

THE LAWYERS GET INVOLVED -- OR
HOW TO MAKE YOURSELF MISERABLE

Ray Jay Davis

College of Law
University of Arizona

Too long have you, the average masochist (ic weather modifier), gone about the important task of punishing yourself for your various guilts by devious or ineffective means. Too long have you had to settle for poorly formulated anxieties or hit-or-miss methods of self-flagellation, simply because this vital field has always been shrouded in ignorance -- a folk art rather than a science. Here at last is the frank report you have been waiting for (Greenburg & Jacobs, 1966).

This expose is designed: (1) to allow a lawyer to tell you about every evil legal thing that has happened or could happen to someone performing weather modification activities for whatever purpose; and thereby (2) to document the extent to which lawyers have become involved in weather modification. Since it is manifestly apparent that few, if any, of you have legal counsel present, you must either: (1) imagine all by yourself all the disastrous legal possibilities in all situations; or (2) pay close heed and take legible notes. Pencils ready?

Copy down this list of the players--the laborers in the legal vinyard--whose efforts can be relied upon to maximize your legal misery:

- (1) The hired gun;
- (2) The lethal lawmaker;
- (3) The artful draftsman;
- (4) The G-Man; and
- (5) The ivory-towered academician (propped up by the invisible student).

(1) The Hired Gun. Every time you seed a cloud you must assume that possibly you have been negligent or have acted illegally--something akin to running a red light, jaywalking, or double parking. You should think as follows:

- (a) Everybody knows I have been out cloud busting;
- (b) I'll be caught. There are hundreds of seeders, but me they will catch;

- (c) The whole sordid story will be in **all the papers**, will go into permanent NOAA records, and **will cause every prospective sponsor, insurance broker, or program manager to shun me for life**; and
- (d) What I really need is a hired gun.

Palladin, the prototype hired gun, was contacted by telegraph in San Francisco. But since he has gone to that great shoot-out in the sky, where do you look when Adams, et al., and their lawyer, Reginald Watt come claiming your activities have flooded Yuba City and a goodly portion of the Central Valley of California? They want more cash than your insurance company is willing to part with (insurance companies are in the business of collecting premiums, not of paying claims). So they and you get Ed Morris to strap on his six shooter, learn some meteorology, preside over the Weather Modification Association, and win the case (Mann, 1968).

Ed Morris, like Palladin, now has his reward; he's a member of the California Board of Regents and far too busy to be your hired gun. What to do? Fortunately for those of you who need to exacerbate your ulcers, there are several routes you can follow:

(1) House counsel. Your company may have its own stable of lawyers. They can be counted on to tell you what is wrong just as General Electric house counsel talked GE out of further participation in Project Cirrus (G-E Review, 1952).

(2) Insurance company retained counsel. Insurance Company of North America had Richard G. Smith on retainer, and so when INA's policyholder, Irving Krick, Inc., was sued, Mr. Smith was rushed to stem the legal tide (Davis & St.-Amand, 1975). This hired gun may be a secretive sort of Palladin, though. Counsel for the insurance company handling the Rapid City flood litigation will not tell me even what company he represents.

(3) Government counsel. Maybe, if the sponsor happened to have some governmental entity, the plaintiffs will sue both you and the government. How about reliance on that guy--Bill Clayton or Chuck Kruse? Keep in mind how well Mr. Richard Nixon's government lawyers did for him, and stop sleeping.

(4) Independent counsel. Did Wally Howell get his own lawyer when Ben J. Slutsky sued him for threatening a washout of the New York borscht belt? (Davis, 1968). If so, it was a good move because the plaintiffs lost. But that's enough of this good news.

