

# **USA v. Theodore Kaczynski: One of the Most Famous Non-Trials in Legal History**

Michael Mello

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**Introducer:** The United States of America versus Theodore John Kaczynski is Michael Mello's book about the Unabomber trial. In it he looks at Theodore Kaczynski, three life sentences as plans for appeal and how and why he got his nickname.

Mello was a criminal and constitutional law professor and represented Ted Bundy at trial. He spoke at the Vermont. Law school in South Royalton, Vt for about an hour and a half.

Professor Mello has served as both pro bono and court appointed counsel for numerous death row inmates.

This presentation will focus on Professor Melo's new book 'The United States of America versus Theodore John Kaczynski, ethics, power and the invention of the Unabomber'.

Theodore Kaczynski pleaded guilty in January 1998 to the Unabomber, crimes. Earlier this year, he filed a motion to vacate his guilty plea and set aside his three murder convictions.

While condemning Kaczynski heinous acts, Professor Mello contends that the Unabomber may not have received a fair trial due to a variety of circumstances which are outlined in the new book.

And which will be in part considered today.

Professor Melo is an internationally recognized authority on the death penalty and he's thus also the author of Dead Wrong, a death row lawyer speaks out against capital punishment.

And against the death penalty, the relentless descents of justice Brennan and Justice Marshall, in addition to many published articles on his subject matters since last year, Professor Melo has exchanged correspondence and served as an informal legal adviser to Theodore Cousins.

And together with three Vermont law school students, he provided substantial pro bono assistance that aided Kaczynski in the preparation of his recent petition.

Professor Mello has made numerous TV and other public appearances to discuss the case in the book, and I now have a great pleasure and turning the rest of the afternoon over to Professor Michael Mello.

**Mello:** Thank you Kevin.

Thank you all of you all.

Thank you for coming taking time out of this flawless fall day.

In the midst of the height of leaf peeping season here in Vermont.

Following my remarks, there will be time for question and answer.

There's and I want you all to feel free to ask questions as I go along.

I think this whole thing would work better if it were at an interactive kind of.

In the enterprise I'm, I'm afraid I don't have a seating chart, so I can't call on folks.

But I do want to encourage you all to stick up your hands, ask questions, make comments.

Uh, freely, but to keep in mind that because we are recording here today, when you when you put up your hand, uh, a boom microphone will appear in front of your face, hopefully within a few seconds.

And if I could ask you just to wait.

Until the boom mic appears.

So that our our larger, larger audience here this afternoon can have the benefit of your questions, comments and thoughts.

10 winters ago.

A man I loved as a father was murdered by mail bomb.

A few days before Christmas 1989, a racist coward with the grudge against the federal judiciary mailed a shoebox sized mail bomb to federal Court of Appeals Judge Robert S Vance in Birmingham, AL.

His assassin now lives on Alabama death row, and although I have spent a large portion of my professional life opposing capital punishment and representing death row prisoners, I have to confess that somewhere in my heart of hearts, when Judge Vance's killer is executed as he probably will be within the next.

Three or four years.

Part of me will cheer.

Judge Vance is the only person I have loved who was murdered. I worked as Judge Vance's law clerk for the year following my graduation from law school in 1982, but he was far more than a boss to me.

He was a friend, a mentor, and in the years following my clerkship in the years leading up.

Until very shortly before, before his murder.

In fact, we spoke on the phone.

Often, and I can't think of a of a single major personal life choice or professional life choice that I didn't seek. Judge Vance's guidance on before I made it.

By the time he died, he had become my father in the law.

I was too distraught by his killing to attend the funeral.

In fact, I bought the plane tickets.

I had the reservations I had the suitcase packed, but at the last minute I couldn't force myself to use them.

I mourn him.

Every day I miss him every day and I pray for him every night.

I mentioned Judge Vance is murder because I want to be clear at the outset that I harbor a special venom in my heart for people who commit murder by sending bombs through the US mail.

For two decades, that's what the Unabomber did.

He set sent and mailed increasingly deadly bombs, Judge Vance and the mail bomb that killed him are never far from my mind.

Whenever I think, write or speak about the Kaczynski case, every aspect of my thinking about the Unabomber case.

Was influenced in some greater or lesser degree, often immeasurable even by me by the fact in the means by which Judge Vance was murdered.

Earlier this year, as as Dean Roth mentioned, I published a book about the Unabomber case.

The book was an outgrowth of my yearlong association with Theodore John Kaczynski, the Unabomber.

In part because of my somewhat unique connection, the national.

Odd journals dubbed me quote the Unabomber's pen, pal UN quote, and for some reason, the that the moniker has stuck.

The media has taken rather a keen interest in the book and what I've done and what I do for sort of my the the the affirmative part.

Of of of.

Of this enterprise, this afternoon is to distill the questions that I have been asked most frequently about the Unabomber, along with the answers to the reporters questions that I wish that I had had the presence of mind to give at the time.

So here goes.

Question one.

Set the stage.

Why did you write the book?

What did the Unabomber do?

Why was he called the Unabomber?

The anonymous Unabomber was responsible for sending 16 bombs that killed people that that killed 3 people and injured 29 others between 1978 and 1995. He was called the Unabomber because his early targets included universities and airlines, hence universities airlines.

Bomber well.

The the anonymous bomber forced the Washington Post and the New York Times into publishing his 35,000 word Neo Luddite Anti Technology manifesto. In 1995, after reading the manifesto, Theodore Kaczynski's brother David suspected that his brother Ted might.

Be the mysterious bomber.

The brother passed his suspicions onto the FBI and Theodore Kaczynski was arrested in May of 1996 and charged with the Unabomber crimes.

On the eve of his trial in January of 1998, Kaczynski pleaded guilty in exchange for a sentence of life imprisonment without the possibility of parole. The government, as its part of the bargain, waiving the death penalty.

Thus, there was no trial and I have come to think of the Unabomber case indeed as the non trial of the century.

Kaczynski's January 22nd 1998. Guilty plea occurred only after a fairly dramatic and and invisible to the outside world. Behind the scenes struggle between the Unabomber and his court. Appointed attorneys.

There were and there remain competing views of Kaczynski as a person and as the unit.

Former radical environmentalist paranoid schizophrenic, insidious psychopath, Machiavellian genius.

One thing was clear.

However, Theodore Kaczynski did not get his day in court.

He didn't get his trial and it all begged a rather simple question with a very complicated answer.

Why didn't he get his day in?

In my book about the Unabomber case, I attempt to tell that the behind the scenes story of the war that broke out between Kaczynski and his court appointed defense attorneys that struggle the struggle between Kaczynski and his.

Anti capital punishment lawyers reveals the fault lines at the intersection between law psychiatry and the media.

And it raises some of the most basic questions about the essential nature of the attorney-client relationship in capital cases.

Should court appointed attorneys be allowed to force a mental illness defense on a client who specifically and emphatically rejects it and who is mentally competent to stand trial?

Can a mentally competent defendant be denied his right of self representation?

In other words, his right to fire his lawyers go it alone, represent himself.

