

Both Sides Say Kaczynski May Represent Himself

William Booth

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SACRAMENTO, Jan. 21—The day before opening statements in the Unabomber trial are set to begin, attorneys for both the government and defense agreed suspect Theodore J. Kaczynski has the right to represent himself in court as he requested.

This raises the specter of a months-long capital case pitting the power of the federal government and its investigators against a 55-year-old mathematics professor turned backwoods hermit, whom psychiatrists have diagnosed as a paranoid schizophrenic.

Kaczynski is charged, in the current trial, with being the anti-technology bomber whose devices killed two and maimed two. He faces the death penalty if convicted.

While U.S. District Judge Garland E. Burrell Jr. pondered the question of Kaczynski's representation – having to choose between letting Kaczynski represent himself or keep current counsel – plea negotiations continued between government and defense representatives, according to sources close to the case.

There remains the possibility of a last-minute plea agreement.

Kaczynski has been seriously discussing a plea agreement since mid-December, according to Justice Department officials. According to sources, he has offered to plead guilty to at least some of the bombings if he could be sentenced to life in prison without parole, avoiding the death penalty.

Kaczynski's lawyers, however, have also pressed in the plea negotiations for the right to appeal the legality of the search of Kaczynski's Montana cabin. In previous plea discussions, they also asked for protection of their client from state murder charges and assurances that Kaczynski would not serve his sentence in a federal mental institution.

In an interview with National Public Radio, President Clinton even weighed in with an opinion on a plea agreement, suggesting that the case proceed, and if Kaczynski is found guilty, the jury should decide his punishment.

"Well, if he's guilty, he killed a lot of people deliberately," Clinton said. "And there therefore I think it's something that the jury should be able to consider. . . . But I do think it should be presented to the penalty phase."

The eleventh-hour negotiations come on the heels of a report filed by a federal psychiatrist who concluded that Kaczynski was legally competent to stand trial but independently confirmed previous assertions by defense mental health experts that Kaczynski suffers from paranoid schizophrenia.

The trial has been delayed because of Kaczynski's refusal to allow his lawyers to offer evidence that would point to his mental illness. When it became clear to Kaczynski that his lawyers planned to pursue such a limited mental health defense during the first phase of the trial to determine his guilt or innocence, the defendant balked and demanded he be allowed to represent himself.

Burrell said he would decide the issue of Kaczynski's representation Thursday morning and then call in the jury and proceed with the trial.

In documents filed today, government and defense lawyers agreed that Kaczynski has a fundamental Sixth Amendment right to self-representation, and more specifically in this case, that his request to do so was timely and not designed to cause delay.

Burrell, however, suggested in court on Tuesday that Kaczynski's request may have come too late. A jury has been selected but has not yet been sworn in. Prosecutors and defense lawyers both stated that because the jury had not yet been sworn in, previous case law suggests it is not too late for Kaczynski to represent himself.

Burrell also questioned Tuesday whether the issue of "judicial estoppel" came into play. The doctrine is invoked to preclude a party from abusing the judicial process by taking inconsistent positions in the same litigation. Both government and defense attorneys advised the judge that he should not deny Kaczynski the right to self-representation based on changing his mind.

If Burrell rules Thursday that Kaczynski cannot represent himself, the judge could order him to proceed with his defense attorneys and allow them to present a limited mental health defense or he could order defense attorneys Judy Clarke and Quin Denvir to abandon a mental defense, as prosecutors have suggested.

This the defense attorneys are loath to do, stating that Kaczynski's life is on the line and that a mental health defense is his only chance.

If ordered to abandon a mental health rebuttal, the defense attorneys warned the judge, "ethical obligations may cause defense counsel to seek to withdraw from representation in this case if ordered to forgo what counsel believes is the only viable defense in favor of one that would lead to Mr. Kaczynski's conviction and execution."

Finally, a U.S. magistrate today ordered prosecutors to turn over any relevant information they have about the existence of additional "secret shacks" used by Kaczynski. The government said its previous unwillingness to do so was based, in part, on fears that such shacks may be booby-trapped or hold buried explosives. But nothing has ever been found, prosecutors said.

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national/longterm/unabomber/bkgrdstories/competent.htm](http://www.washingtonpost.com/wp-srv/national/longterm/unabomber/bkgrdstories/competent.htm)>

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