

UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

HONORABLE STEPHEN V. WILSON  
UNITED STATES DISTRICT JUDGE, PRESIDING

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff (s),	)	
	)	
vs.	)	CR 02-884-SVW
	)	
SHERMAN MARTIN AUSTIN,	)	
	)	
Defendant (s),	)	

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SENTENCING HEARING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, JUNE 30, 2003

LOS ANGELES, CALIFORNIA

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1 LOS ANGELES, CALIFORNIA, MONDAY, JUNE 30, 2003

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3 (COURT IN SESSION at 11:00 a.m.)

4 THE CLERK: Item number seven, CR 02-884-SVW,  
5 United States of America versus Sherman Martin Austin.  
6 Counsel, please state your appearances.

7 MR. CASTRO-SILVA: Good morning, your Honor.  
8 Rod Castro-Silva, for the United States.

9 MR. KAYE: Good morning, your Honor.  
10 Ron Kaye, appearing on behalf of Mr. Austin,  
11 present before the Court.

12 THE COURT: This is the time for sentencing.  
13 Has the defendant read the presentence report?

14 MR. KAYE: Yes, your Honor.

15 THE COURT: Okay. I'll hear from you and/or  
16 your client.

17 MR. KAYE: Thank you, your Honor.

18 Your Honor, Mr. Austin committed this offense  
19 when he was 18 years old. Now, he's 20 years old.  
20 Since his commission of this offense, he has engaged in  
21 nothing that remotely resembles it.

22 In fact, the government's complaint was  
23 dismissed in February of 2002 and we entered into plea  
24 negotiations in August of 2002. The government --  
25 during that time, when he was not supervised, similarly,

1 there was no conduct that remotely resembled any  
2 Interned dialogue that would promote violence,  
3 whatsoever.

4 As part of those negotiations, the government  
5 was introduced to his mother. His entire family is  
6 here, including one of the writers, Ms. Bolton, who  
7 wrote a letter to your Honor.

8 His mother was involved in those negotiations.  
9 We met with the government several times, and as a  
10 result, the government had offered a plea agreement  
11 under 11 (c) (1) (c), which essentially gives the Court  
12 discretion within the range that has been proposed in  
13 the presentence report.

14 But, your Honor, the government, the  
15 Probation Office, and the defense are all in agreement  
16 that the Court should impose a sentence of --  
17 essentially, the most lenient sentence possible within  
18 that range, which, at this juncture, is four months in  
19 custody and four months in a community correction  
20 center.

21 Your Honor, we provided the Court with a very  
22 detailed report from a Dr. Evelyn McGinnis, who works  
23 for the California Department of Corrections in  
24 Lancaster. Her analysis focuses on the dangerousness of  
25 individuals and whether criminal inmates are -- should

1 be eligible for parole, whether they constitute a risk  
2 of danger to society.

3 Dr. McGinnis, after a thorough examination,  
4 applied her experience and found that Mr. Austin does  
5 not represent a risk to society, whatsoever.

6 Objectively, she used the HARE Personality  
7 Dangerousness Test and made this conclusion: That on  
8 the contrary, Mr. Austin is a very, very peaceful,  
9 mild-mannered man who is much more inclined to act in a  
10 very peaceful, non-aggressive manner.

11 In addition, a critical component of  
12 determining an individual's dangerousness is personal  
13 history. Ms. Bolton is here. She was a mentor/teacher  
14 in the LA Unified School District. She knows -- she's  
15 known Mr. Austin for 18 years, 18 years of his 20 years  
16 of living.

17 We provided a letter from Mr. Russo who was a  
18 Big Brother to Mr. Austin through the Big Brother  
19 Program. He did not have this mentoring from his  
20 father. He was pretty much raised by his mother, who's  
21 present in court.

22 And the Big Brother also responded that  
23 Mr. Austin was somebody who was -- his characteristics  
24 were the kind of person that would avoid all conflict.  
25 He was not engaged in aggressive sports. He would go

1 hiking, collect butterflies, things to that effect.

2 And finally, we presented the letters of John  
3 Perlstein and Ms. Greentree, also, who have also known  
4 Mr. Austin all of his young life, who just emphatically  
5 relate to the Court how this individual does not  
6 resemble someone that society should be concerned with.

7 The government has been very, very cooperative  
8 and has taken a close look at this case. I'm sure  
9 Mr. Castro-Silva will be addressing the Court, as well.

10 And the last thing the government would do at a  
11 time like this, with the acts of aggression that have  
12 been perpetrated on a global level, is recommend a low  
13 sentence when they perceive someone to be a danger.

14 Mr. Austin is someone who, in the future, will  
15 comply completely with the terms of supervision.

16 Everyone who has analyzed this case has sensed  
17 that this came about as a result of his immaturity.

18 He was very computer literate from the early  
19 days of his high school. His mother is a computer  
20 instructor at a private school.