Say, is it possible to simultaneously oppose the death penalty and advocate a convicted criminals right to attorney assisted suicide?

As I argue in the book?

The the media presence at the Unabomber non trial was massive. 75 news organizations set up a a tent city in effect that they dubbed Club Ted near the Sacramento courthouse where the trial was scheduled to be held.

Immediate tickets to the courtroom went for \$5000 a pop, according to Tom Nadau, a reporter who.

Is there covering the non trial for the Sacramento Daily Reporter newspaper the mainstream media, despite its saturation and generally excellent daily coverage of the criminal justice system, largely bought into Kozinski, lawyers spin on the epic struggle.

Between Kozinski and his lawyers over control.

Of the defense.

In particular, the Daily Press, which I should note at the outset, did not have access at the time to the court records the the court records.

In particular, the letters that Kaczynski sent to the judge and the transcripts of the the behind closed door meetings between Kaczynski, the judge and the defense lawyers.

Which form the basis of of of of of my book.

The reporters at the time didn't have access.

Pardon me to to to virtually all of that information.

Given the absence of that information, the media in general and the the the general public as well came to believe.

I think that one Kozinski was in fact a paranoid schizophrenic 2 that his lawyers acted properly in raising a mental illness defense, regardless of their clients.

Actions and free that Kaczynski himself and not his attorneys should be held responsible for the disruption of the trial.

Pardon me that the chaos into which the Kaczynski trial plunged, was bank was blamed on Kaczynski alleged manipulation of the judicial system rather than.

On his lawyers, ultimately successful manipulation and control of their own client.

I believe that this popular wisdom, as is often the case in my experience with popular wisdom, is wrong on all counts.

First, I don't believe that Theodore Kaczynski is or was a paranoid schizophrenic.

More precisely, I don't believe that the existing public record supports a conclusion that.

Kaczynski was suffering from any sort of serious or organic mental illness, much less that he was so mentally ill that his lawyers hostile takeover.

The Unabomber defense was justified second.

I don't believe that Kaczynski warriors had any legitimate right to force their mentally competent to stand trial client to stake his life on a mental disease or defect defense.

So long as Kaczynski, so long as Kaczynski followed their instructions, the lawyers instructions the Unabomber's attorneys never seriously doubted.

That he was mentally competent to stand trial.

The fact that his own lawyers seemed so certain throughout the entire course of the pretrial and trial proceedings that that their client was mentally competent to stand.

It is a fact that seems to me to be of overriding importance, and 3rd, I believe that Kaczynski's lawyers and not Kaczynski himself, were responsible for the disruption that occurred in the Kaczynski non trial. In the months leading up to the trial, Kaczynski lawyers.

Kept him in the dark.

About the defence that they planned to raise and by the time Kozinski figured out what his lawyers had planned, it was as a practical matter too late for him to change lawyers.

Or, as the judge ruled to represent himself, cornered by his lawyers and the judge, Kozinski had only two ways to prevent.

His court, his court appointed attorneys from portraying him as a madman.

He could either plead guilty or he could kill himself on the eve of trial.

He he made a very serious suicide attempt and tried to kill himself.

When that attempt failed.

Told he decided that that he had no other choice but to plead guilty, so that's what he did.

Question #2

And actually, in terms of sort of the frequency of ask questions, question #2 is the one that that I've that I've been asked more more frequently about the Kaczynski case than than any other question question #2. So is it guilty? Did he do it is Ted Kaczynski the Unabomber answer.

I want to be clear that my opinion that Theodore Kaczynski is guilty is based solely on the public record.

In his case, and not upon anything that Kaczynski said to me in our private telephone conversations or that he wrote to me during our yearlong correspondence based.

Solely on the public record, I'm convinced that Kaczynski is the Unabomber, that he killed those three people that he injured.

Those 29 people that he tried to bring that airliner down there is no doubt in my mind that Theodore Kaczynski is the Unabomber. He did it.

Uhm, question 3.

Why did you help Ted Kaczynski in his efforts to invalidate his guilty plea and win a retrial?

Answer because he asked for my help and because when I became a.

Member of the.

Bar lo those many years ago, 1983. I think I I took an oath that I would never turn away. A person in need of my services because they are unpopular, even hated, even justifiably hated.

Theodore Kaczynski is hated as I have learned over the last year.

If I didn't know it beforehand and he's hated for a very good reason, it seems to me he did hateful, brutal things.

But the old newspaper muckrakers had a motto that went as follows without.

Fear or favor.

I've always liked that motto, and that code has led me during the course of my life as a lawyer to work on behalf of some fairly unpopular people including Florida, serial killer, Ted Bundy, and Florida.

Pro-life activist.

Paul Jennings Hill, who is now on Florida's death row for murdering a Doctor Who performed abortions and the doctor's escort.

I'm also helping Kuczynski.

Yeah, that's an interesting slip.

That's supposed to be in the past tense.

I also helped Kaczynski because his case raises, in my opinion, fundamental ethical jurisprudential and constitutional issues.

Kaczynski case.

I believe this is a textbook illustration of what I have come to call the tyranny of the well-intentioned lawyers.

As it emerged in the behind closed doors battle between Kaczynski and his lawyers, the lawyers personal convictions, opposing capital punishment and their rigid adher-



ence to a legal theory that only the defense lawyers have any meaningful say in what defense to put on could not be reconciled.

With their clients equally strongly felt equally heartfelt convictions.

On the matter, the lawyer client conflict in the Kaczynski case, one writer put it I think, I think a very aptly boiled down to this whose lifelong beliefs were going to be kept and whose lifelong beliefs were going to be discarded.

Kaczynski or the lawyers in the end pardon me because the judge sided with the lawyers as against Kaczynski.

The lawyers triumphed over their client but their victory.

It seems to me wasn't that at the end of the day, a pyrrhic one and it came with a moral and ethical invoice attached.

Kaczynski paternalistic, well-intentioned lawyers would have were determined to against their clients with against their clients. Will portray Kaczynski as a madman. The lawyers were determined to act for Kaczynski own good to save his life by any means necessary.

To save him from himself.

If it came to that at its core, therefore it seems.

Yes, Joan. You'll wait a moment for the boom mic to arrive. Yes.

## Q&A

**Joan:** I guess I have one question here. I think there was a couple of things going on. One what extent the death penalty really played and how the lawyers played this out. I, I wonder if that had not been on the table where they would have permitted him to present the defense that he wanted to do. That's one question second.

**Mello:** You've you've anticipated my my most frequently asked question 11. OK.

**Joan:** The second was the.

**Mello:** This is not a set.

**Joan:** Was the judge concerned that it would turn into the case that you have with the Long Island Slayer? If you remember the Long Island?

**Mello:** Colin Ferguson, the Long Island subway gunman.

**Joan:** Colin Ferguson. Really was from what we could sound mentally ill, and perhaps he wanted to avoid that kind of what he thought would be a circus. I guess one concern I have is, suppose you don't think he was. Let's suppose just for purposes of argument that he was. With the lawyer.

