



H. Ward Streett

Here Come the Judge

by Thomas Fleming

It is the worst kind of nightmare, to wake from a bad dream into a worse one, with the sickening realization that you are condemned to run, like the incredible shrinking man, through an infinite regression of worlds, each more terrifying than the last. My first dream last night was elegiac: a visit to my desolate hometown, where there was no familiar face, no word of welcome. A faceless voice whispered to me: there is no place on earth that you can call home.

I “awake” into the dismal predawn grayness of a November day in northern Illinois, knowing that the shadow will not lighten for several months. At breakfast I pick up the local Gannett paper and see the face of the leader staring at me. Here in the Rockford nightmare, it is not Bill Clinton or Mayor Charles Box or any elected official who cracks the whip and grinds the peasants, but an appointed potentate named Michael Mahoney, who is content to be called “the Judge.” His picture is everywhere—in the newspaper, on television; it is a face bloated with arrogance and contempt.

Today, the Judge has made himself the lead story by issuing a decree that local property owners will be assessed another 12 percent (making a total of a 17 percent increase this year), to pay for his favorite sport: a game called musical schools, in which children are bussed around the city, schools opened and closed, academic programs turned upside down and inside-out. The winners—the students who learn the least—are given guaranteed jobs at Burger King, but the Grand Prize (only African-Americans need apply) is an all-expense paid lifetime (Food Stamps included) in a federal housing project of your

choice. The Judge’s personal motto is borrowed from one of his predecessors: the power to tax is the power to destroy, and he will not rest until he has destroyed the city.

The Judge’s chief collaborator—a rich Chicago lawyer who has declared himself the counsel for a class action antidiscrimination suit—will probably think the decree does not go far enough, and at some point he will inevitably enter in another plea, which will cost the homeowners almost as much as the decree itself, and so it will go on into the next millennium. By then the Judge and the Lawyer will be residing in the Dominican Republic or some other place where the living is easy and police protection is cheap.

The Judge (with help from his many colleagues on the federal bench), in his desire to educate the population, has drawn up a new lexicon, in which democracy is defined as the whim of a federal judge, equality means no-quality, and arbitrarily imposed taxes are described as “certificates of participation.” In response to this latest judicial *fiat*, the school board will routinely file a motion to stay the order, as it has done so many times before, and, as the Gannett paper puts it, “Mahoney usually rejects the requests.”

In other nightmares, there are underground resistance movements, but not in this one. The African-American mayor of Rockford fully supports the Judge in his efforts to bring equity to local education—equity in this case meaning no education for all—and the City Council sit on their collective hands, whistling the “Battle Hymn of the Republic.” Every once in a while, a number of school board members try to protest or

complain, but they are quickly put in their place by the authorities in this one-newspaper town: the mayor, the newspaper, and the local business and community leaders who do not care what happens, so long as word does not leak out into the press. (A local committee of prominent citizens, after studying the school problems, concluded that the district needed to invest in more computers.) But word *has* leaked out, and Rockford is quite properly listed in the *Money* magazine survey of 300 cities as number 300: the bottom, the Pits, a sinkhole headed in the direction of East St. Louis, and deservedly so, because with the exception of Michael O'Brien (a lawyer who has contested the use of the school district tort fund to pay for "desegregation"), a radio talk show host (Chris Bowman), who is actually willing to discuss the facts in the case, and a group of concerned citizens, no one in Rockford is willing to stick his neck out and lead the resistance.

There is a remnant of the old republican regime, in the form of Congressman Don Manzullo, who has introduced a bill in Congress to prevent judges from levying taxes. But in this nightmare world of the late 20th century, no one has ever defeated the Judges. Even Ted Turner, a man brave enough to cut deals with communists and marry Jane Fonda, pulled a TV show on Justice Clarence Thomas, for fear of retribution.

The lawsuit which brought the Judge to power is as complex as *Jarndyce v. Jarndyce* in Dickens' *Bleak House* and many times more destructive. When I first moved to Rockford, more than one resident twitted me about the South. "Up here, we know how to handle race problems without stirring up a hornets' nest. We put the gifted and talented programs in predominantly black schools, but the programs are kept separate—in some schools they even have separate entrances. On the books, however, these are integrated schools." But, I protested, surely the minority members on the school board have complained. But, they told me, here was the beauty of at-large elections: no black could get enough votes to win a seat.

