

RECORD OF THE SENATE

MONDAY, JUNE 5, 1989

OPENING OF THE SESSION

At 10:24 a.m., the Honorable Jovito R. Salonga, President of the Senate, called the session to order.

The President. Binubuksan ang pulong ng Senado.

NATIONAL ANTHEM

Ang Pambansang Awit at ang *Pilipinas* ang iparirinig sa atin ng G.S.I.S. Quezon City Singing Group. At pagkatapos ay pangungunahan tayo sa panalangin ni Senador Agapito "Butz" A. Aquino.

Everybody rose for the singing of the National Anthem and remained standing for the opening prayer.

PRAYER

Senator Aquino.

Lord, we pray for all the victims in China's version of people power. May all the bitterness and sufferings terminate, and efforts towards reconciliation and freedom begin.

Amen.

ROLL CALL

The President. Babasahin ng Kalihim ang talaan ng mga Senador.

The Secretary.

Senator Heherson T. Alvarez	Present
Senator Edgardo J. Angara	Present
Senator Agapito A. Aquino	Present
Senator Juan Ponce Enrile	Present
Senator Joseph Ejercito Estrada	Present
Senator Neptali A. Gonzales	Present
Senator Teofisto T. Guingona, Jr.	Present
Senator Ernesto F. Herrera	Present
Senator Sotero H. Laurel	**
Senator Jose D. Lina, Jr.	Present
Senator Ernesto M. Maceda	Present
Senator Orlando S. Mercado	Present
Senator John H. Osmeña	Present
Senator Vicente T. Paterno	Present

Senator Aquilino Q. Pimentel, Jr.	***
Senator Santanina T. Rasul	Present
Senator Alberto G. Romulo	Present
Senator Rene A. V. Saguisag	***
Senator Leticia Ramos Shahani	**
Senator Mamintal Abdul J. Tamano	**
Senator Wigberto E. Tañada	Present
Senator Victor S. Ziga	*
The President	Present

The President. Labimpito ang mga Senador na dumalo sa ating pagpupulong; mayroon tayong korum.

THE JOURNAL

Senator Mercado. Ginoong Pangulo, hinihingi ko na huwag nang basahin ang *Journal* ng nakalipas na sesyon at ito ay ituring na sinasang-ayunan.

The President. Mayroon po bang tutol? [*Silence*] Pinagtibay.

The Secretary will now proceed with the reading of the Order of Business.

REFERENCE OF BUSINESS

BILLS ON FIRST READING

The Secretary. Senate Bill No. 1178, entitled

AN ACT AMENDING SECTION 6 OF REPUBLIC ACT NUMBERED SIXTY-SEVEN HUNDRED TWENTY-FOUR RELATING TO THE COMPOSITION OF THE FOREIGN DEBT COUNCIL.

Introduced by Senators Romulo, Tañada, and Herrera.

The President. Referred to the Committees on Economic Affairs; Finance and Ways and Means.

The Secretary. Senate Bill No. 1179, entitled

AN ACT ESTABLISHING TOURIST INFORMATION CENTERS IN CHARTERED CITIES AND PROVINCIAL CAPITALS, AND FOR OTHER PURPOSES.

Introduced by Senators Romulo and Herrera.

* Arrived after the roll call

*** On official mission but appeared after the roll call

**On official mission

(3) Lack of resources caused by circumstances beyond the control of the department, office or agency, or official or employee concerned;

(4) Legal constraints such as restraining orders and injunctions issued by proper judicial, quasi-judicial, or administrative authorities;

(5) Fault, failure or negligence of the party concerned which renders decision or action not possible or premature; and

(6) Fortuitous events or *force majeure*;

Senator Guingona. Yes, Mr. President. We are cognizant of this, and this bill, as we stated earlier, seeks to supplement specific instances.

The Ombudsman, for example, Mr. President, would be the head of the interagency of critical agencies like the BIR and the Bureau of Customs.

The President. What the Chair is merely suggesting is that, perhaps, if there is need for a more detailed rule, the Civil Service Commission would be the proper agency to address this matter; so that, with their cooperation, they can issue more detailed rules in accordance with this bill.

Senator Guingona. They are included in the Committee, Mr. President.

SUSPENSION OF THE SESSION

The President. Why do we not suspend the session for one minute, if there is no objection? [*There was none.*]

It was 11:13 a.m.

RESUMPTION OF THE SESSION

At 11:15 a.m., the session was resumed.

The President. The session is resumed.

The Majority Floor Leader is recognized.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 842

Senator Mercado. Mr. President, I move that we suspend consideration of Senate Bill No. 842.

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

BILL ON SECOND READING

Senate Bill No. 733 — Defining and Penalizing Plunder

Senator Mercado. Mr. President, I move that we consider Senate Bill No. 733 as reported out under Committee Report No. 451.

The President. Consideration of Senate Bill No. 733 is now in order. With the permission of the Body, the Secretary will read only the title of the bill, without prejudice to inserting in the *Record* the whole text thereof.

The Secretary. Senate Bill No. 733, entitled

AN ACT DEFINING AND PENALIZING THE OFFENSE OF PLUNDER.

