TOWARD A CONSTITUTIONALLY DEFENSIBLE SYSTEM OF CAPITAL SENTENCE IMPOSITION

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I. INTRODUCTION

People vs. Quinlob and Quinlob[1] is a murder case, unusual not so much for its facts, but for the peculiar decision it evoked from the Supreme Court on December 10, 1982. The two accused, on trial for treacherously stabbing and shooting their brother whom they had invited ostensibly to drink "tuba" with them, were meted out an indeterminate sentence by the trial court for the murder; the judge had made no finding of any aggravating or mitigating circumstance, and murder being punishable by the maximum period of *reclusion temporal* to death, the medium period which is *reclusion perpetua* (an indivisible penalty that cannot be the subject of an indeterminate sentence) should have been imposed. On appeal, the appellate court, through inadvertence or otherwise, declared the crime committed punishable by *reclusion temporal,* but somehow continuing in the same breath, sentenced the defendants to *reclusion perpetua.* An offended and indignant Supreme Court bluntly chided the Court of First Instance for its mistake of law in imposing the indeterminate sentence, and the Court of Appeals, not to be spared, was likewise suitably chastised for making "another statement which passes understanding" when it blundered into holding the offense as punishable by *reclusion temporal* but imposed the next higher penalty instead. Finally, the highest court of the land opined that "(t)he victim was killed by his own brothers. It passes understanding why this significant fact has been overlooked by the fiscal, the trial court, the Solicitor General, and the Court of Appeals. Relationship in this case is a generic aggravating circumstance." After painstakingly singling out the ineptitude in the strict application of law by practically all the components of the criminal justice system, the Supreme Court, expected to cap the decision with a death penalty proceding from its appreciation of an aggravating circumstance attending the murder,[2] instead incredibly closed its eyes to its own finding and meted out the penalty of *reclusion perpetua,* "for lack of necessary votes" from the Justices, without any explanation whatsoever to enlighten an understandably baffled reader.

While the decision prevented one less victim from being claimed by the Death Row, it also highlighted a fact not immediately apparent even to those closely observing the judicial system except upon a careful exa-

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1 G.R. No. L-60946, December 10, 1982, 119 SCRA 130.

2 REV. PEN. CODE, art. 64.

mination and comparison of the outcome of capital punishment cases: that although our statutes provide a number of devices designed for the guidance of our courts in their task of sentencing an offender to death or otherwise, which laws even leave little choice to the sentencer but to outrightly impose or not to impose a penalty in certain cases to prevent arbitrariness, the Supreme Court Justices individually retain what could be called the last prerogative—at times unmindful of the law and jurisprudence and aided solely by conscience in deciding the fates of those charged with capital offenses when they are called upon to vote or veto supreme penalty imposition. While our statute books feature fairly elaborate measures and schemes to make sentencing as "mechanical" (as opposed to arbitrary) as possible, ultimately, justices (and judges, too) demonstrating that they are just as prone to succumbing to human weaknesses, invariably and perhaps unknowingly rely on their own persuasions with regard to this certainly controversial punishment, although now and then the court has been quick to avow that it will not shrink from its duty to impose the supreme penalty if the situation so warrants.[3]

This may well be all right to those wrongdoers as the Quinlob brothers who find themselves saved from execution for some unknown reason or another, though as a matter of law they should have been sentenced to die. But for those whose cases failed to stir the sentiments or sway the Tribunal members to sympathy, or perhaps being "incorrigible criminals"[4] or "useless and dangerous members of society"[5] had even fired the disapprobation and indignation of the Court by some chance peculiarity of their case, this is obviously another matter, most especially if a careful scrutiny of their cases reveals that there is no principled way to distinguish their situation from those of others where no death penalty was imposed.[6] A handy example is the twin cases involving inmates of the National Bilibid Prison both decided on October 23, 1981. In *People vs. Crisostomo*[7] two prisoners-gangmates attacked a fellow-inmate from behind, taking turns in stabbing the victim who, having failed to buy the accused some cigarrettes and sugar as they requested, instead pocketed the money. The Supreme Court found the modifying circumstances of treachery and recidivism but for "lack of necessary votes" without any separate concurring or dissenting opinion to support the votes cast, the offenders were punished with *reclusion perpetua.* On the other hand, in *People vs. Rosales*[8] three gangmates stabbed the deceased to avenge the death of another member of

[3] People vs. Carillo and Raquenio, 85 Phil. 611 (1950); People vs. Limaco, 88 Phil. 35 (1951); People vs. Ubiña, 97 Phil. 515 (1955); People vs. Ubaldo, G.R. No. L-19490, August 26, 1968, 24 SCRA 735.

[4] People v. Molo, G.R. No. L-44680, January 11, 1979, 88 SCRA 22.

[5] People vs. Villamor, G.R. No. L-41493-94, December 14, 1981, 110 SCRA 199.

[6] Goodpaster, *Judicial Review of Death Sentences,* 74 Journal of Criminal Law and Criminology 805 (1983).

[7] G.R. No. L-38180, October 23, 1981, 108 SCRA 288.

[8] G.R. No. L-38625, October 23, 1981, 108 SCRA 339.

their Bicol Region-Masbate Gang. The same court sentenced the felons to die.[9] There is nothing in either decision to explain the disparate sentences, and if it were the irrelevant consideration of motive that had led the Court to differentiate the two cases, the case of *People vs. Vergas*[10]—decided three months before (July 24, 1981) where prisoners were attacked and killed because of gang wars (as in the *Rosales* case) but accused were sentenced to *reclusion perpetua* (as in the *Crisostomo* case) due to lack of necessary votes—is but one case among many which can be cited to throw into complete disarray any theory or structure of logical distinction that may be formulated to justify the varying sentences.

The thesis of this paper is that the imposition of the capital sentence becomes "cruel and unusual punishment"[11] proscribed by the Bill of Rights of the Constitution if the sentencing system or scheme of the State permits such occurrence of aberrant and arbitrary decisions, uncontrolled and perpetuated by a judicial system that refuses to correct itself. There is "cruel and unusual punishment" involved if, as it is, sufficient statutes exist to guide the sentencer in choosing the appropriate penalty and yet, somehow, *a misuse of the sentencing apparatus occurs.* Differing judgments for offenders, whose crimes and culpabilities when compared make no meaningful basis for distinction, offend every sense of justice and fair play, which are the very ends sought to be achieved in the Constitutional protection against cruel and unusual punishment and of equal treatment under the laws.

