

Death in the Courtroom

A PROSECUTOR'S VIEW

By Don Gallian

Bruce and Kathleen Busby had been trying to have a child for several years. Their prayers came true on September 13, 1991 with the birth of Ian Mackelroy Busby. To his parents, Ian was the *miracle child*, the child that they had almost given up ever having. Kathleen stated later that she used to *stand beside him every night and thank God for every breath he would take. "He was our only reason for living"*.

On August 30, 1996, Kathleen Busby left the extended care program at George McCann Memorial Catholic School, where she worked. She had placed Ian in his car seat in the center of the backseat of the car, because she was told that was the safest place in the vehicle. When she got to the intersection of Akers and Highway 198, Kathleen stopped at the red light. While they were sitting at the red light, she was talking to her son, Ian, about his birthday party in two weeks. Ian was very excited about the party and turning five years old. He kept asking "how many more days Mom, how many more days?" This would be the last thing that she would remember about her son.

When the light turned green, Kathleen started across the intersection. At that moment a vehicle driven by Karen Martin came through the intersection striking Kathleen's car on the side. Karen Martin had been drinking heavily that day. She had a blood alcohol level of .27% and had already caused two accidents just prior to reaching that intersection.

On August 30, 1996, the Busbys lost their "miracle child." Ian died of the injuries received in this collision. Kathleen Busby did not get a chance to hold her son one last time in her arms or to tell him how much he was loved. After many months of continuances and delays, Karen Martin was tried and convicted of Second Degree Murder and was sentenced to a term of 15 years to life.

I was not asked to write an article on trial strategy or the principles of law. I was asked to do a *much more difficult thing*. I was asked to write an article about the feelings of a prosecutor handling a driving under the influence case where a child has lost his life.

I remember when I first received the case; I contacted Mr. and Mrs. Busby to discuss the case. What people generally know about courts and trials are what they learn from television or the movies. Real life has little to do with what they see on television. The Busbys had dozens of questions and you have to do your best to answer them all. You explain the case will move very slowly through the court system with the defense obtaining one delay after another in the case. You explain to them they will have to re-live the day of their child's death over and over again in Court. You must prepare the parents to be witnesses and explain as a witness they will be subjected to cross examination, as well as the suggestion by the defendant's attorney that the parent-witness may be responsible for their child's death. You have to help them through a judicial system that seems to care much more about protecting the rights of the accused than about the victims.



Editors Note:

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While you are doing all the things that are necessary to prosecute the case, you also have to struggle to keep your own mental and emotional balance. You are looking at autopsy photographs and taking statements from grieving parents. You are examining witnesses and making arguments to the jury. No one prosecutes a case where someone has lost their life, especially where that person is a child, without it touching their lives. For years afterwards, you will drive through that intersection and you will see the face of that child in your mind's eye. You will wake in the middle of the night after dreaming about the moment of that collision and seeing the child on the autopsy table. You are forever changed.

This was my third trial in a row where a child had lost their life. I remember at the end of Karen Martin's case wondering why I was still a prosecutor. It certainly wasn't for the money because I knew attorneys with less experience who were making a great deal more money working for civil firms. It wasn't for the hours because I was working every day and every night on my cases. I wasn't even getting weekends or holidays off. My family was suffering and so was my health. So why was I putting myself through this when no one really seemed to care.

At the end of the trial, Kathleen Busby came up to me and threw her arms around me and with tears in her eyes, thanked me for saying the words that they wanted to say but couldn't say. She thanked me for being there for them. She thanked me for obtaining justice for their son. I then remembered why I was a prosecutor. If we didn't stand up for the victims, no one would. If we didn't protect the children who can't protect themselves, then no one would.

I went to law school because I wanted my life to count for something. I wanted to make a difference. I will never have an expensive car or the summerhouse at the coast. However, at the end of the day, I know that what I did with my life has made a difference and that has made it all worthwhile. This is why we are prosecutors and this is why we do what we do.

