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1998
Illinois State Bar Association
High School Mock Trial Materials

**People of the State of Illinois
County of Lincoln**

v.

Robin Schmitz, McKnight & Gardner

Summary Overview of Case

1. On September 7, 1997, Judge Kelly Barringer, ruled on an environmental matter, Schmitz Trucking and Waste Disposal Co. v. Illinois Environmental Protection Agency prohibiting Schmitz Trucking and Waste Disposal Company, owned and operated by Robin Schmitz, from expanding their enterprise into an adjoining 500 acre tract of land known as Gilmore Woods. The property had been found to be the home of the American peregrine Falcon and the only population of American bald eagles in Illinois, as well as two species of frogs, all on the Illinois endangered species list. It is also home to a genus of plant called the Lakeside Daisy, which is also protected in Illinois.

2. The community of Beckenfelder, Illinois, home of Schmitz Trucking and Waste, was split in opinion on the matter. Some of the residents supported the EPA and hoped that the land would remain untouched; some supported the Trucking Company's proposal, hoping for more jobs in the small community.

3. On the evening of September 11, the Judge's home in Taiteville was vandalized. The mailbox was torn from its post and feathers mixed with a toxic mixture were strewn across the property.

4. On September 14, Judge Barringer received two threatening phone calls from someone disguising his or her voice. The message both times had said, "Reversal would be a good idea...it could save you." The Judge assumed the caller was referring to the ruling in favor the EPA.

5. On the evening of September 16, Judge Barringer found a hand-written note stuck to the front door of his/her residence with a sharp kitchen knife. The note read, "Reversal will save you. Do it." The note had what appeared to be blood

smearred on its edges and a chicken leg had been dangling from the knife.

6. On the evening of September 16, Officer Bagley went to Schmitz Trucking and found Schmitz, McKnight and Gardner in a garage painting a large wooden sign which stated: "Falcons and eagles and Judge Kelly Barringer, all headed for extinction." The sign was confiscated by the police and the Judge informed of its existence.

7. The environmental trial is completed, the ruling was filed on September 24, 1997. The motion to reconsider the ruling was denied on October 15, 1997.

STIPULATIONS

(Stipulations may be used as evidence)

1. The 500 acres (Gilmore Woods) were home to no less than four known endangered species found only in this location in Illinois. No other known populations of these four species had been identified in the United States regions.

Species included the American peregrine Falcon and the American bald eagle. The 500 acres of Gilmore Woods border an adjoining forest preserve which would be affected by the waste disposal aspects of the Schmitz Trucking and Waste Disposal Company proposal to expand. The 500 acres of Gilmore Woods also are home to three streams and a known underground natural water reservoir which could potentially sustain irreparable harm should there be an incident where contaminants enter the water supply. The wetlands are home to a species of endangered plant, the Lakeside Daisy.

2. The Schmitz Trucking and Waste Disposal Company proposal stated that they wished to purchase the land, currently owned by a farmer, Morgan Gardner, who was willing to sell. They would be willing to guarantee that their waste disposal and land fill sites used state-of-the-art technology and that waste from the site had little or no possibility of entering the water supply on the property.

3. Judge Barringer is a public official.

4. On the evening of September 16, there was a meeting at Schmitz Trucking Company. Robin Schmitz, Morgan Gardner and Chris McKnight were present. Officer Bagley saw them and at least 12 others in the group at the garage at Schmitz Trucking.

5. The forensic tests on the paint found at Schmitz Trucking Company during the search on September 22 concluded that the paint was the same brand as was used on the sign found stuck to Judge Barringer's front door.

6. The receipts for repairs to Judge Barringer's property are stipulated as accurate.

Possible Witnesses

For the Prosecution

The Honorable Kelly Barringer, Judge, County of Lincoln
Officer Dale Bagley, Lincoln County Sheriff's Department
Pat Dennis, Resident, Breckenfelder, IL

For the Defense

Robin Schmitz, Schmitz Trucking Company
Morgan Gardner, Resident, Breckenfelder, IL
Chris McKnight, Resident, Breckenfelder, IL

The State is required to prosecute on all four charges in the two indictments attached.

The State is required to prosecute all three parties in this case (Schmitz, Gardner & McKnight).

WITNESS AFFIDAVITS

Statement of Robin Schmitz

My name is Robin Schmitz. I am owner and chief financial officer of the Schmitz Trucking and Waste Disposal Company in Breckenfelder, Illinois. My company has been in business over ten years. I've lived in Breckenfelder all my life. I'm 30 years old.

My company is a growing enterprise. Being so close to Springfield and St. Louis, my trucking and waste removal contracts come from some very large communities. Four years ago, it was becoming evident that we needed to expand. We needed a larger parking facility, a waste treatment site and a land fill location. My current property connects with a large tract of undeveloped farm land called Gilmore Woods. The woods is owned by Morgan Gardner. I made a decent offer for the property and explained my hopes for expansion. I told Gardner that I wasn't in a great hurry to expand, but that sometime in the next five years, I'd like an option to purchase the land if it came up for sale. Gardner told me that if the land was going to be sold, I'd be the first person to be contacted.

Gardner and I met routinely at community functions and would discuss land prices and things like that. I never pushed but I didn't want Gardner to think that I'd lost interest. I wrote a letter to Morgan Gardner about a year ago, formalizing the offer. Gardner must have shown the letter to someone because pretty soon, the Environmental Protection Agency was at the property, surveying, testing and monitoring. The EPA study was over 1000 pages long. It pretty much said that my company would ruin the environment at Gilmore Woods.

That's not true. I have a good record in this community. My waste disposal and land fill operations are state-of-the-art and I've never had one complaint about smell or anything. I live here. I want my town clean. I don't want to destroy the place that I live but I don't see why a few birds and frogs should stand in the way of progress.

