

WEDNESDAY, SEPTEMBER 26, 2001
RESUMPTION OF THE SESSION
At 2:22 p.m., the session was resumed with the Senate President, Hon. Franklin M. Drilon, presiding.

The President. The session is resumed. The Majority Leader is recognized.

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

Senator Legarda Leviste. Mr. President, I move that we resume consideration of Senate Bill No. 1745 as reported under Committee Report No. 11.

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

Senator Legarda Leviste. Mr. President, yesterday when we suspended the session, we were in the period of interpellations. May I now move that we recognize the principal sponsor, Sen. Ramon B. Magsaysay Jr., for the continuation of the interpellation.

The President. Sen. Ramon B. Magsaysay Jr. is recognized for the continuation of the period of interpellations.

Senator Legarda Leviste. Sen. Robert S. "JAWO" Jaworski has reserved to interpellate today, Mr. President. May I move that we recognize Sen. Robert S. "JAWO" Jaworski.

The President. Sen. Robert S. "JAWO" Jaworski is recognized.

Senator Magsaysay. Thank you, Mr. President, we are ready to get back into the debates on the anti-money laundering measure. I just want to mention here that we are still working on the substitute bill which was given to all the senators yesterday early afternoon dated September 25, 2001.

Senator Jaworski. Thank you, Mr. President.

Will the honorable senator from Zambales and the Philippines yield for some questions?

Senator Magsaysay. Certainly, Mr. President.

Senator Jaworski. Well, first of all, Mr. President, I am very thankful that we are taking a lot of prudence in crafting this bill.

First of all, I believe all of us here realize the present economic health of our country, while I do understand that first and foremost in our minds is to address the very aggressive stance of the Financial Action Task Force relative to anti-money laundering law.

As I stated earlier in the caucus, we must also take great prudence and care in realizing that the countries that are truly aggressive in this direction are those countries that are highly taxed, and most of which are enjoying health in their economies, not to mention that they are successful international players in trade.

Therefore, while we must be watchful of dirty money, there are also what we call "green money" that are in the financial arena that we must welcome, especially in light of the fact that even without the anti-money laundering law, a number of billions have already been brought out of our country.

So once again, I just want to say that we must be truly careful and prudent, otherwise a number of billions will be ready to leave, if not to leave, will not be reaching our shores for monies that will be available through tax-avoidance schemes which are not necessarily dirty, and which could be available towards economic activity.

Now going to the bill, Mr. President, let me just ask: Would we be also treading on foreign currency deposits?

Senator Magsaysay. That is correct, Mr. President. This measure now includes both local accounts owned by locals and also the FCDU deposit. We have a provision that includes FCDUs in this anti-money laundering measure.

Senator Jaworski. Mr. President, money laundering is one of those mentioned in Articles 6 and 7 of the United Nations Convention Against Transnational Organized Crime of which we are one of the 124 country-signatories.

Now, in Section 4 of this bill, the crime of "money laundering" is defined as a crime whereby the proceeds of an unlawful activity, whether in cash, property or other assets, are converted, concealed or disguised to make them appear to have originated in legitimate sources.

By this definition, it is then possible that a person may perform certain unlawful activity in one country or a number of countries and convert the proceeds of this unlawful activity in yet another country involving therefore two or even more countries. Is this correct, Mr. President?

Senator Magsaysay. That is correct, Mr. President.

Senator Jaworski. And in this case which we just cited, may we know which country has the primary, if not the exclusive jurisdiction to prosecute the offense of money laundering?

Senator Magsaysay. The country where the infraction originated should be the primary country, Mr. President.

Senator Jaworski. Where it originated?

Senator Magsaysay. Where the crime originated, yes.

Senator Jaworski. Mr. President, I feel that this is important because without any clarification, we might encounter some problems in the future when it comes to enforcement involving another State. This is especially significant considering that when we talk of money-laundering schemes, these would definitely involve large sums which could be the subject of forfeiture in favor of the government of the prosecuting State. We then seek a clarification from the good sponsor.

Mr. President, if the money or proceeds from unlawful activity were placed in our country and a cooperating country requests that the same be initially preserved and subsequently transferred to such country for forfeiture, what should be the action of our government?

Senator Magsaysay. This is a continuing crime which involves countries that are considered part of the cooperative countries. If the seized assets--forfeited--is in that country, let us say originating in the Philippines and caught either in the Philippines or the next country, let us say, Hong Kong, those assets, if it is monetary and not fixed assets, will be held frozen in that second country like Hong Kong. Because the funds are already in another country.

Please note, Mr. President, that on page 8 in Section 14, lines 27, 28 and 29, this is defined on the "Mutual Assistance Among States" or countries. It says: "The Philippine government is hereby authorized to request and grant mutual assistance pursuant to the rules and regulations to be issued by the Department of Justice." These rules and regulations will have to be crafted. The Department of Justice will be given 30 days from the passage of the bill.

Senator Jaworski. Mr. President, I am not a lawyer. But let me go to another point.

As defined in Section 4 of the bill, the crime of money laundering involves the proceeds of an unlawful activity. May we know from the distinguished sponsor the quantum of evidence required to prove such unlawful activity in order to convict a person of money laundering?

Senator Magsaysay. Based on criminal law, Mr. President, the level of evidence must be beyond reasonable doubt for all elements. But in the process of gathering more information, the bank, let us say, or an institution, will base it on reasonable substantial evidence and the threshold before this is reported to the supervising authority.

Senator Jaworski. So the rules of evidence by the court will then be followed.

Senator Magsaysay. That is correct, Mr. President.

Senator Jaworski. Thank you, Mr. President.

I also notice in Section 7, paragraph (b) of the bill, that the pendency of any proceeding relating to the unlawful activity shall not bar prosecution for money laundering. What happens then, Mr. President, if a person convicted of money laundering is subsequently acquitted of such alleged unlawful activity?

Senator Magsaysay. If he is acquitted of the criminal act like kidnapping, let us say.

Senator Jaworski. Yes, Mr. President.

Senator Magsaysay. The crime of money laundering is still there. These are two distinct crimes. These are mutually exclusive. The owner of the account still has to answer to the suspicious nature of that particular account. That is exactly what we are trying to do here. That not only the primary crime of, let us say, kidnapping is being investigated, but also simultaneously the laundered money account with substantial evidence is also being looked at.

Senator Jaworski. Mr. President, we talked about this a little lightly in the caucus. But is it not that the subject that the gentleman is talking about now, the predicate crime is kidnapping?

Senator Magsaysay. Yes, Mr. President.

Senator Jaworski. Therefore, from the kidnapping, money laundering is supposed to have been born. But without that, and if he is acquitted, how come the money laundering...?

Senator Magsaysay. The two crimes are distinct and separate because there are different elements involved. It could be that the kidnapping case was lost because of some technicality.

But may I point out the elements of the crime of money laundering. This is, number one, that a person has knowledge that any monetary instrument or property, in whole or in part, wherever

located, directly or indirectly, represents, involves, or relates to the proceeds of any unlawful activity.

Senator Jaworski. Mr. President, what happens if such acquittal is not merely based on failure to prove the unlawful activity beyond reasonable doubt but with the affirmative declaration by the court that no such unlawful activity was committed?

Senator Magsaysay. I beg the gentleman's pardon?

Senator Jaworski. What happens if such acquittal is not merely based on failure to prove the unlawful activity beyond reasonable doubt but with the affirmative declaration by the court that there was no such unlawful activity that was committed?

Senator Magsaysay. If the subject has been acquitted on the primary crime—meaning kidnapping in this case—his account which is still under investigation by the courts, or let us say the Department of Justice, has to be proven that that amount does not come from the kidnapping case. He has to face also the second crime, because these are two separate crimes. The fact of depositing dirty money coming from a crime, it could not be maybe coming from kidnapping. It could be from something else. But he has again to defend himself. There is no double jeopardy here.

Senator Jaworski. But, Mr. President, if we look at the definition of the crime of money laundering, money laundering is a crime whereby the proceeds of an unlawful activity are converted, concealed or disguised to make them appear to have...

Senator Magsaysay. That is exactly what I am trying to explain here, Mr. President, that this is dirty money or money that came from a crime. It could have come from a particular kidnapping case, but it is deposited in an account to be laundered, and that in itself is another crime. The condition on the predicate offense—meaning the primary crime—is not essential to prevent a person to prosecute a person for money laundering. What is necessary here is that he has the knowledge of the unlawful activity. So there are other persons involved other than the one who made the deposit. Maybe it could be a bank official or some other person who could be guilty of the crime of money laundering.

Senator Jaworski. Mr. President, let me just ask the distinguished sponsor. Let us say there is only one individual involved in the crime. He committed the crime, he deposited the money, but later on, he was acquitted. What I mean is, we are basing on a situation where he was supposed to have committed a crime.

Senator Magsaysay. Maybe, he committed another crime or it does not mean that the crime did not exist. Just because he was acquitted of a certain crime does not necessarily mean that there were no other crimes committed—that the funds went into the account in question. Because these are two separate crimes.

Senator Jaworski. Mr. President, maybe, we have to look at the definition of the crime of money laundering, because it specifically says, it is a crime whereby the proceeds of an unlawful activity are converted. And when it has been proven that he did not commit any crime, how can there be a crime of money laundering?

Senator Magsaysay. All right, Mr. President, I will try to answer this before I turn it over to Senator Pangilinan. He is a lawyer. Maybe he can explain it more clearly. It says here that the question is: Why will he be convicted on laundering as a crime? These are two separate crimes. The act of depositing illegal or dirty money coming from an illegal act, that is a new crime. That is why, we are defining money laundering as a crime here. The antecedent, the primary crime is, let us say, kidnapping or plunder or graft and corruption of public officials. But the fact that there was a suspicious transaction triggered by what we have defined here as in a level of a million pesos and above, this is already in the process of starting to prove that substantial evidence before the FIU or the supervising authority goes to the FIU. And what took place before the council will be evaluated before they send it to the Monetary Board wherein the board will now judge and by a majority decide whether that account will be frozen.

May I quote this gentleman from Baguio City.

When a person is acquitted of the unlawful activity,

In this case, the gentleman is talking about kidnapping; he is acquitted.

it means that the person is not criminally liable or that his criminal liability with respect to the unlawful activity was not established beyond reasonable doubt. There is a crime but the accused was not proven to be the perpetrator thereof.

So as an example, when a person is murdered, the fact of death is there, but this is not always the case, that the accused is convicted because the quantum of evidence required is guilt beyond reasonable doubt.

Senator Jaworski. Mr. President, what I am saying is, would there be a case where, let us say, I was saying there is in reality no crime committed?

Senator Magsaysay. I will ask Senator Pangilinan.

Senator Jaworski. This is just for my... I am not a lawyer that is why I want to be...

The President. Senator Pangilinan is recognized.

Senator Pangilinan. Thank you, Mr. President.

As a general rule, Mr. President, the case for the crime of money laundering will proceed and a separate case for the crime, for example, of kidnap for ransom is not a bar. If acquittal happens in the predicate offense, I believe it does not automatically mean that the money-laundering offense should be dismissed.

The point being raised by Senator Jaworski earlier is, if in a specific instance the decision of the court in the predicate offense or case is that the individual accused did not commit the offense, what happens to the money-laundering case?

If I may be allowed to respond. Perhaps, during the period of amendments, we can make a particular exception when the ruling of the court in a case that may be filed involving the unlawful activity or the predicate offense is that the accused did not commit the offense. As pointed out earlier, the ruling could be insufficiency of evidence, failure to prosecute and so forth and so on.

In the instance of failure to prosecute or in the instance of proof beyond reasonable doubt was not established, I believe that the case of money laundering can still proceed. Perhaps at the appropriate time, when the ruling of the court is that the accused did not commit the offense, then maybe we can make that as an exception in terms of the money-laundering case also being dismissed.

Senator Jaworski. Anyway, I leave it to the better judgment of this Chamber. I only thought of this subject because it could happen. I am sure that there would be instances when there would be money with no unlawful activity. And what do we do?

Senator Pangilinan. I am sorry, Mr. President.

The President. Maybe Senator Jaworski can repeat the question.

Senator Jaworski. Mr. President, as I said, I leave it to the better judgment of this Chamber. I brought out this subject in the belief that it could happen. This is a reality that can happen.

I am also sure that, if at all, maybe there would be an instance where there would be some money without any unlawful activity that we can find.

Senator Pangilinan. In other words, it came from a legitimate source.

Senator Jaworski. We can never just determine.

Senator Pangilinan. In that case, if we are not able to determine it under the principles of criminal law, if a crime is committed, elements of the crime must be proved so that the person accused will be convicted. If one of the elements is not proved, for example, if there are three elements, only two have been proved and one has not been proved, then acquittal will then ensue.

The President. Just a query from the Chair in relation to the question of Senator Jaworski. The inevitable question that will arise from the answer of Senator Pangilinan is, will the pendency of one case be decided as a prejudicial question to suspend the proceedings in the other? So, can the accused in the anti-money laundering criminal case now move for the suspension of the prosecution of the anti-money laundering case until the prosecution of the predicate offense is terminated and a judgment thereon is rendered?

Senator Pangilinan. I believe, Mr. President, that a prejudicial question and the principles behind the legal term require that one case is a criminal case and the other case, under our *Rules of Court*, is a civil case. If we are to go by our *Rules of Court*, this particular principle will not apply because they are both criminal cases.

Senator Jaworski. I would like to thank the gentleman for his answers.

Let me just go back a bit, Mr. President. Let us say, a John Doe does a drug trafficking in Colombia and then brings the money to the Philippines. Where is the money-laundering crime committed?

Senator Magsaysay. The money-laundering crime could be committed once Mr. John Doe opens an account and there is not enough information. It could trigger a query by the bank.

Is the gentleman referring to a foreign John Doe or a Filipino John Doe?

Senator Jaworski. He is a US citizen.

Senator Magsaysay. Let us say, John Doe is a US national.

Senator Jaworski. Or, let us say, a Filipino but he does that.

Senator Magsaysay. Let us say, he is a Filipino.

Senator Jaworski. Yes, Mr. President.

Senator Magsaysay. He opens an account here in the Philippines.

Senator Jaworski. Yes, Mr. President.

Senator Magsaysay. So, the bank will ask for his name, his address, what is he doing in the Philippines, what is his line of business and decide, based on the threshold and items B and C—whether this is unusual or complex—and make a judgment call based on these three elements.

Senator Jaworski. Its representation.

Senator Magsaysay. Yes, Mr. President.

Now, the crime that he committed in... Is it Colombia? The drug crime.

Senator Jaworski. Yes, Mr. President.

Senator Magsaysay. We do not know anything about that. But when the information, once the threshold is reached and the question becomes suspicious, is brought to the supervising authority—meaning the Bangko Sentral ng Pilipinas or the FIU in this case—and the FIU decides that he got substantial evidence that this could be highly likely laundered money.

Senator Jaworski. Mr. President.

Senator Magsaysay. It is possible that the FIU or the board may ask the Colombian information—because this is a transnational crime, if the gentleman recalls who this person is and where he got these funds. So, that could trigger an investigation.

That is why we have this Financial Intelligence Unit that is working with other banks and institutions in other countries.

Senator Jaworski. Mr. President, it seems to be a reasonable answer. But then this is exactly what I was trying to point out.

The example I cited is indeed monies coming from an unlawful activity. But what happens now if there is just quite a sum that comes in and we start, as we are doing it now, spreading the news that all monies coming in will be questioned by the banking system. Does the gentleman not think that this is going to be a very unwelcome subject?

Senator Magsaysay. Precisely, Mr. President, we are trying to put together these requirements of having an Anti-Money Laundering Law, because that has been set up in many of the countries all over the world. So that if we make a query about this Filipino who got funds from Colombia, there is a provision here

that FIU can ask that Colombian bank. Is he going to bring it here in cash? Maybe he is breaking some customs laws. Or maybe he is breaking some laws from Colombia. Because this is what we call "tracking the assets." This is what we call looking at each process, each step of the way. So in the same vein, if we commit a crime here and ship it to Colombia, they will ask us and we are obligated to give them the information.

