

The Mandatory Death Penalty for Perpetrators of Incestuous Rape: The Point of View of Child-Survivors

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INTRODUCTION

There is increasing awareness of the problem of child abuse in the Philippines. Reports to agencies such as Department of Social Welfare and Development (DSWD) have been increasing significantly through the years. In 1998, the DSWD reported 3098 cases of sexual abuse. In 2002, the number of reported sexual abuse cases nationwide rose to 4129 (DSWD Statistics). The Child Protection Unit of the Philippine General Hospital has also seen an increasing number of sexually abused children since 1997. The average increase in the number of sexually abused children seen per year was approximately 20% in its first four years. From 1997 to

Note: For convenience, the pronoun "she" is used for victims while the pronoun "he" is used for offenders in this article. While majority of victims of rape are females and majority of offenders in rape cases are males, the authors acknowledge that male victims and female sex offenders also exist.

2002, the CPU has evaluated a total of 2669 patients who were sexually abused (CPU Annual Reports, 1997-2002).

Clearly, the number reported by agencies such as the DSWD or the CPU represents the tip of the iceberg of sexually abused children all over the country. In the absence of a nationwide reporting system, the number of children who are sexually abused can be estimated from a community-based survey of adolescents conducted in 2000 (BSNOH Survey, 2000). In this study, 4% of adolescents reported experiencing sexual molestation with 1.7% reporting forced sex or rape. From previous studies, an average of 10.4% of Child Sexual Abuse is perpetrated by close family members (Fergusson, 1999). These cases of familial child rape would have to be managed at various Child Protection Units established at various health institutions in the country since 1997.

The existence of a mandatory death sentence for familial child rape forces physicians and other health professionals working within the continuum of care for child maltreatment to routinely face this issue and its impact on children and

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families. While there seems to be public acceptance of the death penalty for the crime of incestuous rape, health professionals working directly with abused children often hear mixed reactions from their patients and their family members about the imposition of this penalty on their own kin. Many have accepted that death is the

appropriate penalty because it is stated in the law and has been public debated many times. Yet, not a few have verbalized that the penalty of death for familial child rape is too extreme. Still others come to the Child Protection Unit mouthing "*bitay*" without comprehending the full meaning of their words. Many are preoccupied with the possible consequences stemming from the death of the family breadwinner.

There remain many different beliefs and opinions on the imposition of the death penalty for familial child rape. Given this equipoise about the appropriateness and acceptability of the mandatory death penalty, there is a need to examine the imposition of capital punishment for familial child rape from the medical perspective. There is also a need to present clinical "lessons learned" regarding its effect as gathered by physicians and child abuse professionals and the families they serve.

The general objective of this paper is to examine the prescription of the mandatory death penalty for familial child rape using standards applied in clinical decision-making. Specifically, the objectives are:

1. To examine the effectivity of the death penalty in deterring incest / sexual offenses
2. To examine the effectivity of therapy for sexual offenders
3. To describe the effects of the death penalty on the child victim-survivors of sexual abuse perpetrated by a family member

HISTORICAL CONTEXT: The History of the Death Penalty Worldwide

The death penalty was widely applied in ancient times throughout the world. Among ancient Egyptians (IV millennium BC to the IV century AD), the death penalty was applied to those who broke Maat, the Universal Law. The crimes included murder, theft, sacrilege, attempt on the Pharaoh's life and spying. Among the Babylonians under the Code of Hammurabi (1792-1750 BC), the death penalty was provided for 25 crimes such as theft, murder and wrongs at work, etc. In the 5th century BC, the punishments attending to the Roman Law of the Twelve Tables included beheading, flogging till death, crucifixion, drowning and burning alive.

In Europe, in the middle ages, the death penalty continued to be used by kings, emperors and feudatories for crimes ranging from murder, theft, high treason to sacrilege. The following centuries would hardly be any different. During the reign of Henry the VIII, 72,000 people were estimated to have been executed (Randa, 1977).

The modern movement for the abolition of the death penalty began in the 18th century with the writings of European theorists Montesquieu and Voltaire. The most famous work at this time was that of Italian jurist, Cesare Beccaria. In his essay, *On Crimes and Punishment* (1767), Beccaria theorized that there

was no justification for the state's taking of a life (Schabas, 1997). Beccaria claimed that the certainty of punishment, not its severity, was the key to deterring crime, and that capital punishment was less helpful in preventing murder than life

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imprisonment at hard labor (Haines, 1996). One of the first to abolish the death penalty was Tuscany in 1786.

Countries in general can be classified into abolitionist or retentionist with regard to their stand on the death penalty. "Abolitionist" for ordinary crimes means that the death penalty has been abolished for all ordinary offenses committed in time of peace such as those contained in the national criminal code or those recognized in common law (e.g., for murder, rape and robbery with violence). In these countries, however, executions have taken place within the past 10 years (for possession of illicit drugs for sale, etc.) and the death penalty is retained for exceptional circumstances such as those that may apply in times of war, e.g., for military offenses or for crimes against the State, including treason or armed insurrection. "De facto abolitionist" means that while the death penalty is in the statutes and death sentences may continue to be imposed, executions have not taken place for a long time – 10 years at least. "Retentionist" countries are those wherein death sentences have been imposed and executions have taken place within the past 10 years. Today, more than half the countries in the world have abolished the death penalty in law or practice (www.deathpenaltyinfo.org/dpicintl.html).

