



MondayMonday

A Summer's Day

November 25, 2013

He was our President and then, in an instant, he was gone. What is left is a combination of what we remember, what we'd like to believe and what is so; the true trinity of history.

We can't speak of the first two, because they offer so little beyond the personal and the nostalgic, safe harbors for old men. However, we are not old and so, we arrive at the least romantic of the set, that which is so.

This week we thought of one man, someone who we had spent our entire youth despising. The usurper, an old man to the martyr's youth, his wife a sharp-featured homespun to the martyr's gentle Guinevere. We were unfair to Lyndon Johnson then and we mean to make it up to him now, for no one, not even the boy martyr, could ever minimize his importance in American history.

They came from two different worlds. Eastern privilege and Texas dust; good looks in a pop culture world and good heart in a world that was too much in a hurry to see it.

In the days after the Kennedy assassination, Lyndon Johnson kept the last great hope of democracy on track, not because he believed in John Kennedy, but



because he believe in what John Kennedy believed in: That no man is greater than the Office and that the Office demands hard work and respect. He gave us the first; we denied him the second. Vietnam saw to that. So now, we apologize, albeit too late. Without LBJ, America would still be a civil rights backwater, a place where children are left to starve, uneducated and unclothed. To be sure, the job is far from done; but we know who started it and where it began. Not in Camelot, but in Austin. Lyndon, we hardly knew ye.

Not every summer's day is a Hallmark movie. At 19 years old, on a summer's day in July, Brittany and three of her friends were returning from the Jersey Shore, driving her father's car. They were driving up the Thruway when Brandon, who was sitting behind her, "playfully pulled the strings of Brittany's bikini top." "Brittany reacted by taking her hands off the steering wheel for a split second to cover herself." But, modesty has its price, for when she did, the car began to veer to the right. Brittany grabbed the steering

wheel to drive back into her lane, but lost control. The car struck the center guardrail and overturned. Brittany was injured and Brandon was killed.

Following a defendants' verdict against one of the surviving passengers, the AppDiv is now asked to set aside that verdict on the basis that the trial court improperly charged the "emergency doctrine." Over the dissent of Justice Roman, the Court refuses. Viewing the evidence in favor of the verdict, "based upon Brittany's testimony, there is a reasonable view of the evidence that her conduct was the product of a "sudden and unexpected circumstance." *Pelletier v. Lahm*, 2013 NY Slip Op 07718 (2d Dep't 11/20/13). Even though Brandon had been engaging in distracting conduct throughout the ride, Brittany could not anticipate what would eventually occur. The presence of an emergency was for the jury to decide, and it did.

The dissent notes that it was the pulling of two bikini strings that caused the driver's breasts to be exposed, acts which were each separated in time. Brandon's tomfoolery in the car over 15-20 minutes should have put Brittany on notice that nonsense was afoot and given her time to react or reduce speed. 19 years old, on a summer's day. No one said this was easy.

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