The following is the whole text of Proposed Senate Bill No. 733:

EXPLANATORY NOTE

One of the characteristics of the post-Marcos era is the heightened public sensitivity to the issues of graft and corruption and accountability of public officials. A manifestation of this is the inclusion of two new provisions bearing on said subjects in the Constitution of 1986. These are Section 27 of Article II (Declaration of Principles and State Policies)

"The state shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption."

and Section 15 of Article XI (Accountability of Public Officers)

"The right of the State to recover properties unlawfully acquired by public officials or employees from them or from their nominees or transferees shall not be barred by prescription, laches or estoppel."

In furtherance of aforesaid constitutional purposes, specifically that the State shall take positive and effective measures against graft and corruption, this bill on *plunder* is proposed in answer to the need for a penal law that can adequately cope with the nature and magnitude of the corruption of the previous regime. The inadequacy of existing laws is patent. The government found it necessary to file 39 separate complaints against the various co-conspirators, burdened by normal evidentiary requirements. Likewise, the overall conspiracy had to be cut up into several simple criminal and graft charges as required under existing laws.

Plunder, a term chosen from other equally apt terminologies like *kleptocracy* and *economic treason*, punishes

the use of high office for personal enrichment, committed thru a series of acts done not in the public eye but in stealth and secrecy over a period of time, that may involve so many persons, here and abroad, and which touch so many states and territorial units. The acts and/or omissions sought to be penalized do not involve simple cases of malversation of public funds, bribery, extortion, theft and graft but constitute the plunder of an entire nation resulting in material damage to the national economy. The abovescribed crime does not yet exist in Philippine statute books. Thus, the need to come up with a legislation as a safeguard against the possible recurrence of the depravities of the previous regime and as a deterrent to those with similar inclination to succumb to the corrupting influence of power.

(Sgd.) TEOFISTO T. GUNGONA, JR.

Senator

(Sgd.) JOVITO R. SALONGA

Senator

(Sgd.) ALBERTO G. ROMULO

Senator

(Sgd.) ORLANDO S. MERCADO

Senator

(Sgd.) RENE A. V. SAGUISAG

Senator

(Sgd.) WIGBERTO E. TANADA

Senator

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Definition of Terms.* - As used in the term

(a) "Public official" means any person holding any public office in the Government of the Republic of the Philippines by virtue of an appointment, election or contract.

(b) "Government" includes the National Government, local government, government-owned or government-controlled corporation and all other instrumentalities or agencies of the Republic of the Philippines and their branches.

(c) "Person" includes natural and juridical persons, unless the context indicates otherwise.

(d) "Ill-gotten wealth" means any asset, property, business enterprise or material possession of persons within the purview of Section two hereof, acquired by them directly, or indirectly through dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes:

(1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

(2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned;

(3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies, or instrumentalities or government-owned or -controlled corporations;

(4) By obtaining, receiving, or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;

(5) Through the establishment of agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

(6) By taking undue advantage of official position authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

SEC. 2. *Definition of the Crime and Penalty.* - Any public officer who, by himself or in connivance with other persons, whether members of his family, relatives, business associates, subordinates and others, for the benefit of himself, shall, through a systematic or methodical scheme, or conspiracy consummated by a series of overt or criminal acts, such as bribery, extortion, malversation of public funds, swindling, falsification of public documents, coercion, theft, frauds and illegal exactions, violations of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019, as amended) and like offenses, amass, accumulate or acquire ill-gotten wealth as defined in Section one hereof, shall be guilty of the crime of plunder, provided that the total amount is not less than One hundred million pesos (P100,000,000.00).

Such public officer or persons who schemed, conspired or knowingly benefited from the aforesaid acts or conspiracy shall be found guilty of the crime of plunder and shall be punished with life imprisonment and perpetual disqualification from public office. Furthermore, the court shall declare any and all ill-gotten wealth so acquired, accumulated or amassed by them escheated or forfeited in favor of the State in an amount equivalent to double the value of the assets illegally accumulated.

SEC. 3. *Competent Court.* - Until otherwise provided by law, all prosecutions under this Act shall be within the original jurisdiction of the *Sandiganbayan*.

SEC. 4. Rule of Evidence. - For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

SEC. 5. Suspension and Loss of Benefits. - Any public officer against whom any criminal prosecution under a valid information under this Act is whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime, administrative proceedings have been filed against him.

SEC. 6. Prescription of Offenses. - The crime punishable under this act shall be imprescriptible.

SEC. 7. Separability of Provisions. - If any provision of this Act or the application to any person or circumstance is held invalid, the remaining provisions to other persons or circumstances shall not be affected thereby.

SEC. 8. Scope. - This Act shall not apply to or affect pending prosecutions or proceedings, or those which may be instituted under Executive Order No. 1, issued and promulgated on February 28, 1966.

SEC. 9. Effectivity. - This Act shall take effect after fifteen (15) days from its publication in the Official Gazette and in a newspaper of general circulation.

Senator Mercado. Mr. President, I ask that we recognize Senator Tañada to sponsor the measure.

The President. Senator Tañada is recognized.

SPONSORSHIP SPEECH OF SENATOR TANA

Senator Tañada. Mr. President and Members of this august Body, I stand here today to ask for my Colleagues' support and approval of Senate Bill No. 733, entitled

AN ACT DEFINING AND PENALIZING THE OFFENSE OF PLUNDER.

