning dirty money coming from criminal activities, Mr. President, has triggered this move by the FATF, the Financial Action Task Force, which originally started with a group of seven countries—the Big Seven countries of the world. Now they are called "Group of Eight," including China, because of the big amount of dirty money coming basically from illegal drugs or drug-related criminal activities. That is why they put together this FATF to be able to trace and to identify the movement of such illegal money throughout the global system.

Since 1989, this has become a big threat to our financial system globally, that it is hitting more than a trillion dollars a year. So when a country such as the Philippines is considered as noncooperative among others—maybe three or four others—and we have not shown the firm resolve to pass our own anti-money laundering measures, then certain sanctions are put together that will badly or seriously affect our transactions, whether it is business transactions or individual transactions and other bank transactions.

Now, I was given a note by my cosponsor here that recently, the First Union Bank of Delaware in US had informed its

correspondent banks here, 12 local banks, including the country's largest bank, the Bank of the Philippine Islands or BPI, that it would already impose more stringent requirements in processing transactions while the country remains in the laundering list, in the noncooperative list.

Senator Pimentel. All right.

Senator Magsaysay. This is a news report from the Internet INQ7.net titled "U.S. Seemed Pressuring RP on Money Laundering Law," but this was downloaded on August 28, 2001.

Senator Pimentel. All right. Now, I would like to ask the basis for the gentleman's statement that the noncompliant countries are now down to three or four, as he said. Where does he base that on, Mr. President? Who told him that there are only three or four countries that have not complied with the anti-money laundering legislation?

Senator Magsaysay. We have certain documents here that my staff is trying to look at. But I think Senate President Drilon has given us a week ago, when he came in from...talking to the FATF. So, this is a list, as of June 2000, over a year ago, of noncooperative countries. The basis of this is FATF. This is as of June last year: Bahamas; Cayman Islands; Cook Islands; Dominica—this must be the Dominican Republic; Israel; Lebanon; Liechtenstein; Marshall Islands; the Grenadines; Nauru; Neuwai; Panama; Philippines; Russia; St. Kitts; and St. Vincent.

So we can see that the list is composed mostly of very small countries, except the Philippines. Well, Israel is a small country. Russia is a big country. So this is as of June 2000. But then recently, the countries of Bahamas, Cayman Islands, Liechtenstein and Panama have been stricken out from the noncooperative list. So the list is getting shorter.

Senator Pimentel. But that list, Mr. President, does not answer the question: "How many countries in the world have anti-money laundering legislation?" It does not?

Senator Magsaysay. Does not.

At this juncture, the Senate President relinquished the Chair to Senator Juan M. Flavio.

Senator Pimentel. So, in other words, the basis for saying that the Philippines is among three or four other countries that have not complied with the requirements of FATF would not necessarily be correct because we do not know how many countries have anti-money laundering legislation. Then, how can we say that only the Philippines and two or three other countries remain in the noncompliant list? I mean, what is the basis for that?

Senator Magsaysay. Mr. President, it is possible that those countries that do not have specific laws on anti-money laundering have complied through other existing laws, that they complied with the elements required by the FATF. When they looked at our laws, like the Bank Secrecy Law, the Central Bank Law, et cetera, they came up with the recommendation that we still need more to comply with their standards. I think there are 11 standards out of 25.

Senator Pimentel. Mr. President, when we speak of possibility,—because the gentleman says it is possible that these countries have complied with the requirements—in all honesty, I am not sure that it is good enough a basis for us to enact a very important legislation. But I do not blame him because I know for a fact that... I was there in some of our meetings with the LEDAC and we asked the Central Bank and the Finance Department officials to give us these data. Up to today, this very hour, this very minute, they have not done so. It was only the Senate President, who was coming from his peregrination from Burkina Faso, passing by Paris that he was able to meet with the executive director of the Financial Action Task Force which, I understand, supplied him with some data.

But having said that, Mr. President, again, let me say that I am not blaming the gentleman for this problem because in truth, this is something that the Executive department should have prepared for a long time ago. Because my understanding is that the notice to the Philippines that we are not complying with the requirements of the Financial Action Task Force was sent to us as early as June 2000, last year. And yet the Executive department never told us that we have to pass this legislation. We even had special session where we could have inserted this matter, but there was no mention about it.

So, Mr. President, I hope the gentleman would not mind my being very meticulous about these matters. I simply wanted to put them on record for the reason that I would hate to see the day when this is repeated—the Congress of the Philippines, the Senate of the Philippines is being faced with the so-called *fait accompli*. We should do this because otherwise these things are bound to happen in our country and we would be adversely affected by the sanctions that are supposed to be imposed upon us.

And so, Mr. President, may I also put on record that when I was a member of the Batasang Pambansa in 1984—long before Senator Jaworski was born, I was already a member of the Batasang Pambansa—we were asking, we were demanding from the governor of the Central Bank to give us copies of the list of our foreign debts and the amounts of our foreign debts. They never complied with that requirement. That is why I am a little bit worried that they are using the same tactic now by not furnishing us the data that we are asking of them.

In any event, Mr. President, during our caucus at noon today, we sort of agreed that we will try to simplify this bill. And one of our agreements is that we will criminalize money laundering. Is that not correct, Mr. President?

Senator Magsaysay. That is the most important thing, Mr. President.

Senator Pimentel. Yes. And then we will also reduce the predicate crimes from the ones enumerated in the old version down to...

Senator Magsaysay. We agreed because in this new substitute bill, from 17 crimes, these have been reduced to four crimes.

Senator Pimentel. Will the gentleman kindly name the four, Mr. President, for purposes of record?

Senator Magsaysay. This is on page 3-

Senator Pimentel. Yes, Mr. President.

Senator Magsaysay. —line 9 as unlawful activity. No. 1 is kidnapping—

Senator Pimentel. All right.

Senator Magsaysay. —under Articles 267 and 270 of Republic Act No. 3815 or the Revised Penal Code. No. 2 is the offenses and other violations under Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972.

Senator Pimentel. Yes, Mr. President.

Senator Magsaysay. Then No. 3 would be the violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

Senator Pimentel. Yes, Mr. President.

Senator Magsaysay. Then we have No. 4, plunder and other violations under Republic Act No. 7080.

Senator Pimentel. Mr. President, just a question. Why do we not include terrorism as one of the predicate crimes?

Senator Magsaysay. As I understand during our caucus, Mr. President, we have not really defined exactly what terrorism is as a crime. Although we know that kidnapping, ransom, piracy, hijacking, and slamming into the World Center are acts of terrorism for sure. The beheading of some farmers in Basilan province by the Abu Sayyaf group is an act of terrorism and murder.

Senator Pimentel. In any event, I would like to mention, Mr. President, that in the United States, for example, as a result of the September 11 incidence, I think the United States is trying to squeeze the financial sources that keep alive terrorist organizations throughout the world. And so I was thinking that probably we should include that as one of the things that we should...

Senator Magsaysay. We have no objection to that, Mr. President. We have to put together a law that will address the current and future threats to peace and harmony in the globe.

Senator Pimentel. Mr. President, the Senate President and I were discussing this earlier and our problem, of course, is the fact that we might have two topics here in the same bill that may not be sanctioned or may not be authorized by our Constitution. But this is something which our lawyers, I think, can manage to find out if we can incorporate a section on terrorism as part of the predicate crimes. I am just thinking out loud.

Now, I suppose we are also agreed that a financial investigation unit be created, Mr. President, in lieu of the board or the council.

Senator Magsaysay. We have already accepted what the gentleman suggested that an FIU or a Financial Investigation Unit be put together in lieu of a council.

Senator Pimentel. And that, Mr. President, the Bangko Sentral or maybe the governor himself be authorized to issue freeze orders even before an account is ordered to be opened to judicial scrutiny. Is that not correct, Mr. President?

Senator Magsaysay. That is accepted once it is introduced as an amendment.

Senator Pimentel. Also, I was of the impression that in order to open an account which is suspected to be a cover for dirty money, a court order would be required. Is that not correct, Mr. President?

Senator Magsaysay. This is after the account which is-

Senator Pimentel. Ordered frozen.

Senator Magsaysay. —on the basis of a probable cause is frozen. Then the Monetary Board asks the court to open the complete information on that particular account and we are supposed to have this 10-day period for the Monetary Board to go to court.

Senator Pimentel. Just for the record, Mr. President.

Among the penalties that we are talking of here for violating this particular legislation, once approved, is the forfeiture of the

money laundered and the fruits of the money laundered. Is that not correct as a general principle, Mr. President?

Senator Magsaysay. That is correct, Mr. President.

Senator Pimentel. And the culprits may also be fined probably with an amount of money laundered for banks or financial institutions, or imprisonment. I do not know for how long, but I was thinking that maybe a one-year to five-year jail period would suffice. So I am asking the sponsor what he thinks of that, Mr. President.

Senator Magsaysay. This is covered by the penal provisions in Section 15, Mr. President.

Senator Pimentel. Yes, Mr. President.

Senator Magsaysay. There are fines that are listed down here. The penalties for the crime of money laundering can range from "seven (7) years to fourteen (14) years or a fine of not less than One Million Philippine Pesos (P1,000,000.00) but not more than twice the value of the monetary instrument or property involved in the offense, or both, at the discretion of the court."

Senator Pimentel. And if the offender is a public official or employee, what kind of sanctions or penalties would be imposed on him or her?

Senator Magsaysay. This is found on page 9, line 23, which provides: "That if the offender is a public official or employee, he shall, in addition to the penalties prescribed herein, suffer perpetual or temporary absolute disqualification from office, as the case may be."

Senator Pimentel. Mr. President, making use of the money laundered is also one of the ways by which this law can be violated. Is that not correct?

Senator Magsaysay. Yes, Mr. President.

Senator Pimentel. I wonder. Here is a lawyer of a money launderer. He is being paid out of the money laundered. Would he be liable, Mr. President?

Senator Magsaysay. Well, if he has the knowledge that the money is dirty money coming from a criminal activity, then he is liable. There must be the element of knowledge.

Senator Pimentel. Mr. President, I raised that issue because of the fact that in the United States, there was a controversy regarding this point. I was informed by the Department of Justice lawyers that they did not push the issue before the courts because

the whole legislation might be declared unconstitutional for the reason that it inhibits the practice of law which is guaranteed by the Constitution. I think we better be careful about that matter.

For example, here is a money launderer. He is sick so he calls a doctor and pays the doctor money from his laundered account. Are we going to include the doctor as a culprit also?

Senator Magsaysay. I would think that if the doctor does not have any knowledge that it is dirty money...

Senator Pimentel. He knows.

Senator Magsaysay. If he does not ask, he will just protect himself by not knowing that it is dirty money. "Ask me no questions and I will tell you no lies" as they say.

Senator Pimentel. In any event, in concrete situations, we have to be careful just what kind of application this law will have especially in these cases where professional services are rendered to money launderers.

Here is a house owner. A money launderer goes to him and says, "I want to rent your house" and pays him with laundered money. How are we going to treat that situation?

Here is a teacher who is hired to tutor the children of a money launderer, and he or she will be paid by a laundered money. *Maraming* possibilities, Mr. President.

Senator Magsaysay. I do not think that is covered, Mr. President.

Senator Pimentel. Even if the teacher knew that he or she is being paid by laundered money. What does the gentleman think, Mr. President?

Senator Magsaysay. I think that if she has vague knowledge...

Senator Pimentel. He can be excused. *[Laughter]*

Thank you, Mr. President. In any event...

Senator Magsaysay. Just like the church that will receive money, let us say, from the Italian mafia, but the church will not ask anything-

Senator Pimentel. Exactly, Mr. President.

Senator Magsaysay. —and then it will say that it has no knowledge because it never asks any question on donations coming from organized crime or even *jueteng*, as the case may be, in the Philippines. I do not think the church or the charity group is liable.

Senator Pimentel. I thank the gentleman, Mr. President, for those responses.

Mr. President, I would like to ask that Sen. Panfilo M. Lacson be recognized for the next interpellation.

The Presiding Officer [Sen. Flavier]. Sen. Panfilo M. Lacson is recognized.

Senator Lacson. Thank you, Mr. President.

Will the gentleman yield for a few questions?

Senator Magsaysay. Yes, certainly, coming from the senator from Southern Tagalog, Cavite.

Senator Lacson. Thank you, Mr. President.

Senator Magsaysay. With pleasure.

Senator Lacson. Mr. President, this concerns Section 3(b), subsection (1) on page 2.

Senator Magsaysay. On page 2, Section 3(b), subsection (1), yes.

Senator Lacson. Does this contemplate a one-time transaction involving an amount in excess of P1 million?

Senator Magsaysay. It could be one-time transaction, yes.

Senator Lacson. What if there are numerous transactions each involving an amount less than the threshold, and all the amounts in the series of transactions, if added, would exceed P1 million, will these be covered?

Senator Magsaysay. These could be covered if the customer's account usually does not have this kind of series of deposits commensurate with his lawful business or his economic status.

Senator Lacson. But what will constitute, Mr. President, a series of transactions? Will it be every other day, every other week, every other month?

Senator Magsaysay. I would think that what the gentleman is asking about would be covered by sub-item (2). This covers "transaction having no credible purpose or origin, underlying trade obligation, contract or economic justification." Or (3) "unusually complex or large transactions."

Senator Lacson. Regardless of the amount, Mr. President?

Senator Magsaysay. Yes, Mr. President.

Senator Lacson. May this representation be enlightened on what the sponsor means by "unusually complex or large transactions?" Can the gentleman give us an example of this?

Senator Magsaysay. This could be based on the philosophy of, "Know thy customer" or "KYC-- know your customer."

Precisely, when an individual or a juridical entity like a corporation opens an account in a bank or a financial institution, one of the first requirements of that institution or bank is to get to know the customer. So aside from the name or his ID, et cetera, his kind of work or business or his employment, the bank will be looking, as what banks do, at how much the current monthly balance average is. But then on one occasion, there is a big surge of deposit and that could trigger a suspicious act by the compliance officer or by the bank. This is what we mean by "unusually large transactions."

Now, "complex" could be that, maybe as graphically made as an example by Sen. Serge Osmeña last night, if there was criminal money coming in from, let us say, China and gets into this account, which is a very, very complex transaction like coming to the Philippines from China and going now to the United States from the Philippines, this could be considered as an unusually complex transaction for that certain account that is already known by the bank beforehand to be quite simple and low.

Senator Lacson. I would like to thank the gentleman, Mr. President.

Again, in relation to the same section, would it not be simpler and easier or less confusing if we will just amend the phrase "in excess of P1 million" and instead make it P1 million or more? Because if it is in excess of P1 million, we are talking of P1 million and P1.00. So let us just make it simpler by amending that phrase.

Senator Magsaysay. We have no objection...

Senator Lacson. If the gentleman is amenable.

Senator Magsaysay. Yes, we have no objection to that, Mr. President. At the proper time when we have our period of amendments, we will accept such a proposal.

Senator Lacson. I would like to thank the gentleman.

And again, under the same section, the phrase "economic status of the client." Are we not legislating a law that discriminates one depositor from other depositors? Because if we have clients with the surnames Zobel, Ayala, Soriano, no questions would be asked of them. But if we have Juan dela Cruz, who just won in a lottery and who would like to deposit the money in a bank, he would be bombarded with lots of questions.

Senator Magsaysay. Well, that is a valid observation of the economic status of the client, Mr. President. However, we would prefer—unless it is such a big reason—that we keep the phrase "financial status." It is all right so that it will not be as discriminatory as the gentleman said, that if he were a Soriano or an Ayala, there will be no questions asked, while if he is a lotto player, he might be asked questions. So there is a sort of economic discrimination.

Senator Lacson. Will it not amount to the same thing, Mr. President, "financial status" or "economic status?" Why do we not just delete...

Senator Magsaysay. Maybe more of the status, financial capacity of the client, financial capacity rather than the economic status. Because the status could be construed as caste social level, caste system.

Senator Lacson. I am afraid, Mr. President, that this would be tantamount to class legislation. That is why I am raising the issue.

Senator Magsaysay. We will improve this phrase, and maybe the gentleman can make a proposal during the period of amendments.

Senator Lacson. I would like to thank the gentleman, Mr. President.

In money laundering offenses in other countries, the investigation usually starts with the alleged involvement of the offender in some form of unlawful activity. Meaning, the unlawful activity must precede the investigation into the money laundering activity of the same person. Is this also true under the proposed bill or proposed law, Mr. President?

Senator Magsaysay. That is the principal crime, they call it the predicate offense. What we are doing is having a separate crime of money laundering based on that as one that will trigger a case.

Senator Lacson. So it will be an unlawful activity that could trigger an investigation into the money laundering activity of a person, not the other way around.

Senator Magsaysay. That is correct.

Senator Lacson. Thank you, Mr. President. On the penalties provided for the offense--

Senator Magsaysay. Yes, Mr. President.

Senator Lacson. --I cannot understand why the failure to report would get a higher penalty than that of a malicious reporter.

Senator Magsaysay. May I know what page, Mr. President.

Senator Lacson. Section 15 (b) and (c), "Penalties for Failure to Make a Report. The penalty of imprisonment from six (6) months to four (4) years or a fine of not less than One Hundred Thousand Philippine Pesos (P100,000.00) but not more than Five Hundred Thousand Philippine Pesos (P500,000.00), or both, shall be imposed on a person convicted under Section 8(b) of this Act."

For malicious reporting, he will only be subjected to a penalty of one (1) month and one (1) day to six (6) months.

Is the one reporting with malice less...

Senator Magsaysay. Less guilty. That is a good point, Mr. President. I think we touched on this during the caucus, and we are open to increasing the penalty on those who are reporting with malice with intent to damage, to impugn the credibility of a person, even if the person is innocent. We are open to adjusting the penalty to make it higher, maybe even higher than the failure to make a report.

Senator Lacson. Thank you, Mr. President. I have no more questions.

Senator Magsaysay. Thank you, Mr. President.

The Presiding Officer [Sen. Flavier]. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, Dr. "Loi" Ejercito Estrada wishes to be recognized for the continuation of the interpellation.

The Presiding Officer [Sen. Flavier]. Sen. "Loi" Ejercito Estrada is recognized.

Senator Ejercito Estrada. Will my *kababayan* from Zambales yield for some amendments?

Senator Magsaysay. I feel deeply honored answering questions that might come from my fellow Zambaleña from Iba, Zambales. Please feel free to ask any questions, Mr. President.

Senator Ejercito Estrada. In accordance with our discussions this afternoon at the caucus, may I propose that we amend Section 9, lines 2 to 8. That is on pages 6 and 7, which states "...the Governor of the Bangko Sentral ng Pilipinas, the Secretary of Finance, and the Chairman of the Securities and Exchange Commission, with prior concurrence of the majority of all the members of the Monetary Board of the Bangko Sentral ng Pilipinas, may itself inquire or examine or

authorize any inquiry, examination or disclosure of said account. Banks and non-bank financial institutions and their officers and employees, who report covered transactions in the regular performance of their duties and in good faith, under this Act, shall not be held liable for any violation of the aforementioned laws" should be deleted.

And Section 10, "*Authority to freeze*," we should delete lines 10 to 12 which reads: "The respective supervising authority shall have the power to freeze any monetary instrument or property alleged to be proceeds of any unlawful activity within the procedures laid down by it in accordance with due process" to allow the following procedures to be more in accord with due process and to prevent possible abuses.

SUSPENSION OF SESSION

Senator Magsaysay. Mr. President, may I ask a one-minute suspension please.

The Presiding Officer [Sen. Flavier]. The session is suspended for one minute if there is no objection. [*There was none.*]

It was 4:59 p.m.

RESUMPTION OF SESSION

At 5:00 p.m., the session was resumed.

The Presiding Officer [Sen. Flavier]. The session is resumed.

Senator Magsaysay. Thank you, Mr. President.

Senator Ejercito Estrada. We have to delete that to allow the following procedures more in accord with due process and to prevent possible abuses:

1. The Monetary Board may order a freeze on a bank account for 20 days;
2. The owner of the account will be informed within 24 hours of the freeze and given three days to appear and justify his account;
3. In case the Monetary Board decides to push through its investigation, it shall apply to the Regional Trial Court for an order to open the account;
4. The Monetary Board, after opening the account, shall then file its complaint for money laundering with the Department of Justice for preliminary investigation and possible filing of the case with the Regional Trial Court; and

5. Criminal sanctions shall be provided for an arbitrary or capricious action of the Monetary Board.

That is all, Mr. President.

Senator Magsaysay. Mr. President, the lady senator from Zambales is correct in the sense that during the caucus, we had agreed generally that during the period of interpellations, amendments could be introduced. However, I am responsible for not having manifested earlier that the same informal agreement during the caucus be adopted during this afternoon's debates. The amendments that were stated by the lady senator from Zambales will be taken up during the period of amendments. We will certainly consider seriously all these laudable amendments which many of these were already discussed and analyzed during the caucus earlier today.

Senator Ejercito Estrada. Thank you, Mr. President.

Senator Magsaysay. Thank you, Mr. President.

Senator Legarda Leviste. Mr. President.

The Presiding Officer [Sen. Flavier]. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, I move that we recognize Sen. Ralph G. Recto.

The Presiding Officer [Sen. Flavier]. Sen. Ralph G. Recto is recognized.

Senator Recto. Thank you, Mr. President.

Will the gentleman from Zambales, the distinguished sponsor of this measure, yield for a few clarificatory questions?

Senator Magsaysay. Very willingly, coming from the very handsome and very dapper senator from Southern Tagalog, particularly Batangas, Mr. President.

Senator Recto. I would like to thank the gentleman for the compliment, Mr. President.

Mr. President, my first clarificatory question would be on Section 2. Maybe this is just a typographical error but it says here in line 5: "Consistent with the country's foreign policy, the State shall extend cooperation in the transnational investigation, prosecution and extradition of persons involved in money laundering activities whenever committed." Or "wherever" committed?

Senator Magsaysay. "Wherever." It is a typographical error.

Senator Recto. At the appropriate time, Mr. President, would the gentleman accept an amendment on this?

Senator Magsaysay. Certainly, Mr. President.

Senator Recto. Thank you, Mr. President.

In Section 3, paragraph (a) "Covered Institution," under "Covered Institution," we have identified under the proposed measure the Bangko Sentral, the Insurance Commission, the Securities and Exchange Commission, the PAGCOR and the Department of Trade and Industry, and all other similar government agencies. I note further that in many other sections, the term "Covered Institutions" is mentioned, particularly in Section 8.

The title of Section 8 is "*Prevention of Money Laundering Customer Identification Requirements and Record Keeping.*" Are we saying then that all those who transact with PAGCOR as bettors in the casino must have a customer identification, and that under paragraph (b) of Section 8, "All records of all transactions of covered institutions shall be maintained and safely stored for at least five (5) years from the date of transactions?"

Is that the intention of the committee, Mr. President?

Senator Magsaysay. As the measure is put together, I believe that is the intention of the committee.

Senator Recto. For what purpose, Mr. President? Do we want to know all people who are customers of PAGCOR? For what purpose would that lead to?

Senator Magsaysay. This is part of the original report on the bill, to give us the customer identification. However, it would be difficult, as the gentleman mentioned earlier, particularly on the casino, on the PAGCOR, that we get all the records of the gamblers. I do not know how my cosponsor will address this, but I understand that we are willing to accept an amendment that will address this actual situation. Provided it does not remove from the five elements that the FATF is asking for, we can be flexible in accepting any amendments to address that particular issue.

Senator Recto. Yes, Mr. President. Thank you very much.

As I understand it, the Insurance Commission is under the Securities and Exchange Commission. Should we treat the Insurance Commission separately?

Senator Magsaysay. I understand that the Insurance Commission is under the Department of Finance as a separate entity from the SEC.

Senator Recto. I thank the gentleman for the clarification.

Mr. President, I also have reservations on the same paragraph (a), line 15, "and all other similar government agencies," because we are talking about covered institutions here. Maybe at the appropriate time, the committee may be willing to delete this provision.

Senator Magsaysay. Covered Institutions, Section 3.

Senator Recto. Yes, Mr. President. It says here, aside from-

Senator Magsaysay. —"and all other similar government agencies."

Senator Recto. That is right. What is meant by this?

Senator Magsaysay. These are agencies that are functioning similar to the Bangko Sentral, the SEC.

Senator Recto. Such as what?

Senator Magsaysay. Such as the Department of Trade and Industry. This is in the original bill.

Senator Magsaysay. Yes, the DTI is already mentioned here. What could be the other similar...

Senator Pangilinan. Mr. President, with the permission of the two gentlemen.

The Presiding Officer [Sen. Flavio]. Senator Pangilinan is recognized, with the permission of the two gentlemen on the floor.

Senator Pangilinan. Just to reply to the query of Senator Recto.

The reason we provided a catchall phrase of "all other similar government agencies" is that it has come to our attention that money-laundering criminals who are interested in cleaning dirty money are very creative in finding ways and means to avoid or to go around transactions to effectively clean their money. So if we limit the covered institutions to those enumerated without giving some leeway in the law, our hands might be tied when we find out that in the future money-laundering schemes have taken on a new tact or a new approach which perhaps, hypothetically, may no longer be covered by the existing number of institutions enumerated.

Senator Recto. Mr. President, I would assume that paragraph (a) "Covered Institution" and paragraph (b) would have a relationship. In paragraph (b), "Covered Transaction," we are only looking at certain bank transactions or financial transactions

which are already covered under covered institutions by the Bangko Sentral ng Pilipinas. So, I do not think that there is a need to have "all other similar government agencies" because all the banks and non-quasi-banking institutions are already covered under the Bangko Sentral ng Pilipinas.

So would the distinguished sponsor, at the appropriate time, accept amendments to delete line 15?

Senator Magsaysay. Mr. President, I think my cosponsor included this in our substitute bill based on the US law which covers among those covered institutions those entities whose transactions have a high degree of usefulness in criminal tax or regulation matters.

Senator Recto. Yes, I understand that, Mr. President. The only problem is that covered transactions under US laws are different from what is contemplated in this proposed law based on my reading of the committee report.

Senator Magsaysay. These are institutions or entities which have a high degree of handling funds that may be used by those more resourceful criminals in covering and cleaning up the dirty money.

Senator Recto. Yes, Mr. President. Precisely, my question is: Could the sponsor give me an example of these similar government agencies?

Senator Magsaysay. The PCSO is one; Philippine Racing Commission is one; or maybe even the Philippine Postal Corporation could be one through mail fraud.

Senator Recto. Would that mean, Mr. President, that we would be covering an expanded covered transaction? I thought we were defining or limiting what would be covered transactions. Because based on the committee report, as I mentioned earlier, under Section 3, Covered Institution in paragraph (a) and Covered Transaction must have a relationship.

Senator Magsaysay. If the gentleman from Batangas would prefer to delete it, we have no objection, Mr. President.

Senator Recto. Thank you, Mr. President.

Based on our caucus this afternoon, Mr. President, I had a query as well that the possibility that the Chair would agree—this is to put on record—that under covered transactions, Item 1 and Item 2 may be deleted and that covered transactions may be a series or combination of unusually complex or large transactions would be the final. Of course, subject to the approval of the Body.

But would the sponsor be amenable to this amendment at the appropriate time?

Senator Magsaysay. We will study the proposal of the distinguished gentleman, Mr. President.

Senator Recto. Mr. President, for the record, I think Items 1 and 2 are too ambiguous. For example, "a transaction involving an amount in excess of P1 million" and under the committee report, a single transaction alone may already be given the red flag "or an equivalent amount in foreign currency based on the prevailing exchange rate, unless a transaction is between a covered institution..." How would the committee define a "covered institution," "properly identified client" and "the transaction is in an amount reasonably commensurate with the lawful business or economic status of the client?"

Would the bank teller, account manager, branch manager, or the CEO be asking these questions of the possible depositor? Would the depositor have to prove when he puts his money in the bank immediately?

Senator Magsaysay. That is one of the means to know the customer. That could be part of information-gathering when an account is opened.

Senator Recto. No, but the point I am raising, Mr. President, is that there is discretion here among the banks now.

Senator Magsaysay. That is correct.

Senator Recto. Unless the transaction is between a covered institution and the properly identified client and the transaction is in an amount reasonably commensurate, I mean, the bank now would have to determine all of these before it possibly accepts the deposit or the transaction.

Senator Magsaysay. Is the distinguished gentleman questioning sub-item (1) on P1 million and up?

Senator Recto. Yes, Mr. President, not only the P1 million but also the other sentences here. Actually, the entire Section 1 and possibly, even Section 2.

Senator Magsaysay. In the Asia-Pacific countries where we have some data on money-laundering laws, more often than not, there is a threshold wherein a certain amount is breached. The judgment of the bank or its staff, whether he is the teller, the supervisor, or the bank manager will inquire if that level is breached especially if that account does not have all the information that will satisfy him that it is indeed clean money.

So we are basing our Section 1, page 2, on P1 million on what the US itself has decided whether it is arbitrary or not that its level is \$10,000 and when that is reached or breached, it triggers inquiries.

Senator Recto. That is right, Mr. President. But I think it was discussed earlier that in the US, it is \$10,000 in cash.

Senator Magsaysay. Yes, Mr. President.

Senator Recto. For example, what if a deposit of P2 million in check is made?

Senator Magsaysay. Then we should include check or demand draft.

Senator Recto. Yes, but we are comparing now apples and oranges, Mr. President, because in the US, it talks about \$10,000 in cash.

Senator Magsaysay. When we say "cash," it can be check because a check is a negotiable instrument and we cannot change the amount or the date. When one presents it, that is as good as cash.

Senator Recto. Anyway, Mr. President, again, just for the record, I think I have misgivings on Items 1 and 2 under "Covered Transaction." But I will have no problem if the definition of "Covered Transaction" would read as follows: "may be A series or combination OF UNUSUAL COMPLEX OR LARGE TRANSACTIONS." Just for the record.

Senator Magsaysay. Thank you, Mr. President. We will certainly study the proposal soon enough.

Senator Recto. Thank you, Mr. President. On the same page, page 2, under "Supervising Authority," based on the caucus earlier, is this the body which would eventually be called the "FIU?"

Senator Magsaysay. This is different, Mr. President.

Senator Recto. What is the "Supervising Authority?"

Senator Magsaysay. As defined here, it refers to the appropriate agency, department or office supervising or regulating any of the covered institutions like if it is the bank, it will be the BSP as the supervising authority. If it is a corporation or a foundation, it is under the SEC. And if it is, let us say, ILFGU insurance, that is under the insurance commissioner.

So, these are the supervising authorities.

Senator Recto. Where in the bill does it talk about the council or the FI unit?

Senator Magsaysay. That is a good question, Mr. President, because earlier today we compressed and made simpler this working draft or substitute bill. The agreement earlier was that instead of a council, we are now putting a Financial Investigation Unit under the Monetary Board and this will have to be embedded. I think Senator Drilon has a further explanation.

Senator Drilon. Mr. President, with the permission of the two gentlemen, may I clarify our discussion this afternoon during the caucus, of course, with the permission of the sponsor.

The Presiding Officer [Sen. Flavier]. Sen. Franklin M. Drilon is recognized.

Senator Drilon. When a number of our colleagues, Mr. President, proposed the FIU, it was in contemplation of substituting "Supervising Authority" found on page 2, line 26. If we look at this draft under discussion, the supervising authority would have the power to freeze the accounts. And, under our discussion during the caucus, it should be the Monetary Board which should have the authority to freeze an account regardless of the nature of the business, whether it is an insurance company, a partnership, a single proprietorship, or a corporation. The supervising authority is the Monetary Board and the support unit is called the Financial...

SUSPENSION OF SESSION

Senator Magsaysay. Mr. President, I move that we suspend the session for one minute.

The Presiding Officer [Sen. Flavier]. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 5:23 p.m.

RESUMPTION OF SESSION

At 5:36 p.m., the session was resumed.

The Presiding Officer [Senator Flavier]. The session is resumed. Senator Recto is recognized.

Senator Recto. Thank you, Mr. President.

Again, just for purposes of record, Mr. President, based on the informal huddle that we had, the idea now is that the supervising authority of the covered institutions be the one to report to the Monetary Board, to the FIU the contemplated financial intelligence or investigation unit which is under the Monetary Board.

Senator Magsaysay. Yes, Mr. President.

Senator Recto. All right. So that is the conceptual framework now of paragraph (f) on page 2, Section 3. Am I right in that, Mr. President?

Senator Magsaysay. Yes, Mr. President. When we say supervising authority, this presupposes either the BSP or the SEC or the Insurance Commission. In the case of the SEC, the commissioner, if he sees a suspicious account or activity of those he is supervising, he reports to the FIU, and so on.

Senator Recto. So this would be the contemplated FIU, Mr. President?

Senator Magsaysay. Yes, Mr. President.

Senator Recto. All right. Now, under Section 9, on page 6 in relation to the FIU and the supervising authority, Mr. President, it says here that the governor of the Bangko Sentral, the secretary of Finance, the chairman of the Securities and Exchange Commission...

Senator Magsaysay. Mr. President, are we looking at page 7?

Senator Recto. Yes, I am sorry, page 6 and page 7, because it is under Section 9 of page 6 but it is under line 2 of page 7.

Senator Magsaysay. Yes, Mr. President.

Senator Recto. All right. This in effect will be the... Is this the FIU or is this a supervising authority?

Senator Magsaysay. In effect this is the FIU. But we had decided to amend this during the caucus—that the Finance Secretary and the SEC commissioners are not included.

Senator Recto. As members of the FIU.

Senator Magsaysay. It will be simply the FIU, Financial Intelligence Unit, headed by the governor of the BSP.

Senator Recto. All right.

Senator Magsaysay. Supervised by him.

Senator Recto. All right. And the powers vested in the FIU would be to inquire or examine or authorize any inquiry. Can it pass on the power of inquiry? Because it says here in line 5, "may itself inquire or examine or authorize any inquiry, examination or disclosure of said account."

Senator Magsaysay. Yes, it may authorize, Mr. President, because in another provision, the FIU may use even other

government agencies in pursuing its search for the necessary information. So it may deputize or authorize or delegate to certain government agencies, like the Department of Justice or the NBI, et cetera, or the PNP.

Senator Recto. All right. Should we allow them the power to disclose the said account?

Senator Magsaysay. We do not allow.

Senator Recto. Yes. So at the appropriate time, Mr. President, we would be deleting this portion of line 5 which says, "or disclosure of said account."

Senator Magsaysay. We are open to improving this particular term, Mr. President.

Senator Recto. Thank you, Mr. President. All right. Just for my knowledge and information, how does substantial evidence in Section 9 relate to *prima facie* presumptions in Section 5?

Senator Magsaysay. Substantial evidence in Section 9...

Senator Recto. In line 28, relate to *prima facie* presumptions in Section 5. Because here, Mr. President, under Section 5 of page 4, the title of Section 5 is "*Prima Facie Presumptions*." The committee has identified three. A fugitive, No. 1. Let me just mention the key words. No. 2, in paragraph 2, "amount manifestly out of proportion to the salary of the person"—

Senator Magsaysay. Yes, the...

Senator Recto.—"reported therein" is *prima facie*; and No. 3, if "a person... filed or given any spurious, forged, fictitious, simulated or otherwise false identification."

Senator Magsaysay. Well, in Section 9...

Senator Pangilinan. Mr. President.

Senator Magsaysay. Yes, I will yield to my cosponsor.

Senator Pangilinan. May I be allowed?

The Presiding Officer [Sen. Flavio]. Senator Pangilinan, with the permission of the two gentlemen, is recognized.

Senator Pangilinan. Mr. President, in Section 5, "*Prima Facie Presumptions*"—and there are three—these are necessary provisions for us to be able to determine knowledge of the unlawful activity. Meaning, one of the elements of the crime of money laundering, or there are several elements

to the crime of money laundering: No. 1 is knowledge of the unlawful activity, knowledge that the proceeds—let me be more specific—have in fact come from an unlawful activity. No. 2, that there is a transaction or an attempt to transact such proceeds; and No. 3, that the transaction is for the purpose of concealing or cleaning or laundering the money.

So with these three elements present in a particular instance, Mr. President, then we have the crime of money laundering. However, with the presumption that when the person being persecuted, No. 1, for money laundering, becomes a fugitive, any monetary instrument or property in his name or belonging to him shall be presumed *prima facie* to represent proceeds of an unlawful activity.

So, in this case, if a person is a fugitive, then there is a *prima facie* presumption that such comes from an unlawful activity, and so forth and so on.

Senator Recto. Yes, I do not have a problem with that.

On item 2, the gentleman talks here of "lawful income" and "legitimately acquired property." The opposite would be "unlawful activity." And we have identified here or defined "unlawful activity" limiting it to a few number of crimes. So, for example, if it is then automatically under this bill that if the income was derived, let us say, from nonpayment of taxes, that would not be an unlawful activity under this bill. Is that correct?

Senator Pangilinan. That is correct.

Senator Recto. And therefore, he could not be charged criminally for money laundering?

Senator Pangilinan. Perhaps, tax evasion.

Senator Recto. That is right, but not on money laundering?

Senator Pangilinan. That is correct.

Senator Recto. I thank the gentleman for the clarification, Mr. President.

On the issue of Section 9, "substantial evidence," how would we define "substantial evidence" because we are passing this authority to the FIU? Would it have to prove certain elements of the crime? For example, when the FIU requests the Monetary Board to freeze the assets, let us say, of a depositor, it requires substantial evidence under Section 9, line 28. In that case, should the FIU present evidence or facts that these proceeds came from an unlawful activity as defined under the bill?

Senator Pangilinan. Substantial evidence under fundamental principles of law has been defined as "evidence possessing something of substance and relevant"—allow me to quote—"consequence and which furnishes substantial basis of fact from which issues tendered can be reasonably resolved." In other words, the term is a legal term that will guide the—

Senator Recto. The Monetary Board.

Senator Pangilinan. —the Monetary Board—

Senator Recto. And the FIU.

Senator Pangilinan. —and the FIU when it seeks permission from the courts based on our caucus earlier...

Senator Recto. Or from the monetary authority, to begin with the initial freeze.

Senator Pangilinan. That is correct, Mr. President.

Senator Recto. All right. The Monetary Board precisely.

Mr. President, the gentleman mentioned three elements earlier for money laundering based on how it is defined here in Section 4:

"Crime Of Money Laundering. Money laundering is a crime whereby the proceeds of an unlawful activity are converted, concealed or disguised to make them appear to have originated from legitimate sources."

For example, before the FIU or the Monetary Board can freeze, it would have to consider what substantial evidence is being presented by the FIU.

Senator Pangilinan. That is correct, Mr. President.

Senator Recto. Now, the substantial evidence, would it include facts relating to an unlawful activity, proceeds relating to an unlawful activity?

Senator Pangilinan. It may. If it is a question of evidence, it may proceed from this. Because this is an investigative phase, we may also consider, based on the reportorial requirements that are in the bill, documents as evidence, documents like suspicious activity reports or cash transaction reports that are required of the bank where the deposit is located. The bank is required to make these reports to its supervising authority. So when these reports, these documents are in the possession of the FIU or the Monetary Board and it examines them and it sees, based on the suspicious activity reports, that in fact it looks like there is an unusual

transaction taking place in a particular bank, that could be basis to say that substantial evidence exists. Therefore the Monetary Board can then eventually freeze the account and request through a court order access to bank documents.

Senator Recto. So, Mr. President, in effect, what we are saying here is that on the basis of a suspicious activity report alone, we are giving authority to the FIU and the Monetary Board to freeze an account.

Senator Pangilinan. That is correct, provided that the suspicious activity report as documentary evidence will be sufficient and classified or categorized as substantial evidence. If that single suspicious activity report is insufficient to establish that substantial evidence exists, then that single suspicious activity report cannot be made basis to open the account.

Senator Recto. Yes, Mr. President. Because I would assume that since money laundering is an act of cleaning proceeds of an unlawful activity as defined in this bill, then any substantial evidence to be presented must include substantial evidence with regard to the predicate crime.

Senator Pangilinan. Hypothetically, yes. For example, if the owner of the bank account is a public official and there are unusual transactions taking place, and we have 10 or 15 suspicious activity reports, under the bill as proposed, the Anti-Graft Law is one basis of one unlawful activity is defined. Therefore, hypothetically, if we have 10 suspicious activity reports on this depositor, and this depositor is a public official, we know how much this public official is earning on a monthly basis, apparently the suspicious activity report will suggest that there are millions of pesos in the account. That could constitute substantial evidence which the FIU will now request the Monetary Board to freeze the said account.

Senator Recto. I thank the gentleman, Mr. President, for that reply.

Just for the record, I believe that any substantial evidence to be presented must possibly include substantial evidence also of the predicate crime. It would be difficult to separate money laundering from the predicate crime because money laundering is a second act to clean up any proceeds from an unlawful activity. I think it would be difficult for money laundering to stand alone at this point.

Thank you, Mr. President, for those replies.

Just to reiterate, in Section 10, it says: "The respective supervising authority shall have the power to freeze." We are not contemplating this anymore?

Senator Pangilinan. Based on our caucus, there have been some informal agreements, yes.

Senator Recto. In Section 11, it says: "Forfeiture Provision. (a) *Civil Forfeiture.* When there is a covered transaction report made, and the court has, in a petition filed for the purpose..." Who files this petition? Is this the FIU?

Senator Pangilinan. Yes, this is the Financial Investigating Unit.

Senator Recto. All right. So, the FIU can file the petition, or the authorized agency, let us say, the Department of Justice or the OSG. Is that what is contemplated here?

Senator Pangilinan. Yes, Mr. President.

Senator Recto. All right. Again, in line 19 of the same provision, it says: "if the offender is unable to show to the satisfaction of the court that said monetary instrument or property was lawfully acquired, declare the same forfeited in favor of the Government of the Philippines." In effect, the burden of proof now is with the respondent, is that right?

Senator Pangilinan. That is correct.

Senator Recto. The burden of proof now is with the respondent that he would have to show that these monies were lawfully acquired.

Senator Pangilinan. That is correct.

Senator Recto. Now, in the interpretation of what is lawfully acquired, it should stem from the opposite of what is unlawfully acquired under the provisions of this bill.

If, what is unlawfully acquired would be through kidnapping, graft and corruption, drugs, anything except those would be lawfully acquired? That could be the defense of the respondent. Is that not possible, Mr. President?

Senator Pangilinan. Well, if money is obtained from other crimes that are not listed under the anti-money laundering law, then it is still unlawfully acquired. However, we cannot prosecute.

Senator Recto. We cannot forfeit at this point because we are under the forfeiture provisions of Section 11 at this point. Just to clarify.

Senator Pangilinan. The civil forfeiture in this particular provision refers to the anti-money laundering law, yes.

Senator Recto. For the same reason, then in Section (b) when we talk of an unlawful activity, again, we refer to what is defined as an unlawful activity. Is it not so, Mr. President?

Senator Pangilinan. That is correct, Mr. President.

Senator Recto. Allright. On page 8, Section 13 - "Restrictions," line 25, it says, "No writ of injunction shall be issued by any court to delay an investigation or inquiry being conducted by the law enforcement agency." Are we talking here about the FIU?

Senator Pangilinan. I am sorry. On what page?

Senator Recto. Page 8, Section 13, lines 25 and 26.

Senator Pangilinan. This will have to refer to the FIU and the Monetary Board.

Senator Recto. And whoever is authorized. So, would the gentleman, at the appropriate time, accept amendments on this?

Senator Pangilinan. Yes, willingly.

Senator Recto. I would like to thank the gentleman. Mr. President, because we are now in Section 14, this has a relationship with Section (h) on unlawful activity, item No. 5, paragraph No. 5. "Felonies or offenses of a similar nature as the above that are punishable under the penal laws of the country where the felony or offense was committed." I think this has a relationship with Section 14 on mutual assistance among states. Is that not so, Mr. President?

Senator Pangilinan. Yes, that is correct, Mr. President.

Senator Recto. For purposes of clarity, at the appropriate time, would the committee accept an amendment in paragraph 5 of--

Senator Pangilinan. Letter (h).

Senator Recto. ...letter (h)? "Unlawful Activity; Felonies or offenses of a similar nature as above that are punishable under the penal laws of a foreign country where the felony or offense was committed in a foreign country."

Senator Pangilinan. Yes, we will accept at the appropriate time.

Senator Recto. I would like to thank the gentleman, Mr. President.

And then in Section 15, *Penal Provisions*. I have no problem with paragraph (a) and the second paragraph in line 7, and then we have paragraph (b) in line 11. "Penalties for failure to make a Report." It says here, if I may quote, Mr. President. "The penalty of imprisonment from six (6) months to four (4) years or a fine of not less than One Hundred Thousand Philippine Pesos (P100,000.00) but no more than Five Hundred Thousand Philippine Pesos (P500,000.00), or both, shall be imposed on a person convicted under Section 8 (b)."

I would assume, Mr. President, that we should have here 8(a), 8(b), and 8(c). Because the penal provision in Section 15 is with regard to Section 4(a) in line 10; "four (4) to eight (8) years," line 10, "Section 4(b) of this Act," and Penalties for Failure to Make a Report," I think should be under Section 8(a), (b) and (c).

Senator Pangilinan. *A, mali ito.* It should be 8(c).

Senator Recto. It could be either 8(c)...

Senator Pangilinan. It is 8(c). There is a typographical error --the requirement of the banks to make reports.

Senator Recto. Yes. All right. However, Mr. President, the reason I mentioned that it should include 8(a), 8(b) and not only 8(c) is that we want the banks to establish records of true identity, and that is covered under (a) and not only under (c). We want banks to have record keeping as in paragraph (b) of Section 8, and we want the banks to report covered transactions in paragraph (c). Therefore, in the penal provisions in Section 15, I think it would be wiser to put in line 14, "shall be imposed on a person convicted under Section 8(a), (b) and (c) of this Act."

Senator Pangilinan. Mr. President, I think letter (d) on page 10, line 3, "Other Violations" will therefore cover the other acts identified or obligations of the given entities. They will be covered under the "Other Violations" if they fail to comply with what is required of them under the proposed law.

Senator Recto. Yes, Mr. President, but the problem with the... Where is that, what page?

Senator Pangilinan. Page 10, line 3.

Senator Recto. All right, paragraph (d), "Other Violations." I thought that one of the important elements of the FATF was to have records kept of depositors—the true names, addresses, et cetera--

Senator Pangilinan. That is correct.

Senator Recto. —and very important condition of some sort.

Senator Pangilinan. Which is in letter (b), "Record Keeping."

Senator Recto. That is right, identifying the customers, record keeping, reporting transactions, et cetera, then I would assume that the penalty should have an equal weight. That is why at the appropriate time, if the gentleman would agree to accept an amendment that persons convicted under Section 8(a), (b) and (c) of this Act...

Senator Pangilinan. We are willing to accept that amendment at the proper time.

Senator Recto. Thank you, Mr. President. I would like to thank the distinguished sponsors. This representation has no further questions.

The Presiding Officer [Sen. Flavie]. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, Sen. Robert Z. Barbers is next in line to interpellate. I move that he be recognized.

The Presiding Officer [Sen. Flavie]. Sen. Robert Z. Barbers is recognized.

Senator Barbers. Thank you, Mr. President. Although I am one of the signatories of the committee report in my capacity as chairman of the Committee on Public Order and Illegal Drugs, when I tried to review the report, I realized that there were some items that skipped my mind, which I would like to raise now for my education, as well as for purposes of clarification.

In the revised version of the proposed measure, Section 5 devotes mostly to how money laundering shall be prosecuted. Then paragraph (b) of Section 5 makes the pendency of any proceeding relating to the unlawful activity shall not bar...

Senator Pangilinan. Mr. President, with the permission of Senator Barbers, he is identifying lines that are not in the copy that I have.

SUSPENSION OF SESSION

Mr. President, may we request a one-minute suspension of the session.

The Presiding Officer [Sen. Flavie]. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 6:04 p.m.

RESUMPTION OF SESSION

At 6:05 p.m., the session was resumed.

The Presiding Officer [Sen. Flavie]. The session is resumed.

Senator Barbers. Mr. President, may I know from the sponsor if there are substantial amendments as to how money laundering shall be prosecuted? It implements the same and pursue my line of questioning as to how it can be prosecuted. How shall it be prosecuted?

Senator Pangilinan. With respect to the definition of money laundering, the elements, these are basically the same. The substantial amendments would fall under the council, the power of the Monetary Board to act on the accounts, the freezing of the accounts, and the number of offenses or unlawful activities as defined. This has been substantially changed.

Senator Barbers. I based my questions on the old version. At any rate, Mr. President...

Senator Pangilinan. I have the old version in my hands, Mr. President. We will see if we can...

Senator Barbers. I think we can reconcile the old version with the new version. At any rate, Mr. President, I think the provision on the pendency of any proceeding is not a bar for the prosecution to implement the same.

Senator Pangilinan. Yes, that would be Section 7 (b): "The pendency of any proceeding relating to the unlawful activities shall not bar prosecution of any offense or violation under this Act."

That is still in the latest version--the working draft--that we are now discussing.

Senator Barbers. In other words, Mr. President, this proposed measure recognizes the presence of at least two criminal cases. Am I correct?

Senator Pangilinan. Yes, Mr. President. That is correct.

Senator Barbers. First is the predicate criminal act, and second is the crime of money laundering.

Senator Pangilinan. That is correct, Mr. President.

Senator Barbers. In this particular measure, these are treated as separate and distinct criminal proceedings. In fact, any person may be charged and convicted in either of the two cases.

Senator Pangilinan. That is correct. Kidnap for ransom is an example, and money laundering or violation of the Anti-Money Laundering Law.

Senator Barbers. Am I correct, Mr. President, in saying that the predicate criminal act or acts and the crime of money laundering are two distinct criminal cases, meaning that any of the two is independent and it can be filed, prosecuted and tried separately, independently in different courts?

Senator Pangilinan. That is correct, Mr. President.

Senator Barbers. What if the predicate crime results in an acquittal? Will it not affect the crime on money laundering considering that these two predicate acts were the basis in filing the money-laundering crime?

Senator Pangilinan. Mr. President, mere acquittal on the predicate offense, for example, kidnap for ransom, does not mean that the money-laundering offense cannot prosper. It will proceed.

Senator Barbers. May a person charged with money laundering ask the dismissal of his case from the court by raising as contention that the alleged unlawful activity from where his alleged laundered money be proven first in court just like raising a prejudicial question?

Senator Pangilinan. The option of raising prejudicial question cannot be availed of in this case. In other words, the accused in the money-laundering case if his case has been dismissed, the kidnapping for ransom case, for example, is dismissed, cannot bring the issue of the dismissal per se as basis for the dismissal of the anti-money laundering case.

Senator Barbers. In my version of the anti-money laundering bill, one of the provisions that has caught my attention is the fact that there is a consolidation of the predicate crime and the crime on money laundering. Now would this be allowed in the gentleman's proposed measure, in the revised version, as an amendment, the consolidation of all the predicate crimes as well as the money-laundering crimes?

Senator Pangilinan. Mr. President, we will be unable to do that because if we are to look at the definition, for example, of money laundering, the elements are different if we are to compare it to the crime of kidnap for ransom as a predicate offense.

If I may be allowed to explain, for example, the elements in money laundering—paragraph 4(a) I believe—would be: one, that there is knowledge that the proceeds came from unlawful activity; two, that there is an attempt to come up with a transaction

involving these proceeds; and, three, that the purpose of such person is to conceal or disguise or further the unlawful activity. Under criminal law, we will be able to convict the individual of money laundering if we are able to prove beyond reasonable doubt the three elements.

In kidnapping, however, the elements are different. The Revised Penal Code provides the elements of kidnapping, the offender is a private individual, there is deprivation of liberty, there is an act of detention which is illegal, and in the commission of any of the offense, there is detention for more than three days and so forth and so on.

What we are saying here, therefore, is that these are two separate offenses, and to combine these as an amendment would therefore have money laundering. The primary objective of the bill if passed into law is to really prevent money laundering. Therefore, we felt it best that we identify clearly what the crime of money laundering is and when the elements are attending, and we prove beyond reasonable doubt that these are present, then we are able to convict under that particular provision.

Senator Barbers. That is correct, Mr. President. But may I know what gives rise to the crime of money laundering in this particular proposed measure, in the revised measure?

Senator Pangilinan. When a person who has knowledge that proceeds or money came from kidnap for ransom—P10 million, for example, allow us to illustrate—and he decides that he will deposit it in a bank and he does it in a bank with the purpose of making payments for a car by using a checking account—in other words, he is trying to put legitimacy to the money by way of a transaction—then that crime is money laundering.

Senator Barbers. Nevertheless, Mr. President, may I know from the honorable sponsor if upon the filing of the predicate offenses in court, the government may ask for provisional remedies that can freeze the supposed fruits or proceeds of the crime?

Senator Pangilinan. May we have the question again, Mr. President? I am sorry.

Senator Barbers. As I said, Mr. President, may I know if upon the filing of the predicate offenses in court, the government can ask for provisional remedies that can freeze the fruits or proceeds of the crimes?

Senator Pangilinan. The predicate offense being kidnapping.

Senator Barbers. That is correct—kidnapping or drug-trafficking.

Senator Pangilinan. Yes, Mr. President. There are some remedies available to the State. Attachment is one such remedy available to be able to get hold of the said proceeds.

Senator Barbers. If we can avail ourselves of these provisional remedies, Mr. President, for the purpose of freezing the fruits of the crime, I do not see any reason the predicate criminal act should be a separate case from the money-laundering case.

Mr. President, the consolidation of the predicate criminal acts with the money-laundering case can also freeze the fruits of the crime or the proceeds of the crime. And it would be much easier for the court to avail itself of this remedy.

Senator Pangilinan. Mr. President, that may be true in a particular case, but in another case, hypothetically, it may be difficult to do so. For example, what if the individual who launders the money is not the individual who is accused of the crime or the predicate offense of kidnap for ransom? How then will we be able to address the issue of forfeiture in the predicate offense if the individual, as mentioned earlier, is not even charged with the crime of kidnap for ransom?

In other words, money laundering, Mr. President, in the bill as proposed, contemplates other situations apart from what was being contemplated by the good senator.

I would suppose—I am venturing a guess—that precisely, in syndicated crimes, criminals have very interesting ways of undertaking efforts to conceal their crime. And as such, the money-laundering law which has been passed or a law on money laundering which has been passed in several other jurisdictions is precisely to address this.

Senator Barbers. Thank you, Mr. President.

Can the person whose assets have been frozen file a counterbond to lift the freeze order?

Senator Pangilinan. The bill as proposed is silent, Mr. President.

Senator Barbers. Are we not made to understand that the bill on the prohibition against bond applies only to court on judicial orders?

Senator Pangilinan. May we have the question again, Mr. President?

Senator Barbers. As I said, are we not made to understand or personally what I understand is that the bill on the granting of bonds or the prohibition against bond applies only to court of judicial orders and issuances?

Senator Pangilinan. Mr. President, in the latest version, the specific provision has been deleted in the working draft.

Senator Barbers. So, we can file a bond. I am sorry because my reference material is the old version.

Senator Pangilinan. Yes, Mr. President. A bond can be filed.

Senator Barbers. Mr. President, the anti-money laundering council has the power to freeze the assets on the proceeds of the crime?

Senator Pangilinan. Mr. President, again, the working draft no longer has the council. But as agreed informally during the caucus earlier, for the information of Senator Barbers, the power of freezing the accounts is vested in the Monetary Board but with a limited power to freeze the accounts for only 20 days after which the Monetary Board or the FIU must get a court order to allow the freezing to proceed or to continue after 20 days.

Senator Barbers. Mr. President, are corporations, including the banking institutions, subjected also to penalties in case of violation of the Anti-Money Laundering Law?

Senator Pangilinan. Yes, corporations are also subject to penalties.

Senator Barbers. What penalty, for example, Mr. President?

Senator Pangilinan. On page 9, line 20, a bank, for example, may suffer suspension or revocation of its license upon conviction of the crime of money laundering.

Senator Barbers. Mr. President, I have one or two more questions. I have a lot of questions for clarificatory purposes but my reference material is the old version.

Senator Pangilinan. We are more than willing to address all the questions of the distinguished gentleman, Mr. President, on the final version—the working draft.

Senator Barbers. This is in connection with the penal provisions, Mr. President. As I skim through the pages of this proposed measure on penalties, this particular section made mention of imprisonment as well as a fine of amounts of pesos or both at the discretion of the court.

Now, may I know if the sponsor is willing, during the period of amendments, to remove the words "discretion of the court?" In other words, the penalty to be imposed should be imprisonment or fine or both preferably. I would suggest that the penalty should be imprisonment and fine and removing the words "at the discretion

of the court" in order to give teeth to the campaign against criminality considering that we are confronted now with the problem on criminality and other illegal activities.

Senator Pangilinan. Mr. President, considering that Senator Barbers is the chairman of Public Order and Illegal Drugs Committee and we need to be tough on crime, we are more than willing to accept these amendments at the appropriate time.

Senator Barbers. Thank you very much, Mr. President. As I said, I still have several questions but my reference is the old version. I will study the new version now.

The Presiding Officer [Sen. Flavie]. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, for the continuation of the interpellation, I ask that Sen. Renato L. *Compañero* Cayetano be recognized.

The Presiding Officer [Sen. Flavie]. Sen. Renato L. *Compañero* Cayetano is recognized.

Senator Cayetano. Thank you, Mr. President. Will the gentleman from Pasay, Quezon City and the Philippines yield for some questions?

Senator Pangilinan. And Pampanga, Mr. President.

Senator Cayetano. And Pampanga.

Senator Pangilinan. Willingly, Mr. President.

Senator Cayetano. Mr. President, before I go through page by page of this so-called working draft, may I ask the good sponsor to walk through the process with me so that we can understand this better?

First of all, Mr. President, let me congratulate the principal sponsors, Senator Pangilinan and Senator Magsaysay. This is not a very easy task to do not only because of its originality but because of certain cultural as well as constitutional aspects of this bill. So, for whatever it may be worth, from the very start, I would like to congratulate both sponsors.

Senator Pangilinan. Thank you, Mr. President.

Senator Cayetano. Mr. President, will the good sponsor give me an idea of the process? Suppose a new depositor deposited in a bank P2 million. After inquiry of the client, the bank manager decided to report to the Monetary Board, through the bank governor, about this unusual transaction. So, what will happen next?

Senator Pangilinan. Mr. President, the report, which is a suspicious activity report, will now be part of the data base of the Monetary Board.

Senator Cayetano. All right. It will now form part of the data base. Will that be all that the Monetary Board will do, or will it go through the process of inquiring further whether such P2 million deposit is a proceed from an unlawful activity?

Senator Pangilinan. My understanding, Mr. President, based on our informal caucus earlier, is that this particular report will eventually be centralized with the FIU—the Financial Investigation Unit. This unit will evaluate this particular report to see whether or not in fact there is more to it, more to the report, apart from the fact that there is an unusual transaction.

Senator Cayetano. Let us assume that it has been evaluated by the FIU as we call it.

Senator Pangilinan. The Financial Investigation Unit.

Senator Cayetano. All right. It has been investigated and, for some reason, the FIU believes that this amount may have been a proceed from an illegal or unlawful activity. What will happen next, Mr. President?

Senator Pangilinan. Under the bill—the law when it is passed—the FIU has the power to deputize other government agencies in order to assist it in its investigation and as such it may deputize the National Bureau of Investigation and the Philippine National Police to look further into the unusual activity. Perhaps, it may gather more information, more documents in the process or in the context of building a case that money laundering has, in fact, been committed.

Senator Cayetano. Will this investigation by different agencies now tasked by the FIU, as the gentleman said, be known to the bank customer, or will it be done confidentially?

Senator Pangilinan. This will be done confidentially. In fact, the bill provides that the reporting authority or the bank must not divulge information to its client that, in fact, it has made a report. So, it will be a confidential investigation.

Senator Cayetano. Suppose, as the gentleman said, the FIU asks the NBI to investigate further, what will the NBI investigate?

Senator Pangilinan. For example, in the suspicious activity report, I assume that there will be the name of the individual, his address, the nature of the transaction and the amount involved. Questions are required of the bank to know the client and, therefore, these information in the report will show the financial

status of this individual. On the bases of these information—name, address, and financial status—the NBI, perhaps, can now, hypothetically, conduct an investigation involving other persons who may know this individual and so forth and so on.

Senator Cayetano. In other words, Mr. President, the NBI now will really look into the person as well as the business. Am I correct?

Senator Pangilinan. That is correct, Mr. President.

Senator Cayetano. If, as the good sponsor says, there is a positive result—meaning, the NBI feels that the deposit of P2 million is unusual because this guy does not have any legitimate business whereby he will have P2 million to be deposited—what will the NBI do now with the report it has gathered or investigation it has undertaken?

Senator Pangilinan. Just to illustrate further before I proceed to answer the question. If, in the course of the investigation the NBI finds out that this individual was convicted of kidnap for ransom or was charged,—not convicted—or was accused three times in court, although the cases for kidnap for ransom were dismissed, then slowly perhaps the story is unraveling that, in fact, this person might be involved in unlawful activity wherein the P2 million may be, in fact, proceeds of that unlawful activity.

When the NBI is able to determine this, the question raised by the gentleman from Taguig and Pateros is: What happens next?

What happens next is that through the FIU, the FIU may, because it has established probable cause, endorse it to the Department of Justice for filing of the case of violation of the Anti-Money Laundering Law. In the meantime, based on the working draft, the FIU can also present its case to the Monetary Board. It can request the Monetary Board by a vote of four out of seven members to freeze the said P2 million account, and then file the case with the Department of Justice.

Senator Cayetano. I would like to thank the gentleman for that information, Mr. President.

The example given is, of course, quite clear because, as the gentleman said, there are already existing cases of kidnapping or, for that matter, he has been accused of kidnapping. But suppose there is still yet no determination that this particular customer of the bank who deposited P2 million has been accused of any of the four crimes committed.

My inquiry here, Mr. President, is: What would be the consequences of the report of the NBI given that this guy has really no legitimate business and yet he was able to deposit

P2 million? If indeed there are existing cases or past cases, there is no problem. I think the good sponsor will agree with me.

My example, in order for all of us to understand this is: Where there are no existing cases yet, no illegitimate or unlawful activity has yet been investigated or, for that matter, filed in court, what will now happen to the NBI report?

Because, Mr. President, the guy may claim, "*Iniregalo sa akin iyang P2 milyon ng isang kaibigan ko. Actually, hindi naman P2 milyon iyan agad. Inipun-ipun ko lamang muna at pagkatapos ay saka ko idineposito.*"

So, what would happen now if there are still no existing or pending cases involving unlawful activity?

Senator Pangilinan. In that particular case, the report will be filed and it will be pending. Perhaps, hypothetically, if indeed he is involved in money laundering, some other transactions will also follow and then maybe by that time eventually he may be prosecuted for money laundering.

However, to answer the gentleman's question, if the facts are such that they were not able to find any unlawful activity connected to the P2 million, then the report will remain as that, a report. In fact, Mr. President, our own experience in our Anti-Terrorism Financial Investigation Seminar is that there are tens of thousands of these reports forwarded to the FIU that do not see the light of day, so to speak, because they stay there, dormant, and do not prosper because of lack of information or evidence to proceed.

Senator Cayetano. Well, I appreciate that kind of information, Mr. President, because we have to allay the fear of bank depositors that simply because an unusual deposit has been made and that because of this bill, which may become law, a report has been made, it does not immediately follow that a money-laundering charge would be leveled against him.

Senator Pangilinan. That is correct, Mr. President.

Senator Cayetano. So, am I correct in my understanding that it is important, before any process to prosecute a person of money laundering, that the so-called "predicate unlawful activity" be first discovered or, for that matter, be existing or pending investigation? Am I correct in my understanding?

Senator Pangilinan. Yes, knowledge of the unlawful activity. That is correct, Mr. President.

Senator Cayetano. Well, knowledge... There are different kinds of knowledge, Mr. President, and I am sure the good sponsor is a very brilliant lawyer, young as he is.

Knowledge can be hearsay; it can be direct; it can be circumstantial. That is why I want the process to be very clear because, as I have said, we are crafting a bill which is new. And we want to understand exactly this bill, not just the members of the Senate, but even the people at large, including the businessmen, the poor and the not-so-poor.

So, am I correct in saying that part of the process is, if there is no pending investigation about any particular unlawful activity, either by the Department of Justice or by the Ombudsman and some other law enforcement agencies, the mere reporting of this unusual bank deposit would not really trigger a case of money laundering?

Senator Pangilinan. No, it will not.

Senator Cayetano. It will not?

Senator Pangilinan. No, it will not.

Senator Cayetano. Will it be a logical consequence if I go further by saying... Consequently, Mr. President, am I correct that there is a need for the predicate unlawful activity to be first filed?

Senator Pangilinan. In court?

Senator Cayetano. By the Department of Justice. Or rather, investigated by the DOJ or investigated by the Ombudsman or any law enforcement agency?

Senator Pangilinan. Mr. President, not necessarily. In the example I gave earlier, if the P2-million account was subjected to a report and the NBI eventually, in the conduct of its investigation, finds out that the individual depositor was in fact charged with kidnapping for ransom three times but all cases were dismissed, in that case, there seems to be an unlawful activity that we can link to this depositor. In such a manner, with additional evidence perhaps, with additional information apart from this, then the charge of money laundering can be forwarded to the DOJ for filing.

Senator Cayetano. Now, again, I cannot emphasize the process, because I think from the process we will be able to understand the concept of money laundering and then go through the crime itself as well as the procedures therein. The example given by the good sponsor is, of course, as I said earlier, very clear. Because I can foresee that if there were charges already existing although these might have been dismissed in the level of the DOJ or, for that matter, in the court about kidnapping, even just one kidnapping,—and it is kidnapping for ransom—I can appreciate the fact,

Mr. President, that indeed that P2 million might have come from that particular unlawful activity, which is kidnapping for ransom.

But it is the process where there is no such determination yet, either by the Department of Justice or by the Ombudsman or, for that matter, let us say, the NBI, before the unusual deposit was made. So, what would happen now? Am I correct to say that this report will just be in the files?

Senator Pangilinan. It will just stay in the files; it will just remain there and will just be taking up space.

Senator Cayetano. In other words, for that matter, that depositor has nothing to fear.

Senator Pangilinan. The depositor has nothing to fear.

Senator Cayetano. Simply because an amount of over P1 million was deposited, am I correct?

Senator Pangilinan. That is correct.

Senator Cayetano. All right. Again, I cannot overemphasize that because *maraming natatakot na kung magdedeposito sila ng* over P1 million *ay ire-report sila at baka maakusahan sila ng* money laundering *at dahil doon ay magkakaroon tayo ng* bank run.

Senator Pangilinan. We appreciate the effort to explain even...

Senator Cayetano. Now, Mr. President, in the example that I gave, a depositor deposited P2 million in the bank. Then, as the other sponsor, my good friend and *kababayan*, Senator Magsaysay, said, "know your customer." And the bank, after interviewing the customer, accepted the deposit but nevertheless felt that it has to report. Now, will the customer be informed by the bank that it will make a report to the proper agency, as the gentleman said, to the Monetary Board about the P2 million?

Senator Pangilinan. There is a particular provision in the bill that prohibits reporting or informing the client that a report is being submitted.

Senator Cayetano. Mr. President, that might be rather...

Senator Pangilinan. I am sorry, Mr. President. With the many drafts, that was already deleted.

Senator Cayetano. Deleted. I thank the gentleman for that because indeed, I think, we may have some problems there, constitutionally speaking. So, in other words, the bank, if my

understanding is correct, will now be obligated to tell the depositor, "I will report this amount." Because the earlier version is, it will be held confidential, the customer will not be told. But now it has been deleted. My question now is, since it has been deleted and which, I believe, is correct, would it now be an obligation on the part of the bank...

Senator Pangilinan. To inform the depositor?

Senator Cayetano. Yes, Mr. President.

Senator Pangilinan. I believe that there is no obligation to inform.

Senator Cayetano. To inform.

Senator Pangilinan. However, there are...

Senator Cayetano. *Kailangang liwanagin natin ito para maintindihan ng depositor. Sapagkat kung hindi po maiintindihan iyan ng depositor at pagkatapos ay bigla siyang imbestigahan ng NBI, baka bumalik ito sa bangko at sabihin, "Bakit ako iniimbestigahan ngayon ng NBI? Hindi ninyo sinabi sa akin na kapag ako ay nagdeposito ng P2 million ay ire-report ninyo ito sa Central Bank."*

Senator Pangilinan. Mr. President, again, I was looking at another copy. In fact, it is in line 6... allow me to correct myself. On page 6, line 13, it says, "When reporting covered transactions to the Supervising Authority"—in this case the Monetary Board—"covered institutions and their officers, employees, representatives, agents, advisors, consultants or associates are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person the fact that a covered transaction report was made."

Senator Cayetano. All right. It speaks of "to any person," but does it refer to the person depositing? I can imagine, we cannot report it to a nondepositor because it may turn out to be malicious and false. But how about to the depositor himself, Mr. President?

Senator Pangilinan. I believe, Mr. President, that because it says "any person," it includes the depositor.

Senator Cayetano. At the proper time, if the sponsor will accept, perhaps that phrase "to any person" should not refer to a depositor. I think my own personal feeling here is that a depositor should be, at least, told that a report may be made by the bank. A deposit, Mr. President, is a contract between the bank and the depositor. And it may not augur well for the banking institution if the depositors would not be told and later on they will be investigated. But anyway, let us tackle this issue when we come to that.

Senator Pangilinan. Yes. Just to interject, Mr. President. My understanding of the US law on money laundering is, in fact, a very specific provision that when a suspicious activity report is filed, the banks are prohibited from informing the client. I believe the reason behind this is that when a client is informed that a suspicious activity report has been filed, he may take the necessary steps to withdraw the money. Assuming he is laundering the money, he may take the necessary steps to withdraw the same and transfer it and therefore... In other words, giving him notice that he is under investigation.

This may be true, Mr. President, and may be applicable if the depositor has nothing to fear. If he is not involved in any illegal activity, there is no reason he should not be informed. The problem would arise if, in fact, he is involved in illegal activity and he is informed that he is under investigation and, therefore, that will give him the opportunity to make transactions to remove the money and bring it elsewhere.

Senator Cayetano. Well, I think, Mr. President, that when a man goes to a bank, the bank offers its services to a depositor. And when it offers the depositor its services, it tells the depositor his rights and the obligations of the bank. Perhaps, it is in that interview that the process maybe is for the bank to say; "As you know, we have this Anti-Money Laundering Act and it is possible that any deposit, not necessarily yours, may be reported to the particular agency." That is really what I am pointing out.

Senator Magsaysay. May I, Mr. President, interject a statement regarding the issue on whether the depositor will be informed by the bank. I understand that in the United States, according to our Senate President, when the deposit of \$10,000, let us say, is transacted, the bank informs the depositor.

Senator Cayetano. That is right.

Senator Magsaysay. That the bank may have to inform the financial center or the FIU of such a transaction. There has to be an information as far as the US procedure is concerned.

But what I am saying is that, in the Philippines, if that is done and the account is suspicious and there is reasonable doubt, it is also very probable that, without freezing it yet—of course, because this is just the first step—the account will leave and there is already a flight of the criminal money to somewhere else.

Senator Cayetano. In the United States, as all of us have traveled there and as we know, in the Customs' declaration if we are carrying \$10,000 or more, we have to disclose. It is merely to disclose. In other words, the person carrying the bill of more than \$10,000 is already preinformed.

When we go to a bank, it is the same. The bank will always tell us that if a deposit is more than \$10,000, an inquiry will be made as to the source, et cetera. So even in the United States, the depositor is informed about this particular transaction that it may be subject to reporting. That is the only thing I want to clarify.

Senator Pangilinan. Mr. President, I would like to clarify. It is correct that when cash transactions involving US\$10,000 or more are made in the US banks, indeed, the banks are required to inform the depositor to fill out a report which is called a "Cash Transaction Report," a CTR. But there is another reporting requirement under the US money-laundering laws which requires reporting of suspicious activities which they call the "Suspicious Activity Report" or SAR. So the CTR, yes. That requires that the bank inform the depositor that it will be making a report that a cash transaction has been entered into. But as far as the SAR is concerned, money-laundering laws in the US prohibit the bank from informing the client that the bank is filing a SAR.

Senator Cayetano. All right. I appreciate the explanation and clarification of both sponsors. I do not know if we can put it here, that the depositor is informed that a possibility of reporting will be made as required under the anti-money laundering law. That is what I am only looking after. As I said, first, I want to ensure that the depositor will not feel afraid or suffer from misapprehension that his private business, legitimate as it is, is being inquired into simply because an amount over P1 million was deposited.

So I do not know, Mr. President, how we can put it here. I do agree with the sponsor that when it is already a matter of suspicious account, that is discretionary on the part of the bank. Second, understandably, it must be confidential. But I think it is the first one *para iyong mga depositor natin ay hindi matatakot*, to provide some kind of a safeguard. Perhaps, during the period of amendments, we can do that.

Senator Pangilinan. In fact, Senator Recto wants to do away with the threshold altogether.

Senator Cayetano. Well, I have a different mind on that, Mr. President. I do not want to raise it.

Senator Pangilinan. During the period of amendments, we will study it and weigh it well.

Senator Cayetano. Mr. President, we are understanding more and more the process. We are halfway through now.

Suspicious accounts. The Department of Justice has earlier investigated this person for the crime of kidnap for ransom. What will happen now with this amount of P2 million? We have

now what we call a predicate unlawful activity. Am I correct, Mr. President?

Senator Pangilinan. That is correct, Mr. President.

Senator Cayetano. What will happen now? Will the FIU or any agency now file a case of money laundering?

Senator Pangilinan. I believe the investigation report will be forwarded by the FIU to the Department of Justice so that the Department of Justice will file the case for violation of the anti-money laundering law.

Senator Cayetano. Or in the case of a public official with the Ombudsman. Am I correct?

Senator Pangilinan. Yes, Mr. President. With the Ombudsman.

Senator Cayetano. Let us make this clearer. *Simulan muna natin sa* Department of Justice.

Let us say a subpoena was issued to a private individual or to a private depositor. At that point when a case is filed with the Department of Justice, is there anything in the process which will require—I think there is freezing of account here, there is forfeiture. When does freezing of that account come in? What period of time?

Senator Pangilinan. Under the law as proposed, it can be filed even before the case is filed before the courts.

Senator Cayetano. Even before?

Senator Pangilinan. Yes, Mr. President.

Senator Cayetano. Before a case is filed in the court?

Senator Pangilinan. Yes, Mr. President.

Senator Cayetano. So am I correct in understanding that if the case is still with the Department of Justice, the account can already be frozen?

Senator Pangilinan. If the case is under investigation with the FIU...

Senator Cayetano. No. No. No.

Senator Pangilinan. Even before the Department of Justice. With the FIU, the FIU can go to court and request the court to freeze the said P2 million.

Senator Cayetano. The FIU?

Senator Pangilinan. The FIU. But of course the court will evaluate the evidence and see if it is...

Senator Cayetano. I thought that under the proposed bill, it is purely administrative freezing.

Senator Pangilinan. I am sorry. I am sorry.

Senator Pimentel. Mr. President.

The Presiding Officer [Sen. Flavie]. Sen. Aquilino Q. Pimentel Jr. is recognized with the permission of the two gentlemen.

Senator Pimentel. Mr. President, I wish to clarify my understanding of the question raised by Senator Cayetano. The freezing of an account which is deemed to be suspicious and reported by the FIU to the Bangko Sentral under the present formula would enable the Bangko Sentral to order the freezing of the account without need to go to court. It is only when there is a need to open the bank account in question that a court order is required I think. That is my understanding, Mr. President.

Senator Pangilinan. Yes. Mr. President, I was confused because I was looking at the version at twelve noon, not the version at three o'clock. [Laughter]

Senator Cayetano. Well, Mr. President, that is why we are asking the process because we are all confused. I think there is no reason for causing some kind of embarrassment because this is a very new bill. While we have an American pattern, well, in the words of the Minority Leader, it is a very complex, complicated, and far-reaching bill. That is why we have to understand all these processes.

Senator Pangilinan. It is complicated even further, Mr. President, because I have three different versions. I studied a different version last night, another version this noon, and another version on plenary. So, it is ...

Senator Cayetano. With the competence of the sponsor, Mr. President, even if he has 10 versions there, he will certainly be able to tell us the process.

So, there will be an administrative freezing of the so-called suspicious account. What will be the procedure of freezing?

Senator Pangilinan. Based on the formal agreement over lunch, the Monetary Board can freeze the account for a period not exceeding 20 days. Within this particular period, the depositor will be asked to explain before the Monetary Board the nature of this deposit whether it is a valid, legitimate deposit. If the Monetary Board is not satisfied with the explanation of the depositor, it will maintain the freezing of the account. Again, within the period of

20 days, the depositor has the option of bringing the matter and questioning the freezing before the proper courts.

Senator Drilon. Mr. President.

The Presiding Officer [Sen. Flavie]. Sen. Franklin M. Drilon is recognized with the permission of the two gentlemen.

Senator Drilon. Mr. President, with the permission of the two gentlemen, over the caucus, our consensus was, if the Monetary Board is not satisfied with the explanation of the depositor, it now has the obligation to go to court if it wants to maintain the freezing beyond 20 days. Also, it has to go to court to ask for authority to track down and open these accounts. But for purposes of freezing, it can immediately be done. However, the freezing cannot go beyond 20 days unless authorized by the court. The moment the petition is filed in court, the 20 days will stop to run.

In other words, the filing of the petition will toll the 20 days, otherwise, the purpose will be defeated by mere inaction of the court.

Senator Pangilinan. Yes, Mr. President.

In addition, I was explaining earlier that the depositor also has the option to question the freezing within the period of 20 days by bringing the matter to court.

So the Monetary Board will bring the matter to court to request an extension of the 20 days. But the depositor, even within the 20-day period can request the court to unfreeze the account if the court finds that the Monetary Board has responded, well, without basis or...

Senator Drilon. I have no problems with that, Mr. President, so long as it is not *ex parte*. In other words, the Monetary Board must be notified that in fact, a petition to lift has been filed so that the issues can be threshed out properly.

Senator Cayetano. I would like to thank the Senate President and the sponsor for that. Let me—I asked earlier, what is the procedure....

The Presiding Officer [Sen. Flavie]. Senator Pimentel would like to intervene with the permission of the gentlemen on the floor.

Senator Pimentel. With the permission of the gentlemen on the floor. Just to clarify this point.

Mr. President, my understanding is that, the Monetary Board can freeze the questioned account for a maximum of 20 days. Why 20 days? Because that is more or less the life also

of a temporary restraining order under the *Rules of Court* or the practice of law. But within those 20 days, as a matter of fact, my understanding is, within the first three days of the 20 days, the Monetary Board is supposed to summon the account holder to explain before it why the account should not be considered as a money laundered account. Then for the Monetary Board to continue with the freezing of the account beyond 20 days, as the Senate President said, there is a need for a court order or sanction authorizing the Monetary Board to do so. The same principle obtains when the desire is to open the account already.

Now, we were also considering the fact that a very astute depositor who can hire caliber lawyers like Senator Cayetano, Mr. President, can frustrate the power of the Monetary Board to take hold and freeze the account so that it cannot be used for nefarious purposes.

And therefore, we said that it is the duty of the account holder to first exhaust the administrative remedies available to him before he can be allowed to go to court, because otherwise, as I said, the moment the freeze order is given and we allow the account holder to go to court and challenge the freezing, then the administrative machinery or the administrative powers of the Monetary Board in this regard might be rendered nugatory, Mr. President.

Senator Cayetano. Well, I would like to thank the gentleman for that information, Mr. President.

But if it were the Monetary Board that will order the freezing of the account, there is no more administrative remedy left because the Monetary Board is an independent body. A depositor cannot go to the Office of the President to ask for relief much less to the secretary of Finance because this is now the Monetary Board which, under the Constitution, is an independent body. So he has to go to court.

Senator Pimentel. May I say, Mr. President, that the account holder can very well ask for a reconsideration, and therefore exhaust the number of days within which the Monetary Board can still freeze the account.

Senator Cayetano. Well, in that case, I accept that kind of explanation.

Now, we are talking of the process only here, Mr. President. So the Monetary Board, without informing first the depositor, will freeze the account.

Senator Pangilinan. That is correct.

Senator Cayetano. Allright. Now, and as already explained

earlier, he will be summoned to explain why the account was frozen and so on and so forth. This is even before...

Senator Pangilinan. Mr. President, just a clarification. The depositor being summoned can also use that opportunity to explain that the frozen accounts are legitimate, and if the Monetary Board, based on the explanation of the depositor, realizes that in fact the account is legitimate, the Monetary Board can unfreeze the account.