You require two reminders right now to prevent relaxation: Complainants always have looked over the fast draw artists and hired their own hired gun, a Jack Palance-like guy on the order of Leo Maki or Tom Tollett, to sue you. We lawyers, then are on both sides, you are in the middle, and guess who has decided most of the cases? Other lawyers. Although the Good Book admonishes one and all that we should "Judge not that ye be not judged," scratch any lawyer and you will find a prospective judge. Unfortunately for you, some lawyers' fantasies do materialize, they know enough politicians to be made judges, and then they tell your hired gun to holster his pea shooter. They decide the case (Mann, 1968).

(2) The Lethal Lawmaker. So you win those lawsuits against Slutsky, Reinbold, Lumsden, the Pennsylvania Natural Weather Association, Adams, Samples, and the Auvil Orchards. Jerry Kirby, Ed Morris, and their like have prevailed. Please keep your stomach curdled. You lost those against Duncan, Shawcroft, and the Commonwealth of Pennsylvania. Now you are ready to develop new anxieties by getting people to reject you. Obviously, the more people you can get to dislike you, the more miserable you will be. Neighbors, sponsors, ranchers, even casual acquaintances--all can be made to renounce you. But what you really need is that ideal potential repudiator, the lethal lawmaker. Did you know that a third of the lawmakers in our state legislatures, and three-fourths of the members of Congress have been or are lawyers? (Hurst, 1950).

Here is how to do it: (1) Win a lawsuit; (2) look like you might win a lawsuit; or (3) do so little that your opposition wouldn't even dream of filing a lawsuit. Whatever your course of action (or inaction), it will give anyone with a gripe about weather, weather predictions, weather changers, or anything immediate access to the lethal lawmaker. And here is what that deadly species of homo sapiens (?) can do to you:

(1) Cut off funds for operational programs. Ask Jack Donnan about his Republican friends in the South Dakota state legislature and their vendetta against a Democratic governor. Jack and the state-wide operational program got the fiscal axe. Lawyers were among the misery-makers (Donnan, Pellett, LeBlang and Rigger, 1976).

(2) Ban cloud seeding altogether. Maryland did this in the late 1960's (Davis, 1974).

(3) Make permits so tough to get that there is de facto prohibition of cloud seeding. Pennsylvania and West Virginia, through the eager assistance of lawyers in the legislatures, have done this (Davis, 1970).

(4) Enter formal legislative resolutions that seeding--especially that carried out over Indo-China--is an evil (Davis, 1972).

So the lethal lawmaker can convert your ordinary run-of-the-mill ulcers into running, bleeding sores. There is even help for this character, assistance from --

(3) The Artful Draftsman. Much weather modification law has been drafted by amateurs, by persons who pass them (those lethal lawmakers) but who have no training in writing them, and by weather modifiers themselves. But some are the products of the professionals--the artful draftsmen. The Colorado Legislative Council drafted their 1972 law, with lots of expert advice and help (Colo. Legis. Council, 1971). David Niss of the North Dakota Legislative Council had the key role in putting together the present law of that state. And there is presently a process going on of taking the Illinois law (Ackermann, Changnon & Davis, 1974), converting it into a suggested statute and commentary for Arizona (Davis, 1975) and then offering it as a "suggested state law" through the Council of State Governments.

We can take care of you, but should temptation to relax overcome you, and you foolishly leave behind your worries, let me hasten to note--your

condition is not hopelessly unthreatening. Be aware of these questions-- each of which most likely will be answered in a manner calculated to do you the most emotional harm.

- (1) How can you be certain that some serious amendment will not cripple you as have the changes in the Texas laws? (Carr, 1975).
- (2) Was there not some fact you neglected to tell that draftsman about the technology that was crucial, but which he immediately would have recognized as a tip-off on the need for different legal regime than the one you and he so carefully put together?
- (3) Or, even assuming no amendment and no missing relevant fact, how can you be absolutely certain the artful draftsman was competent enough (in either law or meteorology) to interpret correctly the information you gave him?

