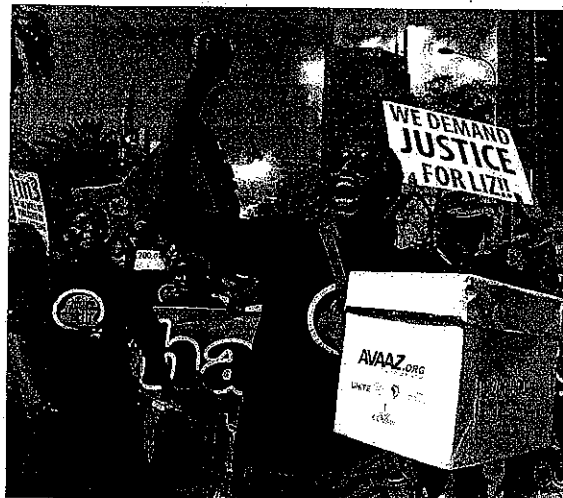


The horticulture of rape



Protesters in the streets of Nairobi on Oct. 31.

By Julie L. Kessler

On Halloween over 300 demonstrators took to the streets of Nairobi after a Kenyan court handed down its sentence of the half-dozen men who gang raped a 16-year-old girl on her way home from her grandfather's funeral, then left her for dead in a pit latrine. The court ordered the convicted rapists not to a one-year, five-year or 10-year sentence for this unconscionable and heinous crime. No, the court in its infinite wisdom instead condemned the defendants to cut the grass at the local police station.

Your eyes did not deceive you. Frankly, there is simply no way to view this grass-mowing sentence as anything other than a shocking display of the Kenyan court's utter disregard of women's bodily integrity. Beyond the emotional anguish this victim suffered at the hands of her rapists, this victim has been hospitalized for the past three months and has had several surgeries since the gang rape. In all likelihood, this poor girl will never, ever be the same as she was on the afternoon she started walking home from her grandfather's funeral.

I wish I could say that this public space beautification sentence for child rape was a judicial aberration unique to far away Eastern Africa.

In Montana in 2008, a 14-year-old girl was raped in a schoolhouse by a 49-year-old teacher. At the sentencing phase, the prosecution had asked for a 20-year prison term with 10 years suspended. In late August, Montana District Judge G. Todd Baugh handed down his decision on the sentence: 31 days with credit for one day served.

No, your eyes did not deceive you here either. Baugh gave the rapist a 30-day sentence for the rape of a child not even old enough to possess a learner's permit to drive her mother's car. Baugh also said in the same case that the victim was "older than her chronological age" and "as much in control of the situation" as her rapist. Protest organizers then demanded that the judge resign, and the Montana branch of the National Organization for Women (NOW) has called on both the governor and the state's attorney general to review Baugh's actions in the case.

I can't begin to understand what Baugh meant when he said that the victim was "older than her chronological age." She was tall? She looked older? Acted older? Even if all of that were true, under Montana state law, as in many other states, this would be irrelevant, as minors under the age of 16 cannot consent to sex. Thus, what she looked like or how she acted or whether she were six feet tall and still growing by an inch a second can't be considered; she was legally incapable of consenting to sex. Period.

Let's assume for the sake of argument that she looked and acted 25. Let's even go one step farther and say (contrary to all presented evidence) that she wanted to have sex with a man old enough to be her grandfather. Statutory rape laws are ones of strict liability; thus, even if the victim looked 25, said she was 25, acted 25, even provided a fake ID reflecting that false age of 25, and stated clearly and plainly that she wanted to have sex with

an older man, the man would still be convicted of rape in a state with these laws.

That the Montana case is beyond tragic goes without saying. And it was made even more so by the fact that the rape victim committed suicide in 2010, just short of her 17th birthday. Apparently, she wasn't "as much in control of the situation" as Baugh had previously thought. The only positive aspect of this tragedy is that the rape victim can't be victimized again by this ongoing travesty of justice.

This, of course, doesn't even begin to address the more fundamental issue of a teacher's fiduciary responsibility to his students in a place of learning. The teacher was in a position of trust and authority and he abused that trust horribly in the worst possible way by raping a child in a school house, the one place other than our homes where our children should be safest in an often frightening world.

The fire the protest organizers and NOW ignited following the sentencing phase must have gotten pretty damned hot in Billings, Mont. In early September Baugh ordered a new sentencing hearing to take place, then saying that Montana state law appears to require a two-year mandatory minimum prison term; he wrote that "imposing a sentence which suspends more than the mandatory minimum would be an illegal sentence." You

think? One would also think that logic, precedent, decency, and accountability might play a role in sentencing statutory rape, too.

However Baugh was not able to impose a sentence longer than 30 days. The Montana Supreme Court in a 4-7 decision denied Baugh a do-over on the sentence, since, under Montana state law, an illegal sentence must be processed as an appeal where it now remains.

Stay tuned.

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