I was at my business on the night of September 16th. I was making signs and attending a meeting to discuss plans for removing Judge Barringer from his position as Judge. Chris McKnight, Morgan Gardner and I formed a committee to vote out, impeach, or whatever it takes to get rid of that Judge. We'd met about three times before the 16th. There were 12 other people at my business that night who can vouch for me. *See stipulations in the statement of facts.

I got there a couple of minutes late on the evening of the 16th. I was coming from a meeting on the other side of Taiteville and I was running late. I saved some travel time by taking the blacktop shortcut. I do it all the time. That night I was passing through Gilmore Woods on my way to my business garage.

I've been asked if I have a letter jacket from the local high school. Sure I have one. So what, most alums have one and they are for sale at the local stores. I wear it all the time to football games. I like supporting local businesses and the local teams. I was captain of the team for two years. Someone else was captain

before I was a junior, that was the year I was captain...and I was chosen again my senior year. I got a letter for my talents on the football field when I was a junior.

The police found a list of slogans in my office. So what? I'll admit that I was forming a committee to see that Judge Barringer wouldn't be retained. He's biased and unfair. He shouldn't be a judge. And, the red paint they found...any number of residents of Breckenfelder would have red paint in their houses or garages. I used that paint to touch up dings in my trucks. My trucks, as anyone will know, have red lettering on the cabs. I got the paint at a local store. Anyone could have that brand.

If I wanted to frighten the Judge, I wouldn't use a chicken leg and feathers. I can think of better ways to intimidate people, believe me. That was kid stuff, and I think it probably was a bunch of kids who heard about our campaign to unseat the Judge and decided to have some fun. Nobody got hurt.

Those pillow slips that were found all cut open in my truck bed? Well, I leave my truck parked outside all the time so people can read the cab and know about my business. It's like advertising. Why pull it into a garage at night? It's always either parked in front of my house or parked in front of the business. I sometimes go for weeks without really looking in the back of the truck, unless I'm looking for something. Those feather pillow tickings were stuffed under a tool box, I never knew they were there until the police showed them to me. Anyone could have jammed them under there.

Judge Barringer's high-handed, elitist attitude is fine for someone making \$100,000 a year of taxpayer money...what about the rest of the little folks scraping by in small town America? Why should some birds and frogs have better living conditions than the citizens of this country? Morgan Gardner could really use that money right now and I was willing to pay up front. You mean to tell me that some animals and plants are worth more than the financial needs of the Gardner family?

As long as it was, that 1000 page EPA report probably didn't take everything into account. Heck, those birds would probably like a little of my garbage to eat come bad weather. Aren't they scavengers? Most birds are. Could be that my land fill would actually help. And who knows, the daisies might be helped by the compost that would be produced? And, if not, transplant the darn things.

You know, lots of lawyers from Beckenfelder live in a subdivision bordering on Gilmore Woods, the land we wanted to purchase. Do you think that fact entered into the decision Judge Barringer rendered? He works with those lawyers, sees them every day. There is probably some good old boy network going on here.

I honestly think that Judge Barringer is trying to bully this town. His lawyer pals own property adjacent to my trucking company and it's obvious to me and lots of other citizens that those friendships and business contacts obviously swayed the Judge's decision.

My business is an honest one and I'm proud of it. Mad as I am, and unfair as that decision was, I wouldn't risk ruining my company over it. Besides, on the night Judge Barringer's property was damaged, I was at a meeting at my business. A person can't be two places at once. I was with at least twelve other people at that meeting.

Judge Kelly Barringer

My name is Kelly Barringer. I am a judge in the Circuit Court of Lincoln County, serving in the courthouse in Breckenfelder, Illinois. I am a state employee and a public official. I live in Taiteville, which is about ten miles from Breckenfelder. I've been a judge for five years.

I am proud of my record as a judge. Very few of my decisions have been overturned at the appellate level. I have heard over 100 jury trials in my career, and I always base my decisions on the facts presented and make every effort not to allow any personal feelings or prejudices enter into the decision making process. I would be the first person to admit, however, that mistakes can be made. If mistakes were made, there are appropriate steps to take through the appellate process.

Judges, when the rule, must do so in writing. This subjects us to public and professional scrutiny which is a good thing. Our decisions are always subject to appellate review, and reversal if errors were made. If the trucking company feels that my decision was not sound, they have every right to an appellate review.

Based on the facts presented, I felt it was in the best interest of the city, the county and Illinois community to preserve the habitat of the endangered animals.

The Environmental Protection Agency Report was extremely persuasive and the assurances of the Schmitz Trucking and Waste Disposal Company did little to persuade me that the community and the endangered animals would not be harmed.

Judicial intimidation is serious and I feel as though I have been subjected to a serious level of intimidation immediately following my decision in EPA v. Schmitz Trucking. The opinion issued by the Court stated the facts, the documents are all on file for anyone to review. This is a sound and fair legal determination. Since the trouble started, I've had trouble sleeping. I can't pretend that all of this isn't changing my outlook on life. I'm depressed and anxious much of the time. Mostly, I'm concerned for my family and what my job could do to them.

The fact that some people in the community don't agree with the decision is not surprising. The community may, indeed, suffer financially. But, those financial concerns were not sufficient enough to outweigh the clear facts in that case. The Endangered Species Act, the Environmental Protection Act and numerous other laws and statutes came into play in my decision. One cannot only think of people...there are animals, land, air, and future generations to consider...and all those considerations must be based on the laws which have been enacted in this state, county, district, what have you. This intimidation is pointless.

I had heard that there would be negative consequences if I decided against the trucking company. The Environmental Impact Statement must, by law, consider a broad range of factors and the report indicated that there was obviously going to be a significant environmental impact, virtually all negative. I love this town, the

county and the state of Illinois. The decision I made was, in my opinion, the only proper decision.

The reactions I felt from some in the community were very disheartening. I got phone calls, some threatening, some just angry. I received letters, some signed, many anonymous. I had no problem with this aspect of the community's comment. However, when I began to experience threats which were backed up by actions, I became concerned and sought the assistance of the police.

