1-3-1986

Canton Oil Corp. v. District Court of Second Judicial Dist.

SUPREME COURT, STATE OF COLORADO

Case No. 85 SA 446

ANSWER TO ORDER TO SHOW CAUSE WITH STAY

CANTON OIL CORPORATION, a Delaware Corporation,

Petitioner,

v.

THE DISTRICT COURT IN AND FOR THE SECOND JUDICIAL DISTRICT and the HONORABLE SANDRA I. ROTHENBERG, a judge thereof,

Respondents.

Defendants Oene "Owen" Miedema and Gary MacLellan, through their counsel, the Law Office of Kathleen Mullen, P.C., hereby respond to the Order to Show Cause issued by this Court, on behalf of the District Court in and for the Second Judicial District and the Honorable Sandra I. Rothenberg, a judge thereof.

I. ISSUES PRESENTED FOR REVIEW

A. Did the district court act within its jurisdiction in granting defendants a new trial pursuant to C.R.C.P. 60(b)(5)?

B. Did the district court grossly abuse its discretion by granting defendants a new trial pursuant to C.R.C.P. 60(b)(5)?

C. Is the 60-day time limitation of C.R.C.P. 59(j) a jurisdictional limitation for deciding motions under C.R.C.P. 60(b)?

D. Has the petitioner failed to demonstrate irreparable injury or the lack of a plain, speedy and adequate remedy necessary to justify the original jurisdiction of the Supreme Court?

II. STATEMENT OF THE CASE

A. Nature of the Trial Court Proceedings.

This case involves a complex commercial transaction involving the sale and management of oil and gas properties between private corporations. Petitioner, Canton Oil Corporation, initiated this action against the Nordic/Seahawk defendants (Nordic Petroleum, Inc., Owen Miedema, Seahawk Oil Corporation and Gary MacLellan), and against Theelen and Partners based upon both statutory and common law theories. Defendants Nordic/Seahawk and Theelen and Partners counterclaimed and crossclaimed on common law grounds. The case was tried before a jury in January and February, 1985. The jury, on February 28, 1985, entered a verdict in favor of both Canton and Theelen and Partners. Judgment was entered against the Nordic/Seahawk defendants by the respondent district court on April 5, 1985.

1. Post-Trial Motions

The time for filing post-trial motions was extended by the respondent district court. On April 26, 1985, the Nordic/Seahawk defendants timely filed a Motion for a New Trial Pursuant to C.R.C.P. 59 and Brief in Support Thereof. As one of the bases for relief, the Nordic/Seahawk defendants alleged gross misconduct on the part of the jurors which was discovered subsequent to the entry of judgment. In support of their motion, the Nordic/Seahawk defendants presented to the court the following description of events which took place during trial along with supporting documents attached hereto as Exhibits A-E:

> These defendants would show that the jury's verdict was the product of passion, prejudice, and a general misunderstanding of the instructions. Specifically, it was reported to undersigned counsel by juror Gene Patterson immediately after the verdicts were read that several jurors were concerned about what appeared to be the apparent close relationship between the court and the undersigned counsel based upon what

Patterson called "the Hebrew thing." Patterson cited to undersigned counsel as a further basis of that the jurors' general discomfort with the fact that the court sustained so many objections made during the trial by undersigned counsel. Patterson also advised that the jury was uncomfortable about the procedural mechanism utilized by Hil Margolin, Esq., counsel for the Denver National Bank, whereby plaintiff's counsel was not permitted to impeach Herman Zueck with his earlier-taken deposition. Hil Margolin, Esq. is a member of the Jewish faith. This court, upon information and belief, is a member of the Jewish faith. Both counsel for the Nordic/Seahawk defendants are Jewish as well.

On Saturday, March 2, 1985, the defendant Owen Miedema received a package of literature and a bible game ("Beat the Devil") addressed to his son on 28 February 1985, the last day of the jury's deliberation, from juror Laura Tizzard. Copies of those materials are attached hereto and made a part hereof as Exhibit A. On 6 March 1985, Tizzard mailed to Owen Miedema another letter attached hereto as Exhibit A1. Not being content with merely sending literature to the Miedema home on two occasions, Tizzard apparently called Donna Miedema, Owen Miedema's wife. See affidavit of Donna Miedema attached hereto as Exhibit B. The information set forth therein is unquestionably demonstrative of an understood prejudice and bias obviating the necessary objectivity for a juror. It is also reflective of a state of mind of one juror, Tizzard, demonstrating an antipathy to the judicial process as a dispute resolution vehicle. Clearly this was not disclosed in voir dire.

The existence of a "Jewish issue" insinuated sua sponte by jurors was grossly improper and the breadth of its effect now obvious. The package and literature (Exhibit A) were mailed during the deliberation in this matter and before the verdict was delivered on 28 February 1985, according to statements provided by juror Tizzard to R. Jon Foster of Williams and Foster, investigator for undersigned counsel. See affidavit of R. Jon Foster attached hereto and made a part hereof as Exhibit C.

Tizzard was obviously evangelical in her furvor to the extent of not only calling the synagogue during jury deliberation to determine if "Miedema" was Jewish but also sending proselytizing literature and materials urging this "misdirected" Jew to see the light and come to Jesus as other Jews have done. Tizzard's preoccupation with Miedema's ethnicity and her

> admitted dislike for the resolution of disputes outside the church rendered her unfit to sit as a juror. Ironically, Miedema is not Jewish. See, generally, affidavit of R. Jon Foster, Exhibit C.
>
> After the verdict was announced, undersigned counsel and co-counsel Martin Berliner spoke with juror Gene Patterson who advised Nordic's attorneys that some of the women jurors, in Patterson's presence, expressed their feelings that there was "something going on" between the undersigned counsel and the court because of "the Hebrew thing" and that "Hebrews stick together." Patterson also advised that if questioned about these remarks he would deny having disclosed them. See affidavits of undersigned counsel and Martin Berliner attached hereto and made a part hereof as Exhibits D and E. Patterson did not deny having made those statements when interviewed by Foster (Exhibit C).

(Motion for Post-Trial Relief Pursuant to C.R.C.P. 59 and Brief in Support Thereof, pp. 2-4).

Both Canton and Theelen and Partners filed briefs in opposition to the Nordic/Seahawk defendant's motion on May 10 and 17, 1985 respectively. Subsequent to the filing of these briefs, the respondent district court initially scheduled a hearing on the Rule 59 motion for August 21, 1985, and then rescheduled it, on its own initiative, for October 10, 1985. The respondent district court later admitted that at the time it scheduled these hearings, it was unaware of the 60-day time limitation for deciding Rule 59 post-trial motions which has just become effective on January 1, 1985. (Oct. 10, 1985 Tr., pp. 10-11).

Neither counsel for Canton nor Theelen and Partners notified the court that it might lose jurisdiction over the Rule 59 post-trial motion by scheduling these hearings more than 60 days after the filing of the motion. Instead, after the 60-day time period had elapsed, Canton and Theelen and Partners filed motions in September 1985 arguing that the

60-day period for deciding post-trial motions under C.R.C.P. 59 had expired, and requesting that the court vacate the October 10, 1985 hearing on the ground that the motion had already been decided as a matter of law.

In response to these motions, trial counsel for Nordic/Seahawk defendants pointed out that defendants had sought relief under C.R.C.P. 59 in a timely fashion. The Nordic/Seahawk trial counsel also pointed out in this response that the literal language of C.R.C.P. 59 simply provides that post-trial motions will be denied after 60 days only if the court has taken no further action. In this case, Nordic/Seahawk trial counsel argued, the court had taken further action by scheduling hearings on the motion within the 60-day time period.

On October 2, 1985, the Nordic/Seahawk defendants filed a Motion for Relief From Judgment Pursuant to C.R.C.P. 60(b). In this motion, these defendants incorporated by reference the factual and legal bases set out in their April 26, 1985 Motion for Post Trial Relief Pursuant to C.R.C.P. 59 and Brief in Support Thereof. As an additional basis for relief under Rule 60(b), defendants cited the fact that the district court had failed to rule on their motion for post-trial relief under Rule 59 and argued that C.R.C.P. 60(b) permits the court to relieve any party for "any other reason justifying relief from the operation of judgment" when such relief is requested "within a reasonable time period." (Nordic/Seahawk defendants' Motion for Relief Pursuant to C.R.C.P. 60(b)).

2. Evidentiary Hearing on Post-Trial Motions.

On October 10, 1985, the district court heard testimony and legal arguments on both the C.R.C.P. 59 and 60(b) motions filed by the Nordic/Seahawk defendants. The court found explicitly that both motions were timely filed by the Nordic/Seahawk defendants. (Oct. 10, 1985 Tr., pp. 10 and 146).

The court, at the beginning of this hearing, admitted that when it scheduled the October 10, 1985 hearing on Nordic/Seahawk defendants' Rule 59 motion, it was unaware of the time limit set out in Rule 59(j):

MR. KRITZER: Your Honor, the motion has been filed under 60(b)(5) specifically requesting relief from the effects of the court's not having heard the matter within that period of time. We certainly feel that within the parameters of the Rule 60(b), that is an acceptable avenue for the Court to take, certainly through no fault of the litigants, your Honor.

THE COURT: No. I think it's the court's fault. I don't think it's the counsels' fault particularly. We set it routinely and didn't give it any thought. It wasn't brought to our attention that it had to be set any earlier, and it wasn't. And there are a lot of counsel pulled together on this matter. So it got set when it got set. I was not aware, frankly, that there was any time problem. So that's what happened.

MR. KRITZER: Your Honor, 60(b)(5) permits the Court to avoid the manifest injustice. It permits the court to avoid the prejudicial effect of an otherwise improper judgment.

In a case such as this, there is a manifest necessity that the evidence be brought forward and a rendering be made on the issues, on the pattern of gross and repeated attacks of jury misconduct. Again, I'm representing to the court we're talking about conduct on the part of perhaps as many as four jurors.

> If the effect of the court's ruling or order setting the matter beyond the 60 days is such that it resulted in injustice, 60(b) contemplates that the court has the authority in order to avoid that injustice.

(Oct. 10, 1985 Tr., pp. 10-11).

