



Workshop 4B

Race, Class and Sex: A Winning combination for a Cross-Curriculum Problem

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FACTUAL SUMMARY CROSS-CURRICULUM PROBLEM

In December 1997, two couples met in the lobby of a fertility clinic in New York City run by Dr. Lillian Nash. Deborah Perry-Rogers, a 33 year-old Black woman, and Donna Fasano, a 37 year-old white woman, had come to clinic to undergo the process of in vitro fertilization.

The Rogerses and Fasanos returned to the clinic in April 1998. While the women were undergoing the necessary medical procedures, their husbands Robert Rogers and Richard Fasano, chatted in the waiting room.

The clinic implanted fertilized eggs in both women's uteruses. Donna Fasano became pregnant; Deborah Perry-Rogers did not. Deborah's unused eggs were supposed to be destroyed. Due to a mix-up by one of the clinics embryologists, however, Donna Fasano was impregnated by one fertilized egg from her husband and one fertilized egg from the Rogerses. Dr. Michael Obasaju, the technician in charge of Ms. Fasano's in vitro procedure, realized immediately that he had made the mistake. If he had informed the Fasanos immediately, the fertilized eggs could have been rinsed from Ms. Fasano's uterus. Dr. Obasaju waited until May 1998, when he learned that Ms. Fasano was pregnant, until he informed Dr. Nash of the mix-up.

Dr. Nash immediately notified both couples of the mix-up. Deborah Perry-Rogers plunged into a serious depression and quit her nursing job. Ms. Fasano was counselled to terminate her pregnancy, but she refused. The Rogerses claim that they tried to contact the Fasanos and that the Fasanos refused to return their calls or communicate with them. The Fasanos claim that the Rogerses never tried to contact them until after the children were born.

On December 29, 1998, Donna gave birth to twin boys – she named the white child Vincent and the Black child Joseph. After they hired a private detective and located the Fasanos on Staten Island, the Rogerses first saw Joseph on April 10, 1999.

On May 10, 1999, the day after Mother's Day, the Fasanos relinquished physical custody of Joseph to the Rogerses after the Rogerses filed suit to obtain custody of Joseph. At that time, the couples reached a tentative visitation agreement. The agreement gave the Rogerses physical custody of Joseph; the Fasanos were given visitation rights under the agreement – one weeknight overnight visit per month; one additional eight-hour visit per month; one weeklong visit each summer; alternating holidays. The agreement also included a \$200,000 penalty provision if the Rogerses violated the agreement.

The relationship between the couples quickly disintegrated. Donna refused to call Joseph by the name the Fasanos had chosen for him, Akiel. Donna also continued to refer to herself as “mommy” when speaking with Akiel. The Rogerses then refused to allow the Fasanos to see Akiel. In June 1999, the Fasanos went to court to enforce the visitation agreement.

Each couple had filed an action for medical malpractice, negligence, and breach of contract against Dr. Nash, Dr. Obasaju, and the fertility clinic. This lawsuit was assigned to Judge Diane Lebedeff. The custody dispute was also assigned to Judge Lebedeff. Judge Lebedeff, one of a set of twins, ordered the couples to submit the reports of their experts concerning the connection felt by the twins. When the boys visited each other, they played together, appeared to recognize each other, and reacted to each other's voices and touch. In July 1999, as an interim measure, while waiting for the expert's opinions, Judge Lebedeff ruled that the Rogerses are Akiel's sole parents, that the baby's legal first name is Akiel, and that the Fasanos are entitled to visitation of only four hours every other week at the Rogerses' home.

As of the latest news report, the interim visitation was in place, each couple was willing to abide by the agreement, and Judge Lebedeff was waiting for the experts' reports to determine if greater visitation between the children should be granted.



Vincent Fasano and Akiel Richard Rogers

Roxas v. Marcos

89 Hawai'i 91, 969 P.2d 1209 (1998).

■ LEVINSON, J.