Senator Cayetano. Yes. I would imagine that is the reason for the subsequent information or notice to the depositor to justify that the account has nothing to do with illegal activity nor proceeds from any illegitimate source.

Let us just hope that the so-called "administrative remedy" is such that a motion for reconsideration, if it will be given, should be decided as quickly as possible so that the poor depositor can go to court within the period of 20 days, otherwise the right of the depositor to go to court might be curtailed.

So the depositor is summoned and he explains. What happens now? As I understood the process, that is the left-hand process. The right-hand process is, a case will be filed with the Department of Justice. Am I correct on this? Does it follow that a case should be filed for the crime now of money laundering?

Senator Pangilinan. By that time, yes, a case should be filed because probable cause would have been established already.

Senator Cayetano. No, no, no. Let us say, on Day One, account is frozen by the Monetary Board. Day Four, the depositor is summoned and he explains. So for a period of time the Monetary Board considers the explanation. Will the FIU or Monetary Board now endorse a case for money laundering while the depositor now is being given the opportunity to explain that the P2 million does not come from an illegal source?

Senator Pangilinan. My understanding is that before the account can be frozen, the evaluation by the FIU forwarded to the Monetary Board shows that based on the evidence available, there is probable cause that the crime of money laundering has been committed and that this individual probably committed the offense. Therefore, as in any criminal case, probable cause is basis to file the complaint before the courts. So I would like to believe that in this case, the answer is "yes." By this time even if there is a motion for reconsideration before the Monetary Board, probable cause has already been determined and therefore a case should be filed.

Senator Cayetano. My only question there, my hesitation there, my apprehension is, here is the Monetary Board that has

now before it the explanation of the depositor. It has not yet finished by final act or decision whether or not that amount is suspicious in character. Why should a case be filed now with the Department of Justice?

Senator Pangilinan. I agree.

Senator Cayetano. Because otherwise, this guy is going to be subjected to what we may even call some kind of harassment. Suppose it turns out later on that the Monetary Board suddenly says: "The account is good. It does not come from any illegal source." Therefore, the guy has to face the Department of Justice in the meantime.

Senator Pangilinan. I agree, Mr. President.

Senator Cayetano. That is why I am looking at the process first, Mr. President. I am not even looking at the pages here.

Perhaps the process should be, while the amount has been frozen—which I agree it should be frozen—and while the depositor has explained and the Monetary Board is still considering whether the original explanation or a motion for reconsideration is still pending, perhaps the process should stop there. There should be no filing of case yet before the Department of Justice or, for that matter, before the Ombudsman. Am I correct in that process?

Senator Pangilinan. Yes, Mr. President. The gentleman is correct that it would be difficult for the Monetary Board, which has earlier determined probable cause, to reverse itself when in fact a case also has been filed. So there might be some difficulty there. If it is reversed and a case is filed, it probably will also have an impact or effect on the case already filed.

Senator Cayetano. So am I correct now in our understanding of the process that while the amount has been ordered frozen and while the depositor's explanation or justification has not been decided with finality by the Monetary Board, no case of violation of anti-money laundering act will be filed either with the Ombudsman or the DOJ?

Senator Pangilinan. That is my understanding, Mr. President. Allow me just to interject, as a matter of information, that this matter was not discussed during the caucus earlier and was not a part of any informal agreement made.

Senator Cayetano. I understand that. That is the reason I am asking the process because what is important here is also to understand because that will go to the very essence of what we are doing here—filing of a criminal case. That is why the timing of the criminal case for anti-money laundering is very important. Anyway, I am already satisfied with that.

The Monetary Board now says by final decision that this is a suspicious account and therefore it will remain frozen. Again, it will trigger two actions. Am I correct, Mr. President? One, the Monetary Board may now file with the Department of Justice a case. Two, the individual may now go to court and seek a relief by having the amount unfrozen, so to speak. Am I correct on this?

Senator Pangilinan. That is correct, Mr. President.

Senator Cayetano. As we note, criminal cases take a long time even in the prosecution level. But it is possible that a court may grant relief to the depositor and unfreeze the account. This will require some kind of a proceeding. Am I correct, Mr. President?

Senator Pangilinan. That is correct, Mr. President.

Senator Cayetano. Which would mean that there will be a presentation by the petitioner now, who is the bank depositor, and, of course, presentation of evidence by the respondent Monetary Board. This may go on for a number of months. In the meantime, the case may also reach the court. Meaning, the anti-money laundering case. Suppose the first court where the petition to unfreeze the account sustained the petitioner and said there is no reason for freezing his account and therefore the Monetary Board exceeded its authority, et cetera. The judgment becomes final, assuming for the sake of argument. What will now happen to the criminal case?

Senator Pangilinan. The judgment of the unfreezing becomes final.

Senator Cayetano. Yes, Mr. President.

Senator Pangilinan. But the case has been filed--the violation of money laundering.

Senator Cayetano. Yes, Mr. President.

Senator Pangilinan. In that case, Mr. President, the case will proceed on the basis of the evidence notwithstanding that another court has unfrozen the said account.

Senator Cayetano. But in all likelihood, that case will probably be dismissed.

Senator Pangilinan. Assuming that the facts...

Senator Cayetano. Yes. *Iyong example ko lamang.*

Senator Pangilinan. That is correct.

Senator Cayetano. Mr. President, when does the examination of the bank now come in in this process?

Senator Pangilinan. The examination of bank records?

Senator Cayetano. Yes. At what point in time after we have frozen the account? When is the opening, a review of the account of this individual examined?

Senator Pangilinan. When the account has been frozen and there is a period of 20 days within which the Monetary Board will now bring the matter to court; request an extension of the 20-day period to freeze the account; and request the court for an order to access the bank records.

Senator Cayetano. This will require a court order now.

Senator Pangilinan. Yes, Mr. President.

Senator Cayetano. To look into, to inquire into the account. To open.

Senator Pangilinan. Yes. To access the bank documents.

Senator Cayetano. I am interested in the exact point in time. The account remains frozen but the individual has already filed his justification. However, there has been no decision yet by the Monetary Board whether the amount should be frozen or not. In other words, within the first 20 days, *wala pang desisyon ang Monetary Board. Wala pa.* So we cannot go to court and inquire.

Senator Drilon. Mr. President.

The Presiding Officer [Sen. Flavie]. Senator Drilon is recognized, with the permission of the gentlemen.

Senator Drilon. The trend of the discussion during the caucus was that after the FIU submits a recommendation to the Monetary Board, the Monetary Board will make a judgment on the basis of a substantial evidence—a *prima facie* case submitted—that indeed there is reason to believe that the account contains money coming from unlawful activity. Therefore, at that point, the Monetary Board is authorized to freeze. But immediately after it has frozen the account, it is now obliged to call the depositor within three days and ask him to explain the contents of his account because there is *prima facie* or substantial evidence that it contains laundered money.

If the explanation of the depositor is not satisfactory to the Monetary Board, the Monetary Board now has to go to court in order to achieve two things: Extend the freeze beyond 20 days, and have access to all the bank records. So we are now being able to allow the State in the exercise of its police powers to prevent the account from being used and at the same time give the depositor the opportunity to dispute the allegations of the Monetary Board before a court of law.

Senator Cayetano. So, my understanding, Mr. President, as explained by the Senate President, actually—I think this is what the sponsor was saying earlier—that after the Monetary Board has made a conclusive and final judgment of freezing the account, it will now go to court to extend the period of the amount being frozen and to seek order from the court to open the bank account. Am I correct?

Senator Drilon. That is correct. But in the meantime, the amounts therein are frozen.

Senator Cayetano. Yes, it is frozen.

Senator Drilon. Yes, Mr. President.

Senator Cayetano. And the court will extend the 20 days.

Senator Drilon. That is correct.

Senator Cayetano. Only after a final judgment has been made, a decision has been made by the Monetary Board that this explanation by the depositor is unsatisfactory.

Senator Drilon. That is correct.

Senator Cayetano. Correct.

Senator Drilon. Yes, Mr. President.

Senator Cayetano. So we have now three court cases. A case filed by the Monetary Board before the Department of Justice for money laundering.

Senator Drilon. That is the criminal action.

Senator Cayetano. We have now a case filed by the Monetary Board to open the account. We have now a case that will be filed by the bank depositor questioning the amount frozen.

Senator Drilon. With the permission of the sponsors, my view is that the criminal case for money laundering at that point would still be premature. The purpose of the law is achieved by allowing a freezing of the account. But it is only when the Monetary Board would have full access to the records of the depositor, which access can only be had upon authorization by the court in appropriate cases would it have the ability to file the criminal case in the Department of Justice. Because if it is just on the basis of the account number and the allegations or evidence that are preliminarily submitted, it may not stand scrutiny by the Department of Justice for purposes of filing the criminal case. In any case, there will be no more prejudice as the account is frozen.

So my personal view is that the criminal case may be filed only as a practical matter after we have full access to the records.

Senator Cayetano. After the account has been ordered opened by the court.

Senator Drilon. That is correct.

Senator Cayetano. And after the Monetary Board has examined the very account ordered by the court to be opened.

Senator Drilon. Yes, Mr. President, that is correct.

Senator Cayetano. As I said, Mr. President, I am only in the process and I think the process is just as substantive and important as the bill itself.

Senator Drilon. Yes, Mr. President.

Senator Cayetano. Because now, we can understand the so-called procedural aspect of how this thing will start before all these cases are filed. I hope I am not belaboring the point, Mr. President.

Senator Drilon. No, Mr. President.

Senator Cayetano. But I think as I explained to the two sponsors, the process is very important to analyze not only for ourselves but even for the ordinary depositors and businessmen to understand very well that we have given a lot of protection to allay the fear that their bank accounts will just be opened without any purpose or for that matter, they will have no access to the court.

Senator Pangilinan. Mr. President, I just have a clarification with the procedure raised earlier.

Assuming that the frozen accounts have been unfrozen, but the court order to open the accounts... The frozen accounts after 20 days, the 20 days have lapsed, a court has granted the unfreezing of the accounts.

In other words, the depositor can now withdraw the accounts. It can happen that eventually after 20 days, the depositor can withdraw the accounts. Are we presupposing here that when the court allows for the freezing of the accounts, it shall likewise allow the opening of the bank records?

Senator Drilon. Of course, yes. When I discussed this with the Minority... Yes, that is correct.

Senator Pangilinan. This is just a clarification, Mr. President, because there was a particular issue raised not discussed during the caucus earlier.

Senator Cayetano. Mr. President, I cannot over-emphasize the importance of this process, and I think it is good that everyone is participating here. Even if it is my hour or right to stand here, I appreciate all the interjections of views because as I said, the process is important.

Now, let us talk about another process, Mr. President.

Senator Pimentel. Mr. President, with the permission of the two gentlemen.

The Presiding Officer [Sen. Flavier]. Senator Pimentel is recognized.

Senator Pimentel. May I just interject this point, Mr. President, that there are actually two crimes that we are talking about. The first crime is the illegal activity that brings about the laundering of funds. The second offense is the money laundering itself because this is what the bill we are discussing would criminalize.

So far, the point that Senator Cayetano was emphasizing was the procedure for the freezing of the account and for challenging the freezing of that account.

The filing of a criminal case for money laundering is an activity that is different from the criminal case that originally brought about the money being laundered in the questioned account.

I hope that I have added some information on this bill.

Senator Cayetano. Thank you, Mr. President.

Actually, there is another process which I would like to share with everyone. Normally, before a court opens a bank account, there is a case filed first in court and it should be the money-laundering case. But from what I have been hearing, it would look like, to me, that the court will be asked to direct an opening of a bank account even before a case of money laundering is filed. Am I correct in my understanding?

Senator Magsaysay. Yes. That is correct, Mr. President. In fact, this is to get additional information over and above what the FIU has given to the Monetary Board. These are all information and investigation. There are no criminal cases yet. This is based on substantial evidence. Once the Monetary Board accepts the FIU's proposal that there is something suspicious, then it may freeze the account of the subject individual.

Senator Cayetano. Mr. President, the reason I asked that is, may I call attention to the case of *Marquez vs. Desierto* which was decided in June of this year, where the Supreme Court struck down a provision of the Ombudsman the right to inquire into the bank

account of an individual because of the Bank Secrecy Act. There is already a case filed in the Ombudsman as far as investigation of graft and corruption is concerned. I think this has something to do with the Amari case. And yet the Supreme Court struck down a provision in the law of the Ombudsman that allows it or authorizes it to inquire into the bank account of this individual under investigation. Meaning, there is already a pending investigation by the Ombudsman and yet because of the Bank Secrecy Act, the court struck down the constitutionality of that provision of the Ombudsman law. That is why I want to inquire into the process because we may be crafting a bill here that later on may be struck down as unconstitutional.

Senator Pimentel. Mr. President.

The Presiding Officer [Sen. Flavie]. Sen. Aquilino Q. Pimentel Jr. is recognized, with the permission of the gentlemen.

Senator Pimentel. Thank you, Mr. President. May I volunteer a thought that the difference between the *Marquez vs. Desierto* case and our present legislation is the fact that under that *Marquez vs. Desierto* case, the person who was being authorized to pry open the bank account was the Ombudsman—

Senator Cayetano. The Ombudsman, yes.

Senator Pimentel. —as the distinguished gentleman pointed out. Now, in this particular case, we are asking that the Monetary Board be authorized to open a bank account as an exception precisely to the Bank Secrecy Law and the court will order the opening, Mr. President. So there is a difference because under the Bank Secrecy Law at present, it is the court that orders the opening. In effect, we are reinforcing that same principle of allowing the court to open the bank account.

Senator Cayetano. I understand that difference. My point is the time aspect. In the case of *Marquez vs. Desierto*, *mayroon nang kasong graft na naka-file* and the Ombudsman wanted to open it.

Senator Pimentel. Yes, Mr. President.

Senator Cayetano. I can see the difference. Now, we are asking here that it is the court that will open but there is no case yet of money laundering, that is why I am asking. When this bill becomes law, under what basis are we going to inquire?

Senator Drilon. Mr. President.

The Presiding Officer [Sen. Flavie]. Sen. Franklin M. Drilon is recognized.

Senator Drilon. With the permission of the gentlemen on the floor, as we have conceptualized, the court will have to order the examination of the account—

Senator Cayetano. I understand that, Mr. President.

Senator Drilon. —as a preliminary step in order to satisfy the need to track down these accounts. The Monetary Board is given the authority to freeze so that the freezing is based on an administrative finding.

Senator Cayetano. Yes, Mr. President, we know that.

Senator Drilon. We freeze, go to court and ask for authority to examine. Presently, we have no authority to freeze whatsoever. That is why when we go to court, it becomes public knowledge and the guilty party can immediately withdraw the amount.

Senator Cayetano. I understand that, Mr. President, that is why my earlier question on process is: Should there not be a case of money laundering filed first with the Department of Justice before a court order to open a bank account?

Now, the gentlemen, the sponsors and the Senate President said, no. That is why I brought up the case of *Marquez vs. Desierto* where there is already a pending case and yet the Supreme Court struck it down.

Senator Drilon. On the point of the *Marquez vs. Desierto* decision, it will be noted, as the Minority Leader pointed out, that here we will ask the court to authorize the opening.

Senator Cayetano. I understand that, Mr. President.

Senator Drilon. No. 2, with regard to a criminal case being filed, it is like a chicken-and-egg question. We are not yet certain that there is money laundering unless we open the account. But if we cannot open the account, unless there is a case of money laundering, then it is a chicken-and-egg question because we cannot prove there is money laundering without being allowed to look into the account. And, we cannot look into the account because there is no case of money laundering.

Senator Cayetano. Mr. President, I appreciate that point. But if I were the lawyer of the depositor, I will say that it is a fishing expedition. We are opening one's account in order to prove that the proceeds came from an unlawful activity. And I think that is a very good argument for the court not to allow the opening of the bank account.

Senator Drilon. Mr. President, it has the same effect as a search warrant. A search warrant would also, in effect, be a fishing expedition to look for evidence.

Senator Cayetano. Mr. President, I beg to differ with my good friend.

SUSPENSION OF SESSION

Senator Drilon. Mr. President, I move that we suspend the session for one minute.

The Presiding Officer [Sen. Flavier]. The session is suspended for one minute, if there is no objection. [*There was none.*]

It was 7:31 p.m.

RESUMPTION OF SESSION

At 7:33 p.m., the session was resumed.

The Presiding Officer [Sen. Flavier]. The session is resumed.

Senator Cayetano. Mr. President, after a brief huddle with almost every one, I think we now understand the process clearly. As I said, I cannot overemphasize the need for clarity in the process itself before we can even talk about some of the sections here.

Having said that, Mr. President, let me now go to some concepts.

The definition of "Anti-Money Laundering Act," Mr. President, involves the presence of proceeds from an unlawful activity. Am I correct?

Senator Pangilinan. That is correct as well as the knowledge.

Senator Cayetano. So, am I also correct, for instance, that if there were no proceeds from an unlawful activity, there will be no anti-money laundering violation. Am I correct, Mr. President?

Senator Pangilinan. That is correct because the second element is, there is an attempt to transact or there is a transaction involving the proceeds.

Senator Cayetano. The reason I asked that is, first, there are four illegitimate or unlawful activities here. One is kidnapping. One may like to kidnap a person because he does not like his face, not because of money. So, what we are really talking about here is kidnapping with ransom. Am I correct, Mr. President?

Senator Pangilinan. That is correct, Mr. President.

Senator Cayetano. Because there is no proceed. One is not interested in money.

Second, under the Anti-Graft Act, there are several ways of committing this act, not necessarily resulting in monetary benefits. So that, maybe at the proper time, we will have to propose an amendment whereby only those sections of the Anti-Graft Act where monetary benefits accrue to the grafter will be covered by this.

Senator Pangilinan. Yes, Mr. President.

Senator Cayetano. This is just a comment.

Mr. President, suppose the P2 million that I gave as an example came from the sale of real estate. Now, this guy invested it with the criminal syndicate to fund the criminal syndicate: "Go ahead and engage in money laundering."

Will that be covered, Mr. President? He is not engaged in money laundering. He is engaged in illegal-drug activity.

Senator Pangilinan. In this case, Mr. President, the predicate offense is the sale of the real estate?

Senator Cayetano. No, Mr. President. As I said, this is good money. This man sold his house and lot. *Walang problema riyan.* It is legal. He got P2 million. A friend, who is a known drug dealer, told him: "You provide us with capital. We will engage in drug dealing." He gives them P2 million and the criminal syndicate engages in drug-dealing.

Now, will that P2 million be considered proceeds of an illegal activity?

Senator Pangilinan. No, Mr. President. In this case, not yet...

Senator Cayetano. It will not. Now, if he does not profit from it, let us say, because *kaibigan niya, pero hindi siya nakinabang*, there will be no anti-money laundering violation there.

Senator Pangilinan. Although there is a violation of the Dangerous Drugs Act.

Senator Cayetano. Yes, Mr. President. I am giving this example for us to understand. What is important in this bill is that the proceeds come from an illegal act--

Senator Pangilinan. Unlawful, Mr. President.

Senator Cayetano. —and then it is cleaned up or laundered to some legitimate purposes.

Now, the so-called *prima facie* presumptions are really disputable presumptions in law, am I correct, Mr. President?

Senator Pangilinan. Yes, Mr. President, unless disputed, they are conclusive.

Senator Cayetano. These are disputable.

On page 5, Mr. President, on the prosecution of money laundering, perhaps, at the proper time, I may propose an amendment that we delete Section 7(a) because I think this might be redundant.

Senator Pangilinan. Section 7.

Senator Cayetano. Section 7(a).

Senator Pangilinan. Yes, Mr. President.

Senator Cayetano. Now, Section 7(b) says: "The pendency of any proceeding relating to the unlawful activity shall not bar prosecution of any offense or violation of this Act."

Meaning to say that, again, while the illegal activity is being investigated or being tried in court, the violation of this particular bill, which may become law, can proceed independently.

Senator Pangilinan. That is correct, Mr. President.

Senator Cayetano. I think the gentleman has already answered that.

Now, with regard to the provision in Section 8, are anonymous accounts, accounts under fictitious names, now prohibited or are going to be prohibited? Are we applying this provision to the present practices now? Are we going to apply this particular provision to the present practices?

Senator Pangilinan. Yes, Mr. President, it is applicable.

Senator Cayetano. In other words, if this becomes law, my understanding is that all bank accounts, which are numbered accounts under alias accounts, et cetera, will be prohibited?

Senator Pangilinan. May I have that question again, Mr. President?

Senator Cayetano. Suppose a person has a bank deposit—it is a numbered account—which is not prohibited by practice. If this becomes law, are we now going to ask the bank that that numbered account be replaced by the real account, meaning the real person's...

Senator Pangilinan. Yes, with this law. However, as a matter of information, there is a BSP Circular that already prohibits the same.

Senator Cayetano. Yes, that is true. But that is for new accounts being opened, not for already existing accounts. Otherwise, Mr. President, this might become *ex post facto* law. Meaning, what was illegal then will be declared illegal now. I have no problem with the application of this, after it becomes law, that numbered account, under certain name's account, be prohibited. But I am talking of existing bank depositors whose numbered accounts, by the way, are still extant.

Senator Pangilinan. This is allowed but only as regards foreign currency deposits.

Senator Cayetano. No, no. There is a present bank account. The gentleman may ask the BSP. There are many bank accounts now that are numbered accounts.

Senator Pangilinan. So the question is: Will these numbered accounts be allowed to continue—

Senator Cayetano. As being numbered accounts.

Senator Pangilinan. —as being numbered accounts?

Senator Cayetano. Yes, Mr. President.

Senator Pangilinan. Yes, these—

Senator Cayetano. These will continue.

Senator Pangilinan. —will continue.

Senator Cayetano. Thank you for that, Mr. President. Because, as my good friend knows, it will be *ex post facto* law and this will be subject to constitutional problem.

Senator Pimentel. Mr. President.

The Presiding Officer [Sen. Flavio]. Sen. Aquilino Q. Pimentel Jr. is recognized.

Senator Pimentel. May I just raise this concern that if we do not include the present numbered accounts in the purview of this legislation, would it not, in effect, deflect the attainment of the purpose for which this bill is being enacted, Mr. President? So, it is a concern on my part, for example, that if we allow the numbered accounts—the present ones—to be recognized, then the danger or the opportunity for money laundering through these numbered accounts may become a reality and therefore the objective of the law can be frustrated. I do not know.

Senator Cayetano. Well, we do not want what the Minority Leader has cited to occur. We certainly want to prevent it. My only

concern here is the constitutionality of the issue. Because, as I said, a deposit is a contract between a depositor and the bank. The BSP has not prohibited numbered accounts and if that bank account has been opened for a number of years.... If we now prohibit it upon the effectivity of this law, this may be *ex post facto* law. I am worried about the constitutionality of this.

Senator Pangilinan. Mr. President.

The Presiding Officer [Sen. Flavier]. Sen. Francis N. Pangilinan is recognized.

Senator Pangilinan. Mr. President, if some of the distinguished senators would be willing to propose amendments to the effect perhaps that a time period will be given to numbered accounts to revert or convert these numbered accounts into identifiable account as an amendment to the bill, we will be more than willing to accept these amendments.

Senator Cayetano. That might be a better suggestion, Mr. President.

Senator Pimentel. Mr. President, may I just make this of record that that may well be a way out of the problem that Senator Cayetano has posed to us. But then, probably we should also consider that under the police powers of the State, such a regulation could probably be used as the reason for requiring that numbered accounts which are already in existence at the passage of this bill would now be converted into accounts with proper names and identities of the depositors.

Senator Cayetano. I really have no hard feelings on that. If my good friend, the Minority Leader, feels this may be a vehicle to precisely commit the crime that we are trying to prevent, definitely I will be the last one to raise that particular issue.

Anyway, let me go to some of the remedies under the proposed law. Well, we have the freezing of the account, we have discussed this. About the forfeiture, Mr. President, when will the civil forfeiture come, at what point in time? Because my understanding is, in forfeiture of account of properties, this normally comes after conviction.

Senator Pangilinan. That is correct, upon judgment.

Senator Cayetano. But not before.

Senator Pangilinan. Upon judgment, yes.

Senator Cayetano. After conviction.

Senator Pangilinan. That is right.

Senator Cayetano. And finally, Mr. President, and this is just a clarification, under Section 12, page 8, *Provisional Remedies Pending Criminal Proceedings*. If the provisional remedy of freezing the account has already been granted to the Monetary Board, if we are now allowing the Monetary Board to go to court to open the bank account, what other provisional remedies could we think of that are no longer possible under the circumstances? Because the freezing period can be extended by the court,—

Senator Pangilinan. That is right.

Senator Cayetano. —and the court may order an account to be opened. So, I am wondering, Mr. President, that perhaps this may, again, be no longer necessary.

Senator Pangilinan. This is really to give a little more flexibility as to the available remedies. However, again, during the period of amendments, if we are willing to study the proposal and if need be, we will adopt.

Senator Cayetano. I would like to thank the gentleman. As I said, this is not a very easy bill. Today's discussions only prove that what I am saying is that we are crafting completely a novel, a new bill. I am hopeful that the processes that we discussed here together would help us get a lot of people to support this one and allay the fear, particularly of our bank depositors on the one hand and, of course, even the banking institution on the other hand.

I would like to thank everyone, not only the sponsors but the Senate President, the Minority Leader and all those who were here earlier, for sharing with us and discussing the process.

Thank you very much, Mr. President.

The Presiding Officer [Sen. Flavier]. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, we thank the distinguished sponsors and the interpellators as well for all the contributions towards the crafting of this important piece of legislation.

I move now that we suspend today's session until two o'clock tomorrow afternoon.

The Presiding Officer [Sen. Flavier]. We shall suspend first the period of interpellations.

Senator Legarda Leviste. The Presiding Officer is correct, Mr. President. I so move.

The Presiding Officer [Sen. Flavier]. Is there any objection?
[Silence] There being none, the motion is approved.

SUSPENSION OF CONSIDERATION OF S. NO. 1745

Senator Legarda Leviste. I move that we suspend consideration of Senate Bill No. 1745 as reported out under Committee Report No. 1.

The Presiding Officer [Sen. Flavier]. Is there any objection?
[Silence] There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Legarda Leviste. Mr. President, I move that we suspend the session until two o'clock tomorrow afternoon.

The Presiding Officer [Sen. Flavier]. There is a motion to suspend the session. Is there any objection? [Silence] There being none, the session is suspended until two o'clock on Wednesday afternoon.

It was 7:50 p.m.

Sept. 26, 2001

RECORD OF THE SENATE

WEDNESDAY, SEPTEMBER 26, 2001

RESUMPTION OF THE SESSION

At 2:22 p.m., the session was resumed with the Senate President, Hon. Franklin M. Drilon, presiding.

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

BILL ON SECOND READING S.No. 1745 — Anti-Money Laundering Act of 2001 (Continuation)

Senator Legarda Leviste. Mr. President, I move that we resume consideration of Senate Bill No. 1745 as reported out under Committee Report No. 1.

The President. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 1745 is now in order.

Senator Legarda Leviste. Mr. President, yesterday when we suspended the session, we were in the period of interpellations. May I now move that we recognize the principal sponsor, Sen. Ramon B. Magsaysay Jr., for the continuation of the interpellation.

The President. Sen. Ramon B. Magsaysay Jr. is recognized for the continuation of the period of interpellations.

Senator Legarda Leviste. Sen. Robert S. "JAWO" Jaworski has reserved to interpellate today, Mr. President. May I move that we recognize Sen. Robert S. "JAWO" Jaworski.

The President. Sen. Robert S. "JAWO" Jaworski is recognized.

Senator Magsaysay. Thank you, Mr. President, we are ready to get back into the debates on the anti-money laundering measure. I just want to mention here that we are still working on the substitute bill which was given to all the senators yesterday early afternoon dated September 25, 2001.

Senator Jaworski. Thank you, Mr. President.

Will the honorable senator from Zambales and the Philippines yield for some questions?

Senator Magsaysay. Certainly, Mr. President.

Senator Jaworski. Well, first of all, Mr. President, I am very thankful that we are taking a lot of prudence in crafting this bill.

First of all, I believe all of us here realize the present economic health of our country, while I do understand that first and foremost in our minds is to address the very aggressive stance of the Financial Action Task Force relative to anti-money laundering law.

As I stated earlier in the caucus, we must also take great prudence and care in realizing that the countries that are truly aggressive in this direction are those countries that are highly taxed, and most of which are enjoying health in their economies, not to mention that they are successful international players in trade.

Therefore, while we must be watchful of dirty money, there are also what we call "green money" that are in the financial arena that we must welcome, especially in light of the fact that even without the anti-money laundering law, a number of billions have already been brought out of our country.

So once again, I just want to say that we must be truly careful and prudent, otherwise a number of billions will be ready to leave, if not to leave, will not be reaching our shores for monies that will be available through tax-avoidance schemes which are not necessarily dirty, and which could be available towards economic activity.

Now going to the bill, Mr. President, let me just ask: Would we be also treading on foreign currency deposits?

Senator Magsaysay. That is correct, Mr. President. This measure now includes both local accounts owned by locals and also the FCDU deposit. We have a provision that includes FCDUs in this anti-money laundering measure.

Senator Jaworski. Mr. President, money laundering is one of those mentioned in Articles 6 and 7 of the United Nations Convention Against Transnational Organized Crime of which we are one of the 124 country-signatories.

Now, in Section 4 of this bill, the crime of "money laundering" is defined as a crime whereby the proceeds of an unlawful activity, whether in cash, property or other assets, are converted, concealed or disguised to make them appear to have originated in legitimate sources.

By this definition, it is then possible that a person may perform certain unlawful activity in one country or a number of countries and convert the proceeds of this unlawful activity in yet another country involving therefore two or even more countries. Is this correct, Mr. President?

Senator Magsaysay. That is correct, Mr. President.

SEPT. 2

RECORD OF THE SENATE

WEDNESDAY, SEPTEMBER 26, 2001

RESUMPTION OF THE SESSION

At 2:22 p.m., the session was resumed with the Senate President, Hon. Franklin M. Drilon, presiding.

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

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By this definition, it is then possible that a person may perform certain unlawful activity in one country or a number of countries and convert the proceeds of this unlawful activity in yet another country involving therefore two or even more countries. Is this correct, Mr. President?

Senator Magsaysay. That is correct, Mr. President.

Senator Jaworski. And in this case which we just cited, may we know which country has the primary, if not the exclusive jurisdiction to prosecute the offense of money laundering?

Senator Magsaysay. The country where the infraction originated should be the primary country, Mr. President.

Senator Jaworski. Where it originated?

Senator Magsaysay. Where the crime originated, yes.

Senator Jaworski. Mr. President, I feel that this is important because without any clarification, we might encounter some problems in the future when it comes to enforcement involving another State. This is especially significant considering that when we talk of money-laundering schemes, these would definitely involve large sums which could be the subject of forfeiture in favor of the government of the prosecuting State. We then seek a clarification from the good sponsor.

Mr. President, if the money or proceeds from unlawful activity were placed in our country and a cooperating country requests that the same be initially preserved and subsequently transferred to such country for forfeiture, what should be the action of our government?

Senator Magsaysay. This is a continuing crime which involves countries that are considered part of the cooperative countries. If the seized assets--forfeited--is in that country, let us say originating in the Philippines and caught either in the Philippines or the next country, let us say, Hong Kong, those assets, if it is monetary and not fixed assets, will be held frozen in that second country like Hong Kong. Because the funds are already in another country.

Please note, Mr. President, that on page 8 in Section 14, lines 27, 28 and 29, this is defined on the "Mutual Assistance Among States" or countries. It says: "The Philippine government is hereby authorized to request and grant mutual assistance pursuant to the rules and regulations to be issued by the Department of Justice." These rules and regulations will have to be crafted. The Department of Justice will be given 30 days from the passage of the bill.

Senator Jaworski. Mr. President, I am not a lawyer. But let me go to another point.

As defined in Section 4 of the bill, the crime of money laundering involves the proceeds of an unlawful activity. May we know from the distinguished sponsor the quantum of evidence required to prove such unlawful activity in order to convict a person of money laundering?

Senator Magsaysay. Based on criminal law, Mr. President, the level of evidence must be beyond reasonable doubt for all elements. But in the process of gathering more information, the bank, let us say, or an institution, will base it on reasonable substantial evidence and the threshold before this is reported to the supervising authority.

Senator Jaworski. So the rules of evidence by the court will then be followed.

Senator Magsaysay. That is correct, Mr. President.

Senator Jaworski. Thank you, Mr. President.

I also notice in Section 7, paragraph (b) of the bill, that the pendency of any proceeding relating to the unlawful activity shall not bar prosecution for money laundering. What happens then, Mr. President, if a person convicted of money laundering is subsequently acquitted of such alleged unlawful activity?

Senator Magsaysay. If he is acquitted of the criminal act like kidnapping, let us say.

Senator Jaworski. Yes, Mr. President.

Senator Magsaysay. The crime of money laundering is still there. These are two distinct crimes. These are mutually exclusive. The owner of the account still has to answer to the suspicious nature of that particular account. That is exactly what we are trying to do here. That not only the primary crime of, let us say, kidnapping is being investigated, but also simultaneously the laundered money account with substantial evidence is also being looked at.

Senator Jaworski. Mr. President, we talked about this a little lightly in the caucus. But is it not that the subject that the gentleman is talking about now, the predicate crime is kidnapping?

Senator Magsaysay. Yes, Mr. President.

Senator Jaworski. Therefore, from the kidnapping, money laundering is supposed to have been born. But without that, and if he is acquitted, how come the money laundering...?

Senator Magsaysay. The two crimes are distinct and separate because there are different elements involved. It could be that the kidnapping case was lost because of some technicality.

But may I point out the elements of the crime of money laundering. This is, number one, that a person has knowledge that any monetary instrument or property, in whole or in part, wherever

located, directly or indirectly, represents, involves, or relates to the proceeds of any unlawful activity.

Senator Jaworski. Mr. President, what happens if such acquittal is not merely based on failure to prove the unlawful activity beyond reasonable doubt but with the affirmative declaration by the court that no such unlawful activity was committed?

Senator Magsaysay. I beg the gentleman's pardon?

Senator Jaworski. What happens if such acquittal is not merely based on failure to prove the unlawful activity beyond reasonable doubt but with the affirmative declaration by the court that there was no such unlawful activity that was committed?

Senator Magsaysay. If the subject has been acquitted on the primary crime—meaning kidnapping in this case—his account which is still under investigation by the courts, or let us say the Department of Justice, has to be proven that that amount does not come from the kidnapping case. He has to face also the second crime, because these are two separate crimes. The fact of depositing dirty money coming from a crime, it could not be maybe coming from kidnapping. It could be from something else. But he has again to defend himself. There is no double jeopardy here.

Senator Jaworski. But, Mr. President, if we look at the definition of the crime of money laundering, money laundering is a crime whereby the proceeds of an unlawful activity are converted, concealed or disguised to make them appear to have...

Senator Magsaysay. That is exactly what I am trying to explain here, Mr. President, that this is dirty money or money that came from a crime. It could have come from a particular kidnapping case, but it is deposited in an account to be laundered, and that in itself is another crime. The condition on the predicate offense—meaning the primary crime—is not essential to prevent a person to prosecute a person for money laundering. What is necessary here is that he has the knowledge of the unlawful activity. So there are other persons involved other than the one who made the deposit. Maybe it could be a bank official or some other person who could be guilty of the crime of money laundering.

Senator Jaworski. Mr. President, let me just ask the distinguished sponsor. Let us say there is only one individual involved in the crime. He committed the crime, he deposited the money, but later on, he was acquitted. What I mean is, we are basing on a situation where he was supposed to have committed a crime.

Senator Magsaysay. Maybe, he committed another crime or it does not mean that the crime did not exist. Just because he was acquitted of a certain crime does not necessarily mean that there were no other crimes committed—that the funds went into the account in question. Because these are two separate crimes.

Senator Jaworski. Mr. President, maybe, we have to look at the definition of the crime of money laundering, because it specifically says, it is a crime whereby the proceeds of an unlawful activity are converted. And when it has been proven that he did not commit any crime, how can there be a crime of money laundering?

Senator Magsaysay. All right, Mr. President, I will try to answer this before I turn it over to Senator Pangilinan. He is a lawyer. Maybe he can explain it more clearly. It says here that the question is: Why will he be convicted on laundering as a crime? These are two separate crimes. The act of depositing illegal or dirty money coming from an illegal act, that is a new crime. That is why, we are defining money laundering as a crime here. The antecedent, the primary crime is, let us say, kidnapping or plunder or graft and corruption of public officials. But the fact that there was a suspicious transaction triggered by what we have defined here as in a level of a million pesos and above, this is already in the process of starting to prove that substantial evidence before the FIU or the supervising authority goes to the FIU. And what took place before the council will be evaluated before they send it to the Monetary Board wherein the board will now judge and by a majority decide whether that account will be frozen.

May I quote this gentleman from Baguio City.

When a person is acquitted of the unlawful activity,

In this case, the gentleman is talking about kidnapping; he is acquitted.

it means that the person is not criminally liable or that his criminal liability with respect to the unlawful activity was not established beyond reasonable doubt. There is a crime but the accused was not proven to be the perpetrator thereof.

So as an example, when a person is murdered, the fact of death is there, but this is not always the case, that the accused is convicted because the quantum of evidence required is guilt beyond reasonable doubt.

Senator Jaworski. Mr. President, what I am saying is, would there be a case where, let us say, I was saying there is in reality no crime committed?

Senator Magsaysay. I will ask Senator Pangilinan.

Senator Jaworski. This is just for my...I am not a lawyer that is why I want to be...

The President. Senator Pangilinan is recognized.

Senator Pangilinan. Thank you, Mr. President.

As a general rule, Mr. President, the case for the crime of money laundering will proceed and a separate case for the crime, for example, of kidnap for ransom is not a bar. If acquittal happens in the predicate offense, I believe it does not automatically mean that the money-laundering offense should be dismissed.

The point being raised by Senator Jaworski earlier is, if in a specific instance the decision of the court in the predicate offense or case is that the individual accused did not commit the offense, what happens to the money-laundering case?

If I may be allowed to respond. Perhaps, during the period of amendments, we can make a particular exception when the ruling of the court in a case that may be filed involving the unlawful activity or the predicate offense is that the accused did not commit the offense. As pointed out earlier, the ruling could be insufficiency of evidence, failure to prosecute and so forth and so on.

In the instance of failure to prosecute or in the instance of proof beyond reasonable doubt was not established, I believe that the case of money laundering can still proceed. Perhaps at the appropriate time, when the ruling of the court is that the accused did not commit the offense, then maybe we can make that as an exception in terms of the money-laundering case also being dismissed.

Senator Jaworski. Anyway, I leave it to the better judgment of this Chamber. I only thought of this subject because it could happen. I am sure that there would be instances when there would be money with no unlawful activity. And what do we do?

Senator Pangilinan. I am sorry, Mr. President.

The President. Maybe Senator Jaworski can repeat the question.

Senator Jaworski. Mr. President, as I said, I leave it to the better judgment of this Chamber. I brought out this subject in the belief that it could happen. This is a reality that can happen.

I am also sure that, if at all, maybe there would be an instance where there would be some money without any unlawful activity that we can find.

Senator Pangilinan. In other words, it came from a legitimate source.

Senator Jaworski. We can never just determine.

Senator Pangilinan. In that case, if we are not able to determine it under the principles of criminal law, if a crime is committed, elements of the crime must be proved so that the person accused will be convicted. If one of the elements is not proved, for example, if there are three elements, only two have been proved and one has not been proved, then acquittal will then ensue.

The President. Just a query from the Chair in relation to the question of Senator Jaworski. The inevitable question that will arise from the answer of Senator Pangilinan is, will the pendency of one case be decided as a prejudicial question to suspend the proceedings in the other? So, can the accused in the anti-money laundering criminal case now move for the suspension of the prosecution of the anti-money laundering case until the prosecution of the predicate offense is terminated and a judgment thereon is rendered?

Senator Pangilinan. I believe, Mr. President, that a prejudicial question and the principles behind the legal term require that one case is a criminal case and the other case, under our *Rules of Court*, is a civil case. If we are to go by our *Rules of Court*, this particular principle will not apply because they are both criminal cases.

Senator Jaworski. I would like to thank the gentleman for his answers.

Let me just go back a bit, Mr. President. Let us say, a John Doe does a drug trafficking in Colombia and then brings the money to the Philippines. Where is the money-laundering crime committed?

Senator Magsaysay. The money-laundering crime could be committed once Mr. John Doe opens an account and there is not enough information. It could trigger a query by the bank.

Is the gentleman referring to a foreign John Doe or a Filipino John Doe?

Senator Jaworski. He is a US citizen.

Senator Magsaysay. Let us say, John Doe is a US national.

Senator Jaworski. Or, let us say, a Filipino but he does that.

Senator Magsaysay. Let us say, he is a Filipino.

Senator Jaworski. Yes, Mr. President.

Senator Magsaysay. He opens an account here in the Philippines.

Senator Jaworski. Yes, Mr. President.

Senator Magsaysay. So, the bank will ask for his name, his address, what is he doing in the Philippines, what is his line of business and decide, based on the threshold and items B and C—whether this is unusual or complex—and make a judgment call based on these three elements.

Senator Jaworski. Its representation.

Senator Magsaysay. Yes, Mr. President.

Now, the crime that he committed in... Is it Colombia? The drug crime.

Senator Jaworski. Yes, Mr. President.

Senator Magsaysay. We do not know anything about that. But when the information, once the threshold is reached and the question becomes suspicious, is brought to the supervising authority—meaning the Bangko Sentral ng Pilipinas or the FIU in this case—and the FIU decides that he got substantial evidence that this could be highly likely laundered money.

Senator Jaworski. Mr. President.

Senator Magsaysay. It is possible that the FIU or the board may ask the Colombian information—because this is a transnational crime, if the gentleman recalls who this person is and where he got these funds. So, that could trigger an investigation.

That is why we have this Financial Intelligence Unit that is working with other banks and institutions in other countries.

Senator Jaworski. Mr. President, it seems to be a reasonable answer. But then this is exactly what I was trying to point out.

The example I cited is indeed monies coming from an unlawful activity. But what happens now if there is just quite a sum that comes in and we start, as we are doing it now, spreading the news that all monies coming in will be questioned by the banking system. Does the gentleman not think that this is going to be a very unwelcome subject?

Senator Magsaysay. Precisely, Mr. President, we are trying to put together these requirements of having an Anti-Money Laundering Law, because that has been set up in many of the countries all over the world. So that if we make a query about this Filipino who got funds from Colombia, there is a provision here

that FIU can ask that Colombian bank. Is he going to bring it here in cash? Maybe he is breaking some customs laws. Or maybe he is breaking some laws from Colombia. Because this is what we call "tracking the assets." This is what we call looking at each process, each step of the way. So in the same vein, if we commit a crime here and ship it to Colombia, they will ask us and we are obligated to give them the information.

So, there could be a crime here because of the deposit and there could be a crime there because of the account having been landed there in this case.

Senator Jaworski. I thank the gentleman for that answer, Mr. President.

Let us go to a case wherein both unlawful activity and money laundering are committed in our jurisdiction. Does the gentleman not think that it would be easier, not only in terms of procedure—since basically the same evidence on the two offenses will be presented before the trial of both offenses—that the trial for both unlawful activity and money laundering be made before the same branch or sala of the regional trial court whenever possible?

I am asking this, Mr. President, because by its nature, money laundering is always dependent upon a predicate offense or the unlawful activity.

Senator Magsaysay. For that matter, the venue is where each case has happened. It could be that the crime was committed in Colombia, but it could be that the money-laundering crime was made in Manila.

Senator Jaworski. Mr. President, that is why I said in cases where both the unlawful activity and the money laundering are committed in our jurisdiction.

Senator Magsaysay. That is already based on what the Department of Justice will put in its rules and regulations because I understand that cases are usually raffled.

Senator Jaworski. Mr. President, I would like to thank the sponsor for his enlightening answers.

Senator Magsaysay. It is my pleasure to answer the very enlightening questions of the distinguished gentleman from Baguio City.

The President. The Majority Leader is recognized.

Senator Flavio. Mr. President, I move that Sen. Vicente C. Sotto III be recognized.

The President. Sen. Vicente C. Sotto III is recognized.

Senator Sotto. Mr. President, it is three minutes before three o'clock. I would not mind waiting for the...

The President. We can continue.

Senator Sotto. I would like to thank the Chair then, Mr. President.

Will the distinguished sponsor guide me through the bill, Mr. President?

Senator Magsaysay. Certainly, for being asked by the good gentleman from Quezon City and Cebu City, Cebu Province.

Senator Sotto. Mr. President, I have a series of questions that I would like to be enlightened on and answered. But before that, there is this nagging issue of the bill in my mind—if this bill when enacted into law becomes retroactive or not. Is it retroactive or prospective, Mr. President?

Senator Magsaysay. This is prospective, Mr. President.

Senator Sotto. That means that if Mang Pandoy has P2 million in a bank as of the date this bill is enacted into law, that is not included because this is not retroactive?

Senator Magsaysay. It depends, Mr. President, because this is dynamic process. It could be that the P2 million that Mang Pandoy has in the bank prior to the passage of the law is legitimate. But when the law is implemented, it could be that Mang Pandoy might decide to become more aggressive and commit a crime.

Senator Sotto. I am talking of the P2 million, Mr. President. The P2 million in the bank.

Senator Magsaysay. The P2 million is not covered.

Senator Sotto. Therefore, the P2 million of Mang Pandoy, let us say, on October 1, if this bill becomes a law on October 1, is not included? It need not be reported. It is not included; it cannot be opened by any provision of this bill.

Senator Magsaysay. Yes, it cannot be opened.

Senator Sotto. In other words, the gentleman's initial statement is not accurate, Mr. President, that in the event that he commits a crime or something unlawful or suspected of committing something, that P2 million that is prospective cannot be touched?

Senator Magsaysay. That is correct, Mr. President.

Senator Sotto. Now, what if tomorrow or if after October 1, after the bill is passed, Mang Pandoy deposits P100 into the same account? So the amount now in the bank account is P2,000,100.

Senator Magsaysay. Yes, Mr. President.

Senator Sotto. So, it is now covered?

Senator Magsaysay. What is covered, the P100?

Senator Sotto. No, the P2,000,100 that is now his account after October 1, after this law has already been passed.

Senator Magsaysay. I do not think the gentleman has hit any triggering threshold that is enumerated in the bill.

Senator Sotto. That is exactly what I said. That is the reason I used *Mang Pandoy*. I do not think he has P2 million, Mr. President.

So what happens now? Right now, they cannot do anything about that. But after the law is passed, what happens? They know that Mang Pandoy is not capable of owning P2 million. They could not ask that before. But now they can ask it already, after this bill is passed, because it becomes P2,000,100?

Senator Magsaysay. Well, this is not covered, Mr. President, because we are looking here at prospective. The P100 that he deposited, which makes his account P2,000,100 still has not triggered any query based on our covered transactions.

Senator Sotto. So, he should not be reported. What if the bank makes a report?

Senator Magsaysay. Well, the bank will be penalized, accountable under the penal provision, Mr. President.

But if the bank report was malicious or false, there are certain penal provisions, including jail term and cash penalties.

Senator Sotto. But after a few days of Mang Pandoy's hogging the headlines already, of being a money launderer.

Senator Magsaysay. There is a provision on confidentiality, Mr. President.

Senator Sotto. I have seen confidential items in the headlines of the newspapers, Mr. President. I cannot accept that answer.

Senator Magsaysay. I can understand, Mr. President.

Senator Sotto. I hope we can formulate some kind of a safeguard later on, during the period of amendments, to address this.

Senator Magsaysay. We are open to such safeguards. I can understand the graphic example that is being given to us by the gentleman.

Senator Sotto. Yes, Mr. President. For the record, I would like to state categorically that I am in favor of the passage of the anti-money laundering bill with proper safeguards that cannot be abused by politicians, by anyone.

Senator Magsaysay. By malicious persons.

Senator Sotto. By malicious persons who would not want a certain personality to be elected President or Vice President or senator. So we have to have these safeguards. It has happened so many times in this country, Mr. President. So, that is only one example.

Senator Pimentel. Mr. President, with the permission of Senator Sotto and Senator Magsaysay.

The President. Sen. Aquilino Q. Pimentel Jr. is recognized.

Senator Pimentel. May I pursue the example presented by Senator Sotto. Here is a deposit of P2 million prior to the passage of this anti-money laundering legislation that we are crafting today. Under all interpretations by the Supreme Court, the law that we pass today will not be retroactive to cover transactions involving, let us say, the P2 million of Mang Pandoy, in the example of Senator Sotto. But what is going to happen when, let us say, after the passage of this bill amounts are added to the P2 million, and subsequently, let us say, after six months Mang Pandoy withdraws P2 million. This is a transaction that happens after the law had been enacted although the amount was, let us say, accumulated in times past before the passage of this law.

Now, it would look as if, Mr. President, the provisions of anti-money laundering would apply because this is an act done after the passage of the law, although parts of the amount were accumulated prior to the passage of this anti-money laundering legislation. That is the question that I would like the sponsor to respond to, Mr. President.

Senator Magsaysay. All right.

Senator Sotto. May I adopt that question likewise, Mr. President.

Senator Magsaysay. I would like to thank the gentleman from Cagayan de Oro.

I would assume, Mr. President, that the role of the bank staff is very, very important. Because the most important among the

elements required of us as a country by the FATF for a bank is that, "You know your customer." That is why this is one of the important factors, "know your customer." Because the bank, the branch manager—and there is usually a supervisor or a teller that Mang Pandoy has known for a few months or a few years—knows that Mang Pandoy really has this business and the deposits, in and out, of P2 million before October 1, and he brings it out because the bank knows its customers.

Precisely, Mr. President, this has been embedded in our banking industry that there are certain private institutions that are undertaking credit and other information checks of not only a Mang Pandoy but even those that have credit cards.

So, anybody that has a credit, whether it is a credit card or a house loan or a business loan or any consumer loan, or buying a car, is already part of that data base.

Senator Sotto. All right, Mr. President. I will lift off from that first. I would like to listen to what the...

The President. Just to pursue the point of the Minority Leader, with the permission of the two gentlemen.

Let us not forget that the crime of money laundering can only proceed from a predicate crime. Not all forms of deposits are subject of the crime of money laundering.

Senator Sotto. But in this particular case, Mr. President, what I am asking now, and what I am focusing on right now is the reporting. It is the reporting.

The President. All right. Even in the reporting. My impression is that the reporting is premised on a suspicion, and there is a substantial basis...

Senator Sotto. No, Mr. President.

The President. No, wait—that there is a substantial basis that a predicate crime has been committed. In other words, if the transaction, if the depositor is not a suspect of any predicate crime...

Senator Sotto. In the bill, Mr. President, it is phrased as "unusually large amount." *Hindi nakalagay iyong sinasabi ninyo.* If we put that in the period of amendments, I will accept. I will not pursue that. But it is not there in the bill right now. What it says in the bill is "unusually large amount."

Now, I will take the answer of the distinguished sponsor first and let us place it this way. All right, the teller or the bank manager knows Mang Pandoy, *kaya* okay, even if he had that P2 million

before. But during that time, he did not have the right to report Mang Pandoy. *Asar pala kay Mang Pandoy itong bank teller na ito, suspicious na pala siya noong araw pa. Wala pang bill noon kaya hindi niya magawa. Ngayon, binigyan natin ng bala iyong bangko.* What happens now? It is now allowed, he will now be questioned. He will now be reported. *Dati, hindi siya maire-report dahil kilala siya.*

So, what is the safeguard that we can make to address this particular concern, Mr. President?

Senator Magsaysay. There is a provision, Mr. President, on page 9, Section 15 on malicious reporting. This is paragraph (c). If somebody within the bank wants to maliciously...

Senator Sotto. Yes, Mr. President. But penalty, one month, malicious reporting. What if Mang Pandoy wants to become president—

Senator Magsaysay. That has been taken up by the...

Senator Sotto. —and he is filing his certificate of candidacy?

Senator Magsaysay. Yesterday, Senator Lacson mentioned this and we are open to amendments to increase these penalties on malicious reporting, Mr. President.

Senator Sotto. What about the damage that has already been done to Mang Pandoy? They have painted him as a money launderer. An apology is not enough. I do not think he can be elected anymore. I do not think an executive session will work. *[Laughter]* So, may I ask that the committee please...

Senator Magsaysay. We will put the safety provisions, Mr. President.

Senator Sotto. Yes, we would gladly accept that and also the comment earlier of the Senate President.

Senator Angara. Mr. President.

The President. Senator Angara is recognized.

Senator Angara. With the permission of the two distinguished gentlemen. May I offer a possible solution to this? Because I am really worried, like many of us here, that any movement in one's account can trigger off this reporting requirement—

Senator Magsaysay. Yes, Mr. President.

Senator Angara. —and the reporting requirement can

trigger off the CB ordering a freeze. And if that proved to be wrong, the damage is incalculable and beyond repair because the credit standing of that person would have been destroyed and can get publicized. So, it is no consolation that the guy who tipped off will be prosecuted for malicious tipping which looks ridiculous.

So what I suggest, Mr. President, is a clear statement—maybe one section—which clearly states that “Nothing in this law will trigger off the reporting requirement or the action to freeze in the case of any bank transaction that is done in the regular course of business or trade or dealing.” Because many merchants, especially if they are brokers or buy-and-sell realtors, deal in large amounts of money and move these almost daily. Does the gentleman mean that when a bank teller sees that, then he or she will report it already?

The President. No.

Senator Angara. There must be a clear-cut statement that the ordinary course of transaction or banking dealings should not be covered by this law. As the gentleman said, only transactions that can be traced to a predicate crime is covered.

The President. Yes, that is right.

Senator Angara. And that is why it is important to reassure our people that the ordinary course of banking dealings and transactions will not be covered by this.

Senator Magsaysay. That is a very reasonable proposal, Mr. President.

Senator Angara. Will the gentleman accept this?

Senator Magsaysay. And we are open to...

Senator Angara. Accept?

Senator Magsaysay. Yes, Mr. President.

Senator Angara. Thank you, Mr. President.

Senator Magsaysay. Subject to style. It is a very good proposal.

Senator Sotto. All right. With that, Mr. President, I will move on to another point if that will be addressed.

Just for the record, I am sure the distinguished gentleman knows why...

The President. In other words, just to clarify the point of Senator Angara, the reporting will be triggered only on the belief that a predicate crime exists?

Senator Angara. Yes, Mr. President.

The President. Otherwise, there is no money laundering technically.

Senator Sotto. Yes, Mr. President. All right. Now, the gentleman mentioned earlier during the interpellation of Senator Jaworski that there are many countries that have an anti-money laundering law already in place. And earlier, I understand that the Minority Leader, Senator Pimentel, asked how many out of the 189 United Nations country-members have the anti-money laundering law. Did we have the answer there? I do not recall.

Senator Magsaysay. Mr. President, I remember that yesterday, we mentioned that there are 45 countries in the Asia Pacific region. And with regard to the rest, there are certain laws they already have that satisfy the basic requirements against money laundering.

Senator Sotto. So we do not have a specific number, Mr. President?

Senator Magsaysay. We do not have the specific number except the 45 countries which I have a list here in a region.

Senator Sotto. Why do we not ask the secretary of Finance? He is in the hall. Can we have a specific figure? Do they not know?

SUSPENSION OF SESSION

Senator Magsaysay. I move that we suspend the session for one minute, Mr. President.

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

It was 3:15 p.m.

RESUMPTION OF SESSION

At 3:21 p.m., the session was resumed.

The President. The session is resumed. Senator Sotto is recognized.

Senator Sotto. Mr. President, before the sponsor asked for a suspension of the session, I was asking the data on how many of the 189 member-countries of the United Nations have the anti-money laundering law.

Senator Magsaysay. Yes, Mr. President. As gathered from the BSP staff, the senator is correct that there are 189 countries all over the world. The FATF or the Financial Action Task Force has been putting all the laws of these countries since the beginning to satisfy the 40 requirements and/or the five basic requirements. Right now, 45 countries have passed the anti-money laundering law. Of those countries that have not complied with the requirements of the FATF, there are still 15 countries, including the Philippines, as of June 2001 until now.

Senator Sotto. May I have the records reflected there, Mr. President.

There are 189 United Nations member-countries. Out of the 189, only 45 countries have passed an anti-money laundering law. So there are 144 countries without it.

Senator Magsaysay. The 144 have complied with the basic requirements. That is why they were not listed as non-cooperative countries. That means that of the ...

Senator Sotto. May we know how they complied without passing an anti-money laundering law?

Senator Magsaysay. They have their existing laws and regulations and data gathering. So that means that they complied with the 40 or so recommendations.

Now, when the FATF went through its list of those that have complied as cooperating countries against those that have not, it turned out that the Philippines is one of the 15 countries that have not complied. I think 11 requirements are still needed. That is why we are passing this anti-money laundering law to comply.

Senator Sotto. What the gentleman wants to say is that 144 of these countries need not pass an anti-money laundering law.

Senator Magsaysay. Yes, because they have already complied.

Senator Sotto. Because their existing laws prevent money laundering.

The President. That is correct.

Senator Magsaysay. Yes, Mr. President.

Senator Sotto. Is Switzerland included in the 144 countries?

Senator Magsaysay. Yes, Switzerland is one.

Senator Sotto. So there is no money laundering in Switzerland, Mr. President?

Senator Magsaysay. Well, there might be money laundering, but if discovered, it is a crime.

Senator Sotto. May I know the update on the Marcos wealth in Switzerland, Mr. President?

Senator Magsaysay. We have no information about that now, Mr. President.

Senator Sotto. Well, that is my problem, Mr. President. Although I am very much in favor of passing an anti-money laundering law right away as a matter of fact, we cannot craft a law on speculation. So I hope that by the time the period of amendments comes... As agreed upon with the Senate President that we try to accommodate all these right away so that we can go to the period of amendments, I hope that the distinguished gentleman and the staff that backed him up, the people from the Bangko Sentral will be able to also give us information on all these issues we are raising, Mr. President.

I need not belabor that. I do not think I am going to get an answer on that point then. So let me just continue.

So 45 countries have passed this law.

What has been the experience of the Philippines with these countries that have passed a similar law already or an anti-money laundering law? Have we had requests for investigation, or received requests for investigation, prosecution, extradition? Have we been given due course or have these elements been given due course already in relation to these countries that have already passed an anti-money laundering law?

Senator Magsaysay. Well, there must have been some requests that were forthcoming towards our shores, Mr. President. But please take note here that we are considered a non-cooperative country, and on the basis that we do not have the law in place yet, we have no record on the subject of money laundering or on extradition or on other crimes.

Senator Sotto. Therefore, Mr. President, we have not benefited substantially because of the anti-money laundering laws from other countries?

Senator Magsaysay. That is correct, Mr. President.

Senator Sotto. Then I need not ask for examples because we have not benefited from their laws that they have passed.

Senator Magsaysay. One of the elements here is that we have a Mutual Assistance Program with other states or other countries.

Senator Sotto. Yes, but we have not been able to recover any, let us say, ill-gotten wealth stashed in any foreign country that have anti-money laundering laws, *ano? Wala pa?*

Senator Magsaysay. Not yet. It is not yet an offense here, it is not yet a crime here until we pass the law.

Senator Sotto. Mr. President, I am a little lost there because of the lack of examples. So let me just focus on a point that was earlier raised by...well, not exactly.

Senator Cayetano yesterday concentrated his interpellation on banks which are under the supervision and regulation of the BSP. Today, Mr. President, I would like to ask some clarificatory questions regarding other entities and institutions supervised and regulated by the entities or the agencies enumerated here, like DTI, Pagcor, the Insurance Commission (IC) and the SEC. DTI is included in the list of covered institutions. Does this mean that all sole proprietorships which are supervised and regulated by the DTI are required also to make reports?

Senator Magsaysay. That is correct.

Senator Sotto. If there is suspicion. Again, with the line of the Senate President if there is a suspicion that a crime has been committed, a predicate crime has been committed.

Senator Magsaysay. On the activities that are pertinent to what DTI is supervising, Mr. President.

Senator Sotto. But on suspicion. In other words, all sole proprietorships must be reported also.

Senator Magsaysay. It must fall within the covered transactions, Mr. President.

Senator Sotto. Yes, and they must be reported. May we know how many sole proprietorships are registered with the DTI at present?

Senator Magsaysay. We do not have that data right now, Mr. President.

Senator Sotto. May we have the data while we go through the... Maybe we can ask somebody to get in touch with the DTI.

Senator Magsaysay. We will do that, Mr. President.

Senator Sotto. So what other entities are regulated and supervised by the DTI, Mr. President?

Senator Magsaysay. Under the DTI is the Board of Investments. In ways, they are looking over the foreign and local

investors as to incentives. And we have other agencies like the CITEM. This is the agency which conducts exhibits basically on Philippine-made products locally and to other countries. So they have their own data base of business entities other than sole proprietors and will certainly cover a large part of that kind of information needed.

Senator Sotto. All right, Mr. President. I hope I can be enlightened in the ensuing...

Senator Magsaysay. NDC is also under the DTI and it has a lot of assets.

Senator Sotto. BOI.

Senator Magsaysay. BOI, yes, TLRC, Livecorp, SBGFC, GFSME and Government Finance Small Guarantee Funds for Small and Medium Enterprise are being supervised.

Senator Sotto. So by including these under institutions in the definition, even government can be guilty of money laundering.

Senator Magsaysay. Yes, indeed, Mr. President. That is why the gentleman from Makati made mention specifically during our meeting a week or so ago that we delete the exemptions of government departments and agencies. So even PEZA, even export zones, public and private, are covered by this.

Senator Sotto. *Wala nang makakilos dito.*

The President. Let the Chair again intervene because I am concerned about the scope of entities that will be reporting under that premise.

Senator Sotto. Indeed, Mr. President. *[Laughter]*

The President. Again, we must emphasize that the reporting will only be done where there is a reasonable basis to believe and there is substantial evidence to show that a predicate crime has been committed. Otherwise, if we require all of these hundreds of thousands of entities under these various agencies to make a report on every transaction done, the FIU will be as big as this government bureaucracy. I do not think that is the intention.

Senator Sotto. Yes, Mr. President.

The President. The intention is to deter money laundering, and money laundering is based on certain predicate crimes. Therefore, the reporting requirement should be based on these predicate crimes rather than on a general requirement that everything must be reported. That is the view of the Chair, subject of course to the view of the Chamber as a whole.

Senator Sotto. Well, I agree with the view of the Chair. But my problem again, Mr. President, is, it is not in the bill.

The President. No, the period of amendments should handle it.

Senator Sotto. That is why. *[Laughter]*

Senator Lacson. Mr. President, point of clarification.

The President. With the permission of the gentlemen on the floor, may I recognize Senator Lacson?

Senator Lacson. Thank you, Mr. President. What level of suspicion on the commission of a predicate crime would trigger an investigation of a money-laundering activity, probable cause or mere suspicion, mere investigation? At what level, Mr. President?

Senator Magsaysay. As mentioned here, it is substantial evidence, Mr. President.

Senator Lacson. What do we mean by substantial evidence? Because there are certain levels, Mr. President.

The President. Can the cosponsor help on that? That is technical legal definition under the law of substantial evidence.

Senator Magsaysay. Well, I have the definition here.

The President. The gentleman has it. All right. I am sorry.

Senator Magsaysay. Maybe the cosponsor can help out here afterwards. It says here, Mr. President, that "substantial evidence is evidence possessing something of substance and relevant consequence and which furnishes substantial basis of fact from which issues tendered can be reasonably solved. Evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance." Just a shade below preponderance.

Senator Lacson. Mr. President, who determines substantial evidence? The prosecutor, the judge, the FIU, the investigator?

Senator Magsaysay. The reportorial is triggered by those covered transactions.

Senator Sotto. The bank teller, Mr. President. He will determine the substantial evidence.

Senator Magsaysay. It could be the bank teller reporting to his branch manager.

Senator Sotto. *Naku po, Diyos ko!*

SUSPENSION OF SESSION

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

It was 3:36 p.m.

RESUMPTION OF SESSION

At 3:51 p.m., the session was resumed.

The President. The session is resumed.

Senator Pimentel. Mr. President.

The President. With the permission of the gentlemen on the floor, the Minority Leader is recognized.

Senator Pimentel. Thank you, Mr. President.

May I help clarify that? Shortly before we broke for one minute, the issue being discussed was on the reporting requirement, Mr. President. There are several sub-issues connected with the principal issue on reporting. For example, who makes the report; when will the report be made; and the basis for making the report. I think we can divide the issues along these categories so that we can respond more adequately to the concerns that have been raised.

On the first issue of who makes the report, Mr. President, my humble suggestion is that a responsible bank officer will have to do the reporting, not just any teller, not just any employee of the bank, so that there is a sense of responsibility attached to the reporting requirement. The responsible bank officer could be the CEO—I do not know who else is considered a bank officer.

By the way, Mr. President, the term “bank officer” is already defined by law. So we can probably settle for that—that it has to be a responsible bank officer.

The President. How about if it is a non-banking institution?

Senator Pimentel. The responsible officer of that institution which is the subject matter of the reporting requirement, Mr. President.

The second issue that I want to tackle would be the basis, Mr. President. I think it is important that we remember the rationale for the enactment of the anti-money laundering legislation from the beginning when this was enacted in several places including the

United States. The reason is always based on narcotics-related offenses. Therefore, the more we broaden the list of the so-called predicate crimes, the more complicated the situation becomes. Probably it is better that we settle and agree among ourselves that we will only use narcotics-based offenses as predicate crimes for our purposes. Of course, this is just a rough suggestion.

The President. Before the gentleman leaves the reporting requirement, with the permission of Senator Pimentel.

Senator Pimentel. Yes, Mr. President.

The President. May I draw the gentleman’s attention to page 6 of the working draft, which pertains to Section 8, paragraph (c) and this concerns Reporting of Covered Transactions.

Senator Pimentel. Yes, Mr. President.

The President. Apparently, the intention is to report only covered transactions and, therefore, only where there is a reasonable basis to believe that there is a predicate crime, otherwise, there is no covered transaction.

Maybe we can elaborate on the phrase “when applicable” to make it clearer and, therefore, use this as the principal premise.

Sen. Sergio R. Osmeña III is raising his hand.

Senator Pimentel. May I just respond very briefly to this point, Senator Osmeña.

There is basis for the Senate President’s suggestion, except for the fact that I am bothered by the thought that somebody, a bank officer of an institution, who is covered by this enactment, would have to determine the legal basis for...“*Kasali kaya ito sa law na ito o hindi? Covered ba ito o hindi?*”

I do not think that we should saddle them with that kind of a responsibility which should be the function of the legal unit that is in charge of enforcement of this legislation. And probably what can be done is, we just define what kind of amounts are covered by the law. In the words of Senator Angara, there was not even any limit at all to the amount that is transacted but suspicious because the term “suspicious” can be determined even by nonlawyers. But when we talk of legal basis, I do not think that nonlawyers should be saddled by that requirement.

Just a rough thought, Mr. President. Thank you.

The President. With the permission of the gentleman on the floor, the Chair recognizes Sen. Sergio R. Osmeña III.

Senator Osmeña III. Thank you, Mr. President. I just wanted to clarify because earlier I heard the gentleman say that covered transactions will only encompass those deposits that have been decided by whoever is accepting the deposit to be subject to suspicion under the proposed law. Am I correct?

I thought, Mr. President, that any deposit, P1 million and above, is a covered transaction.

Senator Sotto. Mr. President, that is what is in the bill.

Senator Osmeña III. That is why, that is what is in the bill. I do not know if I heard wrong that the Presiding Officer said so.

The President. That is not clear to me. My impression is that the reporting requirement will be triggered if there is a suspicion that there is money laundered and that the money laundered is premised on a predicate crime. I may be wrong in my interpretation.

Senator Sotto. Mr. President, I like the gentleman's interpretation but that is not what is written on page 2, letter (b) of the definition of "Covered Transaction."

This specific provision triggered my questions, the questions on the DTI and we will go next to the Insurance Commission dahil *marami ring covered diyam* and then, SEC and Pagcor. *Damay lahat.* Anything P1 million and above because these are included in the covered institutions and covered transactions.

The President. May we continue.

Senator Sotto. May we have the answer to the question.

Senator Magsaysay. May the gentleman repeat his question.

Senator Sotto. I just gave my comment concerning the issue of who is going to report with regard to what the Senate President and Senator Osmeña said. But, I think, right now, on the floor, Mr. President, is the question of Senator Lacson when he interjected my question to Senator Magsaysay. He wanted to know who determines, what are the standards, what is the definition of "substantial evidence," and where did that definition come from.

Senator Magsaysay. Mr. President, may I set the example of what is happening in the United States where the law started. There is a compliance officer in each bank and that compliance officer has the responsibility. He could be the branch manager or another person. But he is the one who is trained, who is learned about the provisions of the law and the requirements of the FIU. He is responsible.

I think the Minority Leader pointed out that this can be included so that there is somebody responsible. That is the important thing—responsible and accountable.

Senator Sotto. Yes, Mr. President. That is acceptable as an example because the gentleman is using the bank as an example.

Now, I have focused the issue on the DTI. There is no bank teller there. We are talking of salespeople. If a person buys P1 million worth of merchandise from a store which is a sole proprietorship under the DTI, under the bill it is classified. Is the store required to make a report on this transaction? If the person that bought P1 million worth of merchandise is, let us say, suspected of being a grafter and a corruptor in the government or connected with a government official or a relative of a government official...

Senator Magsaysay. As long as we have a responsible authority.

Senator Sotto. Who is the responsible authority? Then we go back to the question of Senator Lacson. *Doon sa tindahan, sino ngayon ang responsible authority, iyong tindera?*

Senator Magsaysay. It could be the manager of the department store.

Senator Sotto. It could be, but what is in the bill? That is what we want to know and what we want to put in the bill.

Senator Magsaysay. I think that can be covered by the implementing rules and regulations, Mr. President.

Senator Sotto. That is too vague, Mr. President. As I said, we cannot pass a law such as this that will spell a very big difference in the Philippine economy at present.

The President. With the permission of the two gentlemen, the Chair recognizes Senator Angara.

Senator Angara. Thank you, Mr. President.

Mr. President, the examples being cited by Senator Sotto illustrate and emphasize how ridiculous this law is because of the very broad coverage of the covered institution.

Mr. President, I think the common-sense solution to that is just to limit the covered institutions to banks and to entities that will open a bank. That is why we are saying in the end that we must just limit it to banks, to insurance companies as well as SEC-registered companies. Because when we start adding Pagcor and DTI, then we come to that ridiculous extent that Senator Sotto is

saying. So that Senator Magsaysay, the sponsor, need not say that it is the department store owner or the department manager who will now certify and trigger the report. That sounds ridiculous.

Senator Magsaysay. I accept the difficulty, the bureaucratic nightmare of including ordinary stores or retail.

So, we have no objection if somebody will come forward in the period of amendments to remove the DTI. We do not mind removing the DTI as among those supervising authorities.

Senator Sotto. Covered institutions. In that case, I will terminate my questions on the DTI.

What about the Insurance Commission. Does the gentleman want to maintain that?

Senator Magsaysay. That is a large financial sector and should be maintained, Mr. President.

Senator Sotto. All right. Just a little enlightenment on this.

Mr. President, if someone buys an insurance plan of P1 million, is the insurance company required to report this transaction if there is a suspicion? Under what circumstances will this be reported?

Senator Magsaysay. If the P1 million insurance premium is transacted, I am sure the insurance company will have a data base on this person. Meaning, how can we pay a premium of P1 million a year? He must be earning at least P20 million a year, or his corporation is paying for it.

So, I do not think that is covered, unless a person who has no business record or income record comes in and pays P1 million and later on gets a rebate.

The President. With the permission of Sen. Vicente C. Sotto.

Senator Sotto. Yes, Mr. President.

The President. Is it not the concept of insurance companies to monitor investment in insurance companies just like the SEC where one monitors investment in companies? Would purchase of insurance policies be covered by reporting the requirement?

Senator Sotto. That is what I want to know, Mr. President.

The President. The premium on a P1-million loan may only be a few hundred pesos.

Senator Sotto. No. But a P1 million...

The President. So that I thought the concept here was to monitor investment in insurance companies which may be used as a laundering machine.

Senator Magsaysay. This is a P1 million premium actually, Mr. President.

Senator Sotto. The example I used was an insurance... Well, it can go both ways. As I said, the insurance plan of P1 million investment. I am not being naughty, Mr. President. I probably mispronounced a word or two. I mean, the premium of P1 million.

Yes, I will accept that, Mr. President. But what happens if it is indeed P1 million premium staggered P100,000 over one year. Covered *ba iyan or hindi?*

Senator Magsaysay. It depends. If it is not suspicious... it is not covered. Because it could be that his corporation is paying for the premium of, let us say, P100,000 a month. And it is commensurate to his status as a CEO. So it is not covered because there is nothing suspicious about it.

Senator Sotto. All right. Now, Mr. President, with regard to Pagcor, is the gentleman willing to delete Pagcor also? Because there are many entities and institutions supervised and regulated by Pagcor—casinos, lotto. Is horse racing or cockfighting also included?

Senator Magsaysay. I understand from the BSP officials that they would prefer the Pagcor to be still covered. Because casinos are usually conduits of potentially laundered money.

The President. With the permission of the two gentlemen, the Chair recognizes Sen. Joker P. Arroyo.

Senator Arroyo. Just an observation. I lament the statement of Senator Magsaysay that it is the wish of the BSP. What we should think is our wish now, not the BSP, not anyone. That is the thing that makes our debates complicated. What do we think? Is the BSP trying to...

Senator Magsaysay. Well, may I say something, Mr. President?

Senator Arroyo. Thank you, Mr. President.

Senator Magsaysay. May I take note here that the BSP will be the entity with the Monetary Board to be administering this. And we work on the framework of the BSP-BAP version. So when I pointed out that the BSP's preference is Pagcor, I would assume that it has studied this very well, it has the information and the statistics. And this is its wish. What is wrong with that?

Senator Sotto. Mr. President.

The President. All right, the views are noted. We continue with the debate.

Senator Sotto. Yes. Indeed, I am having... Well, I am equally sad, Mr. President. I am having difficulty because...

SUSPENSION OF SESSION

Senator Magsaysay. Mr. President, I move that we suspend the session for one minute.

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

It was 4:09 p.m.

RESUMPTION OF SESSION

At 4:11 p.m., the session was resumed.

The President. The session is resumed. Senator Magsaysay is recognized.

Senator Magsaysay. Thank you, Mr. President.

The President. All right, we proceed. Senator Sotto is recognized.

Senator Sotto. Just one final item on the Pagcor, Mr. President. As I said, I am having difficulty because we are talking of money laundering. In my mind, it is always drug-trafficking. That is the No. 1 problem of money laundering. I might be too naive, but I do not see other forms *na makakarating sa Pagcor kundi* drug-trafficking lamang. So, I do not know if all the other entities and institutions under the Pagcor should be included. Is cockfighting also under Pagcor? Yes? No, only casinos and lottos. And the bingo. What do we mean by P1 million here as far as Pagcor is concerned, betting or winning?

Senator Magsaysay. Bingo is...

Senator Sotto. Betting or winning? Betting.

Senator Magsaysay. Yes, Mr. President.

Senator Sotto. So, not just any transaction.

Because winning is included, *pagsinabina* transactions, Mr. President. Maybe the sponsor would accept a proposed amendment that we exclude Pagcor—

Senator Magsaysay. We are willing to-

Senator Sotto. —in the covered institutions.

Senator Magsaysay. —seriously consider the gentleman's proposal to remove Pagcor, Mr. President.

Senator Sotto. Mr. President, I have also serious reservations and questions on the SEC, but I am not an expert on this so I would leave it to the other members who are going to ask questions on this. I think Senator Angara would be asking points on the coverage of SEC.

Now, on the P1 million floor, what is the basis for setting in excess of P1 million, as quoted from the bill, under Covered Transactions, Mr. President?

Senator Magsaysay. Mr. President, this came about when the inter-agency task force, to put together this measure, looked at the other countries' own laws. And we noticed in the Asia Pacific area, many of the countries have no threshold or floor, as the gentleman mentioned. However, in the United States, the threshold is \$10,000 and above. However, some of our coauthors wanted it a little higher. Senator Flavier was for P2 million or US\$20,000. And the House, which we have worked with, also favored P1 million. Now in Canada, it is about 14,999 Canadian dollars. In Singapore there is no threshold.

Senator Sotto. I think the threshold in Canada is 10,000 Canadian dollars.

Senator Magsaysay. It is 14,999 Canadian dollars. I think, it is about US\$10,000.

Senator Sotto. All right.

Senator Magsaysay. In Thailand, the threshold may be determined by the finance minister regulator. In order that our ordinary depositors will not feel threatened or be concerned, the PDIC or the Philippine Deposit Insurance Corporation has the statistics that out of 20 million bank depositors, both in the commercial and thrift banks of almost 20 million, only about seven percent have the average account of P200,000 and above. Meaning, 95 percent of our 20 million Filipino depositors have an average account of less than P200,000. So, we are talking about a bill that will at most cover, based on threshold, maybe not even three percent of the bank population. The other 97 percent would be effectively below P1 million.

Senator Sotto. Yes, the value. How much of that three percent represents the total?

Senator Magsaysay. Roughly about half a million. This includes corporations and other organizations. So there are 20 million deposits for the banking system and the thrift banks. And about three percent have a monthly average balance of a million pesos and over. In terms of value, of course, that will even be maybe 80 percent because this includes businesses. But the ordinary Filipino depositors are not affected because most of them or 93 percent have P200,000 and below.

Senator Sotto. Mr. President, the...

The President. With the permission of the gentleman on the floor, Senator Angara is recognized.

Senator Angara. Yes, this threshold question, Mr. President, is very critical. As I understand it, the US and Canadian threshold of US\$10,000 in the case of US and 14,000 Canadian dollar in the case of Canada is only for reporting purposes. But under our scheme, we put the threshold under covered transaction that immediately puts that particular account under suspicion. That is why when we amend this law, we should put that threshold if we decide to put a threshold not under the definition of "covered transaction" but under the reporting requirement.

The President. And is it not that in those jurisdictions, the minimum amount referred to would pertain to cash?

Senator Angara. Yes, Mr. President.

The President. Not a check. In other words, if it is a check...

Senator Angara. Not any other instrument.

The President. Not any other instrument.

Senator Angara. Yes, Mr. President.

The President. If it is a cash, then that is reported.

Senator Angara. Yes. And the fact that one deposited or withdrew US\$10,000, Mr. President, will only trigger a form, a banking reporting form. That is all. It does not mean that it will trigger off the entry of the Federal Bank or the State or currency officer and start looking at one's account. But our law or at least our proposed bill gives that very clear impression. That from now on, the all-powerful Bangko Sentral will be looking over each and every account above P1 million. That will cover practically, as the distinguished sponsor says, 80 percent of the money in our banking system.

Senator Sotto. Yes, Mr. President, I agree. We should look at not just the number of depositors, but the number of transactions.

We must have at least a ballpark figure on how many transactions are done on a daily basis that exceed P1 million. Do we have that, Mr. President?

Senator Magsaysay. I appreciate the observation of the gentleman from Aurora and Quezon Province, and also of Senator Sotto.

If we look at page 2 (b) on the "Covered Transaction," it states here that "Covered Transaction may be any single, series or combination of the following;" and then we have the P1 million. But as Senator Angara said, if it is part of the ordinary business of the entity, there is no suspicion about it. But if there is no credible purpose or origin underlying trade obligation, contract or economic justification, or if there is unusually complex or large transactions, I think the key phrase is "unusually complex." That is where the judgment of the compliance officer or the branch manager or the responsible individual will come in. But we are open to amendments, Mr. President.

Senator Sotto. All right. If that is then the most important one, (3)(b) of Section 3, paragraph (b), then let us leave it at that because Section 2 which the sponsor mentioned also under "Covered Transaction" is one that has, and I quote: "no credible purpose or origin, underlying trade obligation, contract or economic justification." To my mind, this includes transactions involving amounts less than P1 million. It could only be P10,000. If the bank thinks that a person has no credible purpose for depositing, transferring, or withdrawing this amount, then the bank is required to report it.

Senator Arroyo. Mr. President.

The President. With the permission of the two gentlemen on the floor, Sen. Joker P. Arroyo is recognized.

Senator Arroyo. Mr. President, perhaps I could help in this issue. I am going to quote the Review of FATF Anti-Money Laundering Systems and Mutual Evaluation Procedures 1992-1999. I will quote directly.

