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THE ADVOCATE

Vol. XXVIII, No. 5

The Student Newspaper of Fordham University School of Law

March 19, 1997

CAMERAS IN COURTROOMS

by Rob Cowhey

The New York State Committee to Review Audio-Visual Coverage of Court Proceedings will issue its report soon on whether New York should adopt a permanent rule to allow cameras in New York courtrooms.

Dean Feerick, who is the chair of the committee appointed by New York Chief Judge Judith Kaye, said the committee's report should be made public toward the end of March. If the committee recommends coverage be discontinued, the current statute can be allowed to lapse under its own terms on June 30, 1997. If the recommendation is to extend the experimental time period or to adopt a permanent rule, new legislation would be necessary. Members of the state legislature have declined to express their views until they see the committee's recommendation.

The report is expected to bring out strong debate from both sides in either event. Proponents of coverage tend to point out the public's right to information as well as the educational value of televising proceedings. Opponents tend to focus on the sixth amendment considerations, essentially the right of the defendant to a fair trial in criminal cases. Over 90% of cases for which applications are received are criminal trials, but the Court TV breakdown of coverage reveals an array of civil trials such as medical malpractice, sex discrimination and other types of cases.

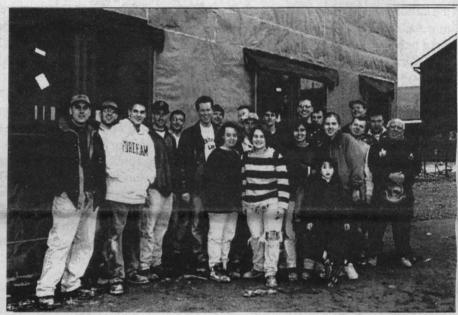
In a November hearing at Fordham Law School, Liz Schneider, a professor at Brooklyn Law School, addressed the issue of rape victims having a veto over cameras in proceedings, not just the defendant. Alexandra Lowe, counsel to the committee, points out that rape victim advocates have complained that it is not enough for the victim herself not to be on camera—to have any of the proceedings televised can be invasive.

There isn't a lot of hard evidence on either side of the fair trial concern. The same case can not be tried twice, with and without cameras, for comparison. Psychologist Borgida conducted tests with students and found that witnesses were more nervous before cameras, but their credibility was the same. Ms. Lowe pointed out that "When you change the audience, you change the performance." Dean Feerick pointed out that there is an argument by some proponents that "cameras could be a greater incentive to be more truthful, more perfect."

While proponents argue that there should be no difference in treatment between traditional media and cameras, opponents say that people who don't read the paper might not escape the evening news. A law enforcement officer who testified at a hearing in October said that at raid sites there was usually a television on but never a New York Times or a Wall Street Journal. Opponents also point out the possibility that coverage could effectively circumvent the rules of evidence. A key piece of evidence may be kept out of court but a juror may catch it on the news or hear about it from a relative who saw the case covered. Linda Sittenfeld, Producer for Rivera Live, explained how television coverage of trials usually works. When "there's enough media interest in anything remotely interesting," there will be an agreement among local affiliates as to who has the resources to cover the trial, provided coverage is allowed by the

judge. There will be one pool camera which provides coverage to other stations. Asked whether there was any gauge of public knowledge, or any way to determine increased interest in law, Ms. Sittenfeld said there isn't a definitive study of how much more people know but that "Television responds to ratings."

On CNBC, Rivera Live has five times the ratings of non-legal shows. While Court TV gives coverage to many things, its ratings aren't as high because it's more like educational television. "Geraldo Rivera sees his show as Rock 'n Roll Court TV." said Ms. Sittenfeld. "It's more lively and dynamic." Other networks are increasing their legal oriented programming. MSNBC is moving Burden of Proof to prime time, and there are new, fiction series such as The Practice. The interest supporting these programs may be a result of coverage, or, Ms. Sittenfeld points out, it could be that "People are frustrated by the system and want answers to consumer questions, or questions like "What if I get arrested?"."



Habitat for Humanity members after a hard day's work in Belfast

A CONSTRUCTIVE SPRING BREAK

Fordham Law Sudents Take a Constructive Spring Break in Northern keland

While most college students were basking in the sun, twenty-one Fordham Law students, faculty and alumni were pounding nails in Belfast, Northern Ireland. The Fordham Law group provided general carpentry work, installing drywall and laying foundations in an attempt to further Habitat for Humanity's goal of eliminating substandard housing. In a nation torn by decades even centuries - of strife and sectarian violence, Fordham Law students helped to bring hope and a sense of unity to a divided land.

