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SESSION NO. 51

Wednesday, January 18, 2017

SEVENTEENTH CONGRESS

FIRST REGULAR SESSION

SESSION NO. 51
Wednesday, January 18, 2017

CALL TO ORDER

At 3:17 p.m., the Senate President, Hon. Aquilino "Koko" Pimentel III, called the session to order.

SILENT PRAYER

The Body observed a minute of silent prayer.

ROLL CALL

Upon direction of the Senate President, the Secretary of the Senate, Atty. Lutgardo B. Barbo, called the roll, to which the following senators responded:

Angara, S.
Aquino, P. B. IV B.
Binay, M. L. N. S.
De Lima, L. M.
Drilon, F. M.
Ejercito, J. V. G.
Escudero, F. J. G.
Gatchalian, W.
Gordon, R. J.
Honasan, G. B.
Hontiveros, R.
Lacson, P. M.
Pacquiao, E. M. D.
Pangilinan, F. N.
Pimentel III, A. K.
Sotto III, V. C.
Trillanes IV, A. F.
Villanueva, J.
Villar, C. A.

With 19 senators present, the Chair declared the presence of a quorum.

Senators Cayetano, Legarda, Poe, Recto and Zubiri arrived after the roll call.

DEFERMENT OF THE APPROVAL OF THE JOURNAL

Upon motion of Senator Sotto, there being no objection, the Body deferred the consideration and approval of the Journal of Session No. 50 (January 17, 2017) to a later hour.

At this juncture, Senator Sotto called Senators Honasan, Aquino, Lacson, Legarda, Poe, Gatchalian, Escudero, Trillanes, Drilon and Recto to a meeting at the Executive Lounge.

BIRTHDAY GREETINGS

Senator Sotto greeted Senate President Pimentel a very happy birthday.

SUSPENSION OF SESSION

Upon motion of Senator Sotto, the session was suspended.

It was 3:20 p.m.

RESUMPTION OF SESSION

At 3:50 p.m., the session was resumed.

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, Senator Sotto acknowledged the presence in the gallery of the following guests:

- Visitors from Monterey, California, headed by Ms. Riza Crisostomo;
- Philippine Youth Achievers: Mr. Nelson Lin, Mr. Philippine Youth-International; Mr. Merwin Abel, Mr. Philippine Youth-World; Ms. Mhey Corpuz, Ms. Philippine Youth-World; and Ms. Angela Muhi, Ms. Philippine Youth-International; and
- Students from South Mansfield College, Muntinlupa City, headed by Dr. Genevieve Ledesma-Tan.

Senate President Pimentel welcomed the guests to the Senate.

MANIFESTATION OF SENATOR SOTTO

Senator Sotto recalled that during the session on Monday, January 16, 2017, Proposed Senate Resolution No. 256, introduced by Senate President Pro Tempore Drilon, was referred to the Committee on Civil Service, Government Reorganization and Professional Regulations; however, several Members objected to the referral and as a result, the said resolution was referred to the Committee on Rules to decide on the matter.

He stated that as early as the previous day's session, after listening and taking into consideration all the arguments and sentiments of the senators both on and off the floor, he was already ready to come up with a resolution. However, he said that other issues came up and that his office also received a letter from the Senate President which he then read into the record, to wit:

> Dear Senator Sotto:
>
> Proposed Senate Resolution No. 256, titled: "Resolution Directing the Committee on Civil Service and Government Reorganization to Look into the Possible Reorganization of the Bureau of Immigration" calls on the oversight power of Congress to look into the issues surrounding the Bureau of Immigration and, if warranted, to recommend the BI's reorganization. While the Committee on Civil Service, Government Reorganization and Professional Regulation has general jurisdiction over the reorganization of the government or any of its branches or instrumentalities, this general jurisdiction yields to a special rule on the matter. In this case, there is a particular committee that has oversight power over immigration matters, and that is the Committee on Justice and Human Rights. Since the recommendation to reorganize the BI is a result of the oversight power of Congress, then it is my opinion that the appropriate referral is to the Committee on Justice and Human Rights.
>
> In the event that a bill for the reorganization of the BI will be subsequently filed as a result of the investigation under Proposed Senate Resolution No. 256, it will be imperative for us to examine the extent of the reorganization proposed therein. If the bill were to mandate the transfer of some of the BI's functions to other government agencies, then the referral shall be to the Committee on Civil Service, Government Reorganization and Professional Regulation. On the other hand, if the bill were to merely streamline functions within the BI, then the referral shall still be the Committee on Justice and Human Rights.
>
> Thank you and kind regards.
>
> (Sgd.) Aquilino "Koko" Pimentel III

