The Poor on Trial in the Philippine Justice System

Ma. Glenda S. Lopez-Wui[*]

I. INTRODUCTION

Law is an interpretative profession as it is vested with "the legitimate authority to interpret the rules governing the structure and processes of

---

[*] '91 B.A., '99 M.A. Sociology (U.P. Dil.). The author is the Deputy Director of the University of the Philippines Third World Studies Center (TWSC). She is the Assistant Editor of *Kasarinlan*. She was the project leader and case study writer for the 2004 United Nations Development Program on *State-Civil Society Relations in the Context of Globalization*. She was also the project leader for the 1999-2003 Southeast Asian Regional Exchange Program research on *State-Civil Society Relations in Policy-Making in Selected Local Communities of Thailand and the Philippines*. She was a senior lecturer in the Department of Sociology of the University of the Philippines Diliman and is now an assistant professor teaching social science courses to undergraduate and graduate students for the U.P. Open University. The author's current focus of study is on human rights, state-civil society and globalization and is presently working on her next publication entitled *The Philippine Human Rights Movement in the Changing Times: Challenges and Prospects* and writing a case study on the anti-corruption movement in the Philippines for the United Nations Research Institute for Social Development. The Author is indebted to Dr. Manuel F. Bonifacio, Dean Merlin M. Magallona, and Atty. Marlon A. Wui for their insights and comments.

This essay was part of a master's thesis entitled *When the Poor is on Trial: A Social Psychological Interpretation* that received a grant from the Commission on Higher Education in 1998. A version of this essay also appeared in KASARINLAN: A PHILIPPINE JOURNAL OF THIRD WORLD STUDIES, Vol. 14, Nos. 3 & 4 (1999).

Cite as 49 ATENEO L.J. 1118 (2005).

societal relations."[1] As societal facts are accurately interpreted through the legal profession, justice in society is thereby promoted, if not enhanced. However, rarely are facts accurately interpreted, for the accuracy of interpretation is largely dependent on the quality of the case that is constructed by the lawyer. Indeed, the quality of case-building is largely constrained by, or has a direct relation to the economic class to which the litigants belong. Thus, the rich have far greater chances than the poor of obtaining better-constructed cases. Some of the factors that negatively affect the case-building for pauper litigants are the difficulty of locating witnesses, inability to communicate with their lawyers and lack of knowledge of the law, heavy workload of the public attorneys, and the absence of investigators and legal researchers at the Public Attorney's Office.

In 1995, Mayor Antonio Sanchez of Calauan, Laguna was convicted by a Regional Trial Court for the rape and murder of a college student. In late 1997, the nation was treated to a barrage of media reports about the conviction of Representative Romeo Jalosjos, a member of a wealthy and prominent clan from Mindanao, who was accused of raping a minor. Daily newspapers and local television stations ran stories about the two cases for several days, treating them either as headline or front page stories and generating widespread public interest.

These are unusual stories for the public considering that the said cases involved the conviction of the rich. In contrast to stories about the rich and powerful being prosecuted for criminal offenses, news about the poor undergoing legal prosecution are considered common tales by the public.

If newspaper reports were to be used as basis, it would be possible to generalize that the majority of those who are convicted of crimes belong to the lower class. In fact, an examination of the economic status of the first five death row inmates whose convictions were affirmed by the Supreme Court since the death penalty was reinstituted in 1994, will show that most of them are economically disadvantaged. The first recipient of the lethal injection, Leo Pilo Echegaray, was a fish vendor, while the other four did not have permanent jobs. One of the convicts, Pablo Andan, lamented in an interview published in a daily newspaper that his only crime was that he was not born rich. Expressing his disappointment with the justice system, he

1. *See generally* Manuel F. Bonifacio and Merlin Magallona, *A Framework for the Study of the Legal Profession: Some Socio-Legal Issues* (unpublished research paper) (on file with the author) (which provides an extensive discussion on the subject matter).

added: "there is no one here among us who belong to a wealthy family. We could not afford a good lawyer — that's why we ended up here."[2]

This Essay does not intend to merely attribute the conviction of the inmates to their poverty. Indeed, the presence of a good lawyer on the side of the accused could spell a large difference on the outcome of a case, but there are other factors, such as the weight of the evidence presented against the accused, that should be considered in analyzing a case. The statements cited, however, capture what is seemingly the dominant opinion of the indigent about their convictions.

Poor people may be guilty of a crime but it is a reality that they cannot readily access the services of private lawyers because of the high cost of professional fees. Hence, most of the indigent accused end up being defended by a counsel *de officio*.

Counsel *de officio* are government lawyers appointed by the court to defend an accused who cannot afford the services of a private lawyer. The duty of the court does not end with the appointment of the counsel *de officio*; it must also see to it that the latter perform meritoriously, "because failure to do so constitutes a reversible error."[3] Moreover, a lawyer cannot refuse the assignment to defend an indigent accused when the court appoints him as counsel *de officio* without turning false to his oath. "[T]he Code of Legal Ethics states that a lawyer assigned as a counsel for an indigent prisoner ought not to be excused for any trivial reason and should always exert his best effort in his behalf."[4]

The provision of a lawyer to a poor litigant is in accordance with the right to counsel[5] of the accused as stipulated in the Constitution.[6] More

---

2. Norman Bordadora, *Death Convicts Hope for Reversal of Fortune*, PHILIPPINE DAILY INQUIRER, Mar. 10, 1997, at 1.

3. *See* United States v. Gimeno, 1 Phil. 236, 237 (1902), cited in William M. Bayhon, *Legal Ethics for Practitioners in* LEGAL PROFESSION 221 (Jorge R. Coquia ed., 1993).