61. As can be seen in Table 3 across, which I will read later,

with the exception of the lower limit set by France, the cash threshold for identification of non-permanent customers has been fixed by European FATF members at amounts between USD10,000 - 15,000. The amounts outside of Europe vary markedly between the low limit set in New Zealand and the very high amount in Japan. Only Hong Kong, China has left it to each financial institution to determine whether the cash transaction is a "large" one. In most members, the identification

requirement is for all large transactions conducted by a non-customer, but in some it is restricted to cash transactions. Though recognizing that the use of cash in different members does vary, it would seem desirable that there be a greater uniformity in identification amount. In particular, the amount in Japan was noted as being too high, while Hong Kong, China should consider fixing an amount so as to create consistency in the application of this measure.

Mr. President, what we could gather from this is that this is used for identification, the cash threshold for identification of non-permanent customers. In other words, these are for people who go to the bank and these amounts are used for non-permanent customers, and it reads: "Turkey, USD4,000; New Zealand, USD5,000; Australia, Canada, USD7,000; France, USD8,000; Belgium, Italy, United States, USD10,000; The Kingdom of Netherlands, USD11,000; Ireland, Norway, Portugal, Singapore, USD12,000; Luxembourg, Sweden, USD13,000; Austria, Denmark, Finland, Germany, Greece, Iceland, Spain, Switzerland, United Kingdom, USD15,000; Japan, USD300,000; HongKong, China, no limit defined."

I do not know who was the gentleman who said here that we are now using the amount as the red flag which should not be the case. I think it was Senator Angara, I do not know, or Senator Pimentel.

The President. It was Senator Angara.

Senator Arroyo. All right. That when we deposit "x" amount whether in cheque or whatever, that is the red flag. That is not the nature of this.

What is being explained here is that when one deposits money or cash in the bank, there seems to be some presumption: "Why are you carrying cash?" That is the reason for the cash-threshold requirement because cash in these days raises the question: "Why is a person taking along with him cash?"

Now, perhaps, we should avoid using the amount as the red flag because that is not the intention even of the FATF. Banks know exactly their customers, their depositors. They know them. So when there is an unusual amount, that is the time the banks will say, considering the history of the account, "This is unusually big amount." That is where the red flag is raised. Because if San Miguel deposits—I do not know how many millions a day—how can we now use that threshold? Or a rich man deposits. But if we use this as a red flag, an amount, a fixed amount, I think it will throw a monkey wrench in our banking system.

Imagine, when a deposit is made, it is the judgment of the bank

to report to the agency and say, "Well, there is an unusual deposit." Then there is a freeze. When there is a freeze order and a check is drawn against that checking account and then the check bounces, what happens? I think we should guard against that because in our desire to get this bill through, we are creating more problems than what we are solving. As the saying goes, "Let us not burn the house just to catch a mouse," because there are very few money launderers. I think by and large, our depositors are honest people. Let us not taint the good ones with the bad ones.

I just added this, Mr. President, to help enlighten, as an aid.

Senator Angara. Mr. President.

The President. Senator Angara is recognized with the permission of the gentlemen.

Senator Angara. With the permission of the gentlemen, and with the permission of Senator Arroyo now that he has taken the floor, may I ask him further questions, Mr. President? I think he has hit the nail on the head.

Senator Arroyo. I am being used by the Minority now but I will oblige.

Senator Sotto. I have no objection, Mr. President.

The President. All right. Will the gentleman yield the floor temporarily to the two gentlemen including the sponsor?

Senator Angara. Yes. Our conceptual problems and difficulties, Mr. President, arise because of the very broad definition of "covered institution" and "covered transaction." That is why if I may just propose, based on what Senator Arroyo just read to us—and I want to get his reaction—if we can revise the definition of "covered transaction" this way, in lieu of the original definition, we will just simply say, "Covered transaction refers to a series"—I am removing the "single"—"or combination or a pattern of unusually complex or large cash transactions of a non-permanent depositor, having no credible purpose or origin or underlying trade obligation or contract." No threshold.

Senator Arroyo. That is a beautiful suggestion.

Senator Angara. But the description of that account holder is very clear and the kind of operation he is doing in his account is also very clear: cash, large, unusual, and he is not a permanent depositor. He is a casual friend of the bank. So it fits even the definition of the sponsor that every bank should know its customer.

Senator Arroyo. I will agree with the observation of Senator Angara, and in fact, I may add that the question of a potential money launderer should be addressed to the bank because they know the depositors.

So, if a bank, for instance, reviewing the account finds an unusual activity of big amounts, that is the red flag. We do not need outside forces or outside intervention to raise the red flag because it is not to the interest of the bank that they should have a money launderer in their midst. I mean, let it be the judgment of the bank so that we do not get entangled in this bill over which we have absolutely no experience.

Senator Angara. Well, thank you, Mr. President. I think I have clarified it.

Senator Arroyo. Thank you, Mr. President.

The President. What is the pleasure of Senator Cayetano?

Senator Cayetano. With the permission of the sponsors, may I ask my good *kumpare*, Senator Angara just one question. Because the proposed...

The President. We might lose track of who is the sponsor of this measure. *[Laughter]*

Senator Cayetano. No, no, no, I have asked the permission of the sponsor.

The President. Okay, yes, if Senator Angara will yield.

Senator Angara. With great pleasure, with utter pleasure, Mr. President.

Senator Cayetano. The proposal, although it has not been submitted formally as an amendment because we have not reached that point yet, sounds rather reasonable expect for one word or phrase--"large amount." That is something we may have to spell out because what may be large to a particular bank may not exactly be large to a smaller bank. So beyond that—I just want to point out--maybe we can spell out later on at the proper time what is the meaning of the phrase, "large amount."

That is all I wanted to point out.

Senator Angara. Fair comment, Mr. President.

Senator Arroyo. Mr. President.

The President. May we recognize Senator Angara first?

Senator Angara. A quick response, a fair comment, Mr. President, except that in my draft I followed the original wording--"unusually large."

Senator Cayetano. Because, Mr. President, the amount covered now under the proposed bill is in excess of P1 million.

Senator Angara. No, I am going to remove that threshold.

Senator Cayetano. Yes. So the gentleman will not put a figure?

Senator Angara. No, I will not put a figure.

Senator Cayetano. Yes, I understood that. I understood it precisely, and that is why I am asking if the gentleman from Aurora, Quezon, and the Philippines would like to tell us at this point in time what really is the figure we are looking at, because "large amounts" is a very subjective term. As we all know, a P500,000.00 to a savings bank could be a large amount but to a huge bank like Metrobank, RCBC, and so on, we know it is a smaller amount.

The President. May the Chair intervene. Can we have those discussions when in fact the amendment is introduced?

Senator Cayetano. No, no, that is what I want to point out.

The President. Yes, so if the amendment is introduced and the same is accepted or not accepted by the committee, that is when this detail could be discussed, if the gentleman on the floor...

Senator Cayetano. I have no particular problem. I just want to point that out. While I feel that the proposal of the gentleman from Aurora and Quezon appears to me to be very reasonable, I just want to point out that particular problem. I thank Senator Angara, Mr. President.

Senator Arroyo. Mr. President.

The President. Yes, Senator Arroyo is recognized.

Senator Arroyo. I just want to point out these things. In Hong Kong, there is no limit for cash transaction. In other words, anyone can bring a bagful of money there and as far as they are concerned they will take it. No questions asked, no limit defined. FATF says that Hong Kong should consider fixing an amount so as to create consistency in the application of this measure. But as of now, Hong Kong has no limit.

Senator Angara. And China.

Senator Arroyo. China. There are no sanctions on them. As a matter of fact, Hong Kong is a member of FATF.

The President. The president is from Hong Kong.

Senator Arroyo. And as the Senate President said, the FATF president is a narcotics expert.

The President. Narcotics commissioner. *[Laughter]*

All right. We go back to the sponsor who had the floor. Yes, Senator Magsaysay is recognized.

Senator Magsaysay. These are very important inputs from our sage senators, Mr. President, and these will guide the sponsor and the other sponsor, Senator Pangilinan, in crafting a better measure during the period of amendments.

We have no objection if the Senate as a whole will adopt no threshold. But may I point out here that the P1 million was arrived at in order to lessen the cost of the bureaucratic expenses.

In the United States, the threshold of \$10,000... There are 13 million reportorials a month. We are not looking at investigation, just reportorial. Can we imagine if we lift the threshold and make it wide open and the condition that it is unusual or complex kicks in? An ordinary Filipino who has an average deposit of maybe P5,000, P10,000, P15,000 a month suddenly puts in P300,000, that becomes unusual and he is dogged.

That is why we were limiting it to P1 million and up so that this is a framework of saying that 95 percent will not be bothered. But still if that part of the covered transaction—meaning No. 2—says no credible purpose or origin, they can still go after him. But the fact that the nightmare of reportorial, bureaucracy and red tape will bear the cost, who will bear the cost? Is it the government again or the banking sector? We are putting P1 million and up because these are big crimes we are looking at.

In fact, we have already reduced the number of crimes from 21 to 17, and now only five. We might even remove two more and come out only with kidnapping for ransom or narcotics-related and maybe Anti-Graft and Corrupt Practices Act and nothing more, nothing less. We are further reducing this, Mr. President.

The President. All right.

Senator Sotto. Mr. President, I still hope that when the period of amendments comes, the proposal of Senator Angara will be supported by the Chamber because in that case I will definitely do away with most of my questions concerning this. I will actually be jumping two pages from this so that I hope we can go to that.

Just one last item on the reportorial. Does this bill make the failure to report a covered transaction a crime, with or without that proposed amendment?

Senator Magsaysay. Yes, failure to report a covered transaction is a crime.

Senator Sotto. So this bill makes the failure to report a covered transaction a crime.

Senator Magsaysay. I beg pardon?

Senator Sotto. It is a crime not to report. Failure to report.

Senator Magsaysay. Yes, Mr. President.

Senator Sotto. All right. Then we must be very careful on the vagueness and the subjectivity of what constitutes a covered transaction. All the more I would like to support the proposed amendment earlier because under the bill, the prudent rule of thumb would be, in case of doubt, report the transaction to the Central Bank or the financial...

Senator Magsaysay. It looks that way. That is why we have a responsible officer. That is his responsibility.

Senator Sotto. Again, can we imagine how many reports the FIU will be receiving on a daily basis because of that if we keep this vague and subjective, Mr. President.

Senator Magsaysay. We were trying to find out from some authorities how many transactions of P1 million up or US\$20,000 are happening in our banking system currently on a monthly basis. We still have not come up with the figures. But as I mentioned earlier, in the US, it is US\$13 million a month. I have read that the cost is quite horrendous.

Senator Sotto. Yes. Then we should learn from that, Mr. President.

Senator Magsaysay. That is correct, Mr. President.

Senator Sotto. Still we should be concerned about the five percent even if we say that 95 percent will not be bothered. The five percent who might be bothered are the ones who run the economy. If I may borrow the former senator's, now vice president, term about certain personalities and people in a certain gathering at EDSA before, it is "quality and not quantity." It applies to this, Mr. President.

Senator Magsaysay. Yes, Mr. President.

Senator Sotto. Mr. President, in this connection, what degree of diligence are we requiring on everyone who may face a situation of having to determine whether a transaction has to be reported or not?

Senator Magsaysay. The diligence of good judgment, the diligence of what the measure states, that is unusual, that is suspicious. Of course, his knowledge of the customer. It is basically on the basis of "know your customer." That is always the frame of reference that this anti-money laundering law is working around. It is the sound judgment with the covered transaction provision.

Senator Sotto. Is the diligence of being a good father of the family a defense? Because in law, that is the...

Senator Magsaysay. It could be a good value to start with. Yes, that is very true, Mr. President.

Senator Sotto. I will no longer go to the other questions because I am glad that the distinguished gentleman is willing to accept the amendments as far as the DTI and the Pagcor are concerned.

Just one last item, Mr. President. On the freezing. Please walk me through again on the freezing. The timetable of the freezing of the account. What triggers the freezing and then the proposed time is what? Is it five days? The automatic freezing.

Senator Magsaysay. It is 20 days.

Senator Sotto. Will the distinguished gentleman please help me again?

Senator Magsaysay. Let us say there is an account that is covered by the covered transaction. One million or up and then it is unusual, it is complex, it is suspicious-looking, and there is reasonable evidence because the account holder is known to the bank, to the branch manager. So, there is a triggering of informing the supervising authority. In case it is a corporation, it goes to the SEC. In case it is an individual, it goes to the FIU, what used to be called "the council." It is now called the Financial Intelligence Unit.

Senator Sotto. Investigating Unit.

Senator Magsaysay. Intelligence.

Senator Sotto. Intelligence? Is it not Investigating Unit?

Senator Magsaysay. Not yet. Intelligence. Reportorial first.

Senator Sotto. Financial Intelligence Unit. So, the report goes there.

Senator Magsaysay. The report goes there and the FIU will determine, get the evidence and if there is substantial evidence of money laundering, it submits this actual account to

the Monetary Board where the seven-member Monetary Board will analyze, evaluate and vote whether there is such a substantial evidence.

Senator Sotto. And if they find that there is? They think, under their belief and their opinion.

Senator Magsaysay. Yes. The board can freeze the account.

Senator Sotto. And we cannot take away the human factor here.

Senator Magsaysay. Yes, Mr. President.

Senator Sotto. So the board will freeze it.

Senator Magsaysay. The board will freeze the account for 20 days.

Senator Sotto. For 20 days.

Senator Magsaysay. In the meantime, the account holder may exhaust the administrative ways to explain his account.

Senator Sotto. In 20 days. So, he cannot...

Senator Magsaysay. Within 20 days.

Senator Sotto. But the account will be frozen for 20 days.

Senator Magsaysay. Yes, initially for 20 days. But not yet opened.

Senator Sotto. Yes, Mr. President.

Senator Magsaysay. So within that 20 days...

Senator Sotto. Let us wait, Mr. President. There is where my problem is.

A congressional candidate of the Opposition receives unusual donations and will go to the bank and deposit contributions for election. In cash, of course. I am sure the members of the House are aware of this.

He goes to the bank and deposits the donation. An influential member of the administration who is running against him makes a report or asks somebody to make a report, or anybody connected to the FIU. I am sure *kung sinu-sinong mga* personnel ilagay natin diyan sa FIU. *Hindi naman* top of the line *ang mailalagay natin diyan sa mga units na iyan*. He makes the report, and in their opinion there is substantial evidence that this is unusual money,

they freeze his account for 20 days before election day. What is the safeguard that we have here? *Talo na.*

Senator Magsaysay. The candidate can go to the Monetary Board and make his presentation that this is a donation. And provided he submits a report to the Comelec, he can go after the members of the Monetary Board in terms of our penal provision, on bad faith and malice.

Senator Sotto. Yes, but he has lost already. He has lost the elections. He has lost time campaigning. I think we should put safeguards to this also.

Senator Magsaysay. I am welcoming safeguards.

Senator Sotto. Not to exempt politicians. I am not saying that we should exempt them, but I think this is very serious. This should not be used as harassment.

The President. The solution is do not deposit in the bank. *[Laughter]*

Senator Sotto. But we undermine the banking system if we do that, Mr. President.

So again, in the period of amendments, I hope this is taken up.

Senator Magsaysay. At this stage, there is no substantial evidence of money laundering. This is merely reporting.

Senator Sotto. Yes, Mr. President. Pero *sanay po tayo sa mga...*

Senator Magsaysay. But we will come to any improvements on this measure.

Senator Sotto. *Sanay na sanay tayo sa mga pinag-iinitan,* Mr. President. That is why I said members of the Opposition *ang ginamit kong example. Talagang mangyayari iyan at mangyayari iyan.* That is why, again we hope we address this in the period of amendments.

Thank you, Mr. President. I thank the distinguished sponsor.

Senator Magsaysay. Thank you. We can feel the same.

The President. The Majority Leader.

Senator Flavie. Mr. President, I move that we recognize Sen. Teresa Aquino-Oreta for the next interpellation.

Senator Magsaysay. Mr. President, may I beg off for a while.

My cosponsor will carry on. I have been standing for three hours. So I will ask for a break for a few minutes.

SUSPENSION OF SESSION

Senator Flavie. I move that we suspend the session for the liquidity problem of the sponsor.

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

It was 4:49 p.m.

RESUMPTION OF SESSION

At 5:29 p. m., the session was resumed with the Hon. Juan M. Flavie presiding.

The Presiding Officer [Sen. Flavie]. The session is resumed.

Senator Drilon. Mr. President, before the break, Sen. Ramon B. Magsaysay Jr., the principal sponsor, and Sen. Tessie Aquino-Oreta availing herself of the period of interpellations, were on the floor. May we ask that they be once more recognized.

The Presiding Officer [Sen. Flavie]. Senators Magsaysay and Aquino-Oreta are recognized, with Senator Aquino-Oreta interpellating.

Senator Aquino-Oreta. Thank you, Mr. President.

Will the good gentleman answer some questions?

Senator Magsaysay. Certainly, as much as I can, Mr. President.

Senator Aquino-Oreta. Mr. President, we were able to get some notes or some materials from the Internet. It says: "FATF, Financial Action Task Force on Money Laundering, dated 22 June 2001." These were just notes taken from the Internet; we downloaded them.

With this in mind, we particularly read the FATF's policy concerning implementation and the listing in relation to NCCTs.

We are racing to pass this bill against a September 30 deadline. And we do so laboring under the belief that unless we do so, the FATF will implement counter-measures against the Philippines for its inadequate progress. Of course, naturally, our economic managers went hysterical, and in fact they even said that by October 1 of this year, our trade and financial transaction investments and even the OFW remittances will be greatly affected.

Mr. President, now I would like to find out if the gentleman believes that the passage of this anti-money laundering bill is sufficient to address all the deficiencies that the FATF identified in the Philippines. In other words, if we do have an anti-money laundering law by September 30, does the gentleman think that all the deficiencies the FATF identified will be sufficient?

Senator Magsaysay. Mr. President, I firmly believe that the way the Senate is doing its best to meet the—I would call it deadline—objective by crafting a sound, well-studied legislation on anti-money laundering will remove us from the list of non-cooperative countries, and will already make us a member of those other states that are part of the information-gathering intelligence system, sharing information on mostly transnational crimes that will make our banking system especially again at par with the rest of the advanced countries of this globe of ours.

Senator Aquino-Oreta. I am very glad to hear that. So that means we do not necessarily have to have a September 30 deadline?

Senator Magsaysay. We would like to attain that, Mr. President. Because I understand that if we do not pass such a law that has the five minimum elements of compliance, the FATF will automatically keep us, retain us in the non-cooperative status, and increase surveillance, give us more information requirements, more administrative obstacles and other ways that it will do to fall upon us come October 1. Even if we pass the law, let us say, on October 1 or 2, we will still be in that list where we will have a lot of problems. The next time it will review the Philippine case, it will be, as I understand it from the Senate President, next year in February. That means, from October, November, December, January, February, about four to five months, we will have to comply with so many other requirements.

In fact, Mr. President, there is already an American bank, First Union Bank of Delaware, which has declared that it will discontinue correspondent relationship with banks located in our country that will not have complied with the requirements of having a law. And the FUB of Delaware has informed 12 banks, including Bank of the Philippine Islands one of our largest banks and very sound, that it will ask for more information from them on any business or non-business transactions. So this will become like another layer of bureaucratic red tape.

Senator Aquino-Oreta. I would like to thank the gentleman for that. But is the gentleman aware that the following countries; namely, the Cook Islands, Dominica, Israel, Lebanon, Marshall Islands, Maui and Saint Kitts and Nevis, that were placed in the NCCT list in June 2000 together with the Philippines were actually found to have made sufficient progress in passing most, if not all

the needed legislation but still they are in the non-cooperative countries and territories?

Senator Magsaysay. I am glad to know that, Mr. President. They must have passed laws that did not comply with the requirements. In fact, I understand that Nauru, among others, passed a law but since they had the good intention of passing the law, they were removed from the stringent measures but were asked to amend that law to comply, and given enough time frame to improve their laws.

Senator Aquino-Oreta. So, Mr. President, what the gentleman is trying to tell us now here is that a law, if complied with by September 30, is not sufficient, that the Philippines still needs to submit an implementation plan with targets, milestones and time frames that will ensure an effective implementation of this legislative reform. Is the gentleman trying to tell us that?

Senator Magsaysay. No, what I meant, Mr. President, is that once the law is passed and it complies with the five basic elements of compliance, this is already a strong signal that we want to be part of that group of countries that will cooperate and relate with their common standards to pinpoint dirty money within our banking and financial systems.

Senator Aquino-Oreta. Yes, but it is not an assurance that we will be taken out of that other list, the NCCT.

Senator Pangilinan. Mr. President.

Senator Magsaysay. May I ask Senator Pangilinan, my cosponsor, to be more specific on what I am trying to say, Mr. President.

The Presiding Officer [Sen. Flavie]. With the permission of the gentlemen and the lady, Sen. Kiko N. Pangilinan is recognized.

Senator Pangilinan. Thank you, Mr. President.

Allow us to clarify the points being raised by Senator Aquino-Oreta.

There are two levels with respect to the non-cooperating countries being given, well, being watched over—for lack of a better term--by the international community in respect to the FATF.

The first level is the level of being included in the NCCT. The second level is the level wherein even assuming that certain requirements have been met, the level of implementation. In effect, we are currently in the first level-NCCT, However, passing a law on money laundering does not mean that we will be removed from the non-cooperative list. After observation, after review of our

implementing or the implementation of our efforts against money laundering and it appears that we have complied in terms of implementation, then we can be removed from the non-cooperative list of nations.

However, even if we remain in the non-cooperative list of nations at this point and if we fail or we are not able to meet our objective of September 30, additional counter-measures will be imposed.

So passing the law does not necessarily mean that we will be out of the NCCT, the list of non-cooperative countries, but passing the law will help us avoid the situation wherein counter-measures are imposed or additional sanctions are imposed.

Senator Aquino-Oreta. Thank you. Mr. President, that is what I was trying to say that the passage of the law does not necessarily take us out from the NCCT list but this is just a beginning of a long journey that comes with a very big price.

So with the tragedy that is happening all over the world, I am just afraid that we may be rushing into something that will create more problems for us in the future. So am I correct? At least, I heard the sponsor say that he will be accepting amendments to the working draft.

Senator Magsaysay. Yes. May I point out that the things that we are trying to avoid are the counter-measures which will kick in after September 30. These include surveillance and more difficulties in transactions. Even our Philippine banks when they ask to put up a branch, let us say, Metrobank wants to put up a branch in London, will not be allowed to do so. These are parts of the counter-measures. But if we have the law in place, that shows our good faith that we have now an anti-money laundering law, and these counter-measures will not kick in. We will be treated like we are being treated now. Right now, there are no counter-measures. But after September 30, without the new law, the counter-measures will come in.

Senator Aquino-Oreta. Mr. President, can the sponsor give us a country that has already undergone the wrath of the FATF? Meaning, a country that is already punished, like the fear that we will be having in case we will not have a law by September 30, all these bad news that the sponsor is giving us? Can the sponsor give us a country that has gone or that has suffered the anger of the FATF?

Senator Magsaysay. Our country itself has started feeling the additional requirements leading to stronger counter-measures after September 30, without a law. There are already additional requirements in our banking system that point towards that

situation because we are a non-cooperative country as far as they are concerned.

Senator Aquino-Oreta. Yes. But, Mr. President, may I have a specific country so that we can have an example of a country that did not, let us say, have a law or did not comply with the requirements of the FATF? Can the sponsor just give us one or two countries that somehow did not comply and suffered the wrath, the anger of the FATF?

Senator Magsaysay. Indonesia has not complied.

Senator Aquino-Oreta. So what happened to Indonesia, Mr. President?

Senator Magsaysay. Indonesia, not having complied, became part of the NCCT this year.

Senator Aquino-Oreta. Yes, just like the Philippines.

Senator Magsaysay. The Philippines came in June last year.

Senator Aquino-Oreta. Yes. Specifically, what happened to Indonesia because it did not comply?

Senator Magsaysay. As mentioned, there are more requirements. Maybe... well, I cannot venture a guess. But one of these, as I mentioned earlier, is if an Indonesian bank wants to put up a branch, let us say, in a complying country like, let us say, Hong Kong, this will not be approved.

Senator Aquino-Oreta. Yes, but that is speculation, Mr. President. I want to know the specific measures or specific consequences when a country has not complied with the request of the FATF, I would like to find out a specific example of what happened. Did its economy deteriorate? Did the rest of the nation not have anything to do... maybe a specific example of a country that did not comply with the FATF requirements.

Senator Magsaysay. If I recall a couple of days ago, the secretary of the Department of Trade and Industries, Secretary Roxas, made mention that such countries are starting to experience difficulties in conducting imports and exports, including the opening of letters of credit.

Senator Aquino-Oreta. What countries are these, Mr. President?

Senator Magsaysay. For one, our own country and Indonesia.

Senator Aquino-Oreta. Does the gentleman mean to say that right now we cannot open letters of credit?

Senator Magsaysay. Not necessarily. It could be that they are requiring more margin deposits. If the complying countries do not even have to put a margin deposit...

Senator Aquino-Oreta. May the gentleman give us a specific example of anyone in the Philippines right now that was not given...

Senator Magsaysay. I do not have a specific example. Maybe I can ask the Department of Trade and Industry to give us some specific examples in due time, Mr. President.

Senator Aquino-Oreta. I thank the gentleman for that answer, Mr. President.

When the period of amendments will come, I hope that the chairman will be accepting the amendments that we will make because I am so afraid that we might be rushing into something and maybe we will work it out or we will suffer the consequences of our rush. We might be creating a monster here. I would like to get the assurance from the chairman that he will indeed accept our amendments when the period of amendments comes.

Senator Magsaysay. Certainly, Mr. President. We will accept good amendments coming from the lady senator from Tarlac and Malabon.

Senator Aquino-Oreta. Thank you, Mr. President.

Senator Magsaysay. Thank you, Mr. President.

Senator Legarda Leviste. Mr. President.

The Presiding Officer [Sen. Flavier]. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, I move that Sen. John H. Osmeña be recognized.

The Presiding Officer [Sen. Flavier]. Sen. John H. Osmeña is recognized for the next interpellation.

Senator J. Osmeña. Will the distinguished sponsor yield for a few questions?

Senator Pangilinan. Yes, Mr. President.

Senator J. Osmeña. Mr. President, I would like to first set for the record certain facts which I think the dignity of the Senate, our patriotism, and our interest in addressing the problems have been put to question.

Mr. President, let me start off with the explanatory note of Senate Bill No. 1676 which was filed by the Senate President, Senator Cayetano, this representation, and Senator Magsaysay.

In the last paragraph of that bill, it says, and it lists the reasons the country should adopt a money-laundering policy. It says:

5. The Philippines can be freed from the countermeasures being applied by the Financial Action Task Force to the noncooperative countries and territories.

That is one of the reasons we are being asked to enact this bill.

Further up on that explanatory note, it mentions that in June 2000, the Philippines has made it to the non-cooperative countries and territories list drawn up by the Financial Action Task Force on money laundering. The task force was first convened in 1989 by the Group of Seven—the United States, Canada, United Kingdom, France, Germany, Italy and Japan—and has since expanded to 29 countries and territories and two regional organizations.

I note, Mr. President, as the gentleman noted also, that this was in June 2000. My question is, what documents, as of the date that we had a committee hearing at which I was present, were submitted to us to support this particular bill by the Department of Finance and the Bangko Sentral ng Pilipinas?

Senator Pangilinan. Documents with respect to the...

Senator J. Osmeña. Yes, Mr. President. Because I remember that at that time I complained up to that date, we were being bombarded by oral testimony coming from the governor of the Bangko Sentral saying that there was this deadline on September 30, saying that we were being pressured. And when I asked why not a single person from the so-called FATF, or what I call FATF, ever came before the committee, nobody could give me an answer. When I asked why not a single letter bearing the letterhead of FATF was ever submitted to the committee, we were just greeted by silence as if we were being told in a very, shall we say, condescending fashion that, "Don't worry about it, and just take our word for it. Just do what we are telling you to do. You do not have to ask for any letters. We are telling you this is the way it is and that is the way it should be."

Mr. President, has the committee ever been honored by the Central Bank or by the Department of Finance with any communication to support their contention?

Senator Pangilinan. Mr. President, sometime in July of this year...

Senator J. Osmeña. No, Mr. President. The committee meeting was only two weeks ago. So at that point in time, there was nothing yet in the committee. I was asking for that.

Senator Pangilinan. The Department of Foreign Affairs, through Assistant Secretary Tirona, forwarded some documents, I believe, to the Bangko Sentral ng Pilipinas which it in turn forwarded to the committee. These documents included advisories from the FATF wherein we were included in the list of non-cooperative countries, and apart from these advisories included were counter-measures that may be imposed on the country and other countries in the said list should a deadline that was set then not be met.

Senator J. Osmeña. Mr. President, when did they forward it? Because when I asked for it, neither the committee secretariat nor the chairman of the committee or the witnesses responded positively.

Senator Pangilinan. That is correct, because I was in the hearing.

Senator J. Osmeña. So either the gentleman was concealing it at that point in time, or he did not have it, and they were concealing it.

Senator Pangilinan. That is correct, Mr. President. I was in that hearing. I remember distinctly the good senator from Cebu inquiring about documents and the documents were turned over to us during the second hearing.

Senator J. Osmeña. During the second hearing.

Senator Pangilinan. Yes, Mr. President.

Senator J. Osmeña. Now, Mr. President, the distinguished sponsor has noticed, I am sure, that we have been bombarded with press releases. I have here, I will not read it anymore because I have a 15-minute pledge to the Senate President, but the newspapers have been bombarding us daily with press releases, with stories, making it appear that the stories were coming from this FATF. Whereas, in reality, anybody who knows a little of journalism will know if that would be the case, these stories would be bylined. These would carry the city of origin. For example, in *Today*, Mr. President, September 11, it says, "FATF insists on September 30 deadline for dirty money bill." It is bylined by Eric dela Cruz, reporter. And it says, "the Paris-based G7 Financial Action Task Force has kept the September 30 deadline imposed on the Philippines." But there was never a press release from FATF. Who was issuing all these press releases? Does the gentleman know, Mr. President? Was it AGILE, the foundation that is funded by the USAID?

Senator Pangilinan. I have no knowledge, Mr. President.

Senator J. Osmeña. Mr. President, the distinguished sponsor and I have been also a part of the political scene for quite a long time. Does the sponsor really think that this consistent barrage of press releases daily in every newspaper would have been coming out of the initiative of reporters? Or was this the product of a determined, well-funded press campaign?

Senator Pangilinan. That is possible that it is an organized effort in that respect.

Senator J. Osmeña. Who was paying for it, Mr. President?

Senator Pangilinan. I have no knowledge.

Senator J. Osmeña. Would it be, Mr. President, that the big banks, these multinationals that we let into this country who almost, on bended knees, asked us to amend and liberalize our banking laws are now trying to dictate to us legislation?

Senator Pangilinan. I can only venture a guess, Mr. President. That would be in the realm of the possible.

Senator J. Osmeña. Mr. President, as I said earlier, I will dispense with the reading of all these because the Senate President is looking at me and I have a 15-minute deadline. *[Laughter]*

Now, Mr. President, was the gentleman furnished by the Senate President with a copy of a folder full of documents that he obtained in Paris?

Senator Pangilinan. Yes, Mr. President, I was furnished.

Senator J. Osmeña. Mr. President, this is the first time I ever saw anything that is official from these agencies, because if it is true that... I do not doubt the gentleman that if the Central Bank gave him some papers on the second meeting, it never reached us and we have never been given this thing. But it goes to show here in Annex C that there is a report of the Financial Action Task Force, the FATF. It says, "Confidential Report on the Philippines Against Criteria for Assessing Non-cooperative Countries and Territories." I guess the gentleman has a copy of this report.

Senator Pangilinan. It is not with me now, Mr. President. I am trying to have it myself.

Senator J. Osmeña. I will not read this report, Mr. President, because I am not going to filibuster. I want the record to show that the Executive department and the Central Bank were remiss and that is the reason we are now being made to look like we are not doing our job, but they were remiss in getting things done, that they did not do anything about it.

about 18 months ago, the FATF had already singled out the Philippines in this report, which they said we were one of the countries that were found to be non-cooperative according to the criteria that they passed.

Would the distinguished gentleman know, Mr. President, if the Bangko Sentral and the Department of Finance were aware of this report on June 20?

Senator Pangilinan. Only belatedly, Mr. President, on the basis of some of the documents turned over to us during the deliberations at the committee level.

Senator J. Osmeña. How belatedly, Mr. President?

Senator Pangilinan. When we started deliberations around two weeks ago.

Senator J. Osmeña. Who testified to that, Mr. President?

Senator Pangilinan. There was no testimony, Mr. President. The documents that I mentioned earlier were forwarded to us by the DFA. There were documents signed by the Office of the Governor of Bangko Sentral ng Pilipinas as annexes which suggest that the Bangko Sentral has had, in fact, information, as the distinguished gentleman mentioned, since June or thereabouts of last year.

Senator J. Osmeña. That is right. When did the Bangko Sentral know about this, Mr. President?

Senator Pangilinan. It was end of June 2000.

Senator J. Osmeña. Mr. President, does the distinguished gentleman have a copy of a letter dated July 25, 2000, signed by Governor Rafael Buenaventura of the Central Bank?

Senator Pangilinan. It might be in one of the annexes, Mr. President, because I have several documents here signed by the governor and the deputy governor of the Bangko Sentral.

Senator J. Osmeña. Mr. President, I have this letter and this was provided us by the Senate President. It was attached to a letter sent on September 25, 2001 by our friend—and I do not mean it in any way, I consider him a good friend—Paeng Buenaventura, and he said:

I noted several comments made in the press that Bangko Sentral and Department of Finance should have taken steps to address the FATF problem last year when we were first made aware of such a listing as a non-cooperative country. For your information, we were a strong advocate and pushed for the following:

1. We suggested an amendment to the Bangko Sentral Act to restore our ability to access deposits. This power was taken out when the new Central Bank Act was passed in 1993. This was to address the FATF's observation that our bank secrecy laws were excessive.
2. We pushed for the passage of legislations on the anti-narcotics and RICO (Anti-Racketeering) bills, one of which was sponsored by Senator Barbers. No action was taken on these bills.
3. There was an unnumbered Senate bill on Anti-Money Laundering which we gave our comments to try and get the bill passed. We attached copy of our letter to the Presidential Legislative Liaison Office giving our comments to the bill.
4. Administrative measures, thru circulars, were put in place by the Bangko Sentral to address the other concerns regarding money laundering.

Since October 2000 there was literally no legislative action and the elections subsequently intervened. Since March of this year, an inter-agency task force was formed precisely to draft a comprehensive bill which has undergone several reiterations/refinements.

I want to give you this information to set the records straight that efforts were made by Bangko Sentral to try to get our country out of the list of non-cooperative countries.

Very truly yours,

(Sgd.) RAFAEL B. BUENAVENTURA
Governor

This letter clearly tells us that the Central Bank has, in effect been doing something about it but it never got to us.

I note, however, that there is one inaccuracy—that since October 2000, there was literally no legislative action.

That is not correct, Mr. President. In fact, a special session was called in February and again in May and we passed the Power Sector Reform Bill. So, we did meet and we did approve legislation, but apparently, the Executive department never got through to following up this bill on anti-money laundering.

I think our colleague, Sen. Teresa Aquino-Oreta, will be happy to note that the culprit here is actually some character

known as "Jimmy Policarpio," who was the person asked by the Central Bank to follow up with Congress the approval of an anti-money laundering bill. Therefore, if there should be any blame laid, it should be at the doorsteps of Mr. Policarpio.

I would like the records to show that, Mr. President.

Having said that, I know that the gentleman and the committee of Senator Magsaysay have been working on this bill since before our break.

Senator Pangilinan. That is right, Mr. President.

Senator J. Osmeña. And that it has been taken up in our sessions for the last three days.

Senator Pangilinan. That is right, Mr. President.

Senator J. Osmeña. Notwithstanding the fact that we have been working on this bill as of last Monday, we had an editorial of the *Philippine Daily Inquirer* as if the people there did not know that we were already working on this bill. Of course, that is understood, given the mind-set of the people in the *Philippine Daily Inquirer*.

But today, Mr. President, we have this full-page ad in the *Philippine Daily Inquirer*, again, by a group who did not identify themselves. Yes, they did.

The title is: RAIDING THE HOUSE OF THE GODS

Civil Society Call for the Passage of a Responsive and Effective Anti-Money Laundering Law

I will not read this, Mr. President, because there is nothing really in this full-page ad which will add to the record, except to point out that a number of signatories in this ad are people who themselves should not be qualified for being members of the civil society.

There is, of course, Mr. Jose Concepcion Jr. who was kicked out of the Cabinet of former Pres. Cory Aquino. I will not add to what the records of the Blue Ribbon Committee have to say about Mr. Concepcion in his tenure as DTI secretary. But now he has transformed himself into civil society.

There is, of course, a man of the cloth from Bacolod, Bro. Rolando Dizon who, I remember at that time when his brother was the head of the National Housing Authority, attempted to pull a land scam on the National Housing Authority, but he is also now a member of the civil society. So, I think that is already forgotten.

The honest truth, Mr. President, is, I do not know who else is in this list. I have not been able to have the time to identify them one by one. But what makes us irritated about this list is that when we are already here deeply enmeshed in it, working three days into this bill, they now come out and make it appear that we are not even working on it and that they are now going to join the chorus of all these people who want this bill passed. So, I just wanted the record to show that.

Now, who is behind the FATF, Mr. President. Nothing has come out on the record, that is why I was waiting until now before interpellating. Nothing has come out on the record as to who are these mysterious people behind the FATF.

Could the gentleman tell us who is behind the FATF, Mr. President?

Senator Pangilinan. The Financial Action Task Force, Mr. President, is actually the Financial Action Task Force on Money Laundering. That is the complete name. It was established by the G-7, I think it is now called the G-8, in a summit in Paris in 1989. Originally, the G-7 is composed of seven countries and they have now expanded to 29 countries.

Senator J. Osmeña. What are the motives, Mr. President?

Senator Pangilinan. By the name itself—the Financial Action Task Force on Money Laundering—the concern of the G-8 or G-7 countries at that time was to address money laundering activity that has been happening or taking place. The issue of criminal activity has to be addressed and, therefore, the G-7 countries thought it best to put this task force to address the issue of money laundering, recognizing that the phenomenon has been affecting not only economies but the peace and order situations in different jurisdictions.

Senator J. Osmeña. That is the publicly accepted reason.

Has the gentleman come across an executive memorandum dated August 31, 2000, issued by the Heritage Foundation?

Senator Pangilinan. No, I have not, Mr. President.

Senator J. Osmeña. Mr. President, is the gentleman familiar with the Heritage Foundation based in Washington D.C.?

Senator Pangilinan. Yes, Mr. President. I have heard and read about this foundation.

Senator J. Osmeña. This foundation, Mr. President, for the record—because those who will read the records later on may not know about this—is a well-known and respected foundation in the

United States. Its offices are in Washington D.C. It is involved in public affairs. It wrote a three-page executive memorandum.

The memorandum is entitled: "The Counter-Money Laundering Act: An Attack on Privacy and Civil Liberties." It says that the stated goal of both bills is to track down the funds that criminals keep in financial institutions worldwide. Their real impact, however, would be to restrict constitutional freedoms but undermining the Fourth Amendment right to be free from government criminal investigations without reasonable and specific evidence of wrongdoing. They are also likely to impinge on customers' financial privacy. Moreover, their effect would be less to collar drug kingpins than to make it easier for "large nations,"—I underscore large nations—to collect taxes by forcing smaller nations like us to violate their own citizens' financial privacy.

It goes further and it says that the bill would give federal law enforcement agencies greater powers to scrutinize financial transactions in foreign jurisdictions.

Then, it says that the OECD is commenting now on the group. It is a group of unelected bureaucrats from 29 wealthy countries, including the United States, devoted to economic and social policies. The FATF, ostensibly devoted to combating money laundering, is actually a means through which member-nations with high tax burdens such as France, can pursue taxpayers and businesses that protect their assets overseas in so-called "tax havens."

The conclusion of this paper, Mr. President, is that in coercing us—and I use the word "coercing"—to pass this legislation, we are just being made tools of big banking institutions of big nations to clean up and do their act, do their job, because if they want to collect taxes from their citizens, if they want to prevent drug trafficking that is their job, that is their responsibility. But we are being coerced into allowing them to dig into financial transactions beyond their jurisdictions for their own ends.

Now, Mr. President, is the gentleman really consciously aware of this, and is he sponsoring this bill knowing that this is the motive of this FATF?

Senator Pangilinan. Mr. President, I remember, when we were in Washington D.C. during the seminar, the Anti-Terrorism Financial Investigation Seminar,—we were there for three days—one of the issues in fact that was raised then was precisely the invasion of the right to privacy. These were issues that were deliberated upon and discussed. There were questions about money laundering and how to balance the police power of the State to fight crime and, of course, the private individual's right to privacy.

I believe that in the long run, hopefully, when amendments are introduced, we can come up with a bill and pass a bill that will directly address what I think is a valid concern--the use of illegally obtained proceeds to further crime. There may be some other interest groups or some other entities that may have a separate or distinct agenda, I will not discount that. But I believe that in the long run, on the basis of our deliberations, on the basis of how we will craft a law, there and then we will be able to determine or we have the choice if we will allow that particular analysis to affect how we are to pass this bill.

In the end, what I am saying is, I am hopeful that through the process of amendment we will be able to craft a bill that will address why this bill is being sponsored in the first place, not because of deadlines, not because of sanctions per se but because I personally feel, as a lawyer, as someone who has been involved in investigations in the past, that a money laundering law will be an effective instrument and tool to combat crimes.

Senator J. Osmeña. Well, Mr. President, I hope that that is going to be the endproduct of our bill.

Mr. President, although that—may I comment at this point of time—strikes at the heart of one of the demands of the FATF, there must be sharing or open access to the information that we generate locally because that is one of their demands. And if this bill does not meet that demand, I do not think we will satisfy them. Not that I want to satisfy them but, I think that that is going to be. But we will make sure, given what the gentleman has said, that we are not being used. Therefore we will strike that provision out from the bill.

Now, Mr. President, just as an aside, I am just curious. Mention has been made here, in fact, on two occasions,—I heard that because I have been in and out of the floor—of Union Bank of Delaware closing the accounts of Filipinos. Does the gentleman have further information aside from the so-called action of the Union Bank of Delaware?

Senator Pangilinan. I believe it was mentioned by Sec. Manuel Roxas of the Department of Trade and Industry.

The First Union Bank of Delaware, which reportedly will discontinue correspondent relations with banks located in countries that have not complied with the requirements, has informed 12 of its correspondent banks in the Philippines, including the Bank of the Philippine Islands, of its plan to demand more information from them, if the country will not pass this bill.

Senator J. Osmeña. Is the gentleman familiar with the correspondent relations that the First Union Bank of Delaware has with the Bank of the Philippine Islands, for example?

Senator Pangilinan. Well, it was published. Before I proceed to the gentleman's question, Mr. President, it was also published in the *Philippine Daily Inquirer* dated September 24, 2001. I am not familiar with the correspondent relationships.

Senator J. Osmeña. Well, in that *Inquirer* story, Mr. President, is there attribution also to Secretary Roxas?

Senator Pangilinan. Yes, Trade Secretary, that is.

Senator J. Osmeña. Well, he should be knowledgeable because he used to work for J. Allen in New York.

Senator Pangilinan. If I may be allowed to quote this portion: "Trade Secretary Manuel Roxas said that all American banks were likely to follow the lead of First Union Bank of Delaware."

Senator J. Osmeña. Well, Mr. President, I am informed—because some people came to talk to me—that apparently the arrangement, as far as the Bank of Philippine Islands is concerned, is that certain privileged individuals are allowed to issue checks printed with the name of the Bank of Philippine Islands that are payable by the First Union Bank of Delaware. So, these individuals—I am not clear—have either accounts in the Bank of Philippine Islands and the Bank of Philippine Islands in turn deposits the money in the First Union Bank, or they have accounts in the First Union Bank. I am not sure. But has the gentleman come across this, or has the Bangko Sentral come across this?

Senator Pangilinan. I have not come across this, Mr. President. In our discussions with the officials of Bangko Sentral ng Pilipinas, they have not made mention of this. They are not aware.

Senator J. Osmeña. The gentleman is not aware if the deposits of the Bank of the Philippine Islands in the First Union Bank of Delaware are part of our dollar deposits or foreign...

Senator Pangilinan. I am not aware, Mr. President.

Senator J. Osmeña. Because my attention was called. This was admitted to me. Of course, he admitted this to me because we are friends, and I promised not to divulge him. But he said that that is the reality, that a very select group of clientele are issued checks by the Bank of the Philippine Islands. He did not say clearly, but when I looked at the checkbook, it did not bear the name, because normally a checkbook bears the name of the account holder. It looked like a draft of the Bank of the Philippine Islands, but then a private person could draw money against that account.

That is why I am wondering whether in effect this First Union Bank of Delaware may not have let the cat out of the bag on certain

violations of Central Bank rules by some of our banks here in maintaining an account like that. But I would like the Central Bank, the Legal Department head sitting there to look into this, whether or not the Bank of the Philippine Islands does have authority from the Central Bank to do this particular activity.

And now, Mr. President, we come to the bill proper. I have with me working draft No. 15. I understood from the earlier interpellations or intervention of Senator Angara that they were going to prepare a third draft, further reducing this. So, I guess, I will have to wait for that draft. I will not interpellate on the basis of this draft. I will yield the floor with the reservation that I will interpellate on the basis of the second revision. I have lots of questions on this draft and it is useless to interpellate if this is not going to be the final version.

Thank you very much, Mr. President.

Senator Pangilinan. Thank you, Mr. President.

It was a privilege to have been interpellated by the chairman of the Committee on Finance.

The Presiding Officer [Sen. Flavier]. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, for the continuation of the interpellation, I move that we recognize Senator Osmeña III.

The Presiding Officer [Sen. Flavier]. Sen. Sergio R. Osmeña III is recognized.

Senator Osmeña III. Mr. President, there is a request by my esteemed cousin from Cebu for an adjournment because the new draft authored by the senator from Quezon and Aurora has not yet been finished.

Senator Pangilinan. Mr. President, may we request a one-minute suspension.

Senator Drilon. Mr. President.

The Presiding Officer [Sen. Flavier]. Senator Drilon before we have a ...

Senator Drilon. Before that, Mr. President, Senator Angara's amendments will come after we close the period of interpellations. Our agreement is that we continue with the September 25 working draft after which we close the period of interpellations and Senator Angara will introduce the amendments proposed.

Thank you, Mr. President.

The Presiding Officer [Sen. Flavier]. Does the gentleman still call for one minute suspension of the session?

Senator Osmeña III. It is a joke only, Mr. President.

Senator Pangilinan. I withdraw that request, Mr. President.

The Presiding Officer [Sen. Flavier]. Please proceed.

Senator Osmeña III. Mr. President, would the distinguished cosponsor yield for a few questions?

Senator Pangilinan. Willingly, Mr. President. It is also a privilege to be interpellated by Sen. Serge Osmeña.

Senator Osmeña III. Well, thank you very much, Mr. President. I shall try to be nice, unlike the secretary of Justice who will not be nice to one of our colleagues. *[Laughter]*

Mr. President, I have been listening quite patiently to the interpellations for the past three days on the anti-money laundering bill. As principal author, I am certainly interested in its passage. My fear is that we may not pass a bill that will be effective in curbing crime but a bill that will only seek to please a foreign outfit called the Financial Action Task Force. So, maybe, since the gentleman has been answering the questions on the floor along with his cosponsor, the senator from Zambales, would he like to sum up for the record and for the members of this Chamber why all the fear about passing an anti-money laundering law?

Senator Pangilinan. The fear of passing rather than not being able to pass?

Senator Osmeña III. Of passing. The way it was presented, written, and the committee report as filed with the Senate Secretariat.

Senator Pangilinan. I believe, Mr. President,—I mentioned this earlier—that there are always conflicting interests in respect to a particular piece of legislation. There will always be interests that have to be balanced. I think in this respect, if on the one hand the objective of the bill is to fight crime, is to be effective in combating criminal activity, certain individual rights—I would like to think—will be affected. And such individual rights in this case would be the right to privacy. So between the police power of the State to enact laws that will address a criminal activity and the right of the individual—his right to privacy—I think this is where the fear or the source of tension lies.

Senator Osmeña III. Well, let us talk about the right to privacy, Mr. President. I am not a lawyer and the distinguished senator from Quezon City is a lawyer. In a democracy, do individual citizens not give up part of their rights in favor of the State in order to maintain order in society?

Senator Pangilinan. That is correct, Mr. President. A valid exercise of police power would, in fact, influence or affect individual citizens.

Senator Osmeña III. And since this bill or variants thereof are practically enforced in most countries of the world in different types of regulations or laws or statutes, has the distinguished senator come across similar conflicts of interest in his research in those other countries where these laws have been passed?

Senator Pangilinan. Yes, Mr. President. In fact, as I mentioned earlier, when we were in the Anti-Terrorism and Financial Investigation Seminar in Washington D. C. on the first week of August, we were given some materials on the issue of whether or not money laundering and the law itself are invasions of privacy, whether accessing of bank records would, in effect, be invading the individual's right to be protected from the strong arm of the law, so to speak.

So, yes. In the US, it is a continuing discussion, although, of course, in its jurisdiction, it has an anti-money laundering law in place for almost 20 years now which has been amended on several occasions.

Senator Osmeña III. Let us talk about money laundering without first touching on the topic of the freezing of assets and the opening of bank accounts.

Is a law against money laundering not a good thing in itself?

Senator Pangilinan. Yes, it is, Mr. President.

Senator Osmeña III. That is because by the very nature of its term, money laundering is laundering of profits from illegal activities. Am I correct?

Senator Pangilinan. The gentleman is correct, Mr. President.

Senator Osmeña III. Also, we are familiar with various practices like in the United States which never had a very strict bank secrecy law and where the Internal Revenue Service can access one's bank account without letting him know to find out whether he has been misdeclaring his income in his annual income tax returns, whether he has been engaging in tax fraud and/or other related crimes, which is why I think it has a better tax collection system over there because of its ability to enforce its tax laws.

Now, in this country, does the gentleman feel we are anywhere close to the US model as far as that is concerned?

Senator Pangilinan. As far as... I beg the gentleman's pardon?

Senator Osmeña III. As far as our tax collection efforts are concerned, as far as the powers that have been given to the BIR and the Department of Finance to collect taxes are concerned, have we been as effective as the United States in this regard?

Senator Pangilinan. Mr. President, in that respect, I would say no. If we are to compare how the United States has been able to enforce its laws, how it has been able to implement its anti-money laundering laws, the Internal Revenue Service being effective...

Senator Osmeña III. I am not talking about money laundering. I am talking about collecting the proper income taxes.

Senator Pangilinan. Yes, Mr. President. About income taxes, I believe that the United States has been far more superior in its capacity and capability compared to ours.

Senator Osmeña III. Well, when we compare the numbers—what is the term for it?—its tax efficiency effort or its tax collection effort would be in the nature of what? About 32 percent to 33 percent of gross domestic product?

Senator Pangilinan. Mr. President, I am vaguely familiar with the statistics.

Senator Osmeña III. And our country would be?

Senator Pangilinan. Much, much less, Mr. President. Tax collection efficiency. I think that is the term.

Senator Osmeña III. And ours is around 12 percent to 15 percent, probably one of the lowest in Asia? Does the gentleman know or realize that the main reason for this is, it seems that in this country, our laws are structured in such a way that it is the BIR that must prove that we did not earn the money legally rather than the individual taxpayer who must prove that he earned it legally? So since the burden of proof is on the accuser here, which is the government, it makes it certainly very, very difficult to collect taxes on that basis.

While in the United States, if the IRS sees Mr. Juan dela Cruz or Mr. John Smith living in a US\$5-million mansion, it will automatically check all the past income tax returns of John Smith and may knock on his door and say, "Mr. John Smith, all your past returns do not justify your being able to financially afford such a house. Could you please tell us how you were able to afford to pay for that house?" which makes it much easier for the IRS to catch tax cheats.

Mr. President, in this country, the gentleman mentioned that there are conflicting interests. Would he like to define, just in general terms, what or who compose these conflicting interests?

Senator Pangilinan. Earlier, Mr. President, of course, the interest of the State and the interest of the individual would in certain respects have some degree of conflict, considering that in the area of privacy or freedom for that matter, the individual would like to have as much freedom as possible. But on the other hand, too much freedom may resort or may result in what we call anarchy or chaos, perhaps. Therefore, the State is interested in curtailing certain freedom to ensure that there is order in our society. So that would be one particular interest or one particular conflict of interest.

Senator Osmeña III. Can we be a little bit more specific and narrow this down? Would the concern come from people who have been used to evading taxes and do not want their accounts opened?

Senator Pangilinan. Definitely, in that respect, considering a tax evader is a criminal, he is committing a crime, the interest of a tax evader and the interest of the State to be able to collect the right taxes would also be a conflict of interest in that respect.

Senator Osmeña III. Let me see. How many tax evaders would there be in this country, Mr. President?

Senator Pangilinan. Given the tax base, I have no figures, Mr. President. I do not have any figures as to how many tax evaders there are.

Senator Osmeña III. Let me help the gentleman narrow it down.

There are about 15 million families in this country. Let us call each family a prospective tax filer, although there are many families that have two or three income earners. How many actually file income tax returns in this country?

Senator Pangilinan. We do not have the figures at the moment. But I would assume that many of the employees who are in the rank and file whose taxes are withheld are clearly the individuals or citizens who pay their taxes.

Senator Osmeña III. Would the staff coming from the Department of Finance give us a general idea as to how many individuals file their income taxes in our country?

Senator Pangilinan. I am informed, Mr. President, that the representatives from the Department of Finance have already left.

Senator Osmeña III. I see that they are not that interested in passing the anti-money laundering bill.

If the Presiding Officer is aware that the Department of Finance officials have since left and we are unable to get the needed information to make a good judgment on some of the provisions of this bill, perhaps, they may be warned that we may not pass this bill at all.

Senator Pangilinan. Mr. President, before the secretary of Finance himself left earlier, he appealed to this representation to try our very best to do what we can in order to come up with a good bill. So I think he is very much interested.

Senator Osmeña III. Let me just venture a guess. I remember from past hearings of the Committee on Finance that there are about six to seven million filers a year and most of them, of course, maybe about five million to five-and-a-half million are salaried employees. And as a matter of fact, Mr. President, of the P350 billion to P450 billion—depending upon which numbers we believe—collected by the Bureau of Internal Revenue, 60 percent is paid by salaried employees, and the other 40 percent is paid by the very rich, moderately rich individuals.

So, Mr. President, what I am trying to point out is that perhaps, only a very few, a very, very few, compared to the total number of families in this country or to the total number of tax filers are concerned about the bank secrecy or the weakening or the loosening of our bank secrecy law. Is that also the indication the gentleman got from those who have been calling him up, Mr. President?

Senator Pangilinan. I believe so. A minority but a very vocal minority.

Senator Osmeña III. A very powerful minority?

Senator Pangilinan. A powerful minority...

Senator Osmeña III. A very influential minority?

Senator Pangilinan. A very influential minority would...

Senator Osmeña III. Now, tell me, Mr. President, if we are able to collect say, P100 billion more—I remember some numbers being thrown out that every year we fail to collect about P2 billion to P300 billion in income taxes because of weak enforcement of tax laws because of the Bank Secrecy Act—an additional P100 billion out of the P300 billion, will that not benefit 75 million Filipinos most of whom are poor?

Senator Pangilinan. Definitely, Mr. President, because we do need...

Senator Osmeña III. So should it not be a policy of our government and of this Chamber that the greatest good for the greatest number being the end—all of a working democracy, we should try to put in place laws that would make sure that the proper taxes...I am not talking about making people pay more than what they owe. I am just talking about making the rich pay what they really owe because they have been getting away with murder all these past years. Would the gentleman agree with us, Mr. President?

Senator Pangilinan. I agree, Mr. President.

Senator Osmeña III. Thank you for that response. Therefore, Mr. President, I come to a specific question. Why is tax evasion not one of the acts or omissions or series or combinations thereof that is defined under the term "unlawful activity" in this proposed bill?

Senator Pangilinan. Mr. President, in the original bill, many moons ago, many versions ago, the tax evasion was one of the unlawful activities identified. But as we went through the deliberations during the public hearings, as well as the committee meetings, there was a position from some sectors for fear, as the popular term or the well-known line, of "harassment."

Senator Osmeña III. All right. Let us talk about harassment. In what nature, in what form could this harassment come about?

Senator Pangilinan. Harassment in the form of... well, hypothetically, if tax evasion is included as an unlawful activity and perhaps the painful experience of some of our citizens in the hands of some tax examiners or some employees of the BIR, perhaps, this could have given rise to that fear, that their painful experience with some corrupt—I am not saying all but some—officials of the Bureau of Internal Revenue may have given rise to this particular fear.

Senator Osmeña III. Now, let us follow that line of thinking. The sponsor says that some of them may have had painful, unfortunate experiences with BIR examiners. Why did they not file administrative cases against those BIR examiners?

Senator Pangilinan. To venture a guess, perhaps they felt that filing of cases would be long and tedious, that it would be a waste of time, and therefore, to avoid that, they just suffered in silence.

Senator Osmeña III. No. I doubt that very much, Mr. President, because I think that if they file, they will see that more skeletons will be dug up.

Senator Pangilinan. That is also a possibility, Mr. President.

Senator Osmeña III. There may be instances—but I have not yet seen personally any instance—wherein an individual businessman actually filed a case against the BIR for harassment.

Therefore, I would like to know how they can use that and how the committee can accept that as a valid excuse when there have been no cases filed for harassment against any BIR employee. It might be unfair to the BIR, but there may be more than meets the eye with that type of argument.

Senator Pangilinan. Mr. President, there are valid points being raised by Senator Osmeña. I agree with him in certain respects. However, given the discussions and deliberations not only during the public hearings, together with the pre-bicameral meeting, the informal meeting with our House counterparts, tax evasion is one specific area that was raised as a possible objection.

However, having said that, there were also other items, other unlawful activities that were removed from the original bill. I think the inclination is because given the, perhaps, “revolutionary” implications of anti-money laundering and the access to bank records, the threat and the fear, the inclination was to come up with a bill that is simpler, more digestible—at least, from my point of view—a bill that we would like to slowly craft. We come up with a few unlawful activities now. As we go along, as we test the law—assuming it is enacted—and we feel it is inadequate, we continue to improve on the law by amending it. I felt that perhaps that would be a good approach.

So in that respect, that is perhaps why we simplified the bill. There are efforts to simplify the bill and limit the unlawful activity to exclude tax evasion.

Senator Osmeña III. Mr. President, all these excuses, including the euphemism to simplify the bill, stem from one fear, and these come from quarters that do not want their bank accounts open to all. *Kaya maski anong gagamitin nilang dahilan*, it just stems from that fear.

Now, Mr. President, if everybody just pays his taxes properly, believe me, this bill would have been passed in two hours. Resistance to this bill comes from those who have something to hide.

So my basic question is: Do we protect and continue to coddle those who have something to hide? Or are we going to make a move in behalf of the poor people of this country who need farm-to-market roads, who need the postharvest facilities, who want sanitary landfills, who want no traffic, who want to cure the pollution of the air that they breathe, and who want more schools and better education? Do we not want to make a move in their behalf?

Senator Pangilinan. Definitely, Mr. President, and I welcome such moves to be able to address greater revenue for the government, to be able to be more effective in addressing the basic needs of our citizens.

Senator Osmeña III. All right. Let me also ask the sponsor to walk us through the procedure or the process that a depositor will encounter if this bill was passed the way it is drafted.

Before I go to that, Mr. President, is the distinguished chairman aware that the crimes that have been covered have been lessened from 31 crimes in the original draft proposed by the special task force put together by the Bangko Sentral, the UP Law Center, the Department of Finance, to 17 crimes in the first committee report, down to four crimes in the working draft that I am interpellating the gentleman on, and probably down to one or two tomorrow? Is the chairman aware of that?

Senator Pangilinan. Yes, Mr. President. I am aware.

Senator Osmeña III. Then, what is the real purpose of the committee for having bothered even to sponsor this bill? Is it to please the FATF? Is it to cure the defects in our tax collection efforts? Is it to help reduce crimes in our own country? Or is it for *pakitang tao*?

Senator Pangilinan. Mr. President, during my cosponsorship speech as chairman of the Committee on Justice and Human Rights, my committee’s concern is being able to deal with or address the issue of criminal activities in our country, the issue of narcopolitics, the issue of kidnap for ransom. And this is precisely why I supported the passage and continue to support the passage of this anti-money laundering bill.

Senator Osmeña III. Mr. President, because of the distinguished sponsor’s concern for bringing down the level of crimes in this country, why is it that piracy was removed?

Senator Pangilinan. Mr. President, along with my desire to combat crimes or deal with criminal activities, is my acknowledgment that the legislative process requires of us to give and take, so to speak, if we are to pass a bill.

Senator Osmeña III. That is good. I like that. In this case, who was giving and who was doing the taking?

Senator Pangilinan. If I had my way, Mr. President, I would prefer a list of unlawful activities that will be longer than what we have now with the working draft. But, again, like I said earlier, I acknowledge that the legislative process requires a give-and-take.

Senator Osmeña III. The same is true with forgery. That is why it was dropped from the list of unlawful activities?

Senator Pangilinan. Yes, Mr. President. From 21 to 17, down to four.

Senator Osmeña III. The same with bribery?

Senator Pangilinan. That is right.

Senator Osmeña III. Bribery was dropped, and malversation.

Senator Pangilinan. That is correct.

Senator Osmeña III. Is kidnapping still there?

Senator Pangilinan. It is.

Senator Osmeña III. Slavery.

Senator Pangilinan. It has been removed.

Senator Osmeña III. Slavery has been removed. What about robbery?

Senator Pangilinan. It was also deleted.

Senator Osmeña III. Theft, under Articles 308 to 310 of the Revised Penal Code?

Senator Pangilinan. It has been deleted.

Senator Osmeña III. Swindling.

Senator Pangilinan. Also, it has been deleted, Mr. President.

Senator Osmeña III. Corruption of minors and white slavery, which is prostitution, I understand.

Senator Pangilinan. It has been deleted, Mr. President.

Senator Osmeña III. We have others like smuggling.

Senator Pangilinan. It has also been deleted, Mr. President. And illegal gambling.

Senator Osmeña III. Are we sending out a message that it is all right to engage in these activities because in the latest major anti-crime bill which this Chamber is considering, out of the 31 crimes, we removed 27 and we are left only with four?

Senator Pangilinan. At first glance, indeed it may look like this way, not because we have limited the list of unlawful activities or that we are going soft on criminal activities. However, all these unlawful activities listed that have been deleted are still, of course, punishable under the Revised Penal Code and other special laws.

Senator Osmeña III. Sure. But if we cannot open their bank accounts to find the evidence, which is precisely why we are passing this anti-money laundering bill because it is pretty difficult to get the evidence against drug lords, against kidnapers, against those who violate the Anti-Graft and Corrupt Practices Act, we are still going to keep it difficult for our law enforcement agencies, for the BIR and the tax collection agencies to collect because they cannot access the bank account to determine whether somebody has been depositing sums out of proportion to his validly earned income.

Senator Pangilinan. I agree, Mr. President. However, allow me also to interject. After having gone through several other anti-money laundering laws of other countries, it came to my attention that the anti-money laundering laws of the United States, which I believe was first enacted in 1984, first began with a shorter list of unlawful activities. I am speculating here, but my appreciation of the history of anti-money laundering in the US is that perhaps, as they went along and found the law effective in certain areas but ineffective in other areas, they went on to amend the law. I believe there have been like more than three or four amendments since 1984.

I am saying this because perhaps they allowed the law to evolve to its present state which made it more palatable and acceptable in their jurisdiction. My fear here—and this is why I fell in certain respects that it would be good to simplify it—is because if we do not simplify it, then we might have that public clamor or public reaction that would render the law even more difficult to implement.

Senator Osmeña III. By public, does the gentleman refer to the handful, powerful influential individuals? Or does the gentleman refer to the majority of the Republic of the Philippines? I will guarantee the gentleman that there will be no public outcry. As a matter of fact, I will guarantee the gentleman the opposite. There will be a public outcry if we pass the bill the way it is now drafted.

Senator Pangilinan. I would like to think that we are addressing competing interests, and we will have to try our very best to cater to the competing interests. That is my understanding of how we may be able to craft a bill that will eventually be acceptable to the different sectors.

Senator Osmeña III. I do not know whether I should call it fortunate or unfortunate, and I do not want the gentleman to take offense that he termed it “competing interests.” Because if the interests of the rich are competing with the interests of the poor, I think the members of this Chamber should side with the poor.

Senator Pangilinan. And I agree, Mr. President.

Senator Osmeña III. I am glad. So the gentleman may accept an amendment to make tax evasion one of those registered under unlawful activity.

Senator Pangilinan. It will be the pleasure of the Senate. If it were up to me, Mr. President, I would not mind having tax evasion back because that was what was in the original version.

Senator Osmeña III. What about extortion? Should extortion also not be one of the unlawful activities under money laundering?

Senator Pangilinan. It was not included in the original bill, Mr. President.

Senator Osmeña III. I think extortion would fall under robbery, Articles 294 to 296. I already asked that question.

May I move on to just another point, Mr. President. Earlier, the distinguished sponsor was explaining that the United States Anti-Money Laundering Law evolved gradually. But I think this may be because the gentleman is confusing money laundering with bank secrecy.

In the United States, there was never any problem with bank secrecy. The IRS could always have access to the bank. So the example that the distinguished sponsor gave is not material.

In the Philippines now, because for the first time we have an opportunity to properly address the problem of bank secrecy and how it impacts on our inability to collect taxes and how it even indirectly promotes crime by protecting the fruits of crime, we tend to equate money laundering with bank secrecy.

But, Mr. President, I was a resident of the United States—along with, I think our distinguished colleague here from Tarlac—for a while from 1977 to 1991. And there was never any bank secrecy law there that disallowed the IRS from looking into my account without even telling me. I knew they did it on two or three occasions, especially when the previous regime, the Marcos regime, asked the Reagan Administration to run after the exiles.

Senator Pangilinan. That is correct, Mr. President. In fact, they say that the Bank Secrecy Act of the United States term is a misnomer because there are more requirements for disclosure rather than keeping secret the information.

Senator Osmeña III. Bank secrecy in the United States, Mr. President, only deals with the bank officers being unable to divulge one's account to non-government agents. But the treasury department, the internal revenue service, the customs department, I believe even the INS, the Immigration and Naturalization Service,

the Secret Service, all have the right to look into one's account without letting him know. I might be wrong on this. I do not know how widespread it is.

So bank secrecy in the United States has to do with a private citizen asking how much money Mr. Kiko has in that account. They are not allowed to divulge that to the public. But they may even be able to divulge it to credit-rating agencies just by giving an idea of what his average deposit would be.

So, they would say, Mr. Pangilinan has an average deposit in the lower five digits, or in the moderate five digits, or in the high five digits which is about US\$80,000 to US\$90,000 in order to help him probably obtain a credit card or a bank loan.

So, Mr. President, that is not a fair comparison.

I would also like to know if this Chamber is aware that prior to the passage of the 1993 Bangko Sentral ng Pilipinas Law, the Monetary Board could, on majority vote, open up any account.

Senator Pangilinan. I am not aware of that, Mr. President.

Senator Osmeña III. I think that the staff of the Bangko Sentral ng Pilipinas is beside the gentleman. And the old Central Bank Act allowed the Monetary Board to open up any account in spite of the Bank Secrecy Law.

Senator Pangilinan. I have just been informed here, Mr. President, that, yes, that was possible to establish fraud and irregularities.

Senator Osmeña III. Therefore, Mr. President, we did not have any bank runs there. I know we are being threatened by this intermediation of deposits by those who are interested in not including many of these crimes that originally fell under the term "unlawful activity." *Pero ang sinasabi ko po*, we already had given the power to the Monetary Board before 1993, and there was never any problem. Not pre-Marcos years, not during the Martial Law years, and not during the Cory Aquino years, and I do not see why we would have that problem again. Perhaps, it would be good for us to explain to the public it is not going to be that easy to open up a bank account. It would take a vote of the Monetary Board plus the members of the, what do we call it, the FIU?

Senator Pangilinan. The Financial Intelligence Unit.

Senator Osmeña III. The Financial Intelligence Unit to open up a bank account and I doubt if it will even open up more than one or two bank accounts a year. I am willing to bet on that.

Mr. President, it is 7:05 p.m. I still have not even begun on the major part of my interpellation. I believe we are celebrating tonight

the birthday of a distinguished colleague, Senator Angara. May I ask that I suspend my interpellation at this time to continue at such time as the Chamber may wish tomorrow.

SUSPENSION OF SESSION

Senator Drilon. I move that we suspend the session for one minute, Mr. President.

The Presiding Officer [Sen. Flavier]. The session is suspended for one minute, if there is no objection. [*There was none.*]

It was 7:05 p.m.

RESUMPTION OF SESSION

At 7:16 p.m., the session was resumed.

The Presiding Officer [Sen. Flavier]. The session is resumed.

Senator Legarda Leviste. Mr. President, I move that we recognize Sen. Blas F. Ople for the continuation of the interpellation; and the cosponsor, Sen. Francis N. Pangilinan.

The Presiding Officer [Sen. Flavier]. Senators Ople and Pangilinan are recognized.

Senator Ople. Mr. President, will the sponsor yield for a few questions?

Senator Pangilinan. Willingly, Mr. President, to the gentleman from Bulacan.

Senator Ople. Mr. President, this is a crazy law but I agree that it is necessary. But will the sponsor agree that September 30 is not a mandatory but merely a directory deadline for the Senate?

Senator Pangilinan. I agree, Mr. President. It is directory, not mandatory.

Senator Ople. Will he agree that it may diminish the indignity facing the Senate with a September 30 deadline if we allow the free debates to continue until October 1 or October 2?

Senator Pangilinan. Mr. President, if that is the reality that we have to face, I will accept. However, it would be, I think, a win-win solution if we are able to complete and enact or pass this bill given the September 30 objective.

Senator Ople. Mr. President, in the Senate caucus the other day, the Senate President, the Hon. Franklin M. Drilon, agreed to an amendment that would, in effect, say probably in

the Declaration of Principles of this bill that the rules of confidentiality embodied in Republic Act No. 1405 shall be maintained as a matter of general principle but allowing for certain exceptions to be mentioned in the law. This is, of course, at the very heart of our debates—to what extent will this protection of Republic Act No. 1405 be stripped from the ordinary depositors in our banks.

Will the sponsor agree to the amendment that would probably appear in the Declaration of Principles to the effect that the rules of confidentiality embodied in Republic Act no. 1405 shall be maintained as a matter of general principle, allowing for certain exceptions?

Senator Pangilinan. Mr. President, it would be of interest to note that as a general rule, based on my own readings of anti-money laundering laws in other jurisdictions, there are still confidentiality of bank records. The Swiss law says that. I believe the Japanese law says that and the law of Thailand also says that. That was the general rule. Confidentiality of bank records prevails with certain exceptions. And yes, we would be more than willing to include that as part of the amendment.

Senator Ople. Yes. And consistent with that, Mr. President, will the sponsor agree to build into the law certain penalties for violations of confidentiality committed by the covered institutions in the covered transactions?

Senator Pangilinan. Yes, Mr. President. There are existing provisions in the bill, as proposed, on violations of confidentiality. If the gentleman from Bulacan feels that we can improve on the particular provision in terms of penalties, we are more than willing to accept that.

Senator Ople. Mr. President, this is not an original observation. I heard it first from Sen. Joker P. Arroyo in our caucus. He says that there is a tendency in this bill to reverse certain fundamental principles of the Constitution such as the presumption of innocence before the charge is proven in court. And the tendency of this bill, in spite of the most recent improvement in the shortened simplified version, still puts the liberties of our depositors at risk because of the fact that mere suspicion can put them under certain sanctions, legal sanctions, including the possibility of the assets being frozen. Will the sponsor welcome amendments that will mitigate these harsher provisions of the bill?

Senator Pangilinan. Mr. President, as chairman of the Committee on Justice and Human Rights, the constitutionally guaranteed rights of our citizens are of paramount interest, and I am sure the same is so for other members of the Senate. If the proposed amendments again will strengthen the law in its entirety, we have no objection.

Senator Ople. May I fall back on a technique now associated with Sen. Serge Osmeña III. I have been advised by some colleagues that there is a party some of us are pledged to attend. May I know if the suspension of the interpellation is acceptable provided that I will be able to continue my questions tomorrow, Mr. President? At what time? Yes, Senator Pimentel says at ten o'clock—nine o'clock. If that is acceptable.

As a result of a brief caucus on the floor, I am willing to ask the President to suspend the interpellation until nine o'clock tomorrow morning, with the consent of the sponsor.

SUSPENSION OF CONSIDERATION OF S. NO. 1745

Senator Legarda Leviste. Mr. President, with that understanding that the interpellations would continue tomorrow at nine o'clock, I move that we suspend consideration of Senate Bill No. 1745 under Committee Report No. 1. We would like to thank the distinguished sponsor for his patience in defending this important piece of legislation.

The Presiding Officer [Sen. Flavier]. There is a motion to suspend the interpellations on Senate Bill No. 1745 under Committee Report No. 1. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Legarda Leviste. Mr. President, I move that we suspend today's session until nine o'clock tomorrow morning, Thursday, September 27, 2001.

The Presiding Officer [Sen. Flavier]. Is there any objection? *[Silence]* There being none, the session is suspended until nine o'clock tomorrow morning, Thursday, September 27, 2001.

It was 7:25 p.m.

Sept 27



REPUBLIC OF THE PHILIPPINES
CONGRESS OF THE PHILIPPINES
SENATE

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SEPT. .

RECORD OF THE SENATE

THURSDAY, SEPTEMBER 27, 2001

RESUMPTION OF THE SESSION

At 9:40 a.m., the session was resumed with the Senate President, Honorable Franklin M. Drilon, presiding.

The President. The session is resumed.

Senator Flavier. Mr. President.

The President. The Majority Leader is recognized.

BILL ON SECOND READING

S. No. 1745—Anti-Money Laundering Act of 2001
(Continuation)

Senator Flavier. Mr. President, I move that we resume consideration of Senate Bill No. 1745 as reported out under Committee Report No. 1.

The President. Is there any objection? [*Silence*] There being none, resumption of consideration of Senate Bill No. 1745 is now in order.

Senator Flavier. Mr. President, for the next interpellator, I move that we recognize Sen. Ka Blas Ople.

The President. Sen. Blas F. Ople is recognized for the period of interpellations; and the principal sponsor, Sen. Ramon B. Magsaysay Jr., is likewise recognized.

Senator Ople. Will the sponsor yield for a few questions, Mr. President?

Senator Magsaysay. Willingly, Mr. President, for questions from the sage of Bulacan.

Senator Ople. Now, Mr. President, the prospect of the Congress passing an anti-money laundering bill has created some urgent concerns on the part of a very substantial number of our citizens. To what extent will this bill strip bank depositors of the protection of their privacy under Republic Act No. 1405, which has been a source of strength for our banking system?

Since the Central Bank Act of 1949, there has been a profound change in the way most of our people handle their money. There was a time when it was taken for granted that if one had some surplus cash, he kept this under his pillow or put it in bamboo tubes for his security. But over a period of three decades, there has been a profound cultural change, and many of our people have learned to put their money in banks, thus helping capital

formation for economic development. It is possible that this source of strength in our banking system may be depleted if we have to do away with bank secrecy under Republic Act No. 1405.

Is the sponsor therefore amenable to an amendment that will reaffirm the policy on confidentiality embodied in Republic Act No. 1405, which shall be maintained as a general principle allowing for the rare exceptions specified in the bill; and that, violations of confidentiality by covered institutions shall subject the violators, in the case of individuals, to administrative, civil and criminal proceedings; and the offending public officials to temporary or perpetual disqualification from holding public office; and that, this liability shall continue to exist even after they leave public service?

Senator Magsaysay. Mr. President, the explanation of the gentleman from Bulacan is well-appreciated. The sponsor and the cosponsor have just decided that such proposed amendments that he may offer during the period of amendments will be acceptable.

We would like to note that Republic Act No. 1405—the Bank Secrecy Law—which was passed in 1955, in almost 46 years since 1955, only 14 cases were referred based on the law. That means that it has been rarely used and has served its purpose. We are not going to repeal the law. We are just putting some amendments. In case the courts still are going to decide for a court order to open the account, that would still be part of this anti-money laundering law that we are crafting. We are open to the gentleman's amendments.

Senator Ople. Mr. President, in the course of the interpellations by some of our colleagues, especially Sen. Vicente C. Sotto III, yesterday, urgent concern also was expressed on the possibility that this anti-money laundering bill might be used for the persecution of a certain class of people in our country, referring to the case of Sen. Vicente C. Sotto III; to the members of the Opposition being subjected to political harassment. May the sponsor respond to that concern?

Senator Magsaysay. That is a genuine concern, Mr. President. That is precisely why the committee and the coauthors have agreed to include in the new working draft—the substitute bill—to remove the political factor by removing the council that has the secretary of Finance and the SEC and just have the governor of the BSP as the overseeing individual of a new office to be called Financial Intelligence Unit (FIU).

The possibility of individuals along the whole process to make use of information for malice or political or other bad faith to destroy the individual's reputation, there are penal provisions that should answer this concern.

Senator Ople. Thank you for that, Mr. President.

Corollary to that, Mr. President, will the sponsor be amenable to a restatement in this law under the "Declaration of Policy" reiterating certain constitutional principle such as the principles that a person is presumed innocent until proven guilty, and that in all proceedings, the burden of proof must be borne by the accuser and not the accused?

Senator Magsaysay. That may be favorably considered as part of our declaration of policy or in other provisions that may fit that safeguard.

Senator Ople. There is also no objection to an amendment that will require the supervising authority, in this case the Bangko Sentral, to observe certain legal standards approximating the concept of probable cause observed in preliminary investigations by the prosecution in court cases, and this is for the protection mainly of the innocent depositors.

Senator Magsaysay. All these can be included in our amendments that we will consider. We are very careful of the rights of the individuals. We will certainly accept such safeguards.

Senator Ople. There is also nothing in this law that will bar aggrieved parties, including third parties, from access to the Supreme Court's power of judicial review.

Senator Magsaysay. There is no bar. In fact, the aggrieved party can initially make use of the administrative process and explain his account to the FIU or the Monetary Board. But he can also go to the courts.

Senator Ople. Yes, Mr. President.

Senator Magsaysay. We have to understand that the exercise is on information and investigation. There is no criminal act yet. It is just like an initial look into until such time as indeed after the 20 days' freezing of asset, within that time frame, when the board goes to court for a court order to open the account. That is when it will be judged whether indeed there is dirty money or not. So, all the process is purely information and intelligence gathering. There is no crime during this whole process.

Senator Ople. Mr. President, that is a reassuring statement. The trend of all my questions, of course, is to see that certain safeguards are built into this law that will protect the ordinary citizen who deposits his money in banks. This will also require the provision in the law that will build accountability into the responsibilities and powers of the Bangko Sentral and the Monetary Board as the supervising authority.

Will the sponsor consider an amendment to the effect that the abuse of power by the Monetary Board and the governor of the Central Bank as the supervising authority will put into effect certain sanctions such as the dismissal and disqualification from public office of such officials?

Senator Magsaysay. This is acceptable, Mr. President. In fact, in the BSP Charter Law, breach of responsibilities among the board and the personnel have its own sanctions. In this measure, there are also penal provisions on those even among the Monetary Board. There are also penal provisions. So if any or all the members of the Monetary Board or the staff of the FIU would do something that is not just and malicious or tending to put blame on an innocent holder of an account, then there are provisions that will apply to this.

In the Bangko Sentral Charter in Section 16, the New Central Bank Act, R.A. No. 7653, it says,

Members of the Monetary Board, officials, examiners and employees of the Bangko Sentral who willfully violate this Act or who are guilty of negligence, abuses or acts of malfeasance or misfeasance or fail to exercise extraordinary diligence in the performance of his duties shall be held liable for any loss or injury suffered by the Bangko Sentral or other banking institutions as a result of such violations, negligence, abuse, malfeasance, misfeasance or failure to exercise extraordinary diligence.

Senator Ople. These are provisions in the General Banking Law, Mr. President. Will it be superfluous to repeat these sanctions in this bill?

Senator Magsaysay. I do not think it is superfluous, Mr. President. If the good senator will put it as an amendment, we do not mind accepting this.