21 And he didn't realize the impact. He didn't,  
22 like, have a sense that what he was doing could trigger  
23 such possible violent conduct.

24 And in her report, Dr. McGinnis states that if  
25 someone did in fact commit a violent conduct, it was

1 more than likely that he would have been appalled, that  
2 he would have been shocked, because violence is so  
3 contrary to this young man.

4 The probation officer recommends a three-year  
5 period of supervised release. And they state that they  
6 want to give this much time for the defendant to mature.  
7 And we're not in opposition to a three-year period of  
8 supervised release; nor is the government.

9 He's -- there's very invasive requirements  
10 with regard to computer monitoring. We're not going to  
11 oppose those, as well.

12 The only issue that we'd ask the Court to  
13 modify with regard to the supervised release is the --  
14 there's a condition that he cannot knowingly be engaged  
15 in any -- or associate with any groups that are  
16 professing any violence. And in my papers to the Court,  
17 I explained the possibility of this having unintended  
18 affect.

19 And what I would ask the Court to do is have  
20 the probation officer first have a preliminary meeting  
21 with Mr. Austin, a meet and confer, before any kind of  
22 violation has been assessed by the probation officer.

23 Because Mr. Austin as been engaged in all kinds  
24 of progressive campaigns. But, overwhelmingly, they  
25 have been for feeding the homeless, objecting to housing

1 conditions, things like that.

2 And there may be meetings where he's involved  
3 with people who may espouse some kind of violence but  
4 it's not really of a serious nature. I think to have  
5 him be under a condition where he cannot engage in --  
6 associate with anyone who espouses some violence I think  
7 is too broad.

8 I know it's constitutional from my reading of  
9 the case law. But it's too broad for the activities of  
10 this young man.

11 If the probation officer senses that he's  
12 involved in touchy territory, then he should meet with  
13 Mr. Austin and if necessary bring it before the Court  
14 for a hearing and not to chill his ability to associate  
15 with others as he's entitled to under the First  
16 Amendment.

17 Your Honor, initially, the government -- and  
18 they placed him -- they described him in a -- in one of  
19 the footnotes in their pleadings, they were not adverse  
20 to one month in custody and the rest of the time in a  
21 half-way house.

22 But since there was a driving with a suspended  
23 license, the criminal history got kicked to criminal  
24 history category two and, therefore, a split sentence is  
25 what was available under Zone B under the sentencing



1 table.

2 But, your Honor, the driving with a suspended  
3 license conviction was without counsel.

4 And we'd ask the Court to sentence Mr. Austin  
5 to the one month in custody. We're not looking for a  
6 departure.

7 THE COURT: What is the sentencing range  
8 without the driving conviction?

9 MR. KAYE: Without the driving conviction, your  
10 Honor?

11 MR. CASTRO-SILVA: It's 6-to-12 months, your  
12 Honor.

13 MR. KAYE: Your Honor, 6-to-12 months.

14 So the range that the parties were in agreement  
15 with initially was one month in custody and five months  
16 in a half-way house.

17 And we'd ask the Court to not count that one  
18 driving with a suspended license based on the fact that  
19 it was without counsel and sentence him to the -- to one  
20 month and five -- one month in custody and five months  
21 in a half-way house.

22 And to make up for that, if the Court thinks  
23 that there should be further -- a further need to  
24 impress upon Mr. Austin that he needs to head in a  
25 direction that everyone condones, we would not be

1 adverse to community service.

2 The expert from the Department of Corrections  
3 stated that Mr. Austin needs to have an understanding  
4 what about violence really means. Because he was so  
5 theoretical on the Internet.

6 THE COURT: What's theoretical about teaching  
7 people how to make explosives?

8 MR. KAYE: Well, your Honor, it wasn't  
9 theoretical in the sense that the language, itself, was  
10 very -- was very literal. But from --

11 THE COURT: You know, I must tell you, I see  
12 this case much differently. And I know you're not  
13 finished, and I'll allow you to make a complete  
14 presentation, but I don't want you to think as I sit  
15 here, I'm accepting everything you say.

16 I'm rather surprised at the government's view  
17 of the case, too, because the case seems to me to be a  
18 very serious case. And the emphasis seems to be on some  
19 psychological profile of this young defendant.

20 That certainly is relevant and certainly is  
21 something that ought to be considered. But on the other  
22 hand, what also ought to be considered is the conduct  
23 and its potential, especially in the world that we now  
24 live in.

25 And I don't view the case simply as one where I

1 have to make some psychological analysis of this  
2 defendant and try to gauge whether or not he fully  
3 appreciates the potential of his conduct. It's obvious  
4 that his conduct is very hurtful and dangerous.