So, there could be a crime here because of the deposit and there could be a crime there because of the account having been landed there in this case.

Senator Jaworski. I thank the gentleman for that answer, Mr. President.

Let us go to a case wherein both unlawful activity and money laundering are committed in our jurisdiction. Does the gentleman not think that it would be easier, not only in terms of procedure—since basically the same evidence on the two offenses will be presented before the trial of both offenses—that the trial for both unlawful activity and money laundering be made before the same branch or sala of the regional trial court whenever possible?

I am asking this, Mr. President, because by its nature, money laundering is always dependent upon a predicate offense or the unlawful activity.

Senator Magsaysay. For that matter, the venue is where each case has happened. It could be that the crime was committed in Colombia, but it could be that the money-laundering crime was made in Manila.

Senator Jaworski. Mr. President, that is why I said in cases where both the unlawful activity and the money laundering are committed in our jurisdiction.

Senator Magsaysay. That is already based on what the Department of Justice will put in its rules and regulations because I understand that cases are usually raffled.

Senator Jaworski. Mr. President, I would like to thank the sponsor for his enlightening answers.

Senator Magsaysay. It is my pleasure to answer the very enlightening questions of the distinguished gentleman from Baguio City.

The President. The Majority Leader is recognized.

Senator Flavio. Mr. President, I move that Sen. Vicente C. Sotto III be recognized.

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

Senator Sotto. Mr. President, it is three minutes before three o'clock. I would not mind waiting for the...

The President. We can continue.

Senator Sotto. I would like to thank the Chair then, Mr. President.

Will the distinguished sponsor guide me through the bill, Mr. President?

Senator Magsaysay. Certainly, for being asked by the good gentleman from Quezon City and Cebu City, Cebu Province.

Senator Sotto. Mr. President, I have a series of questions that I would like to be enlightened on and answered. But before that, there is this nagging issue of the bill in my mind—if this bill when enacted into law becomes retroactive or not. Is it retroactive or prospective, Mr. President?

Senator Magsaysay. This is prospective, Mr. President.

Senator Sotto. That means that if Mang Pandoy has P2 million in a bank as of the date this bill is enacted into law, that is not included because this is not retroactive?

Senator Magsaysay. It depends, Mr. President, because this is dynamic process. It could be that the P2 million that Mang Pandoy has in the bank prior to the passage of the law is legitimate. But when the law is implemented, it could be that Mang Pandoy might decide to become more aggressive and commit a crime.

Senator Sotto. I am talking of the P2 million, Mr. President. The P2 million in the bank.

Senator Magsaysay. The P2 million is not covered.

Senator Sotto. Therefore, the P2 million of Mang Pandoy, let us say, on October 1, if this bill becomes a law on October 1, is not included? It need not be reported. It is not included; it cannot be opened by any provision of this bill.

Senator Magsaysay. Yes, it cannot be opened.

Senator Sotto. In other words, the gentleman's initial statement is not accurate, Mr. President, that in the event that he commits a crime or something unlawful or suspected of committing something, that P2 million that is prospective cannot be touched?

Senator Magsaysay. That is correct, Mr. President.

Senator Sotto. Now, what if tomorrow or if after October 1, after the bill is passed, Mang Pandoy deposits P100 into the same account? So the amount now in the bank account is P2,000,100.

Senator Magsaysay. Yes, Mr. President.

Senator Sotto. So, it is now covered?

Senator Magsaysay. What is covered, the P100?

Senator Sotto. No, the P2,000,100 that is now his account after October 1, after this law has already been passed.

Senator Magsaysay. I do not think the gentleman has hit any triggering threshold that is enumerated in the bill.

Senator Sotto. That is exactly what I said. That is the reason I used Mang Pandoy. I do not think he has P2 million, Mr. President.

So what happens now? Right now, they cannot do anything about that. But after the law is passed, what happens? They know that Mang Pandoy is not capable of owning P2 million. They could not ask that before. But now they can ask it already, after this bill is passed, because it becomes P2,000,100?

Senator Magsaysay. Well, this is not covered, Mr. President, because we are looking here at prospective. The P100 that he deposited, which makes his account P2,000,100 still has not triggered any query based on our covered transactions.

Senator Sotto. So, he should not be reported. What if the bank makes a report?

Senator Magsaysay. Well, the bank will be penalized, accountable under the penal provision, Mr. President.

But if the bank report was malicious or false, there are certain penal provisions, including jail term and cash penalties.

Senator Sotto. But after a few days of Mang Pandoy's hogging the headlines already, of being a money launderer.

Senator Magsaysay. There is a provision on confidentiality, Mr. President.

Senator Sotto. I have seen confidential items in the headlines of the newspapers, Mr. President. I cannot accept that answer.

Senator Magsaysay. I can understand, Mr. President.

Senator Sotto. I hope we can formulate some kind of a safeguard later on, during the period of amendments, to address this.

Senator Magsaysay. We are open to such safeguards. I can understand the graphic example that is being given to us by the gentleman.

Senator Sotto. Yes, Mr. President. For the record, I would like to state categorically that I am in favor of the passage of the anti-money laundering bill with proper safeguards that cannot be abused by politicians, by anyone.

Senator Magsaysay. By malicious persons.

Senator Sotto. By malicious persons who would not want a certain personality to be elected President or Vice President or senator. So we have to have these safeguards. It has happened so many times in this country, Mr. President. So, that is only one example.

Senator Pimentel. Mr. President, with the permission of Senator Sotto and Senator Magsaysay.

The President. Sen. Aquilino Q. Pimentel Jr. is recognized.

Senator Pimentel. May I pursue the example presented by Senator Sotto. Here is a deposit of P2 million prior to the passage of this anti-money laundering legislation that we are crafting today. Under all interpretations by the Supreme Court, the law that we pass today will not be retroactive to cover transactions involving, let us say, the P2 million of Mang Pandoy, in the example of Senator Sotto. But what is going to happen when, let us say, after the passage of this bill amounts are added to the P2 million, and subsequently, let us say, after six months Mang Pandoy withdraws P2 million. This is a transaction that happens after the law had been enacted although the amount was, let us say, accumulated in times past before the passage of this law.

Now, it would look as if, Mr. President, the provisions of anti-money laundering would apply because this is an act done after the passage of the law, although parts of the amount were accumulated prior to the passage of this anti-money laundering legislation. That is the question that I would like the sponsor to respond to, Mr. President.

Senator Magsaysay. All right.

Senator Sotto. May I adopt that question likewise, Mr. President.

Senator Magsaysay. I would like to thank the gentleman from Cagayan de Oro.

I would assume, Mr. President, that the role of the bank staff is very, very important. Because the most important among the

elements required of us as a country by the FATF for a bank is that, "You know your customer." That is why this is one of the important factors, "know your customer." Because the bank, the branch manager—and there is usually a supervisor or a teller that Mang Pandoy has known for a few months or a few years—knows that Mang Pandoy really has this business and the deposits, in and out, of P2 million before October 1, and he brings it out because the bank knows its customers.

Precisely, Mr. President, this has been embedded in our banking industry that there are certain private institutions that are undertaking credit and other information checks of not only a Mang Pandoy but even those that have credit cards.

So, anybody that has a credit, whether it is a credit card or a house loan or a business loan or any consumer loan, or buying a car, is already part of that data base.

Senator Sotto. All right, Mr. President. I will lift off from that first. I would like to listen to what the...

The President. Just to pursue the point of the Minority Leader, with the permission of the two gentlemen.

Let us not forget that the crime of money laundering can only proceed from a predicate crime. Not all forms of deposits are subject of the crime of money laundering.

Senator Sotto. But in this particular case, Mr. President, what I am asking now, and what I am focusing on right now is the reporting. It is the reporting.

The President. All right. Even in the reporting. My impression is that the reporting is premised on a suspicion, and there is a substantial basis...

Senator Sotto. No, Mr. President.

The President. No, wait—that there is a substantial basis that a predicate crime has been committed. In other words, if the transaction, if the depositor is not a suspect of any predicate crime...

Senator Sotto. In the bill, Mr. President, it is phrased as "unusually large amount." *Hindi nakalagay iyong sinasabi ninyo.* If we put that in the period of amendments, I will accept. I will not pursue that. But it is not there in the bill right now. What it says in the bill is "unusually large amount."

Now, I will take the answer of the distinguished sponsor first and let us place it this way. All right, the teller or the bank manager knows Mang Pandoy, *kaya* okay, even if he had that P2 million

before. But during that time, he did not have the right to report Mang Pandoy. *Asar pala kay Mang Pandoy itong bank teller na ito, suspicious na pala siya noong araw pa. Wala pang bill noon kaya hindi niya magawa. Ngayon, binigyan natin ng bala iyong bangko. What happens now? It is now allowed, he will now be questioned. He will now be reported. Dati, hindi siya maire-report dahil kilala siya.*

So, what is the safeguard that we can make to address this particular concern, Mr. President?

Senator Magsaysay. There is a provision, Mr. President, on page 9, Section 15 on malicious reporting. This is paragraph (c). If somebody within the bank wants to maliciously...

Senator Sotto. Yes, Mr. President. But penalty, one month, malicious reporting. What if Mang Pandoy wants to become president—

Senator Magsaysay. That has been taken up by the...

Senator Sotto. —and he is filing his certificate of candidacy?

Senator Magsaysay. Yesterday, Senator Lacson mentioned this and we are open to amendments to increase these penalties on malicious reporting, Mr. President.

Senator Sotto. What about the damage that has already been done to Mang Pandoy? They have painted him as a money launderer. An apology is not enough. I do not think he can be elected anymore. I do not think an executive session will work. *[Laughter]* So, may I ask that the committee please...

Senator Magsaysay. We will put the safety provisions, Mr. President.

Senator Sotto. Yes, we would gladly accept that and also the comment earlier of the Senate President.

Senator Angara. Mr. President.

The President. Senator Angara is recognized.

Senator Angara. With the permission of the two distinguished gentlemen. May I offer a possible solution to this? Because I am really worried, like many of us here, that any movement in one's account can trigger off this reporting requirement—

Senator Magsaysay. Yes, Mr. President.

Senator Angara. —and the reporting requirement can

trigger off the CB ordering a freeze. And if that proved to be wrong, the damage is incalculable and beyond repair because the credit standing of that person would have been destroyed and can get publicized. So, it is no consolation that the guy who tipped off will be prosecuted for malicious tipping which looks ridiculous.

So what I suggest, Mr. President, is a clear statement—maybe one section—which clearly states that “Nothing in this law will trigger off the reporting requirement or the action to freeze in the case of any bank transaction that is done in the regular course of business or trade or dealing.” Because many merchants, especially if they are brokers or buy-and-sell realtors, deal in large amounts of money and move these almost daily. Does the gentleman mean that when a bank teller sees that, then he or she will report it already?

The President. No.

Senator Angara. There must be a clear-cut statement that the ordinary course of transaction or banking dealings should not be covered by this law. As the gentleman said, only transactions that can be traced to a predicate crime is covered.

The President. Yes, that is right.

Senator Angara. And that is why it is important to reassure our people that the ordinary course of banking dealings and transactions will not be covered by this.

Senator Magsaysay. That is a very reasonable proposal, Mr. President.

Senator Angara. Will the gentleman accept this?

Senator Magsaysay. And we are open to...

Senator Angara. Accept?

Senator Magsaysay. Yes, Mr. President.

Senator Angara. Thank you, Mr. President.

Senator Magsaysay. Subject to style. It is a very good proposal.

Senator Sotto. All right. With that, Mr. President, I will move on to another point if that will be addressed.

Just for the record, I am sure the distinguished gentleman knows why...

The President. In other words, just to clarify the point of Senator Angara, the reporting will be triggered only on the belief that a predicate crime exists?

Senator Angara. Yes, Mr. President.

The President. Otherwise, there is no money laundering technically.

Senator Sotto. Yes, Mr. President. All right. Now, the gentleman mentioned earlier during the interpellation of Senator Jaworski that there are many countries that have an anti-money laundering law already in place. And earlier, I understand that the Minority Leader, Senator Pimentel, asked how many out of the 189 United Nations country-members have the anti-money laundering law. Did we have the answer there? I do not recall.

Senator Magsaysay. Mr. President, I remember that yesterday, we mentioned that there are 45 countries in the Asia Pacific region. And with regard to the rest, there are certain laws they already have that satisfy the basic requirements against money laundering.

Senator Sotto. So we do not have a specific number, Mr. President?

Senator Magsaysay. We do not have the specific number except the 45 countries which I have a list here in a region.

Senator Sotto. Why do we not ask the secretary of Finance? He is in the hall. Can we have a specific figure? Do they not know?

SUSPENSION OF SESSION

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

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

It was 3:15 p.m.

RESUMPTION OF SESSION

At 3:21 p.m., the session was resumed.

The President. The session is resumed. Senator Sotto is recognized.

Senator Sotto. Mr. President, before the sponsor asked for a suspension of the session, I was asking the data on how many of the 189 member-countries of the United Nations have the anti-money laundering law.

Senator Magsaysay. Yes, Mr. President. As gathered from the BSP staff, the senator is correct that there are 189 countries all over the world. The FATF or the Financial Action Task Force has been putting all the laws of these countries since the beginning to satisfy the 40 requirements and/or the five basic requirements. Right now, 45 countries have passed the anti-money laundering law. Of those countries that have not complied with the requirements of the FATF, there are still 15 countries, including the Philippines, as of June 2001 until now.

Senator Sotto. May I have the records reflected there, Mr. President.

There are 189 United Nations member-countries. Out of the 189, only 45 countries have passed an anti-money laundering law. So there are 144 countries without it.

Senator Magsaysay. The 144 have complied with the basic requirements. That is why they were not listed as non-cooperative countries. That means that of the ...

Senator Sotto. May we know how they complied without passing an anti-money laundering law?

Senator Magsaysay. They have their existing laws and regulations and data gathering. So that means that they complied with the 40 or so recommendations.

Now, when the FATF went through its list of those that have complied as cooperating countries against those that have not, it turned out that the Philippines is one of the 15 countries that have not complied. I think 11 requirements are still needed. That is why we are passing this anti-money laundering law to comply.

Senator Sotto. What the gentleman wants to say is that 144 of these countries need not pass an anti-money laundering law.

Senator Magsaysay. Yes, because they have already complied.

Senator Sotto. Because their existing laws prevent money laundering.

The President. That is correct.

Senator Magsaysay. Yes, Mr. President.

Senator Sotto. Is Switzerland included in the 144 countries?

Senator Magsaysay. Yes, Switzerland is one.

Senator Sotto. So there is no money laundering in Switzerland, Mr. President?

Senator Magsaysay. Well, there might be money laundering, but if discovered, it is a crime.

Senator Sotto. May I know the update on the Marcos wealth in Switzerland, Mr. President?

Senator Magsaysay. We have no information about that now, Mr. President.

Senator Sotto. Well, that is my problem, Mr. President. Although I am very much in favor of passing an anti-money laundering law right away as a matter of fact, we cannot craft a law on speculation. So I hope that by the time the period of amendments comes... As agreed upon with the Senate President that we try to accommodate all these right away so that we can go to the period of amendments, I hope that the distinguished gentleman and the staff that backed him up, the people from the Bangko-Sentral will be able to also give us information on all these issues we are raising, Mr. President.

I need not belabor that. I do not think I am going to get an answer on that point then. So let me just continue.

So 45 countries have passed this law.

What has been the experience of the Philippines with these countries that have passed a similar law already or an anti-money laundering law? Have we had requests for investigation, or received requests for investigation, prosecution, extradition? Have we been given due course or have these elements been given due course already in relation to these countries that have already passed an anti-money laundering law?

Senator Magsaysay. Well, there must have been some requests that were forthcoming towards our shores, Mr. President. But please take note here that we are considered a non-cooperative country, and on the basis that we do not have the law in place yet, we have no record on the subject of money laundering or on extradition or on other crimes.

Senator Sotto. Therefore, Mr. President, we have not benefited substantially because of the anti-money laundering laws from other countries?

Senator Magsaysay. That is correct, Mr. President.

Senator Sotto. Then I need not ask for examples because we have not benefited from their laws that they have passed.