Habitat for Humanity is a partnership among people of different backgrounds, locales, races, religions and incomes. Their common bond is that they recognize the housing needs of low-income families, and understand their part in helping others to realize the dream of home ownership. Through volunteer labor and tax-deductible donations of money and materials, Habitat volun-

teers, such as the Fordham Law students, build and renovate houses with the help of future homeowners - their partner families. Habitat houses are sold to partner families at no profit, financed with affordable, no-interest mortgages.

The students traveling to Northern Ireland were just a portion of the more than 80 further attorneys from Fordham Law School that actively participate in local NYC Habitat developments. This is a great opportunity for students to give something back to the community said Joel Sciascia, a third-year Fordham Law student from Buffalo, N.Y.

Keeping with Fordham's rich Jesuit tradition the Law School boast one ofthe most active public resource centers in the nation. In the summer of 1996 Fordham Law hosted a mediation project for Belfast's community leaders. This spring break trip represented Fordham Law School's most recent goodwill effort and is only one segment of an ongoing relationship between Fordham Law and Northern Ireland.

PENCIL CRISIS

During Black Heritage Month the Black Law Students Association (BLSA) sponsored a book and pencil drive. Your response to this effort was overwhelming and is sincerely appreciated. The books we collected will go to an impoverished public school library or community center. As posted, the pencils were to be donated to school children in Zimbabwe. I say "were" because unfortunately, there are no pencils. During the last week of the pencil drive someone took — or perhaps I should say stole — all of the donated pencils from the collection box. I will not dwell on this cowardly act but instead appeal to your generosity once again. BLSA will hold another month long pen-

cil drive, March 10 - April 10. Please place new or already used pencils in the collection box outside of the Public Interest Resource Center (PIRC) office. We will collect the pencils on a daily basis so do not be discouraged if you notice that the box is empty.

Thanks for your support of this worthwhile endeavor.

Truly,

Rhonda C. Holmes
Rhonda Cunningham Holmes
BLSA Chairperson

OPINIONS

ADVOCATE EDITOR-IN-CHIEF SPEAKS ON PROFESSOR PHILLIPS

To All:

In recent Advocates, and in your mailbox, you may have found various opinions of Prof. Phillips' views of homosexuals, and homosexual relationships. The first of these inferred that you should boycott his class. This was followed by responses from the Federalist Society, GALLA's response to the Federalist Society's response, and various opinions expressed here in The Advocate.

I was amazed at the extreme actions taken by GALLA, as many students who took or currently takes the class expressed to be that Prof. Phillips' views were taken somewhat out of context, and the attitude taken within class was much more balanced than GALLA's letters led us to believe.

Recently, while reading *The Advo*cate mail, I came across two letters to the Editor, submitted by one Dr. Drescher, and one Alan Hevesi. GALLA had solicited these people to compose the letters. Most recently, during the evening hours, while spending some quality time with my significant other, I received a telephone call from a member of GALLA, trying to ensure that I print both of the letters in this paper.

This opinion is not an attack on GALLA, but rather a plea to ease hypersensitivity of minority issues here in the law school community, as well as elsewhere. During my career here at Fordham, I found that there was tremendous unwarranted sensitivity to minority issues. Events, speeches and occurrences that were made with no bias or animus whatsoever, but could be construed with such a bias, were assumed to have that bias, and the burden of proof was on the speaker to disprove it.

One example of this was a conversation I was having with a previous editor of *The Advocate*. I used the phrase "our race" meaning the human race, and was attacked as being a racist for about 5 minutes before I could explain that he mistook my statement.

Another, more well known occurrence here at Fordham, was the Valerie White incident. To summarize what happened, James Killerlane, who at the time was the Business Manager of the Urban Law Journal, admitted to "doodling" on a calendar of prominent African-American scientists which was owned by Valerie White. When Killerlane admitted that he was the culprit, he apologized and stated that the act was not done with any racial intent. This statement was ignored, it was assumed that it was an act of racial bias, and Killerlane was punished by being required to write a paper on Christine Darden (The Scientist who he "defaced"), write a letter of apology to Valerie White, and attend sensitivity training.

I am not claiming that Killerlane did or did not have intent and bias when Prof. Phillips is entitled to his opinion, and boycotting his class is not going to change it. Writing letters to the students, or soliciting opinion letters to be printed in The Advocate is not going to change it.

writing on the calendar, and besides the issue is dead. What is not dead, however, is the oversensitivity that a large number of students have to such issues. This is evidenced in its entirety by GALLA's recent actions.