5 And I think there ought to be a deterrent. And  
6 my inclination is not what the recommendation is. I  
7 haven't reached a judgment, but it is not.

8 MR. KAYE: I understand.

9 THE COURT: I'm just really surprised that the  
10 government so often brings such nonsense cases and when  
11 it has a case that has some seriousness to it, becomes  
12 Freudian. That's my preliminary view.

13 And I'll hear further from you and/or your  
14 client. And you can continue.

15 MR. KAYE: Thank you, your Honor.

16 Your Honor, I understand the Court's concern.

17 And that's -- and -- and the period of  
18 supervised release with the rigid monitoring will prove  
19 our position to be true.

20 THE COURT: You're missing the point.

21 He may very well comply with the conditions of  
22 supervised release. He may very well turn around and  
23 not do this sort of thing or appreciate the seriousness  
24 of his conduct. But he did something that was very  
25 serious. And it seems to me that there ought to be some

1 societal response, some deterrence. And if there isn't,  
2 we ought not to bring these kinds of cases. We ought to  
3 send defendants to psychiatrists, not to courts of law.

4 MR. KAYE: The only -- the only issue that  
5 causes this case to be somewhat -- somewhat more  
6 ameliorated than the Court is emphasizing, I think is  
7 the fact that it was on -- on the Internet and that it  
8 was part of this very volatile political website.

9 And so, although the Court -- the content  
10 absolutely deserves the concern, what I gather the  
11 government has realized from extensive meetings with  
12 Mr. Austin, personally, and understanding his family,  
13 and the FBI agent is here, is that there was -- there is  
14 that phenomena when you have somebody's who's young and  
15 immature and he's involved in this thrust of this  
16 political movement to get a little carried away.

17 It's not -- not that he -- what he did is at  
18 all -- should be -- should be condoned.

19 THE COURT: A little carried away? I mean, I  
20 just don't understand the argument. A little carried  
21 away? Teaching people how to make incendiary devices to  
22 defensively protect themselves from the police. I just  
23 don't get it. Maybe I'm living in a different world. I  
24 just don't get it. But you can continue on.

25 MR. KAYE: Well, your Honor, I think the points

1 I have made are -- are -- I think the Court has heard  
2 them and understands them. I don't want to belabor it.

3 THE COURT: I don't want to limit your  
4 argument.

5 And as I said, I haven't reached a conclusion,  
6 but what you say so far is not consistent with my view.

7 Is your view of the case that it ought to be a  
8 one-month sentence?

9 MR. CASTRO-SILVA: Your Honor, initially, that  
10 was our view. The defendant, based on --

11 THE COURT: Is that the FBI's view, too?

12 MR. CASTRO-SILVA: The initial plea agreement  
13 that was brought before the Court was vetted with the  
14 FBI and it was with the agreement of FBI, as well.

15 Since the subsequent conviction of defendant  
16 for driving without a license and the kick-up of the  
17 criminal history --

18 THE COURT: From 8-to-14 months as opposed to  
19 6-to-12?

20 MR. CASTRO-SILVA: Right.

21 THE COURT: And that altered your  
22 recommendation to four months in jail instead of one  
23 month?

24 MR. CASTRO-SILVA: Correct.

25 In other words, the minimum was still

1 recommended.

2 THE COURT: I'm not moved by that.

3 MR. CASTRO-SILVA: Just to give you some  
4 background, your Honor, the -- there is no question that  
5 the defendant was involved from a very young age with a  
6 very volatile political ideology.

7 THE COURT: What does that have to do with  
8 anything?

9 MR. CASTRO-SILVA: Well, it gives context to  
10 his website. And it gives context to his conduct.  
11 There's no question that his conduct --

12 THE COURT: Does it explain it? It makes it  
13 worse, doesn't it?

14 MR. CASTRO-SILVA: Well, it gives -- it gives  
15 context to it, your Honor.

16 And -- and the -- there's no question that his  
17 conduct deserves to be punished. And I believe  
18 presently the way to punish the defendant is to give him  
19 four months in custody, or to give him the minimum,  
20 however the Court wants to do that.

21 My recommendation is four months in custody  
22 with a four-month period of CCC. Probation agrees with  
23 that.

24 And to teach the defendant that that conduct is  
25 conduct that is inappropriate, that is wrong, and that

1 he will be punished for that. And I think that he  
2 understands that.

3 And that for the following three years --

4 THE COURT: Why is the emphasis solely or so  
5 much on what he understands, what he appreciates?

6 Isn't there another part to sentencing other  
7 than customizing a sentence to what is predictable about  
8 the future conduct of this defendant? Isn't there a  
9 deterrence?

10 MR. CASTRO-SILVA: I think that -- that--

11 THE COURT: You think giving this sentence --  
12 this defendant four months or a month is supposed to be  
13 a deterrence to some other revolutionary who wants to  
14 change the world according to his or her own views by  
15 the use of websites and teaching people how to blow up  
16 other people?

