CRIMINAL LAW IN THE NEWS

On January 10, 2011, thousands of Auburn University football fans gathered at historic Toomer's Corner to celebrate the team's national college championship. Toomer's Corner has been called the Times Square or center of Auburn University, the site where students, alumni, and fans traditionally have gathered to mark major football victories. The corner is dotted with historic 130-year-old oak trees, which students roll in toilet paper as a traditional part of their celebrations.

On January 28, Auburn officials discovered that an herbicide had been applied in "lethal amounts" to the area surrounding two trees. The poisoning was discovered following a call to a Birmingham radio station from "Al from Dadeville" who claimed that he used "Spike 80DF" to poison the trees and that the trees "definitely will die." "Al" proclaimed that he was a dyed-in-the-wool University of Alabama Crimson Tide fan and that he had poisoned the trees following the annual Iron Bowl, in which Auburn scored 28 straight points and overcame what seemed like an insurmountable 24-point Alabama lead. Al signed off by exclaiming "Roll Damn Tide."

Jay Gogue, the president of Auburn, responded to the poisoning by vowing: "We will take every step we can to save the Toomer's oaks, which have been the home of countless celebrations and a symbol of the Auburn spirit for generations of students, fans, alumni, and the community."

A police investigation led to the arrest of Harvey Almorn Updyke, 62, a resident of Dadeville, Alabama, who is a retired Texas State Trooper. Updyke explained that he believed that Auburn was paying outstanding athletes "under the table" to play football and that he was enraged by the gloating of Auburn fans on the radio. He also alleged that he had seen photos of Auburn fans celebrating following the death of beloved Alabama coach Paul "Bear" Bryant.

Updyke initially characterized the tree poisoning as the type of prank that is a traditional part of college football rivalries. A grand jury charged Updyke with six criminal counts, including two counts of the felony of criminal mischief. Updyke's initial defiance and defense of his actions gradually gave way to a sense of remorse and regret. He stated that he had "done a lot of good things" and he did not want to go to his grave with "Harvey the tree poisoner" as his legacy. He stated that as a Texas trooper, he had arrested a record number of drunk drivers and that he also had been responsible for a significant number of drug busts.

Updyke explained that his entire life people had told him that he cared too much about Alabama football and that he "just had too much 'Bama in me." He admitted that he was a "very unhealthy Alabama fan. . . . I live it, I breathe it. I think about Alabama football 18 hours a day." Updyke explained that his father had died when he was a youngster and that he had been drawn to Alabama's legendary coach Paul "Bear" Bryant as a father substitute. He named his daughter Crimson Tyde and his son Bear and called his dogs Bama and Nicky (after Coach Nick Saban). Updyke owned 46 Alabama hats and had bought out the complete supply of Alabama football championship shirts at a local store. He planned to be buried in a crimson casket.

Updyke pled guilty to criminal damage to an agricultural facility and was sentenced to six months in jail, a $1,000 fine, and five years' probation. During his probation, he must adhere to a 7 p.m. curfew and is banned from college sporting events and may not enter the confines of Auburn University. He was credited with time served and was released after 76 days in jail. Updyke also was ordered to pay $800,000 in restitution in quarterly payments and to perform community service work for the police to help pay off the restitution. Auburn has replaced the soil at Toomer's Corner and expects to see the new oak trees begin to show significant signs of growth in 2016.