

FBI Preps Unabomber Papers

Kaczynski documents readied for auction with X-Acto knife

May 11, 2010

MAY 11—X-Acto knives in hand, FBI employees are poised to manually redact a mountain of documents—20,000 pages of which are handwritten—that were seized from the Montana cabin of Ted Kaczynski, the convicted Unabomber.

In August 2006, a federal judge ordered that the killer's papers be auctioned, with the proceeds being used to pay restitution to victims of the deadly bombing spree. That online sale was stayed while Kaczynski appealed Judge Garland Burrell, Jr.'s ruling, which was affirmed last year by the Court of Appeals. Since then, FBI officials have been processing Kaczynski's documents in advance of forwarding them to an auctioneer selected by the United States Marshals Service.

However, before the Kaczynski material can be sold, FBI workers will have to manually cut out portions of the documents containing material that Burrell has ordered removed from the documents (such as the names of victims and their families, and bomb-making instructions). According to a May 10 status report filed in U.S. District Court, prosecutors reported that 'the safest method to redact an original document with minimal defacing is via extraction, i.e., by cutting the document.' The X-Acto redactions—likely a first for the bureau—will take FBI workers about 60 days.

It is unclear how extensive those extractions will be, or if some of the jailed-for-life lunatic's writings, like his infamous manifesto, could end up resembling paper dolls or Swiss cheese. (4 pages)

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8 IN THE UNITED STATES DISTRICT COURT FOR THE
9 EASTERN DISTRICT OF CALIFORNIA
10 (Sacramento Division)

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13
14 v.
15 THEODORE JOHN KACZYNSKI,
16 Defendant.
17

Case No.: Cr. 96-00259 GEB

DATE: May 24, 2010
TIME: 9:00 a.m.
CTRM: 10

STATUS REPORT FOR THE UNITED
STATES

18
19 The United States submits this status report pursuant to the order of March 17, 2010.


20 This court entered two orders in this case on August 10, 2006. The first order approved a plan
21 of sale for certain of defendant's property, to pay restitution to victims listed in the judgment of
22 conviction (the "Named Victims"). The property to be sold includes more than 20 thousand pages of
23 documents written by hand by defendant, much of it with writing on both sides of the page. At the
24 request of the Named Victims, the court ordered redaction of "the names of all the victims and their
25 families," "all recognized descriptions of the victims and their injuries," and "the names of intended
26 victims." The second order specifically directed the United States Marshal to enter into a contract for
27 an advertised internet auction of the writings and other property to be sold, and thereafter to cause the
28 FBI to deliver the property to the auctioneer for sale. The foregoing orders were stayed for almost three

1 years, until July 21, 2009, while defendant pursued appeals.

2 In compliance with the August 2006 orders, the United States Marshal has two contracts which
3 allow it to sell defendant's property. Within three weeks of the contractor receiving the items to be
4 sold, the selected contractor will begin to publicize the sale.

5 The FBI has also made substantial progress in the massive effort required to redact the
6 documents. The FBI's Civil Discovery Review Unit (CDRU) is responsible for processing documents
7 prior to release. It is an extremely time-consuming process. Each document is afforded a two-stage
8 review by CDRU, with the second review performed by a different, experienced paralegal specialist to
9 ensure that all sensitive information has been redacted and the maximum amount of information not
10 required to be redacted is released. Upon completion of review by CDRU, an FBI attorney conducts
11 one last review of the documents before production.

12 CDRU's present project inventory includes 152 active projects. A majority of those projects
13 have deadlines imposed by a court or the Equal Employment Opportunity Commission.

14  To date, CDRU employees have spent 679.75 hours reviewing documents pursuant to the orders
15 in this case, and have reviewed approximately 12,199 pages. Several difficulties have slowed
16 completion of the process, including the need for Spanish interpreters to assist with processing.

