

Testimony of David Kaczynski
before the
Maryland Commission on Capital
Punishment
Annapolis, Maryland
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I have always been opposed to the death penalty. Although I do not believe that killing a human being is inherently immoral, I do believe that taking a human life can only be justified by necessity - self-defense, a just war, or the use of lethal force by police to stop a violent criminal. If we can protect society by incarcerating murderers, including life imprisonment without the possibility of parole, then we should not use the legal system to carry out a program of unnecessary killing.

Up until 1995, my views on capital punishment were purely theoretical. I never imagined that one day I'd have a personal confrontation with the capital punishment system. But that fateful day came in September of 1995 when my wife Linda suggested that my estranged older brother Ted might be the notorious "Unabomber."

At first, I simply couldn't believe that Ted was capable of harming anyone. Although I believed that Ted was disturbed - he was eventually diagnosed with schizophrenia - I'd never seen any signs of violence in him. But as Linda and I pored over the Unabomber's published Manifesto, I began to confront the reality that my brother, Ted Kaczynski, might be the Unabomber.

We soon found ourselves facing a terrible dilemma where any choice we made could easily result in someone's death. If we did nothing, Ted might kill again. On the other hand, if we handed my brother over to the FBI, he could be executed. I had to ask myself what it would be like to go through life with my own brother's blood on my hands.

At the time, it disturbed me greatly that the price of doing the right thing might be my brother's execution. I wanted to make a life-affirming choice, but the death penalty put me in a position where any choice I made could lead to someone's death. In order to protect innocent life, I had to potentially sacrifice the life of my mentally ill brother. I also had to grapple with the effect of the death penalty on someone else I loved: our elderly mother Wanda. I experienced first hand what the murderer and the executioner both fail to see - that the person who is killed is usually survived by family members who suffer much, much more. I feel deeply grateful - and also tremendously lucky - that Ted not get the death penalty. But I can tell you with absolute certainty that if he had been executed, he would not have been the person who suffered the greatest agony. That person would have been our mother Wanda.

Our decision to turn Ted in was based on the belief that we were morally obliged to do whatever we could to stop the violence. We held on to a desperate hope that Ted might be exonerated by the FBI's investigation. But we were resolved to stop the violence no matter what. Ten years later, we stand by our decision. It brought an end to the Unabomber's 17-year reign of terror which left three people dead and many others injured. We probably saved lives. We would also like to believe that we set a positive example for other families who might face similar dilemmas in the future.

Over the next two years, I witnessed first hand how the criminal justice system actually works. The US Justice Department promised to protect our privacy. Instead we were swamped with media attention on the day of Ted's arrest and for months afterwards, and personal information we shared in strict confidence with the FBI ended up in the *New York Times*. Prosecutors solemnly promised to make a "fair and impartial" evaluation of my brother's mental condition. Instead they used a notorious "hired gun" legal expert to provide psychiatric testimony in my brother's case. Fortunately, my brother will spend the rest of his life in prison. But Ted's life wasn't spared because he's any sicker than one hundred or so seriously mentally ill people that our government has executed since 1992. His life was spared because he had great lawyers.

I began to see the criminal justice system for what it is: an imperfect system run by fallible human beings. From the moment of a suspect's arrest to the condemned man's final breath, the process is influenced by so many variables and so many subjective judgments that inconsistent results are practically guaranteed. The entire judicial system presumes a level playing field, but too often justice gets lost in the shuffle. As a result, we have a death penalty that disproportionately impacts the poor, the black, and the mentally challenged.

For me, it is a real honor to testify with my dear friend Bill Babbitt, whose story will open your hearts and, I hope, your eyes as well. Our personal experiences are practically identical, except for one thing: the outcome of that long and agonizing judicial process. My brother is alive and Bill's brother is dead.

It's probably an empty exercise to debate whether capital punishment is ever justified. Reasonable people can disagree about this philosophical question. But no reasonable person who truly understands how the current system works can, in my opinion, claim that it represents justice. Who lives and who dies should not depend

on one's wealth, one's given mental ability, one's ethnicity or race, or anyone's personal whim or bias.

Do we want a death penalty that is applied unfairly and risks executing the innocent? A perfect system is unattainable, but a marginally better system would cost much more and execute fewer people. Doesn't it make more sense to put our limited resources into effective law enforcement and into helping victims of violence? Do we want more lawyers arguing in court, or more cops on the street? Do we want longer trials, or better victim services? Do we want to kill an unlucky few (not necessarily the worst), or do we want to help troubled kids before they end up hurting someone? In the real world, these are the choices we must make. These are the choices you, as members of this Commission, face through your long and careful deliberations.

Bill and I made *our* choices when we turned in our brothers to the authorities. In doing so, we made difficult yet responsible, life-affirming choices. The same deeply-held ethical values that guided those choices now prompt us to speak against the death penalty. We made sacrifices to protect people we didn't know. In doing so, we also made a statement about the kind of world we want to leave to future generations - a world where violence is truly a last resort; a world where decency and humanity come first.

Thank you. We are deeply grateful for this opportunity to share our experiences and views with the Commission.

Respectfully submitted by,

David Kaczynski

David Kaczynski is Executive Director of New Yorkers Against the Death Penalty. He is the brother of convicted "Unabomber" Theodore Kaczynski. David's brother was charged capitally by the US Department of Justice after David turned him in to federal authorities, thus ending one of the longest and most expensive criminal investigations in US history.