



©MitarArt | shutterstock

Retaining a Forensic Mental Health Expert In *Miller* Cases

In *Miller v. Alabama*, the U.S. Supreme Court ruled that it is unconstitutional to automatically sentence individuals to life without the possibility of parole for a crime committed before their 18th birthday.¹ The attorney in a *Miller* case has numerous strategic decisions to make, such as whom to include on the legal team (e.g., an investigator or a mitigation specialist) and what to present at the hearing.² Sometimes, the attorney may consider retaining different types of experts, such as an educational expert, a linguistics expert, a sociologist to educate the court on the impact of a unique aspect of the case, or a mental health expert. *Miller* resentencing hearings are unique in that the defendant may have already begun serving his sentence and may have served decades in prison. Because the initial sentence was automatically imposed, the defendant may not have received a meaningful initial sentencing hearing. In *Miller*, the Court described factors that should be considered at the resentencing hearing, and in doing so, it presented a road map of factors that the clinician should consider in these types of evaluations.

This article assumes defense counsel has decided to retain a mental health expert to assist in the *Miller* resentencing hearing. Additionally, because it is unlikely that a meaningful sentencing hearing was presented before the court in the prior case, this article also assumes the attorney will want the mental health expert to take a wide stance and examine most, if not all, of the factors the court outlined in *Miller*.³

This article is designed to be a tool to (1) help defense counsel understand the benefits of a forensically trained mental health expert; (2) help defense counsel decide which type of forensic mental health expert to retain and how to find such an expert; (3) help defense counsel prepare the clinician, defendant, and defendant's family for the clinician's evaluation; and (4) inform defense counsel and clinician of the factors to consider in the evaluation as outlined in *Miller*.

What to Look for in a Forensic Mental Health Expert ... and Where to Find One

Miller does not preclude the court from imposing a sentence of life without parole on a juvenile defendant. But before doing so, the court is "require[d] ... to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."⁴ In many cases, this will require that defense counsel retain a mental health expert.

When retaining a mental health expert for a *Miller* evaluation, defense counsel should consider retaining a forensic mental health expert (FMHE) who is knowledgeable about adolescent development as well as the mental

BY DR. ANTOINETTE KAVANAUGH

health needs of adults. An FMHE understands the nuances of conducting an evaluation to be used in court, preparing a report to be tendered to the court, and testifying in court. For example, an FMHE should understand concepts related to *Frye* and *Daubert*⁵ and how they dictate the clinician's choice of instruments and evaluation methods. Similarly, the FMHE should also understand the rules of discovery, and how these rules can impact the evaluation process or the content of a report that is prepared for court. Defense counsel will want the clinician to have experience testifying. Finally, an FMHE should understand that this is not a "quick" or "sparse" evaluation. Quite the contrary, it is one of the most extensive types of forensic evaluations because unlike other in-depth sentencing evaluations (such as those in capital cases), *Miller* resentencing evaluations also involve gathering data (via records and interviews) about the defendant's family members as well as data related to the time that the defendant spent in prison.

A forensic social worker, forensic psychiatrist, or forensic psychologist could be retained as a mental health clinician for a *Miller* resentencing hearing. The type of FMHE counsel retains depends on the particulars of the case at hand. If psychological testing is not needed and medication is not an issue, a forensic social worker may be the ideal candidate. If psychological testing is not needed but medication has been (or should have been) an issue throughout most of the defendant's life, then a forensic psychiatrist may be best suited for the case. If medication is not a major issue and defense counsel wants the expert to use standardized instruments that pass *Frye* and *Daubert* challenges to demonstrate the defendant's current mental health makeup as well as what development factors were at play when he committed the offense, then defense counsel should consider retaining a forensic psychologist.

On the other hand, counsel may choose not to retain an FMHE. Instead, counsel may retain a clinician who is knowledgeable of adolescent development and mental health but is not forensically trained or does not routinely conduct forensic evaluations. In this case, counsel is urged to make sure that such a clinician is familiar with the wealth of research regarding the differences between adolescents and adults. For example, the clinician should be familiar with literature that describes the risk/reward and cognitive control systems of the brain and how these systems function differently for adoles-

cents and adults. The clinician should also understand how peers impact the behavior of adolescents and adults differently. Research clearly shows that when adolescents and adults are doing the same task and their peers are present, adolescents make riskier choices that have poorer outcomes.

If defense counsel retains a clinician who does not routinely conduct forensic evaluations or who is not an FMHE, then counsel should be prepared to devote time educating the expert on factors and issues related to forensic mental health assessment.⁶ For example, it is important that the clinician understand that anything relied upon in forming a clinical opinion could be tendered to the opposing side or, in the case of raw psychological data, to a clinician retained by the other side. This is something that a clinician rarely, if ever, has to address when conducting evaluations primarily for a clinical or therapeutic purpose.

