

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

THEODORE JOHN KACZYNSKI,
Defendant.

2:96-cr-00259-GEB

ORDER DENYING MOTION FOR
RETENTION OF EVIDENCE

Defendant Theodore John Kaczynski ("Kaczynski") filed a "Motion for Retention of Evidence" on May 9, 2011, seeking a court order that prevents the United States (the "government") "from disposing of . . . some of the evidence seized from [his] cabin in 1996, and related information[.]" (Def.'s Mot. for Retention of Evid. ("Mot.") 5:1-7.) Specifically, Kaczynski seeks to enjoin disposal of the following evidence for the stated reasons:

(1) . . . lists and records of evidence . . . because these lists and records will show whether any known cyanide compounds were found in [his] cabin[;]

(2) . . . records of all chemical analyses performed on substances found in [his] cabin, because such records will reveal whether any of the analyses detected cyanide compounds[;]

(3) . . . all powders, liquids, granulated materials, mixtures, and other materials of a possibly chemical nature that were found in [his] cabin, so that these can be chemically analyzed or

re-analyzed, as may in future turn out to be appropriate, to determine whether they contain any cyanide compounds[;]

(4) . . . the originals of . . . [a]ll materials written in code (together with the keys to the codes), because the majority of the coded materials were devoted to descriptions of [his] illegal acts[, and t]hese materials will show whether [he] ever committed any illegal acts involving cyanide[;] . . . [a]ll letters received or sent by [him] that may date from 1982 or later, because they may provide evidence as to [his] whereabouts and activities during 1982[; and] . . . [a]ll parts of [his] journals that may date from 1982 or later, because they may provide evidence as to [his] whereabouts and activities during 1982.

(Def.'s Mot. for Retention of Evid. ("Mot.") 5:1-6:26.) Kaczynski requests in the alternative that the government be required "to retain photocopies of all the written materials" he requests; "to provide [his] designee, Julie Herrada, with photocopies of all of the [requested] written materials[;]" and "to retain a record of the names and addresses of all purchasers of [the requested] written materials[.]" Id. at 7:1-23.

Kaczynski argues the referenced evidence "may turn out to be important" should he have "to resolve correctly the question of any putative connection between [him] and [a 1982 event in which someone put potassium cyanide in Tylenol]." Id. at 4:14-25. Kaczynski states the injunction sought is "motivated by" a recent visit from two prison officers, "who told [him] that the Chicago office of the FBI wanted a sample of [his] DNA to compare with some partial DNA profiles connected with [the cyanide incident]." Id. at 3:6-20. Kaczynski filed "this same Motion [in] both the District Court and [in] the 9th Cir.[,]" stating "[i]t's not clear . . . who has jurisdiction over this Motion . . . [b]ut someone ought to have jurisdiction[.]" Id. at 2:16-3:3.

1 Kaczynski further argues this motion is "URGENT" because the
 2 "sale of [his] property begins on [May 18, 2011.]" Id. at 1:18, 2:6-10.
 3 The on-line auction of the subject property began on May 18, 2011,
 4 however, the bidding for the property is not scheduled to end until June
 5 2, 2011.¹

6 The government opposes Kaczynski's motion, arguing "no court
 7 has jurisdiction" to grant the relief he requests because "(1) no
 8 statute authorizes such an order; (2) it would deeply offend separation
 9 of powers for a court to order preservation of evidence for a
 10 prosecution not initiated by the Executive Branch; and (3) the case-or-
 11 controversy requirement of Article III does not allow courts to
 12 entertain [this] theoretical dispute[] which might arise in the
 13 future[,] when "Kaczynski has not been indicted in connection with the
 14 Chicago Tylenol investigation, and no such federal prosecution is
 15 currently planned." (Pl.'s Mem. in Opp'n ("Opp'n"), 1:23-2:1, 2:9-10.)

16 "Article III limits the jurisdiction of federal courts to
 17 'cases' and 'controversies.'" San Diego Cnty. Gun Rights Comm. v. Reno,
 18 98 F.3d 1121, 1126 (9th Cir. 1996)(citation omitted). "Federal courts
 19 are presumed to lack jurisdiction, unless the contrary appears
 20 affirmatively from the record." Id. (internal quotation marks and
 21 citation omitted). "Two components of the Article III case or
 22 controversy requirement are [the closely related concepts of] standing
 23 and ripeness." Bova v. City of Medford, 564 F.3d 1093, 1095-96 (2009).

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 25 ¹ The start and scheduled end date of the auction are judicially
 26 noticed under Federal Rule of Evidence 201. See U.S. Marshals Serv.,
 27 News Release - U.S. Marshals to Auction Unabomber's Personal Effects
 28 (M a y 1 2 , 2 0 1 1) , a v a i l a b l e a t
<http://www.usmarshals.gov/news/chron/2011/051211.htm>; see also GSA
 Auctions, <http://gsaauctions.gov/gsauctions/aucindx/> (visited May 20,
 2011).

