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JUVENILE JUSTICE: THE NATHANIEL ABRAHAM MURDER CASE

Eugene Arthur Moore*

Once in a while, a case will come along that has such an enormous impact on the law that it is certain to draw attention. One such case was the Nathaniel Abraham murder case—a case involving the sentencing of a young eleven-year-old child in a system designed for older juvenile offenders, which demonstrated some of the novel and important issues facing the juvenile courts today. With the onset of such issues, the Juvenile Justice System has developed into a complex field of vital importance. Investing in the Juvenile Justice System allows us to invest in our future. Although frequently viewed as a social issue, rehabilitation of youthful offenders should become a goal for the legal profession as well as for members of the public.

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Judge Moore is the author of "Delinquency Prevention Sourcebook" and "Youth Service Bureaus," published by the American Judicature Society; "Supplement to the New Justice for Children and Families," "The Story of Camp Oakland, Inc.," "1984 Michigan Court Rules—Probate and Juvenile," and "Waiver to Adult Court," Michigan Bar Journal and the co-author of "Marriage, Divorce and Separation" and "Probate Practice" Pocket Supplements. In addition to his written works, Moore has acted and continues to act in numerous different capacities, many in the field of juvenile law, including former Adjunct Professor of Juvenile Law and Probate Procedure at Detroit College of Law; former member of the Governor's Crime Commission and State of Michigan Youth Advisory Commission; member of the Governor's Committee on Children's Justice; member of the Board of Fellows for the National Center for Juvenile Justice; member of the National Council of Juvenile and Family Court Judges (and Past President); member of the Michigan Probate Judges Association (and Past President); member of the National College of Probate Judges; a member of the State Bar of Michigan (and Former Chairman of the Juvenile Law Committee, Criminal Law Section Council, and Crime Prevention Center Committee); member of the Oakland County and American Bar Associations; Faculty Member at the National College for Juvenile and Family Court Judges and Michigan Judicial Institute; Vice-Chairperson of the STARR Commonwealth; former Chairman of the Birmingham Youth Assistance Committee; Past President of the Children's Charter of the Courts of Michigan, Inc.; Former Chair of the Board of Directors for Big Brothers of Oakland County; Former Chairman of the Board of Governors, Cranbrook Schools; Advisory Director of Crossroads for Youth; Past President of the Boys' Club of Pontiac; and former member of the Board of Trustees for the Cranbrook Educational Community. Throughout his career, Judge Moore has been honored with the following accolades: Gerald G. Hicks—Child Welfare Leadership Award; Distinguished Service Award—Birmingham Jaycees; Meritorious Service to the Juvenile Courts of America by a Judge—NCJFCJ; Boys' Club Medallion—Boys' Club of America; North Oakland NAACP Judicial Award; Distinguished Alumni Award—Cranbrook Schools; Child Advocacy Award—STARR Commonwealth; and the Arthur E. Moore Champion of Children Award.

I would like to thank my staff attorney Alicia Y. Dyer for the excellent editing she did for this Essay. She graduated cum laude from University of Detroit Mercy School of Law in 2001 and has previously served as a research attorney and judicial law clerk at the Michigan Court of Appeals.

With proper education, training, and commitment to the field of juvenile justice, we can begin to preserve, protect, and improve our most precious assets—our youth.

INTRODUCTION

In Pontiac, Michigan, in 1997, eighteen-year-old Ronnie Green, Jr. is shot and killed. Eleven-year-old Nathaniel Abraham is charged with his murder. Under the Probate Code, the Oakland County Prosecutor charges Nathaniel Abraham as an adult in Family Court with the crime of first-degree murder.¹ He is tried by a jury and convicted of second-degree murder.² The sentence for the juvenile's second-degree murder conviction is governed by an Order of Disposition of Juvenile,³ which proposed three options: Nathaniel Abraham can be (1), sentenced as a juvenile where he must be released from jurisdiction at age twenty-one, (2) sentenced as an adult (with the same punishment as any adult—any term of years, up to life in prison), or (3) given a “blended or delayed” sentence where he would be sentenced as a juvenile but at any time before the child turns twenty-one, the Court may conduct a new hearing and then sentence the child as an adult.⁴ This Essay provides an analysis of the three sentencing options and concludes that in order to protect children and preserve the unique functions of the Juvenile Justice System, Nathaniel Abraham should be sentenced as a juvenile. Part I of the Essay is a modified version of the actual sentencing opinion for thirteen-year-old Nathaniel Abraham delivered by the Court on January 13, 2000. Part II is a version of the Court's closing opinion delivered on January 18, 2007, releasing twenty-one-year-old Nathaniel Abraham from the custody of the Juvenile Court. Part III is a reflection on the Nathaniel Abraham murder case and its impact on the Juvenile Justice System.

1. MICH. COMP. LAWS § 712A.2d(1) (2007).

2. *Id.* § 750.317.

3. *Id.* § 712A.18(1)(m).

4. *Id.* § 712A.18(1)(n) (1996) (current version at Mich. Comp. Laws § 712A.18(1)(m) (2007)).

I. SENTENCING OPINION DELIVERED JANUARY 13, 2000⁵A. *History of the Juvenile Justice System*

The Trial is over and now we face an equally important decision: What should the sentence or disposition be for Nathaniel Abraham? The decision will have an enormous effect on both Nathaniel and on our society.

In 1999, we celebrated the 100th anniversary of the founding of the Juvenile Court in America. It started in 1899 in Cook County, Chicago.⁶ The movement's roots were in England during the Industrial Revolution.⁷ During the Industrial Revolution, two groups of people joined hands to fight the abuse of children.⁸ One group opposed the criminal system, which punished children convicted of crimes the same as their adult counterparts.⁹ The second group was concerned about labor standards and the use of children as chattels, as children were worked eighteen hours a day, housed in large dormitories, and given little food and no schooling.¹⁰ It was the protection of children from these abuses that brought about the Cook County (Chicago) Juvenile Court.

Reforms that began in Cook County made their way into Michigan shortly thereafter. In the nineteenth century, the Michigan Legislature decided to punish girls convicted of crimes differently than women and built the Girl's Training School at Adrian.¹¹ The Boy's Training School in Lansing, which similarly punished boys differently than men, followed.¹² Gradually, there developed the *Parens Patriae Doctrine*¹³ where the Juvenile Judge became the "substitute parent" for the child. A Juvenile Code was adopted separate from the Criminal Code.¹⁴ The first paragraph of the Juvenile Code

5. See Sentencing Opinion, *People v. Abraham*, No. 1997-063787-FC (Oakland County Probate Court Jan. 13, 2000).

6. SAMUEL M. DAVIS, *RIGHTS OF JUVENILES: THE JUVENILE JUSTICE SYSTEM*, § 1:1 (2d ed. 2003).

7. Mirah A. Horowitz, *Kids Who Kill: A Critique of How the American Legal System Deals with Juveniles Who Commit Homicide*, 63 *LAW & CONTEMP. PROBS.* 133, 140 (2000).

8. See Susan D. Hawkins, Note, *Protecting the Rights of Competent Minors in Litigated Medical Treatment Disputes*, 64 *FORDHAM L. REV.* 2075, 2076 (1996); see also Barry C. Feld, *The Transformation of the Juvenile Court—Part II: Race and the "Crack Down" on Youth Crime*, 84 *MINN. L. REV.* 327, 331–36 (1999).

