
The Derelict:
A Victory

[*Photo taken by fellow area naturescaper, unknown to us til after the trial. He had been concerned about his own safety when he had heard from the grapevine about our dispute with Zoning, in spite of support from the Forest Commission. The camera's date stamp shows that this was within a day of the Zoning despot's charges, claiming derelict status existed with 18" high grass, including mystery hedge at the sidewalk edge. Don't you see it? ]*

April 2000 was a busy month for us. To begin with, we had bought land out in the country several months before and were deep into negotiating approvals for the more experimental features of the underground house we planned. The greywater system was already nearly through that process. On the other hand, we had not yet begun to wind down our involvement in local community activities to focus exclusively on building. We were getting ready for our part in the Fairfield Habitat Home Tour 2000 in May and were still sending out press releases for upcoming events with the Alternate Energy Association.

Late in the afternoon of the 24th while running errands I happened to remember to bring along a receipt to pick up a certified letter at the post office and that stop there fit into my route. To my dismay and annoyance, the envelop showed the letter was from Fairfield's municipal offices.

We thought we were past those obstacles last September when we had demonstrated to Zoning (both Matala and Kahler), that R-1 properties were permitted to be habitats. We had developed techniques that would even keep our grass and hedges, which are overregulated by Zoning, within their literal requirements. We had even made efforts to implement neighborhood friendly initiatives recommended by green-space developers. Zoning's last words to us were, "then you're the problem of the Parks department" who were promoting habitats. Not one word since, not from Matala, not from Kahler.

Meanwhile the Forest Commission, which is part of Parks, had invited us to be on their habitat home tour.

Reading the city notices was strictly a "twilight zone" experience. There were a half-dozen charges, ranging from absurd to outrageous, and couched in language that indicated that the Zoning inspector, Janette Matala, was over the edge. Matala was demanding that we irreparably damage two of our beautiful spruces, which she ignorantly referred to as "pines", insisting

that they be stripped of their lower branches. Outrage upon outrage, she was basing this nonsensical claim of "traffic visibility" problems on an ordinance that, in its very statement, clearly applied only to corner lots, which we were not!

In big capital letters, Matala demanded compliance within 5 days. "IMMEDIATELY" she shrieked on paper, for harming two of my trees worth thousands of dollars. No matter what the remainder of her citations were, there was no compliance possible and without compliance there was only police, courts and war on the horizon.

As a family, we sat down and reviewed the six pages of detailed demands.

The second charge related to hedges and, in the segment of the page for her interpretation of the ordinance she had cited, she stated her demands listed for compliance extended over "the entire " property, including a specific demand to cut the solitary bush on either side of the driveway to 3 feet in height!

Not only were those solitary bushes not part of any hedge, but there was no mention of a 3 foot limitation anywhere in the ordinance. Nor did the ordinance govern the entire property. It didn't even apply to the front yard at all. If we cut what the ordinance specified, she would still tell the court we were out of compliance, requiring us to mount some kind of legal defense against either an as yet unspecified charge or against another example of irrationality in Zoning behavior.

The third demand was unbelievable but not irreparable. Matala was insisting on the removal of our habitat sign, the little 6" x 10" insignia from the National Wildlife Federation who had certified us. We had posted it at the front of our property to let passersby know what we were doing was based on credible research. Such a sign is part of the standard strategy recommended by various leaders in the green-space movement (including well-known legal talents among their leaders) to improve communication and acceptance. Matala claimed it was "illegal" and demanded its removal within 5 days.

Next came a charge about "weeds", among which is included grass and the nebulous "vegetation" over 8 inches in height or going to seed. We double checked, even though we are pretty familiar with all the plants in our habitat, and found none of the specifically listed "noxious weeds". As for the grass, we allow it to reach ankle height, a definite quantum step higher than neighboring 1"-2" high lawns. Except for the front yard perimeter which we kept shorter, trimming it down to about 4" high on a regular basis.

The ankle-deep middle was a welcome shelter for small birds to

introduce their young to the world while feeding them. Nature conservationists advocate cessation of all mowing from April through July to avoid disruption of small animals' nesting sites. By using a string trimmer we had found a way to maintain the species of grasses we have to ankle-deep, which is under 8" in height, without brutal mowing.

In the backyard, only the center was basically a grass area and it was periodically mowed, just like the front perimeter, with our battery powered mower approved by the EPA. The center area in the backyard was the only sunny area at ground level. The majority of the yard was sheltered by almost 40 trees and another 50 orchard bushes. Under our stewardship the ground cover that developed in the deep shady surroundings was predominantly indian strawberry (which we used for herbal tea), violets (which are high in B vitamins and lively in salads) and virginia creeper (one of boston ivy's relatives that the birds love).

This was our shade garden, which we used for wildcrafting and habitat. The violets, strawberry and creeper grow anywhere from 4" to 10" in height. Depending on the season, there's a variety of similar plants, ranging from black raspberry to sorrel, plantain, and catnip to new maples and poplars. When Matala demanded cutting to the 8" height, was she referring to our garden, since the rest was cut? That would be outrageous but not out of character with this barrage. How far over the edge was Matala?



The next charge made clear her animosity toward nature. Matala apparently equated the ordinance's list of prohibitions, namely "garbage, trash, waste, rubbish, ashes, cans, drums, bottles, wire, oil, paper, cartons, boxes, scrap pieces of construction debris of any type, parts of automobiles or trucks, furniture, glass or anything else of an unsightly or unsanitary nature", with one brushpile, a few scattered branches from the last windy day, and one garbage can (which the city approves as the container for putting excess yard waste out for Rumpke).

With a small forest and orchard, there's always going to be a few twigs and branches. We generally gather them onto the brushpile when it was time to cut the grass and separate the larger ones into the can to accumulate until there was enough for a load to go to the curb. Since there aren't very many large ones, it takes quite a while so the can and its contents lays on its side next to the brushpile so as not to accumulate rainwater as well and be a mosquito hazard and rust problem. All in accordance with standard long-term composting practice.

To Matala it was "unsightly or unsanitary", even though the location was not visible to anyone, no one except one neighbor who keeps a huge kindling pile of her own. Nor was the can used for any other purpose nor was there any sign of a bug problem. What else could she be imagining? We had consulted ForestPark's

Environmental Services department before we started our brushpile, because they had a comprehensive information and support program including a "chipper" program long before Fairfield's Parks whose "chipper" program was very recent and most of whose resources were focused on recreation back then. Matala demanded its removal. If we put the mid-size branches in the can and broke down the fine stuff, there would be about one stuffed can's worth to go to the curb. The neighbor's kindling pile was waist high and just as big in each other direction.

Matala hyperventilated that we had to do it in 5 days but the ordinance patently gave us 15 days. Was she on drugs?

The final insult was the "blight" charge. Matala's requirement for compliance was removal of the leaves that gather along the fenceline, but the ordinance itself was a tangle of phrases about health, safety, economic value and neighborhood character. Which was her basis or justification? There was no way to figure this out from her notice.

Neighborhood character was one of the bases bigots used to keep blacks out of white neighborhoods, and yet we would have to defend ourselves against this vague criteria? Certainly there was no sign of economic decline in my property's valuation when the bank upgraded my line of credit and I had been watching the housing market in our area since we would be selling soon.



The only clue to specifics was her demand to remove the infamous leaves. The leaves were serving several purposes where they were. Their dampness through winter and spring made them a good defense against any fire hazards. Their depth prevented *weeds*, unwanted plants that would abuse fences, from taking root there. But most of all, I was using them, one wagonload at a time, for mixing with our kitchen offal for my composting. Most were already gone. Usually, by midsummer, I must resort to clippings from vine and tree overgrowth for my composting mix. Standard healthy composting practice.

Not only were health and safety no reason to call my leaves "blight", but Matala's demand for their removal in 5 days was in total conflict with the ordinance's allowance of 20 days within which to file an appeal to the ZAB, the Zoning Appeal Board. With deadlines and ZAB meeting schedules, it would be 42 days before we could even get a hearing, assuming we got our turn at the earliest opportunity.

Meanwhile, how do you "comply" with this mess when you're not out of compliance but the police are at Zoning's disposal to come pounding on your door, dragging you into a court which can, and does, put people in jail for defying Zoning's orders. Finding legal representation is easier said than done and we knew that option was our last resort. The first was to contact allies as well as

Zoning.

We tried Matala's boss; we tried Parks; no one responded. The advice I received from a lawyer friend at the AEA meeting Wednesday evening was to pursue every appeal available rather than going to court. So I paid a visit to Zoning's clerks to get copies of the forms required. While I was there, I noticed a copy of the complete sign ordinance. Skimming through page after page of text that seemed irrelevant to such a little sign, I finally noticed that, in the definitions at the very beginning of the document, the ordinance stated that "sign" did not include or apply to the insignia of educational, civic, or religious organizations or movements. How could Matala not have known that?

I renewed efforts to get in touch with Kahler, Matala's boss. Meanwhile we had begun doing our normal trimming and gathered the branches. Our trimming routine takes at least 4 days because battery operated tools, although less hazardous and less polluting, do not have the endurance to do a half acre of yardwork, in short order.

On Monday, the 1st of May, I managed to get through to Kahler. Practically his first words were that he was instructed by the City Law Director, John Clemmons, not to speak to me because Matala had been to our property the previous Thursday, to take



pictures and that she had already filed the charges.

Shocked, I said that was illegal and that his good name was at risk due to Matala's misapplication of code because she was signing his name to false charges. At first he insisted there was nothing he could do and that "the courts would decide", but when I pointed out the absurdity of the corner ordinance and the sign exemption, he finally said he would look into it, but without much conviction.

We kept vigil that day and evening but no city car passed; no car stopped. Nor did he call. We did see a blue paint mark in the middle of the street later in the week and wondered if someone had measured the distance of the spruce to the street. I had just gotten a copy of the Forest Commission's new tree ordinance and now knew how those distances for trees and shrubs near the public right of way were measured. If the city had been measuring, there was no way the spruces could be judged problems based on valid measurements.

While we waited, we were in contact with the ACLU, the American Civil Liberties Union, because we felt the violations of due process and excesses in the citations suggested harassment. Taking pictures during a waiting period, as evidence to get a conviction, is surely railroading, a clear violation of due process. The ACLU said these ordinances had been declared

unconstitutional elsewhere, and thus wouldn't constitute a test case for them; they had no resources for repetition. The EPA however offered a website with specific law research on the constitutionality issues in these anti-natural landscaping ordinances.

Meanwhile I was also busy preparing a handout document for the habitat home tour on May 13th and making arrangements to pick up an older van for us to use when we started construction and moving. To make sure our appeal to the ZAB was filed unmistakably before the 20 day deadline on Sunday the 14th, we made the trip to the county administration offices, gathered our platt data, filled out the forms and paid the fee on Friday the 12th.

Based on ACLU materials, we sought and interviewed a civil liberties attorney with the intention of challenging the constitutionality of these ordinances and their administration; their vagueness makes them suitable tools for harassment; their constraints on landscaping art, free expression and eco-spirituality violate 1st Amendment rights. The lawyer confirmed that this approach was the safest route because the plan is to file a "motion to dismiss" at the local level; if that's denied, as he said was likely since the local court has an expected bias in favor of local law, then you appeal that decision to the next court, never actually going to trial at the local level.



The dollar figure for such a trial strategy quickly broke the 4 digit ceiling, and with substantial probability according to his assessments. In fact, just to confirm that much generated a bill sufficient to feed us for half a month. We began to bring him up to speed on the details of the case, if it developed, just hoping for better probabilities and planning to do as much ourselves as possible.

As part of our plan to get a handle on what to do ourselves, I was posting the details at one of my websites and when we canvassed online friends for their thinking, one had asked about the history of our confrontations with the city and wanted the "case number" from the battle in '98. He explained that it was possible to go to the court house and look at the file to see what evidence the city had on file.

Since I had been unaware of this option, I decided to see for myself. I couldn't remember the old case number but the clerk could search by social security number when we went to the courthouse on May 22nd. That's when we found out that the city had current charges pending. The city had apparently turned right around and finally released Matala's latest barrage of summonses the same day we had filed the ZAB appeal. The court clerks wouldn't let us see the new warrants until they were served, so we had no inkling of their details until the police came

pounding. But after viewing the contents of the case from '98, I decided to make it a point to check the files for the new charges each time some new development arose.

We found out the contents of the new warrants a week later, the evening the police came pounding on my front door on May 26th. There were now three warrants out of the six; the "sign" ordinance had been dropped; the "corner-lot/traffic visibility" charge against our spruces was missing; the "grass/weed" ordinance survived, as did the "blight" charge. New to the list was a charge that we had a front yard hedge that was "over 4' high, less than 1' from the public right of way and more than 50% opaque".

This last charge was totally beyond comprehension. We have no hedge near the public right of way, much less one that's over 4' tall. We alternated between laughing and puzzling over how you could prove an invisible hedge was in compliance. Were we dealing with insanity or some bizarre confusion? Was this another dirty trick? The court date was set for June 14th, the week after the next ZAB hearing. Hopefully our case would be heard at that ZAB hearing and this irrational process ended with the warrants cancelled.

After the shock of the police visit on the 26th of May, I went back to the courthouse to review the photos Matala had taken on April 27th.

Not one of those photos showed any attempt to measure grass though there was a shot of some grass going to seed, not that you could tell it was mine, since there was no identifying feature anywhere in sight. If the photo was from my yard, she must have finagled a close shot of a single square foot of grass somewhere left in my shade garden, somewhere toward the back since the front would have shown some identifying feature. Not to mention the lunacy that naturally produced grass seed would be illegal but store-bought seed would be a sign of good management of your yard.

There were pictures of the driveway bushes, the spruces, the brushpile with its garbage can, leaves around the fence by the swingset, a stray branch, our garden and the bushes and arborvitae along the foundation on the north side of the house. All 24 shots were 8.5" x 11" and glorious in living color. The strangest bit of info was Matala's memo to the court.

After complaining about compliance and demanding we pay her expenses, she indicated that a nameless neighbor (only one such mention) had complained on April 19th, a full 9-14 days after she wrote up the barrage of certified letters. This claim would not support that she was responding to neighbor unrest in initiating her vendetta. What was she thinking when she wrote this in the

memo? It suggested the opposite; that she was the instigator.

Since the pictures were less than useless in proving height of grass or the claimed hedge at the front yard right of way, this whole case was her unsubstantiated claim against my word. If the court were to uphold this, where was the American justice system's claim to fame that in this country citizens are innocent until proven guilty? I've lived in other countries and this distinction is a mark of pride for Americans. In any event we hoped to head this test off by presenting the evidence of the mishandling and misapplication of ordinances to the ZAB hearing which should come about soon, possibly on the 7th of June at the earliest. Otherwise, if that ZAB hearing was overbooked, we would face the complication of getting the court date postponed. How to do that would mean adding to our lawyer bill very soon.

Meanwhile we heard nothing from the ZAB. On Thursday June 1st, we called Zoning's Mr. Kahler because we were concerned, among other things, since we couldn't even tell supporters who had asked when the appeal would be heard. We were at first told by Mr Kahler that no appeal was possible for these ordinances; but when we cited the contrary statements in the city's own notification letters, he changed his story. We were next told that the exalted Law Director, John Clemmons, had determined that the appeal should go before the Building Appeals board instead. When pressed for the hearing date for our appeal, Mr. Kahler said he had our phone# to call us when he had word but he couldn't do anything without the Law Director.

This made no sense (after all what relevance did the Bldg Appeal Board's specialists in mechanical engineering, electrical & plumbing, contracting & heating have to do with composting leaves as blight; and conversely what qualified a zoning inspector to enforce bldg code violations). We began investigating this bizarre change of venue, including visits to the Planning Department to get the addresses of the appeal board members, and to the local public library to read the law.

In the process, we stirred zoning's notice. On the afternoon of June 2nd, according to the US Post Office cancellation stamp, Zoning reversed course and sent notices to the adjacent properties and local media, that the case would be heard by the Zoning Appeal Board on that Wednesday, the 7th of June. Allowing one day for delivery time, that's less than 4 days notice, not the legally prescribed 10 days. **[1137.05(c)(1)]**

This severely limited our response time and we were unable to get in touch with many potential supporters among Fairfield's citizens or, in some cases, they had made conflicting commitments. In the available time, we scrambled to assemble a series of **letters and documents** (which I can show you) which we mailed to neighbors, the media, and some of the Building Appeal and

Zoning Appeal boardmembers.

We attempted to reach supporters among the participants in the Fairfield Habitat Home Tour 2000 including the Citizen Forest Commission chairwoman who had visited our site the previous September and had invited us to be on the home tour. Two of our visitors as well as 2 other habitat owners had expressed their willingness to become involved.

One who belonged to the national natural landscaping group called the Wild Ones had a new theory about how he intended to avoid trouble with Zoning. He said our problem was that we had developed our landscape using standard, familiar plantings, letting them take their natural shape. Everyone thought they knew what those should look like, though they really didn't. His design relied on plants that were now unfamiliar, though they once were native to this area.

The problem with his approach, to my way of thinking, is twofold; the labor, cost and research of tearing out all your existing flora and replacing it would make natural landscaping impractical for most homeowners; and second, our approach only required that existing flora be well adapted to our environment. This continuity honored the rights of our local fauna to flourish and they gave us a big advantage in appropriate development of synergy of flora and fauna. This was consistent with the experience of Macheala Wright (Behaving As If The God In All Life Mattered) as well as Masanobu Fukuoka (One Straw Revolution). But our ally from Wild Ones was particularly adamant that he could defend his landscape and eager to see what the opposition was like.

The Citizen Forest Commission chairwoman, Kathy Winters, had originally gotten involved in city affairs when the city had intruded in her neighborhood because of their lovely street trees. She had become a gadfly of the city administration and opted to take the position on the newly created commission when it was offered. Her group was responsible for the city's Tree City awards for their work in passing the new street tree ordinance. However, now that their street tree ordinance was complete the administration was deferring the appointment of anyone to implement its requirements. When she had seen Matala's selective enforcement in bringing charges against us on the basis of those very neighbors with technical violations of their own, her suggestion was that, if it was her, she would file complaints against every one around, complainer or bystander, til there was such a storm that the administration couldn't ignore the situation. I had reservations about dragging innocent bystanders into this nerve-wracking mess and I doubted Matala would respond to my complaints about the neighbors anyway because she had totally stonewalled when I pointed out the over-limit hedges of one our hostile neighbors in '98 after the city had prosecuted us.

Hopefully Kathy would be able to attend as well.

But even by phone and email, there simply was no time even with these rapidest of media to get through. My sister, Betty Sandoz who's practically a founding member of the Fairfield Sportsmen's Association, was unable to attend because she had a family commitment she'd made prior to an out-of-town family member. She couldn't imagine how ridiculous that hearing could be made. She is actively supportive. As expected, the bigoted group that 'instigated' these proceedings were the only group prepared to show up.

At the hearing, we presented environmental logic and economic data which established that the claims of economic detriment to property values in our area was untrue and that our practices were based on research. The economic data included actual selling prices for houses in our area from a real estate newsletter, the bank's appraisal of our property for our line of credit with its latest value, and data from the tax auditor's files for several properties in our neighborhood including mine. There was no sign of detriment anywhere.

On the selling price lists from the realtor there were a dozen in our area each quarter since I'd been watching and the properties nearest ours, within a block, were clustered near the top of the list consistently whenever the lists were sorted by selling price with the highest prices at the top. This data evidence was barely considered even though it nullified the basis for the zoning charges. Instead, the bigots attacked in full force, openly saying they knew nothing about the environmental issues, their property values or any other issue of merit but they didn't like the looks of my habitat.

Whenever the boardmembers attempted to focus on the other documentation we supplied, pin-pointing the elements of misconduct in the application of the ordinances (including charging us with ordinances applicable to corner lots, which we are not, and demanding the removal of our habitat insignia from the National Wildlife Federation as illegal, as well as attempting to take the case to court on the basis of trumped-up evidence), the flimflam artist of a Legal Director waved and intimidated the board with the claim that 'all that' list was part of our claim that these ordinances were unconstitutional and the board 'was not competent' to judge them. We protested that issues of trumped up charges (even if later dropped), railroading, unfairness, and evidence of misapplication of the code were 'matters of administration' but the Law Director was insistent, even though the list of unfairness and irrationality shocks you.

We were faulted as un-authoritative on the environmental correctness of our habitat even though we presented our credentials as a nominee for a Rockefeller Foundation Fellowship

in environmental science and women's issues at the University of Oregon, as the Director of Publicity for the Alternate Energy Association of Southwest Ohio, and as a voracious researcher on natural landscaping and eco-spirituality. I even offered names of local naturalists we consulted and a letter of recommendation from the local landscaper (Urban Thickets of Hamilton) -- a letter which he wrote after viewing the property in '98.

Instead, the Law Director offered a statement from Kathy Winters of the Citizen Forest Commission which said that Ohio's Division of Natural Resources' Heidi Devine, who spoke at the habitat home tour workshop, advised attendees not to break the zoning code. Now, not only did Kathy not arrive until late in the workshop that day, but she apparently conveniently omitted the fact that Ms Devine's actual presentation advocated that audience members grow a nice tall hedge to screen out the ugliness of adjacent unnatural landscaping, collect a substantial brushpile for habitat purposes and even create a wetlands. She did exactly the presentation in the official **ODNR booklet**. And just like the booklet, Ms Heidi said nothing about the possible ramifications for unsuspecting audience members until I pointed out that her design was illegal according to Fairfield's antiquated code. Ms Heidi was not unaware of the situation in Fairfield because I even alerted her in informal discussion before the program, yet nothing was told to these workshop attendees til I made a public issue of it. For the workshop & tour, I had in fact prepared a **paper for distribution to workshop** participants outlining the suggestions of naturalists in American Gardener magazine for a cautious approach to introducing your habitat for neighborhood scrutiny -- something a decent environmentalist would do to warn new converts, something neither Fairfield's Parks, the Forest Commission nor ODNR were doing for their newbies. The ODNR publication says specifically just 'Do It'. Kathy Winters had to leave the hearing early and when I contacted her later, she said she viewed herself as an independent observer and that there had been much more in the note she left in the custody of the law director than the law director had revealed. She is in a delicate situation since she depends on the city law director to advise her commission, and her commission needs support to get council to implement their street tree ordinance.

The Zoning Board was clearly bewildered by the complexity of this case and the law director's gamesmanship and the night was longer than their tolerance. They rushed to close without due consideration of the seriousness of the issues. They literally denied our appeal while simultaneously stating their approval of our dedication to ideals which they admitted knowing to be right. The Law Director totally misled them, to their potential jeopardy from litigation. By supporting the abuses we've listed in spite of the knowledge that the ordinance itself is unconstitutional and could have been tested with this case in Fairfield, the Law Director exposed them to possible charges of

conspiracy to deny my civil liberties which is a misdemeanor of the first degree **[525.13(a) & (b)]**.

My beautiful swan was labeled an ugly duck because it looks strange to a jack-booted zoning official and a few bigoted neighbors. The young boys in our neighborhood love our yard. When was the last time any of them asked to see one of the bigot's yards and brought their friends to share the adventure? Guaranteed never. And like the residents of Hamlin in the classic nursery tale, Matala and her supporters will find that the Pied Piper of history and science will speak to their grandchildren and their grandchildren will disown them. Already many more Fairfield homeowners are changing bit by bit from the scalped look, whether all of them admit it or not. There are more than a half-dozen homes within a couple blocks where hedges, kindling wood, foundation plants, wildflowers and driveway bushes exceed the McCarthy era limits. If you notice landscaping as you drive, the new landscaping is emerging everywhere, from schools like Morgan Elementary in Ross to public areas like highways and the public library to commercial properties like Butler County's Miller Brewing and Warren County's P&G. Amazingly these examples of selective enforcement are our encouragement that we are winning in the public's eyes. Membership in the NWF has grown 25% in the last two years nationally as well as that much in Fairfield. The new street tree ordinance allows 18 inch high ornamental grass along the curblawns of Fairfield. Imagine. And now Fairfield's Utilities Department is hoping to produce a public access TV show for Fairfield viewers to advocate natural landscaping for water conservation because of concerns about the aquifer beneath the city of Fairfield from which the city's water is drawn. How many more 'admired' citizens will Fairfield put in jail before this source of Fairfield's notoriety is dealt with? According to a new acquaintance I met the other day on the web, Fairfield is known as the 'burb north of Cincinnati, where mowing the lawn is the high point of life and culture. She said her mother lived there and the ambiance was stifling which matches the mindset we encountered in our early confrontations with the city though the events themselves may have enhanced that perception. That story goes back several years.

Not all the way back to when we came twenty years ago, when, on the city's edges where we moved, the deer slipped unobtrusively from the banks of the Great Miami river just on our west to the woods up the hills southeast of our home-to-be. Where A-frames with solar panels were tucked on those wooded slopes and spring peepers by the hundreds trilled on May nights along the creeks that fed the river and some daring fellow drove an electric car that defied oil shortages. That fringe, with its experimenting, its diversity and its creativity, the wellsprings of new life, has all died out with Matala's reign of terror. She entered the scene only a dozen years ago. The oppressive "grass" ordinance appeared in '91, just ten years ago, along with an aggressive conversion of

agricultural zones to the stifling influence of Matala's despotism.

Our natural landscaping story goes only back a few years.

Back when the county and the area around it had nearly lost its federal highway funding for having air pollution readings that exceeded the mandated health limits for more days than anyone cared to admit, back when the adjacent "lakes" area of the subdivision endured flooding with every heavy rain from the runoff down the hills to the south of us, back when the rural electric co-op we belonged to began to issue both winter and summer "peak alerts", that's when we began to investigate various elements of natural landscaping. This type of design suited our resources since we had already the beginnings of a forest and an orchard, which would improve the air quality, reduce our energy usage and slow the stormwater runoff from our yard. We happily began enhancing both our forest and the orchard. Almost in synchrony, the Smithsonian published The Lawn: An American Obsession which documented the latest research, both historical and scientific, on the wisdom of ceasing or reducing the mowing of our grass and groundcover. And the EPA, while announcing that the standard gasoline mower was a major contributor to the air pollution in the US, began promoting an alternative mower that eliminated local air pollution, mulched the clippings, and was safer. We were game. So it wasn't self-propelled, it was quiet and started with a press of a lever. We bought one to add to our battery-powered string trimmer and manual tools.

The trouble started when, in the spring of '95, this new mower developed problems and none of the local services had the specs to fix it. Not for an extended time.

I was also in the midst of changing careers and had accepted an invitation to join the board of an eco-village in the Blue Ridge Mountains. Knowing that I was anxious to start this new adventure, the neighbor across the road said he was interested in buying our house. He made an absurdly low bid for my house, which I immediately turned down. Attempting to justify the offer, he intimated that he didn't approve of my landscaping but that 'he wasn't the type of neighbor who would call the city, as some others would'.

Not long afterwards, when I received a summons, I asked the judge to dismiss the case and nullify the law. Not knowing his history or ignoring it, the judge denied such powers existed. The courts that turned down attempts to enforce fugitive slave laws, the publishers who relied on Peter Zenger's precedent, all would have rolled over in their graves to hear his pronouncement that this historically critical power of our juries is on the endangered list. Due to leave for Virginia within the week, I pled 'no contest' since we had finally located a resource able to fix the mower and had just finished mowing the yard. To my disbelief, the judge claimed

the report he had received from the lawn police said the lawn was excessive and fined us $150. Between packing tasks, I wrote an open letter to the judge with copy for the local paper, the Fairfield Echo, detailing the issues and then left for the mountains.

