



ANNALS OF JUSTICE

NO REMORSE

Should a teen-ager be given a life sentence?

BY RACHEL AVIV

Shortly after midnight on March 6, 2010, Dakotah Eliason sat in a chair in his bedroom with a .38-calibre pistol in his hands, thinking about what the world would be like if he didn't exist. One of his friends had recently killed himself, and his girlfriend had dumped him. Earlier that night, Dakotah, who was fourteen, had taken his grandfather's loaded gun off the coat-rack. The breakup felt like a sign that he would always be a failure, and he figured no one would miss him after a few days. He got a pencil and tried to compose a suicide note, but he didn't know what he should say.

Dakotah wondered if he was ready to die, and contemplated taking someone

else's life instead. He thought about how people have good and evil sides, and how the good doesn't always win. It was the theme of an adventure story he was writing. He drank a can of Mountain Dew, then went to the bathroom and looked at himself in the mirror. He was pale and lanky, with sandy bangs swept to the side. "What am I doing?" he said to himself. "Why? Why do I have the gun? I know better than this."

He walked into the living room and stared at his grandfather, Jesse Miles, who was sleeping on the couch. A retired machinist and an avid hunter, Jesse often fell asleep while watching the Discovery Channel, and stayed on the couch all night so his smoker's cough

wouldn't wake his wife. For forty-five minutes, Dakotah sat on a wooden chair, three feet from his grandfather, and talked to himself quietly, debating what to do next. If he got hand towels from the bathroom, he could gag his grandpa. If he used a steak knife, the whole thing might be quieter. He figured he'd use the cordless phone on his bed to report the crime. He felt as if he were watching a movie about himself. Finally, at just after three in the morning, he raised the handgun, his arms trembling, and shot his grandfather in the head.

"Man, I shot Papa!" he shouted. He put the gun on the floor and rushed into his grandmother Jean's bedroom. She

Steve Eliason, right, first heard on the news that his son, Dakotah, would be tried for murder as an adult. In Michigan, prosecutors

Teen, convicted of murder, to serve life without parole in prison for life



yelled for Dakotah to call 911, and he followed her orders “like a little puppy,” she said later. When officers from the police department in Niles, a rural town in southeast Michigan, arrived, seven minutes later, Dakotah was waiting outside next to his grandmother, who was in her pajamas and frantically waving her hands. Jean explained that Dakotah had shot Jesse. “This is my grandson,” she said, placing her hand on his shoulder.

A trooper named Brenda Kiefer handcuffed Dakotah, read him his Miranda rights, and told him that she needed to know what had happened but that she “was not here to judge.” She asked if he wanted a parent there and heard him say no. (Dakotah insists that he said “Uh-huh,” indicating that he did want a parent present, and that he rarely says “yes” or “no,” a habit for which his father scolds him.) Dakotah had always admired police officers, and he responded politely to Kiefer’s questions, as his grandfather, unconscious and bleeding heavily, was loaded into an ambu-

lance. Dakotah told Kiefer that he had a loving relationship with his grandparents and often spent the weekends at their home, where he had his own room. He didn’t know why he’d picked up the gun, but he guessed that it was “sadness and pent-up anger.”

After talking to Kiefer for fifteen minutes, Dakotah was put in a patrol car, which was parked at the bottom of the driveway. The officer who sat up front, Eugene Castro, asked Dakotah his name, and then realized he had gone to high school with Dakotah’s father, Steve. “So was he good at sports?” Dakotah asked. Castro said that Steve had played hockey and tried to end the conversation cordially, but Dakotah updated him on his father’s path since graduation: after losing his job as a construction worker, he’d begun an associate’s-degree program in criminal justice. Dakotah added that it would be nice to be on the police force, because of the job security.

Several times, Castro stepped outside the cruiser to answer phone calls. When Dakotah was alone in the car,

which had a video camera running, his breathing became heavy and rapid, and he coughed and made retching noises. Then an Avril Lavigne song, “My Happy Ending,” came on the radio. “Ugh, why does this song have to play!” he said. He began singing along with the chorus: “So much for my happy ending/ Oh oh, oh oh.”

Out the window, Dakotah could see the flash of cameras inside his grandparents’ home, a two-story farmhouse that the couple had lived in for thirty-five years. “It looks like forensics is doing their thing,” Dakotah said when Castro returned. “So what do you predict will happen to me? I mean, murder charge—that’s big. I’m still a minor, but . . .” Castro said he didn’t know, and explained that a judge, not the police, would decide. “My life just turned into ‘Law & Order,’” Dakotah said. “But with no commercials.”