Because of its failure to decide the Rule 59 motion within the 60-day time limit set out in amended Rule 59(j), the district court denied relief under C.R.C.P. 59. (Oct. 10, 1985 Tr., pp. 128, 144). In doing so, however, the court explicitly stated that it would have granted the motion for a new trial under Rule 59 based upon jury misconduct had it had the opportunity to do so. (Oct. 10, 1985 Tr., p. 144). Then, based upon its own failing to decide the Rule 59 motion within the time frame provided by the rule coupled with the evidence of gross misconduct by the jurors in this case, the district court granted defendants the opportunity for a new trial under C.R.C.P. 60(b)(5). The district court's findings of fact and conclusions of law as stated from the bench are as follows:

> All right. The 60(b)(5) motion is granted. I want to make certain findings of fact and make certain comments, and I would appreciate the order within five or six days.
>
> Basically this case is a shame. It is really a shame because it was so well tried by counsel and cost so much money. Mr. Wu spent a fortune collecting his case. The witnesses testified and testified again, and counsel on all sides did an excellent job. It was a long trial. There were some personality disputes between counsel, but by and large, it went relatively flawlessly.
>
> When the trial ended and the verdict came in against Mr. Miedema and Nordic and Seahawk, I wasn't surprised at all. And my thought as a Judge is that they have no appeal whatsoever; this is one of the cleanest trials. There is simply nothing that they can say that they didn't get in. They got in everything. Mr. Miedema had his say, and if the case went down the tubes for Mr. Miedema, why, he brought it on himself and the jury disbelieved him, and it was a simple

case, and I didn't give it any thought. When I got the motion for new trial, as thick as it was, I barely gave it any thought, busy as this division is, thinking that this trial was so clean as to those parties, they couldn't possibly have error. How wrong I was and how surprised and disappointed I am and how sad I am for Mr. Wu and his interests that this is the result.

Now, none of the grounds other than juror misconduct mean anything to me legally. They don't hold any water, in my opinion. Maybe the Court of Appeals will disagree. But I do not consider them at all seriously. The jury misconduct in the case is fetid. This trial is fetid. I'm thoroughly disgusted with this jury. I'm ashamed of them.

This is the only jury I have had in almost six years on the bench that I feel ashamed about, and I'm going to issue a separate order to the Jury Commissioner certainly striking Laura Tizzard from the rolls of the jury, because, God forbid, if this should happen to any other litigants, I would feel responsible. And I will consider whether I want to request the Jury Commissioner to strike them all.

Well, what is a trial really? A trial is just an event that keeps people from killing each other. It's the highest form of dispute resolution we have, imperfect as it is. When people come to court, they have certain minimum expectations, and we know that trials aren't perfect. Judges make bad rulings. They take too long. It's an imperfect and impractical process really and in some ways very beautiful.

Mr. Wu comes in. He does not expect there to be any bias or prejudice because of his background. Certainly the Theelen people spent a fortune and time and effort to get their judgment. Mr. Miedema comes in from Canada, so on. But the expectation is that there, at least for that moment in the court setting, will be impartiality.

Now, as adults in an imperfect world, we also know that people have biases. We can't help that. And if we were to require that jurors be perfectly free of prejudice, we have jurors who have no racial bias, no religious bias, no ethnic bias, no economic bias, no sexual bias, we could not find a jury. That's obvious. So I'm not surprised at all to know that we have people on our jury who are anti-Semitic or racist or sexist or whatever they are. In fact, it doesn't particularly bother me because the expectation is that

in the potpourri of the oath and in the fanfare, in the glory of the courtroom with its 20-foot ceilings and in the continuity of the precedent, physical beauty of the setting, intimidating nature of the court process and the repetitiveness of the court instructions, that six people will act together to overcome their personal biases. That's all one asks for, really, not that we have a perfect jury. But that didn't happen here.

We have essentially a tainted and fetid process mainly due to the problems of Laura Tizzard. I think Ms. Tizzard means well. I don't think she harbors any personal bad feelings toward anyone, certainly not toward me or toward the lawyers here. But she is an evangelical person and a religious person; and her conduct, well meaning as it is, is horrifying here. She made remarks about my religion, according to Faye Chambers. Mr. Patterson stated to Mr. Kritzer, through affidavit Mr. Kritzer verified that Mr. Patterson said that several of the women jurors were concerned about the quote, Hebrew thing. Ms. Tizzard mails religious materials to Mr. Miedema's family member during lunch before the verdict comes in. She brought it with her before the jury deliberated. She carried it to the courthouse, possessed it, deliberated, mailed it before the verdict came in. The religious materials speak for themselves.

She was obsessed with Mr. Miedema's religious beliefs to the point where in the middle of trial, she calls a synagogue to inquire about Mr. Miedema's beliefs. Ironically, Mr. Miedema isn't Jewish. He's a Christian. But who can say here what effect that Ms. Tizzard's obsession with Mr. Miedema's religious beliefs had, especially because he is the, shall we say, all-out loser in this event. It wouldn't matter if he had won the case, although I suppose if he won the case, we'd still be here, but on the other side of it.

In any event, the appearance of impropriety in a juror calling a synagogue to inquire about a litigant's religious belief is awesome; and to ignore it would be to say to the community this is something that is to be tolerated in the court system, and that can't be done.

Ms. Tizzard concluded that Mr. Miedema was Jewish because he swore, Mr. Kritzer and Mr. Berliner weren't because they didn't swear, which again goes to Ms. Tizzard's state of mind. I don't believe, again, that

she had any personal bone to pick with Mr. Berliner, whom she referred to lovingly as the wart, or whatever.

In any case, I don't think she meant any harm, but I don't think that Ms. Tizzard had the requisite mental state to be a juror in this case, and, in fact, this case has the same odor as the Borelli case.

Ms. Tizzard told the investigator, Jon Foster, that she had heard Jewish slurs. She denied that here. I weigh credibility in favor of Mr. Foster.

Similarly, I resolve the credibility question in favor of Mr. Foster and against Mr. Patterson, and in favor of attorney Kritzer and against Mr. Patterson, and find that Mr. Patterson denied certain things here under oath that he previously stated. Maybe Mr. Patterson did it out of embarassment. He obviously did not want to come here today. But in any event, I believe that he made certain comments as set forth by Mr. Foster and Mr. Kritzer.

Ms. Metzger testified that after the verdict, she learned that I was in law practice with Mr. Kritzer, a most bizarre and irrelevant comment that causes me to wonder what else was said and corroborates the other things.

Now, I want to make a couple of comments that I think are very important. One, counsel filed a motion for a new trial April 26, 1985. Judgment entered in the case February 28, 1985. Now, under Rule 59(j) as amended January of 1985, the Nordic, Seahawk, Miedema motion for new trial had to be heard within 60 days, and it was not and, therefore, denied as a matter of law. I would have granted the motion for new trial had I had an opportunity, but I did not have an opportunity. It was denied was a matter of law. I'm going to grant it on this ground only.

The 60-day rule is going to present some problems for the trial courts which, of course, are no concern to the Court of Appeals, but I'll mention them anyway since I have their ear on other matters.

Extensions in this case were granted to counsel to file memorandum, and this issue was important enough that I wanted to consider all the law and the cases. I did that.

Extensions were granted to May 17, 1985.

On June 19, 1985, counsel called and set the motion for new trial at my request. The typical procedure is not to set motions for new trial until the memos come in. That way I can determine whether the issue is significant enough to warrant a hearing. So really in this case, the time was already practically up. The court had to rule by June 26, 1985, to meet the requirements of Rule 59(j), and I did not do that. All I did was inform my clerk to go ahead and set the case for hearing and had no issue with when matters are set.

Counsel did not inform the clerk that there was any time problem. As of June 19, 1985, the matter would have to be set for seven days. Presumably we could have done it had we known there was a 60-day problem. In any event, we didn't.

The matter was set for August 21, 1985, and reset by us, due to summer conflicts, until today. So the 59 Motion was untimely.

This leads me to the rather thorny legal question of whether or not one can grant a 60(b)(5) motion under grounds such as this where, as a matter of law, the Rule 59 motion is denied and the same grounds are set forth. I'm sure this matter will be raised in the Court of Appeals very quickly.

I suppose I have two alternatives, and I have chosen the one that I consider the most just and the most practical. One was to deny the Rule 60(b)(5) and say, well, it's the same grounds and advise the Court of Appeals that I think they should reverse the denial of the 59 motion. They can reverse me if I deny a motion for a new trial. This would mean waiting two, three years, and I'm fairly confident that the Court of Appeals would simply reverse and grant a new trial based on the unseemly conduct of the jurors in this case and the record that exists here.

The other alternative is to look at the purpose of Rule 60(b)(5) to note that the reason the 59 motion wasn't heard was probably due to the inaction of the court in not tickling the motion and to just look at the purpose of Rule 60(b)(5). And in this case, I would find that the Rule 60(b)(5) motion was filed within a reasonable time. It comes as no surprise to counsel.

In looking at the language of the Court of Appeals in In Re Marriage of Seeley, found at 689 P.2d 1154, specifically at 1159, the Court of Appeals says:

> "Colorado Rule of Civil Procedure 60(b)(5) is a residuary clause covering extreme situations not covered by the preceeding clauses in the rule, and reliance on that portion of the rule is precluded if the only grounds for relief established are covered by clause one of the rule."
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> In this case, no other portion of 60(b) relates to the particular gross misconduct that's before the court. It is true that the court could and would have granted the motion under Rule 59, but there is no other way to do it under Rule 60, in my opinion. So I want the Court of Appeals to be aware of why I ruled as I did.
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> I, again, express my deepest regrets to Mr. Wu and his counsel, because he was very well represented, and I think and honestly believe that if we had had a decent jury that the result would have been exactly the same. But we simply cannot have trials like this. I could never stand by or sit by and let a trial like this occur and not do something about it, and so the motion is granted.

(Emphasis added).

On November 25, 1985, the district court entered a written order granting the Nordic/Seahawk defendants a new trial. On the same date, the court entered a second order purporting to preserve any judgment liens Canton may have obtained pending a retrial of this case.

B. Proceedings in the Supreme Court.

On December 6, 1985, Canton filed its Petition for Relief in the Nature of Prohibition in the Supreme Court. In response, this Court issued an Order to Show Cause with Stay on or about December 12, 1985. The order was mailed by the Clerk of the Supreme Court on December 13, 1985. Defendants Miedema and MacLellan received such order on December 16, 1985.

III. SUMMARY OF THE ARGUMENT

A writ of prohibition is an extraordinary remedy which should be granted only upon a finding that the district court exceeded its jurisdiction or grossly abused its discretion and that the petitioner lacks a plain, speedy and adequate remedy. Petitioner in this case has failed to demonstrate that the district court exceeded its jurisdiction or grossly abused its discretion. Further, the petitioner, whose judgment liens against defendants' property have been preserved by order of the district court, has failed to show that it will be irreparably injured by the court's order granting defendants a new trial.