The supreme penalty has enjoyed several decades of undisturbed existence in our statute books. It has not been seriously challenged to provoke major jurisprudence on the question of its constitutionality, although from time to time some scholarly doubt has been vigorously expressed. Persuasive public debates have taken place arguing for its abolition, specially during these times when the evolution of the criminal justice system has ripened into the stage where reform and rehabilitation of the criminal are emphasized and the retributive aspect of punishment imposition[12] is diminished. The war against death as a punishment *per se* does seem to be futile at this point, yet it is the objective of this paper to demonstrate that a small but significant battle is in order, to be waged against sentences in capital cases where disparate sentences meted out to offenders, who are more or less equivalently circumstanced, may be challenged as unconstitutional or as "cruel and unusual punishment" imposed in obvious disregard to the mandate which guarantees equal protection of the laws. Death sentences violate the prohibition against cruel and unusual punishment when imposed

[9] This, on the basis of Art. 160 of the Revised Penal Code mandating the imposition of the maximum penalty for the new felony in case of recidivism, which provision applies to both cases.

[10] G.R. No. L-36882-84, July 24, 1981, 105 SCRA 744.

[11] CONST. art. IV, sec. 21.

[12] ST. JOHN-STEVAS, LAW AND MORALS 36 (1964).

under a sentencing system which creates a substantial risk of an arbitrary, discriminating, or capricious decision.[13] This may occur in either of two ways. If a sentencer may impose death without guidelines for selecting such penalty, there is a substantial risk of arbitrariness, discrimination or caprice. It is because of these reasons that the U.S. Supreme Court struck down capital sentencing systems which, although monitored by the evolution in the different states of mandatory methods of judicial review, allowed unguided imposition of the death penalty.[14] In the Philippines, the problem goes a little further than the creation of a capital sentencing structure with sufficient legal safeguards for the correct punishment of criminals to avoid arbitrary sentences, because our penal laws provide for a sentencing apparatus that minimizes, if not eliminates, judicial arbitrariness. Quite a separate controversial issue is one of implementation and enforcement of this existent scheme of penal laws dealing with sentence imposition. This is the second dimension of the problem of arbitrary sentencing, where, despite statutory and jurisprudential instructions, the death sentence is dealt to a capriciously selected handful while others equally culpable are spared.[15]

II. THE STRUCTURE OF CAPITAL SENTENCING IN THE PHILIPPINES

A. Capital Offenses

> To sentence a fellowman to die is a serious matter. The law calls for the imposition of the death penalty only in rare and extreme cases, where the evidence is very strong, even conclusive, and extra-ordinary aggravating circumstances attended the commission of the particular offense.[16]

There are nine acts enumerated in the Revised Penal Code which the legislature deemed sufficiently heinous offenses as to merit in proportion the State's harshest and most irrevocable sanction of death. These crimes are: treason[17] correspondence with hostile country with intent to aid the enemy,[18] qualified piracy,[19] parricide,[20] murder,[21] infanticide,[22] kidnapping and serious illegal detention,[23] robbery in certain cases,[24] and rape in certain cases.[25] In these instances, the set of sentencing guidelines contained in the same code operates.[26]

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13 Furman vs. Georgia, 408 U.S. 238 (1972).
14 *Ibid.*
15 Goodpaster, *supra* note 6, at 800.
16 People vs. Bocar, 97 Phil. 398 (1955).
17 REV. PEN. CODE, art. 114.
18 *Id.* art. 120(3).
19 *Id.* art. 123.
20 *Id.* art. 246.
21 *Id.* art. 248.
22 *Id.* art. 255.
23 *Id.* art. 267.
24 *Id.* arts. 294, 295, and 296.
25 *Id.* art. 335.
26 Other capital crimes not so subject to these guidelines include acts of espionage under C.A. No. 616, and violations of the anti-subversion laws.

Where capital crimes are committed in such circumstances described by law that dictate the mandatory imposition of the supreme penalty, the Courts are duty-bound to impose it, regardless of their opinion that the penalty is wrong, morally or otherwise. This is an obligation; a "painful duty,"[27] and over the years the Supreme Court has had opportunity on judicial review to remind lower courts of basically two things: that the law must be followed to its letter because either or both its retributive and deterrent objectives are achieved thereby, and that considerations or any evaluation of its propriety are therefore out of place because it is with the legislature to determine whether a criminal act deserves to proportionally merit death as a penalty. Thus, the Court has opined that crimes where offenders manifest such criminal perversity "entitle the state to demand the forfeiture of the [criminal's] right to live, in the name of peace, order, and retributory justice," though a judge may feel inclined to disagree.[28] In *People v. Carillo,* it was said that society "must protect itself from such [dangerous] enemy by taking his life in retribution for his offense and as an example and warning to others."[29] In *People v. Olaes,*[30] the trial court meted out a life sentence "in view of the attitude of the chief executive on death penalty" though the crime was properly punishable by death; the court opined:

> Without attempting even desiring to ascertain the veracity or trueness of the alleged attitude of the Chief Executive on the application of the death penalty, the courts of the land will interpret and apply the laws as they find them on the statute books, regardless of the manner their judgments are executed and implemented by the executive department [because] by doing so, [they] will have complied with their solemn duty to administer justice.[31]

It may be seen that the court has had opportunity to express quite eloquently its view that the imposition of a death sentence, if proper under the law, is a duty that the bench cannot evade.

B. Legal Devices to Guide Penalty Imposition

> The imposition of the penalty in capital offense is a matter of strict law and does not and may not be based on the individual feeling of the Justice, singly or jointly, about the propriety or impropriety of the death penalty per se. Accordingly, when the required number of Justices are agreed on the guilt of the accused as well as the existence of any aggravating circumstances which under the ... provisions of the [Revised Penal] Code require the imposition of death penalty,... it is not for any of us to say that he votes for a lesser penalty simply because he does not believe in the death penalty itself. This is because we

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[27] People vs. Barrameda, 85 Phil. 789 (1950); People vs. Guillen, 85 Phil. 307 (1950).

[28] People vs. Pinca, G.R. No. L-16595, February 28, 1962, 4 SCRA 574.

[29] 85 Phil. 611, 615 (1950).

[30] 105 Phil. 502 (1959).

[31] *Id.* at 508.