Senator Magsaysay. One of the elements here is that we have a Mutual Assistance Program with other states or other countries.

Senator Sotto. Yes, but we have not been able to recover any, let us say, ill-gotten wealth stashed in any foreign country that have anti-money laundering laws, *ano? Wala pa?*

Senator Magsaysay. Not yet. It is not yet an offense here, it is not yet a crime here until we pass the law.

Senator Sotto. Mr. President, I am a little lost there because of the lack of examples. So let me just focus on a point that was earlier raised by...well, not exactly.

Senator Cayetano yesterday concentrated his interpellation on banks which are under the supervision and regulation of the BSP. Today, Mr. President, I would like to ask some clarificatory questions regarding other entities and institutions supervised and regulated by the entities or the agencies enumerated here, like DTI, Pagcor, the Insurance Commission (IC) and the SEC. DTI is included in the list of covered institutions. Does this mean that all sole proprietorships which are supervised and regulated by the DTI are required also to make reports?

Senator Magsaysay. That is correct.

Senator Sotto. If there is suspicion. Again, with the line of the Senate President if there is a suspicion that a crime has been committed, a predicate crime has been committed.

Senator Magsaysay. On the activities that are pertinent to what DTI is supervising, Mr. President.

Senator Sotto. But on suspicion. In other words, all sole proprietorships must be reported also.

Senator Magsaysay. It must fall within the covered transactions, Mr. President.

Senator Sotto. Yes, and they must be reported. May we know how many sole proprietorships are registered with the DTI at present?

Senator Magsaysay. We do not have that data right now, Mr. President.

Senator Sotto. May we have the data while we go through the... Maybe we can ask somebody to get in touch with the DTI.

Senator Magsaysay. We will do that, Mr. President.

Senator Sotto. So what other entities are regulated and supervised by the DTI, Mr. President?

Senator Magsaysay. Under the DTI is the Board of Investments. In ways, they are looking over the foreign and local

investors as to incentives. And we have other agencies like the CITEM. This is the agency which conducts exhibits basically on Philippine-made products locally and to other countries. So they have their own data base of business entities other than sole proprietors and will certainly cover a large part of that kind of information needed.

Senator Sotto. All right, Mr. President. I hope I can be enlightened in the ensuing...

Senator Magsaysay. NDC is also under the DTI and it has a lot of assets.

Senator Sotto. BOI.

Senator Magsaysay. BOI, yes, TLRC, Livecorp, SBGFC, GFSME and Government Finance Small Guarantee Funds for Small and Medium Enterprise are being supervised.

Senator Sotto. So by including these under institutions in the definition, even government can be guilty of money laundering.

Senator Magsaysay. Yes, indeed, Mr. President. That is why the gentleman from Makati made mention specifically during our meeting a week or so ago that we delete the exemptions of government departments and agencies. So even PEZA, even export zones, public and private, are covered by this.

Senator Sotto. *Wala nang makakilos dito.*

The President. Let the Chair again intervene because I am concerned about the scope of entities that will be reporting under that premise.

Senator Sotto. Indeed, Mr. President. *[Laughter]*

The President. Again, we must emphasize that the reporting will only be done where there is a reasonable basis to believe and there is substantial evidence to show that a predicate crime has been committed. Otherwise, if we require all of these hundreds of thousands of entities under these various agencies to make a report on every transaction done, the FIU will be as big as this government bureaucracy. I do not think that is the intention.

Senator Sotto. Yes, Mr. President.

The President. The intention is to deter money laundering, and money laundering is based on certain predicate crimes. Therefore, the reporting requirement should be based on these predicate crimes rather than on a general requirement that everything must be reported. That is the view of the Chair, subject of course to the view of the Chamber as a whole.

Senator Sotto. Well, I agree with the view of the Chair. But my problem again, Mr. President, is, it is not in the bill.

The President. No, the period of amendments should handle it.

Senator Sotto. That is why. *[Laughter]*

Senator Lacson. Mr. President, point of clarification.

The President. With the permission of the gentlemen on the floor, may I recognize Senator Lacson?

Senator Lacson. Thank you, Mr. President. What level of suspicion on the commission of a predicate crime would trigger an investigation of a money-laundering activity, probable cause or mere suspicion, mere investigation? At what level, Mr. President?

Senator Magsaysay. As mentioned here, it is substantial evidence, Mr. President.

Senator Lacson. What do we mean by substantial evidence? Because there are certain levels, Mr. President.

The President. Can the cosponsor help on that? That is technical legal definition under the law of substantial evidence.

Senator Magsaysay. Well, I have the definition here.

The President. The gentleman has it. All right. I am sorry.

Senator Magsaysay. Maybe the cosponsor can help out here afterwards. It says here, Mr. President, that "substantial evidence is evidence possessing something of substance and relevant consequence and which furnishes substantial basis of fact from which issues tendered can be reasonably solved. Evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance." Just a shade below preponderance.

Senator Lacson. Mr. President, who determines substantial evidence? The prosecutor, the judge, the FIU, the investigator?

Senator Magsaysay. The reportorial is triggered by those covered transactions.

Senator Sotto. The bank teller, Mr. President. He will determine the substantial evidence.

Senator Magsaysay. It could be the bank teller reporting to his branch manager.

Senator Sotto. *Naku po, Diyos ko!*

SUSPENSION OF SESSION

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

It was 3:36 p.m.

RESUMPTION OF SESSION

At 3:51 p.m., the session was resumed.

The President. The session is resumed.

Senator Pimentel. Mr. President.

The President. With the permission of the gentlemen on the floor, the Minority Leader is recognized.

Senator Pimentel. Thank you, Mr. President.

May I help clarify that? Shortly before we broke for one minute, the issue being discussed was on the reporting requirement, Mr. President. There are several sub-issues connected with the principal issue on reporting. For example, who makes the report; when will the report be made; and the basis for making the report. I think we can divide the issues along these categories so that we can respond more adequately to the concerns that have been raised.

On the first issue of who makes the report, Mr. President, my humble suggestion is that a responsible bank officer will have to do the reporting, not just any teller, not just any employee of the bank, so that there is a sense of responsibility attached to the reporting requirement. The responsible bank officer could be the CEO—I do not know who else is considered a bank officer.

By the way, Mr. President, the term “bank officer” is already defined by law. So we can probably settle for that—that it has to be a responsible bank officer.

The President. How about if it is a non-banking institution?

Senator Pimentel. The responsible officer of that institution which is the subject matter of the reporting requirement, Mr. President.

The second issue that I want to tackle would be the basis, Mr. President. I think it is important that we remember the rationale for the enactment of the anti-money laundering legislation from the beginning when this was enacted in several places including the

United States. The reason is always based on narcotics-related offenses. Therefore, the more we broaden the list of the so-called predicate crimes, the more complicated the situation becomes. Probably it is better that we settle and agree among ourselves that we will only use narcotics-based offenses as predicate crimes for our purposes. Of course, this is just a rough suggestion.

The President. Before the gentleman leaves the reporting requirement, with the permission of Senator Pimentel.

Senator Pimentel. Yes, Mr. President.

The President. May I draw the gentleman’s attention to page 6 of the working draft, which pertains to Section 8, paragraph (c) and this concerns Reporting of Covered Transactions.

Senator Pimentel. Yes, Mr. President.

The President. Apparently, the intention is to report only covered transactions and, therefore, only where there is a reasonable basis to believe that there is a predicate crime, otherwise, there is no covered transaction.

Maybe we can elaborate on the phrase “when applicable” to make it clearer and, therefore, use this as the principal premise.

Sen. Sergio R. Osmeña III is raising his hand.

Senator Pimentel. May I just respond very briefly to this point, Senator Osmeña.

There is basis for the Senate President’s suggestion, except for the fact that I am bothered by the thought that somebody, a bank officer of an institution, who is covered by this enactment, would have to determine the legal basis for... “*Kasali kaya ito sa law na ito o hindi? Covered ba ito o hindi?*”

I do not think that we should saddle them with that kind of a responsibility which should be the function of the legal unit that is in charge of enforcement of this legislation. And probably what can be done is, we just define what kind of amounts are covered by the law. In the words of Senator Angara, there was not even any limit at all to the amount that is transacted but suspicious because the term “suspicious” can be determined even by nonlawyers. But when we talk of legal basis, I do not think that nonlawyers should be saddled by that requirement.

Just a rough thought, Mr. President. Thank you.

The President. With the permission of the gentleman on the floor, the Chair recognizes Sen. Sergio R. Osmeña III.

Senator Osmeña III. Thank you, Mr. President. I just wanted to clarify because earlier I heard the gentleman say that covered transactions will only encompass those deposits that have been decided by whoever is accepting the deposit to be subject to suspicion under the proposed law. Am I correct?

I thought, Mr. President, that any deposit, P1 million and above, is a covered transaction.

Senator Sotto. Mr. President, that is what is in the bill.

Senator Osmeña III. That is why, that is what is in the bill. I do not know if I heard wrong that the Presiding Officer said so.

The President. That is not clear to me. My impression is that the reporting requirement will be triggered if there is a suspicion that there is money laundered and that the money laundered is premised on a predicate crime. I may be wrong in my interpretation.

Senator Sotto. Mr. President, I like the gentleman's interpretation but that is not what is written on page 2, letter (b) of the definition of "Covered Transaction."

This specific provision triggered my questions, the questions on the DTI and we will go next to the Insurance Commission dahil *marami ring covered diyam* and then, SEC and Pagcor. *Damay lahat.* Anything P1 million and above because these are included in the covered institutions and covered transactions.

The President. May we continue.

Senator Sotto. May we have the answer to the question.

Senator Magsaysay. May the gentleman repeat his question.

Senator Sotto. I just gave my comment concerning the issue of who is going to report with regard to what the Senate President and Senator Osmeña said. But, I think, right now, on the floor, Mr. President, is the question of Senator Lacson when he interjected my question to Senator Magsaysay. He wanted to know who determines, what are the standards, what is the definition of "substantial evidence," and where did that definition come from.

Senator Magsaysay. Mr. President, may I set the example of what is happening in the United States where the law started. There is a compliance officer in each bank and that compliance officer has the responsibility. He could be the branch manager or another person. But he is the one who is trained, who is learned about the provisions of the law and the requirements of the FIU. He is responsible.

I think the Minority Leader pointed out that this can be included so that there is somebody responsible. That is the important thing—responsible and accountable.

Senator Sotto. Yes, Mr. President. That is acceptable as an example because the gentleman is using the bank as an example.

Now, I have focused the issue on the DTI. There is no bank teller there. We are talking of salespeople. If a person buys P1 million worth of merchandise from a store which is a sole proprietorship under the DTI, under the bill it is classified. Is the store required to make a report on this transaction? If the person that bought P1 million worth of merchandise is, let us say, suspected of being a grafter and a corruptor in the government or connected with a government official or a relative of a government official...

Senator Magsaysay. As long as we have a responsible authority.

Senator Sotto. Who is the responsible authority? Then we go back to the question of Senator Lacson. *Doon sa tindahan, sino ngayon ang responsible authority, iyong tindera?*

Senator Magsaysay. It could be the manager of the department store.

Senator Sotto. It could be, but what is in the bill? That is what we want to know and what we want to put in the bill.

Senator Magsaysay. I think that can be covered by the implementing rules and regulations, Mr. President.

Senator Sotto. That is too vague, Mr. President. As I said, we cannot pass a law such as this that will spell a very big difference in the Philippine economy at present.

The President. With the permission of the two gentlemen, the Chair recognizes Senator Angara.

Senator Angara. Thank you, Mr. President.

Mr. President, the examples being cited by Senator Sotto illustrate and emphasize how ridiculous this law is because of the very broad coverage of the covered institution.

Mr. President, I think the common-sense solution to that is, just to limit the covered institutions to banks and to entities that will open a bank. That is why we are saying in the end that we must just limit it to banks, to insurance companies as well as SEC-registered companies. Because when we start adding Pagcor and DTI, then we come to that ridiculous extent that Senator Sotto is

saying. So that Senator Magsaysay, the sponsor, need not say that it is the department store owner or the department manager who will now certify and trigger the report. That sounds ridiculous.

Senator Magsaysay. I accept the difficulty, the bureaucratic nightmare of including ordinary stores or retail.

So, we have no objection if somebody will come forward in the period of amendments to remove the DTI. We do not mind removing the DTI as among those supervising authorities.

Senator Sotto. Covered institutions. In that case, I will terminate my questions on the DTI.

What about the Insurance Commission. Does the gentleman want to maintain that?

Senator Magsaysay. That is a large financial sector and should be maintained, Mr. President.

Senator Sotto. All right. Just a little enlightenment on this.

Mr. President, if someone buys an insurance plan of P1 million, is the insurance company required to report this transaction if there is a suspicion? Under what circumstances will this be reported?

Senator Magsaysay. If the P1 million insurance premium is transacted, I am sure the insurance company will have a data base on this person. Meaning, how can we pay a premium of P1 million a year? He must be earning at least P20 million a year, or his corporation is paying for it.

So, I do not think that is covered, unless a person who has no business record or income record comes in and pays P1 million and later on gets a rebate.

The President. With the permission of Sen. Vicente C. Sotto.

Senator Sotto. Yes, Mr. President.

The President. Is it not the concept of insurance companies to monitor investment in insurance companies just like the SEC where one monitors investment in companies? Would purchase of insurance policies be covered by reporting the requirement?

Senator Sotto. That is what I want to know, Mr. President.

The President. The premium on a P1-million loan may only be a few hundred pesos.

Senator Sotto. No. But a P1 million...

The President. So that I thought the concept here was to monitor investment in insurance companies which may be used as a laundering machine.

Senator Magsaysay. This is a P1 million premium actually, Mr. President.

Senator Sotto. The example I used was an insurance... Well, it can go both ways. As I said, the insurance plan of P1 million investment. I am not being naughty, Mr. President. I probably mispronounced a word or two. I mean, the premium of P1 million.

Yes, I will accept that, Mr. President. But what happens if it is indeed P1 million premium staggered P100,000 over one year. Covered *ba iyan or hindi*?

Senator Magsaysay. It depends. If it is not suspicious... it is not covered. Because it could be that his corporation is paying for the premium of, let us say, P100,000 a month. And it is commensurate to his status as a CEO. So it is not covered because there is nothing suspicious about it.

Senator Sotto. All right. Now, Mr. President, with regard to Pagcor, is the gentleman willing to delete Pagcor also? Because there are many entities and institutions supervised and regulated by Pagcor—casinos, lotto. Is horse racing or cockfighting also included?

Senator Magsaysay. I understand from the BSP officials that they would prefer the Pagcor to be still covered. Because casinos are usually conduits of potentially laundered money.

The President. With the permission of the two gentlemen, the Chair recognizes Sen. Joker P. Arroyo.

Senator Arroyo. Just an observation. I lament the statement of Senator Magsaysay that it is the wish of the BSP. What we should think is our wish now, not the BSP, not anyone. That is the thing that makes our debates complicated. What do we think? Is the BSP trying to...

Senator Magsaysay. Well, may I say something, Mr. President?

Senator Arroyo. Thank you, Mr. President.

Senator Magsaysay. May I take note here that the BSP will be the entity with the Monetary Board to be administering this. And we work on the framework of the BSP-BAP version. So when I pointed out that the BSP's preference is Pagcor, I would assume that it has studied this very well, it has the information and the statistics. And this is its wish. What is wrong with that?

Senator Sotto. Mr. President.

The President. All right, the views are noted. We continue with the debate.

Senator Sotto. Yes. Indeed, I am having... Well, I am equally sad, Mr. President. I am having difficulty because...

SUSPENSION OF SESSION

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

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

It was 4:09 p.m.

RESUMPTION OF SESSION

At 4:11 p.m., the session was resumed.

The President. The session is resumed. Senator Magsaysay is recognized.

Senator Magsaysay. Thank you, Mr. President.

The President. All right, we proceed. Senator Sotto is recognized.