The school board progressed from arrogance to recklessness and decided to close down a school in a predominantly black neighborhood, contemptuous—as boards and superintendents always are—of neighborhood feelings. When the inevitable suit came, filed by a group calling itself "People Who Care," I was initially sympathetic with their complaints, although it was impossible not to realize where the city was headed. After years of wrangling and millions of dollars of expenditures, black students are not one whit better off, and the case is out of the hands of People Who Care and converted into a class action suit under the control of a lawyer who is sucking the lifeblood out of a city he does not have to live in. For that matter, the Judge lives 25 miles away in Freeport, meaning decisions about this future ghost town are being made everywhere but here in Rockford.

Like most Americans today, the people of Rockford may seem incurably stupid, but they are not evil. They want to think well of themselves and would not willingly do harm to anyone. Once they changed the method of school board elections, the whole question of equity could have been solved by the usual rough-and-tumble course of political democracy: pay-offs, kickbacks, and blackmail. Nobody would have been completely satisfied with the results, but the black neighborhoods on the West Side of town would have kept their schools and received more money, the white suburbanites on the East Side would have congratulated themselves on how liberal they were, and Rockford could have held onto the 296 spot in the places

rated survey.

It is probably too late to save this city. In the last election, voters reelected the Democratic mayor who supports, unequivocally, the judicial tyranny that is destroying Rockford. Both the mayor and the city council take refuge in the fact that the school system is not their bailiwick, but if the city's political leaders will not take a stand to defend the community, who will? So far, Rockford voters continue to elect politicians who duck the issue. They might just as well dump heavy metals into the water supply; the effect is the same: a slow and painful death of the community. When sheep vote, they inevitably elect the wolf who tells them there's no such thing as wolves, and they continue to feel good about themselves on the long ride to the slaughterhouse. Here in Rockford, there are no torch light parades or monster meetings held to denounce the school board or the mayor, no motorcade of buses to Judge Mahoney's neighborhood, and no all-night vigils outside his house. People Who Care is gone, and all that is left are People Who Couldn't Care Less.

Once upon a time in America, people like Judge Mahoney would have experienced the exquisite sensation of tar and feathers applied to sensitive skin that has never felt the sweat of a day's work. Today, federal judges can wreck whole communities (with the connivance of elected officials) without facing so much as an unfriendly editorial. And foreigners wonder why there is so little outcry against the militias that have sprung up all over the hinterlands. A better question might be: Who doesn't, in his heart of hearts, sympathize with them? Within the space of a few months, a plausible case has been made against the CIA for importing cocaine into Los Angeles, the Defense Department for covering up the accidental downing of the TWA jetliner, and the entire government for a concerted denial that soldiers in the Gulf War were exposed to chemical weapons.

Most Americans appear to believe their President is a crook and a liar, and virtually everyone in the United States has seen at least one conspiracy tape giving evidence of murder plots hatched in the White House against Vince Foster, Ron Brown, and a host of others. Most of us do not believe any one of them, but what difference does it make? When Presidents routinely order the murder of thousands of civilians in Iraq and Bosnia for no apparent motive, what would they not do when they had a motive? Who knows? More to the point, who cares? Only the not quite 50 percent of the eligible voters who showed up on November 5.

The response of our free press is the same as it has been throughout my lifetime: the Big Lie spilling across miles of ink-smudged columns and echoing down the electronic corridors of radio, television, and NEXUS. As one refugee from communism told me recently, at least with *Pravda* they knew how to get information by reading between the lines. Here in America, we cannot find anything out. This is paranoia, of course, but what explains the widespread paranoia—on both left and right—since the mid-60's? Sunspots? Nuclear testing? Or does it all go back to the day they took the Lord's Prayer down from the walls of the little red schoolhouse? It is small wonder if many Americans believe in black helicopters and secretly admire the men who take potshots at them as they fly over their property.

Not too many years ago, a nice Ohio boy went West looking for the frontier. After cowboyboying for a time, he took up trap-

ping and became one of the last of the mountain men. Accused of poaching and bullied by the government agents who came to drag him off to jail, he shot and killed one of them and evaded capture for months. Even after his arrest and conviction, Claude Dallas escaped from prison, and with the help of people who must have known he was a killer, he remained at large for a considerable time. In some parts of the West he was a folk hero, not because he killed a man, but because—unlike the rest of us—he was free.