Senator Sotto stated that he had to put a lot of weight on the letter of Senate President Pimentel, that was why, even as he was ready to come up with a resolution in the previous day's session directing the referral of the proposed resolution to the Committee on Civil Service and to the Committee on Justice and Human Rights, he called for a meeting earlier in the day with the other members of the Committee on Rules where he told them about the letter of the Senate President and his original intention. Thus, after thorough consideration of the arguments and incorporating the real intentions, on record or not, relating to Proposed Senate Resolution No. 256, he recommended that the proposed measure be jointly referred to the Committee on Civil Service, Government Reorganization and Professional Regulation and to the Committee on Justice and Human Rights, treating both as primary committee referral.

Senator Sotto expressed hope that the initiative would nurture a peaceful atmosphere and conducive working environment in the Senate considering that

the Chamber needs to pass a number of legislation before Congress adjourns in March. He explained that the implication of this setup is that the Committee on Civil Service will deal exclusively on the reorganization aspect of the Bureau of Immigration, which is within its competence and jurisdiction, while the Committee on Justice and Human Rights will deal with the aspect of administration of the Bureau of Immigration. However, he clarified that the Blue Ribbon Committee would not be barred from conducting its own investigation on the contentions mentioned in Proposed Senate Resolution No. 256, particularly on the issue of corruption because it can call and undertake a hearing relative to the conduct of public officials.

REFERRAL OF PROPOSED SENATE RESOLUTION NO. 256

Upon motion of Senator Sotto, there being no objection, the Chair referred Proposed Senate Resolution No. 256 jointly to the Committee on Civil Service, Government Reorganization and Professional Regulation and to the Committee on Justice and Human Rights.

MANIFESTATION OF SENATOR PANGILINAN

Senator Pangilinan stated that the motion and its adoption by the Body has precedents that happened on several occasions in previous Congresses wherein there was joint referral of a particular resolution, so that a specific aspect of the resolution is going to be tackled by one committee while another aspect by another committee.

Senate President Pimentel thanked Senator Pangilinan.

For his part, Senator Sotto confirmed that incidents of having joint referrals happened when Senator Pangilinan was Majority Leader.

COMMITTEE REPORT NO. 4 ON SENATE BILL NO. 1210
(*Continuation*)

Upon motion of Senator Sotto, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1210 (Committee Report No. 4), entitled

AN ACT EXPANDING THE SCOPE AND COVERAGE OF REPUBLIC ACT NO. 4200, OTHERWISE KNOWN AS AN ACT TO PROHIBIT AND PENALIZE WIRE TAPPING AND OTHER RELATED VIOLATIONS OF THE PRIVACY OF COMMUNICATION, AND FOR OTHER PURPOSES.

Senator Sotto stated that the parliamentary status was the period of interpellations.

Thereupon, the Chair recognized Senator Lacson, sponsor of the measure, and Senator De Lima for her interpellation.

INTERPELLATION OF SENATOR DE LIMA

Before he yielded to Senator De Lima's interpellation, Senator Lacson presented some rationale for amending Republic Act No. 4200. He said that R.A. No. 4200 was outdated as it was passed in 1965 or 52 years ago, and new technologies have appeared in the marketplace and continue to outpace the existing surveillance law. Thus, he said that Congress needed to adopt a new law that is both responsive and adaptive to the changes; and that it would be useless to argue that R.A. No. 4200 could adapt to existing and future means of communication. Also, he said that one of the aims of the proposed measure was to expand the subject of exemption and new offenses to the list of those already covered under R.A. No. 4200.