> have sworn to apply the law and regardless of our personal predilections, and in the premises just indicated, it leaves us no other alternative.[32]

1. Offsetting Mitigating Against Aggravating Circumstances

With capital as well as non-capital crimes, our penal system requires the sentencing court to make findings as to circumstances which modify criminal liability, and on the basis of the existence of either or both mitigating and aggravating circumstances, and in the latter case offsetting each other, the appropriate penalty to be ultimately meted out is determined.[33] The Revised Penal Code enumerates 10 mitigating[34] and 21 aggravating circumstances,[35] and three other alternative circumstances appreciable as either, depending on the nature and effects of the crime and the other conditions attending its commission.[36] The provisions which allow the sentencer to weigh mitigating evidence and to "reasonably offset those of one class against the other according to their relative weight"[37] or "in consideration of their number and importance"[38] theoretically give sufficient room for the judge to evaluate qualitatively the attending circumstances such that the offsetting process requires not only quantitative consideration. In reality however, the Supreme Court and, likewise, inferior courts have adhered to the practice of quantitative as against qualitative appreciation of evidence, limiting themselves to applying the mechanistic formula of numerically compensating the modifying circumstance, one to one, and on the basis of which set of circumstances outnumbers the other, the court then declares which period of the penalty is to be imposed on the offender (as is standard procedure in non-capital offenses). This, perhaps, is due to practical considerations, as it is at times difficult to reconcile judgments where degrees and gradations in appreciation of facts are involved, and therefore treating circumstances as equally compensable is necessary, if only to avoid the dangers of subjectivity.

Justice Abad Santos in his concurring opinion in *People vs. Sabeniano*,[39] remarks that "[u]nder our system of criminal justice . . . the imposition of penalties is mechanistic. The rules on the application of penalties contained in the Revised Penal Code approximate the programmed mind of today's computer: input equals output which is imperious to the quibblings of the infinitely equivocal human personality."

2. Providing for Capital Punishment in Cases of Commission of a Contemporaneous Crime or Attendance of Statutorily Determined Aggravating Circumstance

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[32] People vs. Borja, G.R. No. L-22947, July 12, 1979, 91 SCRA 360 (Barredo, J., concurring).

[33] REV. PEN. CODE, art. 64.

[34] *Id.* art. 13.

[35] *Id.* art. 14.

[36] *Id.* art. 15.

[37] *Id.* art. 64.

[38] *Id.* art. 63.

[39] G.R. No. L-26704, June 29, 1979, 91 SCRA 47, 54.

Some capital crimes defined in the Penal Code provide for the mandatory imposition of death where a contemporaneous crime is committed or where a stated circumstance so aggravates the offense as to warrant the death penalty, regardless of the modifying circumstances attending the crime. Thus, where kidnapping or detention is committed for the purpose of extorting ransom from the victim or any other person, the only penalty imposable is death.[40] In rape cases, where by reason or on the occasion of the rape, the victim has become insane, or when such rape is accompanied by a homicide, the capital sentence is to be meted out.[41] Here the sentencer is given no option but to impose the supreme penalty notwithstanding findings of any number of generic mitigating circumstances which should have otherwise reduced the penalty.[42]

In other crimes where death is imposable merely as the maximum period of the penalty for the offense, the criminal is meted out capital punishment as a result of the operation of other penal provisions prescribing in specific circumstances such maximum regardless of attenuating facts. In case of robbery in band with homicide, or robbery in band with rape using a deadly weapon or committed by two or more persons, under article 294 in relation to article 296, when an unlicensed firearm is used, the imposition of the maximum penalty, death, becomes obligatory. Article 160 defining quasi-recidivism likewise prescribes the maximum penalty for the new offense, committed during the service of penalty imposed for a previous one, and therefore if such subsequent felony is a capital crime, death becomes the proper penalty. Article 48 defining complex crimes provides that the penalty for the most serious crime shall be imposed and in its maximum period, having a like operation as article 160.

3. Identification of Special Classes of Offenders

Under the Penal Code the death penalty is not to be imposed on certain offenders enumerated by statute. Thus, by reason of his advanced age, where the offender is more than 70 years old and this having the effect of a privileged mitigating circumstance, the supreme penalty is not to be imposed on him.[43] If the offender reaches the age of seventy years after the sentence has been imposed, but before its execution, the infliction of the penalty is to be suspended and commuted.[44] Although article 83 is silent as to minors, yet the conclusion is inevitable that the death penalty can-

[40] REV. PEN. CODE, art. 267.

[41] *Id.*, art. 335.

[42] Mandatory death sentencing statutes have been criticized as unconstitutional as it "reflects neither contemporary standards nor permits individualization" which are indispensable for true compliance with the prescription against cruel and unusual punishment. Goodpaster, *supra* note 6, at 789.

[43] REV. PEN. CODE, art. 47; *See* People vs. Yu, et al., G.R. No. L-29667, November 29, 1977, 80 SCRA 382; also People vs. Milflores, G.R. No. L-32144-45, July 30, 1982, 115 SCRA 570; also People vs. Alcantara, G.R. No. L-168332, November 18, 1967, 21 SCRA 906.

[44] REV. PEN. CODE, art. 83.

not be imposed on a minor found guilty of an offense punishable with death as he is entitled under other articles[45] to a lesser penalty depending on his age.[46] The same article also provides that the death sentence shall not be inflicted upon a woman within three years next following the date of the sentence or when she is pregnant.

C. Judicial Review[47]

A conviction in the trial court producing capital sentence imposition goes up to the Supreme Court on mandatory or automatic review, separate from the right of the accused to appeal if he so chooses. Judicial review is one means of insuring that capital sentences minimize the risk of arbitrary sentencing[48] by the trial court. In *People vs. Bocar and Castro*[49] the Supreme Court stated the purpose of mandatory appeal:

> The automatic review by this Tribunal of a decision or sentence imposing the death penalty is intended primarily for the protection of the accused. It is to ensure the correctness of the decision of the trial court sentencing him to death. The Supreme Court under this automatic review is called upon to scrutinize the record and look for any errors committed by the trial court against the defendant. . . .[50]

Except in isolated instances, as will be demonstrated in the subsequent section, and even then only in a very limited manner, the Supreme Court has retained this restricted concept of judicial review, focusing on the intracase aspect of appeal, while other jurisdictions such as the United States have developed and expanded traditional procedures of review so as to include in its more comprehensive scope the systematic comparison of the capital case at bar with factually similar cases where the offender either received the same or a lesser penalty.[51] Likewise, an evolving feature of review in common law jurisdictions is the evaluation of the sanction *vis-a-vis* the particular offense when it may be imposed where the court is obliged to inquire whether death is a disproportionate and excessive punishment for a given offense. The first development has been referred to as "comparative sentence review" and the second, "proportionality review."[52] These aspects of review also trace their creation to interpretations of the "cruel and unusual" punishment clause and their basic premise is that "the only way to determine whether a death sentence is fair for a

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[45] *Id.* arts. 68, 80.

