

OPINION & FEATURES

The romance of rape

It is tempting to describe the decision of the Court of Appeals acquitting Lance Cpl. Daniel Smith of the crime of rape, promulgated by the all-female 11th special division, as the revenge of the “manangs”. The decision certainly seems to have been written by a conspiracy of spinsters, in vigorous denial of reality, and sustained by fantasies of chivalry (in favor of the American serviceman) and chastity (against the woman we all call “Nicole”).

“This court finds [as] deceptively posturing Nicole’s portrayal of herself as a demure provinciana lass,” the CA ruled, contrary to the unflattering characterization, sometimes using colors supplied by the victim herself, that the trial painted of flirty, hard-drinking Nicole. “On hindsight, we see this protestation of decency as a protective shield against her own indecorous behavior.”

You can almost visualize the three (married) justices crinkling their noses, at the ef-

frontery of an indecent woman protesting rape. After all, only decorously behaved women can be raped, right? And what happened in Subic was merely the “unfolding of a spontaneous, unplanned romantic episode.”

It would be tempting to mock the justices, especially because this approach allows us to point to the ludicrousness of some of the assumptions that went into the decision. Can’t a brazen city girl (to propose an alternative to the special division’s unfair description) fall victim to rape too?

But the prudery behind the decision masks a deeper flaw. The ruling pushes the jurisprudence on rape back to the 20th century; after all this time, the special division still understands rape as essentially a private crime, as a crime against chastity.

This, truly, is unfortunate. We assail the CA’s reasoning, but we really have no quarrel with the judiciary’s role in the resolution of the Subic rape case. By and large, it did its part in the administration of justice—which is far more than you could say about the Executive, which served as either lawyer to or co-dependent of the Americans. We are deeply disturbed, however, that the acquittal is based on grounds that overturn a decade’s worth of gains in women’s rights.

A key passage (crucial, but not the most offensive) in the CA’s decision reads thus: “No evidence was introduced to show

force, threat and intimidation applied by the accused [Smith] upon Nicole, even as the prosecution vainly tried to highlight her supposed intoxication and alleged unconsciousness at the time of the sexual act.”

This finding suggests that only the presence of force, threat or intimidation can affect a woman’s capacity to give consent to sex; it also intimates that women of “audacity and reckless abandon” (the language of the CA’s special division, describing Nicole’s behavior) cannot ever plead that their capacity for consent has been compromised.

The finding negates the breakthrough made in the original ruling of Makati Regional Trial Court Judge Benjamin Pozon, which emphasized that intoxication can rob a woman of the capacity to give consent. Pozon’s emphasis is in accord with the liberalizing tendency that led to the (hard-fought) victory in



Photo courtesy of Inquirer.net

Congress redefining rape as a crime against persons—and is in keeping with the trend in law that grants greater recognition to the dignity of women.

The special division took issue with the RTC’s assertion that Nicole was too drunk to give her consent—“When a woman is drunk, she can hardly rise, much more stand up and dance, or she would just drop. This is a common experience among Filipino girls.” This blithe and too-pat assumption runs counter to the eyewitness accounts

heard in the trial court, about Smith carrying a woman on his back to the van, and about an almost unconscious woman being dumped outside the van (after the “romantic” deed was done).

Worst of all, the decision trivializes the “No” of the drunk Nicole. “Resistance by words of mouth [sic] does not suffice to establish that she indeed did not give her consent to the sexual intercourse,” the court said.

What did they expect? A memo? (*Inquirer.net*)

Newspapers at risk

CHICAGO—I cannot imagine a world in my lifetime without newspapers. But that day might come sooner rather than later.

Will newspapers still be newspapers without the paper? Veteran journalist and former TV anchor Dan Rather asks.

As I sit in this chilly hotel in the heart of town, reading the *Chicago Tribune*, I note that this daily paper in one of America’s famous cities may be the next casualty on the chopping board of disappearing daily newspapers. The paper’s owner, the Tribune Company, which also owns the *Los Angeles Times*, filed for bankruptcy last December because of its heavy debt burden.

