

FOURTH REICH RISING

A CITIZEN'S VIEW OF AMERICA'S LITIGATION LAWYERS



RANDALL ENOS

BY THOMAS N. BURGESS

The more disquieting histories of World War 2 oftentimes precede and portend that event by way of the ordinary. Set in the 1930s in Germany, they are authored by noncombatants and penned with the objectivity needed to quaff a beer, meet a lover, or have a suit or a cuckoo clock mended. The writers doubtless illumine an ill-fated people. But they are unsure of what the luminance reveals, since public sentiment seems so complacent and so ordered. And though daily life concerns *them*, it haunts *us*. The political scene is ominous but the routinism of these chroniclers makes it more so. Among the Americans present in that time and place, Ambassador William Dodd in his *Diary* and William Shirer in his *Berlin Diary* are fine cases in point.

Mainly, they premonish the readers. The Germans are there under the storm clouds, swept day by day further under the jackboot. But aided by time, we are better tutored to ponder the events, view the bulletins, and anticipate the repressions. And when witnessing history thus — and musing on the public acceptance — it is then, I'm convinced, that the phrase "those poor dumb bastards" is put to its most apparent use.

This is not, however, its only fitting use. My American fellows and I could well be the *poor dumb bastards* of our new century. We are living under similar storm clouds and pursuing our lives beneath the shadow of a very pervasive and insidious jackboot mentality. Like the citizens of Hitler's pre-war republic, we are also similarly occupied — and accepting of its presence. Few of us are enraged to challenge it and with our failing to do so, the worst kind of history may repeat itself, as both our sensibilities and our economy simultaneously fail us.

The prospect seems transportable through time — despite warnings that emanate from those 1930s warnings; namely that Olympian parades and ethnic flummery aside, it was authoritarianism and fear (and a perverse conceptualizing of economic goals) that worked to keep a tight lid on the German consciousness. And much like Germans confronted with the *Schutzstaffel*, our nation, as comprised of its citizenry, is spending an excess of time in abject fear of certain lawyers. Like the Brown Shirts, the Black Shirts, and other factions of the Reich, litigation lawyers are today using both greed and fear to expand their dominance of our economy — and their doctrinaire grip on our judgments. They accomplish this while concurrently promoting themselves as the ultimate stewards of democracy — indispensable to every family in this land lest that family is attacked by others of their trade. It is the perpetuity ploy of martinets. And given the controlling tie between the lawyer trade and societal precepts, it is totalitarianism in the making.

So with the vesting we've made in our nationalism, we should be troubled. Not until now was it intrinsic to our national selves to be fearful of, and subdued by, some coercive uptown professional's club. The American experience was to be contrasted with the repressions everywhere — and our law and its practitioners were to be a comfort. But they increasingly are *not* since part of our American tenure was to make some (honest) equity, keep and enjoy a bit of it, and still have *presumably* natural interchange with our countrymen — this without the dread of licensed knights-errant who see liability revenues in every human endeavor and are allowed to daily harness the courts as it suits their litigation machine.

Lending substance to this fear, a lawyer in North Carolina flatly stated to me that he maintained an "equity redistribution retirement business." He then elaborated by telling how, by way of random lawsuits, he simply took money from retired people with savings and awarded it to other folks who had either less equity than the defendants — or anticipated having less for *their* retirement. His view of himself bore a corrupt righteousness but, in today's United States, he was no less empowered for it. In fact, his endowment made him quite fearsome — and I might add, ever more creative and unrestrained. Predictably, the fulcrum for his many claims originate in the things that older people fumble in life — resulting in a claimant's superficially dented car or a claimant's chipped tooth or a time lag that cost the claimant a moment's dignity, a little identity, or some ephemeral option for true happiness the claimant was working on. The prospects are endless and, by hook or crook, the lawyer extorts his bucks and keeps his caseload in motion. I actually had some rejoinders for him — comments referencing Kafka and Hitler and a few other charmers. He laughed. Fingered his diamond cufflinks.

However, like the citizens of the Reich and their view of fascists, I can't say too much now, can I? I could get sued, you know! Worse yet, I might someday need a lawyer as the result of getting sued — and *then* where would I be? In further articulating this fear, Americans are no longer in the habit of saying, "I am afraid of the law." Rather, they say, "I am afraid of lawyers." The former statement implies: "I am mindful of the rules here — as I understand them — and I doubt it that it's wise to go against them." Expanded, the *latter* statement translates: "I am fearful of what lawyers will make of a malleable system of rules and how they will forcibly reconstruct those rules in order to take my savings away from me."