Senator Sotto. Just one final item on the Pagcor, Mr. President. As I said, I am having difficulty because we are talking of money laundering. In my mind, it is always drug-trafficking. That is the No. 1 problem of money laundering. I might be too naive, but I do not see other forms *na makakarating sa Pagcor kundi* drug-trafficking lamang. So, I do not know if all the other entities and institutions under the Pagcor should be included. Is cockfighting also under Pagcor? Yes? No, only casinos and lottos. And the bingo. What do we mean by P1 million here as far as Pagcor is concerned, betting or winning?

Senator Magsaysay. Bingo is...

Senator Sotto. Betting or winning? Betting.

Senator Magsaysay. Yes, Mr. President.

Senator Sotto. So, not just any transaction.

Because winning is included, *pagsinabina* transactions, Mr. President. Maybe the sponsor would accept a proposed amendment that we exclude Pagcor—

Senator Magsaysay. We are willing to-

Senator Sotto. —in the covered institutions.

Senator Magsaysay. —seriously consider the gentleman's proposal to remove Pagcor, Mr. President.

Senator Sotto. Mr. President, I have also serious reservations and questions on the SEC, but I am not an expert on this so I would leave it to the other members who are going to ask questions on this. I think Senator Angara would be asking points on the coverage of SEC.

Now, on the P1 million floor, what is the basis for setting in excess of P1 million, as quoted from the bill, under Covered Transactions, Mr. President?

Senator Magsaysay. Mr. President, this came about when the inter-agency task force, to put together this measure, looked at the other countries' own laws. And we noticed in the Asia Pacific area, many of the countries have no threshold or floor, as the gentleman mentioned. However, in the United States, the threshold is \$10,000 and above. However, some of our coauthors wanted it a little higher. Senator Flavier was for P2 million or US\$20,000. And the House, which we have worked with, also favored P1 million. Now in Canada, it is about 14,999 Canadian dollars. In Singapore there is no threshold.

Senator Sotto. I think the threshold in Canada is 10,000 Canadian dollars.

Senator Magsaysay. It is 14,999 Canadian dollars. I think, it is about US\$10,000.

Senator Sotto. All right.

Senator Magsaysay. In Thailand, the threshold may be determined by the finance minister regulator. In order that our ordinary depositors will not feel threatened or be concerned, the PDIC or the Philippine Deposit Insurance Corporation has the statistics that out of 20 million bank depositors, both in the commercial and thrift banks of almost 20 million, only about seven percent have the average account of P200,000 and above. Meaning, 95 percent of our 20 million Filipino depositors have an average account of less than P200,000. So, we are talking about a bill that will at most cover, based on threshold, maybe not even three percent of the bank population. The other 97 percent would be effectively below P1 million.

Senator Sotto. Yes, the value. How much of that three percent represents the total?

Senator Magsaysay. Roughly about half a million. This includes corporations and other organizations. So there are 20 million deposits for the banking system and the thrift banks. And about three percent have a monthly average balance of a million pesos and over. In terms of value, of course, that will even be maybe 80 percent because this includes businesses. But the ordinary Filipino depositors are not affected because most of them or 93 percent have P200,000 and below.

Senator Sotto. Mr. President, the...

The President. With the permission of the gentleman on the floor, Senator Angara is recognized.

Senator Angara. Yes, this threshold question, Mr. President, is very critical. As I understand it, the US and Canadian threshold of US\$10,000 in the case of US and 14,000 Canadian dollar in the case of Canada is only for reporting purposes. But under our scheme, we put the threshold under covered transaction that immediately puts that particular account under suspicion. That is why when we amend this law, we should put that threshold if we decide to put a threshold not under the definition of "covered transaction" but under the reporting requirement.

The President. And is it not that in those jurisdictions, the minimum amount referred to would pertain to cash?

Senator Angara. Yes, Mr. President.

The President. Not a check. In other words, if it is a check...

Senator Angara. Not any other instrument.

The President. Not any other instrument.

Senator Angara. Yes, Mr. President.

The President. If it is a cash, then that is reported.

Senator Angara. Yes. And the fact that one deposited or withdrew US\$10,000, Mr. President, will only trigger a form, a banking reporting form. That is all. It does not mean that it will trigger off the entry of the Federal Bank or the State or currency officer and start looking at one's account. But our law or at least our proposed bill gives that very clear impression. That from now on, the all-powerful Bangko Sentral will be looking over each and every account above P1 million. That will cover practically, as the distinguished sponsor says, 80 percent of the money in our banking system.

Senator Sotto. Yes, Mr. President, I agree. We should look at not just the number of depositors, but the number of transactions.

We must have at least a ballpark figure on how many transactions are done on a daily basis that exceed P1 million. Do we have that, Mr. President?

Senator Magsaysay. I appreciate the observation of the gentleman from Aurora and Quezon Province, and also of Senator Sotto.

If we look at page 2 (b) on the "Covered Transaction," it states here that "Covered Transaction may be any single, series or combination of the following;" and then we have the P1 million. But as Senator Angara said, if it is part of the ordinary business of the entity, there is no suspicion about it. But if there is no credible purpose or origin underlying trade obligation, contract or economic justification, or if there is unusually complex or large transactions, I think the key phrase is "unusually complex." That is where the judgment of the compliance officer or the branch manager or the responsible individual will come in. But we are open to amendments, Mr. President.

Senator Sotto. All right. If that is then the most important one, (3)(b) of Section 3, paragraph (b), then let us leave it at that because Section 2 which the sponsor mentioned also under "Covered Transaction" is one that has, and I quote: "no credible purpose or origin, underlying trade obligation, contract or economic justification." To my mind, this includes transactions involving amounts less than P1 million. It could only be P10,000. If the bank thinks that a person has no credible purpose for depositing, transferring, or withdrawing this amount, then the bank is required to report it.

Senator Arroyo. Mr. President.

The President. With the permission of the two gentlemen on the floor, Sen. Joker P. Arroyo is recognized.

Senator Arroyo. Mr. President, perhaps I could help in this issue. I am going to quote the Review of FATF Anti-Money Laundering Systems and Mutual Evaluation Procedures 1992-1999. I will quote directly.

61. As can be seen in Table 3 across, which I will read later,

with the exception of the lower limit set by France, the cash threshold for identification of non-permanent customers has been fixed by European FATF members at amounts between USD10,000 - 15,000. The amounts outside of Europe vary markedly between the low limit set in New Zealand and the very high amount in Japan. Only Hong Kong, China has left it to each financial institution to determine whether the cash transaction is a "large" one. In most members, the identification

requirement is for all large transactions conducted by a non-customer, but in some it is restricted to cash transactions. Though recognizing that the use of cash in different members does vary, it would seem desirable that there be a greater uniformity in identification amount. In particular, the amount in Japan was noted as being too high, while Hong Kong, China should consider fixing an amount so as to create consistency in the application of this measure.

Mr. President, what we could gather from this is that this is used for identification, the cash threshold for identification of non-permanent customers. In other words, these are for people who go to the bank and these amounts are used for non-permanent customers, and it reads: "Turkey, USD4,000; New Zealand, USD5,000; Australia, Canada, USD7,000; France, USD8,000; Belgium, Italy, United States, USD10,000; The Kingdom of Netherlands, USD11,000; Ireland, Norway, Portugal, Singapore, USD12,000; Luxembourg, Sweden, USD13,000; Austria, Denmark, Finland, Germany, Greece, Iceland, Spain, Switzerland, United Kingdom, USD15,000; Japan, USD300,000; Hong Kong, China, no limit defined."

I do not know who was the gentleman who said here that we are now using the amount as the red flag which should not be the case. I think it was Senator Angara, I do not know, or Senator Pimentel.

The President. It was Senator Angara.

Senator Arroyo. All right. That when we deposit "x" amount whether in cheque or whatever, that is the red flag. That is not the nature of this.

What is being explained here is that when one deposits money or cash in the bank, there seems to be some presumption: "Why are you carrying cash?" That is the reason for the cash-threshold requirement because cash in these days raises the question: "Why is a person taking along with him cash?"

Now, perhaps, we should avoid using the amount as the red flag because that is not the intention even of the FATF. Banks know exactly their customers, their depositors. They know them. So when there is an unusual amount, that is the time the banks will say, considering the history of the account, "This is unusually big amount." That is where the red flag is raised. Because if San Miguel deposits—I do not know how many millions a day—how can we now use that threshold? Or a rich man deposits. But if we use this as a red flag, an amount, a fixed amount, I think it will throw a monkey wrench in our banking system.

Imagine, when a deposit is made, it is the judgment of the bank

to report to the agency and say, "Well, there is an unusual deposit." Then there is a freeze. When there is a freeze order and a check is drawn against that checking account and then the check bounces, what happens? I think we should guard against that because in our desire to get this bill through, we are creating more problems than what we are solving. As the saying goes, "Let us not burn the house just to catch a mouse," because there are very few money launderers. I think by and large, our depositors are honest people. Let us not taint the good ones with the bad ones.

I just added this, Mr. President, to help enlighten, as an aid.

Senator Angara. Mr. President.

The President. Senator Angara is recognized with the permission of the gentlemen.

Senator Angara. With the permission of the gentlemen, and with the permission of Senator Arroyo now that he has taken the floor, may I ask him further questions, Mr. President? I think he has hit the nail on the head.

Senator Arroyo. I am being used by the Minority now but I will oblige.

Senator Sotto. I have no objection, Mr. President.

The President. All right. Will the gentleman yield the floor temporarily to the two gentlemen including the sponsor?

Senator Angara. Yes. Our conceptual problems and difficulties, Mr. President, arise because of the very broad definition of "covered institution" and "covered transaction." That is why if I may just propose, based on what Senator Arroyo just read to us—and I want to get his reaction—if we can revise the definition of "covered transaction" this way, in lieu of the original definition, we will just simply say, "Covered transaction refers to a series"—I am removing the "single"—"or combination or a pattern of unusually complex or large cash transactions of a non-permanent depositor, having no credible purpose or origin or underlying trade obligation or contract." No threshold.

Senator Arroyo. That is a beautiful suggestion.

Senator Angara. But the description of that account holder is very clear and the kind of operation he is doing in his account is also very clear: cash, large, unusual, and he is not a permanent depositor. He is a casual friend of the bank. So it fits even the definition of the sponsor that every bank should know its customer.

Senator Arroyo. I will agree with the observation of Senator Angara, and in fact, I may add that the question of a potential money launderer should be addressed to the bank because they know the depositors.

So, if a bank, for instance, reviewing the account finds an unusual activity of big amounts, that is the red flag. We do not need outside forces or outside intervention to raise the red flag because it is not to the interest of the bank that they should have a money launderer in their midst. I mean, let it be the judgment of the bank so that we do not get entangled in this bill over which we have absolutely no experience.

Senator Angara. Well, thank you, Mr. President. I think I have clarified it.

Senator Arroyo. Thank you, Mr. President.

The President. What is the pleasure of Senator Cayetano?

Senator Cayetano. With the permission of the sponsors, may I ask my good *kumpare*, Senator Angara just one question. Because the proposed...

The President. We might lose track of who is the sponsor of this measure. [Laughter]

Senator Cayetano. No, no, no, I have asked the permission of the sponsor.

The President. Okay, yes, if Senator Angara will yield.

Senator Angara. With great pleasure, with utter pleasure, Mr. President.

Senator Cayetano. The proposal, although it has not been submitted formally as an amendment because we have not reached that point yet, sounds rather reasonable except for one word or phrase--"large amount." That is something we may have to spell out because what may be large to a particular bank may not exactly be large to a smaller bank. So beyond that—I just want to point out--maybe we can spell out later on at the proper time what is the meaning of the phrase, "large amount."

That is all I wanted to point out.

Senator Angara. Fair comment, Mr. President.

Senator Arroyo. Mr. President.

The President. May we recognize Senator Angara first?

Senator Angara. A quick response, a fair comment, Mr. President, except that in my draft I followed the original wording--"unusually large."

Senator Cayetano. Because, Mr. President, the amount covered now under the proposed bill is in excess of P1 million.

Senator Angara. No, I am going to remove that threshold.

Senator Cayetano. Yes. So the gentleman will not put a figure?

Senator Angara. No, I will not put a figure.

Senator Cayetano. Yes, I understood that. I understood it precisely, and that is why I am asking if the gentleman from Aurora, Quezon, and the Philippines would like to tell us at this point in time what really is the figure we are looking at, because "large amounts" is a very subjective term. As we all know, a P500,000.00 to a savings bank could be a large amount but to a huge bank like Metrobank, RCBC, and so on, we know it is a smaller amount.

The President. May the Chair intervene. Can we have those discussions when in fact the amendment is introduced?

Senator Cayetano. No, no, that is what I want to point out.

The President. Yes, so if the amendment is introduced and the same is accepted or not accepted by the committee, that is when this detail could be discussed, if the gentleman on the floor...

Senator Cayetano. I have no particular problem. I just want to point that out. While I feel that the proposal of the gentleman from Aurora and Quezon appears to me to be very reasonable, I just want to point out that particular problem. I thank Senator Angara, Mr. President.

Senator Arroyo. Mr. President.

The President. Yes, Senator Arroyo is recognized.

Senator Arroyo. I just want to point out these things. In Hong Kong, there is no limit for cash transaction. In other words, anyone can bring a bagful of money there and as far as they are concerned they will take it. No questions asked, no limit defined. FATF says that Hong Kong should consider fixing an amount so as to create consistency in the application of this measure. But as of now, Hong Kong has no limit.

Senator Angara. And China.

Senator Arroyo. China. There are no sanctions on them. As a matter of fact, Hong Kong is a member of FATF.

The President. The president is from Hong Kong.

Senator Arroyo. And as the Senate President said, the FATF president is a narcotics expert.

The President. Narcotics commissioner. *[Laughter]*

All right. We go back to the sponsor who had the floor. Yes, Senator Magsaysay is recognized.

Senator Magsaysay. These are very important inputs from our sage senators, Mr. President, and these will guide the sponsor and the other sponsor, Senator Pangilinan, in crafting a better measure during the period of amendments.

We have no objection if the Senate as a whole will adopt no threshold. But may I point out here that the P1 million was arrived at in order to lessen the cost of the bureaucratic expenses.

In the United States, the threshold of \$10,000... There are 13 million reportorials a month. We are not looking at investigation, just reportorial. Can we imagine if we lift the threshold and make it wide open and the condition that it is unusual or complex kicks in? An ordinary Filipino who has an average deposit of maybe P5,000, P10,000, P15,000 a month suddenly puts in P300,000, that becomes unusual and he is dogged.

That is why we were limiting it to P1 million and up so that this is a framework of saying that 95 percent will not be bothered. But still if that part of the covered transaction—meaning No. 2—says no credible purpose or origin, they can still go after him. But the fact that the nightmare of reportorial, bureaucracy and red tape will bear the cost, who will bear the cost? Is it the government again or the banking sector? We are putting P1 million and up because these are big crimes we are looking at.

In fact, we have already reduced the number of crimes from 21 to 17, and now only five. We might even remove two more and come out only with kidnapping for ransom or narcotics-related and maybe Anti-Graft and Corrupt Practices Act and nothing more, nothing less. We are further reducing this, Mr. President.

The President. All right.

Senator Sotto. Mr. President, I still hope that when the period of amendments comes, the proposal of Senator Angara will be supported by the Chamber because in that case I will definitely do away with most of my questions concerning this. I will actually be jumping two pages from this so that I hope we can go to that.

Just one last item on the reportorial. Does this bill make the failure to report a covered transaction a crime, with or without that proposed amendment?

Senator Magsaysay. Yes, failure to report a covered transaction is a crime.

Senator Sotto. So this bill makes the failure to report a covered transaction a crime.

Senator Magsaysay. I beg pardon?

Senator Sotto. It is a crime not to report. Failure to report.

Senator Magsaysay. Yes, Mr. President.

Senator Sotto. All right. Then we must be very careful on the vagueness and the subjectivity of what constitutes a covered transaction. All the more I would like to support the proposed amendment earlier because under the bill, the prudent rule of thumb would be, in case of doubt, report the transaction to the Central Bank or the financial...

Senator Magsaysay. It looks that way. That is why we have a responsible officer. That is his responsibility.

