

Setting Up of Trusts Behind Negotiations In Capital Case Plea

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A 10-page sliver of the 43-volume appellate record reveals that the establishment of \$100,000 in trust funds became the subject of plea negotiations in the case of a Syracuse man who had been sentenced to die for murdering his wife.

Though the prosecution and defense differ on how the issues surfaced, the record is clear that the creation of the trust funds became a condition of a written offer of a life-without-parole deal from the prosecution in the case of James Cahill, whose death sentence was overturned by the New York Court of Appeals in November.

The prosecution subsequently withdrew the trust fund requirement and the negotiations fell apart for an unrelated reason.

Several experts who handle death penalty cases said it is highly unusual and troubling that financial factors would be raised in plea negotiations in a capital case. Whether initiated by the prosecution or the defense, they said, the injection of money into the negotiations raises difficult issues. When brought up by the prosecution, the question is whether the threat of the death penalty is being used coercively. On the other hand, a defendant who raises the issue may appear to be trying to buy a way out of a death prosecution.

But some experts also noted that restitution is an appropriate form of punishment in all types of cases, including capital ones. And, they noted, in a capital case, particularly, both sides have a duty to pursue all avenues to see if a death prosecution can be avoided.

Kevin Doyle, the head of the Capital Defender Office, which is responsible for providing counsel for capital defendants throughout the state, called the idea of imposing a financial condition on plea negotiations "in and of itself deeply troubling."

Mr. Doyle added that in the eight years since New York reinstated the death penalty, he is unaware of any case where there has been "even a hint" of a financial condition in a plea negotiation.

David Ruhnke, one of the nation's most experienced death penalty defense lawyers, said he had never heard of a prosecutor imposing a financial condition in a plea negotiation. But he added that a victim's family "with bills to pay and mouths to feed" could well view the combination of life in prison and restitution as all piece of the defendant's "paying" for the crime.

Onondaga District Attorney William J. Fitzpatrick, whose office prosecuted Mr. Cahill, said in an interview yesterday that one of Mr. Cahill's attorneys, Richard D. Priest, first raised the issue in "a private discussion" that he did not refer to explicitly during a court colloquy recorded on June 29, 1999.

On that date, Mr. Fitzpatrick was responding to a defense motion to have his office disqualified because of several conditions, including the financial one, which had been placed on the offer of life without parole.

Mr. Fitzpatrick said that Mr. Priest had raised the issue of trust funds for Mr. Cahill's two children, who were then 9 and 11, as a way for Mr. Cahill to show remorse.

Mr. Fitzpatrick said he had seen "no need" to mention the private discussion because Mr. Priest, whom he has known a long time, was just expressing "common human decency." In the transcript, after telling of the defense's unequivocal rejection of the trust fund requirement, Mr. Fitzpatrick said he felt that he had been "set up."

Mr. Priest did not respond to a request for comment. However, during the session before retired County Court Judge William J. Burke, who presided over the three-month trial, Mr. Priest made a point of stating, "We never made the putting up of the money a condition."

Gary W. Miles, who also represented Mr. Cahill, said that "when we saw the offer in writing I was astounded."

Yet according to Mr. Fitzpatrick's presentation to Judge Burke, shortly before his office drafted a letter on June 17, 1999, setting forth the terms of the plea offer, Mr. Priest had said he "felt confident" the plea conditions, including the \$50,000 trust funds for each child, could be met.

Proposal Rejected

But four days later, on June 21, the defense wrote to the prosecution rejecting any financial settlement for the children. In response, Mr. Fitzpatrick said he wrote the defense back on the afternoon of June 21 to withdraw the prosecution offer.

A week later, on June 28, after the defense had moved to disqualify the prosecution because of the plea terms it had insisted upon, Mr. Fitzpatrick reinstated the offer minus the condition for the trust funds. He told Judge Burke that his appeals bureau had informed him that the financial condition "could be potentially problematic," and it was not sure "how the Court of Appeals would view this."

Ultimately, the plea discussions broke down apparently because Mr. Cahill balked at acknowledging that he had murdered his wife, Jill, to eliminate her as a witness to his brutal attack upon her as their marriage was falling apart. Mr. Cahill was accused of assaulting Ms. Cahill with a baseball bat four months before he murdered her in August

1998 by forcing cyanide down her throat as she lay in her hospital bed recovering from a coma.

Witness elimination was the predicate for one of the two capital counts on which the jury sentenced Mr. Cahill to death on Aug. 20, 1999.

Last November, however, the Court of Appeals reversed the death sentence, in part, finding that witness elimination had not been Mr. Cahill's main motivation. In January, Mr. Cahill was resentenced to a prison term of 37 1/2 years to life.

Problems Seen

Several death penalty experts said the principal problem with insisting on a financial condition in capital plea negotiations is that it could be setting a term for avoiding a death sentence that an indigent defendant could not meet.

In 1998, Mr. Cahill was making his living as a carpenter. But he had initially retained Mr. Priest as a private counsel. Later, after the prosecution decided to seek the death penalty, Messrs. Priest and Miles were appointed as counsel and paid from state funds. The standard for appointed counsel in capital cases is not indigence, but inability to afford private counsel, which in a capital case can be very expensive. Mr. Cahill, who is a graduate of Cornell University, started his working life as a stockbroker.

Mr. Miles, who is now chief assistant in the St. Lawrence County District Attorney's Office, said "by no means could Mr. Cahill on his own have come up with anywhere near \$100,000."

The idea of adding a financial condition to a plea bargain in a capital case was "way, way over the top," Mr. Miles said.

A Question of Consistency

Russell T. Nuefeld, a top official of the Legal Aid Society who previously headed its capital defense unit, said that restitution is an accepted form of punishment in criminal cases, and theoretically acceptable in capital cases as long as the prosecutors are even-handed in making life-without-parole deals in similar circumstances to indigent and wealthy defendants.

However, because it is difficult for the public to ever know if rich and poor defendants are being treated evenly, giving a life-without-parole deal to a defendant who provides restitution, he said, "runs a risk of creating a perception, even if unfairly, of a defendant having bought a way out from under the death penalty."

Ronald J. Tabak, the head of New York Lawyers against the Death Penalty, said that a financial condition is "something you might expect to see in the settlement of a civil lawsuit, but should have no influence upon a district attorney" in deciding when the death

penalty is appropriate. Because the potential for coercion is so great, there is no way to read a defendant's agreement to provide a financial payment as "remorse," said Mr. Tabak, who is also pro bono coordinator at Skadden, Arps, Slate, Meagher & Flom.

Professor Eric Friedman of Hofstra University School of Law said that in situations like Mr. Cahill's where he had a legal obligation to support his children, both sides have an obligation to explore "all creative forms of outcome" to work out a plea that enables a defendant to avoid the death penalty.

As long as the defendant has the economic wherewithal to provide for his children, Mr. Friedman said, the two sides "have an absolute duty to go the extra mile to see if an arrangement will work."

- With additional reporting by Tom Perrotta