“Our heroes have always been cowboys,” sang Willie Nelson, but not just cowboys: drifters and gamblers, hunters and mountain men, rustlers and vigilantes; unsociable loners from the real Daniel Boone, who hated the sight of a neighbor’s chimney smoke, to the fictional Huck Finn who lit out for the territories. American history is a long parade of desperadoes and outlaws, going back to the first American hero, Captain John Smith. On the way to Jamestown, Smith so antagonized the leaders of the expedition that they tried to hang him, and once arrived in Virginia, the former mercenary succeeded in seizing power and in defiance of the proprietors abolished communism and saved the settlement. Smith was the first American to make the choice: live free or die.

From Smith to the present, there has hardly been a generation of Americans in which there were not tough and resolute men willing to defy the law if it was the only way they could defend their way of life: Jacob Leisler in New York at the time of the Glorious Revolution; the Carolina Regulators—the first important vigilante movement; the militiamen at Lexington and Concord; the Shaysites and Whiskey rebels in the years after the Revolution; the filibusters who carved out the state of Franklin, and the drunken brawler, Sam Houston, who went to live with the Indians before he led the war for Texas independence. Most Yankees like to hear the tales of Mosby, Morgan, and Forrest, who risked everything to defend their homelands from the plague of blue-jacketed locusts sent to burn their farms, and even the enigmatic and bloodthirsty ex-Ohioan, Captain Quantrill, has his defenders.

After the war that ended the American Republic, more than a few Confederate officers and soldiers headed to Latin America. Some like General Joe Shelby took service with Maximilian; others ended up in Brazil, where even today they celebrate their Confederate heritage. Along the Kansas-Missouri border, where the war broke out in the 1850’s, many of Quantrill’s men found it difficult to settle down to the business of everyday life. Some of them had been unhinged by the crimes done to their kinfolk by the Kansas Jayhawkers who plundered and burned their way through Missouri.

There is a wild streak in the American character, but outlaws are made, not born, at least in Missouri. When war came, the Jayhawkers were backed by the Union Army. Brigadier General Thomas Ewing decided to round up and intern the female relatives of men thought to be Confederate guerrillas. Taken to Kansas City, many of the women were herded into a dilapidated building that Ewing had been told was unsafe. The building collapsed, killing four women, and maiming many others.

Instead of learning humanity from his mistakes, Ewing issued his famous General Order 11 forcing the immediate evacuation of all Missouri families from the border area, where their homes were pillaged and burned by the Kansas troops. For years afterward, it was known as the “the Burnt District.”

In revenge, Quantrill’s men attacked Lawrence, Kansas, and although none of them laid a hand on a single woman, they did

carry out the order to shoot any male old enough to hold a gun. Frank James and his cousin, Cole Younger, took part in the raid on Lawrence. Cole’s father had been a well-to-do Unionist, but this counted for little, when the Jayhawkers hanged the old man, trying to persuade him to tell where he had hidden his money, or when they burned down his widow’s house. Frank James had been captured early in the war and amnestied, but faced with an order to fight for the North, he joined up with Quantrill. His younger brother Jesse came later, after Union militiamen tortured his stepfather and mistreated his pregnant mother.

When the war was over, the Youngers and Jameses found it hard to resume normal life. (The best portrayal of the outlaws as restless youth is Walter Hill’s beautiful film, *The Long Riders*.) If the stories are true, Jesse was seriously wounded, trying to surrender. During the war years, Quantrill and Bloody Bill Anderson had taken to robbing Yankee banks as a means of financing their operations, and some of the boys saw no reason to quit practicing a profession they were just getting good at. They even took to robbing trains, a habit frowned upon by the Yankee-owned railroads who hired the Pinkerton Detective Agency to track down and kill the outlaws. The detectives did not succeed in getting the James brothers, but they did attack their mother’s house on January 26, 1875, hurling some kind of incendiary device through the window. The result was an explosion that killed Frank and Jesse’s nine-year-old half brother and blew off most of their mother’s right hand. There were those at the time who called it murder; some even complained when the Governor of Missouri bribed one of Jesse’s men to kill him. Living quietly under the name of Howard, the outlaw was shot by Robert Ford, “the dirty little coward that shot Mr. Howard and laid poor Jesse in his grave.”

There is no doubt that Jesse James was a criminal in every sense of the word, and yet his crimes were condoned or even praised by ex-confederate Missourians who saw them as an almost justifiable response to the oppressions under which they labored.

