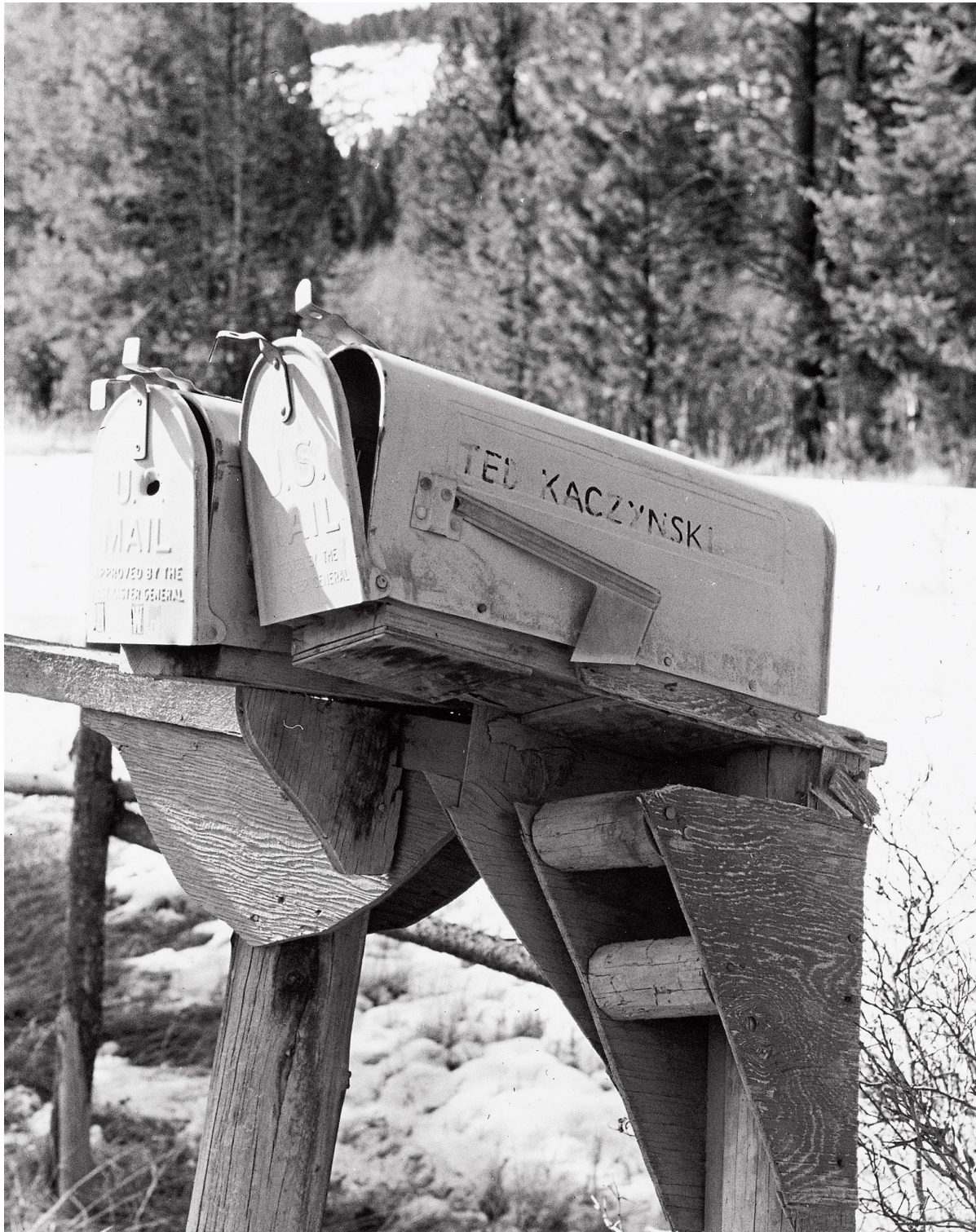


Defending the Unabomber

A look behind the scenes of Theodore Kaczynski's trial raises
questions about sanity and justice

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The ending—abrupt, unsatisfying, badly understood—befitted the strange, unhappy saga of Theodore J. Kaczynski. He was spared a gruelling trial, the judgment of

an elaborately chosen, “death qualified” jury, and a strong chance of being condemned to death, but he was saved from all this by a bizarre alliance of lawyers he was trying to fire, a family he had renounced, psychiatrists he did not trust or respect (and in some cases had never met), a federal judge who had drastically restricted his right to counsel and seemed to fear (with reason) the trial to come, a press convinced that he was a paranoid schizophrenic, and, finally, a legendary death-penalty opponent skilled at “client management” (management, that is, of Kaczynski). Much of the story took place entirely out of public view. Kaczynski pleaded guilty, in late January, to all charges, and forswore all appeals, in exchange for a life sentence. In our overburdened courts, defendants are often left with little choice but to plead guilty, forfeiting their right to a trial in exchange for a lesser sentence. But Ted Kaczynski was not just another defendant denied his day in court.

He was, of course, the Unabomber, the self-styled scourge of big business, big science, behavioralism, genetics, computer science, and all things high-tech and harmful to the environment. For seventeen years, starting in 1978, he had terrorized the country, killing three people and injuring twenty-three—all with small, handmade parcel bombs. The longest, most expensive manhunt in American history had produced no real suspects. Then, in 1993, the bomber wrote to the *New York Times*, identifying himself as a member of an anarchist group called the Freedom Club, and in 1995, in the most extraordinary manuscript submission in the history of publishing, he prevailed upon the *Washington Post* and the *Times* to publish a thirty-five-thousand-word essay, “Industrial Society and Its Future,” by promising to stop the killings.

