

American Board of Criminal Lawyers

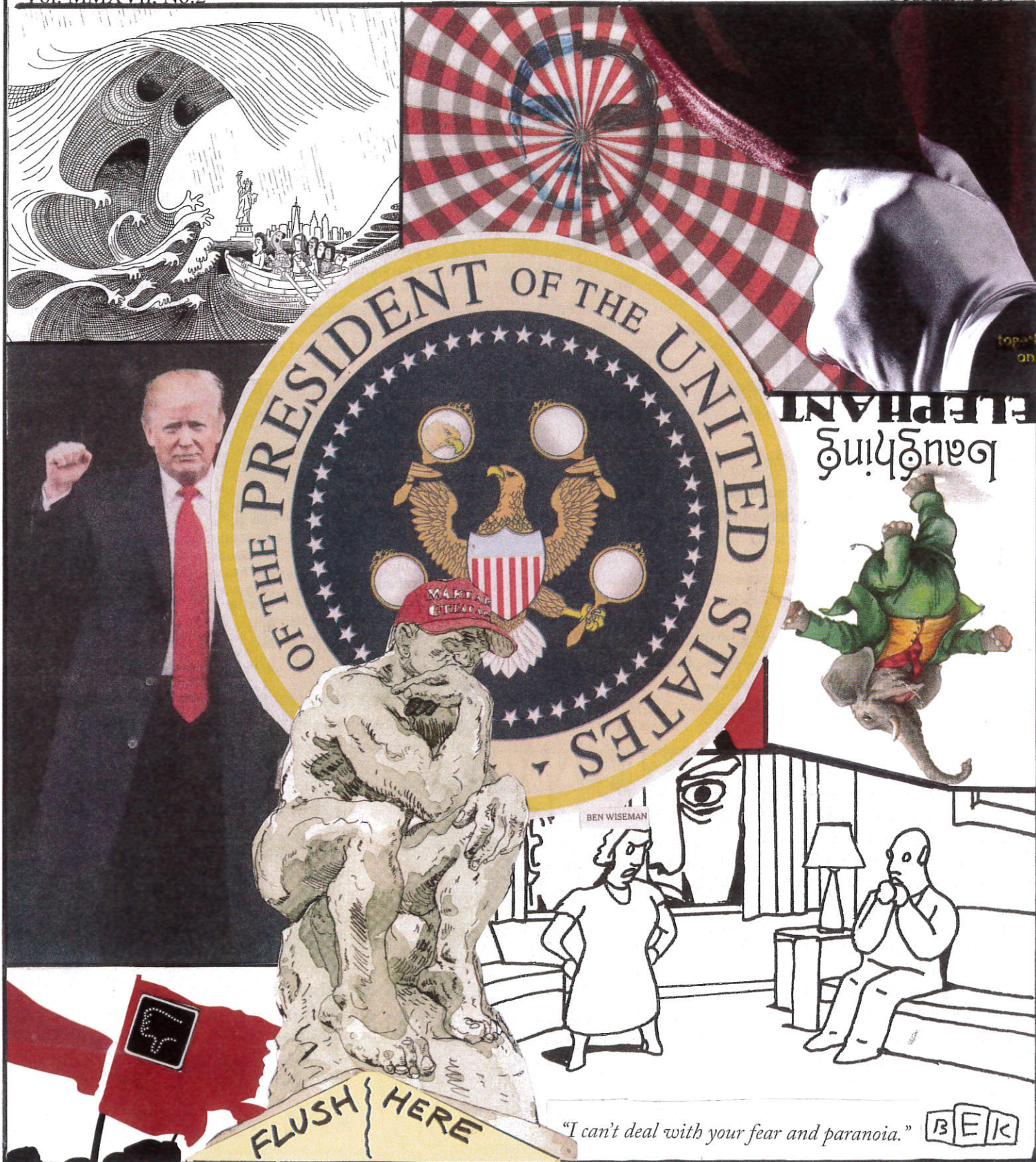
THE ROUNDTABLE



Vol. MMXVII, No.2

It Can't Happen Here

February 2017



TIDBITS:

Joe Hayden and I scored a wonderful victory in State v. Mauti in the New Jersey App Div today in an opinion to be published. Our client, Dr. Mauti was accused of sexual misconduct with a patient-employee-and almost family member. He was convicted at trial where he was not represented by us. Joe, I and our firm were retained to do the complex appeal. We found an issue that had been ignored at the trial level – nonverbal conduct as inadmissible hearsay and a denial of the Right of Confrontation – which became the primary reason for reversal in an 85 page opinion. The Appellate Court also found that the State and trial judge had erred by permitting a plethora of “fresh complaint” witnesses to unfairly bolster the complainant’s testimony. Joe argued the case almost 15 months ago. I got to write a lot of the brief.

Alan Silber

Joe Hayden and **Alan Silber**, ABCL Fellows just won a big victory in the New Jersey Appellate Court. They represented a doctor who was convicted of the aggravated criminal sexual conduct and criminal sexual conduct. In an 80 page Opinion the Appellate Court found the trial court made numerous erroneous evidentiary rulings and reversed the conviction. Another great victory by ABCL fellows.

Jerry Froelich

ABCL Fellow **John Colette** had a great trial victory yesterday. John's client had been convicted of first degree murder and perjury and given the death penalty. On Appeal the death penalty was reduced to life John's client did 28 years in prison before being paroled. After being paroled his 13 year old niece claimed he molested her and he was indicted. John tried the case and put the client on the stand to deny the charges. The jury was out one hour and acquitted John's client. It never ceases to amaze me the great trial lawyers we have in the ABCL.

Jerry Froelich

NEEDS QUICK RESPONSE!

A buddy of mine has two tickets for the 2017 Super Bowl. Box seats plus airfare, accommodation, etc., but he didn't realize when he bought them that this is going to be on the same day as his wedding - so he can't go.

If you're interested and want to go instead of him, it's at St. Peter's Church, in New York City, at 5 p.m. Her name's Louise. She's 5' 6", about 120 lbs., good cook, makes \$130,000 a year. She will be the one in the white dress.

Harold K. Cohen, Esquire

Dover woman given probation for rape of 13-year-old boy

(1/12/17)

JERRY SMITH THE NEWS JOURNAL

A 46-year-old Dover woman was given two years probation on Thursday in Kent County Superior Court after pleading guilty in November to fourth-degree rape for having sex with her daughter's 13-year-old boyfriend.

Elaine B. Goodman faced up to 15 years in prison, but the Honorable Stephen B. Young took into account that this was “an aberration” and that Goodman has shown compassion not only in taking care of her elderly parents but also to others in the community.

“This came out of the blue,” Young said. “The crime is egregious and affected the victim and his family, which was taken into account. But incarceration is not the answer.”

Goodman's attorney, **James E. Liguori**, told judge Young that “there is goodness in this woman” and that she recognized what she did was wrong and has been humbled by the experience.

“I just know she is truly, truly hurt to the core by how much she hurt so many people,” he said. “Everyone is trying to move forward and by admitting her guilt, we can do so.”

Deputy Attorney General Denise Weeks-Tappan saw things a little differently, saying Goodman knew what she was doing when she met the boy in the early morning hours of March 15 and that she was only thinking of herself.

“This mom, who he trusted, instructed him on what to do,” Weeks-Tappan said. “The crime has affected the victim in many ways. He's hurt, embarrassed and it is affecting his schooling. When the defendant committed this crime, she took something away from him. He was not a willing participant, but a vic-



Elaine Goodman

tim.” After hearing from both sides, Goodman told judge Young and the court that she was truly sorry for her actions.

