

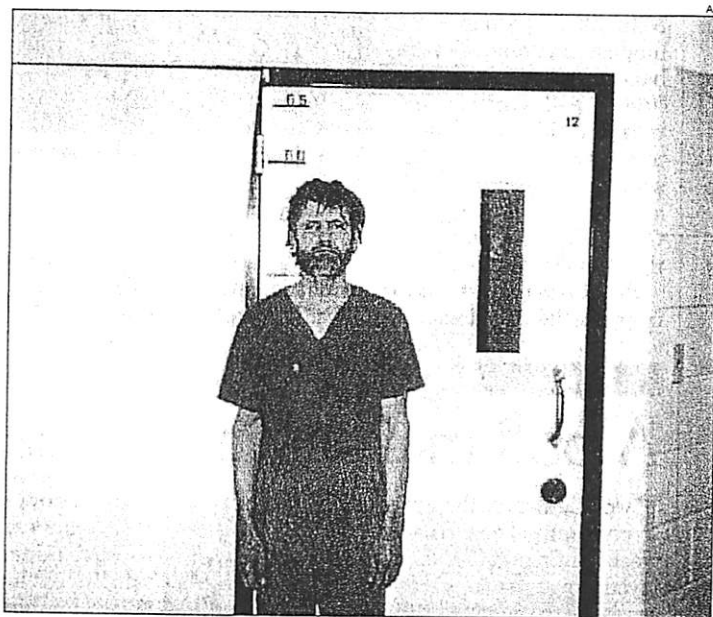
BY GORDON WITKIN

What does it take to be crazy?

Lawyers for alleged Unabomber Theodore Kaczynski, whose trial begins this week, have for now abandoned efforts to portray him as a delusional paranoid schizophrenic. That decision—forced by Kaczynski himself—has agonized his already agonized family, who turned in their brother and son on what they believed were assurances that he would not face the death penalty but would instead receive the psychiatric help he so obviously seemed to need.

Few people would dispute that a man who is said to have lived in a shack for some 20 years, rarely bathing, while sending bombs to strangers, has lost touch with reality. Yet so hostile have Americans become to the possibility that someone might "get away" with murder that a jury would probably have rejected an insanity plea for Kaczynski even if Kaczynski had been willing to make it.

The insanity defense traces its history to an 1843 assassination attempt on British Prime Minister Robert Peel, but our current understanding seems to turn on John Hinckley Jr.'s acquittal, by reason of insanity, in the shooting of President Ronald Reagan. The huge public outcry that ensued led Congress to restrict the use of the insanity defense in federal court, but it has also obscured the fact that the insanity defense is seldom used and rarely successful. An eight-state study in 1991 found that the defense was used in fewer than 1 percent of all criminal cases, and succeeded in only about a quarter of those. Those trends are reflected in some of the decade's highest-profile cases: Jeffrey Dahmer murdered and dismembered 15 men and boys, eating some of their remains; a jury found him sane enough for prison. Lawyers argued that John Salvi III was a "sick young man" who couldn't be criminally responsible for the shooting deaths of two women at suburban Boston abortion clinics; a jury ignored the plea and sentenced him to life. Millionaire John du Pont argued he was legally insane when he shot Olympic wrestler David Schultz; he was found guilty of third-degree murder. Defendants whose insanity pleas are accepted often wind up spending more time locked up in secure hospitals than they would have spent in prison had they been found



Accused Unabomber Theodore Kaczynski after his arrest last April

guilty. Hinckley, after all, is still involuntarily committed to St. Elizabeth's Hospital in Washington, D.C.

Just what, then, are people still so angry about? For one thing, we just can't seem to shake the idea that the insanity defense is used all the time. In one poll, respondents wrongly claimed that all sorts of famous (and convicted) criminals—Richard Speck and Charles Manson among them—had successfully employed the defense. Other answers are perhaps reflections of the times. As a society, we've grown tired of the excuse du jour, of everyone claiming victim status because of previous hardship, real or imagined. One of the Unabomber's victims, Yale com-

puter science professor David Gelernter, has insisted that anything less than the death penalty for Kaczynski would be a sign of national weakness. And as Prof. Michael Perlin, of New York Law School argues, most of us think we innately *know* who's crazy, and anyone who looks more normal than, say, Anthony Hopkins in *The Silence of the Lambs*, just doesn't qualify.

About 17 states now allow a verdict of "guilty but mentally ill," which holds a defendant responsible while providing for mental health treatment in prison. Some legal scholars like Perlin, however, argue that "guilty but mentally ill" is essentially a fraud that does little to guarantee treatment but a lot to assuage society's conscience. At least three states—Montana, Idaho, and Utah—have abolished the insanity defense entirely, but there's some evidence that those who would have used the plea are now just found incompetent to stand trial and end up in the same hospitals. This of course calls into question just what all the "reform" has accomplished. Some people—Theodore Kaczynski perhaps among them—really *are* crazy. ■