Judge Faces Unsettling Questions About Kaczynski's Mental State

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How can a man who may have tried to hang himself in his jail cell be considered competent to stand trial – and even have a chance to act as his own lawyer – in a case in which he faces the death penalty?

To a layman, that is the disturbing question facing U.S. District Judge Garland Burrell Jr. as he presides over the trial of Unabomber suspect Theodore J. Kaczynski. Kaczynski's stand – insisting that his lawyers not be allowed to invoke mental illness in his defense and that he is sane enough to represent himself – dramatizes the difficulties of a legal system seeking to try an obviously disturbed defendant while observing his constitutional rights.

The widely recognized legal premise from which the Kaczynski trial proceeds is the low standard by which a criminal defendant's competence to stand trial is judged. Courts have held that as long as a defendant can understand the nature of the proceedings against him and assist his lawyers in mounting a defense, his trial can go forward.

John Hinckley, for instance, was found competent to stand trial in the shooting of President Ronald Reagan in 1981, even though the jury ultimately found that he was not guilty by reason of insanity.

Kaczynski's situation is even more complicated and troubling, however, because he wants to override his lawyers' advice to assert a mental illness defense and represent himself.

This recalls the case of Colin Ferguson, the Long Island Rail Road gunman who in 1995 rejected recommendations that he plead not guilty by reason of insanity and mounted his own defense, claiming someone took a gun from his bag while he dozed and killed six passengers. After a trial, he was convicted and sentenced to life.

The Supreme Court has ruled that, inherent in the Sixth Amendment right to assistance of counsel, competent defendants generally also have the right to dismiss their lawyers and represent themselves as long as they understand the benefits of having a lawyer and what they are risking by going it alone.

"It is a firm principle of constitutional law . . . if you're competent to stand trial you are competent to represent yourself. That's not competence in the legally talented sense," said attorney Ronald Kuby, who served as Ferguson's "legal adviser" after being dumped as counsel in the case.

In a 1975 case, Faretta v. California, the Supreme Court established the right to self-representation so long as defendants make the choice "knowingly and intelligently."

But in a 1993 case, the court upheld the conviction and death sentence of a triple murderer who had said he wanted to get rid of his lawyers and plead guilty so they wouldn't mount any defense against the death penalty. The man had tried to kill himself around the time of the murders, was found by a psychiatrist to be "deeply depressed" and was medicated while on trial.

In that case, Godinez v. Moran, the court said the basic standard for determining whether a defendant is competent to represent himself is the same as for judging whether he can stand trial in the first place.

Despite that ruling, Richard J. Bonnie, director of the Institute of Law, Psychiatry and Public Policy at the University of Virginia, said, "I would take the view that the law is at least unsettled in this area and it would be entirely appropriate for a district judge confronted with this complex and disturbing situation" to determine that, while competent to stand trial, Kaczynski is not capable of deciding to defend himself or of rejecting mental illness defenses.

But Kuby, the Ferguson lawyer, said that as ghoulish as it is to see an obviously delusional defendant pressing his case, "It violates 200 years of jurisprudence and basic notions, such as the presumption of innocence, to force an insanity defense on an unwilling defendant."

Under the legal traditions followed in the United States, it is not enough for a prosecutor to prove that a defendant committed the act: It must also be proved that the defendant intended for it to happen. This notion has evolved over time into the modern-day insanity defense.

But Robert T.M. Phillips, a psychiatrist at the University of Maryland's schools of law and medicine, said the definition of insanity is not medical. "Insanity is a legal term, not a clinical term," Phillips said. "The law defines what the components of insanity are."

In the courtroom, that means that someone might exhibit behavior that is clearly aberrant, but whose mental illness still does not meet the insanity standard. In the federal system, that means the defendant must prove that the mental illness keeps him from appreciating the wrongfulness of his act.

"Depending on the jurisdiction that you're in, you could be a flagrant psychotic, quite schizophrenic and still found legally sane. To the lay person it may not make sense – to some of us in the system it may not make sense. But these are rules of law, not of medicine or science."

A critique of his ideas & actions.

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