Two instances specifically frightened my family and me. The first was when, on the evening of September 11, my home was vandalized. My children were terrified. The mailbox was been torn from its post and feathers strewn across the property. The feathers had been mixed with some awful smelling sludge-like mixture that smelled awful. I had to pay a contractor \$150 to clean the property and re-seed the damaged lawn sections. I had to buy another mailbox as well and have it installed, post and all. That cost me another \$300.

I contacted the Sheriff's Office, and Officer Dale Bagley responded to the call. The Officer could find no clues as to who caused the damage to property on that first call.

Then, on September 14, I called the Lincoln County Sheriff's Department a second time to report that I had received two threatening phone calls from someone disguising his or her voice. The message both times had said, "Reversal would be a good idea...it could save you." I assumed the caller was referring to the ruling in favor the EPA. The police officer offered to place a monitoring device on our phone, but I declined because I honestly felt that it wouldn't be needed. I didn't honestly feel that this would get out of hand. But, I believe a formal police report and complaint were filed.

I called the Sheriff's Office again on September 16, sometime just about dusk, and Officer Bagley responded to the call.

I was watching a television show that runs from 7:00 to 7:30 p.m. and about half-way through the show when I heard my dog barking and I looked out the front window and saw two people running away from the house. It was just dusk and still pretty light outside. I could tell by the way they ran that they weren't kids. I only saw their backs, they were about 50 yards down the road. One was wearing a local high school letter jacket, one of those yellow and grey ones. The jacket had a large letter on the back. I think it was a C. The other was in a red and black plaid coat. I then went to the front door and found a hand-written note with what looked like blood streaked on the note and dripping down the door. The note was stuck to my door with a kitchen knife. I know it was about 7:15 or 7:20 p.m. because I looked at my watch when I called the police.

The porch light was on so I had no trouble seeing what had set the dogs to barking. The note read, "Reversal will save you. Do it." The note had what appeared to be blood smeared on its edges and a chicken leg had been dangling

from the knife handle. I left it where it was and called the police.

While Officer Bagley was at my home that night, I told the officer that my two children had been approached at school by two of their classmates who had indicted that their parents were going to "get" me. My children told Officer Bagley that the children who had taunted them were sons of Morgan Gardner and Chris McKnight, two local residents of Breckenfelder.

I received a call from Officer Bagley later that same evening after he/she had gone to the Schmitz Trucking Garage. Officer Bagley told me that Schmitz, McKnight, Morgan and others had been in the garage in plain view painting a large wooden sign which stated: "Falcons and eagles and Judge Kelly Barringer, all headed for extinction." The officer told me that Schmitz, McKnight and Gardner, were the leaders of a group organizing a campaign against me. They denied any wrongdoing.

Officer Bagley also believed I should get some extra security for my home and family. I've had a security system put on my home as a result of this and have installed extra outdoor lighting which we keep on all night. We also have a dog who is in the house most of the time.

This thing has caused so many problems, I'm not sure who to believe anymore.

I've known Chris McKnight and Morgan Gardner for years and this type of activity doesn't correspond to their family values and good sense. I truly believe that they feel the community's best interest would be served if the trucking company had obtained consent to proceed with their plan to expand their business. On occasion, though, I have seen them both in my traffic court on various violations. And, Gardner told me at a meeting five or six years ago that "if anyone ever threatened his/her livelihood, he/she would simply take matters into hand and take care of things."

If I had to speculate on who is responsible for these affronts, I'd hesitate to point my finger solely at the citizens of Breckenfelder. I can only believe that the trucking company owners and operators are somehow behind this scheme to intimidate me into changing the ruling I entered. That is what I have been told and what I believe. They have every right to appeal my decision. They don't have the right to frighten my family, intimidate me or damage my property to attain their goals.

The American Bar Association said that "An independent judiciary is the cornerstone of our constitutional system of government. The judiciary is charged with guarding the Constitution and protecting the civil liberties and fundamental rights of every citizen against potential tyranny of the majority." I was doing my job when I ruled in this case. And I feel I was doing it well. Popular or not, the decision was sound and was based on the facts presented. I could not, in good conscience, bend to popular public sentiment or public pressure. That's not what makes a good judge. A good judge applies the law even-handedly, with diligence

and integrity and if the people don't like the law, then they should work to change it through appropriate channels, not through intimidation.

Repairs to my front door cost approximately \$200. The knife hole had to be filled and sanded which meant that the entire door had to be refinished. That \$200 plus the expense of repair and replacement of the mailbox and post, and the clean up of the feather mess totalled about \$650 in damages to my property, not to mention the anxiety my family has felt.

Statement of Officer Dale Bagley

When Judge Barringer ruled on the environmental matter, I was almost afraid to think about what might happen if he/she said that the Schmitz Trucking and Waste Disposal Company wasn't going to be able to expand their business onto that adjoining land. There had been a lot of discussion in the town. After church and at the diner, I kept hearing about the bluestock prairie hen, the midwestern thrush and the endangered frogs and the people would laugh. I don't think they took the matter very seriously.

The case was controversial. I don't remember anything ever getting the people stirred up like this before. There were even television crews from Springfield out here to cover the picketing at the courthouse. Seems as though the people were almost evenly split in opinion on the matter.

On the evening of September 11 the Judge called the Sheriff's Office and reported that vandals had been at his home. I responded to the call and found the mailbox torn from its post, the post had been bent beyond repair, and what looked like pillow feathers strewn across the property. The smell was bad. The feathers had been mixed with what I assumed was a waste product. Tests concluded that the feathers were the type that were in feather pillows sold in local stores. The waste was just that. Sludge like what would have come from a septic tank. Everyone here has them. It would have been pointless to conduct any additional tests on the mess.