4. William M. Bayhon, *Legal Ethics for Practitioners in* LEGAL PROFESSION 221 (Jorge R. Coquia ed., 1993).

5. The importance of the right to counsel of the accused was discussed by Chief Justice Moran in *People v. Holgado* (85 Phil. 753 (1950)). He wrote: "[i]n criminal cases there can be no fair hearing unless the accused be given an opportunity to be heard by counsel. The right to be heard would be of little avail if it does not include the right to be heard by counsel. Even the most intelligent or educated man may have no skill in the science of law, particularly in the rules of procedure, and without counsel, he may be convicted not because he is guilty but because he does not know how to establish his

importantly, the Constitution also provides that no person shall be denied free access to the court by reason of poverty.[7]

However, there are serious doubts about the effectiveness of the counsel *de officio*, as evidenced by the presence of convictions that were either reverted to the lower court for further review or reversed by the Supreme Court because of the counsels' lackluster performance in defending the accused.[8]

One study was conducted in the United States illustrating the seeming inability of the public defender to meritoriously defend his indigent client in court. The study noted that "the relationship between the defender and the prosecutor is much closer than that between the defender and his client." The reason for this was explained by the research:

> ...in line with the concept of "bargain justice" ... that most cases are settled by a plea of guilty ... the public defender rarely prepares to try cases in the conventionally-understood sense of seeking to win. Rather, his efforts are concentrated on securing an appropriate "deal," the possibilities for which are more or less routinely established through past dealing with the cooperating prosecutors.[9]

Philippine laws likewise provide that the right of the accused to counsel does not only begin during the trial but even before he is "taken into custody and placed under investigation for the commission of the crime."[10]

---

innocence. And this can happen more easily to persons who are ignorant and uneducated."

6. PHIL. CONST. art. III, § 12 ("Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.")

7. PHIL. CONST. art. III, § 11 ("Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.")

8. *See e.g.* People v. Malunsing, 63 SCRA 493 (1975) and People v. Magsi, 124 SCRA 64 (1983).

9. *See* David Sudnow, *Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office*, SOCIAL PROBLEMS, Vol. 12, Winter 1965, at 255-76 cited in EDWIN M. SCHUR, LAW AND SOCIETY 160 (1968).

10. ISAGANI CRUZ, CONSTITUTIONAL LAW 315 (1993 ed.); *see, e.g.* Escobedo v. Illinois, 378 U.S. 478 (1964); Miranda v. Arizona, 384 U.S. 436 (1966); People v. Duero, 104 SCRA 379 (1981); People v. Nicardo, 142 SCRA 289 (1986); People v. Duhan, 142 SCRA 100 (1996).

The inability of the suspect to avail himself of the services of a lawyer during the investigation often results in the transgression of his rights. Hence, it is common to hear stories about the accused being tortured into admitting the commission of a crime.

The discrimination against the poor is also manifested in the system of bail.[11] Unlike the rich, the poor often end up in prison while awaiting trial because of their inability to put up money for bail.

Moreover, others believe that the court system itself, because of the need of the accused for resources to defend his case in court, is outrightly militating against poor litigants. As a professor of Yale University pointed out: "[t]he courts are available in proportion to one's ability to pay for their use."[12]

But a complete picture of the predicament experienced by poor litigants cannot be painted without putting into context the role of lawyers in the Philippine criminal justice system and society in general. As will be shown later in this Essay, many of the problems experienced by the poor stem from the inability of the lawyers to fulfill their social obligations. A discussion on this is therefore in order.

II. ROLE OF LAWYERS

The legal profession is accorded with the responsibility to provide interpretations of the law and institute rules necessary to the structure and process of societal relations.[13] The legal profession is especially crucial in terms of providing authoritative interpretations of "conduct that are imposed on the public through its appropriate institutional structures."[14] Given their responsibility to interpret the law, members of the legal profession should therefore see to it that their interpretive skills do not only benefit the affluent but also the poor and the disadvantaged in order to address the problem of inequities and injustice in society.

The most compelling reason for the existence of the legal profession is to see to it that justice is realized within the law. Its immediate goal is to

---

11. PHIL. CONST. art. III, § 13 ("All persons except those charged with offences punishable by reclusion perpetua when evidence of guilt is strong, shall before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the writ of habeas corpus is suspended. Excessive bail shall not be required.")

12. *See* EDWARD S. ROBINSON, LAW AND LAWYERS (1935).

13. Bonifacio and Magallona, *supra* note 1.

14. *Id.*

promote compliance with law, while its ultimate goal is to promote justice. The promotion of justice, in turn, leads to the promotion of the common good.[15]

Upon closer analysis, however, the legal profession seems unable to perform its major social mission. One criticism levelled against the practice of law is that it "has unwittingly led to the support of the status quo." This is explained by the fact that the paying client becomes the focus of attention of the profession since legal service is the major source of income of lawyers. Hence, legal practice inadvertently becomes an instrument "to advance the cause of the paying client."[16]

The pecuniary interest of the legal profession has adversely affected its performance in the conduct of its larger societal goal. For instance, lawyers are expected to protect the victims of oppression and injustice. These victims usually turn out to be the weak and the indigent who constitute the bulk of the population. Their oppression usually stems from their inability to procure the services of lawyers when they need them. As one writer noted, "[t]hose citizens that are termed 'exploited' under capitalism usually turn out to be, under rigorous examination, citizens that are not able to retain lawyers."[17] The inability of some legal practitioners to extend services to the poor and the needy has been scathingly criticized. Following is an example of such commentary:

> [A] very large part of what is called social injustice exists because the legal profession has not shouldered the responsibilities that go with the privilege it enjoys. In theory it is charged with the task of seeing that all men obtain justice, and not only those men who have the price to pay for it.[18]

Ideally, lawyers should be ready to provide legal services to the weak and indigent without insisting on a fee.[19] Their role to provide justice should not be rationed or made available only to those who have the resources to obtain it. Lawyers can continue devoting their skills and talents to their private and paying clients but they must also find ways to spare some of their skills and talents for the problems of the poor.[20] Such is important not only

15. Former Chief Justice Roberto Concepcion, Address at the Opening Session of the First Conference of Law Deans held at the Sulo Hotel (Apr. 22-24, 1976) *in* LEGAL PROFESSION 183-84 (Jorge R. Coquia ed., 1993).

16. Bonifacio and Magallona, *supra* note 1, at 5.

17. Ferdinand Lundberg, *The Legal Profession: A Social Phenomenon*, HARPER'S MAGAZINE, Dec. 1938.

18. LEGAL PROFESSION 67-68 (Jorge R. Coquia ed., 1993).

19. Note, *Public Responsibilities of the Learned Professions*, 21 LOUISIANA L. REV. 130 (1960) *in* LEGAL PROFESSION 33 (Jorge R. Coquia ed., 1993).