[46] I REYES, THE REVISED PENAL CODE: CRIMINAL LAW 222 (1963).

[47] The Constitution provides that the Supreme Court shall have the power "to review and revise, reverse, modify or affirm on appeal or certiorari . . . final judgments and decrees of inferior courts in . . . all criminal cases in which the penalty imposed is death or life imprisonment." CONST., art. X, sec. 5(2)(d).

[48] Goodpaster, *supra* note 6, at 795.

[49] 97 Phil. 398 (1969).

[50] *Id.* at 40.

[51] Balders, Pulaski and Woodworth, *Comparaive Review of Death Sentence: An Empirical Study of the Georgia Experience,* 74 Journal of Criminal Law and Criminology 661, 666 (1983).

[52] *Id.* at 661.

given offense and a given offender is to compare his offense and his culpability to that of others,"[53] thus leading to the conclusion that an intercase form of review is constitutionally required in capital cases, to eliminate arbitrary and disparate sentencing.

As the review structure established in jurisprudence stands, however, the Court is limited to the scrutiny of the particular records of a case, a confirmation in its history that due process has been observed, and an inquiry into the attending modifying circumstances appreciable in favor of or against the accused. Although thus limited, the appellate function of the Supreme Court is a useful and evidently indispensable device as errors by trial courts are inevitable, where errors in capital cases could mean the life or death of a convict. In some cases, a "precedent-seeking" investigation is conducted in order to fix the imposable penalty in capital cases; these instances are the exceptions rather than the rule, and it may be safely said that our criminal justice system is a long way still from developing a structure of true comparative sentence review, involving not only a reexamination of the case at bar but also a methodical comparison with other similar cases, so that the ultimate sentence imposed is one guided by law and established jurisprudence and not by mere whim or caprice of the Justices at a given moment.

D. The Requirement of Ten Concurring Votes for the Imposition of the Death Penalty[54]

The requirement of ten concurring votes in the Supreme Court for the imposition of capital punishment is the last and perhaps the most misunderstood, abused or misused of all the features of the criminal justice system designed ironically to prevent arbitrariness and promote evenhandedness in capital sentence imposition. While a first glance at the unqualified requirement standing alone apparently lends credence to the view that the members of the Court at the penultimate stage of the trial are thereby afforded individual unbridled discretion as to the decision to deprive another of his life or not, as some Justices seem to believe, other equally weighty considerations easily demonstrate this not to be the case. The vote requirement, already held to be merely a procedural right of the accused,[55] is inextricably linked with and therefore must always be explained in the light of the other above-mentioned statutory safeguards *upon which substantive legal bases the vote or dissent must be hinged.* A Justice for example,

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[53] Goodpaster, *supra* note 6, at 787.

[54] The Revised Penal Code originally provided in art. 47 for a unanimous decision of the Justices for the imposition of capital punishment. This provision was repealed by the Judiciary Act of 1948 which reduced the requirement to eight affirmative votes out of ten Justices to sanction its infliction. When the membership of the highest court was increased to fifteen, the voting requirement was correspondingly increased to ten pursuant to a Supreme Court Resolution dated November 13, 1973.

[55] People v. Vilo, 82 Phil. 524 (1949); People v. James Young, 83 Phil. 702 (1949).

cannot stamp approval on the imposition of the death penalty, consistently with his refusal to sustain conviction, if he does not believe that the guilt of the accused have been proved beyond reasonable doubt. Similarly, he can be expected to urge capital punishment though the rest of the Justices vote otherwise, where he specifically makes a finding of an aggravating circumstances supported by the evidence, not offset by any other modifying ones, which justifies his verdict. It must be remembered that the Constitution mandates that "[a]ny member dissenting from a decision shall state the reasons for his dissent."[56] Any reason short of a legal justification for voting against capital sentence imposition when the case so clearly warrants it must therefore be explained, because otherwise, while it becomes an isolated act of mercy favorable to the offender concerned, other accused in similar cases will never have the benefit of knowing what particular considerations swayed the Court to act with leniency in such other case while they remained unspared of the extreme penalty, in which case such sentence becomes 'cruel and unusual punishment' as to them. In any case, dissent must be a matter of strict law, and always clearly demonstrated to be so, not one produced by whim or caprice or an appeal to the passions and sentiments of the Justices, a condition made worse as such conclusion is left solely to conjecture because the reasons remain locked inside the minds of the silent magistrate.

Justice Barredo observes:

> [A] general statement in the decision that for lack of necessary votes, life imprisonment is being imposed does not reflect who of the Justices have not voted for the death penalty and their reason for their votes. In such a situation, it follows ... that there is no way of knowing whether or not the finding or holding of the existence or non-existence of the pertinent aggravating circumstance is justified or not, and consequently, it would be difficult to ascertain whether or not the legal norms established by the code and by jurisprudence have been observed and worse, whether or not justice has been done . . . the reasons [for the dissent] must be of law and justice, and all the parties and the people have a right to know them. I am not certain that the sense of responsibility which should be presumed [to] motivate every Justice of the Supreme Court can sufficiently justify the omission.[57]

While the immediate result of an averted capital sentence may be surmised to be the considerable relief of a grateful convict over whom the ominous shadow of death has been hovering, in another more scholarly and broad perspective, avoidance without legal excuse virtually renders impossible the task of ascertaining what meaningful and logical distinction can be made between similar capital cases where the supreme penalty was dealt and where the option to improve it was forfeited by the State. Ultimately, this hinders the establishment of a scheme of comparative sentence review where convictions are intelligently affirmed or reversed on automa-

[56] CONST. art. X, sec. 8.
[57] People v. Borja, 91 SCRA at 360, 361.

tic review because of precedents which elaborate on their bases. As has been mentioned, other states have already established by jurisprudence that comparative review of capital cases is constitutionally required.[58]