9. Feld, *supra* note 8, at 331–36.

10. *Id.*

11. See Act of May 31, 1879, No. 133, 1879 Mich. Pub. Acts 133 (repealed 1949).

12. See Act of May 5, 1925, No. 185, 1925 Mich. Pub. Acts 185 (repealed 1974).

13. Literally meaning "in parent of his or her country," this term has been used to describe the "state in its capacity as provider of protection to those unable to care for themselves." *BLACK'S LAW DICTIONARY* 1144 (8th ed. 2004); see also DAVIS, *supra* note 6, § 1–2.

14. See *MICH. COMP. LAWS* §§ 712A.1-712A.32 (2007).

mandated that Juvenile Court Judges provide the “care, guidance, and control” that the child should have received in his own home.¹⁵

To this end, the Michigan Legislature created a new Juvenile Court, separate from the Criminal Court, to ensure that the child was properly cared for.¹⁶ Each child was to receive the individualized treatment necessary to change his or her behavior so the child could grow into a successful adult.¹⁷ Society was less concerned about the child’s guilt for the crime committed and more focused on rehabilitation because the Court supposedly provided a better world for the child than the child received in his own home.

Juvenile Court advocates recognized that because children were different psychological and emotional beings than adults, they should be treated accordingly.¹⁸ Due to their youth and immaturity, children’s characters and behaviors could still be molded and they could be rehabilitated.¹⁹

Rehabilitation became the byword of the Juvenile Court. Few of those involved in the juvenile system wanted to lock up children for life. Society recognized that in order to protect itself from future criminal activity committed by grown children, it was necessary to rehabilitate those children placed in its custody.²⁰ Unfortunately, often because of inadequate resources, our Juvenile Courts failed to change many delinquents’ behavior.²¹ As a result, many people began to advocate that our Juvenile Court not try to change a child unless we were even more certain that the child was guilty. Under this view, only if clearly guilty could the juvenile courts impose incarceration and even probation on a child.²²

The new deference for the child’s freedom initiated an expansion and recognition of children’s rights. In the 1960s and 1970s with the landmark cases of *Kent*²³ and *Gault*,²⁴ the U.S. Supreme

15. *Id.* § 712A.1(3).

16. *See* Act of June 27, 1907, No. 684, 1907 Mich. Pub. Acts 684.

17. *Id.* § 3.

18. Kevin Saunders, *A Disconnect Between Law and Neuroscience: Modern Brain Science, Media Influences, and Juvenile Justice*, 2005 UTAH L. REV. 695, 732 (2005).

19. *Id.*

20. C. Antoinette Clarke, *The Baby and the Bathwater: Adolescent Offending and Punitive Juvenile Justice Reform*, 53 KAN. L. REV. 659, 664 (2005).

21. *Id.* at 669.

22. Lisa McNaughton, *Celebrating 100 Years of Juvenile Court in Minnesota: Extending Roper’s Reasoning to Minnesota’s Juvenile Justice System*, 32 WM. MITCHELL L. REV. 1063, 1064–1065 (2006).

23. *Kent v. United States*, 383 U.S. 541 (1966). In *Kent*, the United States Supreme Court began to review due process rights for juvenile offenders. In this case, the Court held that the juvenile is entitled to an informal hearing before the trial court prior to the case being transferred to an adult court. *Id.* at 557.

24. *In re Gault*, 387 U.S. 1 (1967). In this landmark decision, the United States Supreme Court ensured the due process rights of juvenile offenders, including the right to

Court insured that children had attorneys, the right to remain silent, guilt proven beyond a reasonable doubt, and many of the safeguards afforded to adults accused of a crime.

The 1980s saw a rise in juvenile crime and especially of crimes of an adult nature committed by juveniles.²⁵ In response, the Michigan Legislature enacted tougher laws, which treated children more like adults and subjected them to adult penalties.²⁶ The motivation for the laws came from the expectation that even children should be held accountable for their actions. Proponents believed that holding offenders accountable was the way to stop juvenile delinquency and criminal activity. Proponents believed that if juveniles were subject to harsh consequences following criminal actions, then the juveniles would be deterred from engaging in criminal activity in the first place. Likewise, proponents thought that others in society would be dissuaded from illegal actions as a result of witnessing the harsh convictions.²⁷

Certainly, holding individuals accountable for their actions is one of the cornerstones of molding human behavior. At the same time, however, it is questionable whether the adult criminal system works to accomplish this goal. Regardless of molding human behavior, the adult system does at least accomplish two goals. First, it punishes criminals. When convicted, an adult criminal is held accountable for his actions. Often he is punished by probation or some term of incarceration in the prison system. Second, it keeps society safe for a period of time. While that criminal is housed, society is safe from further crimes committed by the incarcerated. But we must look clearly and fully at the effects of incarceration.

There are other outcomes of incarceration that reflect the success or failure of the system. First, is the criminal rehabilitated?

counsel and the right to confrontation and cross-examination. *Id.* at 12–13, 19–31, 36–37, 57.

25. See JEFFREY BUTTS & JEREMY TRAVIS, URBAN INST., THE RISE AND FALL OF AMERICAN YOUTH VIOLENCE 1980 TO 2000 2 (2002), available at <http://www.urban.org/UploadedPDF/410437.pdf>.

26. See generally MICH. COMP. LAWS §§ 712A.1–712A.32.

27. For a look at the background regarding the toughened policy measures installed under 1996 Pub. Act 250, see HOUSE LEGISLATIVE ANALYSIS SECTION, JUVENILE JUSTICE REFORM PACKAGE: SECOND ANALYSIS (July 22, 1996). The analysis provides a review of different viewpoints for both proponents and opponents of juvenile justice reform. In favor of reform, proponents set forth the arguments that reform was necessary to reduce violent juvenile crimes by imposing stricter penalties on juveniles (requiring incarceration for certain offenders), by lowering the age at which juveniles could be prosecuted as an adult to 14, and by giving the prosecutor the authority to decide how to charge a youthful offender. *Id.* at 12–13. Importantly stated in the arguments against the bills, “[t]he bills do almost nothing to confront the causes of juvenile crime,” noting that the package is “almost entirely punitive in nature” *Id.* at 13. Thus, opponents of the act were aiming for prevention rather than “after-the-fact” measures.

The answer to this question often seems to be a clearly resounding “No.” Our adult penal system often does not rehabilitate the way it should. Second, does the criminal re-offend when released? The answer to this question is often “Yes.” Our penal system has an alarmingly high recidivism rate.²⁸ Third, is the public safe? The answer to this question seems to be two-fold. The public is safe from the individual criminal for the period of incarceration. But when this person is released, what is the danger to society? The criminal, as stated, is likely to re-offend,²⁹ and there is a good chance that the next crime this person commits will be more serious than the first.³⁰ In essence, the long-term effect of incarceration in our adult criminal system seems to be that we mold more hardened criminals.

Whether tougher sentences are effective for juveniles is a function of the causes of juvenile crime. Juvenile crime is a community problem with community solutions. No court system, in isolation, can solve this problem. Only when the community comes together and recognizes the problems and factors that contribute to juvenile crime can it tackle the problem.

There are many factors that contribute to criminal behavior. We have an increasing number of children born to very young single parents who simply are not equipped emotionally or financially to rear children. We have a generation of youth who are bombarded by images and messages of violence in movies, TV, music, and especially video games. Kids are exposed to violence without attaching any sort of ethical or moral value to it. The message of many popular video games is that it is desirable to brutally maim, shoot, and kill people. Conflicts are to be resolved with violence. And to further confuse the sponge-like minds of our youth, there is certainly no message of permanence or gravity. With a flick of the re-start button, all the characters are alive again and the carnage can start all over. There are no lessons about compassion, compromise, empathy. No exposure to the grief of the families that are affected. Violence is made neat and clean and detached. When kids are bored they use violent games, music, and shows to occupy their time. There must be better experiences and messages for our children.

