

# Defending the indefensible

Holly Bailey & Ted Kaczynski

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# The Article Cliff Notes

Famed lawyer Judy Clarke befriended Ted Kaczynski as she sought to keep him from being executed. She succeeded — and he hates her for it.

**Holly Bailey**

National Correspondent

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(Photo illustration: Yahoo News, photos: Reuters, Bob Galbraith/AP)

*From his prison cell, Ted Kaczynski — the “Unabomber,” who terrified the nation in the 1980s and early 1990s — has carried on a remarkable correspondence with thousands of people all over the world. As the 20<sup>th</sup> anniversary of his arrest approaches, Yahoo News is publishing a series of articles based on his letters and other writings, housed in an archive at the University of Michigan. They shed unprecedented light on the mind of Kaczynski — genius, madman and murderer.*

Long before she became a headline name for her efforts to save Boston Marathon bomber Dzhokhar Tsarnaev from the death penalty, lawyer Judy Clarke had another, equally notorious client: Ted Kaczynski, the Unabomber. And her strategy in both cases was similar: Faced with overwhelming evidence that they were guilty of horrific crimes, she searched for details and insights into their lives that might lead jurors to see them as just human enough to spare them from death.

To do that with Kaczynski, though, she felt she had to understand his motivation for the string of terror bombings that left three people dead and more than a score injured, and narrowly missed bringing down an airliner. In late 1996, awaiting trial in Sacramento, Calif., Kaczynski took out a pencil and a yellow notepad and began a letter to Clarke:

“Judy ... You asked how someone like me, who seems to be sensitive to other people’s feelings and not vicious or predatory, could do what I’ve done,” he wrote in the letter he labeled “VERY SENSITIVE.” “Probably the biggest reason why you find my actions incomprehensible is that you have never experienced sufficiently intense anger and frustration over a long enough period of time. You don’t know what it means to be under an immense burden of frustrated anger or how vicious it can make one.”

For Kaczynski, there was “no inconsistency between viciousness” toward the people he considered responsible for his anger and “gentleness” toward others, he wrote. In fact, he argued, “having enemies augments one’s kindly feelings toward those whom one regards as friends or as fellow victims.”

But — in an admission he appears never to have made to anyone else — Kaczynski allowed that he did sometimes feel conflicted about what he'd done. Were his deadly bombs justified? “A qualified yes,” he told Clarke — depending on his mood at the time and whether he felt his campaign against the dehumanizing effects of modern technology was “winning or losing.”

The previous fall, Kaczynski had achieved what he considered a significant victory. Under the threat of continued violence, the New York Times and Washington Post published the 35,000-word anti-technology manifesto that had been his life's work. (The appearance of the manifesto led to his eventual arrest, when his brother, David, recognized that the Unabomber's language and ideas echoed letters he had received from his brother years earlier.) But, as Kaczynski told Clarke, he didn't feel the satisfaction he'd hoped for. “When I feel that I'm winning ... I start feeling sorry for my adversaries, and then I have mixed emotions about what I've done,” he wrote.

The letter is a measure of how much Kaczynski had come to like and trust Clarke. Although he would eventually enter a guilty plea at the start of his trial in 1998, receiving eight consecutive life sentences, he refused for years to admit or explain his actions to anyone else. In his letter, he wrote he did not expect her to agree that the crimes he committed as the Unabomber were justified, but he wanted to offer an explanation anyway. “I can't blame you for feeling troubled about what I've done,” Kaczynski wrote to Clarke. “In fact, I respect you the more because you have raised this difficult question, even though it makes me uncomfortable to try to answer it.”

The Unabomber was only the second high-profile case of Clarke's career. (The first was Susan Smith, the South Carolina mother who was accused of intentionally drowning her two young sons.) Kaczynski's papers, comprising 90 boxes in an archive at the University of Michigan, offer some insight into how the famed defense attorney, who famously refuses to speak to reporters (and did not respond to comment for this story), does her job.

