

The Case Against Kaczynski

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SACRAMENTO—By the time a suspect was apprehended in April of last year, after the most extensive and expensive manhunt ever, the terrorist known as the Unabomber had become one of the most widely known serial killers in history.

With the arrest of Theodore John Kaczynski in Montana, FBI agents uncovered a cabin filled with damning evidence, including not only a signature explosive device in the style of the Unabomber, but a draft of his infamous 35,000-word manifesto against technology and diaries providing incredible detail about Kaczynski's thoughts and actions, material that appears to amount to a virtual signed confession.

This trove of incriminating evidence will form the core of the government's case against Kaczynski when his federal trial begins here with jury selection on Wednesday.

What possible defense will Kaczynski, who has pleaded not guilty to the charges, offer?

His lawyers appear to be ready to tell the jury that despite all that prosecutors know about the defendant, there is something missing: Kaczynski is mentally ill, they are expected to argue, probably suffering from paranoid schizophrenia.

It is a high-risk strategy, yet one that many trial lawyers agree may be the only way to keep Kaczynski, 55, from being put to death if he is found guilty at the end of his trial, which is expected to last at least four months.

Kaczynski's defense lawyers, viewed as highly capable and impassioned, have said little to the press about their trial strategy, signaling only through court documents that they intend to marshal a partial defense arguing that the former mathematics wunderkind-turned-hermit, who according to his family harbored inside him a seething rage, suffered from "a mental defect."

If they do pursue this strategy, it would not be as a traditional insanity defense – excusing the crime because of mental illness. Instead, Kaczynski's attorneys may attempt to present testimony that would suggest that their client suffered from a so-called "diminished capacity" and therefore was incapable of fully forming an intent to murder and maim. In other words, Kaczynski may have committed the crimes, but his sense of reality was so abnormal, so delusional, that he cannot be held responsible.

Kaczynski's lawyers, too, want the jurors to enter his primitive cabin, trucked more or less in its entirety to Sacramento from Montana, and to experience what his world was like: the tiny dark cell, without electricity or running water, where he lived alone for a quarter of a century, aloof from daily social interactions that, according to his family, so troubled him throughout life.

"I think it's pretty clear that the defense is going to introduce the issue of mental disturbance one way or another," said Paul Mattiuzzi, a forensic psychologist in Sacramento who has testified in other mental defect cases. "The evidence of mental defect may be important in the guilt phase. But it may be even more valuable in the punishment phase [if he is found guilty], when the government is going to portray him as the embodiment of evil and the defense will want to argue that he's not evil, he's sick."

Legal experts agree. "This is what I suspect is really is going on," said Peter Arenella, a law professor at the University of California at Los Angeles and nationally recognized authority on insanity and diminished capacity defense. "All sorts of mitigating evidence might be presented to show that he's a strange bird, not someone we should execute, because he's crazy as a loon."

Kaczynski was transferred Thursday from the Federal Correctional Facility in Dublin, south of San Francisco, back to the Sacramento County Jail, where he had been held for more than a year after his arrest. He was moved to Dublin in September after complaining of excessive noise and insomnia at the Sacramento jail.

Chief Deputy U.S. Marshal Michael Nelson said the accused Unabomber, who has abandoned his shaggy, mountain-man beard in favor of a neatly trimmed style, spends most of his time in his single cell quietly reading books from the jail library. "He's a very prolific reader. He goes through books pretty quickly," said Nelson. He did not say what books Kaczynski favors, but said, "He can have anything he requests if it's available in the library."

Nelson said Kaczynski's cell is isolated from the other prisoners and that he is under a 24-hour watch. He is allowed out of his cell for an hour of exercise a day in an exercise yard – alone – and is a "model prisoner," the chief deputy marshal said. Nelson said Kaczynski's lawyers have indicated the defendant plans to attend the trial sessions daily, and that he will be driven by car the five blocks from the County Jail to the federal courthouse.

Kaczynski's two lead defense attorneys are Quin Denvir, a federal public defender who has won reversals of three guilty verdicts in death penalty cases, and Judy Clarke, who convinced a South Carolina jury that Susan Smith did not deserve the death penalty for drowning her two sons in a lake. Smith was sentenced to life in prison.

After months of legal wrangling, however, Kaczynski last week refused to submit to examination by the prosecution's psychiatrists. Such a refusal may serve to bar the defense from offering testimony from its own experts as to Kaczynski's mental state, but it would not necessarily preclude other witnesses – family members for example, including his brother David, who alerted authorities that Kaczynski might be the Unabomber – from telling jurors they believe that the hermit is mentally impaired.