The Manifesto, as it became known, denounced modern technology and urged a revolution in the name of Wild Nature. Jefferson Morley, an editor at the *Post*, described it as “a romantic, turgid, disturbing document—but so were the ‘Port Huron Statement’ (which marked the birth of the New Left in 1962) and ‘Witness,’ Whittaker Chambers’s autobiography in 1952 (which marked the birth of the modern Right).” Most Americans didn’t read it, and no doubt considered its author nothing more than an evil coward.

David Kaczynski, a social worker in Schenectady, New York, read the Manifesto on the Internet, and thought he recognized his older brother’s language and ideas. After considerable agonizing, David got in touch with the F.B.I., and Ted, then fifty-three, was arrested on April 3, 1996, at his cabin, near Lincoln, Montana. The Freedom Club turned out to have a membership of one.

Nineteen months later, jury selection began in Sacramento, California, for a federal trial on charges related to four bombings, two of them fatal. The prosecution, over bitter objections by David Kaczynski, had decided to seek the death penalty. Because the F.B.I. had found an overwhelming trove of evidence in Kaczynski’s cabin—it included a completed bomb, a carbon copy of the Manifesto, and thousands of pages of journals meticulously recording his work on the earlier bombs—the guilt phase of the trial was effectively moot, and the lawyers were already looking to the penalty phase, when jurors would be asked to consider a death sentence. For six weeks, Kaczynski watched

with great interest as his lawyers grilled the prospective jurors. Here were the ordinary, technology-oppressed Americans in whose name he had conducted his long campaign of terror against “the technician class.” Kaczynski, dressed in cable-knit sweaters and striped dress shirts, looked trim and professorial, and nothing like the shaggy, half-mad hermit whose image was flashed around the world after his arrest. He conferred amiably with his attorneys—Quin Denvir, the federal defender for the Eastern District of California, and Judy Clarke, a renowned trial lawyer and federal defender. Clarke had recently saved Susan Smith—the woman who drowned her two young sons in South Carolina—from execution. Lanky and attractive, Clarke often had her hand on Ted’s shoulder.

But the appearance of harmony at the defense table was misleading. In truth, a profound conflict had been growing between Kaczynski and his various lawyers virtually since his arrest. They believed that his best, if not his only, hope of escaping a death sentence was to claim that he was mentally ill. He staunchly refused to do so. This clash of wills and world views eventually erupted into open court. But before he was yanked offstage Kaczynski’s quietly fierce performance raised fundamental questions about a defendant’s right to participate in his own defense, the role of psychiatry in the courts, and the pathologizing of radical dissent in both the courts and the press.

He was a bookish, brilliant boy, born in 1942, the first child of ambitious, self-educated parents. Reared in a working-class Chicago suburb, he skipped two grades, had few friends, liked to shut himself up in his attic room. He was a nerd’s nerd, shy and arrogant, socially doomed. For playmates he was forced to rely on David, who was seven years younger, popular, and easygoing.

At sixteen, Ted entered Harvard on a scholarship. He lived in Eliot House, where big, swaggering rich boys ruled the roost. Ted, physically slight and badly dressed, ate alone. He graduated at twenty, then went to the University of Michigan, at Ann Arbor, where his considerable gifts as a mathematician emerged. He began to publish in scholarly journals, and his dissertation, on “boundary functions,” won a prize.

Still, after he left for a teaching job at Berkeley, almost nobody in Michigan remembered him. Ann Arbor and Berkeley were hotbeds of the student antiwar movement, which was then reaching its peak. Kaczynski apparently remained uninvolved. In a 1968 photograph taken at Berkeley, he’s short-haired and clean-shaven, and is wearing a coat and tie. Though not a popular teacher, he continued to publish impressively and was on track for tenure in one of the world’s top math departments. Then, in 1969, he suddenly resigned, telling his family that he didn’t want to teach math to engineers who would use it to harm the environment.

It seemed that, for all his indifference to student leftism, Kaczynski despised the status quo. He and David, who graduated from Columbia in 1970, bought 1.4 acres together in Montana, in high country just west of the Continental Divide. And that was where Ted lived—except for a few forays into the outside world to earn money at menial jobs and, later, to deliver bombs—for the next twenty-five years. He built a simple, ten-foot-by-twelve-foot cabin with two small windows, a woodstove, no electricity, no

plumbing. He grew a garden, built a root cellar, hunted rabbits and deer, exchanged vegetables with neighbors, didn't file a federal tax return. He rode an old bicycle five miles into the town of Lincoln for supplies, and spent a lot of time at the public library there. His parents visited him each summer for the first few years. David came several times, and then, emulating Ted, moved to his own patch of remote wilderness, in the west Texas desert. But Ted's relations with his family became increasingly strained. In voluminous letters, he blamed them—particularly his mother, Wanda—for his shyness, his loneliness, his anxiety, his anger, even his height (he was shorter than David). Their visits ceased. He sometimes refused to open their letters. The family came to believe that Ted was seriously disturbed.

There was never any real doubt that Kaczynski was legally sane. But his lawyers believed that the degree of his culpability for his crimes could be made to depend on his psychiatric classification—the more serious his diagnosis, the less his culpability.

