



**SEARCH
FOR EXCELLENCE**

Arch K. Schoch, Dean

**INTERNATIONAL ACADEMY
OF TRIAL LAWYERS**

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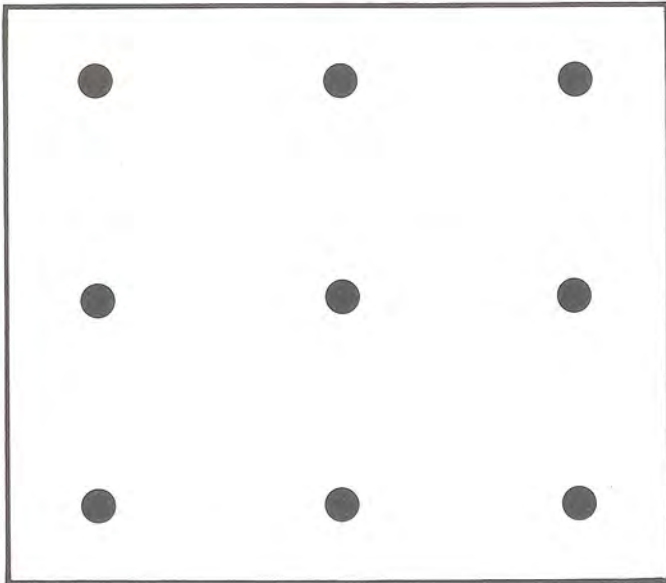
San Francisco

Address

by

Arch K. Schoch, Dean

SEARCH FOR EXCELLENCE



MR. PRESIDENT—DISTINGUISHED FELLOWS OF THE ACADEMY AND YOUR LOVELY LADIES—GUESTS AND FRIENDS OF THE ACADEMY.

You will note that your program does not indicate the title of my address. I feel that I should explain this. Immediately after Ed Savell's learned address at the New York convention in 1977, I turned to illustrious Past-President, Bob Morgan, and asked him if he could suggest a title for my address at this convention. Bob immediately responded that he thought that "*Search For Excellence*" would be very appropriate for this group. Bob then went on to explain why such a topic would meet the approval of the Academy. At this point, Don Farage commented, facetiously, of course, "Good Lord, don't put the title to your address in the program, or you won't have an audience because the members of this Academy are all such dudes that they believe themselves to be the epitome of excellence. I accepted Bob's and Don's recommendation and I trust that the substance of this address and the lack of notice of its title are acceptable.

So, in lieu of a title for my address in the program, I'll ask you to note in your program that I have provided you with a puzzle—a puzzle of nine points—for those of you without a program, the same puzzle appears here on the podium.

I invite you to try to solve this puzzle during the portions of my address you find wearisome, or should I say—least intriguing. The object of the problem is to close all nine points with only four straight lines and without lifting your pen. I repeat, the object is to close all nine points with only four straight lines without lifting your pen. The lines may intersect each other.

There is no trick or gimmick in this problem, although the solution will not be readily apparent to all for reasons I shall suggest somewhere in the course of my address here today. Now as for the topic—"*Search For Excellence*"—I am a little shaky and awe-struck at the prospect of having to entertain or elocute before such an imposing presence as this.

At first blush it appeared an excellent topic for such an excellent audience but I could not for the life of me formulate or caption a topic for such discourse which would not appear an affront to those of you before me whose membership in this Academy confirms your excellence through the application of Res Ipsa.

But I personally love a challenge. Speaking to this group on the subject of "*Search For Excellence*,"—approaches in degree of challenge—an economist giving a lecture on capitalism to the Brazilian Coffee Growers Association.

Perhaps ironically, the choice of excellence for my topic constitutes an allegory within my essay. Quite candidly, I accepted Bob's tender of this challenging subject because I was tantalized by my immediate inability to define excellence—much less—impart its meaning to a group of people undeniably imbued with abundant amounts of it already.

I am no longer embarrassed or chagrined at my inability to define excellence. If it weren't for the time element I would take a five-minute recess and challenge all of you to come up with a workable definition of excellence that would mean anything at all to a curious Martian who might pop down to Earth with a query of what precisely that term excellence denotes. There is really no help from Webster's... "the fact or state of excelling; superiority; eminence. An excellent quality or feature." All definitions of excellence utilize other words which are equally lacking in recognizable prototypes in the world of demonstrative reality. One of your first assays in defining excellence might be the rhetorical tail-chasing I did when I readily came