28. See BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, REENTRY TRENDS IN THE U.S.: RECIDIVISM, <http://www.ojp.usdoj.gov/bjs/reentry/recidivism.htm>.

29. See *id.*

30. See *id.*

We live in one of the wealthiest counties in the entire nation.³¹ We have some of the finest juvenile programs in the country. But we must do more. Individually and collectively, many enjoy great wealth and prosperity. Why, then, can we not boast of having the best services for children in the country? Somehow we have lost our sense of social responsibility. We cannot afford to live in isolation, closing our eyes to the plight of many of our youth. Children like Nathaniel cannot reach out for help, only to be placed on a waiting list for treatment for six months. To a child, six months is a lifetime. Just as immediate consequences for one's actions are necessary, so is immediate intervention at signs of trouble. If we want to be safe from the kind of crime that Nathaniel committed, we must be prepared with our efforts and wallets to help create and fund programs to stop this tragic waste. Children, and the potential each possesses, are our most precious resource. We must collectively guard, protect, and nurture them.

We need better-trained parents. We need mentors. We need big brothers and sisters. We need more recreational programs and youth groups. We need more counselors for children and families. We need more foster care homes and more support for these generous families. We need better schools. Any effort that touches the life of one of our children in a positive way is a vital and indispensable piece to the puzzle in stopping juvenile delinquency and criminality. We must enlist the financial support of our privileged individuals and local corporations, as well as the individual efforts of many, to help create and fund effective programming for kids. It is only by intervening now and helping to develop mature, responsible, caring, empathetic children that we can assure a safer society. What we sow today, we will reap in the future.

Most would agree that our laws were originally connected to social norms with ethical and moral justification and rationale. Within society, behaviors were not randomly assigned legal values of right and wrong. Instead, we collectively believed in the moral and ethical reasons for those laws. Children must be taught the fundamental reasons for laws and rules. Learning to live in society is something that develops over an entire childhood. Children are explorers and discoverers. They have an inherent need to know "why." "Why" is often the most repeated word a parent hears from his child. When children learn about the rules and laws of society, they need real reasons to follow them. These reasons are essential

31. OAKLAND COUNTY MICH. PLANNING AND ECONOMIC DEV. SERVS., 2007 COMMUNITY PROFILE, available at http://www.oakgov.com/peds/assets/docs/community_profiles/OakCounty.pdf#search=%22Oakland%20County%20richest%22.

for the child to feel connected to and part of society. To really understand the reason one should not kill, a child has to develop social abilities, such as empathy and compassion. These social abilities are the building blocks of a cohesive society. It is only by internalizing society's norms that children, and eventually adults, will truly be guided by them and abide by them. We cannot cure the problem from the outside in; we must work from the inside out.

Yet instead of increasing support for prevention programs, many said "get tough."³² As a result of the "get tough on kids" policy, we saw changes in our "waiver" statutes. The waiver age was reduced in Michigan from fifteen to fourteen, permitting the family court to waive its jurisdiction over juvenile offenders at age fourteen, resulting in those youthful offenders to be tried as an adult in the criminal courts.³³ In addition, prosecutors were given the discretion to bypass the Juvenile Court waiver process altogether, though previously, the Juvenile Court Judge had a full hearing in order to decide where the child should be tried.³⁴ At these waiver hearings, the court looked at the child's past record, the seriousness of the crime, the child's pattern of living, and the programs available in the adult system versus the programs available in the juvenile system.³⁵ With the ability to bypass the waiver process for certain serious crimes, prosecutors alone, without a hearing, could make the decision of where to try the accused child: in the Criminal Court or the Juvenile Court.³⁶ Even more recently, the Legislature determined that, if the prosecutor chose a trial in the Adult Criminal Court, the child, if convicted, would have to be sentenced as an adult.³⁷ No discretion was given to the sentencing Judge to decide to use the Juvenile System. "Get tough" continued to be the cry of many.

This is not to say that the adult system of incarceration is not vital to our society. We need immediate protection from dangerous individuals. But the message is that we also need to look for more long-term, systemic answers to crime in our society. The Legislature's response to juvenile crime is a very short-sighted solution. If we put more kids into a failed adult system, where incarceration simply involuntarily prevents them from doing any harm, we

32. E.g., Jarod K. Hofacket, Comment, *Justice or Vengeance: How Young is Too Young for a Child to be Tried and Punished as an Adult?*, 34 TEX. TECH L. REV. 159, 167 (2002).

33. See MICH. COMP. LAWS §§ 712A.4(1), 764.1f (2007).

34. *Id.* § 712A.2(a)(1).

35. See *id.* § 712A.4(4).

36. See *id.* § 712A.2(a)(1).

37. See *id.* §§ 712A.4(1), 769.1(1); see also MICH. CT. R. 6.931(A).

should not be surprised when they emerge, upon their inevitable release, as more dangerous and hardened criminals. Instead of spending money building more prisons, we should be spending money preventing crime and rehabilitating youthful criminals.

Prevention and rehabilitation are the foundational elements of the Juvenile System. The Juvenile System recognizes that children are our most precious commodity. They are our hope for the future. If we prevent the criminal mindset from taking hold of our youth, then we in turn prevent adult criminals from coming into existence. If we rehabilitate those youths who have committed criminal acts, we are making ourselves safe both now and in the future.

Not satisfied that we were tough enough, the Michigan Legislature went one step further and enacted Public Act 244 of 1996 (the basic statute in the case at hand).³⁸ Under this statute, the prosecutor can elect to have the child tried in the Juvenile Court as an adult and, if convicted, sentenced in one of the following three ways at the discretion of the Judge:

1. As a juvenile, with release at the latest at age twenty-one.
2. As an adult subject solely to adult penalties and punishment.
3. Grant the child a blended sentence. Under this option, the court may initially sentence the child as an adult but delay the adult sentence, first placing the child in the Juvenile System. If, at age twenty-one, the child is not rehabilitated, the court can then carry out an adult sentence. The statute requires yearly reviews. The adult sentence can be imposed at any time up to age twenty-one if there is a violation of the juvenile sentence, or the child can be released before age twenty-one if rehabilitated. If neither has occurred before age twenty-one, there shall be a hearing. At that time, the defendant may be released, if rehabilitated, or the adult sentence imposed, if not rehabilitated.³⁹

Many view this as a reasonable statute. It gives the Juvenile System a chance to rehabilitate, without having to predict today, at sentencing, whether the child will or will not be rehabilitated. At

38. 1996 MICH. PUB. ACTS 674. In particular, MICH. COMP. LAWS § 712A.18(1)(n) (1996)(current version at § 712A.18(1)(m) (2007)), which is a codified portion of the 1996 Act, guided the case at hand.

39. See MICH. COMP. LAWS § 712A.1-32.

twenty-one, the court can have a hearing and see if the person, now an adult, has changed for the better. If yes—release; if not—impose an adult sentence.

While the Legislature placed a minimum age of fourteen for both the application of Judicial Waiver⁴⁰ and the Prosecutorial Automatic Waiver,⁴¹ there is no minimum age set for the first-degree murder statute under which Nathaniel was charged.⁴² Thus, pursuant to the prosecutorial decision, we must try a child, aged eleven at the time of the crime, as an adult in the Juvenile Court (now called the Family Court). The Court must subject him to one of the three dispositional alternatives listed above, including a possible sentence of life in prison.

