Reflections on Representing Children

By Jennifer Pilette and Bill Ladd

Having been continuously engaged in the practice of what was once labeled “kiddie law” or “criminal law lite” for four decades allows us to reflect on the transitions in both the child welfare and juvenile delinquency contexts.

Historically, there was little guidance for practitioners and the trial courts in child welfare cases. Courts generally operated with a sense of placing the interests of the child first, yet the practice was often ad hoc and dependent on the professional rigor of the individual actors. Witness the tragedy of *In re AMB*, where the Court of Appeals held that the trial court had erred by withdrawing life support from a seriously ill newborn child without notice to the parents or the child’s assigned counsel.1 *AMB* demonstrated the dangers of the informality of practice in juvenile court proceedings.

In 2008, the federal courts became actively involved with child welfare issues as the Eastern District of Michigan took over supervision of many Michigan Department of Health and Human Services (DHHS) practices with the settlement agreement in *Dwayne B. v Granholm*, which later became known as *Dwayne B. v Snyder*.2 The most recent report of the court-appointed monitor indicates that DHHS had met only 13 of the 74 required performance standards evaluated in 2017.3 These results highlight the need for trained, experienced counsel to ensure that the terms of the settlement are enforced statewide. Still, too often the lawyer-guardian...
versed its longstanding opinion in In re Ferranti\(^{5}\), there has been a steady march toward treating United States Supreme Court decisions regarding juvenile life sentences\(^{7}\). In so doing, Michigan now explicitly allows collateral challenges to claimed delinquent children like adult criminals. Fears of “super predators\(^{8}\)” and child “wilding\(^{9}\)” altered our kinder, gentler, and relatively rare Michigan juvenile waiver process. While the historic discretion of a seasoned juvenile jurist remains present in the traditional waiver context\(^{10}\), the rise of automatic waiver (ceding to the prosecution the role of gatekeeper in certain aspects of waiver\(^{11}\)) and designation proceedings (the practice of trying children as adults in the juvenile court itself\(^{12}\)) have contributed to the criminalization of Michigan’s children.

So, too, in juvenile competency to stand trial, we have recently gazed through a more adult lens in viewing children’s comprehension of their own role in the delinquency process. The Michigan Juvenile Competency Statute\(^{13}\) evaluates questions of juvenile competency by juvenile rather than adult norms, yet still fashions Michigan’s concept of children’s legal comprehension akin to the adult competency standard.

When teaching law school, we stress that the legal system “treats children as children when it benefits us as adults and treats them as adults when it benefits us as adults.” No where is this more apparent than in the area of juvenile confessions where we evaluate children’s statements by the same legal standard as we evaluate those of adults,\(^{14}\) often with disastrous consequences.\(^{15}\)

We teach law school with the hope that this area of legal practice is finally coming of age, ripe for a new generation of children’s counsel.

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**At a Glance:**

Former SBM Children’s Law Section chairs Jennifer Pilette and Bill Ladd share their reflections after four decades of involvement with children’s law.

Jennifer Pilette, Wayne State Law (1979), was formerly with the Juvenile Defender Office and the State Appellate Defender Office, and was a juvenile court referee (Wayne County). She and her husband, Bill Ladd (both former SBM Children’s Law Section chairpersons), have taught juvenile law at Wayne and University of Detroit Mercy law schools, receiving the Adjunct of the Year Award at UDM. She currently trains on child welfare issues for SCAO.

Bill Ladd, a 1979 graduate of the University of Detroit School of Law, practiced with the Juvenile Defender Office and the Michigan Children’s Law Center. As counsel on many Michigan legal battles involving children, he received the Children’s Attorney of the Year Award from the SBM Children’s Law Section in 2009 and the SCAO Foster Care Review Board in 2016, and is the “next friend” on Dwayne B. v Snyder. He retired in 2018.

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**ENDNOTES**

2. Dwayne B. by Stempfle v Granholm, memorandum opinion of the United States District Court for the Eastern District of Michigan, signed October 24, 2008 (Case No. 06-13548); slip op at *1 and Dwayne B. by Stempfle v Snyder, memorandum opinion of the United States District Court for the Eastern District of Michigan, signed July 25, 2017 (Case No. 06-13548); slip op at *1. The two cases cited and their subsequent orders were based in the same complaint, hence the identical docket number for each. The changed defendants merely reflect the transition from Governor Jennifer Granholm (2003–2011) to Governor Rick Snyder (2011–2019).
11.  MCI 764.1f.
12.  MCI 712A.2d.
13.  MCI 712A.18r to MCI 712A.18s.
15.  When They See Us (Netflix, 2019) and The Central Park Five (PBS, 2012).