

Return to Sender - Elvis and Notice

By Robert H. Thomas

I gave a letter to the postman,
he put it his sack.
Bright and early next morning,
he brought my letter back.

In *Jones v. Flowers*, the U.S. Supreme Court answered the question of what further obligation the government has to provide a property owner notice of an impending sale of his property when a certified letter is, in the words of the classic Elvis song, "Returned to Sender." The Court held the Due Process Clause of the U.S. Constitution requires the government to take additional reasonable steps to notify a property owner when written notice is returned undelivered.

Mr. Jones didn't pay his property taxes. The State of Arkansas, as you might expect, did not appreciate Mr. Jones's oversight, and after several years of such behavior, sent him a certified letter informing him that if he didn't pay up, his house would be sold. Although he still owned the house, Mr. Jones had earlier moved out, so he didn't get the letter, which was returned to the state unclaimed.

The state, hearing no response from Mr. Jones, published a notice in the newspaper and after hearing no response, sold Jones's house. Jones sued, asserting that the Due Process Clause of the Fourteenth Amendment requires that the government do something more if a certified letter is returned undelivered.

The Court agreed, holding that the state should have taken additional steps to provide Jones with actual notice. It is not enough to send a letter if it is returned undelivered, and then publish a notice in a newspaper. The government must take additional reasonable steps to provide notice before taking the owner's property.

This case is important because it tells us that due process does not require that a property owner actually receive notice before a taking of property; rather, the focus is on the notice provided by the government, which must be reasonably calculated under the circumstances to apprise the party of the pendency of the action and provide them an opportunity to object. The key fact in the case was that the government knew its attempt to provide notice to Mr. Jones by certified mail was not successful, since the letter was returned undelivered. Armed with that knowledge, the government had to do something more than publish a notice in the newspaper.

But what more must the government do? The Court did not provide clear guidelines, but it noted that the state could have resent the notice to Jones by regular mail. The Court did not define the outer limits of what due process requires, only that the State of Arkansas had not done enough before the forced sale of a person's home and property.

This time I'm gonna take it myself
and put it right in her hand.
And if it comes back the very next day
then I'll understand.

In the Court's words, "It's not good enough.
Elvis would be proud."

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