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Open City

The Wages of Fear

Sherman Austin gets a year
by Steven Mikulan

John Ashcroft may have replaced the wheels of justice with tank treads, but terror-related cases don't move through the federal courts any quicker than before 9/11. Readers of Open City will recall the ordeal of 18-year-old Sherman Martin Austin, whose family's Valley home was swarmed by the FBI in the heady days following the PATRIOT Act's passage. After subjecting the house to the kind of forensic scrutiny accorded a jumbo-jet crash, the feds decided not to arrest Austin, whose anarchist Web site, Raisethefist.com, had aroused their interest when it posted a link to another site offering bomb-making instructions. But a week later the government changed its mind and held him without bail for 13 days. Then it let him go. Six months later, in August 2002, it had another change of heart and charged him, following a plea agreement, with a single count of distributing explosives information.



(Photo by Slobodan Dimitrov)

Now 20, Austin appeared downtown Monday to be sentenced. He was dressed in a gray suit his mother had bought at an Out of the Closet thrift store. He'd worn the suit the week before for this same hearing, which had to be postponed because a clerk had forgotten to enter it on Judge Stephen V. Wilson's calendar. It was the same suit Austin had worn June 30, when he appeared before Wilson for sentencing, only to be told by the Reagan appointee that the second plea agreement worked out between Austin's defense attorney and the federal prosecutor was too lenient. And, for all I know, it was the suit Austin had worn last September, the first time he appeared for sentencing, only to have Judge Wilson declare the original plea deal too light.

So here were Sherman Austin and Judge Wilson once more, each wearing their respective court attire. Wilson again asked assistant prosecutor Rob Castro-Silva if anything had changed his mind toward increasing Austin's sentence of four months' custody, four months in a halfway house and three years' probation. And again the prosecutor said no.

This time, however, Wilson was ready to pass sentence: 12 months in prison, a \$2,000 fine and three years' probation. Austin will not, during those three years, be allowed to sit in the same room with anyone who vents violent anti-government rhetoric or to use a computer without the okay of a probation officer — who will also have access to Austin's telecom bills.

"Is this the maximum probation I can give?" Wilson asked the prosecutor.

Austin's sentence knocked the air out of his dozen supporters, and his mother began to sob. The defendant was probably the calmest person in Room 6, however.

"I wasn't surprised," Austin told me later, as his supporters milled about in the hallway. "I was expecting at least eight months — it was all political to the judge."

Austin's stunned friends discussed the sentence for about 20 minutes, then drifted outside the massive courthouse.

"Thanks for comin' out," Austin told well-wishers, as though they had attended a yard sale he'd thrown.

If 9/11 hadn't existed, it would have been necessary to invent it. Since the start of the Reagan era, the number of federal crimes on the books has increased geometrically — and so has the number of federal capital offenses. So too have applications of the RICO Act and terrorist laws to cases for which they were not originally envisioned. Far more so than the concept of the hate crime, the notion of terrorism has been expanded to include just about anything that displeases or alarms us. And by "us" I mean both the government and you and me.

About a dozen years ago I was camping with friends in Joshua Tree, when one of my pals, apparently with more beer than common sense in him, left a poem on the windshield of a stranger's car. About a week later I learned the incident was being investigated as a potential terrorist threat because the recipient of the verses viewed them as a threat and because the incident occurred on federal land.

Nothing came of this, but it made me realize how quickly people will reach for a legal nuke anytime something frightens or annoys them, whether in the form of terrorist charges or three-strikes laws. This eagerness to employ legal overkill has been growing since before 9/11, making America a little less recognizable as the country most of us grew up in. Austin took the plea agreement because of the 20 years he faced under terrorist-enhancement laws enacted long *before* the PATRIOT Act. Sherman Austin's lawyer, deputy federal public defender Ron Kaye, had dissuaded Austin's friends from seeking media attention for the case lest it draw too much scrutiny to Austin. Austin's mother did not want her name to appear in any coverage of the trial for fear she would lose her job. We may have nothing to fear but fear itself, but today the F word is everywhere.

Sherman Austin has a month before he has to surrender to U.S. marshals. Outside the courthouse Monday, his supporters debated the case some more. Maybe Austin was lucky not to have been tried for the empty iced-tea bottles that the FBI discovered and which were initially suspected of being Molotov-cocktail equipment. Maybe he should have gone to trial, maybe his supporters should have gone to the press. Eventually the group dwindled, and the anarchist, his mom and a few friends walked past the court's anti-terrorist barricades to Chinatown to have lunch at Sam Woo's.