forth with the brilliant banality that excellence is simply a noun used to denote things of the highest quality. This is all neat and tidy until the Martian asks, "What, then, is quality?" Then you go back to Webster's for "quality" and get yourself referred back to "excellence." You try another tack: You take the Martian to the Louvre and lead him through the classic exhibits and enlighten your alien inquisitor to the reality that the smile of the Mona Lisa and the manner in which it is depicted by da Vinci, are imbued with true artistic quality. On the way out, you and the Martian peruse the still delectable form of de Milo's beauty, assign her quality, descend the stairs and walk down les Invalides, eventually pass under the excellent Arc of Triumph and you casually enlighten your wide eyed Martian that the quality of Parisian life he is witnessing is—by the consensus—reputed to be high. For contrast you take your protege through a student art exhibit on the roadside, and avoiding the insertion of confusing terms of the artist's discipline such as "dynamic symmetry," and the like—you reveal simply that this or that still life was stillborn in terms of quality compared to the smiling Gioconda he has previously seen, or that the music flowing out of the organ grinder's electric xylophone lacks the quality of the Beethoven exuding from the coffee house door you are passing. But then your highly precocious students asks the inevitable question which shatters your brief pretensions to enlightenment. "Then quality," he asks, "is a thing which exists or does not exist in varying quantities in the things themselves, is it not?" You answer, "of course." And then your cosmic friend tenders another query in his quest to colonize the concept of quality. He asks whether or not it is a fact that modern empirical man is equipped to define with scientific exactitude all the elements on earth, according to their properties, atomic weights, etc. Conceding this, you waive the picador and stare at the matador with sabre poised above the hump of the bull you have been skipping around. Thrust comes fatally with the Martian's final request to be told what the intrinsic components of quality are so that he may apply them to objects himself without your having to appraise them for him. At this point you're ready to escort your friend back to his saucer, without dinner. You could easily beg the question and decide quite reasonably that when it comes time for a quality dinner you had planned at Maxim's, you could, without negative result hurry the Martian on down to Hardees or usher him through the golden arches, since he couldn't know the difference. You could even make him content living on a farm if you hadn't shown him Patee. But your abortive attempt to matriculate the Martian through your school of quality should have one positive effect. . .it should have the positively pleasurable effect of frustrating the hell out of you. I can hear you thinking now "Regardless of Mr. Schoch's frustration with the Martian, I know quality when I see it. I know good law from bad, and am pretty good at sizing up the professional quality of a judge or colleague in the practice. What else do I need?" The answer to this may be that you need nothing. But if you are, like myself, even mildly interested in analyzing the subject of how we may each enhance the quality of our own performance, either in our professional or private lives, you may want to continue with me a little further.

Let me try to capsulize for you the gist of what follows in simplest terms, and thereafter elaborate by example.

First, I suggest to you that—"excellence"—is merely a term denoting the upper extreme on the continuum of another term, i.e., quality.

Second, it is my considered belief that the term quality is one best left undefined, for the simple reason that if quality be defined, it must be defined with

logical analogues taken from the past, and this being so, the excellence of tomorrow could not in terms exceed that which has come before.

Finally, let me suggest to you that the excellence of the highest quality is the product of a uniquely human equation. It is the wonderful precipitate resulting occasionally when one combines the elements of intelligence, gumption and the magic ingredient, *stuckness*.

Now, intelligence you know well; true gumption or grit we have all enjoyed from time to time—let me define the term "stuckness" as a term of art, in the study of quality.

Stuckness is that beautiful state of affairs where you are faced with a problem for the solution of which you have no ready-made precedent or instruction manual and no handy analogues, either personal or borrowed, to guide you quietly and conveniently to your end. There is no surcease from the nagging frustration of butting your head against that insurmountable wall; and yet you know there is a way, because you have willed it.

Many of you will find yourselves "stuck" when it comes to solving the puzzle I've furnished you. There is no answer in the appendix of your program. It is my desire that you savor the stuckness I've provided for you—imagine that your life depends on your ability to solve it by the end of my talk—but you must solve it while you listen or else miss some valuable point of my catechism and, of least import, the actual solution to the puzzle of nine points.

You will notice I said a beautiful state of affairs. How is it that I can perceive the frustrating phenomenon I have just described as beautiful? The reason is one likened to the pearl sickness. Inserted into the oyster by chance submarine current, or by the device of a crafty oriental, a seed of frustration to the oyster becomes the genesis of a wonderful pearl. Likewise, the seeds of frustration sewn in the minds and spirits of certain exceptional people cause a reaction much like that of the pearl sickness. In mankind and his endeavors, the product of this beautiful affliction may be, ironically, the saving grace, as it may provide the only fountain of youth or regeneration for quality, for excellence.

But before I venture further into the subject of excellence, and how it is sometimes achieved, let me give you an example of a situation in which I believe quality was attained by a lawyer, if in fact myself, and although in a fashion ancillary to the main stream of professional advocacy. May I repeat—in a fashion ancillary to the main stream of professional advocacy. Sometime ago in my practice, a rather well-to-do middle-aged woman, whom I'll refer to as Mrs. Blank, made an appointment and entered my office wishing to discuss a matter of great importance, terming it shyly—a "domestic matter." Having known the woman's family personally, and the very esteemed reputation of her husband, I made the appointment during which the classically heartbreaking story of middle-aged marital infidelity was unraveled,— for the umpteenth time. My husband and I, she said, have been married now for nearly 18 years. We have four beautiful children and our marriage up until recent times has been of the highest princess and prince charming idyllic storybook quality. I further learned from Mrs. Blank that the change in the previously ideal marriage relationship seemed to have had its inception in her husband's recent reassignment to the Chicago office of his company. Now this lady was from our little High Point city,— incidentally the furniture capital of the world. Her husband was in a very high executive position with, let's say, XYZ Industries, a very prestigious conglomerate. The wife, my client, because of certain exigencies existing at the time, remained in

High Point while her husband worked in the great northern city during the week, utilizing the company aircraft to commute home and back on weekends. However, the weekend reunions had become less and less regular and, finally, regular on a monthly basis. The wife had only suspicions at this stage, but had noted an ominous decrease in Harry's libido which seemed to go against the grain of the old cliché of—*hearts growing fonder in absentia*—. To determine whether or not in fact my lady client had a legal problem, I set about immediately to have the husband put under surveillance by a highly reputed investigative agency in Chicago. The report, with 15 pages of attachments which was forwarded me within 30 days, with pictures of rendezvous points and amorous M.O., caused me to dread my second conference with Mrs. Blank. When she had digested the reports and dried her eyes, I discussed with her the legal avenues of redress and recommended one thing and another. "But Mr. Schoch," she insisted, "I have no need of Harry's income, and will never need alimony and never want him to know that I have discovered what he had done. I love him too dearly and could never marry anybody else. No, Mr. Schoch, all I want—is my Harry back."

