

Families of Victims and Survivors Weigh In on Sale of Ted Kaczynski's Property

2006/04/17

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v.
THEODORE JOHN KACZYNSKI, Defendant.

UNITED STATES' STATUS REPORT

On July 21, 2005, the Ninth Circuit Court of Appeals ordered, *inter alia*, that the United States present to this Court, in a timely manner, "a commercially reasonable plan to dispose of the property at issue, the principal purpose of which shall be to maximize monetary return to the victims and their families" or to return the property to Kaczynski. (416 F.3d 971, 977 (9th Cir. 2005)). On September 16, 2005, the Court appointed Steven A Hirsch and his firm as *pro-bono* counsel to the named victims and their families. It also ordered "the United [to] cooperate with Kecker & Van Nest to facilitate the carrying out of the Finn's responsibilities as amicus counsel..."

The United States has endeavored to cooperate with Mr. Hirsch, who represents Mrs. Susan Mosser, Mrs. Connie Murray, Dr. Charles Epstein, and Mr. Gary Wright¹, hereinafter "the Named Victims".

Since the United States is enforcing the criminal restitution lien for the benefit of the Named Defendants, to the extent that the United States can satisfy the Named Defendants' wishes without violating the Ninth Circuit's mandate, it will endeavor to do so. Appended hereto as Exhibit 1 is a copy of the Named Victims proposal. Unfortunately, the Named Victims do not speak with a unified voice.

I. The United States Response to Mrs. Murray's and Mr. Epstein's Proposal

Two of the victims, Mrs. Murray and Mr. Epstein, propose the following:

¹ The amended judgment in the above-captioned case ordered that restitution be paid to Dr. Charles Epstein in the sum of \$200,000; to Mrs. Susan Mosser in the sum of Eleven Million Dollars; to Mrs. Connie Murray in the sum of Two Million Dollars; and to Mr. Gary Wright in the sum of \$211,000. The Court of Appeals' decision makes it clear that the proceeds from the sale of Kaczynski's property is to be for the benefit of the four named victims and their families. *See*, 416 F.3d at 977 n. 11. Unfortunately, the other victims, such as Mr. Gelenter, who earlier contacted the Court, are not represented in this matter since it involves the enforcement of the restitution order and lien.

- That the United States gather **all** of the Defendant's writings, including the copies and originals held by the University of Michigan. The Named Victims request that any legal fees and costs incurred by the United States in gathering said materials be borne by the United States. The United States finds this request reasonable and will endeavor to do so, if the Court so orders;
- That the United States exclude from any sale or auction "any writings describing the victims' injuries or providing specific, usable information to make bombs". To the extent that the Court approves this exclusion, the United States will do so;
- That the victim-specific writings be offered at no cost to the specific victim or that victim's survivors, regardless of whether that victim is named in the restitution order. To the extent that the Court approves this disposition of the property, the United States is willing to do so;
- That the United States gather all of Kaczynski's belonging "other than those in his prison cell." The United States has all of Kaczynski's personal property, other than anything he has acquired since his arrest, in its possession;
- That the United States refrain from auctioning "any belongings which are materials that Kaczynski used or planned to use for making bombs or any firearms." The United States is willing to do so and the Ninth Circuit's order is premised on Kaczynski's representations that he did not request the return of bomb making-material;
- That the United States auction the non-bombmaking related personal property and the writings in two stages: 1) that the personal property and writings in its possession be auctioned quickly; and 2) that the writings in the possession of the University of Michigan be sold at a later auction, after those are returned to the United States. While the United States is willing to sell the non-bombmaking related personal property as soon as the Court approves the appointment of the receiver and his plan of sale, the United States believes that in order to maximize the value of the writing to be sold, it must obtain the return of all copies of Kaczynski's writings provided to the University of Michigan by Kaczynski's counsel before selling the same. The United States believes that the value of the writings to be sold will be depressed if copies of the same are available to the public at the University of Michigan and the buyers cannot be assured of exclusivity;
- That the United States consult with the Named Victims before publicizing the sale or auction but allowing the United States the right to exercise its discretion to maximize value. The United States is willing to reasonably consult.

- That the victims be able to “credit bid”² at the sale or auction and that the Named Victims make a joint bid — a bid on which all victims agree. The United States has no opinion on how the victims wish to credit bid: jointly or severally or not all. It will be happy to continue warehousing the items until receiving further instructions from the Named Victims jointly or from the Court, if the Named Victims disagree if the Named Victims are the successful bidders at the auction.
- However, to the extent that the Named Victims wish to reduce Kaczinski’s debt to them by giving him credit for the value of his belongings or writings, the United States requests that they do so before the Receiver is engaged. In other words, that a private sale exclusively open to the Named Victims be held. Congress has not appropriated funds for the United States to advertise and sell any criminal defendant’s property, including Kaczinski’s. As with a United States Marshal’s sale, the cost of the sale property to satisfy a restitution lien must be paid from the proceeds of the sale. The costs of sale are paid first, then the proceeds are distributed to the creditors *pro rata* or in the order of priority. If a receiver is appointed by this Court to sell Kaczinski’s property, the receiver will have to be paid by a percentage of the sale proceeds, an hourly rate and reimbursement of out-of-pocket expenses or a combination. Those payments will have to come from the sale proceeds;
- If the Named Victims wish to set a minimum bid for the personal belongings and writings to be sold and require that these be sold as a lot, if the Court approves their request, the United States will accede to their wishes;
- The United States has no appropriations from which to pay the advertising and costs of any auction. If a receiver is appointed, he will pay those expenses with the understanding that he will be paid for his time and reimbursed his expenses;
- Any proceeds received from the sale of Kaczinski’s property will be deposited with the Clerk of the Court. Pursuant to the Court’s order, the proceeds should be paid by the Clerk of the Court to the Named Victims *pro rata*.

