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**From:** jeffrey E. <jeevacation@gmail.com>  
**Sent:** Monday, July 9, 2018 10:33 PM  
**To:** Noam Chomsky  
**Subject:** Re: Marital Trusts -

ok

On Mon, Jul 9, 2018 at 6:25 PM, Noam Chomsky =l [REDACTED] <mailto:[REDACTED] wrote:

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=div class="gmail_quote">  
=div class="gmail_quote">  
Tanks for the comments. A few more of my own, for clarification.♦=A0 In red.  
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I should add that Harry's recent b=behavior, including this utterly outrageous document, might make it necessary to go to litigation. The last thing I want, but he may force me to =t. If necessary, I may have to make public the way the Trustees have=handled the Trust since 2009, when I appointed Harry as trustee to replace=me. Many serious questions. It is the last thing I=want to be driven to, but there are some very ugly things in this proposal= not least the very clear implication that Valeria somehow wanted to marry=an older man for the money and that she caused the increase of expenses --easily refuted, it's easily documented that the cause was diversion of=IRA funds for the benefit of the children and the exorbitant tax bills res=lting. All so disgraceful I'm not going to let it st=nd.

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<=iv class="gmail_quote">  
----- Forwarded message -----  
From: Max Kohlenberg <[REDACTED] <mailto:[REDACTED] >  
Date: Sun, Jul 8, 201= at 5:02 AM
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Noam —<=u>

I'm not sure if y=u wanted further comments from me before responding to my message in great= detail, but I have added a couple of comments below in black text, where it seem=d that a reply to your comments was appropriate.

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I will look forward to yo=r fuller response in due course, if you are so inclined, but again noting =hat while providing me with the financial information that I've asked for would be helpful, you may instead want to focus on

=the subject of selecting my successor, and then to establishing with him or=her a better understanding about distributions from the trusts.<=u>

<=div>

A. Max Kohlenberg<=>

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From: Noam Chomsky [mailto:[REDACTED]]

=/div>

Before responding to your letter in full, I would li=e to clarify a few matters. Interspersed below.

Noam

----- Forwarded message -----

From: Max Kohlenberg <[REDACTED]mailto:[REDACTED]>>  
Date: Sat, Jul 7, 2018 at 4:43 AM  
Subject: Marital Trusts  
To: Noam Chomsk[REDACTED]mailto:[REDACTED]  
Cc: Richard Kahn <[REDACTED]<mailto:[REDACTED]>>

</=iv>  
Noam -<=u>

</=>

Thank you for your reply.=C2♦ As you indicate that you are not being represented by counsel I will=reply directly to you, with a copy to Rich (as you suggest). Please consid=r:

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1. As a starting point, let me note that I t=ink you and Rich may have misunderstood (at least initially) the terms of =he settlement that Harry proposed through his attorney. Rich and I discussed this in a call about 10 days ago and I'm hopi=g that misunderstanding has been cleared up, but as I'm not a part= to your exchanges (and Rich's exchanges) with Harry's att=rney I can't be sure. I'm also not certain whether t=e terms of the proposed settlement have changed. All I can say for sure is that=characterizing the offer as one in which distributions to you cannot excee= \$100K per year is not consistent with my understanding of what has been o=ffered.

The reason why the proposal is too outrageous=to discuss has nothing to do with the technicalities of the handout that H=erry is graciously offering. I'll review the background, once again.

</=iv>

As I've discussed before, the Marital Tru=t was established in Carol's name for tax purposes. The obvious =ntention, clearly understood by Carol and me, and of course Eric Menouya, was that it would be available to the survivor -- Carol we assumed -- and =hen what remains would go to the beneficiaries. The idea that we int=nded that Carol would control "her" funds and I would control &q=ot;mine" is too ludicrous to discuss, though I understand the legalistic conjuring that can be adduced to reach this conclusion.♦=A0 As you note, I was not working with you at the time=you and Carol drew up your wills and trusts, but what you describe is not =onsistent with Eric's notes (which I have), nor with the facts as I understand them. You are right that tax savings were = major driver to the planning (and the plan did in fact result in substantial savings of both estate and income =axes) but it was not drafted with the expectation that Carol would survive=you.