To start her interpellation, Senator De Lima stated that the bill is one of the measures that Congress, as policy makers, should be conscious about, especially in balancing the interests of the State which is to strengthen or enhance the capacity of the law enforcers and law enforcement, on one hand, and to continuously protect the rights of the people, especially the right to privacy, on the other. She believed that while the proposed measure offered a lot of improvements to try to make such delicate balancing act between two equally important and primordial interests, the measure could be effective in terms of precluding or deterring more crimes prohibited and identified in the law which are committed by private citizens or non-state actors or those not involved in the enforcement of laws.

However, she expressed her concern on how the bill would preclude, deter or discourage prohibited acts of wiretapping by state actors, particularly law

enforcers and investigators within the military and the police administration, who, she claimed, have been wiretapping certain public figures. She said that no less than President Duterte admitted that she herself was a subject of surveillance by a foreign state which was the subject of her petition for habeas data she filed before the Supreme Court.

Asked to define the use of the term "expanded" in the title of the measure, whether it was reflective only or indicative of the fact that the proposal added a list of crimes under the exception, Senator Lacson replied that the use of the word "expanded" was just one of the connotations of the term, the other being that it means the expansion of the methods or the means to listen to conversation or to wiretap because the means mentioned in the current law cannot be anymore covered under R.A. No. 4200 considering the age of modern communication and information technology. He cited the amended Section 1, which, he said, was encompassing, to wit:

> "SECTION 1. It shall be unlawful for any person TO SECRETLY WIRETAP, INTERCEPT, OVERHEAR AND LISTEN TO, SCREEN, READ, SURVEIL, RECORD OR COLLECT, WITH THE USE OF ANY MODE, FORM, KIND OR TYPE OF ELECTRONIC, MECHANICAL OR OTHER EQUIPMENT OR DEVICE OR TECHNOLOGY NOW KNOWN OR MAY HEREAFTER BE KNOWN TO SCIENCE OR WITH THE USE OF OTHER SUITABLE WAYS, ARRANGEMENTS OR MEANS FOR THE ABOVE PURPOSES, PRIVATE COMMUNICATIONS, CONVERSATIONS, DISCUSSION/S, DATA, INFORMATION, MESSAGES IN WHATEVER FORM, KIND OR NATURE, SPOKEN OR WRITTEN WORDS OF ANY PERSON OR PERSONS, WITHOUT ANY AUTHORIZATION FROM ALL THE PARTIES CONCERNED.

Asked whether the term "expansion" would refer not only to the expansion of the list of exempted crimes or offenses but also to the expansion of the list of methods, the means or the devices to be attuned to the time and especially advanced technology, Senator Lacson answered in the affirmative, adding that the proposal also included the increase in penalties, including the fines, from six months to six years to six years to 12 years and a fine of P1 million to P5 million.

Asked whether the use of the term "expansion" also would refer to the expansion of additional safeguards against intrusion, Senator Lacson answered in the affirmative, pointing out that the proposal is adherent to 13 international principles on the application of human rights to communication surveillance. He said that during the period of amendments, the crime of graft and corruption, which was overlooked, will be added in the list of offenses. Senator De Lima thanked Senator Lacson for including graft and corruption which, she said, was one of her proposed amendments.

As regards the expanded list of the means of communication, Senator De Lima noted that R.A. No. 4200 listed wiretapping instruments which are already considered outmoded like dictograph, dictaphone walkie talkie or tape recorder while in the proposal, it already encompasses other types of gadgets as provided in the phrase "by using any other device or arrangement to secretly overhear/intercept." Senator Lacson explained that the amendment was an additional safeguard because those gadgets or equipment not even discovered or invented by science will be covered under the new measure.