The following summer while I was working for the eco-village, the city continued their harassment, now expanding their invasive interest to other areas of our yard. My son then trimmed the bird sanctuary to make it look more like a gazebo and it "passed" inspection. They, however, insisted he get rid of my longterm compost pile of tree branches which was quite an ordeal since he had no help, was under time pressure and his car was misbehaving. By the end of that year, after hurricane Fran took out their road and their organic orchard, our little eco-village group sold the land to pay off their debts and disbanded. The group fared well enough despite that discouraging turn of events. On returning home I again assumed responsibility for dealing with the city.

This time the city complained about grass and hedges. After the lawn police had admitted, on site, that parts of the 'hedge' in the citation were actually trees, and had agreed that the way I'd trimmed the 'hedge' along that front part of the backyard fence was acceptable with bushes cut and trees allowed to grow, I was stunned when the police delivered the summons late in December

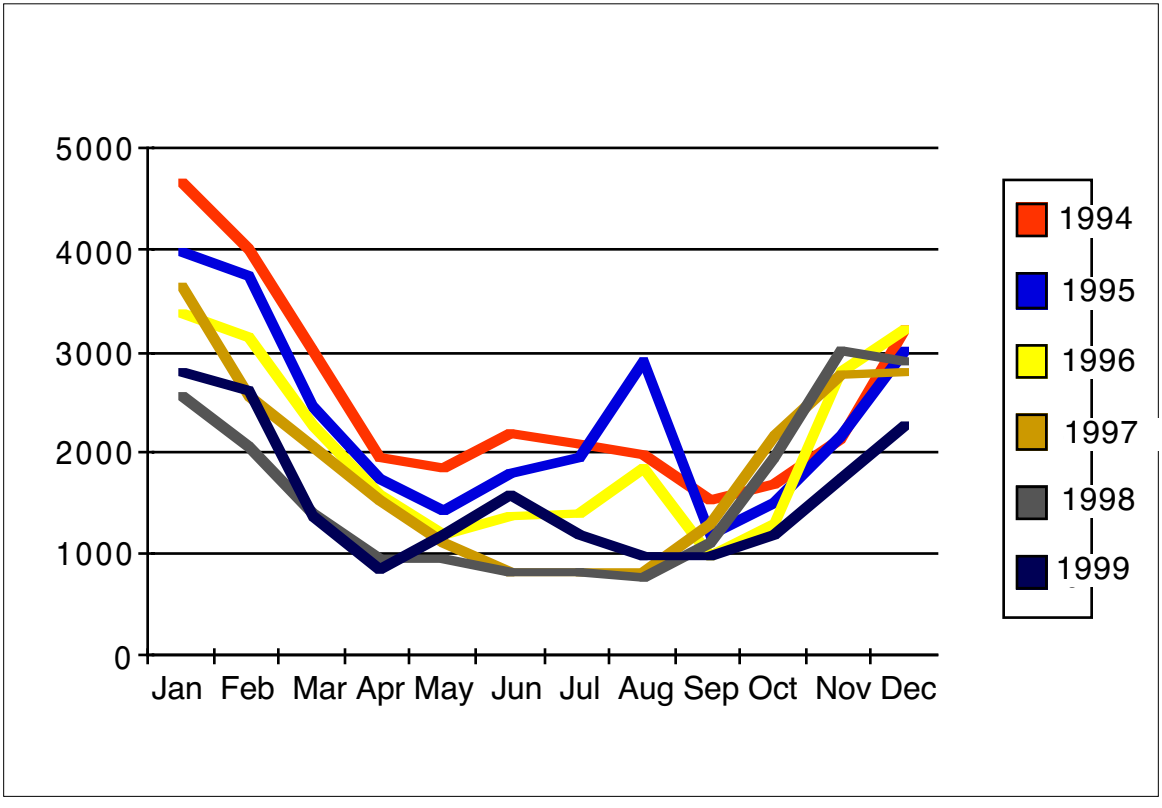


because I felt the remaining 'hedge' along the sideyard fence was reasonably close to its approved limit, having been trimmed to the legal height while the multi-trunk filbert trees were allowed to grow. I consulted a couple environmental landscape architects and dozens of experts from the state, from the county, from adjacent municipalities. I contacted the local chapter of the Sierra club, my councilman, my county commissioner. I called several lawyers, civil rights and environmental specialists.

No one knew of any individual with relevant experience in converting to natural landscaping. Some commercial and government properties had made the transition relatively uneventfully. Supporters said I should simply stand my ground.

My councilman said he grasped the research but suggested I should move to a townhouse so someone else would do the grass cutting, that living in the city took more attention to home ownership! He literally said he felt morally superior for the self-flagellation of grasscutting. Basically calling me a derelict, not fit for home ownership in the hi-brow city, when in fact I was presenting him with the most sophisticated research available and he was clinging a discredited McCarthy era esthetic. His knowledge of landscaping practice beyond mowing was a vacuum. Natural landscaping has its own techniques and skills. Working with nature is not being lazy, just being smart, as well as a whole lot more satisfying and pleasant. This sense of peace and

**Monthly electric usage showing the gradual impact as more natural landscaping developed**



wellbeing is practically its trademark and always a good guide when you're in doubt. Besides fundamental arrogant ignorance, he had to feel somewhat guilty because of the council's choice to spend millions in taxpayers' funds to build the stormwater retention basin above our nearby troubled section of the "lakes" subdivision instead of letting the hillside grow thick and bushy. But the most amazing violation of civility and civil rights by a Fairfield councilman was yet to come.

I asked the city for a variance. They said I was not eligible since the hedge was already in place. I suppose if I'd dug it up, applied and then replanted it, that would have made sense to them. I approached city council and made a presentation during open session, asking for their attention to the city's outdated ordinances, citing the legal trends elsewhere based on the Smithsonian's research. I provided examples of other cities' solutions and listed the benefits of natural landscaping, including the economic experience in Orlando where homes with natural landscaping sold for higher prices than similar homes in similar economic locations with traditional lawns. They listened intently, thanked me for my interest and after the meeting one of the councilmen requested a copy of my presentation.

On the lawyer scene, each of the lawyers I spoke to bowed out. The civil types because they were busy. The environmentalist variety considered it too minor. They dealt with county



highways and constitutional issues. They said their fees would exceed any fines I might incur. So I took pictures of my grass with the yardstick beribboned at the appropriate mark, to demonstrate that the grass height was under eight inches; pictures of my hedge to show it was approximately six feet, except for the orchard's filbert trees which reached about eight. I plotted my landscape, gathered catalogs to demonstrate that the filberts were multi-trunk trees and subpoenaed the local landscape architect who had offered his support, because I was told that his letter of support was not admissable.

In court I found out that the neighbor who had tried to cheat me was one of the complainants and eager to testify. In a violation of civil liberties so atrocious as to be unbelievable, the prosecution called the chief of police to testify that I was defiant, offering a copy of my presentation to city council as evidence. The same copy I had supplied the councilman in charge of building and zoning, at his request, saying he was "supportive" but the mindset of the town was the problem. "Fairfield is no university town", he had said.

After more than an hour of struggling with courtroom procedure, I managed to establish that the city had been mis-measuring the grass, that they didn't know the difference between height and length. So the judge threw the grass charge out but, ignoring the evidence that the city's faulty basis for their charges could be the

reason for the history of the earlier charges as well, he held it against me that I had been "resisting" for over two years. Apparently the act of persisting in maintaining your innocence is an especially vexing offence when you are contradicting Matala, or was it simply contradicting the city. Fairfield uber alles.

And the architect, instead of supporting the concept of different heights for trees, hedges and foundation plantings, played his own game of offering his services to make the landscaping of this defiant woman more artful. A conniving attempt to drum up business or an overconfident maneuver?

The judge had the bailiff immediately drag me off to jail, threatening to put my children in social services. No bail, no stay of sentence, no concern for mitigating factors. Fortunately my son had the presence of mind to take over. He was legally an adult and he spoke for his sister. Following a brief conference at the window, he and my daughter called in the troops. Meanwhile my presence in the city jail was so incongruous to the other inmates there that they were trying to offer helpful advice. And before very long, my guardian let me see that things were not as out of control as it might seem. He arranged for me to overhear, though I was in an isolation area, the whispered exchange between a pair of guards to the effect that the judge had called and instructed that they were to take precautions that my stay should be uneventful. Sense of guilt or intent to menace?



With my meditative state attainable now during all the waiting through the booking and preparation, my outlook became intensely curious about the people, the place, its deficiencies, and the routines. It was like being privvy to someone else's world, a realtime inside look. Though you could tell the guards were leery of this assignment, it was instructive to watch them deal with their tasks. It must be spiritual death to work in a prison.

The inmates, in contrast, were all so friendly. Not that this was a pleasant place. The cellblock I had been assigned to had erupted shortly before my arrival in a racially divisive incident. In some way my story, which they found incredible, brightened their day as proof that absurdity rules in our society. They told me their stories, showed me their drawings and writing, told me the ways they'd found to cope with the deprivations.

Still, it was hardly peaceful, even when the raucous TV hours were finally over. The jail was overheated, the bathroom facilities inadequate, the water gushing from a faucet that didn't work. One woman was suffering from cramps and the guards refused to bring her even a couple of aspirin. Back home though, I knew my son was making progress.

My son promised the high-priced environmental lawyer that he would take charge of the hedges. The lawyer felt somewhat

responsible and cut him a deal on his rates. The next day I was free, in a manner of speaking, with the requirement to cut, over the next month, namely in the middle of February, everything in sight and my first-born at risk til the job was done and reported in court at the beginning of March. Freedom in Fairfield.

Over that intervening period, I found out that the city had known about the unsavory possibility that the neighbor so eager to testify might be harassing me for personal gain. I also realized that the lawn police were apparently ignoring other homes in the area that had hedges and foundation plantings that easily exceeded mine in height, including the hedge behind my despicable neighbor's patio. When I pointed this out to the lawn police, she went silent but, when she resumed, it was as if her mind had simply been blank. Nor was my lawyer interested.

The judge, at the later hearing, viciously set a threatening two year period of probation, though it was non-reporting, leaving us vulnerable to further harassment. As soon as we were out of court, my daughter and I documented the state of the yard since it'd been declared to be in compliance, though the grass was uncut and the arborvitae along the side of the house still tower over the roofline.

I continued looking for legal protection but found no equivalent to the “defense leagues” or “legal funds” that some activist groups



have formed. I created a website with our story, text and pictures, and used it to promote the concept of such an organization, to seek others with similar experience and to share the progress we’d made on defeating the grass height ordinance.

We learned from our contacts about types of grass, especially creeping red fescue, that literally grows sideways. There was even a supplier just across the river. The library was adding related books to their collection including one that listed another possibility, namely buffalo grass, an upright grass, which, left uncut, never gets taller than 6” without laying over.

We talked to organizations with related environmental agendas. While exploring their websites, the library and writing from friends, our list of contacts expanded, the story spread, and the bigger picture formed. The trail led to my absolute favorite toy.

Having always been fascinated with the mathematical models for resource planning, particularly the elegant ones published in Limits of Growth back in the 70s, I was delighted to see their developers were on the trail of the full power of what these models can tell us. Those models showed that, in this century even with the most favorable assumptions justifiable by experts in their respective areas of production, delivery, development and waste, we, as a planet and system will have to deal with resource bankruptcy in more than one area as well as drowning is waste.

Extending their earlier results with Beyond the Limits in '98, the team explored the behavior of the system as we approach those limits. With sensitivity run after sensitivity run, the fact that caught my attention was the fact that there was only one run which completely avoided disaster. Disaster in a planetary resource model is an outcome picture with a nasty dip in the population variable, or more bluntly, since mathematicians are as averse as anyone else in speaking the meanings of the numbers though coping with the reality demands handling those numbers, a die-off. That doesn't necessarily mean a total die-off like the dinosaurs, more like the black plague, war or major upheavals leading to increased death rates somewhere. Scary stuff.

The only successful run was the one in which the model was primed to emulate the situation in which there was more diverse experimenting leading to early identification of problems, ease of dissemination of those alerts, free exchange of the results of searches for solutions and rapid implementation of promising routes. Reliance on the slow movement of big organizations was clearly secondary. This scenario was more typically the work of "unwashed irregulars", but with access and networking.

These limiting behavior results were independent of whether we're talking about climate changes, environmental degradation, bioengineered plague, or resource depletion. This amazingly put



our version of natural landscaping at the crossroads of this picture because we were experimenting in wildcrafting natural foods and herbal medicines, as well as reducing resource usage, reducing pollution of air and water, moderating our micro-climate, and providing a welcoming space for the fauna in our local eco-system to cope with changes.

The book offered the international effort to reverse the impending environmental disaster developing with the ozone hole as an example of the best speed we've managed to achieve in making our world operate like the one in the successful run. That effort is only now, twenty years after the discovery of the ozone hole, approaching the turning point in getting the ozone hole to stop growing. There's still several years to go before that danger is truly undone, partly because past actions have such long trails of impacts in this science and partly because negotiation and willingness to change are slow and difficult.

Another speedier example, though much disparaged, is the Y2K scare. Having worked in decision analysis, I know that there's nothing like having averted disaster to allow the naysayers to diminish the reality of the danger, to belittle those who raised the alarm, and to ignore the mammoth effort required to dodge what they want to claim was routine. But mammoth it was, recalling huge numbers of programmers back from retirement over and above the existing staff, grooming and testing unbelievable

numbers of computers and lines of code, mobilizing users everywhere, while nations and whole economies postponed investment in new ventures. That the postponed investments subsequently came online at the time and with the required volume to smooth the economic depression in the US as the impact of the collapse of the Asian markets in '97 was materializing here testifies to the potential size of the forces involved and the potential disaster, including its complications. What mobilized the major players was the manifest mobilization of significant numbers of private individuals taking fallback positions and gaining the public's awareness that demanded attention. Major players depend on consumer confidence and, among themselves the pursuit of the public recognition of being the earliest to achieve Y2K readiness as well as the harsh penalties for being hindmost, motivated those executives to divert their attention from ongoing games and devote the requisite energy to the Y2K tasks, which of themselves were techy and unexciting. Though the trail-lengths of past actions are not comparable to those of environmental hazards like nulear waste or atmospheric chemistry, the example of unwashed irregulars moving the system is instructive to note.

As an example of one not-too-distant and direct application of the use of natural landscaping in dealing with a potential die-off, there's the approaching resource limit in gasoline, estimated to be within 30-50 years, under current trends in exploration and consumption. In the US alone, there are 30 million acres of lawn



that could be converted to productive natural landscape forms, which would save nearly a half billion gallons of gas each year in mowing alone, with more saved in transport if that landscape also produced items its owners consumed. This action delays the period when ultimately the increased energy costs of arduous extraction, challenging production and transport of gasoline from remote markets will exceed the energy derived from the gasoline's use here. It also allows a more leisurely pace for us to adapt to new patterns of life. For those places where anachronistic zoning rules do not preclude rational considerations, homeowners could rapidly adopt the new aesthetic with their motivation being simple living, health, economic and environmental wellbeing. The justifying knowledge is already in place, though the practical examples to follow are scarce.

Our dilemma then was finding the combination of legal shelter and landscape design that would disarm the despots of municipal zoning that Matala represented. Some organizations like the Audubon Society and the Wildflower Society developed ready made replacement ordinances promoted by green groups. Getting political commitment to implement them requires more public awareness than yet available to pressure councils like Fairfield, still they provided food for thought. Shorter term solutions came from others who recommended certification and relayed strategies for engaging a wider group of neighbors in acceptance.

Certification as an urban wildlife habitat was an option. My rabbits romped in the shelter of our grass instead of cowered as they did when navigating the neighbors' yards. My American toads, by the chorus, sang hypnotically every night from early summer til late in the fall. But certification has no force of law. Another indication of defiance? Undoubtedly. But we decided to pursue it, as it was all that was realistically available.

When the certification process was complete, we held an "open house", which went unattended except for a few of the younger boys in the neighborhood. We mowed the perimeter of the front yard and sculpted designs in the grass, rotating the sheltered areas for small wildlife. We posted the National Wildlife Federation's insignia prominently on the mailbox pole so passersby could identify the certification and the activities we were implementing. Practically, that was the entire list of calming recommendations for enlisting neighbor acceptance. Before long the lawn police returned, demanding that we remove the sign and insisting this was not allowed. Fortunately, we had just read the contrary in the city's newsletter and we fended her off. That was a year ago in '99. A year later this latest assault began and we were now trying to convince the ZAB that the grass gestapo was retaliating.

After the ZAB defeat, we had the option of appealing their decision to the Butler County Court of Common Pleas, once the



ZAB decision was official. The basis was simply that the ZAB hearing was scheduled without the required legal notice and our side was not adequately represented as a consequence. We also considered presenting the evidence to the councilman on the ZAB while the hearing's results were still tentative. He had not been present the night of the hearing and we felt his interest in Fairfield's economic growth might make him more accepting of our economic data and more open to ideas not currently in vogue in the city. I whipped together a packet and called his office, but the incident in '98 suggested this was a bad move. The materials I had provided to a supposedly supportive councilman in '98 ended up being offered in court against me with the claim that my approach to council was an indication that I was defiant. To openly criticize the law to your councilman is apparently a cardinal sin in Fairfield. In the meantime, we had to face our first court appearance on June 14th to plead "not guilty" which our lawyer said we could do without his presence.

I sat through at least a dozen cases that morning before it was my turn and the judge seemed pretty decent. One lawyer told us most judges are decent, they just side with the city. There was one case that day though, where the police officer had been over-zealous against an elderly couple and the judge had dismissed the charges. In addition, the judge had told one of zoning's victims that if they were in compliance by the trial date, she would dismiss their case as well. When it was my turn, she didn't ask

for a plea. Instead she asked if we had retained a lawyer. Technically we hadn't and she gave us one week to do so. When my son heard about this judge, he advocated changing strategy. With a series of pictures we could prove we were in compliance.

By now, there were so few leaves along the fence we could simply move them to beneath the willow and have just enough to use those leaves as mulch there. The willow was in need of moister soil anyway and the mulch would provide that. It was only another week or so before the leaves would have been gone into the compost pile in any event. A picture of the fence would suffice.

Similarly we could take a yardstick with a ribbon around the 8" mark and take pictures around the grass to show that its height was under the mark. We would measure it just as we had in '98 when we won the grass charge in Judge Spaeth's court. Lastly, a nice wide panoramic shot of the front yard would show the absence of any offending hedge.

We were making progress on our construction plans at our new lot, finding a really nice apartment near the lot to eliminate the expense and drag of an hour's drive, each way, to work on the new house. The constitutionality challenge could take years, meaning we couldn't sell the house, only rent it out for the duration. Although we would likely win the challenge, eventually, it wasn't certain by any means. Our main concern was to defend our habitat so that the next owner would be entitled to keep the natural landscaping. Under this new plan, all they would have to do is move the leaves into composting sooner. If Matala was this easily defeated, even discredited because of the invisible hedge, the new owner would be in a strong position and we'd be out of the lawyer business without blowing a five figure fortune.

It seemed a genuine opportunity, one we trusted, one you could verify with big, glorious decision trees with reams of sensitivity testing and stunning mathematical models to figure the true bottomline, incorporating the impact on our personal lives and work, the influence on Fairfield's future, the benefit nationally to the movement to reclaim the 30 million acres of lawn Americans are futilely tending and ultimately to the effect on the delicate balances in the simulations of planetary resources and populations.

Such a grand conception would quickly overwhelm the intrepid puzzler without the use of the tools of approximation and the confidence that Loving Providence builds convergent systems that we are part of and that only require that we align our efforts with the big picture in mind and mindfully monitor and shepherd those lives and resources that are within our scope and stewardship. Do that and you can trust that you will be supported, a step at a time. So we began with the barest minimum, calculating only the

financial impact on our personal lives now. The initial values pointed away from the constitutional challenge and opened the game of determining how much added complexity would be needed.

**<< Close-up of decision tree -- Defense Decision>>**

Our approximation to a fully glorious decision tree can be done on a standard spreadsheet. And playing with the ballpark values and likelihoods shows an amazing stability and robustness. The keys to this assuring situation were the deadening burden of lawyer's prices and the safety from gross miscarriage due to the judge's apparent sense of equity. The former was a certainty; the latter was less solid.

In addition, when we searched through the other possible components of a full bottom line, the impact of the constitutionality strategy, with its 3-4 year dent in our lives and work, not factored into the costs in the decision tree yet, suggested a substantial downside in what we could accomplish, interfering with our business start-ups and my children's careers. The venerable "alternative use of resources" approach to allocating personal goals consistent with the global ones said to look for a different legal strategy because these added costs would only tip the balance of outcomes further away from the constitutionality choice.



Conversely, the contribution of our efforts to broader objectives would only improve one variable, namely Value Secured, which was our estimate of market value of a legally recognized natural landscape. Because we could push that one variable with global ties (Value Secured) all over the scale of reasonably expectable impacts with no change in decision, any struggling over the precise valuation of global impacts was unnecessary and focussing on our personal variables would be sufficient.

Other variables, like probabilities and lawyer's fees, moved cross-over points and shifted outcomes proportionately but left the overall balance of outcomes pointing to the same decision, confirming what "gut" would say and making further development of intricacies superfluous.

A successful constitutionality challenge began to look like a pyhrric victory and, from a mother's point of view, no "ism", no matter how grand, and certainly no single target, is worth the sacrifice of your children's welfare. Constitutionality was just one target. Because our estimate of the judge removed the necessity of defending against a gross miscarriage of justice from the decision tree scenarios, it became preferable to defend our habitat and our rights ourselves. We would work on the law front ourselves, with a direct approach.

The real concern was our estimate of the judge. That we would need to monitor and refine.

We were also making some changes to the front yard to make it more manageable by a new owner-to-be. We had hired an arborist to cut down our pinoak snag to pedestal height for a rustic birdbath. The snag had not attracted any bat families so its contribution to the habitat would now be to support feeding, drinking and bathing for other birds. We planted joseph's coats among the sedum at the base And we encircled a generous oval area around the new birdbath with landscape timbers, added violets, chrysanthemums and euonymous around the perimeter with a plan for a meadow garden in the center, to eliminate over half the front yard mowing forever.

While the arborists were there, we asked them to inspect the poplar in the backyard that had been dehorned by lightning. It was their assessment that the tree was still healthy and the top would descend safely on our side of the fence in about 2 years.

Our feathered residents took an immediate liking to the birdbath but it was too late in the season for planting buffalo grass. We would wait til fall for that.

We scrambled to get pictures taken in time but that court appearance held more surprises. When we arrived at court, my



sister was talking to a lawyer friend of hers who happened to be waiting for a different case. He took a look at our pictures and offered to represent us, *pro bono*, "if we didn't mind!"

That seemed too good to pass up so when the judge called our case, he made the offer official and got a 3 week continuance til July 12th. The judge declined to look at the pictures. Since the lawyer made a point of re-emphasizing that he was doing this *pro bono* , I wondered if he was looking for brownie points from the judge for his own agenda, especially when he seemed to be buying Matala's complaining.

That was the distressing part because we had been dismissed but the lawyer and Matala were having a conference with the judge who did not seem to be in nearly as good a mood as at our first appearance. If this had been our only experience with this judge, we would have been less optimistic about this strategy. I began to think it was more than luck that the *pro bono* lawyer had intervened. But more alarming was the distinct possibility that the judge was deferring to Matala for the assessment that we were in compliance. If that were the case then the judge was abdicating her role as judge and permitting the police state condition where the prosecution is the judge and jury. It would give Matala a blank check. Fairfield would then have a justice system where the accuser rules, a nightmare worthy of Hollywood. From where we stood it was not possible to hear well

enough to determine and when it was over the lawyer hastily assured us he was "on our side" though he had no time to spend yet on the case history other than the brief comments we had exchanged before our case was called.

Outside afterward he set an appointment for a week later to discuss the case at our house. We prepped everything, including faxing him the case history, but he didn't show up. After waiting, we called only to be told that he was "with a client" and had forgotten our appointment. He rescheduled the meeting to the next weekend. I asked for confirmation that he had received the fax. Since the fax was pretty lengthy by the time it described all the case, I had been concerned that he would think he'd gotten more than he had bargained for and I had offered in the cover note to change from *pro bono* to paying status. He huffed that he expected the info to be given to him when he arrived at the next meeting. He apparently had no intention of prepping for the meeting. We offered to meet him at his office but he declined and promised to be there the following Saturday.

He didn't show the Saturday either and, when finally located, wanted us to wait til the 4th of July. We wondered how he could get up to speed in the remaining time. In the interim, the Cincinnati Post had printed a story by one of their human-interest reporters that poorly presented our side and only Zoning's "no comment", just enough to annoy the city without adding to our credibility. The only advantage I could see was that the writer might make a potential witness, with some apparent independence, since he had spent one morning on our back patio admiring the view and asking questions.

While we waited for the lawyer, I made a trip to the municipal courthouse to check the case files for any sign of movement. New additions to the file included another 24 prints of pictures taken on the 13th of June, apparently in preparation for the court appearance. While I thumbed through the leafy shots of my garden, a couple fellows began to take notice. Without thinking, I said I thought they were beautiful and was pleased when they not only concurred but expressed preferences for certain photos. It made up for the sense of violation that you feel at the realization that someone hostile to you has intruded into your private space and looked for some way to do you harm.

Worse, was the idea that the intruder was not considered a criminal even though her results turned up only things of beauty, work in progress (like the bird bath) and private things like a child's swingset or the clothes line. What sort of person was Matala and how would she manage if our gate was padlocked as we sometimes keep it? Clearly her practice was to take pictures immediately prior to a court appearance or filing where the city anticipated the question of compliance would arise. I would make sure the fence was padlocked for July 11th and 12th. Then we

would see. If there was any idea that she was planning to honor the definition of compliance given to us and that showed in our pictures, it was shattered by her accompanying memo. The very first line of her complaining said that "the property" was now in "worse condition" than when the summonses were issued. This was lunacy. She was not prepared for our defense but now she knew we had counter-pictures.

When our *pro bono* lawyer arrived on Independence Day, it was his plan to dictate his deposition of a tour of our yard into his tape recorder. We showed him the spruces, the sign, the grass, the invisible hedge, the garden tour we give visitors, our leaves and composting. When we sat down on the patio to discuss the case, the details and illegal behavior of the city, he was uninterested. He took the copy of the fax then asked what we'd be willing to give up to appease Zoning!!! His deposition was just a show to get us in an agreeable mood because, with no interest in ordinances and violations, he had no intention of winning the case we'd prepared.

He wanted immediate concessions because he had planned to be at a party very shortly and was in a hurry to leave. When I objected that we had not done anything wrong and deserved a credible defense, he glowered that I would be "another TedKaszinski" and told me to think about it.