20. LEGAL PROFESSION 159 (Jorge R. Coquia ed., 1993).

because it benefits the lower classes, but also because it serves the interest of social justice as well as the interests of social stability and tranquillity.[21]

A number of commentaries on the legal profession point to the inadequate moral moorings among lawyers as the cause of their seeming inability to accomplish the noble cause of their profession. The importance of integrating into the lives of lawyers the ethical prerequisite of their profession was succinctly captured in the following words of Justice J.B.L. Reyes:

> [t]he ethics of law practice cannot be those of the open market. Law touches too wide a range of human values, and is beset by too many temptations, to admit of any but the highest standards of conduct. From the ranks of lawyers will be drawn judges and prosecutors, legislators and presidents who will decide the destiny of the nation and of the citizens. No one can escape shivering at the thought that some time in the future his own life or liberty may hinge upon an individual unable to discriminate between what is profitable and what is right, what is expedient and what is just; or whose main interest in life is survival or preferment.[22]

Although moral training may not be entirely learned in school, the role of law schools in turning out high-minded lawyers, "who can treasure the principle of morality and refinement in conduct and a developed sense of responsibility," cannot be discounted. Justice J.B.L. Reyes particularly emphasized the importance of law school training in the "cultivation and consolidation of moral character, civic courage, and ethical principles" among law graduates.[23] Upon examination of the kind of law graduates that are turned out by law schools, however, Justice Reyes averred that they have failed in providing the necessary training to hone the professional ethics of the students. In his assessment of the ethical training of lawyers, Justice Reyes wrote:

> Law schools appeared to have failed to kindle in the hearts of their wards a resolute dedication to the rule of law and fair play, as well as the conviction that every lawyer is, and must remain, an integral part of the administration of justice. The failure is written large[ly] in the court records – evasion of the sworn duty to defend the poor and defenseless on the flimsiest of excuses; resort to technicalities and delay – that convert litigations into wars of attrition; groundless suits and appeals; abandonment of clients without the courtesy of a notice to them or the court. And outside the courthouses, how many lawyers seek to palliate their failures by charging prejudice or base motives on the part of the judges? How many of them,

---

21. *Id.* at 69.

22. Justice J.B.L. Reyes, *Objectives of Legal Education in Present-Day Philippine Society in* LEGAL PROFESSION 116 (Jorge R. Coquia ed., 1993).

23. *Id.* at 116-17.

> placed in positions of power, have practiced self-restraint, respect and tolerance of others, and subordination of self-interest? Are we not treated to the sad spectacle of lawyers in official positions praising themselves for their compliance with the law of the land and the orders of courts, as if it were a matter of grace and tolerance on their part, and not of inescapable sworn duty?[24]

One of the reasons cited for this failure is the nature of the present law curricula which "devote only a miniscule portion to professional ethics – those moral rules without which the practitioners would become just licensed freebooters." Legal ethics is offered as a subject in law school not more than two hours per week in the last semester of the eight that compose the law course proper. The importance of devoting more time to the study of legal ethics lies in the truism that: "[e]thical training grows progressively weaker unless carefully nurtured and regularly reinvigorated by exercise, precept, and example."[25]

However, in the face of criticisms, the importance of the legal profession cannot be discounted. The following rejoinder to the rapprochement thrown against the profession may capture why it continues to exist.

> For whatever may be said against the legal profession as a whole, the necessities of our complex civilized society will always need the services of law-trained men who have the grasps of social problems and who dominate the forces of social control. And as long as organized society exists on the face of the earth, as long as men are governed by laws enforced for their own benefit and for the good of all, as long as we have government of laws and not of men, so long will lawyers be needed for the peace and happiness of men. [26]

It is against the backdrop of the predicament experienced by the poor that this Essay was conceptualized. Specifically, this Essay aims to examine the social and psychological issues and problems encountered by poor litigants in criminal cases by looking into the interaction that takes place between the lawyer and the client. It is hoped that by examining this process several insights may be brought to light that could explain why the poor encounter problems during their trial. The Essay will also explore the perceptions and attitudes of lawyers regarding the conduct of criminal cases involving poor litigants, especially the disadvantages and inequities experienced by this sector in the criminal justice system. Inmates from the Quezon City jail, private lawyers, Public Attorney's Office (PAO) lawyers,

---

24. *Id.*

25. *Id.* at 117-18.

26. Editor's note to Ferdinand Lundber's article, *The Legal Profession: A Social Phenomena in* LEGAL PROFESSION 183-84 (Jorge R. Coquia ed., 1993).

and judges from Quezon City were interviewed to generate data for the research. Although the term litigant refers to both parties in a lawsuit, namely the complainant and the accused, this paper uses the term to refer only to the accused.

III. THE LAWYER-CLIENT RELATIONSHIP

A significant difference can be gleaned between the relationship of the well-to-do and poor litigants with their respective counsels. This difference tends to further highlight the predicament experienced by the poor in the criminal justice system. The well-to-do can easily confer and discuss their case with their counsels. They can reach their lawyers anytime when they have questions on their minds, as they have their office and home telephone numbers. Their lawyers also visit them in jail, especially at the crucial time when they are to take the witness stand to prepare them for their testimonies. Litigants with private lawyers also set expectations on how their lawyers should conduct their case and if these expectations are not met, they replace them with new ones. Their relative familiarity with the legal system and the conduct of their case—they study the transcript of court proceedings of their cases—enable them to set expectations on how their counsels should perform their tasks.

However, this is not the case with the poor litigants. They hesitate to initiate interaction with their counsels. Hence, conferences with their counsels are held very rarely. When they confer with their lawyers, they merely listen to them and seldom ask questions about their case. The reason they cited on why they cannot approach their lawyers is that they are ashamed to do so because they are not able to give anything to the latter as some sort of compensation for their services.