The passage of this proposed legislative measure, which is principally authored by no less than our esteemed Senate President; and cosponsored by Senators Saguisag, Romulo, Guingona, Mercado, and this Representation, has become imperative, given our contemporary experience with some people who have occupied high positions in government.

It cannot be seriously disputed that much of our economic woes and the nation's anguish are directly attributable to the despoliation of the National Treasury by some public officials who have held the levels of power. It is sad to state, Mr. President, that there is presently no statute that either effectively discourages or adequately penalizes this predatory act which reached unprecedented heights and which had been developed by its practitioners to a high level of sophistication during the past dictatorial regime.

For, while it is true that we have laws defining and penalizing graft and corruption in government and providing for the forfeiture of unexplained wealth acquired by public officials, it has become increasingly evident that these legislations are no longer suffice to deter massive looting of the national wealth; otherwise, this country would not have been raided and despoiled by the powers that be at that time.

Indeed, there is a need to define plunder, and provide for its separate punishment as proposed in Senate Bill No. 733; because, plunder involves not just plain thievery but economic depredation which affects not just private parties or personal interest but the nation as a whole. And, therefore, Mr. President, it is a crime against national interest which must be stopped and if possible stopped permanently.

It is in this light, distinguished Members of the Senate, that Senate Bill No. 733 was conceived and fashioned out by its Authors. And I ask my distinguished Colleagues to pass this bill, not only to forestall the future plunder of the country's coffers, but to deter and abort, hopefully, any attempt or scheme to amass wealth unlawfully by those who hold public office. True, it is that this piece of legislation may not provide the panacea for graft in government as no statute can, considering much limitless capacity for mischief. But, with the approval of this bill, at least, it cannot be said that we, in the Senate during our day, did not have the will and the courage to confront a real evil existing in government officialdom and to propose a remedy for it.

Thank you, Mr. President.

Senator Maceda. Mr. President.

Senator Guingona. Mr. President.

The President. Senator Maceda is recognized; then Senator Guingona.

Senator Maceda. Will the distinguished Chairman of the Committee on Constitutional Amendments, Revision of Codes and Laws yield to a few questions?

Senator Tañada. Gladly, Mr. President.

Senator Maceda. I would like to congratulate the Gentleman for sponsoring this bill. May I just have some clarification on the meat of the bill which is Section 2 — Definition of the Offense of Plunder. To begin with, Mr. President, assuming that the facts as are now being reflected in the newspapers are correct, the Garchitorena land case would not fall under this definition because it is less than a P100 million.

Senator Tañada. Yes, Mr. President. Under the present wording of Section 2 of the bill, it would not be covered because the bill expressly states that the crime of plunder would be committed by a public official who amasses ill-gotten wealth through a series of overt or criminal acts in the amount of P100 million, at least. So, anything less than that amount will not be covered by this bill.

Senator Maceda. The second point, Mr. President, is that, as the distinguished Gentleman has just stated, if a public official, with one jackpot transaction, makes P100 million or above, he may not be included because it is not a series of criminal acts or transactions.

Senator Tañada. That would be correct, Mr. President. But, I believe, that this bill can stand improvement, and we hope that we will have the amendments of the distinguished Gentleman.

Senator Maceda. So, would the distinguished Gentleman, in the period of amendments, accept that, first of all, when the amount is substantial enough - whatever amount we agree on, just one single act or one single transaction could already be covered by this offense?

Senator Tañada. We are willing to consider that.

Senator Maceda. That while P100 million might be the cut-off point for life imprisonment and perpetual disqualification from holding any public office, maybe from P10 to P99 million we could just impose the next lower penalty.

Senator Tañada. We are willing to consider that, Mr. President.

May I just state that the amount of P100 million was arrived at in the light of the experience had at the PCGG when it investigated the supposed ill-gotten wealth acquired by some public officials in the past administration. It was discovered that in many cases investigated, if not all, the amount involved is not less than P100 million.

Senator Maceda. I am just pointing out, Mr. President, that, as exemplified by the Garchitorena Land Case which was a 62-

million case, the tremendous adverse public reaction already indicates to us, Mr. President, that maybe a lower amount than P100 million should be covered. Although we are aware that there are existing penalties for singular acts or lower amounts; but if the idea is to send a message and to strengthen the present laws, maybe, some amendments along that line might be worth considering.

Senator Tañada. We are willing to consider that.

Senator Maceda. Thank you.

The President. Apart from the Garchitorena Land deal, where there other transactions that can form a series? I understand from the papers that there are other land deals that have not yet been revealed.

Senator Tañada. That is what I have also read in the newspapers, Mr. President, but I am not yet aware of the details.

The President. Senator Gonzales is recognized, and then Senator Guingona.

Senator Gonzales. Mr. President, will the distinguish Senator yield to some questions?

Senator Tañada. Gladly, Mr. President.