The district court properly exercised its jurisdiction in granting a new trial under C.R.C.P. 60(b)(5) based upon a combination of gross juror misconduct, which was timely raised by defendants' C.R.C.P. 59 motion, and the court's failure to decide this motion in the 60 days permitted by C.R.C.P. 59(j).

Such a combination of circumstances are not covered by subsections (1)-(3) of C.R.C.P. 60(b) and are sufficiently extraordinary to justify a ruling under C.R.C.P. 60(b)(5). C.R.C.P. 60(b)(5) should be liberally construed so as to effectuate its remedial purposes. As long as C.R.C.P. 60(b)(5) motions are filed within a reasonable time and meet the standards of the rule, the court has a broad discretionary power to grant such motions even after the 60 days have elapsed under C.R.C.P. 59(j).

Absent gross abuse of the court's discretion in granting a C.R.C.P. 60(b)(5) motion, the ruling of the trial court should not be disturbed. The district court's ruling in this case did not constitute an abuse of its discretion; therefore, a petition for a writ of prohibition should be denied and the order to show cause dismissed as improvidently granted.

IV. ARGUMENT

A. The District Court acted within its jurisdiction when granting defendants a new trial pursuant to C.R.C.P. 60(b)(5).

A writ of prohibition is an extraordinary remedy and does not lie where ordinary forms of relief are adequate and available. It may not be used as a substitute for an appeal. Halliburton v. County Court, City and County of Denver, 672 P.2d, 1006 (1983); Coquina Oil Corporation v. District Court, 623 P.2d 40 (1981); Alspaugh v. District Court, 190 Colo. 282, 545 P.2d 1362 (1976); Leonhart v. District Court, 138 Colo. 1, 329 P.2d 781 (1958); Prinster, et al. v. District Court, 137 Colo. 393, 325 P.2d 938 (1958); Shore v. District Court, 127 Colo. 487, 258 P.2d 485 (1953); People ex rel. Palmer v. Adams, 83 Colo. 321, 264 P. 1090 (1928); People ex rel. Zalinger v. County Court, 77 Colo. 172, 235 P. 370 (1925).

The proponent of a writ of prohibition must demonstrate that the district court acted in excess of its jurisdiction or grossly abused its discretion, and that no other adequate remedy is available to correct this abuse of judicial power. Halliburton v. County Court, City and County of

Denver, supra; Varner v. District Court, 618 P.2d 1388 (1980); Western Food Plan, Inc. v. District Court in and for the City and County of Denver, et al., 598 P.2d 1038 (1979).

In this case, a writ of prohibition is unjustified since the district court clearly acted within its jurisdiction in granting Nordic/Seahawk's motion for a new trial pursuant to C.R.C.P. 60(b)(5).

C.R.C.P. 60(b)(5) provides that

> On a motion and upon such terms as are just, the court may relieve a party or his legal representative pending final judgment, order, or proceeding for ... (5) any other reason justifying relief from the operation of the judgment.

(Emphasis added).

This rule is identical to Rule 60(b)(5) of the Federal Rules of Civil Procedure. In Klapprott v. U.S., 335 U.S. 601 (1949), the United States Supreme Court construed that "other reasons" clause of Rule 60(b)(5) as vesting "power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." 335 U.S. at 615.

Other courts and commentators have referred to Rule 60(b)(6) as a "grand reservoir of equitable power to do justice in a particular case." Moore, Federal Practice at 308 (1950 ed.); Pierre v. Bernuth Lembeke Co., 20 F.R.D. 116, 117 (S.D. N.Y. 1956). As with other remedial rules, this rule should be liberally construed when substantial justice will thus be served. Klapprott v. U.S., 335 U.S. at 615; Bridoux v. Eastern Airlines, Inc., 214 F.2d 207 (D.C. Cir.) cert. den., 348 U.S. 821 (1954); Tozer v. Charles A. Krause Milling Company, 189 F.2d 242 (3rd Cir. 1951); Estate of Cremidas, 14 F.R.D. 15 (D. Alaska 1953).

Errors or omissions in the judicial process, whether by the trial judge, court clerk, jury or counsel have served as the basis for relief under F.R.C.P. 60(b)(6). See 15 A.L.R. Fed. 193 (1973).

In Radack v. Norwegian America Line Agency, Inc., 318 F.2d 538, (2nd Cir. 1963), the Court of Appeals vacated an order dismissing plaintiff's lawsuit for failure to appear on the date scheduled for trial fifteen months after the case was originally dismissed. The court found that plaintiff's failure to appear in this case was really an error by both counsel and the court. In cases such as this, the Court of Appeals held that

> Rule 60(b) relief acts as a corrective remedy, mitigating the harsh impact of calendar rules when a litigant's action is dismissed as a result of his counsel's neglect.

(318 Fed. 2d at 542).

In a more recent case, the Tenth Circuit Court of Appeals in Pierce v. Cook and Company, Inc., 518 Fed. 2d 720 (1975), granted relief from judgment three and a half years after the original judgment was entered. In so ruling, the Pierce Court reasoned that an unusual combination of events may make a situation extraordinary justifying relief under Rule 60(b)(6). 518 Fed. 2d 723.

The Colorado Court of Appeals in 1984 adopted these same principles in In Re Marriage of Seeley, 689 P.2d 1154 (Colo. 1984). In Seeley, the court specifically recognized that "court errors and omissions have generally been held to justify relief from judgment under Fed. R. Civ. P. 60(b)(6) which is identical to C.R.C.P. 60(b)(5)." 689 P.2d at 1160. The court then found that a total lack of review by the court of the settlement agreement in a divorce proceeding constituted a circumstance

that did not fall within the ambit of either C.R.C.P. 60(b)(1) or (2).[1] 689 P.2d at 1160. Therefore, according to the Seeley Court, this judicial omission justified the trial court's reliance on C.R.C.P. 60(b)(5) in setting aside the agreement even though it was entered eight months before. Id.

The district court, in the case under review, extensively relied upon the principles of the law articulated by the Seeley Court when granting the Nordic/Seahawk defendants relief from judgment pursuant to C.R.C.P. 60(b)(5). (Oct. 10, 1985 Tr., p. 146). The district court reasoned that:

> 1. The juror misconduct outlined in the Nordic/Seahawk defendants' motion for a new trial justified relief under C.R.C.P. 59 and the court would have granted the motion within the 60-day time limitation of subsection (j) of the rule had it been aware of the time limitation which had just become effective in January, 1985. (Oct. 10, 1985 Tr., p. 144);
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> 2. The denial of Nordic/Seahawk defendants' Rule 59 motion for a new trial by operation of law was a result of the court's errors and omissions. (Oct. 10, 1985 Tr., p. 146);
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> 3. The combination of the court's errors and omissions and the gross jury misconduct in this case is not covered by any other provisions of C.R.C.P. 60(b) and justified relief under C.R.C.P. 60(b)(5).

The district court's failure to review the Nordic/Seahawk defendants' Rule 59 motion within the time limit set out in C.R.C.P. 59(j) had the same effect as the Seeley trial court's failure to review the settlement

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[1] In addition, the Seeley Court also recognized that relief under C.R.C.P. 60(b)(5) is not available simply because grounds have also been established under either or both clauses (1) and (2) of the Rule. 689 P.2d at 1159.

agreement prior to making it an order of the court. In both cases, manifest injustice would have resulted from the court's failure to perform appropriate review of a judgment which had a binding effect on all parties to the proceeding. Therefore, the district court, when it recognized its own error, clearly acted within its discretion as defined by the Seeley Court when it granted relief under C.R.C.P. 60(b)(5). Had it done otherwise, the court would have grossly abused its discretion and defeated the purpose of C.R.C.P. 60(b) which is to avoid manifest injustice.

As the district court acted within its jurisdiction under C.R.C.P. 60(b)(5), Canton's request for a writ of prohibition should be denied.

B. The District Court properly exercised its jurisdiction by ordering a new trial in this case pursuant to C.R.C.P. 60(b)(5).

1. The District Court's order granting a new trial pursuant to C.R.C.P. 60(b)(5) was based upon a clear showing of exceptional circumstances.

Contrary to Canton's assertions at page 8 of its petition, the Nordic/Seahawk defendants' Rule 60(b)(5) motion did assert exceptional circumstances justifying relief from judgment. Specifically, the motions cited both the evidence of gross misconduct by jurors, which was incorporated by reference from the defendants' Rule 59 motion and supporting brief, and the court's failure to decide defendants' Rule 59 motion within the 60 days provided by subsection (j) of Rule 59. See, Nordic/Seahawk defendants' Motion for Relief Pursuant to C.R.C.P. 60(b) quoted at pages 5-6 of Canton's Petition for Relief in the Nature of

Prohibition. In addition, the latter basis was argued more fully during oral argument at the October 10, 1985 hearing on the motion. See, Oct. 10, 1985 Tr., p. 10.

Unlike the cases relied upon in Canton's petition at pages 12-14, this is not a case in which the parties seeking relief under Rule 60(b) failed to timely file a Rule 59 motion. It is undisputed that the Nordic/Seahawk defendants' Rule 59 motion was timely filed. See, Petition for Relief in the Nature of Prohibition, page 4. It is simply a case in which the district court, while attempting to fairly balance the rights of all parties by setting a hearing on the motion, inadvertently missed a newly effective deadline for deciding such motions. When the court recognized its error, it attempted to avoid a clear injustice by granting relief under Rule 60(b)(5).

This combination of circumstances, given the fact that the 60-day time limitation for deciding motions under C.R.C.P. 59 became effective less than three months before it became an issue in this case and has yet to be interpreted by any appellate court, constitute extraordinary circumstances sufficient to justify relief under C.R.C.P. 60(b)(5).

2. The gross juror misconduct in this case deprived defendants of the right to a fair trial and therefore justified an order granting relief from judgment.

Canton's argument that the respondent district court abused its discretion by granting defendants a new trial even though the court personally believed that the outcome of the trial would have been the same even with a decent jury is without merit.

This argument, of course, ignores fundamental precepts of our system of justice. First, in a jury trial, it is the members of the jury -- not the court -- who are the ultimate finders of fact. Therefore, the district court's personal opinion regarding the possible outcome of a trial is irrelevant. Judge Rothenberg, to her credit, clearly recognized this fundamental principle of justice when ruling on the motion for a new trial.