They called him a “high-functioning” paranoid schizophrenic. Medically speaking, that would place him at the least-ill end of the spectrum of schizophrenia, where obvious symptoms are often absent. The primary evidence of his illness seemed to be in his writings (most of which have never been made public), in his family's stories, and in his way of life. Dr. Karen Froming, who specializes in neuropsychological assessment, gave Kaczynski a battery of tests that “revealed deficits of a mild nature in the areas of frontal and cerebellar motor functions, microsomia or smell functions, cognitive processing efficiency, visual memory, and affective processing.” These deficits were consonant, she said, with paranoid schizophrenia. They did not, however, prove it. What really indicated such a diagnosis to her, Dr. Froming told me, were Kaczynski's systematized paranoid delusions.

I asked what those delusions were.

“Anti-technology,” Dr. Froming said simply. “His view of technology as the vehicle by which people are destroying themselves and the world.” The Manifesto, in other words.

Predictably, the prosecution's psychiatrists disagreed. Dr. Froming's test findings “scream geek, not schizophrenic,” Dr. Park Dietz said dryly. Dr. Dietz, a forensic psychiatrist who often works for the government in high-profile cases, cautioned me that he could not diagnose Kaczynski's condition without interviewing him, and that he had been prevented from doing so, despite a court order. (According to the defense team, the problem was that Kaczynski refused to see a government doctor, whereas the government thought that the real problem lay with Kaczynski's lawyers, who did not want him interviewed by experts who might find him not psychotic.) Dr. Dietz had, however, read Kaczynski's journals, and had not found them to show schizophrenia. “They're full of strong emotions, considerable anger, and an elaborate, closely reasoned system of belief about the adverse impact of technology on society. The question always is: Is that belief system philosophy or is it delusion? The answer has more to do with the ideology of the psychiatrist than with anything else.”

Kaczynski's own ideology gave psychiatrists short shrift. "The concept of 'mental health' in our society is defined largely by the extent to which an individual behaves in accord with the needs of the [industrial-technological] system and does so without showing signs of stress," he wrote in the Manifesto. He himself, despite his elaborate effort to withdraw from society, showed plenty of signs of stress—insomnia, anxiety, and depression—and even sought help from therapists in Helena, Great Falls, and Missoula. In his journals he recorded his fear that his campaign against industrial society would ultimately be dismissed as the work of a "sickie," observing that "many tame, conformist types seem to have a powerful *need* to depict the enemy of society as sordid, repulsive, or 'sick.'" He noted the old Soviet practice of suppressing dissidents by labelling them mentally ill.

So the paradox, as his case neared trial, could not have been lost on Kaczynski. His own lawyers, talented idealists intent on saving his life, were striving mightily to label him mentally ill. The prosecutors, meanwhile, intent on having him executed, were ready to accept him as the dead-serious dissident and violent anarchist that his writings said he was. "The prosecution believes he was acting on a genuine political program," Dr. Froming said, with some wonderment. "In fact, he wasn't. What it was was a real need to protect himself from an extremely frightening world." Dr. Xavier Amador, a schizophrenia researcher at Columbia University, who did not examine Kaczynski but, at the request of the defense team, did review his writings and submit a report to the court, specializes in "unawareness of illness." The circularity of the reasoning in Dr. Amador's report, in which Kaczynski's disdain for psychiatrists and his firm rejection of the idea that he was schizophrenic were offered as expert evidence that he was schizophrenic, presumably made for some exquisitely annoying reading for Kaczynski in his cell.

Dr. Froming's report was probably not much more fun. She wrote that his journals undermined his claim, made during their interview, that he had chosen to live as a hermit: "The explanations for his chronic social isolation which he offered during the testing were clearly contradicted by Mr. Kaczynski's writings that document his despair over both his inability to establish normal human relationships and his inability to comprehend why he has been unable to do so." It was as if being proudly independent ("autonomy" is much extolled in the Manifesto) were incompatible with being sad, lonely, and shy—almost, indeed, as if sadness and loneliness were the equivalent of mental illness.

The psychiatrists retained by Kaczynski's lawyers stood ready to treat his crimes as symptoms (the illness committed them, not Kaczynski, Dr. Amador explained to me), which was really the legal and ethical heart of the matter. To a lay observer, there was, in truth, a mountain of evidence, lying mostly in plain sight, of complete madness. The defendant had apparently—and, indeed, would soon admit he had—spent seventeen years building ingenious little bombs and sending them around the country to kill and maim people he had never met. Mild deficits in affective processing seemed, somehow,

beside the point. And yet the bombings were the crimes charged. They could not be the evidence of illness.

While this might seem a perverse distinction before the law, its real implications are more disturbing still, for it suggests what few of us like to acknowledge—that sane, rational people may commit violent, terrible acts, including serial murder. (Dr. Dietz, who seems almost to relish this thought, helped convince a jury that Jeffrey Dahmer, the Wisconsin cannibal, was not insane.) Ted Kaczynski, in his refusal to plead mental illness, was not only refusing to recant his ideas but also refusing to recant his acts. He had done what he had done for the reasons he had given. And he was apparently prepared to explain those reasons to the jury and the world. He even had, virtually from the beginning, a lawyer who was ready and well qualified to step in and help him make his deeply subversive case.

J. Tony Serra had got in touch with Kaczynski shortly after his arrest. Serra was the real-life inspiration for a 1989 film, “True Believer,” starring James Woods, about a flamboyant radical attorney who defends unpopular clients. Known for courtroom eloquence, a long gray ponytail, Salvation Army suits, and a marijuana habit, Serra has built an enviable record of legal victories, often in cases that other lawyers wouldn’t touch. He has represented Black Panthers, White Panthers, members of the Symbionese Liberation Army. He has twice won freedom for men already condemned to death in California. He works pro bono much of the time, and that was what he proposed to do for Kaczynski. He has, he says, the highest regard for public defenders, who, like him, spend their careers representing the poor and the despised. “I respect them and I love them,” he told me. “They are my allies.” But Kaczynski’s lawyers were intent on saving his life with a defense that their client did not want. “I am of a different ilk,” Serra told me. “I have always served the objective of the client. A person has the right to defend himself in the manner he chooses, even if it means death, as long as he appreciates the risk. Kaczynski appreciated and understood all the ramifications and wanted a trial based on an ideological defense.”