As far as expansion is concerned, Senator De Lima noted that the measure also contemplated to increase the penalties for violations of the law, especially those committed by state actors or elements of the security forces, both the military and the police. Asked what are the increased penalties to be imposed on public officers, Senator Lacson replied that public officers found violating the law would be imposed the penalty of perpetual disqualification from holding public office on top of the imprisonment of not less than six years and not more than 12 years and a fine of not less than P1 million but not exceeding P5 million.

Asked whether he would be open to amendments making the penalties for public officers or state actors higher than what were being proposed, Senator Lacson answered in the affirmative. Senator De Lima explained that she was thinking of imposing the highest penalty for violation of the law by state actors, not only for committing some qualified acts but also other acts within the contemplation of the regular application of the law because they have the capability to violate the Anti-Wiretapping Law. She said that, in fact, even Republic Act No. 4200 did not deter them from violating the law, thus, the imposable penalty must be serious or grave enough to create a deterrence. Senator Lacson agreed.

Adverting to the prohibited acts of interception and recording of private communication, Senator De

Lima remarked that the phrase "overhear and listen to" denotes a passive act. Senator Lacson pointed out that even onlookers or "*nakikimiron*" may be liable.

To the observation that the word "overhear" presupposes a passive situation since the person hearing the communication has no intent to hear unlike listening which implies the intention to hear thereby making it an active verb, Senator Lacson pointed out that the mere fact of actually overhearing a wiretapped conversation brings the assumption of malice. Nonetheless, he said that the reasoning that a person has no intention to hear but has accidentally heard the conversation being wiretapped could be considered as a matter of defense during trial. He clarified that all the unlawful acts mentioned in the bill should be taken together to establish an active participation in the commission of the crime.

Asked why the word "screen" is a prohibited act when in the dictionary it ordinarily means to conceal, to protect something, to show a movie/video, or to broadcast, Senator Lacson said that it is a technical term which refers to capturing using a cellphone screenshots or still photos of any communication which is a subject of wiretapping. Senator De Lima said that the act of screening envisions several scenarios.

Asked how the word "private" qualifies the definition of private communication, Senator Lacson averred that the word pertains to the privacy as enshrined in the Constitution.

Saying that the meaning of privacy is sometimes hard to determine, Senator de Lima stated that in the landmark case *Katz vs. United States* (1967), the U.S. Supreme Court provided the standards to determine the existence of privacy when it held that "The Government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which he justifiably relied while using the telephone booth, and thus constituted a search and seizure within the meaning of the Fourth Amendment," and that "protection may be extended to areas where a person has a subjective expectation of privacy and such expectation is objectively reasonable."

Citing a gray area on privacy, Senator De Lima recalled a news report about a car owner who posted a video of an MMDA enforcer who apprehended her and tried to extort her in exchange for a speeding violation which prompted then MMDA Chairman Francis Tolentino to qualify the video recording as entrapment and a violation of the Anti-Wiretapping Law. Senator Lacson said that the former MMDA chairman may have a point that while the traffic enforcer could be liable for attempted extortion, the lady traffic violator likewise committed a violation of the Anti-Wiretapping Law.

But Senator De Lima presented another school of thought based on the U.S. Supreme Court's previous ruling that police officers "had no reasonable expectation of privacy in a conversation that occurred in a car on the shoulder of a busy highway," because by virtue of their position, they would have a diminished expectation of privacy. She said that in such a situation, the conversation secretly recorded by one of the parties cannot be entitled to the protection of the law.

Senator Lacson stated such a situation must pass the two-part reasonable expectation of privacy test as held in the case of *Ople vs. Torres*: "(1) whether by his conduct, the individual has exhibited an expectation of privacy; and (2) whether this expectation is one that society recognizes as reasonable." He admitted that as he was not familiar with the circumstances of the apprehension and the recording by the traffic violator, Senator De Lima may also be correct to claim reasonable expectation of privacy. However, he said that it is up to the courts to decide on the matter. As regards the traffic enforcer, he said that it is the prerogative of the one being extorted to put up a defense which may be of use in case it reaches the courts. Senator De Lima remarked that under such circumstance, she would take the position that the enforcer must not be entitled to the protection of the law.