17 MR. CASTRO-SILVA: I think that for a person  
18 similarly situated to the defendant, it would serve some  
19 sense of deterrence. I think that if he has some --

20 THE COURT: Has your recommendation been  
21 cleared with the Justice Department?

22 MR. CASTRO-SILVA: My -- the recommendation did  
23 not have to be cleared with the Justice Department, your  
24 Honor.

25 THE COURT: I just find it shocking.

1 MR. CASTRO-SILVA: The recommendation has been  
2 vetted with -- through all levels in my section and in  
3 the office.

4 THE COURT: Well --

5 MR. CASTRO-SILVA: And it has been -- without  
6 getting into the -- obviously, the discussions of our  
7 office, you know, all of the factors that we looked to  
8 in determining what kind of recommendation, what kind of  
9 plea agreement.

10 THE COURT: Well, I tell you what, I want to  
11 put this sentencing off for a few weeks. I want to know  
12 what the recommendation is of the Justice Department.

13 I want you to send this case to the Justice  
14 Department in Washington. I want to get their  
15 recommendation. This is a case that has national,  
16 international overtones. I want the FBI's view of this  
17 case.

18 I respect your view. You're obviously an  
19 honorable person but -- how old are you?

20 MR. CASTRO-SILVA: I'm 38, your Honor.

21 THE COURT: You're older than most. Most of  
22 the assistants are 26 or 27.

23 MR. CASTRO-SILVA: I take it that as a  
24 compliment.

25 THE COURT: It is.



1 MR. CASTRO-SILVA: I guess you think I look  
2 young.

3 THE COURT: You do look young, which is not a  
4 bad thing.

5 And this is a serious matter. Every sentence  
6 is. My inclination, just to let you know, is to impose  
7 a much greater jail sentence than that recommended.

8 MR. CASTRO-SILVA: Can I ask this of the Court,  
9 your Honor, the parties are -- did enter into a binding  
10 plea agreement. At the change of plea, the Court  
11 indicated it was going to accept. That binding plea  
12 agreement has a sentencing range of 6-to-12 months.

13 THE COURT: Well, I would -- my inclination  
14 would be to impose a jail sentence of 8-to-10 months.  
15 And I actually wish I had more discretion. That's my  
16 inclination. And I want to know what the view is of the  
17 Justice Department.

18 MR. CASTRO-SILVA: Very well, your Honor. I  
19 will discuss it with my supervisors and let the Court  
20 know.

21 THE COURT: And I would be interested. If you  
22 don't want to give it to me, that would be okay, too.  
23 It may be helpful to the defendant, I don't know.

24 THE COURT: I also want to know what FBI's view  
25 is, not the agent's view.

1 MR. CASTRO-SILVA: Your Honor, when you say  
2 the FBI --

3 THE COURT: I mean Justice. Headquarters. I  
4 mean Mr. Mueller's view.

5 MR. CASTRO-SILVA: I'll see what I can do, your  
6 Honor.

7 THE COURT: Thank you.

8 MR. CASTRO-SILVA: When shall we continue it  
9 to, your Honor?

10 THE COURT: I'll give you till the 28th of  
11 July. And I'll hear further argument, at that time.

12 This is an important matter.

13 MR. KAYE: And that's at 11:00, your Honor?

14 THE COURT: Yes. Thank you.

15 MR. CASTRO-SILVA: Thank you, your Honor.

16 THE COURT: I'm not suggesting that I'm going  
17 to be at all bound by the suggestion of what they said,  
18 but I am interested. And if they're in agreement with  
19 your view, that might very well be persuasive.

20 But my inclination here is that there's  
21 something wrong with the recommendation. All right.

22 Thank you.

23 MR. CASTRO-SILVA: Very well, your Honor.

24 (END OF PROCEEDINGS.)

25 - - -

CERTIFICATE OF REPORTER

COUNTY OF LOS ANGELES )  
STATE OF CALIFORNIA ) SS.

I , LENA VILLEGAS, OFFICIAL COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT I REPORTED STENOGRAPHICALLY THE FOREGOING PROCEEDINGS AT THE TIME AND PLACE HEREINBEFORE SET FORTH; THAT THE SAME WAS THEREAFTER REDUCED TO TYPEWRITTEN FORM BY MEANS OF COMPUTER-AIDED TRANSCRIPTION; AND I DO FURTHER CERTIFY THAT THIS IS A TRUE AND CORRECT TRANSCRIPTION OF MY STENOGRAPHIC NOTES SO TAKEN.

*Lena Villegas*  
LENA VILLEGAS, CSR, RPR, CP  
FEDERAL OFFICIAL COURT REPORTER

DATED: *July 9, 2003*