Having at the first interview imparted to her what my fee would be in the matter, and not having an eye batted in reaction thereto, I was not a little disenchanted with having to disclose to Mrs. Blank the fact that she did not have a legal problem and accordingly had very little reason for being in my office. I had had only modest success in the area of marriage counseling and none virtually in either religion or psychiatry, and accordingly, deemed myself incompetent to manage my client's or her husband's affair any further. "But Arch," she persisted, "I've heard so much of the wonderful things you can accomplish, and I *know* that if you set your mind to it, you will be able to get my Harry back." "But lawyers," I explained—with all the soothing I could muster,—“are all trained to get rid of husbands, not to retrieve them.” Her response was one of the most difficult types to handle—female determination—. Without further ado, she brought forth her check book and drafted out the sum I had named as my fee. Before I could remonstrate with her further, she directed me both to retain the amount and contact her in due course with the solution to her problem. We made our adieux, I with my covert intention of returning her draft with a letter of regret and withdrawal.

I know many of you before me now have shared the distasteful experience of having to advise one with a grave human problem of the fact that there is no legal shibboleth to its solution. This was a fine and gracious woman. With her faithful, forgiving and hopeful nature she had presented to me a veritable dilemma. Proverbially, the dilemmatic situation is made graphic through the utilization of, once again—the bull. This time you're in the arena facing his snorting nostrils, decimating hoofs and, most fearful, the two horns—one or the other of which you must apparently elect for impalement purposes. On one of the horns training in on me vicariously through Mrs. Blank's plight was the point that if nothing were done legally, the inertia of human nature would automatically prolong the husband's affair and my client's distress. On the other hand—or horn—if legal proceedings were instituted—and this 'til-now ideal husband thus exposed—the result would be the near-certain ruination of a marriage and even more pain for my client. The bull followed me home. It pawed at my dinner table and the following day, Saturday, chased me over 18 holes of our Willow Creek Golf Club. It bristled at me unpricked when I should have been attending church the next day and made menacing passes at me during the ensuing work week while I, much to my own surprise, neither

returned the draft nor wrote my—Dear Jane letter. I grew to dislike the bull. In my frustrated state I looked from one horn to the other and found that the thing I disliked most about this bull was not his menacing nature or pose. Rather, what I detested was his apparent ability to make me choose between two painful alternatives. To wind up this paralegal parable, let me say that I did find the solution. With hindsight now assisted by a philosophical work by Robert Pirsig, I realize that my success with the bull was wrought neither through evasion nor attack, but rather through an unconventional maneuvering, not of the bull himself, but rather of his proverbial portrayal. More about Pirsig's philosophy, which is incidentally an essay on quality, later. But let it suffice for now to suggest that we have become conditioned to assume many false stances or beliefs,—the proverbial horns of dilemma being only one. When we see these horns emerging from a situation we have been taught to recognize as a—dilemma, involving painful repercussions at both ends, we have been pathetically accustomed to feel powerless to do anything but elect which painful point we will be stuck with. There is, mind you, a third alternative, or option to be rhetorically precise. Yes, when the two horns are charging down your corridors of escape there is a third option you can employ to avoid disaster altogether—*YOU CAN THROW SAND INTO THE EYES OF THE BULL*—. Now Pirsig coined that image; but looking back on the case of poor Mrs. Blank, I realize now that that is just what I did. Goaded by a nagging desire to spare Mrs. Blank the pain of her domestic dilemma, and catalyzed by a sometimes errant penchant for the paralegal, I presented Mrs. Blank at her second conference with me the solution to her problem—*THE PAIL OF SAND FOR THE EYES OF HER BULL*—. In this case the solution was a two-page letter written under the curious nom de plume of—*"Facts Coordinator"* for XYZ Industries,—addressed to Mr. Blank, and if you will afford me your indulgence for a small didactic diversion into personal memorabilia, let me read to you the letter that Mr. Blank received:

Dear Mr. Blank:

As you know, you hold a very sensitive position with XYZ Industries. The personal image that you have created is certainly excellent on the surface; that is, the conscientious executive and dutiful husband who spends his weekends with his family in North Carolina.

However, when it was determined that your residence was to be changed to Chicago, a cursory check was ordered on your personal activities.

The facts pertaining to your personal activities which were disclosed leave something to be desired for one in a high executive position. A few of the details of this investigation are documented on the attached sheets to enable you to properly evaluate your position.

This information remains with me as Coordinator, and will not be disclosed to anyone or become part of your personal record. You are admonished not to disclose the contents of this letter or its attachments, to Miss R, either directly or indirectly.

As Coordinator, I do make certain positive recommendations which you are requested to fulfill forthwith:

1. Sublease your Apartment 25-C at the Hamilton House;
2. Relocate Miss R in some position that is outside the XYZ Group, and cease all association with her;
3. Make arrangements for your family in North Carolina to move to some suitable place in Chicago suburbia;
4. Join some nice Country Club where your associations will be fitting to the standards of your position; and

5. Live an exemplary family life, free from illicit excursions with the opposite sex.

You are notified that the surveillance has been terminated. Ninety days from the date hereof, it will be necessary to resume the surveillance to ascertain whether or not the requested recommendations have been fully complied with.

