

Death Penalty: Not A Deterrent to Criminality

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His Excellency Jan de Kok, Commissioners Wilhelm Soriano and Eligio Mallari, Honorable Members of the Diplomatic Corps, Fellow Speakers, Delegates and Participants, good morning.

When I received the invitation to be a part of this dialogue, I was reminded of the phenomenon called by Swiss psychologist Carl Jung as *synchronicity*, the perception of meaningful life coincidences.

Last year, the Commission on Human Rights of the Philippines (CHRP), the European Union (EU), and the Public Attorney's Office (PAO), worked together to save two precious lives from death by lethal injection. We all did it without consciously coordinating with each other. But like waves we moved as one for death convicts Roberto Lara and Roderick Licayan.

On January 20, 2004, ten (10) days before the scheduled execution of Roberto Lara and Roderick Licayan, the CHR through Chairperson Quisumbing submitted a position paper to the Supreme Court, presenting among others, its

“full support to the motion of the Public Attorney’s Office (PAO) Chief, Persida Rueda-Acosta requesting the Honorable Supreme Court to reopen the case of Roderick Licayan and Roberto Lara based on testimonies of Pedro Mabansag and Rogelio de los Reyes.” The CHR contended, “what will unfold during the trial by reason of their testimonies is something relevant to the innocence of Licayan and Lara.”

Joining the voice of protest then against the execution of Lara and Licayan, were diplomats from countries within the European Union. They went to the New Bilibid Prisons (BUCOR) and expressed their overwhelming support for the suspension of Lara and Licayan’s execution. May I extend my heartfelt gratitude to all of you. The presence today of our supporters during our fight for our clients’ lives, makes this forum truly meaningful to me.

In a study on death penalty in the Philippines, Amnesty International, found out that:

- 1) innocent people may be sentenced to death through judicial error;
- 2) death penalty is the ultimate cruel and inhuman punishment; and
- 3) has no unique deterrent effect. (Press Statement of Mamamayan Tutol sa Bitay [MTB] Movement for Restorative Justice, “Death Penalty: State Sanctioned Killing,” p.2)

The PAO has long accepted the veracity of said findings which bolstered the public attorneys’ commitment to continue their share in working for the abolition of death penalty in the Philippines.

The PAO has two specific objections to death penalty for these concretely affect the clients it is mandated to serve, the poor who are in search for justice.

Said objections are as follows:

1. It violates the right to equal protection of the poor. It is imposed disproportionately upon those whose victims are rich and influential, and offenders who are poor and uneducated.

2. It denies due process of law. Its imposition is often arbitrary, always irrevocable – forever depriving an individual of the opportunity to benefit from new evidence or new laws that might warrant the reversal of a conviction, or the setting aside of death sentence. (<http://www.aclu.org>,”Stop the Execution of the Innocent,” p.2)

To elucidate our specific objections, I will cite the case of PAO clients Gerry Ebio, and of course, Roberto Lara and Roderick Licayan.

Ebio was found guilty of Rape, and a Sorsogon regional trial court sentenced him with death penalty. The court *a quo's* decision was affirmed by seven (7) out of fourteen (14) justices of the Supreme Court. (When the high court deliberated on Ebio's case in 2002, there were only 14 sitting justices. Justice Santiago Kapunan had just retired, and had not yet been replaced then.) Public attorneys brought up the issue of the required quorum when the justices voted on the case. Having raised a valid point, "the tribunal decided to recall its action on Ebio's case and take a second look on the issue of whether it had a quorum at the time it voted to affirm his appointment with death." (Raul Palabrica,

"Questionable SC death verdict," Philippine Daily Inquirer, Sept. 26, 2004, p. A15)

In this case, Atty. Raul J. Palabrica of the Philippine Daily Inquirer, noted the PAO lawyers "professionalism and dedication to the cause of extending free competent legal assistance to people who cannot afford to pay for legal services." (Ibid.)

The vigilance of PAO lawyers saved Ebio; their persistence did it, to Lara and Licayan.