Second, the requirements of due process dictate that the jury be impartial and unbiased. In the instant case, the trial court found juror misconduct so pervasive and sweeping as to make a sham of judicial process and a fair trial impossible. Specifically, the court in its ruling from the bench on October 10, 1985 described the jury misconduct and the trial itself as fetid. (Oct. 10, 1985 Tr., pp. 140-141). The conduct of juror Tizzard is described by the court as "horrifying" and so completely unsuitable that she had to be struck from the jury rolls. (Oct. 10, 1985 Tr., pp. 140-142). According to the court, Ms. Tizzard did not have the "requisite mental state to be a juror in this case, and in fact, this case had the same odor as the Borelli case." (Oct. 10, 1985 Tr., p. 143).

In addition to the misconduct by juror Tizzard, the court also found that other jurors made Jewish slurs during the course of the trial and considered factors outside the evidence presented at trial. (Oct. 10, 1985 tr., p. 143). Finally, the court found that all of this misconduct justified the granting of a new trial. Despite her own personal views, Judge Rothenberg concluded:

> ... we simply cannot have trials like this. I could never stand by or sit by and let a trial like this occur and not do something about it, and so the motion is granted. ...

(Oct. 10, 1985 Tr., p. 147).

As Canton admitted on page 16 of its petition, the current test in Colorado to determine whether juror misconduct should result in setting aside a verdict is "not whether the irregular matter actually influenced the result, but whether it had the capacity of doing so." Butters v. Wann, 147 Colo. 352, 363 P.2d 494, 496-97 (1961); Accord, T.S. v. G.A., 679 P.2d 118 (Colo. App. 1984).

The evidence of record in this case, particularly that summarized by the district court in its bench ruling, demonstrated a clear anti-semitic bias on the part of Ms. Tizzard and a number of other jurors, sufficient to meet the "capacity to influence the result" test outlined in Butters. As noted above, the district court, based on this evidence, made the explicit finding that Ms. Tizzard did not have the "requisite mental state to be a juror in this case..." (Oct. 10, ,1985 Tr., p. 143).

The evidence of record also supports the granting of a new trial under the following principles articulated by this Court in People v. Dunoyair, 660 P.2d 890, 985 (Colo. 1983):

> Where, for example, a juror deliberately misrepresents important biographical information relevant to a challenge for cause or a preemptory challenge or knowingly conceals a bias or hostility towards the defendant, a new trial might well be necessary. In such instances the juror's deliberate misrepresentation or knowing concealment is itself evidence that the juror was likely incapable of rendering a fair and impartial verdict in the matter.

People v. Borelli 624 P.2d 900, 902 (Colo. App. 1980) and People v. Rael, 578 P.2d 1067, 1068 (Colo. App. 1978). (Emphasis supplied).

There can be no question that under the facts of this case, the very integrity of the jury verdict cannot be disassociated from the abvious racism and prejudice of Ms. Tizzard and several other jurors whose votes were a condition precedent to a unanimous verdict.

Given the clear evidence of bias on the part of several jurors, the district court properly exercised its discretion by ordering a new trial.

The granting or denying of a motion for a new trial on the ground of juror misconduct is a matter within the discretion of the trial court and unless it clearly appears that the court abused its discretion or that palpable error was committed, the ruling of the trial court should not be disturbed. First National Bank v. Campbell, 198 Colo. 344, 599 P.2d 915 (1979); Park Stations, Inc. v. Hamilton, 28 Colo. App. 216, 554 P.2d 311 (1976).

C. The 60-day time limitation of C.R.C.P. 59(j) is not a jurisdictional limitation for deciding motions under C.R.C.P. 60(b).

The core of Canton's argument at pages 9-16 of its Petition for Relief from the Nature of Prohibition is that the 60-day time limitation for deciding motions under C.R.C.P. 59 is a jurisdictional limitation on the court acting under C.R.C.P. 60(b). This construction of the rule must fail in that it violates the plain terms of C.R.C.P. 60(b)(6). It is also inconsistent with the ordinary rule of construction outlined in Graham v. District Court In and For Jefferson County, 137 Colo. 233, 323 P.2d 635, 636 (1958);

> The Supreme Court has a duty, if possible, to harmonize Rules of Civil Procedure which appear dissonant under the circumstances involved.

As Canton itself points out at page 11 of its petition, C.R.C.P. 6(b) provides that the court "may not extend the time for taking any action under Rules 59 and 60(b), except to the extent and under the conditions therein stated." (Emphasis added). C.R.C.P. 60(b) contains a specific time limitation for filing timely motions under Subsection (b)(5). That time limitation is "within a reasonable time" - not within 60 days. The time limitation under Rule 60 has been found to be jurisdictional. See Petrini v. Sidwell, 38 Colo. App. 454, 558 P.2d 447 (1976).

As Seeley and the federal cases cited above demonstrate, what constitutes a reasonable time depends upon the facts and circumstances of each case. In Seeley, plaintiff's Rule 60(b)(5) motion was considered timely when filed eight months after judgment was entered. In this case, the district court explicitly found that the Nordic/Seahawk defendants' motion under C.R.C.P. 60(b)(5) was filed within a reasonable time. (Oct. 10, 1985 Tr., pp. 10 and 146). If motions under C.R.C.P. 60(b)(5) are considered timely filed more than eight months after judgment has been entered, the court must have jurisdiction to decide these same motions even though the 60 day limitation for deciding Rule 59 motions may have passed.

If this Court were to adopt Canton's argument, it would in effect be repealing the more liberal jurisdictional time limitation of C.R.C.P. 60(b) and defeating its remedial purpose. Clearly, such a result was not the intent of this Court when amending C.R.C.P. 59. Finally, such an interpretation would do violence to one of the key principles articulated by the Supreme Court Civil Rules Committee in recommending with the amendment of Rule 59:

> The committee feels strongly that when a proper ground for post-trial relief exists, there should be no complicated barriers or traps.

13 Colo. Lawyer, p. 595 (April, 1984).

D. Petitioner has failed to demonstrate irreparable injury or the lack of plain, speedy and adequate remedy necessary to justify the original jurisdiction of the Supreme Court.

Even if, arguendo, Canton had a legitimate claim that the district court either exceeded its jurisdiction or abused its discretion, it still must prove that it lacks a plain, speedy and adequate remedy to justify the issuance of a writ of prohibition.

In its Petition for a Writ in the Nature of Prohibition in this case, Canton fails to meet this burden of proof. Rather, it merely summarily asserts that

> In this situation, where the trial court has clearly exceeded its jurisdiction and plaintiff is placed in position of having to suffer additional delay and the expense of a new trial, after which the issues raised herein may very well be moot, appeal is not a plain, speedy or adequate remedy, and this Court's original jurisdiction is justified.

(Petition for Relief and Nature of Prohibition, p. 9).

In fact, Canton can by way of appeal raise all of the claims outlined in the petition regarding the district court's ruling granting a new trial. When stripped to its essentials, Canton's real complaint is that it will "suffer additional delay and the expense of a new trial" if it is required to utilize the ordinary remedy of appeal.

Prospective delay and expense, however, do not make the appellate remedy inadequate. The mere fact that proceedings may be expensive and may even result in ultimate reversal of a trial court is insufficient for

a resort to original proceedings. Public Service Company of Colorado v. District Court, 188 Colo. 407, 535 P.2d 508 (1975); Coquina Oil Corporation v. District Court of the Ninth Judicial District, supra; Leonhart v. District Court, supra; Prinster v. District Court, supra.

Further, the record of this case clearly demonstrates that the district court, while granting defendants a new trial, also protected Canton's economic interests. By order dated November 25, 1985, the district court, based upon this Court's ruling in Weaver v. District Court, 545 P.2d 1042 (1976), granted Canton's motion to preserve its judgment liens pending the outcome of a new trial on the merits.[2] Therefore, Canton's claim to defendants' property and its priority over other judgment creditors are fully preserved. Accordingly, Canton, as a result of the district court's order granting a new trial, will not suffer the irreparable injury necessary to justify the extraordinary remedy of a writ of prohibition.

---

2 Defendants have filed a motion for reconsideration of this order, but the district court has yet to rule on such motion. In this motion, defendants argue that the juror misconduct in this case was so gross as to totally deprive defendants of a fair trial; therefore, the allowance of the continuing imposition of judgment liens based upon the jury verdict is a fundamental violation of due process.

V. CONCLUSION

Based upon the foregoing arguments, the Nordic/Seahawk defendants respectfully request that this Court deny Canton's Petition for Relief in the Nature of Prohibition and discharge the order to show cause.

Respectfully submitted,

LAW OFFICE OF KATHLEEN MULLEN, P.C.

Kathleen Mullen

Kathleen Mullen, #8767
1750 Gilpin Street
Denver, Colorado 80218
Telephone: 329-9600

ATTORNEY FOR OWEN MIEDEMA AND GARY MacLELLAN

CERTIFICATE OF MAILING

I certify that on January 3, 1986, I mailed a true and correct copy of the foregoing ANSWER TO ORDER TO SHOW CAUSE WITH STAY, addressed to:

Stuart A. Kritzer, Esq.
3773 Cherry Creek Drive North
Suite 515
Denver, Colorado 80209

Paul Wood, Esq.
Law Offices of John Franks
1355 S. Colorado Boulevard
Suite 601-C
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Sherman & Howard
633 Seventeenth Street, #2900
Denver, Colorado 80202

Honorable Sandra I. Rothenberg
Denver District Court
City and County Building
1437 Bannock Street
Denver, Colorado 80202

Jay Nicholas McKeever, Jr.
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Denver, Colorado 80203

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Harlan P. Phelps
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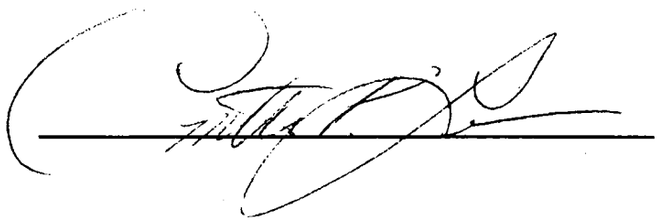
Denver, Colorado 80222



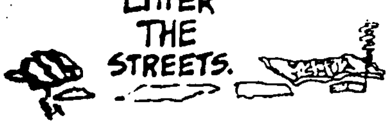
Sin is the human problem Y'SHUA came to solve.