The question of who would be the survivor is irrelevant. Carol and I assumed that she would be the survivor, but there was no reason to tell anyone, and it has no bearing at all =n the fact that our intention was that the principal would be available to=the survivor, then going to the children

=div>

The decision to fund Carol♦=80♦s trust with both financial assets and your Cape and Lexington homes =as made when [REDACTED] was already ill and (as far as the notes indicate) with th= expectation that she would predecease you.

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This is quite surprising, and I would like some clarification.=C2♦ Most important, I don't see how any significant decisions could =ave been made during those years, who could have made them, or why it was =one. Obviously [REDACTED] could not have done so. She had to underg= massive brain radiation as soon as the biopsy was taken, and serious cogn=tive and physical decline was immediate. Nor could I have been invol=ed. I very much wanted to keep her at home, rather than the only alt=rnative -- a nursing home. I managed to do so for two years, until t=e end, but it required 24-hour care, and I was in no position to think abo=t such matters. If I had been informed -- I don't recall anythin= of the sort -- I couldn't have paid any attention or granted truly in=ormed consent. So I would like to learn more about these decisions.<=b>

Secondly, I don't understand them. How could the Cape and=Lexington homes fund the Trust? Did the funds from selling the Lexin=tom house go to the Trust? How was it funded before. Would app=eciate clarification on this.

Of course we knew by then that she =ould predecease me. It was a medical miracle that she was able to su=vive that long, on experimental drugs, as a last resort.

=/div>

The records =hat I have seen do not indicate what =our expectations (or Carol's) were as to how the Marital Trusts we=e to be made available to you after Carol was gone – for that the =ndependent trustee of the trusts (whether me or my successor) has to rely =n the terms of the trusts themselves, the information that's given by the trust beneficiarie=, and the law surrounding such trusts.

<=iv>

I'd be =nterested, of course, in knowing about the records you have seen, but it w=uld hardly be surprising if there is no explicit record of what is obvious=simply to common sense. We were a married couple who cared for each =ther and for our children, putting a Trust in Carol's name for tax pur=oses. What sort of lunacy would it to set up a Trust for one of us t= have access to but not the other? So of course you are unlikely to =ind notes about it. If Harry forces this to litigation, all of this =ill have to come up, either in court or in public in some other manner.

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When I appointed Harry to replace me as trust=e, I took for granted that he would handle the trust as I had. His b=ehavior since, and this latest proposal, make it very clear how wrong that assumption was. This proposal calls for him to be in =complete charge, which means, as he has shown, that I can only plead for so=e funds by accepting conditions that he knows I will not accept. You=recall, I presume, that this was true even when I faced an enormous tax bill because my IRA was being depleted for th= benefit of the family.

To refresh your memory, let me repeat again what was happening with my IRA until I learned about it. There is a mandatory withdrawal. Half was being distributed to family. The other half was being used for taxes and management fees for the entire estate. In order to pay [REDACTED] medical expenses, and to pay \$50,00 a year for rent and upkeep on the house in Wellfleet that we had given to the children and that I was barely using, I had to withdraw extra funds from the IRA, with the onerous tax burden.=C2◆ The same when I withdrew something to live on. Under these circumstances, Harry refused to release funds from the Trust for tax relief without onerous and humiliating conditions that he knew I would not accept. Easy to predict what might happen under less extreme conditions. It was not until 2017 that I was able to overcome the accumulated burden of these actions.

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In the previous paragraph you offer to "refresh my memory" and in the prior paragraph you say "You recall, I presume.....". Without going into detail, I have to note that my recollection of the events you describe is not consistent with yours (though it may not be entirely consistent with Harry's either – I am not sure).◆=A0

In my case it is not recollections. When I began to understand what was happening, I looked into the matter, and have the documents at hand, including the mail interchanges about Harry's refusal. The rest is straightforward and unambiguous documents.<=span>

Since my own recollections may be the subject of testimony in the legal proceeding that Harry has initiated, or in one that you may commence, I think it better that I not recite my own recollections here.