**Mello:** That that that he was.

**Joan:** Mentally ill with the lawyer had been would have been appropriate for the lawyer to do with the. Lawyer did.

**Mello:** If the lawyers were honestly convinced that that that one Kozinski was was in fact a paranoid schizophrenic and two that his mental illness so impaired his ability to aid in his defense and to give his lawyers help in presenting that defense, then what? The lawyers should have done is filed a motion to declare their client mentally incompetent to stand trial.

The lawyers, I mean the. It it's fair game in this setting, of course to ask hypothetical questions, but for me I keep coming back to. My own very strong belief. Not only that, Kaczynski was mentally competent to stand trial, which is a very low. Which is a very low bar to meet. You can be pretty crazy. I mean you can be a fairly flamboyant paranoid schizophrenic.

See for example Colin Ferguson in New York the the the The New York gunman and still still be mentally competent to stand trial. The Ferguson case is a harder one for me. The Kaczynski case is incredibly easy for me because even if he is in fact mentally ill in in some way and. And he might be. I mean, I. I don't say that that that that that I'm certain that he doesn't suffer from any kind of mental illness at all. But if he does, it's clear as a bell to me. That he knew exactly what was going on.

In the in the in the trial, in the pretrial proceedings and where that where that came through for me, what what, what really convinced me that Kaczynski was not

just sort of. Bargain basement. Mentally competent to stand trial, but was mentally competent to stand trial by a country mile were the letters, the handwritten letters that he wrote to the judge and what he said and did during the the the behind closed. Store meetings, the first part of your question, which was was anticipated my question 11. Was whether it was to what extent the the fact that this was a death case influenced what the lawyers did? In my opinion, it made all the difference in the world.

Had this been? A run-of-the-mill robbery case. Had this been anything other than a capital prosecution, there is no doubt in my mind that Kaczynski's lawyers would not have seized control over this case in the way in the way that they did in in the way that they did. And that's and. And that actually is in part why that the part of the subtitle to my book is ethics, power and the invention of the Unabomber, because the the the the presence of capital punishment and the fact.

That that the the stakes in this particular battle between Kaczynski and his lawyers, that the the stakes were were life and death, literally with, were were life itself.

The lawyers did things that that that no defense lawyer would do, or very few defense lawyers would do if the stakes weren't weren't weren't that high.

I mean, this is a, uh.

A very good example, I think of the warping effect that capital punishment as a legal system has on on the the the essential basis core of the attorney-client relationship. Did did that answer your?

**Joan:** My point was that I I agree with you there, there was irregularity, but I'm actually relieved that there was in the sense that had gone the way he would. He would have been. I had no doubt that he would have been executed. And it's like the sausage. Don't watch them being made, but I'm actually happy about the end result. I mean, I, I that may, and I'm not altogether.

**Mello:** Well, the the, the the the the, the capital punishment abolitionist in me was jumping for joy when this guilty plea went down and and and opposing capital punishment, fighting every attempt by the state to kill people to execute people who don't.

Want to be executed by the state?

It is for me an extremely important value, but but but it's, but it's not the only value and in this case the the individual dignitary concerns the the Ted Kaczynski human right fundamental human right to his day in court, his way assisted by counsel.

Not controlled by counsel Trump's the that the capital punishment dimension of it.

**Joan:** Not just turning his brother in but face having killed his brother.

Well it's it's it's ironic that that that.

Ted's brother David testimony at at the penalty phase of of of the capital trial and and there's there's no doubt whatsoever in my mind that there would have been a penalty. There would have been a penalty phase.

Jury would have found Kaczynski guilty of murder and so the case would have proceeded to to to to phase two to a mini trial on the question of of punishment.

David Kaczynski was was was was was Ted's lawyer's secret weapon. I mean he would have been.

I think the most powerful defense witness in mitigation.

Had Kaczynski been in control of his defense and if he

If if he succeeds in getting what he's seeking now, invalidation of the guilty pleas and a trial his day in court.

Assisted by counsel.

There's no way that the Ted would allow David to to to testify.

I mean, it's fair to characterize.

Pardon me, it's it.

It seems to me that it's that it's fair to characterize.

The the the.

The defence that Ted Kaczynski wanted at the penalty phase of his capital case as a suicide mission, had he gotten what he wanted?

There's very little doubt in my mind that that that a jury would have would have sentenced him today.

I mean in that respect his lawyers, tactical and strategic belief that as a practical matter in the in the real world of of of capital trials, the only real chance to save Ted Kaczynski like to save Ted Kaczynski's life.

Or some kind of mental illness defense at the penalty phase as a tactical manner, as a strategic matter.

That judgment by Kuszynski lawyers, I think, is absolutely right.

That was it.

It seems to me the only realistic way of of saving his life.

**Speaker 6:** I would have to disagree with you.

**Speaker 6:** Said that, the death penalty was the critical component in the case.

**Speaker 6:** As a as a criminal defense attorney for over 30 years.

**Speaker 6:** The an attorney is always as a public defender.

**Speaker 6:** One is always confronted with a client.

**Speaker 6:** Whose perceptions of his own case is so distorted that the attorney has to take the lead, and in what you refer as the tyranny of the well-intentioned attorney, you often in my circumstances a public defender. You can often have a client who was innocent of the charge.

**Speaker 6:** Part, but whose perception of the system and the defenses which can be raised will ensure his being found guilty.

**Mello:** But that the reason that I think that wasn't the case in.

In in the Kaczynski case was he saw with piercing clarity what the options were and what the consequences of the various courses of action were.

When I was I was a capital public defender in in Florida for a few years and I don't think I ever encountered.

A client I don't think I ever had a client who.

Seem to understand not just the the broad outlines of of how the legal system worked, but but the details that the subtleties of it, the nuances of it as as as Ted Kaczynski did.

I mean this, he was.

Super competent to stand trial.

**Speaker 6:** More difficult for his defense.

**Speaker 6:** To come up with a situation if their ethical responsibility is to put forward the most effective defense.

**Speaker 6:** Knowing the nature of the crime and the nature of their client.

**Mello:** I I don't.

I don't think that is.

That is their ethical responsibility.

I think their ethical responsibility is to assist their client.

That the basic goals of the defense.

Or it seems to me or and ought to be the defendants, not the lawyers.

If assuming that the client is.

What what I've been calling super mentally competent to stand trial.

**Speaker 6:** Assuming he's guilty.

**Speaker 6:** Take that assumption out of your your equation.

I mean.

**Speaker 6:** What the defense attorneys responsibility is?

**Speaker 6:** These are the the ethical requirement to put forth an effective defense to ensure that an innocent person is not convict.

**Mello:** That that doesn't I?

I mean, I I I have no problem with taking with taking the question of guilt out of the equation.

It it doesn't, it doesn't change.

It doesn't change it for me at all.

I mean, it's it's.

It's the clients, life is the clients.

Case it's the clients trial at the client's day in court, it ought to be the clients choice, which is, which is not to say that lawyers that defense lawyers shouldn't do everything they can to persuade their.

Concededly mentally competent to stand trial.

Client to do what, what the lawyer thinks is best, but ultimately it seems to me that if the client is mentally competent to stand trial, the choice the choice ought to be.