B. The Case at Hand: Sentencing Nathaniel Abraham

I have reviewed all the psychological reports, the recommendation of Mr. Hamilton, the Juvenile Court Caseworker, the report of the Out-of-Home Screening Committee of the Juvenile Court, the report of Kathy Milliken of the Family Independence Agency (“FLA”), and the report of Susan Peters of Adult Corrections. I have also reviewed all the psychological evaluations and reports from the Prosecution and the Defense. I have considered the testimony as part of the sentencing process. I have heard the arguments of the Prosecution and Defense. I have heard the statements of Ronnie Green’s family members.

Obviously, we must deal with the law that we have. We have a child convicted of second-degree murder committed when he was eleven years old. The Legislature has told the Sentencing Judge what criteria must be weighed in making a decision about which of the three options should be used in today’s sentencing. The sentencing statute for second-degree murder instructs the Court to look at the “best interest” of the public in making its sentencing decision.⁴³ The best interest of the public is to protect the public from further criminal behavior by the Defendant. In making the decision, the statute says the Sentencing Judge must look at “(i)

40. *Id.* § 712A.4.

41. *Id.* § 712A.2(a)(1). Under this statute, the Family Division of the Circuit Court may only obtain jurisdiction over a juvenile who is 14 years of age or older and who has been charged with a “specified juvenile violation” if the prosecutor actually files a petition in the court rather than authorizing a complaint and warrant pursuant to Mich. Comp. Laws § 764.1f(1). *See id.* For a list of the so-called “specified juvenile violation[s],” *see id.* § 712A.2(a)(1)(A)-(I).

42. *Id.* § 712A.2d.

43. *Id.* § 712A.18(1)(n) (1996) (current version at § 712A.18(1)(m) (2007)).

[t]he seriousness of the offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.”⁴⁴ Here, the offense is of the most serious nature. A person was murdered. The impact upon the victim and the victim’s family is devastating. Further, the juvenile used a firearm in the offense. Community protection dictates that a long-term program is necessary.

The Judge must also consider, “(ii) [t]he juvenile’s culpability in committing the offense, including, but not limited to, the level of the juvenile’s participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.”⁴⁵ As the person who pulled the trigger, Nathaniel is fully responsible. However, his teacher at Lincoln Middle School, Elva Rosario, is reported to have stated that at the time of the crime, Nathaniel did not understand the difference between fantasy and reality. Additionally, the psychological evaluations indicate that he functioned between the six and eight-year-old level in terms of emotional maturity and internalized norms for appropriate behavior and acceptance of responsibility for his behavior. Youngsters at this developmental age often judge their behavior strictly in terms of the immediate impact it has on them. In accordance, his reports and teachers also described him as very impulsive. Further, Nathaniel was tested at below-average intelligence.

The Court must also consider “(iii) [t]he juvenile’s prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.”⁴⁶ This offense is not part of a repetitive conviction pattern. Rather, it is Nathaniel’s first offense. The offense is, however, part of a pattern of anti-social behavior. It was noted that Nathaniel engaged in delinquent behavior for about two years prior to the offense, but there was no formal intervention. While in Children’s Village,⁴⁷ his behavior has been a problem at times but has improved to some degree according to

44. MICH. COMP. LAWS § 712A.18(1)(m) (2007).

45. *Id.*

46. *Id.*

47. The Children’s Village, a program unique to Oakland County, provides residential and treatment services to children and youth who come under the jurisdiction of the Oakland County Court System and who are deemed to be temporarily in need of out-of-home care, custody, and treatment. See Oakland County, Oakland County Children’s Village, <http://www.oakgov.com/childvil/> (last visited Sept. 21, 2007).

official reports. He is unlikely to disrupt the treatment of other juveniles in a treatment facility.

The next criterion the Court must consider is “(iv) [t]he juvenile’s programming history, including, but not limited to, the juvenile’s past willingness to participate meaningfully in available programming.”⁴⁸ There was no effort to provide a treatment program for Nathaniel until he entered Children’s Village two years ago. However, his mother did seek treatment for him through community mental health. He was placed on a waiting list for six months prior to the initiation of treatment. He did attend three sessions after the initial assessment, but then the treatment stopped. The mother indicated that a different therapist might have been more helpful as the reason she discontinued treatment. Since he has been at Children’s Village, Nathaniel has been seeing a therapist and has made some improvement. He needs a therapist he can trust who will help him develop self-esteem and social controls.

The Court must also consider, “(v) [t]he adequacy of the punishment or programming available in the juvenile justice system.”⁴⁹ The Juvenile System is designed to provide treatment for youngsters, such as Nathaniel. Programming is available to meet his psychiatric, behavioral, educational, vocational, and recreational needs. The Juvenile System is also designed to provide treatment for the family of the juvenile. Nathaniel needs to learn that he is accountable for his behavior. He needs to learn to be far less impulsive and more concerned for the needs of others. The programming is much more extensive and comprehensive in the Juvenile System than in the adult system.

Finally, the Court must consider “(vi) [t]he dispositional options available for the juvenile.”⁵⁰ The three dispositional options must be considered in light of the five factors discussed above.

1. Option A: Sentenced as a Juvenile

If Nathaniel is sentenced as a juvenile, he will be released at the very latest at age twenty-one. Will the public be best protected if Nathaniel is released at twenty-one? We do not know what Nathaniel will be like eight years from now, for the next eight years are formative years for children. With the progress he has made in the last

48. MICH. COMP. LAWS § 712A.18(1)(m) (2007).

49. *Id.*

50. *Id.*

two years plus the next eight years, the Juvenile Justice System should be able to rehabilitate Nathaniel.

The protection of the public and the rehabilitation of the respondent are the opposite sides of the same coin. If we rehabilitate the respondent, then the public is safe. If we do not, he may kill again.

2. Option B: Sentenced as an Adult

Should Nathaniel be sentenced today as an adult? If we say, "yes," even for this heinous crime, we have given up on the Juvenile Justice System. We cannot be certain that between now and the time he turns twenty-one that we can change his behavior for the better. It is not the case that today, at age thirteen, the only promising solution for Nathaniel is the adult prison system. The testimony and/or reports are clear that the adult prison system is not designed for youth. It is only a last resort if the Juvenile System has failed. Testimony and the psychological examination demonstrate that in the last two years, while awaiting trial, Nathaniel has made progress in the Juvenile System. It is also clear that the adult system has very few treatment alternatives for a thirteen-year-old. In addition, at thirteen, Nathaniel may be subject to brutalization in prison that could destroy any hope of rehabilitation.

Our adult system is not successfully rehabilitating people. Evidence indicates that our jails do not release enough productive and reformed citizens.⁵¹ The real solution is to prevent an adult criminal population from ever coming into existence. This can only be accomplished by taking advantage of the hope and promise of our youth and nurturing them into healthy adults.