For instance, a litigant who was accused of acts of lasciviousness said that even though his lawyer gave him his office phone number, he has not called him despite having pressing questions about his case. He said he is ashamed to call his lawyer because he is not able to give him anything.[27]

The Filipino value of *hiya* (shame) operates in the social exchange that takes place between the lawyer and poor litigant. The poor litigant experiences *hiya* when dealing with his lawyer primarily because of his inability to compensate the latter's services. This also deprives the litigant the feeling of moral ascendancy to demand better services from his lawyer. The awareness of the litigant of the fact that his lawyer receives compensation from the government in exchange for services rendered to the poor does not assuage his feeling of *hiya* toward his lawyer.

27. Interview with Lucio, accused of acts of lasciviousness (Jul. 11, 1998).

The difference in the kind of interaction that exists between the pauper and well-to-do litigants and their respective counsels can be further understood using the concept of *status congruency*. Status is defined as "the worth of a person as estimated by a class or a group of persons. The estimate of worth is determined by the extent to which his attributes or characteristics are perceived to contribute to the shared values and needs of the group or class of persons."[28] The more valuable the attributes of the person to the group, the higher his status becomes.[29]

Status incongruency exists in every lawyer-client relationship. The lawyer has the higher status because of his possession of skills that are needed by the client. Nonetheless, the capability of the well-to-do to pay for the services of their lawyers balance out the status incongruency that initially characterizes their relationship. They regard each other equally because rich litigants are able to contribute a resource (monetary remuneration) that is also valuable to the lawyer. That is why the well-to-do are able to make demands and set expectations on how their lawyers should perform. If the lawyers' performances fall below expectations, rich litigants readily replace them with new ones.

But the situation of poor litigants is different. Their inability to pay for the services of their counsels makes the status incongruency more pronounced in their relationship with their lawyers. Hence, it is often the case that poor litigants assume a subdued demeanor in the relationship and often hesitate to initiate the interaction. Likewise, they cannot ask their lawyers questions about their case, thereby leaving them in the dark as to the status of their case. Poor litigants also cannot make demands on their lawyers. If they are dissatisfied with their lawyers, it is very unlikely that they will demand the latter's replacement. Although the law allows the litigant to demand for a lawyer of his own choice,[30] it is doubtful if the poor can express such a demand in court.

The poor litigants' conferences with their counsels are further limited by the fact that some public attorneys are unable to visit their clients in jail primarily because of their heavy workload. As a result, public attorneys who are unable to do jail visits only hold conferences with their clients when they see each other in court. However, such conferences are limited to only a few minutes (about 10 minutes) given the time the inmates are allowed to stay in court when they have hearings and the number of clients (about 7 to 9) the lawyer has to attend to in one hearing. The limited time for courtroom conferences compels other public attorneys to visit their clients in

28. PAUL F. SECORD & CARL BACKMAN, SOCIAL PSYCHOLOGY 294-95 (1964).

29. *Id.*

30. PHIL. CONST. art. III, § 12.

jail. Below is a narration of a public attorney on why he makes it a point to do jail visits.

> I even go to the Quezon City jail (to interview clients) because you only have very limited time to talk to them in the courtroom. The prisoners are usually brought in the courtroom at 8:00 a.m., then the judge starts the hearing at 8:30, so you only have 30 minutes to talk to all of them. If you have 12 cases to be heard for that day, then how will you apportion the 30 minutes for all your clients? So every time the accused is going to testify I make it a point to visit him or her at the jail.[31]

There are even a number of clients who claimed that their lawyers do not converse with them. An example is the case of a litigant accused of robbery who lamented that his lawyer only talks to the fiscal and the judge when they are in the courtroom. He said that this is causing him a lot of anxiety because he is not being informed of what is happening to his case.[32]

The lack of communication between a litigant and his lawyer could have grave implication on the administration of justice. Communication between the lawyer and client involves the lawyer explaining to his client the main elements of the controversy of the crime. It also involves conferences pertaining to case-building. The initial important step in case-building is the interview because it is through this method that the client will provide the facts of the case. The interview should be done intensively and extensively in order for the lawyer to ascertain the facts of the case. Likewise, the lawyer needs to carefully check and examine what the client says, for it would be tragic for him to build the case upon facts that are insufficient or entirely incorrect.[33] In view of the importance of the conferences between the lawyer and client, one could imagine the quality of the case built by the counsel if the client was not interviewed at all, as is the case for some of the poor.

Another instance where communication becomes very crucial is when the lawyer urges his client to plead guilty. A miscarriage of justice may result if the lawyer persuades his poor client to plead guilty without fully explaining to him the implication of the plea bargaining. This apprehension is not entirely unfounded judging from the fact that some litigants interviewed for the study were urged by their lawyers to plead guilty sans the elaboration on the implication of the petition.

Moreover, poor litigants judge the performance of their counsels based on the way they deal with them and not with the manner they handle their

---

31. Interview with Atty. Raul Rivera, Public Attorney's Office (Jun. 19, 1998).

32. Interview with "Ferdinand," accused of highway robbery (May 26, 1998).

33. VICENTE J. FRANCISCO, TRIAL TECHNIQUES AND PRACTICE 41 (1953).

case. This is not to state, however, that all those who deal or interact well with their clients perform meritoriously when it comes to handling cases. What is pointed out is that in assessing their counsel's performance, poor litigants put more importance in the way their lawyers treat them than in the way they manage their cases. The poor litigants' inability to judge their counsels' performance based on merit may be brought about by their limited knowledge of the legal process and the way their defense is being conducted. Their lack of knowledge about the conduct of their case is brought about by the fact that very few among the poor study their cases' transcript of court proceedings.