I checked with the neighbors, but no one had seen it happen. The Judge lives on the outskirts of town on a large lot. I didn't expect to find any clues or other witnesses and I didn't. No tire tracks, nothing. I thought that maybe word of mouth in our small town would lead me to something or someone, but before that could happen we got another call from the Judge.

That call came in on the evening of September 14. The Judge said he'd gotten two threatening phone calls from someone disguising his or her voice. Same person both times. And, the message both times had said, "Reversal would be a good idea...it could save you." Judge Barringer and I both assumed the caller was referring to the ruling in favor the EPA. I offered to monitor the Judge's neighborhood more regularly and the Judge accepted that.

On September 16, the Judge called again and I responded to the call. The call came through from the Judge at 7:22 p.m. It's on the police log.

The Judge met me at the end of his driveway and walked me to his front door. He hadn't touched anything, but pointed at a hand-written note which had been stuck to the front door with a kitchen knife. The note read, "Reversal will save you. Do it." The note had what appeared to be blood smeared on it and dripping down the door and a chicken leg had been dangling from the knife. I photographed the door with the knife, note and chicken leg and then removed the knife and note. I had them processed for prints, but whoever had done it had worn gloves and had been

very careful. The note was hand written, but we never had the opportunity to match the print. It looked as though a right handed person had written it with their left hand to disguise the writing.

It was while I was at the house on September 16 that Judge Barringer told me that his/her two children had been approached at school earlier that day by two kids who said that their parents were going to "get" the Judge. The kids were the sons of Morgan Gardner and Chris McKnight, two local residents of Breckenfelder.

After leaving Judge Barringer's house, I drove back to Schmitz Trucking Company on the old blacktop between Breckenfelder and Taiteville. Went through the woods. It takes about 15 minutes at a sensible speed.

I had seen people gathering there on my way out of town to Barringer's. When I drove by, I'd seen at least twelve trucks and cars in the lot. It was after hours, that's probably why I noticed. When I got there, most of the trucks and cars were still there. I noticed that Chris McKnight was wearing a red plaid jacket, but so were at least two others. Heck, half the county has those jackets for when they go out hunting. Two people there were wearing high school jackets but I didn't recognize them. I thought it was interesting that Schmitz and Gardner weren't wearing jackets at all. The night was cool and they were outside. I asked if what was going on and they were forthright. They were organizing a protest against the Judge which would take place during the next election. I did see that Schmitz had a jacket hanging on the back of his office chair which had been pulled outside. It was a yellow and gray school jacket with a captain's letter on the back.

Even though I know Morgan and Chris pretty well and didn't think they'd have a hand in this type of thing...frightening kids and destroying property...I went to Schmitz Trucking when I left the Judge's and found Schmitz, McKnight and Gardner in the garage painting a large wooden sign which stated: "Falcons and eagles and Judge Kelly Barringer, all headed for extinction." I confiscated the sign and kept it as evidence.

On September 17, the morning after I'd been to Schmitz Trucking Company, I stopped by the diner and saw Chris McKnight. I could tell that McKnight was upset when I brought up the sign and said that I'd taken it as evidence. Chris said that the sign was being painted for a group who intended to inform the public about the Judge's lack of concern for the financial well-being of the community. They were going to place a number of signs around the town prior to the next judicial retention election, which would be in November, that would encourage voters to not retain Judge Barringer. McKnight denied any wrongdoing and denied involvement in the attacks on the Judge's property without me asking any questions at all.

Later, on the morning of the 17th, I drove by the Gardner home on my routine patrol. Morgan was in his yard and waved so I stopped. I didn't ask any questions, just said good morning and Gardner then admitted to feeling strongly about the Judge's ruling and said that he/she was planning on urging voters to vote

Barringer out of office but flatly denied making phone calls to the Judge or anything else that would harm property. Morgan said that the group "Citizens Against Barringer" was meant to inform the citizens of Breckenfelder about the Judge's apparent lack of concern for the economic well-being of the community and that was all. They were just getting organized and had met only three times at the Trucking Company with Robin Schmitz.

I wanted a formal statement from Robin Schmitz. I drove out to the Trucking Company and Robin Schmitz stated that he/she supported the community's actions in removing Barringer from office. He/she further stated that, "One person should not be able to stand in the way of progress. Judge Barringer's high-handed, elitist attitude is fine for someone making \$100,000 a year of taxpayer money...what about the rest of the little folks scraping by in small town America? Why should some birds have better living conditions than the citizens of this country? Judge Barringer knows so many lawyers who live in that subdivision bordering Gilmore Woods, which we wanted to purchase. Do you think that fact entered into the decision he rendered?"

Schmitz became agitated when I asked questions about his/her whereabouts on the evenings the Judge's property had been damaged and the threatening phone calls had been made. I told Schmitz that the telephone company would tell me if the calls had been placed from the Schmitz Trucking Company or the Schmitz home telephone. This seemed to upset him/her even more. Schmitz said, "I can't believe this is America! What kind of system of government do we have here. A person can't even express an opinion without having the police come calling to question every little thing you do."

I sought a search warrant to search the Trucking Company property, including all the vehicles owned by Schmitz and used for personal or business purposes. The warrant was issued by Judge Craghead. Judge Barringer had no knowledge of the investigation of Schmitz at this point. The search of the Trucking Company property was conducted on September 22, at 9:00 a.m. by three officers, Officers Taite and Rendleman accompanied me.

On September 22, we found a list of slogans in the office of Robin Schmitz which targeted Judge Barringer. These matched the list given to us by Gardner and McKnight. We also found two feather pillow cases which had been torn open and emptied. We thought that the feathers that were on the Judge's lawn might have come from the pillows. Tests to match the feathers were inconclusive. The pillows came from a local Target store and anyone could have purchased them. But, we also found a small tin of red paint which tests concluded matched the color and brand of the paint on the note on Judge Barringer's door. The tests proved that the paint was a brand sold by a local automotive dealership and was a match for the kind of paint used for the sign found at the Barringer residence.