Senator Ople. Yes. I just want to observe that in the New Central Bank Law, which I helped draft as vice chairman of the Committee on Banks, Financial Institutions and Currencies at that time, there is a provision for requiring the appointment of the governor of the Central Bank to be submitted to the Commission on Appointments. This has not been implemented as part of the accountability of the highest officials of the Bangko Sentral. This is still a pending question in the Commission on Appointments, together with the question of the confirmability of the highest officials of the Philippine National Police. A provision which also appears in the Local Government Code and in the Philippine National Police Law. As I said, these are pending questions in the Commission on Appointments, and in particular, Senator Pimentel has been pressing for the implementation of these legal provisions.

I want to reiterate my own position that the governor of the Central Bank in the future shall be subject to confirmation by the Commission on Appointments. This is all part of the process of accountability to put the necessary safeguards so that the powers of the Central Bank are utilized in a very sound and responsible manner, and are never used for political purposes or for excessive bureaucratic interference in the operation of our banking system.

Will the sponsor welcome amendments to that effect?

Senator Magsaysay. Is the distinguished senator saying that he will put amendments here that will require the approval of the Commission on Appointments?

Senator Ople. No. That will be saved for a future debate, Mr. President. It is in the Commission on Appointments right now and I think, it has its own jurisdiction over this matter.

Senator Magsaysay. Yes, Mr. President.

Senator Ople. I have summarized my proposed amendments as add-ons to the Angara amendments to simplify matters, Mr. President.

I think I have exhausted the matter of safeguards in the meantime. I am willing to yield the floor to the next interpellator, Mr. President.

Senator Magsaysay. Thank you very much, Mr. President. The points are well-taken.

The President. The Majority Leader is recognized.

Senator Flavier. Mr. President.

POINT OF ORDER

Senator Osmeña III. Point of order, Mr. President.

The President. What is the point of order of Sen. Sergio R. Osmeña III?

Senator Osmeña III. Mr. President, the distinguished senator from Bulacan has been proposing amendments to the Angara amendments. I do not have the Angara amendments.

The President. There are no amendments yet. I assume this is a referral to a paper which Senator Angara passed on to the other senators last night. There is no Angara amendment.

MANIFESTATION OF SENATOR OPLE (To Immediately Furnish Senator Osmeña III with Angara and Ople Amendments)

Senator Ople. May I request that a copy of the Angara amendments plus the Ople amendments be furnished immediately the distinguished senator from Cebu.

The President. It is noted. The Majority Leader is recognized.

Senator Flavier. Mr. President, I ask that Sen. Gregorio B. Honasan be recognized for the next interpellation.

The President. Sen. Gregorio B. Honasan is recognized.

Senator Honasan. Thank you, Mr. President. Will the distinguished gentleman from Zambales and the Republic of the Philippines yield for some questions?

Senator Magsaysay. Certainly, to the very energetic senator from Sorsogon and the Bicol Region, Mr. President.

Senator Honasan. Thank you, Mr. President.

Mr. President, I would just like to echo the apprehensions of some of the individual members of this Chamber which, if properly addressed, would raise the collective level of confidence of this Chamber in finally passing an anti-money laundering bill.

I will begin with the apprehensions regarding the reporting system. Mr. President, when we define "unlawful activity" as the triggering mechanism for a subsequent examination of a probable cause for money laundering as a crime, are we confident in our ability to detect, monitor, prosecute and eventually establish the linkages between the predicate crimes and the crime of money laundering? Are the mechanisms in place that would allow us to establish expeditiously?

Senator Magsaysay. This is exactly what we are trying to put together in this measure, Mr. President. The "unlawful activities" that are described in our measure which have been reduced from 21 to about four or five will have to be referred to the Department of Justice as a precedent crime. But actually the triggering point is on the threshold of what could be considered as a potential source of dirty money—the crime—which at present is P1 million and then any unusual or complex movements on the covered transactions. We are not looking at the specific crime initially. It is just the action of an account or when an unusual deposit comes in without any credible purpose or origin underlying trade obligation, contract or economic justification, as mentioned by Senator Angara a couple of days ago, in the course of the ordinary business or unusually complex or large transactions. We do not

know yet if there is a crime. It is the financial movement of a certain account based on "know your customer" movement that could trigger a query.

At the outset, there is an alarm bell wherein the supervising authority—whether it is the SEC in case of a corporation, the IC, the Insurance Commission, or the BSP itself— will now make a decision whether there is reasonable doubt that this indeed might be a laundered money that has gotten into the accounting question. We do not know if there is a crime yet. But afterwards, it goes to the FIU that we were conceiving as the depository of information and data base which is under the BSP. So, that is the system of information and intelligence gathering.

The FIU means Financial Intelligence Unit. Incidentally, this is also used by the Department of Treasury in the United States.

Then the FIU will again look over this certain account and decide to reach judgment whether there is substantial evidence based on, at first glance, what the bank or the institution forwards to it. So, this is the process of information and intelligence gathering.

There is no crime imputed. It is just the unusual increase of an account or a new account that is deposited because the basis here is to "know your customer." That is always the frame word that we go back to— know your customer. So, if one is an old customer and the bank knows that he is a senator, a CEO, a working man or a working woman, the bank knows his capacity.

Let us say, his average monthly balance is P25,000 and suddenly he has a million. There must be something. Maybe, the branch manager might say: "Mr. Dela Cruz, it seems that you sold a property or a car. May we know because we are under this law. We are supposed to report any abnormal surge in your account."

So, Mr. Dela Cruz will show the deed of sale of his house and lot, or whatever he has sold. That is the process of information and intelligence gathering, Mr. President.

Senator Honasan. Thank you, Mr. President.

Senator Magsaysay. The Department of Justice will come in only when there is already a crime after so many layers of information gathering and decision-making.

Senator Honasan. Thank you, Mr. President.

I would like to go now to the strategic planning effort that was allowed to bear on what we have now—a decision to make— regarding the passage of an anti-money laundering bill.

Is it our impression that most of the inputs to the bill, as presently drafted, came from the Central Bank?

Senator Magsaysay. The real inputs came from the Swiss Law and the US Law on anti-money laundering. These were just put together by the inter-agency task force that put together a measure—the original bill of which is Senate Bill No. 1745—which put together some local conditions that we embedded in the inter-agency task force, which means the Bangko Sentral ng Pilipinas, the Department of Justice, Department of Finance, the Bankers' Association of the Philippines and the SEC. This is the inter-agency task force.

We mentioned the Bangko Sentral here because eventually it is the one going to oversee the FIU through its Monetary Board. Basically, government agencies and the Bankers' Association of the Philippines put together this measure based on the US Law and the Swiss Law on anti-money laundering.

Senator Honasan. And the lead agency is the Bangko Sentral ng Pilipinas?

Senator Magsaysay. It appears that way, Mr. President.

Senator Honasan. Mr. President, just as a matter of information. Were the agencies, like the NEDA, consulted so that we can also derive from their inputs about the net effect on our economy considering the rapidly developing situation?

Senator Magsaysay. The NEDA was invited, Mr. President.

Senator Honasan. Was national interest considered?

Senator Magsaysay. I am of the opinion that this is the overriding basis of putting together this measure. That national interest—the interest of our country, our people and our economy—are the overriding considerations.

Senator Honasan. Mr. President, with all due respect, I am sure that the distinguished sponsors and their committees have done a lot of hard work. But I ask this question in light of the growing perception that we are being stampeded into the passage of this bill by what some of our colleagues describe as a faceless, almost nameless entity that has practically infringed on national sovereignty.

Is this the gentleman's impression also, Mr. President?

Senator Magsaysay. At first glance, it looks like it is faceless and not bearing much interest as far as our national interest is concerned. But the FATF, the Financial Action Task Force, which is the "faceless" entity, is basically the group of seven advanced

countries, including Japan, European countries, Canada, the United States, and Australia which expanded to, at present, 31 countries.

So, when we look at the faceless FATF, we are looking at maybe 80 percent or even 90 percent of all the trade and exports we are working with. In other words, this is the rest of the globe. Because of the original seven, Japan and the US, over two-thirds of our trade and import and export are dealt with these two major countries of the FATF.

A cosponsor would like to interject, Mr. President.

Senator Pangilinan. Mr. President, just an interjection.

The President. Senator Pangilinan is recognized.

Senator Pangilinan. Thank you, Mr. President.

On the point raised by Senator Honasan that we are being...What was the term again?

Senator Honasan. Stampeded.

Senator Pangilinan. Stampeded. I believe this is not the case with this bill, Mr. President. The Philippines, for example, is signatory to the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. It was concluded in 1988 and came into force in November of 1990. We were a signatory to the Convention in 1988 and the Senate ratified this particular Convention in 1996. Included in one of the provisions of this particular convention is the need to adopt measures as may be necessary. If I may be allowed to quote: "To establish as criminal offenses under its domestic law when committed intentionally."

Section (b1) says: "The conversion or transfer of property knowing that such property is derived from any offense or offenses established in accordance with subparagraph (a), concealing or disguising the illicit origin of property or assisting any person who is involved in the same."

In other words, it is not entirely correct to say that we are being stampeded into enacting this particular law because we have, in fact, ratified this convention. The Senate has ratified this convention and, therefore, under International Law, it is our obligation to comply with the provisions in the said convention.

Senator Honasan. Thank you, Mr. President. I would also like to thank the gentleman from Quezon City and the Republic of the Philippines.

Mr. President, would we have any data on the history of money laundering in the Philippines as an important input to what should be an internal strategic planning process to be participated in by what the gentleman described as a multi-agency group?

Senator Magsaysay. Since the crime of money laundering... At this time, Mr. President, money laundering is not a crime. The best we can say is that the Bank Deposit Secrecy Law or Republic Act No. 1405, which is a very strong law that was passed in 1955, prevented any inspection of bank accounts that might harbor dirty money from illegal activities. But in our situation, right now there are no readily available statistics to quantify money laundering in the Philippines.

I am reading this:

This mirrors the difficulties encountered by local authorities and even international authorities in measuring the present global scale of money laundering, which figure has been brought out that can lead up to \$1.3 trillion annually. But the Philippines has a hard time because right now there is no tracking. Instead of getting money laundering statistics, data had been gathered on the extent of illegal trade of narcotics, kidnappings and graft and corruption in the Philippines. These illegal activities are said to be among the major sources of laundered money in the country.

But if the gentleman would like me to cite some hard figures in the world banks, International Monetary Fund (IMF) close estimate, that the range of worldwide laundering is from \$300 billion to \$500 billion, not \$1.3 trillion. In the Philippines, we are looking at the three major sources where proceeds are believed to be laundered money. These are illegal drugs, illegal trade or narcotics to be at P265 billion annually. These come from the reports of the PNP and the ISAFP or the Intelligence Service of the Armed Forces of the Philippines.

Then kidnapping with ransom, which is included in our crimes. From the PNP, it estimates that the ransom paid for the first three months of 2001—the first quarter of this year—is around P27 million. So far, there are 42 cases of kidnapping from January to June, so this P27 million is low because this is just the first quarter.

And on graft and corruption,—this is the eye-opener—the Ombudsman—this is from the Ombudsman, using its records from 1988 to 1999, or 12 years—estimates that the amount of graft and corruption practice, unfortunately, in our own country, amounts to P1.4 trillion lost to corruption in 10 to 12 years figure. It is P1.4 trillion.

Senator Honasan. Thank you, Mr. President. So I am enlightened without any explanation. But I ask these questions because I would like to be reassured before we make a decision that this is not a response to a call of the United States for an all-out effort against terrorism. This is in response to unlawful activity that we have had difficulty in monitoring and prosecuting. Is this a fair statement?

Senator Magsaysay. That is correct, Mr. President. This law in other countries came about because of the large deleterious effects of drug money going into the mainstream economy through the banking and financial systems. In my sponsorship speech last Monday this was mentioned—for having eroded a lot of our population's social values and old traditions. So this triggered the anti-money laundering law in the advanced countries, which we are now being asked to pass, so that we will have our way of being part of the network of information sharing, investigation, intelligence network, and eventually catching the capital and freezing it in order to remove the profit from the criminals. These are the objectives of the anti-money laundering law.

Senator Honasan. Thank you, Mr. President. If I may add, is it also the vision or the intention of the authors that the bill as crafted would be dynamic and flexible enough to respond to possible negative effect?

Let me cite simplistically a case in point, Mr. President. Suppose we abide by the conditions, we meet the deadline and we find out later on that partially or substantially the passage of an anti-money laundering bill has caused some capital flight. Would the bill allow us to respond also to this?

Senator Magsaysay. That is a very relevant question, Mr. President. Actually, when the Committee on Justice and Human Rights; and the Committee on Banks, Financial Institutions and Currencies approached this, we had our marching orders from the Senate President that we must craft the bill that will basically comply with the five elements of a money laundering law. And we made it as broad as possible so that, as the gentleman mentioned, there could be some level of flexibility once this bill is passed into law.

But the gentleman is correct. How this will be implemented by the implementing authorities, like the Monetary Board, the Financial Intelligence Unit and the Supervising Authorities, will now depend on how these things are managed. And, of course, we can always come back and keep on improving the law, as some countries have been doing that for the past few years.

But the important thing is that we pass the law, if I may appeal to our colleagues, as early as possible so that the sanctions that we have been hearing about will not hit our economy and further

deteriorate what is already a bad economic condition in our part of the region.

Senator Honasan. Thank you, Mr. President.

Mr. President, I was going to raise the issue of any measure in the bill that would introduce not only safeguards but measures that will insulate this bill from the harsh reality of partisan politics, which has victimized painfully some of us. But I will skip that provision because I am sure this will be a function of the period of amendments.

Finally, Mr. President, the Financial Action Task Force has imposed very narrow conditions on us and very strict deadlines, practically an ultimatum. Now, let me turn it around and ask if there are negative effects. Is there anything on the other side of the coin, on the other side of the condition and the deadlines, that conveys a message to us that if we agree and we pass this on time, the member-countries will bail us out in case of any financial difficulty?

Senator Magsaysay. Well, this is a relevant issue again, Mr. President, the fact that the FATF will see to it that we have complied with the requirements. This was not really forced within the short period of time. It has been asked of us as early as June 2000, as mentioned by Senator Arroyo. It just was not prioritized because of a lot of turn of events.

But at any rate, going back to some kind of protection, if the new law now affects our economic well-being, I am sure that the FATF or those countries that are part of the FATF and our part of the sanctions or flexibility will go out of their way to help in the sense that we are now a cooperating country.

We have gotten out of the list of the non-cooperative countries. These are the countries, basically, that have been giving us all these foreign supports, like the ODA Fund coming from Japan, the Obuchi Fund, the Miyasawa Fund, the World Bank Fund. These are the countries, in effect, that are asking that we be part of this law, this global effort to try to minimize and try to catch dirty money, including money that supports terrorism.

Senator Honasan. Thank you, Mr. President. Again, I ask that question because in a broader concept related to a very clear definition of national interest and even national security, our historical experience... I agree with Senator Pangilinan that we must honor our commitments—

Senator Magsaysay. Yes, Mr. President.

Senator Honasan. —especially if we have signed these agreements. But our historical experience in this sort of things has

not been encouraging. We have a Mutual Defense Treaty, we have the Visiting Forces Agreement, we have a 66-year old Defense Act. But the tangible results have not been felt by the Filipino people even in terms of national security.

And now that we are faced with the threat of global terrorism, we will have to give more substance to the commitments we agree to especially as we rush to meet the deadline.

Anyway, Mr. President, I thank the gentleman so much for his patience. It is an honor to be enlightened by the distinguished sponsor.

Senator Magsaysay. It is likewise an honor, Mr. President.

Senator Honasan. Thank you, Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF SESSION

Senator Flavier. Mr. President, I move that we suspend the session for one minute to inquire who is ready to be the next interpellator.

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

It was 10:26 a.m.

RESUMPTION OF SESSION

At 10:27 a.m., the session was resumed.

The President. The session is resumed.

Senator Flavier. May I now move that Sen. Sergio R. Osmeña III be recognized for the next interpellation.

The President. Sen. Sergio R. Osmeña III is recognized.

Senator Osmeña III. Thank you, Mr. President.

At the outset, may I just say that I just received about 20 seconds ago the working draft of the amendments introduced or sought to be introduced by Senator Angara, the senator from Aurora and Quezon. How does the Chair want us to treat this working draft? Do we make our interpellations based on the working draft with the Angara amendments or based on the September 25 draft?

The President. May the Chair suggest that we proceed with the September 25 draft, not the Angara amendments.

Senator Magsaysay. I will support that, Mr. President. We base our debates on the September 25 working draft.

Senator Osmeña III. Thank you, Mr. President. Would the distinguished sponsor yield for a few more questions?

Senator Magsaysay. Certainly, from the good senator from Cebu—

Senator Osmeña III. Negros and Iloilo.

Senator Magsaysay. —Negros and Panay.

Senator Osmeña III. Thank you, Mr. President.

Yesterday, I left off discussing the range of predicate offenses that were included in the original bills filed and made the observation that in the working draft of September 25, we are now down to four predicate offenses or predicate crimes.

Mr. President, I guess it is the impression of everybody in this Chamber that the reason we are rushing this bill is to fulfill our commitment under three international conventions that have been signed by representatives of the Philippine government, although I think a couple of them have not yet been ratified by the Senate. I refer to the Vienna Convention, the 1998 United Nations' Declaration on Money Laundering and the 2000 UN Convention Against Transnational Organized Crime which expanded the list of predicate offenses.

Would the distinguished sponsor be able to inform us what predicate offenses are recommended by these three conventions?

SUSPENSION OF SESSION

Senator Magsaysay. Mr. President, I move that we suspend the session for one minute.

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

It was 10:30 a.m.

RESUMPTION OF SESSION

At 10:30 a.m., the session was resumed.

The President. The session is resumed.

Senator Magsaysay. Mr. President, the crimes that are included are basically drug-related narcotic crimes and other serious crimes.

Senator Osmeña III. Is that what we put in our bill, other serious crimes, Mr. President?

Senator Magsaysay. Mr. President, we are given by these agreements the flexibility to include in our own measure our input of what crimes should be included. In our present working draft, we have so far reduced from the original 21 to five.

Senator Osmeña III. I believe there were 31 in the draft that was...

Senator Magsaysay. We started with 31, reduced it to 21, then 17 and now it is down to five.

Senator Osmeña III. Mr. President, the United Nations' Convention Against Transnational Organized Crime which was signed by our representative in the year 2000 defines a "serious crime" as "conduct constituting an offense punishable by a maximum deprivation of liberty of at least four (4) years or a more serious penalty." But even more important, this convention or this treaty is directed at organized criminal groups. Even down in Article II, Section (H), it says: "The predicate offense means any offense as a result of which proceeds have been generated that may become the subject of an offense as defined in Article VI of this Convention."

As we read on page 4, paragraph 2, subparagraph (a), the sentence reads: "Each State party shall seek to apply paragraph 1 of this Article to the widest range"—let me repeat, Mr. President—"the widest range of predicate offenses."

Mr. President, would three, four or five offenses be reflective of the "widest range of predicate offenses" seeing that we already started from 31?

Senator Magsaysay. The answer, Mr. President, is that, as the distinguished senator mentioned, we started with 31 and pruned it down because we were informed that most of the laundered or dirty money over 80 percent comes from drug-related offenses. If we follow the widest range of predicate offenses, and since with our own local conditions we can put as wide as we can, even beyond the 31, we in the committee felt that narrowing it to not more than five at this stage—in fact, the other senators would even like to narrow this down further—would make the predicate crimes more focused on the present problems of our society and lessen the impact on ordinary citizens by having so many other offenses included in this measure.

Senator Osmeña III. Does the gentleman mean to say that the trend now is to even lessen the predicate offenses from the five or four to one or two?

Senator Magsaysay. That is correct. Not one or two. I think it might end up to have maybe three or four from five. We now have five including "Felonies or offenses of a similar nature as the above...". The "above" means "(1) Kidnapping...; (2) Offenses and other violations under Republic Act (R.A.) No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972; (3) Violations of R.A. No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act; (4) Plunder under R.A. No. 7080;" and "(5) Felonies or offenses of a similar nature as the above that are punishable under the penal laws of the country where the felony or offense was committed." This is the catchall, No. 5.

I heard some of our colleagues here say that they would like to reduce this further. That, of course, is already up to our discretion and judgment whether to broaden it or to focus on it based on our own individual judgment.

Senator Osmeña III. Mr. President, for example, the 2000 UN Convention is directed against transnational organized crime. Would we not want to stop someone who kidnaps a 10-year-old, a 12-year-old Filipina girl, takes her to Hong Kong and forces her into prostitution? Do we not want to stop that type of crime?

Senator Magsaysay. Of course, we want to stop those types of crimes.

Senator Osmeña III. What about those who are engaged in swindling or embezzlement?

Senator Magsaysay. Mr. President, does the gentleman want to offer his amendments?

Senator Osmeña III. Mr. President, I would like to bring back all the 31 in the original list.

Senator Magsaysay. Well, we are free. I would like to ask the gentleman to save some of our precious time, and if he can give his amendments, we are free to vote on these.

Senator Osmeña III. Mr. President, with that type of response, I have a feeling that perhaps the sponsor just wants to cut short the period of interpellations and the explanation as to why the committee has accepted cutting down the number of predicate offenses from 31 to 21 to 17 to five, and now even further as he himself indicated a few seconds ago.

Mr. President, I think it is important, as we deliberate on this bill, to let our people know the reason so many offenses that have been victimizing our people, our children, have been removed. Robbery has been removed; theft has

been removed; swindling has been removed; malversation has been removed; bribery has been removed; piracy has been removed; rebellion has been removed. I was wondering: Are we not interested in stopping these types of crimes? Are we not interested in making sure that those organized groups that benefit from these crimes are put in jail?

Senator Magsaysay. Mr. President, I am one with the coauthor—Sen. Serge Osmeña is a coauthor—in trying to cover as many offenses as possible. And I am amenable to include a catchall phrase that is based on the United Nations' Convention Against Transnational Organized Crime to include "serious crime," which shall mean conduct constituting an offense punishable by a maximum deprivation of liberty of at least four (4) years or a more serious penalty. We can even expand those serious crimes.

I think this will cover all those really despicable offenses against humanity and individuals making the law as flexible as possible to allow the concerns of the gentleman to be included in this bill. But what I mentioned earlier that just as our counterparts have started with so many criminal offenses listed down and then have reduced it in order to get into the cracks of what money laundering is all about—meaning, over 80 percent of those dirty money comes from drugs—I believe that if we have these serious offenses, serious crimes, we will have covered quite a lot of these concerns of the good senator.

Senator Osmeña III. Well, I am very glad to hear that, Mr. President, except that I am not a lawyer and I do not know if a catchall phrase like this would be legal or acceptable by the courts. And perhaps, I would like...

Senator Magsaysay. We are together in this because I am also an engineer and not a lawyer. So we might as well ask our lawyers here to see if this is possible, Mr. President.

Senator Osmeña III. That is right. In other words, if that is not possible, then I really would like to reintroduce the other offenses.

Senator Magsaysay. We are open to the gentleman's amendments, Mr. President.

Senator Osmeña III. I would like to thank the gentleman, Mr. President.

Also, in one of the conventions—I think it is part of the 40 recommendations of the FATF—there was a strong admonition that corporations must also be penalized. May I know why corporations were not included as those that would be penalized should they be involved in money laundering like banks, for

example? Why penalize only, as the bill proposes, the officers of the bank if the bank as an organization were in a position to know what it was doing? Should a bank, the institution itself, also not be subject to sanctions, penalties, fines, et cetera?

Senator Magsaysay. The gentleman is correct, Mr. President. When we look at our definition of "person," this refers to natural or juridical person. So, as the gentleman aptly mentioned when he said that corporations are included, even banks and other institutions, sole proprietorships, partnerships or other legal entities, and even government corporations and government departments, are included now.

Senator Osmeña III. Well, I thank the gentleman for that clarification.

Senator Magsaysay. Senator Arroyo observed this prior to our signing of the committee report. We actively removed the exemptions of government departments and corporations and entities to make this a much more encompassing piece of legislation, Mr. President.

The President. The Chair wishes to invite the gentlemen on the floor to page 9, Section 15, lines 20 and 21.

Senator Osmeña III. I have that, Mr. President. It reads, "Provided further that if the offender is a juridical person, the court may suspend or revoke its license upon conviction..."

I am glad to be enlightened on that point, Mr. President.

Now, Mr. President, there are crimes the fruits of which may not be collected in a bank account.

Senator Magsaysay. That is correct, Mr. President.

Senator Osmeña III. For example, hijacking, even the Abu Sayyaf group or the Bin Laden group. One may have a group and bank accounts identified with members of the group. However, it would be difficult to pinpoint whether a predicate offense had been committed resulting in the deposits in that account. And yet, if the group has been found to be one of those that have been engaging blatantly in criminal activities, how would the anti-money laundering bill be able to attach the bank accounts of that group?

Senator Magsaysay. In the example of the distinguished gentleman, he is saying that the consequence of the criminal act does not necessarily mean that there is a deposit. It could be in kind—

Senator Osmeña III. That is correct.

Senator Magsaysay.—or some other assets. The proposed law is conceived not only to criminalize laundered money, putting dirty money into the banking or financial system, but it also covers real estate or other securities or any other economic or even non-economic activities which would constitute a way for the financial, economic or advantaged consequence of the criminality to be absorbed, and thus give the wrongdoers some kind of profit—financial or emotional profit.

So this is broad enough. It is not just the money going into the banking or financial system but also the fruits, whether monetary gain or power or influence.

Senator Osmeña III. So although this is called an anti-money laundering bill, money can be expanded in its definition to refer to other types of assets, like real estate, securities.

Senator Magsaysay. Yes, other resources.

Senator Osmeña III. All right. Now, I have an exploratory question, and I do not know if it is material to or germane to the intent of this bill. Supposing Mr. Abu Sayyaf receives clean money, a donation of sorts, say, from a rich supporter in the Middle East—Mr. Bin Laden. It comes into an account that has been identified as the account of a member of the Abu Sayyaf group. Is that dirty money? And can we attach that money and close that account?

Senator Magsaysay. Well, as mentioned by the distinguished gentleman, this is clean money going into the account of, let us say, a criminal group.

Senator Osmeña III. That is correct.

Senator Magsaysay. So upon the deposit, this is still clean money. So it is not dirty money. However, the owner of the account, if it were a criminal group like the Abu Sayyaf or the Al-Qaeda, makes use of the funds—before, these are clean funds—the way the funds will be used is now criminalized. But until such time as the consequence of how the criminal entity will handle this money, is already a precedent crime. Let us say, they will burn down Ipil. So that is the precedent crime.

Now if in burning down Ipil, part of this money that they have withdrawn is deposited and triggered a threshold, then in effect, that becomes already dirty money. That is my own layman's analysis, Mr. President.

The President. Mr. Sponsor, I think the question of Senator Osmeña can be answered if we refer to page 3, line 23. The key is, it must be "proceeds of an unlawful activity are converted."

In the particular case, Senator Osmeña referred to clean money as the sponsor mentioned.

Senator Osmeña III. Yes, that is right, Mr. President. I am referring to proceeds of a lawful activity that goes into the bank account of an acknowledged criminal. Is society defenseless against that sort of activity? The reason I bring this up is that the other day, President George Bush issued an executive order in the United States freezing all the accounts and then he named several groups including the Abu Sayyaf group.

In other words, regardless of whether the money is clean money or dirty money, the account, if it belongs or is associated with a member of the Abu Sayyaf group or the Al-Qaeda or whatever, is frozen by the United States government. I was just trying to explore that is why I said I prefaced this question saying it was exploratory. Is there any way we can make that part of the anti-money laundering law?

Senator Magsaysay. That is a very relevant issue, Mr. President, the fact that this is clean money and gets into the account of, let us say, a criminal group. This is clean money.

Senator Osmeña III. We have to presume it is clean money because we do not know.

Senator Magsaysay. Yes. That is the assumption. The assumption is it is clean money. If that clean money triggers off a threshold that the account suddenly went up five or ten times or even over, that will trigger an alarm. As provided for in this measure, that will make the financial institution or the bank will make the report to the supervising authority. We again go back to the process of its layer eventually landing in the Monetary Board which will now have the power to freeze the account but with the account holder, the criminal—we do not know yet if he is a criminal—will just trigger the level. He will be asked to explain. If he can explain that this is clean money, then there is no money laundering involved because this is clean money. He can say, "This came from the United Church of Makati." Meaning, if he can explain that this is really clean money coming from a charitable organization, let us say, the Greenpeace, the board sends an e-mail to the bank of Greenpeace in the United States and says, "Is this money legit, not dirty?" and our counterpart of the board or the FIU says, "This is legit." Then there is no money laundering in this case because it is clean money.

Senator Osmeña III. I understand that it is not money laundering because by our own definition these are profits from legal activities. I was just trying to stretch and explore a possibility whereby—because of the unique circumstances the world not only the Philippines finds itself in—we might be able to freeze accounts of members that had already been identified as terrorist

groups without having to prove whether it was dirty money or looking for a predicate offense. The mere fact that the owner of the account is a terrorist group, any influx of money into that account, as the gentleman and I can infer, would be used for terroristic activities, as we have been reading some of the stories on activities that led to the September 11 bombing of the World Trade Center in New York.

Senator Magsaysay. I understand that some of our colleagues here would like to include terrorism.

Senator Osmeña III. Yes, Mr. President.

The President. That is correct. If I may interfere. I have been discussing...

Senator Osmeña III. And hijacking.

Senator Magsaysay. And hijacking. Yes.

The President. We have been discussing it with the Minority Leader and the consensus is that we may include a definition of terrorism in accordance with international agreements without punishing it because we cannot punish it in this offense. But the monies that flow out of that or belonging to that organization may be frozen now.

Senator Osmeña III. Yes. That is what I was trying to explore because I am not a lawyer.

The President. It can be done.

Senator Osmeña III. Hijacking, piracy, rebellion, terrorism, for example. Is it possible for the government to say: "Because you are an outlawed group, any assets that belong to your members or unidentified members may be frozen?"

The President. It can be frozen but the definition may not make them criminally liable. For example, if it comes from clean money, if it is clean money, for example, it may not be strictly...

Senator Osmeña III. So, how do we freeze? I am assuming it comes from clean money because obviously if it comes from dirty money, it falls under all of the other provisions we have in this proposed bill. But if it is clean money, how is it possible for us to paralyze their operations by freezing the clean money knowing that chances are, it will be used for dirty operations?

The President. The Minority Leader is trying to craft a provision along that line, Senator Osmeña.

Senator Osmeña III. Thank you very much, Mr. President.

Now, I would like to refer the distinguished sponsor to recommendation No. 8 of the 40 recommendations that were written up by the Financial Action Task Force on money laundering. And it reads as follows:

Recommendations 10 to 29 should apply not only to banks but also to nonbank financial institutions.

May I know if this bill includes nonbank financial institutions aside from insurance companies? What about those money remittances, for example?

Senator Magsaysay. Yes, Mr. President. The fact that among the supervising agencies, the Securities and Exchange Commission, those entities including banks and nonbanks, and even corporations, of course, and even large entities—NGOs, foundations, I think, are covered by the SEC—are covered, even nonbanking institutions.

Senator Osmeña III. Because under the definition in Section 3, subsection (a) of Covered Institutions, it says: "All institutions and entities under the supervision and regulation of Bangko Sentral, Insurance Commission, Securities and Exchange Commission, Pagcor, DTI, et cetera." But there are individuals who do not even register with the SEC but engage in remittances both within the country and from Manila to abroad.

Senator Magsaysay. Is the gentleman looking at the foreign exchange dealers?

Senator Osmeña III. That is right. Many of them are not registered.

Senator Magsaysay. Are these not registered with the Bangko Sentral?

Senator Osmeña III. No, Mr. President. Many of them are not registered.

Senator Magsaysay. My cosponsor has just shown me the version of the Congress which includes money changers, money payment remittances. We can look at these, and if the gentleman thinks that this will cover Section 8 on combating money laundering, this might be adopted by the Senate. This is the Lower House bill.

Senator Osmeña III. I am glad to hear that, Mr. President. I still do not have a copy of the House bill as passed on Second Reading at four o'clock this morning. Perhaps the Senate Secretary might be directed to obtain and furnish every member of this Chamber with a copy as soon as possible.

On recommendation 9, it also recommends extending the ambit of the anti-money laundering law to the conduct of financial activities of commercial undertakings by businesses or professions which are not financial institutions.

Now, the big corporations of this country, as the distinguished sponsor and I know can easily remit.

Senator Magsaysay. In partnership.

Senator Osmeña III. No. Even those which are not banks which are not subject to regulatory supervision can remit money. At least, even if we may not be able to supervise them closely, should the anti-money laundering bill not cover them also?

Senator Magsaysay. I agree with the distinguished gentleman, Mr. President. The remittances are, of course, remitted through the banking system, and that will be included in the banks looking at the transactions.

Senator Osmeña III. Thank you for that, Mr. President.

Under the latest version of the September 25 working draft, tax evasion has been removed as one of the predicate offenses. Has it not?

Senator Magsaysay. That is correct, Mr. President.

Senator Osmeña III. Suppose in a court proceeding for kidnapping or drug-related activities or anti-graft, evidence is unearthed that the person involved, the person accused has also been engaged in other form of criminal activities, let us say in particular, tax evasion. May the BIR use the evidence uncovered in this investigation to file now a case for tax evasion against the person who was accused of another crime?

Senator Magsaysay. The BIR having the annual reports on tax payments twice a year, I think, will have the basis of finding out whether indeed there is a case of tax evasion by a certain entity. As far as the BIR information is concerned, these are public documents having been received. If the BIR, through its own process, finds that there is indeed tax evasion and charges the discrepancy against the entity but that entity did not put dirty money into its account, I do not think there is any triggering point here, Mr. President.

Senator Osmeña III. But, let us say, the accused went to court to force the FIU not to open up his account. FIU wins, the account is opened up. So now, it becomes a matter of public document, right? All of the information pertaining to that account because it is in court becomes public document. So, therefore, the BIR can now come in there.

Senator Magsaysay. Yes, once one goes to court, it becomes public document.

Senator Osmeña III. All right. So can the BIR come in there and utilize also the evidence since it is now public document to file, if warranted, a case for tax evasion?

Senator Magsaysay. The BIR could, Mr. President.

Senator Osmeña III. So there will be no exemption whatsoever.

Senator Magsaysay. No exemption.

Senator Osmeña III. Thank you for that, Mr. President.

Mr. President, what about branches abroad of banks and other covered institutions and, let us say, majority-owned subsidiaries, should they not be covered by this bill?

Senator Magsaysay. The branch banks of Filipino banks abroad are covered by the anti-money laundering laws of those countries where these are situated just like the foreign banks here, let us say, City Bank, Hong Kong Bank, Standard Chartered, are covered by our money laundering laws.

Senator Osmeña III. I agree, and as a matter of fact, whichever is stricter. However, there may be countries where money laundering laws are not strong enough and it is one of the 40 recommendations that our country in crafting such a law includes branches and majority-owned subsidiaries of such institutions which are located abroad.

At the proper time, would the distinguished gentleman be willing to entertain an amendment that will...

Senator Magsaysay. Certainly, Mr. President, to improve the present working draft.

Senator Osmeña III. I do not know if it is the time to bring it up. But in the latest Angara amendment, the threshold amount is being removed. I would like to reserve my...

Senator Magsaysay. I understand that it is being removed.

The President. That can be debated upon when the Angara amendment is presented.

Senator Osmeña III. When he presents the amendment. That is very good, Mr. President.

Now, let us go to the FIU, the supervising authority. Would the good sponsor please explain to this representation since I am confused how that Financial Intelligence Unit will work?

Senator Magsaysay. This is the way we conceptualized this, Mr. President. From the original measure, there would be a council which was originally the local task force, the Anti-Money Laundering Task Force. That was the initial name. It consisted of a five-man committee but we reduced it to three. It became a council composed of the secretary of Finance, the SEC commissioner and the governor of the Bangko Sentral ng Pilipinas.

However, there were some concerns that having a political appointee might endanger the objectivity of this council. So during the caucus, if I remember well, the Body felt that we should have a more simplified draft which we are looking at now and included, instead of a three-man council working collegially, meaning, unanimous before they can act, that it be substituted by a Financial Intelligence Unit oversighted by the governor but having an executive director. This FIU or Financial Intelligence Unit is patterned after the Financial Intelligence Unit of the US Department of Treasury. We felt that since the United States law has been among the first and has been improved through the years, it would be relevant for us to pattern some, not all, that will apply to our local conditions so that there will be more trust and less concern on any political factors in seeing to it that intelligence and information are gathered and the malice or other political reasons will be reduced, if not eliminated.

So it is the FIU that will be the keeper of data and will be the second layer after the supervising authority to look into whether this is indeed an account with a substantial level of evidence that could be holding laundered money. This will be under the Monetary Board and will act as, sort of, a clearinghouse, having all the data and asking for data from its counterpart in any country that are relevant to trace the information needed to make more relevant and more accurate decisions.

Senator Osmeña III. Mr. President, even in the—I will have to refer to it anyway—the September 27 version of Senator Angara, the Financial Intelligence Unit is not defined. What is covered here in subparagraph (f) is “Supervising Authority refers to Bangko Sentral ng Pilipinas.”

Will the distinguished sponsor be coming up or furnishing us with a definition of the phrase “Financial Intelligence Unit” which really should be included in Section 3, Definition of Terms?

The President. Yes.

Senator Magsaysay. Right now, Mr. President, we are still using the September 25 version. Officially, we have not received

the amendments of Senator Angara which contains the nondefinition.

Senator Osmeña III. No. That is why, I have moved away from September 25 because, definitely, FIU is not included there. I would have expected that it would have been included or defined in the latest proposed amendments coming from Senator Angara but it is not here.

Senator Magsaysay. That is correct, Mr. President. I stand corrected.

The FIU that I made mention still had to be introduced by Senator Flavier. Since there is an expected amendment on that matter, among others, by Senator Angara, we are holding the infusion of this FIU which is not in the September 25 version until the time when this will become more relevant.

The President. Just for clarity. The FIU was decided in the caucus after the September 25 draft was crafted and, therefore, not included in the September 25 draft.

I discussed this point with Senator Angara last night and he did confirm that it was not deliberate in his draft that he missed the FIU. It will be incorporated later.

Senator Osmeña III. I think at this time that will end my interpellation. I would like to thank the distinguished sponsor for being very open and candid in answering our questions.

Thank you, Mr. President.

Senator Magsaysay. Thank you, Mr. President.

The President. The Majority Leader is recognized.

Senator Flavier. Mr. President, at least for today that ends the series of interpellators except that I remember Sen. John H. Osmeña made a reservation.

The President. No more.

Senator Biazon raises his hand. He wishes to raise a few questions, after which, we can close the period of interpellations.

Senator Flavier. We will assume that Sen. John Osmeña’s absence here waives his time to interpellate later.

The President. He can raise questions in the period of amendments.

Senator Flavier. May I now move that we recognize Sen. Rodolfo G. Biazon for the next interpellation, Mr. President.

The President. Before that...

Senator Osmeña III. Mr. President, just a point of clarification.

The President. Yes.

Senator Osmeña III. With the kind permission of Senator Biazon and the Majority Leader.

May we now have a single draft that we may amend because we go line by line on amendments and I do not know which one to amend.

The President. Can we discuss that once we suspend our session after the interpellation?

Senator Osmeña III. All right. Thank you, Mr. President.

The President. Sen. Rodolfo G. Biazon is recognized now.

Senator Biazon. Thank you, Mr. President.

Will the gentleman answer some questions?

Senator Magsaysay. Certainly, Mr. President.

Senator Biazon. Mr. President, has there been any formal commitment made by the Executive department to meet the September 30 deadline?

Senator Magsaysay. There has been no formal commitment by the Executive department, by our President, to meet the September 30 deadline. There is commitment. This is a legislative measure which our Executive branch has not deemed to commit because we are separate branches of our government. The most that the Executive had done was to urge us, if possible, to consider its passage. But there is no formal commitment to the FATF or any other entities overseas.

Senator Biazon. That definitely is in accordance with the definition of responsibilities, distribution of responsibilities in the different departments of our government.

Mr. President, how many countries compose the Financial Action Task Force?

Senator Magsaysay. At present, I understand there are 31 countries. There are 29 plus two organizations.

Senator Biazon. Are there 29 members?

Senator Magsaysay. Yes, Mr. President.

Senator Biazon. Or 29 countries covered members?

Senator Magsaysay. There are 29 member-countries.

Senator Biazon. And the nucleus is the G8 or G7?

Senator Magsaysay. The G7 became G8, yes.

Senator Biazon. Would the 29 nations constitute the policy-making body as far as the FATF is concerned or a nucleus number of countries within the 29?

Senator Magsaysay. If the 29 constitute the FATF-member countries, I would assume that the 29 are the ones managing the policies.

Senator Biazon. Mr. President, I raised this issue because in the 20th special session of the UN in 1998, there was promulgated a political declaration. May I be allowed to read pertinent portions of this:

Resolution 1, adopted as recommended by the Ad Hoc Committee of the Whole. General Assembly. Adopts the political declaration annex to the present resolution.

The political declaration states:

That drugs destroy lives and communities, undermine sustainable human development and generate crime. Drugs affect all sectors of society in all countries in particular. Drug abuse affects the freedom and development of young people, the world's most valuable asset. Drugs are a grave threat to the health and well-being of all mankind, the independence of states, democracy, the stability of nations, the structure of all societies and the dignity and hope of millions of people and their families.

Therefore, we, the state-members of the United Nations, concerned about the serious world drug problem, having assembled at the 20th Special Session of the General Assembly to consider enhanced actions to tackle it in the spirit of trust and cooperation...

Mr. President, this declaration has 20 paragraphs and if may I read the pertinent paragraph.

I will go to paragraph 13, Mr. President. Paragraph 13 reads:

Decide to devote particular attention to the emerging trends in the illicit manufacture, trafficking and

consumption of synthetic drugs and call for the establishment or strengthening by the year 2003 of national legislation and programs giving effect to the action plan against illicit manufacture, trafficking and abuse of amphetamine-type stimulants and their precursors adopted at the present session.

Paragraph 14, Mr. President, reads:

Decide to devote particular attention to the measures for the control of precursors adopted at the present session and further decide to establish the year 2003 as a target date for states, with the view to eliminating or significantly reducing the illicit manufacture, marketing and trafficking of psychotropic substances including synthetic drugs and the diversion of precursors.

Relevant is Paragraph 15, Mr. President, which reads:

Undertake to make special efforts against the laundering of money linked to drug trafficking and in that context emphasize the importance of strengthening international, regional and subregional cooperation, and recommend that the states that have not yet done so adopt by the year 2003 National Money Laundering legislation and programs in accordance with relevant provisions of the United Nations' Convention against the illicit traffic in narcotic drugs and psychotropic substances of 1998, as well as the measures for countering money laundering adopted at the present session.

There are still other relevant paragraphs, Mr. President, but these paragraphs only confirm Paragraph 15, that the deadline, if we call it a deadline, set by the United Nations Convention is not September 2001. It is set for the year 2003.

So, may I now ask the question: How do these provisions of this convention adopted by the UN in 1998 relate to this deadline that we are dealing with as promulgated by the FATF, Mr. President?

Senator Magsaysay. Thank you, Mr. President. We are talking of two separate entities. What the gentleman just mentioned, particularly Paragraph 15, made mention of the United Nations Convention to adopt anti-money laundering law on or before 2003. This is the United Nations Convention.

Senator Biazon. Yes, Mr. President.

Senator Magsaysay. However, the FATF, although all of those countries are members of the United Nations, is separate from the United Nations Convention. This is of a more dynamic

action task force—by the name itself, task force—that will hasten and make more effective as early as possible the solution on laundered money mostly coming from drug-related crimes and other transnational serious crimes, which had been working on this since 1989, and had imposed its own possible sanctions without losing the direction of the broader, although not together, United Nations Convention's paragraph 15 deadline or objective. Not deadline, but the direction of having anti-money laundering law on or before 2003. What I am saying is that, FATF is separate from the United Nations, although the members are basically the same member-countries, with the FATF having 29 of the countries.

Senator Biazon. Yes. I would agree that these 29 member-countries of the FATF are all members of the United Nations. But when there is a threat of sanctions by these 29 member-countries to us, can we not invoke the provisions of this convention as a reason for us not to be subjected to that sanction because this is adopted by the Special General Assembly of the United Nations, Mr. President? Can we not therefore get out of the clutches of those 29 member-countries and seek relief from the provisions of this convention so adopted by the United Nations in 1998, which states that the deadline or by at least 2003, that is the time when nations are asked to provide the legislative framework to prevent money laundering?

Senator Magsaysay. Well, these are two different entities, as I mentioned earlier, Mr. President. The 1998 United Nations Convention passed this policy statement, particularly what the gentleman has lifted from the Articles of Coverage, Paragraph 15, as to adopting laws by 2003, and it is only 2001.

However, since we are not yet a member of the... We are considered a non-cooperative country under the FATF which is more focused economically and crimewise more than the United Nations, which is global in scope and with broader concerns. While the FATF is more on this, particularly on the issue of money laundering, our officials have deemed that we would like to become a cooperative country by passing this law. Because we would not like to be given so many requirements and other sanctions, and more surveillances and more reports that would hamper our economic recovery.

Senator Biazon. So, simply put, Mr. President, the Group of Seven that would definitely be the most powerful bloc in that 29 member-countries is twisting our arms.

Senator Magsaysay. I do not think the Group of Seven is twisting our arms. The Group of Seven or, let us say, the FATF, the countries that are already part of the cooperative countries, are simply saying, "We would like you to be part of the cooperative countries because there is a serious problem globally on laundered money," meaning dirty money coming from illegal activities. And

we have become active participants of these efforts, to be part of it, by joining the ratification of the UN Convention on Illegal Drugs. So there is no arm-twisting here. It is just complying with our having joined that and passing the law.

Now, it is up to us to pass it or not. But we have decided to pass it so we will have a law. We will be part of that group of nations that agreed that dirty money has to be caught, has to be punished and criminalized. This is the only explanation that I can give because I am sure that he will appreciate it. We do not want our institutions, our banking sector, our individuals, even the OFWs to go through additional requirements before they can remit or we can receive remittances and other banking and financial transactions. It is a matter of compliance.

Senator Biazon. Yes. If there is non-compliance, are the sanctions well-defined?

Senator Magsaysay. Are the sanctions well-defined? Yes, the sanctions are defined.

Senator Biazon. What are these sanctions, Mr. President?

Senator Magsaysay. The sanctions are requirement for more documents, requirement for more information, customer information— both sides—the recipient and the remitter, including OFWs.

I was informed by Secretary Patricia Sto. Tomas of the Department of Labor and Employment that they have already started receiving bank requirements before they can remit the money to our OFWs.

The data we have here is that if we do not pass our own measure by September 30 this year, then we will be subject to:

(1) Enhanced surveillance;

(2) More stringent requirements for identifying clients;

(3) Intensified advisories to financial institutions to make strict identification of beneficial owners a prerequisite to entering into any business relationship with Filipinos or Philippine companies. It is like we are being put in a warning list.

(4) Systematic reporting of all financial transactions on the given presumption—they are presuming that the same transactions in the Philippines are more likely to be suspicious.

So automatically we become a suspicious society being suspected of handling dirty money.

(5) Withholding of the approval of any request for the establishment in any FATF member-country of a branch or representative office of a Philippine bank or its subsidiary on account of the fact that the relevant bank is from a non-cooperative country.

Meaning, if, let us say, Metro Bank would like to put a branch office in London which is a member of the FATF, then it will be disapproved. And finally,

(6) Issuance of warning to the international non-financial business community that the transactions with entities within the Philippines might run the risk of money laundering.

Now, who would want to be labeled a suspicious individual or a suspicious bank or a suspicious society?

These are what our officials have decided that we do not need during these difficult times. That is why in our own caucus, we have decided that we will try to do our best to comply and pass a law on or before September 30 because this was asked of us as early as June 2000. We were just so busy with other things that it just came to this point that we have only a few days left within which to comply. These sanctions are quite serious because this will put a label that we are a suspicious-looking people. We cannot imagine our vaunted professionalism in the banking and financial sector. Many of our professional Filipino accountants, bankers and even engineers, are being suspected as coming from a non-complying country that does not want to cooperate and this will be a stigma we will carry forever.

Senator Biazon. Anyway, definitely, those are clear blackmail mechanisms.

Mr. President, has there been an extensive consultation with potential Filipino investors on the effect of the adoption of this anti-money laundering law?

Senator Magsaysay. That is correct, Mr. President. We have had a series of public hearings and we called not only the Bankers Association of the Philippines but the several chambers of Commerce. We have called the Philippine Chamber of Commerce and Industry representing the Filipino business; we have called the Federation of Filipino-Chinese Business Council; we have called the European Chamber of Commerce, and all of them are one in saying that this has to be passed because they know that with these sanctions, they will have a harder time conducting business or doing business with their counterparts in other parts of this world.

Senator Biazon. This is during the hearings, Mr. President?

Senator Magsaysay. During the hearings and also in some executive sessions, Mr. President.

Senator Biazon. Because there are some concerns being raised—I do not know the proportion of these concerns relative to the total effect—that there may be some Filipino investors or moneyed people who would rather take out whatever they have in the event this law is passed. Has this been considered, Mr. President?

Senator Magsaysay. I can understand that and that is being considered, Mr. President. But we are open to any amendments the distinguished gentleman may offer when the period of amendments comes. We will try to encompass his concerns.

Senator Biazon. Mr. President, may I shift to another point.

The reporting is mandatory on the part of the covered institutions. Is this correct, Mr. President?

Senator Magsaysay. The reporting is mandatory. Yes, that is right, Mr. President.

Senator Biazon. Is it the intention of the proposed law to be initiating the conduct of an investigation or providing reporting only, if needed, in an investigation?

Senator Magsaysay. The side of reporting is basically for information which will be the basis of looking further into whether indeed there is a criminal money or not. But we are not even thinking of any precedent crime on the reporting. It is just that there is an unusual movement of funds and there might be reasonable evidence of some crime but we do not know what crime it is.

Senator Biazon. As per the draft, we have four predicate crimes and these are: Kidnapping, drug-trafficking, graft and corruption, and the fourth is a conglomeration of other offenses and felonies.

Senator Magsaysay. Plunder, Mr. President.

Senator Biazon. Plunder, yes.

Senator Magsaysay. And then the felonies.

Senator Biazon. Felony, yes.

Now, if an investigation is conducted, it should be initiated after probable cause is established that these crimes are committed.

Senator Magsaysay. May I ask what is the question again, Mr. President?

Senator Biazon. We have the predicate crimes. Is it the intention that investigation can only be initiated if there is established probable cause that these predicate crimes are committed?

Senator Magsaysay. That is correct.

Senator Biazon. But just the same, even before a suspicion that such crime is committed, there is already this reporting?

Senator Magsaysay. That is correct, Mr. President.

Senator Biazon. And failure to report by the covered institution is cause for filing charges against them?

Senator Magsaysay. That is correct. There are penal provisions on that, Mr. President.

Senator Biazon. Mr. President, I think we have to examine this further, because the concern is the possibility of abuse.

Senator Magsaysay. I can understand the position of the gentleman. That is why there is a threshold in this working draft, and there are other conditions that will limit, if not eliminate, those abuses. I can understand the gentleman's concern, Mr. President.

Senator Biazon. Thank you, Mr. President.

The President. The Chair is now ready to act on a motion to terminate the period of interpellations.

The Majority Leader is recognized.

Senator Flavier. Mr. President, seeing no more senators interested to interpellate, may I move that we end the period of interpellations.

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

SUSPENSION OF SESSION

Before we proceed to the period of amendments, with the permission of the Chamber, the Chair declares a suspension of the session for one minute, if there is no objection. [*There was none.*]

It was 11:42 a.m.

RESUMPTION OF SESSION

At 11:48 a.m., the session was resumed.

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

Senator Legarda Leviste. Mr. President, I move that we open now the period of amendments. Still on the floor is the principal sponsor of the measure, Sen. Ramon B. Magsaysay Jr.

The President. Senator Magsaysay is recognized for the period of amendments.

Senator Magsaysay. Thank you, Mr. President.

**MOTION OF SENATOR MAGSAYSAY
(The Working Draft of September 25, 2001 Adopted as the
Lone Committee Amendment
of the Two Sponsoring Committees)**

May I now move that the working draft as of September 25, 2001 be adopted as the lone committee amendment of the Committees on Banks, Financial Institutions and Currencies; and Justice and Human Rights.

The President. Is there any objection? [*Silence*] There being none, the document marked "working draft" as of 25 September 2001 of Senate Bill No. 1745 introduced by the sponsoring committees is hereby admitted into the *Record* as the sole committee amendment of the sponsoring committees.

Senator Legarda Leviste. Mr. President, I move that we recognize Sen. Edgardo J. Angara for the individual amendments.

The President. For the period of individual amendments, Senator Angara is recognized.

Senator Angara. Thank you, Mr. President.

ANGARA AMENDMENTS

Let me introduce in one blow, so to speak, the amendments that we have made. These amendments reflect many of the points raised during the caucus and therefore are already points of consensus, and amendments that are editorial in nature, and some new provisions that we are introducing.

Copies of the draft of this omnibus amendment were distributed to the members of the Senate last night, and I can see that everyone has a copy of it.

So with the permission of the Body and in accordance with our agreement during the one-minute recess, Mr. President, I have the privilege of introducing the amendments to the working draft of September 25, as distributed and disseminated to the members.

The President. All right. There is a document distributed to the Chamber, captioned "WORKING DRAFT WITH SEN. ANGARA'S VERSION SEPTEMBER 27, 2001." The said document contains the Angara amendments, which introduced amendments to the whole bill, and the amendments are identified as in capital letters and in brackets.

There is a motion to admit into the *Record* all these amendments as individual amendments of Senator Angara. What does the sponsor say?

Senator Magsaysay. The committees have no problem with these individual amendments embodied in the Angara version as of September 27, 2001 and accept such individual amendments, Mr. President.

The President. All right. Is there any objection?

Senator Osmeña III. Mr. President.

The President. Sen. Sergio R. Osmeña III is recognized.

Senator Osmeña III. Mr. President, it is not as a nature of objection, but may we just express a reservation because we just like to study the amendments. We may introduce amendments to the amendments. Is that understood, Mr. President?

The President. Yes.

Senator Osmeña III. Thank you, Mr. President.

The President. Is there any objection? [*Silence*] There being none, the Angara amendments are accepted.

In accordance with our agreements during the one-minute caucus, we now use the working draft with the Angara amendments, September 27, 2001, as the working draft upon which the individual senators may now introduce their individual amendments, and we now go line by line and page by page on this document.

May we now proceed? On page 1. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, Senator Cayetano wishes to be recognized.

The President. Amendments to page 1. Senator Cayetano is recognized.

Senator Cayetano. Thank you, Mr. President. With the permission of the sponsors, will the gentleman from Aurora, Quezon and the Philippines accept an amendment to his amendment?

Senator Angara. Certainly, Mr. President, provided I can study it.

Senator Cayetano. Thank you, Mr. President. Actually I just got this copy, but I have already proposed amendments to the first page.

In line 7, it starts with the word "CONSEQUENTLY." I note, however, that the preceding paragraph, from lines 3 to 6, speaks of the State continuing to protect and preserve the integrity and confidentiality of bank accounts. The word "CONSEQUENTLY" in my mind, Mr. President, should probably be changed with the word HOWEVER because lines 7 to 10 is really an exception to protect and preserve the integrity and confidentiality of bank accounts.

So my proposal will be instead of the word "CONSEQUENTLY", it should be HOWEVER, IT IS ALSO THE POLICY et cetera, et cetera.

The President. The Cayetano amendment would change the word "CONSEQUENTLY" in line 7 to the word HOWEVER.

Senator Cayetano. Yes, Mr. President.

Senator Angara. Mr. President, I can easily accept that amendment except I think it will make a break in the flow of thought in this declaration. As we will notice, this "Declaration of Policy" is stated in a more affirmative positive way because the original draft is that the national policy is not to use the Philippines as a money center. We have never been and we do not intend to be a money laundering machine. That is why I want to highlight and emphasize the primary objective of making the Philippines a safe and stable financial banking system. Therefore, in order to achieve that goal,—that is why the word used is "CONSEQUENTLY" rather than the word "HOWEVER"—and therefore, and consequently, we would like to proscribe and prohibit those acts that will impair the stability and safety of the banking system.

If we substitute the word "CONSEQUENTLY" to "HOWEVER", as if there is a contrapuntal in the two statements. No, this is one continuous flow of thought.

Senator Cayetano. I know that, Mr. President. I was thinking if we use the word "CONSEQUENTLY", it really means as a result thereof. My own reading, with the permission of the gentleman, is that lines 7 to 10 really speak of an exception. The affirmative statement from line 3 to line 6 is quite clear. I accept that; that the State will continue to protect and preserve the integrity and confidentiality of bank accounts. What happens then? We have now a policy to proscribe such action or activity specifically money laundering. That is why I proposed that amendment

that the word "CONSEQUENTLY" may not exactly follow from the flow.

I read, with the permission of my good friend, that lines 7 to 10 would appear to be an exception. That is the only reason.

Senator Angara. It is not even an exception, Mr. President. I stepped to further enhance and strengthen that stability and safety. That is why if the distinguished gentleman is not comfortable with the word "CONSEQUENTLY", we can think of another word. But the term "HOWEVER..."

CAYETANO-ANGARA AMENDMENTS

Senator Cayetano. Suppose we just delete the word CONSEQUENTLY.

Senator Angara. What about adding the word "MOREOVER"?

Senator Cayetano. All right, MOREOVER.

The President. In line 7, the word "CONSEQUENTLY" is deleted and in lieu thereof add the word "MOREOVER".

Senator Cayetano. Yes, Mr. President.

Senator Angara. It is accepted, Mr. President.

The President. It is accepted by Senator Angara. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Cayetano. In line 10, after the word "COUNTRY", period (.). I suggest and I propose an amendment to put a comma (,) and add the following phrase: TAKING INTO CONSIDERATION THE ESTABLISHED CONSTITUTIONAL PRINCIPLE THAT NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY AND PROPERTY WITHOUT DUE PROCESS OF LAW NOR SHALL ANY PERSON BE DENIED THE EQUAL PROTECTION OF THE LAW. It is a constitutional precept because this is a Declaration of Policy.

Senator Angara. That is excellent, Mr. President. It is at the end of the word "COUNTRY", line 10. We accept that, subject to style.

Senator Cayetano. I would like to thank the gentleman for that. Actually, I was influenced by my good friend and *kababayan* from Malolos, Bulacan, Senator Ople.

As I said, I have only gone through page 1. I reserve the right to propose amendments on the other pages.

Thank you, Mr. President.

The President. Certainly, we are just on page 1.

Senator Cayetano. Yes. Later on, I will propose other amendments because I have not really read the other pages.

The President. Yes. Senator Arroyo?

Senator Angara. Would it be proper, Mr. President, if the proposed amendment of Senator Ople can also be incorporated at this point?

The President. It is on what page?

Senator Angara. In Section 2.

The President. Yes, we are on page 1. So it is entirely proper. But may the Chair know the pleasure of Senator Arroyo who I recognized earlier?

Senator Arroyo. Mr. President, I would like to introduce an amendment by insertion after line 10.

The President. After line 10.

Senator Osmeña III. Mr. President, anterior amendment.

The President. Anterior amendment. Senator Osmeña is recognized.

OSMEÑA III-ANGARA AMENDMENT

Senator Osmeña III. Yes, Mr. President. Reading lines 8, 9 and 10, it would seem that we are pandering to the wishes of an agency called the FATF. We are doing this not because it is right or wrong, but because we do not want to ruin our credit standing.

May we suggest that this be deleted. All words after "WHICH WILL TARNISH, RUIN AND DESTROY THE FINANCIAL STATUS AND CREDIT STANDING OF THE COUNTRY", and instead insert the phrase: IN ORDER NOT TO ALLOW CRIMINALS TO PROFIT FROM THEIR ILLEGAL ACTIVITIES.

So this brings it to a moral level rather than a level that would make us subservient to agencies that are not within the country.

Senator Angara. It is accepted, Mr. President, because that is more specific.

The President. Can the Chair have the wording again?

Senator Osmeña III. Subject to style, delete all the words after "WHICH" in line 9 and insert the phrase: IN ORDER NOT TO AFFORD CRIMINALS PROTECTION OF THEIR PROFITS FROM THEIR ILLEGAL ACTIVITIES, or something to that effect.

TO MAKE USE OF PROFITS FROM THEIR ILLEGAL ACTIVITIES.

Senator Angara. Subject to style, Mr. President.

IN ORDER TO PREVENT CRIMINALS OR CRIMINAL SYNDICATES FROM PROFITING FROM THEIR ILLEGAL ACTIVITIES. Subject to style.

The President. All right. I think that is a good enough style.

Senator Angara. Yes, Mr. President.

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

Senator Magsaysay. Mr. President.

The President. The sponsor is recognized.

Senator Magsaysay. With the permission of Senator Arroyo. Just an observation, Mr. President.

Because the original committee version which has been replaced by the now Angara individual amendment, the Declaration of Policy puts a strong message that "the country's foreign policy shall cooperate with other countries in investigation, prosecution and extradition of those involved in money laundering." Because this is a money laundering law and this involves the criminalizing of dirty money, the sponsor feels that this should be included because this is the crux of the law and not so much as the stability of the country's financial and banking sector. Although that is equally important, but this is the anti-money laundering law.

So if I can ask the author of the individual amendment which we have adopted as the committee report that we are working on now to include this to be harmonized.

Senator Angara. Yes, Mr. President, very easily. Maybe what we can do is add another paragraph incorporating the sentence beginning with lines 12 to 14 and just adding the opening phrase: AND FINALLY, CONSISTENT WITH THE COUNTRY'S FOREIGN POLICY, et cetera, up to the word "committed." And that will be the third paragraph.

The President. Yes.

Senator Magsaysay. That would be favorable. Thank you, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved. Therefore, the sentence starting with line 12 up to line 14 is reinstated, and the deletion will end on the word "activity" in line 11.

Senator Arroyo is now recognized.

ARROYO-ANGARA AMENDMENT

Senator Arroyo. After line 10, Mr. President, and subject to the Ople and Osmeña amendments, the following sentence and paragraph be added: FURTHERMORE, THIS ACT SHALL NOT BE USED FOR POLITICAL PERSECUTION OR HARASSMENT OR AS AN INSTRUMENT TO HAMPER COMPETITION IN TRADE AND COMMERCE.

The President. What does the sponsor say?

Senator Angara. Excellent, Mr. President, and we accept that that is in line with the discussions during the plenary.

The President. How about the principal sponsor of the measure? What does he say to the Arroyo amendment?

Senator Magsaysay. Very well accepted, Mr. President.

Senator Arroyo. Thank you, Mr. President.

Senator Sotto. Just a question, Mr. President, before we approve the amendments.

The President. Yes.

Senator Sotto. I am in favor of the amendment, Mr. President, but I just would like to find out if that amendment would rather be placed in another provision or another section in the later part of the law instead of...

Senator Arroyo. I have no objection, Mr. President. We can put it at the bottom.

Senator Sotto. What I mean is...

Senator Arroyo. At the bottom of the last article.

Senator Angara. I think that is a good suggestion, Mr. President, by putting it in a separate provision or section, then that means it is an operational provision rather than an announcement of...

Senator Sotto. Rather than a Declaration of Policy.

Senator Angara. I think that is better.

Senator Arroyo. It is accepted, Mr. President.

The President. So, we can take that up at the appropriate page.

Senator Sotto. I suggest after Section 14. Later on, Mr. President.

Senator Angara. Whatever.

The President. All right. Are there any other amendments to page 1?

Senator Pangilinan. Point of inquiry, Mr. President.

The President. Yes.

Senator Pangilinan. Just a clarification. Because as cosponsor of the bill and having accepted the amendments of Senator Angara, am I, as cosponsor, allowed to make some clarifications or suggestions to the amendments?

Senator Angara. Definitely.

The President. What does Senator Angara say?

Senator Angara. We welcome that, Mr. President. We welcome the participation of the cosponsor of this measure.

Senator Pangilinan. Thank you, Mr. President.

In that case in Section 2, "Declaration of Policy," the first paragraph focuses on a stable and safe financial banking sector. Is that right? And the second paragraph would then look into or touch on the issue of money laundering. I feel that perhaps, it might be more appropriate, subject of course to Senator Angara's approval, if we can reverse the order of the paragraphs because after all, the title is defining the crime of money laundering, and providing penalties therefor. It would seem to be more precise if the first paragraph focuses on money laundering and then the second paragraph focuses on the stable and safe financial banking sector.

Senator Angara. I wish I can accede to that thought, Mr. President, but that is precisely the purpose of stating right away, right off that the objective of this law is to ensure the stability and safety of bank operations and accounts in this country.

The evil of money laundering is not an objective and preventing it is not a national objective that we ought to concentrate on, although it is an evil that we must suppress. Therefore, I do not want money laundering as the principal focus although it is in this bill in a statement of purpose or policy. The policy really or what are we really trying to achieve by passing all these laws that will impair the stability of our banking system? Really, the objective is to preserve stability. So, I think that is a major premise that we ought to state right off, and any other statement should be supportive of that objective.

Senator Pangilinan. Yes, Mr. President. Thank you. It is just my opinion and based on my own cosponsorship speech that the objective of the law as sponsored, as cosponsored is precisely to combat crime and the bill, if passed, will effectively assist or help in the campaign against crime by way of criminalizing money laundering. However, I have spoken with the main sponsor of the bill and he informed me that he is amenable to the position of Senator Angara. So I will defer to the chairman of the Committee on Banks, Financial Institutions and Currencies.

Senator Angara. Thank you, Mr. President.

The President. Is this an amendment on page 1? Sen. Ralph G. Recto is recognized.

Senator Recto. Mr. President, just a clarification on the same page, Section 2, on "Declaration of Policy."

The President. The gentleman may proceed.

Senator Recto. Thank you, Mr. President.

Mr. President, I am sure we all know that the Declaration of Policy is very important in any of the bills that we pass and that the Declaration of Policy will provide the objective and intent of this bill. Based on the comments made by Senator Angara that the initial paragraph in the "Declaration of Policy" would be to provide a stable and safe financial and banking center, do I take it then that that would be the main intent and objective of this bill? I think he made reference to that earlier.

Senator Angara. That is the main purpose and objective of this bill, Mr. President, and that should set the tone and orientation in the interpretation of this bill. But, of course, when we talk of money laundering and declaring it as a crime, that is one of the means through which we can make that goal of a safe and stable banking system achievable.

Senator Recto. That is right. I have no problem with that, Mr. President. My only concern is that, in effect, because of the "Declaration of Policy" in Section 2, that would have an effect

on "Covered Institution," "Covered Transaction" and other sections later on. Again, also the definition of "Monetary Instrument" and the "Unlawful Activity" since we are talking about money laundering.

So at the appropriate time, Mr. President, once we go on to the different sections and pages that we intend to amend, I would always want to go back and refer it to what we have approved in Section 2 on the "Declaration of Policy." Just for the record.

Thank you, Mr. President.

The President. All right. Is there any other amendment on page 1?

Sen. Sergio R. Osmeña III is recognized.

OSMEÑA III AMENDMENT

Senator Osmeña III. Thank you, Mr. President. Will the gentleman yield for a few proposed amendments?

At the bottom, in line 17, I was just looking at the definition of "Covered Institution" in the House version and I believe it is more all-encompassing, Mr. President. If the Chamber will allow me to read it, I will read it into the *Record*, otherwise, we all have copies of the House version. But I will ask that we adopt the House version.

The President. All right. The proposed amendment to Section 3—

Senator Osmeña III. Subparagraph (a), line 17.

The President.—Subparagraph (a) on "covered institution", would adopt the definition of House Bill No. 3083 which all the members have copies of. What does the principal sponsor say?

Senator Magsaysay. The proposal of Senator Osmeña III is accepted as far as the principal sponsor is concerned, Mr. President.

The President. All right. The Osmeña amendment to reflect Section 3(a) of House Bill No. 3083 is accepted by the sponsor.

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

The Chair presumes that the amendment goes up to page 2, lines 1 to 4. Is that correct, Senator Osmeña?

Senator Osmeña III. That is correct, Mr. President, because lines 2 to 4 were deleted earlier by the senator from Aurora.

The President. All right. We now proceed to page 2.

Senator Arroyo. Mr. President.

Senator Ople. Mr. President.

The President. May I recognize Senator Arroyo first before Senator Ople?

Sen. Joker P. Arroyo is recognized.

Senator Arroyo. On page 2, starting from line 5 to line 19, on the subject "covered transaction", I move that we adopt the wording of the House version, House Bill No. 3083, on page 2, lines 28 to 34, and lines 1 to 6 on page 3, to obviate in the bicameral conference so much huddling and discussion.

The President. What does Senator Angara say?

Senator Angara. That is completely acceptable, Mr. President.

The President. Sen. Blas F. Ople is recognized.

Senator Angara. Just to state, for the record, Mr. President, so that lines 5 to 19, on page 2, are deleted and in lieu thereof, the House definition of the term "covered transaction" will be inserted.

The President. And that definition is found on page 2, lines 28 to 34, and on page 3, lines 1 to 6 of House Bill No. 3083.

Senator Angara. That is correct, Mr. President.

The President. Does Senator Ople wish to be recognized on the amendment of Senator Arroyo?

Senator Ople. Mr. President, I would like to go back to page 1 because I have stood up to propose...

The President. If Senator Ople has no objection, may we first act on the Arroyo amendment and then we go back to page 1?

Senator Ople. I should not mind, Mr. President.

Senator Sotto. Mr. President.

The President. Is this in relation to the Arroyo amendment?

Senator Sotto. Yes, Mr. President.

The President. Sen. Vicente C. Sotto III is recognized.

Senator Sotto. I completely agree with the proposed amendment, except that I would like to be enlightened on No. 4 of the proposed amendment. This is very vague.

The President. No. 4.

Senator Sotto. It is like a catchall or too broad...

The President. Is it No. 4?

Senator Sotto. Yes, Mr. President. No. 4 of the amendment.

Senator Osmeña III. There is no No. 4.

The President. There is no No. 4 in the House version.

Senator Sotto. In the House version...I will do that later. I am sorry. I think I jumped to the other version.

The President. Sen. Sergio R. Osmeña III is recognized.

Senator Osmeña III. This is an amendment to the amendment of the senator from Makati. The original Senate version was a transaction involving an amount in excess of P1 million; the House is at P5 million. May we come up with a compromise at P3 million, Mr. President.

The President. What does Senator Arroyo say?

Senator Arroyo. The basis for the amount under the substitute bill speaks of no amount. In fact, it appears on page 2, lines 5 to 9.

The Angara version says: "REFERS TO A SERIES OR COMBINATION OR A PATTERN OF UNUSUALLY COMPLEX OR LARGE CASH TRANSACTIONS OF A NON-PERMANENT DEPOSITOR HAVING NO CREDIBLE PURPOSE OR ORIGIN, UNDERLYING TRADE OBLIGATION OR CONTRACT."

This is now the definition which we are discussing and which I seek to substitute with the House version.

What I am trying to say, Mr. President, is that during the bicameral conference, perhaps we could obviate discussions by just accepting the House version. After all, yesterday, I said that the threshold amount in Hong Kong has no limit. The threshold amount in Japan is \$300,000.

Senator Angara. That is P15 million.

Senator Arroyo. Mr. President, \$300,000 is P15 million. So, the two Asian countries in that table have both very high threshold amounts—P15 million for Japan and no limit as far as Hong Kong is concerned.

If we have to discuss this, then let us discuss it. I understand that the members of the House of Representatives had a very

heated discussion particularly on this subject last night. They broke up late this morning. And if this has been the subject of a heated discussion, then I am just trying to obviate further discussion in the bicameral conference.

Thank you, Mr. President.

Senator Osmeña III. At the outset, Mr. President, we have not yet come to the proposed amendment of the distinguished senator from Aurora which begins in line 11 of page 2 when the gentleman from Makati came in in line 5 and proposed the adoption of the House version.

Therefore, I had never intended to accept the deletion of lines 11 to 16, particularly the amount of P1 million.

As to the observation of the gentleman from Makati that Hong Kong and Tokyo have no limits or have larger limits, this would be comparing apples and oranges. In Hong Kong and in Tokyo, they have a very sophisticated financial system which is already, shall we say, almost beyond reproach as far as the international banking community is concerned. And, therefore, leaving it to the discretion of the branch managers there to determine whether a particular deposit is suspicious or not, serves the purpose. In this country, we are not yet at that level of sophistication or level of trust or level of competence.

Essentially, the threshold amount of P1 million is merely a figure. We probably pulled it out of the air using the guidance of the \$10,000 threshold amount that has been in use in the United States for two or three decades. What is sought by having a low threshold amount is that a series of bank accounts could be opened all below the threshold amount but which, put together, would amount to a very large sum. If the single amount of P5 million were a sole deposit, that would be acceptable. But we have thousands of branches in this country. And if we were to accept the P5-million amount and someone had opened accounts in even 50 or, say, even 100 of those branches, P4 million times 100 would amount to P400 million. I think that is the reason there are such low threshold amounts.

I am not willing to go to the mat on this particular issue but, maybe, we can defer the threshold amount or just put in any amount below P3 million and let the bicam thresh it out, if the gentleman from Makati is willing to accept that.

The President. If the gentleman from Makati can accept that, we can place P3 million and try to convince them.

Senator Arroyo. I will leave it to the Body.

The President. All right. So, there is no objection. The

Arroyo amendment, as amended by Senator Osmeña, is accepted by the principal author, Senator Angara.

Before we act on this, Sen. Ralph G. Recto is recognized.

Senator Recto. Just a clarification. Just like earlier, when I stood up to find out the intent of the Declaration of State policy, I would think that covered transactions would refer to what transactions are to be reported by covered institutions to the FIU. Is it not so that covered transactions would refer to what transactions are to be reported by the FIU, the "red flag," so to speak?

Mr. President, during the period of interpellations—and why I accepted the amendment of Senator Angara—we were talking about cash deposits. And with the amendment of Senator Arroyo, using the House version, it is not really cash deposits, but it talks about transactions in excess of P5 million, and it has certain exceptions such as "except those between a covered institution and a person who is at the time of the transaction, a properly identified customer thereof where the amount is commensurate with the business or financial capacity of the client." And we have another paragraph in Paragraph 2.

Now, are we saying that the banks should inquire of the covered institution or the depositor all the businesses that he is involved in? I would prefer to stay with the amendment of Senator Angara, but I will agree with Senator Osmeña III to put an amount. Because, at any rate, I think what we have to do here is to maintain the stability, the credibility of the financial sector. And by and large, most of those identified under unlawful activities—drug dealers, kidnappers—will not accept checks, they will be paid in cash. And that they will try to go to the bank and deposit these cash transactions.

So that is my point, Mr. President, and that should trigger the reporting requirement of the covered institutions to the FIU—the cash transactions. It is a simpler amendment, the amendment of Senator Angara, which we agreed to adopt earlier, which refers to a series or combination or a pattern of unusually complex or large cash transactions of a non-permanent depositor. We can set an amount here, whether it be P1 million or P5 million, for as long as it is cash, I think that should trigger the reportorial requirement.

Senator Pimentel. Mr. President.

The President. Sen. Aquilino Q. Pimentel Jr. is recognized.

Senator Pimentel. Before the main sponsor would reply to the observations of Senator Recto, allow me to put into the *Record* that under the sophisticated way of dealing in a monetary transaction today, I think only the drug dealers in Burkina

Faso would deposit in cash, Mr. President. Many of the transactions are done through electronic mail and would probably be the more dangerous trend if we limit the deposits in the Philippines to cash transactions. But I agree with Senator Recto that somehow there has to be a threshold and there has to be some kind of a guiding principle by which the red flag can automatically be raised by the unusual transaction that is being made through our banking institutions. Just an observation.

Senator Angara. Mr. President.

The President. Sen. Edgardo J. Angara is recognized.

Senator Angara. I think that is a good observation. And the point raised by Senator Recto, I think, is also important, Mr. President, because now that I reread the House definition, the House definition really will indicate that just a simple, single transaction of over P5 million will already trigger off the description that it is a covered transaction and will trigger off reporting.

Now, the second transaction of over P5 million has a qualification of having no underlying legal or trade obligation. But I thought that these two subsections should have that qualification. One is suspicious of the first not simply because of the huge amount of P5 million but because there seems to be no legitimate reason underlying it.

So, now the cash, I leave it to the Body, whether we use the description "cash" before the word "transaction."

The President. Would the gentleman on the floor accept a one-minute recess to discuss this?

Senator Osmeña III. May I just put on record, Mr. President,—

The President. Senator Osmeña III is recognized.

Senator Osmeña III. —an observation. We are trying to interdict transactions that come from other countries, using the Philippine financial system as just a remittance center and sending it in a few seconds later to Grand Cayman Islands or to the United States. And those would not be cash transactions, those would be electronic transactions, not even checks.

Thank you, Mr. President.

SUSPENSION OF SESSION

The President. All right. The Chair will declare a one-minute recess so the gentlemen can come up with the wording.

Is there any objection? [*Silence*] There being none, the session is suspended for one minute.

It was 12:31 p.m.

RESUMPTION OF SESSION

At 1:35 p.m., the session was resumed.

The President. The session is resumed.

May we know the status of the debate, Madam Majority Leader?

Senator Legarda Leviste. Mr. President, earlier, we had Senator Angara on the floor. May I ask that Senator Angara be recognized for the continuation of the amendments on the Angara version.

The President. Senator Angara is recognized.

Senator Angara. The parliamentary status is that we are at the definition of "Covered Transaction" on page 2, lines 5 to 19. The latest amendment introduced and was accepted was the amendment by Senator Arroyo to replace lines 5 to 19, with the House version. And the other amendment is the one introduced by Senator Serge Osmeña III.

The President. Lowering the threshold...

Senator Angara. Lowering the threshold from five to three. And latest comment is that of Senator Recto expressing his preference to the phrasing or the formula found in our version rather than in the House version. So that is the parliamentary status.

The President. All right. What is the pleasure now of Senator Angara, being the principal author of the amendment?

Senator Angara. Of course, I would have been biased in favor of my own version, Mr. President, because I thought it was simpler, and we can accommodate some of the concerns expressed by Senator Arroyo as well as Senator Recto by putting a threshold in the provision that I have crafted and removing some of the phrasing here which to some, especially Sen. Serge Osmeña III, is not really necessary, like that phrase "OF A NON-PERMANENT DEPOSITOR". So, we can rewrite Section (b), page 2, lines 5 to 9, to accommodate all the concerns and suggestions made by Senators Arroyo, Osmeña III, as well as Senator Recto.

And if I may do so now,—

The President. Please.

Senator Angara. —I would suggest, Mr. President, that we go back—rather, we first withdraw the approval of the Arroyo amendment.

The President. It has not been approved yet.

Senator Angara. It has not been approved. All right.

The President. We just accepted the proposed amendment of Senator Osmeña.

Senator Angara. Then, I go to my version, Mr. President, on page 2, line 5.

Senator Ople. Mr. President, there is an anterior amendment on page 1.

The President. Is it possible, Senator Ople, that we try to finish this and then we go back to page 1?

Senator Ople. All right then, on that understanding.

The President. Yes, we will go back to page 1.

Senator Angara. So, on page 2, line 6, between the words "COMPLEX" and "LARGE", delete the word "OR" and in lieu thereof, insert the word AND. This is the concern of Senator Arroyo.

In line 7, delete the phrase "OF A NON-PERMANENT DEPOSITOR".

In line 9, remove the period (.) after the word "CONTRACT" and include the phrase INVOLVING AN AMOUNT IN EXCESS OF THREE MILLION PESOS (P3,000,000.00) OR THE EQUIVALENT IN FOREIGN CURRENCY.

So, here we have accommodated the concern of Senator Recto that it should really be limited to cash, although we are reminded by Senator Osmeña III that in this modern way of sophisticated banking, transfers need not really be in cash. But drug dealers and kidnappers normally deal with cash. So we will keep the word "CASH" and then we insert that threshold of THREEMILLION PESOS (P3,000,000.00).

I hope that captures all the concerns expressed, Mr. President.

The President. May the Chair raise a question to the sponsor?

Senator Angara. Yes, Mr. President.

The President. Would a covered transaction only involve cash transactions in excess of P3 million? Meaning, cold cash?

What about the concern raised by Senator Osmeña? Is that addressed here?

Senator Angara. No, it will not, Mr. President, if we retain the word "CASH"—

The President. That is correct, yes.

Senator Angara. —in line 6.

The President. Yes.