Regardless of how I feel on the issue, Prof. Phillips is entitled to his opinion, and boycotting his class is not going to change it. Writing letters to the students, or soliciting opinion letters to be printed in The Advocate is not going to change it. Prof. Phillips may state his opinion about homosexuals to others, and those people have the ability and thought processes to evaluate his statements and either agree or disagree. We are not sheep who blindly accept information we receive from professors as complete truth and without question. I thank GALLA for making Prof. Phillips' views on the matter known to the student body, but beyond that the entire issue is overblown. GALLA, your request is granted, here are the two letters you wanted printed in The Advocate.

Regards,

Kenneth P. Persing

Editor-in-Chief

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Do you have no consideration for contracts?

Do you feel like abandoning Civil Procedure for failure to state a claim for which relief can be granted?

Do you simply own no property and therefore see no reason for studying it?

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PROFESSOR OF PSYCHIATRY SPEAKS ON PROFFESSOR PHILLIPS

Dear Editor:

I have been approached by members of the Gay and Lesbian Law Association of Fordham University (GALLA) to comment on the accuracy and meaning of psychiatric and psychological opinions introduced: by Professor Earnest Phillips in his Cases and Materials on Domestic Relations, 7th Edition. In addition to reviewing those materials, I have read the circulated responses of GALLA, The Federalist Society and a letter in support of Professor Phillips from a Mr. Jerry Clark published in the February 14th issue of the Advocate.

I agree with the response of the Federalist Society which states "students should take courses with teachers they disagree with and voice that disagreement in the open air of the classroom." However, I also agree with the GALLA statement that "Professor Phillips is required to demonstrate academic integrity and to adhere to certain professional standards." Although I was not present in class to hear the discussion of the material, in reviewing his written materials, Professor Phillips' presentation of psychiatric opinion seems unnecessarily provocative, presents only part of the truth and is inconsistent with historical

The pathological views of homosexuality recently espoused by Nicolosi (1991) and interminably by Socarides (1968, 1995), both cited by Professor

Philips, are a vestige of history that goes beyond the 90 [sic] years of psychoanalytic theory. As Szasz (1973) has pointed out, pathologizing unacceptable social behaviors was a natural extension of the paradigm shift (Kuhn, 1972) from religious models of sin to scientific models of illness. In fact, many former sins are now identified as illnesses in the Amencan Psychiatric Associatioll's Diagnostic Manual: gluttony is now an eating disorder, drunkardness is now alcoholism, and so on. When sodomy became homosexuality, another new disease was born. In 1973, for the time being, it was laid to rest.

However, contrary to the authors Professor Phillips cites, there is an abundant literature debunking pathological theories of homosexuality (Cabaj & Stein, 1996). The growth in this literature, ever since the Kinsey (et al, 1948) report challenged basic psychoanalytic tenets, has been astonishing and convincing. Adding to the mix in depathologizing homosexuality has been the emergence of openly gay professionals who, contrary to the sources cited by Professor Phillips, appear to do their jobs and have relationships with professional colleagues without any evidence of the psy-

please see **DRESCHER** continued on page 6

THE ADVOCATE

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Herb Deitrick STAFF WRITER

The Advocate is the official student newspaper of Fordham Law School. The goal of The Advocate is to report news concerning the Fordham Law School community and development in the legal profession. The Advocate also serves as a forum for opinions and ideas of members of the law school community. The Advocate does not necessarily concur with opinions expressed herein, and is not responsible for opinions of individual authors or for factual errors in contributions received. Submissions should be made on disk in MS Word (any version) or Word Perfect 5.1. We reserve the right to edit for length and grammar. Advertising rates available upon request. Contributions are tax deductible.

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FORDHAM ADJUNCT PROFESSOR SPEAKS ON PROFESSOR PHILLIPS

Dear Mr. Pershing [sic],

The recent controversy concerning the treatment of homosexual relationships and the issues connected with homosexual marriage in the Fordham Law School course "Domestic Relations" raises once again questions about academic freedom and the efficacy of intellectual discourse. It should surprise no one that academic discussion of domestic relations would generate energetic debate since society itself has not yet resolved fundamental cultural questions concerning gender and sexual orientation. It seems to me unchallengeable that Professor Philips has the right to structure his course as he sees fit, that students have the right to register for his course or not depending on their assessment of its content and that other faculty members have the right--perhaps even the obligation--to offer in their own courses alternative conceptions of the issues he raises. It is equally important for members of the Fordham community who disagree with Professor Philips' interpretation of the law to respond in a manner that identifies incorrect or false statements about law and history and that challenges the most egregious assertions about the nature of human legal and emotional relationships.