As Serra envisioned such a defense—which could probably be argued only during the penalty phase of the trial—Kaczynski would explain himself to the jury, using the Manifesto. Eminent political scientists would be called to interpret the essay, paragraph by paragraph. The defense case would be based on what Serra called “imperfect necessity—you commit a crime to avert a greater disaster that you believe will occur,” though others may find your belief unreasonable. “It doesn’t eliminate culpability,” Serra noted, “but it lowers culpability.” Serra was confident that Kaczynski’s case against technology would be perfectly comprehensible to the jurors. “It’s not crazy, and it’s not difficult to understand. And if the hole in the ozone opens and kills us all, he’ll be proved right!”

While federal death-penalty guidelines do not include ideology in the list of “mitigating factors,” they do contain an “other factors” clause, and Serra thought he had a reasonable chance of persuading at least a couple of jurors to vote against execution. (Denvir and Clarke were counting on “impaired capacity”—a mitigator when

“the defendant’s capacity to appreciate the wrongfulness of the defendant’s conduct or to conform conduct to the requirements of the law was significantly impaired.” Any defense would have to contend, of course, with various countervailing “aggravating factors,” including “substantial planning and premeditation” and “grave risk of death to additional persons.”) Serra, who has represented his share of disturbed clients, did not consider Kaczynski mad. Indeed, he told a reporter, “This guy is a genius. He sees things we can’t see and understands things we can’t understand. Maybe we should give him the benefit of the doubt.”

Kaczynski’s court-appointed legal team took a very tough stand against Tony Serra. Serra has declined to describe their contacts in any detail, beyond acknowledging that the statement “His blood will be on your hands” was liberally employed. Scharlette Holdman, a veteran death-penalty “mitigation investigator” and a key member of the defense team, was less shy. “I couldn’t believe that Tony was coming to a capital case and exploiting the vulnerability of a mentally ill patient in that emotionally charged environment,” she told me. Holdman, who is not a lawyer, has earned a formidable reputation by managing appeals in scores of capital cases in Florida. *Newsweek* once dubbed her “The Mistress of Delay” for her success in preventing executions. Now working from San Francisco, she is usually appointed to cases on a confidential basis, and prosecutors often know little or nothing about her role. Though the fact that she was working with the Kaczynski team went completely unreported, she was involved almost from the beginning. And the Serra matter really seemed to enrage her. “There are always those attorneys, like moths to a light, who come to a famous case out of their own self-interest, nothing to do with the defendant’s interest,” Holdman told me. She knows well that the best chance of saving the life of a convicted capital defendant usually lies in constructing a sympathetic life story, often one involving significant mental impairment, and that such a story must often be prepared without the client’s coöperation. I first tracked her down, in fact, at a conference of the capital-defense bar where the workshops included “Dealing with Difficult Clients” and “Detecting Mental Illness.” Holdman was offering “Defusing Bombs Before Penalty Phase” (pun most likely intended).

Holdman had been described to me by a former colleague as a specialist in “client management,” and she spent many hours a week with Kaczynski during the long months of trial preparation. She was one of the links between Kaczynski and the outside world, which included his political supporters—an amorphous but vivid crew of anarchists and enviro-radicals, who gathered primarily on the Internet. Holdman even persuaded key figures in that world to shut down their support campaigns as the trial approached, lest they disrupt delicate plea negotiations. Holdman’s counsels to Kaczynski himself have not been disclosed, but he was obviously kept firmly in the dark for as long as possible about the extent of his team’s plans to depict him at trial as mentally ill. The analogy usually employed by hard-liners in this area is that the brain surgeon doesn’t ask the brain-damaged patient how he wants his surgery done.

For many months, Kaczynski's attention was actually focussed elsewhere—on the possibility that a defense motion to suppress the evidence found in his cabin, because of inadequacies in the F.B.I.'s search warrant, might succeed, and that the case against him might therefore collapse. Even after this motion was denied, he apparently held out hope that an appeal might succeed, and that he might yet walk free, back to Montana. Although Tony Serra says he believes that Kaczynski did everything he could to engage his services long before the trial but was prevented from doing so by his defense team, it seems more likely that Kaczynski was not yet convinced that it would be necessary for him to dismiss his lawyers. If he did, in fact, believe that he had any chance of walking free from jail, he was, of course, severely deluded (not clinically deluded but blinded by unrealistic hopes, however conceived and encouraged). No judge in America would have set him free. Still, Kaczynski always attached, in negotiations with the government, a major condition to his offer of a guilty plea—that he be allowed to pursue his appeal on the search of his cabin. Not a prayer, said the prosecution.

Kaczynski was evidently not seeing much of the press coverage of his case, where his lawyers' plan to offer a "mental defect" defense was being reported. Indeed, it was only in the second half of November, with jury selection well under way, that Kaczynski discovered that his lawyers were planning to introduce testimony from the psychiatrists who had diagnosed his condition as paranoid schizophrenic. He was furious, and protested vehemently. And that was when, with the trial itself rapidly approaching, a game of legal chicken began. In Scharlette Holdman's experience, it was the client who normally flinched in these situations. This client did not flinch.

