

## ALVARO CALAMBRO: COMPETENCY TO BE EXECUTED

Franklin D. Master, M.D.

*The death row case of Alvaro Calambro, a convicted murderer, is described chronologically in detail, including the crime itself and the appeal process. This case is unique in that the defendant's mother, Lydia Calambro, intervened in federal court to block Alvaro Calambro's execution by declaring herself as his "next friend." The controversy describing the psychiatrist's role in assessing a condemned individual's competency to be executed and its ethical dilemma is explored.*

In late September, 1993, Duc Huynh, a Vietnamese immigrant, was fired from his job at U-Haul Rental in Reno, Nevada after a complaint filed by a fellow employee, Peggy Crawford, age 31. This was to prove a fatal mistake for Peggy, for Duc, three months later, teamed up with 21-year-old Alvaro Calambro, a Filipino-born brother of Duc's common-law wife, Lea, to plan the robbery of this same U-Haul store and the murder of Peggy and, as it would later turn out, a fellow clerk, 25-year-old Keith Christopher.

Alvaro Calambro (who prefers to be called John), was born in the Philippine Republic, but from age ten had lived in Downey, California, and later in adolescence settled in Reno, Nevada. The third of eight children, he did poorly in school, leaving after the ninth grade, while functioning at a sixth grade level academically. His father, Reynaldo, was physically abusive to the boys in the family as well as their mother, and was sexually abusive to the girls. Later diagnosed as schizophrenic, Reynaldo was divorced from Lydia Calambro, Alvaro's mother, who is described as being extremely passive in this dysfunctional family. Alvaro's means of coping with this dysfunctional environment included torturing small animals as a young child and, in later adolescence, smoking marijuana and freebasing cocaine.

In December, 1993, Duc and Alvaro, both financially strained and unemployed, planned a robbery and murder, to take place at the U-Haul store. No masks were to be used. As Duc was a former employee, he would be recognized by the clerks, but the clerks would not live to tell anyone. Alvaro purchased oversized shoes to wear so that any footprints left would throw off the police. They

would enter the store at closing time, to guarantee the presence of the entire day's receipts (estimated by Duc as being in the five figures) and the absence of any last minute customers who might be potential witnesses. A home burglary in late December netted the two the needed guns for the robbery.

On January 3, 1994, as the U-Haul store was closing for the evening, Duc and Alvaro slid in through the doors as the store was being locked up, with Duc telling Keith Christopher that he had permission from the store's manager to borrow one of their smaller trucks. To the disappointment of Alvaro and Duc, most of the day's receipts had already been placed in a secured safe, and, when their guns forced the clerks to empty all cash drawers, only \$2,435.00 was obtained. Duc had started out being in charge of the robbery but, at this point, an impatient Alvaro, who felt things were moving too slowly, took over.

Grabbing some twine and masking tape at the U-Haul counter, while Duc held the gun on the clerk, Alvaro proceeded to bind the two clerks' wrists and ankles together behind their backs in a hog-tied position with the twine, and then gagged both with tape. In later recorded confessions to police, Alvaro stated that Duc left him in charge of the helpless clerks while Duc, with the money, went out to the parking lot for a smoke. Alvaro later admitted that he was amused by Peggy's beginning to pray while he bound her wrists and ankles together as he knew that she would soon be with God anyway. He also expressed amusement as she helplessly strained against her bonds and was unable to scream while she watched Keith being murdered, knowing that her turn would come next. Fantasizing that it would be fun to watch his victims' brains run out of their skulls and to possibly eviscerate his victims, Alvaro took a ballpeen hammer and began crushing in Keith's skull as Peggy lay bound and gagged next to him. After receiving ten hits with the hammer on the skull, Keith was dead. Alvaro then took a tire iron, also lying in the store, and used it to try to pry Keith's skull apart. This eventually produced a wide enough fissure to allow Alvaro to place his hands inside the skull, but, since Alvaro was afraid that the sharp, bony edges of the skull might cut his fingers, he abandoned the dead Keith and turned his attention to Peggy. Three whacks on the skull with a hammer killed Peggy. This time Alvaro was gratified to see brains and blood emerge from the skull. He then forced the tire iron through one of Peggy's eye sockets and left the tire iron protruding from the socket as he exited the store to rejoin Duc.