The following Monday I went to his office and asked for my pictures back. He got angry, said I'd have to have an appointment to get them the next day, that he was having his secretary type up his deposition for <u>his</u> files to show what he'd <u>done</u> for us and that he would be in court with us the day after to formally withdraw from the case. The following day he was more cordial and at the court appearance he seemed surprised that I was not planning to defend myself. I gave the name of the civil liberties lawyer since I had called him to figure out where we stood now. The judge gave a month's continuance and I pled "not guilty". Our fun with lawyers was just beginning.

Of more immediate concern was the fact that the judge did not seem cordial, again. Or was it just jitters over other cases? In one sentencing, the novelty of a TV camera covering the case, showed the judge in a very solemn mood. The case had involved some violent behavior but, not having observed the trial itself, the jail term offered no clue to any bad grace, only a distaste for sentencing a fellow whom the judge noted had been a positive influence in the community in the past. The ambiance was distinctly different for the entire court session. That made two out of three days when we wouldn't have wanted to be presenting our case without some backup expertise to protect our right of appeal if anything went badly wrong.

**<< switch to close-up of DefenseDecision2>>**

If you modify the decision tree used earlier to now include the branches representing the possible outcome that the judge could issue a sentence of jail, without bail or appeal or some comparable disaster, and evaluate the tree with either the assumptions appropriate to defending ourselves or those assumptions we thought were appropriate to having an expert defender, you get some interesting results as you vary the probability that you can avoid disaster.

The main difficulty that arises in this expansion is the feeling that your gut doesn't want to come up with a value for disaster. Usually disaster scenarios are accompanied by infinitesimal probabilities so you can't simply try a wide range of assessments as you can with ordinary unknowns. The results are inherently very sensitive to the interplay of these extremes in values and probabilities, necessitating the adoption of an assessment scheme appropriate for the non-quantifiables that lurk in such dark corners. Everyone has some limit on their tolerance for fear while functioning to the degree necessary for the given occasion and the so-called "utilities" approach bypasses the precise definition of disaster with its screaming inhibitions.

The actually adopted model in this case is a multi-attribute utility technique, or MAUT, because analyzing the impacts of our extreme cases revealed opposing forces. Although highly undesirable from a personal standpoint, a disaster has media potential whose feedback might benefit or at least mitigate some part of the loss. To cope with this situation, separate concerns now emerged, each with its own thread of utility values.

Technically, a utility is simply a less controversial but uniform representation of the value, to you or the group, of an outcome under consideration and is sometimes called "druthers", or even "regrets" if a negative frame of reference is more suitable. Our assessments were made on scales of 1=worst to 10=best, a familiar tactic applicable to diverse concerns that varied from Children's Wellbeing, to Nature's Progress, Civil Liberties Impact to Finances. Each needed its own scale because, for example, although nature encompasses much of our longterm and short term wellbeing, it didn't totally coincide with civil liberties or children's well being everywhere among the outcomes so separate assessments ease the difficulty of trying to get your gut to blend the total benefit picture.

Ultimately this blending is necessary though, because a single number to represent the value of the outcome is very desirable, whenever possible, for ease of comparing. To accomplish this, MAUT asked that we assign "importance" or "significance" to each of these criteria's scales. For simplicity, the significances are thought of as percentages, one for each criteria, whose total is 100%. These also may sometimes be difficult to assign. If varying

these percentages over a range of possibilities doesn't feel comfortable, then examine your criteria for some conceptual entanglement, solvable by splitting some criteria into two. The idea of decision analysis is to let your gut speak so you can logically look at it, share it with others affected, even jointly and severally offering assessments. Where your gut receives its inspiration is a spiritual or physical consideration, depending on your philosophy, but its functional reality deserves respectful examination .

With these utilities now neatly assessed and summarized, we are ready to vary the probabilities, in order to compare the DIY to the expert-driven choice. The key variables are the size of the lawyer's fee and the greater probability for the newly favorable outcomes, which probability differential was expected as the result of our estimate of experience, career training and aptitude. We set the initial probabilities for the lawyer to reflect the strength of our case as well as some estimate of bias comparable to the constitutional challenge. Then we varied our DIY chances to find the performance levels we'd have to match to make the DIY choices have an expected utility that met or exceded the expert-driven option's.

In order for our DIY results to be comparable to or better than the lawyer's, the probability that we could be tripped up had to be 1 chance in 6 or less. These numbers were sensitive only to increases in the lawyer's fee and the improvement in our chances presumably due to experience and legal aptitude. The greater the fee, the more you should have the right to expect in performance exceeding DIY. But there is a point at which the differential performance would imply an unrealistic suppression of our DIY estimate based on our previous experience. At a fee that seemed consistent with some earlier estimates, the decision favored seeking a supportive lawyer unless our assessment of our chances of avoiding the pivotal disaster were better than seemed reasonable given the accumulating impressions and the possible impact of the treacherous or incompetant article in the Post.

When you consider the scene of the judge consulting your accuser and refusing to look at your pictures, that 5 times out of 6 seemed pretty unreasonable since we would be scrambling to learn even the basic procedures in time.

We considered the option of returning to the constitutionality challenge strategy but that invisible hedge charge had changed that scenario. The hedge near the public right of way ordinance didnot fit the vagueness or baseless categories as did the "weed" and "blight" ordinances. A hedge too close (whatever that is) to the road could complicate a snowplow's job should an emergency vehicle need to get through.

When I had told the civil liberties lawyer that the

constitutionality challenge would not get all the charges dismissed and we now favored a short, sweet and simple approach, he insisted on a meeting at our house. Arriving a bit late in his big SUV with a young female companion who waited in the car, he hurried through the tour. Intoning "leaves of three, let it be" when I showed him our raspberries, I'm not sure what the source of his discomfort was. Without a moment's pause at the end of the tour, he immediately launched his withdrawal. Profusely apologizing, he suddenly couldn't possibly defend us because we were, perish the thought, "changing the character of the neighborhood". I was speechless. Of all things for a civil liberties lawyer to say! He couldn't possibly not know that was hypocrisy in his profession. He left, saying he would refer me to one of his brethren in the profession, refused to return my call and sent me a bill, double his previous two!

Now what!

We took it out on heavy work. We dove into moving and remodeling the house interior, while waiting for return calls from lawyers. I began calling a variety of lawyers, not just civil liberties, but also environmental and some wild cards. In the meadow garden, I shaved the grass that was to be replaced, saving the spacious island of Zoysia as a haven for toads and other hoppers. The Zoysia, in comparison to other grasses, is impenetrably thick and luxuriant, its arching form laying over nicely under the 8" mark to create brushed waves of green with no intrusions of stray plants.

Yellow cinquefoil bloomed beneath the little purple maple. The cherries didn't fruit in the strangely cool summer but the weather favored our other work of the heavy variety while we recorded each lawyer's excuse and called another. My sister took date-stamped pictures of the meadow garden's progress.

Vandalism in the neighborhood, directed primarily at our house erupted and then intensified. My son set up one of his cameras as surveillance and recorded two older teenage boys on bikes around an hour before midnight doing their "malicious mischief". The video sat idle in police custody for months though we offered to freeze-frame and print the boys' images. We eventually retrieved it late in the fall. Curiously, the police seemed unconcerned, though one incident in our neighborhood we know for sure was fairly substantial. The Burkhardts across the street had the back window of their truck cap smashed out, not small change for some people.

Meanwhile, we had our first face-to-face meeting with Fairfield's Utilities manager who was working on the idea of doing a short program on local public access TV about the desirability of natural landscaping as a way to protect the quantity and quality of Fairfield's water supply. I had contacted

Dena Morsch, Clerk of Council, early last spring because I knew council meetings were broadcast that way and I was investigating the possibility of presenting AEA meetings on local stations generally.

She wanted to see the PR for our group, after which she put me in touch with Dave Crouch of Utilities because she knew they were interested in natural landscaping which was one of AEA's meeting topics in the past. I had repeated the intro procedure for him and, between interruptions in his schedule and ours, we explored what interests and resources we had between us. I had hoped to have our case resolved soon and sent him a copy of a video loaned to me by Wild Ones which he planned to use in firming up support for his project and its budget, up the administrative ladder. We found out that Fairfield's position in the water business is pretty pivotal because several jurisdictions, from Hamilton to Cincinnati, all pump water from wells drilled in Fairfield. At that rate, pollution seeping through Fairfield's soil from maintaining landscapes that require chemical support on a regular basis becomes an issue for those communities as well.

We were more interested in the rights and legal scene with the local interest interspersed, since the education and motivation side seemed to have been done already, admirably in fact, and it wasn't clearing the obstacles that really had to be removed. The interesting regional interconnectedness of the acquifer that Fairfield sat on though opened new angles for getting leverage, so doing an informational segment as part of our coverage of the legal scene in Fairfield appealed. Should the case come to trial, we remembered the videographer in court and prepared to launch a request for coverage permission under the auspices of our group and my son's business. When the trial date drew near, I would locate the appropriate administrator to arrange filming, with our status as an educational project of a civic group, namely AEA, and our alliance with the Utilities Department to improve chances of approval.

Back on the lawyer front, each excused themselves. Enviro lawyers were busy with big projects like county highways and such. Some lawyers sniffed "they didn't do zoning cases." We tried referral services. Incredibly Butler County's Bar Association gave out names at random, without regard to the type of case. We followed leads from friends only to find their helpful defender had only been pinch hitting for our mutual friend and really only did divorce cases. Or they only taught law school and didn't practice.

In one situation, we were warned by a friend with some brave but unfortunate experience, not to go with a lawyer who regularly dealt with your opposition lawyer or his office partners, because lawyers were inclined to trade their clients' welfare for some career advantage or another case more important to them. When

you're fighting the city, that advice puts a severe crimp in your pool of legal talent.

It was beginning to look like we might be doing this case ourselves anyway, or be coming down to the wire for any lawyer to get up to speed. So I took the file I had faxed to the *pro bono* lawyer and documents prepared for earlier steps and built a comprehensive narrative complete with copies of receipts, photos and legal argument. Whoever took the case would have everything at their fingertips.

I even went back to the courthouse to track what had been updated in the case file there. I was particularly interested in seeing how Matala had managed since we had locked our gate during the day of and the day before the court appearance. Yet there they were. Pictures not only of our front yard but pictures of the back yard taken from within the yard, not from neighboring yards. Surely there was some law against this. Under constitutional protections didn't the city need court approval, an order of some kind to enter, especially where there was a clear indication that no one was to be admitted. What crime was in progress, what escaping criminal was she apprehending? She was supposed to gather evidence not save some imperiled victim. I went home trying to imagine this pudgy, little bureaucrat leaping our chainlink fence, getting her ultra-crisp uniform untidy and messed. Jackbooted personality but not the physique to match. When I examined the gate though there was the distinct possibility that the tongue of the latch had been pulled apart to evade the lock that blocked it and then re-bent to look normal. It sat loosely over the opposite side now. Only the welcome view of the calm and mysterious yard was reassuring. After all her effort, none of the pictures were in anyway incriminating for some technicality and they were as beautiful as before. My sister's crimson van had been parked in the driveway in one of the pictures, but no one remembered going through the gate while we waited for court.

I also began working on the brief against Clemmons to present to the Ohio Supreme Court's Disciplinary Council for wayward lawyers and judges, after a visit from two friends from Deer Rock. We had all been members of Deer Rock Intentional Community in the middle or late 90's while the group was trying to start an eco-village in the Virginia mountains near Charlottesville. Wynn and Carol had stopped at our house on their way back from the American Solar Energy Society/MidWest Renewable Energy Fair in Wisconsin. Carol shared our distrust for the honesty of the City Law Director for his role in this affair and said that when she had a confrontation with a disreputable law officer there were "ways to bite their ankles when they walked over your body." I pursued the question with the state attorney general and was referred to the Lawyer's Professional Responsibility Code. When I followed up online their complaint forms and the "Code"

were downloadable if you had Adobe's PDF Reader. The Reader program is also free, but took several tries to get a good copy. My son helped me with his.

My discussions online and by phone with Wild Ones also produced legal aid, of a sort. One of their members was Chicago lawyer Bret Rappaport who had done the research for the John Marshall Law Review's definitive article on natural landscaping laws and he offered to provide his expert consultation to Fairfield's city council to upgrade their laws if they were interested. The director of WildOnes, Donna Van Beuchan, generously sent me the full text of the JMLR research so my lawyer, whoever that might turn out to be, would have the constitutionality arguments that had stood up in other US cities, from West Palm Beach to Vandalia. There were still ways this could come in handy.

Meanwhile, the formal document announcing the results of the highly irregular ZAB meeting arrived which opened the door to possibly changing directions and filing an appeal against the ZAB. (Interestingly, two of the five board members of the Building Appeal Board, that Clemmons had allegedly decided were a more appropriate destination for my appeal, had moved without forwarding addresses according to the post office, which eventually returned the hearing documents I'd sent them in our haste to try to meet the hearing date. You can draw your own conclusions on the motives for the handling of our ZAB appeal.



The basis for disputing the hearing's legitimacy was indisputable but the puzzle was whether it was desirable. Some said any appeal was preferable to proceeding to court but, in the real world of limited time and focus, would the division of resources necessary to pursue the appeal's requirements divert energy away from preparation for court with little improvement in ZAB results. The likely 30 day limit in which to file the appeal in county court just about coincided with the deadline to go back to municipal court.

The law, ordinance [1137.05(e)] Stay of Proceedings, stated that while an appeal was in progress, the city could not go forward with the action appealed from, so when the lawyer search showed no promise yet, we went down to the county courthouse in Hamilton and the clerks helpfully gave us examples of appeals to emulate, as well as other hints on procedures. In all cases they made it ritually clear that they were not providing legal advice. Based on the copies they gave us of an appeal of another "hasty and capricious" zoning decision, I put together an appeal and began assembling the flock of notifications required but time to serve them was running too close for comfort. It would be hair-raising trying to do this last step alone and reach all parties before the municipal court case was scheduled. I had visions of sliding into chambers with a jumble of paperwork while everyone was waiting in the courtroom, like one of those standard

nightmares in new dress.

Fortunately, one of the wilder leads we received was from a law office assistant at an office that had turned us down. It produced a genuine response on the lawyer scene. I had been sifting through names from the recommended website that listed lawyers by area and specialization. One of the lawyers, one Gregory Wetherall, in the "Real Estate" category of the website was suggesting a meeting, at T-minus-48 hours and counting.

He would do the case. He wanted his money in advance, to the tune of a couple thousand dollars for an estimated 18 hours work. Since this was consistent but a little under the civil liberties lawyer's estimate for a constitutional challenge at the local level, we felt he was a good possibility. He had litigating credentials both here and in Texas and seemed attuned to liberties issues. With all the negativity we had encountered from talking to lawyers, our estimate of the probabilities was schizophrenic.

I brought Wetherall the whole documented argument for the trial, as well as the appeal's brief. He had his secretary copy everything but I had the distinct feeling that information was disappearing into the ozone in the haste and reorganization he was doing, even though he acted confident and in control.

Sure enough, our relief, as Wetherall unleashed appeal and



request for continuance, was short lived. The appeal he filed had been all re-worded for little apparent gain and a glaring untruth now held a key position in the argument. He said this was easily remediable but the court clerk had said the county appeal judges were adamant about improprieties that bogged the process. We wondered.

But not for long because Wetherall dropped the ball at the municipal hearing to get the case put on hold, pending the appeal. "What ordinance," he said when I protested that the city wasn't allowed to go ahead and that I had given him the law pages that said the city could not proceed while an appeal was in progress. I couldn't decide who to be more upset with, Wetherall or the judge. It must surely be her responsibility to know Fairfield's laws and to ensure Fairfield citizens were afforded the protection the laws were meant to provide. Was she hostile because our difficulties in getting legal representation were lowering her case throughput rate and some simplistic efficiency rating? Was she ignorant of the law? Was she being misled by the prosecution?

We thought positive. Our defender had been forced into action before mastering the voluminous details of laws and events. He had managed to get a 3 week postponement to September 21st, specifically to get up to speed, but the first turning point had already been passed. We wondered why the county court did not

assert its rightful authority. We were citizens of the county too. If the city was our adversary, shouldn't the higher court treat our grievance as equitably regardless. It was their duty and purpose.

We considered the possibility that this slip up might be to our advantage since Wetherall said the appeal would likely take 3-4 months while the panel of county judges considered and wrote and whatever. Winning there, after how many hours at lawyers' prices, would put us back before the ZAB whose subservience to the city law director and indebtedness for their appointments to the board were not encouraging. This route could lead right back to the municipal court, just adding another layer of wasted lawyer fees.

In contrast, trial offered the possibility of requesting a jury. Now a jury trial may seem extravagant and reserved for the glitzy or the horrorific but we were entitled to request a jury since Fairfield's ordinances put people in jail for their hedges and blight charges. In this case we concluded a jury was the best option to get a fair hearing. Particularly after the absurd demands Wetherall relayed from the city.

At a pretrial meeting on August 30th between our lawyer and the prosecutor, the city tried to call capitulation a "plea bargain". They literally told my lawyer that I could plead "no contest", scalp my yard, front and back, now and perennially and they wouldn't send me to jail. Per the prosecutor's interpretation of the law, the hedges were to be under 3 feet high! How nice of them! Of course, there's no such law and they had no right to make such demands. Wetherall said they hated me and he couldn't figure out why but he said if we declined their so-called offer we should ask for a jury. I've served on a grand jury before and felt I had some handle on both the promise and the risk.

It was definitely not reassuring to see the lawyer shaken, and I wonder what his opening position had been. Not having been present for the confrontation, I couldn't determine whether anything had miscarried, but the end result and the impression matched our feeling. Had he gone in unprepared? We had requested that he fax us his filings in advance and wondered why he insisted on sending them snail mail. He said he wanted the participation we were offering yet his gratuitous rewording and reluctance to allow us a preview suggested resentment of some sort. Meanwhile we found email more fruitful.

I had already searched the ordinances for any sign of a requirement that we have a lawn at all by flipping through the library's copy of the FCO, the Fairfield Codified Ordinances. during the summer. Besides the uneasy feeling that your eyes could miss a point in this manual method, there was the added discomfort that the required updating of the book's pages had been neglected occasionally in the past and older versions of some

laws still remained in the book, in one case specifically. The case of the "weed" ordinance. There the book gave a statement that matched the county's ordinance to cut 4 times each growing season, a version that should have been replaced sometime after '87 with the version quoted in the summons. How many others could be relied on?

I called the clerk of council to see if there was another "official" copy of the FCO where updating was more rigorous. She said the library was the source the public should use and was not aware of the problem. Her other alternative was more what I was hoping for. She said the FCO was now online but she didn't have the URL.

I had visited the city's website earlier in the spring but it was under development and a bit sparse. There was some progress but still no mention even now of the FCO but I emailed their webmaster and got the elusive URL. Now I could do some intensive, exhaustive research once I played around with their search engine to learn the peculiarities of its abilities. I then confirmed the absence of rules requiring a lawn and the absence of regulations governing garden heights or even any reference to gardens other than garden stores. I reported my results to Wetherall by email including the URL for his use.

More important, when I was looking for defenses for my brushpile and composting, I found that the very last part of the blight ordinance said that "blight" was not intended to refer to properly functioning composting areas. This seemed to override the earlier sentence requiring leaves to be removed within 3 months of falling from the trees.

Now you might ask how the city intends to check which leaf is overdue if you happen to have Japanese maples, pin oaks and other such oak trees among your collection. Oaks have the habit of dropping their leaves just before spring, instead of in the fall. Did the city lawmakers intend to check whether there were overdue fall leaves among the early spring ones? Oak leaves conceivably had the right to be on the ground til June!

Among the other issues in the email, I asked if any form of support from the Fairfield Utilities department which favored natural landscaping for Fairfield, would be suitable for testimony. Among the successful cases described in Rappaport's research was one in which the defendant had been working with Chicago's city parks on a naturalization project and had been given some of those cuttings to nurture in her garden. Since our involvement with Fairfield Parks' habitat program had deflected last September's attack by Zoning, it seemed logical that Utilities's support for the landscape style would be useful to bolster Parks', which seemed to have lost its clout.

Wetherall was tied up with the "jury demand" and didn't respond. Afterwards I asked that he at least acknowledge receipt of what I was sending, and when that didn't happen, a follow-up phone call seemed to work. Next he requested descriptions of potential witnesses, so I emailed him thumbnail descriptions of those who'd come to the ZAB hearing plus another neighbor who had a brushpile.

The likely witness that seemed the most important to me was the Forest Commission chairwoman Kathy Winters, since she represented Fairfield's other side. I detailed her knowledge and involvement in the case as well as why her situation was delicate, how to get the support she could supply and where the opposition's use of her as a witness was vulnerable.

As I went through the list of hostile neighbors, I gave him specifics of their landscaping that were like ours, their comments at the ZAB hearing as well as their history and vulnerabilities. Each had characteristics that pointed out how hypocritical their distaste for our landscape was. Because of Robbe's attempt to rip us off in '95 and Richardson's availability since retirement, I guessed they would be most likely witnesses for the prosecution among the neighbors.

When I pressed Wetherall later about who our defense witness list should include besides our independent experts, he dismissed the idea of calling Kathy or Utilities David Crouch as being risky compared to the comfort of questioning experts. I thought we'd see Kathy anyway because I knew, from calling her before the August court date, that they had asked her to be a witness then. He only wanted witnesses that the jury would view as unbiased, but were solidly friendly and Fairfield connected, such as habitat owners.

I pointed out that the habitat owners I knew whose yards were like mine would need protection of some kind before we could really ask them, even though one seemed well connected in the community. Besides, I argued, saying we were popular with some folks didn't prove we hadn't broken the law. We were supposed to be presumed innocent. The burden of proof was supposed to be on the city, sticking to the text of the law and evidence, not unsubstantiated claims. I asked him for a session where we could focus on the evidence the city was to send, because I'd seen all the pictures up to and through the July court date and could identify and explain what was in the photo better than anyone.

Over the last of September I took pictures, date-stamped, of our own. First the neighbors' yards with their brushpiles, their hedges that exceeded the law, bushes that overhung the sidewalks, gardens of wildflowers encircled with timbers. Next, my daughter and I cruised the three block area around our house for more homes with similar features. Back at our apartment, I

did more computer searches of the law, including tracking references to state laws and administrative code. I copied the results, attached summaries, pieced together arguments and emailed them to Wetherall.

One thing I noticed about related Ohio laws requiring cutting of any kind, there always seemed to be some specified justification of substance such as safety or health to make the code make sense, which is our right, something totally absent from Fairfield's code. Nor is there any threat of jail among the consequences for non-compliance. I wondered about how Fairfield's lawmakers had strayed from Ohio's better model of code. It should have been their guidelines since the cities receive their powers from the state. Meanwhile we remodeled the house, room by room.

In the beginning of October I finished up the photos with a panorama of our backyard that we could use to counter the effect of the disorienting angles and out-of-context nit-picking that misrepresent and mislead. Matala took pictures of the spruces so you couldn't measure their relation to the sidewalk, for example. In the backyard the closeup of a branch made size out of proportion. In another, she took the detail out of context, such as the little square foot of grass going to seed in a remote area of the garden. If the city was planning on misleading the jury with fears of "unsightly" in spite of our exemption for having a composting area, we would need the whole impression to counter the

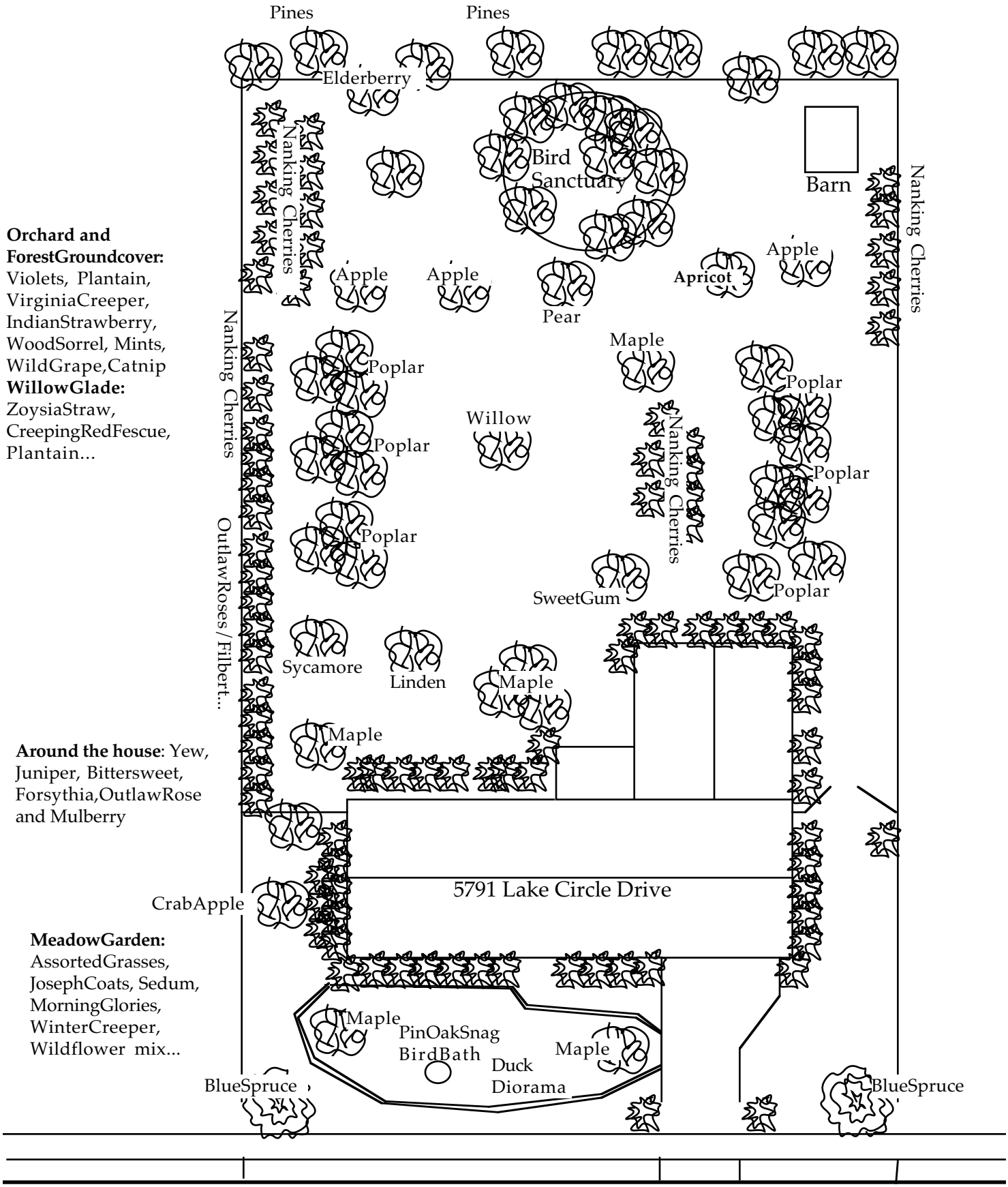


emotional damage they were planning to unleash. We had the text of the law in our favor and hoped to anticipate what misdirection they might favor.

I had found the horticulture expert that I wanted and we toured the yard to check my lot plan for botanical identification errors. Carol helped me identify a couple trees and bushes that had very similar traits but we were basically in agreement on the flora and stewardship.