Today, Americans envision civil law as embodied by lawyers — most often, litigation lawyers — and this notion sustains a very legitimate fear in this country. In the foregoing sentiments, lawyers are no longer viewed as simply affiliated or synonymous with the law. Rather, it is now assumed they have replaced the law. Free-contingency has legitimized the fusion

of greed and belligerence — both traits released into a realm of infinite possibilities. As a consequence, these lawyers are now the proprietors of huge fault-allocation factories — and our equity and honest judgments are shipped to them as unrefined goods to reprocess and mark-up. Additionally, as litigation lawyers become an ever more disproportional — and disproportionately wealthy — segment of our society, they become the errant and corrupt faction they have long faulted other groups for being. They simply take what they want and, although we have long understood that the law was ever with us *to practice*, we also assumed that it was no one's to just *take*. That happens only when totalitarian states are formed.

Without question, their burgeoning population is fuel for their arrogance. And if you want to see where, early on, it all gets nurtured, go to most any large university and look for the biggest building there. Lawyers make visible alumni. (*Try getting them to endow a school of education, nursing or social services.*) One stroll through a law school and you feel like you are wandering the halls of Himmler's Wewelsburg Castle, watching the young SS hatchlings as they stroll from class to class, feeling their empowerment over those who teach children, tend the sick, or maybe make shoes or build homes. As to their enrollments, the schools are now charged to crank out apprentice predators in the way Hitler charged his populace to produce Reich-babies.

One day last spring at a west coast university, a professor of education had formally reserved a common area in the law school. Due to numerous campus events, her regular classroom had been appropriated and she needed only an hour or so to complete her curriculum for that day. Her students were displaced but managing. They were among those priceless young Americans who were earning their credentials to enter the demeaning hell of our public schools; to try to teach America's children and to try exposing them to a positivism and a humanness that society is not quite providing at present.

At one point in her lesson a law student came upon the scene, taken aback by the idea of this space being occupied. Displeased, he approached the professor, interrupting her lecture and saying, "Why are you here? How long are you going to be here?" Straightaway the teacher tried to counter this stridence with calm — and replied that she had arranged for the area due to campus circumstances. When the young lion got less reasonable still, the teacher explained what they were doing and mentioned that *he* some day might have children in public school. To this he stared blankly for a moment and then said, "My children will never go to *public* school!" He then turned smartly and marched off at a clip.

Some months before this incident, another education professor stated that with our present litigious environment, up to 30% of her department's time-intensive curriculum is now displaced — not by techniques in the nurturing of young minds — but by issues regarding liability. So let's establish who is raping the education of this country — as they have plundered all our other institutions. With their extortion of public schools, lawyers can afford the private schools to which that obstinate young lion alluded — additional to all the other things they can afford.

To a degree, the attitude could be written off. Aside from their youth and their contentious view of the world, law students, after all, are compelled to be business folk — of a sort. They are groomed to be sleek and swift entrepreneurs and, in theory, this should *not* be at variance with the American enterprise ethic. The greater problem comes when their arrogance is compounded — not only by their grip on the lawmaking process but by their explosive numbers relative to all (productive and constructive) entrepreneurs. It portends the things lawyers will do to American enterprise and ultimately to all other facets of American life.

In order to illustrate what they will do (and are doing) I will use the phrase "pushing the envelope." It's one of those zippy little idioms credited to both NASA and yuppie vernacular, but it doubtless speaks to our energies and our innovation. It is supremely entrepreneurial. So transporting it to the American marketplace, I could theorize for instance that when an agronomist "pushes the envelope" we hopefully get better food and assuredly *more* food. Likewise, when a biochemist pushes the envelope we get *more* beneficial medicines along with still *more* of the trivial ones — in truth, *both* being good for the market. Architects, builders and stripteasers can all, by pushing the envelope, give us *more* of their talents which produce *more* of their product — and also *more* unexpected variants, which then hopefully find still *more* beneficial applications.

But what occurs when a lawyer pushes the envelope? Well, we can get more laws numerically of course. But of these can come ever more variants that, though immediately beneficial for some claimant, are societally corrupting. They either entrap us because we can't stay abreast of law innovations or victimize us because lawyers arrived at a whole new legal concept as we stood in the dock, being sued. And like other entrepreneurs, lawyers get colleague applause for the inventiveness. What defendant/society gets is akin to what the Pentagon sells: a lot of innovative "equalizing" that we presumably need for one hell of a lot of money — except, upon closer examination, the military comes up as being easier to turn one's back on. Our generals don't attempt a run on *each* of our wallets — at least not on a basis that could break us *individually*. And despite their specialized and cryptic dealings, their "creativity" is still monitored and overruled by citizens other than themselves.

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