His because he's the one who's going to have to live with the consequences.

**Speaker 6:** 30 years of experience, I've found that a client is only found incompetent when the judge feels that the trial will be a pain in.

**Speaker 6:** Yes, otherwise all clients are competent.

**Speaker 6:** I mean when you have the son of Sam case, it's even worse than the Ferguson case in New York where the son of Sam literally was getting his instructions from a dog and there was no question in the judges mind that he was saying and then in Ferguson case, there's no question.

**Speaker 6:** There's no question that no matter how strong the motion.

**Speaker 6:** Was in Kosinski case the judge was going to find him competent.

**Speaker 6:** What you seem to be arguing is that at a certain point, the role of the attorney becomes irrelevant.

**Speaker 6:** Visa V the.

**Speaker 6:** Intelligence and the ability of his defendant to articulate his own slightly distorted idea of.

**Speaker 6:** What the defense should be?

**Mello:** My my what I see the role of a defence lawyer as an assistant as a helper, as a provider of information as an advocate.

On behalf of what the defense lawyer thinks the the client.

What to do but?

That ultimately it's the clients, the clients decision.

**Speaker 6:** And the defense attorney should then resign if it's countered to, for example, in a death penalty case, if a client is clearly marching down the road to its legal suicide, that defense attorneys only alternative then is to withdraw from the case.

**Mello:** Well, that that's what I think.

As instance lawyers should have done six months in advance of trial when it became clear to the lawyers that that there was this irreconcilable.

Conflict in part because in the Kozinski case there was another lawyer in the wings, Tony, Sarah, who was was was ready, willing and able six months in advance of the the beginning of jury selection in in the Kozinski case to to.

To take over as defense counsel and to represent Kaczynski in the way that Kozinski wanted to be represented.

Yes, yes.

**Speaker 7:** Because tenant of Suszynski did not stand trial, we can only speculate about what he would say, and now one of the things that we may be able to speculate is whether or not his act was unilateral.

**Speaker 7:** Did he have any?

**Speaker 7:** Was he about to reveal any connection?

**Speaker 7:** To to his act.

**Speaker 7:** And perhaps that's why it's.

**Mello:** Give me another.

With with respect to the crimes, yeah, I mean whether whether he he had any help or was yeah, part of.

**Speaker 7:** So wait, what whether he was instructed to do what he did and what was his reasoning behind that?

**Speaker 7:** If in fact he was not insane.

**Mello:** Yeah, yeah, that's that's absolutely right and I can't say that I know with any precision what.

The precise contours of the defence that that Kaczynski wanted.

What would have been the the impression I get from from my my contacts with them is that that he wanted.

Some variation of a political necessity defense.

A necessity defense at the penalty phase of his capital trial, which is the phase in which that kind of defense would have been admissible and and and appropriate the only.

Public explanation or private explanation for that matter, that that I've ever seen of of the crimes and the reasons for committing the crimes, it is, is the manifesto itself.

The Unabomber manifesto itself, which was published by The Washington Post and the New York Times in 1995, and he basically said in the in the manifesto, and this is a.

It's a paraphrase, but it's a.

It's a, it's a pretty close.

That he engaged in the bombing campaign as a way of of of drawing attention to publicizing the downsides of the industrial revolution, the the, the dangers of technology.

The encroachments of.

Technology and and the the the the sort of the the technocratic state.

Infringements upon our freedom, autonomy, liberty and the like.

I'm part of the reason that I'm I'm a little hesitant in speculating about what, what, what I think is in space defence would have been is because I'm not sure that it's really clear in his mind what that defense would be.

He he never got to that stage with his court appointed attorneys the first time around.

I mean he he never really had to think.

About precisely what kind of defense he wanted those lawyers to put on, because it became increasingly clear to him during during the process of jury selection that that that the the only defense that the attorneys intended on making against the the against the death penalty was.

Was a mental disease or defect defense.

**Speaker 7:** Well, my last question is I'm I'm not a lawyer yet I'm a first year student and so I wanted to know is it doesn't.

**Speaker 7:** Doesn't this constitute a malpractice on the part of the lawyers or the OR violation of the due process clause?

8-9 and 12.

This is a much better way of doing this, it it seems to me.

Let's try and keep this momentum going.

Jeez, I I have I I?

Have a couple of different.

Ways of of of of answering that.

In theory kacynski could.

It could.

Sue his.

Attorneys for malpractice.

As a practical matter that would be virtually impossible for him to do on his own.

And if he was going to do that, he would.

He would have to do it on his own.

He would.

My guess is he would find it impossible to find a lawyer to represent him on that, and the reason he.

He'd find it virtually impossible is because what what the lawyers did is.

I I don't.

Think it's malpractice?

I mean, it's it's.

What they did is not.

Unreasonable what they did it in fact is what most capital defense attorneys and most non capital defense attorneys as well would have done.

And because they weren't acting unreasonably in what they did, they probably wouldn't have been guilty of malpractice.

The second, the second part of your.

Of your your, your, your your question is actually at at the heart of of the United States of America versus Theodore John.

Actually, now it's Theodore John Kaczynski versus the United States of America.

The litigation which he initiated last April to invalidate his guilty.

He he is arguing in that motion, among other things, that his attorneys rendered ineffective assistance of trial counsel because they.

Because they were laboring under a kind of conflict of interest, a conflict between their own personal opposition to capital punishment, which interfered Kozinski argues, and and I and I and I and I agree with them on this interfered with the lawyers duty of loyalty.

To their client to kacynski.

There's he's also.

He's also arguing that that his guilty plea was was involuntary, that that essentially he was pressured into pleading guilty because of, uh, a.

Essentially, that his guilty plea was the product of of pincer like constraints on his ability to make rational.

Logical constitutional decisions.

On the one hand, his court appointed attorneys insisted on portraying him to the jury in the world.

As at as a paranoid schizophrenic.

On the other hand, his trial judge ruled.



Erroneously, in my view that that Kaczynski did not have the right the constitutional right to fire those lawyers and and and represent himself so because of of the the the pincer like actions of those two forces, he really had no.

As a practical matter, and determining the the voluntariness or the involuntariness, and therefore the legality, the constitutionality of guilty pleas turns on.

That on Unreal world.

The the real world circumstances.

As a practical matter, Kaczynski really had no other choice.

But other than to to plead guilty.

Between his, his lawyers, sort of of pressuring him from this end and the judge pressuring him from this end, he was denied constitutional he was denied the ability to make constitutional choices that other criminal defendants, and in particular capital defendants, would have been able.

To make.

**Speaker 6:** Attorneys, are they willing to give affidavits in support of the ineffective assistance on the conflict issue Visa V that they will acknowledge that their primary objective was the preventing the death penalty?

**Mello:** That's a very good question and I I don't know the answer to it.

I'm I'm not sure I part of.

The what makes the Kozinski case unique?

Sort of from.

A front from a uh from a post conviction, from an appellate litigators perspective.

And from the perspective of of of writers or scholars or whatever it is I I am and am doing.

Here at the moment is the richness of the factual record.

I mean, the lawyers may.