From another angle, consistent refusal to impose the capital penalty is not just isolated, but a whole array of cases which are more or less factually equivalent may be taken to be an indirect expression by the Court of its judgment that the penalty is not commensurate to the offense committed. The sense of disproportionality felt by one or some of the Justices cannot be legally explained in a dissent because the Court is bound by the view that, as is in civil law jurisdictions, it is not for the Justices, to judge the propriety of a penalty, but theirs is only "the duty of judicial officers to respect and apply the law regardless of their private opinion. . . . It is a well-settled rule that the Courts are not concerned with the wisdom, efficacy or morality of laws."[59] Thus it would seem that the only escape for a Justice reluctant to impose the supreme penalty is to veto its imposition by hiding behind the anonymity afforded by the terse statement that although the imposition of capital punishment "is in order," the penalty next lower in degree is to be imposed "for lack of the necessary votes."[60]

III. A SURVEY OF CAPITAL CASES: A STUDY OF CONTRADICTIONS

While the isolated verdicts to spare a man from a fate of death prompted solely by considerations of mercy may be seen as almost excusable departures from the legal norm by their peculiarity of circumstance or by the very fact of their infrequency, the existence of decisions of a whole class of similar cases where judgments go either way, at times almost as if each case is to be determined by the chance toss of a coin, is to be condemned as unjust to those who were inexplicably added to the list on Death Row. Unfortunately, while our reports and publications are replete with such inconsistent decisions, the aberrant trend remains to this day unchallenged.

Take the case of the convicts serving sentences at the New Bilibid Prisons who commit the new offense of murder. As earlier stated, quasi-recidivism is a special aggravating circumstance—a finding of which commands the imposition of the maximum of the penalty for the new offense—such that where the new crime is a capital one as murder, death is mandatory

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[58] Goodpaster, *supra* note 6, at 787.

[59] People v. Limaco, 88 Phil. 35, 40 (1951).

[60] The more recent cases include People v. Zagamay, G.R. No. L-34675, January 30, 1984, 127 SCRA 128; People vs. Mabansag, G.R. No. L-46293, January 30, 1984, 127 SCRA 146; People vs. Villareal, G.R. Nos. L-36317-18, January 31, 1984, 127 SCRA 279; People vs. Regato, G.R. No. L-36750, January 31, 1984, 127 SCRA 287; People vs. Palon, G.R. No. L-33271, February 20, 1984, 127 SCRA 529; People vs. Aro, G.R. No. L-38141, May 15, 1984, 129 SCRA 216; People vs. Bernaba, G.R. No. L-32865, May 18, 1984, 129 SCRA 266; People vs. Cañete, G.R. No. L-37945, May 28, 1984, 129 SCRA 451.

under the law. *People v. de los Santos*,[61] however, provoked a long line of cases, and continues to do so to date, where capital punishment is avoided because of the consideration of the court of the inhuman conditions prevailing in the penitentiary which in the opinion of the Court prompt the convicts to display greater criminality.

While this is a patent violation of the strict instruction of the law, the court in such leading case, intermittently echoed in subsequent ones, justified its position thus:

> The members of the Court cannot in conscience concur in the death penalty imposed, because they find it impossible to ignore the contributory role played by the inhuman conditions then reigning the penitentiary.... [T]he incredible overcrowing... the starvation allowance of 10 centavos per meal... must have rubbed raw the nerves and dispositions of the unfortunate inmates, and predisposed them to all sorts of violence.... All this led inevitably to the formation of gangs that preyed like wolf packs on the weak, and ultimately to pitiless gang rivalry for the control of prisoners. abetted by the inability of the outnumbered guards to enforce discipline, and which culminated in violent riots. The government cannot evade responsibility for keeping such prisoners under such subhuman and dantesque conditions. Society must not close its eyes to the fact that if it has the right to exclude from its midst those who attack it, it has no right at all to confine them under circumstances that strangle all sense of decency, reduce convicts to the level of animals, and convert a prison term into prolonged torture and slow death.[62]

This case was succeeded by numerous others also featuring capital sentence avoidance. While some refer explicitly in the main decision to the *de los Santos* case as a precedent,[63] others are silent as to why the penalty was reduced to life imprisonment although admitting that death is properly imposable. This latter class of cases may be further subdivided into two, where (a) the decision is nevertheless supplemented by separate opinions referring to "compassionate reasons" why the death sentence is not to be imposed, but such reference is made only to the "dehumanizing prison conditions"[34] without specifically citing any precedent,[65] and (b) where there is a "lack of necessary votes" without any explanation whatsoever to explain by what process a reduction of penalty was arrived.[66]

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[61] G.R. Nos. L-19067-68, July 30, 1965, 14 SCRA 702.

[62] *Id.* at 712.

[63] People vs. Garcia, G.R. No. L-40106, March 13, 1980, 96 SCRA 497; People vs. Tampus, G.R. No. L-44690, March 28, 1980, 96 SCRA 624; People vs. Pincalin, G.R. No. L-38755, January 22, 1981, 102 SCRA 136; People vs. Melendrez, G.R. No. L-38095, August 10, 1981, 106 SCRA 575; People vs. Toledo, G.R. No. L-38495, July 25, 1983, 123 SCRA 545.

[64] People vs. Alicia, G.R. No. 38176, January 22, 1980, 95 SCRA 227 (Makasiar and Abad Santos, JJ., concurring).

[65] People vs. Villacores, G.R. No. L-35969, May 16, 1980, 97 SCRA 567; People vs. Verges, G.R. Nos. L-36882-84, June 24, 1981, 105 SCRA 744.

[66] People vs. Perez, G.R. No. L-44188, January 27, 1981, 102 SCRA 352; People vs. Garcia, G.R. No. L-36162, July 31, 1981, 106 SCRA 313; People vs. Crisostomo, G.R. No. L-38180, October 23, 1981, 108 SCRA 288; People vs. Daeng, G.R. No.