On whether the expanded definition of "forms of communications" includes written communication such as letters, chats or SMS transcripts, Senator Lacson affirmed, adding that even e-mails are included.

Asked if sign language is likewise covered by the expanded definition, Senator Lacson said that all other means of communications would be consolidated and discussed at the proper time. He said that he is open to incorporating other safeguards during the period of amendments and thanked Senator De Lima for contributing additional safeguards to the bill.

Senator De Lima said that her foremost concern is to safeguard the unlawful intrusion of privacy by

weighing and sensitively balancing the interests and perspectives of the State's law enforcement capacities on the one hand, and the protection of right to privacy of a private individual or public official on the other hand. She emphasized that she would never support any legislative measure that would trample upon basic fundamental liberties.

To the phrase "knowingly possess," Senator De Lima asked if it could be interpreted as the possession of a private communication which was not sent to the possessor, or whether the possessor, who is neither the recipient nor the sender of the private communication or letter, would be liable if the letter is entrusted to him/her by only one party and not all or both of the parties to the conversation, for instance, a secretary to whom the recipient entrusted the safe-keeping of a private communication in letter form without the consent of the sender.

Senator Lacson said that for purposes of consistency, consent should be given by all parties and not just one party in the private conversation or communication; otherwise it would violate privacy inasmuch as it presupposes a communication between two persons.

Asked if the party who saves the transcript without the knowledge or consent of the other party in a conversation is liable for possessing recorded communications, Senator Lacson replied in the affirmative. He said that as long as there is no consent from all parties to a communication or conversation, mere possession should be a violation.

As regards the modern forms of electronic communication which automatically store records or copy conversation without any overt action from the recipient of the communication, Senator Lacson said that the party should destroy such communication or conversation at the first instance since he is not privy to it.

Asked if the party to an SMS or e-mail exchange who does not delete the messages he or she receives is liable for possessing a recording of the private conversation in the form of undeleted text messages, Senator Lacson said that any person who possesses such private communication as well as the screenshots of e-mails, chats or SMS exchanges, especially a person who is not a party to the private conversation but has in his/her possession a transcript or records of a particular conversation, will suffer consequences.

On whether the taking and possession of screenshots of private correspondence done by a person who is a party to the conversation would be considered as a secret and unauthorized recording of communications which could make him liable for suit by the other party, Senator Lacson replied in the affirmative. He recalled having rejected a suggestion to allow one-party consent for such recordings as such actions should have the approval of all parties concerned. He said that a law enforcement officer who secretly records a conversation with a possible suspect without a court order would be considered a one-party consent which is allowed in the United States but would not likely pass the privacy provision of the Philippine Constitution. He pointed out that the action of one private person who opts to record and not delete a conversation with another party as well as disseminating the same is a clear violation of the law.

Asked if closed circuit television (CCTV) footages are a form of wiretapping, Senator Lacson clarified that in such a situation, there would be a reasonable expectation of privacy considering that CCTV cameras are everywhere such as in business establishments like grocery stores where one should expect to be monitored. However, he said that extending the camera's reach beyond or over the other side of the fence would be an intrusion as there is no reasonable expectation of privacy.

Senator De Lima asked whether CCTV footages from hidden cameras that inadvertently record forms of communication such as sign language, lip reading or private letters are considered illegal recordings. She cited as an example hidden nanny cams which are household CCTVs that monitor how well a nanny performs her caretaking duties but somehow inadvertently catches some form of conversation while also recording not only some form of criminal wrongdoing such as maltreating a child or stealing but even some private acts. Senator Lacson adverted to the ruling in the case of *Victoria Hing v. Choa Chuy* (G.R. No. 179736) which states that:

> "In this day and age, video surveillance cameras are installed practically everywhere for the protection and safety of everyone. The installation of these cameras, however, should not cover places where there is reasonable expectation of privacy, unless the consent of the individual, whose right to privacy would be affected, was obtained. Nor should these cameras be used to pry into the privacy of another's

residence or business office as it would be no different from eavesdropping."