Because of the dehorned poplar, it seemed to me that we would also need an arborist in order to refute Matala's possible claims of dereliction. Since it was not in the definition of compliance given in the certified notices, it theoretically should have been eliminated from consideration in the courtroom for due process reasons, otherwise compliance became a moving target which is patently unfair to any defendant. But we'd seen this happen in '98 and Matala's pictures after the ZAB hearing included one of the tree tops.

Composting also seemed pivotal because of the exemption so I was pursuing a lead from Forest Park's Environmental Services director Wright Glenn who had recommended a retired expert in a speciality called "solid waste management". The fellow was originally on the staff of Ohio State's Extension Service and gave their classes on composting practice.




**Orchard and ForestGroundcover:** Violets, Plantain, VirginiaCreeper, IndianStrawberry, WoodSorrel, Mints, WildGrape,Catnip

**WillowGlade:** ZoysiaStraw, CreepingRedFescue, Plantain...

**Around the house**: Yew, Juniper, Bittersweet, Forsythia,OutlawRose and Mulberry

**MeadowGarden:** AssortedGrasses, JosephCoats, Sedum, MorningGlories, WinterCreeper, Wildflower mix...

Retired experts were a great resource because they were immune from the political pressures and rules that went with employment. I had phoned, tracked down and interviewed a dozen or more staffers in resources like ODNR (Ohio Division of Natural Resources), parks' departments for a couple counties, conservation services, NWF and many more. Although many wanted to help and promoted what we were doing, either their department rules specifically forbade going into court (like ODNR) unless they were the defendant, or their supervisors or personal observation told them it was a "conflict of interest". This term totally baffled me. How could supporting an ally in pursuing what you promote be a conflict of interest? We weren't paying or promising them any advantage that was counter to their work, though of course, the day of court they might have to miss a couple hours of regular tasks. But our success would make their job of convincing people to adopt their ideas easier, or would it make their job unnecessary?

When I pursued the question with one, especially the question of who would not be so restricted, he explained that opposing another jurisdiction had political consequences for other projects within the organization. Simply put, if you rock someone else's boat, you never know how many powerful people will remember when you need some cooperation on a future project, even one of the projects of a coworker. Universities had the same problem though there the issue was grants, funding and approvals as well. That's how interrelated the various money sources, government branches and universities were. Independent consultants were a possibility only if they were either big enough or remote enough to be immune.

Once I knew what to ask for, namely referrals to retired experts or consultants, things went much smoother and the mutual dread went away. The mind-numbing reality of trying to accomplish something from within the establishment with all this futility clearly demonstrated the fallacy of thinking that the power of one was a myth. Perfectly capable, well-intentioned people were being reduced to pointing to outsiders to get the job done, something we should keep in mind when designing and funding organizations is that there are limits on what big ones can be expected to accomplish. The bigger, more interrelated, the more impotent, the less deserving of funding or expectation.

The other expert I thought might be necessary was someone who could address the fauna issues in an urban habitat. We knew fears of rats, snakes and mosquitoes were unjustified and provably so in a court of law based on the JMLR research. But we knew these misconceptions were still out there. Although nothing had been charged or even mentioned so far, we wanted a naturalist or biologist with habitat or urban focus. Although I did eventually find a retired biology teacher who doubled as a naturalist in the

Fairfield area, he didn't show up for any of the meetings I arranged to introduce our habitat for inspection.

But it wasn't really necessary because the fellow, Nick Freeman, whose expertise was in solid waste management had another masters degree in entomology. And Carol Randaci, our horticulturist had a specialization in natural landscaping and lived with her husband and family on a 200 acre naturalized area in the center of the city of Covington. In addition, the arborist we found, Jennifer Gulick, from the big consulting firm, Davey Tree, was also a forester and had been superintendent of the Cincinnati Park System, with 17 years of experience. These wonderful people were doing this out of the goodness of their heart. They not only were doing their technical surveys of our yard but agreed to two meetings with the lawyer, one a week before the trial, one a day before, as well as appearing for testimony. Wetherall planned to interview and talk to them to make sure there would be no surprises.

When I reported, by email, on progress by mid October, there were still a few calls outstanding to a couple possibilities who were on the road but I had basically narrowed the list to these three. I had other news too. I had discovered a new trick the city might attempt and wanted to discuss it and make sure our lawyer was prepared for this. While waiting for Wetherall to receive his official copy of the city's evidence, I had returned to the



courthouse to see what pictures and memos had been added to the file, from August on. Since there had been a court date then that we had canceled on short notice, it was possible that Matala had not been notified and had shot another roll of film.

There were no August pictures in the file, but to my amazement, they had added pictures they had taken back in their unsuccessful standoff the previous October. They had claimed then, that you couldn't have a habitat in an R-1 zone and wanted us to remove the sign and undo our progress in naturalizing the landscape. With the help of Kathy Winters and the NWF, I had managed to identify a couple habitats that had been announced in the city newsletter and that were indeed in R-1 zones. When I confronted Matala with this data, she stonewalled so I demanded to speak to her superior, Hubert Kahler. After checking the newsletter issue I calmly cited over the phone, he backed down, saying petulantly that we were then "the problem of the parks department" and hung up.

Not only were they resurrecting these pictures, presumably attempting to make this year's case seem like an extension of last year's standoff, with the goal of threatening me with a violation of my "good behavior" promise from '98 which had expired before this year's case arose, but they had attached a memo saying they had just discovered these photos in their files.

Furthermore, counter to the court precedent set in the case in '98, when we won the grass charge, they were measuring the length of the grass not its height. I suggested to Wetherall that we might want to subpoena Kahler.

In addition, I proposed attending the next "pre-trial" meeting. It puzzled me that the lawyers should be making decisions, basically deals, about the case without judge or jury or witnesses or record. I wanted to see what went on for myself and asked Wetherall what to expect. It seemed rather undemocratic and I wondered who conducted it, who would be privy and what professional skills were in play. Wetherall suggested meeting ahead of time.

On the day of the pre-trial, after waiting for an extended period in the courthouse lobby, I called Wetherall's office. His secretary said he was on his way, having been held up at a previous hearing on the other side of town. The city law director and Matala were on the verge of leaving but decided to wait when I explained. Wetherall came hustling in a little while later and began asking for the court required information to which we were entitled, based on the formal request he had filed a month ago. The prosecutor was unavailable so the meeting was being handled by the city law director who deferred to Matala but she was unprepared and Clemmons promised that Matala would send the paperwork she had back at her office later that day or the next.



That was it.

I spoke to Wetherall for a while out in the parking lot and he was ecstatic over their apparent lack of preparation. We went over the pictures I had taken, just briefly, and he seemed enthusiastic. I also gave him a full list of experts, including the contacts who did the referring, as requested, though I explained that those outside my short list of experts were unwilling. He countered that he would subpoena a couple that looked good to him and their unwillingness would make their testimony more believable. This seemed unfair to these otherwise supportive experts and ungrateful to the fine volunteers I'd found and I expressed reservations, re-iterating their reluctance. He reconsidered. He was in a hurry and said we needed curriculum vitae or resumés for each witness, that I should co-ordinate the conference, and we would look at the pictures in more detail later.

There were to be two sessions for my role as well and I called him later to schedule the one a week before the trial. I went there expecting to go over the city's promised evidence, discuss what maneuvers the city might try, and how we could fend them off. Instead he began lecturing me on my appearance and how I should behave in the courtroom. I was to look like a "typical woman of Fairfield, Butler County". He was adamant that I wear a dress, something conservative, heels and stockings. Nothing about me was to look hippy. I should wear my hair so that it was not

unique, specifically if I wanted to wear it long, it should be gathered and kept back behind my shoulders. Nor was that enough. Make-up was essential. By all means, get some lipstick.

Then he started in on behavior and speech. Demure, speak when spoken to but cease immediately should I be interrupted, mid-sentence if necessary. But smile. Show no anger at all costs, because, be assured, the prosecutor will attempt to get me riled. When answering the prosecutor's questions, say the minimum and keep my words "generic", non specific. He said this would annoy the prosecutor no end. He asked me what I'd say to a few questions and about choked when I mentioned that we used the "string trimmer to sculpt our garden and cut the grass." No one uses a trimmer to mow their lawn, he vehemently objected, totally missing the point that landscaping was an art and we respected the lives of the plants and animals that depended on it. Similarly "habitat" was a forbidden word. Say "yard" or "garden".

Worse was when he demonstrated. He whined. This turned my stomach. I've worn the corporate suit and been through enough job interviews to understand the goal of appearing typical and not divisive but I draw the line at his whining. I objected and he tempered the whining but I had no intention of adopting such a perversion. He may not know the difference between whining and demure but I did. Not giving the prosecutor what he wants and



helping the jurors to identify with me made sense. I could do that to increase our chances of winning. He said he was responsible for doing the rest but he expected resistance and repeated himself interminably til I insisted I had the idea though the irritation he interpreted as resistance was simply the justified response to being treated like a slow learner.

Finally I convinced him to take out the pictures sent by the city. They had apparently come directly from Matala's fax and he commented that she was retaining custody of them and had refused to turn them over to the prosecutor, Pete Froelke. He began flipping casually through a pack of almost 40 pictures, most of which I had seen at the courthouse. The pictures from the previous year weren't in there but I saw some dated from the August courtdate that hadn't been in the courthouse file so I asked him to slow down.

We had been commenting on the absence of meaningful measurement and the problems with Matala's angles, when he came to one that showed a patch of disheveled grass with a measuring tape held in it. At first he kept on going, dismissing its significance but I insisted on having a close look.

The tape measure was basically half hidden, disappearing into the grass, so that you couldn't see its bottom. Nor was there any identifiable feature that would show which way was "up", much

less anything to confirm that it was in my yard. In fact, the very fact that the grass was all disheveled was uncharacteristic of our grass. When your grass is long and lays over under the cutting edge of a whirling string or blade, the grass blades tend to lay smooth and orderly, almost as if brushed or swept.

The photo itself was not enlarged to the full sheet and there was something scrawled on the side that looked like 18" plus some other notation. Wetherall discounted it because he said it looked like the grass only came up to the 6" mark on the tape. He wanted to go on but I noticed the progression of numbers from 6" down to 1" should have revealed the bottom of the tape but more tape was somewhat visible beyond where the bottom of the tape should have been. That's when I realized Matala actually was claiming my grass was 18" high, that the segment of the tape showing was on a tape that counted the inches between the foot-marks and there was another foot of tape below where the tape became visible.

This was disturbing. She was now forging evidence. Was she doing this on her own? Was someone coaching or providing assistance? After all, she'd never made any attempt to measure anything before in any case except those pictures from the year before where there was one shot taken of someone pulling the grass up in the air by its tips and holding a measuring stick to it. I wondered whose hand that was since holding the stick, grass and camera and pressing the shutter seemed unlikely. This August photo though showed no hand holding the grass up or whatever direction.

I knew my grass was not 18" high, anywhere, nor disheveled like that. Either she had taken this photo elsewhere or was bending the tape where it was out of sight and messing up the grass in order to get this illusion that the grass was standing up instead of laying over. Even the impression of unsightliness was being served in some perverse way that even grass in its natural state, completely untended wouldn't have since it's guided uniformly upward by the sun and brushed and swept in waves by the wind. I had never measured the length of my grass before but I was wondering how else to prove that this was not my grass.

Wetherall refused to get excited about this, insisting he was planning to have all these pictures disqualified as irrelevant to a charge against negligence alleged to have occurred back in April. Considering how the city had ignored the stay our appeal had entitled us to, I didn't feel very confident in his assurances.

He also mentioned the fact that the first thing we would do in court was the *voir dire*, the questioning of potential jurors to determine who would would sit for the trial. Apparently, both attorneys asked a round of questions of each juror and then decided whether to use their "for cause" exclusions for open bias, or their

two exclusions based on some form of hunch, without need to specify a reason. Amazingly, he was considering a theory that there was a difference between the likely attitudes of the prospective jurors based on gender, since the area around Fairfield is known to be quite conservative. I used his gender dichotomy to get him to agree to change his whining plan so that my answers would be more rational, not quite so demure and tentative, though the rules otherwise would hold. He was convinced that would appeal to the "more rational men", while his contentions that I was being picked on by the neighbors would appeal to the "more emotional women". Returning to the *voir dire*, he was drawing a blank. After asking what limits were put on these juror questions, I suggested I would give the process some thought, convinced there would be a better way, based on concepts related to the case.

I left feeling uncomfortable with the lack of substance. Shutting my vocabulary down, I practiced being "generic" while I drove my daughter to her weekly Irish dance class, wondering what it was going to cost to dress like a "typical Fairfield woman". Fortunately my daughter and my sister came to my immediate assistance, because time was growing short.

After trying a couple times, I finally found a day that the experts and Wetherall could fit into their schedules to meet at my house. Due to a family consideration the forester, Jennifer, chose to come the day before, on Friday the 27th, to do her mapping and surveying. She left her resume and the impressive literature on Davey Tree in my custody. By Monday, she had followed that with an inspection report and offered us the use of the materials from her visit which she would keep on file at her home office.

The day of the conference, Wetherall took an immediate liking to both Nick and Carol, when she later arrived. In fact, while I gave the tour and turned over the material in my composting area, Wetherall seemed to focus on the visual impression our witnesses would have on the jury. He made such a fuss about how grandfatherly and highly credentialed Nick would look to the jury that I was embarrassed because he was directing his comments to me as if we were discussing a high fashion dummy displaying the latest style, instead of a person in front of us. Nick and I tried to laugh it off and continued the tour.

When we were just about through, Wetherall changed subjects to his theory on how to handle the cross examination of hostile witnesses among the neighbors. He planned to focus on one of the neighbors and make him look like a bully who was pushing me around. He asked if Mr Robbe, one of our neighbors, was "big and burly". I was amazed that this was his plan of attack. I'd read, once upon a time, that games were played in this arena but this bordered on mind games. I objected that, although Mr Robbe was tall compared to me, he was known to be helpful to some of the more elderly neighbors. Wetherall pressed for an alternate

suggesting Mr Richardson. I questioned whether this "image" concept would work at all with our neighbors since most are older, either in retirement or near it, as I'd stated in the email descriptions I'd sent him over a month ago.

I'm basically open to wild and creative approaches to problem solving if someone says this is productive, somehow, but this conversation was truly embarrassing, as if the substance and the law were overshadowed by some sleight of hand. Nor did Nick seem comfortable. He's a quiet helpful person. He and Carol began their own conversation. Their discovery of some mutual friends and the happiness they were expressing caught Wetherall's attention, reminding him of another affair he had planned, for which he needed to leave shortly. He left in somewhat of a hurry while we wrapped up the conversations and the last of the tour.

As my daughter and I were preparing to put away the cake and glasses, we noticed Wetherall had left his briefcase and papers sitting on the breakfast bar. He could be returning shortly when he realized his lapse of memory, or we might have to take his paperwork along with us. While we waited around a while, I decided those pictures from August needed more study. My daughter laughed, when I told her that Matala was claiming our grass was 18" high. She conjured images of us wading knee-deep, dragging our feet through the grass to get the mail or to take the offal out to the compost.

We estimated the dimensions of the scene in Matala's bogus picture based on the inches marked on the tape and examined the type of grass blades that stood "up" around the tape. If that scene was in our yard somewhere it was a bit less than a square foot and consisted exclusively of grass. No other groundcover, seed head, leaf, brushpile, berry, trunk, evergreen or flower. No barn, swingset, clothespole, bird sanctuary, timber or birdbath. No sign of any of the little flags that marked the garden path that wove its way around the backyard. That should eliminate nearly all the backyard except the center and transition areas, though even most of the transition area had indian strawberry laced everywhere.

The doorbell rang and Wetherall was now later than ever so I made no mention of the idea that was forming. After he'd gone it was easy to check the areas outside the lawn. The backyard lawn area I literally combed, on hands and knees, never finding a single square foot of grass without little plants interspersed.

For the front yard, we had my sister's panoramas dated the end of July, showing the entire front yard, the sides along the house, as well as the curb lawn. The four weeks between those pictures and Matala's was not nearly enough for the grass to grow knee-deep. The panoramic shots showed the grass cut extremely short in

anticipation of planting buffalo grass, the meadow garden included, except for the island of Zoysia. There are limits to how fast grass can grow, somewhere around 3" in a week during the peak growing season in the spring, August being slower. Which left only the Zoysia. Though that island was exclusively grass and was longer than the 8" limit, not only was it laid over well below the limit but the arch of its curve and the length of the brushed top surface would not exceed a foot or so. In addition, we had bought the Zoysia, not only for its lush, dense matte, but also because it grows very slow. Browning out each winter, it grows again from the bottom and was trimmed slightly each time the rest of the grass was trimmed, which would have made it inconceivable that it would reach 18".

That night I decided that I had mentally countered the targets of Matala's other pictures and I wanted to do the same with these. I spent the evening assembling a list of questions for jury selection, basing them on concepts like whether they did organic gardening themselves, bought organic produce or herbs, enjoyed outdoor recreation, had lived other places, or believed in diversity and constitutional liberties, emailing it for him to read before my visit on Monday. I also asked when he needed to arrange the subpoenas for Kathy Winters and David Crouch.

I went to Wetherall's office on Monday to pick up copies of the pictures from the August set forward and to show him the complete outfit that I planned to wear for the trial. He was impressed with the transformation, saying that I had achieved the look he wanted me to portray. I started to tell him that I felt we should let those August pictures into the trial and then challenge her perjury but before I got any further he became flushed and alarmed, saying it was a huge mistake to challenge the city like that, and that he would quit as my attorney. As soon as the words were out of his mouth, he began tempering the tirade, saying he was trying to protect me and I should defer to his judgment. Calming down, he insisted he was confident the pictures would be eliminated and then she would have no basis on which to make her claim except her honor as a city employee. That seemed shaky to me since the city bias favoring its own was clear, though he insisted that the prosecutor, Froelke, was different and easy to work with. I decided that we would visit this question again and, in any event, we had pictures demonstrating the height of our grass. He changed the subject to the *voir dire* questions I had sent, saying he intended to use them.

When I got home with the pictures, I checked to be sure that the remaining photos covered the entire yard, then the moment Matala claimed there was 18" high grass, we would challenge her to specify exactly where. Whatever location she chose, we would present the court the appropriate picture showing no sign of 18" high grass. There were only six other pictures dated for August, but they covered every area in the yard except the area

back by the bird sanctuary, which is a substantial structure that is surrounded with vines, not grass, and the center front yard, which could be seen in our pictures, and was flanked by Matala's pictures on the right and the left.

I detailed the argument in an email to Wetherall, analyzing each picture to point out how to make it clear to the jury that grass in the picture was not knee-high, such as comparing it to half the chainlink fence height, or a quarter of the house wall, and such. I prefaced the discussion with the justification that we should have a contingency plan in the event that his reliance on getting the pictures dismissed fell through. He should make sure any set of pictures, even if not from August, should include the whole set for the month because this strategy would work in any event.

That was sent on the 31st. When I called to see what was next on the agenda and to schedule my last meeting before the trial, the paralegal seemed apologetic. His timetable as he described it at our last visit was to spend the two days before the trial doing the equivalent of intensive cramming for an exam. She said she was really sorry but that he hadn't been able to devote time to the case today at all because he was focussing on some office changes. Not reassuring, but she said that he would double his efforts tomorrow and that he was good on his feet. Since he had adopted my ideas on selection of the jury and I now had been working on some concepts for my own courtroom examination, I said I would fax these suggestions to him to help him fill in the gap in his preparation and she seemed appreciative.

I expanded on the theme we had considered earlier, where I presented facts and logic in answer to questions directed to me and he emphasized the emotional appeal that he was defending me from bullies. I could then present the economic data on property values while being my normally value conscious, data managing self. If I kept my voice calm, he said I would still be the "nice, articulate lady" before this storm of city/neighbor harassment arose. On the garden side, I would continue to strive for generic, but I could give the basic facts and common sense, that in an orchard the garden must of necessity be a shade garden, that the carrots and tomatoes that grow in the sun would never do in the shade of an orchard, that tea and herbs were the appropriate garden for the area. It would then be obvious that I was being ordered to "mow my garden", something that my R-1 zone entitles me to have.

As long as I was calm I could be aggrieved, and I proposed to describe the ordeal of harassment in terms of Matala's misapplication of code to my spruce trees, emphasizing their value in thousands of dollars, the absolute impossibility of complying with the demands we were given and the entanglement of invalid code as the basis. Similarly I could then lead into the "invisible hedge" dilemma. How do you comply? Which would

give us the chance to introduce our panoramic photos, emphasize the definition of hedge as well as the pattern of Matala's mischief. Doing the same for the "blight" charge, I would underscore the logic of the ordinance in exempting the leaves and brush as being for my use in composting.

Considering that Wetherall was so far behind schedule on preparation, I hoped to give his work a significant boost and reduce the ultimate cost of his services, keeping them within his original fee.

I had some last minute photos I wanted to take at the house, including one of the Zoysia in the front yard, illustrating the shape and height as well as having an identifiable feature in the scene, but something to show my grass as "close up" as Matala's falsified scene. As I was propping up the yardstick and trying to get the right angle, a dark car passed somewhat tentatively, made a wide loop-turn and jockeyed up to the curb. A young woman leaned out of the car and asked if I was the defendant in the upcoming trial in Fairfield this Friday. When I acknowledged that fact, she and a young man got out of the car. She identified herself as Maria Rogers of the Hamilton Journal News and her companion was the staff photographer. Did I mind answering a few questions. She had used the mistaken version of my name that the city persisted in maintaining was proper, so I wondered if it was wise to engage in publicity with no advance notice. Her first official question seemed to indicate that she was coming with an open mind, an engaging curiosity and was innately friendly. She looked in several directions and asked incredulously whether this was actually the property that was the basis of the charges. What, she asked, was the matter.

Notebook and pencil ready she asked what I was doing. We talked about the invisible hedge, the ankle deep grass that should have been legal, the leaves and habitat, the sign and spruce issues. The fellow asked if it was ok to take a few pictures and began his own agenda. We toured the yard and she asked the question of why I was fighting this battle. I explained about the importance of natural landscaping and the need for diversity and independent experimenting if our children were going to have a chance to inherit a livable world; that this was based on my interest in the mathematical models that simulate the relationships of our resources and their use. For once I had the feeling that I was not talking to the wind. She said she was interested in attending the trial and would cover the story. Better even than having our own video of the trial, this independent coverage was ideal and would ensure the proceedings in the courtroom were truly going to be open to public scrutiny. It removed the creative burdens as well since coping with both sides of the camera would have been extremely taxing. But that had turned out not to be an issue anyway, since just a week ago the judge had denied permission for our filming request, which was both

disappointment and relief. Maria's entrance as an independent was absolutely ideal, since she had immediate access to a publication.

It seemed likely that my meeting that day with Wetherall would be late, so I began working on more crossexamination concepts on how to present our logic with questions our opponents would have to agree with. For Matala, he would point out the obvious fact that people in R-1 zones have gardens and, further, are not required to mow them. Using that and the fact that these gardens usually have "vegetation" over 8" in height, would indicate that the grass ordinance needs some sort of context. He would then proceed to point out that the definition of the principal approved uses of R-1 zones preceded the grass ordinance. I gave him the years for each, 1984 and 1991. It was then a short step to say that no lawmaker would say that you could do agriculture and then limit you to 8" in height, just as no lawmaker would say you could have a residence, the other approved use, and limit you to a structure 3' in height.

He then would proceed to apply this logic to our yard, offering our lot plan for the jury to visualize the arrangement he's describing. He then concludes that there are only a few small areas where there is lawn and not garden, following that with our pictures of how we measured our grass. At this point he asks Matala just how she determined that our property needed mowing. There were no tall vegetation pictures in her collection except for areas that were in our garden and she would either have to concede that our lawns were in compliance or she would have to bring out the falsified picture. In the latter case, we label her action the "ultimate indignity" and proceed with the picture by picture analysis that I had given him in the email.

Next in the fax I tried to visualize how he would make it clear to the jury how oppressive and unjust it is for the neighbors to complain to the city about my landscape when so many of the elements of my landscape are in their own yards. At the ZAB hearing their only complaint was that they didn't like the looks so they had no substantive reasons. Such a system where neighbors "snitch" on each other is characteristic of a police state so I presented a hypothetical testimony where he asks the witness which neighbor they planned to report next, the elderly lady with the three big kindling piles she uses for extra heat, the young family with the sheltering pines for their pool privacy, or the fellow with the driveway bushes larger than mine whose wife was about to have a baby? In the process he establishes that my yard fits the character of the neighborhood.

That evening I went over my pictures of the neighbors' yards with Wetherall, labeling each as an exhibit. He had new printouts of the same laws I'd given him which he waved around as evidence of his preparation! He talked about his new office, his bad cold,

the medication he was taking and his talk with the prosecutor. When we got to the panoramic views of our yard, he fussed that they should be printed on one sheet, instead of being a sequence of photos carefully assembled into one with tape out of sight behind. So I was to head out to find an all-night color copier and was to bring the resultant images to trial the next morning. We also discussed how I was to sit through the questioning of prospective jurors and keep track of their answers to our questions so he could simply review the tallies and select the least favorable ones for exclusion.

Somehow in reviewing items, the issue of the date on Matala's pictures came up and I pointed out that the date those pictures were taken wasn't really legally proof that we were disrespecting the city's notices because they had been taken in the waiting period specified in the ordinances given. In fact in some ordinances there were 15 to 20 day waiting periods before anything was supposed to happen. He acted like this was the first time he'd heard this news and that I didn't understand the significance of Matala's violation of due process. I was struggling with disbelief that he could have just spent a claimed intense day of preparation and was so unaware of fundamental facts. When I said I had given him the postal receipt the very first day I had come to him, he fumbled around momentarily then gave up trying to find my voluminous file of documents we had gone over more than two months ago. He was all excited and said I should take care of last minute things and he was going to spend the rest of the evening finishing up his preparation.

The morning of the trial, my children and I met my sister outside the courtroom, everyone in their sedate, courtroom best. In the courtroom, prospective jurors were quietly sitting, scattered and wary. Our experts arrived and we settled into the front few rows, waiting for the affair to start. Even the reporter had taken up a position, front and center, notebook ready.

Wetherall and the prosecutor emerged from the judge's chambers, looking amiable. Wetherall waved me to join him at the table across the room from the jury box, and the prosecutor took the center table. While the clerk of courts took juror attendance, Wetherall spread out his files and I constructed the tally sheet. The prosecutor's questions focussed on whether any candidate had any sort of connection to or knowledge of the case or anyone related. He also asked whether they were willing to "stand by the law" whether they agreed with it or not. Wetherall used our agreed list of questions.

After the first bank of jurors had been questioned, Wetherall and the prosecutor each decided if there were any candidates they wanted to give up their seats in the jury box. Based on the right to eliminate candidates "for cause" or without, two were eliminated. The next two candidates took the empty seats and

had their turn to answer the questions. One candidate was excused when she indicated a likelihood that she might not be able to stay the duration. Some clearly were relieved to be excused. Others gave no indication.

Every candidate said they supported the expression of individuality. Many claimed to be early adopters and to shop at health food stores. Testimony by government employees was held in no higher esteem than that of an individual and the importance of constitutional rights was fairly universal. I didn't know whether to be overjoyed at this wellspring of favorable replies or to wonder if there was a new definition of apple pie. It looked optimistic or, at the very least, raising the issues positively should put those ideals into focus.