II. The United States’ Response to Mrs. Mosser’s Proposal

It appears from the Named Victims’ plan that Mrs. Mosser would also restrict the sale of the personal property and writings as described in the first three paragraphs

² Creditors at foreclosure actions bid their debt or a portion thereof as a credit at the sale- without paying any money. The Defendant/judgment creditor’s debt is reduced by the amount of the creditor’s bid if the creditor is the successful bidder at the sale.

of Section I. However, Mrs. Mosser would prefer that United States first attempt to sell the writings and personal belongings to museums or similar institutions that “would not highlight Kaczinski as ... anarchist/intellectual but as an evil man who disguised himself as an anarchist/intellectual in order to kill people,” Mrs. Moser requests that the materials first be offered to said institutions as a cash sale. However, if the interested institutions cannot afford to purchase the same, that the materials be exhibited for a fee, which half of the proceeds going to the victims and half to the FBI for the benefit of wounded agents or the survivors of agents killed in the line of duty.

Mrs. Mosser requests that any items which cannot be housed in a museum as she specifies be auctioned but that the publicity accompanying said auction not be sensationalistic.

If the Court approves Mrs. Mosser’s proposal, the United States will attempt to comply with her wishes. In that regard, the FBI Museum is willing to house Kaczinski’s belongings and the United States to archive all and display some of the writings. However, the FBI does not have appropriated funds to pay the Named Victims for the materials and it does not charge visitors to its museum.

III. The United States’ Response to Ms. Wright’s Proposal

Mr. Wright agrees with the other Named Victims to restricting the sale of the writings and the personal property as described in the first three paragraphs of Section I. However, Mr. Wright wants to maximize the proceeds from the sale; or, if the Named Victims acquire the property by credit bid, he wants no restriction on his disposition of his share of the property.

IV.

As the Court can see, the Named Victims do not agree on the disposition of the property. The United States is willing to proceed to consolidate the writings by asking the University of Michigan to turn over the writings to the United States and, if necessary, seeking a court order that they be compelled to do so. The United States is also willing to submit to the Named Victims and Defendant’s counsel a list of the bomb-making materials which should be excluded from any sale. Finally, the United States is willing to segregate the writings as requested.

However, without further direction from the Court, the United States does not know whether it should seek the appointment of a receiver and ask the receiver to prepare a plan for sale. It needs further direction from the Court.

Dated: April 17, 2006

McGREGOR W. SCOTT
UNITED STATES ATTORNEY
By: *|s| Ana Maria Martel*
ANA MARIA MARTEL
Assistant U.S. Attorney

Certificate of Service

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers; that on APRIL 17, 2006, she served a copy of **UNITED STATES' STATUS REPORT and EXHIBIT — The Four Restitutionary Victims** by placing said copy in a post-paid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and its contents in the United States Mail at Sacramento, California.

Addressee(s):

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|s| Jocelyn M. Trujillo

JOCELYN M. TRUJILLO, Legal Asst.

Exhibit 1

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

THEODORE JOHN KACZYNSKI,
Defendant.

The four restitutionary victims authorize the government to put forward the following plan.

(1) Writings: The government will attempt to gather the originals and copies of all of Kaczynski's existing writings, including those currently housed at the University of Michigan. This may require legal action by the government. Any legal action will be undertaken entirely at the government's expense and no costs or fees associated with the action may be assessed against the victims, the auction proceeds, or the victims' restitutionary awards.

(2) The government will not auction or otherwise sell any writings describing the victims' injuries or providing specific, usable information on how to make bombs. The government will make every reasonable effort to obtain permanent custody of such writings. Before conducting any auction, the government shall segregate writings describing victim injuries and shall offer those writings to the victim described or to his surviving family, for free, whether or not that victim is named in the restitution order.

(3) Belongings: The government will gather all of Kaczynski's belongings other than those in his prison cell.

(4) The government will not auction or otherwise sell any belongings that are contraband—that is, any belongings which are materials that Kaczynski used or planned to use for making bombs, or any firearms.

(5) The government will auction all saleable writings and belongings, as defined above in paragraphs (1) through (4). This auction will occur in two phases: (a) an auction, to be held as soon as is reasonably practical, of all the saleable writings and belongings described above, except for the writings currently in the custody of the

University of Michigan; (b) an auction, to be held as soon as is reasonably practical, of any saleable writings currently in the custody of the University of Michigan which the government manages to obtain by legal action or otherwise.