If I may digress momentarily, I cannot understand why executives from the south and west who come to Chicago believe that different moral standards exist here as distinguished from their places of residence. It is astonishing to observe young executives who have strived so diligently to reach the top who thoughtlessly are willing to gamble their reputations and positions by indulging in extra-marital affairs.

Your cooperation is solicited, and you may be assured that if the recommendations are accepted there will be no reference made to this situation. Signed: Facts Coordinator, XYZ Industries.

Within shortly over a month of having received this letter, Mr. Blank had complied with all five of the mandates issued by the cryptic Facts Coordinator for XYZ, yours covertly but truly. As a caveat or apology at this point, let me emphasize that I in no way espouse the devious method of reconciling the Blanks' marriage as possessed of *intrinsic moral quality*. I tender it to you merely as an allegory, a personal parable not to portray what quality *is*, but rather how quality or excellence is sometimes achieved. The manner in which it is achieved most often is by the profound experience I enjoyed in handling Mrs. Blank's case. The philosopher and writer I referred to earlier, Robert Pirsig, terms this experience appropriately—the phenomenon of "stuckness"—. Stuckness may be, for us legal technicians and practitioners, the very essence of our creative process. It is the occasion which luckily happens upon our scene with sufficient periodicity to re-enliven us. It is on those occasions where legal precedent is either non-existent or to no practical avail. It is that situation where we have an initial tendency to look to Martindale for a young B.V. on whom we can plop this distasteful dilemma, or the situation where we know there is no pat legal answer, and farm out the hypothetical to someone else for the dual motive of confirming our negative conclusions and/or furnishing us with the fashionable juris prudential rubric, or bull if you will, for the third and final time.

To attest the quality of the solution to the case of Mrs. Blank, let me boast of having received annually Christmas cards from her expressing continued gratitude for the part I played in helping Harry home. She assures me that hers and Harry's marriage is still deliriously happy and in part as a result of the hopefully benevolent but definitely crafty fraud of your humble Dean.

Before I end my catachism on the subject of the blessed event of stuckness,—MOTHER OF EXCELLENCE—I must share with you one final parable or should I say allegory because it was handled by my younger son and involved our local vice and narcotics squad in High Point and the problem with which we all have to contend with periodically, the perennial problem of mendacity. The case involved the legal area of search and seizure. Our clients were two young men charged with felonious possession of the controlled substance—marijuana.—To those among you living in a more enlightened jurisdiction—that is where marijuana is being decriminalized—a marijuana indictment may not seem too odious.—But let me assure you—grass—is not greener in North Carolina—where the marijuana charges brought against our defendants could have brought them collectively 20 years imprisonment.— Those of you who have done any work in the area of drug defense realize that there are two cardinal rules or maxims which apply in the area of

contraband charges. One, your client is always guilty, and two, if you are absolutely certain that all the elements of entrapment took place to tempt, confound and inculcate your client, and you have every confidence of being able to compose and deliver through your persuasive art the strongest possible summation in favor of a positive finding on the issue of entrapment, enjoy that confidence—then forget it—. In drug cases, if the search cannot be attacked successfully, most likely your client will be paying you principally for your appeal for mercy in a guilty plea or plea bargain.

In this particular case, our two boys, George Stalder and Tommy Logan, had parked their van in a rural area where they sat with three other young men bartering on the subject of the van's cargo, a little over 10 pounds of gold—which, for the non-heads among you, is drug slango for Columbian grass or marijuana—. It was a cold winter's night and all the windows to the van were tightly shut. It was dark in and outside of the van; and the contraband was wrapped in hermetically sealed plastic containers, swaddled in an impermeable rain coat hidden from view beneath the tire well in the interior of the van. No plain view was possible, and there was no tell-tale smell issuing from the inside of the van, as smoking during drug transaction was absolutely taboo.—These particular clients knew their trade—. While the five were seated discussing the affairs at hand, there came the stentorian rap at the driver's side where stood Monty Myers and Randy Hall, the fair-haired and handsome All-American High Point counterparts of Starsky and Hutch. All defense witnesses recorded the same words being spoken by Officers Myers and Hall, commonly dubbed "Monty's Marauders" in the local drug culture. "Open up, Tommy. We have reliable information that you've got a load of marijuana on board and we want to search your van." No response from within. Finally, defendant Stalder, owner of the van, having had some experience with Myers before in a similar raid, responded with words to the effect of, "we are legally parked Monty, and you have no probable cause to search this vehicle." On a previous occasion this same Officer Myers had arrested defendants Stalder and Logan for drug possession, but the case was thrown out at the voir dire hearing, due to the fact that Officer Myers had predicated his search of the vehicle on that occasion on the claim that he detected the odor of marijuana exuding from the defendant's parked Porsche automobile. On that first "bust," however, Officer Myers was standing some twenty feet away from the Porsche when he claimed to have smell the marijuana, *and* it was a rainy night in February, *and* the windows again were closed. No burned marijuana cigarettes were found in the ensuing search.