It is unknown whether Kaczynski's brother or mother will be called to testify. David Kaczynski has said in interviews that he is tormented by the idea that his decision to turn in his brother to save the lives of other potential victims may end up costing his brother his life. The accused Unabomber has refused to meet with his family since his arrest.

In the government's own trial brief filed with the court last week, prosecutors laid out their case against Kaczynski – and it was clear from the documents that the government will seek to show that Kaczynski was a cold, calculating murderer who sought, in words from his diary, as quoted by the prosecution, to "kill someone I hate" and to gain "revenge on society." They will attempt to show that the defendant knew

exactly what he was doing as he patiently handcrafted his bombs, often with intricate carvings, and picked victims who somehow offended his anti-technology sensibilities.

The former mathematics professor at the University of California at Berkeley is charged, specifically, not with murder, but with transporting and mailing explosive devices with the intent to kill and injure.

Though the government seeks to prove that Kaczynski is the elusive Unabomber, who over a period of 18 years beginning in 1978 mailed or placed 16 bombs that killed three victims and injured another 29 persons, he is charged in the Sacramento trial with only four bombings between 1985 and 1995, which resulted in two deaths and two serious maimings.

Most damaging to Kaczynski's defense are voluminous diaries, handwritten journals, experimental logs and an uncompleted autobiography seized in the recluse's primitive cabin near Lincoln, Mont., when he was arrested on April 3, 1996. A few excerpts from the written material have found their way into the court record, though the bulk of the material has not been made public.

During a motions hearing in September, lead prosecutor Robert J. Cleary called the journals "the backbone of the government's case."

Consisting of thousands of pages, many of them in three-ring binders and some written in Spanish or in an easily deciphered code, the writings include explicit admissions – indeed, prideful boasts in many instances – to each of the Unabomber's attacks, according to prosecutors.

Many of the writings, Cleary acknowledged, are innocent entries like "you know, my day in the woods, what I ate for dinner – that sort of thing." But a smaller set of documents about a foot high contains devastating admissions, Cleary told U.S. District Court Judge Garland E. Burrell Jr., who will preside at the trial. In court filings, the prosecution said the diaries "reflect, in both word and deeds, the defendant's hatred of anyone who interferes with the way he wants to live his life and his anti-technology views."

Among other things, the government said, the notes reflect the writer's experimentation with bomb components, his method of construction of at least seven explosive devices and chilling commentary on the success of his attacks.

One journal entry offered by the prosecution was made shortly after the Unabomber's first fatal victim, computer store owner Hugh Scrutton, 38, was killed in Sacramento by a device left behind his store. "Experiment 97," the entry reads, "Dec. 11, 1985, I planted a bomb disguised to look like a scrap of lumber behind Rentech computer store in Sacramento. According to San Francisco Examiner, Dec. 20, the 'operator' . . . was killed, blown to bits."

Another entry, from 1980, describes the mail bomb attack on the former president of United Airlines, Percy Wood: "After complicated preparation I succeeded in injuring the Pres of United A.L. but he was only one of a vast army of people who directly or indirectly are responsible for the jets."

Although many of the diary entries referred to in the government's filings have been edited for tactical and legal reasons, prosecutors said the documents clearly show Kaczynski's "desire to kill, his joy when he does so and his frustration when he does not."

Since the defense team has already agreed to a stipulation that virtually all of the handwritten documents found in the cabin were written by Kaczynski, its efforts at keeping them out of the trial have centered on arguments that they are uniquely personal papers that should be held inadmissible on the basis of the First, Fourth and Fifth amendments to the Constitution that, respectively, protect free expression and safeguard against illegal search and seizure and self-incrimination. Allowing the use of such intimate writings against Kaczynski, they argued, would be "psychologically comparable to prying words from his lips."

Judge Burrell so far has refused to suppress the diaries, saying that "voluntarily prepared" documents are not protected by the Fifth Amendment even if they are private diaries that are self-incriminating. He also ruled that the defense had failed to demonstrate that the use of the diaries would violate Kaczynski's Fourth Amendment rights because there clearly was probable cause to search for and seize the diaries.

Despite Burrell's general ruling, Kaczynski's lawyers have indicated they intend to fight a rear guard action against the use of the diaries by demanding evidentiary hearings as the writings are introduced piecemeal by the prosecution.

Michael Mello, a Vermont Law School professor who has consulted with defense attorney Judy Clarke on the issue, said, "They have to, because what is so intuitively clear to me, as a keeper of diaries for 15 years, is a logical line of demarcation between diaries and other kinds of papers."

Unlike letters, which are intended to be read by at least one other person and which are often written with the knowledge that they could be shared among many, diaries usually are written with the intent of never being shared, Mello said. "There is something special about a diary," he said, "and there is something especially unsettling to the American spirit in the government sending a man to death . . . on the basis of his diary."

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