Senator Gonzales. To commit the offense of plunder, as defined in this Act and while constituting a single offense, it must consist of a series of overt or criminal acts, such as bribery, extortion, malversation of public funds, swindling, falsification of public documents, coercion, theft, fraud, and illegal exaction, and graft or corrupt practices act and like offenses. Now, Mr. President, I think, this provision, by itself, will be vague. I am afraid that it might be faulted for being violative of the due process clause and the right to be informed of the nature and cause of accusation of an accused. Because, what is meant by "series of overt or criminal acts"? I mean, would 2, 3, 4 or 5 constitute a series? During the period of amendments, can we establish a minimum of overt acts like, for example, robbery in band? The law defines what is robbery in band by the number of participants therein. In this particular case, probably, we can statutorily provide for the definition of "series" so that two, for example, would that be already a series? Or, three, what would be the basis for such a determination?

Senator Tañada. I think, Mr. President, that would be called for, this being a penal legislation, we should be very clear as to what it encompasses; otherwise, we may contravene the constitutional provision on the right of the accused to due process.

Senator Gonzales. Yes, Mr. President. This aggregate amount or total value of P100 million, does this represent the

value of the transaction? Or, does this represent the amount of the allegedly ill-gotten wealth?

Senator Tañada. To my understanding, Mr. President, that would refer to the value of the alleged ill-gotten wealth.

Senator Gonzales. So that a transaction may involve billions of pesos. But if the amount have gone to the personal benefit and, therefore, ill-gotten in that sense on the part of the accused is less than P100,000, he could not be penalized under this Act?

Senator Tañada. That would seem to be the noble interpretation under the present wording of the provision.

Senator Gonzales. So, the offense of plunder would necessarily absorb all the overt or criminal acts, so that if, let us say, a public official or a person is prosecuted and convicted or acquitted for the case of plunder that would already be a bar to a prosecution for the independent acts constituting the series of offenses, Mr. President.

Senator Tañada. That is correct, Mr. President. This kind of plunder could be considered as a complex crime, so that the individual acts which could by themselves be considered criminal would be deemed absorbed by the crime of plunder. So that if one is already convicted of the crime of plunder...

Senator Gonzales. Or acquitted.

Senator Tañada. No, not necessarily, Mr. President. Because if one is acquitted of the crime of plunder, he may still be charged and found guilty of a lesser offense which could just be a simple case, say, of malversation or bribery.

Senator Gonzales. If one is acquitted, Mr. President, for the crime of plunder and he is prosecuted for an act necessarily absorbed therein and, therefore, necessarily a part of the offense of plunder, would not the constitutional prohibition against double jeopardy apply? Because no person shall twice be placed in jeopardy or punishment for the same offense, and the same offense includes an offense necessarily included in that offense. And here, the law on jeopardy provides, not only for a conviction, but also for acquittal or even the dismissal of the case against the accused without his express consent. So double jeopardy would already necessarily set in.

Senator Tañada. It may not necessarily set in, Mr. President. For example, if one has been accused of the crime of murder but during the trial it turns out that the evidence presented was not sufficient for the accused to be convicted of the crime of murder, the accused could still be found guilty of homicide and there would be no violation of his right to double jeopardy.

Senator Gonzales. Yes. But if he is acquitted of the crime of murder on the same ground, can he be prosecuted for a lesser offense like homicide?

Senator Tañada. Yes, Mr. President. There are decisions to that effect that on the same information, one who has been accused of murder can be convicted for the lesser crime of homicide.

Senator Gonzales. That is not my question. I mean, one can be convicted of a lesser offense than that charged in the information. There is no question about that because this is only a single proceeding. What we are talking of are really two proceedings: first, a criminal prosecution for plunder, and the accused is acquitted. The question is: "Will that not operate as a bar to a criminal prosecution for any of the independent offenses which constitute the series for which he was prosecuted for plunder?"

Senator Tañada. I see. Let us say, Mr. President, that the accused is charged with the crime of plunder and then, during the trial, it comes out that the evidence presented does not support the allegation that he has amassed at least P100 million of ill-gotten wealth but only, let us say, P50 million or P20 million. Now, the court may not convict him for the crime of plunder but it can convict him for the crime of malversation or bribery or theft.

Now, the Gentleman's question is, but what if the court finds him innocent? Then, I think, that perhaps will present the problem that the Gentleman is now raising.

Senator Gonzales. I think the same would constitute double jeopardy, Mr. President.

Senator Tañada. So, maybe, this has to be clarified, Mr. President.

Senator Gonzales. Yes, Mr. President, and that is the purpose of this question. For as long as they are alleged in the information, meaning, that they are alleged to be as constituting the series of criminal acts which constitute the offense of plunder and for which the accused is being hailed or prosecuted before the court, Mr. President, so, the forfeiture of the ill-gotten wealth, Mr. President, will be ordered by the court in case of a judgment for conviction in the same criminal case for plunder.

Senator Tañada. Yes, Mr. President.

Senator Gonzales. There is no need for the State to file an independent action civil in nature under the Magsaysay Anti-Graft and Corrupt Practices Act so that the court could declare a forfeiture in favor of the State of the said property.

Senator Tañada. That is correct, Mr. President. Under this bill there would be no need for that. The court will, when it finds the accused guilty of the crime of plunder, order the forfeiture of the property in favor of the government.

Senator Gonzales. Yes, Mr. President. So, in this particular case, probably the theory underlying this provision then is that the ill-gotten wealth constitutes the fruits of the offense that is penalized for the first time under this Act. Would that not be, Mr. President?