The following are the numbers for abolitionist and retentionist countries as of 2002:

Abolitionist for all crimes: 76

Abolitionist for ordinary crimes only: 15

Abolitionist de facto: 20

TOTAL - Abolitionist in law or practice: 111

Retentionist Countries: 84

Most executions occur in a handful of countries including China, Iran, Saudi Arabia and the United States. In 1977, the United Nations General Assembly affirmed a formal resolution that throughout the world, it is desirable to "progressively restrict the number of offenses for which the death penalty might be imposed, with a view to the desirability of abolishing this punishment" (www.newsbatch.com/deathpenalty.htm).

The Application of the Death Penalty In The Philippines

The body of criminal law in the Philippines is based on the Spanish *Codigo Penal* of 1898. Capital punishment was introduced in the country during the American Regime when a major revision of the criminal law in 1932 called for capital punishment for the crimes of kidnapping, murder, parricide, piracy, rape and robbery with homicide. After World War II, espionage was added to the list of capital offenses. The aftermath of World War II saw the creation of a new Anti-Subversion Law which called for the Death Penalty for all communist leaders. Between 1946 to 1965, 35 people were executed for offenses which the Supreme Court labeled as crimes of “senseless depravity” or “extreme criminal perversity.”

During the Marcos Years (1965-1986), the Communist Party of the Philippines (CPP) and its armed wing, the New People’s Army (NPA) grew considerably. Subversive crimes such as possession of firearms and arson were added to capital offenses, with deterrence touted as the official justification. One highly publicized execution during this time was that of a Filipino-Chinese drug dealer.

When President Cory Aquino came into power, a Constitutional Convention was held incorporating a strong Bill of Rights into the Philippine Constitution. During the Aquino years (1986 – 1992), the Philippines became a signatory to major human rights treaties. In 1987, the Philippines became the first Asian country in modern times to abolish the death penalty. However, only one year after its abolition, the military began lobbying for the restoration of the death penalty for crimes committed by the CPP/NPA.

In response to public clamor against widely publicized “heinous crimes,” President Fidel Ramos restored the Death Penalty via Republic Act 7659 which took effect on 1 January 1994. Treason, murder, rape, kidnapping and selected drug-related crimes were among those listed as capital offenses. In 1997, the new Rape Law, Republic Act 8353, imposed the death penalty specifically “when the victim is under 18 years of age, and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity, or affinity within the third civil degree, or the common-law spouse of the parent of the victim.”

In 1998, the year that President Joseph Estrada assumed office, the number of death penalty sentences imposed from 1998-1999 increased by 25%. President

Estrada then created a “Conscience Committee” in 1999 to review Death Penalty convictions, granting several reprieves.

Calls to repeal the Death Penalty were formalized with the filing of House Bill 8844 in Congress by Representative Roan Libarios in 2000. It was in the same year that the highly publicized first execution by lethal injection was done on Leo Echegaray who was convicted of raping his stepdaughter “Baby.” Towards the end of the year, President Estrada imposed a moratorium on the Death Penalty in honor of Jesus’ 2000th birth anniversary.

APPROACHING DEATH PENALTY FROM THE MEDICAL PERSPECTIVE

There is a need to examine the impact of the mandatory death penalty through three layers of perspective that health professionals involved in the fields of child protection and child advocacy must use in any clinical decision-making. There are three pertinent guiding tenets in the approach to children who are victims of child abuse:

1. Ethical principles: first do no harm

One of the most recognized ethical principles or dictums that governs the practice of medicine is the prescription to “first do no harm.” This principle of **beneficence** refers to “the duties to avoid harm as well as to advance the welfare of others.” However, this ancient nostrum is widely perceived to be only half-complete, as no intervention is without any risk of harm, and most medical decision-making is made by weighing the benefits against risks. Applying this same dictum to the application of the mandatory death penalty in incestuous child abuse requires a consideration of whether the potential benefit (severance of the perpetrator’s access to the child) is worth the potential harms or risks (psychological distress, economic displacement, disruption of the family unit, etc.).

2. "Best interest of the child"

On August 21, 1990, the Philippines became the 31st country to ratify the UN Convention on the Rights of the Child (UNCRC). By signing the Convention, the Philippines is bound to implement the principles set forth during the convention and to provide all the rights enumerated in this instrument within the country's socio-economic, political and cultural context.

The UNCRC has 41 articles that stipulate the rights of all children. These rights are grouped into four broad areas: survival, development, protection and participation. **Survival rights** include the right to life, to an adequate standard of living, to health and to parental care and support. These rights are often threatened when the perpetrator of incest is also the breadwinner of the family. **Development rights** refer to those the child needs in order to achieve her full potential in all aspects of her being: mental, spiritual, social and emotional. To respect developmental rights requires a holistic view of the child. Taken in the context of survivors of familial sexual abuse, it is recognizing that her needs go beyond the medical or legal, and that appropriate management should consider the child's social, educational, spiritual and other needs. **Protection rights** refer to those that the child needs to be protected from abuse, neglect and exploitation in all forms. This includes the right to preservation of identity, to family reunification, against illicit transfer and non-return; and to protection from abuse. **Participation rights** are the most novel of children's rights enumerated.