When the officer didn’t respond, Dakotah began breathing heavily again. “I wish I could take it back, but now I understand the feeling people get when

ILLUSTRATION BY JOHN RITTER; PHOTOGRAPHS AND HEADLINES: SOUTH BEND TRIBUNE, NILES DAILY STAR

try defendants older than fourteen in adult court without a hearing, a statement of reasons, or an investigation into their background.

they do that," he said, drawing out his words slowly. "You feel like nothing could ever hurt you—just for that split second, once you realize what you've done."

Steve Eliason had been asleep for only a few hours when a detective knocked at his door and told him that his stepfather, who had raised him, was in the hospital in critical condition and that his son had been arrested. Still groggy from a night of drinking with his wife, Lisa, and out-of-town guests, Steve expected that there would be some reasonable explanation. Dakotah's only previous encounter with the police involved a missing backpack, and he had quickly been absolved of blame. He was an honor-roll student with a close group of friends who called themselves the Randoms, because, unlike the jocks and the preps who occupied the upper tier of their school's social hierarchy, their hobbies were varied: video games, fan fiction, classic rock, anime.

The detective, Fabian Suarez, drove Steve to the police station and, just before five in the morning, led him into a windowless, fluorescent-lit room with a Formica table and three chairs. Dakotah sat alone at the table, and Steve stared at his son, shook his head, and then pulled up a chair next to him. For

the second time that morning, Dakotah heard his Miranda rights—Suarez went through the litany rapidly, in a dispassionate monotone.

"Are you angry with me?" Steve asked Dakotah, his voice shaking. "Is it something I did?" He told Suarez that a family doctor had once suggested that Dakotah see a therapist, because Dakotah was upset that nothing he did could ever please his dad. Dakotah didn't play sports—he preferred singing, drawing, and writing stories—which meant that he didn't have to maintain his grade-point average for a team. "So I try to push him," Steve explained.

Detective Suarez asked if he could have a private conversation with Dakotah, whose focus had drifted; he was shaking his wrists, blowing on the skin where the handcuffs had been. Steve agreed and told Dakotah, "We are trying to get to the bottom of this. Please, please answer."

Alone with the detective, Dakotah was initially sluggish, as if humoring a concerned teacher. But when Suarez asked what made him angriest in life he said that he was mad at his mother, Mary, who had abandoned him when he was a baby and dropped in and out of his life, depending on whether or not she was with a new man.

Dakotah said it had never occurred to him to hurt his grandfather, but

"something overcame me." It had been a typically boring Saturday: he played racing and fighting games on his PlayStation console for four hours, and watched part of "Terminator 3" and a few shows on Comedy Central. Then he had a brief, pleasant conversation with his grandmother before she went to sleep. Later that night, he started thinking about how his family and friends were too distant; it felt like everyone he loved was drifting away. For about two hours, the "main argument was homicide or suicide," he told Suarez. "You ever hear people talk about having voices in their head? Well, it's not so much that as multiple personalities. One is like the good guy and the other is essentially the bad guy."

"The thing is when you actually do kill somebody, whether you have an emotional attachment or not, you get about five seconds," Dakotah said. "All the tension goes away." He propped his elbows on the table and rested his head in his hands, rubbing his face. "It's just that initial feeling," he continued. "It's an overwhelming feeling—I'm not really sure how to explain it."

After ten minutes, Steve demanded to be let back into the room. He had spoken with his brother, who was at the hospital, and learned that their father had died. By the time he returned, the interview was over. Steve was aggressive and agitated, and told Dakotah he couldn't make sense of what had happened. "Help me understand," he pleaded. "You always seemed happy."

Dakotah looked up at him blankly, his hands folded on the table.

"You're not showing any remorse, Dakotah. I'm not saying it in a bad way, but is something wrong with your head? Do you have problems with thinking? I mean, because you're a very intelligent young man." Steve told him to imagine what would happen "if you weren't my kid, and I was in this room with the person that shot my dad." He raised his voice: "This is the shit they talk about. Kids get into these goddam video games and they don't pull their head out of the fucking game. They think they can just go"—he pressed his finger into Dakotah's biceps—"hit the re-start button!" He said he couldn't accept "I don't know" as an answer. "Why would you shoot Papa, D.? Papa loved you."