A day later, the Reno police came looking for Duc, who, as the prime suspect in the robbery/murder, was hiding in the ceiling of his mobile home. Alvaro met the police at the door of the mobile home and successfully sent them on their way by telling them that Duc had disappeared several days earlier.

Alvaro and Duc then went on a twelve day crime spree through California, engaging in a series of burglaries and armed robberies that moved them in a southwesterly course through the Golden State until finally, on January, 16, 1994, with a female security guard as hostage, Duc driving, and Alvaro shooting through the car's windshield, the Los Angeles police, accompanied by a SWAT team, first chased the pair down the Los Angeles freeway system and then cornered them in a building, forcing them to surrender. During the final siege by SWAT on the building, Alvaro accidentally shot himself in the foot, later denying that this self-inflicted wound was in any way intentional.

Extradited back to Nevada in March, 1994, Alvaro was sent to Lakes Crossing, Nevada's forensic psychiatric facility, for evaluation. In December, 1994, a board certified psychiatrist found Alvaro to be competent, an antisocial personality, not very bright, and a danger to the community. A psychologist performed a WAIS-R on March 9, 1995, with the results being a verbal score of 63, a performance score of 76, and an overall score of 71 (a later WAIS-R given in April, 1995 gave an overall score of 84 to Alvaro).

Two Reno, board certified psychiatrists, Phillip Rich and Bruce Tannenbaum, found Alvaro to be competent to assist counsel and participate in the criminal justice proceedings, and treating mental health personnel within the prison, Dr. Donald Molde, psychiatrist, and Dr. Mace Knapp, clinical psychologist, also felt that Alvaro was not significantly mentally ill.

On June 19, 1996, both Duc Huynh and Alvaro Calambro were convicted and sentenced to be executed. Duc hung himself at the Ely State Prison on December 19, 1996. A tragic side story of Duc's suicide is that Alvaro's sister, Lea (Duc's common-law wife), in a suicide pact with Duc, attempted to kill both herself and their four-year-son, Binh. Lea survived, but little Binh did not. Lea, convicted of murdering Binh, is currently in prison in Southern Nevada, serving a sentence of a life without the possibility of parole.

In 1997, Alvaro exhibited several behavioral problems. A fellow inmate accused him of pouring urine down the speaking tube from his cell into the inmate's cell in March, 1997. In the summer of 1997, Alvaro reported that he was

hearing voices and thought he was a vampire. Alvaro was briefly treated, first with Mellaril, then, later, with Haldol. After a few weeks, he refused both antipsychotic medications, but he reported that the voices and delusions had also disappeared.

In May, 1998, a June 13, 1998 execution date was set for Alvaro (Nevada uses lethal injection as its means for execution) and, on May 26, 1998, he was transferred from Ely State Prison to Carson City's Nevada State Prison to await execution.

On June 11, 1998, Lydia Calambro, Alvaro's mother, filed a precedent-setting "next friend" appeal in federal court in Reno, Nevada, to contest his execution, stating that Alvaro was not competent to be executed. A Washoe County (Reno) District Judge, Steve Elliott, had ruled on June 23, 1998, that Alvaro was competent to be executed, and had reset an execution date for July 27, 1998. Because Alvaro was currently choosing not to further contest his execution, his mother, Lydia Calambro, had now filed suit in the court of Federal Judge Howard McKibbin, suing the warden of Nevada State Prison, John Ignacio, as well as Nevada Attorney General Frankie Sue Del Pappa, to prevent the execution.