Appointed to the case in the summer of 1996, a few months after Kaczynski had been arrested at his remote cabin in Montana, Clarke soon became one of Kaczynski's favorite people. In letters to others, the bomber almost moons over her, writing of how interesting she is and how much he enjoys spending time with her. It seems clear that he adored Clarke and probably had a crush on her. For Kaczynski, who never had a girlfriend— a source of despair in his diaries — Clarke, who was and is married, was his first significant female relationship.

While news stories have long suggested Kaczynski was hostile to his attorneys from the outset, his letters show the opposite is true. He actually bonded with most of his legal team, whom he came to regard as close, personal friends. After more than 20 years of living as a recluse, Kaczynski was now spending hours every week with lawyers and defense investigators who visited him in jail as often as they could, trying to keep up his spirits. They gave him work to keep him busy, including going through the many coded writings that had been found in his cabin. For Christmas, they gave him a dictionary — which Kaczynski treasured.

“We developed a unique relationship with him,” recalled Quin Denvir, a former federal public defender who was Clarke’s co-counsel on the case. “We spent hours with him, trying to draw him out, especially Judy.”

What Kaczynski did not know — and what would ultimately sour the relationship — was that his attorneys were preparing to mount an insanity defense. With such overwhelming evidence of guilt, it was the only thing they believed might save him from the death penalty. Though court records show that the defense had been laying the groundwork for months, the bomber apparently did not realize what was happening until late 1997 — just weeks before his trial was to begin. While he was angry with his entire defense team, Kaczynski focused most of his wrath on Clarke.

In a blistering letter from that time, addressed to his lawyers, “(and most of all Judy,” Kaczynski rages that his legal team exploited “a lonely man’s hunger for friendship in order to manipulate and deceive him” over the use of a mental health defense and that he regarded that betrayal as “many times worse than my brother’s.”

“They have professed warm friendship for me, they have actively cultivated my friendship so that I developed a strong affection for most of them,” he wrote. “Some of them I even loved.”

Though court psychiatrists had diagnosed him as a schizophrenic, Kaczynski rejected the analysis and the idea of the mental health profession at all. He was concerned it would undermine the ideology he had laid out in the Unabomber manifesto. “Of all the things you could have done to me, what you have done is the cruelest,” he wrote. “I would rather be killed, crucified, blinded — anything but this.”

Kaczynski seemed particularly hurt that Clarke had decided “from the outset” that he was mentally ill. He was angry and upset that she apparently hadn’t believed him when he told her that his parents had verbally and emotionally abused him when he was a child. And he was angry that she was using an insanity defense to save him from the death penalty — which he wanted because he couldn’t bear the idea of spending the rest of his life behind bars.

Even as he raged against his lawyers and asked the judge to fire them or to allow him to represent himself, Kaczynski felt guilty, especially about Clarke. “In spite of all this, I find her personality so attractive that I think I enjoy talking with her more than any other person I have ever known, and I have a strong sense of rapport with her,” he wrote in a January 1998 letter.

But, he wondered, “Is she a friend or an enemy? In practical terms, she is an enemy of me and of everything I stand for, but in terms of personal relations, she is very friendly toward me, and I have warm feelings of friendship toward her.”

In late January, as the trial was beginning, Kaczynski attempted to fire his legal team and represent himself. The judge blocked it, but the upshot was a deal in which Kaczynski agreed to plead guilty in exchange for eight life sentences without parole. Even as he did so, the bomber raged at his attorneys — and especially Clarke — for reinforcing “the public’s perception of me as a madman.”

Still, Kaczynski, even after his sentencing, continued for many years to exchange correspondence with Clarke, Denvir and other members of his legal team. He sent holiday cards to Clarke, who sent him postcards from her vacations and a photo of her pug, Jax.

But as Clarke became busy with other cases, the correspondence dropped off and Kaczynski once again became bitter toward her. (Her last letter on file in the archive is from 2002.) When a pen pal wrote of his plans to visit Asheville, N.C., Kaczynski made a snide comment, noting that he'd heard the city was nice — except for its being the hometown of his former attorney, Clarke.