Eight jurors and two alternates were eventually identified from the sixteen that were questioned. Next the judge gave a lengthy description of the process as well as the jury's role, including general terminology such as "reasonable doubt". The only bad omen had been the lingering confusion over my name, which Zoning never could get right. The judge had used it as an excuse to refer to me as "the defendant" for the duration, even though the city stood on their heads to get the names of jurors pronounced correctly. This sort of de-personalization of an opponent is standard police state tactics to prepare the unwary to condone violations of individual humanity. Wetherall was unsuitably gracious about this "slight" though it may not have been a choice,

The first item of business was the prosecution's opening statement, the purpose of which was to give the jury a preview of what the prosecution planned to show. Although Wetherall had the options of following immediately with our opening statement or waiting til it was our turn to present evidence, and in fact had originally expressed a preference for not "showing our hand" too early, he now changed his mind.

In this choice, there is also a trade-off between getting your ideas into the jury's awareness before the prosecution can build their case versus strengthening your presentation by having your opening statement's plan in close proximity to your parade of witnesses and evidence. Since our *voir dire* questions had already put our ideas into the jury's awareness, the logic of strengthening our presentation by giving our opening statement later should have made more sense. In a complex trial such as this with multiple charges and myriad details, having the big-picture type framework still in mind is particularly useful to the jury especially since the judge had denied jurors the ability to take notes on any kind. This she justified with some questionable statement about how some of them might miss an important piece while recording the previous idea. Not only would this rule handicap those jurors whose learning styles were visual not aural but anything missed by one would likely be picked up by another

which would then be reassembled during deliberations afterwards.

The other bizarre constraint imposed by the judge was that jurors were literally forbidden to view the property during their lunch break. She said it would give those who did an "unfair advantage" over those who didn't. Were we pursuing justice or some other mechanical uniformity?

From the start the prosecutor was instructive to watch. He cultivated the image of an elder statesman, unhurried, calm and methodical, with a sing-song bit of a drawl that he used to keep his presentation smoothe and flowing. He opted to work from a position to the side of the jury instead of using his podium, basically delivering his messages from the position of confidante and friend.

He used the tactic of insinuation liberally because the jury was at a disadvantage. Their ability to detect this activity was severely limited because they couldn't yet see the photos he was entering as evidence so he could manipulate their mental images by deliberate use of terms to mislead. Nor would they see those pictures til deliberation time. He could, for example, present the picture of my yard waste can laying by the brushpile waiting to be sorted at the edge of the forest area and pointedly say to Matala, "And were there cans?" in Ms Raichyk's back yard, emphasizing the word "cans", painting a horrorific picture of beer cans and pop bottles strewn across the landscape.

He did it consistently, calling leaves "debris" and "rubbish". He droned repeatedly the phrase "high grass" as though it was in every picture, whereas most scenes were either legal height or were ground cover in the garden, not grass.

They had chosen to use black and white photocopies of the original color pictures, which diminished not only the beauty but also the clarity so the jury would have to be alert to undo these smear tactics.

He tossed in a red herring too, like entering a platt on the property, emphasizing that it was a certified copy. Never was there any use made of this item. I wondered about this. We could have used it to prove that we were not a corner lot and that Matala's notices had the earmarks of harassment with their pattern of baseless charges and impossible demands.

Be wary of the tactic of combining charges for supposed simplification or ease or speed. It opens opportunities for surprise attacks and shell games when the prosecution is short of justification for the charges originally stated. The city had changed the target for compliance on other occasions and in the case of our driveway bushes, they relied on emotional confusion.

If they weren't claiming those bushes as the basis for their front hedge, close to the right of way charge, claiming it instead under "blight", then they had nothing to present as evidence of a claimed offending hedge. They showed no pictures of any front yard hedge, only those bushes. Technically, those driveway bushes were specifically demanded to be cut in the certified letters on the basis of a hedge ordinance, though of course an inappropriate one. Nevertheless, when the prosecutor conjured up his presentation, he chose to terrorize the jury with the image of mangled children being on the jury's consciences if they failed to convict me. The prosecution claimed those solitary bushes were a safety hazard to small children when a car was backing out of our driveway.

Now, backing between bushes near the edge of the driveway, particularly at an angled position, requires careful navigating and a speed much less than walking speed. Further, you're approaching a stop at the curb before entering the street. Picture backing your car between obstacles, with less than a few inches clearance, into a parking space.

To be out of sight for the duration of the approach, 5-10 seconds, and close enough to enter the path of the vehicle as it enters the walkway, our hypothetical child would have to be lurking behind the bush and would have to move, from a standing start, a distance of at least their full height, while the vehicle is clearly in view and traveling at less than half walking speed for an adult. To enter the path of a clearly visible, crawling vehicle, would require an attempt at suicide. Children do not come equipped with suicidal tendencies. They acquire them from living with oppressive adults.

The real test of the city's fraudulent effort is the solution they demanded, namely keeping the bushes trimmed short of 4 feet high, well over a child's head, and cut back from the public right of way to eliminate the edges that overlap the pedestrian's path. This is not a solution to protect our hypothetical children. This solution should have exposed their hypocrisy.

The entire orchestrated production proclaiming their concern was fraud and a premeditated use of terror to divert the jurors' power of reason from their appointed task, looking at the law. Jurors would have needed engineering training to deal with this fear mongering because they were not given any law nor any engineering basis by the prosecution. There were no engineers on the jury that day and the city kept the production of terror up.

But the most incredible tactics were the lies Matala told under oath. She testified that there was 18" high grass and that she'd measured it.

Nor was that the only lie she told. She claimed that she'd sent

the notices out both regular and certified mail. Intimating that this was normal practice, she asserted we had to have received the regular mail version because it never returned. Not only is such logic unjustified since mail is misdelivered, lost, damaged or the intended recipient can be away on a trip with their mail held at the post office, but she has never sent her notices any way but certified in all the five years that we've dealt with her.

In an attempt to conceal her jackbooted operation, the prosecutor asked in honeyed tones if she would "work with" a resident to get the changes needed. To which she replied, "certainly", she worked with all residents. Not only was that untrue in our case, majorly, but she followed that with the further lie that she'd generously held our charges til May12th when she determined that there had been no improvement whatsoever. That was the day before we were presenting information and guided tours for potential habitat owners from the city of Fairfield showing them how to avoid these hazards. We were spit and polish perfect by that date relative to the ordinances. The more likely connection to that date, is the fact that May 12th was the day we filed our appeal to the ZAB with the brief that outlined Matala's malfeasance. It was pure and simle retaliation.

At that point the prosecution rested. But no sooner had Wetherall begun asking questions about the identity of the neighborhood snitch, than the prosecutor was requesting permission to add something he had forgotten to ask Matala. Wetherall considerately allowed the prosecutor to take back control.

The prosecutor's omitted target was the "character of the neighborhood" issue, but his phrasing gave Matala an extended opportunity to reiterate her claims of our gross misconduct compared to her favorable impressions of the neighborhood. Finally the prosecutor relinquished control. I wonder whether this was any more than a tactic to monopolize the time and attention of the jury since there was no apparent new information. How obligated would you be to accede and would it make a difference to what the prosecution could say in their closing arguments if they'd failed to include some bit of testimony.

Wetherall started out shuffling through the prosecution's pictures, for some reason looking for some hedge picture. He didn't need their picture for our hedge defense so this behavior was puzzling except that I had mentioned in a memo that the hedge charge was the weakest and defeating it, if done early, would diminish their credibility and allow us to focus on our more complex arguments. What happened next was that he again changed course and went back to his caller identity line of questioning and the crossexamination went down hill immediately.

He wasted huge quantities of time in a myriad of ways, revealing a major lack of preparation, if I was to believe the claims that he had courtroom savvy and could think on his feet. Sometimes he repeated the exact same question two and three times. The worst case was in the trio about the intent of the ordinances being preservation of the character of the neighborhood. The repetitions began to feel like grilling or some form of harassment, as well as being pointless and annoying to the jury.

At one point early in the crossexamination, he began a logic syllogism to the effect that violations of the ordinance implied that the character of the neighborhood was changed. It may have been that he expected to then claim that our actions did not change the character of the neighborhood and therefore that we were not in violation of the ordinance. Repeating it twice for Matala's approval, it must have dawned on him that his initial premise was untrue, because he then dropped this line of argument.

He made our character of the neighborhood focus muddy by wandering down a line of questions that showed that Matala engaged in a form of selective enforcement practiced in police states, namely he established that Matala would not cite anyone for violations she discovered unless they had been snitched on. This may have been intended to make Matala unlikable to the jurors. The problem was that it opened the door to confusion for the jury and an interminable stream of objections by the prosecution about selective enforcement when Wetherall finally did make his character of the neighborhood points with the neighbors.

Selective enforcement is looking at the violations as a transgression by the city official, which the judge would not allow. Whereas character of the neighborhood is simple existence of the violation. Later when he needed the character of the neighborhood defense to establish that we "fit in", the prosecutor could protest loud and long that these were attempts by Wetherall at making selective enforcement claims. This distracts the jury, and like corporate media's dominance of political advertising, the warnings by the judge and the repetition give legitimacy to a false claim, using up significant time, energy and credibility, while the truth languishes.

He spent major amounts of time attempting to establish that Matala was aware of things when it didn't matter. For example, it didn't matter whether Matala knew about the composting exemption, only that the exemption existed. Matala was not being prosecuted for harassment in this trial. Nor did it matter what Matala knew of the other ordinance violations, only that there were other violations of the ordinances in the area. Similarly, it was only necessary to elicit the facts about Matala's violations of due process and draw the conclusion simply that it

happened.

The worst error was the questions he asked about her education. Coming after all his questions on what she knew and didn't do right, it seemed especially like belittling independent learning and was likely to insult the jury members since most who are early adopters or knowledgeable about organic gardening and alternative medicine, for which we chose them, have learned on their own. And it made him look like a snob, as well as being pointless since it assumes that her knowledge of horticulture and the area being discussed could not have been learned by reading or growing up in an agricultural setting.

Among the tactics that were his undoing was his insistence on having Matala quote, or later, read the ordinances. Although he may not have intended that she quote it verbatim, still the demand seemed patently untenable for user-unfriendly law code. Reading it necessitated that he supply the text which led to fumbling through his copies of ordinances, another occasion for the prosecutor to make faces to demonstrate that tolerance was being tested by the ineptness of this disorganized greenhorn. In a later use of this tactic of wrangling with Matala over her knowledge of legal points, the prosecutor became openly disdainful of Wetherall's preparation, sniping for the jury's benefit that "he's pointing to the wrong ordinance", though in fact that was a matter of opinion. Her poor reading performance not only made the content unintelligible for the jury to consider but surely added to the jury's antipathy for his treatment of the witness.

Devastating to the case, more than the waste and ill-will, was the number of times that he failed to score our points when they were available. These occasions occurred later in the crossexamination after he'd wasted his energy, his credibility and the prosecutor's objections were draining concentration, his and the jury's.

He had an opportunity when Matala couldn't say that she'd ever talked to us during this episode in the spring. This disproved the prosecution's claim that she worked with everyone, but he let recognition of this implication slip through his fingers. When you score, you don't sweep it under the rug. You crow. You announce it.

Not much later he succeeded in asking the question I'd suggested in one of the emails, namely getting her to specify where she was claiming the high grass was located. In a golden opportunity, she literally testified that it was everywhere, over the entire property, in every picture. But instead of triggering the examination of the prosecution's own pictures and, for the jury's sake as well as the court record, pointing out the comparisons such as the visibility of the bottom of the gate or relativities to other

features in the picture so the jury would have these techniques at their disposal in examining the pictures later, he totally dropped the ball. Nothing. He said nothing about it. He not only lost the chance to defeat this charge, he lost the chance to let the jury get a feel for Matala's deceptions

In short order, he dropped the ball again. He asked the comparable question about hedges, to which Matala responded that the offensive hedges were on either side of the property. But that contradicted the charges which specifically were written for front yard hedges. The rules for side yards and backyards were different. I'd told Wetherall the city had used this tactic of changing the target for compliance before and he let this slide right by. Why didn't he have the charges withdrawn? This is a violation of due process. There's no way he could not be unaware of this legal safeguard prohibiting this sort of activity which makes defense unsustainable. Was he planning on making his move during the summations?

This claim, if it stood, also called into question the city's focus on the driveway bushes, since they were not part of (5) or (7) of the BOCA code, which was technically what we were cited for. Weren't lawyers supposed to protect you from these sorts of transgressions?

Among the other things he failed to challenge was the story of Matala's holding the charges til the 12th out of graciousness, but he could do that later when he had me on the stand. Similarly, he could respond to the prosecutor's charge that there was no evidence of agriculture when our experts were on the stand. It would have felt reassuring to have entered the horticultural data I'd accumulated on exactly the plants in our garden, to squelch the charge on the spot, but that's the way the process is arranged. That's why the jury needs to be able to take notes.

Instead of giving the legal definition of a hedge, he asked Matala to confirm if a single bush was a hedge, giving her an opening to play the 'expert', but then failing to demolish that pretense as well as the preposterous idea that our driveway bushes were violating any hedge ordinance. Claims like Matala's that a single bush was a hedge could and should have been countered to avoid the jury picking up bogus information not to mention granting her legitimacy as competant.

Another indication of poor preparation was the fact that Wetherall's questions were unaccountably phrased as if he were asking her opinion instead of zeroing in on pertinent facts, like he managed to do for the location of the grass and hedges. This phrasing gave her answers a status they had no right to since they could have been challenged intrinsically, for example by referencing the precise legal definition of hedge which I'd given him.

Maybe the afternoon would go better after it was our turn to lead. First there was lunch and then the rest of the witnesses for the prosecution. Our experts were dispersed for the moment. Jennifer had gone back to her office, just down the road. My son was to call her when the time was near. Nick had already come back from lunch. Carol wasn't back yet. The rest of us went down the road to a fast food place with Wetherall, trying to gauge where we stood and unwind. Wetherall was still complaining about his cough. We wolfed down a meal and drove back to get ready. The jurors came shortly afterwards.

Once the judge returned, the prosecution began calling the rest of their witnesses. First on the agenda was Mr Richardson. The prosecutor emceed this show, working methodically through his list of statements each neighbor was to say. There was no doubt their show was well rehearsed. Mr Richardson was coached to report that some relative visiting him had disliked our thick and leafy appearance and figured incorrectly that the house was empty.

Next on his list was a comment on the height of our backyard hedge, which should have been classed a violation of due process, because we weren't charged with a hedge height ordinance for any but the front yard and, in addition, they were misleading the jury with the idea that the 4 foot height should now apply to our



orchard bushes in the backyard. There's nothing in the "blight" list about healthy bushes and trees; they neither diminish property values, just the opposite, nor constitute a fire, safety or health hazard; nor were they out of character with some of the other hedges in our immediate vicinity. There was no basis for their claim of deterioration other than a few bigots who didn't like their looks. They were primarily filbert, mulberry and cherry bushes; part of our little orchard.

The hilarious third item on Mr Richardson's script was his testimony on my leaves. He claimed my leaves were unraked for at least two years. How anyone could take such a claim literally is beyond common sense. Not only the amount of leaves but the surveillance implied. Pretending to monitor my affairs without missing any activity in spite of the row of orchard bushes, he labeled a hedge, between our properties, he must be neglecting his poor wife. Clearly the prosecutor expected the jury to believe it and he gave it legitimacy with his confidence. Imagine how many leaves would be gracing our fenceline if two years of leaves from my fifty orchard bushes and forty trees were to remain unraked in my half-acre.

When it was Wetherall's turn to cross examine, he must have been intimidated by his preconceived notion that elderly people can't be villains or maybe that their villainy should be tolerated. Wetherall did not even engage Mr Richardson in noticing the

other tall hedges among the neighbors, if only to open his eyes to the world outside his ill-founded view. Allowing the credibility of our claim that we matched the character of the neighborhood to diminish, Wetherall weakly asked Mr Richardson if his taste was different than mine. Then he retreated because he couldn't handle the crossexamination.

The next witness was Mr Burkhart who had a fetish about the natural shape of my bushes. To him the sight of new growth on a bush was a sign that those bushes were growing "wildly". This last word made him practically flinch when he said it. He also claimed that you had to walk around the driveway bushes. Now this is truly puzzling. People easily navigate their home's interior hallways which are generally 3 feet wide whereas they suddenly have difficulty on a sidewalk that's 4 feet wide by design, minus 7 or 8 inches from this bush which is the total extent of the overlap that the city's own picture showed. There must be some magic repulsion in those bushes.

Wetherall failed to counter the prosecution's position, probably because he'd never spent any time studying the pictures but this time he at least broached the subject of neighborhood character by showing Mr Burkhart the picture of the hedge that shields the Robbe's patio view from the Burkhart's pool area. Emphasizing that the hedges exceeded the patio roof height, sent the prosecutor into spasms. The prosecutor objected that this was a claim of selective enforcement. Wetherall responded that his goal was to establish character of the neighborhood, but the judge warned that she wouldn't allow selective enforcement claims. They didn't seem to be listening to each other. Of course the jury would be distracted and likely to discount the point made.

When Wetherall restated his comment about the pictured bushes comparing them to my bushes, this challenge to Mr Burkhart's sensibilities provoked the fearful retort that my hedges "were up against her house" as if such contact was sacrilegious. After which Wetherall rested his crossexam without comment of any kind to counter this strange suggestion. How was the jury to tabulate and make sense of this collage of fetish, opinion and violations of due process mixed among the original charges.

The experience of being the object of these people's fears and animosities as they dealt with the difficulties of facing change occurring close to home should have been surreal. The tension between your perception of logical absurdities, on the one hand, and the reverent legitimacy being granted those absurdities on the other hand by those with the power and intent to do you harm should enervate and cause visceral distress. Something like "Twilight Zone Live, News at 11". But I was focussed on playing my role. Having worked through the development of our case, I was familiar with the logic and even the law on our side and I trust my guardian so I was feeling more the adventure and wonder

of doing something meaningful in Alice's wonderland. In addition, the experience was occasionally distracted with the necessity of finding appropriate pictures to keep Wetherall supplied, since he seemed in no shape to find what he needed himself.

The third neighbor was the young Mrs Baker and the prosecutor did his methodical ritual of establishing identity, residence, length of ownership, before launching his seemingly open ended request for each witness's description of my property and their opinion of whether their property was "debased and deteriorated" by my proximity. To Mrs Baker, our landscaping was "overgrown" and she claimed the bushes hid the windows whereas the only front window within reach of the bushes is the big picture window whose bushes we keep trimmed so our cats can look out from their sprawling cushions at sill height. No one questioned her right to look in the windows, the basis of her apparent definition. On the side of the house, the law actually allows 6 foot high bushes and the one window on her side looks at the Richardson's garage, not a sight as pleasing as the tops of our evergreens like a window box bouquet to soften the brickwork scene. Our governing height for our trimming on that side is the height of the electric meter and water meter which have to be read monthly, both of which are below 6 feet up the wall of the house. Furthermore, not only are these bushes under their legal limit but we were not charged with any such height violation nor do evergreens diminish the value of the property.

Expanding this due process violation, the prosecutor directed her attention to the arborvitae in the picture of the other side of the house that inspired Mr Burkhart's aversion for wall-touching hedges. She agreed they must be 8 to 10 feet high in places, ignoring the fact that these are trees whose trunks are at least 6" in diameter and to cut off the tops of these would be majorly unsightly as well as running counter to the direction of the newest street tree ordinance which had taken the step of demanding that new construction on larger lots preserve such trees with a few exceptions **[901.06(e)]**. Though the new ordinance did not quite apply to our situation, it was an indication of the trends in lawmaking.

None of these violations of due process seemed to inspire any resistance or objection in Wetherall. Did he view these as more troublesome to turn off than to hope they would be lost in the muddle? Was this a case of displaced resentment? The opposition were not pulling their punches.

The third concern on Mrs Baker's list was our driveway bushes. In her case, the magic repulsion actually forced her all the way off the sidewalk and into the grass! Because Mrs Baker is young , the prosecutor again trumped up his phony safety issue to keep the jury in a state of alarm.

When Wetherall presented Mrs Baker with a picture of her own 10 feet high hedges of pine trees sheltering the privacy of their inground pool, the prosecutor was again objecting that Wetherall was claiming selective enforcement. No matter how many times the intended distinction had been dealt with earlier, the objection became *de riguer*. The judge was swayed and warned that Wetherall shouldn't "go there", adding to the impression that Wetherall was constantly out of line. Insisting his interest was character of the neighborhood, he entered some of the pictures as evidence for the jury's later inspection.

The next witness for the prosecution was Mr Root, whose house is the one beyond the Richardsons'. The prosecution's drill was the same. This time, at crossexamination, Wetherall used the picture of the Hess' driveway bushes, larger than ours and further out over the sidewalk and next to the Roots' residence. Again the objection and the scolding. Maybe by summation time Wetherall would find a way to re-iterate his point for the jury's understanding of the distinction between the two concepts and the significance for the ordinance we were charged with. But he still kept falling into the trap.

The final witness called by the prosecutor was someone named Ms Rose from down the street a ways. She also had to walk around the bushes and considered our landscaping an "eyesore".



Wetherall chose not to confront her with pictures at all. Possibly her grey hair deterred him.

When the prosecution rested, the city law director interrupted the proceedings and suggested the jury be given a break so they wouldn't be affected by the discussion of legal points he wished to raise among the lawyers and the judge. The judge accommodated his suggestion.

After the jury was cleared out, the city law director began his law twisting, with an attack on the necessity of certified mail for notification. He asserted that certified notification was only necessary for the grass ordinance and further, that the wait was strictly a limit on when the city could take action against the property. The city did not have to wait to take action against the owner.

Though this was illogical and could not possibly be a valid interpretation, our lawyer's only counter argument was that the certified notices each stated the wait was in effect, making the city's action in taking pictures as the basis for filing charges a simple breach of contract.

My attempt to interject an opinion on the longer mandated delays and the appeal available was silenced by Wetherall's reminder of my role. The judge and the opposition were patently unwilling

to consider even the remote possibility that the accused might have something to contribute to their hallowed discussion. Nor did he consult me either. No request by my lawyer to conference with his client, even though he knew unequivocally that I was more familiar with the FCO than he was. This conversation was only for the elite. The defendant was an afterthought. Nor was it just because it was in front of his peers. I had tried to point out the error the prosecution was making in measuring the legal distance of my driveway bushes from the public right of way with whisper and scribbled jotting during early testimony, to no avail.

How much ground were we going to lose if he failed to undo this mangling of the law? How much ground would we lose if I was cited for contempt by ignoring the role playing that was the agreed strategy? Contempt of court is known to be one of the most capricious actions of the court and its penalties have ranged from mere fines to jail terms. The judge's glare suggested she was thoroughly sick of something with no tolerance left.

Yet Clemmons' view was not being opposed and it treated the owner with less respect than the land and leads to untenable situations.

Specifically in these charges, the BOCA "blight" ordinance offers the option of appealing the decision of the zoning official provided the appeal is filed within 20 days of when the owner receives notification. The soonest such an appeal, once filed, can be heard is the next scheduled ZAB hearing. In the event that the filing date is after the 15th of the month, the deadline for the next ZAB schedule is already closed and the appeal will be scheduled for the following month's ZAB hearing date. This could result in as much as 70 days wait between notifications of zoning official's displeasure and the ZAB hearing for the charge.

Under John Clemmons' interpretation of the city's rights, he could have the owner prosecuted and convicted before the appeal is heard. This is so unjust and illogical, it clearly invalidates Clemmons' claims unless the court wishes to claim infallibility and that the ZAB is a rubber stamp for the court. Otherwise the ZAB could decide differently than the court, granting relief from the charges which should cause the charges to be dropped whereas they've already been prosecuted.

What, pray tell, would the city do then? Say "oops"?

There is nothing in the ZAB rules to prevent this from happening if the Stay of Proceedings is interpreted as Clemmons claims. There is no way his interpretation is a valid representation of the lawmaker's intent.

In fact, ZAB rules state that if the owner is dissatisfied with the ZAB decision, once it's official, the owner may appeal the

decision in the County's Court of Common Pleas, a process that takes months.

Wetherall should have at least remembered we had an appeal still pending. What would it take for him to wake up? The judge had already indicated she did not honor a "fully informed jury" and intended they should be limited to honoring the written law and now the prosecution was perverting even that. And he was letting this happen.

Nor was the prosecution finished with their kangaroo court project. They next attacked what our experts should be allowed to say, objecting that expert testimony was irrelevant to these laws. The city law director argued that city council had decided these were "nuisances" and no one else was allowed to say otherwise.

He actually wanted a blank check for his definition of "nuisance", as well, using the ordinance's phrase "such conditions include, but are not limited to" as his justification for his despotic ambitions. Never mind that we were charged with strictly (5) and (7) of the listed conditions. Of course this was the way he intended to shore up the questionable things the prosecution was attempting on my driveway bushes, which my lawyer did nothing about. How he planned to cover the vacuous front yard hedge charge if he used his despot approach was part of his art as a shell game charlatan.



Even the use of the term "nuisance" is duplicitous. In ordinary parlance a nuisance is a simple annoyance, hardly something jailable. But in legal terminology it's a serious condition that causes genuine harm, damage or danger to health, safety and public welfare. It seems to be used by municipal lawmakers as a sloppy way to cover anything they've missed, but the city's executive and judicial groups appear to be using it to make their dreams of police state control apply to whatever pea they've put under the shell.

Continuing his tirade, he made a misstep. His claim was that experts couldn't say the charged conditions were not devaluing the neighborhood. He quickly backpedaled that only a real estate expert could make such a claim. Did my lawyer remember the real estate data I had gathered or, if he felt it wasn't admissible, wonder if he shouldn't have followed up on it? In any case, the idea that an expert arborist can't tell you the value of having an orchard and forest was absurd, but my lawyer did not catch this either.

To cover the misstep, the law director opined that if we wanted to dispute the law we should take our experts to city council. Now not only weren't we disputing the law -- we felt the law was on our side, that is till he began mangling the law -- but we'd tried that in '98 and had our presentation used by his prosecutor as

evidence against us that we were disrespecting the law.

The law director might be accused of looking for more evidence if we'd made such presentations this time but in reality he was putting words in my lawyer's mouth and then berating him for those words. Would my lawyer remember the history? No. Would he object to the mis-characterization of his argument? Maybe not if he hadn't really thought out that argument in advance. With Wetherall's glib, extemporaneous approach, parts of his presentations already had wandered into useless and self-defeating deadends.

In an effort to make our expert strategy look like a futile waste of court time, the law director offered that "if your experts can testify that a bush is not within 1 foot of the sidewalk, go ahead", insinuating that facts were facts and opinions, even expert opinions, were only opinions. Was he playing poker here, bluffing? In fact, the proper method of measuring the distance of our bushes or trees from the sidewalk was to measure from the trunk, not the drip line which was the part overhanging the sidewalk that the prosecutor made much of. He should know this. He was party to the rehashing of the street tree ordinance before its passage. Apparently he was sure our lawyer wouldn't know. Unfortunately our lawyer hadn't listened to what I'd told him earlier in the trial.