Senator Tañada. Yes, Mr. President.

Senator Gonzales. But suppose, let us take it the other way. Will a forfeiture proceeding before the Sandiganbayan, under the Magsaysay Anti-Graft and Corrupt Practices Act, constitute a bar to a criminal prosecution for the crime of plunder if and when this bill shall become a law?

Senator Tañada. This would be made to apply prospectively.

Senator Gonzales. Let us assume that it is prospective, because this is not intended to repeal entirely the provisions of the Magsaysay Anti-Graft and Corrupt Practices Act which provides for an independent action in the name of the Republic of the Philippines, the prayer being to declare forfeited in favor of the State what we call "ill-gotten wealth" or properties which are manifestly out of proportion to his lawful income, and income coming from other lawful sources but arising from a series of acts which, in themselves, constitute offenses.

Senator Tañada. So, the person is charged with the violation of that Anti-Graft and Corrupt Practices Act.

Senator Gonzales. Yes. Assuming that there is judgment of forfeiture — because that is the only judgment; that is civil in form — but then, after judgment of forfeiture has been issued by the Sandiganbayan, still the defendant can be prosecuted for plunder under this provision.

Senator Tañada. I personally would not mind that being legally feasible; but, I would have some constitutional questions.

Senator Gonzales. Yes, Mr. President. I think, in the case of *Cabal vs. Capunan*, the Supreme Court had said that, while the forfeiture proceeding is garbed in civil form, the essence, however, is that it is penal or criminal since there is a penalty imposed and the penalty being that of forfeiture of property in favor of the State. That is why, I recall that, in that case, the original law provided that before a complaint could be filed, there must be a finding of probable cause to be determined by a fiscal after preliminary investigation. And General Cabal, who was formerly

the Chief of Staff, after he was no longer in the service, was really made a defendant in a forfeiture case. The City Fiscal of Manila created a Committee of Fiscals. General Cabal refused to give testimony before the Fiscal's Office. This Committee of Fiscals filed a petition for the issuance of an order commanding him to appear and give testimony. Judge Capunan then of the Court of First Instance of Manila issued the order. And when he still failed or refused to testify, he was cited for contempt for violation of the order of the Court. The Supreme Court ruled that, although garbed in civil form, this is in the nature of a criminal proceeding. And, therefore, being in the nature of a criminal proceeding, then the Constitution says that no person can be compelled to become a witness against himself.

And under our Rules of Court, it says that the right against self-incrimination includes the right of the defendant not to testify or to give testimony, and his refusal to do so shall not be taken against him.

So, probably, this is one area that a more in-depth study — I am not prepared to say so, I am just merely provoking some discussion and, probably, a deeper thinking on the effect of this bill, Mr. President.

Senator Tañada. Yes, Mr. President. Under Section 6 of that law, which is entitled

AN ACT DECLARING FORFEITURE IN FAVOR OF THE STATE ANY PROPERTY FOUND TO HAVE BEEN UNLAWFULLY ACQUIRED BY ANY PUBLIC OFFICER OR EMPLOYEE, AND PROVIDING FOR THE PROCEEDINGS THEREFOR.

Under Section 6 of that law, Mr. President, it is provided:

If the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property, forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become property of the State; *Provided*, That no judgment shall be rendered within six months before any general election or within three months before any special election.

Said Section 6 continues, Mr. President.

The Court may, in addition, refer this case to the corresponding Executive Department for administrative or criminal action, or both.

So, it would seem that, even after the accused has been found guilty of violating this law, he could still be criminally prosecuted.

Senator Gonzales. I have no problem with respect to the administrative action that may be taken. But I have my doubts, as far as the criminal action is concerned. That has not yet been tested before the Court.

And, since this is a criminal case, Mr. President, then the Gentleman is correct that this can be applied only prospectively.

Senator Tañada. Yes, Mr. President.

Senator Gonzales. It cannot be applied retroactively, and therefore, it could not reach past offenses. However, they may, in truth, constitute plunder as defined under this bill that has been committed in the past. To do so would make it an *ex post facto* law.

Senator Tañada. The Gentleman is correct, Mr. President.

Senator Gonzales. Thank you, Mr. President.

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized, then Senator Paterno and Senator Romulo.

Senator Guingona. Just some clarificatory questions of the distinguished Sponsor, Mr. President.

Senator Tañada. Gladly, Mr. President.

Senator Guingona. The bill, in the definition of "ill-gotten wealth," Section 1, letter (d), - the "ill-gotten wealth" as defined herein must be acquired under any of the names enumerated thereunder:

1. Through misappropriation, et cetera;
2. By receiving directly or indirectly gift, kickbacks, that is clearly felony by itself;
3. By illegal or fraudulent conveyance or disposition of assets belonging to the National Government;
4. By obtaining, receiving or accepting, directly or indirectly, any shares of stock, ... in any business enterprise or undertaking."

Will this number four be a criminal offense by itself? A public official receives shares of stock for participation in any business enterprise or undertaking. If taken in isolation by itself, it is not an offense. Is that correct, Mr. President?

Senator Tañada. Yes, Mr. President. It has to be a series of overt or criminal acts. So, this has to be accompanied by other criminal acts to be covered by this bill.