The litigants who expressed satisfaction with their counsels said that their lawyers are very kind and go out of their way to talk to them when they are in the courtroom. They even said that their lawyers visit them in jail. Also, the poor litigants express satisfaction with lawyers who believe their insistence of innocence. The following is what a pauper litigant had to say on why she is satisfied with her lawyer:

> Atty. Diaz is really interested in us. He even gave us his phone number. He told us to call him two weeks before our scheduled hearing so that he can go here to know what we are going to say in court. But with our previous lawyer, it is different, we felt we were taken for granted. He does not talk to us. Atty. Diaz is very persistent, he always talks to us even only for a while. Before the hearing starts, he approaches us. He tells us that we should be consistent in our statement, there should be no changes. We are happy that he is giving us importance, especially with his coming here.[34]

The poor litigants' ascribing importance to the way their counsels deal with them is a manifestation of their preference for a more personalistic relationship with their counsels. Illustrated in this preference for a more personalistic relation are traditional Filipino values such as *pakikipagkapwa* and *pakikisama.* But in the case of the well-to-do, their emphasis on the performance of their counsels as basis of whether to continue their relationship with them or not makes their relationship less personal and more professional in character. What binds them is a contract, thereby making their relationship objective and impersonal.[35]

IV. LITIGATION INCIDENTS

Being away from their families is one of the torments of both the poor and well-to-do litigants in jail. They mostly rely on their families for support, both financially and emotionally, during their difficult time behind bars. However, the tragedy of the poor is that, unlike the rich litigants, their

34. Interview with "Lea," accused of murder (Jun. 7, 1998).

35. Bonifacio and Magallona, *supra* note 1, at 4.

families are unable to provide them not only with financial but also emotional support. Most of the relatives of the poor rarely do jail visits because of limited resources for their transportation fare and their preoccupation with looking after the needs of their children. The spouses of poor litigants have to work much harder than the rich to make ends meet for their families. This is because the families of the rich inmates usually have savings, businesses and relatives willing to help them, to tide them over while an income-earning family member serves time in prison. Also, because they do not get support from their families for their sustenance, poor litigants have to make do with the P30 daily food allowance allotted to them by the government while serving time in prison.

The slow pace of the trial is the most cited response of both the rich and pauper litigants when asked about their problems regarding their trial. Most of the litigants said that their biggest regret of having to put up with a long trial while detained is their inability to earn income and support their families. What makes the long wait harder for the poor litigants is their inability to earn income while in jail. They expressed regret about the time lost in jail that they could have put into more productive endeavors if they were free. Being in jail compounds the problems of the poor because not only can they not pay the services of private lawyers who, more often than not, have the capability to build a better case than the public attorneys, but their very source of income is also curtailed. Income loss for the poor is much harder for them than among the rich. It is often the case that the male poor litigant is the only breadwinner in his family. Hence, more than their inability to support their legal and other needs in jail, the bigger regret of the poor is their inability to support the needs of their families because of income loss. In contrast, the families of the well-to-do litigants often have savings or other sources of income in case one of their family members suddenly goes without income.

The slow pace of trial of both the poor and the well-to-do litigants could be analyzed in the context of what the judge respondents disclosed about the number of cases they handle in their respective *salas*. Like the PAO lawyers, judges also have to confront the problem of work overload. One of the judge respondents said that she had 295 pending cases in her *sala* at the time of the interview. This high number is primarily brought about by the fact that judges cannot keep up with the number of cases being filed in their courts, which averages more than one case a day. Because of their workload and the time and attention that they have to allot for studying their

cases, it is very hard for them to proceed with the disposition of cases at a faster pace.[36]

Although the poor and well-to-do litigants voiced their common concern about their long trial, the other problems they mentioned with respect to their cases differ from each other. The problems of litigants with private counsels are related more to technicalities such as the absence of judges hearing their cases and their inability to apply for bail because the offenses they are accused of are non-bailable.

Among the poor litigants, one of their problems is their dissatisfaction with their counsels because the latter do not take notice of or converse with them when they see each other in court. In contrast, no one among the well-to-do mentioned any problem with their present lawyers. A poor litigant narrated her problem with her previous lawyer in the following manner:

> The problem with our previous lawyer is that he does not talk to us whenever there is a hearing…And if he talks to us, he would tell us: "[a]dmit the crime!" He told us if we will not admit it, we will have to spend 20 years in jail. But I told him I would not admit it even though I will rot in jail because I did not do it. Whenever I see him I am really peeved at him…I was really disturbed when he told us that our sentence would only be lowered if we plead guilty. He said it would only be six years and one day.[37]

Some of the poor litigants also narrated that they were tortured while undergoing interrogation by the police. They said that they were tortured to make them admit to the crime but they remained steadfast in asserting their innocence. The following is one such narration:

> I went with the *barangay tanod* (community police) when they arrested me because I wanted to clear my name. But they beat me and electrocuted me to make me confess to the crime. But I did not relent because I have not done anything wrong. Then in the morning, it was the turn of the police to beat me. But I remained steadfast in asserting my innocence. With the torture that I went through, I could have identified my companion who they said was with me when I allegedly committed the robbery.[38]

They said they wanted to file complaints against the abusive authorities, but did not know whom to ask for help. When the rights of the poor are transgressed, it is often the case that they just keep quiet about the matter

36. Interview with Judge Rosalina Pison, Regional Trial Court of Quezon City (Aug. 31, 1998).

37. Interview with "Connie," accused of qualified theft (Jul. 25, 1998).

38. Interview with "Dindo," accused of robbery (Jun. 20, 1998).

because they do not have the needed resources in pursuing the case. Aside from not knowing anyone whom to ask for help, they also do not have the time and money to pursue their complaints. It is also sometimes the case that the poor just enter into amicable settlements with the person against whom they have filed the complaint if ever they were given such offer. Because of their difficult lives, it is easy for them to accept such offer in exchange for their giving up their complaints.

The heavy workload at the PAO is a crucial factor that considerably diminishes the quality of work of the public attorneys. Most of the public attorneys handle an average of 140 cases — a workload that could negatively affect their capability to build a good case for their pauper clients. As one public attorney put it:

> [t]here may be some truth to what the others are saying that PAO lawyers are not performing as well as private lawyers. One reason for this is the workload that we have; when private lawyers go to court, they only attend to one case. In our case, out of the 14 cases scheduled for hearing, for instance, we may have to attend to 12 or 11 cases. The private lawyers could concentrate on only one case. We could only give very little time for our cases.[39]

Because of their workload, some of them fail to thoroughly interview their clients and witnesses, as well as conduct investigation for their cases. Some even fail to interview witnesses vital to the defense. To ease their burden, PAO lawyers hope that the relatives of their clients would help them in their investigation and in looking for witnesses. Unfortunately, however, most of the relatives of the pauper litigants do not follow up the cases of their kin with the lawyers. As one PAO lawyer lamented:

> [i]f they just rely on me, without their help, it would be very difficult. I attend to hearings and walk-in clients, I prepare documents, I do not have much time to really help these people gather evidence. But the problem is that they do not have any relative who follow-up their cases with us. We are glad to help them, but what can they do to help us?[40]

The PAO lawyers also cited that the lack of facilities and support staff, such as legal researchers and investigators in their office, further burden their already heavy workload. Likewise, since they do not have a complete library; they themselves buy or borrow from their friends the books that they need.