Joe Shelby, whose life had been saved by Quantrill’s men, stood up for his rescuers to the end of his life. Other ex-Confederates romanticized them. Writing in the *Kansas City Times* (September 27, 1872), John Newman Edwards (the James’s first hagiographer) described the men who robbed the Kansas City Fair in 1872 as “three bandits . . . come to us from the storied Odenwald, with the halo of medieval chivalry upon their garments.”

There were no haloes on Frank and Jesse James, but to understand their character and behavior during the long war against the Yankees—a war that only ended with Frank’s acquittal in 1884—requires an historical imagination that is not fettered by the Victorian prejudices of the 1870’s or the post-modern sentimentality of the 1990’s. The proper historical and cultural context for the Jameses and Youngers is not the Kansas-Missouri border in 19th-century America so much as the Scottish-English border in the age of the ballads—“Fight on, fight on, my merry men all,” cries the outlaw Johnnie Armstrong with his dying breath, and this spirit was if anything even more ferocious in the more purely Celtic areas of Scotland and Ireland.

The clansman’s loyalty was to his people rather than to someone so distant as a king, much less to something so impersonal as the state. A clan leader like Sorley Boy MacDonnell did not view his followers as so much expendable cannon fod-

der: they were his family. As Michael Hill relates in his magisterial account (*Fire and Sword*), Sorley Boy watched as Elizabeth's commander, the Earl of Essex, slaughtered the MacDonnell women and children who had been left on Rathlin Island. Writing to his bloody mistress, Essex gloated: "Sorley . . . was likely to run mad for sorrow, tearing and tormenting himself . . . and saying that he then lost all he ever had."

Sorley Boy MacDonnell was, in his own way, an outlaw, who defied both the King of Scotland and the Queen of England. His loyalty was to his people. The same can be said of Frank and Jesse, whose loyalty to their mother was part of their legend. Like many another Celtic outlaw, Jesse was a loner who praised God and was not afraid to do the Devil's business:

Jesse went to his rest with his hand on his breast
The devil will be upon his knee,
He was born one day in the Counth of Shea
And he came from a solitary race.

Whatever the truth is about the Jameses and Youngers, in legend they are the American Robin Hoods, defending their kinfolk and neighbors from an oppressive government that is controlled by the rich and powerful:

Jesse stole from the rich and he gave to the poor.
He'd a hand and a heart and a brain.

Jesse was an armed robber and probably a murderer; the same can be said of Johnnie Armstrong the reiver. Both were loyal to their kin and betrayed by government.

The stories are repeated, generation after generation, from Hereward the Wake to Robin Hood to Rob Roy MacGregor to Francis Marion fighting the savage Banastre Tarleton in the swamps of Carolina to the teenage heroes of *Red Dawn*: the outlaw hero is a man who defies authority to defend his people. The logical consequence is obvious: for there to be a Robin Hood or a Jesse James, there must first be a people. That is the question for us as Americans: Are we—were we ever—a people?

The conflicts that culminated in the War Between the States have never gone away, and they live on in the sectional, religious, and ethnic quarrels that are erupting every month: in Los Angeles, in New York, and most recently in St. Petersburg. Underneath the surface there is another conflict, more serious even than the apparently never-ending quarrels between North and South, black and white: the struggle between the rubes and hicks who work out here in the heartland and the city slickers and foreigners who own the government. Most recently it has taken the form of a culture war, between sectarian evangelicals, at one extreme, and the corporate American culture of infidelity and perversity, on the other.

This latest episode in the struggle between the country and small town hicks that constitute the American people and the city slickers who exploit and rule them has no coherent form, because, unfortunately today, the only public debate is between the radical slickers who want to tear down the last vestiges of decency and explode the last standing chunks of rubble that testify to our lost civilization and the more moderate slickers who claim to be the only legitimate spokesmen for the hicks. Even the Christian Right is dominated by epicene and enervated leaders who sold their followers to Bob Dole and kept Ma

and Pa Clinton in the White House. If our only choice is between Mr. Reed and Ms. Rodham, between the *Village Voice* and the *Weekly Standard*—we had better all light out for the territories.

One hundred and fifty years ago, when Rockford was on the frontier, the local people suffered under a different kind of oppression: a local gang of rustlers with influence in high places. When the decent elements of the county caught up with the rustlers, they shot several of them and drove the rest out of the area, and when the newspaper condemned the action, they burned down its office. Those were different men and different times, but one thing has not changed: the need for local self-reliance.

