

THOBURN'S MARTYRDOM

By William Nicoson

And the bitter groan of the martyr's woe
Is an arrow from the Almighty's bow.
—William Blake, *Jerusalem*

His fellow inmates call him "Shrub." John Thoburn's failure to plant shrubs and trees at his driving range in the number and locations specified by Fairfax County has landed him in jail for contempt of court.

Thoburn opened his Golf Park in 1997 just outside Reston across Hunter Mill Road from the family's Fairfax Christian Academy. The zoning permit he obtained not only denied his request for miniature golf but also attached 27 conditions to operation of his driving range. Enforcing these conditions has apparently required a massive effort by county zoning inspectors. Night lighting, generators and a juke box, prohibited by the permit, were initiated, then dropped after county intervention. Food prepared on the premises, though prohibited, was offered until discovered by county inspectors. The requirement that colas be sold only in cans was ignored until enforced. A required berm was erected but surpassed the permit's height limit.

Thoburn says he planted over 700 trees and shrubs in 1994 but, according to zoning officials, not enough and many were sited improperly under his permit. When ordered to move and supplement the misplaced greenery, Thoburn agreed as usual, but consistently failed to comply even after issuance of a court order. Last September, as the planting season drew to a close, he was held in contempt of court. Two supplemental hearings followed without compliance, and on February 16th Circuit Court Judge Michael P. McWeeny directed that Thoburn be jailed until he complied with outstanding court orders or closed his driving range.

From his cell, Thoburn has directed an effective public relations campaign against what he calls the "tree police." The County's decision to open its own driving range at Oak Marr Recreational Center -- with night lighting and miniature golf -- has played into Thoburn's campaign. Expressing fear that his wife might be arrested, he has sent her with their children out of state. On March 15, The Washington Post published his manifesto against the "arbitrary zoning decisions" of "Fairfax County bureaucrats." "Whether it is jukeboxes, trees or hot dogs, Fairfax County has shamelessly trampled my constitutional property rights." He demanded a signed apology from all county supervisors. "If I can be jailed for not moving trees, do I really possess my property?"

Jailed for not moving trees? Thoburn has been jailed for repeatedly failing to obey court decrees. In our system of justice, no one, however stubborn or messianic, is entitled to defy a court with impunity. Thoburn was granted a permit which may well have been overloaded with conditions designed to appease neighbors. His remedy was to appeal the conditions he found unfairly

burdensome. Instead he accepted the benefits of the permit while ignoring systematically any of its requirements which were inconvenient at the moment.

But Thoburn's campaign will enlist many in his cause. His enemy is the always-suspect local bureaucracy. His infraction is easy to characterize as trivial. Jail is the perfect setting for unleashing the martyr's "arrow from the Almighty's bow." And who, these days, cares about the sanctity of a court decree?

Susan McDougal wore her contempt citations proudly and convinced many that her refusal to comply with court orders and willingness to endure the long consequent incarceration were noble. After all, as a convicted felon, she was only trying to save her Whitewater partner from a similar fate. Thoburn is borrowing the same robe of martyrdom but only to save himself from meeting the legal obligations he himself chose to assume.

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