Dakotah's face had turned deep red, and he hung his head a couple of inches from the table. He wiped his eyes with his sleeve.

"Don't hold it in. Let it out," Steve said. He put his arms around Dakotah, who had begun sobbing, and pulled him toward his chest. Dakotah circled his arms around his father, letting his weight collapse into him. "You've got to be strong for me, O.K.?" Steve whispered, rubbing Dakotah's back and staring at the wall with a bewildered expression. "You're my little boy."

Watching the local news the next day, Steve learned that Dakotah would be tried as an adult for first-degree homicide, which in Michigan carries a mandatory sentence of life imprisonment without the possibility of parole. The county's prosecuting attorney, Arthur Cotter, a towering man with white hair who was elected to office in 2008, had reviewed videotapes of Dakotah's statements to the police and concluded that Dakotah didn't belong in the juvenile justice system, which releases offenders from custody when they turn twenty-one. Cotter said that the decision was easy, because Dakotah had shown "an utter lack of remorse." "Even his father noticed it," he told me.

In Michigan, as in many states, prosecutors can try defendants older than fourteen in adult court without a hearing, a statement of reasons, or an investigation into the adolescent's background. The decision cannot be reviewed or appealed. This allows prosecutors to bypass the juvenile justice system, which was built upon the premise that youths are still malleable, in need of the state's protection, and uniquely capable of rehabilitation.

The first juvenile courts, which emerged at the turn of the twentieth century, aimed to treat criminal behavior, not punish it, by intervening in the domestic lives of children whose parents had failed them. The establishment of a separate court system for youths followed other progressive reforms, like compulsory education and child-labor laws, which extended the boundary of childhood. The psychologist G. Stanley Hall lent scientific legitimacy to the concept of adolescence,

describing it, in 1904, as a "genetic period of storm and stress," with a "curve of despondency" that rises at the age of eleven and falls by twenty-three. Juvenile hearings were sealed to the public and focussed on the personal history of the offender rather than on the offense. Judges designed individualized treatment plans to address whatever had thwarted the child's development: neglect, abuse, a poor education, an overcrowded home, unrestricted exposure to books about bandits. In 1910, Benjamin Lindsey, one of the first juvenile-court judges in the country, wrote that "our laws against crime are as inapplicable to children as they would be to idiots."

The juvenile justice system quickly became a model for courts throughout the world—the judicial scholar Francis Allen called it the "greatest legal institution invented in the United States"—but the system's paternalistic outlook often led to capricious rulings. In the nineteen-sixties, a new generation of children's advocates tried to redefine the "best interests of the child," focussing on liberating rather than protecting youths. In 1967, the Supreme Court reviewed the case of a fifteen-year-old who had been committed to a detention home for six years for making a lewd phone call, and ruled that the "condition of being a boy does not justify a Kangaroo Court." The decision established that juveniles deserve many of the same due-process rights as adults, including the right to a lawyer and the right against self-incrimination.

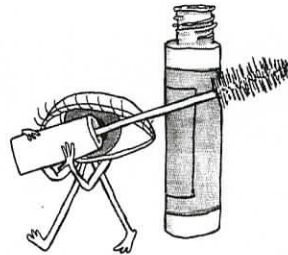
Once hearings became adversarial (resembling "junior varsity criminal trials," as one court decision put it), the system's original mission was gradually obscured. In the eighties, when youth crime rates began to rise, most visibly in gang-related violence, reformers argued that modern adolescents were more sophisticated than the youths of earlier eras. In 1985, Alfred Regnery, the head of the Justice Department's Office of Juvenile Justice and Delinquency Prevention, accused the juvenile courts of naively adopting Rousseau's theory that youths are "incapable of evil unless they are corrupted" and of listening to the

"psychobabble of social workers." In the following decade, juvenile gun homicides more than tripled, leading to widespread hysteria, promoted by sensational news reports, about a rising generation of juvenile "super-predators." They are "doing homicidal violence in 'wolf packs,'" wrote John DiIulio, then a professor of politics and public affairs at Princeton, who helped popularize the idea of a "demographic crime bomb." (He has since expressed regret, acknowledging that the prediction was never fulfilled.) Juvenile courts became increasingly punitive, and by the late nineties nearly

half of committed juveniles were behind bars, rather than in community-supervision or treatment programs, and a quarter of them were locked up because of misdemeanors or probation violations. Forty-six states rewrote their laws to make it easier for minors to be tried as adults.