Senator Angara. But if Senator Recto will agree just to drop the word "CASH."

The President. Yes.

Senator Angara. But we express the sense of the Senate that we feel that this section should largely refer to cash transactions in order to give rise to that suspicion, in order to consider this as a red flag. Because if somebody sends a person money through electronic transfer, one should assume that the bank already has a previous arrangement with the sender bank or may have some previous dealing with the remitter of that fund. And obviously, if one is a kidnapper or a drug lord, he will not do it through bank transfer.

The President. So, the gentleman is proposing to delete the word "CASH?"

Senator Angara. Delete the word "CASH" so that we can accommodate some other specie of cash that may be invented in the future so that this provision will be, in a sense, timeless but expressing the sense of the Senate that this is largely targeting cash transactions.

The President. All right. Senator Osmeña III is recognized.

OSMEÑA III-ANGARA AMENDMENT

Senator Osmeña III. Well, thank you for that, Mr. President. Perhaps, in order to accommodate everyone's concerns, why do we not consider inserting after the word "LARGE" in line 6, a couple of words. So, it will read as follows: "REFERS TO A SERIES OR COMBINATION OR A PATTERN OF UNUSUALLY COMPLEX AND LARGE FINANCIAL TRANSACTIONS, ESPECIALLY CASH TRANSACTIONS,".

Senator Angara. All right. I think that captures the concern, Mr. President.

Senator Osmeña III. Thank you, Mr. President.

The President. "ESPECIALLY CASH." All right. May the Chair read the proposed section for clarity and for the record?

Senator Angara. So the new subsection will read:

(b) "Covered Transaction" REFERS TO A SERIES OR COMBINATION OR A PATTERN OF UNUSUALLY COMPLEX AND LARGE FINANCIAL TRANSACTIONS—

The President. CASH TRANSACTIONS.

Senator Angara. No, Mr. President.

The President. I am sorry.

Senator Angara. —ESPECIALLY CASH HAVING NO CREDIBLE PURPOSE OR ORIGIN, UNDERLYING TRADE OBLIGATION OR CONTRACT INVOLVING AN AMOUNT IN EXCESS OF THREE MILLION PESOS (P3,000,000.00) OR—

The President. ITS EQUIVALENT IN FOREIGN CURRENCY.

Senator Angara. —ITS EQUIVALENT IN FOREIGN CURRENCY.

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

May the Chair now recognize Sen. Blas F. Ople to go back to page 1?

Senator Ople. Thank you, Mr. President. This is an anterior amendment on page 1 under the "Declaration of Policy." In a previous meeting, the sponsor of the omnibus amendment, Senator Angara, has already cleared this amendment for adoption by him. May I read the proposed amendment.

The President. That will come after line 14?

Senator Ople. In line 5, in the "Declaration of Policy," Mr. President.

The President. All right.

OPLE-ANGARA AMENDMENT

Senator Ople. THE RULES ON CONFIDENTIALITY EMBODIED IN REPUBLIC ACT 1405 SHALL BE MAINTAINED AS A GENERAL PRINCIPLE.

The President. I am sorry. May we be clarified which draft the gentleman is using? Where will we insert the Ople amendment?

Senator Angara. Mr. President, I would suggest that we insert the Ople amendment immediately after the Cayetano amendment and that should be found in line 10 in the "Declaration of Policy."

The President. All right, after line 10.

Senator Ople. It is agreed, Mr. President.

The President. May we have the Ople amendment again?

Senator Ople. THE RULES ON CONFIDENTIALITY EMBODIED IN REPUBLIC ACT 1405 SHALL BE MAINTAINED AS A GENERAL PRINCIPLE.

Mr. President, there is a second paragraph in the draft that I distributed, but in my opinion, it is now subsumed under the Arroyo amendment on insulating the proceedings from political considerations which will appear in a separate section towards the end of the bill.

The President. So the proposed Ople amendment is after line 10 which shall read: THE RULES ON CONFIDENTIALITY EMBODIED IN REPUBLIC ACT 1405 SHALL BE MAINTAINED AS A GENERAL PRINCIPLE.

Senator Ople. Yes, Mr. President.

Senator Angara. It is accepted, Mr. President.

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

Senator Ople. Thank you, Mr. President. I will wait for my turn in the other pages of the bill.

Senator Arroyo. Mr. President.

The President. What is the pleasure of Senator Arroyo?

Senator Arroyo. Mr. President, are we free now to make amendments starting in line 19 of page 2?

The President. I would think so. Yes.

Senator Pangilinan. Mr. President.

The President. Senator Pangilinan is recognized.

Senator Pangilinan. Mr. President, just a clarification before we proceed to line 20.

As amended, the item on covered transaction, we set a threshold of P3 million. I am assuming here that, hypothetically, if an individual deposits P2 million everyday for three days, or 10 days for that matter, this particular provision also includes such a transaction as a covered transaction, is that not right? Because although the deposit is P2 million, the aggregate amount because of the series or a combination of deposits exceeds P3 million.

Senator Angara. That is true, Mr. President.

Senator Pangilinan. Thank you, Mr. President.

The President. For the record, it is covered, yes.

Now the Chair recognizes Senator Arroyo. Which line?

Senator Arroyo. After line 19, page 2.

The President. All right.

Senator Arroyo. Mr. President, the offenses under this Act are actually two: "Covered Transaction" and "Unlawful Activity" which is on page 3 starting in line 17.

For orderly presentation, I would suggest and move that lines 17 up to 29 on page 3, and lines 1 to 3 on page 4, be inserted between lines 19 and 20 of page 2 so that the sequence would be better.

Senator Pimentel. Mr. President, antecedent amendment.

The President. Senator Pimentel is recognized.

Senator Pimentel. The motion of Senator Arroyo would transpose the section on "Unlawful Activity" to that portion after line 19.

Senator Angara. Immediately after the definition of "Covered Transaction."

PIMENTEL-ANGARA AMENDMENT

Senator Pimentel. Yes. I would like to suggest, as a matter of style, that lines 9 to 16 found on page 3 be transposed earlier because these talk about "Transaction." So we have "Covered Transaction" and then the following section will read "Transaction" and then to be followed by the Arroyo amendment, Mr. President.

The President. All right, the proposed amendment of

Senator Pimentel is to transpose lines 9 to 16 on page 3 to before line 5 on page 2.

Senator Pimentel. No, Mr. President.

The President. Sorry.

Senator Pimentel. After line 19.

The President. After line 19?

Senator Pimentel. Yes. "Covered Transaction" and then "Transaction."

The President. All right. I am sorry.

Senator Angara. In effect, what the two distinguished gentlemen are suggesting is that line 9, beginning with letter (g) "Transaction" on page 3 up to and including line 29 on page 3 and lines 1 to 3 on page 4 be transposed to page 2 immediately after line 19.

The President. That is correct. Is there any objection to that? Is that acceptable to the sponsor?

Senator Angara. It is accepted, Mr. President.

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

Senator Angara. In fact, Mr. President, this is a good arrangement. And I think the other sections can be better-arranged later on after we have finished all the amendments. Somebody, our parliamentary draftsmen, should really rearrange the sequencing of the provisions.

The President. All right, we now proceed. Still on page 2, line 20.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Since we have transposed "Unlawful Activity" to the place where it is now located, maybe it is opportune to include in the definition of "Unlawful Activity" **TERRORISM**, Mr. President. But we will have to define what "terrorism" is.

We are ready to define "terrorism"...

The President. For an orderly discussion, may I suggest to Senator Pimentel that we insert that amendment at the time we reach page 3, although we know that it was already transposed to

page 2 just so we can proceed more orderly so that we can now consider line 20 on page 2.

Senator Pimentel. Yes, Mr. President. It is understood that this is included in the "Unlawful Activity."

The President. That is correct.

So, on page 2, lines 20 to 28, is there any amendment being proposed? *[Silence]* There is none.

Page 3. Senator Osmeña is recognized. We are now on page 3, unless the gentleman has an amendment on page 2.

Senator Osmeña III. On page 3, if there is no anterior amendment, Mr. President, may I request that under "Supervising Authority" the definition of FINANCIAL INTELLIGENCE UNIT be included as I am still unclear as to what that phrase encompasses.

The President. The principal sponsor of the measure may please respond.

Senator Angara. Mr. President, the design of this bill is to centralize and consolidate supervision in one body, because we can see the spectacle of three separate entities supervising and causing confusion and lack of direction.

What we are saying is that whether one is supervised by the SEC or the Department of Finance, the supervision will lie solely on the Central Bank of the Philippines. Now, the Central Bank will be assisted naturally by the Monetary Board and we will set up in a subsequent section, which I omitted, which I failed to mention in my draft, the creation of a financial intelligence unit which will be the body that will actively receive the complaints, analyze, assess, for the Monetary Board and the Central Bank governor. So that is the structure that we are envisioning under this. That is why the reference to the Supervising Authority is only to the Bangko Sentral ng Pilipinas.

Senator Osmeña III. So where would the definition of the Financial... Under what section would that definition of the FIU come in?

Senator Angara. Yes, it would be in a separate section, Mr. President. I was thinking that it should go immediately after Section 6, Jurisdiction of Money Laundering Cases and Senator Flavio has a proposal.

The President. There will be a proposal from Senator Flavio at the appropriate section, Senator Osmeña. So, if the gentleman can just await...

Senator Osmeña III. I am just in a quandary now, Mr. President, because the definition in the House version of the phrase "Supervising Authority" seems to cover more ground, and if I may be allowed to read, it appears on page 3, line 22 of the House bill. It says,

"Supervising authority" refers to the appropriate supervisory or regulatory agency, department or office supervising or regulating the covered institutions enumerated in Section 3(a).

Now, essentially what brings to mind, Mr. President, is: supervising authority now differs from the House version, the Senate version. I think we might anticipate what we would want it to be already rather than prolonging the debate in the Bicameral.

Senator Angara. That is true.

Senator Osmeña III. So which would be more accurate, Mr. President, the definition of the House or the definition of the Senate?

Senator Angara. The definition of the House took into account the original wording of the original draft. As we remember, Mr. President, the original draft will create a three-man council and so the definition adopted by the House is still in relation to that council. But as I am saying, Mr. President, because of our consensus that this bill must be simple in conception as well as contain simplified procedure, we thought that one supervising authority would be sufficient, because after all, what are we trying to trace? We are trying to trace money put into the financial and banking systems, and whether we are an entity created under the Bangko Sentral or by the SEC, we will have to have a bank account. And since the man in charge of money flowing in the banking system or in the financial system largely is the Central Bank governor, we thought that that will simplify matters if we just vest the sole authority as supervising in terms of implementation of this bill on the Bangko Sentral governor.

Senator Osmeña III. I have no objection to that. I think what we are trying to do here is define the terms. There are three levels now involved. At the lowest level we have the covered institutions; at the highest level we have the Bangko Sentral which the Senate wants to call the Supervising Authority. Now what would be the generic term for the SEC and the Insurance Commission? Because in the House, I think that is what the representatives refer to as the "supervising authority."

Senator Angara. That is correct.

Senator Osmeña III. So it is a matter of nomenclature. What do we call what?

Senator Angara. The use now of the word "SEC" or Department of Finance is purely descriptive, Mr. President, and has no operational content now under the conception, under the structure that we are setting up.

So the gentleman is right. It begins with the covered institution either a bank, insurance broker, insurance company, et cetera. Then it goes to the Central Bank governor. But the Central Bank governor will be supporting him and backstopping him, a financial intelligence unit which will now study, assess and evaluate those reports coming from the covered institutions regarding covered transactions.

So that is how we conceptualize this thing and....

Senator Osmeña III. Does the gentleman mean to say that the Insurance Commissioner and the Securities and Exchange Commission will play no role?

Senator Angara. Well, they will follow their own bureaucratic process. If the one involved is a stockbroker, I suppose his initial report will go to the exchange and go to the SEC and in turn go directly to...

Senator Osmeña III. Therefore, the exchange and the SEC become the supervising authority.

Senator Angara. But I do not want to call it a supervising authority because it is just really part and parcel of their bureaucratic process. In fact, if I have my way, I would like to cut out those layers and steps and authorize the covered institution to report the covered transaction directly to the Bangko Sentral because time is of the essence here.

Senator Osmeña III. But, unfortunately, the Bangko Sentral does not have direct regulatory supervision over those institutions that fall under the Insurance Commissioner and the Securities and Exchange Commission.

Senator Angara. That is correct, Mr. President, but this proposed law is not about regulation. We are not talking about the Bangko Sentral being vested with regulatory authority over entities over which, under the present law, it has none. What it does, in fact, is a limited but important function of being the central clearinghouse of all money-laundering activities wherever coming from, whether from banks or insurance agencies.

Senator Arroyo. Mr. President.

The President. With the permission of Senator Angara and Senator Osmeña, the Chair would like to recognize Senator Arroyo.

Senator Arroyo. I would just like to interject and perhaps add my two-cents' worth in this discussion.

Mr. President, the success or failure of this proposed Act would depend upon the enforcing agency.

Now, the Fincen in the United States is composed of the representatives of the Department of Treasury, Department of State, Department of Justice, and the agencies of the banking system.

Now, when we were discussing this preliminarily at the committee level, we could not agree on adopting any model because of the fear, particularly on the part of the Minority, that the secretary of Justice would be included in the unit.

Now, without trying to muddle the discussion, because of the concern of the Minority about the secretary of Justice being part of it, especially since the secretary of Justice will handle the prosecution of the offenses, the Department of Justice has been completely left out. And by leaving it out, it has really no investigative or prosecution arm.

We have here an Act where there will have to be an investigation, in fact, a preliminary finding, which calls for judicial or quasi-judicial function, but unrepresented would be the Department of Justice.

Now, because of the concerns of the Minority, well, even the committee just left out this Department of Justice. Whether that is wise or not, I do not know. The fact is, this bill is supposed to be essentially enforced by both the investigative and the prosecutorial arm of the government. But in deference to the position of the Minority, let us just say that we just yield to their fears.

Now, if we create this and from the text that we are reading, it will actually be the BSP, that will be the central office that will determine this. Senator Osmeña says, "How about the Insurance Commissioner? How about now the SEC?" That is a very serious concern. We should have a body that would approximate the United States model where every agency is represented. Otherwise, I can imagine that the Insurance Commissioner will be very jealous about an intrusion from the BSP. The Securities and Exchange Commission will also be very jealous of the intrusion by the BSP into affairs of purely securities matter.

How we can form a composite group that would address all of these concerns is what, I think, we should face. Fact of

the matter is that money laundering starts with the banks because, as they described it, the gateway of money laundering is the banks. I just have to discuss this because how do we solve this problem?

Senator Angara. Mr. President.

The President. Sen. Edgardo J. Angara is recognized.

SUSPENSION OF SESSION

Senator Angara. It is a very valid comment, Mr. President. Before we proceed, I move that we suspend the session for one minute.

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

It was 2:07 p.m.

RESUMPTION OF SESSION

At 2:27 p.m., the session was resumed.

The President. The session is resumed.

Unless the gentlemen on the floor have come to an agreement, there is a suggestion that we defer further amendments in lines 6 to 8, the "Supervising Authority," and jump to another section.

Senator Pangilinan. Mr. President.

The President. Sen. Francis N. Pangilinan is recognized.

Senator Pangilinan. Mr. President, I think we are almost coming to an agreement.

The President. All right.

SUSPENSION OF SESSION

Senator Pangilinan. I move that we suspend the session for two minutes.

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

It was 2:28 p.m.

RESUMPTION OF SESSION

At 2:30 p.m., the session was resumed.

The President. The session is resumed.

Senator Legarda Leviste. Mr. President.

The President. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, there was a suggestion earlier to move on to the next less contentious provision.

The President. All right. So, we hold off further discussion in lines 6 to 8 on page 3. Is that how the Chair understands it?

Senator Angara. We will hold off the definition, scope, and function of a "supervising authority"—

The President. All right.

Senator Angara. —and go ahead so that we can move forward.

The President. All right. We are now on page 3, line 9. Sen. Aquilino Q. Pimentel Jr. is recognized.

I am sorry. Sen. Panfilo M. Lacson is recognized.

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

May I introduce some amendments on the "Unlawful Activity."

The President. All right. Is there any anterior amendment in lines 9 to 16?

Sen. Renato L. *Compañero* Cayetano is recognized for the anterior amendment in lines 9 to 16 of page 3.

Senator Cayetano. Mr. President, I do not know how to call Senator Angara, the sponsor but, anyway, the sponsor of the first amendment.

The President. There is no Angara amendment in lines 9 to 16.

CAYETANO AMENDMENTS

Senator Cayetano. Anyway, I would like to propose an amendment beginning on page 3, line 9 to line 16. I propose that we substitute the definition of the term "Transaction" with the definition of the term "Transaction" in the House version. I feel the definition of the word "Transaction," as originally written, is simply worded but, nevertheless, contains all the elements.

In the House version, and may I refer to page 3, Section 25, subparagraph (h), the definition of the word "Transaction" refers to any act establishing any right or obligation or giving rise to any contractual or legal relationship between the parties thereto. It also includes any movement of funds by any means with covered institution.

The President. All right. The Cayetano amendment is read. What does the principal sponsor, Senator Magsaysay, say?

Senator Magsaysay. We have no objection, Mr. President. This is a more succinct definition of the term "Transaction."

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

Sen. Panfilo M. Lacson is recognized.

Senator Lacson. With the permission of the sponsor, Mr. President.

On page 3, line 28, after the word "Act", add the following as among the offenses covered by the term "Unlawful."

Senator Cayetano. Mr. President, with the permission of Senator Lacson, I have an anterior amendment.

The President. All right.

Senator Cayetano. Beginning in line 21, page 3, subparagraph (2), Sections 3, 4, 5, 7, 8, I would like to insert also Section 9 because Section 9 of the Dangerous Drugs Act speaks of cultivation.

The President. All right. Sections 3, 4, 5, 7, 8.

Senator Cayetano. I propose to include also Section 9 of that law. That Section 9 speaks of cultivation of plants which are sources of prohibited drugs. In fact, the penalty there is also *reclusion perpetua* to death.

The President. Is Section 9 also part of Title II?

Senator Cayetano. Yes, Mr. President.

Senator Magsaysay. The amendment is accepted, Mr. President.

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

We now go to line 28. Senator Lacson is recognized.

Senator Lacson. In line 28, after the word "Act", add the following as among the offenses covered by the term "Unlawful Activity": ROBBERY EXTORTION OR AS DEFINED IN ARTICLE 294 OF THE REVISED PENAL CODE, ROBBERY WITH VIOLENCE OR WITH INTIMIDATION OF PERSONS AND ILLEGAL GAMBLING", if that is acceptable.

Senator Angara. May we get it again, please? Robbery, extortion...

Senator Lacson. Robbery, extortion...

Senator Angara. Under Article 294 of the Revised Penal Code.

Senator Lacson. Under Article 294 of the Revised Penal Code. That would be No. 4. And then No. 5 would be illegal gambling.

So we will change No. 4 in line 1 of pages 4 to 6, Mr. President.

Senator Angara. Illegal gambling... It is accepted, Mr. President.

Senator Osmeña III. Mr. President.

The President. Sen. Serge Osmeña is recognized.

OSMEÑA III-LACSON AMENDMENTS

Senator Osmeña III. Mr. President, amendment to the amendment, with the permission of the distinguished senator from Cavite, Sen. Panfilo M. Lacson. Robbery under Articles 294 to 296; and 299 to 302. Robbery and extortion.

Senator Angara. Article 296...

Senator Osmeña III. Articles 294, 295, 296, 299, 300, 301 and 302. Those are the...

The President. What does Senator Lacson say?

Senator Lacson. Kindly repeat, Mr. President.

Senator Osmeña III. To amend the amendment of the senator from Cavite and to expand the articles referred to. So it should now read as Articles 294, 295, and 296; 299, 300, 301 and 302. Covering robbery and extortion. All felonies under Republic Act No. 3815, as amended, also known as the Revised Penal Code.

Senator Lacson. I have no objection, Mr. President.

Senator Angara. It is accepted, Mr. President.

The President. May the Chair know the view of the principal sponsor, Senator Magsaysay?

Senator Magsaysay. It is accepted, Mr. President.

The President. The Lacson Amendment, as amended by Sen. Serge Osmeña, is accepted by the sponsor.

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

Senator Osmeña III. Another amendment, Mr. President, because the gentleman from Cavite, Senator Lacson, mentioned the inclusion of illegal gambling. May I include Presidential Decree Nos. 449, 483 and 1602, as amended.

Senator Pimentel. Mr. President.

The President. Sen. Aquilino Q. Pimentel Jr. is recognized.

Senator Pimentel. Before Senator Lacson will accept the amendment, may I ask if the Osmeña III amendment previously accepted includes fraud and other so-called "white-collar" offenses, Mr. President?

Senator Osmeña III. No, Mr. President. I was just amending the amendment of the gentleman from Cavite. I am about to make an amendment to include swindling, theft, malversation, bribery.

Senator Pimentel. I just wanted to find that out.

Thank you, Mr. President.

The President. All right. So, there is a proposal on the illegal gambling to specify the pertinent presidential decrees. Is that how the Chair understands it?

Senator Osmeña III. That is correct, Mr. President.

The President. What does Senator Lacson say?

Senator Lacson. It is accepted, Mr. President.

The President. All right. The same being accepted, is there... Does the principal...

Senator Arroyo. Mr. President.

The President. Sen. Joker P. Arroyo is recognized.

Senator Arroyo. Mr. President, during the committee hearings we started pruning down the list because this bill will become all-encompassing if we add almost all the offenses in the Revised Penal Code.

Now, we cannot even agree on who would be the implementing authority of this. And these are properly offenses which are, strictly speaking, under the Department of Justice—prosecution of these offenses. If we add all these, are we sure that we can still enforce this law? We can keep on adding to the list, but whether we can enforce this is something else because the list is so long now. That is the problem that the committee faced and that is the reason we pruned it down. Now the House version has only four offenses. That is why I am just presenting this for the consideration of the Body.

The President. May the Chair make a suggestion consistent with the discussion on Supervising Authority. May we skip the definition of "unlawful activity" and go to the next sections which are less contentious and come back to this.

So, we deem it that the previous approvals on the additional offenses are reconsidered in the meantime and we go back to these later when we have another discussion on these. Is that acceptable?

Senator Osmeña III. Well, yes. But may I just say something in reaction to a statement of the gentleman from Makati.

The original proposed bill contained 31 predicate offenses. This was cut down by the committee to 17. Right now, we only have three or four, so we have just added two, so I think that makes six. I do not think that is anywhere near the 17 that Committee Report No. 1 filed on September 13 had.

Senator Arroyo. Well, Mr. President, if there are only two added, I do not think that is a problem. Since the amendment was not read, it gave me really goose pimples in the sense that it is practically the Revised Penal Code. But if that is the explanation of Senator Osmeña, that is fine with me.

Senator Osmeña III. And, Mr. President, I will just have to add another four later on during my turn. But I had mentioned this and I predicated shortening my interpellation on these—that bribery, malversation, theft, swindling and smuggling are included. As a matter of fact, in response to the question earlier of the Minority Leader who was asking about white-collar crimes, these, I believe, are the white-collar crimes that the Minority Leader, the gentleman from Cagayan de Oro, had adverted to.

The President. All right.

Senator Osmeña III. So, while we are at it, Mr. President, I will not object to deferring these to a later date.

Senator Arroyo. Mr. President, the rationale for this Anti-Money Laundering Act refers to international crimes, transnational crimes. These are what are involved here. That is why many countries are in agreement that we criminalize offenses which cross boundaries—drug trafficking, kidnapping, those things—which is a menace to everyone regardless of nationality. This is the heart of this bill. So, anything which is of domestic nature, purely the concern of particular countries, seems to be a little alien to this bill. I just have to say that so that when we go back, perhaps we could think about this more clearly.

Thank you, Mr. President.

Senator Osmeña III. No, I do not accept that, Mr. President. I do not accept that we must limit ourselves to what... Even the definition of "transnational crimes" is in question. For example, we get a request from the United States that the brother of Osama bin Laden has been accused in the United States of tax evasion. We will not be able to open his account in Manila, for the simple reason that tax evasion is not included even as one of the predicate offenses under our anti-money laundering bill. We have limited it to three offenses and we have limited it to the first layering of the anti-money laundering operation. And this would be severely limiting our scope.

Under the 40 recommendations set forth by the FATF and the United Nations 2000 Convention Against Transnational Organized Crime, there is a statement there which asks those who are participants or signatories to the convention to include the widest possible range of predicate offenses. And here we are arguing as if it were a virtue of giving the narrowest possible range of predicate offenses. And I do not accept that. I do not think that that is the intent of our having signed the 2000 Convention Against Transnational Organized Crimes.

The President. All right, the views are well-taken. As the Chair previously suggested, we can reconsider the previous approvals of amendments on unlawful activity and go back to it later on.

Yes, Senator Pimentel is recognized.

Senator Pimentel. Mr. President, before we leave this controversial issue, may I suggest that I be allowed to propose a non-controversial amendment—

The President. All right.

Senator Pimentel.—which is on terrorism, Mr. President?

The President. All right.

Senator Pimentel. Because it is definitely an international concern and I think it should be included in our definition of "Unlawful Activity."

The President. Senator Pimentel may proceed.

PIMENTEL AMENDMENT

Senator Pimentel. I propose, Mr. President, I move that we add **TERRORISM** under "Unlawful Activity" at the proper section to be numbered accordingly. And I would like to propose this definition which is found in Title 22 of the United States Code, Section 2656, which reads as follows:

THE TERM "TERRORISM" MEANS PREMEDITATED,—and I would like to add the word USUALLY—USUALLY POLITICALLY MOTIVATED VIOLENCE PERPETRATED AGAINST NONCOMBATANT TARGETS BY SUB-NATIONAL GROUPS OR CLANDESTINE AGENTS, USUALLY INTENDED TO INFLUENCE AN AUDIENCE.

THE TERM "INTERNATIONAL TERRORISM" MEANS TERRORISM INVOLVING CITIZENS OR THE TERRITORY OF MORE THAN ONE COUNTRY.

THE TERM "TERRORIST GROUP" MEANS ANY GROUP PRACTICING, OR THAT HAS SIGNIFICANT SUBGROUPS THAT PRACTICE, INTERNATIONAL TERRORISM.

Thank you very much, Mr. President.

Senator Cayetano. Mr. President.

The President. May I first find out from the sponsors if they are willing to accept this amendment?

Senator Cayetano. Precisely, I would just like to ask some clarificatory questions of the proponent.

The President. Before that, we can raise the question afterwards. We will find out first whether it is acceptable.

Senator Cayetano. All right.

Senator Angara. As far as we are concerned, Mr. President, this is completely acceptable to us.

The President. The amendment is accepted.

Senator Cayetano. Mr. President.

The President. Yes, Senator Cayetano.

Senator Cayetano. The reason I wish to speak out before the amendment is accepted... Well, first of all, let me say that I share the idea of my colleague from Cagayan de Oro that we ought to include "terrorism." My worry there is that we are defining for the first time the crime of terrorism which does not exist in our statute book. This particular bill may be held unconstitutional because it will cover two subjects now. This bill concerns unlawful activity which is now penalized under existing law. If we now create a new crime—which, by the way I said I am amenable but we ought to do this in a separate bill—that is just my worry. By accepting the proposal to consider the act of terrorism a crime, this bill may suffer some constitutional flaw. That is just my concern.

Senator Angara. It is a valid concern, Mr. President, but I think there is a solution to his concern. For instance, if it really turns out that he is correct that this is another topic or subject matter that ought not to be here, then there is a separability clause here. It will not affect the validity of the whole statute. But I think it is important, given the fact that terrorism is now a contemporary facet of national and international life, that we make it here already. Sure, the ideal time and place is for another statute or proposal to make it an independent crime. But we are already at this and we have an opportunity to proscribe it and say that the proceeds of terrorism will be considered as money laundered.

The President. May I know from Senator Pimentel if terrorism per se is being sought to be punished?

Senator Pimentel. No. As defined here, Mr. President, we are just putting in a clear definition of what "terrorism" consists of. Because our purpose is, as the sponsor from the Minority, Senator Angara, said, we are interested in proscribing or denying the fruits of terrorism to be enjoyed by the terrorists.

The President. So it is not that we are punishing terrorism. We are not creating a new criminal offense.

Senator Pimentel. Yes, Mr. President. There is no penalty prescribed here. Just the act considered as a basis for proscribing the fruits of that crime in terms of monetary rewards, for example, to those who are committing terrorism.

The President. The fruits of the activity.

Senator Pimentel. Of terrorism.

Senator Cayetano. I do not wish to be a killjoy, Mr. President. As I said, I share my good friend's concern about terrorism, not only international but even domestic. Even without penalizing it, we are including it in the paragraph under "Unlawful Activity." If

we consider terrorism as an unlawful activity, then we are in fact creating a new unlawful act which, as I said, may subject this bill to a constitutional challenge.

Anyway, my good friend from Aurora and Quezon feels that with a separability clause, it can be done. As I said, I have no vehement objection to that. As long as we understand the precise danger that it may be challenged, well and good. Anyway, I am not objecting. I am merely making a comment.

The President. All right. Is there any objection? *[Silence]* There being none, and since the amendment is accepted, the same is approved.

Just a grammatical amendment in line 21. The staff points out that instead of "TITLE TWO", it should be ARTICLE TWO.

So we suspend consideration of the definition of "Unlawful Activity." We now proceed to page 4, Section 4, in line 4. Are there any amendments, Sen. Serge Osmeña?

Senator Osmeña III. Yes, Mr. President. Again, I would like to refer to the House bill which describes three different ways by which the money-laundering law could be violated. The Senate contains only two: a person who commits, or a person who knows and helps. So the accessory. This is lacking because the House includes any person who does not follow the transaction-reporting requirement under the new proposed law.

The House Section (c) reads as follows:

"Any person who, with knowledge that any monetary instrument or property, is required under this Act to be disclosed and filed with the government, the Supervising Authority, or the Anti-Monetary Laundering Unit (AMLU), fails to disclose such monetary instrument or property."

The President. What does the principal sponsor, Senator Magsaysay, say?

Senator Angara. Let me respond first, Mr. President, because we were the ones who made this amendment.

The President. I am sorry. Yes, Senator Angara is recognized.

Senator Angara. Mr. President, we compressed these three subsections into two but still the two provisions capture the essence of the three. In the House version, letter (c) really is about failure to report and that is reflected in letter (b) of our amendment, "...fails to perform or refrains from any act", et cetera.

The President. "...fails to perform..." Yes. That is line 18.

Senator Osmeña III. Yes, I can see how that would be, Mr. President. But perhaps the good sponsor would see his way clear, just to make it simpler for a lay person to have three different categories or three different ways by which this law could be violated, which are: first, the person who is involved in the unlawful activity and attempts to transmit the money or remit the money; second, the person who aids and abets him in the remittance of the money; and third, the person who does not report particularly those who are working for the financial institutions.

Senator Angara. It is also all right with us, Mr. President.

Senator Osmeña III. Thank you, Mr. President.

Senator Angara. That will clarify the offense even better.

The President. Would Senator Angara still retain line 18 in that case?

Senator Angara. Well, we have to rewrite it according to the suggestion of Senator Osmeña, Mr. President.

Senator Osmeña III. Perhaps, Mr. President, if we can delete all of Section (b) in the Senate version and adopt both subsections (b) and (c) of the House version.

Senator Angara. That is all right, Mr. President. But we cannot adopt subsection (c) because subsection (c) of the House version contemplates an anti-money laundering unit which we do not have.

Senator Osmeña III. Subject to style, Mr. President.

Senator Angara. Subject to style, yes.

The President. The amendment of Senator Osmeña is accepted by Senator Angara whose amendment has been previously adopted. Is there any objection?

Senator Recto. Mr. President, I have no objection, but just one clarification.

The President. Senator Recto is recognized.

Senator Recto. Mr. President, in the House version which Senator Angara agreed to adopt, it talks about monetary instruments or property. But in the Senate version, there is no definition for "property" but only monetary instruments. Unless we have a separate definition for what "property" is. This will include possibly real property. And who will be the supervising authority later on? We are talking about the Central Bank in relation to

banks; the Securities and Exchange Commission in relation to other monetary instruments like stock certificates; and BSP...

Senator Osmeña III. Mr. President, with the permission of the gentleman from Batangas, may I refer him to page 3, line 4 which contains the definition of "Proceeds." We are talking here about the proceeds. "Proceeds" refer to all profits, results, effects and any amount derived or realized from an unlawful activity." It does not limit itself to cash, bank instruments, certificates or deposits, et cetera, but I guess this will include all real and personal properties as well.

Senator Recto. All right. My question then is, how is this reported? I mean, since we are talking about the BSP, the SEC, and the Insurance Commission, *paano iyong red flag dito?*

Senator Angara. Well, that is why, Mr. President, I was reluctant initially to accept the third subparagraph of the House version because we are still trying to determine the line of reporting. As the Chair knows it, we set that aside and deferred it. So the concern of Senator Recto is correct. We do not have an agreement yet on the line of reporting and the ultimate supervisory authority.

The President. Maybe Senator Osmeña can agree to retain first the wording as presently submitted with the understanding that once we resolve the issue on "Supervising Authority," we can take a second look at the House version on that particular section.

Senator Osmeña III. I have no objection. So we just defer this.

The President. All right, we can also defer this, although we can also approve the Senate version, the Angara amendment, and just go back to it later on.

Senator Recto. Mr. President, in the Angara amendment, it also has a term "or property," "monetary instrument or property," and I am not objecting. I just want to seek clarification because this will have a relationship on how it is supposed to be reported to the supervising authority. And my understanding is, what is being contemplated...

Senator Angara. No, in our draft, Mr. President, just to correct it.

Senator Recto. Yes, Mr. President.

Senator Angara. In our draft, we omitted or we deleted "monetary instrument or property" in both subsections.

Senator Recto. Yes, yes. Well, thank you, Mr. President.

The President. Is there any other amendment in lines 4 to 20?

Senator Barbers. Mr. President.

The President. Yes, Senator Barbers is recognized.

BARBERS AMENDMENT

Senator Barbers. I have a proposed amendment in line 12 of page 4.

The President. Okay.

Senator Barbers. I propose, Mr. President, that after the word "transfers", we insert the word, INVESTS, and the word FUNNELS. Since the crime is defined by way of enumerated acts with reference to the proceeds of many unlawful activity, adding the two words INVESTS and FUNNELS would make clever the covert acts of money laundering, and at the same time will expand the coverage.

The President. All right, FUNNELS. What does the sponsor say?

Senator Angara. We accept it, Mr. President, subject to style.

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

The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, a proposed amendment for the distinguished sponsor after line 20. May we add letter (C).

(C) THE CRIME OF MONEY LAUNDERING AS SPECIFIED IN THIS LAW SHALL BE APPLICABLE WHEN A COVERED TRANSACTION EVEN THOUGH TRANSACTED ABROAD, INVOLVES A CURRENCY NOTE OF THE PHILIPPINE ISLANDS OR OBLIGATIONS AND SECURITIES ISSUED BY THE GOVERNMENT OF THE PHILIPPINES.

It is on page 4, after line 20, letter (C).

Senator Angara. May we have the amendment again, Mr. President?

Senator Legarda Leviste. Mr. President, subject to style.

(C) THE CRIME OF MONEY LAUNDERING AS SPECIFIED IN THIS LAW SHALL BE APPLICABLE WHEN A COVERED TRANSACTION EVEN THOUGH TRANSACTED ABROAD, INVOLVES A CURRENCY NOTE OF THE

PHILIPPINE ISLANDS OR OBLIGATIONS AND SECURITIES ISSUED BY THE GOVERNMENT OF THE PHILIPPINES.

Senator Angara. I am trying to capture the essence of this amendment. Does it mean that if the proceeds of the unlawful activity committed abroad in terms of Philippine coins and currency, this law will also be applicable?

Senator Legarda Leviste. Yes, Mr. President. Let me provide a situation. If there is a person, whether a foreigner or Filipino, who is able to bring out more than P5 million, which is a threshold or P3 million that we have set out, brings it out of the airports, brings it to a country that is a non-complying country like Egypt for example, and while he was there he was able to deposit the amount which he was able to bring out illegally and deposited it in a local bank in that country. Later on it turns out that this person has a pending case in the Philippines and in the courts here in this country for kidnapping and other crimes.

Letter (C), this paragraph inserted here would be able to provide the evidence needed in that non-complying country for our Philippine courts to prosecute him.

SUSPENSION OF SESSION

Senator Angara. May we ask for a one-minute suspension of the session.

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

It was 3:04 p.m.

RESUMPTION OF SESSION

At 3:08 p.m., the session is resumed.

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

Senator Legarda Leviste. Mr. President, I will withdraw my amendment, subject to the inclusion later on on page 10 of the mutual assistance among states. I notice in the Angara working draft on page 10, Section 14, the mutual assistance among states was deleted. The kind sponsor has gladly suggested that this would be included later on, and therefore, my concern will be addressed by this provision.

The President. All right. We shall proceed. Is there any other amendment? We are now in line 21 of page 4. Lines 21 to 28, there is no amendment. We now go to page 5.

Senator Arroyo. Mr. President.

The President. Senator Arroyo is recognized.

Senator Arroyo. May we go back to page 4, Mr. President?

The President. We go back to page 4.

Senator Arroyo. Yes. May I suggest that lines 21 to 28 on page 4 and lines 1 and 2 on page 5 on "Prima Facie Presumptions" be just eliminated because let the Rules of Court be just followed. I am bothered by...*wala na ito, ano?*

Senator Angara. *Oo, inalis na natin.* Out of the three presumptions, Mr. President, we just retained one.

Senator Arroyo. Which is?

The President. The one in caps.

Senator Angara. The one in capital letters.

Senator Arroyo. Mr. President, I am a little bit worried about the phraseology that when a person prosecuted for money laundering has introduced, submitted, filed or given any spurious, forged, fictitious, simulated or otherwise false identification of the true owner or origin of any monetary instrument or property in any covered institution, he shall be presumed to have the knowledge that a monetary instrument or property constitutes as proceeds of an unlawful activity. The burden is immediately shifted to the defendant. I am bothered by that. The shifting of the burden is immediately thrown at the person and it goes against the very presumption of innocence.

Senator Angara. Mr. President, if the distinguished gentleman is proposing that we delete this one remaining presumption, we are more than glad to do it because like him, I also share the sentiment that this law is already loaded against people suspected of being a money launderer. With this rule on evidence, we are really loading it even more.

Senator Arroyo. Thank you, Mr. President. Anyway, in the House version, there is no...

The President. The Arroyo amendment is to delete from lines 21 down to 28 on page 4 and lines 1 and 2 on page 5. Is there any objection?

Senator Osmeña III. Objection, Mr. President. I think it is pretty difficult now to prove *prima facie* case and this merely helps give teeth to the law. We are looking at very few other sections that would deal with this. As a matter of fact, I wanted to broaden this, if it is legally possible. I would ask the help of the lawyers in this Chamber whether a *prima facie* assumption

that a person is a member of an organized terrorist group, like the Abu Sayyaf, would be enough to give cause for the freezing of his bank account. That is why I object. I feel this would give some teeth to the law because it talks about having filed forged, fictitious, simulated or otherwise false identification of the true owner.

Senator Angara. Mr. President, this presumption applies at a stage where a case is already pending. As it says, "when a person prosecuted for money laundering." That means there is already a case filed against him. At that point, I do not think it is fair that we create presumptions against the defendant when it is really the duty and the burden of the prosecution to prove his guilt beyond reasonable doubt.

At this point, there is already probable cause that he is a money launderer. That should be sufficient starting point for the prosecution. Why should we make his job that much easier by introducing this presumption and therefore his burden of proving guilt beyond reasonable doubt is that much easier? This one really is contrary to the presumption of innocence.

Senator Pangilinan. Mr. President.

The President. Sen. Francis N. Pangilinan is recognized.

Senator Pangilinan. As cosponsor of the bill, one of the primary factors behind placing provisions of this nature, *prima facie* presumptions, is that it is in recognition of the nature of money laundering. The characteristics being that it is very difficult to detect. Its transaction can be done electronically. And therefore, *prima facie* presumptions, as was correctly pointed out earlier by Senator Serge Osmeña, would help and put more teeth to the law.

Again, in putting the *prima facie* presumptions, it is really in recognition that the crime of money laundering is a complicated criminal act which needs some teeth for a law to be effective.

Senator Cayetano. Mr. President.

The President. Yes, Senator Cayetano.

Senator Cayetano. Just to add certain comment on that *prima facie* presumption.

As my good friend from Aurora, Quezon and the Philippines said, this applies when a case of money laundering is being prosecuted. Am I correct, Mr. President?

The President. Yes.

Senator Angara. That is correct.

Senator Cayetano. Therefore, the fact alone that a money-laundering case has been filed and being prosecuted has already given the government precisely the very reason a case has been filed, and that would be because these guys submitted spurious documents, fictitious, simulated or false identification of the true owner of any monetary instrument or property. In other words, my point is, this is redundant because a case has already been filed.

Senator Osmeña III. Mr. President.

The President. Senator Osmeña is recognized.

Senator Osmeña III. The point of the senator from Taguig is well-taken. May I just suggest then that in line 23, the word "prosecuted" be deleted and the word INVESTIGATED be inserted. So it will now read:

"When A person being INVESTIGATED for money laundering HAS INTRODUCED, SUBMITTED, FILED"; etcetera.

So this is before the actual act of prosecution, Mr. President.

The President. The amendment is to change the word "prosecuted" to INVESTIGATED.

Senator Osmeña III. That is correct.

Senator Cayetano. Mr. President, with the permission of the other gentleman from Cebu.

The President. May I have the views first of the principal sponsor, just for an orderly discussion? The sponsor of the amendment is Senator Angara.

SUSPENSION OF SESSION

Senator Angara. May we have a one-minute suspension of the session, Mr. President?

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

It was 3:18 p.m.

RESUMPTION OF SESSION

At 3:28 p.m., the session was resumed.

The President. The session is resumed. Senator Angara is recognized.

Senator Angara. Mr. President, we are in lines 23 to 28. Senator Arroyo, who originally moved to have these deleted, has

withdrawn his motion to delete. Therefore, this provision is retained and is now open to amendments.

OSMEÑA III-CAYETANO AMENDMENT

The President. There is a proposal to replace the word "prosecuted" with INVESTIGATED.

Senator Angara. That is correct, Mr. President, as proposed by Senators Osmeña III and Cayetano. So we accept that.

The President. All right. In line 23, the word "prosecuted" is changed to—

Senator Angara. BEING INVESTIGATED.

The President. BEING INVESTIGATED. So we reinstate the word "being"?

Senator Angara. That is correct.

The President. All right. In line 23, reinstate the word "being", and instead of "prosecuted", INVESTIGATED is the word used.

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

We will now proceed to page 5.

Senator J. Osmeña. Mr. President.

The President. Sen. John H. Osmeña is recognized.

Senator J. Osmeña. This is a preliminary to a possible amendment, Mr. President.

I would just like to clarify. Line 25 speaks of the "FALSE..."

The President. What page?

Senator J. Osmeña. On page 4, Mr. President.

Line 25 speaks of the "FALSE IDENTIFICATION OF THE TRUE OWNER OR ORIGIN OF ANY MONETARY INSTRUMENT OR PROPERTY..."

Mr. President, it is not uncommon for law offices, members of the bar, to act as nominees for people when corporations are being registered with the Securities and Exchange Commission when they are not really the owners of the shares of stock that have been subscribed to, or they are not the source of the money that has been paid for that subscription.

So, therefore, when such a person is being... The word "prosecuted" was changed to INVESTIGATED. He is being investigated and he is asked to reveal the identity or the source of the money and he refuses to violate his professional responsibility as the nominee, may I know if he is, in effect, giving false identification of the true owner or origin of the money?

Senator Angara. Mr. President, at face value, that would look to be a situation falling within this provision. But, at a closer look, that is not so because the lawyer in that case, acting as a nominee, is only an agent and is representing himself as an agent and not representing himself as the owner or misrepresenting somebody else's owner.

But, I think, the question is also relevant and if we can find an appropriate phrase that will exclude the accepted and traditional practice of acting as nominees, we would be happy to accept that, Mr. President.

Senator J. Osmeña. Mr. President, my amendment here would be to delete this whole section. We are back to square one.

Senator Angara. That is what the gentleman wanted in the first place, Mr. President.

SUSPENSION OF SESSION

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

It was 3:35 p.m.

RESUMPTION OF SESSION

At 3:41 p.m., the session was resumed.

The President. The session is resumed. Sen. Renato L. Compañero Cayetano is recognized.

CAYETANO-J. OSMEÑA-ANGARA AMENDMENT

Senator Cayetano. Mr. President, after the gentleman from Cebu, Sen. John H. Osmeña, timely reminded us that many professionals are engaged in lawful activity, including those in the bank, I now move, as a matter of consensus arrived at by all concerned, to delete entirely the *prima facie* presumptions in Section 5, beginning line 21 of page 4—

The President. All right. There is a motion...

Senator Cayetano.—to line 17 of page 5...

Senator Angara. Up to...

The President. No. The provision in line 2 of page 5.

Senator Cayetano. Line 2 of page 5.

The President. The amendment of Senator Cayetano would delete line 21 down to line 28 on page 4; lines 1 and 2 on page 5.

Senator Pimentel. Mr. President.

The President. Sen. Aquilino Q. Pimentel Jr. is recognized.

Senator Pimentel. Mr. President, I was trying to listen to the reason advanced by Senator Cayetano for the deletion of this provision. Obviously, a person who is acting out of lawful motives will not introduce, submit, file or give any spurious, forged, fictitious, simulated or otherwise false identification. I am not too sure that that would be a valid justification. I mean, the explanation of Senator Cayetano would be a valid justification for the elimination of this provision. Because this provision merely gives rise to the *prima facie* presumption of wrongdoing of persons who introduce, submit, file or give spurious, forged, fictitious, simulated documents.

SUSPENSION OF SESSION

Senator Angara. Mr. President, I move that we suspend the session for thirty seconds.

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

It was 3:44 p.m.

RESUMPTION OF SESSION

At 3:45 p.m., the session was resumed.

The President. The session is resumed. Senator Cayetano is recognized.

Senator Cayetano. Mr. President, I would like to thank the gentleman from Cagayan de Oro.

The basic reason or primary consideration for moving to delete this particular provision on *prima facie* presumption is that this is contrary to the presumption of innocence enshrined in our Constitution.

The President. All right.

Senator Pimentel. I would like to hear it from the Minority sponsor, Mr. President. *[Laughter]*

The President. All right. The Minority sponsor is recognized.

Senator Angara. Mr. President, I want to reiterate and reecho the statement of rationale of the distinguished gentleman from Muntinlupa and Pateros. And I share the belief that in a criminal statute law, criminal law or criminal statute like this, we ought to eliminate any provision that will create presumption of guilt rather than of innocence. Because once one is indicted, the power and authority of government is so overwhelming because of the resources available to it. And therefore out of the wisdom of experience and study over the centuries, the principle of presumption of innocence has been embedded in our constitutional systems. We ought not to impair the effectiveness of that principle by presumption of guilt rather than of innocence.

Senator Pimentel. Mr. President, I find the explanation of the Minority sponsor overwhelming. *[Laughter]* Without any bias, I submit.

Senator Pangilinan. Mr. President.

The President. Senator Pangilinan is recognized.

Senator Pangilinan. Mr. President, just for purposes of record. If we will adopt the amendment, as proposed, the entire Section 5 of the original bill, as proposed, will be deleted.

So, for purposes of record, the reason behind Section 5,—again, this is a reiteration—was that the committee believed that we needed more teeth and being able to prosecute, being able to investigate. These are two levels—investigate, prosecute and forfeit properties, proceeds from an unlawful activity. However, after conferring with the other gentlemen who had proposed amendments, the committee has opted to agree to the said amendment.

The President. All right. So, the amendment to delete lines 21 to 28 on page 4; and lines 1 and 2 on page 5 is accepted by the sponsor.

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

Senator Angara. We are now on page 5.

The President. On page 5, yes.

Senator Cayetano. Mr. President.

The President. Senator Cayetano is recognized.

CAYETANO AMENDMENT

Senator Cayetano. May I propose an amendment to Section 6, Jurisdiction of Money-Laundering Cases; Witness Protection Program. I propose to delete the second sentence in line 23 which reads: "Whenever called upon to testify in court or any criminal investigation in connection with a money laundering crime under this Act..." et cetera, until line 27.

The reason for that, Mr. President, is that it is redundant. Because under the Witness Protection Program, the Public Prosecutor or the Ombudsman may, by himself, *motu proprio* opt to precisely put a witness that may be used in connection with any crime—now, in this case, money laundering—under the Witness Protection Program. So, we do not have to put it here. It will only lengthen the pages of this bill.

The President. What does the principal sponsor say? This is not an amendment of Senator Angara. The Chair concurs with the observation of Senator Cayetano.

Senator Pangilinan. Yes, Mr. President, the law on witness protection allows for witnesses to be admitted independent of this particular provision. So, we agree to simplify.

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

We go now to page 6.

Senator Barbers. Mr. President, anterior.

The President. I am sorry.

Senator Aquino-Oreta. Anterior amendment, Mr. President.

The President. All right. One by one. I first recognize Sen. Teresa Aquino-Oreta.

Senator Aquino-Oreta. Anterior amendment, Mr. President, line 18, subject to style.

The President. Line 18. Yes.

AQUINO-ORETA AMENDMENTS

Senator Aquino-Oreta. It says: "Jurisdiction of." Delete the word "of". It must be "Jurisdiction OVER Money Laundering Cases".

The President. That is correct.

Senator Aquino-Oreta. And then in line...

The President. May we approve that first? Is there any objection? *[Silence]*

Senator Aquino-Oreta. And then delete "Witness Protection Program".

The President. All right. Is there any objection? What does the sponsor say? Senator Pangilinan?

Senator Pangilinan. It is accepted.

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

Senator Aquino-Oreta. In line 21, after the word "laundering", place a period (.) and delete the word "except". And then start the new sentence with a capital T. "Those committed by public officers", et cetera.

Senator Angara. It is an editorial change.

The President. All right. What does the principal sponsor say?

Senator Pangilinan. May we know what line again?

Senator Aquino-Oreta. In line 21, after the word "laundering", place a period (.) and then delete the word "except". Then start the sentence with "Those committed by public officers", et cetera.

Senator Pimentel. The trouble, Mr. President, is that there are so many people in that one... *[Laughter]*

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

Senator Legarda Leviste. Mr. President.

Senator Barbers. Mr. President.

The President. The Majority Leader is recognized. Can the Majority Leader guide the Chair who will be recognized on the floor?

Senator Legarda Leviste. Yes, Mr. President. I have an amendment in this line unless Senator Barbers has an anterior amendment. Is it an anterior amendment?

My amendment is in line 22. And Senator Cayetano has an amendment in what line? *Wala na?* Finished.

Senator Osmeña III. Anterior, Mr. President, in line 21.

Senator Legarda Leviste. Yes, Senator Osmeña III has an anterior amendment.

The President. Senator Osmeña III is recognized.

Senator Osmeña III. I just wish to be clarified on the amendment introduced by the distinguished senator from Aurora. In caps, it is written here "AND PRIVATE PERSONS WHO ARE IN CONSPIRACY WITH SUCH PUBLIC OFFICERS".

Now, may I know if this is necessary? I mean, does the law specifically state that only public officers may be investigated by the Sandiganbayan?

Senator Angara. This has both a practical and legal purpose, Mr. President. Practical in the sense that we do not want to split prosecution. Because one is a private person, he has to go to an ordinary court, and because one is a public official, he goes to the Sandiganbayan. Since they acted in conspiracy, they ought to be tried in the Sandiganbayan.

Senator Osmeña III. Yes, but will it only apply in cases of money laundering? In other words, in normal cases it would not.

Senator Angara. No, it does too.

Senator Osmeña III. Well, I remember recently, the Ombudsman just cleared the spouse of a very high-ranking official saying that he was a private person and was not subject to investigation by the Ombudsman. Although...

Senator Angara. That is why, Mr. President, many people...

Senator Osmeña III. Was that correct or was that wrong? Again, I am just asking a question.

Senator Angara. That is why the quick answer to that is, that is true if the person is the only one being prosecuted. But if he is being prosecuted because he conspired with other public employees or officials, then the Sandiganbayan has jurisdiction over him.

Senator Osmeña III. So the element of conspiracy must come into play?

Senator Angara. Yes, Mr. President.

Senator Osmeña III. Again, I will go back to my original question.

Will this apply now to all cases before the Sandiganbayan or only to cases involving money laundering?

Senator Angara. In all cases.

Senator Osmeña III. In all cases from now on?

Senator Angara. Where there is conspiracy, yes.

Senator Osmeña III. Thank you very much, Mr. President.

Senator Legarda Leviste. Mr. President, in line with that, I have a question for the distinguished sponsor.

To my understanding, Sandiganbayan only covers public officers up to a certain salary grade, Salary Grade 27, I believe. Is that correct, Mr. President?

Senator Angara. I am sorry I was not listening.

Senator Legarda Leviste. My question is, the Sandiganbayan only covers public officers up to a certain salary grade, I believe Salary Grade 27. Is that correct, Mr. President?

Senator Angara. I do not remember that distinction, Mr. President, that jurisdiction depends on...

Senator Legarda Leviste. Mr. President, I think that is a fact and therefore the way it is worded, given the fact that the Sandiganbayan only covers Salary Grade 27, I believe that we must specify it here and revise it.

If the sponsor so agrees, it will read as follows: The Regional Trial Courts shall have jurisdiction to try all cases on money laundering EXCEPT THOSE committed by public officers AND PRIVATE PERSONS WHO ARE IN CONSPIRACY WITH SUCH PUBLIC OFFICERS WHICH MAY FALL under the jurisdiction of the Sandiganbayan IN ACCORDANCE WITH R.A. 8249.

The President. Unless the intention is to vest in the Sandiganbayan all money-laundering cases involving public officers regardless of the rank of the public officer. If that is the intention of the sponsor, then this will be an exception to the laws just cited by Senator Legarda Leviste.

Senator Legarda Leviste. That is my query, Mr. President. If that is the intention, then we have no objection to that. But we just wanted to clarify whether this only covers those covered by R.A. No. 8249.

The President. What does the sponsor say?

Senator Angara. My legal advisers, Mr. President, Senators Cayetano and Pangilinan, have counseled me and advised me that we must accept this amendment. That is correct as stated by the distinguished senator.

Senator Legarda Leviste. My legal adviser, the Minority Leader, says that Senator Angara must accept also my amendment.

Senator Angara. Yes, that is why it is accepted.

Senator Legarda Leviste. Thank you. Subject to style, yes.

The President. May we have again the amendment?

Senator Legarda Leviste. May I read the amendment, Mr. President.

The President. First, the provision reads this way as already amended: "The Regional Trial Courts shall have jurisdiction to try all cases on money laundering." And then the word "except" is deleted. And then we start the sentence with: "Those committed by public officers AND PRIVATE PERSONS WHO ARE IN CONSPIRACY WITH SUCH PUBLIC OFFICERS shall be under the jurisdiction of the Sandiganbayan."

Senator Legarda Leviste. That is the original, Mr. President, and the amendment would read "WHICH MAY FALL under the jurisdiction of the Sandiganbayan IN ACCORDANCE WITH R.A. 8249." Subject to style.

Senator Osmeña III. Mr. President.

The President. Yes, Senator Osmeña.

Senator Osmeña III. Why has the word "shall" been replaced by the word MAY?

The President. No. No. It is still there.

Senator Osmeña III. I just heard it. Maybe I heard it wrong. May I ask the Majority Leader?

The President. Senator Osmeña is correct.

Senator Legarda Leviste. WITH SUCH PUBLIC OFFICERS WHICH MAY, which shall FALL... It depends on the style, Mr. President.

Senator Osmeña III. No. Legal style is "shall," Mr. President. It is mandatory. There is no option.

Senator Legarda Leviste. May I request Senator Osmeña to repeat his query?

Senator Osmeña III. My query is: Why was the word "shall" deleted and changed to MAY?

Senator Legarda Leviste. No, Mr. President. In fact, my correction, my amendment is SHALL.

Senator Osmeña III. I see. Then I heard it wrong because I heard MAY.

Senator Legarda Leviste. It was "may" in the original.

Senator Osmeña III. No, no, it is "shall" in the original in our copy.

Senator Legarda Leviste. "PRIVATE PERSONS WHO ARE IN CONSPIRACY WITH SUCH PUBLIC OFFICERS which shall..."

SUSPENSION OF SESSION

The President. The Chair suspends the session for one minute since this is a very important provision on "Jurisdiction" and it is not clear, if there is no objection. *[There was none.]*

It was 4:00 p.m.

RESUMPTION OF SESSION

At 4:06 p.m., the session was resumed.

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

Senator Legarda Leviste. Yes, Mr. President. I have been enlightened in the small caucus we had earlier where those below Salary Grade 27 will also be covered by the statement, "...those committed by public officers AND PRIVATE PERSONS WHO ARE IN CONSPIRACY WITH SUCH PUBLIC OFFICERS shall be under the jurisdiction of the Sandiganbayan."

I just want to put it on record that my query was: "Does it mean that only those beyond Salary Grade 27 are covered?" However, the sponsor had said that this would cover all private persons and those public officers regardless of rank. Thank you.

The President. All right. So it has been withdrawn.

Any other amendment on page 5? Seeing none we go back to...

Senator Barbers. Mr. President.

The President. I am sorry. Yes, Senator Barbers is recognized.

Senator Barbers. I would like to propose an amendment in line 23, after the word "Sandiganbayan." But I would like to inform the Body that I really do not know whether this particular amendment is appropriate in this particular section because this might even fall in another section, Section 12 in particular, which provides for the penal provisions. But I deem it proper to propose this amendment in this particular section, Section 6, because this speaks of public officers, Mr. President.

So my amendment is a new sentence or a phrase after the word "Sandiganbayan", which reads like this: IF A PUBLIC OFFICER, AN EMPLOYEE OR ANY MEMBER OF ANY LAW ENFORCEMENT AGENCY INSTRUMENTAL IN THE ARREST OF THE ACCUSED ARE CALLED TO TESTIFY AND REFUSES TO DO THE SAME, THEY SHALL SUFFER THE SAME PENALTIES IN SECTION 12 HEREOF.

The rationale behind this is that, we have received several reports that several major cases, especially on drug cases, were dismissed by the courts because of the non-appearance of the arresting officers. So this is the rationale behind this and this would deter the public officer or the law enforcement agent to receive any payoff in consideration for the dismissal of the case.

But whatever it is, Mr. President, I will submit to the wisdom of the sponsor whether he accepts this amendment or not, because as I said, this might even fall under another section.

The President. Senator Angara is recognized.

Senator Angara. Mr. President, I think that is a good amendment, but I think we should put it under the Penal Provisions.

Senator Barbers. I submit, Mr. President. That is why I advanced an information and probably that is the price of having no adviser like Senator Angara and Senator Legarda Leviste. *[Laughter]*

The President. All right, we now proceed to page 6. Senator Arroyo is recognized.

Senator Arroyo. Mr. President, it is only a question of style. It is on page 6, line 2. Delete the word "both" and in lieu thereof use the word EITHER. In line 3, delete the word "and" and in lieu thereof, use the word OR; and after the word "activity", insert a comma (,) and add the words OR BOTH.

Mr. President, the reason for this is that if we do not put the word EITHER, we have to convict the offender both of two crimes. So that is the rationale for that.

The President. All right.

Senator Pimentel. Mr. President.

The President. Yes, in relation to the Arroyo amendment?

Senator Pimentel. Yes, in relation to the Arroyo amendment. Maybe the better wording would be EITHER OR BOTH because there is no need to preclude the conviction of the culprit if he had previously been convicted of money laundering and then we give the implication that he need not be prosecuted and convicted for any other felony or unlawful activity.

Senator Arroyo. Mr. President, that is why in line 3, I added the words OR BOTH.

Senator Pimentel. OR BOTH. All right.

Senator Arroyo. So that it is EITHER OR BOTH, but it is really style.

The President. Yes, I think the style is very well taken.

Senator Pimentel. All right. I submit.

Senator Arroyo. Also in line 4, between the words "any" and "proceeding" to insert the word PRIOR. It is really for style.

The President. All right. What does the sponsor say?

Senator Cayetano. Mr. President, I have an amendment to the proposed amendment.

The President. Yes, Senator Cayetano is recognized.

CAYETANO-ARROYO AMENDMENT

Senator Cayetano. Mr. President, with due respect to my colleagues, I thought (a) and (b) are one and the same. I mean paragraph (a) in line 2 and paragraph (b), beginning in line 4 ending in line 5, are really the same because in letter (a), it authorizes that a person may be charged with and convicted of either the crime of money laundering or the unlawful activity to the predicate crime. Letter (b) says that the pendency of either case shall not bar prosecution of either the unlawful activity or money laundering.

So my proposed amendment to the amendment is just consider paragraph (b), "The pendency of any proceeding relating to any unlawful activity shall not bar THE prosecution of any offense or violation under this Act." Therefore, it would delete paragraph (a) entirely. That is my proposed amendment to the amendment.

The President. What does Senator Arroyo say?

Senator Arroyo. Senator Cayetano is a better lawyer than I. Thank you. [Laughter]

The President. All right. So it is accepted.

What does Senator Pangilinan as principal cosponsor say?

Senator Pangilinan. Senator Cayetano and Senator Arroyo are better lawyers than I.

The President. All right. It is accepted. The proposed amendment is the deletion of lines 2 and 3 on page 6, and letter (b) in line 4 so that Section 7 will read:

"SEC. 7. Prosecution of Money Laundering. - The pendency of any proceeding relating to the unlawful activity shall not bar prosecution of any offense or violation under this Act."

Senator Cayetano. Mr. President, having accepted the amendment, I would now propose...

The President. May we just approve this first?

Senator Cayetano. Yes, I am sorry.

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

CAYETANO AMENDMENT

Senator Cayetano. Actually, this is really an anterior amendment because I would now propose the deletion of Section 7, Prosecution of Money Laundering, and I would now include the accepted amendment as the second paragraph of Section 6, found on page 5 because that seems to be logical.

In other words, after line 23 of page 5, "jurisdiction of the Sandiganbayan.", we now move to have another paragraph which will be paragraph (b) that has been accepted as amendment found in Section 7 and completely delete Section 7(a) which has already been accepted. It is just a matter of style but I think it is important.

The President. Is there any objection? [Silence] There being none, the amendment is approved. Is there any other amendment on page 6?

Senator Jaworski. Mr. President.

The President. Sen. Robert S. Jaworski is recognized.

JAWORSKI AMENDMENT

Senator Jaworski. Mr. President, as manifested by this

representation during the period of interpellations and was welcomed by one of the sponsors, I would like to propose an amendment on page 6, line 5, Section 7 of the bill. After the word "Act", add the phrase *PROVIDED, THAT ANY DISMISSAL OR ACQUITTAL OF THE UNLAWFUL ACTIVITY UPON WHICH THE CHARGE OF MONEY LAUNDERING IS PREDICATED, WITH THE POSITIVE DECLARATION THAT NO SUCH UNLAWFUL ACTIVITY WAS COMMITTED, SHALL CAUSE THE TERMINATION OF THE PROSECUTION FOR MONEY LAUNDERING IN WHATEVER STAGE.*

The President. What is the view of Senator Pangilinan on this proposed amendment?

Senator Pangilinan. I beg the gentleman's pardon. May the good senator repeat the proposed amendment?

Senator Jaworski. Just for the proper guidance. This is on page 6, line 5, Section 7, which is now supposed to be covered in Section 6. After the word "Act", add the phrase *PROVIDED THAT ANY DISMISSAL OR ACQUITTAL OF THE UNLAWFUL ACTIVITY UPON WHICH THE CHARGE OF MONEY LAUNDERING IS PREDICATED, WITH THE POSITIVE DECLARATION THAT NO SUCH UNLAWFUL ACTIVITY WAS COMMITTED, SHALL CAUSE THE TERMINATION OF THE PROSECUTION FOR MONEY LAUNDERING IN WHATEVER STAGE.*

Senator Pangilinan. Just a clarification, Mr. President.

If we add this particular provision, do we take it to mean that if there is an acquittal because of failure to prosecute, for example, or an acquittal because of failure to establish proof beyond reasonable doubt, this acquittal in specific cases will not mean the dismissal of the money laundering case?

The President. What does Senator Jaworski say?

Senator Jaworski. Yes. What we discussed earlier was if the dismissal is based on—

Senator Pangilinan. Failure to prosecute.

Senator Jaworski. —proof beyond reasonable doubt.

The President. May the Chair suggest that we state it positively. The dismissal for failure to prosecute or acquittal for insufficiency of evidence shall not bar the prosecution of money laundering under this Act.

Senator Jaworski. That is correct, Mr. President.

Senator Pangilinan. Mr. President, I think the good senator would like to have an exception that if the acquittal would be based—

Senator Jaworski. Based on a positive declaration.

Senator Pangilinan. —on a positive declaration by the judge—

Senator Jaworski. That there was no unlawful act.

Senator Pangilinan. —or that the person accused did not commit the offense, then the money-laundering case must be dismissed.

Senator Jaworski. Yes, Mr. President.

SUSPENSION OF SESSION

Senator Pangilinan. Mr. President, may I ask that we suspend the session for one minute.

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

It was 4:19 p.m.

RESUMPTION OF SESSION

At 4:38 p.m., the session was resumed.

The President. The session is resumed. Sen. Francis N. Pangilinan is recognized to react to the amendment proposed by Senator Jaworski.

Senator Pangilinan. Yes, Mr. President. After conferring with the other members, I think Senator Angara has a proposal as to how we may go about the particular provision as proposed.

The President. Sen. Edgardo J. Angara is recognized.

Senator Angara. The proposed amendment of Senator Jaworski should clearly state that the acquittal is on the basis of a clear determination by the judge that the accused did not commit the crime.

The President. After trial on the merits.

Senator Angara. That is correct, Mr. President.

Senator Recto. Mr. President, just one clarification.

Senator Angara. Just to respond to other situations where the accused may also be acquitted but on some other ground, I think that is what Senator Recto may want to express, for the record.

Senator Recto. Yes, Mr. President.

The President. Sen. Ralph G. Recto is recognized.

Senator Recto. We were discussing during the huddle earlier that I would have no problem with the positive declaration of a judge that the accused is innocent of a crime or of an unlawful activity. But in the event that a prosecutor mishandles the prosecution and the person may have been really innocent of the crime and there is no positive declaration now because the trial did not continue, I do not think that that should be the fault of the accused.

May I hear from Senator Angara? What would be his comment on this?

Senator Angara. Mr. President, the fact that the accused was already acquitted by reason of any other ground is already a powerful argument for saying that the second case of money laundering should already be dropped. But we cannot put that kind of rule in the law. We were suggesting that Senator Recto just express—and we are already expressing it—that the intent of this law is that an acquittal in the predicate crime would be a powerful argument or reason for seeking a dismissal of the money-laundering case, and that is our clear and unequivocal intent.

Senator Recto. Mr. President, I thank the gentleman for the clarification. Now that it is in the record, I have no objection.

Senator Lacson. Mr. President, point of inquiry.

The President. Senator Lacson is recognized.

Senator Lacson. What if the offender of both the crimes of money laundering and the predicate offense gets convicted, first, for money laundering and his assets forfeited, and then, he gets acquitted under the condition mentioned by Senator Jaworski for the predicate offense? What happens?

The President. Senator Pangilinan, what is the gentleman's view on this?

Senator Pangilinan. Mr. President, we will have to go back to the elementary discussion of criminal law here. For one to be able to be convicted of a particular crime, a particular crime will have two or three elements.

In the crime of money laundering, there are three elements: First, knowledge that the proceeds come from an unlawful activity; second, there is an attempt or there is a transaction involving the proceeds; and third, that this is for the purpose of concealing or disguising said proceeds.

So, again, if all these three elements have been proved beyond reasonable doubt in a specific case, then naturally conviction will be the decision.

For kidnap for ransom, the elements are different.

Senator Lacson. That is not the question.

The President. I think the answer to the question of Senator Lacson, if the Chair will attempt to answer it, when one prosecutes the predicate crime per se, one will need proof beyond reasonable doubt. But for purposes of the money laundering case, the predicate crime is only an unlawful activity, not a crime. Therefore, the unlawful activity is an element of money laundering.

Senator Pangilinan. Knowledge of unlawful activity.

The President. Knowledge of unlawful activity, not of a crime being proved beyond reasonable doubt.

I think that should clarify it.

Senator Lacson. Mr. President, it is not a question of elements of the crime. It is a question of, let us say, the efficiency of the judge handling the money-laundering offense vis-a-vis the efficiency of the other judge handling the predicate crime.

What if he gets convicted first? What will the government do? It will reimburse the forfeited assets? He is already in jail.

The President. It can provide for the reopening of the conviction on the money-laundering case before the Supreme Court.

Senator Angara. I think, Mr. President, if I may intervene.

The President. Senator Angara is recognized.

Senator Angara. I think the essential point being raised here is: What happens to assets or properties already confiscated or forfeited as a result of this? The simple answer, Mr. President, is restitution under the Rules of Court, or we can provide a restitution provision in the law itself. I was reading the House version and, in fact, it has a restitution provision.

Senator Lacson. But what happens to the conviction? He is in the National Bilibid Prisons already languishing in jail.

Senator Angara. Both release from prison and restitution of assets confiscated, forfeited.

Senator Lacson. *Masakiit iyon.*

Senator Angara. That is how it works.

Senator Pimentel. Mr. President.

The President. Sen. Aquilino Q. Pimentel Jr. is recognized.

Senator Pimentel. Mr. President, just to clarify things. It looks like the situation envisioned by Senator Lacson would apply when one and the same person is the accused in both money laundering case as well as in the unlawful activity or the predicate crime case. But, certainly, it would not apply to a situation where the money launderer was not the person who committed the unlawful activity but was just a conduit for money laundering.

Now, that being the case, if one and the same person is the accused in both cases, and in the example of Senator Lacson he was convicted first in the anti-money laundering case but subsequently acquitted for the predicate crime, to my mind, that really poses a difficult situation because I would suppose that the money laundering case in that case should be deferred until after the case in the predicate crime is terminated.

In other words, the anti-money laundering case should give way to a determination or the prosecution for the predicate crime first, because it is an element, as a matter of fact, in the anti-money laundering case. Maybe a provision to that effect or, by mandate of the law, to be consolidated under one and the same court to obviate that possibility, Mr. President.

It is a procedural matter and yet it is...

The President. If it is a procedural matter, can we not leave it to the implementing authority to provide for the rules of procedure? I accept that the proposal of Senator Jaworski is more than procedure, it goes to substance.

Senator Pimentel. Yes, Mr. President.

The President. So, if we can first act on the motion of Senator Jaworski.

Senator Pimentel. Yes, there is no problem there. We will accept it, Mr. President.

The President. Subject to style. The sponsors have accepted the Jaworski amendment, subject to style.

Senator Pangilinan. May we hear just the amendment, one last...

The President. It is on the record.

Senator Pangilinan. All right. It is on the record.

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

Senator Osmeña III. Mr. President.

The President. Sen. Serge Osmeña III is recognized.

Senator Osmeña III. Just for clarification, Mr. President, of the Minority Leader. Suppose a crime, an offense was committed in another country, does that assume that any foreigner who is caught with money that is suspected to be the proceeds of illegal activities cannot be convicted of money laundering in this country?

Senator Pimentel. We are not saying that, Mr. President. We are saying that one and the same person is accused both of violating the anti-money laundering law, as well as of having committed a predicate crime. The problem of which case should start first or how the two cases should be dealt with is the matter that Senator Lacson was pointing at. It has nothing to do with a situation where a foreigner commits an anti-money laundering act abroad.

Senator Osmeña III. All right. But if that same person comes here carrying \$5 million in cash without declaring it especially, he can be convicted of money laundering here—

Senator Pimentel. Here.

Senator Osmeña III. —regardless of whether it can be proved that he was guilty of a crime in his country or in the place of origin, or whether the money he was carrying were proceeds.

Senator Pimentel. Then, Mr. President, he can be convicted of anti-money laundering if the elements of the anti-money-laundering law as defined in this Act could be proven. Which means that he must have done something illegal. I mean, the origin of the money which he brings into the Philippines would prove to have been less than honest or less than innocent.

Senator Osmeña III. Well, that is a question in my mind, and I hope we can widen our knowledge of the law in this.

Somebody comes in here with \$5 million in cash, he does not declare it. Some of the elements of the crime of money laundering are now in phase. So, a case is filed against him for money laundering. Do our authorities go back to his country of origin to ask if he has been convicted or will be convicted or is being investigated or is being prosecuted, or...

Senator Pimentel. Or that he has acted in violation of the laws of that country, we can probably do that under the mutual legal assistance treaty, to obtain proof of that. So that the unlawful nature of the money that he has brought in would have been established or could be established.

Senator Osmeña III. And if it cannot be established, what happens?

Senator Pimentel. Then he is acquitted because the elements are not proven. Because certain elements are specified in this Act that defined the crime of money laundering.

The President. With the indulgence of Senator Osmeña, can we proceed?

Senator Osmeña III. Yes. Thank you, Mr. President.

The President. All right. We now proceed to line 6, Section 8 on page 6. Is there any amendment?

Senator Sotto. Mr. President.

The President. Section 8, yes? Senator Sotto is recognized.

Senator Sotto. What happened to the query of Senator Lacson, Mr. President? May we be informed? It is also related to the manifestation of Senator Recto and I have a question on that that I want clarified.

The President. There is no proposed amendment by Senator Lacson, these were queries. And may the Chair suggest that we just hold on to this and discuss it further afterwards as this was just a query made by Senator Lacson. So we can proceed.

Senator Sotto. I submit, Mr. President, but I wish that we do take that up later because this will be very vital as far as the implementation of the law is concerned.

Thank you, Mr. President.

The President. All right. The Chair would reiterate. Proposed amendments to Section 8 on page 6 are in order.

Senator Barbers. Mr. President.

The President. Senator Barbers is recognized.

Senator Barbers. I have a proposed amendment on page 6, line 8.

The President. On page 6, line 8. Please proceed.

Senator Barbers. My proposed amendment, Mr. President, comes after the word "documents".

The President. Yes.

BARBERS AMENDMENT

Senator Barbers. After the word "documents", insert the phrase WHICH SHALL REMAIN CONFIDENTIAL UNLESS THE DISCLOSURE OF THEIR IDENTITIES ARE AUTHORIZED BY COMPETENT AUTHORITY. Now, the rationale behind this...

The President. Can the gentleman please repeat—WHICH SHALL REMAIN CONFIDENTIAL—

Senator Barbers. —UNLESS THE DISCLOSURE OF THEIR IDENTITIES ARE AUTHORIZED BY COMPETENT AUTHORITY.

Now, the rationale behind this is that, at all times the identities of the depositors must be protected. The identities must remain confidential unless or until the transactions are subject to an investigation or they are suspected of violating the anti-money laundering law.

The President. What is the view of Senator Pangilinan?

Senator Pangilinan. Mr. President, this is consistent with the provisions earlier on the declaration of policy or confidentiality. So, we accept.

Senator Cayetano. Mr. President.

The President. What is the pleasure of Senator Cayetano?

Senator Cayetano. Before I propose any amendment also in Section 8..

The President. May we first act on the Barbers amendment? Unless the gentleman is amending the Barbers amendment.

Senator Cayetano. No, no. It was already accepted by the sponsor.

The President. The Chair has not ruled on it yet. The Barbers

amendment was accepted by the sponsor. Is there any objection?
[Silence] There being none, the amendment is approved.

Senator Cayetano is recognized.

Senator Angara. Let me just...

Senator Cayetano. Preparatory to...

Senator Angara. With the permission of Senator Cayetano, Mr. President, let me just make this observation. I did not want to make it because I am not really objecting to the amendment.

Under the present law, under the existing Bank Secrecy Law, that is already considered confidential and it cannot be disclosed or divulged except through a court order. What I was worried about is the seeming opening we are creating here by the phrase "when authorized by competent authority" because that, in fact, is already in the law. So, this should not be interpreted in any way as creating an opening for the disclosure of the bank account or the identity of the account holder.

That is what I want to put on record, Mr. President.

The President. All right. That is on record. Senator Cayetano is recognized.

Senator Cayetano. Yes, Mr. President. Prefatory to any amendment that I may wish to propose, I just want to ask with reference to Section 8 from lines 12 to 17 which would now prohibit use of fictitious names, numbered accounts, et cetera. My query is: What will happen to the present numbered accounts in the banks? Would that now be considered when this bill becomes a law and becomes effective as abrogated automatically and therefore must be converted into the true name of the beneficial owner? Or shall that remain as a numbered account because it has been opened as such under a practice previously allowed by the Bangko Sentral?

The President. Senator Arroyo is recognized.

Senator Arroyo. Mr. President, I think there is a Bangko Sentral circular already prohibiting that, in fact, except that the banks do not follow it. [Laughter]

Senator Cayetano. Yes, Mr. President, my good friend from Makati is correct but that was only last July, if I recall. Since July, if I recall, no numbered accounts have been allowed to be opened. Before that, there were still a number of bank accounts that were numbered.

The President. The gentleman seems to know about it out of personal knowledge?

Senator Cayetano. Pardon?

The President. The gentleman seems to know about it out of personal knowledge. [Laughter]

Senator Cayetano. Well, as a lawyer, yes. As a lawyer. So my only query is very simple. Are we going to allow those... Will this law abrogate the...

Senator Arroyo. Or rather, I think, would those accounts continue? I think that is the question.

Senator Cayetano. The numbered accounts.

Senator Arroyo. Well, the numbered accounts will be covered by the FCDU law. But the fictitious names and the...

Senator Cayetano. No, the present numbered accounts not under the FCDU.

Senator Arroyo. Well...

Senator Cayetano. I just want to find an answer.

Senator Pangilinan. Mr. President, if I may be allowed to interject.

The President. Yes, the sponsor is recognized.

Senator Pangilinan. The Bangko Sentral circular being referred to focuses on local accounts. Local numbered accounts are no longer allowed, and existing local numbered accounts are given one year within which to convert their numbered accounts into identifiable name accounts. *Mayroon pong* transition.

Senator Cayetano. All right, if there is such a transition, there is no problem there.

The President. All right.

Senator Cayetano. In other words, this provision will consider that transitory period.

Senator Pangilinan. And if the good gentleman from Taguig would want to propose an amendment in terms of a period...

Senator Cayetano. No, no. I am not proposing an amendment. My query has been satisfactorily answered by the sponsor.

Thank you.

Senator Pangilinan. Thank you.

The President. All right. Is there any other amendment on page 6? Yes, Senator Aquino-Oreta.

AQUINO-ORETA AMENDMENT

Senator Aquino-Oreta. Mr. President, line 23.

The President. Line 23?

Senator Aquino-Oreta. Yes. It says there "Covered institutions". Prior to that, can we put the words RESPONSIBLE OFFICERS OF? And then continue: "covered institutions shall report to the Supervising Authority", et cetera.

The President. All right. Is there any objection to this? What does the sponsor say?

Senator Pangilinan. Mr. President, I think there are also amendments from Senator Angara.

The President. Can the sponsor just respond to the proposed amendment of Senator Aquino-Oreta?

Senator Pangilinan. We have no objection, Mr. President.

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

Senator Barbers. Mr. President, I have an anterior amendment.

The President. Please proceed, Senator Barbers.

BARBERS AMENDMENT

Senator Barbers. In line 22, I propose to delete the word "when" after the word "years" and replace it with the words FROM THE TIME. This is to make a reckoning period of five years. Thus, from the date of closure, the five-year period will run.

Senator Pangilinan. It is accepted, Mr. President.

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

Senator Aquino-Oreta is recognized.

AQUINO-ORETA AMENDMENT

Senator Aquino-Oreta. In line 24, Mr. President, after the word "TRANSACTION", delete the word "FALLS". So it will now read: "ANY COVERED TRANSACTION

WITHIN FIVE (5) WORKING DAYS." We will just delete the word "FALLS".

The President. What does Senator Angara say?

Senator Angara. It is accepted, Mr. President. That is a clerical error.

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

Senator Sotto. Mr. President.

The President. Senator Sotto is recognized.

Senator Sotto. Mr. President, just to facilitate the proceedings, shall we correct the clerical errors now or later?

The President. Yes. Please do.

Senator Sotto. We can do so?

The President. Yes.

SOTTO AMENDMENT

Senator Sotto. In line 17 of page 6, delete the last "s" of the sentence.

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

LEGARDALEVISTE AMENDMENT

Senator Legarda Leviste. Mr. President, an anterior amendment.