I look across the street and the neon sign of the other daily newspaper, *The Chicago Sun-Times*, still shines but probably not for long either. The paper has been put up for sale, along with the *Miami Herald*, but there are no perceptible buyers in the horizon. It will probably just die a natural death.

In mid-March, the iconic *Seattle Post-Intelligencer* printed its last issue after 146 years of publishing. It was a sad day, like someone venerable had died. After all, the paper had been around even before Washington itself became a state of the Union.

In quick succession, the *Rocky Mountain News* (Denver) and the *Tucson Citizen* (Arizona) also folded up. At least, some observers say, Seattle, Denver and Tucson still have other newspapers. But some economists predict it’s only a matter of time before major cities in the United States are left with no prominent newspapers at all.

Try to imagine life in New York without *The New York Times* and in the nation’s capital without the *Washington Post*.

And remember *San Jose Mercury News* in California? It was the first American newspaper that exposed the Marcos regime’s network

of cronies who were siphoning off their stolen wealth from the Philippines in 1985 prior to the overthrow. This was followed by the *Seattle Post-Intelligencer* which came out with an investigative exposé of its own.

Well, *San Jose Mercury News*, the *Detroit News* and *Denver Post*, are all owned by the Seattle Times Co. and Media News Group, which have gone bankrupt.

This space enough to list **American** at risk, like the *Chronicle*, more than \$1 in 2008. It be-giant Hearst newspaper chain, which also owns the *Seattle Post-Intelligencer*. Joining the list of losers in the falling domino chain is New Jersey’s Star-Ledger owned by Advance Publications.

I think back to my own town, which has still two dailies: the *Honolulu Advertiser* and *Honolulu Star-Bulletin*, both in dire financial straits. Mark Twain worked as a reporter for the former, which has been around since the time of the missionaries in the mid-19th century. *The Bulletin*, where the late Corky Trinidad worked for more than 35 years as its editorial artist, just laid off hundreds of writers and workers and closed down its other island bureaus.

Dan Rather asked another pointed question: Are online-only editions still called “newspapers”? He doesn’t discount the importance of blogging and other forms of “citizen journalism” on the Internet, but will the newspaper “tradition” disappear?

Newspapers, he continues, are our “most vital wellspring for news

will not be all the other newspapers

San Francisco which lost million a week longs to the

longs to the

COMMENTARY

Belinda A. Aquino

—news as distinguished from stenography of official pronouncements, from infotainment and from the heat of partisan opinion masquerading as the light of information.”

For more than 200 years in America, newspapers have been a dependable, if not indispensable, source of public information and a constant check on the abuses of power.

“I can’t imagine what civil society would be like,” says a business entrepreneur in San Diego, who argues that without newspapers, “a huge amount of information would just never get out.”

Or there is too much junk information floating around in the anarchy of present day Internet blogs, video clips, e-mail, websites and what-have-you.

What will disappear also it seems to me is the art and elegance of editing. What will happen to copy editors and readers?

Ah, says the excited new e-media advocates, “we have to deliver it [news] in a way the reader thinks is worth paying for.” More than ever, they continue, the “patient” can be saved.

In the end, they argue, the Internet is cheaper, more efficient and more ecological than paper distribution. Fewer trees to cut down so the environment is saved. And it is more enjoyable reading on the Web!

But not for me, brother! Computer glare hurts my eyes and I get dizzy.

Seriously, this voice is coming from a somewhat fading generation (alas!) embodying the values of the old journalism, as in the days of professor Armando Malay, pioneer journalism professor at the University of the Philippines.

It has become a very different, if not bewildering, world indeed! (*Inquirer.net*)

The elimination of public opinion

WHAT, exactly, is going on in the House of Representatives? Every representative willing to venture an opinion seems to have one different from everyone else’s. When their opinions do end up having certain things in common, they tend to be what’s normally referred to as a belief in “conventional wisdom.” This is nothing more than generalities politicians and their observers adopt, since politics is the kind of activity that hates hard and fast rules, and which thrives best in an atmosphere of generalities and not specifics.

The conventional wisdom is: once the present second Regular Session of the 14th Congress ends in June, when it resumes sessions in July for its third and final Regular Session, the political class would have gone from fussing over the political interests of the administration, to an every-politico-for-himself scramble to be “under the kulambo” of whoever they think will be the next president.