Sin is what separates us from God who wants to give us health, joy and a meaningful life.

But GOD is not very popular. If He built a house on earth, people would break out His windows with stones.

Though GOD has always been [...] people, only a few people [...] God and that's why we [...] WARS, FAMINES,

AND WHY PEOPLE LITTER THE STREETS.



NOW THE GOOD NEWS!

Y'SHUA will save you! ...

All humanity did the worst to Him- mocking Him or ignoring Him and when that didn't stop Him:

Killing Him.

We all did our worst to get rid of Him. He did GOD'S BEST in dying for our sins. And to show GOD'S POWER He rose again from the dead.

So even if you are a temporarily happy sinner, believe me, or better yet, believe GOD:

DUMP THE SIN and GET Y'SHUA.

Become part of the important minority who really care. Join the people of GOD.

Y'SHUA will make you a member:

"As many as received Him
(Y'SHUA)
to them gave He the power to become the sons of God even to them who believe on His name."
- John 1:12

CALL OR WRITE:
MOISHE ROSEN
JEWS FOR JESUS ©1982
60 Haight St.
San Francisco, CA 94102
(415) 864-2600

Please do not litter

AND THOU SHALT CALL HIS NAME

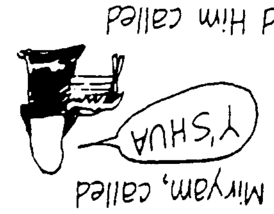
Y'SHUA Y'SHUA

AND THOU SHALT CALL HIS NAME

Y'SHUA

That's His Jewish name.

His mother, Miryam, called Him that.



You've heard Him called JESUS and His mother called MARY. And it's all right with Him if you call Him JESUS, but that way people forget His **Jewishness**.

Miryam and her fiancé, Joseph, were both told,

"And thou shalt call His name Y'SHUA; for He shall save His people from their sins."*

* Matthew 1:21, Luke 1:31

Now you might say:

"But that's in the New Testament. What does that have to do with JEWS?"

The answer is:

EVERYTHING!

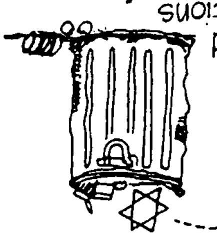
Y'SHUA (or JESUS if you want to call Him that) **said**:

"SALVATION IS OF THE JEWS."

- John 4:22

Now a lot of non-Jews would like to forget He ever said it.

Some would even like to see Jesus as a non-Jew, but He isn't.



Y'SHUA is the only person in history who could choose the conditions of His birth and He **chose** to be born:

- poor,
- in a country with a repressive government
- and a Jew.

The name Y'SHUA tells **why** He was born. It means "God saves" or "God is Savior" or "Salvation."

Now you might wonder what it means to be **saved**, or what a person needs to be **saved from.**

Perhaps you aren't miserable enough to know that you need salvation. If not,

wait a while, you will be.

(Sorry about that bad news, but there are worse things than poverty, boredom, sickness, and death.)

That worse thing is

SIN.

It causes ALL of the above.

Exhibit "3"

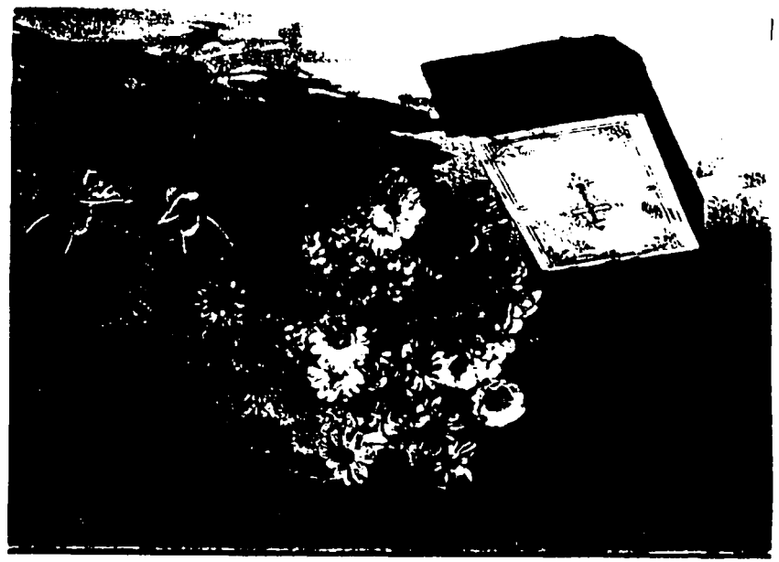
"Wait on the Lord, be of good courage, and he shall strengthen thine heart." Psalm 27:14

To the Owen Miedemas

Just to tell you
You're thought of
and ~~missed~~ blessed
And wished a Quick
Recovery

Laura Tjzgard t

Remembering Jan Trenta', who emigrated to Rapid City, S.D. 1947, - who later found employment with our state department.



Bible & Flowers

Should a Leo do business with a Scorpio? On a Tuesday should you make a major purchase today?

Before you marry someone, should you ask, "What's your sign?"

Do the constellations determine your future? Of course not. Yet millions of people are into occult activities in one form or another.

There is only one sign that is of vital importance to you. You have seen it often. It is the sign of the cross.

Does making the sign of the cross protect me from danger? Does wearing a cross on a chain around my neck make me a Christian?

Of course not. One can become a Christian only because of what happened on a cross. God Himself came to this earth to die for our sins and bring us back into His family.

He himself bore our sins in his body on the cross, so that we might die to sins and live for righteousness. *I Peter 2:24*

Only those who repent of their sins and receive Jesus as their Savior are Christians.

To all who received him, to those who believed in his name, he gave the right to become children of God. *John 1:12*

But cannot handwriting analysis or voodoo magic or star positions determine my future? Are there not powerful forces at work that I should know about?

The only all-powerful and all-knowing One is God Himself. He created all things and determines all things. Only He knows the future. Faith in Him gives you total security. The devil will use any means he can to deceive you and make you trust something other than God.

The god of this world hath blinded the minds of them which believe not, lest the light of the glorious gospel of Christ, who is the image of God, should shine unto them.
II Corinthians 4:4

He was a murderer from the beginning, and abode not in the truth, because there is no truth in him. When he speaketh a lie, he speaketh of his own; for he is a liar and the father of it.
John 8:44

But Jesus defeated the devil, and when Jesus comes again, He will send the devil and all who follow him into hell forever.

He who does what is sinful is of the devil, because the devil has been sinning from the beginning. The reason the Son of God appeared was to destroy the devil's work.
I John 3:8

Hundreds of organizations promise you that by white witchcraft, or ESP or astrology wheels or lucky keys or Tarot cards you will have success in marriage and business and health and anything else you desire. But God, who controls all things, condemns all such practices:

Let your astrologers come forward, these stargazers who make predictions month by month, let them save you from what is coming upon you. Surely they are like stubble; the fire will burn them up. They cannot even save themselves from the power of the flame.
Isaiah 47:13, 14

Let no one be found among you who . . . practices divination or sorcery, interprets omens, engages in witchcraft, or casts spells, or who is a medium or spiritist or who consults the dead. Anyone who does these things is detestable to the Lord.
Deuteronomy 18:10-12

Turn your back on the satanic world and walk the way of the cross! Don't be concerned about which star you were born under, but whether you are born again into the family of God!

What sign do you live by? Make it the sign of the cross and join Christians who believe in Jesus, accept His work on the cross, and live by His power. You also will say, *"God forbid that I should glory save in the cross of our Lord Jesus Christ."* *(Galatians 6:14)*

WHAT'S YOUR SIGN?

For Janice Miedema
From Mrs L. Tazelaar

Scripture passages quoted: John 8:44, II Corinthians 4:4, and I Galatians 6:14 are quoted from the King James Version and the others from the New International Version.

Send Evangelical No. 231-1408 per doz. $2.25 per 100
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ADULT SUNDAY SCHOOL CLASSES FOR QUARTER -- MARCH 3, 1985 to MAY 26, 1985

CLASS	ROOM	TEACHER
Foundations	Annex Rm. 9	Mike Reilly
Evangelism	Pastor's office	Biz Vigil
Baptism	Annex Rm. 11	Lloyd Apodaca
Prenatal Class for Expectant Mothers	Room 320	Jan Schoel
Missions Class	Annex Rms. 6-8	Ken Urban
Israel -- I attend	Annex Rm. 5	Lynn and Cecile Lantz
Family Relationships	Conference Rm.	Joe and Sandy Kuka
Parents of Teenage Children	Annex Rm. 10	Reggie Martinez
New Testament Books	Fellowship Hall	Harold Eledge
The Christian and His Work	Room 360	Darrell Stude
Teachings for Women	Room 310	

SERMON OUTLINE DATE

PASTOR

TITLE OR THEME

MAIN SCRIPTURAL REFERENCE

OTHER SCRIPTURES THE PASTOR USES

IDEAS THAT SEEM IMPORTANT TO YOU

CIRCLE THE IDEA THAT YOU THINK WAS THE MOST IMPORTANT FOR YOU.

Announcements

Inviting you -

Redeemer Temple

3241 Lowell Denver, Colorado 80211

"So, naturally, we proclaim Christ! We warn everyone we meet, and we teach everyone we can, all that we know about Him, so that we may bring every man up to his full maturity in Christ."
(Colossians 1:28, Phillips)

ANNOUNCEMENTS FOR WEEK OF FEBRUARY 24, 1985

Sunday, February 24
8:55 a.m. - Choir and orchestra practice
9:00 a.m. - Sunday School, all ages
10:00 a.m. - 10:30 a.m., library open
10:30 a.m. - Worship service
Children's Church, grades 1-4, will be dismissed to go to Fellowship Hall at greeting time.
6:00 p.m. - Worship service

Monday, February 25
9:00 a.m. - Women's aerobics
6:00 p.m. - Men's basketball (Redeemer Temple men only, plus guest)

Tuesday, February 26
NO MEN'S PRAYER BREAKFAST -- Discontinued
9:00 a.m. - Mothers of Preschoolers

Wednesday, February 27
9:00 a.m. - Women's aerobics
5:30 p.m. - Clothing room open
6:30 p.m. - Prayer in office area
7:00 p.m. - Worship service, Family Night Puppet show and skits

Thursday, February 28
10:00 a.m. - Intercessory prayer in the sanctuary
7:30 p.m. - Sunrise Ministries (Ministry to alcoholics)

Friday, March 1
9:00 a.m. - Women's aerobics
6:00 p.m. - Small group potluck fellowship in Fellowship Hall

ADULT BREAKFAST, Saturday, March 2nd, 7:30 a.m in the Fellowship Hall. There will be special testimonies by Angelo and Linda Mentz and music by Valerie Garcia and Ernie Trujillo.