(4) The G-Man. So there are cases that have been decided and laws that are on the books--thanks to a great extent to lawyers getting involved. But none of them could cause you sufficient misery without the expertise of the G-Man--the legally-trained (at some night YMCA law school or the school of hard knocks) administrator of weather modification laws. Directors of Natural Resources Departments (Colorado), heads of Boards of Registration and Education (Illinois), and chairmen of Weather Modification Boards (Texas) often have been and in fact now are lawyers.

Now they start with the assumption that you are guilty. Guilty of what they neither know nor want to know. Perhaps you are toying with the notion of hiring a statistician trained at Berkeley, you would like to use orgonomy for cloud busting, or you mean to run off to Washington to inform their superiors on the pécadillos of the federal weather modifiers in the hinterlands. In any event, you are most certainly guilty.

Who can punish you? Ray Booker? Stan Changnon? Conrad Keyes? Arnold Court? Hardly. These people have not until now even known about their own guilt. And besides, they should be far too busy punishing themselves to be bothered about punishing you. Clearly, if any punishing is to be done, you can and must rely upon the always-prepared G-Man.

Here's how he keeps your temperature high and your bank account low. G-Men can deny you a permit, as was the case in Colorado when a former president of this august body wanted to suppress some hail (Davis, 1974). Or, what may be even worse, they may grant you a permit on the ground that you certainly will have no adverse impact on the Texas environment, because you will have none anywhere (Taubenfeld, 1976). That is really being damned by faint praise.

G-Men write opinions for attorney generals' offices, such as the New Mexico opinion giving the regulators wide discretion to stop weather modification efforts--discretion that they seem to have exercised with relish. There also is the California opinion saying that governmental districts must

file environmental impact reports--a measure resulting in massive forest cuttings to produce all the necessary paper. To be fair, a rather rare trait in any lawyer, I must also report the opinions of attorney generals in California and South Dakota have facilitated funding operational projects.

But enough of fairness and on with the subject of misery. The G-Man might actually try to help you. That's bad. Archie Kahan is rather fond of saying that Stewart Udall (then Secretary of the Interior), Frank Barry (then Solicitor of the Department of the Interior), and Charles Ares (then Dean of the College of Law of the University of Arizona) had once been law partners. He further says that I was the bone that these G-Men, trying to be good guys, tossed to Arizona and the weather modification community. They really meant to help. The result? Here I am working my hardest at bringing plagues on you that even Moses didn't get around to.

(5) The Ivory-Towered Academician. Finally, we must turn to the slipperiest character in this whole charade--the ivory-towered academician--propped up by the invisible student. If you have not been able to crank up your worry potential to unheard of heights until now, let a member of this fraternity help you learn creative worrying. We are long-time experts at this. Just ask any of our students--particularly at exam time. Wandering through a report on cloud seeding law that I wrote has been characterized as an "uncharted trip across a minefield." (Davis, 1968).

There have been the article writers--a noble profession on the European continent and a sad outcome of "publish or perish" on this continent. Vaughan Ball was the pathfinder (Ball, 1949), Howard Taubenfeld the real pioneer (Taubenfeld, 1970, 1968 and 1966), Ralph Johnson and Sho Sato the specialists (Johnson, 1970; Sato, 1970), and Joe Howe the wit (Howe, 1971). Even non-professors have tried their legal writing skills out in their efforts to make you more nervous (Davis, 1968).

A hitherto closely held secret, though, is that these writers have been backed up by hordes of invisible students who have done much of the real research into the deadly art of dastardly legal creativity. Student research assistants have been paid mere pittance to do much of our negative thinking for us. Class projects at New Mexico, Harvard, and Arizona have yielded free legal assistance to faculty members. I always like to try out some really outrageous notion on a class. But then I was well trained in doing so; my introduction to weather modification was connected with a law examination at Harvard in 1951. A question asked whether the federal government had legal power under the Commerce Clause of the Constitution to regulate weather modification. I believe I said they did; it then was always safest at Harvard to admit the federal government could do whatever it pleased, so long as the lawyers could figure out a way of going about it that would please other lawyers--and they usually did.

CONCLUSION.