In October, 1992, the Louisiana Supreme Court had ruled in *State v. Perry* that condemned mentally ill prisoners could not be forcibly medicated to make them competent (1), and *Ford v. Wainwright*, in 1986, stated that, according to the Eighth Amendment of the U.S. Constitution prohibiting cruel and unusual punishment, the insane could not be executed (2). The *Ford* case made the important changes that included competency examinations now being subject to cross-examination and the defense now being allowed to introduce its own experts to challenge the findings of competency examiners, while still adhering to the common-law tests of competency to be executed: essentially, that the condemned person is aware of the fact that he has been convicted and that he is about to be executed because of this conviction.

Lydia Calambro, represented by the federal public defender's office, introduced her own set of mental health experts. Edward Dougherty, Ed.D., criticized Drs. Rich and Tannenbaum as having been "too cursory" in their examinations. Patricia Heras, Ph.D., maintained that sociocultural factors had not been adequately considered. Dr. Heras had not seen Calambro in the past three years, and Dr. Dougherty had never interviewed him. David Schmidt, Ph.D. was brought by the defense to interview Calambro, but Alvaro refused to even talk to him.

On June 19, 1998 I was contacted on the telephone by Federal Judge Howard McKibbon, who asked me if I would be willing to accept the assignment of interviewing Alvaro Calambro in Carson City to determine his competency to be executed. Judge McKibbon added that he wanted a Nevada psychiatrist to examine Calambro, but felt that because of all of the publicity that the local press in Reno had given this case, it would be preferable to have a psychiatrist from the Las Vegas area to do the examination.

I accepted Judge McKibbon's invitation, but was aware of the controversy that surrounded mental health professionals engaging in such evaluations. Heilbrun's Group in Florida had outlined the pros and cons of treating individuals who are incompetent for execution (3), but some psychiatrists had argued against colleagues in any way cooperating with the court in assessing competency to be executed. Ralph Aquila stated that, since execution is harm, the guiding model to mental health professionals should be: "Do no harm" (4). Leo Uzych wrote that psychiatrists should "serve as healers, rather than as cogs in the machine of state" (5). Fini Schulsinger wrote from Denmark that the World Psychiatric Association (WPA) obliged all of its members in the 1989 meeting in Athens, Greece, to avoid declaring that any person was "fit" for execution (6). Heilbrun and his associates, previously mentioned, responded directly to Aquila, by stating that we would continue to see capital punishment in some form in the United States so that psychiatrists would need to continue to make forensic mental assessments, but that these assessments should be both ethical and informed (7) and referred to their own guidelines in making such assessments (8).

Judge McKibbon directed me to examine Alvaro Calambro and to answer the following questions:

- 1) Is he competent to litigate his own cause if he wants to do so or is he unable to litigate his cause due to a mental incapacity?
- 2) Does he have the capacity to knowingly, intelligently, and voluntarily waive his right to proceed to challenge his conviction and sentence of death in the state and federal courts?
- 3) Does he understand that he is about to be put to death and what that means?
- 4) Does he understand why he is being put to death?

- 5) Does he understand that it is possible for him to challenge his conviction and sentence and post conviction proceedings in state and federal courts and, that if he pursues such a challenge, he is entitled to a stay of execution?
- 6) Does he want to forego any further challenges and be put to death?

Accompanying the court order was a crate containing three large volumes of court papers, weighing approximately thirty pounds, to be reviewed, and two video cassettes. I spent over fifteen hours over the next week reviewing all of the testimony that had occurred in this case.

Early on the morning of July 3, 1998, which was a Nevada state holiday (since I am now a full time state employee for Southern Nevada Adult Mental Health Services, a state agency, my forensic practice must be conducted on my own private time), I flew to Reno, Nevada, and rented a car for the thirty minute drive south to Carson City and Nevada State Prison. After passing through security (I had already faxed the court order to the Warden's office from Las Vegas) I was driven in a security van to the concrete block house, known as Unit #13, where Alvaro Calambro was held. I was then led to the attorney's room, a small no-nonsense, securely walled, little closet of a room with slit windows and a solid, bolted to floor, picnic table with two similarly bolted backless benches on either side of the table as the room's only furniture.