Senator Guingona. Yes. So, the act of receiving is in itself not punishable. Is it?

Senator Tañada. It would be punishable under the Anti-Graft and Corrupt Practices Act, but not under this proposed measure, Mr. President.

Senator Guingona. Receiving shares of stock under an ordinary business transaction?

Senator Tañada. If it is given to him by reason of the position he occupies or in expectation of some action or inaction that he is supposed to do.

Senator Guingona. Yes. Now, under number five also, it states:

(5) By ESTABLISHING agricultural, industrial or commercial monopolies or other combinations, ... intended to benefit particular persons..."

Would this, by itself, be an offense?

Senator Tañada. As I mentioned earlier, it will have to be a combination or a series of acts, Mr. President.

Senator Guingona. As we understand it, therefore, there has to be a scheme or a conspiracy.

Senator Tañada. That is right, Mr. President.

Senator Guingona. And, there has to be bribery; there has to be extortion...

Senator Tañada. Mr. President, not necessarily all of these individual criminal acts, but any combination of them.

Senator Guingona. Yes.

The President. The Chair would like to ask the question: ...

Senator Tañada. Yes, Mr. President.

The President. ... Is this supposed to be committed by the public official himself, the establishment of commercial or agricultural monopolies?

Senator Tañada. Yes, Mr. President.

The President. Under the present Constitution, can we do that, if we are public officials? We are not supposed to engage even in private business.

Senator Tañada. That is correct, Mr. President. We cannot, under the present Constitution.

Senator Guingona. All right. So, are we to understand from the response to the questions of the Chair that numbers four and five are, by themselves, offenses?

Senator Tañada. Yes, Mr. President. But, taken by themselves alone, they would not be covered by this bill but by other existing laws.

Senator Guingona. Since it is a series or a scheme, what amount of evidence will, therefore, be required? Must there be a pattern of the criminal acts? Must there be a series of bribes, for example? Or, can there be only one?

Senator Tañada. Under Section 4 of the bill, Mr. President, it is provided that:

For purposes of establishing the OFFENSE of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, ... but, there must be enough evidence "sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy."

So, that is the quantum of evidence that would be required under this proposed measure.

Senator Guingona. That is sufficient to establish the *prima facie* case.

Senator Tañada. Yes, Mr. President.

Senator Guingona. I would like to know: In the past regime, everything was done supposedly legal — with the adequate presidential decrees, with the lawyers assisting the CPAs manipulating the books — because they were covered by the necessary law supposedly. Would they all be now under this bill? Would they be liable?

Senator Tañada. They would be liable; they would be covered under this bill, Mr. President.

Senator Guingona. So, even if there is a law or some rules and regulations purportedly justifying the illegal acts, provided that there is a conspiracy to enrich oneself P100 million, then that would be falling within the....

Senator Tañada. That is correct, Mr. President, that would be clearly covered by this bill.

Senator Guingona. The lawyer who concocts, who sets up the corporation, the lawyer, who sets up the damage, stockholders, or the lawyer who transfers equity from one to the other. Would he fall under this?

Senator Tañada. Yes, Mr. President.

Under this bill, it will not only be the public official who can be criminally prosecuted, but even private citizens who may have been found to have been part of that conspiracy or scheme to amass this ill-gotten wealth. So that a private citizen under the principle in Criminal Law, can be held liable under this bill if there can be proven conspiracy. So, he can be a principal by direct participation, by inducement or he can be considered as an accused; maybe, not as a principal, but an accomplice or merely as an accessory.

Senator Guingona. As I understand from the responses of the distinguished Senator to the interpellation of Senator Gonzales, without prejudice to his liability under specific laws, he can be disbarred; he can be prosecuted for bribery, for other similar offenses included in the charge.

Senator Tañada. If the charge against him is included for the crime of plunder, then that would already be absorbed in that crime of plunder.

Senator Guingona. He can no longer be disbarred.

Senator Tañada. I believe he can still be disbarred. But he can no longer be prosecuted for the individual crime of malversation or falsification of public or commercial documents. That would already be absorbed in the crime of plunder.

Senator Guingona. Thank you, Mr. President.

Senator Paterno. Mr. President.

The President. Senator Paterno is recognized.

Senator Paterno. Will Senator Tañada yield to some questions?

Senator Tañada. Gladly, Mr. President.

Senator Paterno. Mr. President, not too clear yet on the reason for trying to define a crime of plunder. Could I get some further clarification?

Senator Tañada. Yes, Mr. President.

Because of our experience in the former regime, we feel that there is a need for Congress to pass the legislation which would

cover a crime of this magnitude. While it is true, we already have the Anti-Graft Law. But that does not directly deal with plunder. That covers only the corrupt practices of public officials as well as their spouses and relatives within the civil degree, and the Anti-Graft law as presently worded would not adequately or sufficiently address the problems that we experienced during the past regime.

Senator Paterno. May I try to give the Gentleman, Mr. President, my understanding of the bill?

Senator Tañada. Yes.