Although judges have long been attuned to the difficulty of trying mentally ill defendants, there is little recognition that people may be incompetent to stand trial because of their age. Each year, more than two hundred thousand offenders younger than eighteen are tried as adults, yet only about half of them understand the Miranda warning. According to studies of delinquent adolescents, they have trouble grasping that a "right" is an absolute privilege that they may exercise without penalty. Defendants fifteen and younger are particularly impaired, and waive their rights much more frequently than do adults. The vast majority misinterpret at least one of the four statements that make up the Miranda warning, stumbling on terms like "consult," "interrogation," "appoint," and "entitled," which may be above their reading level.

At a hearing to determine whether Dakotah's confessions were made voluntarily and could be used at trial, Dakotah maintained that he didn't realize that he was free to stop talking to the police once he had already started. The prosecutor, Arthur Cotter, broke down the Miranda warning and asked Dakotah which sentences he couldn't comprehend. Dakotah conceded that he





"We've come to spoil the broth."

understood the language ("Yeah, I know what a lawyer is"), but not its implications. He explained, "I just felt I had no choice but to answer the questions."

The judge, Scott Schofield, was not persuaded and ruled that all Dakotah's statements could be admitted as evidence. He pointed out that Dakotah watched "Law & Order," had proofread one of his father's papers for a criminology class, and used big words. (The trooper, Brenda Kiefer, testified that Dakotah, when describing his grandparents' property, had used the word "elevation" and warned that frozen ruts on the driveway were "treacherous.") Schofield dismissed the claim that Dakotah was in a psychotic or altered state of mind. He interpreted Dakotah's reference to hearing voices as an externalization of his own conscience, "a debate that he was having with himself—should I do the right thing, or should I not do the right thing?"

Dakotah often talked of becoming a writer. Throughout his freshman year, he wrote fantasy stories and shared them with his friends, who critiqued the plots and gave him tips for improvement. Tashawn Reese, who collaborated with him, said that Dakotah's stories were about underdogs who

faced emotional challenges—the hero falls in love with an irresistible girl who's unavailable, or his parents die, or his school morphs into a crater—and usually the "theme was the eternal struggle between good and evil." The last story Dakotah brought to school was about two boys, one of whom develops demonic powers while the other acquires angelic ones; at the end, both soar into the sky.

Kelsey Crago, who dated Dakotah briefly, couldn't recall his doing anything unusual in the weeks before the murder. She knew that he was disappointed by his recent breakup—his girlfriend had broken things off by text message—but he didn't talk about it, because he didn't like drama. Kelsey described Dakotah as a "great listener, the main person I trusted if I needed advice," but he rarely shared his own problems. In letters to Dakotah, she repeatedly asked him why he had killed his grandfather, but never felt satisfied by his answers. "I wasn't thinking," he told her, and wrote that maybe he had watched too many crime shows.

At the Berrien County Juvenile Center, fifteen miles from his home, Dakotah complained that every time he closed his eyes he saw his grandfather's death, "like a movie." He told a case-

worker that he was still trying to figure out what had happened and that he wished he had killed himself instead. He was forced to wear suicide garb, clothes too stiff to be torn, and was unable to sleep. His grandmother Jean, a petite, well-dressed woman with short white hair, wrote him a letter telling him that she forgave him, and visited him at the center after two weeks. "It was hard for him to look at me, with him knowing what he'd done," she told me. "He'd look up and then look away. Mostly, he just held my hand and rubbed it."

Steve berated himself for acting like a "maniac drill instructor" and losing his temper over anything his son did wrong. He also blamed Dakotah's "bio-mom," as he called her. In her statement to the police, Mary explained that she'd never intended to have a child with Steve. "I had a party at my apt.," she wrote. "We got drunk, we got pregnant." (Mary would not talk to me, explaining, "I have nothing to say.") She was rarely involved in Dakotah's life until he was seven; then she went to court to obtain joint custody. When Dakotah was twelve, she changed her mind and relinquished all her rights as a parent. Steve remembers Dakotah coming home from a visit and "brushing his hands like he'd just had crackers and was getting rid of the crumbs. He said, 'Mom finally washed her hands clean of me.'"

