

Kaczynski Is Competent For Trial, Lawyers Agree

William Booth

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SACRAMENTO, Jan. 20—Theodore J. Kaczynski is mentally competent to stand trial, prosecutors and defense attorneys said today, putting the case back on track for opening statements Thursday after a tumultuous two weeks.

Attorneys for both sides agreed with a government psychiatrist who examined the Unabomber suspect last week and found him mentally fit for trial – meaning he understands the proceedings and can assist in his own defense. Kaczynski was found competent, despite an apparent suicide attempt and a finding of unnamed “psychiatric diagnoses.” While the diagnosis was sealed, a source said the government psychiatrist concluded Kaczynski suffers from paranoid schizophrenia, as Kaczynski’s lawyers and at least two defense experts have already stated.

Though the question of Kaczynski’s mental fitness is answered, it remains unclear who will represent the 55-year-old mathematics professor turned hermit: his current defense team, new lawyers or the defendant himself.

Kaczynski, who has fought with his attorneys over their intent to introduce a limited mental health defense, two weeks ago requested that he be allowed to represent himself instead.

U.S. District Judge Garland E. Burrell Jr. said today he would decide the issue Thursday morning and then proceed to put the case before the jury.

The judge was clearly growing impatient with the proceedings, repeatedly stating that his time was being wasted and raising questions about why these issues were not raised before jury selection began.

The judge signaled that he will not appoint a new attorney for Kaczynski, though he seemed to be undecided over whether the defendant could represent himself or whether the judge will order him to keep his counsel.

Each option raises its own set of complex legal issues, opening up ever more avenues for appeal.

Kaczynski, who faces charges that he killed two people and maimed two others during a decades-long bombing spree against technological society, brought his trial to a halt when he refused to continue with his lawyers.

Kaczynski told the court he could not “endure” a mental health defense. According to his own lawyers, Kaczynski suffers from the delusions of a paranoid schizophrenic and has as one of his symptoms a profound dread of being labeled mentally ill. Because of his request to represent himself, and an apparent suicide attempt, Burrell ordered last week’s competency exam.

A new attorney for Kaczynski seems highly unlikely at this late date, in large part because it would take a new lawyer months to prepare for trial.

“I’m tentatively not inclined to bring in new lawyers,” Burrell said. “The difficulty Mr. Kaczynski has experienced with these lawyers will resurface with new lawyers.”

The main issue is Kaczynski’s ability to shape the central strategy of his defense. Previous court rulings make it clear that a defendant has the right to make decisions regarding his plea, whether he will take the stand or not, and a possible insanity

defense. But generally, defendants are not granted control over the presentation of evidence, which witnesses to call and the day-to-day management of the case.

But there is a gray area. Does Kaczynski have a say in whether he is portrayed as mentally ill – either as a way to convince jurors that he was so delusional that he could not have formed the legal intent to kill or as a way to discourage jurors from condemning him to death?

Burrell has stated in court that Kaczynski's attorneys are "in control" of his mental health defense, but legal experts say it is not so clear-cut.

Prosecutor Robert Cleary called it "an open legal question." But the judge did not appear to agree.

Then Cleary urged Burrell to order Kaczynski's attorneys to heed their client's wishes and drop a mental health defense during the so-called guilt phase of the trial.

Kaczynski attorney Quin Denvir suggested he and fellow lawyer Judy Clarke would be loath to follow their client's wishes. Moreover, Denvir said, "We believe there is no legal authority for the court to order that."

Burrell suggested today that he might hold Kaczynski to an agreement reached during a closed-door meeting on Dec. 22. During that session, Burrell said Kaczynski agreed to stick with his lawyers in return for their promise not to introduce expert testimony about his mental state during the guilt phase of the trial. Kaczynski, however, agreed that his lawyers could marshal mental health evidence during a punishment phase if he was found guilty.

But Burrell acknowledged that Kaczynski may have been confused about what he agreed to. Indeed, a few days later, Kaczynski again clashed with his lawyers after he learned that they still planned to discuss his mental state, but without expert testimony, showing jurors, for example, pictures of the neatly dressed Harvard student turning into a grizzled, disheveled and dirty hermit.

When Burrell asked prosecutors for advice on how to resolve the matter, the government said that it was difficult to respond because they did not have transcripts of the judge's sessions with Kaczynski in his chambers.

Burrell, however, left open the possibility that Kaczynski may represent himself if the trial resumes on Thursday as scheduled. "A criminal defendant has an absolute right to self-representation if it is timely and not for the purpose of delay," Burrell said.

But the judge questioned whether Kaczynski's request to represent himself was timely, noting that a jury already has been selected and was just about to be sworn in when the trial derailed two weeks ago.

Finally, in an unrelated matter, Kaczynski's defense lawyers today filed a motion to compel the government to disclose the location and contents of possibly one or two additional remote wilderness "secret shacks" used by their client, who wrote in his journals of such refuges "to which he could retreat when the encroachments of organized society on his life at his cabin became too great to endure."

According to defense attorneys, the government told them that either there were no secret shacks, or if they were, prosecutors did not intend to rely on any evidence discovered there. A hearing on the existence of any such shacks was scheduled for Wednesday.

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