I have long opposed discrimination of any sort based on sexual orientation and support the right of gay men and lesbians to marry. Though the law and society have belatedly rejected religious, cultural and psychological grounds for racial, sexual and other forms of discrimination, justifications of this sort are still used to deny full civil liberties to gay men and lesbians.

Professor Philips includes in his cases and materials an analysis of the nature of gay and lesbian relationships which opposes the view that homosexuality "is natural and within the range of normality" in the hope that his presentation will be considered as a counter "to the only view which many students have ever heard." The discussion includes statements that "all societies" have reached definitive conclusions about the heterosexual nature of marriage and the "necessary" connection between heterosexuality and intimacy, love and companionship. This falsely implies that homosexuals are incapable of intimacy, love or companionship. In addition, the course materials rely on the statements of two psychologists whose analysis of gay relationships leads them to draw sweeping conclusions about the necessarily "isolated", "egocentric" and "narcissistic" nature of homosexual relationships. The context in which these statements are placed indicates that they are opinions

please see **HEVESI** continued on page 6

HOT DOG

by Timothy Dockery

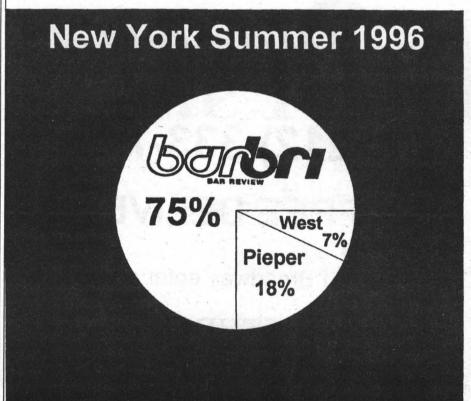
Hot Dog, frank, wiener, wiene, Stuffed in a bun, it's mana to me, a mana that sends me to heaven, whether from home or 7-11.

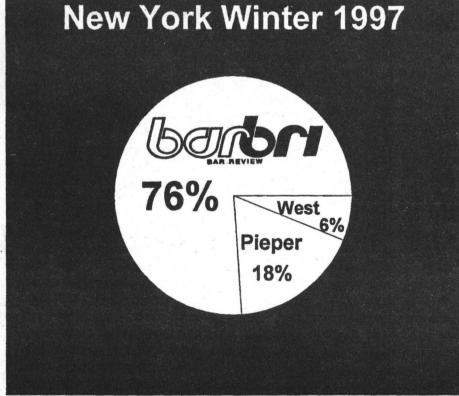
Dogs with mustard, kraut, Red Onion, Like holy water to the Baptist John. Those garnishments work for my diet, much like Judas did for Pontius Pilate.

Christian, Muslim, Hindu or Jew, even on Fridays since Vatican II. If I am Samson, they're my Delilah, such is the price of Gray's Papaya.

The Numbers Speak For Themselves . . . Again.

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WE CAN ALL GET ALONG

by Maria John ('00)

As some of you may know, the law school community has recently been confronted with serious bias issues. The one concerning this writer is the recent voting regarding whether or not to allow The Gay And Lesbian Law Association (GALLA) to become a member of the Minority Affairs Committee.

The Minority Affairs Committee was a group organized in 1989 to address the issues of racial and ethnic bias. It consist of Professor Pearce (the Chairperson). Professors Denno, Flaherty, Johnson and Madison, Director Hillary Mantis, Financial Aid Director Jim McGough, Dean Escalera and representatives from APALSA, LALSA and BLSA, respectively, the Asian, Latino and Black student groups on campus. I was present at the BLSA vote. So was a GALLA member who shall be called John Doe. I should state that Mr. Doe is also a "duespaid member" of BLSA. But by his own admission, not much more. Right now, he says the discrimination he faces as a gay law student far outweigh those he experiences as a black law student, so he has not been active in BLSA but has focused his concern on GALLA instead.

BLSA's President, Rhonda Holmes, in what I thought was a diplomatic effort, told the BLSA General Body members present the background of this heated question. GALLA students feel they should be on the Minority Affairs Committee because they face similar bias issues to Blacks and other minorities. Wait, I know what you're thinking, being gay is not a minority. Well sure it is, but then again it isn't. The Random House Dictionary of the English Language defines minority as follows: "the smaller part or number; a number, part, or amount forming less than half of the whole; a smaller party or group opposed to a majority; a group differing (emphasis added), especially in race, religion or ethnic background, from the majority of a population, especially when the difference is obvious and causes or is likely to cause members to be treated unfairly..."