Instead, our lawyer earnestly maintained that our experts would say that there was no "danger" in our landscaping practices which he pointed out was part of the rationale for "nuisances". The law director tried to counter that such an argument was more appropriate for a constitutional challenge, which this was not. This was less effective than the law director had hoped, since the ordinance did mention "fire, safety or health" and undermining this phrase would then put Matala's bogus safety charges against our driveway bushes also in the suspect category, assuming he wanted a fallback position if our lawyer ever turned around and insisted on the legal definition of a hedge.

The composting exemption was another area our lawyer specifically mentioned as a topic that our experts could address, namely that we qualified for the exemption. The prosecution insisted that our composting had to be legal, bin and all. Our lawyer protested that we weren't charged with improper composting, that all that was necessary to meet was the definition referenced specifically in the exemption clause. The law director invented a new definition, unrecorded in any law. He maintained that the phrase "properly located" was defined by the ordinance for residential composting, the special case that mentioned a structure. When I'd read that ordinance it seemed to me that the definition of "structure" was general enough to encompass the structure you create as you compost. After all, the city ordinances refer to "erecting" a hedge so if a hedge was a

structure, surely a "layered pile" was. There was no official definition of "structure", leaving only the commonly used term approach based on the dictionary. His assertion about proper location was pure invention, an example of lawmaking by the prosecution.

With the goal in mind of updating our experts, our lawyer asked for a brief recess extension, while we huddled with our experts. To have the last word, the law director whined that the experts were going to testify the ordinances were stupid, which of course the judge would not allow anyway, but he made sure she would be irritated in advance should the prosecution use this objection later. The judge warned our lawyer that she wouldn't allow this.

When we went out into the lobby to talk with our experts, I noticed that the city had left Mr Robbe and Mrs Couch sitting waiting. On what basis I wondered. They had even denied Mr Richardson's request to remain for the rest of the trial which seemed very strange for a public proceeding. Why. Were the neighbors just handy puppets who might identify some of the prosecution's lies and reveal the city's real role? After our five minute huddle while the jury was called back, the trial resumed.

Wetherall first called Nick Freeman to the stand. Spending a lot of emphasis on his educational background, the only substantive question Wetherall asked was the definition of horticulture and agriculture, and whether the plants we grew were edible and would constitute agriculture, which Nick confirmed. But he hadn't noticed any of the neighbors' yards. The prosecution ignored him.

Carol Randaci was called next. After the same initial questions about background and our meeting the definition of agriculture, Wetherall asked Carol about our composting and whether we had a structure. Carol confirmed that composting builds a structure. After which Wetherall quit. The prosecutor was not about to allow this and began challenging Carol's explanation of how the layering created a structure for horticultural use. The prosecutor began raising his voice when Carol refused to back down, practically yelling "Are you saying there's a bin out there?" To which Carol replied calmly that that was not what she said and proceeded to make her points as explicitly as possible, effectively making the prosecutor look like a slow learner. Agitated the prosecutor made sure to get the last word. Next he dragged out a couple pictures of leaves and grass to challenge Carol's assessment that we were doing agricultural projects but Carol stood her ground. The prosecutor tried to belittle her assessment by putting words in her mouth, associating his misbegotten pictures with her informed judgment, saying "so anywhere there's leaves that's agriculture!" Carol used this opening to launch her description of the logic of gardening in a shade area, how naturalization occurs, the stages of development of shade gardens. Unable to shake her

defense the prosecution dismissed her without further questions.

While the prosecutor regained his composure, Jennifer Gulick took the stand to testify. Our lawyer proceeded to elicit the details of her work, education and experience. Jennifer told the court that our trees were healthy, giving their number and general age. Wetherall made no attempt to draw on Jennifer's survey and its implications for property values. Lastly, she testified that the general character of the neighborhood only differed from our landscaping in the quantity of trees, without describing any specifics of the neighbors' yards. The prosecution declined to question Jennifer.

Next it was my turn. Our lawyer began with questions on education, experience, whether I was a native to SW Ohio, my children and my book. Then he moved to what kind of landscaping we do. To which I replied "natural landscaping" and proceeded to describe the concept as well as mentioned that it was promoted by Utilities and Parks departments. Next he asked the question I suppose was intended to protect me for appeal purposes, namely, whether I considered what I did an art. I answered affirmatively and began to elaborate, at which point the prosecutor objected. His apparent reason was that "yes" was enough! This is puzzling.

When the next question mentioned that there were three charges against us, the judge immediately interjected her clarification that the "weed" charge was for her to decide, that there were only two charges that were "relevant" for the jury's purposes.

This legal technicality was less interesting than the designation and the implication. Because the judge was to decide the "weed" charge, did she not need to hear the evidence as surely as the jury did? And would this divert the jury from noticing that the grass in the pictures was not 18" high since it was not "relevant" to them, causing them to fail to question Matala's honesty based on this discrepancy in her testimony compared to the evidence? Did the judge just throw out the jury's clues, diverting them from examining the evidence for appropriate, but missing, confirmation? Was the judge declining to hear my testimony on the charge? How did she plan to make her determination?

Wetherall took the "blight" charge first, asking that I explain the "rubbish"; what was in my yard? Beginning with the orchard, then proceeding to the forest and finally the gardens, I described the variety of bushes, trees, herbs, fruit and salad plants. I said that the only grass area was in the center of the yard and that I trekked through that area when I did my composting. I described wearing my yard boots for working with my composting, that their height was 7" tall and was my gauge for when the grass required cutting. Again the prosecutor objected, with no response from my lawyer. If this testimony was not

permissable under the rules of criminal procedures or the rules of evidence, why hadn't Wetherall outlined those boundaries in our session on my testimony.

The next charge was the hedge charge and Wetherall asked if I had such a hedge. I responded that I had no hedge at the public right of way, that there were solitary bushes on either side of my driveway making them over ten feet apart. At which point I gave the definition of hedge as a row of closely planted bushes, shrubs or trees.

Wetherall then asked if I would knowingly violate the law, giving me an opportunity to say that I had in fact made a concerted effort to study the law so that I knew my agricultural rights and my composting rights and that I was not violating, and would not violate, the law. The prosecutor objected. Would I violate the law? No.

Returning to the "blight" charge, Wetherall asked if I were changing the character of the neighborhood. To which I responded that there were elements of my landscaping in just about every yard, including for example the kindling piles in Mrs Couch's yard. At which point the prosecutor objected.

At that point Wetherall stopped, never making any attempt to use any of the strategy I'd wanted to implement to show that Matala was lying. All he had to do was to bring Matala's pictures out and give me a chance to comment on each picture. This way the only thing in the jury's minds were those images built from the prosecutor's slurs.

Whether the prosecutor objected left and right didn't matter, I would have defused those images and specifically made it apparent that there was no knee high grass. I could have identified that some pictures were facing into the garden, that the grass in the pictures was no more than ankle deep in the deepest areas and that everywhere in the side yard or front yard that grass was much less than ankle deep. I could have commented on the easy passability of the sidewalk, the reason for turning the yard waste can on its side, the fact that my leaves were usually gone by mid summer, undoing the testimony of my bizarre neighbors. This would have defused the prosecutor's thunder.

If he had brought out the certified letters from the city's own evidence, I could have told the story of how Matala and Kahler really dealt with us, misapplied code and refusing to talk to us. He could have drawn on the knowledge, which he should have had of the county appeal, to illustrate the kind of treatment the Zoning department gives when they work with residents who have grievances. There was no need to be boisterous about it; I had told him that I could be the articulate Fairfield lady. He

either didn't trust me or he wasn't prepared.

The prosecutor began with whether I had received the city's notices by regular mail. No. I wondered if he knew Matala was lying about this. Next he asked if I'd received the certified notices on April 24th, which I acknowledged, I had. Next he wanted to know if we had made any changes to our yard when we'd received the notices. I replied that we had done our normal maintenance.

At this point he took out Matala's pictures beginning with the evergreens on the side of the house. Making an issue of their height and exaggerating that they were 10 feet high, I responded that those were my foundation plants and a couple were about 8 feet high. Lots of homes in Fairfield have foundation plants that reach that high. Nor are my foundation plants any more "closely planted" than any other foundation plants usually are. It's unclear from the tape whether I managed to say that the bushes he was pointing to were in the side yard, not the front, but it's frequently not possible to get unsolicited information, though highly pertinent, into the record, being physically drowned out as unwanted or made to seem illegitimate by disqualifying legalese, as can be seen in the next questions, especially under the handicap of having to appear non-combatant and polite, for the jury's benefit. He switched to the picture of the driveway bush and wanted to know if it wasn't closer than 1 foot from the sidewalk. I made an attempt to define the proper measurement for distance but was interrupted.

The next picture was the nebulous grass picture and he wanted to know if it was on my property. I answered that there was nothing identifiable in the picture so I really couldn't say, and further there was nothing to indicate what the height of the grass in the picture even was. Knowing that this was an absurd piece of evidence he bolstered it with a new form of deceptive phrasing. "Did I hear Mrs Matala say" this and "did I hear Mrs Matala say" that. I responded that I had heard what she said but that she was wrong.

Pulling out the picture of the fenceline next to the swingset, with its few remaining leaves, he continued his convoluted questioning. "Did I hear Mr Richardson say" that I hadn't raked the leaves in two years. Yes but he was wrong because I raked them everytime I did my composting. Did I rake them "all" every time? Of course not; I raked the appropriate amount at the appropriate time.

The picture of the brush and the yardwaste can came next and the prosecutor's best imitation of revulsion at the fact that the can was "laying" there. This act had to convey an image of rubbish strewn about so I made a point of emphasizing the fact that the can was the city approved container for yardwaste though I had to speak right through his attempt to silence me with a demand

that I answer the question as asked. Although this was a little less ladylike, I felt I had remained completely composed and nonbelligerent.

Then he began another question in which he referred to a picture with Matala holding a ruler but then backpedaled like he'd just remembered a change in the script. Our lawyer had been sure he could get this picture eliminated from the evidence, but I wondered if it had been slipped among the wad of pictures admitted anyway. Even if it hadn't, did its presence in the batch reviewed pre-trial in the judge's chambers, gone unaddressed at the trial instead of as I'd wanted, have anything to do with the judge's lack of interest in my testimony on the grass charge when our lawyer brought it up? And why was it ok for the prosecutor to address the grass charge when the judge had dissuaded our lawyer from doing so? And was this supposed "slip" wasted on the jury? Did they now think there was such a picture somewhere? Had he just entered the "evidence" in spite of Wetherall's pathetic attempt to defeat the prosecution's violations of truth and due process?

With no further questions the prosecution rested. The judge sent the jury to have a short break and then the summations were to begin. For a system in which the accused is said to be treated as innocent and permitted a fair chance of defense, the summations are clearly geared to conviction. The prosecutor presents his summary, followed by the defense's summary. But that's not the end. To make sure the prosecution has the last word, they are permitted a rebuttal statement, whereas the defense has no such comeback.

The prosecutor began by reading the blight ordinance and reminding the jury that they were not to judge the law, only follow it. He then paraded his list of slurs and lies, from saying that Matala had measured 18" high grass, to neighbors having to walk into the grass, to 2 year old leaves. He muddied the issues of the "1 foot from the public right of way" with references to 8 foot high hedges, and added his terror formula of a safety hazard to small children. To insure that the jury would confuse character of the neighborhood with selective enforcement, he made it emphatic that other violations were not "material". Then he assured them he would be back shortly.

Though this was the last chance our lawyer had to make his case, with all the power he could muster, and it was not a simple case, he actually announced his intention to shorten the time the jury would have to listen! Considering the tactical and logic errors he made in this summation, the deficiencies and the lost last opportunities as well, it was clear that he'd given little thought or preparation to even the summation, surely a critical stage in any trial.

He opened by giving credibility to the neighbor complaint basis of the prosecution's case by saying this was a case of a few disgruntled neighbors. Following this with a comment that there were other violations but they were not reported, he played right into the prosecution's game of illegitimizing our character of the neighborhood defense by misrepresenting it himself as selective enforcement.

Then he complained of the vagueness of the statutes, wandering into the constitutionality arguments for discrediting the law, which the prosecutor and the judge had already instructed the jury was disallowed. The jury "knew" they had to follow the law. Although the prosecutor did not object and Wetherall's intention was to make the point that his client had made a valiant effort to abide by the law, it gave the impression that our legal status was flawed, that we needed to discredit the law, tantamount to an admission of guilt!

Surely this was not thought out in advance with any degree of attention to logic or impressions. Could we have possibly done any worse without representation? Was Wetherall being double teamed by the crooked prosecution inspiring occasional sympathy, or more likely, were his vulnerabilities the deserved outcome of not having prepared, making him and his arguments of questionable quality. Worse, was it to his advantage to have the case turn out badly, necessitating a costly appeal. It was not his price to pay for his lack of preparation.

Next he reminded the jury of the 5 day due process issues, pointing out that Matala was ignorant of due process and had made no attempt to contact us to discuss our landscaping. When he stated our agriculture argument in defense of our gardens and our composting basis for the exemption from the blight charges, the objections started.

The prosecutor objected that Wetherall was trading on the certified notice requirement which he insisted was demonstrated to be unnecessary to prosecuting these cases. And within a few moments he was objecting to the agriculture claims. These outbursts overshadowed the assertion that Matala had never actually made any other attempt to contact or to discuss what we were growing or any other issue. Nor did Wetherall make any attempt to re-iterate the points that were not in dispute or to clarify the disputed points.

He concluded with an appeal to emotion again, this time specifically calling the character of the neighborhood defense by name, but again falling right into the selective enforcement rut by complaining that only his client was cited which was "unfair" and "the city doesn't care". In a final blow to our logic and legal argument, he stated that these were matters of taste and asked how they could be considered criminal.

Not only did he fail to support his emotional plea with our logic, he undid it. Nor did he attempt to criticize their illogic in the interpretations of the laws and required stays. Nor did he make any attempt to point out the gross impropriety of the prosecution's slurs and the naked places where their lies were exposed.

We put our hope in the jury.

To undo Wetherall's due process and unfairness claims, the prosecutor responded that Matala had waited til May 12th to issue her summonses, reiterating Matala's unsubstantiated claim that we were still not in compliance, and leaving the jury in the dark about the appeal we were entitled to. Emphasizing that May 12th was "well passed" the deadline, he deceived the jury about the deadlines involved.

Next he attacked the agriculture status we were claiming for our garden with the insinuation that there were proper R-1 growing activities and ours were not, sniffing that this was "the city, not a farm". Even though the absurdity of 8" high limits on city gardens is what he was implying, it was apparently not in Wetherall's capacity to object. Returning to his favorite slurs about 2 year old leaves and 18" high grass, the prosecutor insisted that these neighbors were not "vindictive", they were just living next door to a "horror story" and it was "this lady" who "snubbed" the neighbors and the city.

On the composting he waxed eloquent in his slurs. Insisting that, if done "correctly", with a "bin", it was fine, when in fact the use of a bin inhibits proper decomposition and requires additional attention and maintenance. It's the bin operations that tend to have odor and other problems, all just to satisfy some repressive urge to conceal nature. Although Wetherall objected that we were not charged with composting violations, the judge overruled him. Encouraged, the prosecutor painted a word picture with lies like "trash lay all over" and large quantities of dead leaves and 18" high grass, to conclude the city's idea of justice.

After this display of our city's civilization at its finest, the judge began an interminable list of instructions, re-emphasizing the prosecution's demand that they not "judge the law" and reinforcing the prosecution's assertion that they may not consider the 5 day notice issue. The remainder was mostly a repeat of the instructions given at the beginning, though she did mention that the jury should avoid insinuations. However when she gave the hedge ordinance she failed to even mention that this applied only to front yards, not sideyards or backyards. She explained that they were to return with a verdict on each charge separately and that, "if the city failed to prove beyond a reasonable doubt any one of the essential elements of any one of the charges, their verdict on that charge must be not guilty." Finally she asked if

any jurors were unable to continue, and when none responded, she released the alternates and sent the jury to deliberation.

Considering the trial, the jury apparently gave a serious effort to unraveling the lies and logic. Those who passed through the hall outside the deliberation room, reported hearing raised voices and arguing through the closed doors. It was after 5PM when the judge had sent them to deliberate and they had been in the courtroom since before 9AM, but the judge still expected them to work out these tangles. Over one of the breaks, we had heard two of the women on the jury worrying over the length of the trial, one fretting that this day was her twins' birthday and she had planned a slumber party for her daughters' friends, leaving only her husband to finish the preparations and manage the event.

For two hours the jury struggled, coming back into the court to ask the judge for clarification on the blight charge when it was nearly 7 o'clock. They wanted to know if the composting exemption also applied to the leaves. Again the city law director went into action, twisting the law beyond recognition as the work of rational lawmakers. He asserted that the term "section" in the statement of the exemption meant only the clause that contained the exemption.

This contradicted common sense in that, if you compost the leaves in your yard, it was pointless to say you were permitted to compost them and then demand that they be removed from your yard within three months of falling. But even treating the issue as a purely legal point, he was lying to the court since the very grass ordinance we were charged with has a similar structure using the term "section" and it clearly demonstrated that "section" meant the entire numbered ordinance, not merely the clause in which the term "section" occurred. With a lawyer to defend you, you might expect this misuse of a legal point would not be allowed to escape notice. Even the judge failed to question the law director's display of erudition and misled the jury.

The jury struggled only briefly after that and returned with verdicts of "guilty" on both charges. The judge added her verdict of "guilty" on the 18" grass charge and scheduled the sentencing hearing for two weeks away on November 16th.

As everyone was leaving the courtroom, the judge motioned Wetherall to the bench and told him that if we were "in compliance" by the sentencing hearing, that she would not impose the jail time. Curiously, the prosecution was nowhere within hearing and the judge made no attempt to summon them for this little conference.

Maria, the reporter, had remained for the entire event and now told us that she planned to write the story for the paper and would return for the sentencing hearing as well. She gave us her

phone number and said she would give us a call.

We returned home wondering what should be our next move. Wetherall had said that, to even begin an appeal to the next court, required getting the trial transcript which was going to be nearly a thousand dollars in his estimation, even before layering on substantial lawyer's fees.

Shortterm we had the judge's confidential statement to evaluate. It was damage control time. The only change we felt was needed to be in compliance was to deal with the "structure" issue for our composting. We had every expectation though that Matala would lie to the court, no matter what we did. The media was a wild card. In meditation, my guide assured me that now it was his turn.

We slept on it and waited for word from Maria. Late in the day she called to say the story would be in Sunday's paper. We decided to wait and see what would develop in the media. I began calling other family members and returned calls from others who had been unable to attend, including a woman who was organizing the Middletown Coalition of Habitat Owners. She had been committed to taking an elderly friend to a doctor's appointment and was anxious to see what the situation was like in Fairfield so I agreed to give her a tour of the yard on Monday. I also called our experts to let them know the outcome and thanked



each one for their efforts in our defense.

Sunday my sister managed to get us several copies of the Hamilton Journal News with Maria's article. The story occupied a full quarter of a page, complete with color picture and substantial headline, right in the middle of the newspaper's pre-election coverage. Very prominent and exciting. "Fairfield woman's yard causing controversy". Though Maria's coverage was balanced in it's presentation of both sides, she had encapsulated the type of conflicted testimony that had characterized the case, contrasting Matala's claim that there were dead and dying trees all over the yard with the forester's expert testimony that the trees were quite healthy. She covered quotes from one of the neighbors and both attorneys, as well as quotes from our interview prior to the trial and afterwards, including the discussion of our environmental logic and concern for future generations that was the basis for our choice. The potential for stirring public interest was encouraging, so we debated how soon to begin moving the composting into the bird sanctuary.

On Monday, it was rainy so I hurried through the tour with the woman from Middletown and we postponed any serious attempt even to move any leaves into the "structure" of the bird sanctuary. Tuesday was election day and we had other commitments. On Wednesday, we stopped by the house to pick up the mail. To our delight there were letters from unknown supporters and there

# Fairfield woman's yard causing controversy

## Resident says she uses natural landscaping

By Maria Rogers
Journal-News

FAIRFIELD

Greg Lynch/Journal-News

**Jeanette Raichyk of Fairfield stands in her yard, which she said is a registered backyard habitat with the National Wildlife Foundation. Raichyk was convicted Friday of breaking three city ordinances.**

Jeanette Raichyk of Fairfield believes the way her yard appears is what nature intended and that it makes "life much nicer," but city officials disagree.

Raichyk on Friday was convicted in Fairfield Municipal Court of failure to cut weeds and grass, failure to cut or trim hedges and maintaining an exterior blight area.

Raichyk, a mathematician who lives at 5791 Lake Circle Drive, follows a practice she calls "natural landscaping," which she said involves composting with fallen leaves and reduces the need to water her yard. She also has many trees and plants in her back yard that she said bear vegetation that she uses in food and herbal teas.

LOCAL

She testified on Friday that she had studied the city ordinances that she was accused of breaking and that she believes her yard is in compliance.

"We have an orchard, and there's a lot of shade," she said prior to her trial, adding that her yard is certified with the National Wildlife Federation as a backyard habitat. "We got the yard certified because we have all these things here that would make us a habitat. It's very peaceful in the backyard."

Several of Raichyk's neighbors say her landscaping practices detract from the neighborhood and testified that her yard was "overgrown" and an "eyesore."

"It's a total mess and an eyesore," Harry Richardson, who also lives on Lake Circle Drive, testified about Raichyk's yard. "I've had a lot of comments from visitors wondering if people even live there."

An arborist testified that the trees in Raichyk's yard were healthy, but Janette Matala, zoning inspector for Fairfield, said there were dead trees, leaves and limbs throughout the yard when she inspected it.

Matala, who cited Raichyk for violations of city ordinances, said she had received several telephone calls complaining about Raichyk's yard.

"This lady has decided she is going to do what she wants to do, no matter what her neighbors say and no matter what the city says," Prosecuting Attorney Pete Froelke told jurors during closing arguments.

Raichyk's lawyer, Gregory Wetherall, argued throughout the trial that Raichyk's yard does not change the character of the neighborhood as the city had alleged.

"This is a trial about a lady's personal preferences and choices," he told jurors, adding that he thinks Raichyk's landscaping practices are good for the environment.

Raichyk said she had been convicted of a similar offense in the past and had spent a night in jail as a result. She added that many other inmates at the jail laughed when they heard why she was incarcerated.

"I think my presence there cheered a lot of people up," she said prior to her trial.

Raichyk on Saturday said she plans to move the leaves in her yard that she uses for composting to a structured area so she will be in compliance with city ordinances. She also said she plans to keep her bushes trimmed within the guidelines of the city ordinances, although she fears that trimming some of her plants that bear fruit might hinder their ability to produce.

Raichyk said the reason she feels so strongly about her yard is that she is concerned for the protection of the environment for future generations and wants her yard to be environmentally friendly.

"As a mathematician, I've been very interested in observing the development of the mathematical models that try to simulate the workings of our planet. They show that we are approaching limits sometime in the century in some of our resources," she said, noting she believes people need to be watchful of how they treat the environment and that it is the responsibility of people to make changes that preserve it.

Raichyk is scheduled to be sentenced at 9 a.m. on Nov. 16.

seemed to be more traffic than usual so we planned to delay starting til the weekend and focussed on getting the trimming tools and raking operation ready.

The first letter was from a neighbor about three blocks away who had come to see our "blighted" landscape for himself Sunday afternoon after reading Maria's article. He sent us a copy of the letter he'd sent to the newspaper's editorial pages and it was wonderful to read. The editors apparently agreed and published his account of his visit in Saturday's paper under the show stopping headline "Time to sell lawn mower, burn rake".

The second letter was from a woman who lived just over the hill from us in one of the neighborhoods that surrounded Harbin Park in Fairfield. This lady had also come to our yard Sunday, but it was because she had a different sort of problem with Matala. She had a neighbor whose woodpiles were infested with carpenter ants which were migrating into her yard and home. She had attempted to get Matala to respond to her substantive concerns and had been told that "dead trees, leaves and limbs throughout the neighbor's yard was legal as well as the stacks of decaying firewood, a large (100 ft) roll of chainlink fence and other trash". I took up her offer to call and we spoke at length about her desire to start a homeowners' association in Fairfield to cope with the mischief of the Zoning department. Apparently either there are some people in Fairfield whom the Zoning inspector declines to prosecute even when reported for substantive violations, or Matala prefers some complaints over others.

Thursday evening I attended a meeting of EarthSave at the University of Cincinnati with guest speaker Howard Lyman. What a difference there was in his accounts of the Texas court case in which he and Oprah's lawyers had battled the cattlemen's charges. When he advocated more individual action here, the topic of local events gave me an opportunity to update the group on our case. People came forward after the meeting to wish us well and to offer insights into the psychology of dealing with the lies, to look at our pictures and to get a copy of the newspaper article. One woman described their battles in Hamilton County, which she said they had found a way to put an end to, by hiring a landscape "architect" to define a plan and put his stamp on their property as "naturalized".

I also discussed a plan with Carol, our horticultural expert. To ensure that Matala could not lie about our compliance with the ordinances, I planned to take date-stamped pictures of every feature in our yard, accompany them with a document addressed to our lawyer listing the ordinance in the related charge, identifying which pictures dealt with the charge and having spaces for our signature, a witness's signature and Matala's signature, saying that the pictures matched the site as she inspected it. Carol volunteered to be the witness.

FROM OUR READERS

# Time to sell lawn mower, burn rake

I read with some alarm the story about Jeanette Raichyk of Fairfield and her conviction for violating city ordinances, namely failing to cut her grass and rake her leaves. She was charged with maintaining an exterior blight area, and is to be sentenced on Nov. 16.

I was doubly alarmed when I actually walked past the property to see for myself if it was indeed "blighted." Far from it.

The grass, while tall, is hardly tall enough to hide a mouse and the yard is not overgrown or unsightly, just thick and shady. The house seemed neat and the grounds were anything but a hazard. This is simply a case of a woman who had a different idea from her neighbors' of what her yard should look like.

Mrs. Raichyk's yard poses no threat to the safety or health of her neighbors. It hurts no one that her yard looks the way it does. This is merely one more instance of society imposing its values on an individual because some stuck-up neighbors think the way a person lives is somehow some business of theirs.

I say, allow the woman to have her yard the way she wants as long as there is no safety problem, and leave her alone. If your life is so empty you need to complain about the neighbor's yard, perhaps you should find something more worthwhile to occupy your time.

This whole case makes me want to sell my lawn mower and burn my rake.

**Thomas J. Pennington**
*Fairfield*

Everything would be very official and we would give Matala copies of the documents and photos to deliver to the court. Since our lawyer had not lifted a finger to arrange any inspection before the sentencing, it was up to us to design a process to safeguard what opportunity we could find. Taking the initiative seemed imperative since any other route lost us our advantage of being in charge.

Another supportive letter came from a family in nearby Harrison Ohio who were contending with bizarre neighbors who begrudged them their wildflowers and yet stole blooms and seed from their yard. Their requirements were to cut the swath along the road short and the next 10 feet back to 12 inches in height.

When the weekend came, there were decisions to be made about pruning our orchard bushes, which already had next year's buds formed. Wherever possible we would trim the tops level to look "neat", minimizing the damage to new growth anywhere but over the top. The arborvitae from the court picture would be no more trimmed than they had in '98 when Matala had said they would pass, very little different than the court photo. Where measurement was required we would again arrange photos showing the proper measure in progress just as we had in the photos we'd prepared for the court in June.



