

At His Own Request

Is Kaczynski's rejection of his best chance for a defense a
result of paranoid schizophrenia?

David S. Jackson / Sacramento

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Ted Kaczynski has one big problem: he is apparently too crazy to appreciate how crazy he is, but not crazy enough to be legally insane. The defense strategy for his trial, which began this week, had appeared to be set. His lawyers had planned to argue that he suffered from paranoid schizophrenia, which made him incapable of forming the intent to commit a premeditated crime. But paranoid schizophrenics typically resist being labeled mentally ill, and Kaczynski proved to be all too typical. On Dec. 18 he wrote a letter to complain to U.S. District Judge Garland Burrell Jr., who quickly summoned Kaczynski and his lawyers to his chambers to discuss Kaczynski's "concerns." The Harvard-educated defendant, it turned out, wanted to represent himself. After two days of talks, attorney Judy Clarke announced that the problem had been resolved, but the defense strategy was shattered. Last week Clarke and lead attorney Quin Denvir filed a terse, one-sentence notice saying they no longer planned to argue that their client was mentally ill. Says University of Chicago law professor Albert Alschuler: "If he doesn't want to raise a mental-defect defense, he doesn't have to."

Kaczynski's attorneys have good reason to be worried. This week the prosecution will begin showing the eight-woman, four-man jury what FBI agents found in April 1996 when they raided Kaczynski's Montana cabin. The list of exhibits includes the fully-armed bomb found at the shack, bomb-making parts and chemicals, carbon copies of the Unabomber's manifesto and taunting letters to his victims and the news media. There are also thousands of pages of diaries and journals that Kaczynski kept for more than two decades. Written in English, Spanish and sometimes code (which was deciphered using a key found in the cabin), the journals are filled with the methodical observations of a man driven to kill his enemies by building the perfect bomb. Prosecutors describe the entries as nothing less than a long, detailed confession to every bomb the Unabomber sent. Such entries as "I intend to start killing people" and "I came back to the Chicago area...so that I could more safely attempt to murder a scientist, businessman, or the like" show why prosecutors believe Kaczynski deserves to be executed.

The prosecution's confidence in its case led to the collapse of another defense effort: pleading guilty to save Kaczynski's life. The plea was sent along to Washington by the Special Attorney Robert Cleary in Sacramento, and after several weeks of consideration, Attorney General Janet Reno and the Justice Department rejected it. Said a high-ranking department official: "This man is a cold-blooded killer. Read his writing." Kaczynski's brother David, who turned him in, claims that the government should have fully investigated his mental state, including interviewing the family, before deciding on the death penalty. The Justice official insisted that the defendant's mental state was considered but added, "Any serial killer is nuts. Does that mean they should all be spared the death penalty?" Prosecutors say Kaczynski has continually refused to be examined by their psychiatrists—and that such behavior is typical not so much of paranoid schizophrenics but of malingerers.

Although his lawyers have not claimed that Kaczynski is incompetent to stand trial, they still believe, despite their shift in strategy, that he is psychotic. But the particular

illness he has poses problems for them. People with paranoid schizophrenia are often able to function relatively normally. Indeed, no one watching the neatly dressed former Berkeley professor scribbling notes and conferring with his attorneys would say he looks insane. Insanity, the most obvious defense, was never an option because it would have required Kaczynski's lawyers to argue that he either did not know what he was doing or did not know it was wrong. And unfortunately for them, the coolly calculating diary entries and the Unabomber's ability to evade detection and taunt authorities for so many years effectively ruled that out.

So now, in the likely event that Kaczynski is convicted, the defense's plan is to wait for the sentencing phase of the trial and raise his mental condition as a mitigating factor. His brother and mother will then take the stand and tell how his aberrant behavior goes all the way back to childhood. With a little bit of luck, the jury may show some mercy. Kaczynski will probably not like all the talk about mental illness then any more than he does now. But at that point his lawyers will be engaged in a last-ditch effort to save his life. Their only hope is that he will let them do their job.

—With reporting by Viveca Novak /Washington

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