SINGLES: Saturday, March 2nd, 5:30 to 9:30 p.m., volleyball and table game night. Bring $4.00 for pizza, and table games. Meet in Fellowship Hall.

WELCOME, Jessica Louise Poland! She was born at 7:45 a.m. Wednesday morning, weighed 7 lbs., 14 oz. Congratulations, Tim and Lezlee.

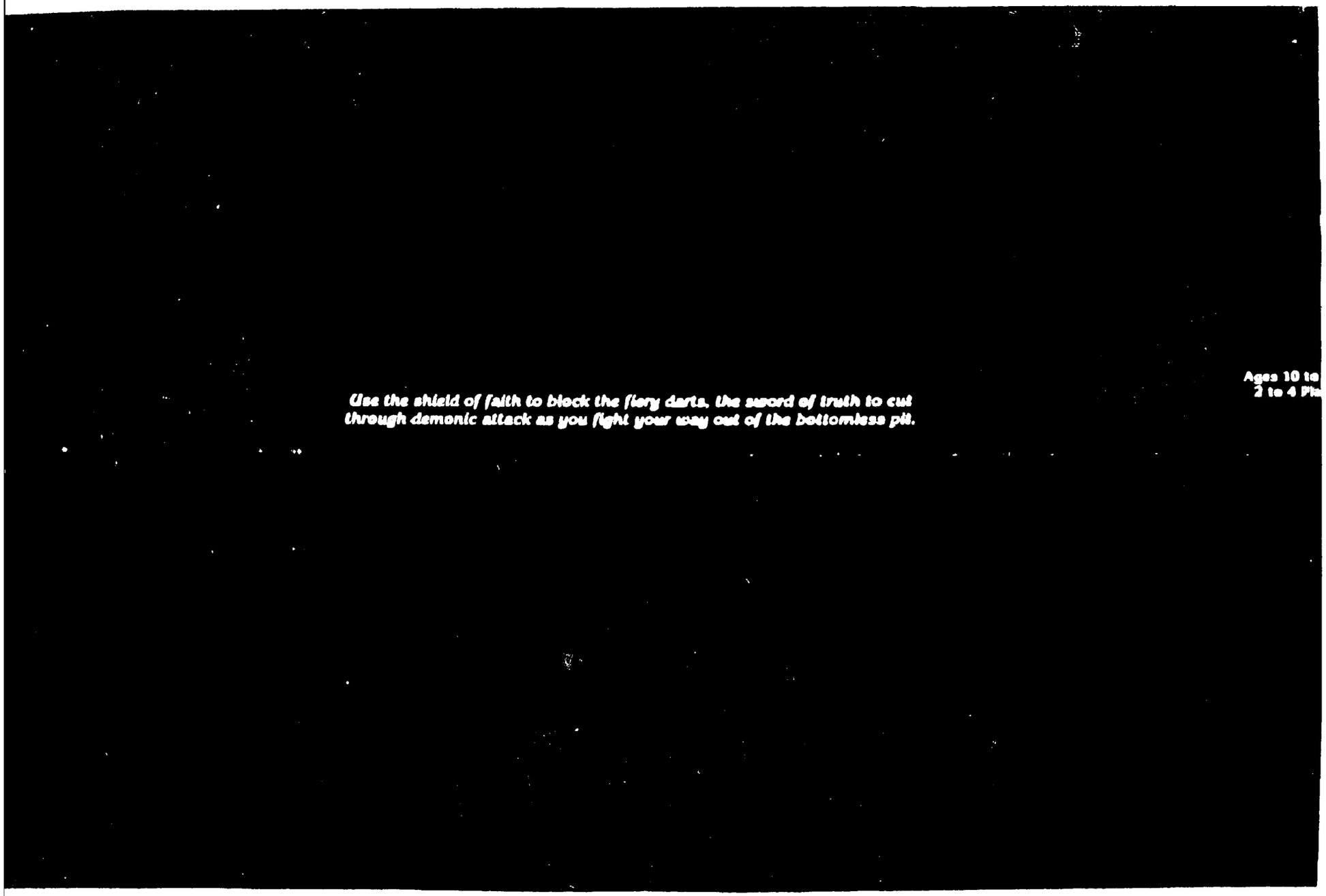
MISSION AVIATION FELLOWSHIP: We are very grateful that we are able to send $2076.00 as a special gift to MAF as a result of your generous offering.

SMALL GROUP MEETING: There is a small group that meets for potluck fellowship at the church every Friday night at 6:00 p.m. You are invited if you would like to come. There are also other small groups meeting during the week in various locations throughout the city. If you are interested, contact the church office.

VOLLEYBALL: Adults who may be interested in playing volleyball on one or two Saturdays per month please contact George and Bonnie Martinez at 573-9082.

WE WANT TO EXPRESS our appreciation and gratitude to Carol Caple for her many years of faithful service as a secretary at Redeemer Temple. She will be retiring February 28th, and we will miss her!


BEA


Use the shield of faith to block the fiery darts, the sword of truth to cut
through demonic attack as you fight your way out of the bottomless pit.
Ages 10 to
2 to 4 Pl

path of arrows until you come out on the other side.

FINANCIAL DISASTER: Landing on this square results in the loss of one turn as indicated on the board. There is no need to draw a card.

SAFETY ZONES: The secret place and praise the lord squares are safety zones and bad cards may not be played on persons landing on those squares.

PROPHET: You have landed on the prophet. There are two kinds of prophecies (good and bad) when you land on this square you need to draw one card from the Prophet pile then follow instructions on the card.
EXAMPLE: You have landed on the prophet square. You draw the first card from the top of the prophet card pile, the card reads ("Thou art snared with the words of thy mouth") Go to nearest depression pit. You must do what the prophet says to do be it good or bad. The word nearest means you might be sent forward if you are closest to this depression pit or you could be sent backwards if the depression pit would be closest in the opposit direction. You must do what the prophet says.

GOOD CARDS		***BAD CARDS***
Jesus*	Healing	Devil
Faith	Armour	Sin
Repentance	Praise	Doubt & Unbelief
Word		Sickness & Disease
		Financial Disaster

JESUS: The only card that will get you out of any trouble without having to move from the square you are on at the time bad card is played on you. Jesus card will allow you to go forward regardless of landing on trouble square, or prophet card. Jesus card may be used when bad card is played on you, regardless of whether you are on trouble square or not. If you are on trouble square and a bad card is played on you, a Jesus card overrides both the trouble square and the bad card.

BEAT THE DEVIL

GAME RULES

OBJECT: The object of the game is to be the first player to reach glory land.

EQUIPMENT: The equipment consists of a game board, spinner, 4 pawns, 18 prophet cards, 52 Beat the devil cards.

DEAL: Deal five, Beat the devil cards to each player face down,remaining cards to be placed face down in pile on center of board. Prophet cards placed in pile face down on prophet scroll in center of prophet.

THE PLAY: High spin goes first then turns move clockwise around the board. Each player may hold no more than five cards in hand at one time.
EXAMPLE: You have landed on a trouble square and you do not have a card needed to get off of trouble square, you must wait until your next turn then you may draw one card. If you draw the card you need to get off of the trouble square, then you must place the card at the bottom of deck, spin and move forward. If you do not draw the card you need to get off of the trouble square, you must discard one card of your choice, by placing a card at the bottom of the deck. If you do not wish to discard you may play a bad card on player to your left, unless you are playing the devil card which may be played to the left or the right. The player receiving the bad card must go to nearest square indicated either forward or backward, then place card at bottom of deck. When you are on trouble square, you may draw only one card per turn.
You may play a bad card on person to your left, anytime it is your turn, even if you are on a trouble square at that time. Except when you are on the Road to Destruction, then you may not play bad cards on anyone. EXAMPLE: When not on trouble square. It's your turn, you have played bad card on player to your left. You are not on a trouble square so you may not draw a card.
EXAMPLE: When you are on trouble square, you now draw card first, if you wish to play bad card on person to your left you may do so, person receiving bad card must follow instructions then place the card at the bottom of deck.

TROUBLE SQUARES: When you land on a trouble square you must stay until you play one of the cards specified on the square, that may be done on your next turn. The cards needed to get off trouble squares will be indicated on the square; these cards are; faith, healing, praise, armour, word, repentance, and JESUS*
Devil or Sin card overrides trouble square, you may play a devil on someone even if they are already on a trouble square.
EXAMPLE: When you are not on a trouble square; It's your turn, you may not draw a card. If you decide to play a bad card on player to your left you may do so unless you are playing the devil card, which may be played either to the left or the right.
EXAMPLE: You have played a bad card on one of the players, at this time player receiving bad card must do what bad card says to do, unless they use Jesus card to override bad card. After you have played the bad card, you may then spin and move forward.
EXAMPLE: When you are on a trouble square. When you have landed on a trouble square you must wait until it is your turn. When it is your turn, you may draw one card from the top of the deck, if you have drawn the card needed to get off of trouble square, you must place card at bottom of deck, spin and move forward. If you do not you have six cards in your hand you must discard one by placing card at bottom of deck, you may not move forward until you play the card needed to get off of trouble square.

DESTRUCTION: When you land on the road to destruction and you have one of the cards specified to get out (Jesus, Word, or Repentance cards) you place the card at bottom of deck, slide down to "saved by grace", spin and move forward.
EXAMPLE: You do not have card indicated to get off of road to destruction you may draw a card from the top of the deck when it is your turn. If you do not draw a card needed and you have six cards in your hand, you may not play a bad card on any players while you are on road to destruction. At this time, if you have six cards you must discard the card of your choice by placing it at the bottom of the deck. At this time, you may spin and move forward on the road to destruction. If you land on "saved by grace" you may slide out. If you do not land on "saved by grace" you must continue on the road to destruction until you have drawn one of the right cards to get out. When leaving the road to destruction go to the "saved by grace" square. If you reach the end of the road to destruction which is the bottomless pit you are automatically out of the game. When you are on the road to destruction you cannot play any bad cards on any other players!

BAD CARDS: A bad card may be played on the person to your left when it is your turn; with the exception of the devil card which may be played reversible to the left or the right. After bad card is played on another player, that player must go to nearest indicated square, if it is to be forward or backward, whichever is closest. You may play bad card on someone even if you are on a trouble square.