The present dispensation, for whatever reason, can look forward to being in office for the second-longest duration in our history come October, but without achieving the kind of one-party dominance the hitherto-longest-serving presidents achieved during their time. The present Lakas-Kampi alliance is nowhere as large, or as united, as the prewar Nacionalistas or the New Society KBL.

Worse, neither party has a particularly viable presidential candidate, which would condemn Lakas leaders to being under the thumb of yet another outsider, as it’s been since 2001, while Kampi, deprived of the incumbent’s power of patronage, might wither and die. Neither party has particularly strong senatorial candidates, either, which would limit their options under any new dispensation, regardless of whether or not they retain or even expand control of the House and local governments.

To be sure, any future president would need them, but their ambition is to be more than mere piglets dependent for sustenance on

THE LONG VIEW

Manuel L. Quezon III

the Palace trough; the House has a long-standing grudge against the Senate, and any hope of changing the equation depends on both a cooperative president and eliminating constitutional obstacles to amendments; and the present situation is, perhaps, the best for doing that.

Much as administration supporters in and out of office insist they’re reasonable people, who only want an open debate, and who therefore accuse their opponents of being fanatically opposed to change, the reality is otherwise. The only change the administration wants is a unicameral, parliamentary system, possibly with a kind of fake federalism—in a region where even neighboring parliaments are bicameral, and where no unitary state is contemplating a shift to federalism.

An insight into the actual problem confronting the House today (and the motivations behind their present moves) is provided by a speech made by Raul Manglapus in the 1971 Constitutional Convention, endorsing the “Ban Marcos” resolution.

According to Manglapus, politicians began to consider abolishing the four-year term (with one possible re-election for another term) in 1949, because of the controversial elections of that year. By the 1960s, legislators were also keenly interested in two other Constitution-related proposals: first, that the membership of the House should be increased; and second, for elections to be synchronized to save time and money.

In 1967, fulfilling the provisions of the 1935 Constitution, Congress began sitting in joint session to consider these proposals, but no consensus could be reached on restoring a single six-year presidential term and on synchronized elections; there was agreement, though, to increase the number of representatives.

At which point, according to Manglapus, “someone said, ‘Since we cannot agree and we cannot keep on meeting in joint sessions

because the public will demand that we cease this futile exercise, let us call a Convention.’”

But, Manglapus added, “the intention of course was that the Congressmen and the Senators were to control the Convention. And therefore when somebody said, ‘Let us call a Convention, anyway we can all be members of that Convention and we can control it,’ some other members of the House said ‘We cannot because we are inhibited by the present Constitution.’”

Clever colleagues proposed a solution: “All we have to do is amend the present Constitution at the same time that we pass the increase of seats in the House. We will say ‘However, a senator or congressman may be a delegate to the Constitutional Convention.’”

The problem was that any amendment had to be submitted to the people; Manglapus related that public opinion was disgusted with such a self-serving proposal, the result being “84 percent of them said ‘no.’ And the next morning the Senators and Congressmen woke up to find they had created a frankenstein monster. They had called a Constitutional Convention and they were not going to control it. And so they began to make noises that there was no need for the Convention, that [it] would be expensive... [and] cheaper and more convenient for the Senators and Congressmen to resume their work as a constituent assembly.”

Public opinion forced Congress to pass a Constitutional Convention Act, according to Manglapus, and deprived the political professionals of the fruits of victory twice over. Is it any wonder then, that when President Marcos offered a means—“constitutional authoritarianism”—to veto public opinion, that the political class, on the whole, decided it could live with martial law?

That option seems fairly remote today. The President is reported to be meeting with House members practically every other day: will it, can it, finally gamble on throwing caution to the wind and brazening it out? The only way it can is if Lito Lapid runs to the Supreme Court, or Oliver Lozano does, to provoke a manufactured constitutional crisis—with the payoff not necessary in the lifetime of the present Congress, but say, in the 15th, under the leadership of by-then Representative Gloria Macapagal-Arroyo of Pampanga. (*Inquirer.net*)



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