That county blacktop had been monitored for about a week. There had been numerous complaints from citizens that there were drag races going on out there late at night and people were speeding. The State Police set up a road monitoring

device, when a vehicle passes over the strip on the highway, a camera on the side of the road takes a photograph of the vehicle. On the evening of September 16, the photographic tapes show six vehicles passing through the area of Gilmore Woods. Two were exceeding the posted speed limit. One of the two vehicle license plates was registered to Robin Schmitz of the Trucking Company. One of the others, from earlier than evening, was registered to Chris McKnight. McKnight wasn't speeding.

Statement of Pat Dennis

My name is Pat Dennis. I live in Breckenfelder, Illinois. I've been a resident here for five years.

My family moved here from Chicago to escape pollution and the hectic big-city life. We looked long and hard to find a nice rural community and we knew Breckenfelder would be a nice place to live when we first saw it. That was confirmed when we ate at the diner and met some of the citizens.

During the first week after moving in about five years ago, I met Judge Barringer and was impressed. The Judge was kind to my children who were with me at the time. Judge Barringer quickly became a good family friend.

It was about three months after we moved in that I heard from others eating at the local diner that the Schmitz Trucking Company was trying to purchase the Gilmore Woods tract of land from Pat Gardner which abutted our property. I was concerned and asked if anyone was trying to stop the purchase. The people in the diner looked a little confused, like they hadn't realized that there were other options. I told them that there were options and offered to take action on behalf of those in the community who were opposed to the purchase.

I wrote to our Congressperson and to the Environmental Protection Agency. Both responded quickly and the EPA sent a representative to review the proposed purchase plan. The EPA submitted a lengthy report that indicated that there were endangered species on the property that would be affected by any alteration in the use of the land. The report also expressed serious concerns about water pollution from any proposed dumping on the site. The case of Schmitz v. EPA went before Judge Barringer and he ruled in our favor, stopping the purchase of the land.

Judge Barringer followed the law. Studies proved that the sale of the land for the purpose proposed would have endangered some threatened and sensitive species which had been identified as having habitats in that area. The study was sound. No one argued that the species were there and that they were endangered. The study provided information on the environmental effects of the waste site and considered the effects on threatened or endangered species. That study gave site-specific information and considered such factors as the habitat of the endangered species, aquatic resources, soil conditions and erosion potential. It was a sound report which withstood all kinds of challenges. The methodology of the report fairly assessed the damages that could result from Schmitz Trucking Company taking that property and turning it into a dump. Those threatened species are there and they're safe, thanks to Judge Barringer. I'm very relieved that the Judge ruled the way he/she did.

I mean, really, rather than messing something up and then paying thousands, maybe millions, for a clean up, why not leave this property the way it is and find another way to expand the waste business? There have been laws to protect the environment in this country for years. There's the Federal Refuse Act of 1899 and

the New York Rivers and Harbors Act of 1888. They couldn't protect the land, the air and the animals. The Environmental Protection Act is trying to finish the job those laws began. But the EPA guidelines and statutes have loopholes, almost every law does. What's to prevent someone from finding one of those loopholes and allowing seepage, discharge or runoff into the land and water. That would ruin Gilmore Woods. It's happened elsewhere. It could easily happen here.

If there isn't some loophole in the law, then what about enforcement of the EPA standards? There have been stories in the news about horrible breakdowns in enforcement in some areas. What if that happened here? No matter how many laws you have to protect the land, air, water and the animals and people, there has to be someone out there willing and able to aggressively enforce those laws. I was happy to try to do something about the sale of Gilmore Woods. I'm glad Judge Barringer followed the law and made the right decision.

Some people in the town weren't so happy about the Judge's ruling. They had wanted the new jobs that the expansion would create. They weren't really thinking about future generations here. What a large land fill would do to the atmosphere of Breckenfelder. This lovely little town with a huge hill of garbage next to it. It was offensive.

I wasn't trying to stop the purchase just because the trucking company would have been my new next door neighbor. I feel strongly about Breckenfelder and its citizens. Everyone living here should have the opportunity to breathe clean air, have a nice place to go walk on a Saturday or Sunday, without smelling rotting trash. The animals deserve to have clean water to drink and space to roam and fly. Our local eco-system is important. There's a balance here that must be protected. There has been far too little done locally to protect our natural wildlife and the habitats they need in order to survive and thrive. The woods have been untouched for years. The local people have respected the property. I can't understand why anyone would want to sell out something as important as our environment.

Why did the trucking company need all 500 acres? That's a huge plot of land. Their proposal could have been limited to about 100 acres and could have stayed away from the woods and streams where the endangered birds and frogs lived. I can't help but think that Schmitz Trucking had different plans for that 500 acres than those proposed in their purchase plan. I don't know what they could have been, and I didn't want to find out.

On the evening of September 16, I was out walking in Gilmore Woods. The citizens around here have always been allowed access to that property. No hunting or fishing, but if you want to walk, or picnic, or just enjoy the scenery, it's always been allowed.

I often go for an evening walk and I enjoy the quiet out there. You can really see the stars. It was about 7:30 p.m., just at dusk though it was pretty dark. I saw McKnight's car pulled off the road that goes through the woods, just as I was

coming off the trail near the county blacktop. It looked as though he had pulled over off the road for something because the car was stopped completely, but the lights were on...but then he saw me and sped away. Really laid a patch on the road. There may have been someone else in the car. It almost looked as though someone was hunched down in the passenger seat.

A few minutes later, I saw a Schmitz truck with its ugly red lettering coming down the blacktop at a really high speed. It was getting darker by then and I couldn't see who was driving, but it was a Schmitz truck. I don't usually see much traffic when I'm out at night in those woods.