(6) With due regard to the feelings and sensibilities of the victims and their families, the government will use reasonable efforts to publicize and conduct both auctions so as to maximize monetary return to the victims and their families. The victims and their families will have the right to consult with the government on the means used to publicize and conduct the auctions; but the government will obtain ultimate discretion to determine those means, and the victims cannot take any legal action to challenge the government's exercise of that discretion.

(7) There will be two classes of bidders: victim and nonvictim bidders. Victim bidders-the four listed in the restitution order-may participate in the auction only by making joint credit bids.

(8) A joint credit bid is a bid by all four victims to "pay" for an item or items by accepting a stated reduction in the amount of restitution owed to the victims. A joint credit bid must be approved by all four victims; each victim will contribute equally (25%) to that bid; and each victim will own an equal share (25%) of any items acquired by means of that bid. A joint credit bid will be deemed equal to a nonvictim cash bid of the same amount. The government shall warehouse any items acquired by the victims until further instructions from the victims. Gary Wright has expressed a strong concern that, with respect to any items acquired by joint credit bid, each victim must be pennitted to dispose of his or her share of that property as he or she sees fit.

(9) If the victims choose to make one joint bid for all items on sale at the auction, then the bidding thereafter will be restricted to bidders who wish to make one bid on all items on sale at the auction. There will be no item-by-item sales once the victims make a joint bid for all items.

(10) The government shall bear all expenses associated with publicizing and conducting each auction. Immediately following each auction, the government shall distribute to the victims, according to their respective shares of the restitutionary total, any proceeds obtained from nonvictims at that auction. To the extent that the victims have obtained items through their joint bids, the government shall obtain after each auction a court order stating the revised amount of restitution owed to each victim.

(11) The government shall immediately distribute to the victims, according to their respective shares of the restitutionary total, all of the funds obtained from the sale of Kaczynski's cabin.

Connie Murray Dunning and Charles Epstein join in this proposal.

Susan Mosser does not join in this proposal, and instead submits a separate statement, included below.

Gary Wright joins in this proposal, but also wishes to submit a supplemental statement, included below.

Separate Statement by Susan Mosser

Ms. Mosser wants to ensure that the materials are disposed of in as dignified a manner as possible. Accordingly, before the government holds any general auction, Ms. Mosser would prefer that it approach museums and criminal-justice organizations about whether they might wish to acquire the property. Possible museums include the Spy Museum, the FBI Museum, the Montana Law Enforcement Museum, or perhaps even the Smithsonian. Other possible acquirors include institutions that study criminal behavior, forensic psychiatry, criminal justice, or law enforcement, such as John Jay College, the Forensics College, the FBI academy, the Criminal Justice Department of the University of Massachusetts, or the Department of Psychology of the University of California.

Preferably, acquirors would pay cash for the materials. Alternatively, they could exhibit the materials to the public for a fee, with half of the proceeds going to the victims and half to an FBI fund for wounded or killed agents and their families. The purpose of any such exhibit “would not be to highlight Kaczynski himself as an anarchist/intellectual, but rather as an evil man who disguised himself as an anarchist/terrorist in an attempt to kill people.”

Items not disposed of in this way could be auctioned, with due regard to the impact that publicity would have on victims and their families. Sensationalistic forms of on-line auctioning (e.g., “Murderabilia”) should be avoided. Victims should be allowed to make “credit bids” at the auction, using the unsatisfied balance of their restitutionary awards to “pay” for items.

Ms. Mosser also has expressed interest in knowing whether the Court regards movie rights or story rights as being part of the property at issue here.

Ms. Mosser has expressed her concern for both her children (who were in the house at the time her husband opened Kaczynski’s bomb and was killed), and the other victims’ children who were alive at the time their loved one was injured by one of Kaczynski’s bombs. She feels that “celebrity status” auctioning and sensational forms of auction would have a severe and negative impact on any recovery they might have made since the time of that trauma.

Supplemental Statement by Gary Wright

Mr. Wright feels strongly that restitution should, first of all, serve the financial needs of the victim. He therefore objects to any plan that would constrain his ability to maximize the monetary value of his restitutionary award as he sees fit. He does not believe that additional publicity will matter much because the Unabomber case cannot become any more public than it already has. In addition, if the writings and miscellaneous property are displayed at a museum, place of higher education, or any other facility, the public will have open access to all of the documents and property

discussed. Accordingly, he wants to use share of the proceeds from any property sale to reimburse himself for medical expenses that were never covered by insurance, and to provide educational opportunities for his child. He fully understands that other victims will have differing viewpoints on this matter, and he respects the different choices that other victims may make. He asks only that his own choices not be constrained.

The Ted K Archive

Families of Victims and Survivors Weigh In on Sale of Ted Kaczynski's Property
2006/04/17

Case 2:96-cr-00259-GEB-GGH, Document 702-1, Filed 04/17/06.
<<https://ecf.caed.uscourts.gov/doc1/033086748>>

www.thetedkarchive.com