Senator Sotto. Again, can we imagine how many reports the FIU will be receiving on a daily basis because of that if we keep this vague and subjective, Mr. President.

Senator Magsaysay. We were trying to find out from some authorities how many transactions of P1 million up or US\$20,000 are happening in our banking system currently on a monthly basis. We still have not come up with the figures. But as I mentioned earlier, in the US, it is US\$13 million a month. I have read that the cost is quite horrendous.

Senator Sotto. Yes. Then we should learn from that, Mr. President.

Senator Magsaysay. That is correct, Mr. President.

Senator Sotto. Still we should be concerned about the five percent even if we say that 95 percent will not be bothered. The five percent who might be bothered are the ones who run the economy. If I may borrow the former senator's, now vice president, term about certain personalities and people in a certain gathering at EDSA before, it is "quality and not quantity." It applies to this, Mr. President.

Senator Magsaysay. Yes, Mr. President.

Senator Sotto. Mr. President, in this connection, what degree of diligence are we requiring on everyone who may face a situation of having to determine whether a transaction has to be reported or not?

Senator Magsaysay. The diligence of good judgment, the diligence of what the measure states, that is unusual, that is suspicious. Of course, his knowledge of the customer. It is basically on the basis of "know your customer." That is always the frame of reference that this anti-money laundering law is working around. It is the sound judgment with the covered transaction provision.

Senator Sotto. Is the diligence of being a good father of the family a defense? Because in law, that is the...

Senator Magsaysay. It could be a good value to start with. Yes, that is very true, Mr. President.

Senator Sotto. I will no longer go to the other questions because I am glad that the distinguished gentleman is willing to accept the amendments as far as the DTI and the Pagcor are concerned.

Just one last item, Mr. President. On the freezing. Please walk me through again on the freezing. The timetable of the freezing of the account. What triggers the freezing and then the proposed time is what? Is it five days? The automatic freezing.

Senator Magsaysay. It is 20 days.

Senator Sotto. Will the distinguished gentleman please help me again?

Senator Magsaysay. Let us say there is an account that is covered by the covered transaction. One million or up and then it is unusual, it is complex, it is suspicious-looking, and there is reasonable evidence because the account holder is known to the bank, to the branch manager. So, there is a triggering of informing the supervising authority. In case it is a corporation, it goes to the SEC. In case it is an individual, it goes to the FIU, what used to be called "the council." It is now called the Financial Intelligence Unit.

Senator Sotto. Investigating Unit.

Senator Magsaysay. Intelligence.

Senator Sotto. Intelligence? Is it not Investigating Unit?

Senator Magsaysay. Not yet. Intelligence. Reportorial first.

Senator Sotto. Financial Intelligence Unit. So, the report goes there.

Senator Magsaysay. The report goes there and the FIU will determine, get the evidence and if there is substantial evidence of money laundering, it submits this actual account to

the Monetary Board where the seven-member Monetary Board will analyze, evaluate and vote whether there is such a substantial evidence.

Senator Sotto. And if they find that there is? They think, under their belief and their opinion.

Senator Magsaysay. Yes. The board can freeze the account.

Senator Sotto. And we cannot take away the human factor here.

Senator Magsaysay. Yes, Mr. President.

Senator Sotto. So the board will freeze it.

Senator Magsaysay. The board will freeze the account for 20 days.

Senator Sotto. For 20 days.

Senator Magsaysay. In the meantime, the account holder may exhaust the administrative ways to explain his account.

Senator Sotto. In 20 days. So, he cannot...

Senator Magsaysay. Within 20 days.

Senator Sotto. But the account will be frozen for 20 days.

Senator Magsaysay. Yes, initially for 20 days. But not yet opened.

Senator Sotto. Yes, Mr. President.

Senator Magsaysay. So within that 20 days...

Senator Sotto. Let us wait, Mr. President. There is where my problem is.

A congressional candidate of the Opposition receives unusual donations and will go to the bank and deposit contributions for election. In cash, of course. I am sure the members of the House are aware of this.

He goes to the bank and deposits the donation. An influential member of the administration who is running against him makes a report or asks somebody to make a report, or anybody connected to the FIU. I am sure *kung sinu-sinong mga* personnel ilagay natin diyan sa FIU. *Hindi naman* top of the line *ang mailalagay natin diyan sa mga* units *na iyan*. He makes the report, and in their opinion there is substantial evidence that this is unusual money,

they freeze his account for 20 days before election day. What is the safeguard that we have here? *Talo na.*

Senator Magsaysay. The candidate can go to the Monetary Board and make his presentation that this is a donation. And provided he submits a report to the Comelec, he can go after the members of the Monetary Board in terms of our penal provision, on bad faith and malice.

Senator Sotto. Yes, but he has lost already. He has lost the elections. He has lost time campaigning. I think we should put safeguards to this also.

Senator Magsaysay. I am welcoming safeguards.

Senator Sotto. Not to exempt politicians. I am not saying that we should exempt them, but I think this is very serious. This should not be used as harassment.

The President. The solution is do not deposit in the bank. *[Laughter]*

Senator Sotto. But we undermine the banking system if we do that, Mr. President.

So again, in the period of amendments, I hope this is taken up.

Senator Magsaysay. At this stage, there is no substantial evidence of money laundering. This is merely reporting.

Senator Sotto. Yes, Mr. President. *Pero sanay po tayo sa mga...*

Senator Magsaysay. But we will come to any improvements on this measure.

Senator Sotto. *Sanay na sanay tayo sa mga pinag-iinitan,* Mr. President. That is why I said members of the Opposition *ang ginamit kong example. Talagang mangyayari iyan at mangyayari iyan.* That is why, again we hope we address this in the period of amendments.

Thank you, Mr. President. I thank the distinguished sponsor.

Senator Magsaysay. Thank you. We can feel the same.

The President. The Majority Leader.

Senator Flavie. Mr. President, I move that we recognize Sen. Teresa Aquino-Oreta for the next interpellation.

Senator Magsaysay. Mr. President, may I beg off for a while.

My cosponsor will carry on. I have been standing for three hours. So I will ask for a break for a few minutes.

SUSPENSION OF SESSION

Senator Flavie. I move that we suspend the session for the liquidity problem of the sponsor.

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

It was 4:49 p.m.

RESUMPTION OF SESSION

At 5:29 p.m., the session was resumed with the Hon. Juan M. Flavie presiding.

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

Senator Drilon. Mr. President, before the break, Sen. Ramon B. Magsaysay Jr., the principal sponsor, and Sen. Tessie Aquino-Oreta availing herself of the period of interpellations, were on the floor. May we ask that they be once more recognized.

The Presiding Officer [Sen. Flavie]. Senators Magsaysay and Aquino-Oreta are recognized, with Senator Aquino-Oreta interpellating.

Senator Aquino-Oreta. Thank you, Mr. President.

Will the good gentleman answer some questions?

Senator Magsaysay. Certainly, as much as I can, Mr. President.

Senator Aquino-Oreta. Mr. President, we were able to get some notes or some materials from the Internet. It says: "FATF, Financial Action Task Force on Money Laundering, dated 22 June 2001." These were just notes taken from the Internet; we downloaded them.

With this in mind, we particularly read the FATF's policy concerning implementation and the listing in relation to NCCTs.

We are racing to pass this bill against a September 30 deadline. And we do so laboring under the belief that unless we do so, the FATF will implement counter-measures against the Philippines for its inadequate progress. Of course, naturally, our economic managers went hysterical, and in fact they even said that by October 1 of this year, our trade and financial transaction investments and even the OFW remittances will be greatly affected.

Mr. President, now I would like to find out if the gentleman believes that the passage of this anti-money laundering bill is sufficient to address all the deficiencies that the FATF identified in the Philippines. In other words, if we do have an anti-money laundering law by September 30, does the gentleman think that all the deficiencies the FATF identified will be sufficient?

Senator Magsaysay. Mr. President, I firmly believe that the way the Senate is doing its best to meet the—I would call it deadline—objective by crafting a sound, well-studied legislation on anti-money laundering will remove us from the list of non-cooperative countries, and will already make us a member of those other states that are part of the information-gathering intelligence system, sharing information on mostly transnational crimes that will make our banking system especially again at par with the rest of the advanced countries of this globe of ours.

Senator Aquino-Oreta. I am very glad to hear that. So that means we do not necessarily have to have a September 30 deadline?

Senator Magsaysay. We would like to attain that, Mr. President. Because I understand that if we do not pass such a law that has the five minimum elements of compliance, the FATF will automatically keep us, retain us in the non-cooperative status, and increase surveillance, give us more information requirements, more administrative obstacles and other ways that it will do to fall upon us come October 1. Even if we pass the law, let us say, on October 1 or 2, we will still be in that list where we will have a lot of problems. The next time it will review the Philippine case, it will be, as I understand it from the Senate President, next year in February. That means, from October, November, December, January, February, about four to five months, we will have to comply with so many other requirements.

In fact, Mr. President, there is already an American bank, First Union Bank of Delaware, which has declared that it will discontinue correspondent relationship with banks located in our country that will not have complied with the requirements of having a law. And the FUB of Delaware has informed 12 banks, including Bank of the Philippine Islands one of our largest banks and very sound, that it will ask for more information from them on any business or non-business transactions. So this will become like another layer of bureaucratic red tape.

Senator Aquino-Oreta. I would like to thank the gentleman for that. But is the gentleman aware that the following countries; namely, the Cook Islands, Dominica, Israel, Lebanon, Marshall Islands, Maui and Saint Kitts and Nevis, that were placed in the NCCT list in June 2000 together with the Philippines were actually found to have made sufficient progress in passing most, if not all

the needed legislation but still they are in the non-cooperative countries and territories?

Senator Magsaysay. I am glad to know that, Mr. President. They must have passed laws that did not comply with the requirements. In fact, I understand that Nauru, among others, passed a law but since they had the good intention of passing the law, they were removed from the stringent measures but were asked to amend that law to comply, and given enough time frame to improve their laws.

Senator Aquino-Oreta. So, Mr. President, what the gentleman is trying to tell us now here is that a law, if complied with by September 30, is not sufficient, that the Philippines still needs to submit an implementation plan with targets, milestones and time frames that will ensure an effective implementation of this legislative reform. Is the gentleman trying to tell us that?

Senator Magsaysay. No, what I meant, Mr. President, is that once the law is passed and it complies with the five basic elements of compliance, this is already a strong signal that we want to be part of that group of countries that will cooperate and relate with their common standards to pinpoint dirty money within our banking and financial systems.

Senator Aquino-Oreta. Yes, but it is not an assurance that we will be taken out of that other list, the NCCT.

Senator Pangilinan. Mr. President.

Senator Magsaysay. May I ask Senator Pangilinan, my cosponsor, to be more specific on what I am trying to say, Mr. President.

The Presiding Officer [Sen. Flavier]. With the permission of the gentlemen and the lady, Sen. Kiko N. Pangilinan is recognized.

Senator Pangilinan. Thank you, Mr. President.

Allow us to clarify the points being raised by Senator Aquino-Oreta.

There are two levels with respect to the non-cooperating countries being given, well, being watched over—for lack of a better term—by the international community in respect to the FATF.

The first level is the level of being included in the NCCT. The second level is the level wherein even assuming that certain requirements have been met, the level of implementation. In effect, we are currently in the first level-NCCT. However, passing a law on money laundering does not mean that we will be removed from the non-cooperative list. After observation, after review of our

implementing or the implementation of our efforts against money laundering and it appears that we have complied in terms of implementation, then we can be removed from the non-cooperative list of nations.

However, even if we remain in the non-cooperative list of nations at this point and if we fail or we are not able to meet our objective of September 30, additional counter-measures will be imposed.

So passing the law does not necessarily mean that we will be out of the NCCT, the list of non-cooperative countries, but passing the law will help us avoid the situation wherein counter-measures are imposed or additional sanctions are imposed.

Senator Aquino-Oreta. Thank you. Mr. President, that is what I was trying to say that the passage of the law does not necessarily take us out from the NCCT list but this is just a beginning of a long journey that comes with a very big price.

So with the tragedy that is happening all over the world, I am just afraid that we may be rushing into something that will create more problems for us in the future. So am I correct? At least, I heard the sponsor say that he will be accepting amendments to the working draft.

Senator Magsaysay. Yes. May I point out that the things that we are trying to avoid are the counter-measures which will kick in after September 30. These include surveillance and more difficulties in transactions. Even our Philippine banks when they ask to put up a branch, let us say, Metrobank wants to put up a branch in London, will not be allowed to do so. These are parts of the counter-measures. But if we have the law in place, that shows our good faith that we have now an anti-money laundering law, and these counter-measures will not kick in. We will be treated like we are being treated now. Right now, there are no counter-measures. But after September 30, without the new law, the counter-measures will come in.

Senator Aquino-Oreta. Mr. President, can the sponsor give us a country that has already undergone the wrath of the FATF? Meaning, a country that is already punished, like the fear that we will be having in case we will not have a law by September 30, all these bad news that the sponsor is giving us? Can the sponsor give us a country that has gone or that has suffered the anger of the FATF?

Senator Magsaysay. Our country itself has started feeling the additional requirements leading to stronger counter-measures after September 30, without a law. There are already additional requirements in our banking system that point towards that

situation because we are a non-cooperative country as far as they are concerned.

Senator Aquino-Oreta. Yes. But, Mr. President, may I have a specific country so that we can have an example of a country that did not, let us say, have a law or did not comply with the requirements of the FATF? Can the sponsor just give us one or two countries that somehow did not comply and suffered the wrath, the anger of the FATF?

Senator Magsaysay. Indonesia has not complied.

Senator Aquino-Oreta. So what happened to Indonesia, Mr. President?

Senator Magsaysay. Indonesia, not having complied, became part of the NCCT this year.

Senator Aquino-Oreta. Yes, just like the Philippines.

Senator Magsaysay. The Philippines came in June last year.

Senator Aquino-Oreta. Yes. Specifically, what happened to Indonesia because it did not comply?

Senator Magsaysay. As mentioned, there are more requirements. Maybe... well, I cannot venture a guess. But one of these, as I mentioned earlier, is if an Indonesian bank wants to put up a branch, let us say, in a complying country like, let us say, Hong Kong, this will not be approved.

Senator Aquino-Oreta. Yes, but that is speculation, Mr. President. I want to know the specific measures or specific consequences when a country has not complied with the request of the FATF, I would like to find out a specific example of what happened. Did its economy deteriorate? Did the rest of the nation not have anything to do... maybe a specific example of a country that did not comply with the FATF requirements.

Senator Magsaysay. If I recall a couple of days ago, the secretary of the Department of Trade and Industries, Secretary Roxas, made mention that such countries are starting to experience difficulties in conducting imports and exports, including the opening of letters of credit.

Senator Aquino-Oreta. What countries are these, Mr. President?

Senator Magsaysay. For one, our own country and Indonesia.

Senator Aquino-Oreta. Does the gentleman mean to say that right now we cannot open letters of credit?

Senator Magsaysay. Not necessarily. It could be that they are requiring more margin deposits. If the complying countries do not even have to put a margin deposit...

Senator Aquino-Oreta. May the gentleman give us a specific example of anyone in the Philippines right now that was not given...

Senator Magsaysay. I do not have a specific example. Maybe I can ask the Department of Trade and Industry to give us some specific examples in due time, Mr. President.

Senator Aquino-Oreta. I thank the gentleman for that answer, Mr. President.

When the period of amendments will come, I hope that the chairman will be accepting the amendments that we will make because I am so afraid that we might be rushing into something and maybe we will work it out or we will suffer the consequences of our rush. We might be creating a monster here. I would like to get the assurance from the chairman that he will indeed accept our amendments when the period of amendments comes.

Senator Magsaysay. Certainly, Mr. President. We will accept good amendments coming from the lady senator from Tarlac and Malabon.

Senator Aquino-Oreta. Thank you, Mr. President.

Senator Magsaysay. Thank you, Mr. President.

Senator Legarda Leviste. Mr. President.

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

Senator Legarda Leviste. Mr. President, I move that Sen. John H. Osmeña be recognized.

