

Ed Firmage maintains a website at www.edfirmage.net and his most recent writings can be found at www.oneutah.org.

THE TEXAS RAIDS: THE ALAMO DEFENDERS, CIRCLED AROUND SARAH, SHOOTING AT A METAPHOR

Let me simply say that we are now exactly in a perfect storm, where United States v. Reynolds meet Loving v. Virginia meet Lawrence v. Texas meet "Sarah" v. ...well, we're not quite sure who. Sarah v. Texas? Sarah v. United States? If Lawrence is to gay and lesbian brothers and sisters; and to polygamists, what Brown v. the Board was to people of color and ethnicity, as I believe it to be, this indeed is a time of legal revolution. Not to put too fine a point on it, as Dickens would say in Jarndyce v. Jarndyce, the eternal feeding trough for lawyers through generations, gays and polygamists are in bed together. Along with those of us who are serial monogamists or anyone like me, and Douglas and Black, who don't want the state, the police, under the marital or any conjugal bed.

Please colleagues, don't forget procedural due process. I stated this circumstance as best I could, in much better days, in the Reynolds Lecture, Ends and Means in Conflict. This was published in several law reviews and religious journals, circa 1987. Our fellow citizens hate us for these laws that seem to them to be trivia: protecting a murderer by having taxpayers pay the fees of defense counsel. And protecting whatever is left of the Fourth Amendment, in this manic lawlessness of this administration, and their lackeys on the bench.

If Texas police can invade an FLDS Temple, have absolutely no doubt that they can do the same thing in Salt Lake City. Or New York. Or Los Angeles. Any of you who give a tinker's damn about your own synagogue, mosque, temple, chapel, parish or ward, take notice. As W.H. Auden warned in the opening days of World War Two, writing as I recall in New York as Hitler's armies swept into Poland, you're next. If you don't protest when the state comes for the Roman Catholics. And you don't care much for Protestants. And you're really not interested in the aristocracy in the military. And you never liked big industrialists either, then don't be shocked as the shock troops knock on your door. We know this is next. It always has been. Insanity is defined as doing the same thing many times and still you expect a different result.

St. Thomas More lost his head. (As Rudyard Kipling, who died as I was born, noted, if you can keep your head when all around you are losing theirs, you'll be taller than they are.) He had been sheriff, like our Texas brother; but More was sheriff of London and later Lord Chancellor, circa fifteenth and sixteenth century, when Cardinal Woolsey introduced him, fatefully and fatally to Henry V!!!!. A young rogue, a varlet, an opportunist, was seeking position with St. Thomas More. More, of course, was Roman Catholic and remained so, in all faith and fervor, to the end. He finished the race, as St. Paul so often analogized to the Olympics. Roper, a good man and close to More, told him that he should do for the royal toad or he would surely have More's head. St. Thomas said that no harm had yet been done. Thomas didn't believe in pre-emptive war. More said that procedural law, like large oaks, peopled Great Britain, Ireland and Wales from stem to stern. "Would you have me tear asunder the great forests of procedural protections?"

"Yes, I would tear down every tree in England to get" the toad. " Then where would you be, Roper, when the winds roar, where would you hide?" Well, this was St. Thomas More.

A warning about metaphors. We kill each other for and by metaphors. We launch Crusades with entire civilizations in murderous self-slaughter. We excommunicate over a creed that has god in a bottle. From the tenth through the next several centuries, Crusaders slaughtered Roman and Greek, Catholic and Orthodox. And millions died, between civil war in Christianity and holy war (what a oxymoron) between Muslim and Christian. What a waste. Our local version was called the Mountain Meadows Massacre.

So the Judge in Texas says "Sarah" is a metaphor, even though she likely doesn't exist. Good God, have we all gone nuts? Is it something in the Water in Texas? We have Bush in the White House and a very able woman trying her best in a very difficult case. But Due Process of Law hasn't been repealed by this administration, just ignored. I hope for the resurrection: the resurrection of the Fourth Amendment searches and seizures protections. In the First Amendment and freedom of speech, including religious speech--like prayer anywhere and anytime we wish and without guards of any faith monitoring them, to see if we lie to God. I believe in freedom of religion. Don't assume we are all brain dead, judiciary, telling us this "isn't about religion." Again, it must be the alkali in the Texas water. I truly pity this able judge in this Solomon-like cutting of the babies in half. And then quartering them, cutting them off from their mothers, not to mention their fathers. Nursing mothers denied their babies. This sounds to me like the slaughtering of the innocents. And of course I recognize that the innocents are being terribly hurt and surely permanently damaged by people on both sides of this slaughter.

I said "both sides" of this slaughter of the innocents. I misspeak. We must remember, daily and then again, that there are as many sides of this centuries-old story as there are people. The murderous slaughter of the truth by CNN and Fox, in their 24/7 repetition of their mangled one-dimensional bit of truth with a thousand parts error, mirror their lethal progenitor, in one and only one respect. Joseph Goebbels, head of the Ministry of Public Enlightenment in Germany in the thirties and forties of the twentieth century, gave us the heart of the problem. Tell a lie often enough, long enough, and everyone, finally, accepts it as true. **BY NO MEANS AM I EQUATING THIS STORY, THIS HUGE TRAGEDY, AS IF THIS NATION WAS ANALOGOUS TO NAZI GERMANY.** I know as I state this disclaimer, that I will face a pasting in letters to the editor, not a few from the Bar. Nevertheless, the principle and the principle only, of telling a lie until it is the accepted truth lies at the heart of advertising and the political process that this year, is nastier than I have ever seen, in life and in history. In canon law and scriptural history leaders were chosen by casting lots. How much better than this utter debasement of American democracy.

We must realize that there are several major groups of Mormon polygamists, each hugely different from each other. All are based, really, upon a notion that surely possess a huge truth. Hundreds of millions of people on every continent practice polygamy. And monogamy and every variant and position known to humankind. Criminal law will never change this.

BUT criminal law can do what I believe every member of this panel believes, and insists: there must not be physical or mental abuse of anybody, particularly the innocents, our own children.