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24 October 2002

Legal Affairs
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Afterthoughts, "After the Rainbow" (Sep.-Oct. '02.)

I tipped *Legal Affairs* on the 2002 'Rainbow Gathering' in Michigan, and plugged in much source info & effort -- hoping for lucid reportage on the civil rights and policy controversies swirling around this event, and building up for years. But that didn't happen.

Instead the writing took the low road, leaning on hippie-dippie caricatures & druggie slurs, as if the Gathering were just a big spaced-out Disco-in-the-woods -- disregarding its meaning as a spiritual pilgrimage & social experiment, the diverse participants, and the First Amendment principles they enact and understand better than lawyers. Then parroting official postures, the article goes blithely gullible and devolves into *'He Say-She Say'* crosstalk more fitting to a pop tabloid than a serious journal of legal issues.

The photo caption alone is a litany of errors --*"The Rainbow Family leaving the ghost town in the Ottawa National Forest after the Forest Service closed the area on July 4th."* -- Wrong:

~ The 'Special Closure' was enacted on June 23, right after gatherers arrived. It was the first use of this power against an annual Rainbow Gathering to prohibit access to the chosen site, including the only large meadow suitable for assembled prayer and ritual.

~ The Choate site is no 'ghost town' with old buildings & relics subject to archeological harm -- just a wooded landscape with buried foundations, overgrown railroad grade, and a few 'artifacts' mostly discarded from logging and other activities long after the town was abandoned and demolished.

~ The image shows gatherers *Entering* the area, crossing the river to pray on July 4th, after USFS Officers backed down from threats of confrontation: A U.S. Attorney showed up and told them that people praying on this land posed no threat, and his office would not support police actions tostop them. Still, cops on horses & ATV's stayed all day in close surveillance, and cited folks anyway.

(Do police stake out your church?)

~ The handy tag misleads: "The Rainbow Family"does not exist, in fact or theory. The common usage is widely confused, and exploited by the Feds to infer that some aggregate 'group' entity convenes or comprises the gathering -- but there is none, it's just unconnected folks who show up. This is not an arcane distinction... it has everything to do with the nature of consensual assembly, and this right as a personal guarantee under the Constitution.

The article hopscotches pithy quotes & tilted hearsay, but never lands on the defining events and issues. A brief letter can't fill the void of factual analysis or rebut the blunders line-by-line, so maybe it does best by rhetorical questions in retort, going where it should have gone --

•• Did the Choate Closure vex constitutional law as an agency action on concealed factual grounds, summarily creating a new criminal offense ('being' there) and insurmountable burdens for any legal challenge? This fate befell a lawsuit filed in Marquette on July 1 (Sedlacko v. USFS, # 2:02-cv-97): If claims must first prove this action to be bad science & policy *before civil rights issues are even reached,* and have no chance of timely relief... can the government now use broad Closure powers arbitrarily to trump First Amendment rights on public land?

•• Why was a ‘Delegation of Authority’also enacted on June 23 -- shifting administrative powers to ‘Incident Command’ with U.S. Special Agents in control, turning a peaceable assembly into a ‘National Incident’ subject to enforcement as the main mode & motive of Forest Service policy, and disabling cooperation with qualified Rangers in broader public interests?

•• How could USFS officials allege groundwater pollution on-site if there was no evidence of runoff impact or threat to deep-aquifer wells... and in fact the Closure did most to increase water & health risks, forcing camps from higher ground & suitable soils to the damp clay swales east of the river? Gatherers fixed a few problem spots and left the site clean, restored, and recovering by late July, as always. By definition, transient or marginal effects are not *“environmental damage”...* so are these thresholds altered for gatherings, to inflate alleged ‘impacts’ and agency pretexts?

•• What was the policy intent of targeted law enforcement tactics, including campsite invasions, roadblocks & traffic gauntlets, illegal searches & high-profile misdemeanor arrests? Some abuses so outraged the Michigan Governor that he pulled the State Police off the site. Where hundreds of petty citations were issued to set upindefensible charges in a distant court, undue fines, and many federal warrants, what are the due process & equal protection impacts upon those who travel for expressive purposes, and upon ‘Rainbows’ as a minority creed?

•• What does it mean that it was declared an “Illegal Gathering” because ‘somebody’ had not signed a permit, so that *Everybody* was subject to prosecution? As always, people were willing to meet high protective standards, but were denied alternative ways to comply in substance: What if the ‘Group Use’ permit (36 CFR ¤251.54) was knowingly contrived to put expressive assemblies outside the law, trigger police presence, and trap participants in a vague, vicarious criminal offense?

•• ‘Rainbows’ have won prior permit cases and key roadblock & harassment fights... so why have judges backed the Feds in recent ‘Group Use’ rulings, how have they dealt with the issues, or Not?... Strangely the best case is hung up on appeal in Kansas City (U.S. v Nenninger, 98-3047), the ruling stalled for over2 years, and elsewhere judges have evaded the core questions:

What if there is no “Group” able to act as permit Holder, no agent able to sign without fraud, and criminal jeopardy is inescapable? How can this rule be applied as a *“reasonable time, place and manner restriction”*if in effect such expressive events are ‘singled out’by their inability to comply, and individual standing under the First Amendment is nullified?

Clearly these are loaded issues of public law worthy of scholarly revelation -- not glib condescension from a reporter who breezed through for 2 days and left without the story.

No insight was raised on this revived folk tradition of gathering on the land, nor scrutiny of policy pretexts & grounds. And this episode did not end in July, but has kept unfolding in court cases that came out of this Gathering, will define it in future years, and must be part of the picture.

So a need remains for good journalism on these matters, and hopefully a niche in *Legal Affairs.*

peace & respect,

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