David and Wanda Kaczynski were in a horrendous position. David had always loved his brainy older brother, the proud purist, though the two of them had had some painful clashes. Ted once worked briefly in a factory where David served as his supervisor. Ted had gone on a date with a female co-worker, and when she told him she didn't want to see him anymore he posted copies of a nasty limerick about her in various places in the factory. After David told him to cut it out, Ted stuck a copy on the machine where David worked, daring him to do something about it. David fired him.

David made his last visit to Montana in 1986. He and Ted continued to write, but their letters grew increasingly rancorous, particularly when the subject was Ted's mental health. David and his wife even discussed what might be necessary to have Ted involuntarily committed. In November of 1995, in the last letter David received, Ted wrote, "I am not 'suffering, sick or discouraged,' and I don't know what 'indications' you think you have that I am so. But if you want me to get sick, all you have to do is keep trying to communicate with me, because I get just choked with frustration at my inability to get our stinking family off my back once and for all, and 'stinking family' emphatically includes you."

David shared this letter, and others like it, with the *Washington Post* last year as part of what the *Post* called "a campaign by the Kaczynski family to persuade prosecutors not to seek the death penalty." The idea of the campaign was, of course, to portray Ted as mentally ill. After making the excruciating decision to turn in his

brother to the F.B.I., David had felt betrayed when the authorities, breaking a promise, revealed his role to the press, thereby causing him, his wife, and his mother to be cruelly besieged by reporters, and also causing what might be a permanent rift with Ted. But that betrayal was small beer compared with the government's subsequent decision to seek the death penalty.

David and Wanda stayed impressively "on message" even then, according to a key member of the defense team. With the help of Anthony Bisceglie, a media-savvy Washington lawyer, they had learned how to use the press. In the months after Ted's arrest, they gave long interviews to the *New York Times* and the *Washington Post*. David talked at length to the *Sacramento Bee*, painting a vivid picture of his brother as a complex idealist who was helplessly mentally ill. In September, 1996, mother and son went on "60 Minutes," and Wanda, who was well spoken and sympathetic, and was nearing eighty, told a horrifying story. At the age of nine months, she said, Ted had been hospitalized for a severe case of hives. In those days, babies in that hospital were not allowed to be touched by family members. Ted was strapped to a table, naked and screaming, for a week. When she finally got him back, Wanda said, he was unresponsive, "completely limp." And she felt that all his later problems had stemmed from that early trauma.

David and Wanda worked with Ted's lawyers, meeting with the mental-health experts and with a family historian, for the defense planned to describe a family dynamic that included, according to court transcripts, "multiple generational . . . mental illnesses." How much Ted knew of this collaboration is hard to gauge. David did hear that Ted had seen the *Times* interview and a transcript of their "60 Minutes" appearance, and that he was livid about alleged inaccuracies as well as the general violation of his privacy.

On January 5th, the day Ted's trial was scheduled to start, Wanda and David bravely turned up in the federal courtroom in Sacramento, taking seats in the front row which the defense had reserved for them. Ted had seen neither of them in more than a decade. But when he came in, a few minutes later, striding briskly across the room to his spot at the defense table, not five yards from where his mother and brother were sitting, he turned and sat down without a flicker of acknowledgement.

The courtroom was jammed that morning, with reporters, spectators, surviving victims of the Unabomber, and victims' families. Judge Garland E. Burrell, Jr., took his seat on the bench, but before he could say a word Kaczynski himself spoke up, in a calm, reedy voice. "Your Honor, before these proceedings begin, I would like to revisit the issue of my relations with my attorneys," he said. "It's very important." Apparently, Kaczynski, after weeks of semipublic wrangling with his lawyers about a mental-health defense, had just learned that they were planning to go ahead with it in the guilt phase, despite his wishes. For her opening statement, Judy Clarke had brought along two photographs of her client—one the scrubbed young Berkeley professor and the other a spectral hermit's face. Kaczynski and his lawyers retired with the judge to

his chambers, and there Kaczynski declared his interest in replacing his lawyers with Tony Serra.

Proceedings were delayed for two days while Burrell attempted to resolve the conflict. Contact was made with Serra, and his willingness to represent Kaczynski pro bono was confirmed. During the subsequent public hearing, Kaczynski again spoke up, clearly and politely stating his wish to retain Serra. Judge Burrell, who was said to be haunted by the thought of poor Lance Ito, undone in the national spotlight by bunglers and demagogues, denied the request for new counsel. Serra would need many months to prepare, he said. The jury had already been selected, and witnesses were waiting to testify. The request was “untimely.” Glaring at Kaczynski, Burrell went on to try to settle, once and for all, the dispute between the defendant and his lawyers by ruling that it was the lawyers’ choice, rather than the defendant’s, whether or not to present a “mental status” defense. This ruling caught all parties by surprise, and the next morning the prosecution expressed its concern that the ruling might contain “grave appellate error” and cause a guilty verdict to be thrown out by a higher court. The Judge also seemed to have second thoughts about his ruling.

Kaczynski, in any event, had just electrified the courtroom with another announcement—made this time through an ashen Judy Clarke—that, since he had been denied both the counsel of his choice and the control of his own defense, he would exercise his Sixth Amendment right to represent himself. Clarke explained that Kaczynski, while he had no enthusiasm for doing so, felt he had no other choice. It was the “unendurability” of listening to his lawyers describe him in public as mentally ill that had forced this decision, she said—an inability to endure which she considered a symptom of his mental illness. (Would a sane man, passionately committed to his ideas, more easily listen to himself being described by his own representatives as insane?) On the day that Kaczynski made this request, David Kaczynski told me later, “I thought he had to be absolutely the most lonely person in the world. I thought, Here he is rejecting lawyers who care about him just as he rejected the family who loved him. I felt intense grief.”

