

# **Brother Asserts Prosecutors Misled Him in Unabom Case**

William Glaberson

November 23, 1997

David Kaczynski, who turned in his brother as the suspected Unabomber, said in an interview on Friday night that he had been misled by investigators and prosecutors into believing that they saw Theodore J. Kaczynski as a mentally ill man who would "be happier in jail."

Mr. Kaczynski spoke bitterly about what he described as a cynical reversal by the Government in recent days as his brother's psychiatric condition has become the central issue at his trial here for four of the string of bombings that began in 1978.

The prosecutors, who are seeking the death penalty, have conducted an intense effort to bar lawyers for Theodore Kaczynski from asserting that he is mentally ill. They say that is the only appropriate sanction because he refused to be examined by prosecution psychiatrists.

But David Kaczynski said Federal agents working on the case told him before his brother was arrested in 1996 that reading the Unabomber's lengthy manifesto on why he felt compelled to carry out the bombings had convinced them that they were "not dealing with a political terrorist but with a disturbed individual."

This week the prosecutors said that defense assertions that Mr. Kaczynski was a paranoid schizophrenic who is pathologically afraid of psychiatrists might be mere "trial tactics." And, referring to him as they would a terrorist, they quoted from Mr. Kaczynski's journals to cast him as a man who was trying to avoid being labeled a "sickie" to protect the image he sought to give of himself as an anti-technology crusader.

"Their actions," David Kaczynski said in a telephone interview, "suggest to me that they are looking for a potential result, which is to put a disturbed, sad, lonely, isolated person to death without regard for his mental state and without regard to the really principled cooperation of his family in protecting the public and trying to help someone they love."

Mr. Kaczynski has made no secret in the past of his anguish over the Justice Department's decision to seek the death penalty against his brother. But the remarks were his most combative and they foreshadowed the extraordinary role he is expected to play at the trial when he is to plead for the life of the brother he turned in.

His presence in the witness box will most likely be the most potent part of the defense case, posing the rhetorical question of whether anyone would ever again turn in a disturbed and dangerous brother in a case in which he could face the death penalty. The bombings caused three deaths and injured more than two dozen people. The four bombings for which Mr. Kaczynski is on trial took two lives.

Leesa Brown, a spokeswoman for the Justice Department at the trial here, said prosecutors would not respond to David Kaczynski's assertions. But in their legal filings the prosecutors have said Theodore Kaczynski put his mental status in issue when his lawyers said they wished to present psychiatric evidence at the first phase of the trial, which is to determine guilt or innocence.

If Mr. Kaczynski is convicted, a second, or penalty phase, would be held to determine whether he should be sentenced to death, life without the possibility of release or some lesser penalty.

The judge in the case indicated on Friday that he might permit some psychiatric evidence. But, speaking after the judge's remarks, David Kaczynski said the Government's stance on the issue convinced him that he had been manipulated when Government agents and the chief prosecutor in the case, Robert J. Cleary, assured him that they would treat his brother as a person who might be suffering from a mental illness.

Instead, Mr. Kaczynski said, "the Government has sought death at any cost without making an earnest effort to discover the truth about Ted's mental state."

The defense has said it would argue that Mr. Kaczynski suffers from a "mental defect," which made it impossible for him to form the intent necessary to be held criminally responsible. If the jury agrees, he could be acquitted. In their legal filings, the prosecutors have suggested that because the defense opened the possibility of trying to win an acquittal in a case with such vast evidence implicating the defendant, prosecutors had no choice but to fight the claim of mental illness.

In the interview — with his lawyer, Anthony Bisceglie, listening — David Kaczynski said he met with Mr. Cleary about six weeks after his brother was arrested at his Montana cabin in 1996. He said Mr. Cleary assured him that "before making a decision to seek death or not to seek death, a fair and impartial evaluation of Ted's mental health" would be conducted.

Mr. Kaczynski said he now believes no thorough psychiatric evaluation of his brother was ever conducted by the Government. Mr. Kaczynski said that part of the reason he reached such a conclusion was that no psychiatric experts hired by the prosecution had interviewed him or his mother. He said that the two of them could have provided valuable insights into his brother's history and mental deterioration.

He said that at the meeting he told Mr. Cleary his brother might well resist psychiatric examinations, which he has, because he had long denied any psychological problems. Mr. Kaczynski said Mr. Cleary acknowledged that he understood that. Mr. Cleary also assured him, Mr. Kaczynski said, that prosecution psychiatrists had said that the face-to-face psychiatric evaluations that the prosecutors now seek would not be necessary.

"Mr. Cleary promised an earnest effort to pursue justice in this case," Mr. Kaczynski said, "that this would not be a game of win or lose. I am no longer persuaded by his assurances. He wants to execute my brother. It's doubtful that he wanted to earnestly learn the truth about Ted's mental condition."

Selecting his words carefully, Mr. Kaczynski recalled difficult conversations with Federal agents who wanted his cooperation in the weeks before and after the arrest in Montana. One agent working on the investigation, he said, talked to him about his distress and in many of the conversations assured him that by turning in his brother, Mr. Kaczynski was not only protecting innocent potential victims but Theodore Kaczynski as well.

The agent, Mr. Kaczynski said, told him: " 'I know you want to help your brother. It is very clear he has been in extreme psychological distress for a long time.' And she said I should consider that 'Ted would probably be happier in jail.' "

Neither David Kaczynski nor Mr. Bisceglie has ever said that they had any express promise that the Government would refrain from seeking the death penalty. But Mr. Kaczynski's comments showed that he feels he was led to believe that the investigators and prosecutors shared his concern about his brother.

Mr. Kaczynski said that Mr. Cleary "broke his promise to me." Mr. Cleary allowed him to think, Mr. Kaczynski said, that the Government accepted his warnings that his brother was seriously ill and needed psychiatric help.

Mr. Kaczynski said he had been disappointed, puzzled and dismayed by the turn that the prosecution of his brother had taken. But, when he was asked if that made him regret the step he took when he went to the Federal Bureau of Investigation, he answered quickly.

"I regret every day of my life the pain Ted is suffering right now," he said. "And I regret the Government's decision to seek the death penalty, which I think is a grossly unjust decision. On the other hand, I realize I did what I had to do."

The Ted K Archive

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The New York Times, November 23, 1997, Section 1, Page 22. <[www.nytimes.com/1997/11/23/us/brother-asserts-prosecutors-misled-him-in-unabom-case.html](http://www.nytimes.com/1997/11/23/us/brother-asserts-prosecutors-misled-him-in-unabom-case.html)>

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