I think Judge Barringer made a fine decision in this case. And I think that those in this community who are threatening the Judge and the Judge's family are incredibly irresponsible and should be held accountable for their actions. It's just not right to intimidate or threaten when you don't get your own way. Had I lost in court, I would have appealed and sought more assistance to help me present a better argument to persuade the Judge that the community needs this land more than the trucking company does.

People deserve to have full trust and confidence in their courts. They can only do this if judges act independently of public opinion or separate from other parts of the lawmaking process that involve legislators, law enforcement officials, attorneys and the public. The judge's role is not to create laws, to be part of an investigative process or to make decisions based on instinct. Judges make rulings based on evidence presented in open court. It is important for people to understand that what happens after a trial--no matter the social impact--is not a reflection on whether or not the Judge's application of the law in that trial was correct. It is critical that a judge's role be kept within the limits of the law to ensure a fair process. No system is perfect, but ours is the best known means of administering justice. The system works because judges are able to act independently without fear of intimidation or repercussions for their rulings.

Statement of Morgan Gardner

My name is Morgan Gardner. I have lived in Breckenfelder, Illinois all of my life. I'm a farmer and proud of it. It was Gilmore Woods, my 500 acres that the Schmitz Trucking Company had offered to purchase. At first I didn't want to sell the land. It was a lovely piece of property and I liked owning it. I hunted that land in the fall and winter and fished in its streams. My kids love playing there. But, when Schmitz Trucking Company offered to buy, I did consider selling. Why not? Their money was pretty good, if I do say so myself. I wouldn't have had to ever worry about money again, if the sale had gone through. Those same kids who love playing on that land need to go to college.

I first heard from Schmitz Trucking about four years ago. Robin Schmitz called me and said he/she was interested in buying my land, known as Gilmore Woods, so he/she could expand his/her business. He/she told me there wasn't a big hurry to get the land, but he/she said that sometime in the next five years would be a great time to obtain the property. So, we struck up deal and I agreed to contact Schmitz first when and if I was ready to sell. About a year ago, Schmitz wrote me a letter that spelled out the terms of our verbal agreement. I still have the letter, and I don't remember ever showing it to anyone. Somehow, word most have gotten out, and pretty soon the whole town knew about Schmitz's offer to purchase.

Robin Schmitz didn't tell me much about the plans for the land, but I did know that the proposal included expanding the trucking company and waste disposal business. That would have brought lots of jobs to Breckenfelder. That would have been a very good thing. Would have kept some of the young people here instead of them going off to the cities when they graduate from the high school. Would have given this town a good future.

Farming hasn't been all that great lately. I've had some equipment break down, the weather can beat you, sometimes the land seems like it would be better used for something else. I can't deny that the money would have helped my family. Like I said, I have kids who need to go to college.

If you ask me, Pat should have kept his/her nose in his/her own business. Then I could have sold my property, had plenty of money and so could all of the people who could have gotten jobs if Schmitz Trucking could have expanded their business. I don't know about anyone else, but my family could sure use the money. We aren't poor, but we've had a few financial problems lately and the sale of that property would have set us up good.

But, Pat Dennis had other ideas. Dennis came to town about four years ago and right away started making poetic noises about the beauty and tranquility of small town living. Heck, that family was goofy for the country. They'd roam around all dreamy-like just taking pictures of flowers and dogs and stuff. But, then Dennis heard about the proposed sale and got all huffy. Didn't like the changes that would have come, I guess.

I guess there's a place for everyone in a small town, but one or two people shouldn't be able to control the lives of everyone else here. Pat Dennis tried to do that when those letters were sent to the Congressperson and to the EPA. Who needed that? Course trucking companies are going to kick up dust, course land fills are going to smell a bit, but those birds can fly away if they don't like it here. And those frogs can swim up or down streams. Heck, I'll volunteer to transplant every last one of those darn daisies!

I feel strongly about this community too. We needed those jobs. Now we won't get them because Judge Barringer ruled against Robin Schmitz. Schmitz and I were talking about getting the voters in Breckenfelder to vote Barringer out of office. I was ready to paint signs and walk door to door. But I'd draw the line at making threatening phone calls to scare the Judge or the Judge's family. That's a mean trick. Our group "Citizens Against Barringer" was meant to inform Breckenfelder folks about the Judge's lack of concern for the well-being of the community. Those jobs meant opportunity.

On the evening of September 16, I was at Schmitz Trucking Company for a meeting. About twelve or fourteen people met there to paint signs and talk strategy on how to get Judge Barringer off the bench. I don't know what went on at the beginning of the meeting, I didn't get there right on time.

I haven't seen my school jacket in years. I never got a letter to put on the coat, just wore it for the school colors. I gave it to an old girlfriend years ago. I don't think I ever got it back. I do have a red plaid jacket, wear it all the time. Half the town has them.

Statement of Chris McKnight

My name is Chris McKnight. I've lived in Breckenfelder all my life. My family has lived here for generations. We run the local diner in downtown Breckenfelder.

On September 16, when Officer Bagley came to Schmitz Trucking, we were painting campaign signs. I was at the Schmitz Trucking Company that night with Gardner and Schmitz. I got there at about 7:30 p.m. There was a group already gathered there. Schmitz wasn't there yet either, but he came racing in only about five minutes later and let us all into the garage to start painting signs and planning our strategy to get Judge Barringer off the bench. Morgan Gardner wasn't there yet...but he got there...finally. We were almost finished with the meeting and had started painting. I think he pulled in at about 7:50 or so.

What I was doing before the meeting at the trucking company is nobody's business but my own. I'll exercise my rights under the Fifth Amendment if I have to. I was doing nothing wrong. A person should be able to do their own personal business without becoming a suspect!

I don't understand Schmitz's attitude. I am upset about the criminal charges and I don't think we should make these things personal. Barringer had a job to do. He/She did it. I just disagree with the outcome, though, honestly, I'd miss the woods if they were gone. You can't stop progress though.