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These recognize that children *can and should* be part of any decision-making concerning their welfare and development. Article 12 of the UNCRC states that *State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.* The child's participation is based on his or her evolving capacity.

Aside from this declaration of rights, the UNCRC has four general guiding principles, namely: **best interest of the child, survival and development, par-**

icipation and non-discrimination. The first is especially relevant to the issue at hand. Article 3 of the UNCRC enjoins all that “actions concerning children, whether undertaken by public or private social welfare institutions, court of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.” For decisions to be in the best interest of the child, they should recognize the child’s unique individuality, evolving capacity and contextual features. Therefore, any and all decisions affecting the child should be *individualized and tailored to identified needs*.

3. Evidence-based medicine

The third and newest layer of lenses through which clinical decisions filter is the paradigm of Evidence Based Medicine (EBM). EBM provides the clinician the necessary tools to traverse the maze of medical literature to “determine the benefits and risks of alternative patient management strategies, and to weigh those benefits and risks in the context of an individual patient’s experiences and values,” so that these principles may be applied in the clinical care of patients. In evidence-based clinical practice, the “hierarchy” of evidence is recognized, for example, large randomized controlled trials provide the best evidence of causation while case-control studies provide, at best, evidence of association. The practice of EBM involves the finding and appraisal of the best evidence available in literature to guide one’s clinical decision making. This implies knowledge of the strength of the evidence as well as the degree of uncertainty offered by such. In literature on clinical interventions, for example, one looks for evidence that the intervention in question results in a “benefit” without causing or causing the least “harm” for the patient. In addition, the clinician examines the results for methodological rigor to help him decide how much salt to take with the conclusions put forward.

METHODOLOGY

In “traditional” EBM parlance, “population” consists of sex offenders convicted to receive the death penalty and children who are the victim-survivors of their crime, while the “intervention” being studied is the mandatory death penalty for incestuous rape. The “outcomes” of interest are the following:

1. Deterrence of criminals from doing the crime which should logically manifest as changes in the crime rate, preferably a decline;
2. Recidivism rate of sex offenders, defined as repeating or committing another sexual offense following the index sexual abuse; and
3. Effects on the quality of life of the child-victim.

Given that the nature of the intervention and outcome variables of interest do not lend themselves to “traditional” EBM principles, this paper uses the following methodology to assess the evidence:

1. Presentation of integrative studies, in this case, narrative reviews on the effectivity of the death penalty; and
2. Case studies of sexually abused children seen in the Child Protection Unit (CPU) whose perpetrator is a family member who has been convicted and sentenced to receive the death penalty or stands to receive said penalty if convicted.

“Study Setting:” The PGH Child Protection Unit

The Child Protection Unit (CPU) of the Philippine General Hospital (PGH) is the first Multi-disciplinary unit of its kind in the country providing “sustainable comprehensive services for abused children and their families.” Launched in 1997, the CPU sees more than 700 children each year from all over the country for allegations of child abuse. Majority of the children evaluated (approximately 60% to 70%) are diagnosed to have been sexually abused (CPU Annual Reports 1997 to 2002).

The CPU team is made up of doctors, nurses, social workers and mental health professionals. The doctors are usually pediatricians who conduct the medico-legal evaluation and testify in court on their findings and as expert witnesses. Social workers put together a comprehensive family profile on each patient at the time of the evaluation and conduct risk and safety assessments on subsequent home visits. The CPU social worker may also be the case manager of selected patients to help them access many needed social services. Child psychiatrists on the team provide mental health screening and therapy both for the child victim and for family members. The length of involvement of the CPU for each patient is not set and largely depends on whether the child still has need for services that the CPU can provide. All disciplines working in the CPU have confidential patient forms to record every encounter. Record keeping is centralized in the CPU office.

DOES THE DEATH PENALTY WORK IN DETERRING INCEST / SEXUAL OFFENSES?

The use of the death penalty has been a hotly debated topic for centuries. The main arguments by death penalty proponents are deterrence and retribution. On the other hand, those who wish to abolish the death penalty argue that it does not actually deter crime but instead violates human rights, discriminates against the poor and in some instances, may result in the deaths of the innocent.

Does the death penalty really deter crime?

A study done by Isaac Ehrlich in 1975 claimed that each execution between 1933 and 1969 had prevented seven to eight homicides. This led him to conclude that the death penalty had a substantial deterrent effect. In 1985, Stephen Layson, a student of Ehrlich's, used a similar methodology to update Ehrlich's analysis and estimated that each execution deterred approximately 18 homicides (Fox, 1989). However, the methodologies of these 2 studies have been criticized i.e. inferring micro trends from macro data and the utilization of aggregate data of all states (Albert, 1999). Sociologist William C. Bailey conducted within-state analyses of the deterrence hypotheses in the late 1970's and early 1980's by analyzing the ef-

fect of executions within a single state (California, Oregon, Utah, North Carolina and Ohio). His results showed no deterrent effect in any of the states examined (Bailey, 1998).