The clinician who is retained and does not routinely conduct forensic evaluations is urged to become familiar with the relevant forensic or ethical guidelines of the profession. For example, psychologists have Forensic Specialty Guidelines,⁷ forensic social workers have a Code of Ethics for Forensic Social Workers,⁸ and forensic psychiatrists have the Ethics Guidelines for the Practice of Forensic Psychiatry.⁹

Multiple options are available for finding a clinician. Defense counsel can utilize her own professional networks and ask for recommendations. Another viable referral source is a national professional organization. For example, the National Juvenile Defender Center can provide FMHE referrals for different disciplines across the country.¹⁰ Alternatively, counsel can contact an organization specific to a particular profession and obtain a referral in the local area. For instance, if counsel seeks an FMHE who is a social worker, then counsel may want to contact the National Association of Forensic Social Workers as well as the National Juvenile Defender Center to obtain a referral.

A Word About Psychological Testing

In many cases, if counsel retains an FMHE who is a psychologist, then the FMHE may administer tests to assess the defendant in one or all of the following domains and may use the tools indicated:

- ❖ *Cognition:* Wechsler Adult Intelligence Scale IV (WAIS-IV administered to those over 16) or the Wechsler Intelligence Scale for

Children-V (WISC-V administered to those under 17).

- ❖ *Academics:* Wide Range Achievement Test-Fourth Edition (WRAT-4) or the Woodcock-Johnson III Tests of Achievement (WJ-III).
- ❖ *Personality and Emotional Functioning:* Minnesota Multiphasic Personality Inventory 2-RF (administered to those over 18), the Personality Assessment Inventory (PAI) (administered to those from 18 to 89), the Minnesota Multiphasic Personality Inventory-Adolescent (MMPI-A) (administered to youth from 14 to 18), or the Personality Assessment Inventory-Adolescent (PAI-A) (administered to youth from 12 to 18).

Not every domain is relevant in each case. For example, a defendant's cognitive abilities may not be relevant if defense counsel does not suspect that these abilities are significantly deficient. On the other hand, imagine a scenario in which the defendant has been detained since the 8th grade, GED classes were not available to those who were not within two years of their release date, and the defendant claims to have "taught himself" while in prison. In that case, it could be helpful to administer academic testing to demonstrate the academic advancements the defendant achieved. These advancements would be one indicator of growth and rehabilitation.

It is reasonable for defense counsel to ask the clinician to explain which instrument the clinician plans to administer to the defendant and why. During that conversation, counsel should raise any issues he has with a certain instrument. Some lawyers, for example, have concerns about the use of the MMPI-2, but many of these concerns are sufficiently addressed with the revised version of that test, the MMPI-2-RF. Similarly, some lawyers have concerns about how a client may respond to an individual item on a self-report measure. However, a skilled clinician — in this case a psychologist — should be able to explain that what matters is how a person answers on each item that makes up a scale and not on one item in particular.

Prepare the Clinician, Defendant, and Defendant's Family¹¹

A skilled mental health expert is able to find, build, and summarize meaningful mitigation evidence that defense counsel can then present to the court. However,

the FMHE's work product is directly impacted if he or she is not provided with timely and necessary information by defense counsel, such as prior records including relationship histories, mental health, and criminal history.

It is critical for defense counsel to assist the clinician by preparing the defendant, the defendant's family, and the clinician for the evaluation. In doing so, defense counsel can assist the clinician in building mitigation evidence that speaks directly to the clinically relevant factors as determined in *Miller*.

As is the case with any capital mitigation evaluation, the FMHE will want to spend an extensive amount of time conducting interviews with the defendant's family, the defendant, and collateral sources. Most likely, the evaluation will also involve administering psychological and/or forensic tests to the defendant. The FMHE will want to explore the defendant's development, home life and the background of those in the defendant's family system, as well as other related factors described in greater detail below.

It is very helpful to the clinician for defense counsel to forewarn the defendant and the defendant's family that the clinician will ask them personal and perhaps uncomfortable questions, and that

spend sufficient time with the defendant to ensure that he understands the clinician will be asking about the offense and understands how important it is that he answer to the best of his ability.

Clinically Relevant Factors

Unless the clinician has read the *Miller* decision, defense counsel should be prepared to tell the clinician the scope of factors the court will consider at the hearing. It is imperative that the clinician understands these factors as their scope and breadth drive the evaluation. The following elaborates on key factors as set forth in the *Miller* decision.¹²

1. Family and Home Environment

*"Mandatory life without parole for a juvenile ... prevents taking into account the family and home environment that surrounds him — and from which he cannot usually extricate himself — no matter how brutal or dysfunctional."*¹³

The family context and home environment of the defendant cover a broad range of issues including mental health; substance abuse and treatment; criminal history; and history of violence, abuse, and neglect. Minimally, this would include

defendant's mother and siblings multiple times. The mitigation specialist is well suited to inform the clinician which of the eight siblings can provide a rich description of the environment in which the defendant grew up.