I'll admit to anyone interested in listening that I think Judge Barringer made a mistake in ruling against that land purchase. My sign said "Falcons and eagles and Judge Kelly Barringer, all headed for extinction." We were planning on letting the voters know that if they didn't like the way the Judge ruled, they could do something about it. The sign was confiscated by the Officer Bagley.

I was working with Morgan Gardner to solicit members for a group who was going to work to let Breckenfelder folks know about the lack of concern for the financial well-being of the community. We were preparing to place signs around the town prior to the next judicial retention election in November to encourage voters not retain Judge Barringer. I've worked on campaigns before. I know I have every right to paint signs and to let community members know about my position. Morgan Gardner and I were doing just that. We weren't doing anything wrong.

We had heard from Robin Schmitz after the decision and agreed with what Schmitz said. It wasn't fair to strip opportunity from the community like that. Schmitz offered to help with the campaign to inform the citizens and wrote up a list of slogans for us to paint on signs. Schmitz even gave us the wood and the paint to do it.

When I heard at the diner about what was going on at the Judge's house, I got concerned. Nothing like that has ever happened in Breckenfelder. There's virtually no crime here. We don't have to lock our doors or our cars, nothing ever gets stolen. It's like we watch out for each other here. This was very strange. I

didn't like it at all.

I mentioned my concerns to Robin Schmitz over coffee at the diner a few days after the knife and chicken were stuck to the Judge's door. Schmitz laughed and said, "A little chicken shouldn't scare anyone, what's the good Judge whining about. Someone's just having a little fun." That surprised me. Schmitz didn't seem concerned at all.

EXHIBITS

**Schmitz Trucking & Waste Disposal Company
1234 Donna Drive
Breckenfelder, Illinois 00007**

Robin Schmitz, President

217/555-1234

February 1, 1997

Morgan Gardner
987 Ann Lane
Breckenfelder, Illinois 00007

Dear Morgan:

I wanted to write this letter to confirm our agreement about the sale of your 500 acres at Gilmore Woods. I know we have a "gentleman's" agreement, but I thought it would be best to put everything in writing.

As we agreed four years ago, you have given Schmitz Trucking & Waste Disposal Company a right of first refusal in the event you place your 500 acres that abuts our property up for sale. At the time you contact Schmitz and advise that the land at Gilmore Woods is available for purchase, we will negotiate and agree upon a per acre price.

I believe that the above accurately reflects our agreement. If it does not, please let me know immediately.

I look forward to completing this transaction with you in the near future.

Sincerely,

Robin Schmitz, President

INVOICE

Dennison's Lawn & Garden Supply
2001 Odyssey Road
Breckenfelder, Illinois

Bill to: Hon. Kelly Barringer
Taiteville, Illinois

4 hours @ \$25 per hour, plus materials=

\$100 rake and disposal of approximately 2 bushels of
feathers/waste and low-power lawn wash

\$50 re-rake and seed damages portions of law

TOTAL \$150.00

Thank you for choosing Dennison's!

INVOICE

Franklin Fencing Company
708 Illinois
Breckenfelder, Illinois

TO: Judge Kelly Barringer
Taiteville, Illinois

Labor - 3 hours @ \$40 per hour		
Dig post hole, mount post, fill and level area	\$120	
Materials - 6 foot length of high-test metal	\$125	
Aluminum mailbox	\$ 50	
Custom lettering -		\$ 5

TOTAL amount due: **\$300**

INVOICE

The Wood Shop
555 South Oak
Breckenfelder, Illinois

Kelly Barringer
Taiteville, Illinois

Fill, sand and refinish door, re-stain and re-
mount in existing frame:

\$200

Please pay upon receipt. Thank you for your business.

INDICTMENT

The Grand Jurors chosen, selected, and sworn, in and for the County of Lincoln, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid present that on or about September 14 to 16, 1997, at or within the County of Lincoln:

Robin Schmitz
Chris McKnight
Morgan Gardner

Committed the offenses of THREATENING A PUBLIC OFFICIAL
and INTIMIDATION

In that they communicated with one another, in person, by telephone or by mail, and communicated to the Honorable Kelly Barringer a threat to inflict physical harm on the person or family of Judge Barringer through a series of threatening telephone calls and through a threatening written document in violation of and **720 ILCS 5/12-6** and **720 ILCS 5/12-9**

exposed the Honorable Kelly Barringer to hatred, contempt or ridicule, contrary to the Statute, and against the peace and dignity of the People of the State of Illinois.

_____ Prosecuting Attorney

A TRUE BILL

_____ Foreperson

Stipulation - no attacks on the charges may be made. Motions to challenge the indictment will not be entertained. (The indictment may not conform exactly to Illinois law but is sufficient for purposes of this hypothetical trial.)

INDICTMENT

The Grand Jurors chosen, selected, and sworn, in and for the County of Lincoln, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid present that on or about September 14 to 16, 1997, at or within the County of Lincoln:

Robin Schmitz
Chris McKnight
Morgan Gardner

Committed the offense of

CRIMINAL DAMAGE TO PROPERTY
CRIMINAL DEFACEMENT OF PROPERTY

In that they Knowingly damaged property at the home of Judge Kelly Barringer without consent; and/or

Knowingly damaged the property at the home of Judge Barringer without consent by defacing, or otherwise damaging the property by the use of paint and/or any other similar substance in that they, without permission, knowingly did

1. destroy the mailbox at the Barringer residence
2. smeared feathers on the lawn using a toxic mixture of manure and waste
3. damaged the door of the Barringer residence by attaching a threatening written document to the door of the residence by stabbing the paper through with a kitchen knife, causing damage to the residence

In violation of **720 ILCS 5/21-1** and **720 ILCS 5/21-1.3**

Stipulation - no attacks on the charges may be made. Motions to challenge the indictment will not be entertained. (The indictment may not conform exactly to Illinois law but is sufficient for purposes of this hypothetical trial.)

STATUTES

720 ILCS 5/12-6. Intimidation

§12-6. Intimidation.