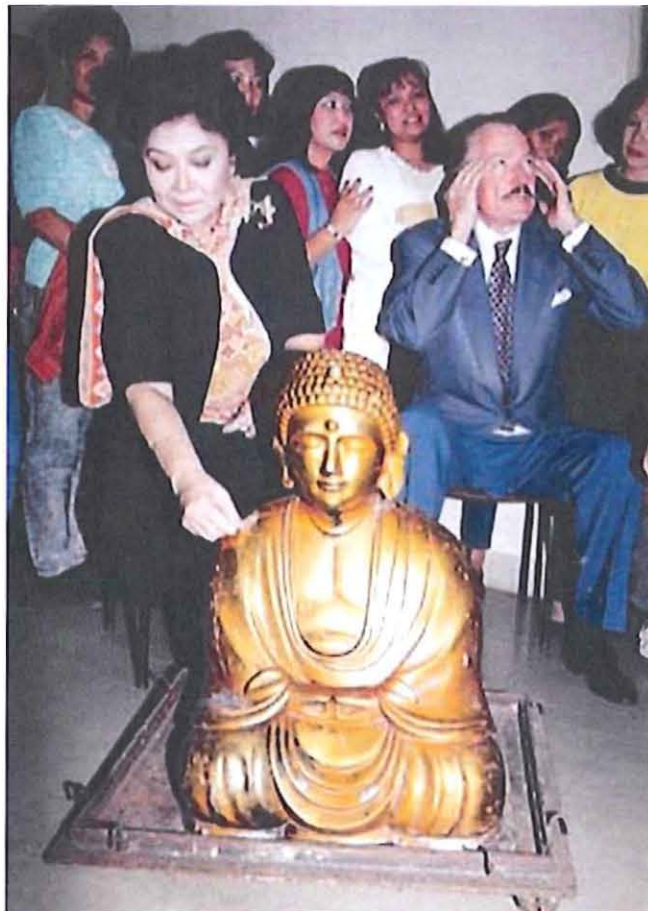
[The Estate of a Philippine national Rogelio Domingo Roxas and the Golden Buddha Corporation ("GBC"), a corporation formed by Roxas and



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Tuesday, February 29, 2000



Associated Press

Former Philippines first lady Imelda Marcos scrapes the outer layer of a statue of Buddha to allegedly show that it is not made of gold in this 1996 file photo. Attorney James Linn, right, reacts during an inspection at a courthouse vault where the statue was being kept.

Lawyers debate value of stolen gold

The estate of a treasure hunter battles the estate of Philippine dictator Ferdinand Marcos

By Susan Kreifels
Star-Bulletin



Attorneys argued yesterday about how a Circuit Court judge should determine the value of a golden Buddha statue and 17 bars of gold that a Filipino treasure hunter said was stolen from him by the late Philippine President Ferdinand Marcos.

Los Angeles attorney Daniel Cathcart, representing the estate of now-deceased treasure hunter and locksmith Rogelio Roxas and the Golden Budha Corp., argued before Judge Marie Milks that the gold should receive the highest value between the time it was stolen and 1986, when Marcos was deposed and arrived in Hawaii to live in exile.

Using the highest price of gold, reached in 1980, would value the Buddha and bars at \$84.6 million, Cathcart said outside the courtroom. That compared to a value of \$5 million, based on values the defense would argue for, he said.

Oklahoma lawyer James Linn, representing the Marcos estate, argued that the value should be based on the price of gold at what would have been a reasonable time for Roxas to replace it, which he said Roxas could have done anytime.

But Cathcart said neither Roxas, nor any reasonable investor, would have replaced the gold while Marcos was still in power and could have stolen it again.

Milks instructed the attorneys to present written facts by March 31 that would determine a reasonable time it would have taken an investor to replace the gold.

The Roxas estate and the Golden Budha Corp. won the largest judgment in history -- \$40.5 billion -- against Marcos in 1996 for the theft of the statue and bars. In November 1998, the Hawaii Supreme Court reversed \$22 billion of the jury award, saying the evidence was too speculative to support a specific amount. The court ordered a new trial to determine the value of the gold.

The Atlanta-based Golden Budha Corp. represents the claims of Roxas, who said that in the 1970s he discovered the boxes of golden bars and the one-ton statue. The treasure had

originally been taken from Asian countries during World War II by Japanese Gen. Tomoyuki Yamashita and hidden in tunnels about 150 miles north of Manila.

Roxas said Marcos ordered soldiers to steal the statue and gold bricks from his house and then jail and torture him. Roxas and the Golden Budha Corp. filed suit against Marcos and his wife Imelda in 1988 while they were living in Hawaii. The Circuit Court jury found Ferdinand Marcos liable but absolved Imelda.

