

DNA Evidence: Vital Link to Truth and Justice

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Reaction to the
Presentation of the Report for the Project
"Incorporating DNA Evidence in the Resolution of
Sexual Assault Cases in the Philippines"

NISMED Auditorium, University of the Philippines
Diliman, Quezon City
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Greetings...

I would like to congratulate Dr. de Ungria-Jose and her staff here at the DNA Analysis Laboratory (DAL) for their project which proposes to develop an integrated system for the collection and handling of physical evidence, particularly DNA evidence, in sexual assault cases. I hope that it will help greatly in the administration of justice in our country.

Your project and the recently abolished death penalty in our country, reminded me of an article that I read a long time ago. It reported that "... in the United States, 80 convicts by final judgments have later on been exonerated because subsequent DNA evidence had shown that they were completely innocent of the crimes attributed to them." (Hon. Artemio V. Panganiban, *The Lawyers Review*, August 31, 2001, p 72.)

The figure stated there elicited these comments from the writer of the article:

"If this has happened in the US, the most technologically and economically advanced nation in the world, then it has probably happened in the Philippines and other countries. I shudder to think that during the last five (5) years, our trial courts have imposed on more than 1,500 persons the penalty of death...." (Ibid.)

The article was published five (5) years ago; no doubt the figures cited there had been altered a number of times, yet their effect is just as disturbing as when they were freshly written. It even prompted the writer of the article to say that may be the Supreme Court had made a mistake in sentencing Leo Echagaray with death by lethal injection.

Your project is an idea whose time has come. This may assuage the pain of Chief Justice Artemio V. Panganiban in his recollection of the Echagaray execution.

Your project may give us a fresh start now that capital punishment had been abolished. Reading your project summary, I was struck by this statement: "DNA evidence ... may be used by the defense to exclude wrongfully charged suspects as well as assist victims in the prosecution of the real perpetrator of the crime."

You see the public attorneys are the lawyers of indigent parties who are accused of a crime. We are mandated to

defend the accused. We represent them from preliminary investigation up to the stage when they would be needing us in appealing their cases. We do not have martyrs or saints for clients, however, there are innocent ones among them that we need to free from false accusation or unjust incarceration.

Included also among the clients of the PAO are women who are victims of violence and their children. They are explicitly cited in the "Anti-Violence Against Women and Their Children Act of 2004" or Republic Act No. 9262, signed by H. E. President Gloria Macapagal-Arroyo. Section 13 of this law, provides:

"Section 13. Legal Representation of Petitioners for Protection Order – If the woman or her child requests in the application for a protection order for the appointment of counsel because of lack of economic means to hire a counsel de parte, the court shall immediately direct the Public

Attorney's Office (PAO) to represent the petitioner in the hearing on the application... The lack of access to family or conjugal resources by the applicant, such as when the same are controlled by the perpetrator, shall qualify the petitioner to legal representation by the PAO."

Among the women and children that we are representing are victims of sexual violence. They could be helped by your study; your target beneficiaries being – women and child victims of sexual assault.

In your project summary you stated that your beneficiaries "will directly benefit from the study... The appropriate rehabilitation process may be initiated early for child victims abused by their fathers/relatives due to the identification of the real offender using DNA evidence, reducing the pressure on the child to testify against their own father/kin." This is the kind of assurance that I would

want to hold on to, and something that I wish I could promise to my young clients.

Providing legal assistance to minors is emotionally draining. Seeing how they relive their bitter experiences in the hands of their molesters every time they are interviewed makes my heart bleed.

There was one case where I had to interview a 13-year-old rape victim. I had to ask her how many times she was molested. The girl could not tell me how many because she was being raped either at night or during the day by different men who were assigned to guard her. This girl was our young client Angelica, a deportee from Sabah, Malaysia, who was raped in a detention camp there.

The citizenship of Angelica was questioned. However, this issue became moot and academic because DNA tests later proved that her father was a Malaysian, and her mother was of Filipino origin. Therefore, from the point of view of

the Philippines, Angelica was a Filipina, and from Malaysia's, a Malaysian. The representatives of the governments of the Philippines and Malaysia discussed the case of Angelica, and later issued a joint statement of commitment to bring her back to Sabah and continue the case against those who abused her.

Defending Angelica also meant protecting her privacy and shielding her from the trauma of facing her abusers in court. Angelica was not her real name. We thought of it to prevent the media from divulging her identity. Along with a pseudonym, we also thought of the possibility of presenting only her videotape in the court. Sec. 27 of the Rules on Examination of Child Witness allows the taking of the minor's deposition by videotape.

Angelica could recall the faces of her abusers. But we know that there are victims of rape and other forms of sexual violence whose memories of their harrowing

experiences have been erased, temporarily or permanently, as a consequence of the trauma, or these memories may have been purposely buried by the victims themselves in the recesses of their minds. In these cases, the DNA evidence could be the vital key that could unlock the truth leading to justice for the victims.

DNA evidence is a kind of physical evidence. In handling the case of the soldiers who were convicted for the double murder case of the late Sen. Ninoy Aquino and his alleged assassin Rolando Galman, I learned from our forensic experts that physical evidence does not and cannot lie. However, it can be twisted or can be deliberately misinterpreted in order to mislead. My three-month study of the case enlightened me even more on the importance of physical evidence. I am more particular now on the safeguards that are needed in maintaining and preserving the authenticity of samples for testing. Switching of evidence

should not and must not be allowed to happen to preserve its sanctity, conclusiveness, and reliability. This can be avoided when the chain of custody is protected. The chain of custody must remain unbroken from the time a piece of evidence is taken from the scene of the crime until it is presented in the court. Physical evidence, specifically DNA evidence, is as reliable only as the ones collecting, transporting, analyzing, storing, and interpreting it.

Dr. de Ungria-Jose at sa inyong mga kasamahan dito sa DNA Analysis Laboratory, may tiwala po ang PAO sa inyo. I hope that the Congress would take note of your worthy endeavors, and support you by funding your projects. I also hope that we could all work together someday, and utilize the full potentials of science and law in serving our country.

Thank you for giving me this opportunity to be one of your panelists. Good day...

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