I think the law that Nathaniel has been charged under is fundamentally flawed. However, it is not my place to make law, and I must work with the law the Legislature has enacted. Instead, I urge the Legislature to reassess this law and consider improving the resources and programs within the Juvenile Justice System rather than diverting more youth into an already failed adult system. Specifically, I urge the Legislature to reconsider the statute in question and set a minimum age at which a child can be charged as an adult. The Legislature, not the Prosecutor, Judge, or Jury should decide. Perhaps the minimum age should be fourteen, as in our two waiver statutes.⁵²

51. See BUREAU OF JUSTICE STATISTICS, *supra* note 28.

52. MICH. COMP. LAWS §§ 712A.2(a)(1), 712A.4 (2007).

3. Option C: Blended (Delayed) Sentence

Under this option, the Court may delay the imposition of a sentence of imprisonment upon a juvenile for a period of time “not longer than the period during which the court has jurisdiction over the juvenile” by entering an order of disposition delaying the imposition of the sentence and placing the juvenile on probation.⁵³ If the Court chooses this option, the Court must conduct annual reviews of the probation and review the services provided to the juvenile, the juvenile’s placement, and the juvenile’s progress, along with any other factor deemed relevant by the Court.⁵⁴ “The Court may order changes in the juvenile’s probation based on the review, including but not limited to the imposition of a sentence.”⁵⁵ The Court must also determine whether the juvenile has been rehabilitated or if the juvenile continues to pose a serious risk to society. If the Court determines the latter or that the juvenile has not been rehabilitated, then the Court can either impose sentence or continue its jurisdiction over the juvenile.⁵⁶

However, if we were to impose a delayed sentence, we take everyone off the hook. Unlike Option A, which sentences Nathaniel as a juvenile with the hope of rehabilitating him within the next eight years, a delayed sentence provides a safety net that allows for an adult imprisonment following his juvenile sentence. If we rely on a future prison sentence, there is a danger that we will not use our best efforts to rehabilitate Nathaniel today. In effect, a blended system simply prolongs the time until Nathaniel’s eventual incarceration in the adult system. In addition, if Nathaniel is sentenced to a term of incarceration, the Adult Criminal Sentencing Guidelines would apply. Under the appropriate guidelines’ range, Nathaniel would be sentenced to prison for eight to twenty-five years.⁵⁷ If Nathaniel were to fail in the Juvenile System and we were to sentence him to prison at age twenty-one, we would have to deviate from the guidelines by increasing his minimum sentence of eight years. The statute states that Nathaniel must receive credit for the ten years he was on probation as a juvenile.⁵⁸ Further, the ten years Nathaniel will have spent in the juvenile system is more than

53. *Id.* § 712A.18(1)(m).

54. *Id.* § 712A.18i(2).

55. *Id.*

56. *Id.* § 712A.18i(3).

57. SENTENCING GUIDELINES ADVISORY COMM., MICHIGAN SUPREME COURT, MICHIGAN SENTENCING GUIDELINES 74–79 (2d ed. 1988).

58. MICH. COMP. LAWS § 712A.18i(11) (2007).

the eight-year minimum imprisonment sentence he would receive under the sentencing guidelines.

4. Resolution: Nathaniel will be sentenced as a Juvenile within the Juvenile Justice System only

The option that best meets the needs of Nathaniel and the public is the Juvenile System and only the Juvenile System. While there is no guarantee that Nathaniel will be rehabilitated by age twenty-one when he must leave the Juvenile Justice System, the protective environment of the system provides the best odds for success. It is my belief that blended sentencing is much better suited for older juveniles of fifteen or sixteen years. For those close to the exit age of twenty-one, the limited time within the Juvenile Justice System reduces the chances of rehabilitated success, and therefore, there is a greater need to preserve the option of adult prison at age twenty-one. As I said earlier, the pendulum has swung back so that much of the public wants us to get tougher with juveniles. For some it has worked, for others it has not. Here we have dealt with the most tragic of tragedies, the killing of another human being. Fortunately, murder is a very small part of what we see in Juvenile Court. In 1997, 0.001% of all statewide juvenile arrests were for killings.⁵⁹ The Juvenile System functions to meet the unique needs of juvenile delinquents, and if we follow the “get tough” trend, we risk blurring the lines between the adult and juvenile system and revert to the pre-Industrial Revolution days. Instead of abolishing the Juvenile System, we must preserve and strengthen it. This County must be willing to pay in dollars and human energy to help prevent juvenile crime and rehabilitate our young offenders. The media, the Defense Bar, the Prosecutor, the Judges, the Court and institutional staff, the County Commissioners, volunteers, and the people of our community can and must make a difference. Children are too precious to be lost because of the system’s neglect and failures.

We must remind ourselves that the true victim is Mr. Ronnie Green, who has been robbed of his life and has no chance of any future. I believe that my decision, although it may not seem the most just to his family in terms of punishment or retribution, in the long-run will give Mr. Green a legacy that will live on. Hopefully, far

59. See Michigan State Police, Uniform Crime Reports, Crime Statistics, and Offense and Arrest Reports, http://www.michigan.gov/msp/0,1607,7-123-1645_3501_4621-25744-.00.html (last visited Sept. 21, 2007).

into the future, the Greens will be able to take some comfort in knowing that their son's death was not in vain, but rather was a wake-up call for our community and the nation that our youth are in trouble and we need to pay attention. Mr. Green's death can be the catalyst to reinvigorate help for children. His death, if our community is paying attention and commits to taking action, can affect, shape, and mold the lives of countless children in the future.

Let there be no misunderstanding, Nathaniel must be accountable and responsible for his behavior. We have seen all kinds of finger pointing towards the failure of his mother, the schools, the Police, and the Courts. These are all contributing factors to Nathaniel's delinquency, but it remains that Nathaniel pulled the trigger. He made the decision. Thousands of children raised under similar circumstances do not kill.

This Court orders that Nathaniel Jamar Abraham be placed within the Juvenile Justice System and committed to FIA for placement at Boys Training School. The Court shall continue to supervise the progress of Nathaniel Abraham and will conduct six-month reviews of his progress. It is further ordered that Nathaniel may not be transferred from Boys Training School without a Court Order after a hearing, with notice to the prosecution and defense. This sentence shall be effective until Nathaniel reaches age twenty-one when this Court loses jurisdiction. There shall be a treatment program involving individual and group therapy for him and his family, and the program shall include positive role models with positive rewards for proper behavior.

II. CLOSING OPINION, DELIVERED JANUARY 18, 2007 UPON ABRAHAM'S RELEASE FROM JURISDICTION⁶⁰

The respondent turned twenty-one, ten years after the crime, and under Michigan law, the Court was required to close the case and release him from custody since he was sentenced as a juvenile and the juvenile jurisdiction ends for a juvenile at age twenty-one.⁶¹

On October 29, 1997, Ronnie Green, Jr.'s life was tragically cut short. A child was responsible for killing Ronnie Green, Jr. and causing unimaginable grief for his family.

60. See Opinion Closing Case, *People v. Abraham*, No. 1997-063787-FC (Oakland County Probate Court Jan. 18, 2007).

61. MICH. COMP. LAWS §§ 712A.2a, 712A.18d, 803.307(1)(a) (2007).

Seven years ago on January 13, 2000, Nathaniel Abraham was sentenced as a juvenile for the crime of second-degree murder that he committed at the age of eleven, and was placed with the Michigan Department of Human Services for treatment and rehabilitation. It was the intention of this Court and hopefully all Juvenile Courts around the country to rehabilitate children rather than warehouse juvenile offenders, sometimes in adult facilities, until their eventual and usually inevitable release back into society.

Since Nathaniel was only eleven years old at the time of the offense, the Juvenile System had ten years to rehabilitate him before his release at twenty-one. If the Juvenile System could rely on moving Nathaniel to state prison at age twenty-one, they would not be faced with the same urgency to succeed.