“I know sorry is just a word, but I really am,” the sobbing Goodman said. According to court documents, Goodman

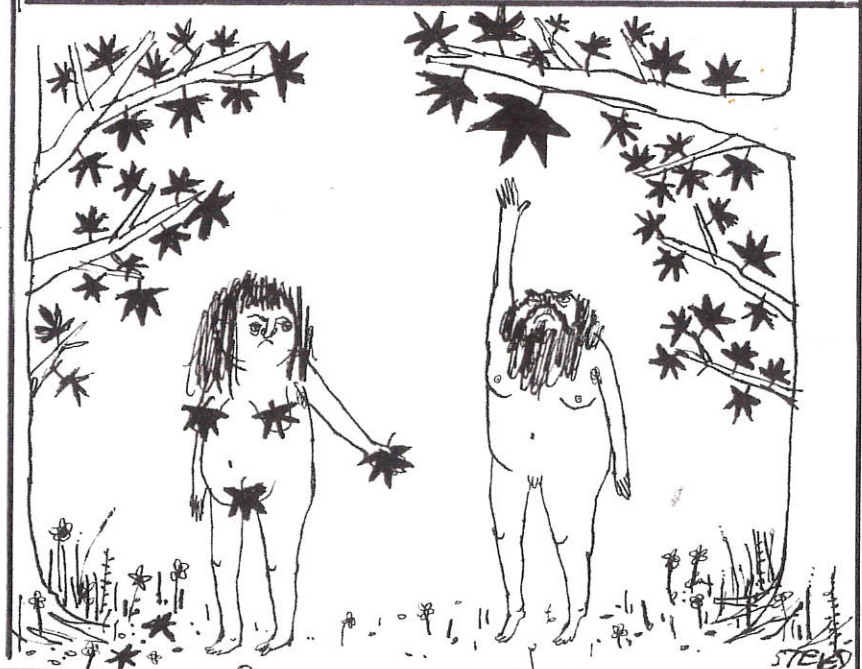
had arranged to meet the boy, who was sneaking out of his house to meet her at about 1 a.m. in March, a few weeks before her 45th birthday.

The pair drove around for a while, then parked and sat in the back seat talking and being intimate until about 4:30 in the morning, when Goodman had to drop him off at home and get ready for work, according to the documents.

During an interview in November 2015 at the Children's Advocacy Center, the boy said that at one point, after kissing him and undressing him, Goodman “took his you-know-what and put it in her you-know-what,” according to the documents. The arrest was based primarily on the digital evidence, which included text messages between Goodman and the boy and Goodman and a friend that referred to the incident, according to court documents.

Goodman told her friend through text message: “He is so cute with a nice ass body,” according to the documents. “I asked him what in the world are u doing with a body like that at 13...” Goodman was arrested and charged in November 2015. Following her plea, the judge ordered a pre-sentence investigation to be completed before sentencing.

Reach Jerry Smith at jsmith17@delawareonline.com. Follow him on Twitter at [JerrySmithTNJ](https://twitter.com/JerrySmithTNJ).



Chelsea Manning's Lawyer, a New Mexico 'Trailblazer,' Zeroed In on Key Distinctions

Miriam Rozen, *The National Law Journal*

January 18, 2017

For the college-bound son of a former co-counsel, Nancy Hollander took the time and effort during a friendly dinner conversation in August 2016 to explain distinctions between her client Chelsea Manning and Edward Snowden.

Manning is the former U.S. Army intelligence analyst convicted of a 2010 leak that revealed American military and diplomatic activities across the world, whose sentence President Barack Obama commuted this week. Snowden is a former government contractor who leaked National Security Agency documents in 2013, who faced espionage charges before fleeing to Russia.

"Her case is a little like Snowden's but here's why it is a little bit different," Marlo Cadeddu recalls Hollander told her son about Manning.

By last week, Josh Earnest, Obama's White House press secretary was also making distinctions between the two.

"Chelsea Manning is somebody who went through the military criminal justice process, was exposed to due process, was found guilty, was sentenced for her crimes, and she acknowledged wrongdoing. Mr. Snowden fled into the arms of an adversary, and has sought refuge in a country that most recently made a concerted effort to undermine confidence in our democracy." Earnest said at a Jan. 13 press conference.