While a whole legal controversy may be stirred as to the commutation of such sentences even if "as a matter of legal precision death should be imposed,"[67] a separate furor may be raised by convictions of quasi-recidivists, resulting into the imposition of the extreme penalty on the offenders following strictly the guideline imposed by Art. 160 of the Penal Code. The most recent of these cases, decided in 1981, is *People v. Rosales*.[68] *People v. Dumdum*,[69] decided in 1979, cites seven other cases where the accused prisoners killed their fellow prisoners, were tried for murder and were sentenced to die on the basis of a guilty plea: *People v. Santos*;[70] *People v. Ala*;[71] *People v. Yamson*;[72] *People v. Yamson*;[73] *People v. Peralta*[74] and *People v. Lapon*.[75] Other more recent cases are *People v. Gonzales*[76] and *People v. Tanchico*.[77] Peculiarly, all these cases make no mention at all of the first set of cases previously discussed where "justice is tempered with mercy" and only a life sentence was imposed on the defendants; the reverse also holds equally true. The total absence of meaningful distinctions between these murder cases of quasi-recidivism will justify a confused reader into thinking that the vote for or against the imposition of the death penalty is dependent on the sentiments and fancies of the Justices for the moment, and ultimately on the changing membership of the Court at any given time. No reason need be adduced to demonstrate why this is legally objectionable.

Another area where the Court of late has been ruling with embarrassing inconsistency is the group of decisions sentencing a convict who should have been meted out the death penalty but is made to suffer life imprisonment instead, due to too long a detention period, because the trial court conviction reached the Supreme Court on automatic review only after a lapse of a decade or more. One legally grounded objection to this class is addressed to the departure from the mandate of the law which does not enumerate such a finding as an instance to excuse death sentence imposition. It was in 1979 when the Supreme Court decisions reflected the height of the quandary that the Justices felt themselves to be in, as they could not decide whether a long period of detention would suffice to produce a reduction of penalty. It was then when, in glaringly disparate sentences, three death penalties and two life imprisonment terms were dealt separately

L-44187, November 12, 1981, 109 SCRA 166; People vs. Abrea, G.R. No. L-55309, February 22, 1982, 112 SCRA 83; People vs. Zagamay, G.R. No. L-34675, January 30, 1984, 127 SCRA 128.

[67] People vs. Pincalin, G.R. No. L-38755, January 22, 1981, 102 SCRA 136.
[68] G.R. No. L-38625, October 23, 1981, 108 SCRA 339.
[69] G.R. No. L-35279, July 30, 1979, 92 SCRA 198.
[70] 105 Phil. 40 (1959).
[71] 109 Phil. 390 (1960).
[72] 109 Phil. 753 (1960).
[73] 111 Phil. 406 (1961).
[74] 113 Phil. 201 (1961).
[75] G.R. No. L-25177, October 31, 1969, 30 SCRA 92.
[76] G.R. No. L-34674, August 6, 1979, 92 SCRA 527.
[77] G.R. No. L-32690, October 23, 1979, 93 SCRA 575.

in a total of five cases to offenders convicted of robbery with homicide, all of whom had been in prison for more than ten years.[78] As late as 1980 the Supreme Court sustained a capital sentence likewise in a robbery with homicide case[79] but subsequent to that, there have been consistent rulings where detainees for a long period (ranging from 10 to 24 years) have been spared of death.[80]

The concurring opinion of Justice Barredo in *People vs. Borja*,[81] a murder case also decided in 1979, would seem to reveal that he was instrumental in persuading the other members of the Court to adopt the viewpoint that prevailed in the next succeeding years that prolonged detention of more than 10 years justifies a reduction of penalty from death to *reclusion perpetua*. He reasoned that

> ... the passage of so many years of mental torture under the deplorable conditions obtaining in the national penitentiary during all those years has transformed that penalty into a cruel one within the contemplation of the human prescription of the Constitution against the inflicting of cruel and unusual punishment.... [L]iving under the shadow of a sentence of death for more than ten years... is a life that can be worse than death itself. Indeed such an unusually long waiting amounts to cruelty, which should unusual punishment.... [L]iving under the shadow of a sentence of death be added—to the penalty of death.[82]

He went on further to criticize the unpredictable votes that Justices raise in such cases, thus:

> Some members of the Court feel that there are cases wherein the accused really deserve to be punished strictly in accordance with the applicable provisions of the Revised Penal Code because of the undeniable atrociousness and viciousness or obvious incorrigible perversity characterizing the commission of the offense. I respect their views, but I submit that the injunction of the Constitution against "cruel and unusual punishment" contemplates the most heinous crime conceivable and yet does not distinguish... there is no justification for adding, in effect, another penalty to the one prescribed by the Revised Penal Code. Indeed, if the law says the penalty should be death and no more, how can we impose an additional penalty of prolonged detention through no fault of the convict?[83]

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[78] Defendants in *People vs. Rabuya*, G.R. No. L 30518, November 7, 1979, 94 SCRA 123; *People vs. Ang*, G.R. No. L-29980, December 14, 1979, 94 SCRA 586; and *People vs. de la Cruz*, G.R. No. L-28966, November 7, 1979, 94 SCRA 87, were sentenced to die while defendants in *People vs. Coramot*, G.R. No. L-31866, November 7, 1979, 94 SCRA 150; and *People vs. Alvarado*, G.R. No. L-29451, December 14, 1979, 94 SCRA 576 were given life terms only.

[79] People vs. Adriano, G.R. Nos. L-25975-77, January 22, 1980, 95 SCRA 107.

[80] People vs. Capillas, G.R. No. L-27177, October 23, 1981, 108 SCRA 173; People vs. Lupango, G.R. No. L-32633, November 12, 1981, 109 SCRA 109; People vs. Gamet, G.R. No. L-55029, June 29, 1982, 114 SCRA 870; People vs. Lakandula, G.R. No. L-31103, July 20, 1983, 123 SCRA 415.

[81] *Supra* note 32.

[82] *Id.* at 361, 362.

[83] *Id.* at 363.