On whether the court decision meant that such material is considered inadmissible as evidence, Senator Lacson explained that the situation Senator De Lima had posited would be a gray area particularly if the private act was committed and recorded in the residence of the homeowner who might be in violation of the Anti-Wiretapping Act if he decides to keep and disseminate the material.

Asked if the standard reasonable expectation of privacy is an essential element prior to the prosecution of the case, Senator Lacson replied in the affirmative.

Senator De Lima clarified that she was asking about the exact meaning of certain terms in the measure to avoid or preclude questions of constitutionality or being overbroad.

Adverting to the proposed Section 1(A) of the bill, Senator De Lima asked how certain scalawags within the Philippine National Police (PNP) can be prevented from reselling the wiretapping equipment purchased through them to the local market since these could be procured without the authorization from the Department of Information and Communication Technology (DICT). Senator Lacson replied that those involved in such transactions would be liable for technical malversation since the purchases of equipment considered as government properties should be guided by the provisions of R.A. No. 9184 (Government Procurement Law).

As to the basis for giving the PNP, NBI, PDEA and AFP the authority to procure wiretapping equipment either through limited source bidding or direct contracting. Senator Lacson explained that while the general rule under RA 9184 is an open bidding for all procurement, law enforcement agencies like the PNP – by the very nature of their jobs – are exempted from this process and could purchase their equipment either through limited source bidding or direct contracting because if criminal elements acquired information about the kind of technology being used by the PNP or the NBI, they could quickly resort to procuring equipment that could scramble or render these wiretapping devices ineffective. He explained that limited source bidding may be conducted only in conditions such as the procurement of highly specialized types of goods and consulting services, which fall within the purview of the purchase covered by the provision.

On whether the limited source bidding or direct contracting for such procurement is merely an option for such agencies, Senator Lacson replied in the affirmative, but he noted that it would not be practical on the part of these agencies to resort to open public bidding.

That being the case, Senator De Lima suggested that the intention of bringing such procurement under the application of the exception should be clearly stated in the provision because as currently worded, it gives the impression that the purchasing agency has the option to purchase the equipment through open bidding or via limited source bidding or direct contracting. Senator Lacson agreed, adding that the word "may" could be changed to SHALL for this purpose.

However, Senator De Lima clarified that she has yet to be convinced that every purchase of this special equipment should not go through open and public bidding.

Asked to confirm if he is going to include violations of the Anti-Plunder Law (RA 7080) in the list of offenses that were added to the list of exempted crimes under the proposal, Senator Lacson replied in the affirmative. He said that he had instructed his staff to prepare the amendment as it was on oversight on their part for not including violations of Republic Act Nos. 6713 and 3019, meaning, the exemptions would include violations of RA 7080 as well the Anti-Graft and Corrupt Practices Act.

Senator de Lima shared the view that plunder and other acts of corruption should be included in the expanded list as these are less susceptible to usual methods of investigation because it commonly involves the participation of government officials who have the capacity to ensure their impunity. However, she cautioned that this would be a sensitive situation as it involves public officials and there is a high risk that electronic surveillance could be misused for purposes of persecution. Senator Lacson pointed out that they would be squandering the opportunity to gather evidence that would be admissible if they do not get any court order and just wiretap conversations. He agreed to Senator De Lima's suggestion to put more safeguards regarding this particular provision.

Asked if he would consider the proposal allowing the Sandiganbayan or the Supreme Court to authorize

the use of such investigative methods only under certain circumstances, Senator Lacson replied that he would welcome an amendment to have the Sandiganbayan rather than the RTC authorize the use of such investigative methods.

For her part, Senator De Lima said that she was trying to strike a balance between the need to facilitate the gathering of evidence for purposes of conviction and guard against cases of abuses, misuse or political persecution. Senator Lacson remarked that it is reasonable to have the Sandiganbayan as the issuing authority in cases involving graft and corruption because it can better appreciate the application to wiretap conversations.

