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Kaczynski is denied papers

The Unabomber has no right to donate writings, a judge rules.

By Denny Walsh -- Bee Staff Writer - (*Published March 7, 2004*)

Rejecting a fellow jurist's opinion, a Sacramento federal judge has ruled that convicted Unabomber Theodore Kaczynski has no First Amendment right to donate his writings for scholarly research at a university.

U.S. District Judge Garland E. Burrell Jr. said Friday the government legally possesses the papers on behalf of the victims of Kaczynski's bombs, and denied his motion for their return. Kaczynski can't tell the government what to do with the material, the judge said.

Burrell's ruling overrides findings two months ago by U.S. Magistrate Judge Gregory G. Hollows that the government appears to be trying to chill Kaczynski's speech. Burrell rejected the notion that the government has to either sell the papers and give the proceeds to victims or give the papers back to Kaczynski for donation to the University of Michigan.

The university has told the court it is eager to obtain the "important historical materials" for its world-renowned research library of social protest.

Kaczynski holds master's and doctoral degrees in mathematics from Michigan, and one of his bombs, which was aimed at someone else, injured a graduate student there in 1985.

Burrell, however, said the government may hold the material indefinitely, which is what Kaczynski attorney John Balazs contended it may not do. Hollows agreed.

The journals, treatises and written thoughts were seized by federal agents when they arrested Kaczynski eight years ago at his Montana cabin.

Burrell also took the unusual step Friday of firing Balazs, who was appointed by Hollows to represent Kaczynski on the return-of-property issue.

Balazs, a highly regarded Sacramento attorney who was part of the team that defended Kaczynski in the prosecution of the Unabomb case, said in a Saturday interview the move surprised him.

The judge said Kaczynski has no constitutional right to counsel on such a matter.

"Exceptional circumstances do not exist," Burrell declared. "Kaczynski's motion lacks merit and (pleadings he has prepared and submitted on his own behalf from time to time) reveal he possesses the ability to articulate his claims."

But Balazs said the stakes are big because of "First Amendment, freedom of expression concerns, and the general question of personal property rights," so an appeal will likely be pursued.

"These are important, complex issues. That's why I was appointed.

"The judge must believe that," he added, noting that Burrell designated his order for publication, which is uncommon. That means it will go into case-law books and may be cited as precedent by other courts and attorneys.

"I will be conferring with Mr. Kaczynski in the next week," Balazs said. "I fully expect that he will want to appeal. He will proceed as (his own attorney), or I will ask the (9th U.S. Circuit Court of Appeals) to reappoint me."

In his findings and recommendations, Hollows bluntly said he detected a government attempt "to remove Kaczynski's ideas from public view, in whole or in part."

"The court will not permit Kaczynski's ideas to be censored, or otherwise kept from public view, no matter how bogus they may appear to the undersigned or others," the magistrate judge wrote. "That some may find an idea offensive does not shield the idea from First Amendment protection."

But, according to Burrell, "The issue is not whether Kaczynski has the right to communicate any idea, but rather whether equity supports his position that he can dictate what the government must do with ... property it lawfully possesses. Plainly," it does not, he said.

The 61-year-old Kaczynski, a Harvard graduate, mathematics prodigy, and former University of California, Berkeley, professor, believes that the industrial and technological revolutions undermined the world's system of rewards and values, resulting in suppression of individual freedoms. To make his point, he employed homemade bombs to maim and kill people chosen according to fields of endeavor.

As part of a plea agreement, he admitted to Burrell in January 1998 that he is the notorious serial bomber who set off 16 explosions that killed three people, including two in Sacramento, and injured 23 others between 1978 and 1995. He is serving a life sentence without parole at an ultra-secure prison in Colorado.

Kaczynski and Balazs have never objected to the government keeping property classified as contraband. Neither have they objected to the government selling the property and applying the proceeds to the \$15 million of victims' restitution ordered by Burrell. But the judge sided with the government in its refusal to sell the property, saying Kaczynski would profit from his "criminal celebrity status" through the reduction of his monetary debt to the victims.

Burrell further agreed with the government that Kaczynski would profit from the donation of his writings to the Special Collections Library at Michigan.

"What he characterizes as a public interest in the property cannot be quantified or traced to bank accounts, but granting his request would aid him in his apparent endeavor to extol his criminal celebrity status, and this extolment could salt the wounds of the victims in the same way as financial profit," the judge wrote.

Instead of case law, Burrell cited a 1996 University of Hawaii Law Review article as authority for the latter proposition.

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