In fall 2013, journalist Mark Bowden contacted Kaczynski for a profile he was writing of Clarke, tied to her defense of the Boston Marathon bomber. “I’ll give you my general impression: Judy Clarke is a bitch on wheels and a real sicko,” Kaczynski wrote back, according to a letter in his archive. The months that Clarke and her team spent trying to understand him made no difference to his fate: Life without parole was probably the best outcome he could have achieved at trial, and he got there just by taking a plea. He is serving it at the federal “supermax” in Florence, Colo., where his fellow inmates include some of Clarke’s other notorious clients, including Atlanta Olympics bomber Eric Rudolph; Zacarias Moussaoui, who was implicated in the 9/11 attacks — and Tsarnaev, who was sent there after his conviction and sentencing last year. Despite Clarke’s efforts, he was sentenced to death, the only one of her clients she couldn’t save.

**Read more in this [Yahoo News Special Report](#):**

# The Letters

**Collection Description:** Long before defending Boston Marathon bomber Dzhokhar Tsarnaev, lawyer Judy Clarke had an equally notorious client: Ted Kaczynski, the Unabomber. And her strategy in both cases was similar: Faced with overwhelming evidence that they were guilty of horrific crimes, she searched for details and insights into their lives that might lead jurors to see them as just human enough to spare them from death.

## Letter #1

Judy, there is a question you've raised with me a couple of times that I tried to answer as best I could, but I didn't feel that I did a very good job of answering it. Since the issue is one that you seem to find disturbing, I'll try to answer your question more clearly now.

You asked how someone like me, who seems to be sensitive to other people's feelings and not vicious or predatory, could do what I've done. Probably the biggest reason why you find my actions incomprehensible is that you have never experienced sufficiently intense anger and frustration over a long enough period of time. You don't know what it means to be under an immense burden of frustrated anger or how vicious it can make one.

Yet there is no inconsistency between viciousness toward those whom one feels are responsible for one's anger, and gentleness toward other people. If anything, having enemies augments one's kindly feelings toward those whom one regards as friends or as fellow victims.

I want to make it clear that I am offering these remarks not as justification, but only as explanation. I don't expect you to feel that my actions were justified.

Do I feel that my actions were justified? To that I can give you only a qualified yes. My feelings at a given time depend in part on whether I am winning or losing. When I am losing (for example now, when the system has me in jail) I have no doubts or regrets about the means that I've used to fight the system. But when I feel that I'm winning (for example, between the time when the manifesto was published and the time of my arrest), I start feeling sorry for my adversaries, and then I have mixed emotions about what I've done.

Thomas Mosser, for instance, was a practitioner of what I consider to be the slimy technique of public relations, which corporations and other large organizations use to

manipulate public opinion, but it does not necessarily follow that he was ill-intentioned. He may simply have felt that the system as it exists today is inevitable, and that he could accomplish nothing by going into another line of work. And of course his death hurt his wife and children, too.

So I can't blame you for feeling troubled about what I've done. In fact, I respect you the more because you have raised this difficult question, even though it makes me uncomfortable to try to answer it. I suppose that to sympathize with my actions one has to hate the system as I hate it, or at least one has to have experienced the kind of prolonged, frustrated anger that I've experienced. I think you have the good fortune never to have gone through anything like that.

I'm grateful that, in spite of your feelings about my actions, you are working so hard to win my case for me.

Not as justification, but only to put things in perspective, I offer the following comment.

During the latest U.S. invasion of Panama at least 300 civilians (some say 1,000 or more) were killed through the actions of the U.S. forces. Yet, as far as I know George Bush has never expressed any remorse or even any mixed feelings about ordering the invasion. (He didn't know in advance that civilians would be killed, but he must have realized that there would be a very high risk of civilian deaths, since that sort of thing is commonplace in war).