Starting in line 18, just for clarity. "All records of all transactions of covered institutions shall be maintained and safely stored for at least five (5) years from the date of". Kindly delete the words "date of" and instead put TIME SUCH transactions and include WERE CONCLUDED. So it will now read: "from the TIME SUCH transactions WERE CONCLUDED". It is on the same page, page 6, letter (b) in line 20.

The President. The sentence will now read:

"Recordkeeping. - All records of all transactions of covered institutions shall be maintained and safely stored for at least five (5) years from the TIME SUCH transactions WERE CONCLUDED."

What does the sponsor say?

Senator Pangilinan. It is accepted, Mr. President.

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

Senator Legarda Leviste. The Minority Leader wishes to be recognized, Mr. President.

The President. Senator Pimentel is recognized.

PIMENTEL AMENDMENT

Senator Pimentel. Thank you, Mr. President.

Again, as a matter of style. I am proceeding from the fact that I think we should avoid legalese even in the law we are drafting so that probably we should remove "Provided that", that kind of phraseology.

Specifically in line 16, with the permission of the Body, I move that we delete the words "Provided that" and start the sentence with "Covered institutions shall record."

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

PIMENTEL-ANGARA AMENDMENTS

Senator Pimentel. In lines 25 and 26, Mr. President, put a period (.) after the word "THEREOF" and delete the words "PROVIDED, HOWEVER, THAT". And then we start with THE SUPERVISING AUTHORITY MAY EXTEND...

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

Senator Pimentel. May I introduce also the following amendments: "THE SUPERVISING AUTHORITY MAY EXTEND THE FIVE-DAY REPORTING PERIOD TO NOT MORE THAN TEN WORKING DAYS".

The President. Is there any objection? Senator Angara?

Senator Angara. No objection, Mr. President. But maybe we just simply say MAY EXTEND THE PERIOD instead of describing/justifying the period.

Senator Pimentel. That is better, Mr. President.

The President. MAY EXTEND THE PERIOD TO NOT MORE THAN TEN (10) WORKING DAYS.

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

Senator Pimentel. And then in the same line, after the word "PERIOD", delete the words "AND, PROVIDED, FURTHER, THAT" up to "THE COVERED" in line 28. So the sentence will now read: TRANSACTIONS IN EXCESS OF THREE MILLION PESOS (P3,000,000.00) ARE COVERED BY THIS ACT.

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

Senator Pimentel. On page 7, line 1, delete the words FINALLY, THAT. We start the sentence with the following: THIS REPORTING REQUIREMENT DOES NOT APPLY...

The President. This is an editorial amendment. Is there any objection? *[Silence]* There being none, the amendment is approved. We are now on page 7. Senator Arroyo is recognized.

Senator Arroyo. Mr. President, I will propose an amendment unless there are others who will make amendments preceding line 12.

The President. Is there any anterior amendment?

Senator Aquino-Oreta is recognized.

Senator Aquino-Oreta. Mr. President, in line 9, "be filed with the government or any supervising authority" and insert the word WILLFULLY.

The President. I am sorry, can we...?

Senator Aquino-Oreta. Between the words "authority," and "fails" insert the word WILLFULLY. So, it will read: "be filed with the government or any supervising authority, WILLFULLY fails to disclose,..." The insertion of the word underscores the felonious nature or the character of the act. The act must be willful and deliberate and not merely negligent.

The President. All right, so the word WILLFULLY is being inserted between the words "authority," and "fails".

Senator Aquino-Oreta. Yes, Mr. President.

Senator Osmeña III. Mr. President.

The President. Senator Osmeña is recognized.

Senator Osmeña III. May I just object to that? It is very hard

to prove willfulness, Mr. President. It is hard to prove that the act was deliberately done.

SUSPENSION OF SESSION

Senator Angara. I move that we suspend the session for one minute, Mr. President.

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

It was 5:07 p.m.

RESUMPTION OF SESSION

At 5:09 p.m., the session was resumed.

The President. The session is resumed. Senator Aquino-Oreta is recognized.

Senator Aquino-Oreta. Mr. President, in line 9 if the element of knowledge is there, then I withdraw the word WILLFULLY.

The President. All right, the amendment is withdrawn.

ANGARA AMENDMENT

Senator Angara. Mr. President, if there is no amendment, may I introduce an amendment on the heading of Section 9.

Mr. President, Section 9 is a combination of the original Section 9 as well as Section 10 of the September 25 working draft. Section 10 is about the authority to freeze, which we included in this Section 9. So, that makes the present heading, namely, "Additional Exemption from Bank Deposits Secrecy Laws" not appropriate or not comprehensive enough to explain.

The President. What is the proposed amendment?

Senator Arroyo. Mr. President.

Senator Angara. My proposal, Mr. President, is, in lieu of the present heading, we would like to suggest that the heading, "AUTHORITY TO FREEZE", because this is what it is all about, be substituted.

The President. So Section 9 is proposed to be captioned AUTHORITY TO FREEZE.

Senator Arroyo is recognized.

Senator Arroyo. It is an anterior amendment, Mr. President.

The President. All right.

Senator Arroyo. It is lines 12 to 18 of page 7. Mr. President, the purpose of this paragraph is to preclude undue publicity on the reporting of alleged money laundering because of the sensitive nature of the transaction, and which is, that the offense goes to the very core of this secrecy or confidentiality of bank transactions.

So I would propose in line 15 that between the words "person" and "the fact", we insert after "person" a comma (,) then add ENTITY comma (,) then THE MEDIA comma (,). And in line 18, after the word "institution" and comma (,), insert the word OR MEDIA. The reason is that...

The President. Just for clarity. In line 15, the amendment is: Insert after the word "person" the following: comma (,) ENTITY comma (,) THE MEDIA comma (,). Is that correct, Senator Arroyo?

Senator Arroyo. Yes, Mr. President.

The President. All right. And in line 18 after the comma (,) after the word "institution" the words OR MEDIA comma (,).

Senator Arroyo. As a matter of fact, Mr. President, I do not know how to word this or perhaps, we could just do this subject to style.

Any reporting on this transaction should really be penalized. Because when someone is reported to have allegedly committed the offense of money laundering or an unlawful activity, there is already a reporting mechanism. When that reporting mechanism is made, there should be an absolute prohibition—that such reporting should not be revealed outside, because the person has not been found guilty or whatever.

The President. He is not even charged.

Senator Arroyo. He is not even charged, but if media blows this entirely out of proportion, pity the poor fellow. I mean, that is what I would like to propose.

Senator Lacson. I agree, Mr. President, especially if the accounts are non-existent. *[Laughter]*

Senator Pimentel. Mr. President.

The President. May I recognize Senator Pimentel. That was... I did not see Senator Lacson.

Senator Pimentel. Yes, in connection with the motion of Senator Arroyo, may I introduce the following phrase in line 16 after the word "thereto" just to...

Senator Osmeña III. Mr. President, with the kind permission of the Minority Leader, may I just react to the comments of the senator from Makati. A covered transaction is not per se illegal. It is just a statutory amount which by law we will now require to be reported to the supervising authority so that later on a pattern or patterns may be established.

So if we go back to the definition of "covered transaction," it does not mean it is illegal, Mr. President. It just says that anything above P3 million, a deposit of P3 million or above, will be reported to the supervising authority. It does not indicate that one is naturally guilty of a crime because one deposited P3,100,000 in a bank account.

The President. I think what Senator Arroyo is just doing is just to include the media to make sure that it is part of the word "person" under line 15. Senator Arroyo is not changing the...

Senator Arroyo. Yes. What I am trying to point out is that there should be no undue, in fact, publicity at all.

The President. Yes, Mr. President.

Senator Arroyo. Because here is a situation where somebody deposits P3 million. Therefore, there will be a reporting mechanism. When that matter is reported, if there is publicity on that matter, what happens? The person has not committed anything. He has just been reported. The red flag has just been waved. If there is undue publicity, then I think it would not be fair to that person. But it is really a fertile ground for gossip, that here is a person who deposited P3 million. People will not deposit anymore with the banks if we allow this. They will not deposit big amounts because they will be worried that the mere reporting of P3 million and above may be given publicity. So the idea is just to prevent publicity so that no undue harm should befall that person.

Senator Osmeña III. Mr. President, I do not disagree with the opinions of the senator from Makati up to that point. But, let us say, supposing later on a case is filed, will media still be prohibited? The way this particular clause is worded, media will still be prohibited from ever writing that Mr. X, Y, Z had deposited and those deposits reported, say, daily for the past two weeks or two months. When does media become exempt then?

Senator Arroyo. Mr. President, this only refers to the reporting. Once the case is filed, well, all systems go.

Senator Osmeña III. All right. Thank you very much, Mr. President.

The President. All right.

PIMENTEL-ARROYO AMENDMENT

Senator Pimentel. Mr. President, may I continue with my proposal in line 16, which is intended to give teeth to what Senator Arroyo earlier proposed. My proposed amendment would be worded in this way: After the word "thereto" in line 16, period (.), then we start a new sentence: NEITHER MAY SUCH REPORTING BE PUBLISHED OR AIRED IN ANY MANNER OR FORM BY THE MASS MEDIA, ELECTRONIC MAIL OR OTHER SIMILAR DEVICES.

The President. All right. There are two amendments which we can take up together. Senator Arroyo and Senator Pimentel have proposed amendments. What would the sponsor say?

Senator Pangilinan. We accept the amendment, Mr. President.

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

Senator Lacson. Mr. President.

The President. Yes, Senator Lacson is recognized.

Senator Lacson. Further amendment to the proposed amendment to Section 9.

The President. May we just first act on the Angara amendment which proposes to change the title in Section 9 to AUTHORITY TO FREEZE? That is now the title of Section 9. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Lacson is recognized.

LACSON AMENDMENT

Senator Lacson. On the same page, delete the phrase beginning with the word "Notwithstanding" in line 24 until and including the word "laws" in line 27.

Section 9 will now read as follows: AUTHORITY TO FREEZE. WHENEVER PROBABLE CAUSE EXISTS that any deposit, trust, investment or similar account in any bank or non-bank, financial institution is, in any manner or by any means, et cetera, up to the word ORDER.

The President. What does the sponsor say?

Senator Pangilinan. Mr. President, my only concern here is that we are, in fact, amending the following laws and therefore, to delete that particular line, we would rather have an express provision of law.

The President. The way I understand Senator Lacson's amendment, it is an editorial amendment because the phrase being proposed to be deleted is a provision of law which in statutory construction is deemed to be amended by the proposed paragraph.

Senator Angara. And besides, Mr. President, if I may intervene, there is a repealing clause here. The attraction of the Lacson amendment is that it will make this provision more concise.

Senator Lacson. After all, the intent of this section is really to authorize certain persons or certain individuals to freeze. So, it is not editorial.

The President. I am sorry, yes.

Senator Pangilinan. Mr. President, my only concern really is, the other day, Senator Cayetano mentioned the case of *Marquez vs. Desierto* wherein, if I recall the ruling as mentioned by Senator Cayetano, the Supreme Court cited or set down the power of the Ombudsman to inquire into bank accounts precisely because of the Secrecy of Bank Deposits Act. As such, just to ensure that we are making it clear here that we are amending despite the repealing clause, it might be prudent for us to retain the provision so that it is clear and there is no doubt.

I believe this particular section, apart from the order of freezing, the original provision gives the power to the Monetary Board to inquire. Of course, we are removing that.

Anyway, for purposes of discussion, the amendment is accepted taking note of the comments of Senator Angara that there is a repealing clause.

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

Senator Recto. Mr. President, one clarification to Senator Angara.

The President. Senator Recto may proceed.

Senator Recto. In Section 9, in the same amendment area, it says here "WHENEVER PROBABLE CAUSE EXISTS" and then it reads "any deposit, trust, investment or similar account in any bank or non-bank financial institution is, in any manner or by any means, IS a covered transaction or money laundering, the Governor of the Bangko Sentral... et cetera, may ORDER AFREEZE".

My point is, what would be "probable cause" here? In effect, just by being merely a covered transaction, is that already a probable cause?

Senator Angara. No, Mr. President. The fact alone that it is a covered transaction is not sufficient to give rise to a probable cause. "Probable cause" by definition is such indicia or factors that will convince a reasonable mind that the matter exists or might have existed. Therefore, that factor alone that it is a covered transaction is not in itself sufficient.

Senator Recto. What would be the factors?

Senator Angara. As we said in the definition of unlawful activity, it must project an unusual movement in the account of large amounts or cash as the gentleman suggested, and such other indicia of an unusual operation of an account.

Senator Recto. That is all under covered transactions.

Senator Angara. Yes, Mr. President.

Senator Recto. Everything the gentleman mentioned is under covered transactions.

Senator Angara. Yes, Mr. President.

Senator Recto. It would appear then that under covered transactions, based on the gentleman's statement, that is already probable cause.

For example, the gentleman mentioned unlawful activity. Are we connecting now "unlawful activities," as defined herein, and "covered transactions" to be a probable cause?

Senator Angara. No, Mr. President. Covered transaction may lead to the discovery of an unlawful activity. Therefore, as I said, it is important that it must, first of all, be a covered transaction. Otherwise, the beginning of an inquiry should not be made at all. But that alone is not sufficient. The fact that it is a covered transaction is not sufficient. There must be other indicia or factors or circumstances that will give rise to the belief of a reasonable man that an unlawful case probably exists.

Senator Recto. That is why the gentleman is relating now covered transactions to a potential unlawful activity. Is that what the gentleman is saying?

Senator Angara. That is correct.

Senator Recto. But in determining probable cause, we do not have to show the relationship. Is that what the gentleman is saying? We should not show the relationship between the covered transaction and the unlawful activity.

Senator Angara. There is a correlation between the covered transaction and the unlawful activity. I think it must be shown, first of all, that the account that we are monitoring is a covered transaction. Otherwise, if it is outside the covered transaction, we have no business looking into it.

Senator Recto. Yes, that is right. My problem here is that, it would appear that a covered transaction is already a criminal offense. It is possible. Because immediately, it is being frozen, and what if the depositor was not guilty of any unlawful activity?

Senator Angara. No, Mr. President. We do not start with the premise that any covered transaction is already automatically equivalent to an unlawful activity.

Senator Recto. That is right.

Senator Angara. That is why it may give rise, and it is a necessary step. It is a precondition before we start inquiring into that account.

Senator Recto. So this is for discovery purposes basically.

Senator Angara. For discovery purposes. That is why we were careful under this provision that we do not allow the bank official to jump immediately to the conclusion that that is an unlawful activity.

Senator Recto. Yes. But it is possible to immediately freeze the account.

Senator Angara. No, it is not possible. We must give the account holder at least a three-day notice to explain.

Senator Recto. Anyway, Mr. President, I wanted to find out if it would be possible for this Body to identify in the law what would be the elements of probable cause. But if that may be too difficult, then that...

Senator Angara. Probable cause, Mr. President, of course, it is very well understood among the legal circles. But if we define it in detail, it may just muddle the issue.

The use of probable cause is already a work of legal art. It is clearly understood in the judicial and legal communities, and this is really a safeguard.

Senator Recto. Yes. The members of the Monetary Board are also lawyers?

Senator Angara. Not lawyers. But they will be advised by lawyers, Mr. President. I can foresee that the Monetary Board as well as the governor would be advised by the bank legal counsel.

Senator Recto. Senator Arroyo tells me that this would be tackled later on probably when we decide the issues of the supervising authority and the FIU within the Monetary Board.

And just for the record. Since the gentleman mentioned that probable cause would be known in the legal profession very well, then maybe we consider lawyers possibly in the FIU in case we decide that it would be an FIU within the Central Bank who will determine probable cause.

Senator Angara. That would be a desirable qualification, but not necessarily the most desirable.

Senator Recto. Thank you, Mr. President.

Senator Osmeña III. Mr. President.

The President. Yes, what is the pleasure of Senator Cayetano?

Senator Cayetano. Mr. President.

The President. We are now on page 8, Senator Cayetano.

Senator Osmeña III. Anterior, Mr. President. Page 7.

The President. Senator Osmeña is recognized.

Senator Osmeña III. Mr. President, with the permission of the distinguished gentleman from Aurora and also with the permission of the proponent of the amendment, the senator from Cavite, I seek a reconsideration of the deletion of lines 24 to 27 which is the phrase "Notwithstanding the provisions of R.A. No. 1405"... et cetera, because I have meant on page 8 in lines 10 to 14 to reinstate the phrase that begins "itself inquire or examine or authorize any inquiry, examination or disclosure of said account."

The reason, Mr. President, is that one of the five elements required by the Financial Action Task Force is access to information on bank deposits. And if we remove the access, then we will have a toothless law.

Therefore, Mr. President, with the permission of the senator from Cavite and the main sponsor, may I ask for a reconsideration of the deletion of lines 24 to 27 on page 7.

The President. All right. There is a request for a reconsideration of the deletion of lines 24 to 27.

SUSPENSION OF SESSION

May we have a one-minute suspension of the session, if there is no objection. [*There was none.*]

It was 5:33 p.m.

RESUMPTION OF SESSION

At 5:51 p.m., the session was resumed.

The President. The session is resumed. The Minority Leader is recognized.

Senator Pimentel. Mr. President, with the permission of Sen. Serge R. Osmeña III and Senator Angara, during the break I made a proposal that before discussing Section 9 on page 7, we should first insert a new section for the creation of the Financial Investigation Unit.

The President. All right.

PIMENTEL AMENDMENTS

Senator Pimentel. And so with that agreement in mind, may I now make this motion, Mr. President, that we insert a new section before Section 9, which will be entitled: CREATION OF THE FINANCIAL INVESTIGATION UNIT. The proposal reads as follows: THE FINANCIAL INVESTIGATION UNIT IS HEREBY CREATED. THE UNIT SHALL BE COMPOSED OF THE BANGKO SENTRAL GOVERNOR, AS CHAIR; AND THE SECURITIES AND EXCHANGE CHAIRMAN AND THE INSURANCE COMMISSIONER AS MEMBERS."

So it is a three-member body, Mr. President. May we act on that first?

The President. All right. What does the sponsor say?

Senator Magsaysay. This is a welcome proposal from the Minority Leader. I think Senator Arroyo is also happy.

The President. All right. Therefore, the sponsor accepts the amendments?

Senator Magsaysay. It is accepted, Mr. President.

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

Senator Pimentel. Next sentence, Mr. President.

The President. Yes.

Senator Pimentel. THE FINANCIAL INVESTIGATION UNIT SHALL ACT UNANIMOUSLY IN THE DISCHARGE OF ITS FUNCTIONS AS DEFINED HEREUNDER.

The President. Is that acceptable to the sponsor?

Senator Magsaysay. It is accepted, Mr. President.

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

Senator Pimentel. The functions of the unit, Mr. President, are lifted from the House version which I would like to read as follows...

The President. Maybe we can just refer to it first.

Senator Pimentel. On page 5, Mr. President,—

The President. Yes.

Senator Pimentel. —all the way up to lines 1 to 4 on the next page 6. Does the Chair want to...

The President. No. The Pimentel amendment would incorporate in the Senate version lines 6 to 34 on page 5; and lines 1 to 4 of House Bill No. 3083. This pertains to the functions of the FIU.

Is there any objection...

Senator Magsaysay. Since this is also lifted from the original September 25 working draft of the Senate, the original committee report which was sent to them, there is no objection. We accept this adoption, Mr. President.

The President. Yes, Senator Osmeña III is recognized.

Senator Magsaysay. Except that the term "AMLU" should be FIU.

The President. Yes. All right. With that amendment...

Senator Magsaysay. As corrected, using the term.

The President. Yes.

Senator Osmeña III. Mr. President, would the distinguished Minority Leader have any objection to—since it is exactly the same animal—just using the anti-money laundering unit nomenclature, which was already in our original committee report and also to harmonize with the House?

Senator Pimentel. I have no problem with that, Mr. President.

The President. All right. Is this in the original committee report, Senator Osmeña?

Senator Osmeña III. Yes, it is there, it is in the original committee report. As a matter of fact, I think they call it the council, Anti-Money Laundering Council.

The President. Yes.

Senator Pimentel. We call it Anti-Money Laundering Unit.

The President. This is on page 12 of the original committee report?

Senator Magsaysay. May I clarify from the proponent of the amendment, Mr. President: Who heads the FIU or, for this matter, if we adopt the Osmeña suggestion that AMLU is used?

Senator Pimentel. The governor of the Bangko Sentral, Mr. President.

Senator Magsaysay. Thank you, Mr. President.

The President. If I am not mistaken, the functions and powers of the unit is found on page 12, lines 25 to 29; page 13, lines 1 to 29; page 14, lines 1 to 4 of Committee Report No. 1, Senate Bill No. 1745 as originally submitted to this Chamber. Is that correct, Senator Osmeña?

Senator Osmeña III. Yes, Mr. President, pages 11 to 15, Anti-Money Laundering Council.

The President. No. We are just talking about the functions of the council, which Senator Pimentel wanted to transpose.

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

All right. So we go now to Section 9. The pending matter is the proposed deletion of lines 24 to 27, starting with the word "Notwithstanding" and ending with the word "laws" and comma (.). That is where we are.

Senator Osmeña III. Yes, Mr. President. As I mentioned earlier, with the kind permission of the proponent, the gentleman from Cavite, he has accepted that I may ask, without his objection, a reconsideration of the deletion.

The President. All right. The deletion has been considered. The previous approval is reconsidered.

OSMEÑA III AMENDMENT

Senator Osmeña III. Now, Mr. President, because of that, then we might have to reconsider also the title because it had been amended by the distinguished senator from Aurora. And I ask for

a reconsideration of the amendment to the title. Perhaps, we can call it "Additional Exemption from Bank Deposit Secrecy Laws AND FREEZING OF ACCOUNTS" to combine both Section 8 and Section 9.

The President. What does Senator Angara say?

Senator Angara. I have no objection, Mr. President.

The President. Is there any objection? [*Silence*] There being no objection, the amendment is approved.

Senator Osmeña III. I mean, Section 9 and Section 10. I am sorry, Mr. President. Then, I believe that the distinguished lady senator from San Juan has an amendment.

Senator Sotto. Before that, Mr. President,—

The President. Senator Sotto is recognized.

Senator Sotto. —may we just have the first two lines of Section 9, as amended now, read.

The President. The Chair does not think there is... Does the gentleman mean the title of Section 9?

Senator Sotto. No, Mr. President. It will now start with... we deleted lines 24 to 27.

The President. No, the Chair thinks it was reinstated.

Senator Sotto. It was reinstated. We are not deleting? All right.

The President. Yes. Sen. Loi Ejercito Estrada... What is the pleasure of Senator Cayetano?

Senator Cayetano. Mr. President, with the permission of Senator Ejercito Estrada. Because I have been standing here waiting after Sen. Serge Osmeña.

The President. All right, Senator Cayetano.

Senator Cayetano. The restoration sought by Senator Osmeña III has been accepted by the sponsor.

Mr. President, I wonder, this Section 9, as now approved, does not really provide for an exemption from bank deposit law. There is nothing here which will allow inquiry into the bank deposit. This only refers to freezing of accounts by the Monetary Board for a period of 20 days where the same may be extended by a court order.

I would like to point out, Mr. President, that in the House version, there is a provision on authority to freeze—that is Section 11 found on page 8—and another provision on additional exemption from bank deposit secrecy law which is found in Section 9 of page 7. So, I just want to clarify because as I read now Section 9, as reconsidered by the proponent, there is really nothing here that will allow the opening of bank accounts for the purpose of reviewing if there is such an amount that ought to be examined by the AMLU to come to a decision that indeed there is probable cause to file a case as far as this law is concerned.

Senator Osmeña III. Mr. President.

The President. Yes, Senator Osmeña. Is Senator Cayetano through?

Senator Cayetano. Yes, that is the point I just want to bring out.

The President. Senator Osmeña is recognized.

Senator Osmeña III. Yes. If the kind senator from Taguig, Pateros, Muntinlupa—

The President. And the Philippines.

Senator Osmeña III.—and the Philippines had waited until my second amendment which was to reinstate on page 8, lines 10 to 14, which deals with the additional exemption from the bank secrecy law.

The President. All right.

Senator Osmeña III. So that particular line reads in line 10 of page 8: “itself inquire or examine or authorize any inquiry, examination or disclosure of said account. Banks and non-bank financial institutions and their officers and employees, who report covered transactions in the regular performance of their duties and in good faith, under this Act, shall not be held liable for any violation of the aforementioned laws.”

So therefore, that is exactly what follows, Mr. President, as to what is termed additional exemptions from bank deposit secrecy laws.

The President. All right.

Senator Osmeña III. Now, the authority to freeze which has originally been Section 10 can be brought back as Section 10 or can be incorporated as part of Section 9 also.

The President. Yes, but the gentleman has already amended the title to say, “AND Authority to freeze”.

Senator Osmeña III. That is right, Mr. President. So, if I may be allowed to proceed with my amendment so that the gentleman from Taguig and Pateros will...

Senator Cayetano. Before my good friend from Cebu proceeds because he is now going to propose an additional amendment which is after Section 9. What I am really seeking is also a reconsideration of the accepted reconsideration earlier asked by Senator Osmeña III. My reconsideration consists of the authority to freeze should be given to the court as found in the House version. Here, it is given to the AMLU. The court’s intervention will only come after the 20-day period where an extension is being sought.

Now, Mr. President, the reason I feel that the authority to freeze should come from the court is precisely what Senator Osmeña will soon propose which is an additional exemption from the secrecy of bank deposit law which would allow administrative examination of bank deposits.

So we have a situation that the authority to freeze under the House version which I am proposing to be adopted, which by the way is of grave importance and consequence because the moment the bank freezes an account for all purposes, one cannot move this account anymore, although there is no finding yet that a probable cause exists.

On the other hand, if we allow the court to do that, then it is correct, proper, and appropriate for an administrative agency like the BSP or the AMLU to recommend to the BSP the lifting of the Bank Secrecy Act, vis-a-vis, this particular provision. So we have a balancing act, Mr. President. That is just the point I want to say.

Senator Angara. Mr. President, if I may just intervene at this point because it may help clarify the situation.

Mr. President, the present formula granting the BSP power to freeze upon certain condition is really a merging of the concept of the original working draft that there can be an opening, an access, without any court order, and the existing rule under the present laws that one cannot open without a court order.

As the Chair will remember in our caucus, we said, “Okay, we will allow administrative action without, first, a court order provided that it is a well-defined order in terms of time.” That is why we came up with this power to freeze for a limited period.

Senator Cayetano. My problem with that, Mr. President, and I thank my good friend for explaining...

Senator Angara. Let me just complete the narration.

Senator Cayetano. Yes. I am sorry.

Senator Angara. I completely sympathize with the point of view of the distinguished gentleman, but we are trying to accommodate differing views in this regard. One is to allow administrative access without court order; and the other is the present law disallowing any opening of account unless it is with a court order.

So what, in effect, this proposal did is to combine both administrative and court order because the BSP, without any court order, can order a freeze. As the gentleman rightly says, once the account is frozen, that is as good as if already embargoed. One cannot operate it. But if the Central Bank wants to continue the freeze indefinitely, then that is the time for the person to go to court and the court now will have the chance to determine whether the freeze should stay or not. So that is the background of this formula, Mr. President.

Senator Cayetano. I thank my good friend for that explanation, Mr. President, but the point remains. Under the Angara version, the authority to freeze is only to freeze. The BSP, even if the court extended the order to freeze, will not allow the BSP to inquire into the bank deposit because my good friend here deleted beginning in line 10 up to line 14 the power of the members of the Monetary Board to inquire or authorize any inquiry, examination or disclosure of said bank of said account.

So that is my problem. I would like to accept that proposition, but it does not allow an administrative opening or disclosure of the bank account.

The President. Senator Osmeña III is recognized.

Senator Osmeña III. Precisely, Mr. President, we would not have to be going through this if they had allowed this representation first to ask for a reconsideration of the deletion of lines 10 to 14 on page 8.

Senator Cayetano. Mr. President, I will now ask my good friend to continue his proposed amendments.

Senator Osmeña III. So with the kind indulgence of the gentleman from Taguig, Pateros, and Muntinlupa, I would like to ask a reconsideration of the deletion by the distinguished senator from Aurora of lines 10 to 14 in order to allow the bank to obtain information because again there is no use freezing an account if we do not know what is in it.

Senator Angara. Mr. President, much as I would like to accede to my distinguished colleague, if I did, then we did not

move at all from the original proposal of the working draft which is really to grant unlimited administrative access to a bank account without the intervention of the court.

As I said, Mr. President, we debated this in the caucus. It was debated very intensely and we came up with a compromise. And the compromise being that short of opening it, we will give administrative power to the BSP to freeze the account.

The President. Just a point.

Senator Angara. Yes, Mr. President.

The President. But the way it is amended here, even with the court order, it would appear that the BSP could no longer look into the account. Is it possible that the BSP can look, examine and track down the account with the appropriate court order?

Senator Angara. Yes, by all means, Mr. President. That is the intentment—only upon a court order or with a court order.

The President. So, both freezing and examination of the account. I am sorry, freezing beyond 20 days—

Senator Angara. Freezing beyond 20 days, Mr. President, and authority to now examine the accounts—

The President. —should have a court order.

Senator Angara. —should have a court order.

Senator Arroyo. Mr. President.

The President. Senator Arroyo is recognized.

Senator Arroyo. With the permission of Senator Angara and Senator Cayetano. As a compromise, I understand, this was the object of very intensive debates in the House, I do not want to make a motion first because I just want to make a suggestion whether we could just adopt the House version on the authority to freeze. The reason for that is this: When we allowed already the amendment and the Chamber already accepted that the Anti-Money Laundering Unit and no longer the BSP alone, therefore, it would not be appropriate that we should now give powers to these three. What can be done is exactly what the House has done. The House has its own AMLU, we have our AMLU. If we adopt the House version, then there will be no conflict between the Senate and the House versions. I am proposing that...

The President. Is Senator Arroyo referring to Sections 9 and 11 of House Bill No. 3083, to adopt Section 9 and Section 11 of House Bill No. 3083?

Senator Arroyo. That is correct, Mr. President.

The President. In lieu of Section 9 of our version.

Senator Arroyo. Yes, Mr. President.

The President. All right, that is quite clear. What does Senator Osmeña say?

Senator Osmeña III. I am afraid that would be difficult, Mr. President, because Section 9 of the House version should be taken together with Section 11, Authority to Freeze; Section 12, Remedies Pending Criminal Proceedings; Section 10 on Forfeiture provisions...

The President. No, we have similar provisions in our version, Senator Osmeña.

Senator Osmeña III. No, Mr. President. Why does the Chair not take a look at Section 11 under "Authority to Freeze" of the House version on page 8?

The President. All right, yes.

Senator Osmeña III. The authority to freeze is predicated upon a court order also. And that is not what the Senate has. Now, of course, in the revised working draft submitted by Senator Angara, he has a proposal to delete Section 10 which is "Authority to Freeze", and it was superseded by an amendment in Section 9 which reads: "Order of freeze of the account provided that the bank client is given due notice and opportunity to explain within 72 hours".

Again, Mr. President, that is not a court order. That is asking a bank client to explain within 72 hours and the court order would come only after the 20th day of the issuance of the freeze. So there is a difference between the Senate and the House versions.

Senator Arroyo. Mr. President.

The President. Senator Arroyo is recognized.

Senator Arroyo. The authority to freeze is found in Section 9 of the Senate version. It is found on page 7 starting with line 23, while the House version is found on page 8 starting in line 16. Both are entitled, "Authority to Freeze".

If we just adopt the House version, perhaps it will obviate too much discussion. As I have said, I understand that this was a very contentious issue among 220 congressmen, and like us, we have been discussing this. So I do not want yet to make a formal motion so-that we can discuss this. And I would like to ask Senator Cayetano whether he...

SUSPENSION OF SESSION

The President. Maybe it would serve us well if we suspend the session for one minute, if there is no objection? *[There was none.]*

It was 6:17 p.m.

RESUMPTION OF SESSION

At 6:24 p.m., the session was resumed.

The President. The session is resumed.

Senator Arroyo. Mr. President.

The President. Senator Arroyo is recognized.

Senator Arroyo. Mr. President, I move that in lieu of Section 9 of the Senate version, we adopt the following provisions in the House version; namely, Section 9 in the House version found on page 7, lines 7 to 15, and Section 11, page 8 of the House version starting from line 16 and ending in line 25, subject to style because of certain words that will have to be adjusted as of what we have previously agreed upon. I so move.

The President. What does the sponsor first say?

Senator Magsaysay. Mr. President, the sponsor strongly feels for this retention of the provision of Section 9 of September 25 draft on the additional exemption from bank deposit secrecy. One of the five elements required by the FATF is that we loosen, we relax the very strict bank secrecy law. Unless we use the original version of our exemption from bank deposits secrecy law, I do not think that we will comply with No. 4.

Senator Arroyo. Mr. President, we have also loosened somehow the examining mechanism because this is already an improvement over existing law. I would think that the principal sponsor can be persuaded to accept this because, as I said earlier, it is an improvement. In fact, a considerable improvement over the...

Senator Magsaysay. May I state here that the original committee report based on S. No. 1745 was that we do not even have to go to court. That was the original. In the caucus, we accepted that we give the power of freeze to the board for 20 days.

May I know from the proponent, Senator Arroyo, if we still have to go to court to freeze based on Section 11?

Senator Arroyo. Yes. The only difference between the House

version and the Senate version is that in the existing Senate version, there is a 20-day period.

Senator Magsaysay. Yes, Mr. President.

Senator Arroyo. But in the end, still we are to go to court if we extend it beyond 20 days.

Senator Magsaysay. And to open the account.

Senator Arroyo. Yes. Still, we cannot avoid a court order. What I am trying to point out is this. Whether we use the Senate version or not, somehow, we have still to go to court. The difference only between the Senate and the House version is that in the House version, we immediately go to court and *ex parte* the court can give it. In other words, even if there is no hearing, the court can *motu proprio*, on application, grant the application of the AMLU or whatever.

The President. Senator Magsaysay, there is a...

Senator Magsaysay. Is it that one has to go to court to freeze?

Senator Arroyo. Yes. But the court can...

Senator Magsaysay. There is no automatic 20 days for the board to freeze before going to court. I mean, within the 20 days we go to court to open the account.

Senator Arroyo. If I understand the House version, one immediately goes to court and asks for an *ex parte* order.

Senator Magsaysay. But there is no freezing?

Senator Arroyo. No, there is. Because if the court gives it *ex parte*...

Senator Magsaysay. That is a big "if," Mr. President. What if it does not? Because this is based on appreciation of one's application.

Senator Arroyo. Mr. President, by the same token, there is also no assurance whether it is the BSP or the AMLU that will agree to open. We assume that if it is the AMLU, automatically it will agree. That is also not the case. They are supposed to study also the matter. In short, the difference is that here is the court. Here is AMLU. Both are required under the law to study. The only difference is who will grant the authority?

Senator Magsaysay. Yes, Mr. President.

Senator Arroyo. Now, who has the authority? In the House

version, it is the court, and I find it unusual here that it says *ex parte*. Meaning no hearing. The other side will not even be heard.

Senator Magsaysay. Yes, Mr. President.

Senator Arroyo. But in the Senate version, the AMLU or the BSP is required to notify within 72 hours the depositor. In fact, there is a requirement. In the case of the court, it does not.

The President. What does the principal sponsor say?

Senator Magsaysay. May I ask for a one-minute suspension of the session.

Senator Osmeña III. Mr. President.

The President. Senator Osmeña III is recognized.

Senator Osmeña III. Before we go on suspension, may I just clarify. Earlier when we suspended the session, I thought the agreement was freeze first, go to court for an *ex parte* to examine. But if we adopt the House version without amendments, it means we have to go to court even to freeze.

The President. That is correct.

Senator Osmeña III. Based on that, we can go on our suspension.

SUSPENSION OF SESSION

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

It was 6:31 p.m.

RESUMPTION OF SESSION

At 6:41 p.m., the session was resumed.

The President. The session is resumed.

COMMITTEE AMENDMENT

If the Chamber would allow, the Chair would like to state the agreement reached during the caucus.

Sections 9 and 10 of the bill would incorporate the agreement adopted during the caucus, which means that THE MONETARY BOARD OR THE ADMINISTRATIVE AUTHORITY—whoever that is—WILL BE GIVEN AN AUTHORITY TO FREEZE FOR A PERIOD NOT EXCEEDING TWENTY (20) DAYS. SHOULD THAT AUTHORITY NEED

TO EXTEND THE FREEZE ORDER BEYOND TWENTY (20) DAYS OR SHOULD THE AUTHORITY NEED TO LOOK INTO THE ACCOUNT, THEY SHOULD NOW SEEK A COURT ORDER WHICH THEY MAY DO SO *EX PARTE*. THE DEPOSITOR IS GIVEN NOTICE AND AN OPPORTUNITY TO EXPLAIN WITHIN SEVENTY-TWO (72) HOURS FROM THE TIME THE ACCOUNT IS FROZEN.

Senator Arroyo. Mr. President.

The President. Sen. Joker P. Arroyo is recognized.

ARROYO AMENDMENT

Senator Arroyo. Mr. President, I think we should say FROM NOTICE because...

The President. All right, SEVENTY-TWO (72) HOURS FROM NOTICE. THE ORDER OF THE COURT ALLOWING ACCESS OR EXTENDING BEYOND TWENTY (20) DAYS THE FREEZE ORDER MAY BE RESTRAINED ONLY BY THE SUPREME COURT, subject to style, if that can be adopted.

Senator Magsaysay. The principal sponsor accepts it, Mr. President.

The President. How about Senator Angara?

Senator Angara. Mr. President, that is essentially what my version states, and we will be happy to accept the formulation of the Chair.

Senator Biazon. Mr. President.

The President. Sen. Rodolfo G. Biazon is recognized.

Senator Biazon. I have one or two questions, Mr. President, if the Chamber will allow. When does the effectivity of the freeze order begin?

The President. Immediately when there is a finding that the account contains laundered money.

Senator Biazon. Now, the provision which provides a chance for the bank client to explain, is it upon issuance or upon receipt of such notice?

The President. The administrative agency, the Monetary Board or the FIU, is required to give notice within 72 hours from receipt of the notice.

Senator Biazon. Receipt or issuance?

The President. Receipt.

Senator Biazon. Upon receipt.

The President. Yes.

Senator Biazon. Thank you, Mr. President.

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

Senator Angara. So, that takes care of Section 9 on page 7 and the same section on page 8 up to line 14.

The President. That is right.

Senator Angara. So, we can now begin examining Section 10, *Civil Forfeiture Provision*.

Senator Arroyo. Mr. President.

The President. Sen. Joker P. Arroyo is recognized.

Senator Arroyo. On the *Civil Forfeiture Provision*, I observe that, again, the burden of proof here is shifted immediately to the defendant. By every standard of our rules of procedure and evidence, the burden of proof is with the plaintiff.

Here, it reads, starting in line 20, page 8: "IF THE DEFENDANT, AFTER DUE NOTICE AND HEARING FAILS TO PROVE TO THE SATISFACTION OF THE COURT THE ORIGIN OR PROVENANCE OF THE PROPERTY COVERED BY THE REPORT, THE LATTER SHALL ISSUE A FORFEITURE ORDER IN FAVOR OF THE GOVERNMENT OF THE PHILIPPINES, SUBJECT TO THE RIGHTS OF INNOCENT THIRD PERSONS WHO MAY APPLY, BY VERIFIED PETITION, FOR A HEARING TO ADJUDICATE THE VALIDITY OF HIS ALLEGED RIGHT OF INTEREST IN THE PROPERTY SUBJECT OF FORFEITURE."

Here, it is the defendant that has to prove that his property is clean rather than the government proving that the defendant's property is ill-gotten. I do not think that is fair because the burden of proof should always be with the plaintiff.

I prepared a substitute...

Senator Angara. Mr. President, not to be impolite but I want to immediately respond to this because I came to the same conclusion after re-reading this proposed amendment. I was really about to propose that we delete this amendment and restore the original provision which is found on page 9, line 4 up to line 20.

So, this proposed amendment, which is capitalized, will be deleted and we go back to the original text.

Senator Arroyo. Mr. President, still the burden of proof under the original provision which is found from lines 4 to 12, inclusive, on page 9, is still with the defendant-depositor.

Senator Angara. Then, we can begin the amendment, Mr. President. This can be the basis of the amendment rather than the proposed amendment.

ARROYO-ANGARA AMENDMENT

The President. In other words, what Senator Angara is saying is, we reinstate first the working draft of September 25 by removing the brackets in Section 10 and work out the amendments from there in order to satisfy the concerns of Senator Arroyo.

Senator Angara. Yes, Mr. President.

The President. Is there any objection? [*Silence*] There being none, the proposed amendments therefore in Section 11 of the September 25 draft is reconsidered and Section 11 of the September 25 draft is hereby reinstated. So, we can now proceed to amend Section 11.

May the Chair suggest that we address the concerns of Senator Arroyo. We remove in line 8,--I will attempt something, Senator Arroyo—page 9, starting with the word "subject" up to line 11 after the word "acquired"...

I am sorry. The start of the deletion should be in line 9 starting with the word "if" and ending with line 11 ending with the word "acquired." The sentence will now read: "...the court may, subject to the evidentiary requirements prescribed by the Rules of Court, declare the same forfeited in favor of the Government of the Philippines".

Therefore, the burden is on the petitioner if phrased this way. We remove the words "if the offender is unable to show to the satisfaction of the court that said monetary instrument or property was lawfully acquired". By deleting that, we shift the burden to the petitioner.

Senator Arroyo. Mr. President, that is all very good, except that it does not indicate here who files the petition.

The President. Certainly, the petition must be filed by the government. It cannot be filed by the owner of the property.

Senator Arroyo. If that is the intention that it is the government that files the petition; and the phrase in lines 6, 7, and 8 says:

"...after hearing during which the offenders shall be given opportunity to explain the origin or provenance..." I suppose that is fine.

Senator Osmeña III. Mr. President, may I inquire if there is an amendment.

The President. Just a moment. There is a query from Senator Osmeña III.

Senator Osmeña III. Yes, Mr. President. May I just inquire if there has been a proposed amendment in lines 4 to 12 of page 9?

The President. Lines 4 to 12 of page 9 have been reinstated.

Senator Osmeña III. But no amendment yet.

The President. There is no amendment yet. We are just trying to address the concern of Senator Arroyo that the burden is being shifted to the holder of the property.

Senator Osmeña III. Thank you, Mr. President.

Senator Cayetano. Mr. President.

The President. Senator Cayetano is recognized.

Senator Cayetano. In connection with the apprehension of my good friend from Makati.

Mr. President, if we read through from line 1 up to line 8...

Senator Angara. No, line 4.

Senator Cayetano. Yes, line 4 to line 8 of page 9. The provision here speaks of a petition which has been filed by the government and that the court has ordered a seizure of the property. That is why the burden really shifts to the defendant because the court has already ordered the seizure. So, it is now up to the defendant to say: "Mr. Court, you are wrong in seizing my property because it is not unlawfully acquired," and so on and so forth. I think this is proper, Mr. President, as worded.

That is just my comment.

Senator Arroyo. Mr. President, I am afraid that if we allow this... Here is a court that has ordered already the seizure of any monetary instrument or property without yet a hearing. Here is a property that has been seized.

Now, if this was seized by virtue of an ancillary order, perhaps yes, but it is not clear. Here is the government that wants to get the property of the alleged offender, but it is the alleged offender

that will have to explain, "No, Mr. Government, don't because this is mine; this is legitimate," instead of the government saying, "You, offender, this is not clean property," and the government will now show why. And the defendant will also have to say, "No, it is clean."

It is like proving a negative allegation. This is the situation here.

The President. We will formally propose the amendment.

Senator Cayetano. There is vagueness here in the way it is written. Because as mentioned by our good friend from Makati, it presupposes, as I read it, that a seizure order has already been made. I think what the gentleman from Makati is saying is how did that come about in the first place, Mr. President?

Senator Arroyo. Mr. President, with the permission of Senator Cayetano. I have prepared a kind of a draft which I gave to the Senate President and to Senator Angara which reads something like this. Forget the Supervising Authority which is really AMLU or whatever. The Supervising Authority may, before the lapse of the reglementary period provided in Section 9, meaning the freeze order, while the freeze is in operation or during the pendency of the prosecution for money laundering, petition the court for civil forfeiture of the monetary instrument or property, in whole or in part, directly or indirectly, related to the transaction report. So, it is the government that has filed the case. The court may, after due notice and hearing and subject to the evidentiary and procedural requirements of the Rules of Court, render judgment on whether or not the same shall be forfeited in favor of the government of the Philippines.

Senator Cayetano. Mr. President, just a comment on that proposal. I thought that would be stricter on the part of the defendant. Because here, I thought this provision already envisaged a situation where there has been a conviction. Because normally, a civil forfeiture of a property will only come after the accused has been convicted or found guilty.

So, if we agree on that, I am sure my good friend will agree with me that this is better for as long as we make it very clear that this forfeiture really will come only after a conviction has been made.

Senator Arroyo. But, Mr. President, line 4 decrees, when there is a covered transaction report made. So, we can imagine, here is just a covered transaction report made to the council and the court has, in a petition filed for the purpose, ordered seizure of any monetary instrument or property.

The picture is this. There is a covered transaction report made, then the government files a petition. I do not know what is

the purpose, it is vague. "The court has ordered seizure of any monetary instrument or property, in whole or in part, directly or indirectly, related to said report, and after hearing during which the offender shall be given opportunity to explain the origin or provenance of said monetary instrument or property."

This is not a case where there has already been a conviction. This is a case where a petition is filed by the government for the seizure of a monetary instrument or property. But after seizing the property, the provision says, in effect, that the defendant, the property owner must now prove that this property is clean. Now, here is the defendant that is proving that the property is clean, instead of the government saying that the property is not clean. I mean, by every standard of our rules, the plaintiff must be the one that should first prove. The burden of proof is on the plaintiff.

Senator Cayetano. Mr. President, I really have no quarrel with my good friend. I agree with him as far as the right of the defendant is concerned. The only reason I thought that the civil forfeiture comes after conviction is the use of the word "offender" after the words "Rules of Court, if the offender" in line 9. So, I thought maybe, when we speak of the offender, he is already a convicted person. Because, normally, as I understand it in criminal law, the civil forfeiture will only come after conviction. That is why, I said I am not at cross purpose with my friend from Makati. I certainly agree with him that he should be given an opportunity. But where does the burden of proof lie?

Senator Angara. If I may intervene, Mr. President.

The President. Senator Angara is recognized.

Senator Angara. The two distinguished gentlemen are really not expressing disagreeing views. I think the confusion is that the wording of this provision is really very vague. Therefore, the proposed amendment of Senator Arroyo will clarify this vagueness and will reconcile the views of the two, not reconcile, but will express the views of both more accurately than these are.

Senator Cayetano. Mr. President, I thank Senator Angara for his comment. But as I read now the proposed amendment of Senator Arroyo, I even find this very difficult for the defendant or for the accused because I thought, unless I am wrong, that normally a civil forfeiture comes only after conviction.

The President. Not necessarily, because...

Senator Cayetano. But that is the general rule unless we are now saying that... For instance, in graft and corruption, the law on forfeiture comes after conviction for that matter, almost any other case, the proceeds of the crime.

So, I was just thinking, as far as my good friend from Makati is concerned, as I said, I do not have any cross purpose with him.

The President. May the Chair be enlightened? Why are we providing for a civil forfeiture?

Senator Arroyo. It is a very good question, Mr. President. I thought all of these are criminal...

The President. Yes. Why are we providing for a civil forfeiture when a criminal prosecution for money laundering would include the civil aspect and the judgment, if found guilty, will be imprisonment and forfeiture—

Senator Cayetano. That is precisely the point.

The President. —of the fruit of the crime which is the money laundering?

Senator Cayetano. That is correct.

The President. Why did we include civil forfeiture here?

Senator Angara. That is correct.

The President. May I have the answer from the sponsor, Senator Pangilinan?

Senator Pangilinan. That is correct, Mr. President. This was an input from the Department of Justice based on Republic Act No. 1379. However, the observation of the Senate President is well-taken and valid actually. Republic Act No. 1379 is the forfeiture...

The President. Republic Act No. 1379 is the forfeiture of ill-gotten wealth.

Senator Pangilinan. That is correct.

The President. But that is a civil case by itself. That is a proceeding which the government institutes against a government official who has unexplained wealth.

Senator Pangilinan. That is correct.

The President. It is a civil case. We are talking here about money laundering which is a criminal case and the civil forfeiture is necessarily a part of the criminal case.

Senator Arroyo. It is automatically incorporated in the criminal case.

The President. Yes. Can we imagine if we follow this? The accused will have three cases. The predicate crime, the criminal

case for money laundering, and the civil case for forfeiture of the monies being the subject matter of the litigation.

May I propose that we delete these provisions on civil forfeiture.

Senator Sotto. Mr. President.

The President. Yes, Senator Sotto is recognized.

Senator Sotto. In light of what the Chair just said and the manifestation of the others, why do we not just go back to the Angara draft and listen to the proposed amendment of Senator Arroyo instead of...

The President. No, because the Angara draft would also have a civil forfeiture.

Senator Sotto. But that is precisely going to be the point of the amendment of Senator Arroyo.

The President. No, the proposal of the Chair is to delete civil forfeiture.

Senator Sotto. Well, I submit.

The President. If that is agreeable to the principal sponsor, to Senator Angara, and to Senator Arroyo, we can delete the civil forfeiture.

Senator Angara. The more we delete more provisions, Mr. President, this law will be better.

Senator Cayetano. Yes, *puwede na*.

Senator Pangilinan. We submit.

ANGARA-DRILON AMENDMENT

The President. All right. Is there any question to the deletion of the civil forfeiture?

Senator Angara. Not only the civil forfeiture, Mr. President, but perhaps the entire section.

The President. Section 11?

Senator Cayetano. Yes, Mr. President.

Senator Angara. Yes. This is the civil forfeiture claim on forfeited, et cetera.

The President. All right?

Senator Arroyo. Thank you, Mr. President.

The President. All right. The Chair moves that we delete the provisions related to civil forfeiture.

Senator Jaworski. Mr. President.

The President. Yes, Senator Jaworski.

Senator Jaworski. I am not a lawyer, Mr. President. I am not to confuse all of us a little further, but would there not be any case wherein forfeiture would be necessary because of instances where maybe the accused died or when the accused is no longer around or could not be found but there are funds?

The President. Maybe if the accused is no longer around, there is no case.

Senator Jaworski. So what happens with the moneys?

The President. There are other provisions of the law which will apply. Under the Central Bank regulation, under existing laws, there are provisions on that.

Senator Jaworski. Thank you, Mr. President.

Senator Sotto. Parliamentary order, Mr. President. I reiterate the motion of the Chair.

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

Senator Cayetano. Mr. President, on page 10, Section...

The President. We now go to page 10, line 6, because, for the record...

CAYETANO AMENDMENT

Senator Cayetano. This is supposed to be Section 11, Provisional Remedies Pending Criminal Proceedings.

Mr. President, in view of the fact that there is already a provision on the authority to freeze, these other provisional remedies are useless and redundant because the moment a freeze order is made and the court has already extended it or sanctioned it, there is no other remedy. That is why I think we do not need this provision anymore. So I move that we completely delete Section 11.

The President. What does the principal sponsor say?

Senator Pangilinan. We submit, Mr. President.

The President. Does the sponsor accept the amendment?

Senator Pangilinan. Yes, we accept the amendment, Mr. President.

The President. The amendment has been accepted for the deletion of lines 6 to 13 on page 10. Is there any objection?

Senator Osmeña III. Mr. President.

The President. Senator Osmeña III is recognized.

Senator Osmeña III. Just a clarification, Mr. President. May we ask the distinguished senator from Taguig, Muntinlupa, and Pateros.

The President. Senator Cayetano, an inquiry is being made.

Senator Osmeña III. Why would it be necessary to remove Provisional Remedies Pending Criminal Proceedings? We have a 20-day freeze. One may go to court for an *ex parte* motion to investigate the account, inquire into the account. What happens after that if we remove this provision, Mr. President?

Senator Cayetano. Mr. President, the moment the court orders the freezing of the account, that will remain until the case is terminated. That is the reason. And when an order to freeze exists, the defendant cannot move any property already frozen. The availment of provisional remedy is to ensure that the property being sought will not be removed. But since it is already frozen, there is no way by which the property can be removed or concealed. That is the reason I proposed the deletion of this.

Senator Osmeña III. May this be clarified, Mr. President. We do not have the exact wording but the section that we have adopted on freezing of accounts refers only to bank accounts. Or does it refer to all types of properties, real and personal?

Senator Cayetano. The freezing of the bank account is basically being subjected to as a matter of law under consideration. Consequently, that is the only one we have to go after because that is the fruit of the crime.

Senator Osmeña III. Not necessarily, Mr. President. If, during the course of the criminal proceedings it is found that real properties have also been purchased by fruits of the crime, then there must be a section that would deal with the attachment, the garnishment or the freezing of those properties. Does the gentleman not think so?

Senator Cayetano. In that case, assuming that it were so, then one can also ask the court that precisely even the properties that

have been acquired through the use of the fruits of the crime should be frozen because the order to freeze does not necessarily mean just the amount involved.

Senator Pangilinan. Mr. President.

The President. The principal sponsor is recognized.

Senator Pangilinan. If I may also interject. Besides, if the information has been filed and there is a pending criminal case, there are already provisional remedies available under our Rules of Court. As such, this particular section is a duplication in a sense because the Rules of Court will provide for provisional remedies when the case is pending.

The President. Yes, because it says "upon filing of the information". So there is a case.

Senator Osmeña III. Thank you very much, Mr. President, I withdraw my...

The President. So, there is a motion to delete Section 11, lines 6 to 13, page 10. What does the principal sponsor say?

Senator Pangilinan. I have no objection, Mr. President. We accept the amendment.

The President. Is there any objection? [*Silence*] There being none, Section 11, lines 6 to 13, is deleted.

Senator Cayetano. Mr. President, Section 13, line 14. This is a matter of inquiry. Has this been restored?

The President. No, it has been deleted as of this time.

Senator Cayetano. Then I would like to move that we restore this provision with the following amendments of words and phrases: NO TEMPORARY RESTRAINING ORDER OR WRIT OF INJUNCTION SHALL BE ISSUED BY ANY LOWER COURT INCLUDING THE COURT OF APPEALS TO DELAY AN INVESTIGATION OR INQUIRY BEING CONDUCTED By AMLU or whatever it is, et cetera.

The President. ...BEING CONDUCTED period (.). May I propose that we say: EXCEPT FOR THE SUPREME COURT or something like that.

Senator Cayetano. That is why I did not include the Supreme Court. I only say LOWER COURT INCLUDING THE COURT OF APPEALS.

The President. That is why it is a matter of phraseology. A matter of style.

Senator Cayetano. Yes, Mr. President.

The President. All right. There are two amendments: First is to restore Section 13 found in lines 14 and 15. The second is to allow only the Supreme Court to issue the TRO or writ of injunction.

Senator Cayetano. Yes, Mr. President.

Senator Arroyo. Mr. President.

The President. Senator Arroyo is recognized.

Senator Arroyo. This provision on eliminating injunctive writs keeps on recurring in various statutes, and always the Supreme Court strikes it out because this is a restriction on remedy that an individual may have. But more than that, there is this constitutional provision of the extraordinary *certiorari* powers of the court when any body or court gravely abuses its discretion or jurisdiction. Now, to say that we can enjoin an investigation or inquiry would be to say that even if the law enforcement agency has committed grave abuse of discretion or acted without jurisdiction, the court cannot issue an injunction.

That is why I respectfully submit that we cannot curtail a remedy of a citizen to seek redress when any agency of the government commits grave abuse of discretion or acts beyond its jurisdiction. That is the right of every citizen because if we allow this, then we preclude remedies, Mr. President.

Senator Angara. Mr. President.

The President. Senator Angara is recognized.

Senator Angara. If I may intervene to clarify. I think the observation of Senator Arroyo is absolutely correct. But one way of looking at these two is that we are not banning the issue of an injunction except that we are now saying that the injunction can only be issued by the Supreme Court.

The President. That is covered.

Senator Angara. Therefore, if we say, no writ of injunction shall be issued by any court lower than the Supreme Court, that really in effect says, only the Supreme Court can issue it. So I think that may be one way of looking at it.

Senator Arroyo. Mr. President.

The President. Yes, Senator Arroyo.

Senator Arroyo. Out of 30 cases filed with the Supreme Court, how many are given due course, statistically? It is good if

one case is given due course, and the Supreme Court might not consider this worthy enough for its consideration, especially if the amount is only about P3 million. Now, we deny the remedies to a citizen.

If for instance there is an abuse on the part of the prosecution arm, what happens? We have to go to the Supreme Court, and the Supreme Court acts only on questions of law, questions of jurisdiction but not questions of fact. I mean these are the things that I think we should consider. We cannot curtail the remedies available to citizens.

Senator Cayetano. Mr. President, as the proponent of the motion to restore, I do respect the opinion of my good friend from Makati. But there are many cases. In fact, in the Eleventh Congress, Congress passed a bill which was written into a law that no injunction shall be issued by any lower court, including the Court of Appeals, except the Supreme Court, in cases of infrastructure projects of the government.

Now, Mr. President, just like what Senator Angara said, we are not really absolutely limiting the right of a citizen who feels injured by any outcome of investigation or inquiry about this so-called "money laundering activity." What we are only saying is, only the Supreme Court shall be allowed. Because as we know, it is so easy now to get a TRO and have it converted into a writ of injunction, and eventually it will go to either the Court of Appeals or to the Supreme Court.

Because of the importance of this particular legislation, particularly in the very first aspect or step which is an inquiry by whatever we call it, supervising authority or the AMLU or the Three Musketeers—the BSP governor, the chairman of the SEC and the Insurance commissioner—we are merely limiting but certainly not denying as far as this is concerned.

Senator Pangilinan. Mr. President.

The President. Yes. Senator Pangilinan is recognized.

Senator Pangilinan. If I may just be allowed to interject also.

Again, if we look at the nature of money laundering, the "criminal mind" so to speak is ingenious. He or she will attempt to withdraw the money immediately, come up with a strategy to be able to defeat the efforts of the government to be able to freeze, to be able to forfeit, to be able to address the proceeds. *Madali hong mawala itong mga pondong ito kapag hindi po nabigyan ng ngipin ang batas.*

We are not denying or depriving the individual of redress or remedies. We are in fact allowing, and that is of course

constitutional. The individual can petition the Supreme Court for *certiorari* if indeed there is grave abuse on the part of the supervising authority or the agency concerned.

Senator Arroyo. Mr. President, when we limit the remedy to the Supreme Court, we deprive a citizen of a certain area of redress. We are all too familiar with the corruption in the Judiciary. I think everybody here, every lawyer here in this Senate does. But is that an argument to curtail what is really a basic right? That is what is at issue here. It would seem that we have elevated this Act into the highest kind of crime. We do not do that in murder. We do not do that even in plunder. We do not do that even in graft and corruption. We do not do that in heinous crimes.

Now, what is so special about this Act that it should be given a privileged position, that it should be on a category all its own, that while in murder and all those heinous crimes there can be a remedy, but here, no? I mean, those are my concerns, Mr. President.

The President. All right.

SUSPENSION OF SESSION

Senator Magsaysay. May I ask that we suspend the session for one minute, Mr. President.

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

It was 7:21 p.m.

RESUMPTION OF SESSION

At 7:22 p.m., the session is resumed.

The President. The session is resumed. Senator Angara is recognized.

Senator Angara. Mr. President, after a minicaucus, we have come to the conclusion that subject to the vigorous and passionate objection of Senator Arroyo, and with great reluctance, we accept the restoration of this provision, as amended.

Senator Arroyo. Mr. President.

The President. Excuse me. The present status of this provision is that it is reinstated. In other words, there is a restriction. Previously, it was deleted. My impression of Senator Arroyo's intervention is to reinstate the Angara amendment which will delete Section 13.

Senator Angara. That is right.

Senator Arroyo. That is correct.

The President. All right. So we will reinstate the Angara amendment.

Senator Angara. No. There is a motion by Senator Cayetano to restore the deletion.

The President. That is correct, to restore the deletion because the Angara amendment deletes Section 13.

Senator Angara. That is correct.

The President. All right.

Senator Angara. To reinstate it and Senator Arroyo stood up and opposed the restoration.

The President. So if Senator Cayetano will withdraw his motion, then the deletion stays.

Senator Angara. Yes, Mr. President.

Senator Cayetano. Mr. President, as the other sponsor, the third sponsor [Laughter] correctly pointed out, the vehement objection of my good friend from Makati will be recorded for the purpose of ensuring precisely his point of view but he had reluctantly agreed...

Senator Arroyo. No, no, Mr. President. On this particular issue, which I consider very important, I would rather have a division of the House.

The President. All right.

Senator Arroyo. Quite frankly, I do not mind losing as long as there is a division of the House.

The President. All right.

SUSPENSION OF SESSION

Senator Cayetano. May we have a one-minute suspension of the session, Mr. President.

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

It was 7:24 p.m.

RESUMPTION OF SESSION

At 7:33 p.m., the session was resumed.

The President. The session is resumed.

CAYETANO-ANGARA-ARROYO AMENDMENT

Senator Angara. Mr. President, we now have come to a consensus, and Section 13 will be rewritten to read as follows:

NO COURT SHALL ISSUE ANY INJUNCTION AGAINST ANY FREEZE ORDER EXCEPT THE SUPREME COURT.

The President. All right.

Senator Cayetano. Mr. President, with a little amendment to that:

NO COURT SHALL ISSUE A TEMPORARY RESTRAINING ORDER OR WRIT OF INJUNCTION.

We just include TEMPORARY RESTRAINING ORDER in that.

Senator Angara. Subject to style, Mr. President.

The President. What does the principal sponsor say?

Senator Magsaysay. It is accepted, Mr. President.

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

Senator Angara. Mr. President, with regard to Section 14, *Mutual Assistance Among States*, we recommended that this also be deleted. But as we promised Senator Legarda Leviste, we will take a second look at this and we are willing to get this restored or reinstated.

The President. All right. Line 16 to line 19 is being restored. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Just an editorial motion. May I move that in line 17, the word "Philippine" be stricken out. What government are we talking about? This is our government. We always make this, I think, a grievous error of referring to ourselves as the Philippine government.

The President. The FATF is not a government.

Senator Pimentel. Correct, absolutely.

Senator Angara. Mr. President, while we are at it, perhaps the word "grant" in line 17 should read EXTEND instead of "grant".

The President. All right.

Senator Angara. So it will read: "The government is hereby authorized to request and EXTEND mutual assistance".

Senator Pimentel. Yes, right. OF FOREIGN STATES. "...to request FOREIGN GOVERNMENTS".

Senator Angara. Yes, Mr. President.

The President. May we have it again? "The government is hereby authorized to request..."

Senator Pimentel. ...FOREIGN GOVERNMENTS AND GRANT MUTUAL ASSISTANCE.

The President. "...to request FOREIGN GOVERNMENTS and EXTEND mutual assistance".

Senator Angara. Yes. Mr. President, is the Body comfortable with the rule-making power being given to the Department of Justice? Maybe it is Foreign Affairs.

The President. Sen. John Osmeña is approaching the rostrum.

Senator J. Osmeña. Mr. President, I understand that there is a mutual legal assistance treaty or there are treaties that have been entered into. So maybe, we should tighten this provision by saying that it should be granted pursuant to the provisions of any existing mutual assistance.

The President. But there are two MLAT's right now.

Senator J. Osmeña. Then the government should negotiate more.

Senator Angara. Mr. President, perhaps even this phrase "pursuant to the rules and regulations to be issued by the Department", probably is a surplusage. Because it is the government—whether it is through the Department of Justice or the Department of Foreign Affairs or both—that should pursue this request or this assistance. As far as I know, there are only two mutual assistance treaties, one with the US and one with Australia. So maybe, it will not harm this law if we just delete the phrase beginning with "pursuant" up to "Justice".

The President. Yes. But may the Chair inquire what is being requested and what is being extended by the government.

Senator Angara. Assistance.

The President. Here, assistance.

Senator Angara. Yes, mutual assistance.

The President. Period (.)

Senator Angara. Period (.)

ANGARA-PIMENTEL AMENDMENT

The President. All right. So the sentence will read: "The government is hereby authorized to request FOREIGN GOVERNMENTS and EXTEND mutual assistance."

Senator Pimentel. IN MATTERS OF...

The President. IN MATTERS COVERED BY THIS ACT.

Senator Pimentel. Yes, Mr. President.

Senator Angara. IN MATTERS COVERED BY THIS ACT.

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

We now go to line 20. These are the Penal Provisions.

Senator Barbers. Mr. President.

The President. Senator Barbers is recognized.

Senator Barbers. I would like to propose an amendment to Section 15 on Penal Provisions. Line 22...

Senator Jaworski. Mr. President, just a point of clarification before we go to that subject.

The President. Sen. Robert S. Jaworski is recognized.

Senator Jaworski. On what the distinguished gentleman just stated, how does it go, Mr. President, in Section 14?

Senator Angara. Section 14 will read: "The Philippine government is hereby authorized to request FOREIGN GOVERNMENTS and EXTEND mutual assistance." There is something really awkward here. *[Laughter]*

Senator Jaworski. If the distinguished gentleman does not mind, I think what we should do is: THE GOVERNMENT IS HEREBY AUTHORIZED TO GRANT ASSISTANCE AND REQUEST FOR MUTUAL ASSISTANCE because we cannot grant mutual assistance.

Senator Angara. What about this phrasing, Mr. President? THE GOVERNMENT IS HEREBY AUTHORIZED TO ENTER INTO MUTUAL ASSISTANCE, PACTS OR TREATIES—

Senator Jaworski. That is better.

Senator Angara. —WITH OTHER STATES.... Even without that authorization, our government is, in fact, authorized to do that. But just to emphasize, Mr. President, and because we promised Senator Legarda Leviste that we must revisit this...

Senator Biazon. Mr. President.

The President. Sen. Rodolfo G. Biazon is recognized.

Senator Biazon. Just a question, either to the major sponsor or the minor sponsor. Why is there a need for this provision?

Senator Angara. That is exactly why we recommended its deletion, Mr. President, because we thought that this is already inherent. This is an inherent power of states.

Senator Biazon. Mr. President, this is the question because, here, it is a function of the foreign government or our government to enter into any mutual agreement. For example, the Mutual Legal Assistance Treaty that exists between the government of the Philippines and the government of the United States. This is entered into among nations as the need may arise, so this is inherent in the functions of government.

So the same question is asked: Why is there a need for this redundant statement of a basic principle in governance?

The President. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, earlier we were proposing amendments where a person was able to spirit out illegal money to a country that was a non-complying country.

May I be enlightened from the principal sponsor or the minor sponsor how this concern would be addressed without the mutual assistance among states, while realizing that the MLAT is an existing treaty and this is only between the Philippines and the United States. What about the non-cooperating countries?

Senator Biazon. Mr. President, that is going to be an inherent function of the government and this is going to be treated on a case-to-case basis.

Senator Pimentel. Mr. President, may I propose a compromise.

The President. Sen. Aquilino Q. Pimentel Jr. is recognized.

Senator Pimentel. The compromise is worded as follows: THE ANTI-MONEY LAUNDERING UNIT MAY REQUEST ITS COUNTERPART IN FOREIGN STATES TO EXTEND ASSISTANCE IN MATTERS COVERED BY THIS ACT AND TO GRANT THE ASSISTANCE TO REQUESTING FOREIGN GOVERNMENTS ON THE BASIS OF RECIPROCITY. Words to that effect.

Senator Biazon. It is the same.

Senator Pimentel. No, it is not the same because now it is the AMLU that is directly given the power to request its counterpart in foreign states, Mr. President. It is not the same.

Senator Biazon. In which case, we are granting a blanket authority to a unit of the government—the power to enter into agreement that is inherently given to dual or joint responsibility of both the Executive and the Senate.

Senator Pimentel. The power being granted to the AMLU is a power that is designed to strengthen the ability of this Body to implement the objectives of this legislation, Mr. President.

Senator Biazon. Yes. But, Mr. President, I would like to go back to what I stated earlier.

The grant of mutual assistance to, et cetera, et cetera, is a function of agreements among nations and the Constitution is very clear where this responsibility rests.

Senator Pimentel. Mr. President, that is why the wording of the amendments on the basis of reciprocity, probably, can add as defined in applicable mutual legal assistance treaties.

Senator Magsaysay. Mr. President.

The President. Sen. Ramon B. Magsaysay Jr. is recognized.

Senator Magsaysay. This is the fifth element. This is one of the five basic requirements and this has been in our original bill. It has always been in the Committee Report No. 1. It has been in the September 25 draft approved by the caucus, and Senator Angara removed this in his Angara version but he is accepting to put it back, to restore Section 14.

This is one of the five. Although the senator from Muntinlupa City has some good points but this is a basic requirement. One of the five—on exchange of information.

Senator Biazon. May this representation be apprised of the statement.

Senator Magsaysay. “The strengthening of international cooperation, in which the recommendations encourage authorities to exchange information on currency flows and money laundering techniques and on suspicious transactions or operations, international cooperation, should be supported by bilateral and multilateral agreements based on generally shared legal concepts.

Cooperation and mutual assistance should include the production of records by financial institutions, the identification, freezing, seizure and confiscation of criminal proceeds and extraditions and prosecutions.”

Senator Biazon. Mr. President, may I ask a clarificatory question. When we say Philippine government, does this refer to the Executive department or the combined authority and responsibility of the Executive and the Senate with reference to entering into agreements with other countries?

Senator Magsaysay. It could mean the government or its authorized agency. In this case, the AMLU would be acceptable, Mr. President. That was recommended by the gentleman from Cagayan de Oro.

Senator Biazon. This is the point I am finding difficulty with, Mr. President.

This is delegating the combined authority and responsibility of both the Executive and part of the Legislature, which is the Senate, in entering into agreements with other countries.

Senator Angara. Mr. President, if I may intervene and, perhaps, help clarify the situation. Senator Biazon is absolutely correct. As originally worded, this is a needless and unnecessary provision because the original wording will authorize the government, et cetera. We do not need that authority because the government has the inherent authority to enter into mutual assistance pact. But with the new phrasing—this is being suggested by Senator Pimentel—then we have a different conception now because the one being authorized now is an entity of government, and it would need that kind of authority and authorization. Without that authorization, it will not be able to do it on its own because it does not have the inherent power to seek or grant assistance in order to effectively implement this provision.

So, perhaps, that...

Senator Pimentel. May I add, Mr. President, just to clarify. I will read the proposal for clarity.

PURSUANT TO APPLICABLE MUTUAL LEGAL ASSISTANCE TREATIES, THE AMLU—it is to be spelled out—MAY REQUEST ITS COUNTERPART IN FOREIGN STATES FOR ASSISTANCE IN MATTERS COVERED BY THIS ACT AND TO EXTEND THE SAME ASSISTANCE TO REQUESTING FOREIGN GOVERNMENTS ON THE BASIS OF RECIPROCITY.

The President. Very good.

Senator Biazon. In which case, Mr. President, this clarifies the matter. Meaning, do I understand that the authority is being given on the basis of authority already acquired by virtue of appropriate government agreements that are existing?

The President. Yes.

Senator Biazon. Thank you, Mr. President.

Senator Osmeña III. Mr. President.

The President. Senator Osmeña III is recognized.

OSMEÑA III-PIMENTEL AMENDMENT

Senator Osmeña III. Perhaps a minor amendment. Delete the phrase “mutual legal assistance” and widen it to include BILATERAL AND MULTILATERAL TREATIES. Because we are signatories to the Vienna Convention, to the 2000 Convention against Transnational Organized Crimes. So, bilateral and multilateral.

Senator Magsaysay. It is accepted, Mr. President.

The President. All right. The Pimentel formulation with the amendment of Sen. Sergio Osmeña is accepted by the sponsor. Is there any objection? [*Silence*] There being none, the motion is approved.

Line 20. Senator Barbers is recognized.

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

The first amendment that I would like to propose is in line 22. Delete the word “or” and replace it with the word AND.

The President. All right.

Senator Barbers. In line 23, Mr. President, I propose to delete the word "or"; and in line 24, delete the words "both, at the discretion of the court".

Then, in line 26, Mr. President...

The President. May we do it one by one? What does the sponsor say, Senator Magsaysay or Senator Pangilinan?

Senator Barbers. The justification for this proposal...

The President. We will just find out first if the sponsors are accepting the amendment.

Senator Barbers. I will justify the proposal, Mr. President.

The President. All right.

Senator Barbers. The justification for this proposal, Mr. President, is to give teeth to the anti-money laundering law considering that today the whole world is confronted with problems on criminality, illegal activities as well as terrorism. Now, to show to the whole world that the government means business, we have to impose a penalty of imprisonment and fine without any discretion from the court anymore.

Senator Biazon. Mr. President.

The President. May the Chair first ask the sponsors whether or not they are accepting the amendment.

Senator Magsaysay. We have no objection, Mr. President.

The President. The sponsors are accepting the amendment.

Senator Magsaysay. Yes, Mr. President.

The President. All right. Senator Biazon is recognized.

Senator Biazon. Mr. President, anterior amendment.

The President. May we just act on this first, Senator Biazon?

Senator Biazon. Actually, it is just an anterior amendment because of one line.

The President. All right.

Senator Biazon. Mr. President, lines 22 and 28. The penalty is proposed to be P3 million instead of P1 million, because we raised the threshold from P1 million to P3 million. So, may I propose that instead of P1 million, the penalty be made P3 million.

Senator Barbers. I think the amendment has already been accepted in connection with the amount, from P1 million to P3 million. That is why I did not make mention of the amount anymore.

The President. Not yet. The fine is not yet mentioned, Senator Barbers.

All right. The Biazon amendment would amend P1 million to P3 million in line 22.

Senator Biazon. And line 28.

The President. May we take line 28 later on? May we just dispose of lines 20 to 25, with the gentleman's indulgence?

Senator Sotto. Mr. President.

The President. Senator Sotto is recognized.

Senator Sotto. The Barbers amendment is an anterior amendment over the P1 million.

The President. No, there is also P1 million in line 22.

Senator Sotto. Yes, line 22. He is replacing "or" with AND.

The President. All right. That is why, we just act on it all at once. All right?

Senator Sotto. Then I submit that we act on it all at once.

BARBERS-BIAZON AMENDMENT

The President. The amendment in line 22 is to delete "or" and replace it with AND; to delete "One" and replace it with THREE (3), both in words and in figures. In line 23, delete "or"; in line 24, delete the phrase "both, at the discretion of the court". Is that acceptable to the sponsor?

Senator Magsaysay. It is accepted, Mr. President.

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

Now, we go to line 26.

Senator Barbers. In line 26, Mr. President, I...

Senator Pimentel. Before that...

The President. Anterior amendment. Senator Pimentel is recognized.

Senator Pimentel. Mr. President, I have no quarrel with the fine of P1 million or more, but...

The President. No, it is already P3 million.

Senator Pimentel. It is P3 million.

The President. Yes.

Senator Pimentel. But I have a problem with this draconian approach to imprisoning people, seven to 14 years for money laundering. So, probably, Mr. President, my suggestion is to simplify the penalty to one to five years. *Makulong kayo ng isang taon ay okey na iyan.* Why does it have to be seven to 14 years?

Our problem really, Mr. President, is that some of us have even tempted to say "death penalty." The problem is not so much the gravity of the penalty but the speedy administration of justice. If our justice system is speedy enough, we can settle for a lesser penalty. That should be enough to deter.

The President. May the Chair inquire from Senator Pimentel if this is now subject to the Law on Probation since this is less than six years?

Senator Pimentel. Yes. I have not considered that. Or else, we can put here—not eligible to probation, without the right to probation.

The President. All right. What does the sponsor say? The proposed amendment in line 21 is—

Senator Pimentel. It is ONE (1) to FIVE (5) years.

The President.—ONE (1) to FIVE (5) years.

Senator Pimentel. Without probation.

Senator Magsaysay. The committee chairman feels that it is too low. The House version goes for the same as the present version, Mr. President—SEVEN (7) to 14 years.

Senator Pimentel. In which case, Mr. President, let me just put my thoughts into the *Record*.

The President. So, the gentleman is not proposing an amendment anymore? The proposed amendment of Senator Pimentel is withdrawn.

Now, we go to line 26.

Senator Biazon. Mr. President.

The President. Senator Biazon is recognized.

Senator Biazon. In lines 23 to 24. Since we changed "or" to AND, I propose that the whole phrase in line 23, starting from the words "or both, at the discretion of the court" be deleted.

The President. It is already deleted.

Senator Barbers. That was proposed already, Mr. President.

The President. It was deleted, accepted and approved, Senator Biazon.

Allright. Now, in line 26.

BARBERS AMENDMENT

Senator Barbers. In line 26, I propose to remove the word "or" and replace it with the word AND.

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

Senator Barbers. I will skip line 27, Mr. President.

Senator Biazon. Mr. President.

The President. Senator Biazon is recognized.

BIAZON AMENDMENT

Senator Biazon. In line 27, raising Five Hundred Thousand (P500,000.00) to ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000.00) in line with...

The President. Yes. All right. Is there any objection? ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000.00) but then we should amend also line 28, Senator Biazon.

Senator Biazon. Yes, that would follow, Mr. President.

The President. May we have it already so that we can rule on it?

Senator Biazon. Yes. And in line 28, change "One million (P1,000,000.00)" to THREE MILLION (P3,000,000.00).

The President. All right, what does the sponsor say?

Senator Magsaysay. It is accepted, Mr. President.

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

In line 28, is there any other amendment?

Senator Barbers. Yes, Mr. President.

In lines 28 and 29, I propose again to remove the words "or both, at the discretion of the court".

The President. What does the sponsor say, Senator Magsaysay?

Senator Magsaysay. It is accepted, Mr. President.

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

On page 11, Senator Revilla?

Senator Revilla. *Ginoong Pangulo, hindi na siguro sila magdedebate dito sa aking amendment.*

The President. *Sana po.*

Senator Revilla. *Para madali tayo.*

The President. *Opo.*

Senator Revilla. Mr. President, I would like to manifest my own observation on the proposed measure under consideration.

Section 8 provides for the responsibility of covered institutions. Section 8 (b) requires covered institutions to maintain and store records of all transactions for a period of five (5) years. This provision emphasizes the importance of records and documents especially in building a case against a would-be money launderer.

However, looking at Section 12, there appears to be no penalty imposed on covered institutions that failed to retain records of covered transactions for the duration of the required period of five years.

I therefore propose, Mr. President, that we consider inserting a proviso under Section 12 penalizing covered institutions that failed to retain records of covered transaction equivalent to the penalty for failing to make a report under Section 12(b).

SUSPENSION OF SESSION

Senator Angara. I move that we suspend the session for 30 seconds, Mr. President.

The President. Is there any objection? [Silence] There being none, the session is suspended for 30 seconds.

It was 8:03 p.m.

RESUMPTION OF SESSION

At 8:06 p.m., the session was resumed.

The President. The session is resumed.

REVILLA AMENDMENT

Senator Revilla. Mr. President, on page 11, a new subsection should be inserted before Section 12 (b) to read as follows:

(b) PENALTIES FOR FAILURE TO KEEP RECORDS. A PENALTY OF IMPRISONMENT FROM SIX (6) MONTHS TO ONE (1) YEAR OR A FINE OF NOT LESS THAN ONE HUNDRED THOUSAND PESOS (P100,000.00) BUT NOT MORE THAN FIVE HUNDRED THOUSAND PESOS (P500,000.00), OR BOTH, AT THE DISCRETION OF THE COURT SHALL BE IMPOSED ON A PERSON CONVICTED UNDER SECTION 8 (B) OF THIS ACT.

Section 12 (b) and (c) will then be renumbered accordingly.

Thank you, Mr. President.

The President. May the Chair have that again? Section 12 (b) is being amended in line 2 by replacing the word "four (4) years" to ONE (1) year?

Senator Revilla. That is right, Mr. President.

The President. What does the sponsor say?

Senator Magsaysay. We have no objection, Mr. President. We approve the amendment.

Senator Angara. Mr. President, this is an entirely new section. It is not just reducing the penalty.

The President. I am sorry. This is a new provision.

Senator Angara. A new provision. Penalty for not keeping the record.

The President. I am sorry. Yes. Is there any objection? [Silence] The same having been accepted by the sponsor, and there being no objection, the amendment is approved.

Senator Jaworski. Mr. President.

The President. Senator Jaworski is recognized.

Senator Jaworski. Thank you, Mr. President.