That first case was thrown out on voir dire hearing. But on *this* occasion Myers was more careful to get close enough to the van to add credibility to his claim. The next statement issuing from Officer Myer's lips at the scene of the arrest was, "I detect a strong odor of marijuana coming from your van, what about you Officer Hall?". At which point Hall confirmed, as if from the script of a fourth grade play, "Yes, I also detect a strong odor of marijuana coming from the van", the words being mouthed as a conscious parody of the truth. To conclude, the door to the van was forced open, all parties in the vehicle searched and the contraband recovered. The defendants had not been quite as careful as they should have been. Inside the van, from the ashtray were confiscated two or three roaches, not of the insect variety, but rather the butts of marijuana cigarettes. This find would of course afford strong evidentiary substantiation to the claims of the arresting officers to have smelled the marijuana. Defendants however convinced us that absolutely none had been smoked inside the van prior to the search and seizure, and that the claims on the part of the vice officers

to have had reliable information, and to have smelled the odor of marijuana, were absolute lies. Pre-trial conferences with the district attorney and narcotic officers indicated that they would seek to justify the search and seizure solely on the officers' having detected the odor of marijuana. They had abandoned as an apparently unneeded over-kill the non-existent reliable informer. But there we were. All the tangible and circumstantial evidence was in favor of the State. Unless we could prove on voir dire, by a preponderance, that Officer Myers did not in fact smell the odor of marijuana prior to his entering and searching of the van, we had prison-bound clients. We had to establish that truth in favor of two known and one convicted drug traffickers, pitted against the testimony of the soft spoken and fair-haired All-American disciples of Starsky and Hutch. The problem was a nagging one. How to prove that there was no smell of burning marijuana. The marijuana cigarette butts were glaringly there. There was no deductive clinical test to establish that they had been burned not on the night of the arrest, but some ten days to two weeks previously, and carelessly left odorless, tasteless and hidden from the view of anyone outside the van. All the legal precedent in the case, from Mapp, Escobedo forward, was neatly stacked on the prosecutor's table. We were left to save the freedom of two drug traffickers through their own testimony that they had smoked those cigarettes two weeks prior to their arrest, a case with no over-abundance of trial merit.

The members of our firm conferred the matter out as we do each morning with cases where we need think-tank. Those among you are very fortunate who have joined practice with individuals whose personalities and ideas catalize your own. In our small firm the queries "why" uniformly begat quips of "why not?". We decided to employ as our initial strategy the three cardinal rules in criminal drug defense—Delay, Delay, Delay—. Some months later, before the preliminary hearing in the matter, I got a call from my younger son who said he had just discovered, while taking his post-tennis shower, the reason we were stymied in our effort to dream up a defense strategy. He told me of a book that he had just read entitled "Zen and the Art of Motorcycle Maintenance", and it had shown him the way to win our case. Responding to my next question which touched on his sobriety, my son, in an excited state, related to me a curious proposition. "Dad, if it hadn't been so impossible I couldn't have come upon it. There is no legal or practical defense in the case, right? We know the legal precedents and we know the probative probabilities. Deductively, we can't formulate any strategy to attack probable cause to search in this case. The cops are going to lie and we can't impeach them. At least, we can't impeach them with ordinary means, such as contrary credible witnesses, or prior inconsistent statements. "In other words," he said, "we can't solve the problem as lawyers. But that is what is so beautiful about it," he continued. "We *can* solve it as movie producers—and the solution has *real* quality. Then, when we've finished being movie makers, we'll take the movie and become lawyers again, and win the case." I got the hunch that he was onto something, and that that something had quality.

In the office the following Monday, my young partner outlined the miracle we were to perform. Our *end* to negate probable cause. Our means, was to establish the absolute and habitual mendacity of the prosecuting officers. There was scant precedent for that. As we all know, one is permitted in his defense to put on evidence of a significant character or personality trait of a witness which bears on material issues in the case, or on the witness' veracity. But the question was, of course, how to establish through deductive logic that one is possessed of an overdose of subjective

quality—mendacity—. My son's response was still enthusiastic. "But that's the mistake you're making," he insisted. "The books and the teachers have taught us to be deductive in our methods of proof and reason. There is an entirely different system of establishing truth, the process of—'induction'. As Starsky and Hutch are liars on occasions A, B and C, which are past and unprovable, then there is a distinct likelihood that they will be mendacious on future occasions E, F and G, which we can and shall establish." "Are you thinking what I think you are thinking?" I said to him. He said, "Yes, we are going to arrange for our clients now on bail to be arrested again by Monty's Marauders; and this time we're going to say after its all over, 'Smile, you're on candid camera'".

The plans were made and were executed with military precision. On April 18, Officer Myers received a telephone tip by an unidentified and *absolutely unreliable* informant. Her words spoken while the tape recorder was going were, and I do here quote—"Hey, Monty, do you know a jerk by the name of Tommy Logan?" Response affirmative. "Well he and that sorry friend of his, George Stalder, are going to be at Lum's at Zayre Shopping Center at 6:00 tomorrow night; and they are going to have ten pounds of sh-- on them and I want you to bust their ass"....click.