Senator De Lima asked if violations of the Fair Competition Law could be included in the list of offenses since anti-competition, particularly cartel cases, may be considered in the list of crimes in which courts may sanction interception and recording. She stated that it is necessary to give teeth to the newly-enacted Fair Competition Act because certain anti-competitive acts are specifically and uniquely conducted to avoid detection. She noted that cartel cases and anti-competition cases are complicated, and wiretapping has been critical in successfully detecting, investigating and prosecuting them. Since international cartels are keen in avoiding U.S. authorities because they are covered by law, Senator De Lima pointed out that a failure on the part of other countries to be as vigilant could create safe havens. Senator Lacson said that they might as well include many cases so that it would not be necessary to amend the bill frequently.

Since the measure already includes violations of the Anti-Money Laundering Act, Senator De Lima posited that it would be covering more offenses as the list of predicate crimes under AMLA has been continuously expanded; therefore, reviewing the list of predicate offenses under AMLA would suffice to avoid a longer or a duplication of the list of the offenses.

At this juncture, the Senate President relinquished the Chair to Senator Ejercito.

Regarding judicial authorization, Senator De Lima appreciated the fact that compared to the old law, the proposed measure has indicated detailed procedures. She then asked if the product of an authorized act of wiretapping cannot be readily used without express court authorization. Senator Lacson answered in the affirmative.

Senator De Lima stated that it is a very good safeguard so that there is no automatic use of the product of authorized wiretapping. Senator Lacson pointed out that the applicant cannot remove, conceal, destroy, discard or reveal any of the tape, disc, other storage device, or any copy or excerpt thereof, and that such materials should be deposited with the authorizing court within 48 hours.

Asked to explain the requirement of notice to the affected party, Senator Lacson clarified that the individual whose communications have been intercepted or recorded should be notified within 90 days from the expiration of the order. Asked on the rationale of the period specified given that the court order has a life of 60 days subject to an extension of 30 days, he replied that it is for the recipient to prepare for his or her defense and for the case buildup on the part of the law enforcement authorities.

Citing proposed Section 3-A, Senator De Lima stated that there are standards in giving the authority to intercept, record and listen, to wit: (1) that there are reasonable grounds to believe that any of the crimes enumerated in Section 3 has been committed or is being committed, or is about to be committed; (2) that there are reasonable grounds to believe that the evidence that will be obtained is essential to the conviction of any person for, or to the solution of or to the prevention of, any of such crimes; and (3) that there are no other effective means readily available for obtaining such evidence.

On the first standard, Senator De Lima pointed out that in using the phrase "about to be committed," there must be imminence of the commission of the crime. Senator Lacson stated that the bill simply followed the standards of a citizen's arrest. Senator De Lima expressed concern regarding the phrase, and cited as an example the current issue on the alleged plot to oust the current president. Assuming that there is such plan, she said that it would certainly fall under any of the excepted offenses, like sedition or inciting to sedition.

Asked how the phrase "about to be committed" would be interpreted, Senator Lacson replied that it should be left to the sound discretion of the judge because, although it is an *ex parte* procedure, the judge who will issue the authority will hear the applicant and witnesses.

Senator De Lima stressed that parallel to the standards for warrantless arrest, there should be an element of imminence and no substantial time gap.

Continuing on the example given by Senator De Lima, Senator Lacson said that in presenting the evidence, the person should be able to prove that there is imminent danger to oust the president, and the determination of whether there is imminent danger should be left to the judge.

