

Brotherly Intervention

Sentencing in the Unabom case is not a family matter.

Paul H. Robinson

November 29, 1997

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Last Saturday, David Kaczynski served notice that he would challenge the prosecutors' decision to seek the death penalty for his brother, Theodore Kaczynski, the man suspected of being the Unabomber, who carried out a string of bombings beginning in 1978.

David Kaczynski said he had helped the Federal Bureau of Investigation capture his brother only because he believed prosecutors shared his view that his brother is mentally ill, a "disturbed, sad, lonely, isolated person," who should be detained but not executed.

David Kaczynski made a painful decision for our protection. Although the F.B.I. may have eventually caught his brother, Mr. Kaczynski's help saved not just time, but possibly lives. Do prosecutors owe it to him not to seek the death penalty? I think not.

Criminal justice is a matter not of personal accommodation but of societal principles. Good deeds by one cannot reduce another's guilt and the deserved punishment. If a jury agrees that Theodore Kaczynski is indeed so mentally disturbed as to be not responsible under the law, then justice will be served by his acquittal. But if the jury finds him a radical eccentric who is accountable for what he has done and deserving of the death penalty, then justice will also be done.

Assume that after David Kaczynski read the Unabomber's published manifesto and came to believe that his brother might be the bomber, he chose not to come forward – even though he had every reason to expect the bombings to continue.

English common law, from which ours is derived, could have found him guilty of a crime. In England, it was, and still is, an offense to fail to report a felon sought by the authorities.

Our own laws don't impose such a legal duty on citizens. The change is considered to be the product of our pioneer heritage of independence and self-sufficiency – and, some would say, our lack of community obligation. (Things may be changing. Rhode Island, Vermont and Wisconsin now have statutes that impose some kind of duty to help strangers who are in danger.)

But, whatever the law, there is general agreement that one has a moral duty to give information to the authorities that would save a life, especially if all that is required is a phone call. Knowing what he knew, it would have been morally indefensible for David Kaczynski to withhold his information from investigators and allow more people to be killed. He did what he would have expected others to do if they were in his place.

Some argue that if prosecutors do not follow David Kaczynski's wishes, others in similar situations could be discouraged from making the right decision. This might be a more compelling concern if there were many people trying to decide whether to turn in their siblings for capital crimes.

But if such a situation ever did arise, the authorities might well have to engage in distasteful negotiations – and keep whatever promises they made. Still, the authorities need do only what is explicitly agreed to. David Kaczynski may think he was misled, but he wasn't promised anything. Early in its investigation, the F.B.I. may have believed that Theodore Kaczynski was mentally ill. After all, what the F.B.I. knew of him

was shaped by what his brother had said. But neither justice nor practical necessity prohibits prosecutors from changing their views.

David Kaczynski is entitled to our thanks and compassion. But prosecutors are right not to alter the path of justice for his brother, wherever that may lead.

Letter Responses

In Unabom Case; Brother's Keeper?

To the Editor:

Paul H. Robinson (Op-Ed, Nov. 29) writes that David Kaczynski; who helped the authorities capture his brother, Theodore Kaczynski, the suspect in the Unabom case, is not owed a commitment by prosecutors not to seek the death penalty in the case. Yet I don't think Mr. Robinson framed it right when he says that "criminal justice is a matter not of Precedent No one else will ever be personal accommodation but of societal principles."

Criminal justice is to establish societal principles, through personal accommodation, if necessary. Otherwise the concept of plea bargain would not exist.

Contrary to Mr. Robinson, what English law says or doesn't say is irrelevant. What is relevant is that we as a nation deliberately chose against making failure to report a felon an offense. Given a choice between handing over my brother to the state to be executed and letting the state find him, I know which decision I would be less uncomfortable with.

Amit Sarkar

Ramsey, N. J., Nov. 30, 1997

Dangerous Precedent

To the Editor:

Re “Brotherly Intervention” (Op- Ed, Nov. 29): We can be indebted to David Kaczynski for helping the authorities apprehend his brother, Theodore Kaczynski, the suspect in the Unabom case. But there will be little assistance from family members again in such cases if we put their kin to death: this would create too great a moral dilemma for even the most law-abiding among us.

For prosecutors in the Kaczynski case to close their eyes to this human conflict is to create a dangerous precedent. No one else will ever be harmed by Theodore Kaczynski if he is imprisoned for the rest of his life, but someone likely will be if he is executed for his crimes. Here is yet another example of how the death penalty creates problems instead of solving them.

Hugh R. Winig

Lafayette, Calif., Nov. 29, 1997

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The New York Times, November 29, 1997, Section A, Page 15, Opinion. Plus
Editorials/Letters on Dec. 5, 1997. papers.ssrn.com

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