For their current nightmare, from which there is no waking, the people of Rockford can expect no outside help. It is up to them to make what they can of their town. Rockford's problems did not begin with the People Who Care lawsuit, but with the entrenched indifference of the People Who Couldn't Care Less. The schools were never any good in Rockford, and no one cared about them until the lawsuit put the school district in debt and raised property taxes. When Illinois passed a law granting home rule to cities that wanted it, Rockford voters turned it down in the belief that home rule would mean higher taxes. A city that will not rule itself should not complain when others do the job for them.

If the people of Rockford—Swedish and Italian, African and Mexican—ever discover that they can be a real city, a community of communities, they can band together to make Judge Mahoney's life miserable, turn out the politicians who refuse to fight, reject all the counsel offered by "professional" educationists and community leaders, and once again take responsibility for their own lives and their own city. If the people of Rockford—who are exactly like the people in other American cities—cannot muster the spirit of community outlawry that will be required, if they are to resist judicial tyranny, then they had better be very clear in their minds that the smaller ethnic communities within the city will not be so timid. When the ties of common interest and citizenship are loosed, all that remains, to bind people to a place, is the ancient gravity of blood and race. ◊

LIBERAL ARTS

JUDICIAL IDIOCY ABROAD

The Enborne Lodge special boarding school for students with learning disabilities in Newbury, England, is receiving £650,000 a year to look after one student, the *London Weekly Telegraph* reported in October. Seventeen-year-old Wayne Richards has been at the school since age 11 and is now not even taught there, yet the school employs 38 teachers, care assistants, and other staff to take care of him. The Lambeth Council, which runs the school from London, marked it for closure three years ago, but the process has been blocked by a judge and legal wrangling by the boy's parents.

Something Like Waco

The New Federal Police State

by Samuel Francis



About a year after the raid on the Branch Davidian compound in Waco, Texas, by the Bureau of Alcohol, Tobacco, and Firearms, I was invited to take part in a discussion of the Waco incident on a program on the National Educational Television network. The program was a call-in show, and after my hosts and I had recounted the facts of the Waco raid and its aftermath, I was struck by the remarks that several callers from various parts of the country had to offer. Some of them claimed to know or to have heard about similar incidents in which local, state, or federal law enforcement agencies had staged armed raids on private homes or businesses, without adequate proof of wrongdoing by those against whom the raids had been mounted, and with results that often left innocent citizens injured or their property and rights violated. Although neither I nor my hosts on the TV show had heard of these incidents and to this day I have no way of verifying what the callers were reporting, it began to occur to me then that Waco was perhaps far from being an isolated case. Not too long after the show, however, news of just such mini-Wacos began to creep into the light of day.

The television show on which I appeared was filmed in April 1994. Four months earlier, on January 10, 1994, officials of ten different organizations concerned with civil liberties or Second Amendment rights (including the liberal-to-left American Civil Liberties Union and the conservative Citizens Committee to Keep and Bear Arms) had sent an eight-page letter to President Clinton. The letter detailed several cases of what it called

“widespread abuses of civil liberties and human rights” and a pattern of “serious abuse” of the law or proper police procedures by federal law enforcement agencies—the ATF itself, but also the Immigration and Naturalization Service, the Drug Enforcement Administration, the Bureau of Indian Affairs, and the FBI. The cases included the Waco assault as well as the attack on Randy Weaver at Ruby Ridge, Idaho, in August 1992, but the letter also discussed several other incidents that were generally unknown to the public and to this day have not received the public attention they deserve.

The letter noted that “federal police officers now comprise close to 10 percent of the nation’s law enforcement force” and that “some fifty-three separate federal agencies have the authority to carry firearms and make arrests.” Arguing that the cases reviewed involved abuses such as the “improper use of deadly force; physical and verbal abuse; use of para-military and strike force units or tactics without justification; use of ‘no-knock’ entrances without justification; inadequate investigation of allegations of misconduct; use of unreliable informants without sufficient verification of their allegations; entrapment” and several other improper or illegal procedures, the letter called on the President to “appoint a national commission to review the policies and practices of all federal law enforcement agencies and to make recommendations regarding steps that must be taken to ensure that such agencies comply with the law.”

More than a year after the letter was sent to the President, I was told by one of its signers that no response had ever been received, and obviously no such national commission has ever

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