We would clear the leaves from the lawn areas, the garden path, around the swingset and the fenceline area that seemed to fascinate Matala, and move them with the brush pile into the bird sanctuary. It would be the grandest composting structure, with areas for longterm compost, and rotating areas for kitchen offal among the leaves. A wonderful habitat area beneath the vineage and trees of the bird sanctuary.

We bought more landscaping timbers and used them to define the perimeter of the backyard lawn area, distinguishing it from the garden areas. We also used timbers to define an area over the septic tank to serve as a brush sorting area, a sheltered bed for early starts for plants if needed and ground level feeding area for our smaller habitat residents. We clustered the wild rose and other clippings with winter food sources there. We could position the yardwaste can, laying over, on the side of the patio nearby.

On Saturday, as we were beginning the operation, a van stopped at the front of the house. It was one of the jurors who came to apologize for not holding out. She said she had not been the only one resisting but she wanted us to know that she regretted giving up. Next time, she said, it would be different. We invited her to see the yard for herself and she said it reminded her of her husband's ancestral home in West Virginia. She was shocked at the dual role of the city in this affair, particularly that we had been on Fairfield's habitat home tour while being prosecuted by

zoning. Obviously the restriction against notetaking allowed other information to slip through jurors' grasp as available bases to test the reliability of the city's prosecution.

On Monday, I called Matala and asked if she would be available to inspect the changes to the landscaping in order to implement the judge's orders. She was totally unaware of the judge's instructions, and somewhat suspicious, but when I related the conference at the bench after the trial, she agreed to come to the lot the next afternoon, which was one of the times Carol had said would work for her schedule.

When Matala arrived Tuesday she was in her usual autocratic form, even though she complained that law director Clemmons was out of town and she hadn't been able to consult him. When presented with the picture envelop and documents, she was uncertain of what to do and began stonewalling, even though I read her the text that described the purpose of the document and displayed the pictures. My son explained that we had made the changes required by the court but she disagreed and began making an issue of the "pines" not having been cut even though they had never been an issue in the court and they clearly were not overhanging the sidewalk by even a smidgen which was their only possible role in court.

Making outrageous demands, not supported by law or even by Clemmon's kangaroo court, she was resurrecting her original demands for stripping the "pines" of their branches, probably in retaliation for having been made to withdraw those charges when the original summonses were eventually released; probably encouraged by the arbitrary, sham logic honored by the court she concocted rules of thumb that were bizarre. Her lunatic version of traffic visibility for the driveway was not even phased by my suggestion that I'd rip out the driveway bush for clearance before ever considering ruining the spruces. She still wanted those "pines" cut 4' up and 4' in. She seemed to have a vendetta against the "pines". When the lack of support from the court proceedings was put in front of her, she began to insist that she "shouldn't be here", that she hadn't "been informed", that she was here as a "courtesy". She would come the day before the court hearing. At which point Carol drove up.

Carol's arrival stunned Matala, who retreated to more civil behavior. Announcing that she didn't realize Carol was to be involved, she paused while we greeted Carol, showed her the paperwork momentarily, at Carol's request, and told her that we were just beginning the discussion of the landscaping changes. Carol used her implied status as court approved expert to move the proceedings along to a general listing of the changes we needed to review, diverting attention to the grass. Matala agreed with Carol's casual remark that the day was cold and Carol quickly proposed that, as long as everyone was assembled, we

could review what changes might still be needed, particularly since Matala was showing signs of hesitance.

Heading for the grass in the front yard garden, Matala said she was going to "raise the grass", to which several of us objected that this was not the officially sanctioned way for grass to be measured, as demonstrated in Judge Spaeth's court. She dismissed Spaeth as well as Campbell's respect for legal precedent, in one sweeping statement that "we're not talking Spaeth". In a particularly irrational display of her "logic" she insisted that grass, like hair when it gets long making the hair lay down more, has to be raised to determine its height!

Detecting resistance, she wanted to know if our attorney was coming, presumably he would be more trustworthy? When we looked incredulously at her and said he wouldn't be attending but was to be the addressed recipient of the documents for the court, she wanted to check with the court. At which point Carol confirmed our assertion that this was to establish compliance before sentencing. Confused, Matala commented that that was supposed to have been before the trial. Indignant that Campbell seemed to have undone the prosecution's handiwork, Matala wanted to do this tomorrow but Carol pressed for this tour as a pre-certifying check with the presumed benefit of making tomorrow's check go smoother. Besides we were here already, something Matala could not dispute. Unwilling to display her animosity openly, Matala continued around the side of the house toward the "hedges", having insisted that the grass in the meadow garden was not adequately cut.

Looking at the foundation plants, Matala complained they didn't look to be under 6 feet. My son said simply that he was just shy of 6 feet tall himself, making it clear that the bushes were about his height. Carol concluded this fact and was about to move on when Matala objected to the arborvitae reaching the roofline, but Carol said in shocked tones that it was not a hedge tree, that you couldn't sensibly cut its 6 inch diameter trunk off at the hedge height, acknowledging the obscenity of Matala's suggestion. Deterred but unrestrained, Matala headed for her next favorite target, the backyard, since she could now see the garden area was not mown. In passing she wanted the bush by the gate removed, though it was under 6 feet but was diverted when I named it as "honeysuckle".

Making a beeline for the yardwaste can laying near the former brush sorting area, Matala wanted that "stood up". When I pointed out that this would make it accumulate water and become a mosquito hazard, she fumed that it should be somewhere else, but "stood up". Imperiously marching to the center of the yard, she proclaimed that "all this" has to be cut. Now Carol took charge. Obi-wan Randaci made unending magic to turn the stormtrooper's mind inside out on issue after issue.

Beginning with the obvious, irrefutable fact that the whole backyard is not a grass area, Carol began the process of establishing "yes-mode" followed by subtle movement into transferring that agreement to another point. Affirming Matala's insistence that "lawn areas" have to be cut, Carol distinguished our shade garden from the central lawn area emphasizing the landscaping timbers as delineating the areas. While Matala was absorbing the difference and the issue of delineation, Carol reinforced the image with pure gardener's decorous ardor for lovely natural woodland gardens. Emphasizing that "nice" neighborhoods do this, she unflinchingly inquired for confirmation that Fairfield was outlawing what nice neighborhoods were doing. "Not here?"

Matala looked around for something to reinforce her prejudice and announced that the indian strawberry were "weeds" and they should be mowed. While appearing concerned for compliance, Carol stressed with some obvious horror that "you'll mow the strawberries' heads off". The image of innocent strawberries being decapitated was stunning. What a desecration of gardening culture.

Without missing a heartbeat, Carol began a new picture, dropping the name of the notoriously fine neighborhood in our area where she was familiar with the landscaping. Emphasizing her status as court expert with 20 years of horticulture teaching experience and calling on some innate, god-given right to pursue gardening, she sought Matala's denial that Matala was telling us we "can't define our own garden?" Hardly pausing, Carol did the defining, identifying the features of our landscape and putting them in the picture. "This is a natural woodlands garden", "with fruit trees", and "leaf mulch in the garden area". And here's the "lawn for cookouts and entertaining" surrounded by "gardens for herbs, fruit and habitat", all nicely delineated. It sounded so refined. Matala could imagine that as acceptable and Carol confirmed her lack of objection by accentuating "so this is enough delineation!"

Realizing she had given some ground, Matala tried adding a caveat that the "leaves can't stay here year to year", insisting that was our habit though our late summer pictures show otherwise, confirming our court testimony. "These are old leaves" she opined, claiming she knew this because of their color. They were brown. Carol retorted that actually "we keep ours year to year", to which Matala made no response.

Instead she tramped back toward the bird sanctuary, now home to the composting area, announcing authoritatively that it had to be "opened up" or there would be "gnats", and for good measure, she tossed in "animals". In an incredible display of baseless babble, she added that it would be all dried out in there and become a wetlands! Refusing to allow this hilarious absurdity to break her

concentration, Carol began thoughtfully, "if I understand the prosecutor", establishing that she had the court's legitimate definition in memory, a proper composting structure could be covered, indicating with a gesture that the bird sanctuary was indeed sheltered by the vines and their support structure. And that there was air circulation needed, referencing Matala's mistaken reading of the law in court to include a mention of "screening" as well as the requirement for "turning" actually in the ordinance. To which Carol concluded, nodding assuredly, "so it would be in compliance", seeming delighted at the clarity and recollection.

With no objection from Matala, Carol reviewed her list of issues for compliance, making notes on her clipboard, and asserting radiantly that it would be easy enough to be in compliance by tomorrow with a bit more attention to just leaves and grass. This unsettled Matala and she indicated a need to "check with the court". At which point I noticed that we not only had leaf mulch in the garden but also around a couple trees in the lawn area, especially the willow which needed the mulch's moisture and Matala hadn't agreed to specifically this. Based on her animosity and propensity to fixate on leaves as "rubbish", I pointed out this additional landscape feature to be dealt with before tomorrow.

True to form, Matala seized on these leaves as needing to be removed by spring. When my son pointed out the willow's need for the mulch's moisture especially in the summer, Matala defended her eviction by saying we should replace it with wood mulch, or shredded bark or compost. Since there would be compost galore that could be used and adding another layer would have been our plan anyway as we had done the previous summer, I saw no problem in this agreement but Carol lost no opportunity.

"Only certain kinds of mulch?" she asked incredulously, pointing out that this arrangement of a circle of mulch around trees was otherwise standard gardening practice. "Wow, not leaves in Fairfield," she started to note exuberantly on her clipboard, adding that in all the places she's taught in New York and Pennsylvania, naming the big league, epic sites, she commented that she'd never encountered that. "And I've been teaching just that!" she declared in the delight of discovery. "It actually says that in an ordinance? No leaves!" she wrote with gusto. "And to think, all our university courses," she began, and then hit the jackpot, "and those government training programs!" At which point Matala, backpedaled that the leaves weren't shredded, as apparently the distinction from the bark mulch. "Oh," said Carol now satisfied, "so if the mower were run over them in the spring", that would take care of the problem.

With no comeback available, Matala now turned to the north side of the yard, just realizing that it was included in the delineating

timbers. Heading for the plantain area, where the grass was not yet quite crowded out, she spotted some long grass lying low among the garden plants. What an offense, there were some unwanted plants in the garden after all. Carol was quick to solve that dilemma by suggesting that the timbers be moved just a bit back to where the grass had totally disappeared.

I pointed out that this had all been grass once but the grass was disappearing and would be gone soon, finishing that area of the garden, making a fuller setting for the nature walk with its tiny flags winding around the garden. "I just walk anywhere", announced Matala referring to her invasive forays into our yard. Seeming to be simply concerned for adjusting the landscaping timbers, Carol said firmly that these were "obviously strawberry beds". Only a klutz walks on strawberries seemed to hang in the air. Having established the principle of adjusting the timbers, Carol recited her om that the "good thing about tomorrow" was that we'll know "upfront" that everything was ok.

Possibly preparing Matala for the idea that the garden area might again expand, Carol described the wonder of naturalization as the shade garden takes over all the shaded area, saying that this was a gradual 5 year process. Thinking she'd found one last flaw in the beauty Carol described, Matala began scolding that the problem was that we'd just done the whole area at once. We "should have done it bit by bit" she



admonished, "not everything at once". Realizing that Matala had just acknowledged that our landscaping was commendable and within Fairfield's tolerances, Carol seized the moment to demonstrate that it was Matala's slowness to realize that what was being done was admirable, merely approached more rapidly than Matala's preference, that led to the unpleasantness of the whole affair. Lamenting that, this was "the really sad part" because "in the world of horticulture", our way was "the right way", which left Matala with no leg to stand on.

Keeping the momentum, Carol had one more look at the bird sanctuary and commented approvingly what a "great compost area" it was. Looking for some scrap to nitpick, Matala poked at the vines that overhung the bottom of the structure. She wanted them "trimmed back" to expose the blockwork, complaining that the vines were overshadowing the groundcover. Carol looked askance at this suggestion, asking if that was "taste or compliance". Having no basis for this demand in any ordinance, and being in territory where Carol knew the ordinance definitions, Matala grasped at straws. Pretending some horticultural basis she said it would make it grow back bushier, not realizing the absurdity of demanding it be cut back for more light, while pointing out that it would make the vineage grow back even more thickly blocking the light. Wasn't that right, she was asking Carol. Not to be diverted from the real issue of compliance, Carol reflected that, as it was now, it shielded the

neighbors' view of the composting structure. Having pondered the issue sagely, Carol delivered the coup d'etat and the coup d'grace at once. She took Matala's own high ground, saying compellingly, "we need to stay with compliance."

With that, we concluded the tour, with Carol commenting on the cold again and asking if I had the paperwork for her signature. While we took care of formalities, Matala basically retreated, not wanting to sign something she didn't understand and unwilling to say when she would return tomorrow. On the other hand, her fear of having come without instructions and undone nearly everything the kangaroo court had achieved, made her leave without even a copy of the document so she had nothing to show Clemmons when he returned. I wonder what she told him about the document and what his reaction to her description of the events would be. For our purposes, we not only had the pictures and the document but also a tape recording of the entire visit. For now we had more work to do and not many daylight hours left to do it.

Once we'd run the battery powered tools till they were out of energy, we focussed on the leaves. We wondered what the court would say to Matala's demands for the "pines" since the traffic visibility testimony only concerned the driveway bushes. As the time approached dusk, Mr Richardson came to his side of the fence and said Matala was trying to reach us by phone, which of



course we had long since disconnected. I drove up to the city administration building to see what she wanted since it was across from the nearest payphone and I wanted to make a couple calls anyway.

I arrived just as she was preparing to leave for the day, to her surprise. She dug out our file but she didn't have word from her sources yet so it seemed she really only wanted to have our new phone number. As she flipped through the file I could see that she had a copy of Maria Rodger's article in the file and wondered if she had the supporting letter to the editor and the article from the summer. I decided I didn't want her to have such easy access to reaching us and left, saying that we wouldn't be near enough to hear it ring anyway.

I went across to the payphone and called Wetherall who seemed surprised that we had arranged the certifying visit by Matala. When I told him about the issues remaining, he was less than encouraging. I pressed that cutting the trees was not a simple task, that the trees were worth thousands of dollars, though I didn't mention Carol's suggestion of selling them. He finally suggested that we could request a continuance on the basis that an expert was required.

My other call was to my brother, since I doubted the battery powered mower would finish the cutting in the next charge. He

said he'd bring his big brush cutter as soon as he was free, but it wouldn't be til after dark. Otherwise it was off to Walmart. Til then there were lots more leaves, which we added to either the garden, the trees or the bird sanctuary.

The street lamps were lit by the time my brother arrived. We stood in the meadow garden and talked about the day's discoveries, especially the hare-brained measurement of height that was really length. Checking the Zoysia island to gauge the mower's likely handling of the low but long grass, he clued us into the beast's temperament, tricks for starting and unclogging. The length of the grass didn't seem to match Matala's length where I looked but who could guess exactly which strand Matala had measured, assuming she actually managed to handle a tape measure with any degree of correctness. After the introduction we voted to call it a night.

My daughter and I came back the next morning before the street lamps were out and set ourselves to the adventure of powering up the big mower. Although this cut was annoying and an abuse of power, it was not damaging to flora or fauna in the habitat because, by contesting the charges til November, we were not only past the interval when cutting is a detriment to the habitat's little creatures but the grass in question was mostly Zoysia, which browns out for the winter anyway. In the former consideration, cutting is usually discouraged or limited between April and August, while the year's young fauna benefit from the extra shelter. For the latter, the life of the Zoysia had already retreated to its roots, which are said to be as much as 3 feet deep. By spring when the new growth emerged, what we were cutting now we would have simply raked then, dry and the color of straw, into a circle around the big maple as mulch.

As for the legal issue, we felt that the original precedent would stand in future court proceedings if the issue were presented during the trial phase and bolstered by logic. Matala's analogy to hair would backfire on her in court since you could illustrate its absurdity by comparing what she did to pulling a theater patron's hair up in the air and proclaiming them to be blocking the view of those behind because of the "height" of their hair. "Height" is then clearly differentiated from "length" which is what she is really measuring and not what the law is allowing. We would make a point of getting the issue raised with the Forest Commission since Matala's bogus logic would affect the way their precious street tree ordinance was implemented for ornamental grasses as well.

My brother's mower was set fairly high and the ultimate difference in appearance was pretty minimal now because, even at full length, the picture taken two days before the trial shows the height as it stood for the neighbors to stare at was already under the five inch mark, "hardly tall enough to hide a mouse",

according to the editorial writer among our nicer neighbors. We worked with rake and mower both, a meticulous form of grooming, totally out of proportion to the "threat" of high grass, but we laughed to imagine Matala crawling desperately around the yard pulling at little strands of grass trying to find one that exceeded her illegal limit, shrieking that we couldn't deny her this shred of triumph.

We adjusted the timbers and cleared a few more leaves. The bird sanctuary was filled to almost hip deep and made a delightfully massive cushion to drop into, with each added layer of leaves and grass. By noon we decided to take a few date stamped pictures of the changes and to include a sequence of pictures demonstrating that our spruces were no traffic visibility problem.

We backed our car til the rear bumper was at the curb and it became clear why city engineers design curb-lawns and sidewalks as they do. At the point at which the car is about to enter the street, the driver is seated above the sidewalk so traffic visibility is guaranteed, 180 degrees, left and right, which is why the traffic visibility ordinance only applied to corner lots where traffic is coming from more than left and right.

Not being a corner lot, our picture would show a wide open vista, but we would see when we went back to court if we could get agreement with these facts and their implied common sense and logic, though not today because Matala was still not there and we had to have the film developed. My son arrived shortly after my daughter and I left to get to the photo lab before the deadline and he stayed to just about dusk before going off to work. She didn't come while he was there either. If Matala needed to take pictures for court, she had to have waited for us to leave before returning to the scene of her downfall the day before. Waiting for dusk would have risked poor quality evidence for court the following morning at 9AM. What could Clemmons and Froelke devise to recover her loss. Tomorrow we would see.

When we arrived at court the day of the sentencing hearing, we showed Wetherall the pictures but we didn't tell him about the tape recording. After the court's automated reading of the boilerplate admonitions, explaining citizen's rights that were supposed to be honored in the court, the special arrangements for felonies and misdemeanors, victims rights, bail and jail and alcohol programs, the actual session began with the entrance of the judge.

Her first question was whether there was any reason why the hearing shouldn't proceed. Our lawyer began by saying we had done everything possible to come into compliance but that there was one issue we were concerned was still unsettled. When the judge heard the tree described as having been there 25 years and that the city wanted it cut, she was wondering what was the

problem. Was it over the property line, apparently wondering why she had no recollection of any tree discussion before.

Wetherall took the picture I gave him and asked to approach the bench. When the judge asked if the pictures were recent, I responded that they were date stamped and had been taken two days ago, since Wetherall hadn't noticed or didn't remember. Wetherall now explained that the trees were very valuable and that the proscribed cutting would ruin them.

When he added that we had cut the grass and put the leaves into a structure at the back of the yard, the judge immediately picked up on this new development, wondering if the structure complied with the city ordinance. Lacking confidence, Wetherall said he presumed so since zoning had been out for the inspection.

The judge asked about "the bushes" and Wetherall confirmed that they had been cut. She was looking at one of the pictures with my daughter holding a yardstick to a driveway bush with the "pine" in the background, with the sidewalk and curb lawn in view. When she commented that the yard looked cared for, I wondered whether she had ever even looked at the city's evidence from the trial which had a similar picture. Why did it now look "cared for"?

The judge next asked if there was anything I wanted to add.



Suddenly I was actually being consulted? Not only wasn't I silenced when I'd commented earlier, here was more proof of the power of the press. Wetherall had other ideas about who should speak and immediately began his "mitigation" *spiel*, saying "the only thing" he could say was that I'd been an "upstanding, contributing member of the Cincinnati community for many years" and even had my own business, had authored a book and was "a very intelligent lady".

The judge persisted in seeking my comment. What exactly did she want now? All the important things that had needed saying during the trial would certainly not be welcomed. Maybe she expected a sound bite fit for the next newspaper edition or her scrapbook. I responded that we had made every effort to use logic and common sense in determining what the legal requirements were. Without waiting for anything further the judge asked to hear from "the City".

The prosecutor was nowhere in sight but Clemmons was with Matala. He had Matala's new pictures and began suggesting that we'd strewn boards around the yard and that a "sizable area appears not to have been touched" yet. He seemed to have the impression that the "boards" were connected with our composting structure.

I started to clarify since I was the one who knew best what was in

my yard but Wetherall grimaced so I stopped. Clemmons seemed unsure now. Was it the newspaper article, Matala's account of the visit or the judge's actions or all of the above. Did he consider this a gamble, that he might be stepping into a trap, or was this just dogged persistence in their harassment plan. "Maybe I'm not seeing these photographs very good," he hedged.

With the photo I had of our composting area, Wetherall again took over, offering the picture, calling it the "brick circle". Clemmons translated that into "the old swimming pool" trying to get his bearings on which issue to press, the boards or the sizable area but in the process basically acknowledging the viability of the concept of using the bird sanctuary for the composting structure, though he was attempting to get in a slur while he was at it.

He decided he was adamant that the "boards laying here in the yard" were the problem. Ignoring Wetherall, I explained that those were landscape timbers and that Matala and my horticulturist had agreed that they were an appropriate delineation of the shade garden areas of the yard. Adding that the shade garden plants were more dense in some areas where the naturalization process was further developed, I described the agreement to move the timbers so that the transition areas would be included in the lawn area to be scalped.



The judge seemed puzzled that the City was complaining about something they had agreed to, so I emphasized that Matala had been party to the agreement. Clemmons backed down.

He was however not done trying. His next target was "the leaves". He wanted an explanation for the fact that he had a picture showing leaves on the ground when we'd said the leaves were raked.

Wetherall developed a sudden allergy to answering. I looked over at the picture from across the tables and noticed that there were leaves on the tree right there in front of their faces exactly above the site he was pointing to, which I immediately pointed out, adding what should have been obvious by now, that we had not only that tree but over thirty others right there in the same area with over forty bushes besides, still shedding leaves. No one with common sense and anything but hostility would need an explanation for the few leaves in that picture.

With no comeback from Clemmons, the judge picked up the slack, wanting reassurance that the raking would continue. In fact she "wanted" us to compost the leaves now that there was a structure and asked Clemmons for confirmation that the City had no objection. Clemmons said it was acceptable. We agreed without hesitation to continuing what we had done all along.

Clemmons still wasn't through. He was back to the "pine", saying it needed to be cut back off the sidewalk but now insisting on "six feet up"! Unexpectedly he was ignoring Matala's stupidity about the traffic visibility. Did she tell him what she had been up to and he rejected her concept? The judge didn't seem to have absorbed the compliance in the picture of the "pine" she'd already been given since she was still saying "people shouldn't have to go out and around that tree."

I objected that the tree didn't do that and began describing the picture we'd taken of the car with the driver positioned over the sidewalk and the clear vista past both trees. Wetherall was trying to hide the picture under the pile but I managed to extract it and offer it to the judge since she had the picture of only one of the trees. It not only demonstrated the right way to show traffic visibility, for possible future reference, it showed how unobstructed the sidewalk was.

After looking at this picture, the judge wondered what the City was complaining about. First asking if the City was indeed saying it needed to be trimmed, then pointing out that it looked as though it was already clear. Clemmons dodged with "all we're saying is, I don't want her to get the impression that the tree is granted some kind of exemption into the future."

The judge accepted the six feet order, even though it was based on



the new street tree ordinance from which the tree was exempted as pre-existing. Attempting to bolster this weak performance, Clemmons re-iterated he didn't want any misunderstandings.

Worried that her year's worth of efforts were producing very little, Matala made one last ditch attempt. She said she'd agreed to the use of the leaves for mulch until the spring and she wanted them removed afterwards. The judge asked if that was acceptable. The mulch in the garden would be overgrown with the new year's shade plants and the agreement was that shredding the leaves around the trees with the mower was tantamount to removing them so, of course we had no problem with that.

The judge wrapped up the proceedings nullifying Matala's attempt to cast us as a derelict. Admiring our "passion" and "determination", the judge admonished us that if we have a disagreement with the existing laws we should work to get them changed, educating the community and City Council.

Of course the fact that the laws had been misapplied at best, that we were not defying the law, that the City was the one who had perjured themselves, disrespected judicial precendent, intentionally misrepresented the content of the law, engaged in harassment and endeavored to cover it up, was supposed to be law and order. This was community consensus, and living together

respectfully. Maybe a lot of "education" was indeed needed "somewhere".

The judge then listed the terms of her sentencing: $1,100 dollars in fines, much of it suspended, and 180 days of jail, 180 suspended, and two years non-reporting probation, under which landscaping violations would allow the judge to reimpose the fines and jail days, which of course, she said, was "the last thing" she wanted to do. Did we understand, she wanted to know.

We understood that we had already bought land elsewhere almost a year ago and were preparing to sell this house, that if we were not the owner of any part of this respectful community even their misbegotten version of law and order did not apply to us and could not be used to reimpose anything, that the landscape we had developed over the last five years was now judged to be in compliance, basically as it stood before we appeared in court last June, that the agreement that it was in compliance we had documented with pictures and tape recording and that the same court that had confirmed these agreements had just made us convicted, serial environmentalists. That title ought to be impressive anywhere. Yes we understood.

In the days that followed, we finished the last of the remodeling tasks at the house, interspersed with the winding down of the activities of the case. Maria's article on the sentencing gave us a



chance to tell the area's readers that we'd managed to salvage some of our growing areas and that we felt the attention to our cause had been helpful in making people aware of many important issues. We mentioned the fact that people seeing our home because of the trial, in person or in pictures, had told us they thought our home was gorgeous, from the folks at the EarthSave meeting, to the Middletown Habitat coalition organizer, to the clerk at the photolab who had hopes of buying a home with a forest like ours.

In the same issue, the Journal-News printed a letter from my sister that highlighted the gardening and civil liberties implications for Fairfield residents with the headline "Common sense lost in yard controversy". Within a week, another area reader wrote that natural landscaping does no harm to anyone and that laws based on "unsightliness" in some people's tastes protected no one, concluding that "Surely Fairfield can't be proud of this."

This provoked a response from one of the jury members who had apparently not grasped the significance of selective enforcement as opposed to character of the neighborhood. We responded two weeks later and the Journal-News published our letter to thank the jury for their attempt to unravel the misinformation in the case and not only explained those issues but supplied the real estate data on our neighborhood and its analysis. The juror had thought such facts would have clarified the issues for him.

Responding to his other questions gave me the opportunity to remind readers that R-1 property owners were entitled to a garden and an orchard and to ankle deep grass, that having them was not disrespecting the law and that independent sources had reported in this paper, the Journal-News, that this is what they had observed at our home.

He had also asked about why the neighbors hadn't resolved this among themselves and why we had chosen to follow the advice of "outsiders" instead of Fairfield's own experts. To which I responded that we had invited neighbors to visit when we were on the Fairfield Habitat Home Tour, sponsored by the city's forest commission but no one had responded at all, then or earlier for our open house when we were first certified, adding that the young boys in our neighborhood however had loved the yard and that Fairfield's Utilities Department had been working with us to encourage others to practice natural landscaping.