What was George Bush's motive for ordering the invasion? Certainly it was not to topple a nasty dictator, since there are lots of equally nasty dictators, since there are lots of equally nasty two-bit dictators that the U.S. doesn't bother about. Bush claimed his motive was to stop Noriega's participation in drug trafficking, but it seems to be agreed that by the time the invasion Noriega was no longer of central importance to the drug trade, and obviously this dictator's removal has done nothing to slow the flow of drugs to the U.S.

Speculations as to Bush's real motive include; a desire to gain political advantage by carrying out a successful military operation; or a desire to install in Panama a government favorable to the United States's retention of control over the Canal Zone when the current treaty expires. But I've heard of no plausible motive for the Panama invasion that would justify 300 civilian deaths.

Yet mainstream opinion does not regard Bush's action as criminal. Why? Because his way of killing people is conventionally acceptable in our society.

## **Letter #2**

To Judy, Scharlette, and Gary

What you three told me at our meeting of April 17 about the possibilities of freedom makes no sense to me.



Assuming that we lose on the search warrant, and barring some unforeseen and highly improbable development, I can't see how my chances of freedom could be anything but minimal – say one chance in a hundred, or less.

1. As for winning the sympathy of a jury, bear in mind some of the things that my early (1970's) writings indicate: indiscriminate, homicidal hostility toward society in general, not just toward the corporate-governmental-technological elite; I hunted game illegally and in a few cases even wasted meat; in a few cases I tortured small animals that had made me angry.

2. As for making a jury think they might have done what I did if they'd been in my shoes, consider the Menendez case. The Menendez brothers killed the parents who abused them – probably more severely than my parents abused me – and anyone can identify with that. Yet the Menendez brothers can expect to be in prison for a very long time, if not for life.

3. As for an insanity or mental-state defense, that too is implausible. Possibly some neurological damage might be demonstrated, but it is crystal-clear that I was fully in control of my own actions, I was well aware of what I was doing, I acted with a cool head, and I had no difficulty in understanding the difference between what our society considers right and what our society considers wrong. Furthermore, little remorse can be shown in my case.

Contrast the case of Susan Smith: ...

## Letter #3

Written in December or Late Nov. of 1997

Quin, Gary, Scharlette, and (most of all) Judy —

Of all the things you could have done to me, what you have done to me is the cruelest. I would rather have been killed, crucified, blinded – anything but this. The only thing you could do now to alleviate the unspeakable torment you are causing me would be to withdraw from the case. But I will bet that not one of you will in fact withdraw, and, whatever rationalizations you may invent, the reason you won't withdraw is that remaining in the case satisfies your own needs, whether your career ambitions, or your emotional needs, or whatever. In order to satisfy your own needs you will continue to cause me this torment rather than withdraw.

What tortures me is not merely what you are doing with the case. If some attorney who was a stranger to me did the same things, it wouldn't cause me nearly so much pain. What tortures me is the fact that you made yourselves my friends and now you do this to me.

It is a matter of principle with me to have nothing to do with the mental health professions. This is a principle to which I have not always adhered strictly. People often fail to adhere strictly to their own principles, but that doesn't mean that the principles aren't genuine.

At any rate, during the months of preparation for this trial, my attorneys Michael Donahoe, and later Gary Sowards, put me under heavy pressure to undergo examination by certain mental-health professionals. I was extremely reluctant to undergo such examination, but I eventually agreed to do so for two reasons: First, both Mr. Donahoe and Mr. Sowards professed warm friendship for me; they won my affection and I wanted to please them. Second, both Mr. Donahoe and Mr. Sowards assured me repeatedly that the examinations were covered by attorney-client privilege, and that the results of the examinations and even the fact that the examinations took place, would not be divulged to anyone outside the defence team without my permission. Both Judy Clarke and Quin Denvir were aware that these promises had been made to me. And all of my attorneys knew that the issue was extremely important to me.

On Teusday, November 25, in this courtroom, I learned for the first time that my attorneys had divulged to the prosecutors the fact that I'd undergone various mental-health examinations, and moreover had divulged my scores on certain neuropsychological tests. In view of the promises that had been made to me I was horrified and shocked. During the noon break I angrily confronted my attorneys, and they seemed contrite, but they had essentially no excuse to give for what they had done, except that they claimed they thought it was in my best interest as interpreted by them.