TEMPTATIONS

DISASTER

DEPRESSION PIT
PRAISE OR ARMOUR CARD

PRAISE THE LORD
IN GOD'S HANDS
(SAFETY ZONE)

ROAD TO DESTRUCTION
1 JESUS, WORD, OR REPENTANCE CARD

HALELUJAH SQUARE
MOVE FORWARD 3

PROPHET
DRAW ONE PROPHET CARD

SAVED BY
GRACE

DOUBT & UNBELIEF
1 FAITH OR PRAISE CARD

SICKNESS & DISEASE
1 FAITH OR HEALING CARD

PROPHET
DRAW ONE PROPHET CARD

PRAISE THE LORD
(SAFETY ZONE)

FIERY DARTS
1 ARMOUR CARD

BOTTOMLESS PIT

PLACE CARDS HERE

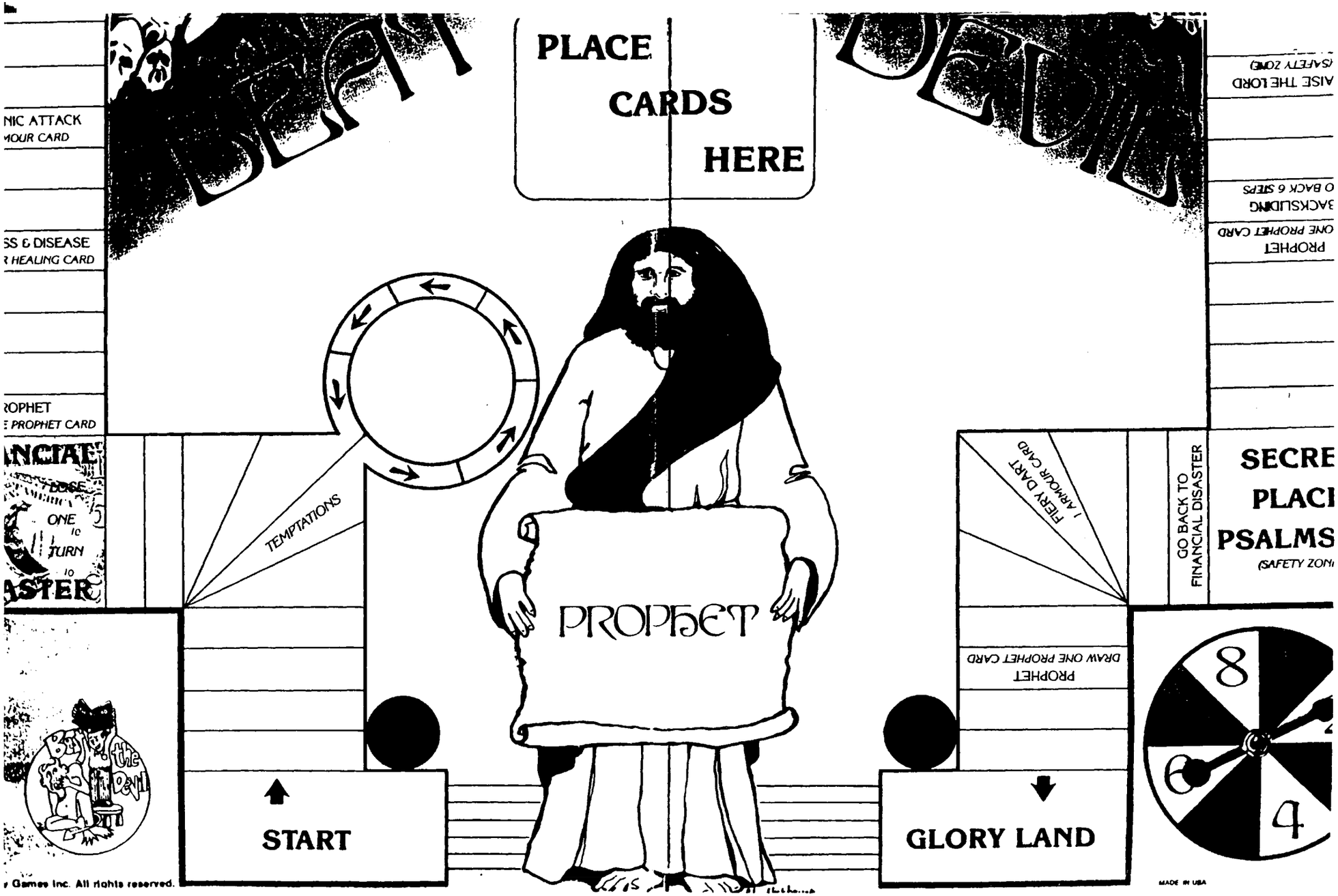
CKNESS & DISEASE
FAITH OR PRAISE CARD

OUBT & UNBELIEF
FAITH OR PRAISE CARD

PROPHET
W ONE PROPHET CARD

PRAISE THE LORD
(SAFETY ZONE)

BACKSLIDING
GO BACK 6 STEPS


PLACE
CARDS
HERE
PROPHET
TEMPTATIONS
FIERY DART
1 ARMOUR CARD
GO BACK TO
FINANCIAL DISASTER
PROPHET
DRAW ONE PROPHET CARD
START
GLORY LAND
8
4
MADE IN USA

DOUBT & UNBELIEF ??

ARMOUR

"Put on the whole armour of God, that ye may be able to stand against the wiles of the Devil."

Eph. 6:11

FINANCIAL DISASTER

PRAISE

"In everything give thanks: for this is the will of God in Christ Jesus, concerning you."

I Thess. 5:18

FAITH

"But without faith it is impossible to please Him. For he that cometh to God must believe that He is, and that He is a rewarder of them that diligently seek Him."

Heb. 11:6

HEALING

"Therefore I say unto you, what things soever ye desire, when ye pray, believe that ye receive them, and ye shall have them."

Mark 11:24

REPENTANCE

"That if thou shalt confess with thy mouth the Lord Jesus, and shalt believe in thine heart that God hath raised Him from the dead, thou shalt be saved."

Rom. 10:9-10

HEALING

"But He was wounded for our transgression, He was bruised for our iniquities: the chastisement of our peace was upon Him; and with His stripes we are healed."

Isiah 53:5

FAITH

"But without faith it is impossible to please Him. For he that cometh to God must believe that He is, and that He is a rewarder of them that diligently seek Him."

Heb. 11:6

SICKNESS & DISEASE

SICKNESS & DISEASE

WORD

"In the beginning was the Word, and the Word was with God, and the Word was God."

St. John 1:1

DOUBT & UNBELIEF ??

SICKNESS & DISEASE

ARMOUR

"Put on the whole armour of God, that ye may be able to stand against the wiles of the Devil."

Eph. 6.11

FAITH

"So then faith cometh by hearing, and hearing by the word of God."

Rom. 10:17

DEVIL

GO TO ROAD OF DESTRUCTION

HEALING

"Beloved, I wish above all things that thou may prosper and be in health even as thy soul prospereth."

III John:2

FAITH

"So then faith cometh by hearing, and hearing by the word of God."

Rom. 10:17

FINANCIAL DISASTER

JESUS

"If ye shall ask any thing in My name, I will do it."

John 14:14

DEVIL

GO TO ROAD OF DESTRUCTION

ARMOUR

"Put on the whole armour of God, that ye may be able to stand against the wiles of the Devil."

Eph. 6:11

PRAISE

"The garment of praise for the spirit of heaviness;"

Isiah 61:3

REPENTANCE

"That if thou shalt confess with thy mouth the Lord Jesus, and shalt believe in thine heart that God hath raised Him from the dead, thou shalt be saved."

Rom. 10:9-10

REPENTANCE PRAISE ARMOUR DEVIL

SIN

GO TO ROAD OF DESTRUCTION

ARMOUR

"Put on the whole armour of God, that ye may be able to stand against the wiles of the Devil."

Eph. 6:11

REPENTANCE

"Jesus saith unto him, I am the way, the truth, and the life: no man cometh unto the Father, but by Me."

John 14:6

REPENTANCE ARMOUR SIN

SIN

GO TO ROAD OF DESTRUCTION

FAITH

"Now faith is the substance of things hoped for, the evidence of things not seen."

Heb. 11:1

PRAISE

"By Him therefore let us offer the sacrifice of praise to God continually, that is, the fruit of our lips giving thanks to His name."

Heb. 13:15

PRAISE FAITH SIN

PROPHET SAYS:

Because of guilt in your life:

GO TO NEAREST DEPRESSION PIT

PROPHET SAYS:

Because of your great faith.

ONE FREE SPIN

PROPHET SAYS:

Beware of false prophets.

GO TO THE ROAD TO DESTRUCTION

PROPHET SAYS:

Your faith has moved God.

MOVE 2 STEPS FORWARD

PROPHET SAYS:

You are headed for financial disaster.

MOVE AHEAD 3 STEPS

PROPHET SAYS:

You are backsliding fast.

MOVE BACK 3 STEPS

PROPHET SAYS:

Thou art snared with the words of thy mouth.

Prov. 6:2

GO TO NEAREST DEPRESSION PIT

PROPHET SAYS:

Your bad words justify your fate.

GO TO NEAREST DEPRESSION PIT

PROPHET SAYS:

Your faith has moved God.

MOVE 2 STEPS FORWARD

PROPHET SAYS:

Because of your doubt and unbelief.

GO TO SICKNESS & DISEASE

PROPHET SAYS:

Because of your lack of patience:

FORFEIT ONE SPIN

PROPHET SAYS:

You have not because you ask not.

LOSE ONE SPIN

PROPHET SAYS:

Submit yourselves therefore to God, resist the Devil, and he will flee from you.

James 4:7

GO 2 STEPS FORWARD

PROPHET SAYS:

And we know all things work together for the good for them that Love God, to them who are called according to his purpose.

Rom. 8:28

GO TO NEAREST PRAISE THE LORD

PROPHET SAYS:

Lack of patience has caused you to:

GO BACK 4 STEPS

PROPHET SAYS:

Because you forgot to pray, here you must stay.

LOSE ONE TURN

PROPHET SAYS:

In all things give thanks.

I Thes. 5:18

ONE FREE SPIN

PROPHET SAYS:

Greed has overcome you, and you are now in financial disaster.