The other criticism to these cases of detainees remains directed at the lamentable absence of elaborated dissents from the infliction of the supreme penalty, when it is imperative that the departure from the command of the law be explained in each case, specially as in these cases where the life sentence is sought to be justified on grounds not found within the sentencing apparatus established in the Penal Code. The Justices who take pains to submit separate opinions in support of their vote can be counted with the fingers of one hand, and in some cases, it is only with a reference to these isolated and succinct concurrences or dissents that it may be surmised that the lack of votes described in the main opinion was probably (but not conclusively) due to the long detention of the defendant. It may safely be said that it is only Justice Barredo who has been religiously and conscientiously making known his imposition of the death penalty and since 1979 has been consistently referring to his concurrence in the *People vs. Borja* case.[84] There is a host of other cases where no reason at all is stated either in the main or in separate opinions why only *reclusion perpetua* is imposed on the defendant, and it remains a matter of guesswork which of these was due to the prolonged detention of the accused.[85]

Disparate sentences may also result from a reluctance of the Justices to impose the supreme penalty on a female offender although exactly the same attendant circumstances may be appreciated against her and her co-accused. In *People vs. Nierra*[86] the Nierra spouses offered a reward to co-defendants for the murder of the husband's sister. The deceased was surprised in the act of squatting in preparation for relieving herself, when her hair was pulled from behind and a pistol was inserted and fired into her mouth. The Court held that "[t]he death penalty imposed on the Nierra spouses is in accordance with law. However, for lack of the requisite ten votes, the death penalty imposed on Gaudencio Nierra should be commuted to *reclusion perpetua*."[87] Another case is *People vs. Plata Luzon*[88] where the accused offered ₱5,000 to anyone willing to kill her husband, and she and her lover participated actively in the execution of the murder by deceiving the deceased into going with the perpetrators to Laguna where he purportedly could purchase a motor, but where instead he was slain. The wife later fabricated a story that she and her husband were victims

[84] People vs. Labinia, G.R. No. L-38140, July 20, 1982, 115 SCRA 223; People vs. Caramonte, 94 SCRA 140; People vs. Alvarado, 94 SCRA 576; People vs. Cavillas, 108 SCRA 173; People vs. Lupango, 109 SCRA 109; People vs. Rabuya, 94 SCRA 123; People vs. Ang, 94 SCRA 586; People vs. Adriano, 95 SCRA 107; and People vs. dela Cruz, 94 SCRA 150.

[85] In published cases of robbery with homicide in the month of January, 1984 alone, three out of four life imprisonment cases "due to lack of necessary votes" went totally unexplained: People vs. Villareal, G.R. Nos. L-36317-18, January 31, 1984, 127 SCRA 279; People vs. Regato, G.R. No. L-36750, January 31, 1984, 127 SCRA 287; People vs. Palon, G.R. No. L-33271, February 20, 1984, 127 SCRA 529.

[86] G.R. No. L-32634, February 12, 1980, 96 SCRA 1.

[87] People v. Nierra, 96 SCRA at 14.

[88] G.R. No. L-35016, August 12, 1983, 124 SCRA 75.

of a hold-up. The Court, without citing any justification, imposed only a life sentence upon her notwithstanding several aggravating circumstances that attended the commission of the crime. Similarly unexplained is the decision in the case of *People vs. Mabansag*[89] where the accused wife and her paramour offered a reward of ₱2,000 for her husband's murder, and upon conviction the lesser penalty of *reclusion perpetua* was imposed on her. In *People vs. Talingdan*[90] it was proven at the trial that the accused wife at the very least knew her husband was going to be slain, as she was present in at least two meetings where her lover and his cohorts discussed the preparation for the murder, and while such killing was taking place she diverted the attention of the other household members and feigned innocence of the crime although she was covering it up. The Court sentenced her co-defendants to death, but held her liable as a mere accessory after the fact. These murder cases do not give much less elaborate on the reasons why the female offenders were not meted out the death penalty as her co-defendants.[91]

In yet another line of capital cases, the Court has distinguished between the accused in a case, setting apart he who appears to be the "most culpable" either as a mastermind or brains behind the crime or the gangleader in offenses committed by a band. Here, the death penalty is meted out to the latter while his co-accused are sentenced to a lesser penalty only, although the case clearly reflects, and at times the decision even goes so far as to declare, that all the defendants are convicted as principals, being culpable as such. Because of the "moral perversity" displayed by the leader as inducer, the most severe penalty is dealt to him while the rest of the accused who indubitably also participated in the crime are made to serve only a prison term. This is strictly a jurisprudential development, most closely analogous to the principal-accomplice penalty differentiation in the Penal Code.

These cases trace their origin to the leading case of *People v. Ubiña*[92] where the Court had occasion to rule that where a principal accused exercises personal influence over co-accused, as in the case at bar where the latter were his political adherents and proteges dependent on him for livelihood, "the law must be applied in its full force and to its full extent"[93] only as to such principal who masterminded the crime, but not as to the others who also participated in the commission of the crime, as their acts were not entirely the "voluntary results of inner depravity,"[94] although

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[89] G.R. No. L-46293, January 30, 1984, 127 SCRA 146.
[90] G.R. No. L-32126, July 6, 1978, 84 SCRA 19.
[91] See also *People vs. Molleda*, G.R. No. L-54248, November 21, 1978, 86 SCRA 667, where the Supreme Court took pains to demonstrate in its opinion the culpability of the defendant woman and her participation in the crime yet ultimately declaring her acquittal while her co-accused were sentenced to life imprisonment.
[92] 97 Phil. 515 (1955).
[93] *Ubiña*, 97 Phil. at 528.
[94] *Ibid.*

likewise convicted as principals, they are to be meted out the penalty next lower in degree only.[95]

In *People v. Tuazon*[96] the principals by direct participation were sentenced to *reclusion perpetua* for a murder. Their co-defendant who offered the reward was sentenced to die, "considering the manner in which he effected his diabolical purpose to eliminate his enemy . . . he should be meted out a penalty more severe than that imposed upon those who actually carried out the murder desired by him."[97]

In *People v. Ong*[98] the defendant held up a PNR train with 3 other malefactors. Three aggravating circumstances were appreciated against him without any attenuating ones to offset the same; nevertheless he was given a life sentence only, the main decision failing to state why this was so. Only one separate opinion was filed by Justice Teehankee, from which it may be inferred that the result of the voting was due to the accused not having "a direct active participation in the commission of the offense, much less in the exchange of shots which resulted in the death of a PNR employee," as another perpetrator "appeared to be the gang leader."[99] The decision is peculiar because the Supreme Court made an express finding of conspiracy, where normally the "act of one is the act of all."

