Feds say public has no right to Unabomber evidence

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SAN FRANCISCO — The public has no First Amendment right to view the original writings and other evidence seized in 1996 from Unabomber Theodore Kaczynski's cabin in Montana, the Justice Department told a federal appeals court here Thursday.

Kaczynski pleaded guilty in 1998 to a nearly 20-year bombing spree that killed three people and injured 23. He led authorities on the nation's longest and costliest manhunt before his brother tipped off authorities in 1996.

Serving a life term without the possibility of parole, Kaczynski wants to donate his thousands of pages of writings, books and other materials seized from his Lewis and Clark County cabin to the University of Michigan, which has agreed to open the items to researchers.

Assistant U.S. Attorney Ana Maria Martel told a three-judge panel of the 9th U.S. Circuit Court of Appeals the Unabomber could donate copies of his works, which include letters to and from family and friends, but the government would keep the originals.

Martel added that the government also did not want to participate in auctioning off a celebrity murderer's holdings, as some of the judges suggested.

"He is a criminal," Martel said.

Martel said the government would sell the material to itself — priced as if Kaczynski was not a celebrity killer — and use the proceeds to help pay Kaczynski's $15 million in restitution he owes his victims.

None of the three judges understood why the Justice Department wouldn't just sell the works to the highest bidder, and use the proceeds to pay his restitution.

"All you're doing is keeping the victims from getting any money," Judge William Canby Jr. said.

Martel replied: "I know the court is troubled by this."

"I'm just mystified by what you want to do," Chief Judge Mary Schroeder said.

Judge Michael Daly Hawkins asked Martel how much the government might pay for the materials. She said they were worth the price of what it costs to host a "garage sale."

Attorneys for Kaczynski said the material belongs to the Unabomber, and he has agreed to surrender it to the University of Michigan free of charge. Photocopies, which have been provided to Kaczynski, aren't good enough for scholastic research, his attorneys said.

Christopher Durbin, representing the Society of American Archivists, told the court that the "three-dimensional aspects" of the original property give it intrinsic value to researchers. He said the ink, type of paper and the handwriting "provide insights into elements in which those works were written."

The hundreds of books, including "1984," "Of Mice and Men" and a host of various language texts seized may also have doodles and other writings in them.

After the 45-minute hearing, Martel said in an interview that the government does not want to give the Unabomber any control of the materials.

"Why should Kaczynski be dictating what should be done with the property until he pays his restitution?" she said.

The Harvard-trained mathematician who became a Montana recluse is serving a life sentence for the string of bombing attacks between 1978 and 1995. Two people were killed in Sacramento and the other in New Jersey.

The government labeled him the Unabomber because many of his attacks were directed at university scholars. Kaczynski's writings have connected the attacks to his campaign against what he considered the tyranny of technology.

He tried to take back his guilty plea, alleging a federal judge in Sacramento overseeing the case violated his rights by allowing his lawyers to use his mental condition as a defense, over his objections, and by denying his request to represent himself. The Supreme Court ruled against him.

The Unabomber wanted a trial even if it meant getting the death penalty. He avoided a death sentence in exchange for his guilty plea.

The Unabomber wrote that his "counsel's portrayal of him as a grotesque lunatic would have been broadcast nationwide, and this was a prospect that anyone might have found unendurable."

The appeals court did not indicate when it would rule.

The case is United States v. Kaczynski, 04–10158.

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