The night before the "bust", the subject vehicle (that is, our client's van) was cleaned by professional cleaners under the direction of an unbiased, unimpeachable law student from Wake Forest University. One expert witness was sent to a local health food store, where he obtained receipts for his purchase of the contraband bait, a ten pound mixture comprised of oregano, basil and oriental dandelion tea in equal parts. The resulting grass-like mixture could have deceived the nose of a Mexican border official's hound dog. Before the night of the appointment, the subject van was again thoroughly cleaned from ashtray to tire well with the commercial substance, Mr. Clean. The clothing of defendants Stalder and Logan was thoroughly laundered, and all foreign material extracted from pockets and cuffs. The van was equipped with two separate fail safe recording and transmitting devices able to pick up conversation and noise within thirty feet of the subject van with the windows closed. The counterfeit grass was again hermetically sealed in plastic bags, so as to render the package *completely odorless*. The packing was then wrapped again in an impermeable raincoat and hidden from view in the tirewell of the subject van. Our surveillance vehicle was equipped with one-way glass, sound motion picture and receiver equipment to monitor and record conversation and activities in subject van. We were going to make a movie of an actual drug bust. Our intent was to establish that Monty's Marauders would search and seize a motor vehicle on bare suspicion or on unreliable information, and further that they would fabricate lies, according to their habit, to establish probable cause ex-post facto.

The bust came off like clock work. The defendants arrived at Lum's at Zayre's Shopping Center at quarter of six. A very suspicious looking individual with beard and business suit entered the van and conversed with defendants, all in broad daylight, each acting according to script and making absolutely no covert movements with their hands, and smoking only filter-tip cigarettes. The three entered the restaurant where they dined according to plan, under the careful scrutiny of yet a third unimpeachable witness. The suspicious party was of course our plant, an impeccable source, who was in fact the professional movie producer who lent us his expertise in the matter of sound and movie recording of the event. At all times we were in radio contact with the defendants and their guests; and we filmed the arrival of the police surveillance vehicle, driven by narcotics officers Myers and Hall, as they

entered the shopping center to view our scenario. We filmed them through the one-way glass of our surveillance van up until the moment, fifteen minutes before sundown, when according to script the subject van departed and headed home, none of its occupants having done anything suspicious enough to warrant a search of the van. The unmarked narcotics vehicle, assisted by three marked patrol cars with emergency lights twirling and sirens blowing, pulled the subject van over at 6:10 p.m. Our surveillance van pulled around on a side road and from this hidden vantage point filmed and recorded the arrest which began in the traditional and rehearsed manner with three raps at the window. Officer Myers: "Open the door, Tommy". Response from within: "Whats the problem this time, Monty?" Officer Myers: "We have reliable information that you're carrying pot on this van, and we want to come in and search the vehicle". Response from within: "Reliable information? What kind of reliable information?" Response: "That's for us to know, just open the door, Tommy". Response from within, again according to script, "What law have we violated? You've got no cause to search this van." Officer Myers: "In addition to the reliable information, I also detect the strong odor of marijuana emanating from this van. What about you, Officer Hall?" Officer Hall, according to our script: "Yes, I detect a strong odor of marijuana coming from this van." Officer Myers: "Open the door, Tommy, or I'll bust the window in". According to script, the defendant at this point voluntarily opens the door; all parties are searched with the cameras still clicking frame after frame of the unlawful arrest, defendant still protesting that there is no cause for their arrest, search and seizure. In a few short moments, Officer Myers, wildly exuberant at finding his ten pounds of dandelion tea, shouts triumphantly into the recording machine, "We don't need probable cause when we got the pot, Tommy". By the time of trial, as you might suspect, the defendants, who had been booked on the charge of felonious possession in the planned arrest, had been relieved of those charges when the SBI lab report came back with its embarrassing analysis. Fortunately for us, neither Monty and his Marauders nor the DA could read the writing on the wall, and all were easily led down the primrose path at the voir dire hearing in the trial of the case proper. The facts of the two arrests were almost identical. The words of the arresting officers on the occasion of both arrests were, according to their own admission, almost verbatim. However, on trial, Myers, when being cross-examined on the event of the planned drug bust, denied absolutely ever having predicated his search on any reliable informant. His excuse for arresting the defendants Logan and Stalder on the second occasion was that he intended to make a routine motor vehicular check; and when he pulled the vehicle over, he and Hall both detected the strong odor of marijuana pouring out of the van, the windows of which were open, etc., etc. Of course, we wound up cross-examination with the question directed to Myers—"And you're just as sure you smelled the odor of marijuana on arresting defendants at the shopping center as you were when you arrested them in the case here being tried?" Answer, amazingly—"Yes". After the trip down the garden path was complete, we put on our experts, our sound and film makers one by one, and established to a clinical certainty that the van was clean as a pin and the defendants were even cleaner; that the windows of the van were rolled up, and that the only odor which could have emanated from the van that evening, was the odor of shaving lotion on our movie producer's body. When we brought down the screen and showed to the court our sound movie of the second bust, Starsky and Hutch fled the court room; the DA sat mute with hands over face; and our voir dire motion was granted summarily, without oral argument, as our pictures and recordings proved to be each worth 10,000 words.

In the experience of our law Firm, most instances of stuckness have been cases of this sort, that is difficulties in establishing truth. One can nearly always find the needed legal precedent or rubric on which to found an argument in his client's defense or case, the nagging hurdle in most cases being the problem of bringing the facts home to the trier. In the problem of probation or adducing evidence, mendacity, or bias-colored testimony, is often the trial lawyer's nemesis. I am not saying or suggesting to you that in every case where you are stymied in your efforts to establish truth, you or some member of your firm will come through with the type of golden inspiration that is the certain impeachment of your prevaricator. What I am urging you toward is the appreciation of the fact that when you are stymied at first blush in a case or personal quest, you are in a blessed condition. Avoid the normal gumption traps where frustration leads one toward retreat or concession. Learn to apply the techniques of judo to your practice of law, where the strength or tendencies of your foe may be utilized to topple him. If the means of proving your issue cannot be found in *Am. Jur's Proof of Facts*, then do as my son did—abandon logic and replace it with Hollywood fantasy. Before you dismiss Mrs. Blank from your office with regrets concerning the demise of her marriage, take off your legal hat and don the hat of Facts Coordinator for XYZ Industries, etc.