Recent studies in the late 1990's show that the death penalty does not have a deterrent effect and may have a brutalization effect instead. (RECAP Newsletter, National Death Penalty Developments, 12/99) A study by William Bailey (1998) comparing the murder rates and sub-types of murder before and after the resumption of executions in Oklahoma between 1989 and 1991 found there was no deterrent effect. What he found was a significant increase in stranger killings and non-felony stranger killings when Oklahoma resumed executions following a 25-year moratorium. In his study of criminal homicides in Los Angeles before and after the resumption of executions, Thompson (1999) found slight increases in homicides during the first 8 months following the first execution after a 25-year moratorium. Harries and Cheatwood (1997) studied differences in homicides and violent crime in 293 matched pairs of counties in the US who shared a contiguous border but differed on the use of capital punishment. They found no support for a deterrent effect of capital punishment at the county level. A survey by the New York Times (New York Times, 9/22/00) found that states without the death penalty have lower homicide rates than states with the death penalty. The homicide rates in the last 20 years of states with the death penalty have been 48%-101% higher than those of states without the death penalty.

The murder rate in the United States is three times the murder rate of European countries that have banned capital punishment (New York Times, May 11, 2002). In Canada, the homicide rates fell after the abolition of the death penalty. Statistics Canada reports that the number of homicides in Canada in 2001 (554) was 32% lower than the number of homicides in 1975 (721), the year before the death penalty was abolished (www.IssuesDirect.com).

Supporters of the death penalty contend that at the very least, the offender is prevented from committing a repeat offense. Executions, according to the retentionists, maximize public safety through a form of incapacitation and deterrence. The possibility of execution would give a potential offender pause before committing a crime out of fear of the consequences. Statistical measurements will

always be challenged because there is no way to survey would-be offenders. One famous quote is by John McAdams of Marquette University/Department of Political Science:

"If we execute murderers and there is in fact no deterrent effect, we have killed a bunch of murderers. If we fail to execute murderers, and in doing so would in fact have deterred other murders, we have allowed the killing of a bunch of innocent victims. I would much rather risk the former. This, to me, is not a tough call."

A lot of supporters of the death penalty do not view it as a deterrent but rather as a just punishment for a heinous crime. (www.facts.com) It is an expression of society's outrage at a crime so grievous that an adequate response should be the penalty of death. Retentionists claim that the death penalty serves an important purpose in promoting the stability of a society governed by law. In doing so, it prevents anarchy and vigilante justice. Massive media coverage of violent crime promotes images of subhuman, remorseless killers and rapists, promoting fear and anger against violent crime. People then adopt a "tough-on-crime" stance that favors the death penalty based on retributive grounds alone. This has resulted in the death penalty becoming a mainstay of political campaigns (Dieter, 1993).

The general public and most professionals really know little about the death penalty. The opinion of an informed public would certainly differ significantly from that of a public unaware of the effects and consequences of the death penalty. Most people express doubts about the death penalty when they come to know the problems facing its implementation. The probability of executing innocent people is a reality that has been discussed extensively in recent studies. Radelet et.al. (1992) discuss over 400 cases in which the defendant was wrongly convicted of a crime punishable by death. At least 23 cases have resulted in the execution of innocent people. Scheck, Neufeld and Dwyer (2000) reported that DNA testing in 18,000 criminal cases excluded more than 25% of prime suspects prior to trial. Because the great majority of criminal cases do not produce biological material to be tested and DNA testing is not yet part of routine forensic investigation in the

Philippines, one can only speculate as to the error rate in death penalty cases pending before Philippine courts. The Innocence Project in the United States found that mistaken identification was the most common reason for wrongful conviction in the US, figuring in 61 of 110 cases (Tan, 2002). The other reasons identified by the Innocence Project were: errors in serological tests (40), police misconduct (38), prosecution's misconduct (34), defective/fraudulent science (26), bad lawyering (23), false witnesses (17), mistakes in microscopic hair comparisons (21), use of informants/snitches (16) and false convictions (15). (Tan, 2002).

A national survey (1993) conducted by the polling firms of Greenberg/Lake and the Tarrance Group in the United States on people's opinions about the death penalty revealed that support of the death penalty drops below 50% when sentence of life without parole, coupled with a requirement for restitution, is offered as an alternative (Dieter, 1993). It is sometimes argued by death penalty supporters that the death penalty is necessary to assuage the grief suffered by the family of the murdered victim. That may be true for some families. However, many families of murdered victims are also opposed to the death penalty.

DO INTERVENTIONS OTHER THAN CAPITAL PUNISHMENT SUCH AS THERAPY WORK? Evidence on therapy for sexual offenders

A series of analyses was done comparing the recidivism rate for 10,988 treated and untreated sex offenders in 79 studies that met inclusion criteria. Recidivism rates were investigated according to age of offender, age of victim, offense type, type of treatment, location of treatment, decade of treatment and length of follow-up. The analysis was designed to detect patterns in the data and the relative strength of patterns using three criteria formulated specifically for the study.