A very solid and and I think pretty unequivocal record of what they were doing and and why they were doing it.

So and my guess is if the lawyers were asked, you know, sort.

Of the the the the the.

Classic Watergate question.

You know what did you do?

What did you know?

When did you do it and why did you do it?

They they would they?

Would they respond in ways consistent with what they said on the on the record the the the I?

I mean it's it's.

It's it's it's.

It's a little frustrating and I don't mean you're frustrating, but the situation of of sort of trying to argue this is is is is is is a little frustrating to me because the the real evidence of all of this is still under court seal.

Which means you all have pretty much got to take my word for it until until there there comes a time and hopefully there will come a time when the when those records are are are unsealed.

But the the the the the record is is is is pretty clear.

It seems to me that that the lawyers did what most sort of hardball kick \*\*\*\* capital.

Defense attorneys would do.

And whether I mean whether they were correct in doing so, whether they rendered constitutionally ineffective assistance of counsel, and whether their actions contributed to a.

An involuntary and therefore unlawful guilty plea.

I mean, these are all.

Hard questions for me on which reasonable minds can and will probably always differ.

**Speaker 6:** Work to address them.

You know?

**Mello:** Other than some of the most glaring

Constitutional violations that I've ever seen in my life as a lawyer, no.

I mean and and when?

Question 4.

This was.

Something that that Kaczynski and I wrote to each other and really explored in in in some depth during during the time when when he was helping me Fact Check my book.

And I was helping him.

The pros a motion to set aside his guilty plea.

The the there the even.

From on on, even even here on on the other coast of the USI could sort of sense the the the sigh of relief that that the California Federal judiciary breathed when this case went down by guilty plea. Rather rather than trial the the the.

That the legal system was really, really happy that that this case was was resolved the way it was without a trial.

Uh, and therefore it it seems to me that that that that the.

Matters not factual matters, but atmospheric matters.

I don't want to call them political matters there because I think they're more sort of viscerally human nature.

Matters I think will weigh very heavily against that. the US Court of Appeals for the 9th Circuit.

Being willing or at all inclined to reopen this particular chapter in in American jurisprudence, it seems to me that if they if the appellate court listens to the facts and follows the law.

They ought to throw out this guy.

Typically they ought to throw out this guilty plea.

Now on appeal.

I don't think they need to remand it for an evidentiary hearing.

I think the record is clear as a bill about what happened, why it happened, they've got more than enough before him to decide.

As a matter of law, that what happened in this case cannot cannot stand.

Whether they'll do that.

**Speaker 8:** People there have been some handouts and upon the screen excerpts of letters from Kaczynski, can you explain what exactly he's trying to say in that passage, or how that relates to the larger case?

**Mello:** Sure, sure.

What is in the handout and what is what is on the screen is a portion of a letter that Kaczynski wrote to me last October.

In response.

Pete, I'm going to back up a little bit and and sort of.

Put answer your question but in a but in a somewhat larger context 'cause I 'cause I do want to talk a little bit about sort of how I came to be involved in this case and how 3 Vermont law students came to be involved in this case.

I got involved in the case quite simply because Kaczynski wrote to me last summer in July of 98. I guess now 2 summers ago I received in my faculty mailbox.

50 feet that way in Whitcomb House, a letter, a #14 letter, a legal size letter.

With a handwritten address to me with a return name and address of Theodore Theodore J.

Kaczynski, prison number XYZ federal federal supermax prison, Florence.

Rado, it arrived in my mailbox out of the blue.

I had no idea that it was that it was coming.

And and what Kaczynski wanted initially in the and and and what he asked me in the letter was to send him copies of two newspaper op-ed pieces that I had published the previous January while his his his defense team was sort of in the in the midst of.

Of their their meltdown.

I sent him the.

I sent him the the copies of the two op-ed pieces along with a draft of a law journal article that I was writing.

Comparing the the the the ethical dilemma which faced Kaczynski's lawyers with the ethical dilemma and and the way that dilemma was resolved by slavery abolitionist John Brown's lawyers back in in in 1859. And I wrote to Kaczynski.

I wrote back to him thinking and.

Probably, if I'm completely honest with myself.

And you all hoping that that that would be the end of it, that I'd never hear from them again.

He must have responded to to my letter and what I sent to him the day that he received it, because I think at like 5 days after I sent my letter to him he he had responded.

He responded, taking me to task in strong and somewhat salty language.

For for suggesting in in the the draft of the law review article that that Kosinski somehow considered John Brown to be his his historical antecedent and role model, and he he was, was quite sharp that he didn't know anything about John.

Brown didn't care anything about John Brown that that if I.

If I look at the 100,000.

Pages of his journals and experiments, and Diaries and stuff that I won't find one single reference to.

John Brown.

So I wrote to him back saying, yeah, you know sorry I got some bad information I'm I'm I'm delighted to to change the manuscript.

But note that it's that it's just a draft.

It's not going to be published for another few months.

There's that's.

And this is part of why I sent it to you, 'cause I you know I wanted you to.

To to tell me whether whether I was I was especially far off base in anything that I said.

Oh, and by the way, you should know that that the John Brown scholars will be delighted to know that because I was, I mean, I was sort of in the middle of pins or like constraints at the time, because in the course of researching.

Law review article I I I had spent a good bit of time with with the John Brown literature and had and had gotten to know some of the leading John Brown scholars.

And they were not at all pleased with with having their their hero in history who's also one of my heroes in history compared in in any way in any print medium to to the Unabomber.

Someone I I wrote him sort of my sharply worded.

Response to his sharply worded response to my first letter, I expected never to hear from him again.

Lo and behold, about a week later, yet another letter from Kaczynski arrived.

This one was was was very conciliatory and he thanked me for for changing the law.

Review articles referenced to John Brown and he said, look, you have an interest in.

And you and I both have an interest in your getting your facts straight.

I'd also written to him in my first letter that I was writing a book about his trial, and so in his third letter to me, he said, you know, you and I both have an interest in your getting your facts right in your book, so I'm I'm willing to.

To to provide you with any information or documents that that can keep you on on the right path and that was an offer that I couldn't refuse.

It I and I I have to confess that.

That kacynski

Please pardon me Kozinski's involvement. The information he provided to me, but but in particular the documents that he provided to me made my book of an infinitely stronger book than it. It would have been otherwise.

But as is often the case in life in law.

Nothing that nothing is ever free.

He he asked me to to first help him find a lawyer to represent him in in in a litigation that he wanted to initiate to, to vacate and set aside his guilty pleas.

I wrote back to him and told him that I'd be happy to.

To try and find him, a lawyer, that that's something that that I do.

A good bit of, uh, in I get unsolicited mail fairly frequently from from incarcerated people mostly, but not all on death row seeking legal assistance.

And I, you know, I I, I always try and help those folks out by linking them up with with with with the.

The right lawyer to do the job.

When I when I when I agreed to do that in the Kaczynski case, I.

Really underestimated how difficult it was going to be to find.

Kaczynski not a lawyer.

Not any lawyer, but the right lawyer, a lawyer with with the right experience with the right background with the right expertise.

To to do the job right, to take the case on and and to take it.

