

RECORD OF THE SENATE

TUESDAY, SEPTEMBER 25, 2001

OPENING OF THE SESSION

At 3:39 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

The President. The 24th session of the First Regular Session of the Twelfth Congress is hereby called to order.

Let us all rise for the prayer to be led by Sen. Ramon B. Revilla.

Everybody rose for the prayer.

PRAYER

Senator Revilla.

Ama naming Banal at Makapangyarihan, sa aming muling pagtitipun-tipon ay dumudulog kami na sana ay patnubayan kami ng Iyong Banal na Espiritu. Sumasamo kami na bigyan ng sapat na karunungan, kahinahunan at pang-unawa upang ang aming gagawing talakayan ay maging maayos at wasto ayon sa Iyong kalooban.

Sa aming mga magiging mungkahi at kapasiyahan, manaig nawa ang kapakanan ng nakararami at hindi ang pansariling interes lamang.

Panginoon, itinataas namin sa Iyo ang intensiyon ng mga taong naghahasik ng karahasan. Basbasan Mo po sila upang magising at magbalik-loob sa Iyo sapagkat kung sila ay nasa Iyo ay hindi poot at karahasan ang mananaig sa kanilang mga puso kundi pag-ibig at kapayapaan.

Panginoon, bahaginan nawa ng Iyong mapanuring isipan ang mga kinauukulan sa kanilang pagpapasiya kung anong uri ng tulong o suporta ang ibibigay sa bansang Amerika kaugnay sa pinsala nitong tinamo na likha ng mga taong mapaghasik ng kaguluhan. Hinihiling namin ito sa Iyo upang hindi malagay sa alanganin ang seguridad ng bansa na sa dakong huli ay aming pagsisisihan. Sapagkat, Panginoon, batid Mo po na ang bansang Pilipinas ay nahaharap din sa iba't ibang uri ng karahasan at kaguluhan na may kaugnayan sa seguridad ng aming bayan.

Panginoon, Ikaw ang higit na nakakaalam kung ano ang nararapat. Kaya kami ay umaasa at nananalig na hindi Mo kami pababayaan. Sa Iyong pamamatuubay ang lahat ay magkakaroon ng kaayusan.

Sumasamo kami sa Inyo sa pamamagitan ni Kristo, ang Mahal naming Panginoon.

Amen.

ROLL CALL

The President. The Secretary will please call the roll.

The Secretary, reading:

Senator Edgardo J. Angara	Present
Senator Teresa Aquino-Oreta	Present
Senator Joker P. Arroyo	Present
Senator Robert Z. Barbers	Present
Senator Rodolfo G. Biazon	Present
Senator Renato L. Compañero Cayetano ...	Present
Senator Noli "Kabayan" De Castro	Present
Senator Luisa "Loi" P. Ejercito Estrada	Present
Senator Juan M. Flavir	Present
Senator Gregorio B. Honasan	Present
Senator Robert S. "JAWO" Jaworski	Present
Senator Panfilo M. Lacson	Present
Senator Loren B. Legarda Leviste	Present
Senator Ramon B. Magsaysay Jr.	Present
Senator Blas F. Ople	Present
Senator John Henry R. Osmeña	Present
Senator Sergio R. Osmeña III	Present
Senator Francis N. Pangilinan	Present
Senator Aquilino Q. Pimentel Jr.	Present
Senator Ralph G. Recto	Present
Senator Ramon B. Revilla	Present
Senator Vicente C. Sotto III	Present
Senator Manuel B. Villar Jr.	Present
The President	Present

The President. All the 24 senators are present. The Chair declares the presence of a quorum.

The Majority Leader is recognized.

THE JOURNAL

Senator Legarda Leviste. Mr. President, I move that we dispense with the reading of the *Journal* of the previous session and consider it approved.

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

Senator Legarda Leviste. Mr. President, I move that we proceed to the Reference of Business.

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.]

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.

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; Neuwi; 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. Flavie]. 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. Flavie]. 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. Flavie]. 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. Flavie]. 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. Flavie]. The Majority Leader is recognized.

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

The Presiding Officer [Sen. Flavie]. 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 million iyan agad. Inipun-ipon 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. Allright. 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 maintindihan 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. Allright. 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. All right. 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, etcetera. 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. Flavier]. 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. Flavier]. 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. Flavio]. 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. Flavio]. 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. Flavier]. 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. Flavie]. 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. Flavie]. 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. Flavie]. 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.