JAWORSKI-REVILLA AMENDMENT

To be numbered or lettered accordingly based on the earlier amendment so accepted, I would like to incorporate letter (b) under "Penalties for Failure to Make a Report" and "Malicious reporting" into one. So it will now read: "Penalties for Failure to Make a Report AND Malicious reporting" so that the penalties will be the same.

The President. All right.

Senator Jaworski. And then in another paragraph after "Act" which is in line 5...

The President. May we do it one by one if the gentleman does not mind? So letter (b) will now read in line 1, page 11: "Penalties for Failure to Make a Report AND Malicious reporting."

Senator Jaworski. Yes, Mr. President.

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

Senator Jaworski. And in line 16 which will now be brought up after the word "Act" in line 5...

The President. I am sorry? What is the proposed amendment in line 16, Senator Jaworski?

Senator Jaworski. Delete the letter (c) and "Malicious reporting" and insert the phrase THE SAME PENALTY SHALL BE IMPOSED UPON any person who, with malice, or in bad faith, reports or files a completely unwarranted or false information relative to money- laundering transaction against any person. And delete "shall" and the rest of the paragraph.

Senator Angara. Mr. President.

The President. Senator Angara is recognized.

Senator Angara. Before we act on the proposed amendment, may I just make the observation that subparagraphs (a), (b) and the new paragraph introduced by Senator Revilla are applicable to corporations; whereas, malicious reporting has reference only to individuals. Because one cannot have malice or bad faith in a corporate entity.

So, maybe, combining them both, or keeping them separate may be the better style.

Senator Jaworski. That is all right with me, Mr. President, as long as the penalty will be the same.

Thank you, Mr. President.

The President. All right. So, the Jaworski amendments are withdrawn.

Are there any other amendments on page 11?

Senator Angara. No, Mr. President. The proposed amendment combining penalties for failure to make a report and for malicious reporting, that is withdrawn, Mr. President.

The President. Yes.

Senator Angara. And we will keep the two, separate as these are now.

The President. That is correct.

Senator Angara. But his amendment to make the penalty for malicious reporting the same as the penalty for failure to make a report is standing...

The President. Is pending approval. All right. What does the principal sponsor say of the amendment?

Senator Magsaysay. We have no objection. It is accepted, Mr. President.

The President. Is Senator Pimentel raising a point on this amendment?

Senator Pimentel. Just an inquiry, Mr. President. Will this penalty not subject or enable the culprit to avail himself of the probation?

Senator De Castro. Mr. President, that is my follow-up *sana* for penalties for failure to make a report. Because we noticed that the penalty of imprisonment is from six (6) months to four (4) years...

The President. May we act first on the Jaworski amendment?

Senator De Castro. Yes, Mr. President, I am sorry.

The President. All right. It was accepted by the sponsor. There being no objection from the Chamber, the amendment is approved.

Now we will proceed. Senator De Castro is recognized.

Senator De Castro. Thank you, Mr. President.

I notice that the penalty for failure to make a report is imprisonment from six (6) months to four (4) years, and for

malicious reporting, a penalty of one (1) month and one (1) day to six (6) months.

So, Mr. President, just an inquiry: Shall we allow the person convicted under this Section 8 to avail himself of probation? He falls under the period of up to six (6) years wherein he is allowed to avail himself of the probation but this is up to four (4) years, and the other one is up to six (6) months only.

So, are we going to allow the person convicted under this Section 8 to avail himself of the probation, Mr. President?

The President. This is not to answer the gentleman's question. But for the record, line 16 has already been amended by Senator Jaworski. And the penalty, in effect, is the same as six (6) months and four (4) years.

But the question of Senator De Castro is still valid. The question is: Would the offender be able to avail himself of the law on probation? The answer would be in the affirmative since the law on probation would allow the benefits for those convicted up to six (6) years.

Unless the gentleman introduces an amendment which will state that the offender may not avail himself of the probation law.

DE CASTRO AMENDMENT

Senator De Castro. Yes, Mr. President. May we introduce that amendment.

Senator Magsaysay. The sponsor will accept that, if there is such an amendment, Mr. President. Omnibus.

The President. All right, the De Castro amendment would prohibit the offender from availing himself of the probation law, subject to style.

Senator De Castro. Subject to style, Mr. President.

The President. Accepted by the sponsor.

Senator Sotto. Mr. President, is the Chair referring to both penalties for failure to make a report or just the malicious reporting?

The President. It is both.

Senator Magsaysay. Both. It is omnibus.

Senator Sotto. I think the malicious reporting should be both but not the failure to make a report given that high a penalty.

The failure to make a report could be a human error as far as some of the...

The President. So he could avail himself of the probation law but not on malicious reporting.

Senator Sotto. I think so. But not on malicious reporting. In malicious reporting this could be intentional. *Iyong* failure to make a report *puwedeng baka may problema sa....*

The President. There is a proposed amendment to Senator De Castro's amendment.

Senator De Castro. Yes, I think so, Mr. President. It is only on malicious reporting.

Thank you, Mr. President.

SOTTO-DE CASTRO AMENDMENT

The President. The inability to avail of the probation law is limited to malicious reporting. What does the sponsor say?

Senator Magsaysay. We accept the amendment, Mr. President.

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

Is there any other amendment on page 11? Senator Pimentel is recognized.

Senator Pimentel. Mr. President, in line 21.

Senator Magsaysay. Excuse me, Mr. President. I have an anterior amendment or rather a query. *[Laughter]*

Senator Angara. The gentleman should ask my permission, Mr. President. *[Laughter]*

Senator Magsaysay. Yes, yes.

The President. Senator Magsaysay may proceed.

Senator Magsaysay. Just a query, not an amendment.

The President. Yes, yes.

Senator Magsaysay. The Angara version removed, deleted on page 11, lines 6 up to line 15, and we have a phrase here that is important to us based on the move of the committee member, Senator Arroyo, that even public officials and even government

departments and heads of agencies be included as possible perpetrators of the new crime of money laundering. But in putting a new provision which is basically the same on page 11, line 21 of the Angara version up to page 12, too, we noted that these are basically the same but the phrase "*Provided, finally*, That if the offender is a public official or employee, he shall, in addition to the penalties prescribed herein, suffer perpetual or temporary absolute disqualification from office, as the case may be" disappeared.

And I understand that this is part of the Revised Penal Code which we are emphasizing here because this is a strong statement that says that even if the offender were a public official or employee, he falls within this law.

Senator Angara. Mr. President.

The President. Yes, Senator Angara.

ANGARA AMENDMENTS

Senator Angara. Mr. President, to facilitate the discussion, may I be permitted to amend my own amendment and incorporate already what the distinguished sponsor is saying so that the amendment will read like this, because there are also new provisions added to this. It reads: *PROVIDED, THAT THE OFFENDER UNDER SUBPARAGRAPHS (A), (B), AND (C),—(b) being the Revilla amendment—IS A CORPORATION, ASSOCIATION, PARTNERSHIP OR A JURIDICAL PERSON, THE PENALTY SHALL BE IMPOSED UPON THE PRESIDENT,—and we delete the word "DIRECTOR"—OR RESPONSIBLE OFFICERS, AS THE CASE MAY BE, WHO PARTICIPATED IN THE COMMISSION OF THE CRIME OR WHO SHALL HAVE KNOWINGLY PERMITTED OR FAILED TO PREVENT ITS COMMISSION; PROVIDED, FURTHER, THAT IF THE OFFENDER IS A JURIDICAL PERSON, THE COURT MAY SUSPEND OR REVOKE ITS LICENSE UPON CONVICTION; PROVIDED, FURTHERMORE, THAT IF THE OFFENDER IS AN ALIEN, HE SHALL, IN ADDITION TO THE PENALTIES HEREIN PRESCRIBED, BE DEPORTED WITHOUT FURTHER PROCEEDINGS; PROVIDED, FINALLY, THAT IF THE OFFENDER IS A PUBLIC OFFICIAL OR EMPLOYEE, HE SHALL, IN ADDITION TO THE PENALTIES PRESCRIBED HEREIN, SUFFER PERPETUAL OR TEMPORARY ABSOLUTE DISQUALIFICATION FROM OFFICE AS THE CASE MAY BE.*

Senator Magsaysay. I will accept that, Mr. President. Thank you.

The President. All right. Is there any objection?

Senator Osmeña III. Mr. President.

The President. Sen. Serge Osmeña is recognized.

Senator Osmeña III. May I just inquire why "DIRECTOR" was deleted? After all, it is the director—the Board of Directors if this is what this means—that establishes policy directions for a corporation.

The President. The question is, why is a director being deleted?

Senator Osmeña III. Why is "DIRECTOR" deleted?

Senator Angara. Because the nature of the offense is such that only the acting officer should really be held accountable, not the Board of Directors which largely is policy making, and probably they do not even know that there is such a suspicious account in their own bank. So I think it is only fair that the penalty be imposed on the executive officers.

Senator Osmeña III. But, Mr. President, the last phrase, which appears in lines 25 and 26, is the qualifier. It states, "WHO PARTICIPATED IN THE COMMISSION OF THE CRIME OR WHO SHALL HAVE KNOWINGLY PERMITTED OR FAILED TO PREVENT ITS COMMISSION".

Therefore, the Board of Directors must be held responsible if it knowingly permitted or failed to prevent its commission.

Senator Angara. Well, that is true, Mr. President. The directors will fall under the phrase "RESPONSIBLE OFFICERS" because while directors, they are still responsible officers.

The President. A director can fall under the phrase "RESPONSIBLE OFFICERS".

Senator Angara. That is correct, Mr. President. It is unfair and I think it is not a good rule in any statute book, whether criminal or not, to impose especially a penal sanction on directors because they are not really in operations.

Senator Osmeña III. Mr. President, again, we are just mentioning "director" because "director" usually refers to a member of the board which is the policy-making body. The officers or the executive directors who are also members of the board are usually the ones who are in charge of the chief executive and the operating officers of the company. But if it is possible that the directors knowingly permitted or failed to prevent the commission of a crime, they must be held responsible.

This is true in the United States and in other advanced Western economies. Which is why, as a matter of fact, in many countries, there is the obligation to elect what are known as

outside directors to the board to make sure that the executive directors are kept honest and to protect the rights of the shareholders. So maybe we can keep "DIRECTOR" in there. Anyway, if they did not knowingly permit or failed to prevent the commission of the crime, they will not be included.

Senator Angara. But that is not the point, Mr. President, because certainly, a knowing director ought to be prosecuted. I think there is no question about that. Even without the word "DIRECTOR" here, he will fall under the phrase "RESPONSIBLE OFFICERS."

The thing is that we do not get away from the concept that the persons being penalized under this section are operating people—executive officers of the company. Because if we extend it to director who does not know anything about it theoretically or stockholders or majority or controlling stockholders who may not know about it, there is no limit to the scope and application of this law. That is the reason I suspect that we made this provision.

Senator Osmeña III. I do not understand Mr. President. Again, in normal corporate usage, an officer is someone who is president, chief executive officer, chief operating officer, chief financial officer, vice president, et cetera.

So when we remove director... In most cases, a director is not known as an officer.

Senator Angara. That is why we are excluding it, Mr. President, because it is not in the same category as operating people or executive officials.

Senator Osmeña III. Therefore, Mr. President, if the Board of Directors institutes a policy or fails to institute a policy, that does not prevent the commission of a crime, he will not be penalized?

Senator Angara. That is not true, Mr. President. I think we are quibbling over a point. Definitely, a director who has knowledge should be prosecuted. If that is the intent of the...

Senator Osmeña III. Where would that be?

The President. May the Chair suggest something. If we delete the words "PRESIDENT, DIRECTOR OR" and just say RESPONSIBLE OFFICERS, will that cover the director?

Senator Osmeña III. Not in the way I use the word "OFFICERS" again, Mr. President. But if that is the understanding, then yes, that would be better.

Senator Angara. Agreed, Mr. President.

The President. So, in line 24, delete the words "PRESIDENT, DIRECTOR OR".

Senator Angara. Yes, Mr. President.

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

Senator Pimentel. Mr. President.

The President. Sen. Aquilino Q. Pimentel Jr. is recognized.

Senator Pimentel. First, a question, Mr. President.

Senator Angara. Mr. President, we should also delete the phrase "AS THE CASE MAY BE".

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

Senator Pimentel is recognized.

Senator Pimentel. Point of inquiry first, Mr. President. Does the adverb "KNOWINGLY" in line 26 modify also the verb "FAILED"?

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

Senator Pimentel. In other words, it is understood that the failure to be sanctionable or punishable is predicated upon knowledge of the responsible officer concerned.

Senator Angara. That is correct, Mr. President. A center is essential in this.

ANGARA-PIMENTEL AMENDMENTS

Senator Pimentel. We go back to line 21. Editorial suggestion in order to avoid these kilometric sentences. We delete the word "PROVIDED, THAT" so that we start with the word "OFFENDER" and the period (.) be placed in line 26 after the word "COMMISSION".

The President. Delete the words "PROVIDED, THAT" in line 21. Is there any objection? *[Silence]* There being none, the amendment is approved.

Delete the colon (:) in line 26 and replace it with a period (.). Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Pimentel. Then in line 27, delete the words

"PROVIDED, FURTHER, THAT". We start the sentence IF THE OFFENDER IS.

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

Senator Pimentel. In line 28...

Senator Cayetano. Mr. President, proposed anterior amendment.

The President. Sen. Renato L. *Compañero* Cayetano is recognized.

Senator Cayetano. In line 27. Is that what the gentleman is...

Senator Pimentel. Yes, Mr. President.

Senator Cayetano. I will postpone my proposal.

Senator Pimentel. With the deletion of the words **"PROVIDED, FURTHER,"** the sentence should read now as **IF THE OFFENDER IS A JURIDICAL PERSON, THE COURT MAY SUSPEND OR REVOKE ITS LICENSE UPON CONVICTION.**

Senator Cayetano. The gentleman is finished with that?

Senator Pimentel. Yes, Mr. President.

PANGILINAN-ANGARA AMENDMENT

Senator Angara. May I just interject, Mr. President, because Senator Pangilinan reminded me that the words **"UPON CONVICTION"** may not be appropriate here.

Senator Pimentel. That is right.

Senator Angara. May we recommend that the words be deleted.

Senator Cayetano. Anterior amendment, Mr. President.

The President. Senator Cayetano is recognized.

Senator Cayetano. In line 28, it speaks of "may suspend or revocation of its license". If it is a stockbroker, of course, we may suspend or revoke its license. But if it is a corporation, we call it franchise. I would like to insert after the word **"LICENSE"** the words **OR FRANCHISE**. If it is a corporation, we disenfranchise it. We do not say we take out the license. If it is a stockbroker, then we remove or suspend the license. If it is a corporation, we disenfranchise it.

Senator Pimentel. No, we can also revoke its license to operate.

Senator Cayetano. The real term there is to disenfranchise. That is why I said **OR FRANCHISE**.

Senator Angara. That sounds odd, Mr. President. This is the first time I heard that one disenfranchises a corporation.

Senator Cayetano. Mr. President, even in the corporation law, there is a procedure there to disenfranchise.

Senator Angara. It is the license to operate that we revoke or suspend.

Senator Cayetano. I just want to clarify that.

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

Senator Cayetano. As long as we understand that the word **"LICENSE"** includes also corporate bodies incorporated by the SEC, then I have no problem.

Senator Angara. Yes. It also includes it. But the provision does not intend to disestablish that corporation.

The President. There is a motion to delete the phrase **"UPON CONVICTION"** in line 28, and just place a period (.) after **"LICENSE"**.

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

Senator Pimentel. In line 29, Mr. President—**"PROVIDED, FURTHERMORE, THAT"**. It is for deletion.

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

Senator Pimentel. And the final **"PROVIDED, FINALLY, THAT"** which is contained in the amendment of Senator Angara.

The President. Yes. We delete **"PROVIDED, FINALLY, THAT"**.

Senator Pimentel. Yes, Mr. President.

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

Then in line 2 of page 12, after **"BE DEPORTED WITHOUT**

FURTHER PROCEEDINGS", add the phrase: AFTER HE SHALL HAVE SERVED THE PENALTIES AND PAY THE FINES IMPOSED.

The President. What about the phrase "IN ADDITION TO THE PENALTIES HEREIN PRESCRIBED"? There is a phrase in line 1, Senator Pimentel.

Senator Pimentel. That is correct, Mr. President. But it does not speak of serving the penalties. There is a difference between just saying that the penalties be...

Subject to styling, but the idea is he can be deported without further proceedings but after he shall have served the sentence and paid the fines.

The President. AFTER SERVING THE PENALTIES HEREIN PRESCRIBED.

Senator Pimentel. Yes. Better still, Mr. President. AFTER SERVING THE PENALTIES HEREIN PRESCRIBED.

The President. So we delete in line 1 "IN ADDITION TO THE PENALTIES HEREIN PRESCRIBED"

Senator Pimentel. Thank you, Mr. President.

The President. Is there any objection?

Senator Barbers. Mr. President.

The President. Is that an objection, Senator Barbers?

Senator Barbers. No, Mr. President.

The President. May we just act on this amendment first?

Senator Barbers. No, Mr. President. But this is in connection with the proposed amendment of Senator Pimentel.

The President. It is an amendment to the amendment.

Senator Barbers. No. In view of the fact that when I proposed an amendment earlier, when we were discussing about jurisdiction, I made a reservation that if that proposed amendment will not be appropriate in Section 6 on jurisdiction, this will fall under penal provisions.

The President. Yes.

Senator Barbers. So, my proposed amendment comes after the word "PROCEEDINGS".

The President. Yes. We will act on that amendment after we have acted on the amendment of Senator Pimentel.

The sentence will now read: IF THE OFFENDER IS AN ALIEN, HE SHALL BE DEPORTED WITHOUT FURTHER PROCEEDINGS AFTER SERVING THE PENALTIES HEREIN PRESCRIBED.

Then we can go to the amendment of Senator Barbers. May we just act on this amendment first?

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

Senator Barbers' amendment is now in order.

BARBERS AMENDMENT

Senator Barbers. Mr. President, my proposed amendment is by adding another paragraph to the amendment of Senator Pimentel. I would like to propose an additional paragraph which reads like this:

PROVIDED, THAT IF A GOVERNMENT OFFICIAL OR EMPLOYEE OR ANY MEMBER OF LAW ENFORCEMENT AGENCIES INSTRUMENTAL IN MAKING THE ARREST OF THE ACCUSED ARE CALLED UPON TO TESTIFY AND REFUSES TO DO THE SAME OR PURPOSELY FAILS TO TESTIFY SHALL SUFFER THE SAME PENALTIES PRESCRIBED HEREIN. Subject to style. This was earlier accepted, Mr. President.

Senator Pimentel. Mr. President, subject to style, I would suggest that we start with the phrase ANY PUBLIC OFFICER OR EMPLOYEE WHO IS CALLED UPON TO TESTIFY.

Senator Barbers. It is accepted, Mr. President.

Senator Angara. Just as a reminder, Mr. President. The proper place of the Barbers amendment is not really after the Pimentel amendment, because there is an amendment that we introduced and we adopted from lines 13 to 15 of page 11 as recommended by Senator Magsaysay.

The President. So can we hold off the Barbers amendment first?

Senator Angara. As long as we place it in the proper slot, Mr. President.

The President. So the Barbers amendment is accepted.

Senator Angara. It is accepted, and we will place it in the proper slot.

The President. All right. It is accepted. Is there any objection? *[Silence]* There being none, the amendment is approved, subject to the appropriate placement.

Lines 3 to 7 on page 7 has been deleted. Lines 8 to 12 is an Angara amendment.

Senator Magsaysay. Mr. President, may I again, find out from the proponent of this amendment...

The President. We are now in line 8.

Senator Magsaysay. Line 8. This is from Senator Flavier who has left us earlier this evening.

The President. All right. Flavier amendment.

Senator Angara. Line 8. This is the new Section 13. *EXEMPTION FROM LIABILITIES.* THE GOVERNMENT SHALL HOLD THE MEMBERS OF THE MONETARY BOARD AND THE EXECUTIVE DIRECTOR OF THE AMLU, FREE FROM ANY SUIT OR LIABILITY FOR ACTS PERFORMED IN THE REGULAR COURSE OF THEIR DUTIES AND RESPONSIBILITIES UNDER THE PROVISIONS OF THIS ACT.

May I justify this, Mr. President. That these same people are already under the BSP Charter held liable due to the provision of Section 16 of Republic Act 7653 which provides for liability on their part if there is a breach of their responsibilities. It is not a committee amendment; this is a Flavier individual amendment.

The President. All right. What does the sponsor say?

Senator Angara. Mr. President, we have no basic objection to this as long as we understand that this does not exempt any of the officials from arbitrary action, responsibility for any arbitrary action which is now provided under Section 13. So this can go side by side with Section 13, because I do not think we can insulate any public official for liability because of arbitrariness.

Senator Sotto. Mr. President.

The President. May the Chair suspend the session for one minute to allow a discussion on the floor of this particular proposal.

The session is suspended unless Senator Sotto...

Senator Sotto. I was just going to say that with the explanation of Senator Angara, then why do we have to place that provision here?

SUSPENSION OF SESSION

The President. All right. That is why the Chair would like to suspend the session for 30 seconds to enable the two gentlemen to reconcile this provision, if there is no objection. *[There was none.]*

It was 8:39 p.m.

RESUMPTION OF SESSION

At 8:46 p.m., the session was resumed.

The President. The session is resumed. Sen. Edgardo J. Angara is recognized.

Senator Angara. Mr. President, after mutual consultation, we accept the proposed amendment of Senator Flavier, through Senator Magsaysay, with modification.

We will designate the Flavier amendment as Section 13, and it will read as follows:

SEC. 13. *EXEMPTION FROM LIABILITIES.* EXCEPT IN CASES OF ARBITRARY AND WILLFUL ABUSE OF THE AUTHORITY GRANTED HEREIN, THE GOVERNMENT SHALL HOLD THE PUBLIC OFFICERS FREE FROM ANY SUIT OR LIABILITY FOR ACTS PERFORMED IN THE REGULAR COURSE OF THEIR DUTIES AND RESPONSIBILITIES UNDER THE PROVISIONS OF THIS ACT.

Senator Biazon. Mr. President.

The President. Is that the entire amendment, Senator Angara?

Senator Angara. *Mayroon pa po, Ginoong Pangulo.*

The President. Can Senator Biazon allow the complete amendment to be read first?

Senator Biazon. I will wait, Mr. President.

Senator Angara. And the present Section 13, Mr. President, will be re-designated as Section 14, with the amendment that the word "CAPRICIOUSLY" in line 11 will be deleted.

This forms the main body of this provision while we designate it as a separate section, Mr. President. This really forms part of one concept—that as long as the public officers do their jobs in good faith, then they will not be subject to any liability. On the other hand, if they abusively and willfully use their authority granted under this Act, then they are open to liability.

That is the concept of these two combined sections, Mr. President.

The President. Before I recognize Senator Biazon, just a query to the principal sponsor. Does he confirm the amendment proposed by Senator Angara?

Senator Magsaysay. We accept, Mr. President.

The President. All right. Sen. Rodolfo G. Biazon is recognized.

Senator Biazon. Thank you, Mr. President.

On the phrase "WILLFULLY ABUSED THE EXERCISE OF THE POWERS GRANTED IN THIS ACT", could this willful abuse of the exercise of powers be committed collectively considering that there are a series of processes that involve different officials at different levels?

Senator Angara. Yes, Mr. President. Since the action is at different levels, then each official at a particular level will be answerable for his action.

Senator Biazon. Yes. So, this abuse could be collective in nature?

Senator Angara. Excuse me.

Senator Biazon. This abuse can be committed collectively as far as pinpointing responsibility is concerned.

Senator Angara. Yes, Mr. President. It can be a conspiracy.

Senator Biazon. In which case, I have some proposed amendments to certain portions thereof.

SUSPENSION OF SESSION

Senator Pimentel. Mr. President, I move that we suspend the session for one minute.

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

It was 8:50 p.m.

RESUMPTION OF SESSION

At 8:54 p.m., the session was resumed.

The President. The session is resumed. Senator Angara is recognized.

Senator Angara. Mr. President, let me summarize the consensus. Instead of two separate sections, we will have only one section combining the two, and it will read as follows: Section blank—I do not want to put any number now.

The President. That is in line 8?

Senator Angara. That is right, in line 8.

EXEMPTION FROM LIABILITY AND RIGHT TO SUE. EXCEPT IN CASE OF ARBITRARY AND WILLFUL ABUSE OF THE AUTHORITY GRANTED HEREIN, THE GOVERNMENT SHALL HOLD PUBLIC OFFICERS FREE FROM ANY SUIT OR LIABILITY FOR ACTS PERFORMED IN GOOD FAITH IN THE REGULAR COURSE OF THEIR DUTIES AND RESPONSIBILITIES UNDER THIS ACT.

ANY PERSON WHO SUFFERS DAMAGE OR INJURY SHALL HAVE THE RIGHT TO SUE THE PUBLIC OFFICER WHO ARBITRARILY AND WILLFULLY ABUSED THE EXERCISE OF THE AUTHORITY GRANTED UNDER THIS ACT.

The President. Is there any objection?

Senator Magsaysay. It is accepted, Mr. President, with pleasure.

The President. All right. It is accepted with pleasure.

Senator Biazon is recognized.

Senator Biazon. Yes, there is no objection except certain clarificatory insertions probably. Since there is an agreement that willful abuse of the exercise of powers can be committed collectively, since there are numerous officials involved, may I then propose an amendment to this amendment.

The President. There is a proposed amendment to Senator Angara's amendment by Senator Biazon.

Senator Angara. Yes, with pleasure, to my colleague in the Minority, Mr. President.

Senator Biazon. Thank you, Mr. President. I do not know which line to refer to now. But if we are referring to the previous draft where we have Section 13 still, RIGHT TO INDEMNIFY FOR WRONGFUL ACT. I am referring to lines 10 and 11. Have you located it?

The President. Yes.

Senator Biazon. So, I propose that after "PUBLIC OFFICER", insert OR PUBLIC OFFICERS WHO, and then add INDIVIDUALLY OR JOINTLY, ARBITRARILY, et cetera.

The President. All right.

Senator Magsaysay. It is accepted, Mr. President.

Senator Biazon. Thank you, Mr. President.

The President. Sen. John H. Osmeña is recognized.

Senator J. Osmeña. Thank you, Mr. President.

Just a question, Mr. President. We have Republic Act No. 3091, the Anti-Graft and Corrupt Practices Act. And in Section 3, paragraph (e) of this law, it says that a public officer may be made answerable if he causes any undue injury to any private party. How do we reconcile the section now that is before us with the existing law? Because the existing law, to my mind, already penalizes any abuse of any power by any government official, and which includes the parties that are now empowered under the Anti-Money Laundering Act. So, do we reconcile this? On the one hand, are we exempting them, are we in effect saying that Section 3, paragraph (e) of the Anti-Graft and Corrupt Practices Act is inoperative, Mr. President?

The President. Senator Angara?

Senator Angara. No, Mr. President, we are not intending to do that. The general provision that any public official who abuses his power will be answerable for it still stands. But we feel that we have to accept the Flavio amendment because this is a unique and novel law, statute that we are passing and we do not want to discourage people involved in the process to hesitate to act for fear of being sued.

But on the other hand, we are also sending the signal and we are reminding them of the general principle that they cannot abuse their power and they will be answerable or will be held responsible for that. So we combined the assurance and the reminder in this amendment.

Senator J. Osmeña. The gentleman's amendment...

Senator Cayetano. Mr. President, with the permission of the two gentlemen.

The President. Senator Cayetano is recognized.

Senator Cayetano. Just for information. I believe the amendment being offered refers merely to civil liability—

The President. That is correct.

Senator Cayetano. —for damages.

The President. Yes.

Senator Cayetano. Under the Anti-Graft Act which my good friend from Cebu mentioned, that is purely criminal. So I think that is where the distinction lies, Mr. President.

The President. Yes.

Senator J. Osmeña. So there is no incompatibility?

The President. No, there is none.

Senator Angara. There is nothing to harmonize. There is no incompatibility.

Senator J. Osmeña. Thank you, Mr. President.

The President. All right. Senator Lacson is recognized.

Senator Lacson. I would like to propose a new section.

The President. May we act on this amendment first?

Senator Arroyo. Mr. President.

The President. Yes, Senator Arroyo is recognized.

Senator Arroyo. Mr. President, the original draft of this proposed law was drafted by the Bangko Sentral. There was no provision, there was no request for that particular provision. Now that we are at the tail end and we have been here since this morning at nine o'clock and it is now nine o'clock in the evening, we are now being stampeded into introducing this immunity clause.

Now, this smacks of class legislation. Other public officials in other government offices are not immune. They do not have advanced immunity from civil suit. But this bill gives advanced immunity to the public officers who will enforce this Act. Now, these officials can cause damage to depositors and those who will transact business with the Insurance Commission, with the Securities and Exchange Commission. And with this provision, then these officials will feel comfortable. They can be careless. Why? Because anyway they will be immune from suit. The counterfoil precisely that they will act with prudence is that they could be liable. But if we make them free in advance, then they will not be careful. This idea of advanced immunity would encourage irresponsibility. This is a very serious thing that they can issue a freeze order. That is what we gave them, the freeze order. Imagine for 20 days, they can. The monies of the depositor cannot move. The possibility that they might issue bouncing checks because they have not been informed yet and they issue checks against the frozen deposit. They cannot do business with their deposits. These are problems that we have to face.

Perhaps, we should modify this provision in such a way that when we grant them these powers, then we should also apply the brakes that will enable them to exercise their duties carefully. At the moment, I am not prepared with what to do but I would suppose that the principal sponsor and the other sponsor should craft this provision in such a way that always, these officials must be on the guard.

That is all, Mr. President. As I have said earlier, they did not put this in the original proposed bill. Now we are already about to finish it and they make *pahabol*.

Senator Angara. Mr. President, if I may just respond.

I think the comments of Senator Arroyo are valid. But just to correct the impression that the original committee report as well as the September 25 draft did not contain such an immunity, in fact it did, Mr. President, and that prompted us during the caucus to say what is the protection of a person unjustly wronged by this action. In fact, if I remember right Senator Arroyo's comment, this is really loaded against the depositor of this country. So we discussed various ways of compensating that one-sidedness and I think it was Senator Ople who suggested that there must be a provision for indemnity. And so we drafted this original Section 13 which is a "RIGHT TO INDEMNIFY FOR WRONGFUL ACT."

The Flavier proposal again revives what they have been asking under the original draft, Mr. President. The compromise we agreed with Senator Magsaysay and Senator Cayetano is to combine both. On one hand, we gave that assurance but on the other hand, we do not want to send the signal that this is now a warrant to do whatever they like. They must not abuse the authority and so this is in a way that compromise. Certainly, I think it should not be interpreted as an advanced immunity because this is not an immunity against an abusive exercise of power.

The President. Senator Osmeña is recognized.

Senator Osmeña III. Mr. President, if I might react.

Today we have been on the floor for 12 hours. We were here at 9:07 and I think we were called to order at 9:20 this morning. And certainly, it is the administration that has been trying to get the anti-money laundering bill passed in keeping with the warnings from the Financial Action Task Force that certain sanctions would be imposed on the Philippine financial community if this law were not signed and in place by the 30th of this month which is on Sunday.

And therefore, both sides, the Majority and the Minority have tried hard to craft a realistic and effective anti-money laundering bill. Certainly, there have been suggestions to craft a bill that

would pay lip service to the FATF requirements, just like what Nauru did, and hopefully buy time to come back and revisit the bill in case the FATF said, "That is not good enough" to include additional amendments that would meet the minimum requirements of the FATF.

Mr. President, the FATF has circulated what we all now know as "the 40 recommendations." In the 40 recommendations, Recommendation No. 2 states that "Financial institution's secrecy law should be conceived so as not to inhibit the implementation of these recommendations." In other words, since we have a very strict Bank Secrecy Law, we have to open up the secrecy law a little bit to make sure that the provisions of the anti-money laundering law will be effectively implemented.

Mr. President, perhaps some of us have forgotten what those recommendations are. So allow me to refresh the memory of some of our colleagues.

Recommendation No. 16 reads: "Financial institutions, their directors, officers and employees should be protected by legal provisions from criminal or civil liability for breach of any restriction on disclosure of information imposed by contract or by legislative regulatory or administrative provision if they report their suspicions in good faith to competent authorities even if they did not know precisely what the underlying criminal activity was and regardless of whether illegal activity actually occurred."

Now, that is the recommendation to protect just the banks. What more the regulator, Mr. President. What I am trying to say is, in the past few days, we tried to come up with an anti-money laundering bill that we hope would be fair, but which it seems to me is designed to make it difficult to implement the provisions by putting handcuffs on the regulatory powers.

This, I think, would be unfair, Mr. President, because I do not think the Bangko Sentral, the Insurance Commission and the SEC ask to become the regulator. Essentially, what I can deduce from Recommendation No. 16 is that in the anti-money laundering law, one is up against very powerful people. People with a lot of money certainly, drug dealers, and the transnational organized crime groups are no pushovers. And they certainly know that they can hire powerful lawyers to sue institutions that have, in their own opinion, transgressed their rights.

I am hopeful, Mr. President, that we can skew the law on behalf of those whom we are tasking with the regulation of this anti-money laundering bill, otherwise, we would be giving a toothless law. We would be, shall we say, scaring our own regulators into implementing it fairly and impartially because of the restrictions or

the warnings that they would be sued and sent to jail in case they made a wrong move.

Mr. President, I think the members of this Chamber should, at least, weigh things a bit. The provisions have become heavily in favor of whoever is laundering the money and away from those who are being asked now to regulate. And I think that is very, very unfair.

Thank you.

The President. What is now the pleasure of Senator Sotto?

Senator Sotto. Mr. President, I think that is inaccurate, saying that this is heavily favored toward the launderers. This is probably favored towards the Filipino depositors, not the launderers. We are all against the money launderers. We are all against drug traffickers.

It is very easy to identify them really. *Kung iyon ang titirahin. Ganoon eh.* That is why we do not have to be afraid of being sued if one is going after the right people. But if one is going to be after the wrong people, then *matatakot ka nga.* One would want that provision.

The provision that was read came from the FATF. *Sila ang nagbibigay din noon na iyong mga tao nila ililibre sa problema.*

That is the problem, Mr. President. I hope we reach a certain compromise here, otherwise, I will have to express my reservations towards this particular provision.

Senator Osmeña III. Mr. President, may I react?

The Filipino depositor has been one of the most protected in the world. I have not seen a bank secrecy law as strict as that of ours, particularly for depositors of foreign currency deposits.

Having lived in Europe and the United States for almost two decades including my schooling days, Mr. President, I assure the gentleman that even the laws of Europe and the United States are not as strong as ours favoring the depositor. We have been well-protected as depositors over there.

The fear, I think, in our minds are those depositors who have something to hide. Because understandably, I have seen no depositor in America, for example, quarrel with the way they are treated by their own Internal Revenue Service. Now, I understand we have some abusive elements in our own BIR, well and good. Then let us make sure that they get punished severely for whatever acts of harassment that may arise in the future because of the loosening up of the Bank Secrecy Act.

But Mr. President, let me tell the Chair something. There are many people I have talked to who are not afraid of the weakening of the Bank Secrecy Law because they have nothing to hide. Those who are afraid are those who have something to hide. And I think that is the essence of the main opposition to this bill.

Let us be honest with ourselves and I hope that if this law is applied evenly and equally to every one and if this will encourage more people to pay the rightful taxes, then perhaps we may not have to be looking at the P145 billion deficit this year and next year, and we will not always be complaining that the tax efficiency effort of the BIR is very, very poor. We will not be complaining that we do not have enough resources to fund their farm-to-market roads, our school buildings and whatever necessities that the poor of this country so rightly deserve.

Mr. President, we look around this Chamber and even earlier this afternoon, for example, it is the salaried employees that pay 60 percent of the collections of the BIR. Sixty percent is paid by salaried employees, and I think that has always been a very unfair ratio. And I am absolutely positive that if we come up with a very realistic anti-money laundering bill, we will not only be able to minimize laundering of money from profits of illegal activities in the Philippines and in Asia which are channeled through the Philippines, but we will even be able to increase our tax collection in order to bring about a better society for everyone.

Thank you, Mr. President.

Senator Angara. Mr. President.

The President. All right. Senator Angara is recognized.

Senator Angara. Senator Sotto spoke of a compromise. What we have done right now, Mr. President, is, in fact the compromise that we thought will help. As I said, the request for immunity or exemption from liability has been there from the very beginning, which we did not accept under our proposed amendment. But now that it is renewed by Senator Flavier, we are accepting it because we already have a provision like Section 13, the original Section 13 on the right to sue and the right to recover indemnity from abuse of public officials.

So I thought that this is more or less a balanced approach to the issue. We satisfy the concern of the FATF.

Senator Cayetano. Mr. President.

Senator Angara. So if I may read it again, Mr. President, for everyone's...

Senator Cayetano. Mr. President, before my colleague reads it, he mentioned this immunity is contained in the 25th September working draft. May I call the attention of everyone that on page 6, September 25 original draft, beginning in line 19, it says: "However, no administrative, criminal, or civil proceedings, shall lie against any person for having made a covered transaction report in the regular performance of his duties and in good faith, whether or not such reporting results in any criminal prosecution under this Act or any other Philippine law."

Again on page 7, under Section 9, beginning in line 4, it says: "Of all the members of the Monetary Board of the Bangko Sentral ng Pilipinas, may itself inquire or examine or authorize any inquiry, examination or disclosure of said account. Banks and non-bank financial institutions and their officers and employees, who report covered transaction in the regular performance of their duties and in good faith, under this Act, shall not be held liable for any violation of the aforementioned laws."

So this is actually what Senator Angara is mentioning, that the immunity clauses are contained in the original version of 25 September 2001.

Senator Angara. Yes, Mr. President. We deleted all those requests for exemptions from liability under our draft, and in lieu thereof, we provided for the right to indemnity and to sue under Section 13. So the situation really is, there is no provision for exemption until now.

We just want to correct the impression that this was a last-minute request that we are being stampeded into accepting. That is not the case.

Just to again recall the compromised phraseology, let me restate the proposed amendment. The proposed amendment will be...I will not give it any number yet.

EXEMPTION FROM LIABILITY AND RIGHT TO SUE. -
EXCEPT IN CASE OF ARBITRARY AND WILLFUL ABUSE OF AUTHORITY GRANTED HEREIN, THE GOVERNMENT SHALL HOLD THE PUBLIC OFFICERS FREE FROM ANY SUIT OR LIABILITY FOR ACTS PERFORMED IN THE REGULAR COURSE OF THEIR DUTIES AND IN GOOD FAITH UNDER THE PROVISION OF THIS ACT.

ANY PERSON WHO SUFFERS DAMAGE OR INJURY SHALL HAVE THE RIGHT TO SUE THE PUBLIC OFFICER OR OFFICERS WHO EITHER INDIVIDUALLY OR JOINTLY ARBITRARILY AND WILLFULLY ABUSED THE EXERCISE OF THE AUTHORITY GRANTED UNDER THIS ACT.

So that was the compromised formulation we agreed upon, Mr. President. So I want to assure our distinguished colleague, Senator Arroyo, that this is not a last-minute thing that we are being forced to accept. This has been there from the very beginning and we outrightly rejected it in our draft, and in fact, put this "right to sue" and "indemnity" instead.

Senator Arroyo. Mr. President.

The President. Senator Arroyo is recognized.

Senator Arroyo. Mr. President, in our caucus, I raised the question about what happens if, because of the action of the enforcement agency, which we have not yet given any nomenclature, what protection does the depositor have?

So we agreed that there will be a right to indemnity. We did not talk about protection for immunity. We were thinking about what happens. Because the danger here is not on money launderers—everybody is agreed that they should be punished—but innocent depositors should be protected.

In fact, no one can sue these officers. They will not have the money to do that. A depositor who, for instance, has a P3-million freeze, cannot afford that. What is P3 million nowadays?

I do not know whether this is class legislation or not but this immunity, the moment we do this, every public official will now ask for the same immunity. There lies the danger. There will be no statute that we will discuss in this floor that the affected public officers will ask for immunity because we have set the precedent.

Look at the *Banco Filipino* case. Imagine what happened in the *Banco Filipino* case. The one that paid for the lawyers of the Bangko Sentral—when the Aguirres sued the Bangko Sentral—while the case was going on was the *Banco Filipino*. The *Banco Filipino* was subsidizing the lawyers of the Bangko Sentral while the Aguirres were defending themselves. Here is a situation where the Aguirres were subsidizing the legal costs of the Bangko Sentral. In the end, the Supreme Court upheld the Aguirres. But at what cost?

These are the experiences in the past that we had. We are faced with a law which is a catchall. Empirical data indicate that we are not really a money-laundering country. Hong Kong is. We can deposit any amount, and I have a table here that there is no limit to any amount one can deposit and a Hong Kong bank will accept it. Yet, the Chairman of the FATF is from Hong Kong. How low can we get? There is the Hong Kong triad in the hearings before Senator Barber's committee. The Hong Kong triad operates in Hong Kong. Where do they put the money?

In Hong Kong. Certainly, they are not here. That is the Hong Kong triad.

The *Yakuza* in Japan. They put their money in Japan. Japan has a \$300,000 threshold limit. Why will they put it in the Philippines? We are unstable. I am just saying that let us not be more popish than the Pope. The FATF said that we should. We are already accommodating them.

The advanced countries have sophistication. Take for instance, the Federal Reserve Board. The American public will not stand for a Federal Reserve Board that is abusive. The English will not allow the Bank of England to be abusive. I am not saying that the Bangko Sentral is abusive. But, certainly, when I asked for an insertion at the outset that this bill should not be used for political persecution or as a means to prevent free competition and trade, the idea was that at no time should this bill be used as an instrument of oppression.

There is a potential for oppression in this bill. I am just saying we keep on talking about the red flag. I am just saying let us have a red flag. The description of "willful," "capricious," can never be proved. For the lawyers here, they know we cannot prove willfulness, we cannot prove maliciousness, we cannot prove capriciousness. That is a very difficult element to prove. That is why the prefatory clause is actually a useless clause. It is a *consuelo de bobo* clause. How can we prove maliciousness? How can we prove willfulness? We cannot prove that. That is why that safeguard is useless.

Anyway, I leave it to the Chamber. I just want it on record that this is my position because I am wary about the future.

Thank you, Mr. President.

The President. Senator Magsaysay is recognized.

SUSPENSION OF SESSION

Senator Magsaysay. May I ask that we suspend the session for one minute, Mr. President.

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

It was 9:29 p.m.

RESUMPTION OF SESSION

At 9:31 p.m., the session was resumed.

The President. The session is resumed. Senator Angara is recognized.

Senator Angara. Mr. President, I am pleased to announce that by overwhelming consensus, we have agreed not to press for this amendment, as well as the Flavier amendment. We withdraw them.

The President. So Section 13 found in lines 8 to 12, as well as the Flavier amendment, are both withdrawn.

Is there any objection?

Senator Magsaysay. We have no objection, Mr. President.

The President. There being none, the amendment is withdrawn.

Sen. Ping Lacson was earlier recognized.

Senator Lacson. I am proposing a new section, Mr. President.

The President. Do not make it so difficult. It is already 9:31.

LACSON AMENDMENT

Senator Lacson. No, Mr. President. Considering that I was with the law enforcement for a long time, I would like to propose a section granting a system of incentives and rewards to the agency and its personnel that will lead and initiate the investigation, prosecution and conviction of money launderers. And this is to read as follows, subject, of course, to style:

SYSTEM OF INCENTIVES AND REWARDS. A SYSTEM OF SPECIAL INCENTIVES AND REWARDS IS HEREBY ESTABLISHED TO BE GIVEN TO THE APPROPRIATE GOVERNMENT AGENCY AND ITS PERSONNEL THAT LED AND INITIATED THE INVESTIGATION, PROSECUTION AND CONVICTION OF PERSONS INVOLVED IN THE OFFENSE PENALIZED IN SECTION 4 OF THIS ACT IN THE AMOUNT OF TEN PERCENT (10%) OF THE VALUE OF THE MONETARY INSTRUMENT AND/OR PROPERTY INVOLVED IN THE OFFENSE.

The President. What does the sponsor say?

Senator Magsaysay. May we ask for a suspension of 30 seconds. *[Laughter]*

DRILON-LACSON AMENDMENT

The President. Maybe if we just remove that 10 percent and leave it to the authorities. The concept is there must be a reward system. But to place a 10 percent may subject it to a lengthy debate.

May we appeal to Senator Lacson to remove the minimum 10 percent. Maybe it could be more than 10 percent.

Senator Lacson. I agree, Mr. President.

The President. So if we can delete the 10 percent.

Senator Magsaysay. Without the figure of 10 percent, we have no objection, Mr. President.

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

Senator Sotto. Mr. President.

The President. Senator Sotto is recognized.

Senator Sotto. Yes, Mr. President. Earlier, Senator Arroyo was introducing a section concerning prohibition against political harassment, something to that effect. This is the time and, I think, this is exactly the section where it should be inserted.

SOTTO AMENDMENT

So, may I introduce a new section that will prohibit political harassment during the election period, subject to the wordings that would be introduced probably later on by the other members who have the same issue. Let me read into the *Record* my proposal. This is a new section:

*PROHIBITION AGAINST POLITICAL HARASSMENT.
NO CASE FOR MONEY LAUNDERING MAY BE FILED
AGAINST AND NO ASSETS SHALL BE FROZEN,
ATTACHED OR FORFEITED TO THE PREJUDICE OF A
CANDIDATE FOR AN ELECTORAL OFFICE DURING
THE ELECTION PERIOD.*

The President. What would the sponsors say? Senator Cayetano is recognized.

Senator Cayetano. Mr. President, will my good friend from Quezon City and the Philippines answer just a few clarificatory questions?

Senator Sotto. Certainly, Mr. President.

Senator Cayetano. I just want to find out. Actually, it is a ban.

Senator Sotto. Yes, during the election period.

Senator Cayetano. Yes, during the election period only.

Senator Sotto. If we will recall, during the period of interpellations, Mr. President, we brought this out and we used the example of the possibilities of political harassment by...

Senator Cayetano. Yes. I have really no objection. I just want to find out, to enlighten myself. So the period refers merely to the election period.

Senator Sotto. Election period only.

Senator Cayetano. So before the election period starts, a case of money laundering may be filed.

Senator Sotto. Yes, Mr. President.

Senator Cayetano. Then after the election day, a case may be filed. Am I correct?

Senator Sotto. Yes, Mr. President.

Senator Cayetano. Thank you. That is all I want to find out, Mr. President.

The President. So it is just a deferment of the action under the law. Is that correct, Senator...

Senator Cayetano. Mr. President, it is more like a suspension—

The President. A suspension.

Senator Cayetano. —of any proceeding involving money laundering, et cetera, during the election period so that there will be no political harassment of candidates.

Senator Sotto. For candidates only of all electoral office.

Senator Cayetano. All candidates from barangay level to the President.

Senator Sotto. Yes, Mr. President. *Para hindi magamit.*

Senator Cayetano. All right.

The President. Only for candidates.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Mr. President, would that not be...

The President. Class legislation?

Senator Pimentel. Because we can make and make that exception available to everyone during the election period. Because otherwise, *baka magiging kuwan iyon.*

The President. No, but the political harassment really is on the candidate, that is the concept.

Senator Pimentel. Or to the contributors of the political candidates.

The President. What does the...

Senator Angara. Mr. President.

The President. Yes.

Senator Angara. Before we act on the Sotto proposal.

ANGARA-ARROYO-SOTTO AMENDMENT

May I introduce the Arroyo amendment which he mentioned earlier in this proceedings because this can be the general rule and the Sotto amendment is an exception. I mean, at least for a limited period.

The amendment is: THIS ACT SHALL NOT BE USED FOR POLITICAL PERSECUTION OR HARASSMENT OR AS AN INSTRUMENT TO HAMPER COMPETITION IN TRADE AND COMMERCE. Then, we can follow it with the Sotto amendment which is more specific and time bound—limited to election period.

The President. All right. What does the principal sponsor say, Senator Pangilinan?

Senator Pangilinan. After conferring with Mike, the chairman of the Committee on Banks, Financial Institutions and Currencies, it is accepted with pressure from my chairman. *[Laughter]*

The President. All right. The amendment has been accepted. The Angara-Sotto-Arroyo amendment has been accepted. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Sotto. One final section, Mr. President, a new section also. Prospective Application. This law shall apply prospectively.

I understand, Mr. President, that during the period of interpellations also, the Chair, together with the sponsor, agreed that we specify that this is a prospective law.

The President. Criminal laws are prospective in application, otherwise we get into constitutional trouble.

Yes, Senator Sotto.

Senator Sotto. Mr. President, I am willing to withdraw the proposal, but with the understanding that we all agree that this should not be used for harassment. We used the example that an existing bank account can be used against the depositor after the law is enacted even if the law is prospective. Because once there is a transaction, then it is subject already. As long as we have the understanding that this is prospective and that the existing accounts that are not subject to any illegal transactions or unlawful activities should not be included and should not be interpreted as something like making this law retroactive without really doing so. With that understanding and probably an amendment from Senator Angara as far as this intention is concerned, then I will withdraw the proposal.

The President. The Sotto amendment is withdrawn.

Senator Angara. Mr. President, the fear underlying the proposed amendment is genuine. Because suppose a person has now P2,900,000 in his bank account or just to make the extreme example, P2,999,000. Tomorrow, when the bill is passed, he makes a deposit of P2 that will already theoretically bring his account under active surveillance because it is now a covered transaction.

The President. No, it is not.

Senator Osmeña III. Mr. President.

The President. Sen. Sergio R. Osmeña III is recognized.

Senator Osmeña III. Mr. President, I think the threshold amount does not refer to the balance in the account but on the per-transaction basis, per-deposit basis.

Senator Angara. That is reassuring, Mr. President, if that is not intended to cover such an activity because that is, if I recall, the example cited by Senator Sotto during the interpellation. If that is not so and there is an express clear statement that the intent is such that it will not apply to an existing account like that, then I think that should be sufficient and Senator Sotto is justified in withdrawing formally his proposed amendment.

Senator Pimentel. Mr. President, just to clarify.

The President. Sen. Aquilino Q. Pimentel Jr. is recognized.

Senator Pimentel. I heard Sen. Serge Osmeña say that it has something to do with deposits. That is not the intention of the law. It includes withdrawals also—any transaction not just deposits, Mr. President.

The President. All right. The Sotto amendment has been withdrawn.

Is there any other amendment on page 12 on Implementing Rules and Regulations, Separability Clause, Repealing Clause and Effectivity? These are standard provisions.

Sen. Aquilino Q. Pimentel Jr. is recognized.

Senator Pimentel. Mr. President, in between the Implementing Rules and Regulations and Separability Clause, may I propose that a section be inserted which has something to do with congressional oversight.

The President. All right.

PIMENTEL AMENDMENTS

Senator Pimentel. The title of the section would be CONGRESSIONAL OVERSIGHT COMMITTEE. THE CONGRESSIONAL OVERSIGHT COMMITTEE IS HEREBY CREATED AND... Excuse me, Mr. President. I will reword that, with the permission of the Chair.

THERE IS HEREBY CREATED A CONGRESSIONAL OVERSIGHT COMMITTEE COMPOSED OF FIVE (5) MEMBERS FROM THE SENATE AND FIVE (5) MEMBERS FROM THE HOUSE OF REPRESENTATIVES. THE MEMBERS FROM THE SENATE SHALL BE COMPOSED OF THREE (3) SENATORS REPRESENTING THE MAJORITY AND TWO (2) SENATORS REPRESENTING THE MINORITY WHO SHALL BE APPOINTED BY THE SENATE PRESIDENT UPON RECOMMENDATION OF THE MAJORITY AND MINORITY PARTIES OR COALITIONS THEREIN. THE MEMBERS FROM THE HOUSE SHALL BE COMPOSED OF THREE (3) REPRESENTATIVES COMING FROM THE MAJORITY AND TWO (2) MEMBERS COMING FROM THE MINORITY WHO SHALL ALSO BE APPOINTED BY THE SPEAKER OF THE HOUSE UPON RECOMMENDATION OF THE RESPECTIVE PARTIES, Mr. President.

The President. What does the sponsor say?

Senator Magsaysay. It is accepted, Mr. President.

Is this after Section 15?

The President. It is between lines 20 and 21.

Senator Biazon. Mr. President.

Senator Pimentel. May I proceed with its powers, Mr. President.

The President. I am sorry. I thought that was the complete... Please proceed, Senator Pimentel.

Senator Magsaysay. May I request, Mr. President, if it is possible that we have more than five.

The President. May we allow first the proponent to complete the amendment and then we can propose amendments to the amendment?

Senator Magsaysay. Certainly, Mr. President.

The President. Senator Pimentel may continue with...

Senator Pimentel. Next paragraph, Mr. President.

The President. Yes.

Senator Pimentel. THE OVERSIGHT COMMITTEE SHALL HAVE THE POWER TO PROMULGATE ITS OWN RULES, TO OVERSEE THE IMPLEMENTATION OF THIS ACT AND TO REVIEW AND REVISE THE IMPLEMENTING RULES ISSUED BY THE ANTI-MONEY LAUNDERING UNIT WITHIN THIRTY (30) DAYS FROM THE PROMULGATION OF THE SAID RULES.

Senator Biazon. Mr. President.

The President. Sen. Rodolfo G. Biazon is recognized.

Senator Biazon. In the composition of the Oversight Committee in the Senate, what happens if there is only one member of the Minority?

Senator Pimentel. The Minority shall have the right to nominate from among its members.

Senator Biazon. So, we are not talking about proportional representation.

Senator Pimentel. That would probably be better. But I am not too sure how that can be devised, Mr. President, unless it is more specific than just, say, proportional representation. We might have difficulties arriving at that representation.

BIAZON-PIMENTEL AMENDMENT

Senator Biazon. Probably, the statement would be, if there is only one Minority. Does he have the right? Subject to style. Thank you, Mr. President.

Senator Pimentel. Yes, Mr. President.

Senator Biazon. Thank you, Mr. President.

The President. Sen. Sergio R. Osmeña III is recognized.

Senator Osmeña III. All our committees are divided proportionally between the Majority and the Minority. So, I do not think there is a problem. But maybe what Senator Biazon meant is that the Minority should be represented by at least one member in the Committee. So, although they may have a proportion of less than 20 percent which may not entitle them to any seat out of five, I think, the Minority should at least enjoy one seat in the Committee.

The President. May we be clarified. It is proportional representation provided the Minority shall be represented by at least one member. Is that acceptable to Senator Pimentel?

OSMEÑA III-BIAZON-PIMENTEL AMENDMENT

Senator Pimentel. I think, Mr. President, it would be best if we put in the phraseology of proportional representation BUT THE MINORITY SHALL HAVE AT LEAST ONE REPRESENTATION.

The President. Yes, that is the proposal.

Senator Pimentel. Words to that effect, Mr. President.

The President. Yes, that is the proposal of Senator Osmeña.

Sen. Ramon B. Magsaysay Jr. is recognized.

Senator Magsaysay. Earlier, I was saying that since this is a very vital piece of legislation, we may expand the number of members of the Oversight Committee from five to seven.

The President. Senator Pimentel.

Senator Pimentel. I have no objection, Mr. President.

The President. Is the amendment acceptable to the sponsor?

Senator Magsaysay. It is accepted, Mr. President.

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

Senator Magsaysay. There is an anterior amendment to be given by Senator Cayetano, Mr. President.

The President. Sen. Renato L. *Compañero* Cayetano is recognized.

Senator Cayetano. Before that, Mr. President, with the enumerated powers of the Oversight Committee now accepted by

the Body, may I request a reconsideration that one of the powers of the Oversight Committee is to approve the implementing rules and regulations that may thereafter be implemented consistent with the authority of the Power Commission.

Senator Sotto. Mr. President.

The President. Sen. Vicente C. Sotto III is recognized.

SOTTO AMENDMENT

Senator Sotto. Mr. President, with the indulgence of Senator Cayetano and the Chamber.

I was about to propose an amendment to Section 14 to that effect. And if it will be accepted by Senator Cayetano and the Chamber, in line 16 of Section 14, under Implementing Rules and Regulations, after the word "Act", remove the period (.). We can retain the period, Mr. President, and then proceed with THESE RULES AND REGULATIONS SHALL BE SUBMITTED TO CONGRESS FOR APPROVAL BEFORE IT CAN...

DRILON-SOTTO AMENDMENT

The President. Maybe Oversight Committee, not Congress. May I suggest OVERSIGHT COMMITTEE.

Senator Sotto. OVERSIGHT COMMITTEE FOR APPROVAL BEFORE IT CAN BE EFFECTIVE. Yes, Mr. President.

Senator Cayetano. Mr. President, I am not the principal sponsor, but I have been delegated to say yes and accept it. But before that, I have an anterior amendment.

The President. Is the Sotto amendment accepted by the sponsor?

Senator Cayetano. I have been authorized, Mr. President, to accept it.

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

Senator Cayetano. The sponsors are rather tired.

Actually, Mr. President, in line 14, Section 14, it says here, "the Bangko Sentral ng Pilipinas". It is already proposed to be deleted, "in coordination with all the concerned Supervising Authorities".

CAYETANO AMENDMENT

I would suggest, Mr. President, in view of the fact that there are three musketeers involved, THE BANGKO SENTRAL NG PILIPINAS, THE INSURANCE COMMISSION, AND THE SECURITIES AND EXCHANGE COMMISSION be added instead and the deletion stands, as is.

The President. All right. The amendment in line 14 is to include INSURANCE COMMISSION AND THE SECURITIES AND EXCHANGE COMMISSION.

Senator Cayetano. Yes, Mr. President. Because earlier, we agreed that they will be the AMLU.

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

Is there any other amendment on page 12? *[Silence]* On page 13, the last page. *[Silence]*

That being the last page, the Chair declares a suspension of the session and the Secretary...

Senator Recto. Mr. President, I think we still have to go through "Covered institutions."

The President. We can have a break for dinner and then the Secretariat will prepare a clean copy and we will use that as a basis again for the amendment, including the other amendments which we have left behind.

Senator Osmeña III. Mr. President, we have some proposed amendments that were deferred.

The President. Yes, these will be taken up.

Senator Osmeña III. After the recess?

The President. Yes.

Senator Osmeña III. Thank you, Mr. President.

SUSPENSION OF SESSION

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

It was 9:53 p.m.

RESUMPTION OF SESSION

At 10:50 p.m., the session was resumed.

The President. The session is resumed.

Senator Legarda Leviste. Mr. President, before we suspended the session, we agreed to return to two provisions; namely, the Supervising Authority and the Covered Transactions.

The President. And there are...

Senator Legarda Leviste. And Unlawful Activity.

The President. My notes indicate three items deferred, the matter of the Supervising Authority; the matter of the Unlawful Activity; and the definition of the crime of Money Laundering. Those are the three items which we deferred.

Senator Legarda Leviste. Yes, Mr. President.

The President. We will take these up now. Also distributed to the members of the Chamber is an amended copy as of September 27, 2001, which already contains the amendments that we have approved.

The principal author is recognized for the continuation of the period of amendments.

What is the pleasure of the Body? Should we proceed to the three items that we left behind before we go back to all the others?

Senator Legarda Leviste. Mr. President, I move that we consider the proposals under the Covered Transaction.

The President. The Supervising Authority is the first item that the Chair proposed we take up because there is already an agreement here.

May the Chair ask the Chamber to turn to page 4, line 20 on the definition of Supervising Authority?

Senator Pangilinan. Mr. President, which version?

The President. There is a version which says, "Amended Copy as of September 27, 2001."

Senator Pangilinan. This is where we will be basing our amendments.

The President. That is right. May the Chair invite the attention of the Chamber to page 4, line 20, Supervising Authority. This is one of the first items that we have deferred.

What is the pleasure of the Chamber as far as the definition

of Supervising Authority is concerned? Right now, it refers to the Bangko Sentral ng Pilipinas.

Senator Pangilinan. Yes, Mr. President. If I recall correctly, Supervising Authority, letter (H), will also include the Insurance Commission as well as the Securities and Exchange Commission.

The President. The Insurance Commission and the Securities...

Senator Pangilinan. Securities and Exchange Commission, Mr. President.

The President. Securities and Exchange Commission.

All right. There is an amendment proposed on page 4, line 21. After the word "PILIPINAS", insert the clause INSURANCE COMMISSION AND THE SECURITIES AND EXCHANGE COMMISSION as supervising authority.

Senator Pangilinan. Mr. President, the term "Supervising Authority" should be replaced by the term "AMLU" or Anti-Money Laundering Unit.

The President. Anti-Money Laundering Unit.

May the Chair suggest another term for "Unit" because this consists of three government offices. It is not only a unit.

Senator Pangilinan. The chairman of the Committee on Banks, Financial Institutions and Currencies suggests "Council," Mr. President.

The President. "Group"? Anti-Money Laundering "Group" is the proposal? Or "Council"? What is in a name?

Senator Magsaysay. "Group" sounds very—

The President. Loose.

MAGSAYSAY AMENDMENTS

Senator Magsaysay.—loose and temporary. The "Council" is permanent. I would prefer the COUNCIL, which was earlier my version.

The President. The Chair would repeat. On page 4, line 20, delete the words "SUPERVISING AUTHORITY" and in lieu thereof, state ANTI-MONEY LAUNDERING COUNCIL. In line 21, replace the period (.) after "PILIPINAS" with a comma (,) and insert INSURANCE COMMISSION AND THE SECURITIES AND EXCHANGE COMMISSION.

Is there any objection to the proposed amendment? Sen. Serge R. Osmeña III.

Senator Osmeña III. No objection, Mr. President.

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

The next item that was deferred is on Section...

Senator Osmeña III. Mr. President.

The President. Yes, Sen. Serge R. Osmeña III is recognized.

Senator Osmeña III. Mr. President, just so we do not forget, with the amendment of the sponsor, perhaps on page 7...

Senator Magsaysay. With the permission of the gentleman from Cebu. Going back to line 20, ANTI-MONEY LAUNDERING COUNCIL, does it refer to the office or to the person, like the governor of the Bangko Sentral? I think it should be the person, Mr. President. THE GOVERNOR OF THE BANGKO SENTRAL NG PILIPINAS, THE INSURANCE COMMISSIONER AND THE CHAIRMAN OF THE SECURITIES AND EXCHANGE COMMISSION.

The President. All right. The proposed amendment will read: THE ANTI-MONEY LAUNDERING COUNCIL REFERS TO THE GOVERNOR OF THE BANGKO SENTRAL NG PILIPINAS, THE INSURANCE COMMISSIONER, AND THE CHAIRMAN OF THE SECURITIES AND EXCHANGE COMMISSION.

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

All right. May we now go to Section 4?

Senator Osmeña III. Mr. President.

The President. Sen. Serge Osmeña is recognized.

Senator Osmeña III. Because we are on the same subject, since there is Section 7 creating the Anti-Money Laundering Unit, I think we should amend that and call it COUNCIL in order to align it with...

The President. In fact, the Chair is prepared to receive an omnibus motion to amend all reference to Supervising Authority and Anti-Money Laundering Unit to ANTI-MONEY LAUNDERING COUNCIL.

Can Senator Osmeña make that motion?

OSMEÑA III AMENDMENT

Senator Osmeña III. I move that, as an omnibus motion, all reference to Anti-Money Laundering Unit be changed to ANTI-MONEYLAUNDERINGCOUNCIL.

The President. And also with reference to "Supervising Authority"?

Senator Osmeña III. Yes, Mr. President.

The President. Is that acceptable to the sponsor?

Senator Magsaysay. It is accepted, Mr. President.

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

The Chair would like now to invite the attention of the Chamber to Section 4, which we also deferred. As the records will show, there was a proposal to adopt the version passed by the House. Section...crime of money laundering. *Nasaan yong sa House?* As the records will show, we deferred action on Section 4. There was a motion by Senator Osmeña to adopt the definition found in lines 8 to 19, on page 4 of House Bill No. 3083.

Senator Osmeña III. May I read it, Mr. President.

The President. Senator Osmeña III may proceed.

OSMEÑA III AMENDMENTS

Senator Osmeña III. Yes. Beforehand, to delete lines 3 to 6 on page 5.

The President. Lines?

Senator Osmeña III. Lines 3 to 6 on page 5, subsections therein.

The President. Yes.

Senator Osmeña III. And to incorporate a Subsection (b), the House version which reads:

"ANY PERSON WHO, KNOWING THAT ANY MONETARY INSTRUMENT OR PROPERTY REPRESENTS, INVOLVES, OR RELATES TO, THE PROCEEDS OF ANY UNLAWFUL ACTIVITY, PERFORMS ANY ACT, OR FAILS TO PERFORM ANY ACT, AS A RESULT OF WHICH

ACT OR OMISSION, HE, IN ANY MANNER AND BY ANY MEANS, DIRECTLY OR INDIRECTLY, ABETS, ASSISTS IN, OR OTHERWISE FACILITATES THE OFFENSE OF MONEY LAUNDERING REFERRED TO IN PARAGRAPH(A) ABOVE."

The President. Senator Osmeña may wish to continue.

Senator Osmeña III. And subparagraph (c):

"ANY PERSON WHO, WITH KNOWLEDGE THAT ANY MONETARY INSTRUMENT OR PROPERTY IS REQUIRED UNDER THIS ACT TO BE DISCLOSED AND FILED WITH THE GOVERNMENT, THE ANTI-MONEY LAUNDERING COUNCIL (AMLC) FAILS TO DISCLOSE SUCH MONETARY INSTRUMENT OR PROPERTY."

The President. All right, what does the sponsor say?

Senator Magsaysay. It is accepted, Mr. President.

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

We go now to the final item which we deferred and this is the matter of the "Unlawful Activity".

Senator Osmeña III. Yes, Mr. President.

The President. This is on page 3 starting with line 8.

Senator Osmeña III. May I ask that this be inserted between lines 20 and 21, Mr. President.

The President. Lines 20 and 21.

Senator Osmeña III. Before the definition of "terrorism".

The President. Yes.

Senator Osmeña III. BRIBERY FALLING UNDER ARTICLES 210 TO 212 of the Revised Penal Code. Maybe, Mr. President, in earlier drafts, all the offenses under the Revised Penal Code were lumped together under one group. And subject to style, maybe the Secretary can be authorized to do this.

MALVERSATION UNDER ARTICLE 217 OF THE REVISED PENAL CODE WHICH REALLY IS REPUBLIC ACT NO. 3815, AS AMENDED.

The President. Malversation? All right. Malversation under?

Senator Osmeña III. Article 217.

The President. All right.

Senator Osmeña III. THEFT UNDER ARTICLES 308 to 310.

The President. ARTICLE?

Senator Osmeña III. ARTICLES 308 to 310. And then SWINDLING AND OTHER DECEITS UNDER ARTICLES 315 and 316. SMUGGLING AND OTHER—I cannot read my own handwriting—UNDER REPUBLIC ACT NOS. 455 AND 1937.

The President. SMUGGLING? May I have it again?

SUSPENSION OF SESSION

Senator Osmeña III. I move that we suspend the session for one minute, Mr. President.

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

It was 11:04 p.m.

RESUMPTION OF SESSION

At 11:06 p.m., the session was resumed.

The President. The session is resumed. Senator Osmeña is recognized.

Senator Osmeña III. Mr. President, earlier, I outlined SMUGGLING, ILLEGAL IMPORTATION AND OTHER VIOLATIONS UNDER REPUBLIC ACT NOS. 455 AND 1937, and I believe the distinguished Minority Leader would like to introduce an amendment to one of the unlawful activities that I just mentioned.

The President. The Minority Leader is recognized.

Senator Pimentel. Mr. President, I was trying to find out from Senator Osmeña just what he meant by “theft” and he told me that he was thinking of bank frauds, misuse of one’s position in the bank to accumulate illegal wealth. For lack of a better terminology, I would suggest QUALIFIED THEFT, meaning to say, a theft that is perpetrated by a trusted employee of a bank.

The President. But is it limited to banks? How about...

Senator Pimentel. Or to some other financial institutions covered by this. The volume is subject to the amount that we have discussed. Because normally, if we just say “theft,” I am not quite sure that it would fit into the...

The President. “Qualified Theft” could be a crime where there is violation of...

Senator Pimentel. Relationship. Trust and confidence.

The President. Trust and confidence. The problem with “Qualified Theft” is that “the crime of theft shall be punished by a penalty next higher by two degrees than those specified in the preceding Article if committed by a domestic servant.” [Laughter]

Senator Cayetano. Mr. President, may I add. In addition, the provision on theft under Article 308 is that the penalty is based on the amount.

The President. That is correct.

Senator Cayetano. And the amount here does not exceed P22,000. So it will never reach the covered transaction.

Senator Pimentel. *Lalo na kung theft.*

Senator Cayetano. *Hindi kaya dapat huwag na nating isama ito?*

Senator Pimentel. *Iyong theft.*

Senator Cayetano. *Opo dahil hanggang P22,000 lamang ito.*

The President. It will never qualify.

Senator Cayetano. It will never qualify. For the same reason, with the permission of my good friend from Cebu, that includes also swindling because in swindling, again, it is the amount that is involved and it does not exceed P6,000. The maximum amount is P12,000.

Senator Pimentel. Mr. President, we can probably accommodate the concerns of Sen. Serge Osmeña by defining “Theft” as that committed by employees of covered institutions in amounts reaching the threshold, in the same manner that we are defining “terrorism.”

Senator Arroyo. Call it another name, my friend.

Senator Pangilinan. Mr. President.

The President. Senator Pangilinan is recognized.

Senator Pangilinan. Just an interjection. Qualified theft is not only committed by a domestic servant—

The President. ...with grave abuse of confidence.

Senator Pangilinan. —because the bank manager would fall under the second qualification, “with grave abuse of confidence.” So, somebody with trust and confidence committing theft would fall under that particular...

Senator Cayetano. Yes, Mr. President. My only problem there is qualified theft has something to do with the relationship of the offender vis-a-vis the victim. That is why because of abuse of confidence or the property stolen is a motor vehicle, the penalty is two degrees higher. But again this is limited by the amount, not more than P22,000. *Kaya hindi puwedeng masama iyon sa covered transaction.*

The President. May the Chair suggest: QUALIFIED THEFT WHERE THE AMOUNT INVOLVED IS AT LEAST THREE MILLION PESOS (P3,000,000.00).

Senator Cayetano. Then we are amending the law, Mr. President.

The President. No, because we are not punishing qualified theft as defined in illegal activities, in the same manner that we accepted the amendment of terrorism.

Senator Cayetano. But how are we going to consider that as a predicate crime when it is not a crime under a statute book?

Senator Pangilinan. Mr. President.

The President. Senator Pangilinan is recognized.

Senator Pangilinan. In response to the point raised by Senator Cayetano, the amount is not limited to P22,000. In fact, the next line says, “but if the value of the thing”—this is Article 309—“stolen exceed the latter amount.” In other words, it can be a million pesos. It can be P3 million. It could be P100 million.

There was an earlier suggestion that a theft involving an amount of so forth and so on, P3 million...

Senator Cayetano. As a matter of principle, with due respect to my friend from Cebu, I honestly believe that we should not include theft and swindling, Mr. President.

Senator Osmeña III. Mr. President, may I respond to the distinguished senator from Taguig and Pateros.

May I read Article 309, *Penalties.*

The President. No, I think that has been clarified, Senator Osmeña, if there is no limit of P22,000.

Senator Osmeña III. Thank you.

Senator Cayetano. Mr. President, the reason I said that is, normally, when one steals something of value, as we know, that is not hidden. The thing that one steals, of course, will be known whether it is a car, a piece of jewelry or any personal property. And the penalty will depend now on the value. What we are trying to do here is precisely to uncover the proceeds of an unlawful activity. But here the proceeds are known basically.

SUSPENSION OF SESSION

The President. The Chair declares a suspension of the session for one minute, if there is no objection. *[There was none.]*

It was 11:14 p.m.

RESUMPTION OF SESSION

At 11:27 p.m., the session was resumed.

The President. The session is resumed. Sen. Sergio R. Osmeña III has the floor.

The proposed amendment is between lines 20 and 21 on page 3. Senator Osmeña may proceed.

Senator Osmeña III. Yes, Mr. President. I withdraw the inclusion of the crimes of bribery and malversation. We keep piracy, theft, swindling...

The President. Can we do it slowly, please? Piracy.

Senator Osmeña III. Theft, swindling.

The President. Qualified theft under Article 310 of the Revised Penal Code where the amount involved is at least P3 million.

Senator Osmeña III. Swindling.

The President. Swindling under Article 315 of the Revised Penal Code.

Senator Osmeña III. Smuggling.

The President. Smuggling.

MAGSAYSAY-OSMEÑA III AMENDMENTS

Senator Osmeña III. Under Republic Act Nos. 455 and 1937.

I have an additional request from the sponsor himself, Mr. President. He is willing to accept this with alacrity. Violations

under Republic Act No. 8792, otherwise known as the Electronic Commerce Act of 2000.

Senator Magsaysay. Yes, it is accepted. This is under cyber crimes, Mr. President.

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

Senator Osmeña III. And another suggestion from the distinguished sponsor the inclusion of fraudulent practices and other violations under Republic Act No. 8799 otherwise known as the Securities Regulation Code of the year 2000.

Senator Magsaysay. No objection, Mr. President.

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

Senator Osmeña III. I think that is all, Mr. President. Thank you.

The President. Is there any other amendment?

Senator Sotto. Mr. President, on page 3, line 2, replace "THREEMILLION" with TEN MILLION.

SUSPENSION OF SESSION

Senator Magsaysay. This is a big jump from P3 million. May I ask for a suspension of the session.

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

It was 11:31 p.m.

RESUMPTION OF SESSION

At 11:33 p.m., the session was resumed.

The President. The session is resumed. Senator Sotto is recognized once again.

Senator Sotto. Yes, Mr. President. My original proposed amendment of replacing P3 million to P10 million, I would actually be willing to put it down to P5 million. Considering the fact that we might have to give some elbow room to our conference committee members or representatives, I am willing to withdraw my amendment with the understanding that the Senate President will give instructions to the committee members to raise the P3 million.

Senator Cayetano. Mr. President, just a comment.

The President. Yes, Senator Cayetano.

Senator Cayetano. We may be able to convince the House to bring it down to P3 million.

Senator Magsaysay. Fine.

Senator Sotto. That is why, Mr. President.

The President. The sentiment of Senator Sotto is reflective of the views of a good majority of the members of the Senate, and therefore should be taken into account by the conferees of the Senate.

Senator Sotto. Thank you, Mr. President.

The President. Senator Lacson is recognized.

LACSON AMENDMENT

Senator Lacson. Mr. President, I would just like to qualify my amendment. Line 20, ILLEGAL GAMBLING UNDER P.D. NO. 1602. It should read: PARTICULARLY *JUETENG* AND *MASIAO*.

DRILON-LACSON AMENDMENT

The President. Why do we not say: *JUETENG* AND *MASIAO* PUNISHED AS ILLEGAL GAMBLING?

All right. Under line 20, *JUETENG* AND *MASIAO* PUNISHED AS ILLEGAL GAMBLING UNDER P.D. NO. 1602.

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

Senator Pangilinan. I agree, Mr. President because in P.D. No. 1602...

The President. Is it accepted?

Senator Pangilinan. Accepted.

Senator Magsaysay. Accepted.

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

Is there any other amendment?

Do I hear a motion to close the period of committee and individual amendments?

Senator Magsaysay. Mr. President, I move that we close the period for... I withdraw that motion.

The President. All right. The motion is withdrawn. Senator Cayetano is recognized.

Senator Cayetano. Mr. President, just a point that may lead into the last amendment.

I do recall there was an effort here to include a provision in this bill that when it becomes a law, it shall operate prospectively. I do not see this anywhere here, but I think that is the intent of everyone. So in order to assure everyone, particularly those that have already bank deposits over and above the covered transactions, I believe that we ought to put there that this will operate prospectively.

So with that, Mr. President, subject to style, I would insert it after the Repealing Clause on page 13, after Section 17.

The President. Is Senator Osmeña raising his hand?

Senator Osmeña III. Yes. Mr. President, I have no objection to the proposed amendment of the senator from Taguig-Pateros. I just want to clarify that the threshold amount of P3 million refers to the transaction or deposit not to the level in one's bank account. I mean, if his level of deposits now is P50 million or P100 million, it is not going to trigger a report to the AMLU. What will trigger a report to the AMLU under the covered transaction is a deposit in excess of P3 million.

Senator Cayetano. Does the gentleman mean a new deposit?

Senator Osmeña III. New deposit.

Senator Cayetano. That is my point, Mr. President. We have not really said here "new deposit." But what I am talking about here is because this is a criminal statute.

The President. That is right.

Senator Cayetano. As a matter of constitutional principle, all criminal statutes cannot retroact. But since we are empowering three government officials who we already know, we must as well make sure that they know that this will operate prospectively.

Senator Pangilinan. Clarification, Mr. President.

The President: Yes.

Senator Pangilinan. If this will apply prospectively, does this mean to say therefore that existing deposits will not be covered?

Senator Cayetano. That is right. Why should we include...

Senator Osmeña III. Mr. President.

Senator Pangilinan. Hypothetically, Mr. President, a gambling lord right now has P10 million or P25 million in his bank account. His bank account will not be covered?

Senator Cayetano. It will not.

The President. But the subsequent transactions.

Senator Pangilinan. The subsequent transactions of the account will be covered.

The President. Yes.

Senator Cayetano. Yes. After the bill. In other words, if he has P25 million now but later on after this bill he now, let us say, deposited P3,000,001, then it will be covered as far as the P3,000,001 is concerned.

The President. That is correct.

Senator Pangilinan. So future transactions of existing accounts will be covered by this bill, Mr. President.

Senator Cayetano. As long as it is within the threshold.

Senator Osmeña III. Mr. President.

The President. Sen. Serge Osmeña III is recognized.

Senator Osmeña III. There are two different things that we are talking about here. The bill only seeks the reporting of transactions in excess of P3 million. So that has to be prospective. They will not go back into one's bank account and find out if he deposited any amount in excess of P3 million in the past one year. That does not count. However, if his bank account is frozen regardless of what amount he has in the bank regardless of whether the money was earned one year or 10 years ago, it will be frozen. As a matter of fact, the AMLU will not even know how much he has in that account because the freeze comes before the inquiry into the account.

Senator Cayetano. I would like to thank the distinguished gentleman for that explanation, Mr. President. But certainly it will endanger the present depositors with so much account because it will immediately be reported as having exceeded the threshold amount.

Senator Osmeña III. No, Mr. President. This has absolutely

nothing to do with the threshold amount if we refer to the threshold amount as pertaining to the level of one's total deposit in his savings account or current account. It has nothing to do with that. It is completely irrelevant.

What is triggered for reporting purposes to the AMLU is merely a deposit or a transaction in excess of P3 million which is very high.

Senator Cayetano. When do we reckon the transaction?

Senator Osmeña III. When is it?

Senator Cayetano. When do we reckon the transaction? Is it after the effectivity of the law?

Senator Osmeña III. Yes, after the effectivity of this Act. The moment this bill is signed into law, all transactions in excess of P3 million, meaning, all deposits in excess of P3 million to whatever amount, will be reported to the AMLU.

The President. With the permission of the gentlemen. To settle all of these, may I invite the attention of the gentlemen on the floor to lines 14 and 15 on page 7 of House Bill No. 3083. Maybe with the little amendment, we can agree on this. We can incorporate line 15 by saying: "This ACT shall not apply to deposits and investments MADE prior to the effectivity of this Act."

Is that acceptable to Senator Osmeña?

May I refer the distinguished gentleman to the House version?

Senator Pimentel. Mr. President, before Senator Osmeña replies.

The President. Senator Pimentel is recognized.

Senator Pimentel. Would the words "deposits and investments" cover transactions?

The President. We do not know but we can include it, if that is the wish of the gentleman.

Senator Sotto. Mr. President.

The President. May I just finish the point? I was asking Senator Osmeña. May I refer the distinguished gentleman to page 7, line 15 of House Bill No. 3083.

Senator Osmeña III. Yes, Mr. President.

DRILON AMENDMENT

The President. We propose a wording as follows: THIS ACT SHALL NOT APPLY TO DEPOSITS, TRANSACTIONS AND INVESTMENTS MADE PRIOR TO THE EFFECTIVITY OF THIS ACT.

Senator Osmeña III. It is redundant but we can go ahead and include it because it really does not apply, Mr. President.

Senator Cayetano. Thank you, Mr. President.

The President. So we can include that in the Effectivity Clause.

Senator Pangilinan. Just a clarification, Mr. President.

The President. Senator Pangilinan is recognized.

Senator Pangilinan. When we say "deposits," does it mean accounts?