During the preparation for this trial, I was very worried about the possibility that my attorneys might misrepresent me and my life in various ways in order to win their case. I repeatedly raised the issue with Mr. Sowards and Ms. Clarke, telling them that I was afraid that their instincts as lawyers would lead them to pursue their single professional concern of winning the case without regard to important concerns of mine, such as my desire to be portrayed truthfully before the world. Mr. Sowards and Ms. Clarke repeatedly assured me that they would help me to pursue *my* concerns, even when these might conflict with their professional concerns as lawyers.

On Wednesday, November 26, I met with Quin Denvir, Judy Clarke, and Gary Sowards to discuss their breach of promise that I had found out about on the preceding day. I reminded them of the promise they had made me. They admitted that the promises had been made, and they expressed regret at having made them, but that what they said was essentially, "Tough luck. Promises or no promises, we are going to pursue our professional goal of winning the case, even if the methods we use are destructive toward your concerns, and there's nothing you can do about it." They put it a little more diplomatically than that, but that is what it amounted to.

This would have been sufficiently painful and humiliating to me in any case, but what made it infinitely worse was the fact that in the year and a half during which I've worked with the members of my defense team they have professed warm friendship for me, they have actively cultivated my friendship, so that I developed a strong affection for most of them. Some of them I even loved..

And to have them do this to me – to exploit a lonely man's hunger for friendship in order to manipulate him and deceive him and then to tell him "Tough luck. We're breaking our promises and you're stuck with it." — I've had some very painful and

humiliating experiences in my life, but this is by far the worst. It is many times worse than my brother's denouncing me to the FBI and telling lies about me. If at the time I was arrested, I had been offered a choice between being crucified and having lawyers who would *do* this to me, I would unhesitatingly have chosen crucifixion as the lesser evil. I know that sounds like an exaggeration, but it's the sober truth. I think my defense team will at least be honest enough to confirm I am not prone to exaggeration.

My feelings are such that there is no possible way I can continue to cooperate with these lawyers. Even just to see them makes me sick at heart. So I would ask your honor to do one of three things:

(a) Allow me to represent myself.

Failing that,

(b) Appoint new counsel for me.

Failing that,

(c) In view of the profound conflict of interest between me and my attorneys, appoint an attorney to represent me against my own attorneys.

## Letter #4

This evening Judy Clarke gave me an outline of the opening statement she intends to give tomorrow. I was horrified. It's evident that she intends to give a picture of me that essentially supports the lies of my brother and mother. For example, she in effect denies the reality of the verbal abuse I suffered, saying that I was "oversensitive" and hurt by things my mother said would have "bounced off" most people. This in spite of the fact that in my refutation I showed that the abuse was real; that Meister's declaration states that my mother verbally abused me; that Dr. Kriegler concluded the abuse was real; and that according to Dr. Kriegler my brother said that when our mother got angry it was "close to feeling like what violence would feel like."

I would think that Judy Clarke just hasn't done her homework, but since she is a highly-regarded lawyer, that doesn't seem likely. The most probable explanation I think is this. Judy Clarke is a highly conventional person in the sense that she believes implicitly in all of the fundamental myths of our society. Since I was accused of being the Unabomber, she assumed from the outset that I was mentally ill, and thereafter she interpreted all information to fit that conclusion. Thus, she saw my perception of abuse as due to abnormal sensitivity on my part and tended to overlook the statements of psychologists (Meister, Kriegler) and others that the abuse was real.

What is disturbing is that, even though she knew all along that the abuse issue was extremely important to me, she never revealed to me until now, at the last minute, that she believed the abuse was at least partly imaginary and that she intended to present it that way at the trial.

It's true that when I objected to her statement about the abuse, she said she would consider changing it, but even if she does so, the warped picture of me she presents at

least in the first draft of her opening statement bodes ill for the future. I can foresee a constant and largely unsuccessful struggle with her to try to get her to present an accurate picture of me.