(a) A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another, whether in person, by telephone or by mail, a threat to perform without lawful authority any of the following acts:

- (1) Inflict physical harm on the person threatened or any other person or on property; or
- (2) Subject any person to physical confinement or restraint; or
- (3) Commit any criminal offense; or

- (4) Accuse any person of an offense; or
- (5) Expose any person to hatred, contempt or ridicule; or
- (6) Take action as a public official against anyone or anything, or withhold official action, or cause such action or withholding, or
- (7) Bring about or continue a strike, boycott or other collective action.

Intimidation is a Class 3 felony for which an offender may be sentenced to a term of imprisonment of not less than 2 years and not more than 10 years.

720 ILCS 5/12-9. Threatening public officials

§12-9. Threatening public officials

- (a) A person commits the offense of threatening a public official when:
 - (1) that person knowingly and willfully delivers or conveys, directly or indirectly, to a public official any telephone communication, letter, paper, writing, print, missive or document containing a threat to take the life of or to inflict great bodily harm upon the public official or a member of his immediate family and
 - (2) the threat was conveyed because of the performance or nonperformance of some public duty, because of hostility of the person making the threat toward the status or position of the public official, or because of some other factor related to the official's public existence.
- (b) For purposes of this Section: (1) "public official" means a person who is elected to office in accordance with a statute or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions or in the case of an elected office any person who has filed the required documents for nomination or election to such office; (2) "immediate family" means a public official's spouse, child or children.
- (c) Threatening a public official is a Class 4 felony.

720 ILCS 5/21-1 Criminal Damage to Property

- (1) A person commits an illegal act when he:
- (a) knowingly damages any property of another without his consent; or
 - (b) recklessly by means of fire or explosive damages property of another;
- or
- (c) knowingly starts a fire on the land of another without his consent; or
 - (d) knowingly injures a domestic animal of another without his consent;
- or
- (e) knowingly deposits on the land or in the building of another, without his consent, any stink bomb or any offensive smelling compound and thereby intends to interfere with the use by another of the land or building; or
 - (f) damages any property, other than that described in subsection (b) of Section 20-1, with intent to defraud an insurer; or
 - (g) knowingly shoots a firearm at any portion of a railroad train.

(2) The acts described in items (a) through (f) are Class A misdemeanors if the damage to property does not exceed \$300. The acts described in items (a) through (f) are Class 4 felonies if the damage to property exceeds \$300 but does not exceed \$10,000....

(3) In addition to any other sentence that may be imposed, a court shall order any person convicted of criminal damage to property to perform community service for not less than 30 and not more than 120 hours, if community service is available in the jurisdiction and is funded and approved by the county board of the county where the offense was committed.

720 ILCS 5/21-1.3 Criminal Defacement of Property

(a) A person commits criminal defacement of property when the person knowingly damages the property of another without his or her consent by defacing, deforming, or otherwise damaging the property by the use of paint or any other similar substance, or by the use of a writing instrument, etching tool, or any other similar device.

(b) Criminal defacement of property is a Class A misdemeanor for a first offense if the damage to the property does not exceed \$300. Criminal defacement of property is a Class 4 felony for a second or subsequent conviction or if the damage to the property exceeds \$300. In addition to any other sentence that may be imposed, a court shall order any person convicted of criminal defacement of property to perform community service for not less than 30 and not more than 120 hours, if community service is available in the jurisdiction. The community service shall include, but need not be limited to, the cleanup and repair of the damage to the property that was caused by the offense, or similar damage to

property located in the municipality or county in which the offense occurred.

GENERAL RULES OF THE SUPREME COURT OF ILLINOIS

Rule 61. Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Rule 63. Canon 3. A Judge Should Perform the Duties of Judicial Office Impartially and Diligently

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In performance of these duties, the following standards apply:

A. Adjudicative Responsibilities

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(8) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice....

C. Disqualification

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;...

ILLINOIS PATTERN JURY INSTRUCTIONS

Criminal Damage of Property - To sustain the charge of criminal damage to property over \$300, the State must prove the following propositions:

First: That the defendant(s) knowingly damaged the home and property of Kelly Barringer; and

Second: That the defendant(s) did so without the consent of Kelly Barringer; and

Third: That the damage to the home and property of Kelly Barringer exceeds \$300.

Criminal Defacement of Property - To sustain the charge of criminal damage to property over \$300, the State must prove the following propositions:

First: That the defendant(s) knowingly damaged the home and property of Kelly Barringer by the use of paint or similar substance and by the use of a writing instrument, etching tool or any other similar device; and

Second: That the defendant(s) did so without the consent of Kelly Barringer; and

Third: That the damage to the home and property of Kelly Barringer exceeds \$300.

Threatening a Public Official - To sustain a charge of threatening a public official, the State must prove the following propositions:

First: That the defendants knowingly and willfully delivered or conveyed to the Honorable Kelly Barringer, directly or indirectly, a public official a telephone communication, letter, paper, writing, print, missive or document containing a threat to take the life of or to inflict great bodily harm upon the public official or a member of his immediate family; and

Second: The threat was conveyed to the Honorable Kelly Barringer because of the performance of a public duty, because of hostility of the person making the threat toward the status or position of the public official, or because of some other factor related to the official's public existence; and

Third: That The Honorable Kelly Barringer, is a public official who is elected to office in accordance with a statute or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions or in the case of an elected office any person who has filed the required documents for nomination or election to such office; "immediate family" means a public official's spouse, child or children.

Intimidation - To sustain the charge of intimidation, the State must prove the following propositions:

First: Communicated to the Honorable Kelly Barringer a threat to, without lawful authority, cause the taking of action or withholding of action by a public official; and

Second: That the defendant(s) then performed an act.

ADDED STIPULATIONS:

All receipts included in the materials are accurate and reflect the cost of repairs to Judge Barringer's property.

Judge Barringer is a duly elected public official.