Members of GALLA could legitimately consider themselves one of the minority groups of Fordham. What is clear however is that they are not a racial minority. The good news is they don't pretend to be.

My dismay regarding BLSA's vote stemmed from the discussion among the members and Mr. Doe after Ms. Holmes gave us the background. The main concern is this: If GALLA joins the Minority Affairs Committee will race issues be deflected or completely replaced by issues concerning homophobia? GALLA's concern is this: If GALLA cannot be a part of the Minority Affairs Committee, what voice will they have in addressing the obvious bias problems that they face? BOTH SIDES HAVE VALID ARGUMENTS

In any case, after many questions were posed, such as what the specific mission, purpose and goals of the Minority Affairs Committee are, the body voted against recommending GALLA for membership on the Committee. Now the concern for all of us is this: Does the result of the BLSA vote mean war between GALLA members and the members of BLSA and other minority groups? Well, we won't know for sure until the final outcome on March 27th because despite these votes. Dean Feerick has the final word and he may well choose an opposite view to the majority of suggestions. It is within his right and power to do so, and for the better of the Fordham community, it may also be in his best

Why is it that the reasonable, rationale, gifted human beings we at Fordham Law School are supposed to be cannot agree to disagree when it comes to an issue of prejudice? Prejudice does stir up emotions. At one point in the meeting, a BLSA member said "I caution every one here not to turn this into a battle of who has been discriminated against more — Blacks or Gays? Mr. Doe's response was, "There are laws against me doing certain things because I am gay. I cannot even marry my partner; and we registered as domestic partners which only gave us the right to visit one another if illnes occurred." I am sympathetic to his situation, however, I am surprised he responded to the BLSA student's caution statement with a 'lookat-how-bad-we-have-it' answer.

Lastly, but most significantly, after

Why is it that the reasonable, rationale, gifted human beings we at Fordham Law School are supposed to be cannot agree to disagree when it comes to an issue of prejudice?

the vote went against Mr. Doe's position, he got up, took his cap and jacket off the coat rack, and yes, stormed out of the room, without hearing the critical final comment that things might still turn out in GALLA's favor. Alas, he was guilty of just what he accuses the world, and in particular the Fordham community, of — bias. His response demonstrated a lack of tolerance that was unacceptable given the circumstances.

As the saying goes, nothing personal was intended. But many in the room did not even feel comfortable voting since they did not know first of all, the initial purpose of the Minority Affairs Committee (which, incidentally was chaired at one time by Judge Deborah Batts, an openly gay Black female); and second, why another committee could not be formed to address gender or general bias issues, which GALLA would of necessity be a member, without having to become a member of the Minority Affairs Committee at all. This article is not an attack on Mr. Doe or GALLA (in fact, the writer voted in favor of having them join the Committee since inclusiveness rather than exclusiveness is my personal preference.)

As aforementioned, this is an emotional issue. However, we must all be careful to realize that prejudice, bias and just plain ignorant hatred of that which we do not know and understand *may* exist within the confines of the law school but *most definitely* exist beyond these walls as well. If we can't handle a vote on bias problems in this micro community, how do we expect to resolve the actual problem of discrimination in the outside world?

Keep the peace.

DRESCHER

continued from page 2

chopathology attributed to them by outdated psychiatric literature. In fact, Charles Socarides, the pathologizing psychiatrist cited by Professor Phillips, even has a gay son who was, for a time, the most highly-placed openly-gay official (and an attorney) in the Clinton Administration (Dunlap, 1995).

Mr. Clark's attribution of AIDS to homosexuality reflects his lack of knowledge about the illness and its transmission. Worldwide, AIDS is predominantly a disease transmitted by heterosexuals to each other and by mothers to their unborn children. No one would suggest that we search for a cure for heterosexuality and pregnancy nor do we think of them as the "cause" of AIDS.

Nevertheless, Professor Phillips may have unknowingly done all the students of Fordham University a service by raising an important issue that will not be solved by psychiatrists or other mental health professionals. As students will soon learn, if they haven't learned it already, psychiatric testimony can be used by both sides in an argument, with each side sometime canceling the other out. Furthermore, although history and tradition are important guides in making decisions in the present, they should not be the only ones. After all, if that were the case, slavery would still be legal today, given its acceptance in Judeo-Christian tradition so cherished by Mr. Clark. Who we are today is as important as who we used to be, and both factors are important in deciding who we shall become.