On January 13, 2000, Nathaniel was placed at the Maxey Boys Training School, and in 2006 he was moved to a transitional program at the Nokomis Challenge Center. Lastly, on July 14, 2006, he was moved to a half-way house, the Parmenter Community Justice Center. Despite frequent moves due to a lack of adequate funding during his placement at Maxey, Nathaniel consistently received counseling in anger management and in the Cultural Awareness and Appreciation Program, and he participated in the Substance Abuse and Relapse Prevention Program ("SARPP"). Nathaniel began participating in the Beat the Streets Relapse Prevention Program in 2002, the Chronic Offender Program in 2004, and the "Growth Works" counseling program in 2005. In addition, Nathaniel began to build self-skills in a wide variety of life preparatory areas, including vocational planning, employment training, and familial programs. In fact, Nathaniel was employed as a Youth Maintenance Worker at Maxey. Educationally, Nathaniel quickly began to demonstrate improvement. By 2001, he was passing all of his classes. He was praised for his academic performance in areas of math, reading, and note-keeping. Ultimately, Nathaniel earned his GED on December 18, 2004, followed by his high school diploma on June 11, 2005. While at Nokomis, Nathaniel continued to engage in various challenging activities, enlisted in the Vocational Education Program, and attended Alcoholic Anonymous meetings. Nathaniel also participated in two wilderness trips, on one of which he was voted "Most Valuable Peer." During his placement at Parmenter, Nathaniel persevered through his program requirements by attending weekly therapy sessions, advocate sessions, substance abuse counseling, and alcohol/drug screenings. Additionally, he furthered his learning in areas of independent living on topics such as money management, job hunting, sex

education, credit counseling, housing, and basic nutrition. Nathaniel was able to put some of these skills to practical use when he obtained his state identification, a driver's permit, a savings account, and employment at several places including a Civil War Cemetery and Goodwill Store.

Along with the necessary program requirements, Nathaniel engaged in several community service activities, which included speaking engagements at community facilities, participation in Victim's Impact Panel Discussions, and visits to community centers. During his speaking engagements, Nathaniel inspired those in the community who chose to listen. Nathaniel even began to pass on words of wisdom to his younger brother, telling him not to follow the same path that he did. More importantly, Nathaniel began to live the message he was presenting to others, by demonstrating selflessness and committing random acts of kindness for others. Indeed, Nathaniel's own family members indicated that he displayed a level of sincerity and maturity that they were not accustomed to seeing. Nathaniel, in turn, began to develop a greater appreciation for his family, and even began to attribute positive aspects in himself to members of his family.

Throughout his entire placement, Nathaniel received adulation in numerous capacities from various staff members and others with whom he came in contact. As early as 2003, Nathaniel was described as a leader within his group. He displayed a positive attitude, took on additional work, and followed directions. In August of 2000, he was singled out for doing an excellent job in performing his kitchen detail. The following year, Nathaniel took initiative and began to volunteer his services on work details. By 2003, Nathaniel was described as a diligent worker, requiring little or no redirection. His cosmetology instructor reported that he demonstrated enormous growth and improvement. As an employee, when his work ethic was truly put to the test, he was reported to have done an excellent job at the cemetery, and the employers at the Goodwill Store indicated that he displayed good communication skills and that he was courteous with the customers. Overall, Nathaniel has been described as a role-model and mentor to his peers, friendly, neat, hard-working, respectful, pleasant, organized, thoughtful, courteous, clean, and cooperative.

As expected of any adolescent, Nathaniel had several disciplinary actions taken against him, mainly for fighting, yelling at staff, basketball court blow-ups, stealing cleaning supplies to give to his girlfriend, and signing out and not going where he said he was going. None of these incidents was very serious—certainly his

behavior did not warrant any criminal charges. But hopefully, these experiences helped Nathaniel mature, as do the adolescent mistakes of any child. This is something for a boy who at age eleven committed murder, and prior to that, before the age of eleven, was a suspect in a larceny, malicious destruction of property, illegal entry, trespassing, home incorrigibility, two counts of breaking and entering, and two assaults. Our Juvenile Justice System failed by not reacting and providing help when Nathaniel was a suspect in these offenses. We waited too long. We missed our opportunity for "prevention," the cheapest and most successful route. It was only after a killing that we reacted.

Approximately one year after his placement at Maxey, Nathaniel demonstrated remorse for hurting others, and he began to understand the relationship between cause and effect. As of February 2001, Nathaniel began to display impulse control. He even began to convey some of the things he learned to his peers and had a "calming effect" on them. In May 2001, Nathaniel demonstrated great insight into a matter involving the use of racial slurs by one of his peers and was able to facilitate the matter into a reasonable and rational dialogue. It was at this point that Nathaniel began to demonstrate skill in thought analysis and dissection of problems; he was able to provide positive input along with possible strategies. By 2002, Nathaniel was able to take responsibility for the ways he had hurt others. He began participating in role-playing activities and was able to put himself in the shoes of others. Shortly thereafter, he was able to redirect familial conversations from focusing on himself to focusing on how the Green family might feel. This emphatic understanding is lacking in many young children. Developmentally, this ability was delayed in Nathaniel. It is worth noting that the most current research on brain development indicates that impulse control is the last to develop and is not always complete until the age of twenty-one.⁶² These findings go a long way in explaining many juvenile crimes, although these findings are no excuse for any child. It is a testament to Nathaniel's social workers that he developed empathy. Hopefully he is and will always be aware that Ronnie Green, Jr. was the true victim.

Often Juvenile Judges, as well as other child advocates, are very critical of the lack of resources for juveniles. However, in this case, the state has helped provide Nathaniel Abraham with remedial reading, his G.E.D., a high school diploma, a substance abuse

62. Jeffrey Fagan & Valerie West, *The Decline of the Juvenile Death Penalty: Scientific Evidence of Evolving Norms*, 95 J. CRIM. LAW & CRIMINOLOGY 427, 429 n.19 (2005) (citing Mary Beckman, *Crime, Culpability and the Adolescent Brain*, 305 SCIENCE 596 (2004)).

program, community service, victim impact training, relapse prevention, social skills training, employment planning, job placement, opportunities to speak to groups of delinquent youth, and very importantly, mentoring. The state has done the best it could with the resources available. The biggest void in service to Nathaniel was in vocational training. A good job is so important in the outside world. The state needs to re-double its efforts to give its wards a trade when they leave residential treatment and further ensure that they have a job available upon release.

The state has dedicated, caring, and hard-working staff. Nathaniel's family has also been a great support since his sentencing and has greatly helped Nathaniel. His Guardian Ad Litem ("GAL") and attorneys have worked far beyond what many attorneys would do. His GAL, Elaine Rosati, is the best there is. She has not only worked for his good, but also challenged him to succeed and has shown the concern of a true friend. The Prosecutor's Office, while disagreeing with my original decision, has pushed to make sure Nathaniel progressed and behaved properly while in the care of the state. For seven years, representatives of the Prosecutor's Office, both inside and outside of court, have talked about his supposed lack of progress, his supposed lack of remorse, his supposed temper. These issues were continually addressed by his treatment team.

Once adjudication and sentencing have occurred, justice and protection of the public is best served when all parties involved understand and work toward effective rehabilitation. In the Juvenile System, all parties need to work from the perspective that rehabilitation best protects the public.

What we have is a Family Court Judge telling the State of Michigan to raise an eleven-year-old child who has committed murder. Now we have that same person ten years later, at age twenty-one, about to be released.