The Judge deferred the question of self-representation by ordering a competency examination. A Bureau of Prisons psychiatrist, Dr. Sally Johnson, would determine whether Kaczynski was competent to stand trial and competent to represent himself. Since the standard in such matters is low, there was little doubt that Kaczynski would be found competent. Indeed, Judge Burrell himself, who had been dealing with Kaczynski through seventeen months of pretrial hearings and motions, had said of him a few days before, during an in-camera discussion, “I find him to be lucid, calm. He presents himself in an intelligent manner. In my opinion, he has a keen understanding of the issues. He has always seemed focussed on the issues in his contact with me. His mannerisms and his eye contact have been appropriate. I know there’s a conflict in the medical evidence as to whether his conduct, at least in the past, has been controlled by any or some mental ailment, but I’ve seen nothing during my contact with him that appears to be a manifestation of any such ailment. If anything is present, I cannot detect it.”

The news media could detect it, though. As Kaczynski's conflict with his lawyers escalated, delaying the start of the trial, a cartoon image of Ted as a wild-eyed madman gained currency among reporters, pundits, and TV talk-show hosts. Kaczynski became the stuff of kitsch. Even the *Times* ran a story, in early January, that began, "Theodore J. Kaczynski, the hermit standing trial on charges that he is the Unabomber, has told his defense team that he believes satellites control people and place electrodes in their brains. He himself is controlled by an omnipotent organization which he is powerless to resist, he told the lawyers." These lines were a collage of fragments from various sources pasted together to produce remarks that were never made and, if they had been, would almost certainly have been shielded by attorney-client privilege. *Newsweek*, in a January cover story about new research on genes and the brain, wrote, "Mental health, in this new view, is a continuum. At one extreme might be a Ted Kaczynski, the Unabomber suspect described by his brother's lawyers as obsessive-compulsive, out of touch with reality, delusional, antisocial and paranoid."

"Described by his brother's lawyers"?

Mental health *is* a continuum. There are many shades of schizophrenia, for instance, and Kaczynski may suffer from some version of the disease. But he is nowhere near any clinical extreme. There is no credible evidence that he hears voices, has hallucinations, or is "out of touch with reality"—unless reality is defined as having conventional social and political views. There was clearly something comforting, though, in the familiar picture of an ordinary crackpot—and something frightening about the physically meek, homegrown terrorist who stubbornly refused to accept not just established authority but modernity itself. Fears that the trial might become a "circus" filled countless editorials. (This awful possibility was also referred to as a political "show trial," though that term properly refers, of course, to a sham trial staged by a state to punish its enemies, and not to an argument offered by a revolutionary in the dock.) It wasn't easy to picture Kaczynski turning his trial into agitprop theatre—he is no Abbie Hoffman—but it was becoming clear that he simply would not recant his stark, apocalyptic view that science and progress were a colossal mistake.

There were a few—a very few—dissenting voices. Michael Mello, a law professor (and former capital defender), wrote, in a column for the *Sacramento Bee*, "Ted Kaczynski's lawyers, however well-intentioned and paternalistic, are not 'assisting' him. They are controlling him. They are strong-arming a man on trial for his life." Mello compared Kaczynski's legal situation to that of John Brown, the leader of the famous raid at Harpers Ferry—a violent attempt to foment a slave rebellion in Virginia in 1859. Brown's refusal to allow his lawyers to raise an insanity defense during his trial was respected, and his execution helped bring about the end of slavery. James Q. Wilson, the conservative social scientist, wrote, in a *Times* Op-Ed, of the Manifesto, "The argument is subtle and carefully developed, lacking anything even faintly resembling the wild claims or irrational speculation that a lunatic might produce. . . . If it is the work of a madman, then the writings of many political philosophers—Jean Jacques Rousseau, Tom Paine, Karl Marx—are scarcely more sane."

The only writer who got to see Kaczynski was John Zerzan, a veteran anarchist from Oregon. Here is a sample of the coverage that Zerzan was giving Kaczynski, taken from the magazine *Anarchy*:

Enter the Unabomber and a new line is being drawn. This time the bohemian schiz-fluxers, Green yuppies, hobbyist anarcho-journalists, condescending organizers of the poor, hip nihilo-aesthetes, and all the other “anarchists” who thought their pretentious pastimes would go unchallenged indefinitely—well, it’s time to pick which side you’re on. . . .

Some, no doubt, would prefer to wait for a perfect victim. Many would like to un-learn what they know of the invasive and unchallenged violence generated everywhere by the prevailing order—in order to condemn the Unabomber’s counter-terror.

But here is the man and the challenge before us.

Anarchists! One more effort if you would be enemies of this long nightmare!

Think for yourself. Act on your own.

Those who wanted to know what Kaczynski was thinking were forced to rely on the few people who had contact with him—still, primarily, his lawyers, who naturally tended to emphasize his terrible mental illness. (It was so much worse than an outsider could know, they claimed. Anyone who doubted its power was stupid or heartless, or both.) But Tony Serra, too, was still in touch with him, and what he told me was that Kaczynski “believed that the public defenders (who are paid by the government and therefore ‘sup from the same trough’ as the prosecutors) were conspiring . . . to silence him and prevent him from espousing the ideology that ‘explained’ the homicides. He believed that it was ultimately the right and the left hands, so to speak, of government seeking the same objective in chilling his opportunity to be heard.”

