

Miller Mitigation and the Michigan Approach

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DEEP SOUTH CAPITAL DEFENSE CONFERENCE / NLADA LIFE IN THE
BALANCE
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- *Montgomery v. Louisiana* rendered the sentences of 363 juvenile lifers in Michigan unconstitutional
- Currently Michigan has the largest population of juvenile lifers nationwide
- We have Mandatory lwp for First Degree Premeditated Murder and First Degree Felony Murder, and our age of criminal responsibility was 17
- Michigan's "Miller Fix," MCL 769.25, allows prosecutors to motion for jlwp, which triggers an evidentiary hearing where the *Miller* factors are considered. If not lwp, then judge has discretion to sentence between 25-40 years on the minimum.

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- Michigan County prosecutors have motioned to reinstate jlwp in 2/3 of Montgomery cases
- These hearings are before a judge, not a jury, and there is no presumption against re-imposition of jlwp. *People v. Skinner*, 502 Mich 89, 131, 137 (2018), cert den *Skinner v. Michigan*, 139 S. Ct. 1544 (2019).
- There is no requirement that a client be determined to be “irreparably corrupt” for jlwp to be imposed. *Id.* at 137.

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Every one of these cases involves a murder, the *Miller* factors provide the context for the before, during, and after that mitigates your client’s culpability and demonstrates your client’s capacity for change.



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Family and home environment

- Adverse Childhood Experiences Checklist
- Community Violence
- Racism
- Foster Care
- Instability/Moves
- Normalization of criminality
- Poverty



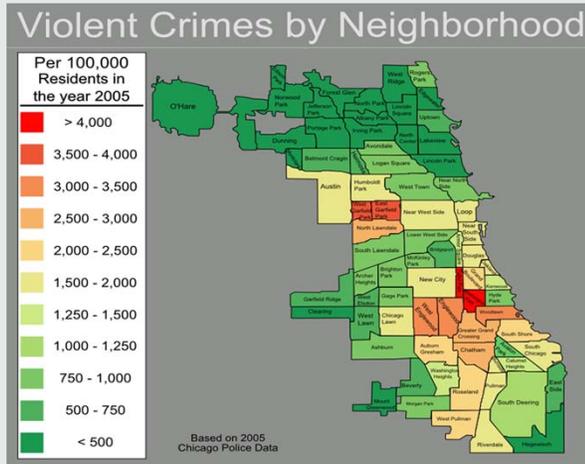
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Presenting Family and Home Environment

- Witness testimony or affidavits
- Mitigation social histories
- Psych evals
- Social scientists who have done field work in a specific community
- Contemporaneous newspaper accounts of a neighborhood
- Mitigation video
- Get creative!

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Presenting Family and Home Environment



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Presenting Family and Home Environment



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Prosecutor Tricks Re: Hallmark features of youth

- Mr. Miller was 14!
- Client made other good choices so more capable than average teen
- This was premeditated/planned so cannot be impulsive
- Everyone is different!

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Circumstances of the Offense

- Leader of follower?
- Under the influence?
- Under distress?
- Hypervigilance or hair trigger response
- Insight
- Accepting responsibility and expressing remorse
- Talk to co-defendants



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Ability to Participate in Defense

- Rejected plea offer
- Confession
- Waived conflicts
- Forwent viable lesser included defense
- Didn't comprehend lwop
- Talk to trial counsel!



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Capacity for Rehabilitation

- Prison/Jail behavior and accomplishments
- Psychological make-up
- Pro-social relationships
- Change
- Insight, remorse, changed thinking
- Age crime-curve



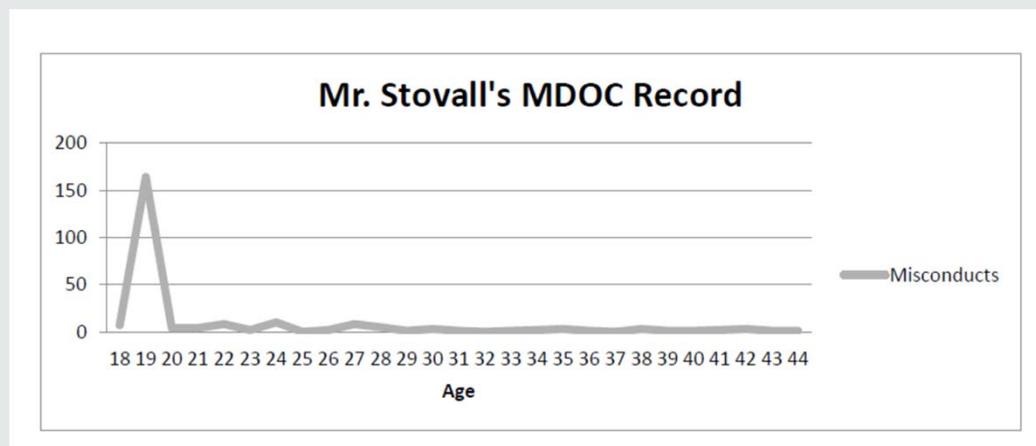
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Presenting Rehabilitation

- Corrections Expert
- Client testimony
- Testimony of fellow prisoners
- Testimony of family and friends
- Psych Expert

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Presenting Rehabilitation



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Presenting Rehabilitation



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Release!



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