GO TO NEAREST FINANCIAL DISASTER

Mar 6, 1985

Dear Owen Miedema,

How are you doing by now? I pray that you might seek and be forgiven. This will strengthen your family. Jesus can give you power to rebuild your life + care for your family.

Did you get the package I sent to your son, including a note to you + your wife? My son told me I should not have included the letter in the box, so you could have decided if you would let your son open it. I'm not even sure I put on my address! Anyhow...

I'm going to a Purim service Fri eve at 366 Garfield.

Your friend, Laura Tizzard +

With agape love.

Domestic Mail
D
US Postage

DENVER, CO
MAR 6
PM
335

Mr. Owen Miedema
RR 3
1960 Belleview Lane
Littleton, CO 80121

Mrs. Norman Tizzard
2534 Kearney St.
Denver, CO 80207

Exhibit "A1"

AFFIDAVIT

I, Donna Miedema, being of lawful age and first duly sworn do state upon my oath as follows:

1. I am the wife of Oene "Owen" Miedema.

2. On or about Friday, March 22, 1985, between approximately 9:00 and 10:00 a.m I received a phone call from a woman who identified herself as Laura Tizzard. She asked if our son had received the game she sent.

3. She asked if Owen had declared bankruptcy and if he was going to do so. She said "He's going to the office every day, isn't he?" She also asked if he'd been sentenced yet. She asked why there was a delay and when was he going to be sentenced. She asked questions about how Owen was doing and said that she would pray for us. She asked if I was helping Owen and going to the office with him. She seemed, in general, to have a great deal of information about Owen's business affairs and those of our family.

Further your affiant sayeth not.

D. M. Miedema
Donna Miedema

STATE OF COLORADO)
) ss.
City and County of Denver)

Subscribed and sworn to before me this 26th day of April, 1985 by Donna Miedema.

Karen Ann Hopken
Karen Ann Hopken, Notary Public
3773 Cherry Creek Drive North, #515
Denver, Colorado 80209-3825

My Commission Expires: January 20, 1986.

22/NORDIC

AFFIDAVIT

I, R. Jon Foster, being of lawful age and first duly sworn do state upon my oath as follows:

1. That I am a principal in the firm of Williams & Foster, Private Investigations, with offices at 1034 Logan Street, Denver, Colorado 80203.

2. I was retained by the Law Offices of Stuart A. Kritzer to interview jurors in the matter of Canton Oil Corporation v. Nordic Petroleums, et al. Among the areas of investigation was the effect of the religion, ethnicity and background of Stuart A. Kritzer and Martin M. Berliner, the attorneys for Nordic Petroleums, Seahawk Oil, Owen Miedema and Gary MacLellan.

3. In connection with that assignment I interviewed Laura Tizzard on 15 April 1985. During that interview, Ms. Tizzard advised me of the following:

a. Ms. Tizzard said that Miedema had put his family through a terrible experience and that, in her opinion, it should never have gone as far as it did. She believed that the issue could have been settled early if Miedema, Wu, Cleary and Theleen had discussed the matter among themselves. Tizzard said that the Bible directs us not to go to Court. A wronged person should first go to the wrongdoer and try to settle the matter between the two of them. If this does not work, the wronged person should again confront the wrongdoer in a friend's presence. If this does not work, then the issue should be taken to the church.

b. Ms. Tizzard stated that she believed it was important for Miedema's son to understand that we are all sinners and to understand the Christian teaching of forgiveness. She stated that was the reason she sent the Christian game to Mr. Miedema's son. Tizzard advised me that during a lunch hour while the jury was deliberating, she went to May D & F, purchased the game and mailed it to Mr. Miedema's son.

c. Ms. Tizzard said that from Mr. Miedema's name she thought he might have been Jewish. She also felt this was a possibility because of Mr. Miedema's swearing during the trial. She said that he certainly was not Christian. She said that after she had mailed the package she had telephoned a synagogue in order to try to determine if the name Miedema was, in fact, a Jewish name. She said she was interested in this because of the fact that she had mailed a Christian game to Mr. Miedema's son. Tizzard said that whether or not Mr. Miedema had been Jewish would have made no difference to her as to the outcome of the trial.

d. Ms. Tizzard said that she had known the Judge was Jewish but until the interview on 15 April 1985 had not realized that Mr. Kritzer and Mr. Berliner were Jewish. She said that she had assumed that they were Christian because neither of them swore during the trial. Tizzard said she does not recall having overheard any comments from any of the jurors regarding to anyone being Jewish. She said there was never any discussion, to her knowledge, of a conspiracy among Mr. Kritzer, Mr. Berliner and the Judge.

4. On 1 April 1985, I attempted to interview Gene Patterson, a juror in the Nordic matter. I spoke with Mr. Patterson by telephone on that day and identified myself as a private investigator employed by attorney, Stuart A. Kritzer. I told Mr. Patterson that Mr. Kritzer informed me that Patterson had advised Kritzer and Berliner, immediately after the verdict was rendered in the Nordic matter, that several jurors were concerned about what appeared to be an apparent close relationship between the Court and Mr. Kritzer and what Mr. Patterson characterized to Kritzer and Berliner as "the Hebrew thing". I also advised Mr. Patterson that Mr. Kritzer said that he, Patterson, told Nordic's counsel at that time that the fact that the Court sustained so many objections of Nordic's counsel seemed to be an additional manifestation of what Patterson characterized earlier to Kritzer as being the existence of "something going on between (Kritzer) and the Judge".

5. Mr. Patterson did not deny those statements but said that what he had previously said concerning the discussion of jurors regarding the "Jewish thing" had been just "chit-chat" and said to Nordic's counsel in confidence. Patterson stated that he felt that it was an invasion of his privacy for me to even call him and I had no right to talk to him.

6. Mr. Patterson stated he did not want to talk to me and said that he intended to telephone the Judge tomorrow (2 April 1985) and complain about my contacting him. I terminated the conversation at that time.

Further your affidant sayeth not.

R Jon Foster
R. Jon Foster

STATE OF COLORADO)
) ss.
City and County of Denver)

Subscribed and sworn to before me this 24th day of April, 1985 by R. Jon Foster.

Karen Ann Hopkins
Notary Public
Address: 3773 Cherry Creek Dr. No.
Denver, CO 80209

My Commission Expires: 1/20/86

22/NORDIC

AFFIDAVIT

I, Stuart A. Kritzer, being of lawful age and first duly sworn, do state upon my oath as follows:

1. That on 28 February 1985, immediately after the verdict was rendered by the jury in the above captioned matter, my co-counsel, Martin M. Berliner, and I spoke with Gene Patterson, a member of the jury, with regard to his impressions of the deliberation and the trial in general.

2. Mr. Patterson, after informing both myself and Mr. Berliner that we did an excellent job in representing our clients, advised us that some of the women on the jury, not he, felt there was "something going on" between the Court and myself.

3. He amplified that statement by saying, "You know, the Hebrew thing." Some of the jurors, according to Patterson, felt evidence of that was the Court's having ruled disproportionately often in favor of Nordic's counsel on evidentiary matters (objections). Patterson indicated that two of the female jurors openly discussed their feelings as "you know how those Hebrews stick together" and that was further evidence of what these jurors believed to be an implicit "understanding" among Jewish defense counsel and the Court which was calculated to favor Miedema and the other Nordic/Seahawk Defendants.

4. Patterson specifically stated at that time that, if asked about the above remarks, he would deny them.

5. Juror Patterson also advised Nordic's counsel at that time that Theleen & Partners was awarded exemplary damages to compensate it for the loss of use of its money and consequent inability to make other investments.

6. On Saturday, 2 March 1985, I was contacted by Owen Miedema who informed me that a package arrived from Laura Tizzard containing a letter, a fundamentalist Christian game, and other literature sent to Miedema's son from Laura Tizzard who identified herself as such. A copy of that literature is attached to the Motion for Post-Trial Relief as Exhibit A.

7. On 7 March 1985, I was again contacted by Owen Miedema and informed that another letter had arrived from Mrs. Tizzard. A copy of that letter is attached to the Motion for Post-Trial Relief as Exhibit A1.

8. On or about 10 March 1985, I was contacted by Owen Miedema and advised that juror Laura Tizzard had called Mrs. Donna Miedema, Owen Miedema's wife, and asked her a series of questions about Nordic's business, the Miedema's financial affairs, and other personal and related information. See Exhibit B to Plaintiffs' Motion for Post-Trial Relief.

Further your affiant sayeth not.

Stuart A. Kritzer, #5807

STATE OF COLORADO)
) ss.
City and County of Denver)

Subscribed and sworn to before me this 26th day of April, 1985 by Stuart A. Kritzer.

Karen Ann Hopken, Notary Public
3773 Cherry Creek Drive North, #515
Denver, Colorado 80209-3825

My Commission Expires: January 20, 1986.

22/NORDIC

AFFIDAVIT

I, Martin M. Berliner, being of lawful age and first duly sworn, do state upon my oath as follows:

1. That on 28 February 1985, immediately after the verdict was rendered by the jury in the above captioned matter, my co-counsel, Stuart A. Kritzer, and I spoke with Gene Patterson, a member of the jury, with regard to his impressions of the deliberation and the trial in general.

2. Mr. Patterson, after informing both myself and Mr. Kritzer that we did an excellent job in representing our clients, advised us that some of the women on the jury, not he, felt there was "something going on" between the Court and Mr. Kritzer.

3. He amplified that statement by saying, "You know, the Hebrew thing." Some of the jurors, according to Patterson, felt evidence of that was the Court's having ruled disproportionately often in favor of Nordic's counsel on evidentiary matters (objections). Patterson indicated that two of the female jurors openly discussed their feelings as "you know how those Hebrews stick together" and that was further evidence of what these jurors believed to be an implicit "understanding" among Jewish defense counsel and the Court which was calculated to favor Miedema and the other Nordic/Seahawk Defendants.

4. Patterson specifically stated at that time that, if asked about the above remarks, he would deny them.

5. Juror Patterson also advised Nordic's counsel at that time that Theleen & Partners was awarded exemplary damages to compensate it for the loss of use of its money and consequent inability to make other investments.

Further your affiant sayeth not.

Martin M. Berliner

STATE OF COLORADO)
) ss.
City and County of Denver)

Subscribed and sworn to before me this 16th day of April, 1985 by Martin M. Berliner.

Karen Ann Hopken, Notary Public
3773 Cherry Creek Drive North, #515
Denver, Colorado 80209-3825

My Commission Expires: January 20, 1986.

22/NORDIC