The Presiding Officer [Sen. Flavie]. Sen. John H. Osmeña is recognized for the next interpellation.

Senator J. Osmeña. Will the distinguished sponsor yield for a few questions?

Senator Pangilinan. Yes, Mr. President.

Senator J. Osmeña. Mr. President, I would like to first set for the record certain facts which I think the dignity of the Senate, our patriotism, and our interest in addressing the problems have been put to question.

Mr. President, let me start off with the explanatory note of Senate Bill No. 1676 which was filed by the Senate President, Senator Cayetano, this representation, and Senator Magsaysay.

In the last paragraph of that bill, it says, and it lists the reasons the country should adopt a money-laundering policy. It says:

5. The Philippines can be freed from the countermeasures being applied by the Financial Action Task Force to the noncooperative countries and territories.

That is one of the reasons we are being asked to enact this bill.

Further up on that explanatory note, it mentions that in June 2000, the Philippines has made it to the non-cooperative countries and territories list drawn up by the Financial Action Task Force on money laundering. The task force was first convened in 1989 by the Group of Seven—the United States, Canada, United Kingdom, France, Germany, Italy and Japan—and has since expanded to 29 countries and territories and two regional organizations.

I note, Mr. President, as the gentleman noted also, that this was in June 2000. My question is, what documents, as of the date that we had a committee hearing at which I was present, were submitted to us to support this particular bill by the Department of Finance and the Bangko Sentral ng Pilipinas?

Senator Pangilinan. Documents with respect to the...

Senator J. Osmeña. Yes, Mr. President. Because I remember that at that time I complained up to that date, we were being bombarded by oral testimony coming from the governor of the Bangko Sentral saying that there was this deadline on September 30, saying that we were being pressured. And when I asked why not a single person from the so-called FATF, or what I call FATF, ever came before the committee, nobody could give me an answer. When I asked why not a single letter bearing the letterhead of FATF was ever submitted to the committee, we were just greeted by silence as if we were being told in a very, shall we say, condescending fashion that, "Don't worry about it, and just take our word for it. Just do what we are telling you to do. You do not have to ask for any letters. We are telling you this is the way it is and that is the way it should be."

Mr. President, has the committee ever been honored by the Central Bank or by the Department of Finance with any communication to support their contention?

Senator Pangilinan. Mr. President, sometime in July of this year...

Senator J. Osmeña. No, Mr. President. The committee meeting was only two weeks ago. So at that point in time, there was nothing yet in the committee. I was asking for that.

Senator Pangilinan. The Department of Foreign Affairs, through Assistant Secretary Tirona, forwarded some documents, I believe, to the Bangko Sentral ng Pilipinas which it in turn forwarded to the committee. These documents included advisories from the FATF wherein we were included in the list of non-cooperative countries, and apart from these advisories included were counter-measures that may be imposed on the country and other countries in the said list should a deadline that was set then not be met.

Senator J. Osmeña. Mr. President, when did they forward it? Because when I asked for it, neither the committee secretariat nor the chairman of the committee or the witnesses responded positively.

Senator Pangilinan. That is correct, because I was in the hearing.

Senator J. Osmeña. So either the gentleman was concealing it at that point in time, or he did not have it, and they were concealing it.

Senator Pangilinan. That is correct, Mr. President. I was in that hearing. I remember distinctly the good senator from Cebu inquiring about documents and the documents were turned over to us during the second hearing.

Senator J. Osmeña. During the second hearing.

Senator Pangilinan. Yes, Mr. President.

Senator J. Osmeña. Now, Mr. President, the distinguished sponsor has noticed, I am sure, that we have been bombarded with press releases. I have here, I will not read it anymore because I have a 15-minute pledge to the Senate President, but the newspapers have been bombarding us daily with press releases, with stories, making it appear that the stories were coming from this FATF. Whereas, in reality, anybody who knows a little of journalism will know if that would be the case, these stories would be bylined. These would carry the city of origin. For example, in *Today*, Mr. President, September 11, it says, "FATF insists on September 30 deadline for dirty money bill." It is bylined by Eric dela Cruz, reporter. And it says, "the Paris-based G7 Financial Action Task Force has kept the September 30 deadline imposed on the Philippines." But there was never a press release from FATF. Who was issuing all these press releases? Does the gentleman know, Mr. President? Was it AGILE, the foundation that is funded by the USAID?

Senator Pangilinan. I have no knowledge, Mr. President.

Senator J. Osmeña. Mr. President, the distinguished sponsor and I have been also a part of the political scene for quite a long time. Does the sponsor really think that this consistent barrage of press releases daily in every newspaper would have been coming out of the initiative of reporters? Or was this the product of a determined, well-funded press campaign?

Senator Pangilinan. That is possible that it is an organized effort in that respect.

Senator J. Osmeña. Who was paying for it, Mr. President?

Senator Pangilinan. I have no knowledge.

Senator J. Osmeña. Would it be, Mr. President, that the big banks, these multinationals that we let into this country who almost, on bended knees, asked us to amend and liberalize our banking laws are now trying to dictate to us legislation?

Senator Pangilinan. I can only venture a guess, Mr. President. That would be in the realm of the possible.

Senator J. Osmeña. Mr. President, as I said earlier, I will dispense with the reading of all these because the Senate President is looking at me and I have a 15-minute deadline. *[Laughter]*

Now, Mr. President, was the gentleman furnished by the Senate President with a copy of a folder full of documents that he obtained in Paris?

Senator Pangilinan. Yes, Mr. President, I was furnished.

Senator J. Osmeña. Mr. President, this is the first time I ever saw anything that is official from these agencies, because if it is true that... I do not doubt the gentleman that if the Central Bank gave him some papers on the second meeting, it never reached us and we have never been given this thing. But it goes to show here in Annex C that there is a report of the Financial Action Task Force, the FATF. It says, "Confidential Report on the Philippines Against Criteria for Assessing Non-cooperative Countries and Territories." I guess the gentleman has a copy of this report.

Senator Pangilinan. It is not with me now, Mr. President. I am trying to have it myself.

Senator J. Osmeña. I will not read this report, Mr. President, because I am not going to filibuster. I want the record to show that the Executive department and the Central Bank were remiss and that is the reason we are now being made to look like we are not doing our job, but they were remiss in getting things done, that they did not do anything about it.

about 18 months ago, the FATF had already singled out the Philippines in this report, which they said we were one of the countries that were found to be non-cooperative according to the criteria that they passed.

Would the distinguished gentleman know, Mr. President, if the Bangko Sentral and the Department of Finance were aware of this report on June 20?

Senator Pangilinan. Only belatedly, Mr. President, on the basis of some of the documents turned over to us during the deliberations at the committee level.

Senator J. Osmeña. How belatedly, Mr. President?

Senator Pangilinan. When we started deliberations around two weeks ago.

Senator J. Osmeña. Who testified to that, Mr. President?

Senator Pangilinan. There was no testimony, Mr. President. The documents that I mentioned earlier were forwarded to us by the DFA. There were documents signed by the Office of the Governor of Bangko Sentral ng Pilipinas as annexes which suggest that the Bangko Sentral has had, in fact, information, as the distinguished gentleman mentioned, since June or thereabouts of last year.

Senator J. Osmeña. That is right. When did the Bangko Sentral know about this, Mr. President?

Senator Pangilinan. It was end of June 2000.

Senator J. Osmeña. Mr. President, does the distinguished gentleman have a copy of a letter dated July 25, 2000, signed by Governor Rafael Buenaventura of the Central Bank?

Senator Pangilinan. It might be in one of the annexes, Mr. President, because I have several documents here signed by the governor and the deputy governor of the Bangko Sentral.

Senator J. Osmeña. Mr. President, I have this letter and this was provided us by the Senate President. It was attached to a letter sent on September 25, 2001 by our friend—and I do not mean it in any way, I consider him a good friend—Paeng Buenaventura, and he said:

I noted several comments made in the press that Bangko Sentral and Department of Finance should have taken steps to address the FATF problem last year when we were first made aware of such a listing as a non-cooperative country. For your information, we were a strong advocate and pushed for the following:

1. We suggested an amendment to the Bangko Sentral Act to restore our ability to access deposits. This power was taken out when the new Central Bank Act was passed in 1993. This was to address the FATF's observation that our bank secrecy laws were excessive.
2. We pushed for the passage of legislations on the anti-narcotics and RICO (Anti-Racketeering) bills, one of which was sponsored by Senator Barbers. No action was taken on these bills.
3. There was an unnumbered Senate bill on Anti-Money Laundering which we gave our comments to try and get the bill passed. We attached copy of our letter to the Presidential Legislative Liaison Office giving our comments to the bill.
4. Administrative measures, thru circulars, were put in place by the Bangko Sentral to address the other concerns regarding money laundering.

Since October 2000 there was literally no legislative action and the elections subsequently intervened. Since March of this year, an inter-agency task force was formed precisely to draft a comprehensive bill which has undergone several reiterations/refinements.

I want to give you this information to set the records straight that efforts were made by Bangko Sentral to try to get our country out of the list of non-cooperative countries.

Very truly yours,

(Sgd.) RAFAEL B. BUENAVENTURA
Governor

This letter clearly tells us that the Central Bank has, in effect been doing something about it but it never got to us.

I note, however, that there is one inaccuracy—that since October 2000, there was literally no legislative action.

That is not correct, Mr. President. In fact, a special session was called in February and again in May and we passed the Power Sector Reform Bill. So, we did meet and we did approve legislation, but apparently, the Executive department never got through to following up this bill on anti-money laundering.

I think our colleague, Sen. Teresa Aquino-Oreta, will be happy to note that the culprit here is actually some character

known as "Jimmy Policarpio," who was the person asked by the Central Bank to follow up with Congress the approval of an anti-money laundering bill. Therefore, if there should be any blame laid, it should be at the doorsteps of Mr. Policarpio.

I would like the records to show that, Mr. President.

Having said that, I know that the gentleman and the committee of Senator Magsaysay have been working on this bill since before our break.

Senator Pangilinan. That is right, Mr. President.

Senator J. Osmeña. And that it has been taken up in our sessions for the last three days.

Senator Pangilinan. That is right, Mr. President.

Senator J. Osmeña. Notwithstanding the fact that we have been working on this bill as of last Monday, we had an editorial of the *Philippine Daily Inquirer* as if the people there did not know that we were already working on this bill. Of course, that is understood, given the mind-set of the people in the *Philippine Daily Inquirer*.

But today, Mr. President, we have this full-page ad in the *Philippine Daily Inquirer*, again, by a group who did not identify themselves. Yes, they did.

The title is: RAIDING THE HOUSE OF THE GODS

Civil Society Call for the Passage of a Responsive and Effective Anti-Money Laundering Law

I will not read this, Mr. President, because there is nothing really in this full-page ad which will add to the record, except to point out that a number of signatories in this ad are people who themselves should not be qualified for being members of the civil society.

There is, of course, Mr. Jose Concepcion Jr. who was kicked out of the Cabinet of former Pres. Cory Aquino. I will not add to what the records of the Blue Ribbon Committee have to say about Mr. Concepcion in his tenure as DTI secretary. But now he has transformed himself into civil society.

There is, of course, a man of the cloth from Bacolod, Bro. Rolando Dizon who, I remember at that time when his brother was the head of the National Housing Authority, attempted to pull a land scam on the National Housing Authority, but he is also now a member of the civil society. So, I think that is already forgotten.

The honest truth, Mr. President, is, I do not know who else is in this list. I have not been able to have the time to identify them one by one. But what makes us irritated about this list is that when we are already here deeply enmeshed in it, working three days into this bill, they now come out and make it appear that we are not even working on it and that they are now going to join the chorus of all these people who want this bill passed. So, I just wanted the record to show that.

Now, who is behind the FATF, Mr. President. Nothing has come out on the record, that is why I was waiting until now before interpellating. Nothing has come out on the record as to who are these mysterious people behind the FATF.

Could the gentleman tell us who is behind the FATF, Mr. President?

Senator Pangilinan. The Financial Action Task Force, Mr. President, is actually the Financial Action Task Force on Money Laundering. That is the complete name. It was established by the G-7, I think it is now called the G-8, in a summit in Paris in 1989. Originally, the G-7 is composed of seven countries and they have now expanded to 29 countries.

Senator J. Osmeña. What are the motives, Mr. President?

Senator Pangilinan. By the name itself—the Financial Action Task Force on Money Laundering—the concern of the G-8 or G-7 countries at that time was to address money laundering activity that has been happening or taking place. The issue of criminal activity has to be addressed and, therefore, the G-7 countries thought it best to put this task force to address the issue of money laundering, recognizing that the phenomenon has been affecting not only economies but the peace and order situations in different jurisdictions.

Senator J. Osmeña. That is the publicly accepted reason.

Has the gentleman come across an executive memorandum dated August 31, 2000, issued by the Heritage Foundation?

Senator Pangilinan. No, I have not, Mr. President.

Senator J. Osmeña. Mr. President, is the gentleman familiar with the Heritage Foundation based in Washington D.C.?

Senator Pangilinan. Yes, Mr. President. I have heard and read about this foundation.

Senator J. Osmeña. This foundation, Mr. President, for the record—because those who will read the records later on may not know about this—is a well-known and respected foundation in the

United States. Its offices are in Washington D.C. It is involved in public affairs. It wrote a three-page executive memorandum.

The memorandum is entitled: "The Counter-Money Laundering Act: An Attack on Privacy and Civil Liberties." It says that the stated goal of both bills is to track down the funds that criminals keep in financial institutions worldwide. Their real impact, however, would be to restrict constitutional freedoms but undermining the Fourth Amendment right to be free from government criminal investigations without reasonable and specific evidence of wrongdoing. They are also likely to impinge on customers' financial privacy. Moreover, their effect would be less to collar drug kingpins than to make it easier for "large nations,"—I underscore large nations—to collect taxes by forcing smaller nations like us to violate their own citizens' financial privacy.

It goes further and it says that the bill would give federal law enforcement agencies greater powers to scrutinize financial transactions in foreign jurisdictions.

Then, it says that the OECD is commenting now on the group. It is a group of unelected bureaucrats from 29 wealthy countries, including the United States, devoted to economic and social policies. The FATF, ostensibly devoted to combating money laundering, is actually a means through which member-nations with high tax burdens such as France, can pursue taxpayers and businesses that protect their assets overseas in so-called "tax havens."

The conclusion of this paper, Mr. President, is that in coercing us—and I use the word "coercing"—to pass this legislation, we are just being made tools of big banking institutions of big nations to clean up and do their act, do their job, because if they want to collect taxes from their citizens, if they want to prevent drug trafficking that is their job, that is their responsibility. But we are being coerced into allowing them to dig into financial transactions beyond their jurisdictions for their own ends.

Now, Mr. President, is the gentleman really consciously aware of this, and is he sponsoring this bill knowing that this is the motive of this FATF?

Senator Pangilinan. Mr. President, I remember, when we were in Washington D.C. during the seminar, the Anti-Terrorism Financial Investigation Seminar,—we were there for three days— one of the issues in fact that was raised then was precisely the invasion of the right to privacy. These were issues that were deliberated upon and discussed. There were questions about money laundering and how to balance the police power of the State to fight crime and, of course, the private individual's right to privacy.

I believe that in the long run, hopefully, when amendments are introduced, we can come up with a bill and pass a bill that will directly address what I think is a valid concern—the use of illegally obtained proceeds to further crime. There may be some other interest groups or some other entities that may have a separate or distinct agenda, I will not discount that. But I believe that in the long run, on the basis of our deliberations, on the basis of how we will craft a law, there and then we will be able to determine or we have the choice if we will allow that particular analysis to affect how we are to pass this bill.

In the end, what I am saying is, I am hopeful that through the process of amendment we will be able to craft a bill that will address why this bill is being sponsored in the first place, not because of deadlines, not because of sanctions per se but because I personally feel, as a lawyer, as someone who has been involved in investigations in the past, that a money laundering law will be an effective instrument and tool to combat crimes.

Senator J. Osmeña. Well, Mr. President, I hope that that is going to be the endproduct of our bill.