We closed by inviting readers to drive by and then address their concerns to the councilmen at the upcoming elections next year. This provoked an expected vitriolic response from a councilman who claimed to have been an observer of these affairs, though his face never graced any of its events nor examined any of its evidence. To him a natural landscape was a "bird-in-a-box" hobby, which is just one more of the "nature-on-life-support" attempts that are ultimately self-defeating, with some poor bird or critter left in the lurch. With natural landscaping you allow the birds, for example, to plant and harvest the foods they need to support themselves, within the limits of your space and use. That was the habitat component of our yard's design. Based on the logic that if you are convicted, therefore you are guilty, he advised readers not to drive by and form their own judgment.

He slurred our home by claiming that the justification for the ordinances was to discourage vandalism which he said increased when the properties were "rundown, and poorly maintained". Not only did he ignore the evidence I'd presented in my article of the bank's appraisal of our home as exceeding the values in the neighborhood, he seemed to be trying to associate the spate of vandalism this summer with our case. That rash of vandal activity would not logically be connected to our property because of the disparity of the timeframe, which he was aware of because he acknowledged that our case was longstanding, which undoubtedly prompted the urgency of his demand that no one accept our invitation to come look as the neighbor who'd written the earlier editorial had done.

The more worrisome possibility was that he was inciting unrest. We had already considered the possible implications of the fact that the 'corporate' culture that existed in Fairfield's government clearly tolerated perjury, harassment and public abuse of the law.

Would the realization, by those close to the settlement, that we had undone their kangaroo court result in some fallout. With our unpredictable hours, my son had disturbed one miscreant active in our backyard after 1AM not long after the trial. How much would the 'justice' system tolerate?

While all this was going on, more visitors came to our home to offer support or called or wrote. One was a woman whose entire front yard at her Fairfield home was a wonderfilled garden with monumental ornamental grasses, wild plants and bushels of delightful greenery. She had received a copy of the sentencing article with the unsigned threat that "you could be next". An irrepressible businesswoman who traveled frequently with her husband, she had earlier encounters with Matala. Among other things, she confirmed that Matala never sent the city's notices by regular mail. Her main suspect for the letter's origin was her next door neighbor as they'd had differences over the sheltered area she'd arranged for her motor home in her backyard, which in her opinion was much wilder than mine. I explained what exemptions and agreements now entitled us to our forest, orchard and shade gardens and later sent her the website URL for Fairfield's ordinances so she could investigate what her liabilities might be under recent changes since her last encounter with Matala.

Also concerned about his yard was the natural landscaper, who'd



earlier expressed his confidence in defending all his native plantings. He now called wanting the inside scoop on the prosecution's strategy. When he heard about Matala's lies that we had 18" high grass over the entire property, he offered a set of pictures for our use. He had cruised by last May when we had exchanged notes and had taken pictures of our house, date-stamped the 19th of May. This was precisely between May 12th, when Matala claimed in court that there'd been no improvement so she'd felt "obligated" to release the charges, and the beginning of June when Matala's memo to the court's file stated that our property was worse than ever.

Furthermore, he said that the turf manuals used by landscapers who specialize in lawns had data on the maximum length of grasses. Grass, like eyelashes, only gets to its mature size, no more, and when he checked, the lawn grasses in our area never reached 18" in length, much less height; only the coarse, upright pasture grasses grew like that. This delightful news I confirmed specifically for my Zoysia by contacting the turf farm that supplied our plants to request written acknowledgement of their experience.

Another visitor left his business cards at various times and places at the house, indicating that he specialized in dealing with EPA, Health, Building and Zoning issues. In a later phone call, he said he had our story posted in his front office and he wanted to know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what he might do to help since he had once been a Butler county health and sanitation inspector and knew Matala's handiwork history. Offering examples of others whom she'd unjustly harassed, he said she was known to violate the rights of Fairfield's property owners in spite of the objections of his co-workers and himself in the county health department, in the days before he'd gone into business for himself as Acme Environmental Services. He should be able to help some of those Matala is now creating problems for.

Which leaves only the last of the loose ends because the decision tree that evaluated our options at this point, from combinations of Supreme Court Disciplinary Council filings to pursuing the still open appeal in the Court of Common Pleas for overturning the ZAB hearing and making a bid to nullify the kangaroo court, to appealing the kangaroo court's irregularities itself, showed definitively that biting their ankles one more time and getting on with enjoying your life and making progress elsewhere was the favored choice. The method not only showed when to fold, it showed how.

Not that irrational choices have never been successful, nor that rational choices are always safe bets. It's just the option with the best expected value, which makes for clear consciences and longterm optimums. In the short term, there are probabilities involved, there's the quality of the data and there's the



execution. You can reduce the significance of the probabilities and the variability in the data to a great extent by doing the sensitivity tests but that doesn't necessarily eliminate them entirely, though it can help uncover likely and much more promising outcomes that can guide your tactics.

In fact the decision to seek a lawyer for our case demonstrates that the data of expecting professional experience in the courtroom to be an advantage was bad data and resulted in the poor defense we saw. As Wetherall explained later when I challenged him over his lack of preparation and resulting poor performance, that at lawyers' prices a lawyer can't expend the time to learn the case to the extent required to know what you know, unless you are exceedingly wealthy, so the exercise in the courtroom, as currently practiced, is a gamble with the odds way over balanced against the individual and in favor of whoever is pulling the strings in the system. This literally would make the operation a scam because of the pretenses that are sold to the public with little chance of being delivered, except that these very dire chances are then presented as realism to frighten the client into more dependence and to avoid the charges of fraud.

That Wetherall failed even to make sensible use of the resources we presented and did not carry out his own normal preparation time and further grossly underestimated the cost of his services for normal preparation as described in the contract phase, makes

him liable for violations of professional conduct even under the current rules. A lawyer should be able to give you an estimate that's accurate to within about ten percent. His actions in response to criticism were to attempt to force agreement to new terms without allowing due consideration, then attempting to extort further charges for services we had never contracted for when we declined to continue negotiations.

Yet this story shows that it's possible to ultimately win in the world outside the courtroom. And, in the courtroom, it's now the rational choice to defend yourself for better odds. Had we never tried the conventional approach, we would never have exposed the flaw in trusting experience, that the experience must not consist of exposure to bad methods, and poor judgment. That bad experience, if not examined for revision, that revision not rehearsed extensively, only adds likelihood of repetition of the basis, not progress, not even stasis. But the current faulty rationale is promoted as standard practice so be aware and use every non-courtroom option available with all the analysis of the odds available in our story. Your guardians are there for you and there are more amazing ways to win than you think. Best wishes, from our new habitat to yours.

20th March 2002

Judge Joyce Campbell
Fairfield Municipal Court
4951 Dixie Highway
Fairfield OH 45014

Dear Judge Campbell,

Re: 2000CR B793 (”weeds”), 2000CR B795 (”hedge”). and 2000CR B796 (”blight”)

I don’t suppose you receive many letters from those who have passed through your court but our case was special for a number of reasons and it’s important that you be aware of a few of its problems as well as the events and information that surfaced since the trial. Although you may have the impression that the sentencing was routine, our goals were achieved and we have now completed our agenda.

The controversy that surrounded the charges and the conviction (see articles in the Hamilton Journal-News dated 5th November, 16th November, 24th November, 29th November, 11th December and 29th December) have brought new evidence forward, in addition to some glaring flaws in the basis of the verdict. We do not seek to overturn the case, only to provide you with information for your future reference in protecting the rights of Fairfield’s citizens.

The first item is a legal issue surrounding the applicability of the exemption from “blight” charges for properly sited composting areas. John Clemmons claimed that the exempting phrase (“This section shall not include” such composting facilities) meant the exemption was only applicable to the clause in which it occurs, namely to [1343.03(g)(7)] concerning “Brush, stump roots,..., and other natural growths..”, and not to the other clause with which we were charged [1343.03(g)(5)] concerning leaves remaining in the yard for more than three months. That this is a false interpretation of the term “section” can be seen by comparing it to the term’s usage in the “weed” ordinance [557.01] with which I was also charged. In [557.01(b)] the clause states that owners of land “described in this section” shall cut some required way. But the land description intended to be referenced is in [557.01(a)], the previous clause, which shows that the term “section” does not refer only to the clause in which the word occurs as claimed by Clemmons when the jury requested guidance.

Even by examination of the content of (7) it can be seen to include (5)’s “leaves” under the broader term “natural growth”. Hence to have a law in which leaves must be thrown away under (5), per John Clemmons, but are allowable under (7), per John Clemmons, is illogical. The jury specifically depended on this distinction and would not have voted “guilty”. One juror, Anna Bletner, came to our home apologizing for “not holding out”.

The second legal point that was disputed and given a cynical twist by John Clemmons is the due process issue of whether the city can act against the owner of the land during the waiting period. Under Clemmons’ view the city can prosecute the owner during the waiting period but cannot take action to change the land for the stated duration. This interpretation treats the owner with less respect than the land and leads to untenable situations in these ordinances. Specifically in these very

charges, the BOCA ordinance offers the option of appealing the decision of the zoning official provided the appeal is filed within 20 days of when the owner receives service of the notice. (See PM111.1) The soonest an appeal to the board can be heard is the next scheduled Zoning Appeal Board hearing. In the event that the filing date is after the 15th of the month, the deadline for the very next ZAB schedule is closed and the appeal will be scheduled for the following month's ZAB hearing date. This could result in as much as 70 days wait between notification of zoning official's displeasure and the ZAB hearing for the case.

Under John Clemmons' interpretation of the city's rights, he could have the owner prosecuted and jailed before the appeal is heard. This is so unjust and illogical, it clearly invalidates Clemmons' claims unless the courts are infallible and the ZAB is a rubber stamp for the court. Otherwise the ZAB could decide differently than the court, granting relief from the charges which should cause the charges to be dropped whereas they've already been prosecuted.

What, pray tell, would the city do then? Say "oops"? There is nothing in the ZAB rules to prevent this from happening if the Stay of Proceedings [1137.05(e)] is interpreted as Clemmons claims. There is no way his interpretation is a valid representation of the lawmakers' intent.

In fact, ZAB rules state [1137.05(d)(4)] that if the owner, or anyone adversely affected, is dissatisfied with the ZAB decision, once it is official, the owner may appeal the decision in the county's court of common pleas, a process that takes months. Our case was just such a case (Case CZ2000-08-1811 in Hamilton's Court of Common Pleas). Based on Clemmons' interpretation, your court accepted what can only be viewed as trumped up evidence intended to railroad a citizen in the midst of pursuing her legal rights.

In the interim following the trial and the controversy, other evidence has come to light which would also warrant your future skepticism in dealing with the zoning official Matala. Our insistence that no notification by regular mail from Matala's office was ever sent in any of our dealings with zoning was confirmed by another Fairfield citizen Gloria Stuard, who visited our home to discuss the history of the case when she received an anonymous copy of the newspaper article on our conviction with the unsigned annotation that "You could be next". This is the type of police state behavior begotten in Matala's snitch agenda.

Further Matala's claim that she only responds to citizen complaints was disputed in a letter we received from Fairfield citizen, Ella Bruce, who told of Matala's refusal to prosecute a wealthy homeowner whose woodpile was infested with carpenter ants that were migrating into the elderly Mrs. Bruce's home. Matala told Mrs. Bruce that the decaying wood, the roll of chainlink fence, "dead trees, leaves and limbs throughout the neighbor's yard was legal" in Fairfield.

Nor were these the only examples of perjury in Matala's testimony. She testified in court that "there was 18" high grass over the entire property, in every picture." Not only can this be seen to be indisputably untrue in many of Matala's pictures --particularly clear were the frontyard and sideyard pictures-- but before witnesses later, Matala admitted to knowing that she was mismeasuring the

grass height, the proper method having been demonstrated when Judge Spaeth threw Matala's charges out in an earlier case 97CRB2757. Matala was pulling the grass up by the tips and measuring "length" instead of "height" and when challenged that this was discredited in '97 she dismissed the court precedent with the statement that "this judge" didn't honor that. We have that on tape.

For independent verification of the actual appearance of our property at the exact time when Matala testified that she "graciously" withheld but was forced to file the charges, we received word that another Fairfield citizen, Mark Stephens, had heard of the case on the internet the previous May when the charges were first filed and had driven by to take photos which he subsequently posted at his website whose URL at that time was (http://www.backyardforest.org/cowgirl/photos.htm). These digital, date-stamped pictures were taken on May 19th, 2000, a date that bridges the date Matala testified in court that there was no sign of compliance with the laws and the date of Matala's June memo to the court claiming the property was in "worse condition" than ever. (June 14th)

These pictures clearly show grass under the 8 inch limit, not knee-high grass, which is what 18" high grass would be. They show that there was no debris, blight nor any offending hedge at the public right-of-way. They also demonstrate that the other charges Matala made in the original certified notices about the "pines" being a traffic visibility problem and the habitat sign being illegal were total misapplications of code. You would be well advised in demanding stringent standards in evidence from zoning official Matala in future cases where Matala's testimony is disputed. In fact Fairfield's Codified Ordinance 525.02(c) would limit the use of Matala's testimony in cases for at least two years.

Also, in reference to the suggestion you made at the sentencing hearing that the appropriate avenue for our environmental concerns was city council: You really shouldn't advise those with grievances unpleasant to the city administration to present their dissenting case to City Council because, in fact, I did that in '98, before the '97 case came to court. To be specific, the copy of my presentation given to then-Councilman Dirksen, at his request, was used in this court under Judge Spaeth by attorney Froelke as evidence against me. Froelke had the Chief of Police present the document as proof that I disrespected the law and was defiant. Apparently Councilman Dirksen's solicitous concern, saying he shared my interests and supported my agenda for ordinance reform but that "this was not a college town", was either less than genuine or his trust in the city administrators in zoning and law was grossly violated. The spectacle of a citizen's speech to her elected government being twisted into a criminal act by the representatives of law and order in this town is an eerie lesson in the difference between constitutional rights and police state immorality. It's a lesson you don't repeat, or advise.

While we're on the subject of history, you might want to review the contents of your court's file on this case for another reason. Some of your staff is more conscientious about legitimacy and respect for legal process than others. In the course of this trial Matala attempted to introduce documents into the official file from an earlier confrontation in which I went to her supervisor and she was forced to back off. In an apparent attempt to the make the current case more extensive, Matala had one clerk named Marcia add the illegitimate materials and pictures attaching a cover note to this clerk with the disingenuous claim that she (Matala) had just discovered these. When the clerk was queried, her

supervisor had the items removed saying that they didn't belong there. But sometime between then and the date after the trial when I checked the file, it was again included. It seems Ms Matala is not very good at understanding that she has limits to her authority to dictate court process.

Although you may wonder why we have not pursued either appeal -- the Court of Common Pleas case to overturn the ZAB hearing or the case to overturn the Fairfield Municipal Court case -- the reason is that the record of Matala's inspection visit between the verdict and the sentencing has validated our landscaping aesthetics and agricultural rights and this has not only been established as precedent in the sentencing but also in the following spring's confrontation between Matala and Clemmons before witnesses. In a recorded phone conversation, Matala's supervisor reported that Clemmons had instructed Matala that the city was not interested in pursuing her latest interest in our home unless the curb lawn or areas outside the delineated prairie garden in the front yard were not cut, per the court's sentencing agreement (the transcript of which was acquired for my use after the trial). Further, the appropriate resolution for the courtroom misconduct by the various lawyers in our case has been set in motion and will deal with that misbehavior. And lastly, all other hazards of the sentencing are moot as of September 2001.

Sincerely,

Jeanette Raichyk
formerly of
5791 Lake Circle Drive
Fairfield OH 45014-4444

(For the record I am enclosing printouts of the photos that were posted on the internet as well as copies of the city's evidence annotated to demonstrate that the city's "evidence" invalidated their claims so you may consider what procedures might improve court outcomes when faced with official misconduct.)

CC: Maria Rogers, Hamilton Journal-News

25th March 2002

Amy C. Stone
Assistant Disciplinary Counsel
The Supreme Court of Ohio
175 South Third Street, Suite 280
Columbus OH 43215-5196

RE: Gerald Froelke, Esq. (A1-3112),
John Clemmons, Esq. (A1-3111),
Gregory Wetherall, Esq. (ODC File No. A1-3113)

Dear Ms. Stone:

Your analysis of the cases above, though they were exhaustively documented and thorough, is amazing to me on several counts. In the Wetherall case, for example, you deny your responsibility to handle the case on the "logic" that I am claiming this attorney represented me poorly and that such behavior, in your opinion, is not a case of ethical misconduct.

Yet the document that is the basis of the Disciplinary Counsel's agenda specifically charges lawyers with the ethical responsibility to "give appropriate attention to his legal work" (EC 6-4) as well as rules titled "Failing to Act Competently" which state that a lawyer must not "handle a legal matter without preparation adequate in the circumstances" nor "neglect a legal matter entrusted to him".

When a lawyer spends the billed preparation day rearranging his office furniture and handling his rental matters for an expanded office and redecoration, in the report of his legal assistant, then utterly and demonstrably fails to present the evidence in his custody in defense of his client, why is it the client's responsibility to bring his conduct to anyone other than the Counsel officially charged with monitoring attorneys to ensure that they act competently and do not neglect the legal matters entrusted to them? And then to be told that the case does not involve your concern for ethics? Are there only selected portions of the Code of Professional Responsibility that you uphold?

But the truly impenetrable "logic" is the dismissal you use to wash your hands of the remaining two cases. By abdicating your authority over a whole class of attorneys, all prosecutors, and placing the burden on the aggrieved party, you are complicit if not directly responsible for the embarrassing statistic that our society's "justice" system holds the unenviable record of jailing the world's largest percentage of its citizenry. Prosecutorial misconduct is clearly an unsavory part of this picture.

But the solution you offer as an alternative is ludicrous. In this case, we won our points outside of the courtroom and any victim of such harassment would be averse to trusting a court, appeals or not, basically in the same political jurisdiction, yet the evidence of misconduct is plain. Your representation that the Counsel would reopen these prosecutorial cases, in the event that the victim of prosecutorial misconduct, unlikely as that would be, successfully litigates the claim themselves, is a farcical definition of self-discipline by a professional society. Your logic would only pursue the villain after the victim has successfully nailed the villain?

Our case is not some hopeless story of devastation like the one we encountered recently of an innocent victim finally released after 25 years in jail; those cases will not likely reach you, their victims too weakened, and certainly their evidence would not be in sufficient condition to successfully disable the villains who perpetrated such horrible cases. If you fail to take the opportunities when you have them, though they are not life-and-death, the destruction of our rights and freedoms, our citizens' guarantees of respect, will continue and your office will be a bottom-feeding, useless exercise whose only reason for existence is to cover up the sins of your profession til they have been exhaustively demonstrated at the expense of those you are charged with protecting.

You have my condolences for the impending loss of your self-respect and soul for failing your mission.

Just as sincerely,

J. H. Raichyk, PhD.
Dectiri Publishing
P.O. Box 54050
Cincinnati, OH 45254

| | A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | | | **Criteria:** | 10% | 10% | 10% | 30% | 10% | 30% | | | | | | | | |
| 2 | | | 100% | | | | | | | | | | | | | | |
| 3 | **Decision** | **Probability** | **Outcome** | Lives on target-Focus on House | | | | | | | | | | | | | |
| 4 | **Expected** | **Summary** | **Summary** | I | Children's SelfRespect | | | | | | | | | | | | |
| 5 | **Value** | | | I | I | **Children'sStress /Happy** | | | | | | | | | | | |
| 6 | | | | I | I | I | Nature Progress-Jeopardy to established Entitlement | | | | | | | | | | |
| 7 | | | | I | I | I | I | **Financial-**Business | | | | | | | | | |
| 8 | | | | I | I | I | I | I | **Liberty** Progress | | | | | | | | |
| 9 | | | | I | I | I | I | I | I | | | | | | | | |
| 10 | | | | v | v | v | v | v | v | | | | | | | | |
| 11 | 3.6 | 54% | 6.7 | 8 | 9 | 7 | 7 | 4 | 6 | | | / | 60% | other harassment | | | |
| 12 | 3.1 | 36% | 8.6 | 9 | 9 | 9 | 10 | 5 | 8 | / | 90% | entitlement stands for model | 40% | peace & nature wins | | | |
| 13 | | | | | | | | | | Sell house under entitlement | | | | | | | |
| 14 | | | | | | | | | | supreme court vs clemmons | | | | | | | |
| 15 | 0.3 | 10% | 2.8 | 5 | 5 | 5 | 2 | 1 | 2 | video promotion \ | 10% | entitlement disrespected | | | | | |
| 16 | ------ | | | | | | | | | ignore appeal vs ZAB (supreme court vs weatherall) | | | | | | | |
| 17 | **7.0** | 100% | | | | | | | | Letter to Judge Campbell, the Mayor, the City Manager and the Hamilton Journal News | | | | | | | |
| 18 | | | | | | | | | | Offer help to Forest Commision | | | | | | | |
| 19 | | | | | | | | | | | | | | | | | |
| 20 | | | | | | | | | | | | | | | | | |
| 21 | | | | | | | | | | | | | | | | | |
| 22 | | | | | | | | | | | | | | | | | |
| 23 | 3.0 | 48% | 6.3 | 8 | 8 | 4 | 7 | 4 | 6 | | | / | 60% | other harassment | | | |
| 24 | 2.6 | 32% | 8.2 | 9 | 8 | 6 | 10 | 5 | 8 | / | 80% | entitlement stands for model | 40% | peace & nature wins | | | |
| 25 | | | | | | | | | | / | | | | | | | |
| 26 | | | | | | | | | | Test entitlement ourself/ | | | | | | | |
| 27 | 0.5 | 20% | 2.5 | 4 | 4 | 4 | 2 | 1 | 2 | /sell house late in fall \ | 20% | entitlement disrespected | | | | | |
| 28 | ------ | | | | | | | | | ignore appeal vs ZAB (supreme court vs weatherall) | | | | | | | |
| 29 | **6.1** | 100% | | | | | | | | Letter to Judge Campbell, the Mayor, the City Manager and the Hamilton Journal News | | | | | | | |
| 30 | | | | | | | | | | supreme court vs clemmons | | | | | | | |
| 31 | | | | | | | | | | video promotion \ | | | | | | | |
| 32 | | | | | | | | | | Offer help to Forest Commision | | | | | | | |
| 33 | | | | | | | | | | | | | | | | | |
| 34 | | | | | | | | | | | | | | | | | |
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| 36 | | | | | | | | | | | | | | | | | |
| 37 | | | | | | | | | | | | | | | | | |
| 38 | 0.8 | 10% | 7.7 | 3 | 9 | 7 | 8 | 7 | 9 | | | | | / | 70% | countersuit vs Fairfield successful | |
| 39 | | | | | | | | | | | | / | 20% | win ZAB - entitlement undone? | | | |
| 40 | | | | | | | | | | | | / | | \ | | | |
| 41 | 0.2 | 4% | 5.7 | 2 | 6 | 6 | 4 | 4 | 9 | / | 70% | win county appeal | | | \ | 30% | countersuit vs Fairfield disrespected |
| 42 | 2.9 | 56% | 5.2 | 5 | 7 | 8 | 2 | 5 | 7 | / | | \ | 80% | disrespected by ZAB - entitlement at risk | | | |
| 43 | | | | | | | | | | Press appeal vs ZAB independently | | | | city good name must be protected at all costs | | | |
| 44 | | | | | | | | | | with yardwork=entitled--> sell? | | | | | | | |
| 45 | 0.7 | 30% | 2.4 | 0 | 2 | 2 | 0 | 5 | 5 | video promotion \ | 30% | disrespected by county | | | | | |
| 46 | ------ | | | | | | | | | Supreme Crt vs Clemmons | | | | | | | |
| 47 | **4.6** | 100% | | | | | | | | Supreme Crt vs Wetherall | | | | | | | |
| 48 | | | | | | | | | | Letter to Judge Campbell, the Mayor, the City Manager and the Hamilton Journal News | | | | | | | |
| 49 | | | | | | | | | | | | | | | | | |
| 50 | | | | | | | | | | | | | | | | | |
| 51 | | | | | | | | | | Case: By law [1137.05(c)(1)] legally prescribed notification time not allowed | | | | | | | |
| 52 | | | | | | | | | | | | Evidence: envelop datestamp | | | | | |
| 53 | | | | | | | | | | Our supporters could make a difference | | | | | | | |
| 54 | | | | | | | | | | | | Tom Pennington's article | | | | | |
| 55 | | | | | | | | | | | | Ella Bruce's letter | | | | | |
| 56 | | | | | | | | | | | | BJ Sandoz | | | | | |
| 57 | | | | | | | | | | Court case miscarried | | | | | | | |
| 58 | | | | | | | | | | | | Matala's photos with no 18" high grass | | | | | |
| 59 | | | | | | | | | | | | Panoramic shot of invisble front hedge | | | | | |
| 60 | | | | | | | | | | | | Composting exemption applies to entire section | | | | | |
| 61 | | | | | | | | | | Conclusion: Law violated, miscarriage not insignificant, right to return process to point of derailment | | | | | | | |
| 62 | | | | | | | | | | | | | | | | | |
| 63 | | | | | | | | | | | | | | Case: Our landscape was not in violation/ordinances misapplied | | | |
| 64 | | | | | | | | | | | | | | | | "height" - established in court '98 | |
| 65 | | | | | | | | | | | | | | | | "section" - grass ord usage applied to B | |
| 66 | | | | | | | | | | | | | | | | experts: Carol, Nick, Jennifer | |
| 67 | | | | | | | | | | | | | | | | Matala's photos vs invisible hedge | |
| 68 | | | | | | | | | | | | | | | | | |
| 69 | | | | | | | | | | | | | | | | | |
| 70 | | | | | | | | | | | | | | | | | |
| 71 | | | | | | | | | | | | | | | | | |
| 72 | 1.3 | 16% | 8.2 | 7 | 9 | 7 | 8 | 8 | 9 | | | | | / | 90% | countersuit vs Fairfield successful | |
| 73 | | | | | | | | | | | | / | 20% | win ZAB - entitlement undone? | | | |
| 74 | | | | | | | | | | | | / | | \ | | | |
| 75 | 0.1 | 2% | 5.9 | 6 | 6 | 6 | 4 | 2 | 9 | / | 90% | win county appeal | | | \ | 10% | countersuit vs Fairfield disrespected |
| 76 | 4.0 | 72% | 5.6 | 9 | 7 | 8 | 2 | 5 | 7 | / | | \ | 80% | disrespected by ZAB - entitlement at risk | | | |
| 77 | | | | | | | | | | Press appeal vs ZAB with control over lawyer | | | | city good name must be protected at all costs | | | |
| 78 | | | | | | | | | | with yardwork=entitled--> sell? | | | | ZAB is filled with Ffld Lackeys | | | |
| 79 | 0.2 | 10% | 2.4 | 0 | 2 | 2 | 0 | 5 | 5 | video promotion \ | 10% | disrespected by county | | | | | |
| 80 | ------ | | | | | | | | | Supreme Crt vs Clemmons | | | | | | | |
| 81 | **5.7** | 100% | | | | | | | | Supreme Crt vs Wetherall | | | | | | | |
| 82 | | | | | | | | | | Letter to Judge Campbell, the Mayor, the City Manager and the Hamilton Journal News | | | | | | | |