Roberto Lara and Roderick Licayan were convicted for Kidnapping on September 9, 1999. They were scheduled for execution on January 30, 2004. Fortunately, however, due to a newly discovered evidence exonerating the convicts from the crime charged against them, I was able to file an Urgent Motion to Reopen the Case before the Supreme Court. On January 26, 2004, the justices honored the Public Attorney's Office by giving their consent to hear the Oral Arguments of the Chief Public Attorney, for the first time in the history of PAO. On February 17, 2004, the Supreme Court voted 8-6 in favor of the reopening of their case, which was remanded to the court *a quo* for new trial.

The euphoric feeling of that moment never fails to inspire me as an anti-death penalty advocate. But I cringe every time these thoughts drift in my mind. *"What if Pedro Mabansag and Rogelio de los Reyes were not apprehended before the scheduled execution? Or, even if they were already in police custody, what if they withheld the truth about the innocence of Lara and Licayan? What if*

the retrial came in too late? Too late ... for the convicts may no longer be in jail, but in the Great Beyond."

Morbid? No... just a slice of the truth. Also a part of the truth is the death of Pedro Mabansag. He passed away recently, but not without leaving a fighting chance for Lara and Licayan to regain their lives, liberty and integrity. In an affidavit given to PAO, Mabansag cleared the names of our clients on the crime charged against them. The retrial of the Lara and Licayan case is ongoing at RTC, Branch No. 272, in Marikina.

The case of Lara and Licayan hogged the headlines, and stirred the debate on death penalty once again. Some people allude to our Office as the savior of Lara and Licayan. But then these two could in turn be considered as the saviors of their fellow inmates in death row. The reopening of their case served as the floodgates of reprieves, and even pardon.

The execution of 217 death convicts was deferred by Her Excellency President Gloria Macapagal-Arroyo. And those qualified and sickly 70-year-olds and above were pardoned by Her Excellency. They were granted not just a temporary lease on life, but the fullness of it to be enjoyed in their twilight years.

These gestures of Her Excellency, prompted Catanduanes Rep. Joseph Santiago to say that:

"Xxx if we may give advice to the president, we would strongly recommend that she commutes to life imprisonment all sentences meted out to over 1,600 convicts on death throw with a stroke of a pen, just like what Russian President

Boris Yeltsin did xxx." ("Pro-life solons: Death penalty given last rites," The Daily Tribune, November 28, 2005, p.4)

In view of the existence of death penalty in our country, I concur with his suggestion. I also suggest that our lawmakers should spare some of their time in reviewing the pending bills on death penalty.

Other "death penalty cases" handled by PAO may not have been covered by the media, but needless to say, they are important to us. There are no less important cases to us, for there are no lives lesser than ours.

The Public Attorney's Office being an attached agency of the Department of Justice has the duty to make certain that justice is served not only to the accused but also to the victims. An innocent accused is also a victim when he is wrongfully detained and charged; and thereafter, executed.

PAO lawyers exhaust all means, within the bounds of law, to ensure that the innocent ones are freed from incarceration and the guilty ones are meted out with humane and appropriate penalty.

Through the efforts of the public attorneys, from the year 2000 up to the middle part of 2005, before the Supreme Court, fifty-six (56) death convicts were acquitted from death penalty. One hundred two (102) inmates were acquitted from death to reclusion perpetua, and three hundred twenty (320) felons had a reduction of sentence from death to reclusion perpetua.

We are happy to have contributed in altering the fates of these 477 death convicts. They are "dead men walking," no more.

Certainly, we do our best in fighting for our clients. If freedom is out of the question considering the gravity of their offense, we bargain for a lesser penalty. No matter how vile their crimes are, they do not deserve death by lethal injection or by other similar means.

Death penalty is a legalized murder. Being a "crime" itself it cannot, and can never solve the crimes in our society. Be that as it may, what then could curb criminality in our country? Strict and thorough enforcement of the law is the most effective key. Coordinated cooperation of the pillars of criminal justice system could make this effort on deterrence a whopping reality.

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