Five days after Earnest offered that explanation — and three days before Obama exited the Oval Office — the president commuted Manning's 35-year sentence, so Hollander's client is expected to leave prison in May.

Cadeddu and her son met with Hollander in August because the two women lawyers have remained friendly and committed to each other's career since they served as co-counsel, representing other controversial clients, defendants in the Holy Land Foundation case, who were convicted in 2009 of engaging in a conspiracy to help funnel at least \$12.4 million to Hamas through a now-defunct Richardson-based Muslim charity.

Cadeddu's son, who, since his own mother is a criminal defense lawyer, pays more attention to politically charged prosecutions than some of his peers, knew about Snowden, but less about Manning. Hence, Hollander took the time to fill him in.

Since Obama granted Manning the commutation, however, television commentators, Twitter-mongers, and all sorts of others with different agendas have compared her situation with that of Snowden, who has sought but not received a pardon and is not expected to receive one.

Cadeddu is not surprised that Hollander, a partner in Albuquerque, New Mexico's Freedman Boyd Hollander Goldberg Urias & Ward, and her co-counsel and partner Vincent Ward, succeeded in navigating the tricky path to secure a commutation of Manning's sentence.

"She is a trailblazer," Cadeddu said about Hollander. She is also a lawyer who cares about her colleagues and her clients, her former co-counsel is quick to add. Hollander has practiced for six decades and represented plenty of high-profile and controversial clients, including Wen Ho Lee, a Taiwan-born scientist who faced charges of stealing secrets for the People's Republic of China but eventually won \$1.6 million from the federal government and five media organizations as part of a settlement of a civil suit. He also got a federal judge's apology for his incarceration.

Hollander also represented and prevailed before the U.S. Supreme Court about a New Mexico church, which had its members barred from using a hallucinogenic tea in religious ceremonies. For the tea case, Hollander flew down to Mexico to test out the beverage for herself, Cadeddu said. "She gets in the trenches," Cadeddu said about Hollander.

By Wednesday night, after the White House announced Manning's commutation, Hollander had hopped on a red-eye flight for back-to-back days of television interviews in New York and Washington, D.C.

She told CNN that Manning has been "nervous the last few days" as she waited for word in the closing days of the Obama administration and that she only learned of the commutation around the time Obama made the announcement. "She knows she's going to be free," Hollander told CNN about her client. "She can start her life."

Even though Hollander told the television reporter about Manning's anxiousness, the New Mexico appellate has always been hopeful about the possibility of a presidential commutation, Cadeddu said.

Over that dinner in August, Hollander expressed deep concerns because Manning, a transgender woman, had reportedly attempted suicide in prison. Hollander had learned about Manning's attempt belatedly from prison officials, Cadeddu recalls, and she was unhappy about that delay. But she was also hopeful about the possibility of a commutation even then. "I think Nancy is always hopeful. She is that kind of a person," Cadeddu said.

(Courtesy of Joe Beeler)

A SMALL OHIO TOWN CLAMORS TO CURB AGGRESSIVE POLICING

YELLOW SPRINGS, Ohio — The scene was an all-too-familiar one on the streets of America's cities: a black suspect on the ground, roughed up by white police officers as an angry crowd looked on. But Yellow Springs is a tiny, predominantly white village, and the arrest at the annual New Year's street celebration was an awakening to many who live here.

Dozens of residents criticized the police force on Facebook, accusing officers of carrying an "us versus them" attitude. Hundreds packed a gym for a special Village Council meeting to denounce the episode for, among other things, the psychological damage it had on their children. When the police chief, unused to such fury, offered his resignation, the audience cheered.

Issa Walker, 28, a Yellow Springs native who is black, wrote the hashtag #WhiteFolksHereAintHavinIt beneath a picture of the meeting he posted to Facebook.

But in the consensus over the need for less aggressive policing, there were subtle differences in perspective: White residents were complaining largely about the officers' violation of social norms in a laid-back town, while black residents focused on what they saw as a racially biased force that targets them regularly. "I don't know if I would call it a coincidence that out of a majority white crowd, a black man would be the one to get tackled to the ground and Tased," Mr. Walker said.