Alvaro initially refused to be interviewed. I was not allowed, for security reasons, to leave the attorney's room, and so I waited alone in the room for forty-five minutes until the custody guards persuaded Calambro verbally to come to the office to be interviewed. When Calambro arrived, he was dressed only in a T shirt and boxer shorts, with his wrists manacled. I did take note of the fact that his clothing was clean, he had no body odor, his face was clean-shaved, his teeth were brushed, and his hair was neatly combed and parted.

Three custody officers remained in the small room with us throughout the interview. I introduced myself to Alvaro Calambro, explaining who I was, showing him the court order, and allowing him to read it, and explaining that I represented neither the state nor the defense, but only the judge, and that my only objective was to determine if he was competent enough or, as I stated to him, "with it," to understand what was happening and what his rights were.

Alvaro did not appear hostile, but, in a calm, very serious manner, stated, "I have already answered all of these questions before in court." As I ran through

each of the judge's questions with him, he would respond with the answer, "I have already answered that question in court." Near the end of the interview, I asked Alvaro, "If you had to answer these questions again, today, would you give the same answers that you gave before in court?" Calambro responded to this by stating, "If I change my mind, I will let you know." He ended the interview by adding "I never wanted you guys to bring me back to court." On the ride back from Unit #13, custody officers volunteered that I "had gotten more out of him" by way of interview "than the previous three interviewers" and at least four custody officers also volunteered to me that Calambro was "very much with it."

My written report to the judge concluded that Alvaro Calambro met all of the competency criteria on all points mentioned in the judge's order. After my report had been submitted, I received another volume of material to review which included a negative personnel report from Nevada State Government on Dr. Knapp, the prison psychologist who had felt that Calambro did not have an Axis I diagnosis, but rather represented a personality disorder, and lengthy reports from both Dr. Dougherty and an osteopathic psychiatrist, Dr. Depry who, although never having personally met with Calambro, felt he was definitely mentally ill and incompetent, and criticized me for the inadequacies of my evaluation.

Two weeks later, on a closed television circuit between the federal courtroom in Reno and an office of the federal courthouse in Las Vegas (a distance of some 440 miles), I was cross-examined by the federal public defender on my findings of competency. I felt that I was able to justify my position, and the federal public defender appeared irritated with me. (Therefore, I felt I had held my own under cross-examination). I read in the newspaper the next day that Dr. Mace Knapp, also under cross-examination that day, had informed the court that Alvaro had told him that he had made up the story of hearing voices and being a vampire because he was tired of the court process and thought the mental health people brought in by defense counsel were "silly."

The state district court's finding of Alvaro Calambro's competency was appealed by the federal public defender. Judge McKibben awaited the state Supreme Court's decision on this appeal before rendering a final decision of his own.

On March 11, 1999, Judge Howard McKibben ruled that Alvaro Calambro was mentally competent to waive appeals of his death sentence, and rejected the petition from Calambro's mother, who had sought appeal on his behalf. An April

5<sup>th</sup> execution date was then set by the State of Nevada. Calambro's attorney, U.S. Public Defender Michael Prescetta, submitted an appeal to the United States Supreme Court, which declined to act on the appeal. Both Roman Catholic bishops of Nevada, as well as the Philippine Consul appealed to Nevada Governor Kenny Guinn to stop the execution, but their appeals were rejected by the Governor, who stated that he felt that he had to carry out his "most solemn duty."

After an evening of speaking with family members for several hours on the telephone, taking communion, and having a last meal of steak, rice, corn, apple pie and Sprite, Calambro calmly walked to the execution chamber, was given a lethal injection, stated, "I regret it," and died at 9:06 p.m. on Monday evening, April 5, 1999. Dead at age 25, Calambro, who had stated he wanted no delays, had spent twenty percent of his life incarcerated and awaiting execution.

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#### ABOUT THE AUTHOR

Franklin D. Master, M.D. has been certified as an expert in forensic psychiatry in several thousand court cases in 25 years of practice in Las Vegas, Nevada. He is currently serving as Medical Director for Southern Nevada Adult Mental Health Services, an agency for the state of Nevada's Division of Mental Health.