Dr. Sally Johnson proved to be the drama’s *deus ex machina*. A lifelong employee of the federal prison system, she is currently the associate warden for health services at a prison in Butner, North Carolina. Like Dr. Park Dietz, she has testified for the prosecution in many high-profile trials, including Jim Bakker’s and John Hinckley’s. She has a reputation for fairness, although Vince Fuller, one of Hinckley’s attorneys, has said that the government “picks her when they want a certain result, and she gives it to them.”

Dr. Johnson spent a week interviewing Kaczynski and reading his journals and other writings and the reports of the other doctors. As had been expected, she found Kaczynski competent to stand trial and to represent himself. But, according to those who read her sealed report to the court, she also offered a “provisional” diagnosis of paranoid schizophrenia. This was good news for Kaczynski’s lawyers and bad news for the prosecutors, and it was to have a decisive impact on the proceedings.

Court reconvened on January 22nd. Although Dr. Johnson had found the defendant competent to represent himself, and both the defense and the prosecution, asked for their views, had filed briefs conceding that he had a constitutional right to do so, Judge Burrell went out on a judicial limb and denied Kaczynski's request. This request, too, he said, had been "untimely." Kaczynski would need time to prepare—never mind his offer to start trial immediately—and a new jury would have to be selected. The Judge even accused Kaczynski from the bench of trying to manipulate the court and delay his trial. The upshot: Kaczynski would have to proceed with his present lawyers, would have to listen to himself being described as mentally ill, and would have to listen to the most embarrassing passages in his journals read out in court, aware that they would be broadcast around the world as evidence that he was a "sickie," a despicable laughingstock, certainly not someone whose ideas should be taken seriously. That was when Kaczynski copped a plea.

It was a curious *dénouement*. The government had been widely criticized for not accepting previous offers of a guilty plea, and had been accused of pursuing the death penalty for political reasons. But the plea offers had always been conditional. The prosecutors wanted at least a clean win—a life sentence, without possibility of release—and not further litigation about the constitutionality of their search of the cabin. So they had refused to consider anything but an unconditional plea. And that was what Kaczynski suddenly offered them, only minutes after the Judge refused his request to represent himself.

In truth, the government's chances of getting a death sentence had started to look less bright. The prosecutors knew, after the Judge's rulings, that they would be facing at trial not only the formidable pair of Denvir and Clarke but the even more formidable pair of David and Wanda. The Kaczynskis, that is, had made it clear that they intended to sit, in obvious agony, behind Ted throughout the trial, and to testify about his many years of deepening mental illness. What jury would not be moved by such a spectacle?

Judge Burrell, for his part, had reason to be pleased with this abrupt conclusion. His painful struggle, primarily with Kaczynski, for control of his courtroom was suddenly over, and his controversial rulings restricting the defendant's right to counsel would not face appeal. Instead, they had helped to force the settlement of the case. There was, of course, something odd about his flying a psychiatrist in from North Carolina for a week to determine the defendant's competency to represent himself and then, when she found him competent, ruling that he could not represent himself. But the defense was not about to point out this bit of judicial fickleness. And, when the prosecutors suddenly changed course and supported this ruling, it seemed that the fix was definitely in. Nobody—at least, nobody with any power—wanted this trial to go ahead.

The final scene, that afternoon, was appropriately weird. The Judge asked Kaczynski a set of basic questions—age, education, occupation—to which he gave answers that were both banal and riveting. "I was once an assistant professor of mathematics. Since then I have spent much time living in the woods in Montana and have held a variety of unskilled jobs." (At one point, the Judge used one of his favorite words, a miserable

legalism, saying, “Is that what you are referencing?” Kaczynski replied, “Yes, Your Honor. That is what I am referring to.” It was as if some lexical divinity had parted the clouds, particularly when the Judge then replied, “Are you referring to anything other than that?”) Next, the prosecutors laid out some of the facts that they would be prepared to prove at trial. The recitation lasted nearly an hour. It was gory—shrapnel piercing a heart, hands blown off—and what was particularly horrifying were decoded “lab notes” from Kaczynski’s journals, in which he recorded the results of his “experiments.” “Excellent” was his judgment on the swift, bloody death of Hugh Scrutton, a young computer-rental-business owner. “A totally satisfactory result,” he wrote of the murder of Thomas Mosser, a New Jersey father of two.

After each horror story—and all sixteen bombings were described—the Judge asked Kaczynski, “Do you agree with the factual representation just made by the Government’s attorney?”

And Kaczynski answered, in a clear, unreadable tone, “Yes, Your Honor.”

What was, in a way, the most disturbing story involved no fatalities. It was an attempt, in 1979, to bring down an airliner with seventy-two passengers aboard. Kaczynski had used a barometer-triggered device, and it had succeeded only in setting some mailbags on fire and forcing an emergency landing; in a letter written years later, the Unabomber expressed relief that the airline bomb had failed, since its target had been too indiscriminate. By then, he had laid out the political coordinates of his campaign, seeking to justify, in the Manifesto, his attacks on computer scientists, geneticists, behavioral psychologists, and public-relations executives. But one of his motives for planting a bomb on the airliner, and nearly killing all those people, had apparently been pure peevishness. Hypersensitive to noise, Kaczynski hated the jets that periodically flew over his home in Montana.