The President. No. The term "deposit" as understood is a deposit of money in an account.

Senator Pangilinan. So it does not include accounts?

The President. That is correct.

Senator Osmeña III. It does not refer to the total amount of deposits.

The President. No.

Senator Osmeña III. It refers to the transaction.

The President. To the transaction. That is correct.

Senator Sotto. Mr. President.

The President. Senator Sotto is recognized.

Senator Sotto. Just to pursue the inquiry. I was proposing this amendment about a few hours ago and...

The President. Now, it is accepted. They saw the light.

Senator Sotto. They saw the light.

The President. Yes.

Senator Sotto. As long as they have seen the light, I will agree, Mr. President. *[Laughter]*

Senator Arroyo. Mr. President.

The President. Senator Arroyo is recognized.

Senator Arroyo. Mr. President, I think the point raised by Senator Cayetano is that he would have preferred a comfort provision. The comfort provision is something like this. Let us assume that the law takes effect on October 1 then all deposits before that— meaning preceding October 1—cannot be looked into or will not be covered by the operation of this Act.

In other words, we cannot issue a freeze order on deposits up to September 30. That is not covered by “covered transaction” and “unlawful activity.” All of those things are not. They will not be included. So what I would like to find out from Senator Cayetano is whether he really wants a comfort provision which might be redundant, but I think it would help.

Senator Cayetano. I think many depositors, particularly businessmen, would like to see that, Mr. President. Anyway, my good friend from Cebu already accepted the proposal of the Senate President.

The President. All right. Is there any objection?

Senator Biazon. Mr. President.

The President. Sen. Rodolfo G. Biazon is recognized.

Senator Biazon. Just a clarificatory question.

We understand that only subsequent deposits of the covered amount will be involved for purposes of reporting. The question is: If because of that subsequent deposit an inquiry is initiated and then a freeze order is issued, would the freeze order include the amounts previously deposited or would it only include or involve amounts subsequently deposited after the passage of the law?

The President. Amounts subsequently deposited after the passage of the law.

Senator Biazon. So, prior deposits cannot be subject to freeze order.

The President. That is correct.

Senator Sotto. Mr. President.

The President. Sen. Vicente C. Sotto III is recognized.

Senator Sotto. Mr. President, what about withdrawal?

The President. That is covered by transactions.

Senator Sotto. So, if I have a P50- million account today, on October 1 it is not covered if I withdraw P5 million.

The President. And the gentleman deposited it somewhere else.

Senator Sotto. No. I just withdrew it.

The President. So, there is no laundering.

Senator Arroyo. In the example given by Senator Sotto, he has a P50-million deposit as of September 30. Now, on October 1, the effectivity of the law, he withdraws P5 million. Withdrawal is a transaction. So, because it is above the threshold amount of P3 million, the question arises. I think that is what...

Senator Sotto. Yes, Mr. President.

Senator Arroyo. Can that be looked into because that is a transaction? I think all these matters can be clarified. That is a covered transaction.

The President. That is a covered transaction.

Senator Sotto. It is a covered transaction.

Senator Arroyo. The P5 million that he withdrew had been there before the effectivity of the law so it should not be included.

Senator Sotto. That is the reason I was proposing prospective. I was using the word “prospective.”

The President. No. That is why, it is prospective.

Senator Legarda Leviste. Mr. President.

The President. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, the concern of our colleagues is that if there is an account, assuming it is P50 million, as Senator Sotto said earlier, and upon effectivity of this law on October 1, the owner of the account withdraws P5 million which is over the threshold approved in the law, would that be a covered transaction? The answer is yes.

The President. Yes.

Senator Legarda Leviste. It is a covered transaction and the red flag is up. Can that account be looked into?

The President. No.

Senator Legarda Leviste. It cannot.

The President. It cannot be looked into because the deposits were there prior to the effectivity of the Act.

Senator Legarda Leviste. That is correct, Mr. President. The P50 million was there before the effectivity of the law but still there is a possibility that the red flag will be up and that the account will be frozen. Is there a possibility that the account will be frozen?

The President. No.

Senator Legarda Leviste. Our sponsor here believes otherwise and that is the reason there is some confusion among our colleagues, Mr. President.

SUSPENSION OF SESSION

Mr. President, I move that we suspend the session for one minute.

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

It was 11:49 p.m.

RESUMPTION OF SESSION

At 11:57 p.m., the session was resumed.

The President. The session is resumed.

After the caucus, the proposed prospective application of the Act will be incorporated in the effectivity provision, Section 18. But to guard against the concerns stated, there will be a definition of "Covered Transaction" which will limit its applications only to deposits and investments. All right, subject to style. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Pangilinan. Mr. President.

The President. Senator Pangilinan is recognized.

Senator Pangilinan. When the Chair made reference to Section 9 of the House version, in the last line, this is no longer going to be... This is not adopted in the...

The President. No, no, only line 15 as amended, and we transposed it somewhere else.

Senator Pangilinan. All right, thank you.

The President. All right. Is there any other amendment?

The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, I believe there are no other amendments from the...

The President. Senator Magsaysay is recognized.

Senator Magsaysay. Mr. President, may I interject. There is an addition in the transaction to include remittances. It is not covered by plain deposits. Actually, it is a withdrawal. When one remits from his account to another account, that is a remittance and it is a withdrawal from one's account.

Senator Cayetano. Mr. President.

The President. Senator Cayetano is recognized.

Senator Cayetano. Mr. President, from what I understood, what Governor Buenaventura and Secretary Camacho told us in an informal huddle, one, withdrawal of all deposits are not covered; and two, if a new deposit comes in, let us say, P5 million, which exceeds the threshold, and reported and a decision is made to freeze, it will not cover the old deposit but only the new deposits. It is P5 million.

The President. That is correct, yes.

Senator Cayetano. And three, for the record, I want to state that Governor Buenaventura also said that we can put in the IRR precisely that point—

The President. Yes.

Senator Cayetano. —that without changing the provisions of the law now, it will be contained in the IRR which, anyway, will be reviewed by the oversight committee.

The President. All right. It is very clear.

Senator Magsaysay. Then I withdraw, Mr. President.

The President. All right.

Senator Jaworski. Mr. President.

The President. Senator Jaworski is recognized.

Senator Jaworski. Mr. President, may the Chair just for once clear it up? It does not necessarily mean that when there is a deposit of P3 million and above, the red flag will be up, am I correct? There are other qualifiers.

The President. May the sponsor answer that?

Senator Jaworski. It does not mean that... We know there are other qualifiers or characteristics before one can be...

The President. That is correct.

Senator Jaworski. Otherwise we might be sending a wrong message.

The President. Yes, that is correct.

Senator Pangilinan. That is correct.

The President. All right.

Senator Jaworski. Understood. Thank you, Mr. President.

The President. Is there any other amendment? There being none, the Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, I move that we close the period of individual amendments.

The President. The period of individual amendments is hereby terminated.

APPROVAL OF S. NO. 1745 ON SECOND READING

Senator Legarda Leviste. Mr. President, I move that we vote on Second Reading on Senate Bill No. 1745, as amended.

The President. Is there any objection? *[Silence]* There being none, we shall now vote on Second Reading on Senate Bill No. 1745, as amended.

As many as are in favor of the bill, say *aye*.

Several Members. *Aye*.

The President. As many as are against the bill, say *nay*. *[Silence]*

Senate Bill No. 1745, as amended, is approved on Second Reading.

This bill is certified as an urgent...

MANIFESTATION OF SENATOR MAGSAYSAY (All Senators as Coauthors of S. No. 1745)

Senator Magsaysay. Mr. President, before we continue, may I manifest to include some of our colleagues here as coauthors.

The President. All the members of the Senate are considered as coauthors.

Senator Magsaysay. Thank you, Mr. President. I appreciate that.

Senator Legarda Leviste. Mr. President, the measure at hand has been certified by Malacañang as urgent based on a letter transmitted—

The President. On September 24, 2001.

Senator Legarda Leviste. —last September 24, 2001. I ask that the Secretary read the letter please.

The President. Is there any objection? *[Silence]* There being none, the Secretary will please do so.

The Secretary.

MALACAÑANG
Manila

September 24, 2001

HON. FRANKLIN M. DRILON
Senate President
Philippine Senate
Pasay City

Dear Senate President Drilon:

Pursuant to the provisions of Article VI, Section 26 (2) of the Constitution, I hereby certify to the necessity of the immediate enactment of Senate Bill No. 1745, entitled

AN ACT DEFINING THE CRIME OF
MONEY LAUNDERING PROVIDING
PENALTIES THEREFOR AND FOR
OTHER PURPOSES,

to address the public emergency involving the need to institute a system of protection against organized and syndicated crimes and other unlawful acts involving money laundering activities and to comply with our international commitment under the Vienna Convention of 1988, the Political Declaration and Action Plan Against Money Laundering adopted at the 20th Special Session of the UN General Assembly in New York, and the United Nations Convention on Transnational Organized Crime.

Very truly yours,

(Sgd.) GLORIA MACAPAGAL ARROYO

cc: Hon. Jose C. De Venecia
Speaker
House of Representatives
Quezon City

BILL ON THIRD READING
S.No. 1745— Anti-Money Laundering
Act of 2001

Senator Legarda Leviste. Mr. President, I move that we vote on Third Reading on Senate Bill No. 1745.

The President. Is there any objection? [Silence] There being none, voting on Third Reading on Senate Bill No. 1745 is now in order.

The Secretary will please read only the title of the bill.

The Secretary. Senate Bill No. 1745, entitled

AN ACT DEFINING THE CRIME OF MONEY LAUNDERING, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES

The President. We shall now vote on the bill and the Secretary will call the roll.

The Secretary. Senators

- Angara Yes
Aquino-Oreta
Arroyo Yes
Barbers Yes
Biazon Yes
Cayetano Yes
De Castro Yes
Ejercito Estrada
Flavier
Honasan Yes
Jaworski Yes
Lacson Yes
Legarda Leviste Yes
Magsaysay Jr. Yes
Ople Yes
Osmeña (J.)
Osmeña III Yes
Pangilinan Yes
Pimentel Jr. Yes*

Senator Pimentel. Mr. President.

The President. Sen. Aquilino Q. Pimentel Jr. is recognized.

EXPLANATION OF VOTE OF SENATOR PIMENTEL

Senator Pimentel. Mr. President, I wish to put on record that

* With explanation of vote

even as I am voting for this bill, I do so denouncing any attempt by faceless bureaucrats, especially those from abroad, who are trying to dictate to us. I vote for this bill because I think it is good for our country and that there is no way we can allow this country to be a haven for money launderers, and all types of criminals have no place in Philippine society.

But let me repeat, Mr. President, what I have disliked for is for the Senate of the Philippines to be perceived as a tool, a pliant tool, of those who would wish to advance their own agenda in our country. I wish to state for the record that I do not like being stampeded into voting for a very important bill such as this one. Although since our colleagues have unanimously endorsed this bill, I go along with the rest of our fellow senators in approving this bill, again, for the simple reason that it is good for our country.

Thank you very much, Mr. President.

The Secretary. Senators

- Recto Yes
Revilla
Sotto III Yes
Villar Jr. Yes
The Senate President Yes

APPROVAL OF S. NO. 1745 ON THIRD READING

The President. With 19 affirmative votes, no negative vote, and no abstention, Senate Bill No. 1745 is hereby approved on Third Reading. [Applause]

The Chair wishes to express its profound appreciation to all the members of the Chamber for having been patient with each other and for being very understanding on the need to approve this bill.

CONFERENCE COMMITTEE ON S. NO. 1745/H. NO. 3083 (Anti-Money Laundering Act of 2001)

Senator Legarda Leviste. Before we adjourn, Mr. President, I move that we constitute the Senate panel for the bicameral conference committee.

The President. Please proceed.

Senator Legarda Leviste. Mr. President, I manifest the nomination of the following: Sen. Ramon B. Magsaysay Jr. as chairman; Sen. Francis N. Pangilinan as vice chairman; and the

following senators as members of the Senate panel: Senators Joker P. Arroyo, Renato L. *Compañero* Cayetano, Robert Z. Barbers, Aquilino Q. Pimentel Jr., Edgardo J. Angara, Sergio R. Osmeña III, Panfilo M. Lacson, Vicente C. Sotto III, Manuel B. Villar Jr. and Ralph G. Recto.

The President. Is there any objection? [*Silence*] There being none, the bicameral conference committee is so constituted.

SUSPENSION OF SESSION

Senator Legarda Leviste. Mr. President, I move that we suspend today's session until four o'clock tomorrow afternoon.

The President. Is there any objection? [*Silence*] There being none, the session is suspended until four o'clock tomorrow afternoon, September 28, 2001.

It was 12:08 a.m.

RECORD OF THE SENATE

FRIDAY, SEPTEMBER 28, 2001

The Secretary.

RESUMPTION OF THE SESSION

September 27, 2001

At 5:13 p.m., the session was resumed with the Senate President, Hon. Franklin M. Drilon, presiding.

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

Senator Legarda Leviste. Mr. President, I move that we proceed to the Second Additional Reference of Business.

The President. Is there any objection? [Silence] There being none, the motion is approved. The Secretary will read the Second Additional Reference of Business.

SECOND ADDITIONAL REFERENCE OF BUSINESS

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The Secretary.

September 27, 2001

The Honorable FRANKLIN M. DRILON President of the Senate GSIS Financial Center Pasay City 1308

Mr. President:

I have been directed to inform the Senate that the House of Representatives on even date passed House Bill No. 3083, entitled

AN ACT DEFINING THE CRIME OF MONEY LAUNDERING, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES,

to which it requests the concurrence of the Senate.

Very truly yours,

(Sgd.) ROBERTO P. NAZARENO Secretary General

The President. Referred to the Committee on Rules

The Honorable FRANKLIN M. DRILON President of the Senate GSIS Financial Center Pasay City 1308

Mr. President:

I have been directed to inform the Senate that the House of Representatives on September 27, 2001 elected Representatives Jaime C. Lopez, Marcelino C. Libanan, Oscar S. Moreno, Teodoro L. Locsin Jr., Jesli A. Lapus, Antonino P. Roman, Imee R. Marcos, Benasing O. Macarambon Jr., Jacinto V. Paras, Harlin Cast. Abayon, Mark "MJ" Jimenez, Ronaldo B. Zamora, Rolex T. Suplico, Enrique T. Garcia Jr. and Celso L. Lobregat as conferees should the Senate ask for a conference upon approval of its counterpart version of House Bill No. 3083, entitled

AN ACT DEFINING THE CRIME OF MONEY LAUNDERING, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES,

which was approved on even date.

Very truly yours,

(Sgd.) ROBERTO P. NAZARENO Secretary General

The President. Referred to the Committee on Rules

The Secretary.

September 27, 2001

The Honorable FRANKLIN M. DRILON President of the Senate GSIS Financial Center Pasay City 1308

Mr. President:

I have been directed to inform the Senate that the House of Representatives during its session on even date approved a motion to retrieve the third reading copies of House Bill No. 3083, entitled

SEPT. 2

AN ACT DEFINING THE CRIME OF MONEY LAUNDERING, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES,

attached to our letter on even date, and in lieu thereof transmit the correct copies of the said measure, hereto attached.

Very truly yours,

(Sgd.) ROBERTO P. NAZARENO
Secretary General

The President. Referred to the Committee on Rules

The Secretary.

September 27, 2001

The Honorable
FRANKLIN M. DRILON
President of the Senate
GSIS Financial Center
Pasay City 1308

Mr. President:

I have been directed to inform the Senate that the House of Representatives on even date elected Representatives Herminio G. Teves, Jose Carlos V. Lacson

and Rodolfo B. Albano as additional members of the Bicameral Conference Committee on House Bill No. 3083, entitled

AN ACT DEFINING THE CRIME OF MONEY LAUNDERING, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES.

Very truly yours,

(Sgd.) ROBERTO P. NAZARENO
Secretary General

The President. Referred to the Committee on Rules

The Majority Leader is recognized.

SUSPENSION OF SESSION

Senator Legarda Leviste. Mr. President, in view of the fact that the House and the Senate conferees to the Bicameral Conference Committee are still ironing out the details of the Anti-Money Laundering Act, I move that we suspend today's session to consider the Bicameral Conference Report at 10 o'clock tomorrow morning, Saturday, September 29, 2001.

The President. Is there any objection? *[Silence]* There being none, the session is suspended until 10 o'clock tomorrow morning, Saturday, September 29, 2001.

It was 5:16 p.m.

9. A new Section 8 of the reconciled version was introduced to read as follows:

SEC. 8. *Creation of a Secretariat.* - The AMLC is hereby authorized to establish a secretariat to be headed by an Executive Director who shall be appointed by the Council for a term of five (5) years. He must be a member of the Philippine Bar, at least thirty-five (35) years of age and of good moral character, unquestionable integrity and known probity. All members of the Secretariat must have served for at least five (5) years either in the Insurance Commission, the Securities and Exchange Commission or the Bangko Sentral ng Pilipinas (BSP) and shall hold full-time permanent positions within the BSP.

10. Section 8 of the House version and Section 6 of the Senate version were reconciled to read as Section 9 of the reconciled version which is as follows:

SEC. 9. *Prevention of Money Laundering; Customer Identification Requirements and Record Keeping.* - (a) *Customer Identification.* - Covered institutions shall establish and record the true identity of its clients based on official documents. They shall maintain a system of verifying the true identity of their clients and, in case of corporate clients, require a system of verifying their legal existence and organizational structure, as well as the authority and identification of all persons purporting to act on their behalf.

The provisions of existing laws to the contrary notwithstanding, anonymous accounts, accounts under fictitious names, and all other similar accounts shall be absolutely prohibited. Peso and foreign currency non-checking numbered accounts shall be allowed. The BSP may conduct annual testing solely limited to the determination of the existence and true identification of the owners of such accounts.

(b) *Record Keeping.* - All records of all transactions of covered institutions shall be maintained and safely stored for five (5) years from the dates of transactions. With respect to closed accounts, the records on customer identification, account files and business correspondence, shall be preserved and safely stored for at least five (5) years from the dates when they were closed.

(c) *Reporting of Covered Transactions.* - Covered institutions shall report to the AMLC all covered transactions within five (5) working days from occurrence thereof, unless the Supervising Authority concerned

prescribes a longer period not exceeding ten (10) working days.

When reporting covered transactions to the AMLC, covered institutions and their officers, employees, representatives, agents, advisors, consultants or associates shall not be deemed to have violated R.A. No. 1405, as amended, R.A. No. 6426, as amended, R.A. No. 8791 and other similar laws, but are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person the fact that a covered transaction report was made, the contents thereof, or any other information in relation thereto. In case of violation thereof, the concerned officer, employee, representative, agent, advisor, consultant or associate of the covered institution, shall be criminally liable. However, no administrative, criminal or civil proceedings, shall lie against any person for having made a covered transaction report in the regular performance of his duties and in good faith, whether or not such reporting results in any criminal prosecution under this Act or any other Philippine law.

When reporting covered transactions to the AMLC, covered institutions and their officers, employees, representatives, agents, advisors, consultants or associates are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person, entity, the media, the fact that a covered transaction report was made, the contents thereof, or any other information in relation thereto. Neither may such reporting be published or aired in any manner or form by the mass media, electronic mail, or other similar devices. In case of violation thereof, the concerned officer, employee, representative, agent, advisor, consultant or associate of the covered institution, or media shall be held criminally liable.

11. Section 11 of the House version was adopted as Section 10 of the reconciled version was reworded to read as follows:

SEC. 10. *Authority to Freeze.* - Upon determination that probable cause exists that any deposit or similar account is in any way related to an unlawful activity, the AMLC may issue a freeze order, which shall be effective immediately, on the account for a period not exceeding fifteen (15) days. Notice to the depositor that his account has been frozen shall be issued simultaneously with the issuance of the freeze order. The depositor shall have seventy-two (72) hours upon receipt of the notice to explain why the freeze order should be lifted. The

AMLC has seventy-two (72) hours to dispose of the depositor's explanation. If it fails to act within seventy-two (72) hours from receipt of the depositor's explanation, the freeze order shall automatically be dissolved. The fifteen (15)-day freeze order of the AMLC may be extended upon order of the court, provided that the fifteen (15)-day period shall be tolled pending the court's decision to extend the period.

No court shall issue a temporary restraining order or writ of injunction against any freeze order issued by the AMLC except the Court of Appeals or the Supreme Court.

12. Section 9 of the House version was adopted and reworded as Section 11 of the reconciled version to read as follows:

SEC. 11. *Authority to Inquire into Bank Deposits.* - Notwithstanding the provisions of R.A. No. 1405, as amended, R.A. No. 6426, as amended, R.A. No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act when it has been established that there is probable cause that the deposits or investments involved are any way related to a money laundering offense: *Provided*, That this provision shall not apply to deposits and investments made prior to the effectivity of this Act.

13. Section 10 of the House version was adopted as Section 12 of the reconciled version adopting paragraphs (b) and (c) in their entirety while paragraph (a) was reworded to read as follows:

(a) *Civil Forfeiture.* - When there is a covered transaction report made, and the court has, in a petition filed for the purpose ordered seizure of any monetary instrument or property, in whole or in part, directly or indirectly, related to said report, the Revised Rules of Court on civil forfeiture shall apply.

14. Section 14 of the House version was adopted as Section 13 of the reconciled version with the amendment that any reference to "AMLU" be changed to "AMLC".

15. Section 15 of the House version and Section 11 of the Senate version were reconciled as Section 14 of the reconciled version.

SEC. 14. *Penal Provisions.* (a) *Penalties for the Crime of Money Laundering.* The penalty of imprisonment ranging from seven (7) to fourteen (14) years and a fine of not less than Three Million Philippine Pesos (Php 3,000,000.00) but not more than twice the value of the monetary instrument or property involved in the offense, shall be imposed upon a person convicted under Section 4 (a) of this Act.

The penalty of imprisonment from four (4) to seven (7) years and a fine of not less than One Million Five Hundred Thousand Philippine Pesos (P1,500,000.00) but not more than Three Million Philippine Pesos (P3,000,000.00), shall be imposed upon a person convicted under Section 4 (b) of this Act.

The penalty of imprisonment from six (6) months to four (4) years or a fine of not less than One Hundred Thousand Philippine Pesos (P100,000.00) but not more than Five Hundred Thousand Philippine Pesos (P500,000.00), or both, shall be imposed on a person convicted under Section 4(c) of this Act.

(b) *Penalties For Failure to Keep Records.* - The penalty of imprisonment from six (6) months to one (1) year or a fine of not less than One Hundred Thousand Pesos (P100,000.00) but not more than Five Hundred Thousand Pesos (P500,000.00), or both, shall be imposed on a person convicted under Section 6 (b) of this Act.

(c) *Malicious Reporting.* - Any person who, with malice, or in bad faith, reports or files a completely unwarranted or false information relative to money laundering transaction against any person shall be subject to a penalty of six (6) months to four (4) years imprisonment and a fine of not less than One Hundred Thousand Pesos (P100,000.00) but not more than Five Hundred Thousand Pesos (P500,000.00), or both, at the discretion of the court: *Provided*, That the offender is not entitled to avail of the benefits of the Probation Law.

If the offender is a corporation, association, partnership or any juridical person, the penalty shall be imposed upon the responsible officers, as the case may be, who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission. If the offender is a juridical person, the court may suspend or revoke its license. If the offender is an alien, he shall, in addition to the penalties herein prescribed, be deported without further proceedings after serving the penalties herein prescribed. If the offender is a public official or employee, he shall, in

addition to the penalties prescribed herein, suffer perpetual or temporary absolute disqualification from office, as the case may be.

Any public official or employee who is called upon to testify and refuses to do the same or purposely fails to testify shall suffer the same penalties prescribed herein.

(d) *Breach of Confidentiality.* - The punishment of imprisonment ranging from three (3) to eight (8) years and a fine of not less than Five hundred thousand Philippine Pesos (P500,000.00) but not more than One million Philippine pesos (P1,000,000.00), shall be imposed on a person convicted for a violation under Section 9.

16. Section 12 of the Senate version was adopted as Section 15 of the reconciled version.

17. Section 13 of the Senate version was adopted as Section 16 of the reconciled version.

18. Section 16 of the House version was adopted as Section 17 to read as follows:

SEC. 17. *Restitution.* - Restitution for any aggrieved party shall be governed by the provisions of the New Civil Code.

19. Section 14 of the Senate version was adopted as Section 18 of the reconciled version.

SEC. 18. *Implementing Rules and Regulations.* - Within thirty (30) days from the effectivity of this Act, the Bangko Sentral ng Pilipinas, the Insurance Commission and the Securities and Exchange Commission shall promulgate the rules and regulations to implement effectively the provisions of this Act. Said rules and regulations shall be submitted to the Congressional Oversight Committee for approval.

Covered institutions shall formulate their respective money laundering prevention programs in accordance with this Act including, but not limited to, information dissemination on money laundering activities and its prevention, detection and reporting, and the training of responsible officers and personnel of covered institutions.

20. Section 15 of the Senate version was adopted as Section 19 of the reconciled version with the amendment that instead of one, at least two Senators and two members from the House of Representatives would represent the Minority.

21. A new Section 20 was introduced into the reconciled bill.

SEC. 20. *Appropriations Clause.* - The AMLC shall be provided with an initial appropriation of Twenty Five Million Pesos (P25,000,000.00) to be drawn from the National Government. Appropriations for the succeeding years shall be included in the General Appropriations Act.

22. Section 16 of the Senate version was adopted as Section 21 of the reconciled version.

23. Section 17 of the Senate version was adopted as Section 22 of the reconciled version.

24. Section 18 of the Senate version was adopted as Section 23 of the reconciled version.

25. The titles of both versions were identical and therefore adopted which reads as:

AN ACT DEFINING THE CRIME OF MONEY LAUNDERING, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES

In case of conflict between the statements/amendments stated in this Joint Explanation and that of the provisions of the consolidated bills in the accompanying Conference Committee Report, the provisions of the latter shall prevail.

(Sgd.) SEN. RAMON B. MAGSAYSAY JR.
Chairman, Senate Panel

(Sgd.) HON. JAIME C. LOPEZ
Chairman, House Panel

CONFERENCE COMMITTEE REPORT

The Conference Committee on the disagreeing provisions of House Bill No. 3083, entitled

AN ACT DEFINING THE CRIME OF MONEY LAUNDERING, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES

and Senate Bill No. 1745, entitled

AN ACT DEFINING THE CRIME OF MONEY LAUNDERING, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES,

after full and free conference, has agreed to recommend and do hereby recommend to their respective Houses that House Bill No. 3083, in consolidation with Senate Bill No. 1745, be approved in accordance with the attached copy of the bill as reconciled and approved by the conferees:

*CONFEREES ON THE PART OF THE
SENATE OF THE PHILIPPINES*

(Sgd.) HON. RAMON B. MAGSAYSAY JR.

(Sgd.) HON. FRANCIS N. PANGILINAN

(Sgd.) HON. JOKER P. ARROYO

(Sgd.) RENATO COMPAÑERO CAYETANO

(Sgd.) HON. ROBERT Z. BARBERS

HON. AQUILINO Q. PIMENTEL JR.

HON. EDGARDO J. ANGARA

*(Sgd.) SERGIOR. OSMEÑA III

(Sgd.) HON. PANFILO M. LACSON

HON. VICENTE C. SOTTO III

(Sgd.) MANUEL B. VILLAR

HON. RALPH G. RECTO

*CONFEREES ON THE PART OF THE
HOUSE OF REPRESENTATIVES*

(Sgd.) HON. JAIME C. LOPEZ

(Sgd.) HON. OSCAR S. MORENO

(Sgd.) HON. MARCELINO C. LIBANAN

(Sgd.) HON. TEODOROL. LOCSIN JR.

(Sgd.) HON. JESLIA. LAPUS

(Sgd.) HON. ANTONINO P. ROMAN

(Sgd.) HON. IMEER. MARCOS

(Sgd.) HON. BENASINGO. MACARAMBON JR.

* Dissenting

(Sgd.) HON. JACINTO V. PARAS

HON. HARLINCAST. ABAYON

HON. MARK B. JIMENEZ

HON. RONALDO B. ZAMORA

*(Sgd.) HON. ROLEX T. SUPILICO

HON. ENRIQUET. GARCIA JR.

(Sgd.) HON. CELSOL. LOBREGAT

HON. HERMINIO G. TEVES

(Sgd.) HON. JOSE CARLOS V. LACSON

(Sgd.) RODOLFO B. ALBANO

**AN ACT DEFINING THE CRIME OF MONEY
LAUNDERING, PROVIDING PENALTIES
THEREFOR AND FOR OTHER PURPOSES**

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. *Short Title.* - This Act shall be known as the "Anti-Money Laundering Act of 2001."

SEC. 2. *Declaration of Policy.* - It is hereby declared the policy of the State to protect and preserve the integrity and confidentiality of bank accounts and to ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity. Consistent with its foreign policy, the State shall extend cooperation in transnational investigations and prosecutions of persons involved in money laundering activities wherever committed.

SEC. 3. *Definitions.* - For purposes of this Act, the following terms are hereby defined as follows:

(a) "Covered institution" refers to:

(1) banks, non-banks, quasi-banks, trust entities, and all other institutions and their subsidiaries and affiliates supervised or regulated by the Bangko Sentral ng Pilipinas (BSP);

(2) insurance companies and all other institutions supervised or regulated by the Insurance Commission; and

(3) (i) securities dealers, brokers, salesmen, investment houses and other similar entities managing securities or rendering services as investment agent, advisor, or consultant, (ii) mutual funds, close-end investment companies, common trust funds, pre-need companies and other similar entities, (iii) foreign exchange corporations, money changers, money payment, remittance, and transfer companies and other similar entities, and (iv) other entities administering or otherwise dealing in currency, commodities or financial derivatives based thereon, valuable objects, cash substitutes and other similar monetary instruments or property supervised or regulated by Securities and Exchange Commission.

(b) "Covered transaction" is a single, series, or combination of transactions involving a total amount in excess of Four Million Pesos (P4,000,000.00) or an equivalent amount in foreign currency based on the prevailing exchange rate within five (5) consecutive banking days except those between a covered institution and a person who, at the time of the transaction was a properly identified client and the amount is commensurate with the business or financial capacity of the client; or those with an underlying legal or trade obligation, purpose, origin or economic justification.

It likewise refers to a single, series or combination or pattern of unusually large and complex transactions in excess of Four Million Pesos (P4,000,000.00) especially cash deposits and investments having no credible purpose or origin, underlying trade obligation or contract.

(c) "Monetary instrument" refers to:

(1) coins or currency of legal tender of the Philippines, or any other country;

(2) drafts, checks and notes;

(3) securities or negotiable instruments, bonds, commercial papers, deposit certificates, trust certificates, custodial receipts or deposit substitute instruments, trading orders, transaction tickets and confirmation of sale or investments and money market instruments; and

(4) other similar instruments where title thereto passes to another by endorsement, assignment or delivery.

(d) "Offender" refers to any person who commits a money laundering offense.

(e) "Person" refers to any natural or juridical person.

(f) "Proceeds" refer to amount derived or realized from an unlawful activity.

(g) "Supervising Authority" refers to the appropriate supervisory or regulatory agency, department or office supervising or regulating the covered institutions enumerated in Section 3(a).

(h) "Transaction" refers to any act establishing any right or obligation or giving rise to any contractual or legal relationship between the parties thereto. It also includes any movement of funds by any means with a covered institution.

(i) "Unlawful activity" refers to any act or omission or series or combination thereof involving or having relation to the following:

(1) Kidnapping for ransom under Article 267 of Republic Act No. 3815, otherwise known as the Revised Penal Code, as amended;

(2) Sections 3, 4, 5, 7, 8 and 9 of Article Two of Republic Act (R.A.) No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972;

(3) Section 3 Paragraphs B, C, E, G, H and I of R.A. No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act;

(4) Plunder under R.A. No. 7080, as amended;

(5) Robbery and extortion under Articles 294, 295, 296, 299, 300, 301 and 302 of the Revised Penal Code, as amended;

(6) *Jueteng* and *Masiao* punished as Illegal Gambling under Presidential Decree (P.D.) No. 1602;

(7) Piracy on the high seas under the Revised Penal code, as amended and P.D. No. 532;

(8) Qualified theft under Art. 310 of the Revised Penal Code, as amended;

(9) Swindling under Art. 315 of the Revised Penal Code, as amended;

(10) Smuggling under R.A. Nos. 455 and 1937;

(11) Violations under R.A. No. 8792, otherwise known as the Electronic Commerce Act of 2000;

(12) Hijacking and other violations under R.A. No. 6235; destructive arson and murder, as defined under the Revised Penal Code, as amended, including those perpetrated by terrorists against non-combatant persons and similar targets;

(13) Fraudulent practices and other violations under R.A. No. 8799, otherwise known as the Securities Regulation Code of 2000;

(14) Felonies or offenses of a similar nature that are punishable under the penal laws of other countries.

SEC. 4. *Money Laundering Offense.* - Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.

(b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above.

(c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.

SEC. 5. *Jurisdiction of Money Laundering Cases.* - The Regional Trial Courts shall have jurisdiction to try all cases on money laundering. Those committed by public officers and private persons who are in conspiracy with such public officers shall be under the jurisdiction of the Sandiganbayan.

SEC. 6. *Prosecution of Money Laundering.* -

(a) Any person may be charged with and convicted of both the offense of money laundering and the unlawful activity as herein defined.

(b) Any proceeding relating to the unlawful activity shall be given precedence over the prosecution of any offense or violation under this Act without prejudice to the freezing and other remedies provided.

SEC. 7. *Creation of Anti-Money Laundering Council (AMLC).* - The Anti-Money Laundering Council (AMLC) is hereby created and shall be composed of the Governor of the Bangko Sentral ng Pilipinas as chairman, the Commissioner of the Insurance Commission and the chairman of the Securities and Exchange Commission as members. The AMLC shall act unanimously in the discharge of its functions as defined hereunder:

- (1) to require and receive covered transaction reports from covered institutions;
- (2) to issue orders addressed to the appropriate Supervising Authority or the covered institution to determine the true identity of the owner of any monetary instrument or property subject of a covered transaction report or request for assistance from a foreign state, or believed by the Council, on the basis of substantial evidence, to be, in whole or in part, wherever located, representing, involving, or related to, directly or indirectly, in any manner or by any means, the proceeds of an unlawful activity;
- (3) to institute civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General;
- (4) to cause the filing of complaints with the Department of Justice or the Ombudsman for the prosecution of money laundering offenses;
- (5) to initiate investigations of covered transactions, money laundering activities and other violations of this Act;
- (6) to freeze any monetary instrument or property alleged to be proceeds of any unlawful activity;
- (7) to implement such measures as may be necessary and justified under this Act to counteract money laundering;
- (8) to receive and take action in respect of, any request from foreign states for assistance in their own anti-money laundering operations provided in this Act;
- (9) to develop educational programs on the pernicious

effects of money laundering, the methods and techniques used in money laundering, the viable means of preventing money laundering and the effective ways of prosecuting and punishing offenders; and

- (10) to enlist the assistance of any branch, department, bureau, office, agency or instrumentality of the government, including government-owned and controlled corporations, in undertaking any and all anti-money laundering operations, which may include the use of its personnel, facilities and resources for the more resolute prevention, detection and investigation of money laundering offenses and prosecution of offenders.

SEC. 8. *Creation of a Secretariat.* - The AMLC is hereby authorized to establish a secretariat to be headed by an Executive Director who shall be appointed by the Council for a term of five (5) years. He must be a member of the Philippine Bar, at least thirty-five (35) years of age and of good moral character, unquestionable integrity and known probity. All members of the Secretariat must have served for at least five (5) years either in the Insurance Commission, the Securities and Exchange Commission or the Bangko Sentral ng Pilipinas (BSP) and shall hold full-time permanent positions within the BSP.

SEC. 9. *Prevention of Money Laundering; Customer Identification Requirements and Record Keeping.* - (a) *Customer Identification.* - Covered institutions shall establish and record the true identity of its clients based on official documents. They shall maintain a system of verifying the true identity of their clients and, in case of corporate clients, require a system of verifying their legal existence and organizational structure, as well as the authority and identification of all persons purporting to act on their behalf.

The provisions of existing laws to the contrary notwithstanding, anonymous accounts, accounts under fictitious names, and all other similar accounts shall be absolutely prohibited. Peso and foreign currency non-checking numbered accounts shall be allowed. The BSP may conduct annual testing solely limited to the determination of the existence and true identification of the owners of such documents.

(b) *Record Keeping.* - All records of all transactions of covered institutions shall be maintained and safely stored for five (5) years from the dates of transactions. With respect to closed accounts, the records on

customer identification, account files and business correspondence, shall be preserved and safely stored for at least five (5) years from the dates when they were closed.

(c) *Reporting of Covered Transactions.* - Covered institutions shall report to the AMLC all covered transactions within five (5) working days from occurrence thereof, unless the Supervising Authority concerned prescribes a longer period not exceeding ten (10) working days.

When reporting covered transactions to the AMLC, covered institutions and their officers, employees, representatives, agents, advisors, consultants or associates shall not be deemed to have violated R.A. No. 1405, as amended, R.A. No. 6426, as amended, R.A. No. 8791 and other similar laws, but are prohibited from communicating, directly to indirectly, in any manner or by any means, to any person the fact that a covered transaction report was made, the contents thereof, or any other information in relation thereto. In case of violation thereof, the concerned officer, employee, representative, agent, advisor, consultant or associate of the covered institution, shall be criminally liable. However, no administrative, criminal or civil proceedings, shall lie against any person for having made a covered transaction report in the regular performance of his duties and in good faith, whether or not such reporting results in any criminal prosecution under this Act or any other Philippine law.

When reporting covered transactions to the AMLC, covered institutions and their officers, employees, representatives, agents, advisors, consultants or associates are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person, entity, the media, the fact that a covered transaction report was made, the contents thereof, or any other information in relation thereto. Neither may such reporting be published or aired in any manner or form by the mass media, electronic mail, or other similar devices. In case of violation thereof, the concerned officer, employee, representative, agent, advisor, consultant or associate of the covered institution, or media shall be held criminally liable.

SEC. 10. *Authority to Freeze.* - Upon determination that probable cause exists that any deposit or similar account is in any way related to an unlawful activity, the AMLC may issue a freeze order, which shall be effective immediately, on the account for a period not exceeding

fifteen (15) days. Notice to the depositor that his account has been frozen shall be issued simultaneously with the issuance of the freeze order. The depositor shall have seventy-two (72) hours upon receipt of the notice to explain why the freeze order should be lifted. The AMLC has seventy-two (72) hours to dispose of the depositor's explanation. If it fails to act within seventy-two (72) hours from receipt of the depositor's explanation, the freeze order shall automatically be dissolved. The fifteen (15)-day freeze order of the AMLC may be extended upon order of the court, provided that the fifteen (15)-day period shall be tolled pending the court's decision to extend the period.

No court shall issue a temporary restraining order or writ of injunction against any freeze order issued by the AMLC except the Court of Appeals or the Supreme Court.

SEC. 11. *Authority to Inquire into Bank Deposits.*
- Notwithstanding the provisions of R.A. No. 1405, as amended, R.A. No. 6426, as amended, R.A. No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act when it has been established that there is probable cause that the deposits or investments involved are in any way related to a money laundering offense: *Provided*, That this provision shall not apply to deposits and investments made prior to the effectivity of this Act.

SEC. 12. *Forfeiture Provisions.* --

(a) *Civil Forfeiture* - Where is a covered transaction report made, and the court has, in a petition filed for the purpose ordered seizure of any monetary instrument or property, in whole or in part, directly or indirectly, related to said report, the Revised Rules of Court on civil forfeiture shall apply.

(b) *Claim on Forfeited Assets* - Where the court has issued an order of forfeiting of the monetary instrument or property in a criminal prosecution for any money laundering offense defined under Section 4 of this Act, the offender or any other person claiming an interest therein may apply, by verified petition, for a declaration that the same legitimately belongs to him and for segregation or exclusion of the monetary instrument or property corresponding thereto. The verified petition shall be filed with the court which rendered the judgment of conviction and order of forfeiture, within fifteen (15)

days from the date of the order of forfeiture, in default of which the said order shall become final and executory. This provision shall apply in both civil and criminal forfeiture.

(c) *Payment in Lieu of Forfeiture* - Where the court has issued an order of forfeiture of the monetary instrument or property subject of a money laundering offense defined under Section 4, and said order cannot be enforced because any particular monetary instrument or property cannot, with due diligence, be located, or it has been substantially altered, destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, attributable to the offender, or it has been concealed, removed, converted or otherwise transferred to prevent the same from being found or to avoid forfeiture thereof, or it is located outside the Philippines or has been placed or brought outside the jurisdiction of the court, or it has been commingled with other monetary instruments or property belonging to either the offender himself or a third person or entity, thereby rendering the same difficult to identify or be segregated for purposes of forfeiture, the court may, instead of enforcing the order of forfeiture of the monetary instrument or property or part thereof or interest therein, accordingly order the convicted offender to pay an amount equal to the value of said monetary instrument or property. This provision shall apply in both civil and criminal forfeiture.

SEC. 13. *Mutual Assistance among State.* -

(a) *Request for Assistance from Foreign State.* - Where a foreign State makes a request for assistance in the investigation or prosecution of a money laundering offense, the AMLC may execute the request or refuse the same and inform the foreign State of any valid reason for not executing the request or for delaying the execution thereof. The principles of mutuality and reciprocity shall, for this purpose, be at all times recognized.

(b) *Powers of the AMLC to Act on a Request for Assistance from a Foreign State.* - The AMLC may execute a request for assistance from a foreign State by: (1) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity under the procedures laid down in this Act; (2) giving information needed by the foreign State within the procedures laid down in this Act; and (3) applying for an order of forfeiture of any monetary instrument or property in the court: *Provided*, That the court shall not issue such an order unless the application is

accompanied by an authenticated copy of the order of a court in the requesting State ordering the forfeiture of said monetary instrument or property of a person who has been convicted of a money laundering offense in the requesting State, and a certification or an affidavit of a competent officer of the requesting State stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.

(c) *Obtaining Assistance from Foreign States.* - The AMLC may make a request to any foreign State for assistance in (1) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity, (2) obtaining information that it needs relating to any covered transaction, money laundering offense or any other matter directly or indirectly related thereto; (3) to the extent allowed by the law of the foreign State, applying with the proper court therein for an order to enter any premises belonging to or in the possession or control of, any or all of the persons named in said request, and/or search any or all such persons named therein and/or remove any document, material or object named in said request: *Provided*, That the documents accompanying the request in support of the application have been duly authenticated in accordance with the applicable law or regulation of the foreign State; and (4) applying for an order of forfeiture of any monetary instrument or property in the proper court in the foreign State: *Provided*, That the request is accompanied by an authenticated copy of the order of the regional trial court ordering the forfeiture of said monetary instrument or property of a convicted offender and an affidavit of the clerk of court stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.

(d) *Limitations on Requests for Mutual Assistance.* - The AMLC may refuse to comply with any request for assistance where the action sought by the request contravenes any provision of the Constitution or the execution of a request is likely to prejudice the national interest of the Philippines unless there is a treaty between the Philippines and the requesting State relating to the provision of assistance in relation to money laundering offenses.

(e) *Requirements for Requests for Mutual Assistance from Foreign States.* - A request for mutual assistance from a foreign State must (1) confirm that an investigation or prosecution is being conducted in respect of a money launderer named therein or that he has been convicted of any money laundering offense; (2) state the grounds on which any person is being investigated or

prosecuted for money laundering or the details of his conviction; (3) give sufficient particulars as to the identity of said person; (4) give particulars sufficient to identify any covered institution believed to have any information, document, material or object which may be of assistance to the investigation or prosecution; (5) ask from the covered institution concerned any information, document, material or object which may be of assistance to the investigation or prosecution; (6) specify the manner in which and to whom said information, document, material or object obtained pursuant to said request, is to be produced; (7) give all the particulars necessary for the issuance by the court in the requested State of the writs, orders or processes needed by the requesting State; and (8) contain such other information as may assist in the execution of the request.

(f) *Authentication of Documents.* - For purposes of this Section, a document is authenticated if the same is signed or certified by a judge, magistrate or equivalent officer in or of, the requesting State, and authenticated by the oath or affirmation of a witness or sealed with an official or public seal of a minister, secretary of State, or officer in or of, the government of requesting State, or of the person administering the government or a department of the requesting territory, protectorate or colony. The certificate of authentication may also be made by a secretary of the embassy or legation, consul general, consul, vice consul, consular agent or any officer in the foreign service of the Philippines stationed in the foreign State in which the record is kept, and authenticated by the seal of his office.

(g) *Extradition.* - The Philippines shall negotiate for the inclusion of money laundering offenses as herein defined among extraditable offenses in all future treaties.

SEC. 14. *Penal Provisions.* - (a) *Penalties for the Crime of Money Laundering.* - The penalty of imprisonment ranging from seven (7) to fourteen (14) years and a fine of not less than Three Million Philippine Pesos (Php 3,000,000.00) but not more than twice the value of the monetary instrument or property involved in the offense, shall be imposed upon a person convicted under Section 4(a) of this Act.

The penalty of imprisonment from four (4) to seven (7) years and a fine of not less than One Million Five Hundred Thousand Philippine Pesos (P1,500,000.00) but not more than Three Million Philippine Pesos (P3,000,000.00), shall be imposed upon a person convicted under Section 4(b) of this Act.

The penalty of imprisonment from six (6) months to four (4) years or a fine of not less than One Hundred Thousand Philippine Pesos (P100,000.00) but not more than Five Hundred Thousand Philippine Pesos (P500,000.00), or both, shall be imposed on a person convicted under Section 4(c) of this Act.

(b) *Penalties for Failure to Keep Records.* - The penalty of imprisonment from six (6) months to one (1) year or a fine of not less than One Hundred Thousand Pesos (P100,000.00) but not more than Five Hundred Thousand Pesos (P500,000.00), or both, shall be imposed on a person convicted under Section 9 of this Act.

(c) *Malicious Reporting.* - Any person who, with malice, or in bad faith, reports or files a completely unwarranted or false information relative to money laundering transaction against any person shall be subject to a penalty of six (6) months to four (4) years imprisonment and a fine of not less than One Hundred Thousand Philippine Pesos (P100,000.00) but not more than Five Hundred Thousand Pesos (P500,000.00), or both, at the discretion of the court: *Provided*, That the offender is not entitled to avail of the benefits of the Probation Law.

If the offender is a corporation, association, partnership or any juridical person, the penalty shall be imposed upon the responsible officers, as the case may be, who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission. If the offender is a juridical person, the court may suspend or revoke its license. If the offender is an alien, he shall, in addition to the penalties herein prescribed, be deported without further proceedings after serving the penalties herein prescribed. If the offender is a public official or employee, he shall, in addition to the penalties prescribed herein, suffer perpetual or temporary absolute disqualification from office, as the case may be.

Any public official or employee who is called upon to testify and refuses to do the same or purposely fails to testify shall suffer the same penalties prescribed herein.

(d) *Breach of confidentiality.* - The punishment of imprisonment ranging from three (3) to eight (8) years and a fine of not less than Five Hundred Thousand Philippine pesos (P500,000.00) but not more than One

Million Philippine Pesos (P1,000,000.00), shall be imposed on a person convicted for a violation under Section 9.

SEC. 15. *System of Incentives and Rewards.* - A system of special incentives and rewards is hereby established to be given to the appropriate government agency and its personnel that led and initiated an investigation, prosecution and conviction of persons involved in the offense penalized in Section 4 of this Act.

SEC. 16. *Prohibitions Against Political Harassment.* - This Act shall not be used for political persecution or harassment or as an instrument to hamper competition in trade and commerce.

No case for money laundering may be filed against and no assets shall be frozen, attached or forfeited to the prejudice of a candidate for an electoral office during an election period.

SEC. 17. *Restitution.* - Restitution for any aggrieved party shall be governed by the provisions of the New Civil Code.

SEC. 18. *Implementing Rules and Regulations.* - Within thirty (30) days from the effectivity of this Act, the Bangko Sentral ng Pilipinas, the Insurance Commission and the Securities and Exchange Commission shall promulgate the rules and regulations to implement effectively the provisions of this Act. Said rules and regulations shall be submitted to the Congressional Oversight Committee for approval.

Covered institutions shall formulate their respective money laundering prevention programs in accordance with this Act including, but not limited to, information dissemination on money laundering activities and its prevention, detection and reporting, and the training of responsible officers and personnel of covered institutions.

SEC. 19. *Congressional Oversight Committee.* - There is hereby created a Congressional Oversight Committee composed of seven members from the Senate and seven members from the House of Representatives. The members from the Senate shall be appointed by the Senate President based on the proportional representation of the parties or coalitions therein with at least two (2) Senators representing the minority. The members of the House of Representatives shall be appointed by the Speaker also based on proportional representation of the parties or coalitions therein with at least two (2) members representing the minority.

The Oversight Committee shall have the power to promulgate its own rules, to oversee the implementation of this Act, and to review or revise the implementing rules issued by the Anti-Money Laundering Council within thirty (30) days from the promulgation of the said rules.

SEC. 20. Appropriations Clause. - The AMLC shall be provided with an initial appropriation of Twenty Five Million Pesos (P25,000,000.00) to be drawn from the National Government. Appropriations for the succeeding years shall be included in the General Appropriations Act.

SEC. 21. Separability Clause. - If any provision or section of this Act or the application thereof to any person or circumstance is held to be invalid, the other provisions or sections of this Act, and the application of such provision or section to other persons or circumstances, shall not be affected thereby.

SEC. 22. Repealing Clause. - All laws, decrees, executive orders, rules and regulations or parts thereof, including the relevant provisions of R.A. No. 1405, as amended, R.A. No. 6426, as amended, R.A. No. 8791, as amended and other similar laws, as are inconsistent with this Act, are hereby repealed, amended or modified accordingly.

SEC. 23. Effectivity. - This Act shall take effect fifteen (15) days after its complete publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

The provisions of this Act shall not apply to deposits and investments made prior to its effectivity.

Approved,

ADJOURNMENT OF SESSION

Senator Legarda Leviste. Mr. President, there being no other business for the day, I move that we adjourn today's session until three o'clock Monday afternoon, October 1, 2001.

The President. Yes, with the announcement that the President of the Republic will sign the measure at four o'clock this afternoon in Malacañang. All the senators are invited. May I repeat that. All the senators are invited to the signing ceremony at four o'clock this afternoon.

Upon motion of the Majority Leader, the session is adjourned until three o'clock, Monday afternoon, October 1, 2001, if there is no objection. *[There was none.]*

It was 12:07 p.m.

Sept. 29, 01

SEPT.

RECORD OF THE SENATE

SATURDAY, SEPTEMBER 29, 2001

RESUMPTION OF THE SESSION

At 11:22 a.m., the session was resumed with the Senate President, Hon. Franklin M. Drilon, presiding.

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

CONFERENCE COMMITTEE REPORT ON S. NO. 1745/H. NO. 3083 (Anti-Money Laundering Act of 2001)

Senator Legarda Leviste. Mr. President, the Chamber is in receipt of the Bicameral Conference Committee Report on the disagreeing provisions of Senate Bill No. 1745 and House Bill No. 3083 on Anti-Money Laundering. Copies have been distributed to the members of this Chamber.

I move that we recognize the principal sponsor, Sen. Ramon B. Magsaysay Jr.

The President. Sen. Ramon B. Magsaysay Jr. is recognized.

REPORT OF SENATOR MAGSAYSAY

Senator Magsaysay. Thank you, Mr. President. Thank you, Majority Leader.

Mr. President, as principal sponsor and chairman of the Committee on Banks, Financial Institutions and Currencies...

The President. Before the sponsor proceeds, the Chair would also like to have a copy of the measure. The Chair does not have it.

Senator Magsaysay may please proceed.

Senator Magsaysay. The Conference Committee on the disagreeing provisions of House Bill No. 3083 and Senate Bill No. 1745, having met and opened the Bicameral Conference on September 28, 2001 which started from 8:30 yesterday morning and lasted up to 3:30 this morning of September 29, 2001, hereby submits the conference committee report to this august Chamber.

I respectfully manifest that this report, including the consolidated version, be considered as read and spread into the Record and Journal of the Senate.

However, may I seek the permission of this Chamber to correct three typographical errors found on page 7. May I correct myself.

First found on page 5, Section 13, paragraph (b) of the same. Page 5, Section 13, paragraph (b) subparagraph 2, by deleting "Section 11(n)" and instead replacing it with the words THIS ACT. So Section 11(n) is replaced by the words THIS ACT in order for the same to be consistent with the preceding subparagraph 1 of the same section.

The next typographical error that we would like to correct, Mr. President, is on page 7, Section 14, on the last line of paragraph (b), the reference to Section 6 (b) should instead read as SECTION 9 (b).

Finally on page 7, Section 14 in the last line of paragraph (d)—as in Denmark—on Breach of Confidentiality. Section 8 should instead read as SECTION 9.

The President. Is it Section 9 or Section 9 (c)?

Senator Magsaysay. It is Section 9 (c). That is correct, Mr. President.

I have conferred with our House counterpart, Mr. President, and they will likewise make the same manifestations.

Mr. President, may I therefore move that this Conference Committee Report be adopted by our Chamber.

Senator Osmeña III. Mr. President.

The President. Sen. Sergio Osmeña III is recognized initially, after which, we will recognize Senator Villar.

Senator Osmeña III. Thank you, Mr. President.

Would the distinguished sponsor yield for a few clarificatory questions on the bicameral conference committee report?

Senator Magsaysay. Certainly, Mr. President. The gentleman who is a member of the Senate panel was with us almost the whole day yesterday up to late evening.

Senator Osmeña III. We must congratulate the sponsor for his physical stamina. Of course, he had the advantage of disappearing for two hours in the afternoon to refresh himself.

Mr. President, I earlier signed the committee report dissenting, because of certain new phrases that had not been in either the House or Senate versions but it was explained to me that the language is nebulous, the purpose is other than that I feared would have been the purpose.

So just for the record, Mr. President, there is no line here, so I would like to refer to Section 3, subsection (b). The third line which reads "within five (5) consecutive banking days". If I might read the entire subsection, it reads that "Covered transaction" is a single, series, or combination of transactions involving a total amount in the excess of Four Million Pesos (P4,000,000.00) or an equivalent amount in foreign currency based on the prevailing exchange rate within five (5) consecutive banking days."

Mr. President, that is difficult to understand. What is meant by "within five (5) consecutive banking days"?

Senator Magsaysay. As I understood it, Mr. President, that if one has a series of transactions within five consecutive days and this amounts to P4 million or above, then this is covered transaction.

Senator Osmeña III. So to make matters clear, this does refer to P4 million deposited everyday for five days.

Senator Magsaysay. An average of P800,000 times five days minimum of P4 million.

Senator Osmeña III. Any amount as long as the total deposit within five consecutive banking days is P4 million or in excess of P4 million.

Senator Magsaysay. That is correct, Mr. President.

Senator Osmeña III. Thank you, Mr. President.

Likewise, in the second paragraph of subsection (b), there is that same phrase. Let me read it to be clearer.

"It likewise refers to a single, series or combination or pattern of unusually large and complex transactions in excess of Four Million Pesos (P4,000,000.00)..."

Again, Mr. President, there is that phrase "in excess of Four Million Pesos (P4,000,000.00)." The question I have in mind is, with this second paragraph the first paragraph is not needed.

Senator Magsaysay. That is correct at first glance, Mr. President, but the Senate panel insisted that the Senate version be included because there is no reference to five days.

If the distinguished gentleman remembers, Mr. President...

Senator Osmeña III. There is no number of days in the second paragraph.

Senator Magsaysay. That is correct. The distinguished gentleman gave instructions to Senator Arroyo, Senator Cayetano

and this representation not to compromise. I can tell the gentleman, Mr. President, that I saw Senator Arroyo literally in tears just to protect the phrase and the senator from Cebu gave us instructions to support it. That is the backbone of this.

Senator Osmeña III. I am grateful to Senator Arroyo and Senator Magsaysay for standing up for this.

Do we take it to mean, Mr. President, just between us girls here in the Senate, that the first paragraph is really superfluous because the phrase "five (5) consecutive banking days" is way inferior to the unlimited number of banking days that would be referred to in the second paragraph?

Senator Magsaysay. That is correct, maybe more accurately independent of.

Senator Osmeña III. Give us an example, Mr. President. What would be the difference, for example, between the first paragraph and second paragraph?

Senator Magsaysay. I will ask Senator Arroyo to give the example, Mr. President.

The President. The Chair would agree with the interpretation of Senator Osmeña that indeed with the second paragraph, the first paragraph becomes superfluous.

Senator Osmeña III. Thank you, Mr. President. On page 5, Section 11, this was something that...

Senator Magsaysay. On page 5?

Senator Osmeña III. Yes, that I also tried to insist upon. Section 11 says:

SEC. 11. Authority to Inquire into Bank Deposits.

- Notwithstanding the provisions of R.A. No. 1405, as amended, R. A. No. 6426, as amended, and R. A. No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court...

Now, Mr. President, I insisted with the House that this would be *ex parte*. Is this *ex parte* or does the...

The President. May the Chair be allowed to explain because it was the Chair who participated in the crafting of this particular provision?

Senator Osmeña III. With the permission of the sponsor.

The President. With the permission of the sponsor, because it was crafted in a closed-door small meeting with the representatives.

As Senator Osmeña correctly pointed out, the concept in the Senate version is that the court application for access to the account was supposed to be *ex parte* and as an additional safeguard, the freezing of the account can be done without court order for a period of 20 days.

Now, in the course of the discussion, the House insisted on its proposal that all must be with court order. The discussion developed to a point where we had to come up with a provision which will both protect or which will both strengthen the hands of the regulators and at the same time accommodate the strong representation of the House, presumably, in behalf of the depositors. So, what came out was this—the council can immediately freeze the account upon probable cause that there is a covered transaction.

This freezing is for a period of 15 days. Within three days from the notice to the depositor that his account has been frozen, he will be required to explain. If the explanation is not satisfactory, the council will now go to court to seek authority to access the accounts.

The difference was whether it is with notice or without notice. In the Senate version, it is *ex parte* or without notice. In the proposal of the House, it is with notice. We explained that the notice is already there when we call him to explain.

The concept of an *ex parte* is to allow relief without notice to the other side. But, in this particular case, there is already notice because we require the regulators to call upon the depositor.

To remedy the situation, the Senate and the House panel agreed that we should allow the freeze to remain without need for a court order. The access will be with notice to the depositor, provided, that upon the filing of the petition for access, the running of the 15-day period will be suspended. So that there will be no way that the account be touched while the litigation is ongoing for access to that account.

Therefore, the purpose of the law is achieved in running after suspected money launderers because even if we are litigating the right of the government to access to the account, the account cannot be touched.

I think that serves all purposes.

Senator Osmeña III. With that explanation, Mr. President, I think that is the best that we can expect under the trying circumstances. And I would like to put on record that I am

switching my dissenting vote to a vote of approval on the committee report.

The President. Thank you, Senator Osmeña III.

Senator Villar. Mr. President.

The President. Senator Villar was previously recognized.

Senator Villar. Mr. President, I just signed the report but then I just would like to be clarified on certain issues on the covered transactions.

I recall that we passed a bill that sets the limit to P3 million and the House passed a bill that sets the limit to P5 million. But in Section 3 (b), this provision would, in effect, be lowering the single-day deposit to P800,000. May I ask the sponsor how we considered the magnitude of the transactions that would involve deposits of P800,000?

I am looking at the practicality of this bill because, Mr. President, I do not want us to approve a law that cannot be implemented. Because if a law is very difficult to implement, there could be selective implementation. I am bothered by the fact that we are, in effect, lowering the amount of the covered transaction to P800,000.

Does the sponsor have any idea of the magnitude or do we have resource persons here from the Department of Finance or the Bangko Sentral about the magnitude of transaction, the number of people that will be asked to explain?

Mr. President, a launderer would normally have a lawyer before he does things. He would be reading this, making sure that what he will do will not be in violation of this bill. But an ordinary citizen, who would be depositing maybe once a year for a special thing like selling a house, selling a car, getting a bonus, will be asked to explain by the different branch managers because they do not want to be accused of not exercising due diligence in accepting deposits from the depositors.

Mr. President, I am just concerned on the magnitude of the transactions that would be covered when we lower the covered transaction to P800,000.

Senator Pangilinan. Mr. President.

The President. Senator Pangilinan is recognized.

Senator Pangilinan. My understanding of this particular provision during the bicameral deliberations, Mr. President, is that, yes, indeed, there is effectively a cap of P800,000 everyday

for five days. If one will deposit P800,000 everyday for five consecutive days, and the said transaction is not properly identified and the amount is not commensurate with the business or financial capacity of the individual, then that is subject to reporting by the covered institution. So, it is automatic.

If one is able to put in P800,000 everyday for a period of five days, it is not automatic that a reporting will take place. It must also be that apart from that amount, that the client is not properly identified and that the amount is not commensurate with the client's business or financial capacity.

So, there is a qualification because, in the end, if it is commensurate with the business or financial capacity of the client like a legitimate businessman and if he is properly identified, then there is no reporting requirement for the banks.

Senator Villar. Mr. President, I understand that, yes, if there is no suspicion, if the branch manager or the bank president knows the client, there would not be any question. But I am talking about a general feeling among our people, particularly among those in the middle class who simply do not want to be questioned, who would simply be afraid to be questioned.

A lot of people would read this bill. I do not think many people will be consulting a lawyer before they deposit a series of P800,000. So, I am just curious as to the number. I think this is very important, Mr. President. Because if we pass a law that will be difficult to implement, there would be selective implementation and this is what bothers me—lowering it to P800,000 now. There is a big difference.

My understanding of the bill that we approved was that it would be P3 million; the House is P5 million. Now, we have lowered it to P800,000. There is a big difference, Mr. President.

It may be late. I know that the members of the committee worked very hard on this. All of us worked very hard on this. But I am just concerned and I would like to put on record that concern of mine—that the launderer will consult a lawyer, ensure that he does not violate this law but the citizens in general will be asked a lot of questions. I am afraid that many of them will, in fact, be afraid to deposit big amounts of money, and that will run counter to our desire to increase the capital formation and to increase the savings rate in the Philippines.

Anyway, first, I just would like to put on record that I am not going to oppose the approval of this bill. And second, I just would like also to put on record that we passed a bill with...but I am not sure about this. May I ask the sponsor how many crimes were covered by the bill that we passed?

Senator Pangilinan. I believe the final version has 14.

Senator Villar. No. I mean, the Senate, the number of crimes covered by the bill that we passed here two days ago.

Senator Pangilinan. Yes. We have here 11...So there is an additional three.

Senator Villar. May we know from the sponsor how many crimes are covered by the bill passed by the Lower House?

Senator Pangilinan. They had four criminal unlawful activities.

Senator Villar. So, the Senate passed a bill with 11 and the House passed a bill with four, and the bicameral conference committee ended up with 14. I am curious, Mr. President, whether that is possible.

Senator Pangilinan. In fact, just as a background, Mr. President, this would have been 15. Initially, we were discussing up to 15 different unlawful activities but as we went along, some members of the bicameral conference felt that there were certain unlawful activities identified that should have been set aside, and so we finally ended up with 11.

Senator Villar. Anyway, Mr. President, I just would like that to be put on record because I am not sure, and I am asking, whether that is possible—that the House, having passed a bill covering four crimes, and the Senate passing a bill with 11 crimes, then the bicameral conference ended up with fourteen (14).

Senator Pangilinan. Mr. President, this was my first bicameral conference. *[Laughter]*

Senator Villar. I understand. I have to apologize to the sponsor. But I would just like to put this on record.

Senator Pangilinan. But having said that, I am told that in previous bicameral conferences, there had been situations or incidents wherein the bicameral conference has, in fact, put into the law certain provisions that were not in the law or the version of either the House or the Senate. Therefore, this is a particular situation wherein the crimes were increased. I mean, the unlawful offenses, rather the unlawful activities were increased.

Senator Villar. Actually, Mr. President, I am not going to argue. I just wanted to put on record that there is a difference. And from this we can see that seemingly the bicameral conference committee is now more powerful than the House of Representatives and the Senate.

Senator Pangilinan. Mr. President, just to place it on record so that we may be guided. The Supreme Court has ruled, in fact, in the case of *Tolentino vs. Secretary of Finance*. I think this involved the Value-Added Tax Law wherein certain provisions in that law were, in fact, added during the bicameral conference, and the Supreme Court ruled that this is a valid act of the bicameral conference.

**REMARKS OF SENATOR VILLAR
(To Put on Record His Observations on
S. No. 1745 and to Congratulate the Chairmen
and Members of the Committees on Banks,
Financial Institutions and Currencies and
Justice and Human Rights)**

Senator Villar. I am not going to argue, Mr. President, and our distinguished sponsor. I just want to put that on record that there is such a difference in the number of crimes covered. I just would like to put also on record that I am questioning the lowering of the covered transaction from P3 million of the Senate and P5 million of the House to P800,000.

Having made those observations, Mr. President, I would like to congratulate the distinguished chairman of the Committee on Banks, Financial Institutions and Currencies; and the Committee on Justice and Human Rights for their wonderful and excellent performance in working on this bill and passing this bill.

And we would like to congratulate also the members of the two committees.

That is all, Mr. President.

Senator Pangilinan. Mr. President.

The President. Senator Pangilinan is recognized.

**REMARKS OF SENATOR PANGILINAN
(Inclusion of Plunder in the List of
Unlawful Activities in S. No. 1745)**

Senator Pangilinan. Just to add to one of the reasons the bicameral conference felt it had to increase the unlawful activities particularly in the crime of plunder. The discussion being, that it would be bizarre or absurd that a money-laundering case is filed for a case in violation of the Anti-Graft Law, of which there were proceeds, but then, one would not be able to do the same for the crime of plunder wherein the proceeds are greater because it is not a predicate unlawful activity.

So, in that respect, we felt that there was a need to include plunder. Both Houses agreed on this particular addition to the list of unlawful activities.

The President. Thank you, Senator Pangilinan.

Is there any other comment, any other queries, any other question on the bicameral conference committee report?

Senator Legarda Leviste. Mr. President, with no other questions,...The principal sponsor wishes to be recognized, and Sen. Renato Cayetano, I believe, has a question.

Senator Cayetano. Mr. President.

The President. Senator Cayetano is recognized.

**STATEMENT OF SENATOR CAYETANO
(Congratulatory Message to Sponsors
of S. No. 1745, the Senate President,
All Senators and Bicameral Conferees)**

Senator Cayetano. No, Mr. President, not a question. I just would like to put on record my congratulatory message to both the sponsors, Senator Magsaysay and Senator Pangilinan, together with all of us here, particularly those who labored late and hard last night. I have attended a number of bicameral conferences. I have never seen, never experienced a more challenging, a more difficult and more confrontational bicameral conference ever.

But I guess the reason for this, Mr. President, was that the bicameral conference committee was trying to draft a final version of a bill that will be submitted to their respective Houses which they represent. And to that end, I must say that the bicameral conferees, headed by the two chairs, and practically all the gentleman here did a good job.

I would like also to mention the presence of none other than the Senate President, who at the very difficult time, particularly on the issue of court intervention on the matter of freezing and opening of bank accounts, was able to suggest, and, in fact, his suggestion was adopted in the law.

Thank you, Mr. President.

Senator Magsaysay. Mr. President.

The President. Senator Magsaysay is recognized.

**STATEMENT OF SENATOR MAGSAYSAY
(In Recognition of the Participants
in the Crafting of S. No. 1745)**

Senator Magsaysay. Just a couple of minutes. Likewise, I would like to give recognition to those who started the ball rolling, from the inception of this effort from the Secretariat, the committee

personnel and staff, those who were inputting their knowledge and experience in the public hearings and sessions. And also very importantly, the positive participation of the Minority headed by Senators Pimentel and Angara, who showed that when it is for the national interest, they can set aside politics and come together with all the other senators in crafting speedily and effectively legislative matters that need to be passed.

Yesterday, as mentioned by Senator Cayetano, it was a very complex situation. But I think the passion of Sen. Joker P. Arroyo; the forbearance and full support of Sen. Francis N. Pangilinan, my cochairman; the very awesome presence of Sen. Aquilino Q. Pimentel Jr. who was nursing a fever but stayed for a long time; the very masculine presence and strength of statements of Sen. Robert Z. Barbers who stayed at least—*macho eh*, so masculine—up to the wee hours showing that his physical strength and stamina remain undiminished; and of course, our in-house legal luminary who craftily made use of his past contacts, Sen. Renato L. Compañero Cayetano, to effectively put to shame the very amateurish and frantic efforts of the House panel—some—to make the bill water down. *[Laughter]*

I am sorry. I withdraw that, Mr. President. *[Laughter]* The Speaker, the former Speakers, those unmentionables. *[Laughter]*

At any rate, I have to say it because the Senate President was there for a few hours and he knew and was almost discouraged that it would not pass and that is a fact. None of us thought as such. Even Sen. Panfilo "Ping" M. Lacson who was there for over 10 hours trying to see that his provision on incentives is not endangered, knew that—

Senator Lacson. More than 14.

Senator Magsaysay. —more than 14, I stand corrected, being a freshman senator that was just almost too much to bear.

At any rate, I would just like to say, Mr. President, to my colleagues, to the staff of the Senate, thank you. *Mabuhay ang Senado!*

The President. All right.

Senator Magsaysay. May I finally reiterate, Mr. President...

The President. Before we, yes, I am sorry.

Senator Magsaysay. I would like to take...

Senator Pangilinan. Mr. President.

The President. Has the sponsor finished?

Senator Magsaysay. I just have to reiterate my motion but—

Senator Pangilinan. If I may be allowed just to...

Senator Magsaysay. —my cosponsor will do it.

The President. All right, Senator Pangilinan is recognized.

STATEMENT OF SENATOR PANGILINAN
(On the Unity of the Senators to
Enact and Approve S.No. 1745)

Senator Pangilinan. Before I reiterate the motion, Mr. President, allow me a few words.

I would also like to thank the members of the Senate for the support given us. This past week, I have aged 10 years. It was a difficult but a very challenging experience and I feel that this is the law, the best that we can come up with at this time.

I would like to thank our chairman of the Committee on Banks, Financial Institutions and Currencies for giving me the opportunity to actively participate in the deliberations here in the Senate and in the bicam, and of course, to my staff.

And in the end, Mr. President, I would also like to make mention again of the fact that this is a testament to what unity in this Chamber can do. I can only imagine what other things, what other accomplishments the Senate can do if we act as one. I hope this will serve as an inspiration for us as we go along our work in this Chamber. That, yes, we can address issues squarely but more so when we are united.

With this, Mr. President, we would like to reiterate the earlier motion that the Bicameral Conference Committee report on House Bill No. 3083 and Senate Bill No. 1745 be approved by this Chamber.

Senator Barbers. Mr. President.

The President. Before we do that, Sen. Robert Z. Barbers is recognized to make a brief statement.

STATEMENT OF SENATOR BARBERS
(Inclusion of His Proposed Amendments
in S. No. 1745 and Expression of Gratitude
to the Governor of Central Bank)

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

Mr. President, I am also a member of the bicameral conference committee of the Senate panel and I think I am one of the happiest senators in that discussion yesterday because all my proposed amendments that were approved by the Senate were included in the final version and approved by the House contingent.

Mr. President, I just would like to make this of record. Immediately after I won as senator in 1998, the first bill that I filed was on money laundering and I called this the "ERAPS Bill" in honor of the incumbent President at that time which means "Eradication of Racketeers and Professional Syndicates." It was not taken up because of some intervening events. After this latest election, I refiled my bill and this time I changed the name of the bill from "ERAPS" to "GLORIA." [Laughter] "GLORIA" means "Governing Laws on Racketeering-Influenced Activities." As I said, I am very happy because my proposed amendments were taken up and approved.

Also, Mr. President, the other members, the other senators, Senator Arroyo, Senator Pimentel, Senator Lacson and this representation were there to support Senator Magsaysay and Senator Pangilinan. And I am very happy to report to this Chamber that because of our insistence, the Senate panel, to the chagrin of the members of the House, were able to come up with what we would like to do in the Senate version. Again, it was approved.

Also, Mr. President, I would like to take this opportunity to inform the Chamber that in spite of the fact that my doctor would like me to sleep at 10 o'clock in the evening, I labored so much just to get the approval of this bill with the House version. That is why, after that bicameral conference last night, I feel strong and I want to join another bicameral conference. [Laughter]

The President. Thank you very much. It is noted.

Senator Barbers. Mr. President, I would like also to take this opportunity to extend our gratitude to the Central Bank Governor who is present now. May I strongly suggest that because of the hospitality and accommodation of the Central Bank Governor, we make the Central Bank the official site of our bicameral conferences. [Laughter]

Lastly, Mr. President, as I said, thank you very much and please do not forget me. [Laughter]

Senator Pangilinan. Mr. President.

The President. Senator Pangilinan is recognized.

PANGILINAN AMENDMENT

Senator Pangilinan. Just one last typographical error that we would like to correct. It is on page 7, letter (c), line 3, "Malicious reporting."

The last word is "and" and in the fifth line, it says, "Five

hundred thousand pesos (P500,000.00) or both". This is redundant, "six (6) months to four years imprisonment and a fine of", and so forth and so on, "or both". So we delete the phrase "or both".

The President. Delete the words "or both" as obviously, this is a redundancy.

Is there any objection to the motion? [Silence] There being none, the motion is approved. Before the final approval, may the Chair make a final statement.

STATEMENT OF SENATOR DRILON (Enactment of S. No. 1745 as First Measure of the Twelfth Congress)

Indeed, we can be very proud of ourselves. The Senate can be proud of us. This is the first measure enacted after 34 session days. This is the first measure enacted by the Twelfth Congress.

The records indicate that this Chamber spent approximately 50 hours of heated debates, both in plenary and in the bicameral conference committee last night. As indicated earlier, it is again proof that the senators can set aside partisan politics for the sake of the national welfare. As shown in the debates, both sides of the aisle contributed significantly to the enactment of the measure where the Minority and the Majority jointly sponsored the measure at a certain point of the debate. It shows that the senators can unify and enact a measure that will respond to a major concern not only internationally but more importantly within our domestic shores; and that is, the rise of terrorism and criminality.

The Chair is confident that this measure will meet the international standards. At the same time, it is a balance between the right of the government to protect the state and the individual freedoms of our citizens and our depositors.

So with that, we now declare, upon motion...

APPROVAL OF CONFERENCE COMMITTEE REPORT ON S. NO. 1745/H. NO. 3083

Senator Legarda Leviste. Yes, Mr. President. There is a motion for the approval of the bicameral conference committee report.

The President. Is there any objection? [Silence] There being none, the bicameral conference committee report on House Bill No. 3083 and Senate Bill No. 1745, is unanimously approved. [Applause]

The following is the whole text of the conference committee report:

JOINT EXPLANATORY STATEMENT OF THE
BICAMERAL CONFERENCE COMMITTEE ON THE
DISAGREEING PROVISIONS OF HOUSE BILL
NO. 2083 AND SENATE BILL NO. 1745

The Conference Committee of the House of Representatives and the Senate on the disagreeing provisions of House Bill No. 3083 and Senate Bill No. 1745 submits the following joint statement to both Houses in explanation of the amendments agreed upon by the Conference Committee and recommended in the accompanying Conference Committee Report:

1. The House version was adopted as the working draft.
2. Section 1 of both versions were identical and therefore adopted as Section 1 of the reconciled version.
3. Section 2 of the House version was adopted and reworded taking into consideration Section 2 of the Senate version which reads as follows:

"Section 2. *Declaration of Policy.* - It is hereby declared the policy of the State to protect and preserve the integrity and confidentiality of bank accounts and to ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity. Consistent with its foreign policy, the State shall extend cooperation in transnational investigations and prosecutions of persons involved in money laundering activities wherever committed."

4. Section 3, paragraph a (1) (2) (3) of both versions were identical and therefore adopted as such under the reconciled version.

Section 3, paragraph (b) of both version was reworded to read as follows:

(b) "Covered transaction" is a single, series, or combination of transactions involving a total amount in excess of Four Million Pesos (P4,000,000.00) or an equivalent amount in foreign currency based on the prevailing exchange rate within five (5) consecutive banking days except those between a covered institution

and a person who, at the time of the transaction was a properly identified client and the amount is commensurate with the business or financial capacity of the client; or those with an underlying legal obligation, purpose, origin or economic justification.

It likewise refers to a single, series or combination or pattern of unusually large and complex transactions in excess of Four Million Pesos (P4,000,000.00) especially cash deposits and investments having no credible purpose or origin, underlying trade obligation or contract.

Section 3, paragraphs c, d, e, f, g, and h of the House version were adopted as such under the reconciled version.

Section 3, paragraph of the Senate version was adopted and reworded to read as Section 3, paragraph i.

(i) "Unlawful activity" refers to any act or omission or series or combination thereof involving or having relation to the following:

- a. Kidnapping for ransom under Article 267 of Republic Act No. 3815, otherwise known as the Revised Penal Code, as amended;
- b. Sections 3, 4, 5, 7, 8 and 9 of Article Two of Republic Act (R.A.) No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972;
- c. Section 3 Paragraphs B, C, E, G, H and I of R. A. No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act;
- d. Plunder under R. A. No. 7080, as amended;
- e. Robbery and extortion under Articles 294, 295, 296, 299, 300, 301 and 302 of the Revised Penal Code, as amended;
- f. *Jueteng* and *Masiao* punished as Illegal Gambling under Presidential Decree No. 1602;
- g. Piracy on the high seas under the Revised Penal Code, as amended and P. D. No. 532;
- h. Qualified theft under Art. 310 of the Revised Penal Code, as amended;
- i. Swindling under Art. 315 of the Revised Penal Code, as amended;

- (2) to issue orders addressed to the appropriate Supervising Authority or the covered institution to determine the true identity of the owner of any monetary instrument or property subject of a covered transaction report or request for assistance from a foreign state, or believed by the Council, on the basis of substantial evidence, to be, in whole or in part, wherever located, representing, involving, or related to, directly or indirectly, in any manner or by any means, the proceeds of an unlawful activity;
- (3) to institute civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General;
- (4) to cause the filing of complaints with the Department of Justice or the Ombudsman for the prosecution of money laundering offenses;
- (5) to initiate investigations of covered transactions, money laundering activities and other violations of this Act;
- (6) to freeze any monetary instrument of property alleged to be proceeds of any unlawful activity;
- (7) to implement such measures as may be necessary and justified under this Act to counteract money laundering;
- (8) to receive and take action in respect of, any request from foreign states for assistance in their own anti-money laundering operations provided in this Act;
- (9) to develop educational programs on the pernicious effects of money laundering, the methods and techniques used in money laundering, the viable means of preventing money laundering and the effective ways of prosecuting and punishing offenders; and
- (10) to enlist the assistance of any branch, department, bureau, office, agency or instrumentality of the government, including government-owned and controlled corporations, in undertaking any and all anti-money laundering operations, which may include the use of its personnel, facilities and resources for the more resolute prevention, detection and investigation of money laundering offenses and prosecution of offenders.

- j. Smuggling under R. A. Nos. 455 and 1937;
- k. Violations under R. A. No. 8792, otherwise known as the Electronic Commerce Act of 2000;
- l. Hijacking and other violations under R. A. No. 6235; destructive arson and murder, as defined under the Revised Penal Code, as amended, including those perpetrated by terrorists against non-combatant persons and similar targets;
- m. Fraudulent practices and other violations under R. A. No. 8799, otherwise known as the Securities Regulation Code of 2000;
- n. Felonies or offenses of a similar nature that are punishable under the penal laws of other countries.
- 5. Section 4, paragraphs a and b of the House version was adopted while paragraph (c) was reworded to read as follows:
 - (c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.
- 6. The first paragraph of Section 5 of the Senate version was adopted to read as Section 5 of the reconciled version.
- 7. Section 6, paragraph (a) of the House version was adopted while paragraph (b) was reworded to read as follows:
 - (b) Any proceeding relating to the unlawful activity shall be given precedence over the prosecution of any offense or violation under this Act without prejudice to the freezing and other remedies provided.
- 8. Section 7 of both versions were reconciled and reworded to read as follows:

SEC. 7. *Creation of Anti-Money Laundering Council (AMLC).* - The Anti-Money Laundering Council (AMLC) is hereby created and shall be composed of the Governor of the Bangko Sentral ng Pilipinas as Chairman, the Commissioner of the Insurance Commission and the chairman of the Securities and Exchange Commission as members. The AMLC shall act unanimously in the discharge of its functions as defined hereunder.
- (1) to require and receive covered transaction reports from covered institutions;