One challenge, several black residents of Yellow Springs said, is that residents are so extremely liberal-minded that it is hard for them to believe that racism exists here. Village leaders said that complaints about the police had been coming from people of all races and that they were analyzing data to determine whether police stops showed racial bias. "I personally don't believe that there was racial profiling or anything in town," said Brian Housh, a councilman who is white and has strongly advocated a police overhaul, citing Black Lives Matter as an influence.

Yellow Springs, with about 3,500 residents, is a blue speck in the conservative sea of southwest Ohio. Anchored by Antioch College, a liberal arts school with Unitarian roots, the village long has attracted an intellectual, activist populace. This is one of the few places in the region where black people were allowed to own homes in the mid-20th century, but still, Coretta Scott King, who studied music and education at Antioch, could not find a student teaching position in Yellow Springs because she was black.

Its reputation is reflected in the rainbow flags flying along the main street, the fruity incense wafting onto the sidewalk from the local smoke shop and the people perched at sidewalk tables reading titles from a used-book store. While President Trump won the county, Greene, with 60 percent of the vote, Yellow Springs went for Hillary Clinton.

As 2016 came to a close, hundreds of residents crowded the main drag downtown, as they do every year, to ring in the new year by watching a disco ball lowered to the pavement. Usually the police allow them to linger for about 45 minutes before walking through the crowd and asking everyone to call it a night, residents said. But this time, they said, officers began clearing the street just eight minutes into the new year. And they did so by driving their cruisers through the crowd, lights flashing and horns buzzing.

Tensions quickly rose, and several villagers approached the police vehicles to ask the officers what they were doing. One of those people was David Carlson, 29. The police say a drunken Mr. Carlson, who is black, had been swearing at the officers, threatening them and striking their car. There was no evidence to suggest that Mr. Carlson was being disruptive like that, one of his lawyers, Jon Paul Rion, said. An officer eventually hopped out of his car and slammed Mr. Carlson to the ground. Chaos ensued. Mr. Carlson got away, and officers chased him. One tried to use a Taser on him, and a crowd of mostly white residents tried to shield him. One councilwoman, Marianne MacQueen, 72, who is white, was not arrested that night, but the authorities later charged her with two misdemeanors, saying she interfered with an arrest and obstructed official business. Ms. MacQueen said she had been trying to calm the situation.

The police charged Mr. Carlson with felony obstruction and misdemeanor theft, saying that he took an officer's Taser — an allegation his lawyers denied. What the police saw as a justified arrest, many witnesses considered unnecessary police escalation. But the scene, so shocking to many of the city's white residents, was less jarring to African-American residents, who make up a little more than 13 percent of the population. "A majority of the people of color that I talk to are, like, 'Yeah, I experience this everywhere I go,'" said Ayanna Madison, 16, a junior at Yellow Springs High School who is black. "I've heard stories of this countless times, and it's not going to change until it happens to the rich kids, until it happens to the white kids, until it happens to the kids whose families control the power in the town or the city."

Village leaders in Yellow Springs, which is roughly 81 percent white, said one reason they were so shocked by the New Year's debacle was that they had been taking complaints against the police seriously and had already been working toward making changes.

Village officials last year withdrew the Police Department from a countywide task force after residents raised concerns that its tactics unfairly targeted black people.

Leaders have tried various measures to connect officers with the community. At each meeting of the village's Human Relations Commission, for instance, a different officer (there are 11; 10 are white) showed up to introduce him or herself. But those meetings were poorly attended.

"It's — how do we get them connected in a meaningful way besides these more symbolic kinds of things?" said Karen Wintrow, the president of the Village Council. "I believe that, when I talk to our officers, they do feel a kinship and an affection and a desire to serve this community. I think that they get overwhelmed with some of the negative rhetoric and don't understand it."