Related to this class of cases is that where disparate sentences are imposed on co-defendants who are tried separately, or on appellants where one of several accused does not appeal a life sentence imposed by the trial court. The defendants on *People v. Saliling*,[100] except Saliling, interposed an appeal to their conviction and death sentence. The Supreme Court refused to sentence the others to die because Saliling who "was the most guilty among the appellants" was made to serve a prison term only based on a plea of guilt, and therefore "the fact that he cannot be sentenced to death anymore has inescapably some repercussive effect on the criminal liability" of the appellants.[101] Similarly, in the more recent case of *People v. Daffon*[102] where the Supreme Court observed that "as a matter of strict law, Daffon should be sentenced to death," appellant was given a life term only. The Court continued to say that "two of his co-accused, who did not appeal were sentenced to *reclusion perpetua* only."[103]

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[95] This case was followed by *People vs. Sakam*, 61 Phil. 27 (1934); *People vs. Cabrera*, 43 Phil. 82 (1922); *People vs. Chua Huy*, 87 Phil. 258 (1950); and *People vs. Ging Sam*, 94 Phil. 139 (1953), all capital cases where not all those convicted as principals were sentenced to die. The most recent case citing *Ubiña* is *People vs. Moreno*, G.R. Nos. L-37801-05, October 23, 1978, 85 SCRA 649.

[96] G.R. No. L-10614, October 22, 1062, 6 SCRA 249.

[97] People v. Tuason, 6 SCRA at 255.

[98] G.R. No. L-43957, February 10, 1981, 102 SCRA 709.

[99] People v. Ong, 102 SCRA at 719 (Teehankee, J., concurring).

[100] G.R. No. L-27974, February 27, 1976, 69 SCRA 427.

[101] People v. Saliling, 69 SCRA at 434.

[102] G.R. No. L-30707, March 28, 1980, 96 SCRA 565.

[103] People v. Daffon, 96 SCRA at 572.

However, in *People v. Balili*[104] which, like *Daffon* is a robbery with homicide case, two of the perpetrators were apprehended and tried, but only one appealed. Though his co-accused was serving a life imprisonment sentence only, appellant was sentenced to die. His punishment was unexplained; and no mention is made of the *Salilling* or *Daffon* cases or any other precedents.

Other parallel cases with varying sentences may be mentioned and compared. In *People v. Tirol*[105] defendants hacked a couple and their children at their own home and the mother and six of the children died. The murder was qualified by treachery and aggravated by dwelling, with no finding of any attenuating circumstances. The accused were sentenced to die. In *People v. Benaraba*[106] defendants went up the house, hit four children aged 12, 10, 7, and 5 with blunt instruments aiming for their heads thereby fracturing their skulls, then burned the house down. The Court sentenced them to life imprisonment only, though the same circumstances of treachery and dwelling attended the commission of the crime.

In *People vs. San Pedro*[107] the Supreme Court imposed the supreme penalty on the defendant who with three others stabbed the driver of a jeep which they stole. Accused was sentenced to die. In *People vs. Feliciano*[108] the defendant with two others clubbed their victim with an iron pipe and shot him dead, slipped him into a sack, abandoned him, and afterwards stole his passenger jeepney. Accused were made to suffer a life term in prison only.

In 1981, the two murder cases of *People vs. Gida*[109] and *People vs. Garcia*[110] were decided. In both cases, the defendants surprised their victims, in the former case by hacking deceased with a bladed instrument while the latter was going down the ladder of his house and in the latter case, by stabbing the deceased who was just stirring from his sleep. In both cases, the Court made a finding that dwelling aggravated the crime, uncompensated by any mitigating circumstance. The defendants in the *Gida* case were sentenced to die, while in the *Garcia* case, defendants were given the chance to live.

IV. CONCLUSION

The decision in *U.S. v. Laguna*[111] was penned by Justice Moreland who had this to say of automatic service of capital sentence cases: "Such procedure is merciful. It gives a second chance for life. Neither the Courts nor the accused can waive it. It is a positive provision of law that brooks no interference and tolerates not evasions."[112]

[104] G.R. No. L-38250, August 6, 1979, 92 SCRA 552.
[105] G.R. No. L-30538, January 31, 1981, 102 SCRA 558.
[106] G.R. No. L-32865, May 18, 1984, 129 SCRA 266.
[107] G.R. No. L-44274, January 22, 1980, 95 SCRA 306.
[108] G.R. No. L-30307, August 15, 1974, 58 SCRA 383.
[109] G.R. No. L-14419, January 19, 1981, 102 SCRA 70.
[110] G.R. No. L-32071, July 9, 1981, 105 SCRA 325.
[111] 17 Phil. 532 (1910).
[112] U.S. at Laguna, 17 Phil. at 540.

Judicial review of a capital case has always been appreciated as a guard against errors committed by the trial court, which vary from a simple misappreciation of evidence to an outright denial of due process where an improvident plea of guilt is entered via a hasty arraignment. But while this function may be defended to be one which has almost never been neglected by the Supreme Court on mandatory appeal, other review procedures remain untried and their aspects unexplained which could have shielded inconsistent decisions from accusation of arbitrariness; these arise from an intercase comparison of cases where disparate penalties are meted out to offenders whose crimes cannot be meaningfully distinguished from one another. At this point the only way to avert a challenge of the constitutionality of the capital sentencing "system," if it can be called that, established by jurisprudence, is to create a structure of review where intercase comparison of sentences in capital cases is made possible so that a single sentencing pattern based on precedents may be adhered to for consistency. The continued treatment of capital cases on the basis of the records of each case alone is much too prone to the unpredictable and momentary whims of Justice who remain anonymous, hidden under the blanket of the bland statement that the death penalty cannot be imposed "for lack of the necessary votes." Moreover, it is difficult to explain this to a convict, or at times to his co-defendant, who has been sentenced to die.

The need for a more expansive method of review is made evident by the fact that jurisprudence, as demonstrated, has been adding extra-statutory devices that lead to an avoidance of capital sentence imposition, for example, the case of quasi-recidivist charged with capital offenses or appellants who have undergone long periods of detention but are sentenced only to life imprisonment. It is only through an intelligent reference to controlling precedents that the imposition of a lesser penalty can be legally justified, and this can only be made possible by a thorough investigation of previous decisions.

Furthermore, if the automatic review system is to be truly overhauled, the Justices must be enjoined to comply with their constitutional duty to explain their dissents to the votes cast on penalty imposition. Only then can the accused, and the people, know what differences between cases led a Justice to legally or logically cast totally contrary votes in factually similar cases.

As it stands, therefore, our system of capital sentence review leaves much to be desired, as it is inadequate to truly afford protection to defendants similarly circumstanced against capricious mistakes—mistakes that cannot be tolerated if only to avoid an unwarranted deprivation of life of a human being. In that very crucial sense, our criminal justice system fails.