My situation is simply grotesque. It is acutely demeaning and it progressively breaks down my strength, my energy, my will to resist, and my self-respect. It is impossible to distinguish between friends and enemies. My lawyers supposedly are charged with defending my interests, but they do so not as human beings making their own free choices; they do so as part of a more-or-less mechanistic system that processes me according to more-or-less rigid rules. They consider it their duty to portray me as mentally ill, against my strenuous opposition, because by doing so they may be able to “save” me from the death penalty (which I would prefer to a life in prison anyway). I bitterly resent their portrayal of me, yet on a personal level they are mostly very likeable people who treat me very kindly and never get angry at me even when I take actions intended to frustrate their “benign” efforts in my behalf. The prosecution, on the other hand, wants to cause my death, but in order to do so they can be expected to do me the favor of trying to refute my own lawyers’ attempts to prove me crazy. The judge, who superintends the whole humiliating process, is a kindly and very conscientious man. The Federal Marshals treat me very kindly and take the greatest care to protect my physical safety; the jail is a wretched place, but that results from laziness and incompetence among the jail staff, and from the mere fact of confinement; it is not the result of any malice. So where is my enemy? There isn’t any. I am simply caught in a machine that is subjecting me to intolerably humiliating conditions. The people who keep me locked up, my lawyers, the prosecutors, the judge are all just gears in that machine; they inflict misery and degradation on me merely by conscientiously performing their respective duties.

Since I can do very little for myself while locked up, I am completely helpless and dependant on others, especially my lawyers. Over time, it erodes one’s self-confidence. It forces one into a position of demeaning obedience: If I were to attempt to resist the jail people it would only result in my being made still more helpless — more closely watched.

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no more compunction than I would have in squashing a cockroach.\* Yet Judy Clarke thinks the Murrays were just wonderful people. She seems to hold this opinion uncritically and without reservation. In spite of this, I find her personality so attractive that I think I enjoy talking with her more than with any other person I’ve ever known, and I have a strong sense of rapport with her. So is she a friend or an enemy? In practical terms she is an enemy of me and of everything I stand for, but in terms of personal relations she is very friendly toward me and I have warm feelings of friendship toward her.

\* In contrast, I take very seriously the suffering that David Gelernter underwent. Gelernter is no cliché, but a highly intelligent, thoughtful, talented, and sensitive man whom no one could describe as a mere stereotype. I consider that he deserved what

he got, but that is a judgement that I do not adopt lightly and it is one about which I have mixed feelings.

## Letter #5

Once you guys are no longer my legal representatives, if you ever want to visit me or write to me I will be very pleased to communicate with you, since we get along much better on a personal level than we do in our legal relationship.

I don't know whether you fully realize how much grief it causes me to think of breaking off with you. I was not exaggerating when I said the defense team had become like a family to me. On my side, at least, the emotional ties are too strong to be broken by any conflicts we may get into, no matter how bitter. So I hope that our personal friendship can be maintained permanently. But, as I've explained, I feel I have to find other legal advisors.

## Letter #6

Dear Mr. Bowden:

I'm sorry I've taken three months to answer your letter of 9/21/13, but I'm deeply involved in work on a new book and I have no time for nonessential correspondence.

The following is from a letter dated 6/17/09, sent to me by Carol Sessions\*, formerly a secretary at the Federal Defender's Office in Sacramento:

Judy Clarke and I butted heads quite a few times while working on your case. I thought sure she was going to remove me from the case, but I was too valuable a worker and made sure she had nothing on me. I made it. She's a machine — treats her employees like a military sergeant. Makes them jog every morning, etc. Told her no way would I ever work for her.

As I've said, work on the new book leaves me no time for nonessential correspondence, so I've dropped the correspondence with Carol Sessions, and for the same reason I'm not going to answer your questions about Judy Clarke. But I'll give you my general impression: Judy Clarke is a bitch on wheels and a real sicko.

Of interest are the dissenting opinions of Judges Reinhardt ...

The Ted K Archive

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The Cliff Notes & Letters

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