On and to do.

It for for the right reasons.

Uh, as the the the weeks and then the months went by and it became increasingly clear to Kaczynski and I both that I was not going to be able to find him, a lawyer.

He asked me to draft him to essentially help him come up with a Plan B uh.

Motion to set aside the guilty plea that he would file himself process as we say in the in the the the the.

Will appeals bid?

Is that he could file himself by by the filing deadline.

I agreed to do that.

I made an announcement in my constitutional criminal procedure class.

Still listening student volunteers to help me with with with that project and and three students step forward three third year students.

Step forward Jason Ferreira, Rich hence and.

Ingrid boss and and and the the The four of us, the three law students and I I.

Sort of created a little law firm out of my in my office across the way in in Whitcomb House.

Those three students worked their tails off on this project for for close to three months with no pay, no class.

Credit no institutional recognition in any way, and I've got to say I have.

I've never in my life been prouder of law students than I am of those three.

And the four of us managed to put together a pretty good pro, say, motion to set aside the guilty plea.

If I do say so myself.

And as we were putting the finishing touches on it in December of 98, I finally found a lawyer, sort of with who who fit the profile that I was looking for. Willing to take the case on. Actually one of my old law school professors at the University of Virginia.

He came into the case in late December of 98, and when he did I that the law students and I and I expect Kaczynski as well. We're all extremely relieved because now this this, this enormous amount of work and.

And and this extremely complex, legally, factually, politically, atmospherically project was now on somebody else's plate and.

We shelved the the the draft motion that the that the students and I prepared and I thought that that that that that was the the end of our of our involvement.

As it turned out, three weeks before the filing deadline.

I came to the lawyer that I recruited bail out of the case.

Uh, which left Kaczynski in the position of having to dust off the the draft motion that that that the three law nubs and I had put together for him and and and and and do it himself.

He did that and he he actually was, was very gracious about thanking the law students by name in on the second page of the most.

That he filed, he filed the motion back in April of 99. It was denied by the District Judge.

I think about a week after he filed it and the case is now on appeal to the US Court of Appeals for the 9th Circuit. The Federal Court of Appeals.

I should mention that.

That in June of this year I resigned as as Ted Kaczynski, pro Bono, legal adviser and a few weeks after I did that, he denounced me to the Dean of the law school, my publisher and probably to other folks as well.

He has a pattern of doing.

That his charge against charges against me were remarkably similar to the charges that he's leveled against every other lawyer who has ever tried to to help him.

I don't take it personally.

This stuff happens in in these kinds of of emotionally charged.

Case is you know what?

What can you do?

The latter is.

Was written by Kaczynski in the course of my recruitment effort.

My effort to find him find him the right lawyer because every time I approached a lawyer the first thing she said was why on Earth does he want to go back into court?

Because all he's all that's going to do is is even if he wins, which he probably won't.

Because these motions statistically are very, very rarely granted, even if he wins, all he's going to all these going to win is a trial, a death sentence, and an execution, and that.

I mean that in and of itself sounds kind of crazy to me.

So I wrote back to Kaczynski and asked him to to explain to me so that I could explain to prospective lawyers why he was doing this, why it was so important to him to go back to court and and to challenge the guilty plea even though.

The likely outcome of that enterprise will be it if it's successful, will be a death sentence and execution.

And that's what he wrote back, and I offer this to you in part as evidence of how thoughtful, how, how deeply he's thought about what he's doing, how he understands the risks and dangers of what he's doing and how just how smart he is, how smart he is, and how perceptive.

I must explain my personal feelings about the death penalty as opposed to life imprisonment.

To me, physical freedom is absolutely essential for a worthwhile existence. The history of my life bears this out. Without freedom only despair remains for me. Even if I were able to do so, I wouldn't want to adjust to a life without freedom. In fact, I refuse to adjust to it as a matter of principle. Such an adjustment would entail the loss of what I most value in myself. I dread the changes that long imprisonment is likely to make in me.

My solitary life in the mountains gave me ample opportunity for intraspection and I know myself well enough to be certain that my preference for death over life imprisonment will not change.

In our society it is customary to oppose life to death. Life is good-death is bad. But in reality life and death are inextricably linked; they are two sides of the same coin. All organisms die eventually and in doing so they give space and nourishment to new organisms. Thus I see no point in prolonging life indefinitely when there is no longer any particular reason to live.

I guess I want to close my affirmative presentation part of this.

On that note, I think I've now over the course of the last year exchanged.

Probably close to 75 letters with Kaczynski. What this is is a portion of the material that I received in the mail from Kaczynski during the first six months of our correspondence. As you can see it's a it's a pretty impressive.

Of paper, so I think I can say that to some extent at least, I I.

I know him, I I have some insight I think into who he is, what he's about.

And what I've concluded at the end of this, this sort of yearlong journey with him is that he is every bit as smart as the media says he is.

He is one of the just... In terms of raw brainpan intelligence... He's one of the the the, the most highly intelligent people that I have ever encountered in my travels.

He's also probably the most the most selfish, the the most arrogant and the most manipulative.

I the the best.

Phrase that I can that I can come up with to sort of encapsulate my general impressions of Kaczynski was a phrase used.

Bye bye bye Texas.

Texas first governor Sam Houston, describing the Jefferson Davis that the President of the Confederacy Houston described Davis as being quote cold as a lizard and ambitious as Lucifer.

And that, I think pretty much sums up my take on Theodore John Kaczynski.

So questions.



## Q&A

**Speaker 9:** Do you think he was a paranoid schizophrenic?

**Mello:** I absolutely do not, and unless radical environmental politics, a willingness to kill for them, and a, uh, a reclusive lifestyle in one of the most physically beautiful parts of of on Earth, all that up to paranoid schizophrenia I.

I don't I I do not believe he's that he's a paranoid schizophrenic.

**Mello:** I apologize, I answered the question before the boom got there.

**Mello:** The question was whether it was whether I I really believed that Kaczynski was not a paranoid schizophrenic and my answer to that is, is is hell no.

**Speaker 9:** I would like to ask is there anyone in the room who agrees with me that he was a paranoid schizophrenic?

**Mello:** Oh, come on folks, don't be shy.

No no no no no leave leave the.

Leave leave the boom.

**Speaker 9:** He's meets certain criteria.

**Speaker 9:** I have another lady whose expert has had considerable experience with paranoid schizophrenic.

**Mello:** Well, perhaps perhaps I misunderstand paranoid schizophrenia I I've I as I understand it from the the DSM, the diagnostic and Statistical manual of the American Psychiatric Association, the hallmark of paranoid schizophrenia is delusions.

There has got to be some kind of.

Delusional system, delusional architecture and my question for you, and for anyone who thinks that Ted Kaczynski is a paranoid schizophrenic, what are his delusions?

I see no delusions that we are choking ourselves off by by technology that that the industrial revolution has been the great king hell of mixed blessings.

Uh, that an increasingly technocratic government is infringing on our privacy, or autonomy or humanity.

I mean, I, I, I see no delusional system in that.

I see.

We we we have some folks seeing delusions over there.