Senator Paterno. I envision that this bill or this kind of plunder would cover a discovered interconnection of certain acts, particularly, violations of Anti-Graft and Corrupt Practices Act when, after the different acts are looked at, a scheme of conspiracy can be detected, such scheme or conspiracy consummated by the different criminal acts or violations of Anti-Graft and Corrupt Practices Act, such that the scheme or conspiracy becomes a sin, as a large scheme to defraud the public or rob the public treasury. It is *parang robo* and *banda*. It is considered as that. And, the bill seeks to define or says that P100 million is that level at which *ay talagang sobra na dapat nang parusahan ng husto*. Would it be a correct interpretation or assessment of the intent of the bill?

Senator Tañada. Yes, Mr. President. The fact that under existing law, there can be only one offense charged in the information, that makes it very cumbersome and difficult to go after these grafters if we would not come out with this bill. That is what is happening now; because of that rule that there can be only one offense charged per information, then we are having difficulty in charging all the public officials who would seem to have committed these corrupt practices. With this bill, we could come out with just one information, and that would cover all the series of criminal acts that may have been committed by him.

Senator Paterno. Would the Author not agree that this crime of plunder should be considered a heinous crime, Mr. President?

Senator Tañada. Yes, Mr. President. That is why, the penalty imposed under this bill is life imprisonment, and permanent disqualification from holding public office.

Senator Paterno. I would really ask, Mr. President, whether the Author would not consider that this is a heinous crime which, for compelling reasons, namely, to try and dampen the graft and corruption, Congress should provide the death penalty for the crime of plunder.

Senator Tañada. I personally would have some problem with that, Mr. President, because I am against the restoration of

death penalty in our criminal code. I would submit that to this Body.

Senator Paterno. I respect the ministerial attitude and the respect for human life of the author, Mr. President, but I just feel that graft and corruption is such a large problem in our society that, perhaps, it is necessary for this Congress to express itself that this crime of plunder is a heinous crime which should be levied the death penalty, Mr. President.

Thank you, Mr. President.

Senator Tañada. Thank you, Gentleman.

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. Just a few questions, Mr. President, if the distinguished Sponsor will yield.

Senator Tañada. Gladly, Mr. President.

Senator Romulo. As one of the co-sponsors of the Bill, Mr. President, my intention is just to clarify.

Senator Tañada. Yes, Mr. President.

Senator Romulo. To follow up the interpellations of Senators Paterno and Maceda, this crime of plunder as envisioned here contemplates of a series or a scheme as responded by the distinguished Sponsor.

Senator Tañada. That is correct, Mr. President.

Senator Romulo. And, therefore, the series would be at least amounting to P100 million?

Senator Tañada. That is correct, Mr. President.

Senator Romulo. Mr. President, would, at the proper time, the Sponsor be amenable to an amendment whereby instead of P100 million, the amount be reduced to P50 million?

Senator Tañada. I would be willing to consider that, Mr. President.

Senator Romulo. Also, Mr. President, although the Gentleman had explained, time and again, that this is a series or a scheme, what if that P50 million, or for that matter P100 million, is only one and not a series, would the distinguished Sponsor also be willing to accept an amendment whereby the amount is P50

million, above P50 million, or about P100 million, depending on what figure we would agree on, that this would also be considered under this Bill?

Senator Tañada. Personally, I would be willing to consider that. But, I would like to have time to consult with the principal Author of this measure.

Senator Romulo. The other question that I would like to propose, Mr. President, is that this bill provides that the prescription of the offense, shall the offense be imprescriptible?

Senator Tañada. Yes, Mr. President.

Senator Romulo. That, perhaps, is a good provision of the bill. But, may I ask, Mr. President, what is in this bill that would insure that there would be a speedier prosecution and, therefore, conviction or acquittal than heretofore is prevailing? What is in this bill that would provide for speedier process by which this crime of plunder would readily and immediately be processed and convicted or acquitted than is now existing in present laws?

Senator Tañada. Yes, Mr. President. On the point of prescription, Mr. President, it is true that it is provided in this bill that the action shall not prescribe. But, that is pursuant to Section 15 of Article XI which states that the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel.

Now, on the second point, Mr. President, I believe that what could make faster and speedier prosecution of these grafters would be a change that will be authorized in this bill, at least, in the filing of information against the perpetrators. Under the existing criminal procedure, as I said earlier, there can be only one offense charged per information. So, if there is going to be a series of overt or criminal acts committed by the grafter, then that would necessitate the filing of so many information against him. Now, if this bill becomes a law, then that means that there can be only one information filed against the alleged grafter. And the evidence that will be required to convict him would not be evidence for each and every individual criminal act but only evidence sufficient to establish the conspiracy or scheme to commit this crime of plunder.

Senator Romulo. And, Mr. President, the Gentleman feels that it is contained in Section 4, Rule of Evidence, which, in the Gentleman's view, would provide for a speedier and faster process of attending to this kind of cases?

Senator Tañada. Yes, Mr. President, and, maybe, in the period of amendments, we can incorporate what is already contained in Section 8 of the Anti-Graft and Corrupt Practices Act

which states that if it can be shown really that there is this disproportionate wealth that a public official possesses and owns compared to what his lawful income would have allowed him to acquire, then the burden of proof would already be transferred to the accused.

Senator Romulo. So, this would be incorporated by the process of amendment during the period of amendments?

Senator Tañada. Yes, Mr. President.