Residents said they used to be able to talk town gossip with their officers, but not anymore, now that most of the officers commute from conservative surrounding towns.

Three years ago, a sergeant was disciplined after taking a camera from a white woman filming police activity in front of her house. Last year, an officer was fired after two aggressive episodes — he shattered the window of a white woman sitting in a parked car and, days later, forced to the ground and handcuffed a white man who appeared "agitated" while walking down the street. Many here said those approaches were unnecessary in a 2.5-square-mile hamlet with a low crime rate.

Since the New Year's episode, proposals for changing the department have included replacing police officers with social workers, providing subsidies for officers to live in the village, and training officers in crisis intervention, implicit bias and the like. The village has named one of its current officers to serve as interim chief while it searches for a permanent replacement. "We are stepping things up," Mr. Housh said. "We're going to be more vigilant and involved."

There remains ambivalence, however, over the role that race plays in the town's policing. Some hoped that what happened on New Year's Day would make issues of race and policing real to those who did not experience them. "We didn't have enough skin in the game when it was going down with folks who were more disadvantaged," said Dr. F. Stuart Leeds, who is white. "It's time to see ourselves as a united community and to express regret for minimizing pain and suffering caused by this type of activity in the past."

(Courtesy of JOHN SHEA)

In Exile With 'Don Quixote'

OF THE MYRIAD times since adolescence that I have returned to the story of Don Quixote de la Mancha, there is one I choose to remember — that I cannot help but remember — as we commemorate the 400th anniversary of the death of Miguel de Cervantes. That reading, in October 1973, took place among a distraught group of captive men and women who, like me, had sought asylum in the Argentine Embassy in Santiago, Chile, after the coup that overthrew the democratic government of Salvador Allende.

In an atmosphere in which a thousand future exiles were suffocating in rooms designed to host cocktail parties, I joined a group of some 30 refugees who were reading it aloud together. Conceived as a sort of literary therapy to fight depression among us, I soon discovered that these readers had much to teach me. Many of them had come to our country from the failed revolutions of other Latin American lands, had been locked away for prolonged periods of time, and suffered torture and banishment. They instinctively understood Cervantes, who like them had been the victim of astonishing adversity and had become immensely resourceful in a cruel and disenchanted world.

In Cervantes's life was the harrowing five years starting in 1575 that he spent in the dungeons of Algiers as a prisoner of the Barbary pirates. It was there, on the border of Islam and the West, that Cervantes came to appreciate the value of tolerance toward those who are radically different, and it was there he discovered that of all the goods men can aspire to, freedom is by far the greatest. While awaiting a ransom that his family could not pay, confronted with execution each time he attempted to escape, watching his fellow slaves tormented and impaled, he longed for a life without manacles. But once he returned to Spain, a crippled war veteran neglected by those who had sent him into conflict, he came to the conclusion that if we cannot heal

the misfortunes that assail our bodies, we can, however, hold sway over how our soul responds to those sorrows.

"Don Quixote" was born of that revelation. In the prologue to Part 1 of his novel he tells the "idle reader" that it was "begotten in a prison, where every discomfort has its place and every sad sound makes its home." Whether that jail was in Seville or in Castro del Río, this recurring experience of incarceration forced him to revisit the Algerian ordeal and put him face to face with a dilemma that



LEANDRO CASTELLA

'Don Quixote' was born out of a defining experience: a five-year captivity by pirates.

he resolved to our joy: Either succumb to the bitterness of despair or let loose the wings of the imagination. The result was a book that pushed the limits of creativity, subverting every tradition and convention. Instead of a rancorous indictment of a decaying Spain that had rejected and censored him, Cervantes invented a tour de force as playful and ironic as it was multifaceted, laying the ground for all the wild experiments the novelistic genre was to undergo.

CERVANTES REALIZED THAT we are all madmen constantly outpaced by history, fragile humans shackled to bodies that are doomed to eat and sleep, make love and die, by the ideals we harbor. To put it bluntly, he discovered the vast psychological and social territory of the ambiguous modern condition. Captives of a harsh and unyielding reality, we are also simultaneously graced by

the constant ability to surpass its battering blows.