At this point, with the permission of Senators Lacson and De Lima, Senator Drilon underscored as a concern that the application could be based on the allegation that a crime is about to be committed. In effect, he said that the person applying for an authority to wiretap is reading the state of mind of the person to be wiretapped and it would be extremely dangerous for that person to be issued the authority based on that premise. Senator Lacson stated that there should be independent—not arbitrary—circumstances that would make the applicant think that a crime is about to be committed. Senator Drilon lamented that it may be good in theory but not in practice. Senator Lacson admitted that the language was copied from the old law. Senator Drilon, however, said that regardless of what is found in the old law, they should re-examine the policy since, at present, there are situations which may not have been prevalent at the time the old law was being discussed. He reiterated his concern about the power to grant the authority to wiretap based on the conclusion of the applicant that a crime is about to be committed.

Senator Lacson opined that the judge should ask for independent circumstances or evidence to show that a crime is about to be committed, and that the conclusion of the applicant shall not be a stand-alone requirement. Senator Drilon said that while it is ideal, it is a cause for concern given the kind of judges that the country has, like those who issued warrants to those who were already in the provincial jail.

Senator De Lima added that there must be overt acts or proof of overt acts that tend to show the attempt to commit the crime. Senator Lacson agreed on the need to input such safeguards in the bill.

Regarding the example she cited, Senator De Lima explained that it was due to some media reports that some personalities are being accused of plotting the alleged ouster of the president. She expressed concern that someone might apply for court order on the basis of such assumptions.

On the third requirement, Senator De Lima stated that it might not be strictly complied with because only the law enforcers themselves could determine whether there are other effective means readily available for obtaining such evidence, and all they have to do would be to represent to the judge or to court that there are no other means. She said that although it is acceptable as a form of additional safeguard, it does not have any added value. Senator Lacson replied that on the contrary, it would make the application for a court order harder. He said that since there are no other effective means readily available, it would be very difficult to secure a court order to wiretap.

To Senator De Lima's query as to what was meant by classified information under Section 3(c), lines 13 to 19 of page 9 of the proposed measure, Senator Lacson said that classified information refers to any information that cannot be divulged to the public without a written order from the court.

Noting that lines 16 to 22 on page 10 of the bill prohibits the disclosure of the identity of the authorized applicant, Senator De Lima asked for an example of a situation where the identity of the applicant may be disclosed by the court because the latter has determined that public interest in the disclosure outweighs the public interest in keeping it secret.

Senator Lacson explained that when there is abuse or violation by the applicant of the use of the classified information or the court order, the court may authorize to disclose the identity of the applicant. For instance, he said that if an applicant sells the proceeds or is compromised, he or she should be answerable to some criminal violations or acts and, as such, the judge should decide to disclose the applicant's identity as a matter of course because he or she violated another provision of the bill.

On the matter of disposition of deposited material under Section 3-F of the proposed measure, Senator De Lima noted that the provision is a very good safeguard because the information or data gathered through the authorized active interference are supposed to be deposited with the court and therefore could not be used, shared or given to anyone without the express authority of the court because the data is deemed as classified information. However, she observed that the proposed measure also provides that the sealed envelope or sealed package shall not be opened and its contents shall not be disclosed,

revealed, read, replayed or used as evidence unless authorized by written order of the authorizing court which shall not be granted except upon motion, with due notice and opportunity to be heard to the individual, subject of the above-mentioned court authorization, she asked what kind of proceedings are being contemplated since the provision mandates notice and hearing. Senator Lacson said that the provision refers to summary yet open proceedings.

Asked to be clarified with respect to the period on which the individual whose communications have been intercepted and or recorded shall be notified of such fact, Senator Lacson said that the provision meant on the 91st day, or right after the extended period.

SUSPENSION OF SESSION

Upon motion of Senator Aquino, the session was suspended.

It was 5:21 p.m.

RESUMPTION OF SESSION

At 5:21 p.m., the session was resumed.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1210

Upon motion of Senator Aquino, there being no objection, the Body suspended consideration of the bill.

ADJOURNMENT OF SESSION

Upon motion of Senator Aquino, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of Monday, January 23, 2017.

It was 5:22 p.m.

I hereby certify to the correctness of the foregoing.

ATTY. LUTGARDO B. BARBO
Secretary of the Senate

Approved on January 23, 2017