The worst journal entry, certainly, concerned the 1985 maiming of John Hauser, an Air Force pilot and Berkeley graduate student in electrical engineering:

I was relieved to read what kind of guy sprang the trap. I had worried about possibility that some young kid, undergrad, not even computer science major, might get it. But this guy is clearly typical member of the technician class. Might even be one of the guys that has flown those fucking jets over my home. This gives great relief to my choking, frustrated anger and sense of impotence against the system. At same time, must admit I feel badly about having crippled this man’s arm. It has been bothering me a good deal. This is embarrassing because while my feelings are partly from pity, I am sure they come largely from the training, propaganda, brainwashing we all get, conditioning us to be scared by the idea of doing certain things. It is shameful to be under the sway of this brainwashing. But do not get the idea that I regret what I did. Relief of frustrated anger outweighs uncomfortable conscience. I would do it all over again.

Later, Kaczynski wrote:

Further search of newspapers yielded . . . Hauser's arm was severed or nearly severed. Tips of three fingers torn off. Use of arm and hand will be permanently impaired. To what degree not known. Hauser father of two kids. He was working toward Ph.D., contrary to other paper that said Masters. He was afraid his "dream" was ruined. Dream was to be an astronaut. Imagine a grown man whose dream is to be an astronaut. I am no longer bothered by this guy partly because I just "got over it" with time, partly because his aspiration was so ignoble.

Watching Kaczynski listen to these "representations" of his crimes and his private, crabbed confessions, I struggled, without success, to comprehend the combination of such viciousness and such meekness in one man. He really was the mail bomber par excellence. He was also no stranger to ignoble ambition—his own being, apparently, a career of guilt-free killing and maiming of innocent people. I was reminded of a passage from an undated letter he had written to his brother:

As you know, I have no respect for law or morality. Why have I never committed any crime? (of course, I'm not talking about something like shooting a grouse out of season now and then. I mean felony type stuff—burglary, arson, murder, etc.) Lack of motive? Hardly. As you know, I have a good deal of anger in me and there are lots of people I'd like to hurt. Risk? In some cases, yes. But there are other cases in which I can figure out ways of doing naughty things so that the risk would be insignificant. I am forced to the humiliating confession that the reason I've never committed any crime is that I have been successfully brainwashed by society. On an intellectual level I have only contempt for authority, but on an animal level I have all too much respect for it. My training has been quite successful in this regard and the strength of my conditioned inhibitions is such that I don't believe I could ever commit a serious crime. Knowing my attitude toward psychological manipulation of the individual by society, you can imagine how humiliating it is for me to admit to myself that I have been successfully manipulated.

On the Internet, where discussion groups are still devoted to topics like "Ted's Anger," there was much debate and rending of garments in the aftermath of the plea agreement. My own favorite posting was "He admitted to his crimes without shame, unlike that pussy McVeigh."

While some commentators speculated that Kaczynski had in fact brilliantly manipulated the judicial process, the defense psychiatrists were nonplussed by this image of Kaczynski as mastermind. What they saw, as the trial approached, was a spectacle of panic, with Kaczynski becoming "extremely disorganized," to quote Dr. Froming. A report by his jailers that Kaczynski, on the night after his request to retain Serra was

denied, had apparently tried to hang himself in his cell seemed, if true, to favor the psychiatrists' view of his mental state. I saw it differently. Kaczynski struck me the way he had struck Judge Burrell, as lucid and well focussed, particularly when one considered that he was on trial for his life. He was just hopelessly trapped. He had tried each of his very few options, and then had taken the best deal he could get.

It is reported that while Kaczynski awaits formal sentencing, which will come in May, he has been writing furiously. Speculation about what he is writing has included a "Manifesto II," a detailed rebuttal of the psychiatric reports that found him mentally ill, and a desperate effort to withdraw his guilty plea, arguing that it was coerced. He has also been in touch with Tony Serra, who has declined to assist with any effort to withdraw his plea. The slight possibility that such an effort might succeed, gaining Kaczynski a trial, which might then result in a death sentence, is presumably too awful for even the True Believer to contemplate.

I talked to David Kaczynski the day after the plea agreement was reached. He was full of praise for the Judge, for Ted's defense team, for Dr. Sally Johnson. He and his mother were immensely relieved, he said, but also immensely sad. "There is just so much that the public hasn't seen of Ted," he said. "He is so different from the outline the prosecution sketched of him. He is the most complex individual I have ever known—truly a mystery—and I thought that long before I ever imagined that he might be involved in attacks on people." Ted had always been at war with the idea that he had a conscience, David explained. "You could hear it in the journal entry they read in court about John Hauser. He really believes that conscience comes from brainwashing. It's not the way most of us see our socialization. . . . He is committed to a kind of rationality that ultimately doesn't create coherence within his own psyche. I guess there are people who really can dissociate—people in organized crime, or government leaders who commit great violence, and still sleep well at night. I don't think Ted ever slept well."

I thought of Ted's cabin, which his lawyers had brought to Sacramento on a flatbed truck, planning to show it to the jury and ask the question: "Would anyone but a certifiable lunatic choose such a primitive abode?" What they did not bring, of course, were the forests and rivers and mountains Kaczynski loved.

David started talking about the times he and Ted had spent together in Montana when Ted first lived there. He recalled with particular fondness a long backpacking trip. "I mean, it was long for me," he said, laughing softly. "A couple of weeks. We went way back in the mountains, where we found this pristine little lake. It seemed like no other people had been there. The lake was full of cutthroat trout, and this was before I became a vegetarian, so we just caught trout every day and that was what we ate. We actually camped on a little island. We waded out there. I guess we were thinking of bears."

"Bears can wade," I said.

"That's true," he said. "They can."

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The Ted K Archive

William Finnegan & Rick Wilking

Defending the Unabomber

A look behind the scenes of Theodore Kaczynski's trial raises questions about sanity
and justice

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