Those of us reading "Don Quixote" in 1973, in an embassy we could not leave, surrounded by soldiers ready to transport us to stadiums and cellars and, ultimately, cemeteries, responded viscerally to the novel. That spontaneous exaltation and practice of liberty, both personal and aesthetic, was inspiring. This faith was epitomized by a passage from Part 2 of "Don Quixote" that moved us to tears.

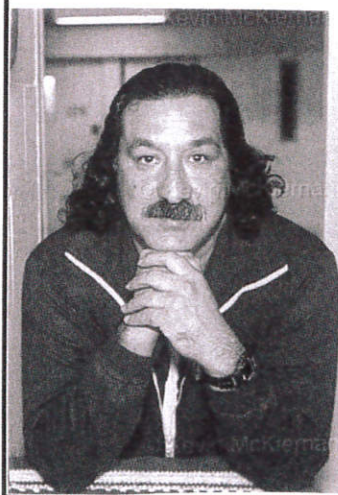
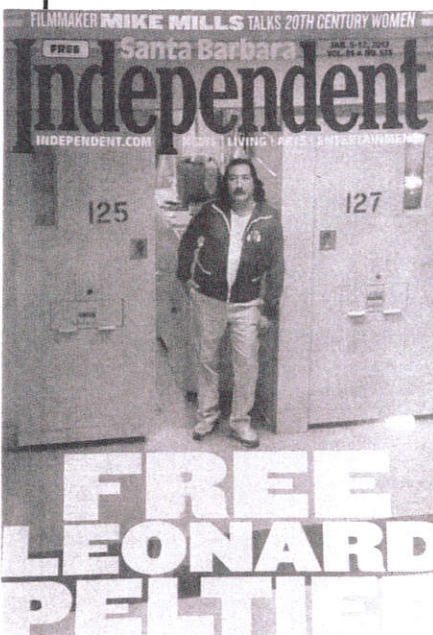
Sancho Panza has been made governor of a fictitious island by a frivolous duke. The lowly squire proves to be a far wiser and more compassionate ruler than the noblemen who mock him and his master. One night, doing the rounds, he comes upon a young lad who is running away from a constable. The boy gets cheeky, and the ersatz governor sentences him to sleep in prison. Infuriatingly, the prisoner insists that he can be put in chains but that no one has the power to make him sleep: Staying awake or not depends on his own volition and not on anyone else's commands. Chastened by the lad's independence, Sancho lets him go.

It is an episode that has stayed with me. If I recall it now, it is because I feel it contains the essential message Cervantes still has for today's desperate humanity.

True, most of the planet's inhabitants are not in prison, as Cervantes so often was, nor do they find themselves confined within walls, like the revolutionaries in the Argentine Embassy. And yet we live, as if captured, in a time of violence and inequality, greed and stupidity, intolerance and xenophobia, marooned on a planet spinning out of control — like lunatics sleepwalking toward the abyss.

Cervantes died 400 years ago, and yet he continues to send us words — like the wisdom of that boy threatened by Sancho Panza — that we need to meditate upon before it is too late. Nobody has the power to make us sleep if we don't wish it ourselves. Cervantes is telling us that our besieged, besotted, captive humanity should not lose hope that we can awaken in time. □

ARIEL DORFMAN is the author, most recently, of "Feeding on Dreams."



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Future Meetings

February 17-19, 2017: Cape Haze, FL

June 23-25, 2017: Montreal, Quebec

October 6-9, 2017: Greenbrier, WV



The RoundTable

Steve LaCheen

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A cautionary tale about the fragility of democracy, it is an alarming, eerily timeless look at how fascism could take hold in America. Written during the Great Depression, when the country was largely oblivious to Hitler's aggression, it juxtaposes sharp political satire with the chillingly realistic rise of a president who becomes a dictator to save the nation from welfare cheats, sex, crime, and a liberal press.