Now in conclusion let us suppose for some reason, only God knows why, you really don't want to be miserable. What to do? You have to learn to cope with lawyers. Some solutions that have been tried and fortunately did not succeed were: (1) King Edward I banned all formally trained lawyers from the courts. But you are not kings. So --

(2) There's always revolution. In Henry V, the Bard puts into the mouths of some soldier malcontents their plans upon taking over the kingdom. "The first thing let's do is kill all the lawyers." Or if that is too stern a step for you, you might --

(3) Leave it to Heaven. In Matthew there's a quote something like: "Woe, woe unto ye lawyers." We'd be happy to wait. Most of us may not be where Matthew is anyhow.

In the meanwhile keep your notes from this humble, but earnest, talk so you will find continuing inspiration and tools for truly painful, meaningless, and miserable lives.

REFERENCES

- Ackermann, W., S. Changnon, and R. J. Davis, 1974: The New Weather Modification Law for Illinois. Bull. Am. Meteor. Soc., 55, 475.
- Ball, V., 1949: Shaping the Law of Weather Control. Yale Law J., 58, 213.
- Carr, J., 1975: Report to Western States Water Council, May Meeting in Las Vegas, Nev.
- Colorado Legislative Council, 1971: Controlling Weather Modification Activities. Report to Colorado General Assembly.
- Davis, R. J., 1975: Uniformity Among Weather Modification Laws. ASCE Nov. National Conv. Meeting Preprint 2548.
- Davis, R. J., 1974: Weather Modification Law Developments. Okla. Law Rev., 27, 409.
- Davis, R. J., 1972: Weather Warfare: Law and Policy. Ariz. Law Rev., 14, 659.
- Davis, R. J., 1970: State Regulation of Weather Modification. Ariz. Law Rev., 12, 35.
- Davis, R. J., 1968: The Legal Implications of Atmospheric Water Resources Development and Management. Final Report Contract 14-06-D-6224, Univ. of Arizona, Tucson, 248 pp.
- Davis, R. J., and P. St.-Amand: Proof of Legal Causation in Weather Modification Litigation: Reinbold v. Sumner Farmers, Inc., and Irving P. Krick, Inc. J. Weather Mod., 7, 127.
- Donnan, J., J. Pellett, R. Leblang & L. Ritter, 1976: The Rise and Fall of the South Dakota Weather Modification Program. J. Weather Mod., 8, No. 2, 1, at 16.
- G-E Review, Nov. 1952: p. 8.
- Greenburg, D., and M. Jacobs, 1966: How to Make Yourself Miserable. Random House, p. 1.

- Howe, J., 1971: Legal Moguls: Ski Areas, Weather Modification, and the Law. Univ. Pitt. Law Rev., 33, 59.
- Hurst, J., 1950: The Growth of American Law: The Law Makers. Little, Brown & Co., p. 47.
- Johnson, R., 1970: Federal Organization for Control of Weather Modification. Natural Res. J., 10, 222.
- Mann, D., 1968: The Yuba City Flood: A Case Study of Weather Modification Litigation. Bull. Am. Meteor. Soc., 49, 690
- Sato, S., 1970: The Role of Local Governmental Units in Weather Modification: California. In H. Taubenfeld, Controlling the Weather: A Study of Law and Regulatory Procedures. Dunellen Co., N. Y., pp. 221-268.
- Taubenfeld, H., 1976: Comments on "Legal Uncertainties of Weather Modification". Talk for March ABA-AAAS Meeting on Legal and Scientific Uncertainties of Weather Modification at Duke Univ.
- Taubenfeld, H., 1970: Controlling the Weather: A Study of Law and Regulatory Procedures. Dunellen Co., N. Y.
- Taubenfeld, H., 1967: Weather Modification and Control: Some International Legal Implications. Calif. Law Rev., 55,493.
- Taubenfeld, H., 1966: Weather Modification Law, Controls, Operations. Report to National Science Foundation.