For Steve and his wife, the fact that Dakotah had killed his grandfather, a man he had loved, was proof that he'd been temporarily insane. A week after Dakotah was arrested, Steve hired Lanny Fisher, a local attorney who had gone to the same high school, was "great at sports but humble about it," and had been practicing law for three years. (Fisher offered to charge a fraction of his normal fee, since Steve and Lisa were living on her hourly wages from Subway.) Fisher, assuming that the trial would be a battle between mental-health experts, said he was "devastated" when he received the results of Dakotah's psychiatric report. The examiner, who interviewed Dakotah for a little more than three hours, noted that Dakotah preferred his own fantasies to reality, but he did not think his imaginary life had ever reached psychotic proportions.

Two more psychiatric reports were done, and neither found that Dakotah met the criteria for legal insanity, which would have meant that he could not appreciate the wrongfulness of his crime or conform his behavior to meet the requirements of the law. No history of physical or sexual abuse was uncovered. Fisher and Arthur Cotter had been discussing a possible plea bargain—fourteen years to life for second-degree murder—but after reading the psychiatric reports Cotter chose to go to trial, a decision that several family members endorsed. Jesse Miles's forty-seven-year-old daughter, Vickie Hartz, Steve's stepsister, told me that she was disappointed that Michigan doesn't have the death penalty. "My dad was an easygoing, mellow guy who did everything for that kid," Hartz said. "And Dakotah killed him with as much emotion as if he were moving a chair."

The murder trial began on August 17th, less than six months after Jesse Miles's death. Judge Scott Schofield, who presides over all the criminal trials in Niles, is known for running a "rocket docket" when his cases get local media attention. He set brisk deadlines for motions and hearings, saying, "It's a cliché, I know," but "justice delayed is justice denied." The courtroom was filled to capacity, with reporters from four local TV stations. Schofield referred to the microphone as an ice-cream cone and encouraged jurors to hold it close to their mouths so they wouldn't make a mess.

At the juvenile center, where residents spend six hours a day in school and attend workshops on risk and anger management, Dakotah was "student of the week" three times, and received awards for "social skills," "fabulous achievement and effort," and "making a difference." Still, Cotter requested that Dakotah's legs be shackled during the trial, saying that he might pose a security risk because of "his feelings of power." "When he shot his grandfather, he felt for fifteen seconds that nothing in the world could hurt him," Cotter told the court. Judge Schofield acknowledged that defendants have the right to be free of restraint but concluded that in this case the shackles were warranted, since "the Court has some concerns

about Mr. Eliason being psychologically conflicted."

Cotter, in his opening statement, portrayed Dakotah as a sociopath so callous he was capable of "chitchat" and making a "whoey sound" in the patrol car just moments after shooting his grandfather. Dakotah was fascinated by death, he said, and would have killed his grandmother, too, if she hadn't woken up. Cotter cautioned the jury that when they viewed the videotape of Dakotah's interview at the police station they might be moved by the sight of Steve Eliason, "in a true test of the unlimitedness of a parent's love," embracing his son. "Do not confuse the emotions you're going to feel—the empathy that you are going to feel when you watch that point with his father—with any sadness that that young man felt remorse," Cotter said.

Lanny Fisher, unassuming and amiable, opened with a speech that laid bare his own confusion. "Most cases, most stories, they have the who, the what, the where, the when, and the why," he said. "The reason that we're all here today is the why." After months of research, he could find no coherent motive, so he presented the crime's incomprehensibility as proof that it couldn't have been deliberate. Cotter referred to Dakotah

as a "young man"; Fisher called him a "boy." He emphasized that in the past year Dakotah had endured a series of losses: his cousin had been in a fatal car crash, his father had told him they were losing their house because he could not pay the mortgage, a friend had committed suicide, and his dog, Bam-Bam, had died of old age.

Fisher's other line of defense was to urge the jury to recall how it felt to be fourteen. "You can't drink," he said. "You have to be twenty-one to do that. You can't smoke, or vote, or join the armed services. You have to be eighteen to do that. Can't even drive a car . . . That's the person that's on trial, ladies and gentlemen."

The trial lasted two and a half days, and much of it focussed on testimony from police officers and forensic technicians who established details about the crime that were not contested by the defense. Fisher chose not to have Dakotah testify, since juveniles tend to make poor witnesses—they are easily misled or intimidated and often give inconsistent, idealized accounts of their own actions. For character witnesses, Fisher called Dakotah's high-school principal, who said that Dakotah was never sent to his office and was "probably not the top student, but pretty good," and a family



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