**Speaker 5:** I don't know a lot about it, but I think.

**Speaker 5:** It's delusional to think.

**Mello:** I'm glad that there's a doctrine.

**Speaker 5:** Gotta back him up.

**Speaker 5:** I think it's delusional to think that you can change people minds about environmental problems and things like that by choosing people to kill.

**Speaker 5:** And I think that those are delusions of grandeur, or perhaps delusions of how society works and how people respond to.

**Speaker 5:** Such things, but.

**Mello:** Read, read the manifesto.

Read the manifesto.

And I mean.

His belief was that unless I kill people.

No newspaper is going to publish my 35,000 word manifesto. That's not a delusion, no it it?

Yeah, but.

It is not.

It is not.

It is not that the Washington Post in that it were it not for the fact that Ted Kaczynski killed people.

The Washington Post in the New York Times, in my opinion, would not have published a 3500.

Word op-ed piece from him. Much less a 35,000 word unedited, complete with errata.

A political political manifesto.

**Speaker 5:** He could have thought of a more creative way to draw the media attention so that when he wrote that manifesto more people would have taken it seriously and taken it to heart.

**Speaker 5:** And I think that there are more creative ways of grabbing the media attention than by killing people.

**Mello:** I I want to be very very very clear about this.

I am not at all.

Remotely in any sense whatsoever.

Never justifying his use of violence.

And and sort of if the one of the the the the questions that that that I have to answer or at least grapple with.

If I'm right that he's not a paranoid schizophrenic, then what is he?

And the answer to that, it seems to me, is that he's a psychopath.

He's a.

He's a sociopath.

One of his victims, David Gelernter, who wrote a very powerful memoir.

A as a survivor of the Unabomber attacks, argues that argues very persuasively, I think the Kaczynski evil.

He's all of those things.

It seems to me he's a psychopath.

He's a sociopath.

He's a he's a clear eyed killer with no remorse whatsoever for what he did but.

For my money, at least, he ain't crazy.

That doesn't add up to to paranoid schizophrenia.

I mean, I would.

I would love to be convinced and, and I mean this very honestly and sincerely.

I would very much like to be convinced that I'm wrong about this because he is because the Unabomber, for me, would be a much less.

Troubling phenomenon if I were able to dismiss him as a madman.

Because then I could just say, well, he he killed people because.

Because because he's because he's because he's nuts.

If he's not nuts, then I have to take seriously the reasons.

That he gave.

And they're coherent reasons.

They're internally consistent reasons.

They're horribly, brutally wrong, evil, destructive.

Reasons but.

There's they make sense.

They make more sense than I wished that they did.

And there's part of me when I when I went into my correspondence with Kaczynski there there was, there was part of me that that was hoping that I decide it through my correspondence with him that that that his his lawyers were right, that he is crazy.

I mean that that his lawyers were right, that the judge was right, that that that the court appointed psychiatrist Sally Johnson was right, that the media is right, that that that most people I talked to are right and I'm wrong that that he really is a paranoid schizophrenic, because that would mean I would need to write this book and I didn't want to write.

This book and I didn't want to write.

This book for.

The same reason that I didn't want to have contact with Kaczynski because all of this brings.

My judges murder very.

Painfully near the surface for me.

**Speaker 10:** Actually, that's something that I wanted to ask you about.

**Speaker 10:** Don't you think that your involvement could be perceived as a conflict because of your relationship with Vance?

**Speaker 10:** Because of your feelings about that.

**Speaker 10:** Because you've said that you would just as soon see him be given the death penalty and be executed, I mean.

**Mello:** I didn't, I didn't, I didn't.

I didn't quite say that.

**Speaker 10:** I've been taking notes, it's pretty much what I've got written down.

**Mello:** Part of me will cheer, part of me. Not all of me, and not the part of me that it's not a part of me that I'm proud of, but I I sound like I'm disagreeing with you.

And I'm not.

I'm horribly conflicted about this case.

This is that the most.

Ethically, troubling constitutionally troubling, jurisprudentially troubling case that I've ever been involved in.

**Speaker 10:** So your personal. Well, you're pretty. I mean, I'm puzzled about that.

**Mello:** I'm honestly mixed and and in when I was answering your when I was trying to respond to your.

One of one of the other points earlier on, and I said that that these are none of these issues are are are black and white to me.

I mean, I can't stand up here and I don't say in my book that that that Ted Kaczynski trial lawyers are are bad, stupid people who.

Just you know who who were just too obtuse to see to see what was right there in front of their face.

These these are genuinely difficult.

Uh, kinds kinds of questions.

I mean, I.

I honestly I I, I really do honestly believe that in in my heart of hearts, reasonable, decent, good kind compassionate people can and probably always will disagree about.

About what what the lawyer should have done in this case, what the judge should have done in this case?

What Kaczynski should?

We've done in this case the the main thing, and I'm going to acknowledge this at the outset that this is a cop out and and here it comes what I was trying to do in the book was was to raise the issues.

To get the the these issues.

On into the the the the the public conversation.

The discourse about about the the intersection between law psychiatry, the media, environmental politics it's I mean it's.

Capital punishment, it's all.

It's all here.

I mean, you could want.

One could easily create an entire law school curriculum around.

This case well not.

An entire loss that an entire criminal.

Constitutional curriculum around this case.

If you gave me enough time I could, I could get property in there and contracts and and and all the rest, but I'll get back to you on that debt.

**Speaker 6:** Brief comments, one is I, I think that a criminal defense attorney lives that conflict every day.

**Speaker 6:** There is no way to permanently reconcile.

**Speaker 6:** The conflict that you're in between the ethics of your personal ethics and the responsibility as a responsible criminal defense lawyer.

**Mello:** I I, I agree.

**Speaker 6:** And that's what creates burnout.

**Speaker 6:** The inability to come to grips with that that concept.

**Speaker 6:** The other comment I have is on this whole question of of violence as a means of political change.

**Speaker 6:** Society has always attempted to classify as Mad Men or mad.

**Speaker 6:** Even those that use act of violence is you can look back in the 60s and you can see SDS and days of rage.

**Mello:** Oh wait wait wait before I mean wait? I mean, you're you're talking about the the 1960s, John Brown?

**Speaker 6:** You can see it goes forever.

**Mello:** John Brown was dismissed almost universally as insane and and not so much by by the South, but by his abolitionist allies in the north.

And there are.

I mean I I learned I I went to I I went to primary.

I got my primary and secondary education in the South in Virginia, and I grew up, always thinking that that John Brown was was was just a nut.

The the Wobblies the the the International Workers of the world.

I mean the the, the, the, the African American activists, it it.

And it's I mean I don't, I don't.

I don't want to sound sort of Oliver Stone conspiracy theory esque here.

But there seems to be.

I mean, that seems to be a fairly consistent pattern throughout American history.

The pattern of dismissing the ideas, the political ideas of people who resort to violence as a way of discrediting the ideas and silencing the people, I mean.

And the fact of the matter is, it seems to me that as much as I loathe as much as I hate what Ted Kaczynski did and hates not a word that I toss about freely.

I have to admit that.