17 A few months ago, the FBI provided six boxes of documents with proposed redactions to the
18 U.S. Attorney's Office for review. That review determined that the redactions initially proposed by FBI,
19 of information that would ordinarily be protected from disclosure by law, exceeded the scope of
20 redactions authorized by this court's orders. Specifically:

21 (a) Some of the writings include the social security number of a person who was incarcerated at
22 the time of the bombings. In addition, defendant's own social security number appears throughout the
23 materials. FBI would normally redact social security numbers absent a waiver or court order
24 specifically authorizing release.

25 (b) The writings refer to defendant's family members and friends, including their addresses. In
26 addition to privacy concerns, FBI has concerns about releasing into the general public information
27 about persons closely associated with defendant, in view of public sentiment regarding defendant
28 himself and anticipated media attention in connection with the public auction.

1 (c) The names of victims and intended victims appear in newspaper articles among the property
2 to be sold.

3 However, as quoted above, this court's orders only authorize redaction of three narrow categories of
4 information, and only authorize redactions to be made from defendant's own writings. Accordingly,
5 following review of proposed redactions by the U.S. Attorney's Office, the FBI modified its protocols
6 for this case, and has devoted many more hours to the task of narrowing the materials identified for
7 redaction.

8 In order to comply with the court's prior order without incurring a risk of liability, the
9 government requests that the court specifically order the FBI to release defendant's documents after
10 redacting only the three categories of information referred to in the Order of August 10, 2006 (i.e., "the
11 names of all the victims and their families," "all recognized descriptions of the victims and their
12 injuries," and "the names of intended victims"). See 5 U.S.C. § 551a(b)(1) (permitting disclosure of
13 documents otherwise prohibited by the Privacy Act "pursuant to the order of a court of competent
14 jurisdiction"). A proposed order for this purpose is submitted herewith. Should the court instead wish
15 to modify the redaction instructions set forth in the order of August 10, 2006, the FBI will of course
16 comply.

17 In addition, the court's prior orders provide that bomb-making instructions are to be excluded
18 from the materials to be auctioned. However, it is unclear whether the entirety of each page containing
19 bomb-making instructions should be removed from those materials, or whether the FBI is instead only
20 supposed to redact bomb-making instructions from those pages. The government requests clarification
21 of this issue through the proposed order.

22 Once CDRU has made a final determination of the redactions to be made, physical redaction of
23 the original documents will remain to be carried out. Before permanently altering the originals, the
24 government requests that the court clarify whether proposed redactions are to be submitted for *in*
25 *camera* review before the redactions are made. Although it did not order *in camera* review, the Ninth
26 Circuit noted that such review could be ordered. See *United States v. Kaczynski*, 551 F.3d 1120, 1128
27 (9th Cir. 2009) ("To the extent Kaczynski objects that the government should not be permitted to
28 single-handedly excise the documents without supervision, this can be easily remedied by having the

1 district court review the materials *in camera* and approve the redactions to ensure they correspond to
2 and do not exceed the descriptions in the approved Plan."). The proposed order submitted herewith
3 provides for permanent redaction of originals without *in camera* review. However, if the court deems
4 such review appropriate, the government will of course comply.

5 Finally, redaction of the originals will necessarily have the effect of removing some text that is
6 not intended to be redacted. As noted above, thousands of pages of the materials are handwritten on
7 both sides of paper. After consulting with the National Archives, the FBI has been unable to identify a
8 method or technology capable of redacting material from one side of a page without also defacing text
9 on the other side. According to the National Archives, the safest method to redact an original document
10 with minimal defacing is via extraction, i.e., by cutting the document. However, this method would
11 obviously remove the back side of the paper as well, along with any text that appears there.
12 Obliterating redacted material with ink *might* obscure less text on the opposite side of the page, but ink
13 redactions may not be completely effective and could be undone. Accordingly, the FBI proposes to
14 redact by extraction, and requests approval of that method in the proposed order.

15 The FBI estimates that it can complete redaction of the originals and deliver the property to be
16 sold at auction within 60 days after entry of an order clarifying the issues identified above.

17 Respectfully submitted,

18 Dated: May 10, 2010

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The Ted K Archive

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