Many treated sexual offenders had recidivism rates below 11%, fulfilling the study cut-off for a positive treatment outcome. Treatment specific for Recidivism Prevention was also found to have positive outcomes, regardless of offender type, including rapists. When analyzed according to the type of sexual offender, juveniles and treated incest perpetrators had lower recidivism rates compared to their untreated counterparts, in contrast to treated non-incest perpetrators, child molesters and adult rapists.

It is interesting to note that incest perpetrators may have a lower risk re-offense to start with. In a study comparing the recidivism rate of child molesters according to the relationship of the victim with the perpetrator, the category of “stranger” displayed a higher risk for re-offense compared to perpetrators who offended against biological children or stepchildren. The percentage of men who were subsequently charged with any type of criminal offense and who offended against their biological children (19%) was smaller than men who offended against their children where the relationship is an extended family member (40%), acquaintance (35.9%) or stranger (45.2%). In addition, this study suggests that the risk for recidivism is not

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stable over time. The “predominant risk” for re-offending appears to be the first 5 years post release.

While these study findings should not be misconstrued as an advocacy for leniency for offenders in low risk categories such as incest perpetrators, the practical implication is that if the child’s safety from re-abuse is the overarching concern, there is

evidence that directed and specific interventions to lower reabuse rates exist. There is also documentation that incest perpetrators are not more “dangerous” compared to other types of sexual offenders. There is therefore no basis for imposing the mandatory death penalty only for incestuous rape.

What are the effects of the death penalty on the child victim-survivors of sexual abuse perpetrated by a family member?

The available studies on a child sexual abuse victim’s mental health vis-à-vis legal outcome examine the effect of certain aspects of the legal process such as courtroom testimony, length of litigation and status of the case on behavioral and psychological symptomatology (Kendall Tackett, 1993). At present, there are no studies on the effect of the death penalty on the victims of convicted incest offenders, mainly because we are the only country with a MANDATORY death penalty.

Drawing upon the experience of the PGH-CPU in treating children and families affected by familial child rape, we report a series of cases illustrating the different

effects and reactions to the crime and its potential penalty. These were gathered from the patient records of the CPU and from newspaper reports (Cases #4 and #5).

CASE STUDY REVIEW: 1997 – 2002

Upon analysis of the cases handled in the PGH-CPU wherein the incident disclosed warranted the death penalty if convicted, we enumerate four recurrent themes:

- **Conflicting Reactions**

Children and their families exhibit conflicting reactions to the death penalty for familial perpetrators of child rape

- **Case-Specific Mandates**

Different reactions to and the impact of the punishment of death for the crime of familial child rape demand case-specific intervention and causality management

- **Mandatory Death Penalty Can Deter Reporting**

- **Mandatory Death Penalty Can Add Stress to the Family Unit**

We present four case studies to illustrate the conflicting reactions of CPU patients to the potential application of the death penalty in their cases. The different outcomes suggested in these cases demonstrate the need for clinical practitioners to be aware of the implications of the death penalty in cases of familial child rape and to treat each case uniquely.

Case #1 below shows that despite abuse, many children decline to pursue cases against their relatives. For children like Carol and Jegu, the attachment to their families is stronger than the desire for justice.

Case Example #1

Children Choose Not to File Case Against Brother

“Carol and Jego”

Ages: 14 and 16

Alleged Perpetrator: Brother

Abuse Type: Sexual

CASE HISTORY	CASE STATUS
<ul style="list-style-type: none">• Carol is a high-school student while Jego is in first year college, taking a computer technician course• Both sexually abused by their half-brother from their mother's previous relationship• Both are studious and dedicated to finishing school and getting good grades	<ul style="list-style-type: none">• Children refused to file a case as long as brother is sent away (“dahil maapektuhan kami... basta makalayo na lamang sa amin”)• Brother is sent away and has no contact with the children• Children back to pre-abuse functioning, back in school• Father initially wanted perpetrator-son to experience being jailed but decided otherwise because of fear that perpetrator's wife may have a nervous breakdown• Father said he favored the death penalty for others but not for his own son (“hindi ako pumapayag sa Death Penalty para sa anak ko pero sa ibang tao payag ako”)

Maricel in Case # 2 sought retribution against her perpetrator but faced many difficulties in the end.

Case Example #2

A Child Seeks the Death Penalty

“Maricel”

Age: 15

Alleged Perpetrator: Stepfather

Abuse Type: Sexual

CASE HISTORY	CASE STATUS
<ul style="list-style-type: none">• Maricel has been repeatedly raped by her stepfather, a much older man with grown children from his first wife• Mother initially disbelieving but became supportive of Maricel through legal process• Maricel's stepsiblings throw her, her younger sibling and her mother out of their house• Mother loses source of income which was her sari-sari store	<ul style="list-style-type: none">• Maricel was able to testify in court after initial difficulty• Stepfather received death penalty• Maricel feels sorry for her stepsiblings but says her stepfather deserved what he got because it is what the law says (<i>"naaawa ako sa kanila pero iyon ang karapatdapat na makuha niya...ayon sa batas"</i>)• Maricel still in school but not getting good grades, often truant• Mother looking for other means of livelihood• Maricel never received civil damages

Some children like Felice in Case #3 below retract their stories because they are uncomfortable with pursuing a case.