Senator Romulo. One other question, Mr. President. In the original bill, it so provided that on the question of forfeiture, it said: "... forfeited in favor of the State in an amount equivalent to double the value of the assets illegally accumulated...". In the bill, as reported out by the Committee, that portion of the original bill was deleted and, in lieu thereof, it states "... shall declare any and all ill-gotten wealth forfeited in favor of the State", in lieu of the original phraseology which stated "... in an amount equivalent to double the value".

May this Representation be enlightened on why the original phraseology was changed?

Senator Tañada. Mr. President, we felt that it would be difficult, first of all, to establish what would be "double the value of the assets illegally accumulated", and this could just prolong the proceeding or the trial. And so, we thought that it would be more practical to just provide that whatever is found to have been the ill-gotten wealth, then that is what should be forfeited in favor of the government.

Senator Romulo. One final question, Mr. President.

In view of the importance of this bill, and the fact, as stated by the Sponsor, that this is a must and an urgent bill, may I inquire, Mr. President, if this bill is being requested as certified or urgent bill, so that both Houses can address themselves to this bill and, therefore, have this passed the soonest?

Senator Tañada. As far as I know, Mr. President, there is no certification from the President as to the urgency of the enactment of this bill.

Senator Romulo. But, of course, the Sponsor would agree that this should be considered an urgent bill?

Senator Tañada. Yes, Mr. President.

Senator Romulo. Thank you, Mr. President.

The President. The Majority Floor Leader is recognized.

SUSPENSION OF CONSIDERATION
OF SENATE BILL NO. 733

Senator Mercado. Mr. President, I move that we suspend consideration of Senate Bill No. 733.

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

Senator Mercado. Mr. President, this afternoon, we shall be voting on Third Reading on some measures pending Third Reading. We shall deliberate and approve hopefully the Conference Committee Report on Wages, and continue the discussion on Senate Bill No. 549, the Multi-Purpose Pavements, and Senate Bill No. 181, Lowering the Age of Majority, the pet bill of Senator Lina.

SUSPENSION OF THE SESSION

Senator Mercado. Mr. President, I move that we suspend the session until three o'clock this afternoon.

The President. The session is suspended until three o'clock this afternoon, if there is no objection. [There was none.]

It was 12:14 p.m.

RESUMPTION OF THE SESSION

At 3:28 p.m., the session was resumed with the Honorable Jovito R. Salonga, President of the Senate, presiding.

The President. The session is resumed.

The Majority Floor Leader is recognized.

CONFERENCE COMMITTEE REPORT
ON SENATE BILL NO. 1084/HOUSE BILL NO. 23227
(Wage Policy)

Senator Mercado. Mr. President, we are in receipt of Conference Committee Report on Senate Bill No. 1084, entitled

AN ACT TO RATIONALIZE WAGE POLICY
DETERMINATION BY ESTABLISHING A
MECHANISM THEREFOR, AND FOR OTHER
PURPOSES

and House Bill No. 23227, entitled

AN ACT TO RATIONALIZE WAGE POLICY
DETERMINATION BY ESTABLISHING THE
MECHANISM AND PROPER STANDARDS

THEREFOR AMENDING FOR THE PURPOSE
ARTICLES 99, 120, 121, 122, and 123 OF PD 442
OTHERWISE KNOWN AS THE LABOR CODE
OF THE PHILIPPINES, FIXING THE STATU-
TORY MINIMUM WAGES, PROVIDING
WAGE INCENTIVES FOR INDUSTRIAL
DISPERSAL TO THE COUNTRYSIDE, AND
FOR OTHER PURPOSES.

May I move that we consider the said report and recognize the Chairman of the Committee on Labor and Employment, Senator Herrera, to sponsor the said report.

The President. Senator Herrera is recognized.

SPONSORSHIP SPEECH OF SENATOR HERRERA

Senator Herrera. Thank you, Mr. President.

The Conference Committee on the disagreeing provisions of Senate Bill No. 1084 and House Bill No. 23227 having met in full and free conference has agreed to recommend, and do hereby recommend to their respective Houses, that Senate Bill No. 1084, in consolidation with House Bill No. 23227 be approved as follows: — Mr. President, this is quite a thick report, this is a 31-page report. I do not know how we can abbreviate the report but, maybe, I will just cite the particular lines where we have some amendments so that we can abbreviate the reporting and we will be sacrificing the other agenda for this afternoon's session.

On page 1 of Senate Bill No. 1084, lines 4 and 5, delete the phrase "nationally or regionally".

On page 1, line 5, before the word "PROMOTE", insert the words "AND TO".

On the same page, on line 5, after the word "PROMOTE", insert the phrase "PRODUCTIVITY-IMPROVEMENT AND GAIN-SHARING MEASURES TO ENSURE A".

On page 1, line 5, delete the word "the" between the words "PROMOTE" and "decent".

On the same page and line, delete the word "or" and in its place insert the word "FOR".

On page 1, line 6, after the word "families", replace the comma (,) symbol with the semi-colon (;) symbol".

On the same page and line, before the word "stimulate" insert the phrase "TO GUARANTEE THE RIGHTS OF LABOR TO ITS JUST SHARE IN THE FRUITS OF PRODUCTION; TO ENHANCE EMPLOYMENT GENERATION IN THE COUN-