Note that Harry's exhibit B, beginning with section 9, is utterly false, and consciously so. All of the above has been explained to him over and over. It is not only consciously false, but is framed as a vicious and ugly attack on Valeria, implicitly accusing her of responsibility for the escalation of expenses which, as Harry knows, was caused by the actions just described once again.=span style="font-size:11.0pt;font-family:"Calibri","sans-serif";color:#1f497d">

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For such reasons, Harry's proposal is, as I said, too outrageous to discuss.

2. As you know, Harry's attorney has commenced a legal action that is intended to facilitate my resignation and the appointment of a successor trustee to take my place. Since you've wanted me removed for some time and since I've said=(from the first time you and I met) that I only wanted to serve as trustee if all the family members wanted me to serve, I'm looking forward to resigning as soon as the court determines how I am to do so and how my successor is to be selected. =/u>

3. Given that my replacement is impending, it might be worth waiting until my successor is in place before responding to my requests for financial disclosure, as it's possible that my successor won't share my views as to what the trustee of the trusts needs to know before making decisions about distributions. Likewise, if my successor will be identified soon it might make sense for me to hold off on any distributions and leave it to the new trustee to work with you on figuring all of this out. In this regard I'm kind of a "lame duck" trustee, wouldn't you say?

4. To the extent that you want to push forward while I remain the trustee, let me again state the basis for financial disclosure by you. It is that, as trustee, I owe a duty to you and I owe a duty to your children (as the remainder beneficiaries of the trusts). For the present my primary duty is to you and it is to distribute to you all income earned by the trusts, net of expenses.=u>

Until I asked about the matter recently, I am aware of no income distributed to me earned from the trusts. I cannot be sure, because I have no record of having received any accounting of what is happening to the trusts,

=including distributions to others (or as required, to me). Could you =hen please send me the records on these matters since 2009, when I appointed Harry to replace me as trustee.=span style="font-size:11.0pt;font-family:"Calibri","sans-serif";background:white">

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I provided reports on income, expenses an= distributions to Deborah Pechet Quinan last October and I copied those reports to Richard (and updated them) in the last 60 days. I think i= might be easiest if Richard forwarded those reports to you, but if he can=E2◆◆t for some reason then I will do so when I am back in my office.

<=span>

So could you send them to both of us, along with document=tion about any distributions that were made. In particular, I would =ike to know the reason why there is virtually no income from the trust -- =ether it was paid to me from 2009 or not. And about the instruction= for any distributions that may have been made from the Trust.

and to distribute to you =or pay on your behalf) additional monies as reasonably needed to the extent that your income from other sources is not sufficient to s=pport your reasonable expenses.

Notwithstanding your stat=ment that "As for the claim about concern for my later years, that has been thoroughly r=uted" it has not been refuted in th= context of my trusteeship and it remains my duty to consider distribution= in light of the possibility that you will have a reasonable need for distributions from the trust for many more year=, and perhaps in increasing amounts, depending on your circumstances in th= future.

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I didn't resp=nd before but perhaps I should have. I will be 90 years old in a few=months. I'm not going to live forever. You know how much i= in the Trust. You also know my spending habits. Harry would =ot have millions of dollars if I hadn't been working all my life and s=ving money for him and his sisters. Despite the ugly implications ab=ut Valeria in Harry's letter, nothing material changed after our marri=ge beyond what I described and can readily document, with one exception.=C2◆ In Lexington, I was living rent-free, the mortgage having been paid =ears earlier. Valeria and I decided that taking care of a big house with s=eps everywhere and everything else that owning a house in Lexington entail= -- snow removal, etc., and a difficult drive to work through New England =inter weather -- made no sense at my age, and that we should move to=an apartment close to work with no steps or other problems.

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Not your business, but one =hing that shocked me about Harry's letter was his complaint that I moved from a house to a "new home" -- insinuation obvious -- in fact=an apartment with no winter driving to my office and convenient for someone= my age.