Case Example #3

A Child Does Not File Case Because Death Penalty is Too Harsh

“Felice”

Age: 11

Alleged Perpetrator: Uncle

Abuse Type: Sexual

CASE HISTORY	CASE STATUS
<ul style="list-style-type: none">• Felice comes from a southern province and was raised by adoptive parents since birth• Adoptive Mother had many partners• Ran away from home to come to Manila to work as domestic helper• In Manila, stayed with an uncle who is a policeman• Uncle sexually abused her, threatening her with his gun	<ul style="list-style-type: none">• Felice does not file a case and is placed in a shelter (“...<i>hindi po ako handa mag-file ng kaso.</i>”)• “<i>Naaawa po ako sa Uncle ko dahil hindi naman po siya ganoon kasama at ayaw kong maparusahan ng Death Penalty</i>”• “<i>Kung may kasalanan tayong tao, dapat tayong magpatawad dahil sabi ng Panginoon</i>”• <i>Kahit gaano kasama ang isang tao, may pag-asa pa itong magbago</i>”• Felice is well-adjusted at the center

In Case #4, below, Sabrina and Justina appealed for clemency when they learned of the death penalty sentence for their father.

Case Example #4

Children Plead for Clemency

“Sabrina and Justina”

Ages: 13 and 15

Alleged Perpetrator: Father

Abuse Type: Sexual

CASE HISTORY	CASE STATUS
<ul style="list-style-type: none">• Sabrina and Justina are sisters both sexually abused by their father• Their father is arrested and the daughters pursue a case• The father is found guilty of rape and sentenced to death	<ul style="list-style-type: none">• Sabrina and Justina express regret upon learning that their father will be put to death• The daughters write to the presiding judge to appeal for clemency and a commutation of the death sentence• The judge has not changed his decision. Article 266-B does not allow for exceptions to the punishment of death in familial child rape convictions.

Although not a patient of CPU, we also cite here the reaction of the girl whose father was the first person executed for the heinous crime of familial child rape to show the full spectrum of reactions to the death penalty imposition. In this highly publicized case, Baby, profiled below in Case #5, sought retribution against the perpetrator, her stepfather.

Case Example #5

A Child Seeks the Death Penalty

“Baby”

Age: 10

Alleged Perpetrator: Stepfather

Abuse Type: Sexual

CASE HISTORY	CASE STATUS
<ul style="list-style-type: none">• Stepfather, Leo Echegaray, is convicted and sentenced to death• Echegaray is the first person to be sent to death under Article 335• Baby campaigns for the execution of her stepfather• When the execution is temporarily stayed by the government, Baby suffers bouts of depression• Baby announces that she wants to see the death penalty applied• Baby expresses her frustration with public opinion and the Catholic Church for encouraging the stay in Echegaray's execution	<ul style="list-style-type: none">• Leo Echegaray is executed• Baby expresses that she believes justice was achieved

Mandatory Death Penalty can deter reporting

Child sexual abuse cases that reach the courts grossly underestimate the true prevalence of the problem. As it is, most ongoing sexual abuse is never disclosed (Summit, 1983). Many clinicians in the field attribute non-disclosure to the Child Sexual Abuse Accommodation Syndrome (CSAAS, see below). Disclosure is typically an outgrowth of overwhelming family conflict, incidental discovery by a third party or sensitive outreach and community education by child protective agencies. Among the few who do disclose, only an even smaller percentage makes it all the way to the court. Particularly in the case of incest, the child is put on the defensive or attacking the credibility of a trusted adult and for creating a crisis of loyalty that defies comfortable resolution. Thus, treated, reported or investigated cases are the exception, not the norm (Fergusson, 1999).

In the CPU experience, only approximately 15% of sexually abused patients file cases that reach the point of going to trial (CPU Annual Reports, 1997 to 2000).

Clinical practitioners provide corroboration that the death penalty for familial child rape can deter children from reporting abuse. Given its seriousness, death penalty litigation could further traumatize child rape victims and perpetrators could use the specter of execution to dissuade children from reporting sexual abuse.

Dr. Barbara Snow, a clinical social worker and co-author of "How Children Tell: The Process of Disclosure in Sexual Child Abuse" explains that should a sexually

abused child be aware of the possibility that the perpetrator may be put to death as a punishment for the crime, the effect would be chilling and largely decrease the number of cases reported. Often, the child is already experiencing excessive self-blame and guilt; compounded by the knowledge that disclosure of the abuse could result in the death of the parent or relative, the emotional burden may be too overwhelming for the child to make a full emotional recovery from the abuse episode.

...the death penalty
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At this point, it is important to know about Child Sexual Abuse Accommodation Syndrome to better understand the dynamics of why children do not easily disclose sexual abuse.