On the best seller's list for about 2 years, and now required reading in many of the leading universities the philosophical work, *Zen and the Art of Motorcycle Maintenance*, by Robert Pirsig, which I referred to earlier, is a work I recommend highly to all of you as a philosophical and psychological treatise which, as the cover blurb threatens,—may well change your life. On its surface, the book is an account of the experiences shared by a father and son during a cross-country motorcycle trek which assumes en route the proportions of an odyssey of self-discovery. The narrator of the story is by trade a rhetorical technician, that is a writer of technical manuals, instruction books and the like. As the story unfolds, you learn that he previously was a brilliant and celebrated scholar and college professor, teaching in the field of philosophy and rhetoric.

In the early years of his teaching experience, the narrator, obviously Pirsig himself under an alter ego, experienced a profoundly disturbing event. In the course of formulating the theme of his doctoral dissertation, he had occasion to be in his classroom one day when a fellow instructor entered, a matronly teacher in the old school tradition, and uttered to him in passing,—“Mr. Pirsig, I'm glad you've decided to teach real quality to your students” —. The statement took the professor aback, not because his classes were not then studying in areas touching aesthetics and rhetorical quality, but because for the first time he questioned whether he was in fact imparting quality education to his students. It had always occurred to him, to his own dismay and chagrin, that his best students were invariably failing. These were the wise acres, the aloof occupiers of the rear seats in the class who seemed to sleep or hibernate through his lectures, only to be brought to clear consciousness when he made the rhetorical slip, or a mistake in rational deduction, at which time they pounced upon him with alertness and alacrity, making him query to himself whether they were failing—or he.

The problem of the failure of his best or most intelligent minds, seemed to Pirsig to be part and parcel of the crux of the world's problems, since the advent of the intellectual revolution. There seemed to be a gaping chasm between what he termed the “romantic” and “classical” worlds. He came to view college and all classical education as perhaps a threat, and certainly a place of tedium, for the

romantic intellectual. Classical education, taught in the classical mode employing Aristotelian deductive logic, historical texts and set formulae, seemed to stultify the majority of the minds he considered most imaginative. The successful, i.e. the "A" students, seemed to be the squares; and the worst students occasionally, if not as a rule, seemed to be those who were mal-content with sitting and being forced to ingest classical learning doled out as the restricted diet, or communion, in what he called the church of reason. The church of reason being a somewhat tongue-in-cheek appellation for all classical institutions of learning. All of us, if we strain our memories, can recall the near-total drudgery of the casebook method of assimilating law. We are told on entering law school we should resign ourselves to the fact that the law is a *jealous mistress*. By the time we graduated, we had learned that the characterization of law as a jealous mistress was really unfair—the law is *not* a jealous mistress; rather, to the truly conscientious scholar—she's a domineering bitch.

Throughout his electrifying treatise, Pirsig relives the travails he suffered in the formulation of his doctoral thesis, an essay on quality. It occurred to him finally that quality, or the concept of quality, excellence if you will, is or was the secret to the unfolding and uniting of the world as he saw it. The problem of the world was by Pirsig epitomized in the difference between the relationship *he* had with *his* motorcycle, and the relationship his friend and co-traveler had with his.

Pirsig had trained himself in depth in the art of motorcycle maintenance, the mechanical intricacies of which being similar to those involved in maintaining the simplest of modern man's machines. We can all relate to the frustration of experiencing a breakdown in one of our mechanical "conveniences". Which of us is really knowledgeable when it comes to remedying a dripping faucet, or adjusting the float tank in our mechanical privy? Which of us isn't exasperated when his automobile falters more than a mile from his friendly mechanic? Pirsig had mastered the art of maintaining the mechanical things which touched his way of life, first by limiting the number of mechanical things on which he relied, and then by understanding totally and fully their principles, parts and inner-machinations, much as we advocates have had to master the mechanics of the judicial process and its supply store of judicial precedent. Is it possible that we can learn a lesson from a motorcycle mechanic which we can apply to our advantage in the search for excellence in the legal profession? A rhetorical question—I suggest, of course we can. Pirsig's traveling companion chose as his vehicle the very finely constructed and high-quality BMW Motorcycle, principally because it required very little maintenance, and hence understanding. All considerations on the complexities of converting fossil fuel into kinetic energy upon the highway frustrated Pirsig's romantic friend to the point of desperation. The comparison of the two individuals in the book, and their respective relationships to their machines, presents a microcosm of experience from which is projected the author's conception of the schism dividing the civilized world. There is a schism between romantic youth, or at least their left-wing hippies, and us old classical squares. Reading the periodicals today, we find that the colleges are now graduating people with honors who have occasionally not even mastered the basics of reading and writing intelligibly. Those of us who have employed Phi Beta Kappa quality associates have sometimes been appalled at the relative ineptitude of today's youth in expressing thoughts with logical and rhetorical precision. They definitely have the intelligence we conclude, but why is it that they have come to reject apparently all semblance of coherence and facility with the logical language of our classical predecessors. There is even such a metamorphosis in this observable in our

appellate reports, where some of us old schoolers rue the relative dearth of beautiful deductive rhetoric we read in school, with opinions in the excellent tradition of Justice Cardozo of the New York Court of Appeals.

