

Waving good-bye to juveniles

By Thomas Smith

He was waiting for the next question. He was nervous, tapping his feet, rubbing his knees. But that was expected. He was the victim of a brutal confrontation, and was about to tell his story in court, from the witness stand, not 15 feet from the accused. Then the question, from the prosecutor: "If you could, please show the court your injuries."

It was church quiet. He stood in the box, turned his back to the judge, and lifted his shirttail. A large white bandage stuck to his lower back. All eyes focused on this bandage, like spokes leading to a hub. He lifted it, and faces twisted. The judge's eyebrows arched. Three knife wounds. Three gaping holes that weren't stitched, weren't bloody, and weren't even oozing. They were like three bloodless tunnels, each capable of fitting a roll of pennies. The holes were arranged like an isosceles triangle, with the skin around each hole curved inward. The holes belonged to Thomas Metcalf.

Mr. Metcalf testified that he was stabbed on his neighbor's porch. He said there was an argument. With a little pushing. And when he turned to leave, three stabs in the night. By someone he didn't know. He fell down on the porch and the accused ran away, but not too far. He was caught by an LPD officer near the scene. While being placed under arrest, he blurted: "I stabbed the dude three times! . . . The dude got what he deserved! . . . I didn't want to kill him . . . I just wanted to hurt him." Got what he deserved? A knife in the back?

Mr. Metcalf dropped his shirt and sat down. Faces relaxed; the judge's eyebrows lowered. "Who did this to you?" the Assistant Prosecutor asked. "He did," he said, pointing to James A. Zarka, seated at the defense table. Mr. Zarka stared back hard, not smiling, swiveling in his seat. He was only 15. And he was being charged as an adult: Assault With Intent To Do Great Bodily Harm, a 10-year felony. He wasn't even old enough to drive, but was now facing the prospect of having an adult felony conviction and being sentenced to prison.

Where did he go wrong? Where was his life going? The short answer was Judge William E. Collette of Circuit Court. The case of Mr. Zarka illuminates some vexing problems with charging juveniles as adults, and it serves as an interesting prism into the juvenile justice system. Should Mr. Zarka have been charged as an adult? Or as a juvenile, which he is?

When I first became an assistant prosecutor with Ingham County, I'd hear other APAs say, "Let's waive the Juvie." Or even more directly, "Waive him up!" which often reminded me of "Book him, Danno." Being a neophyte, I was thinking, Waive what? His rights? Good-bye? Well, as I found out, as in the case of James Zarka, it *did* mean good-bye. It meant good-bye to the juvenile system, and its softer way of dealing with criminal offenders, and *hello* to the adult system. "Waiving" in the parlance of prosecutors meant charging juveniles as adults; more to the point, it meant waiving the exclusive original jurisdiction of Probate Court. (Since Jan. 1, 1998, because of the new Family Court legislation, Probate Court no longer has exclusive jurisdiction over juvenile delinquency matters; Family Court, a division of Circuit Court, now has that jurisdiction; since Jan 1, Probate Court only handles wills and estates, guardianships, conservatorships, emancipations, and involuntary treatment cases.)

Two Systems And A Bridge

In our criminal justice system, there is true age discrimination. It divides those accused of crimes into two groups: juveniles and adults. A line is drawn between these two groups not at age 18 or 21, as some may think, but between the years of 16 and 17. Those 17 and older at the time of an offense are treated as adults. Those under 17 are treated as juveniles.

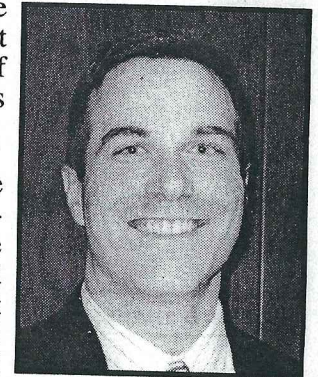
This bright line cleaves the young from the old, the lucky from the unlucky, and it serves as a dividing line between two separate but unequal systems of justice, two systems which have vastly different objectives and outcomes. In punishment. In deterrence. In stigma.

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Nevertheless, these two systems, for a variety of reasons, will continue to remain in place. Unless "waived up," someone like James Zarka will remain the exclusive property of Family Court, under the care and feeding of Mother Lenience.

But all is not dreary. There's a bridge that connects the two systems. It's called The Waiver Process, and 13 months ago it became significantly stronger and wider. On Jan. 1, 1997, Governor Engler's juvenile crime package became effective. In this package, the legislature significantly revamped the old waiver statutes. But wait. *Revamped* isn't quite the right word. They crushed them. Reconstructed them. Rewrote them. In the end, they made it easier for prosecutors to successfully waive a juvenile. The legislature placed more weight on two important factors: the seriousness of the offense and a juvenile's prior record.

Also, the legislature created another waiver-like tool which leveled the playing field and widened the bridge: Adult Designation. This new tool gave prosecutors a third way to charge juveniles as



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adults, and to scare them straight. All this legislation, effective in Michigan's 83 counties, made some prosecutors delirious with glee. Many waited years for this. But another thing happened locally, in Ingham County, that coincided with the passing of the legislation. Stuart Dummings III climbed the ziggurat and became the Ingham County Prosecutor on Jan. 1, 1997. How coincidental. A new prosecutor with new criminal legislation. Don't think the two didn't notice each other. Notice? Mr. Dummings embraced the new legislation like a long lost son. And he hasn't let go since. "There's been a significant increase in the amount of juveniles being waived since Mr. Dummings became our Prosecutor. This is partly because of the changes in the waiver statutes, but also because of his philosophy," said Karen Reidsma, a 16-year Juvenile Court Officer with Ingham County Family Court.

Significant increase? Since Jan. 1 we've been cranking out waivers like cookies. Our statutes need oil. Within the past year, there's been a giant sucking sound in Probate Court: the sound of juveniles getting waived up. No such sound is in Circuit Court. Griping, whining, and blaming is what you hear in Circuit. All from a passel of juveniles, who are bumping and elbowing each other, wiggling for room. Juveniles are clearly not happy. But a lot of people *are*, especially Mr. Dunnings.

Automatic Waiver

In Michigan, there are three ways to charge a juvenile as an adult. One way is known as an "Automatic Waiver." MCL 769.1. It's the most restrictive for charging purposes, for it has strict age and offense requirements. It can only be used when the juvenile is either 14-, 15-, or 16-years-old at the time of the offense, and the charged offense is a "specified juvenile violation," as defined under MCL 600.606; MCL 712A.2(1); MCL 725.1(a); and MCL 764.1(f).

These "specified juvenile violations" are all felonies, and most are life offenses. And if multiple charges are issued, only *one* has to be a "specified juvenile violation." *People v. Veling*, 443 Mich 23 (1993). Under this type of waiver, the juvenile is treated as an adult straight from the beginning. A prosecutor authorizes a complaint and warrant, not a juvenile petition, and the case commences in District Court, not Family Court.

Once in District Court, the juvenile (now a defendant) gets arraigned, bond is set, an attorney is appointed, and a date for the preliminary examination is set within 14 calendar days from the date of arraignment, just like an adult. Once probable cause is established—both for the offense being committed and the person

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even with the waiver process, that "Once a juvenile, always a juvenile." To some degree, they would be right.

Us? We just keep waiving good-bye.

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