Child Sexual Abuse Accommodation Syndrome

Child Sexual Abuse Accommodation Syndrome describes the way in which sexually abused children cope with abuse (Summit 1983). The characteristics of CSAAS span many cultures and ages, suggesting a nearly universal response to sexual abuse. CSAAS is characterized by the following behavior patterns which become the sexually abused child's way of coping with abuse:

- *Secrecy*: child is afraid to disclose abuse.
- *Helplessness*: child is unable to prevent abuse and thereby develops a feeling of helplessness during abusive episodes.
- *Entrapment and accommodation*: child begins to feel trapped by abuse, blames herself and accommodates the abuse; at this time, a child may begin to develop serious psychological problems.
- *Delayed, conflicting and unconvincing disclosure*: by the time a child decides to disclose, she has usually been through the three previous traumatic stages of CSAAS. Therefore, disclosure can be confusing and unconvincing, as secrecy, helplessness, entrapment and accommodation affect her disclosure.
- *Retraction*: without the proper support, most children will retract their disclosure of abuse. Summit reports:

"Unless there is special support for the child and immediate intervention to force responsibility on the father, the girl will follow the "normal" course and retract her complaint."

CSAAS can manifest itself in any case, regardless of the punishment for the crime, and it is a constant clinical concern for physicians. However, in cases where the punishment for the crime is death, it is possible that CSAAS becomes more common and leads to greater secrecy, retractions and possible long-term psycho-

logical complications. Children suffering from CSAAS not only risk medical complications; their condition also limits their ability to offer “rigorous testimony” about the abuse episodes.

Although we cannot estimate the precise number of children who do not report because of fear of retribution from their families or remorse from the perpetrator, the PGH-CPU has had experience with a number of patients who rescinded complaints or refused to file charges because of the death penalty. The case that follows is illustrative. Some of the cases cited earlier are also illustrative of the manifestations of CSAAS in its different stages.

Case Example #6

A Child Does Not File a Case due to the Death Penalty

“Gina”

Age: 15

Alleged Perpetrator: Biological Father

Abuse Type: Sexual

CASE HISTORY	CASE STATUS
<ul style="list-style-type: none">• Father sexually abuses Gina and her sisters but Gina is the only one who discloses• Mother does not believe Gina; family ostracizes her for bringing discord to their home• Gina decides on her own not to file a case because <i>“kailangan po siya ng family ko- financially dahil may trabaho ho siya, bus driver”</i>• Gina is particularly worried that if Father is arrested, medications and treatment her sister with chronic heart disease needs will be discontinued	<ul style="list-style-type: none">• Gina decides not to file a case because her Father is the breadwinner• Gina became depressed but received therapy at CPU• Gina remains in a shelter run by nuns who continue her education. She is presently a 1st year college student.• Gina has no contact with perpetrator• Gina has expressed her desire to see her mother again and has visited her home with the nuns on one occasion. Family members do not visit her at the shelter.

- **Mandatory Death Penalty can add stress to the family unit**

Despite disparate reactions to the mandatory death penalty for familial child rape, one common thread in all family and child reactions to the existence of the death penalty is that of additional stress and complexity rather than the normalization of the family unit.

Case # 7 below highlights the elaborate measures some families must take in order to ensure children's safety and simultaneously avoid the death penalty.

Case Example #7

A Family Seeks its Own Alternative

"Elma"

Ages: 13

Alleged Perpetrator: Brother

Abuse Type: Sexual

CASE HISTORY	CASE STATUS
<ul style="list-style-type: none"> • Elma is 13 and mentally retarded • Father is a farmer and Mother is a teacher • Elma is left alone with her brother, Jun who is a 16-year old high school student with average grades • Mother discovered that Jun was sexually abusing Elma • Jun confesses and is remorseful 	<ul style="list-style-type: none"> • Parents said they love their children and would not file a complaint nor can they bear to put their son in jail • Parents initially wanted to transfer Jun to an aunt's house. After much convincing, brother was placed in a shelter for boys and underwent therapy. He continued school while in the shelter. • Elma remained at home with the parents. She continued to be enrolled in SPED.

Alternatively, some families, as illustrated in Case #8, may abandon the abused child. Cases such as these indicate that the death penalty has the potential to cause more stress for families than to facilitate recovery.

Case Example #8

A Child Abandoned by Her Family

“Cynthia”

Age: 15

Alleged Perpetrator: Biological Father

Abuse Type: Sexual

CASE HISTORY	CASE STATUS
<ul style="list-style-type: none">• Cynthia's parents are separated. She grew up with her mother while her father served a prison sentence for another crime. Mother since remarried.• Cynthia finally meets her biological father at age 15 when she visits him in prison.• Father rapes her and vows to marry her once he gets out of prison• Mother dissuades her from filing a case because she is afraid of Cynthia's father, who is a violent man• Mother does not want Cynthia to stay in her home for fear that she and her second family will be hurt by Cynthia's father• Mother endorses Cynthia to the care of the school guidance counselor	<ul style="list-style-type: none">• Guidance counselor brings Cynthia to the CPU• Cynthia diagnosed with severe psychiatric and behavioral problems. Therapist recommends prioritizing psychiatric problems over filing a case.• Cynthia is placed in a non-government shelter• Cynthia undergoes intensive therapy as an outpatient with some improvement of symptoms.• She remains in the shelter with no visits from her mother. Cynthia often verbalizes her desire to see her mother and her stepfamily to shelter staff.

Case #9 below illustrates two sisters' retraction due to CSAAS. Unfortunately, many children find themselves in similar situations where it is easier to retract than to pursue a case against the perpetrator.