The lack of financial resources on the part of the poor also impairs efforts to look for witnesses for their defense. They cannot afford to give allowance

39. Interview with Atty. Raul Rivera, Public Attorneys Office (Jun. 19, 1998).

40. Interview with Atty. Roberto Omandan, Public Attorney's Office (Jun. 26, 1998).

to the process server to make him personally deliver the *subpoena* to a witness. Although the court gives the process server allowance when he makes the delivery, he is inclined to work more diligently if a client gives him extra payment for his effort. The problem with sending the *subpoena* through registered mail is that it will just be sent back to the courts if the addressee is not located in his listed address. In contrast, a process server will still try to look for the addressee if the latter is not initially located.

The other difficulty of poor litigants with regard to procuring witnesses for their defense is their inability to pay for the transportation fare and allowance of the witnesses. If the witness is employed, they also have to pay him the salary that he failed to earn from his work on the day he was summoned in court. To convince a witness to testify, the litigant has to shell out these expenses, especially if he does not personally know the witness.

The lawyers and judges also mentioned the inability of the poor to put up money for bail as a crucial problem confronting pauper litigants. As a result, a substantial number of poor litigants are detained even though the offenses they are accused of are bailable. Another problem that was cited is that, unlike the rich, it is impossible for the poor to enter into amicable settlement because this often requires paying the complainants to make them withdraw the complaint.

Moreover, the counsels of the poor often take some time to get the transcript of stenographic notes of the cases of their clients, thereby further limiting the time they could devote in studying their cases. Stenographers tend to prioritize the requests of well-to-do clients who pay for their copies of the transcripts over those of the poor who get their copies for free[41] because they get a certain percentage from the payment of the transcripts.

V. SOCIAL RESPONSIBILITY OF LAWYERS

The primary responsibility of lawyers, as pointed out by both the poor and well-to-do litigants, is to find time to converse with their clients. An open line of communication will update the clients about recent development regarding their case as well as make them ask questions about their trial. The importance of the lawyer initiating constant communication with the client is illustrated in their Code of Professional Responsibility. Rule 18.04 of Canon 18 states that "[a] lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information."[42]

41. *See* RULES OF COURT, RULE 3, § 21, ¶ 2.

42. RUBEN E. AGPALO, LEGAL ETHICS 495 (1997).

Moreover, litigants with private lawyers point out that the moment lawyers accept cases, they are bound to defend them to the best of their abilities even though their clients are unable to pay them on time.[43] Litigants also expect their lawyers to do investigatory work and gather evidence for their case.

The lawyers' conferences with their clients also serve the purpose of preparing the latter for their testimonies in court. This is important, especially in the case of poor litigants, because having a conversation or discussion with their lawyers before they testify in court boosts their morale since the court setting and procedure intimidate most of them. One pauper litigant narrated his unpleasant experience during his first encounter with the court proceedings:

> [i]s it not in court there is someone who is asking what happened? (*sic*) I told him that I did not rape anybody. He asked me what is my work and what province did I come from. As I was speaking in a very low voice, he told me: "Speak louder!" I am not really used to being interrogated, I get nervous, fidgety and I stammer. Some people say that if you get nervous and fidgety (when being interrogated), this means that you are owning up to the crime. Is this true?[44]

Because they are mostly unaware of the legal processes, litigants also expect their lawyers to explain to them these processes. A certan litigant was, in fact, grateful to her lawyer for explaining to her the meanings of probation and acquittal. At first she said, she did not know what these words mean, much more the bearing of these terms on her case.[45]

As regards the assessment of the lawyer respondents as to how their fellow members of the Bar regard their social responsibility, they themselves admitted that only few among them would willingly extend free legal assistance to the needy. The scarcity of legal aid lawyers then could partly explain why the public attorneys are overloaded with cases.

However, they said that not all private lawyers should be blamed for being lukewarm about extending *pro bono* service, especially those whose bread and butter consist of the acceptance and appearance fees, and are only earning enough for themselves and their families. Another lawyer explained that a member of the Bar has invested so much to become a lawyer, hence it is but natural that some of them try to recoup their investment from their practice. Besides, some private lawyers will always think that since the PAO

---

43. This is consistent with what the lawyer's Code of Professional Responsibility states about the duties of a lawyer once he accepts the case of a litigant.

44. Interview with "Fernando," accused of attempted rape (Jul. 11, 1998).

45. Interview with Connie, accused of qualified theft (Jul. 25, 1998).

and the various legal aid groups are already taking care of the legal needs of the poor then there is no need for them to give free legal assistance. One private lawyer who is doing *pro bono* work explained:

> [e]ven though they want to help, lawyers are actually constrained by problems confronting themselves. If they are not earning much from their practice right now, you do not expect them to dabble in free legal service because that would take them away from whatever is giving them income. In my case, look at what is happening. I have to talk to a lot of people wanting to get free legal aid and when I attend to them I am taken out of my paying clients.[46]

Nonetheless, one PAO lawyer thinks that something has to be done about the unenthusiastic attitude of some private lawyers, especially those who are earning much from their practice. He suggested that the Integrated Bar of the Philippines (IBP) or Supreme Court should make the rendering of free legal assistance a requirement for renewing the license of lawyers. He said:

> I noticed that only a few lawyers take the time to handle the cases of poor detention prisoners. We handle most, about 90 percent, of these cases. They only handle clients who can pay for their fees. That is why I am hoping that the IBP or the Supreme Court impose on private lawyers that they handle poor detention prisoners. They should make this as a requirement for the renewal of the lawyer's IBP license.[47]