1 "As the part[y] invoking federal jurisdiction, [Kaczynski]
 2 bear[s] the burden of establishing standing to [seek the injunctive
 3 relief he requests]." San Diego Cnty., 98 F.3d at 1126 (citing Lujan,
 4 504 U.S. at 561). "To do so, [he] must demonstrate three elements which
 5 constitute the 'irreducible constitutional minimum' of Article III
 6 standing." Id. (quoting Lujan, 504 U.S. at 560).

7 First, [he] must have suffered an "injury-in-fact"
 8 to a legally protected interest that is both
 9 "concrete and particularized" and "actual or
 10 imminent," as opposed to "'conjectural' or
 11 'hypothetical.'" Second, there must be a causal
 connection between [his] injury and the conduct
 complained of. Third, it must be "likely" - not
 merely "speculative" - that [his] injury will be
 "redressed by a favorable decision."

12 Id. (quoting Lujan, at 560-61.) Further, because Kaczynski seeks
 13 injunctive relief, there is an additional "requirement that [he] show a
 14 very significant possibility of future harm[.]" Id. (citation omitted).

15 In comparison, "[f]or a suit to be ripe within the meaning of
 16 Article III, it must present concrete legal issues, presented in actual
 17 cases, not abstractions." Colwell v. Dep't of Health & Human Servs., 558
 18 F.3d 1112, 1123 (9th Cir. 2009). In other words, "[w]hile standing is
 19 primarily concerned with who is a proper party to litigate a particular
 20 matter, ripeness addresses when litigation may occur." Bova, 564 F.3d at
 21 1096.

22 In many cases, "the constitutional component of the ripeness
 23 inquiry" "coincides squarely with standing's injury in fact prong."
 24 Sacks v. Office of Foreign Assets Control, 466 F.3d 764, 773 (9th Cir.
 25 2006).

26 For example, a claim is not ripe for
 27 adjudication if it rests upon contingent future
 28 events that may not occur as anticipated, or indeed
 may not occur at all. That is so because, if the
 contingent events do not occur, the plaintiff
 likely will not have suffered an injury that is

1 concrete and particularized enough to establish the
2 first element of standing. In this way, ripeness
and standing are intertwined.

3 Id. (emphasis added).

4 Kaczynski assumes the Court has jurisdiction to order the
5 relief he requests. However, the specter of Kaczynski's indicated
6 possible future injury is his concern that he could be prosecuted in the
7 future for the 1982 Tylenol poisoning offenses, and need some evidence
8 the government now possesses to aid his defense against that
9 hypothesized prosecution. This "alleged injury . . . is contingent upon
10 [an] event[] [that may not occur,]" and has not been shown to be
11 "concrete and particularized enough to survive the standing/ripeness
12 inquiry." Bova, 564 F.3d at 1096-97; see also Texas v. U.S., 523 U.S.
13 296, 300 (1998)(stating "[a] claim is not ripe for adjudication if it
14 rests upon contingent future events that may not occur as anticipated,
15 or indeed may not occur at all." (internal quotation marks and citation
16 omitted)).

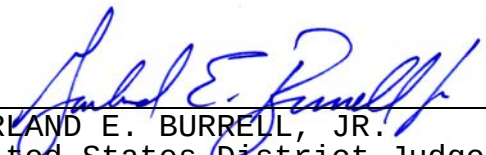
17 Further, assuming arguendo Kacsynski has standing to seek the
18 relief requested and his request is constitutionally ripe for review, he
19 has not shown his entitlement to the injunctive relief he seeks. "It
20 goes without saying that an injunction is an equitable remedy." Weinberg
21 v. Romero-Barcelo, 456 U.S. 305, 311 (1982). "It is the historic purpose
22 of equity to secure complete justice." U.S. v. Martinson, 809 F.2d 1364,
23 1367 (9th Cir. 1987)(internal quotation marks and citations omitted).

24 Injunctions are not remedies "which issue[] as of course[;] .
25 . . [they] issue only where [court] intervention . . . is essential in
26 order . . . to protect . . . against injuries otherwise irreparable."
27 Weinberg, 456 U.S. at 311-12 (internal quotation marks and citation
28 omitted). "[T]he basis for injunctive relief in the federal courts has

1 always been irreparable injury and the inadequacy of legal remedies."
2 Id. Further, "traditional equitable principles requiring the balancing
3 of public and private interests control the grant of . . . injunctive
4 relief in the federal courts." Webster v. Doe, 486 U.S. 592, 604-05
5 (1988). Kaczynski has not addressed the elements required to obtain
6 injunctive relief. Nor has he shown that his interests outweigh the
7 government and Named Victims' obvious competing interests in completing
8 the auction as scheduled.

9 For the stated reasons, Kaczynski's Motion for Retention of
10 Evidence is DENIED.

11 Dated: May 20, 2011

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14 GARLAND E. BURRELL, JR.
United States District Judge
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