The only way that he could have achieved his.

Limited sort of and limited in a in a in a very in a uh, sort of math whiz kind of way.

Goals was to kill people.

I mean were it not for his his history of violence and his threat of future violence.

Uh, no one would?

Would that the name Ted Kaczynski would would mean nothing.

I mean and it and.

And I've talked to two two other.

Neo Luddites anarchists.

That part of the fun of researching and writing a book like this is you get to meet some really interesting people with with some really fascinating ideas.

And, and I've I've I.

I mean, every one of them has told me.

Really pretty much the same thing regardless of where they come out on the question of.

Balance and what they've.

What they've said is they've been working these same vineyards.

Uh, almost exclusively, by nonviolent means, for I mean sometimes 30-40 years. John zerzan. I mean the the the Kirkpatrick sale. I mean the one of the the the, the, the interesting and and and to me surprising things that I found out when when I sort of started.

Researching the ideas in in the Unabomber's manifesto was really, I mean, the ideas weren't even that original.

I mean they were that the actual ideas themselves his critique of technology, his critique of the industrial revolution exists within a very definite and very credible.

It seems to me, and in a lot of ways, very right.

Correct view of.

Of where the United States of America is headed as as we we move into the the the next Millennium.

Read the manifesto.

Any of you who think that that Theodore Kaczynski.

Is is a paranoid schizophrenic?

**Speaker 8:** Right?

Did committed.

These crimes committed these these murders and these maimings sort of for for for the hell of it read the manifesto.

Read the manifesto and.

Then let's talk.

I know I'm I'm getting the the time sign from.

See, I'm I I could I could keep doing this all day.

**Speaker 6:** The filing of the appeal in the federal courts has.

**Speaker 6:** These has he been given access to the material under seal?

**Speaker 6:** Yes, can he now not release it under a First Amendment if he was to give that to you?

**Speaker 6:** Well, as an attorney, strike that if he.

**Mello:** Well, hypothetically.

**Speaker 6:** Was to give it to him.

**Speaker 6:** If he gave it to a journalist under Pentagon Papers, couldn't they?

**Speaker 6:** They now publish all that material.

**Mello:** They could, but but you know the the the interesting thing about it is nobody cares.

I mean, they're.

**Speaker 6:** Shown that the only way to.

**Speaker 6:** Make it care is.

**Mello:** Exactly exactly.

And then I think actually is a is a very nice way of of of tying this up.

Any any other questions, comments?

Yes, Dave.

**Speaker 6:** As a reporter I have to ask, so do you do you or do you not recommend violence as a way to get your stuff into the.

**Speaker 2:** Washington Post and the New York Times.

Hold him.

**Mello:** Let me let me let me.

Put it this way.

If you're willing to pay for it with your life and your liberty, if you believe that strongly in it, and if you're willing to pay the personal price.

Then yeah, I mean I'm.

I'm I've committed.

2 self-conscious acts of civil disobedience in my life that that I that I'm of, which I'm aware both were nonviolent.

I I helped take over the administration building along with about 800 other students at Kent State University in 1978 and in 1995 I defied.

And order by the Florida Supreme Court in one of my my capital cases, the crazy just Basciano case.

Do I I?

I don't believe that nonviolence is always a necessary condition for legitimate civil disobedience or or civic resistance.

As I as I which is, which is how I I I prefer to to to to characterize.

But I mean I would have had.

No problem, for example with bombing the railway tracks on the way to Auschwitz or Treblinka.

I don't believe.

Pardon me, I don't believe that that the state has no moral right to take human lives in.

In some circumstances and World War Two would be one in.

In my opinion, the state indeed is is morally required to sacrifice human life.

For for larger, for for larger ends, larger goals.

So I'm.

And I'm I'm mixed, obviously.

Probably obviously.

I mean I'm mixed and ambivalent about all this stuff.

I mean, none of this stuff is easy.

For me.

So in in theory I can.

I mean I I'm I'm not advocating.

Violence, I hope is clear.

But I don't believe that that.

All acts of violence done for political reasons are are crazy.

I don't believe all terrorists are Mad Men and I don't believe that that all terrorists are are are necessarily.

John Brown, for example, although.

I'm not, I'm not at all confident or certain that had I been around in 1859, I would have applauded what he did.

I like to think that I would have had the the the, the courage to sort of step step outside that that moment in his.

Sorry to do that, but I believe that what what John Brown did was was not only justified.

Pardon me, but but actually was was was morally required.

Of course it's easy for me to say that now with the the perspective of hindsight, including the knowledge that that only about a year after John Brown's raid on the federal arsenal at Harpers Ferry in his execution in December of 1859, the United States went to war.

Over the issue of slavery.

I I also want to be clear that I'm not in any way.

Uh, equating?

Theodore Kaczynski or his political cause, his political ideology with John Brown or his political ideology.

It seems to me.

Is was has always been intrinsically evil and it still boggles my mind that.

That not that many years ago, the United States Supreme Court, the US House, the US Senate, and the region of the country where I was. I was born and reared, recognized the legitimacy of chattel slavery, the ownership of some Americans.

By other Americans, and I just don't.

The environmental degradation.

Or or anti technology as being as being of that kind of of of moral caliber.

I think one I think we've got time for one more.

**Speaker 11:** I just wanted to make the comment that it seems as though often when violence is used to make a point, the message is lost and that I haven't read this manifesto and until now I haven't even really been tempted.

**Speaker 11:** And there seems to be a lot more conversation and discussion around the man.

**Speaker 11:** And his action versus the message that he wanted to.

**Mello:** As a tactical matter, and as a strategic matter, I think violence.

In furtherance of political ideology is almost a terrible idea.

And had I had I had, had I known Kaczynski when he was first contemplating the bombing campaign, what I would have argued is you start killing people.

Your message is going to be lost.



No one is going to care what what you have to say, because because Americans don't do a good job and and I don't think should do a good job of separating that the message from the messenger when the messenger is is is is is killing people.

The the the the the means of.

The message in this instance can't be separated.

It seems to me from from the the the substance of the message itself, and that's in part why the the the the the mainstream environmental movement?

If I can use that phrase.

Really are are angry at Ted Kaczynski than than than any other political constituency in the country. For for exactly the same reasons that the slavery abolitionist mainstream movement in the north in 1859 were were aghast.

At at over John Brown's raid of Harpers Ferry, they were they were afraid.

I mean, in both cases the nonviolent folks were afraid and correctly so, justifiably so that they would be painted in the public mind with the same brush as as these as as killers.

As killers.

Well, thank you all.

This was a true delight.

Thank you again for coming and I think of this as a as an ongoing conversation and I very much hope that we will be able to continue having it in the weeks and months ahead. Stay tuned.

Keep an eye on what the 9th Circuit Court of Appeals does on Ted Kaczynski's appeal. There might well be some surprises in store. Thank you.

**TV Voice Over:** Michael Mello's other books include *Dead Wrong*, and *Using the master's tools to dismantle them*.

The Ted K Archive

Michael Mello

USA v. Theodore Kaczynski: One of the Most Famous Non-Trials in Legal History  
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