Will he succeed? No one knows for sure, and no one has control of the outcome except Nathaniel Abraham.

Juvenile Justice is about rehabilitation. We cannot treat a portion of our children as "throw away" youth. Safety for the people in our society as well as the humane treatment of children depends on a system that focuses on rehabilitation. As much as we do for each child, when we do fail, we must increase our efforts, not give up. Nathaniel has received an academic education, job opportunities, substance abuse counseling, anger management, and victim sympathy understanding. He has learned how to work and has developed leadership skills. Now Nathaniel needs a steady job, ac-

ceptance by a friend/mentor, perhaps further college coursework, and acceptance that he is an adult responsible for himself and responsible for others. No one can do it for him.

He now has the opportunity to say to himself and all of us: I take responsibility for the fact that I killed another person, but I can best show my regrets and sympathy to the family to whom I caused so much grief by succeeding—by being a decent human being.

I did not take the “blended sentence” route because I wanted the Juvenile Justice System to do its job and not pass the buck to our state prisons. No professional in the justice system can say with any credibility that incarceration in our adult prisons has a rehabilitative or deterrent effect. The incredibly high recidivism rate shows this. Our current adult prison system is really only effective at protecting the public from dangerous criminals for the length of their incarceration. It does little if anything to protect the public when they are released. In Michigan, approximately one out of every two adults released from prison returns to prison within two years.⁶³ If children are not reached and helped within the Juvenile System, placement in adult prisons only delays the inevitable. It can be argued that exposing young adults to a hardened adult prison population only makes those young adults worse criminals themselves.⁶⁴ If there were an adult component to Nathaniel’s sentence, he probably would be released by the year 2009 or 2010. For second-degree murderers in Michigan, the average length of stay is twelve years.⁶⁵ Few people would argue that after going through the Juvenile Justice program, adding two to three years of interacting with adult criminals in prison would help to rehabilitate Nathaniel. If that time were in fact detrimental to Nathaniel, the public would actually be much less safe upon his release.

Nathaniel’s attorneys, mentors, teachers, clinic staff, and child care workers did their part. Now he must do his.

One question we must ask is whether the state does the above with every youngster sent to them or only in high profile cases. I hope the answer is they try their best in all cases. Hopefully, the state has learned in this case what they must do in order to have any hope of success for every delinquent committed to their care. I know improving the system will require more resources, particularly

63. National Governor’s Association, Center for Best Practices, Prisoner Reentry—Michigan, <http://www.nga.org/portal/site/nga/menuitem.9123e83a1f6786440ddcbeeb501010a0/?vgnnextoid=83e5303cb0b32010VgnVCM1000001a01010aRCRD>.

64. E.g., Amanda M. Kellar, Note, *They’re Just Kids: Does Incarcerating Juveniles with Adults Violate the Eighth Amendment?*, 40 SUFFOLK U. L. REV. 155, 156 (2006).

65. E-mail from Gary Stockman, Manager, Michigan Department of Corrections, to Honorable Eugene Arthur Moore (Jan. 23, 2006) (on file with author).

in the areas of job training, gradual reintegration into the community, and after care. We all must fight to provide these supports.

Nathaniel: You can succeed. You have the guts, the training, the ability, and you can make it. What I have read about you in the last ten years is that you have had some minor behavioral issues not unlike many children going through adolescence, but you have consistently displayed a positive attitude, you are pleasant, have good social skills, and are very thoughtful of others, and you have developed understanding and empathy for your victim and his family. You have shown the remorse that is so important for rehabilitation. You have shown enormous growth, and you are an asset to your peers. You were the most valuable peer on your wilderness trip, a positive leader, and an excellent worker. You take initiative at work and need no redirection. I wish that could be said of all of us in this room.

Get up in the morning and look in the mirror and say: "Yes, I care about myself, I am helping others, I can earn a living, I care about my girlfriend and her baby. They need me because I have become a good person."

Yes, you can make it, but only you can decide what direction you will go. I have confidence in you, as do the scores of people who care about you and who have helped you along the way. The road will not always be easy, but the best thanks you can give to those who have invested their time, energy, and confidence in you is to succeed. Likewise, the best thanks you can give to yourself and the best apology you can give to Mr. Ronnie Green, Jr. and his family is to succeed. I know you can do it. Do it!

III. REFLECTION: THE FUTURE OF JUVENILE JUSTICE

Now in 2007, ten years after his sentence to the Juvenile System, Nathaniel Abraham has been released. Nathaniel's case is a significant case in the field of juvenile justice.⁶⁶ His case garnered a lot of

66. See generally, Trevor W. Coleman, *Grown Up Justice*, EMERGE, Mar. 2000, at 32; Comment, *Does Abraham Case Show Juvenile Crime Laws Need Change?*, DETROIT NEWS, Jan. 16, 2000, at 9C; James A. McClear, *Plea to Judge: Don't Try Boy as an Adult*, DETROIT NEWS, May 3, 1998, at 3C; Brian Murphy & Joe Swickard, *A Child on Trial*, DETROIT FREE PRESS, May 6, 1998, at 1A; Op-Ed, *Young Injustice: Courts Shouldn't Support Two-track System*, DETROIT FREE PRESS, Aug. 17, 1999, at 6A; Adrienne Schwisow, *Judge Has Stuck By Young Killer He Took Chance On*, NEWS J., Apr. 18, 2005, at A3; Adrienne Schwisow, *Judge's Tough Love Gives Killer "A Chance"*, ADVOCATE, Apr. 18, 2005, at 11A; Ann Zaniewski, *Nate: "It's Just Beginning"*, OAKLAND PRESS, Oct. 24, 2006, at A1; Bryan Robinson, *13 Year Old—and Michigan Juvenile Law—Under Fire in Murder Trial*, Sept. 19, 1999, http://www.courtstv.com/archive/trials/abraham/101999_ctv.html.

media attention because it involved a young juvenile guilty of a heinous crime during a period when society preferred the “get tough” approach to juvenile delinquency. Nathaniel’s sentence broke away from the status quo, and he was placed within the Juvenile Justice System, despite the public’s desire to see him tried in the adult system. It is important to examine the wake of cases following Nathaniel’s to see whether his sentence reinvigorated the Juvenile Justice System and what the future holds for juveniles. During the last ten years, for example, many states have mandated the maintenance of a central registry that tracks the life of a convicted youth sexual offender.⁶⁷ Many states continue to try children of all ages, with no minimum age, as adults.⁶⁸ Many states allow for the housing of juveniles in the same prison placement as adults.⁶⁹ Some states continue to give the prosecutor (not the Judge after a waiver hearing) the power to decide whether a child should be tried in adult or Juvenile Court⁷⁰ and moreover, provide no criteria for the decision other than the seriousness of the crime.⁷¹ No one knows for sure whether this trend will continue. Many people would be happy with such a system. But many still believe in individualized justice for youthful offenders. Many still believe that children are not adults and should be treated differently and that children can be rehabilitated.⁷² Many still believe that the ultimate safety of the public is through rehabilitation. The future of juvenile justice is in the hands of the public, for it is only with the public’s help and resources that the system can truly succeed.

I believe the public is willing to support the Juvenile Court if the Juvenile Justice System is seen as successful. Despite its expenses, if rehabilitation is seen as the best solution, the public will support

67. See Suzanne Meiners-Levy, *Challenging the Prosecution of Young “Sex Offenders”: How Developmental Psychology and the Lessons of Roper Should Inform Daily Practice*, 79 TEMP. L. REV. 499, 503 n.3 (2006). In Michigan, the registry is governed by the Sex Offenders Registration Act. See MICH. COMP. LAWS §§ 28.721-28.732 (2007).