There are many suggestions given by Pirsig to the frustrated technician who must earn his daily bread through solving problems according to an instruction manual. The book contains a beautiful essay on the achieving of excellence in performing one's trade, when it is desired to perform that trade in the classically deductive manner. Some of the suggestions are well taken. The example used is, of course, Pirsig's repairing his own rather problematic motorcycle; but some of the things he suggests are well taken points of advice any tradesman can heed. He suggests rules so simple that we sometimes erroneously assume we have followed them. He suggests having a clean, well-lighted work area, with all conceivably required tools at hand. He recommends coffee and cigarettes as collateral detours available to take when one arrives, in the process of solving of a given task, at the near-inevitable period of creative aridity which he terms a "gumption trap". When we reach a stage in attacking a problem where returns seem to be diminishing, he recommends as a rule that the task be temporarily abandoned for purposes of psychic refreshment. Coffee and cigarettes are common detours, and if they don't satisfy, Pirsig suggests total abandonment for a period, with the possible intervention of sleep or subconscious therapy. All these rules are, however, tendered by the philosopher as a means of properly attacking a problem, or achieving excellence in its solution, in the classical fashion. The rare meat of the author's philosophical essay comes not in this, but perhaps in his attempt to reconcile the hiatus between the romantic and classical worlds. The romantic/classical schism exists not only between generations, but between professional groups, nationalities, religions and most importantly in *ourselves* individually. We all have in varying degrees warring factions of the romantic and classicist vying for dominance within ourselves at all times. Most of our professional lives are lived while we are in the process of solving legal problems with our classically legal tools. Very often we are, romantics that we sometimes are, totally frustrated by the apparently inane legal hurdles which are set before us in achieving our goals. Frustrated by the fact that it takes sometimes three or four years to litigate a client's rights in the Federal Court, vexed by the dilatory tactics employed by some practitioners to thwart our quest for this truth or that legal right, we are incessantly forced to follow a protocol in our judicial process which is borrowed or inherited from a system we can trace further back than our own genetic roots. There is frustration everywhere, and yet we have all tasted the nectar of excellence. We have all been winners and surmounted hurdles of every nature and description; and there is joy and satisfaction in that. The joy is experienced by both our classical and romantic sides, and in this joy our warring sides are wed.

Our problem is one of renewal. We practitioners are not capitalists in the truest sense. We cannot patent our accomplishments and thereafter recline on our accolades or feed ourselves on royalties. Each day of our lives we must continue to put out at least a marketable quantity of excellence. But where is it? Looking back on various of our successes, it often seems that we simply put together a winning structure by resorting to an instruction manual, legal precedent, and so on, employing the classical rules of logical analogy; and the victories we experience seem, in the light of that reality, sometimes dry. There is, however, a certain undeniable satisfaction even in applying the manual and solving the problem according to the creative instructions of a predecessor.

But I will suggest to you that a greater joy than the achieving of classical perfection is had when we are sometimes fortunate enough to be met by a problem or legal situation where we have to wed the warring factions in our minds, that is our romantic and our classical souls. It seems to me that the most profound concept which I learned from Pirsig's treatise is that idea of stuckness. When we are confronted by a problem which can be solved nicely and neatly through the application of the classical text, we prevail and earn our fee. When we are met with problems that permit or demand *more* of us, then and only then are we presented the rare opportunity of giving vent to that which in us is unique—our creative potential—. Stuckness is the occasion, then, according to this catechism, out of which quality can appear. The secret to the world, to the spanning of that hiatus between the romantic and the classical factions in the world and in our own minds, seems to involve the phenomenon of stuckness. It is with the aid of that catalyst, stuckness, that never-before-related ideas occupying the free-floating analogues of our intellects are joined in a fashion unique to ourselves—It is akin to genetic mutation, which process incidentally we can safely thank for our greater-than-monkey intelligence. It is through the saving grace of this phenomenon that we become one with our work and begin to *contribute* something to the legal process uniquely our own. It is through quality, fostered in the school of stuckness, that excellence is born, to become the precedent of the future.

For Conclusion and Solution to Puzzle, turn page.

CONCLUSION

Finally-I wonder how many of you have found sufficient intelligence or gumption or were unintrigued enough, to overcome the stuckness of the puzzle of nine points?

For those of you who have solved the problem, I have a mixed reaction—praise for your excellence, and some irritation over your finding time to complete the work—.

For those of you who have not solved it, but wish to do so, unassisted, pay no attention to me as I demonstrate the solution.

You'll observe four straight lines and no lifting of the stylus—most importantly—note—that I had to depart from the space enclosed by the nine points into the sphere of Excellence in order to unite them. The problems most of you probably experienced in your attempt to solve the nine point problem is perennial.

Traditionally, puzzles of this sort are solved within the geometric framework or plane in which they exist.—Your stuckness—in this case was likely the product of conventional thinking and past conditioning—perhaps the square blackboard of your first geometry instructor, or the closed diagram of meets and bounds in your deeds or jury exhibits—the key to this problem—is the lesson I sought for you to derive from the subject of my late discussion.

When you become really stuck in one bailiwick or dimension, *rejoice* in the blessed event.

It may well permit you to briefly escape that bailiwick, and—by the vehicle of your own intelligence, to sojourn outside—into the dimension of quality—THE REALM OF EXCELLENCE.