Another subject matter that was tackled by the research is the alleged propensity of public attorneys to advise their clients to plead guilty. But according to the public attorneys, they only discuss the possibility of plea bargaining to their client if this will benefit the latter. A plea of guilty is a mitigating circumstance, meaning it can help lower the penalty for an offense.[48] The public attorneys said that they only discuss the possibility of entering a plea of guilty to their client if the latter is sure to get a conviction and, at the same time, admitted to them that he committed the crime. However, the problem with this is that since the application of plea bargaining is dependent on the lawyer's assessment of the client's case, there is always the danger that the public attorney may abuse this so as to unburden himself of his heavy workload. The difficulty of building up a case may lure the public attorney into plea bargaining to hasten the

46. Interview with Atty. Melanio Mauricio (Jul. 9, 1998).

47. Interview with a PAO lawyer who asked not to be identified.

48. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE] art. 13, ¶ 7 ("Mitigating Circumstances… That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.").

termination of the client's case although this may not be to the latter's best interest.

VI. CONCLUSIONS AND RECOMMENDATIONS

As emphasized by Bonifacio and Magallona, law is an interpretative profession. The profession is vested with "the legitimate authority to interpret the rules governing the structure and processes of societal relations." As societal facts are accurately interpreted through the legal profession, justice in society is thereby promoted, if not enhanced. However, rarely are facts accurately interpreted, for the accuracy of interpretation is largely dependent on the quality of the case that is constructed by the legal practitioner. Indeed, this Essay has shown that the quality of case-building is largely constrained by, or has a direct relation to, the economic class to which the litigants belong. Stated otherwise, the rich have far greater chances than the poor in obtaining better-constructed cases.

This Essay outlined several factors that could negatively affect the building of cases for the less privileged. These factors can be classified into those pertaining to the pauper litigants and the public attorneys. In the case of the poor litigants, the factors identified are the following: their submissive attitude and inability to communicate with their lawyers because of *hiya*, their lack of education and knowledge of the law, and lack of family support.

Their inability to communicate with their lawyers and lack of knowledge of the law prevent the poor from sharing with their lawyers their interpretation of the case and probably also prevent them from demanding better service from their counsels. The disadvantage of lack of family support in relation to case-building is manifested in the inability of the relatives to assist in locating witnesses for the detained relative. Relatives of the poor litigants also fail to follow-up the cases of their detained kin with the lawyers, thereby resulting in the inability of the counsels to ask their help on matters pertaining to the building of evidence.

In the case of public attorneys, the overwhelming number of cases that they handle primarily causes constraint in case-building. Because of their workload, public attorneys do not have time to rigorously interview the litigants and witnesses who will provide the necessary facts for the case. The inability of the public attorneys to rigorously interview the poor litigants results in the former's failure to fully take into account the context of the clients' case. In marshalling evidence to build a strong theory of the case, there is a need to weigh the symbolic representation—to be unearthed mostly from the context of the client—with the aim of arriving at a unity of meanings that would bolster the construction of the case.

The public attorneys also do not have investigators who will help them gather evidence and legal researchers who will provide them with

information necessary for building the theory of the case. In addition, the PAO does not have a complete library; hence, important legal materials are not easily accessible to the public attorneys. PAO lawyers also cannot easily secure the transcripts of stenographic notes of their clients thereby further limiting the time they are supposed to devote to studying their cases. Because of these constraints, the public attorney is forced to apply the tactic of doctrinal interpretation rather than framing the overall context of the case.

On top of all these, public attorneys have to contend with meager salaries that are much lower than what private firms provide their lawyers. Because of the circumstances that public attorneys have to contend with, lawyering at PAO is mostly seen merely as a stepping stone to higher positions in the judiciary or to gain experience for a more lucrative career in private practice.

Moreover, the inability of private lawyers to extend assistance to the legal needs of the poor may likewise provide the context in examining the limitation of case-building with regard to poor litigants. Probably due to their lack of sensitivity to their social responsibility or due to the constraints in their private practice such as heavy work load and monetary consideration, most private lawyers are not able to fulfil their profession's mandate to help those who have less in life to have more in law. In addition, the language in which the court proceeding is conducted, which is English, reinforces the alienation felt by the poor with regard to the court setting. As pointed out by Magallona, the problem really lies in the fact that the legal system is detached from its supposed social and cultural moorings, because it embodies the language of another way of life not entirely similar to the Philippine way of life.

In view of the foregoing, this Essay outlines the following recommendations toward the end of easing the predicament of the poor litigants and hopefully toward the realization of their having their day in court in the sense ideally stipulated in the Philippine legal statutes.

A. Poor Accused in the Criminal Justice System

The government should make application for bail more accessible to the poor. According to the law, bail may be given in the form of corporate surety, property bond, cash deposit, or recognizance.[49] All, except for

49. RULES OF COURT, RULE 114, § 1 ("Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court as required under the conditions hereinafter specified. Bail may be given in the form of corporate surety, property bond, cash deposit, or recognizance.")

recognizance, correspond to or involve a penal sum proportioned to the penalty imposable upon the accused. Among others, two important requirements in which a person may be released on recognizance are: he should have a good standing in the community as attested to by witnesses and he should have established to the satisfaction of the court that he is unable to post the required cash or bail bond. The court may also decide to further require the person to be placed "under the custody and subject to the authority of a responsible citizen in the community who may be willing to accept the responsibility."[50] However, the provision on recognizance is not quite easy to implement because it is hard to find people who would willingly take custody of the accused. If the prisoner escapes, it is the person who has legal custody who will answer for this. The government should therefore try to develop other means to make the privilege of bail not merely the domain of the rich.

As regards the difficulty of the poor to get witnesses for their defense, government could consider expanding the coverage of its Witness Protection Program to include witnesses for the defense instead of covering only the witnesses for the prosecution. The assistance for the poor accused may include helping them look for witnesses and providing the witnesses allowance—for transportation fare, meals and salaries on days they appear in court—to convince them to testify in court.

