

## An Examination of Selected Issues Involved in the Execution of Insane Deathrow Convicts

*Katrina V. Goli*

42 *ATENEO L.J.* 99 (1997)

*SUBJECT(S):* EXECUTION OF DEATHROW CONVICTS

*KEYWORD(S):* DEATH PENALTY, DEATH ROW CONVICT

The Supreme Court affirmed the first death sentence last 1996. Aside from this, there are 281 inmates on death row as of 1997 after their convictions by the lower courts. With the growing number of death row inmates and with the courts apparently disposed to meting out death sentences whenever called for, the issue of death row convicts becoming insane after final sentence has been pronounced and while awaiting their execution becomes an important issue.

In the Philippines, commentators are of the opinion that when a death row convict becomes insane, his execution should be stayed pending his treatment at a mental facility based on Article 79 of the Revised Penal Code. According to the provision, however, once the death row convict regains his sanity, he is once again eligible for the death penalty.

The provision, which deals generally with the suspension of the execution of sentences once the convict becomes insane while serving said sentence, does not seem to adequately resolve certain issues especially in the death penalty context, such as: (1) the procedure to be observed once an insanity claim is raised by or on behalf of the death row convict, as well as (2) the procedure to be observed after a death row convict is adjudged insane. Both the due process clause and the equal protection clause of the Constitution require that uniform procedures be formulated in order that those entitled to the statutory right of not being executed while insane may avail of such as well as to avoid the arbitrary, capricious, unreliable and unpredictable administration of the death penalty.

Specifically, a resolution of the first issue entails answers to the following questions: (a) is the death row convict still entitled to procedural due process; (b) if so, to what extent or degree of procedural due process is he entitled? The Article concludes that the death row convict is still entitled to procedural due process and that the extent or degree of such is determined by a balancing of the limited right to life of the death row convict by virtue of his statutory right not to be executed while insane vis-à-vis the interests of the state and society in avoiding the filing of spurious insanity claims, in avoiding the delay or frustration in carrying out the death penalty, as well as minimizing fiscal and administrative costs. The Article then proposes certain

guidelines by discussing selected aspects of procedure in order to aid in the formulation of uniform and specific procedures to deal with such issue.

A resolution of the second issue abovementioned entails answers to the following questions: (a) if the death row convict is adjudged insane, can the state forcibly treat him in order to render him sane for execution purposes; (b) does he have the right to refuse medication; (c) if so, who will refuse for him, considering the fact that he is insane; (d) if he is treated and regains so much of his sanity as to be able to decide for himself as to whether or not to continue treatment, does he now have the right to refuse forcible treatment by the state; and (e) if he has the right to refuse forcible medication by the state, what happens if he refuses or, on the other hand, if he agrees to continued treatment?

The Article reasons that after a death row convict is adjudged insane, the state, to be faithful to its *parens patriae* function, can only medicate him with the view of regaining so much of his sanity that he is able to determine for himself whether or not he desires continued treatment. At this juncture, after weighing the interests of the state in forcible medication, (i.e. its police power and *parens patriae* function), against the interest of the death row convict against forcible medication, (i.e. his right to liberty, right to privacy, right against cruel, inhuman and degrading punishment, right against torture and his right to equal protection), the Article concludes that the death row convict has a right to refuse forcible treatment by the state.

In the course of the above analysis, the Article also raises additional questions as to the reliability and predictability of the present method of treating insanity using antipsychotic drugs, concluding that the lack of precise understanding as to the effects of these drugs in general and their effects on any individual in particular, necessitates a permanent stay of execution, if the death penalty is to be applied fairly and equally.