Mr. President, although that—may I comment at this point of time—strikes at the heart of one of the demands of the FATF, there must be sharing or open access to the information that we generate locally because that is one of their demands. And if this bill does not meet that demand, I do not think we will satisfy them. Not that I want to satisfy them but, I think that that is going to be. But we will make sure, given what the gentleman has said, that we are not being used. Therefore we will strike that provision out from the bill.

Now, Mr. President, just as an aside, I am just curious. Mention has been made here, in fact, on two occasions,—I heard that because I have been in and out of the floor—of Union Bank of Delaware closing the accounts of Filipinos. Does the gentleman have further information aside from the so-called action of the Union Bank of Delaware?

Senator Pangilinan. I believe it was mentioned by Sec. Manuel Roxas of the Department of Trade and Industry.

The First Union Bank of Delaware, which reportedly will discontinue correspondent relations with banks located in countries that have not complied with the requirements, has informed 12 of its correspondent banks in the Philippines, including the Bank of the Philippine Islands, of its plan to demand more information from them, if the country will not pass this bill.

Senator J. Osmeña. Is the gentleman familiar with the correspondent relations that the First Union Bank of Delaware has with the Bank of the Philippine Islands, for example?

Senator Pangilinan. Well, it was published. Before I proceed to the gentleman's question, Mr. President, it was also published in the *Philippine Daily Inquirer* dated September 24, 2001. I am not familiar with the correspondent relationships.

Senator J. Osmeña. Well, in that *Inquirer* story, Mr. President, is there attribution also to Secretary Roxas?

Senator Pangilinan. Yes, Trade Secretary, that is.

Senator J. Osmeña. Well, he should be knowledgeable because he used to work for J. Allen in New York.

Senator Pangilinan. If I may be allowed to quote this portion: "Trade Secretary Manuel Roxas said that all American banks were likely to follow the lead of First Union Bank of Delaware."

Senator J. Osmeña. Well, Mr. President, I am informed—because some people came to talk to me—that apparently the arrangement, as far as the Bank of Philippine Islands is concerned, is that certain privileged individuals are allowed to issue checks printed with the name of the Bank of Philippine Islands that are payable by the First Union Bank of Delaware. So, these individuals—I am not clear—have either accounts in the Bank of Philippine Islands and the Bank of Philippine Islands in turn deposits the money in the First Union Bank, or they have accounts in the First Union Bank. I am not sure. But has the gentleman come across this, or has the Bangko Sentral come across this?

Senator Pangilinan. I have not come across this, Mr. President. In our discussions with the officials of Bangko Sentral ng Pilipinas, they have not made mention of this. They are not aware.

Senator J. Osmeña. The gentleman is not aware if the deposits of the Bank of the Philippine Islands in the First Union Bank of Delaware are part of our dollar deposits or foreign...

Senator Pangilinan. I am not aware, Mr. President.

Senator J. Osmeña. Because my attention was called. This was admitted to me. Of course, he admitted this to me because we are friends, and I promised not to divulge him. But he said that that is the reality, that a very select group of clientele are issued checks by the Bank of the Philippine Islands. He did not say clearly, but when I looked at the checkbook, it did not bear the name, because normally a checkbook bears the name of the account holder. It looked like a draft of the Bank of the Philippine Islands, but then a private person could draw money against that account.

That is why I am wondering whether in effect this First Union Bank of Delaware may not have let the cat out of the bag on certain

violations of Central Bank rules by some of our banks here in maintaining an account like that. But I would like the Central Bank, the Legal Department head sitting there to look into this, whether or not the Bank of the Philippine Islands does have authority from the Central Bank to do this particular activity.

And now, Mr. President, we come to the bill proper. I have with me working draft No. 15. I understood from the earlier interpellations or intervention of Senator Angara that they were going to prepare a third draft, further reducing this. So, I guess, I will have to wait for that draft. I will not interpellate on the basis of this draft. I will yield the floor with the reservation that I will interpellate on the basis of the second revision. I have lots of questions on this draft and it is useless to interpellate if this is not going to be the final version.

Thank you very much, Mr. President.

Senator Pangilinan. Thank you, Mr. President.

It was a privilege to have been interpellated by the chairman of the Committee on Finance.

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

Senator Legarda Leviste. Mr. President, for the continuation of the interpellation, I move that we recognize Senator Osmeña III.

The Presiding Officer [Sen. Flavie]. Sen. Sergio R. Osmeña III is recognized.

Senator Osmeña III. Mr. President, there is a request by my esteemed cousin from Cebu for an adjournment because the new draft authored by the senator from Quezon and Aurora has not yet been finished.

Senator Pangilinan. Mr. President, may we request a one-minute suspension.

Senator Drilon. Mr. President.

The Presiding Officer [Sen. Flavie]. Senator Drilon before we have a ...

Senator Drilon. Before that, Mr. President, Senator Angara's amendments will come after we close the period of interpellations. Our agreement is that we continue with the September 25 working draft after which we close the period of interpellations and Senator Angara will introduce the amendments proposed.

Thank you, Mr. President.

The Presiding Officer [Sen. Flavier]. Does the gentleman still call for one minute suspension of the session?

Senator Osmeña III. It is a joke only, Mr. President.

Senator Pangilinan. I withdraw that request, Mr. President.

The Presiding Officer [Sen. Flavier]. Please proceed.

Senator Osmeña III. Mr. President, would the distinguished cosponsor yield for a few questions?

Senator Pangilinan. Willingly, Mr. President. It is also a privilege to be interpellated by Sen. Serge Osmeña.

Senator Osmeña III. Well, thank you very much, Mr. President. I shall try to be nice, unlike the secretary of Justice who will not be nice to one of our colleagues. *[Laughter]*

Mr. President, I have been listening quite patiently to the interpellations for the past three days on the anti-money laundering bill. As principal author, I am certainly interested in its passage. My fear is that we may not pass a bill that will be effective in curbing crime but a bill that will only seek to please a foreign outfit called the Financial Action Task Force. So, maybe, since the gentleman has been answering the questions on the floor along with his cosponsor, the senator from Zambales, would he like to sum up for the record and for the members of this Chamber why all the fear about passing an anti-money laundering law?

Senator Pangilinan. The fear of passing rather than not being able to pass?

Senator Osmeña III. Of passing. The way it was presented, written, and the committee report as filed with the Senate Secretariat.

Senator Pangilinan. I believe, Mr. President,—I mentioned this earlier—that there are always conflicting interests in respect to a particular piece of legislation. There will always be interests that have to be balanced. I think in this respect, if on the one hand the objective of the bill is to fight crime, is to be effective in combating criminal activity, certain individual rights—I would like to think—will be affected. And such individual rights in this case would be the right to privacy. So between the police power of the State to enact laws that will address a criminal activity and the right of the individual—his right to privacy—I think this is where the fear or the source of tension lies.

Senator Osmeña III. Well, let us talk about the right to privacy, Mr. President. I am not a lawyer and the distinguished senator from Quezon City is a lawyer. In a democracy, do individual citizens not give up part of their rights in favor of the State in order to maintain order in society?

Senator Pangilinan. That is correct, Mr. President. A valid exercise of police power would, in fact, influence or affect individual citizens.

Senator Osmeña III. And since this bill or variants thereof are practically enforced in most countries of the world in different types of regulations or laws or statutes, has the distinguished senator come across similar conflicts of interest in his research in those other countries where these laws have been passed?

Senator Pangilinan. Yes, Mr. President. In fact, as I mentioned earlier, when we were in the Anti-Terrorism and Financial Investigation Seminar in Washington D. C. on the first week of August, we were given some materials on the issue of whether or not money laundering and the law itself are invasions of privacy, whether accessing of bank records would, in effect, be invading the individual's right to be protected from the strong arm of the law, so to speak.

So, yes. In the US, it is a continuing discussion, although, of course, in its jurisdiction, it has an anti-money laundering law in place for almost 20 years now which has been amended on several occasions.

Senator Osmeña III. Let us talk about money laundering without first touching on the topic of the freezing of assets and the opening of bank accounts.

Is a law against money laundering not a good thing in itself?

Senator Pangilinan. Yes, it is, Mr. President.

Senator Osmeña III. That is because by the very nature of its term, money laundering is laundering of profits from illegal activities. Am I correct?

Senator Pangilinan. The gentleman is correct, Mr. President.

Senator Osmeña III. Also, we are familiar with various practices like in the United States which never had a very strict bank secrecy law and where the Internal Revenue Service can access one's bank account without letting him know to find out whether he has been misdeclaring his income in his annual income tax returns, whether he has been engaging in tax fraud and/or other related crimes, which is why I think it has a better tax collection system over there because of its ability to enforce its tax laws.

Now, in this country, does the gentleman feel we are anywhere close to the US model as far as that is concerned?

Senator Pangilinan. As far as... I beg the gentleman's pardon?

Senator Osmeña III. As far as our tax collection efforts are concerned, as far as the powers that have been given to the BIR and the Department of Finance to collect taxes are concerned, have we been as effective as the United States in this regard?

Senator Pangilinan. Mr. President, in that respect, I would say no. If we are to compare how the United States has been able to enforce its laws, how it has been able to implement its anti-money laundering laws, the Internal Revenue Service being effective...

Senator Osmeña III. I am not talking about money laundering. I am talking about collecting the proper income taxes.

Senator Pangilinan. Yes, Mr. President. About income taxes, I believe that the United States has been far more superior in its capacity and capability compared to ours.

Senator Osmeña III. Well, when we compare the numbers—what is the term for it?—its tax efficiency effort or its tax collection effort would be in the nature of what? About 32 percent to 33 percent of gross domestic product?

Senator Pangilinan. Mr. President, I am vaguely familiar with the statistics.

Senator Osmeña III. And our country would be?

Senator Pangilinan. Much, much less, Mr. President. Tax collection efficiency. I think that is the term.

Senator Osmeña III. And ours is around 12 percent to 15 percent, probably one of the lowest in Asia? Does the gentleman know or realize that the main reason for this is, it seems that in this country, our laws are structured in such a way that it is the BIR that must prove that we did not earn the money legally rather than the individual taxpayer who must prove that he earned it legally? So since the burden of proof is on the accuser here, which is the government, it makes it certainly very, very difficult to collect taxes on that basis.

While in the United States, if the IRS sees Mr. Juan dela Cruz or Mr. John Smith living in a US\$5-million mansion, it will automatically check all the past income tax returns of John Smith and may knock on his door and say, "Mr. John Smith, all your past returns do not justify your being able to financially afford such a house. Could you please tell us how you were able to afford to pay for that house?" which makes it much easier for the IRS to catch tax cheats.

Mr. President, in this country, the gentleman mentioned that there are conflicting interests. Would he like to define, just in general terms, what or who compose these conflicting interests?

Senator Pangilinan. Earlier, Mr. President, of course, the interest of the State and the interest of the individual would in certain respects have some degree of conflict, considering that in the area of privacy or freedom for that matter, the individual would like to have as much freedom as possible. But on the other hand, too much freedom may resort or may result in what we call anarchy or chaos, perhaps. Therefore, the State is interested in curtailing certain freedom to ensure that there is order in our society. So that would be one particular interest or one particular conflict of interest.

Senator Osmeña III. Can we be a little bit more specific and narrow this down? Would the concern come from people who have been used to evading taxes and do not want their accounts opened?

Senator Pangilinan. Definitely, in that respect, considering a tax evader is a criminal, he is committing a crime, the interest of a tax evader and the interest of the State to be able to collect the right taxes would also be a conflict of interest in that respect.

Senator Osmeña III. Let me see. How many tax evaders would there be in this country, Mr. President?

Senator Pangilinan. Given the tax base, I have no figures, Mr. President. I do not have any figures as to how many tax evaders there are.

Senator Osmeña III. Let me help the gentleman narrow it down.

There are about 15 million families in this country. Let us call each family a prospective tax filer, although there are many families that have two or three income earners. How many actually file income tax returns in this country?

Senator Pangilinan. We do not have the figures at the moment. But I would assume that many of the employees who are in the rank and file whose taxes are withheld are clearly the individuals or citizens who pay their taxes.

Senator Osmeña III. Would the staff coming from the Department of Finance give us a general idea as to how many individuals file their income taxes in our country?

Senator Pangilinan. I am informed, Mr. President, that the representatives from the Department of Finance have already left.

Senator Osmeña III. I see that they are not that interested in passing the anti-money laundering bill.

If the Presiding Officer is aware that the Department of Finance officials have since left and we are unable to get the needed information to make a good judgment on some of the provisions of this bill, perhaps, they may be warned that we may not pass this bill at all.

Senator Pangilinan. Mr. President, before the secretary of Finance himself left earlier, he appealed to this representation to try our very best to do what we can in order to come up with a good bill. So I think he is very much interested.

Senator Osmeña III. Let me just venture a guess. I remember from past hearings of the Committee on Finance that there are about six to seven million filers a year and most of them, of course, maybe about five million to five-and-a-half million are salaried employees. And as a matter of fact, Mr. President, of the P350 billion to P450 billion—depending upon which numbers we believe—collected by the Bureau of Internal Revenue, 60 percent is paid by salaried employees, and the other 40 percent is paid by the very rich, moderately rich individuals.

So, Mr. President, what I am trying to point out is that perhaps, only a very few, a very, very few, compared to the total number of families in this country or to the total number of tax filers are concerned about the bank secrecy or the weakening or the loosening of our bank secrecy law. Is that also the indication the gentleman got from those who have been calling him up, Mr. President?

Senator Pangilinan. I believe so. A minority but a very vocal minority.

Senator Osmeña III. A very powerful minority?

Senator Pangilinan. A powerful minority...

Senator Osmeña III. A very influential minority?

Senator Pangilinan. A very influential minority would...

Senator Osmeña III. Now, tell me, Mr. President, if we are able to collect say, P100 billion more—I remember some numbers being thrown out that every year we fail to collect about P2 billion to P300 billion in income taxes because of weak enforcement of tax laws because of the Bank Secrecy Act—an additional P100 billion out of the P300 billion, will that not benefit 75 million Filipinos most of whom are poor?

Senator Pangilinan. Definitely, Mr. President, because we do need...

Senator Osmeña III. So should it not be a policy of our government and of this Chamber that the greatest good for the greatest number being the end-all of a working democracy, we should try to put in place laws that would make sure that the proper taxes... I am not talking about making people pay more than what they owe. I am just talking about making the rich pay what they really owe because they have been getting away with murder all these past years. Would the gentleman agree with us, Mr. President?

Senator Pangilinan. I agree, Mr. President.

Senator Osmeña III. Thank you for that response. Therefore, Mr. President, I come to a specific question. Why is tax evasion not one of the acts or omissions or series or combinations thereof that is defined under the term "unlawful activity" in this proposed bill?

Senator Pangilinan. Mr. President, in the original bill, many moons ago, many versions ago, the tax evasion was one of the unlawful activities identified. But as we went through the deliberations during the public hearings, as well as the committee meetings, there was a position from some sectors for fear, as the popular term or the well-known line, of "harassment."

Senator Osmeña III. All right. Let us talk about harassment. In what nature, in what form could this harassment come about?

Senator Pangilinan. Harassment in the form of... well, hypothetically, if tax evasion is included as an unlawful activity and perhaps the painful experience of some of our citizens in the hands of some tax examiners or some employees of the BIR, perhaps, this could have given rise to that fear, that their painful experience with some corrupt—I am not saying all but some—officials of the Bureau of Internal Revenue may have given rise to this particular fear.

Senator Osmeña III. Now, let us follow that line of thinking. The sponsor says that some of them may have had painful, unfortunate experiences with BIR examiners. Why did they not file administrative cases against those BIR examiners?

Senator Pangilinan. To venture a guess, perhaps they felt that filing of cases would be long and tedious, that it would be a waste of time, and therefore, to avoid that, they just suffered in silence.

Senator Osmeña III. No. I doubt that very much, Mr. President, because I think that if they file, they will see that more skeletons will be dug up.

Senator Pangilinan. That is also a possibility, Mr. President.

Senator Osmeña III. There may be instances—but I have not yet seen personally any instance—wherein an individual businessman actually filed a case against the BIR for harassment.