The jury awarded the Roxas estate \$6 million in damages for battery and false imprisonment, and also awarded the Golden Budha Corp. damages of \$22 billion for the gold bullion and \$1.45 million for property that included the statue. With interest, the jury award swelled to more than \$40 billion.

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89 Hawai'i 91, 969 P.2d 1209, 1998 Haw. LEXIS 420

Supreme Court of Hawai'i.

Roger ROXAS and The Golden Budha Corporation, a foreign corporation, Plaintiffs-Appellees/Cross-Appellants,
v.
Ferdinand E. MARCOS and Imelda Marcos, Defendants-Appellants/Cross-Appellees.

No. 20606.

Nov. 17, 1998.

Reconsideration Denied Jan. 28, 1999.

SUBSEQUENT HISTORY: *Subsequent appeal:* Estate of Roxas v. Marcos, 109 Hawai'i 83, 123 P.3d 208 (Hawai'i Nov. 29, 2005) (Table, No. 24605), unpublished/noncitable
Declined to extend by: Bianchi v. Savino Del Bene Intern. Freight Forwarders, Inc., 329 Ill.App.3d 908, 770 N.E.2d 684, 264 Ill.Dec. 379 (Ill.App. 1 Dist. May 7, 2002) (No. 1-00-2121)
Distinguished by: Mikelson v. United Services Auto. Ass'n, 107 Hawai'i 192, 111 P.3d 601 (Hawai'i May 12, 2005) (No. 25217)

[**1217] [*99] **COUNSEL:** Lex Smith, Bert T. Kobayashi, Jr. (of Kobayashi, Sugita & Goda), on the briefs, for defendant-appellant/cross-appellee.
On the briefs: Imelda Marcos, and Stephen R. Johnson (Law Office of Linn & Neville of Oklahoma City, OK), appearing Pro Hac Vice.
On the briefs: Ward D. Jones and Alexander T. MacLaren (of Chuck Jones and MacLaren) for plaintiffs-appellees/cross-appellants.
On the briefs: The Estate of Roger Roxas and The Golden Budha Corporation, and Daniel C. Cathcart (Law Office of Magana, Cathcart & McCarthy of Los Angeles, CA), appearing Pro Hac Vice.

JUDGES: Before MOON, C.J., LEVINSON and NAKAYAMA, JJ., TOWN, Circuit Court Judge, in place of KLEIN, J., Recused, and WEIL, Circuit Court Judge, in place of RAMIL, J., Recused.

OPINION BY: LEVINSON, J.

The defendant-appellant/cross-appellee Imelda Marcos (Imelda), in her alleged capacity as personal representative of the Estate (the Marcos Estate) of former Philippine President Ferdinand E. Marcos (Ferdinand), appeals from that portion of the amended judgment of the first circuit court entered in favor of the plaintiffs-appellees/cross-appellants the Estate of Rogelio (aka Roger) Domingo Roxas (the Roxas Estate) and the Golden Budha Corporation (GBC) (collectively, the plaintiffs-appellees) and against the Marcos Estate. The plaintiffs-appellees cross-appeal from: (1) that portion of the amended judgment (a) entered in favor of Imelda, in her individual capacity, and against the plaintiffs-appellees and (b) ordering the Marcos Estate to pay damages for conversion in the amount of \$22,001,405,000.00; (2) the circuit court's order granting in part and denying in part the plaintiffs-appellees' motion for an award of prejudgment interest; and (3) the circuit court's order granting in part and denying in part the plaintiffs-appellees' motion to alter the judgment.

No.

In the Supreme Court of the United States

REPUBLIC OF THE PHILIPPINES, PHILIPPINE PRESIDENTIAL
COMMISSION ON GOOD GOVERNMENT, PHILIPPINE NATIONAL
BANK, AND ARELMA, INC.,

Petitioners,

v.

MARIANA J. PIMENTEL, THE ESTATE OF ROGER ROXAS, AND
GOLDEN BUDHA CORP.,

Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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Nos. 06-1039 & 06-1204

In the Supreme Court of the United States

ESTATE OF ROGER ROXAS, ET AL., PETITIONERS

v.

MARIANO J. PIMENTEL, ET AL.

REPUBLIC OF THE PHILIPPINES, ET AL.,
PETITIONERS

v.

MARIANO J. PIMENTEL, ET AL.

*ON PETITIONS FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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