Moreover, the problem of the transgression of the rights of the poor accused should be addressed. One way of confronting the problem is by popularizing the law or by teaching people legal precepts and fundamentals, particularly their rights and duties as citizens. A means by which to achieve this is by translating the laws and legal concepts into local languages to make them less alien to the populace. This can also be done by teaching law education, preferably in the vernacular, starting in grade school or through community dialogues and assemblies involving law students and practicing lawyers. The University of the Philippines Institute of Judicial Administration has already embarked on a similar project.

B. Public Attorney's Office

The government should seriously consider taking steps aimed at improving the Public Attorney's Office. More lawyers should be hired to lessen the workload of the public attorneys. Their assignment should be limited to just one court instead of two or even three courts as presently practiced. If the government cannot afford to hire more lawyers at the PAO, then it should consider hiring the services of law graduates who have not passed the Bar or working law students to help out the PAO lawyers. This would save the

50. FLORENZ REGALADO, REMEDIAL LAW COMPENDIUM 327-30 (1995 ed.).

government resources because the salaries of these underbar individuals are lower than full-fledged lawyers. These law graduates or students could do the research and investigation aspects of litigation work (*e.g.* locating witnesses) or they could even draft the pleadings and motions needed by the client. Law schools could follow the example of the law schools with a more practical curricula like the U.P. College of Law and Ateneo School of Law. In the case of the latter, students who chose to do internship at the PAO assist the public attorneys in interviewing litigants, research and drafting of pleadings.[51] Such assistance could go a long way in easing the workload of the public attorneys.

Actually the tapping of the services of the underbar or training of paralegal has already been suggested in several *fora*.[52] In fact, the Public Assistance and Legal Aid Office of the Quezon City government has been employing the services of the underbar to assist its full-fledged lawyers in handling the cases of the poor.

C. Legal Aid Lawyers

One of the most cited recommendations of the lawyers interviewed for the research on how to expand the pool of legal aid lawyers is for the IBP to require its members to extend free legal assistance to the needy. However, a judge interviewed for the study expressed apprehension that difficulties may be encountered if a lawyer who is not into litigation work is required to handle criminal cases of pauper litigants. One recommendation that the IBP could consider to avoid this problem is to require law firms to put up *pro bono* departments as is the current practice of some firms in the country.[53] Law firms that should be particularly targeted are those which are making a lot of income. This could also skirt the problem of requiring even struggling lawyers who are making just enough from their private practice to render free legal aid. To ensure compliance among members of the Bar, the IBP could ask the Supreme Court to make this mandatory.

The IBP could assign the cases to the law firms. The litigants could come from clients entertained by the IBP Legal Aid Committee or those handled by PAO lawyers so as to relieve the latter of their workload. These offices could do the screening on who should qualify for the legal aid. Lesser

---

51. Telephone interview with Ateneo Law School alumna Atty. Bayani H. Jacinto (Mar. 15, 2005).

52. This recommendation was also adopted by the participants of the seminar on justice sponsored by Solidarity on January 1987, Solidarity (112) May-June 1987.

53. One case that can be mentioned here is that of Atty. Melanio Mauricio, one of those interviewed for the study, whose law firm has set up a *pro bono* department.

workload on the part of the PAO lawyers increases the probability of the improvement of their performance. If the cash-strapped government cannot afford to make improvements at the PAO, then the private sector should take the initiative of taking the cudgels for the poor to realize their responsibility to society and their profession.

D. Legal Ethics and Continuing Legal Education

There should be greater awareness and sensitivity among members of the legal profession about the predicament of the poor in the criminal justice system. This awareness could be inculcated among law practitioners through the course on legal ethics and the continuing legal education program. In the case of law students, subjects dealing with the social responsibilities of lawyers with regard to the problems of the poor in the criminal justice system should be further emphasized. The teaching of legal ethics could be integrated into other subjects.[54] Law schools should make it a policy to enjoin their professors to incorporate the teaching of legal ethics in the course they are teaching, as what some law professors are already doing.

Moreover, students could be compelled to handle cases of the underprivileged before they graduate in order to expose them to poor litigants.[55] Their early exposure to the underprivileged would give them ideas about the problems experienced by this group as well as how to deal with them.

The awareness training for the legal practitioners and the law students pertaining to the predicament of the poor should also include topics on how to deal with them. Hence, they should be given lessons on how to better understand the social psychological behavior of the poor. For example, lawyers should be made more conscious of the fact that the poor are greatly unfamiliar with the legal processes. Also, their low level of confidence primarily brought about by their scant education make them intimidated by these processes. Given these, lawyers need to be more patient with the poor and guide them in their encounter with the legal system. This should also apply to the judges. A poor litigant would be more at ease when testifying in the presence of a patient and understanding judge. The legal practitioners' greater understanding of the social psychological situation of

54. Also recommended by Dean Merlin Magallona during the author's thesis panel defense.

55. For example, University of the Philippines (U.P.) law seniors are required to handle cases of the underprivileged as part of their practicum. It has also been recently established in Ateneo School of Law, a Clinical Legal Education elective where law juniors and seniors may take part of handling cases for indigent clients as an elective and as part of their internship requirements.

the underprivileged could help assuage the difficulties encountered by the latter when they are put on trial.

The conscientization of legal practitioners about the problems of the poor and their social responsibility could be realized through the continuing legal education program. As lawyers are wont to attend lectures in continuing legal education only if they deal with the latest in jurisprudence, subjects on social responsibility could be interspersed with topics on jurisprudence in one training course. In this way, the lawyers are not only given lectures on legal knowledge but also on their social responsibility. The tack that is taken here is similar to that of legal ethics being incorporated into the other law subjects. To compel legal practitioners to attend courses in continuing legal education, the Supreme Court could decree that as a requirement for the renewal of their license to practice, lawyers should a complete certain number of hours attending subjects in continuing legal education.[56]

56. *In re*: Bar Matter No. 850, Mandatory Continuing Legal Education (MCLE). Rule 1, § 1 states that the purpose of the MCLE is to "...ensure that throughout their career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law." The directive on the MCLE mandates that effective Dec. 1, 2001, lawyers should complete 36 units of the subjects offered in the MCLE within a period of three years to renew their license or membership in the IBP. According to Rule 2, § 2 (a), of the 36 required units, six units shall be devoted to legal ethics.