Therefore, I would like to know how they can use that and how the committee can accept that as a valid excuse when there have been no cases filed for harassment against any BIR employee. It might be unfair to the BIR, but there may be more than meets the eye with that type of argument.

Senator Pangilinan. Mr. President, there are valid points being raised by Senator Osmeña. I agree with him in certain respects. However, given the discussions and deliberations not only during the public hearings, together with the pre-bicameral meeting, the informal meeting with our House counterparts, tax evasion is one specific area that was raised as a possible objection.

However, having said that, there were also other items, other unlawful activities that were removed from the original bill. I think the inclination is because given the, perhaps, “revolutionary” implications of anti-money laundering and the access to bank records, the threat and the fear, the inclination was to come up with a bill that is simpler, more digestible—at least, from my point of view—a bill that we would like to slowly craft. We come up with a few unlawful activities now. As we go along, as we test the law—assuming it is enacted—and we feel it is inadequate, we continue to improve on the law by amending it. I felt that perhaps that would be a good approach.

So in that respect, that is perhaps why we simplified the bill. There are efforts to simplify the bill and limit the unlawful activity to exclude tax evasion.

Senator Osmeña III. Mr. President, all these excuses, including the euphemism to simplify the bill, stem from one fear, and these come from quarters that do not want their bank accounts open to all. *Kaya maski anong gagamitin nilang dahilan*, it just stems from that fear.

Now, Mr. President, if everybody just pays his taxes properly, believe me, this bill would have been passed in two hours. Resistance to this bill comes from those who have something to hide.

So my basic question is: Do we protect and continue to coddle those who have something to hide? Or are we going to make a move in behalf of the poor people of this country who need farm-to-market roads, who need the postharvest facilities, who want sanitary landfills, who want no traffic, who want to cure the pollution of the air that they breathe, and who want more schools and better education? Do we not want to make a move in their behalf?

Senator Pangilinan. Definitely, Mr. President, and I welcome such moves to be able to address greater revenue for the government, to be able to be more effective in addressing the basic needs of our citizens.

Senator Osmeña III. All right. Let me also ask the sponsor to walk us through the procedure or the process that a depositor will encounter if this bill was passed the way it is drafted.

Before I go to that, Mr. President, is the distinguished chairman aware that the crimes that have been covered have been lessened from 31 crimes in the original draft proposed by the special task force put together by the Bangko Sentral, the UP Law Center, the Department of Finance, to 17 crimes in the first committee report, down to four crimes in the working draft that I am interpellating the gentleman on, and probably down to one or two tomorrow? Is the chairman aware of that?

Senator Pangilinan. Yes, Mr. President. I am aware.

Senator Osmeña III. Then, what is the real purpose of the committee for having bothered even to sponsor this bill? Is it to please the FATF? Is it to cure the defects in our tax collection efforts? Is it to help reduce crimes in our own country? Or is it for *pakitang tao*?

Senator Pangilinan. Mr. President, during my cosponsorship speech as chairman of the Committee on Justice and Human Rights, my committee’s concern is being able to deal with or address the issue of criminal activities in our country, the issue of narco-politics, the issue of kidnap for ransom. And this is precisely why I supported the passage and continue to support the passage of this anti-money laundering bill.

Senator Osmeña III. Mr. President, because of the distinguished sponsor’s concern for bringing down the level of crimes in this country, why is it that piracy was removed?

Senator Pangilinan. Mr. President, along with my desire to combat crimes or deal with criminal activities, is my acknowledgment that the legislative process requires of us to give and take, so to speak, if we are to pass a bill.

Senator Osmeña III. That is good. I like that. In this case, who was giving and who was doing the taking?

Senator Pangilinan. If I had my way, Mr. President, I would prefer a list of unlawful activities that will be longer than what we have now with the working draft. But, again, like I said earlier, I acknowledge that the legislative process requires a give-and-take.

Senator Osmeña III. The same is true with forgery. That is why it was dropped from the list of unlawful activities?

Senator Pangilinan. Yes, Mr. President. From 21 to 17, down to four.

Senator Osmeña III. The same with bribery?

Senator Pangilinan. That is right.

Senator Osmeña III. Bribery was dropped, and malversation.

Senator Pangilinan. That is correct.

Senator Osmeña III. Is kidnapping still there?

Senator Pangilinan. It is.

Senator Osmeña III. Slavery.

Senator Pangilinan. It has been removed.

Senator Osmeña III. Slavery has been removed. What about robbery?

Senator Pangilinan. It was also deleted.

Senator Osmeña III. Theft, under Articles 308 to 310 of the Revised Penal Code?

Senator Pangilinan. It has been deleted.

Senator Osmeña III. Swindling.

Senator Pangilinan. Also, it has been deleted, Mr. President.

Senator Osmeña III. Corruption of minors and white slavery, which is prostitution, I understand.

Senator Pangilinan. It has been deleted, Mr. President.

Senator Osmeña III. We have others like smuggling.

Senator Pangilinan. It has also been deleted, Mr. President. And illegal gambling.

Senator Osmeña III. Are we sending out a message that it is all right to engage in these activities because in the latest major anti-crime bill which this Chamber is considering, out of the 31 crimes, we removed 27 and we are left only with four?

Senator Pangilinan. At first glance, indeed it may look like this way, not because we have limited the list of unlawful activities or that we are going soft on criminal activities. However, all these unlawful activities listed that have been deleted are still, of course, punishable under the Revised Penal Code and other special laws.

Senator Osmeña III. Sure. But if we cannot open their bank accounts to find the evidence, which is precisely why we are passing this anti-money laundering bill because it is pretty difficult to get the evidence against drug lords, against kidnappers, against those who violate the Anti-Graft and Corrupt Practices Act, we are still going to keep it difficult for our law enforcement agencies, for the BIR and the tax collection agencies to collect because they cannot access the bank account to determine whether somebody has been depositing sums out of proportion to his validly earned income.

Senator Pangilinan. I agree, Mr. President. However, allow me also to interject. After having gone through several other anti-money laundering laws of other countries, it came to my attention that the anti-money laundering laws of the United States, which I believe was first enacted in 1984, first began with a shorter list of unlawful activities. I am speculating here, but my appreciation of the history of anti-money laundering in the US is that perhaps, as they went along and found the law effective in certain areas but ineffective in other areas, they went on to amend the law. I believe there have been like more than three or four amendments since 1984.

I am saying this because perhaps they allowed the law to evolve to its present state which made it more palatable and acceptable in their jurisdiction. My fear here—and this is why I fell in certain respects that it would be good to simplify it—is because if we do not simplify it, then we might have that public clamor or public reaction that would render the law even more difficult to implement.

Senator Osmeña III. By public, does the gentleman refer to the handful, powerful influential individuals? Or does the gentleman refer to the majority of the Republic of the Philippines? I will guarantee the gentleman that there will be no public outcry. As a matter of fact, I will guarantee the gentleman the opposite. There will be a public outcry if we pass the bill the way it is now drafted.

Senator Pangilinan. I would like to think that we are addressing competing interests, and we will have to try our very best to cater to the competing interests. That is my understanding of how we may be able to craft a bill that will eventually be acceptable to the different sectors.

Senator Osmeña III. I do not know whether I should call it fortunate or unfortunate, and I do not want the gentleman to take offense that he termed it "competing interests." Because if the interests of the rich are competing with the interests of the poor, I think the members of this Chamber should side with the poor.

Senator Pangilinan. And I agree, Mr. President.

Senator Osmeña III. I am glad. So the gentleman may accept an amendment to make tax evasion one of those registered under unlawful activity.

Senator Pangilinan. It will be the pleasure of the Senate. If it were up to me, Mr. President, I would not mind having tax evasion back because that was what was in the original version.

Senator Osmeña III. What about extortion? Should extortion also not be one of the unlawful activities under money laundering?

Senator Pangilinan. It was not included in the original bill, Mr. President.

Senator Osmeña III. I think extortion would fall under robbery, Articles 294 to 296. I already asked that question.

May I move on to just another point, Mr. President. Earlier, the distinguished sponsor was explaining that the United States Anti-Money Laundering Law evolved gradually. But I think this may be because the gentleman is confusing money laundering with bank secrecy.

In the United States, there was never any problem with bank secrecy. The IRS could always have access to the bank. So the example that the distinguished sponsor gave is not material.

In the Philippines now, because for the first time we have an opportunity to properly address the problem of bank secrecy and how it impacts on our inability to collect taxes and how it even indirectly promotes crime by protecting the fruits of crime, we tend to equate money laundering with bank secrecy.

But, Mr. President, I was a resident of the United States—along with, I think our distinguished colleague here from Tarlac—for a while from 1977 to 1991. And there was never any bank secrecy law there that disallowed the IRS from looking into my account without even telling me. I knew they did it on two or three occasions, especially when the previous regime, the Marcos regime, asked the Reagan Administration to run after the exiles.

Senator Pangilinan. That is correct, Mr. President. In fact, they say that the Bank Secrecy Act of the United States term is a misnomer because there are more requirements for disclosure rather than keeping secret the information.

Senator Osmeña III. Bank secrecy in the United States, Mr. President, only deals with the bank officers being unable to divulge one's account to non-government agents. But the treasury department, the internal revenue service, the customs department, I believe even the INS, the Immigration and Naturalization Service,

the Secret Service, all have the right to look into one's account without letting him know. I might be wrong on this. I do not know how widespread it is.

So bank secrecy in the United States has to do with a private citizen asking how much money Mr. Kiko has in that account. They are not allowed to divulge that to the public. But they may even be able to divulge it to credit-rating agencies just by giving an idea of what his average deposit would be.

So, they would say, Mr. Pangilinan has an average deposit in the lower five digits, or in the moderate five digits, or in the high five digits which is about US\$80,000 to US\$90,000 in order to help him probably obtain a credit card or a bank loan.

So, Mr. President, that is not a fair comparison.

I would also like to know if this Chamber is aware that prior to the passage of the 1993 Bangko Sentral ng Pilipinas Law, the Monetary Board could, on majority vote, open up any account.

Senator Pangilinan. I am not aware of that, Mr. President.

Senator Osmeña III. I think that the staff of the Bangko Sentral ng Pilipinas is beside the gentleman. And the old Central Bank Act allowed the Monetary Board to open up any account in spite of the Bank Secrecy Law.

Senator Pangilinan. I have just been informed here, Mr. President, that, yes, that was possible to establish fraud and irregularities.

Senator Osmeña III. Therefore, Mr. President, we did not have any bank runs there. I know we are being threatened by this intermediation of deposits by those who are interested in not including many of these crimes that originally fell under the term "unlawful activity." *Pero ang sinasabi ko po*, we already had given the power to the Monetary Board before 1993, and there was never any problem. Not pre-Marcos years, not during the Martial Law years, and not during the Cory Aquino years, and I do not see why we would have that problem again. Perhaps, it would be good for us to explain to the public it is not going to be that easy to open up a bank account. It would take a vote of the Monetary Board plus the members of the, what do we call it, the FIU?

Senator Pangilinan. The Financial Intelligence Unit.

Senator Osmeña III. The Financial Intelligence Unit to open up a bank account and I doubt if it will even open up more than one or two bank accounts a year. I am willing to bet on that.

Mr. President, it is 7:05 p.m. I still have not even begun on the major part of my interpellation. I believe we are celebrating tonight

the birthday of a distinguished colleague, Senator Angara. May I ask that I suspend my interpellation at this time to continue at such time as the Chamber may wish tomorrow.

SUSPENSION OF SESSION

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

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

It was 7:05 p.m.

RESUMPTION OF SESSION

At 7:16 p.m., the session was resumed.

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

Senator Legarda Leviste. Mr. President, I move that we recognize Sen. Blas F. Ople for the continuation of the interpellation; and the cosponsor, Sen. Francis N. Pangilinan.

The Presiding Officer [Sen. Flavie]. Senators Ople and Pangilinan are recognized.

Senator Ople. Mr. President, will the sponsor yield for a few questions?

Senator Pangilinan. Willingly, Mr. President, to the gentleman from Bulacan.

Senator Ople. Mr. President, this is a crazy law but I agree that it is necessary. But will the sponsor agree that September 30 is not a mandatory but merely a directory deadline for the Senate?

Senator Pangilinan. I agree, Mr. President. It is directory, not mandatory.

Senator Ople. Will he agree that it may diminish the indignity facing the Senate with a September 30 deadline if we allow the free debates to continue until October 1 or October 2?

Senator Pangilinan. Mr. President, if that is the reality that we have to face, I will accept. However, it would be, I think, a win-win solution if we are able to complete and enact or pass this bill given the September 30 objective.

Senator Ople. Mr. President, in the Senate caucus the other day, the Senate President, the Hon. Franklin M. Drilon, agreed to an amendment that would, in effect, say probably in

the Declaration of Principles of this bill that the rules of confidentiality embodied in Republic Act No. 1405 shall be maintained as a matter of general principle but allowing for certain exceptions to be mentioned in the law. This is, of course, at the very heart of our debates—to what extent will this protection of Republic Act No. 1405 be stripped from the ordinary depositors in our banks.

Will the sponsor agree to the amendment that would probably appear in the Declaration of Principles to the effect that the rules of confidentiality embodied in Republic Act no. 1405 shall be maintained as a matter of general principle, allowing for certain exceptions?

Senator Pangilinan. Mr. President, it would be of interest to note that as a general rule, based on my own readings of anti-money laundering laws in other jurisdictions, there are still confidentiality of bank records. The Swiss law says that. I believe the Japanese law says that and the law of Thailand also says that. That was the general rule. Confidentiality of bank records prevails with certain exceptions. And yes, we would be more than willing to include that as part of the amendment.

Senator Ople. Yes. And consistent with that, Mr. President, will the sponsor agree to build into the law certain penalties for violations of confidentiality committed by the covered institutions in the covered transactions?

Senator Pangilinan. Yes, Mr. President. There are existing provisions in the bill, as proposed, on violations of confidentiality. If the gentleman from Bulacan feels that we can improve on the particular provision in terms of penalties, we are more than willing to accept that.

Senator Ople. Mr. President, this is not an original observation. I heard it first from Sen. Joker P. Arroyo in our caucus. He says that there is a tendency in this bill to reverse certain fundamental principles of the Constitution such as the presumption of innocence before the charge is proven in court. And the tendency of this bill, in spite of the most recent improvement in the shortened simplified version, still puts the liberties of our depositors at risk because of the fact that mere suspicion can put them under certain sanctions, legal sanctions, including the possibility of the assets being frozen. Will the sponsor welcome amendments that will mitigate these harsher provisions of the bill?

Senator Pangilinan. Mr. President, as chairman of the Committee on Justice and Human Rights, the constitutionally guaranteed rights of our citizens are of paramount interest, and I am sure the same is so for other members of the Senate. If the proposed amendments again will strengthen the law in its entirety, we have no objection.

Senator Ople. May I fall back on a technique now associated with Sen. Serge Osmeña III. I have been advised by some colleagues that there is a party some of us are pledged to attend. May I know if the suspension of the interpellation is acceptable provided that I will be able to continue my questions tomorrow, Mr. President? At what time? Yes, Senator Pimentel says at ten o'clock—nine o'clock. If that is acceptable.

As a result of a brief caucus on the floor, I am willing to ask the President to suspend the interpellation until nine o'clock tomorrow morning, with the consent of the sponsor.

SUSPENSION OF CONSIDERATION OF S. NO. 1745

Senator Legarda Leviste. Mr. President, with that understanding that the interpellations would continue tomorrow at nine o'clock, I move that we suspend consideration of Senate Bill No. 1745 under Committee Report No. 1. We would like to thank the distinguished sponsor for his patience in defending this important piece of legislation.

The Presiding Officer [Sen. Flavie]. There is a motion to suspend the interpellations on Senate Bill No. 1745 under Committee Report No. 1. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Legarda Leviste. Mr. President, I move that we suspend today's session until nine o'clock tomorrow morning, Thursday, September 27, 2001.

The Presiding Officer [Sen. Flavie]. Is there any objection? *[Silence]* There being none, the session is suspended until nine o'clock tomorrow morning, Thursday, September 27, 2001.

It was 7:25 p.m.