Case Example #9

Children Give Delayed Disclosure then Retract due to CSAAS

"Vina and Cherry"

Ages: 9 and 7

Alleged Perpetrator: Father

Abuse Type: Sexual

CASE HISTORY	CASE STATUS
<ul style="list-style-type: none">• Vina and Cherry ran away from home in Metro Manila and disclosed to local Social Worker that they were being sexually abused by their father for the past 2 years• Both were brought to the CPU for evaluation then placed in a shelter• Mother was able to get children out of the shelter by saying that the girls would live with a relative. Mother did not believe they were abused.	<ul style="list-style-type: none">• Mother and Father brought children to an island province to hide from authorities. Warrant of arrest issued for the father in Metro Manila.• The children were traced to the island province one year later through the efforts of the CPU Social Worker. Father was arrested and brought back to Manila.• Mother brings children back to Manila. Mother is combative and hostile; did not allow anyone to talk to the children and upheld Father's innocence.• Children were interviewed with their mother present and both denied the abuse.• Court orders the children placed in protective custody.• The children received therapy while in the shelter. After 3 months, they disclose that their father truly sexually abused them.

These illustrative cases demonstrate at best different reactions to the imposition of the Death Penalty, with the majority not in favor of it.

CONCLUSION

Using reasonable standards in clinical decision-making, is the mandatory death penalty for familial child rape beneficial for the child victims?

1. Dictum: "First do no harm"

Mandatory death penalty permanently bars access of a convicted familial child rapist from his victim. However, the death penalty itself or even the specter of its potential imposition also exerts "harmful" effects, including non-disclosure, retraction, psychological sequelae, family stress and abandonment of child, among others.

2. Dictum: Best interest of the child

The evidence cited above illustrates how a child's safety from reabuse cannot be guaranteed by the imposition of the mandatory death penalty. Clearly, an "intervention" that is not uniformly beneficial and may even be harmful necessitates looking for alternatives to ensure the child's safety from reabuse.

The death penalty does not answer needs for the healing and development of the child and her family. From a medical perspective – medical diagnosis with a prescribed health care plan – the mandatory death penalty is not indicated as an integral component of intervention and the reintegration health care plans for children diagnosed with familial child rape (sexual abuse).

In most countries around the world, care of children and families surviving familial child rape is managed without the use of the death penalty. Medically indicated care for sexually abused children requires integrated multidisciplinary care plans characterized by the following:

- Physical health care: treat all medical conditions
- Mental health care: counsel child, family and perpetrator

- Preventive health care: coordinate with law enforcement and social work services to ensure that the child is safe from further abuse
- Child development care: monitor child's development and act on any abnormalities
- Reintegration health care: follow-up health care; monitor sequelae, facilitate reintegration of child into family, foster home or adoptive care

The mandatory imposition of the death penalty is not cognizant of the right of children to participate in any decision-making affecting them. One cannot presume

**The mandatory
imposition
closes the door
to alternatives...**

that all children who are victims of familial child rape clamor for their perpetrators to be put to death. The refusal to file charges or to pursue charges filed may be considered the children's expressions of their different reactions to the abuse, in the context of their life situation at that point in time and their evolving capacities to process the abuse and its aftermath.

Mandatory imposition does not allow the flexibility that the individualized, holistic approaches to management of child abuse cases require.

3. Dictum: Using best available evidence

There is no (conflicting) evidence for the effectiveness of the death penalty in deterring offenders. A measure as absolute and as irreversible as taking the life of a person requires no less than clear undisputed evidence of benefit.

The mandatory imposition closes the door to alternatives that have evidence of efficacy.

RECOMMENDATIONS

current Alternatives to Mandatory Death Penalty for Familial Child Rape

In an earlier treatise by the first author (Madrid 2001) on the Mandatory Death Penalty, the following alternatives were recommended. Two years later, the recommendations remain sound.

1. Modify the mandatory death penalty for incest rape to life imprisonment without parole.
2. Grant a moratorium on Death Penalty executions until the appropriate multidisciplinary management of familial child rape is determined.
3. Give judges discretion in meting out death penalty sentences.
4. Make the penalty for familial child rape consistent with the penalty for non-familial child rape.

Future Research Focus

The multidisciplinary approach to determine strategies to address the causes and attendant problems of familial child rape need to be studied. Specific areas needing answers from future research efforts include the following:

1. What are some alternatives to the mandatory death penalty for familial child rape?

Prison based

Example: Life imprisonment for Perpetrator: What is the impact on the abused child? On the family? On the perpetrator? Can the court order the perpetrator and his family to pay for imprisonment costs and continued child support?

Non-Prison-based

Example: Sex Offender Management Programs: Are these effective? Can they be utilized in the Philippines?

2. What are the long-term effects of the Death Penalty on the surviving family, specifically on their child-victims?
3. What is the full range of reasons why children desist from filing?
4. How adequate and appropriate are present investigative techniques and forensic technology for capital offenses?
5. What is the true, i.e., community-based, prevalence of Child Sexual Abuse? Most prevalence data are based on reported cases which have been shown to underestimate the actual prevalence. How can the present trend of decreased reports of sexual abuse be explained?
6. What are the characteristics of sibling incest? What is its prevalence? What are the effects of the death penalty on the victims? ...on perpetrators?

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