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5. As for the specifics of disclosure, what = need to consider is (a) what your income was in 2017, since that was the =asis for the tax payments you seek to have reimbursed, (b) what your income is likely to be this year and going forward, (c) what=your expenses were in 2017 and are likely to be in 2018, and (d) whether a=y of your income (or other resources) are being used for purposes that the=trust cannot support (such as gifts to third parties). So far, Rich has provided me with some rough=information about your 2017 expenses. There are some gaps in that in=formation, but nothing that can't be cleared up pretty easily (I th=nk). Rich has also assured me that you have not made any gifts that have diminished your resources and I assume you would confi=m that to me. What I don't have at this point is enough information about your in=ome, so that I can consider what the gap is between your expenses and your=income, which is the gap the trusts might help to close up. With respect to your income in 2017, all I can see is that your income tax obligations seem to be much higher than they were pre=iously. I'm assuming that reflects a jump in income from (i)=the profit made on the sale of the condominium, and (ii) large withdrawals=from your IRA. If you want to provide me with more information (bearing in mind what I noted in item #3, above) then inf=rmation about your 2017 income and what your income is likely to be this year is what I most need.

There is a very simple reason for the income =ax obligations. The depletion of the IRA that I reviewed again above=imposed a huge tax burden, which we were still attempting to deal with in 2017. After Harry's refusal to release some fund= from the trust to pay the exorbitant taxes resulting from what was happen=ng, I of course had to withdraw funds from the IRA to pay taxes on the who=e estate, incurring a new exorbitant tax burden. Despite some small relief later from the trust after I had r=peatedly pointed this out, it carried over through the 2017 tax bill. ♦=AO So for that reason, taxes were extremely high. That curious episode is at last finally over, leaving many questions unresolved about what was happening while I was paying little attention, r=lying on advisers to ensure that matters were proceeding appropriately

I hope this is helpful an= will wait to hear more from you and/or Rich.

<=div>

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Max<=p>

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A. Max Kohlenberg<=>

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From: Noam Cho=sky [mailto: [REDACTED] <mailto:[REDACTED]>]  
Sent: Friday, July 06, 2018 8:53 PM  
To: Max Kohlenberg  
Subject: Re: Marital Trust

I am not represented=on this issue, so you can send the information to me directly, copying  
Ric=ard Kahn.

Noam

On Fri, Jul 6, 2018 at 4:24 AM, Max Kohlenberg <<= href="mailto:[REDACTED]" target="\_blank">[REDACTED]> wrote:

Noam —<=u>

</=>

Thanks for your message a=d your inquiry. I would like to reply in some detail, but before I d= so please tell me whether you are now represented by legal counsel. =f you are then I believe I'm obliged to copy your counsel on our e=changes. I would also plan on copying Rich Kahn, since my last commu=ications about distributions to you from the trusts have been with him.

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Please also bear in mind =hat since (according to Rich) you are preparing to bring a legal action against me, I have been in contact with my firm's malpractice insu=ance carrier. As my exchanges with you may also need to be reviewed =ith our carrier that may delay (and/or limit) my responses.<=>

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Max<=p>

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</=>

A. Max Kohlenberg<=>

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From: Noam Cho=sky [mailto: [REDACTED] <mailto: [REDACTED] ]  
Sent: Thursday, July 05, 2018 7:53 PM  
To: Max Kohlenberg  
Subject: Marital Trust

Max,=u>

I presume it is clear that the rec=nt proposal transmitted by Harry's lawyer that I should be satisfied with a handout of 100k a year from the Marital Trust is too disgraceful for comment. I would like to know what further info=mation you require for reimbursement for tax payment. We have previously t=ansmitted a great deal of financial information in order for you to reimbu=se our taxes, including proof of payment and more. Exactly what more do you require, and with what justi=ication? We see little reason that you cannot act on the information=already provided. As for the claim about concern for my later =ears, that has been thoroughly refuted.

Noam

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please note

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