68. John D. van der Vyver, *Municipal Legal Obligations of State Parties to the Convention on the Rights of the Child: The South African Model*, 20 EMORY INT’L L. REV. 9, 30 (2006).

69. See Kellar, *supra* note 64, at 156.

70. Richard E. Redding, *Juveniles Transferred to Criminal Court: Legal Reform Proposals Based on Social Science Research*, 1997 UTAH L. REV. 709, 717–18 (1997).

71. Donna M. Bishop, *Juvenile Offenders in the Adult Criminal Justice System*, 27 CRIME & JUST. 81, 126 (2000).

72. This position is supported by a range of groups. See, e.g., Amnesty International, Feature Article, <http://www.amnesty.org/ailib/intcam/juvenile/feature.htm> (last visited Sept. 21, 2007); Campaign for Youth Justice, New NCCD Poll Shows Public Strongly Favors Youth Rehabilitation and Treatment, http://www.campaignforyouthjustice.org/Downloads/PressReleases/CFYJ_California_Feb2007.doc; League of Women Voters of Indiana, Positions and Studies: Juvenile Justice, http://lwv.in.org/positions/position_juvenilejustice.html (issuing a position in support of rehabilitation and treatment in the juvenile justice system) (last visited Sept. 21, 2007).

the system. If the public does not believe the system is successful, more and more children will be tried as adults and thrown into the failing adult criminal justice system. At the public's demand, we will see more and more local prosecutors who believe prisons are the answer. The prosecutors will execute the public's desire to not waste tax dollars on rehabilitation efforts for child murderers. If, on the other hand, the Juvenile Justice System is perceived as successful, then there is hope. It will take continued research and understanding of how children's formative years and life circumstances contribute to their behaviors. The more we understand the emotional and psychological contributions to juvenile delinquency, the better we can rehabilitate.

But we cannot simply leave the future of the Juvenile Justice System to the social scientists, volunteers, and politicians. Law schools can affect the outcome, as well. Law students should be taught that they must play a leading role in helping to rehabilitate their youthful clients. There is more to becoming a good lawyer than learning the law and its procedures. Lawyers must be trained as to what diversion and rehabilitation programs exist so that they can help their clients get into those programs. Law students must be taught how to develop such a program for their clients if none is in place, and they must find the family members, the mentors, the volunteers, and the agencies that will help. Lawyers must learn that a guilty plea, which is taken in the vast majority of delinquency cases,⁷³ or a jury or judicial verdict of guilty is not the end of the case. Often the most important part of the case does not begin until after guilt is determined. Knowing what to do with the adjudicated child is integral to his/her rehabilitation. A law student may ask, "How, as an attorney, can I find these resources? How can I help develop these resources? How can I get the client into these programs? How can I convince the judge to use these programs for my client?" It is not just up to the pre-sentence or probation officer to develop a plan. The defense attorney, and even the prosecutor, must be part of a team to develop such a plan and see that it is carried out.

What can our law schools do to ensure we still have a Juvenile Justice System trying to rehabilitate juvenile offenders twenty years from now?

1. Juvenile Law (not just Criminal Law and Criminal Procedure) should be a required course in our law

73. Ellen Marus, "That Isn't Fair, Judge": *The Costs of Using Prior Juvenile Delinquency Adjudications in Criminal Court Sentencing*, 40 Hous. L. Rev. 1323, 1325 n.8 (2004).

schools (including delinquency, neglect, abuse, and dependency).

2. Law schools should mandate results-orientated social science training as part of Juvenile Law curriculum.
3. Law students must have practical experience in every aspect of Juvenile Law and represent clients in Court (under faculty supervision) at every level of Juvenile Law including post-adjudication. Professor Donald Duquette, through the Child Advocacy Law Clinic at the University of Michigan Law School, does just this in training law students to represent children, parents, and state agencies in the areas of abuse, neglect, and dependency.
4. Likewise, it is not enough to just have Criminal Law on State Bar Exams. Juvenile Law (that includes delinquency, dependency, neglect, and abuse) should be part of such an exam, including the social science ingredient of Juvenile Justice. Law dealing with children is just as important as law dealing with contracts, property, and other topics currently covered on state bar exams.

For too long, we as attorneys have left the job of rehabilitation and finding services for children and families to the social scientists. Some law schools, again like the University of Michigan Law School, use a team approach that includes law students, social workers, volunteers, and child advocates. These people work together to provide for the needs of the child, family, and community.

Children charged with crimes have a right to an attorney,⁷⁴ to confront their accuser,⁷⁵ and to a fair trial.⁷⁶ Also of importance is children's right to have their attorney fight for their rehabilitation. Only if children's rights are protected on all fronts can we win this battle to preserve justice for children.

The State Bar of Michigan, the Pew Commission on Children, and the American Bar Association all advocate law school courses that provide for an inter-disciplinary approach dealing with the entire range of Juvenile Law. This approach includes prevention, adjudication, and disposition. Likewise, practical experience while

74. *See In re Gault*, 387 U.S. 1, 36-37 (1967); MICH. CT. R. 3.915.

75. *Gault*, 387 U.S. at 57; MICH. CT. R. 3.915.

76. *Gault*, 387 U.S. at 12-13, 19-31; MICH. CT. R. 3.915.

in law school should be mandatory. In *Child Welfare Law and Practice*,⁷⁷ the authors outline the training that is essential for attorneys in child welfare cases.

We do not know what will happen to Nathaniel Abraham or the thousands of children like him. But if we had more Elaine Rosatis, (Nathaniel's GAL) who understand social services as well as the law, who see their clients almost bi-weekly, who fight for resources and programs, and who demand success, we will have the greatest chance of success.

Law schools must teach students that to work effectively in the Juvenile System they need to understand that they cannot approach the solution with the same adversarial mindset that law schools train in criminal law. Rehabilitation occurs with all parties working toward the same goal, not when lawyers only try to "win" or prove their position to be "right."

The same is true in neglect and abuse cases. Once adjudicated, the prosecutor, parents' attorneys, and GAL for the child should all know of or help find resources for the child and for the parents, and ultimately, develop a permanency plan for the child and family.

The University of Michigan Law School Child Advocacy Clinic is a national leader in this area. The training the clinic provides in dependency, neglect, and abuse should be part of the curriculum for law students in delinquency cases.

The most overlooked area affecting children, for example, is in divorce. Does the typical law school support the appointment of a GAL for the children in divorce cases where appropriate? Does it teach law students how to represent children in divorced matters? Is part of law school education in "Family Law," teaching students about the task of helping divorced parents who are at each other's throats work toward the best interest of their children? Do our law schools advocate the team approach of including social workers and volunteers?

The future cannot be left solely to social scientists and volunteers. Law schools must take up the cause, as the University of Michigan Law School has done, and teach future lawyers to be child advocates. If these reforms are implemented, twenty years from now, justice for children and families in delinquency, neglect, abuse, and divorce cases will be something that can make us proud and make our children and families more successful. This task

77. CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES (Marvin R. Ventrell & Donald N. Duquette eds., 2005).

must include the law students and professors in these beautiful buildings here in Ann Arbor as well as those in law schools across our country. Nothing is more important than raising children to be happy, successful, productive adults. Law schools must play a leadership role in accomplishing this goal.