Sincerely

Jack Drescher, M.D.

HEVESI

continued from page 3

apparently shared by the instructor, not simply, as some would have it, the recapitulation of expert opinion. Though Professor Philips concludes that "moral, psychological, political, and social considerations should ultimately decide whether state law will continue to permit only heterosexual couples to marry," he asserts that if "this second [alternative] view of homosexuality is correct, a marriage of homosexuals is impossible and it would be futile to offer the possibility. Myriad, detailed studies over the last 90 years, beginning with Freud, have led many to adopt the view that homosexuality is pathological."

It is not my intention to offer a rebuttal to the specifics of Professor Philips' interpretation of the psychological basis for discrimination against same

sex relationships. His case ultimately is an ideological one which rests on invidious assertions about the nature and validity of human emotional and sexual relationships which I believe are fundamentally wrong and, therefore, should not serve to support legal principles. It seems to me needlessly polemical and false to claim that a social consensus has emerged concerning the validity of gay and lesbian relationships and that a course in domestic relations must offer an oppositional case supporting the endangered status of heterosexual marriage. American society is clearly engaged in a debate--however contentious and unresolved--over the nature and status of non-traditional families and single sex relationships. The recent rush to pass the federal Defense of Marriage Act, the actions by many state legislatures to enact pre-emptive legislation that would deny "full faith and credit" to any homo-

sexual marriage ever made in Hawaii and the escalating violence against lesbians and gay men make it clear that heterosexual marriage is in no immediate danger of cultural or legal repudiation. Professor Philips relies exclusively to make his case on the analysis of two medical practitioners whose work has been challenged, and repudiated, by many knowledgeable psychologists and clinicians. His discussion of the circumstances that resulted in the declassification by the American Psychiatric Association of homosexuality as a psychological disorder in 1973 misrepresents the scope of research that resulted in the decision and the consensus in the field that had emerged at the time.

Whether one supports homosexual marriage or not is a legitimate subject of debate and disagreement and the arguments marshalled to support one viewpoint or another will reflect the cul-

tural, political and moral position of those engaged. The discussion will necessarily be energetic. Nevertheless, it does not advance an understanding, much less resolution, of the debate to frame it on the basis of essentially ad hominem arguments about the emotional legitimacy of various forms of human relationship or the essential integrity of the bond between individuals--legitimacy and integrity which can only be evaluated in the context of individual relationships. Academic freedom guarantees that intellectual debate take place whether we like it or not. Intellectual honesty requires that the parties to the debate engage in a fair discussion based on respect for the facts and for the fundamental legitimacy of human emotional relation-

Alan G. Hevesi Adjunct Professor Fordham Law School

THE FORDHAM LAW SCHOOLS FOLLIES PROUDLY PRESENTS



March 19, 20, 22

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No gunshots were fired, no church bells rang out signaling chaos. Yet the most powerful man, in the most powerful office in the world, ejected himself from the apex of power — the Presidency of the United States of America. And the greatest legal document ever drafted, the Constitution, held the fabric of our nation together during this tumultuous time.

While it is the most significant legal event in the last twenty-five years, few would recognize it as such, because we too often neglect and take for granted the sacred charter. Few would remark that it was the 207 year-old dusty parchment that provided for an orderly and fair judicial process by which citizens, through their chosen representatives, called into question the conduct of their sovereign leader.

And so, with much trepidation in the summer of 1974, the House of Representatives — following the Constitution — drew three Articles of Impeachment accusing the 37th President of extremely serious crimes. The accusation of obstruction of justice stood foremost among the charges as an impropriety with grave implications upon the person charged with 'faithfully executing the laws" of the United States.

The Judiciary Committee voted to impeach; now the question would go to the House floor for a full vote on whether to subject the President to a trial by the 100-member Senate, mandated by the Constitution. Such a trial would rock the nation to the very core of its existence. It did not occur: the President resigned from office. Again the Constitution was there. Following its detailed instruction, the Vice-President became the 38th President.

For all the dismay and outrage exhibited at the time, no riots erupted, no fight for power ensued, no military coup took place and no revolution broke out. In like circumstances, such frightening incidents have occurred in every corner of the globe. With peaceful, determined order, the Constitution handed over the mightiest of its responsibilities - the presidency. We have it to thank for our nation's continuing stability and prosperity.

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