The following scenario depicts how clinical interviews can produce relevant information not obtained previously and how records can be used to support that information:

Scenario A: The defendant, age 38, is sentenced to Life Without Parole (LWOP) for a murder that he committed when he was 14. In interviewing his sister and mother, the clinician learns that his mother raised her three children with the motto "fight to win or when you come home momma will beat you and send you back to win the fight." Also, in interviewing the defendant's sister, two years his junior, the clinician learns that their older brother, now deceased, often beat the defendant in order to "toughen him up." None of this information was included in the records reviewed. However, the defendant's sister told the clinician of an instance when she had to call the police because their mother was not home and the older brother was beating on the defendant, and she feared the older brother would kill him. The clinician asked the defense counsel to locate this police contact and used that record to substantiate and demonstrate for the court the violence in the home environment.

In order to facilitate the best clinician assessment, it is helpful for defense counsel to provide all records related to the family and home environment before the clinician begins interviewing the defendant, family members, and third-party sources. This allows the clinician to become oriented to the case and to maximize the interview time.

The following scenarios highlight the utility of the records:

Scenario A: Social service and police records from the defendant's childhood indicate that he was routinely punished by being hit with a metal rod and household objects such as extension cords. During the interview with the clinician, the defendant is reluctant to acknowledge the abuse or minimize the history of abuse. In this case, the clinician will use the records provided by defense counsel to ask the defendant to explain the differences in the account of the abuse. The defendant explains that the person who used corporal punishment was his mother and she is the only relative who currently has contact with him. The defendant explains that he is afraid that if he openly discusses the history of abuse, his mother will be embarrassed and sever contact with him. The

Select a mental health expert who understands the nuances of conducting an evaluation to be used in court, preparing a report to be tendered to the court, and testifying in court.

these questions will not always be about the defendant. The defendant and the family may feel they are being asked "to air dirty laundry" about each other, and may resist divulging relevant information. While this may be true in some ways, it is crucial they provide honest, complete responses so that the clinician has an accurate understanding of possible mitigating factors. This preparation is harder than it sounds. The best practice would be for defense counsel to have someone on the legal team tasked with spending the time necessary to prepare the defendant and the defendant's family for this type of questioning.

Further, as described below in greater detail, the FMHE will talk to the defendant about the offense from two different perspectives. Defense counsel is urged to

those persons the defendant grew up with and those who "parented," or were supposed to parent, the defendant. In some cases, this may include extended family members in the defendant's household.

The FMHE will want to interview the defendant's family members — including those who cared for the defendant while he was growing up — to obtain information about the family and home environment. These interviews may be extensive. Thus, the clinician could consult with the mitigation specialist on the case to determine which interviews are likely going to be the most fruitful. Imagine a case in which the defendant had eight siblings and they were raised by their mother and deceased grandmother, and the mitigation specialist has interviewed the defen-

defendant's reluctance is clinically relevant and the clinician should use it as an opportunity to make sure the defendant understands the nature of the evaluation, the relevance of relationships at his sentencing, and the clinician's role.

Scenario B: The defendant's mother encouraged drug use among her children and often smoked marijuana and methamphetamine with them. In this scenario, by using the prior clinician records relating to the family and home environment, as well as information gathered in interviews, the clinician is now in the position to inform the court about the multi-generational substance abuse in the defendant's family. The clinician could also use this to demonstrate how the defendant was raised in an environment in which the mother modeled illicit behavior, and to show that appropriate parent-child boundaries were not maintained. By reviewing the substance abuse treatment records of the defendant's mother and siblings, the clinician is able to clearly illustrate the extent of the problem.

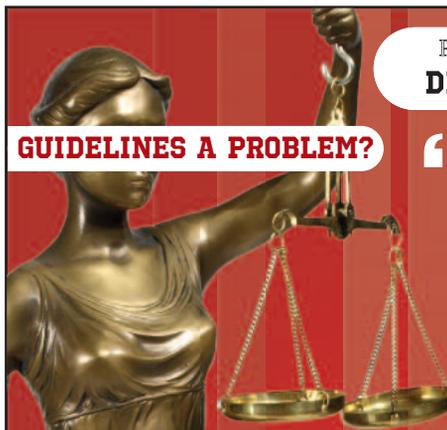
Further, in a resentencing evaluation, it is unlikely that the judge knew of the defendant's history and home life prior to imposing the initial sentence. Thus, this factor could potentially have a substantial impact on how the judge rules during sentencing or resentencing, which is why an experienced clinician is crucial.

2. Offender Age and Characteristics

*"Such mandatory penalties ... preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it."*¹⁴

While considering the offender's age, it is imperative to consider the youth's mental and physical health history, academic and vocational history, and any interactions with the child welfare system. Other characteristics and circumstances include whether the youth had extended periods away from the primary caregiver, and the circumstances of the youth's delinquent/criminal history. The clinician will obtain this information from clinical and collateral interviews as well as records.

The following is an example of how this information can be interrelated, and how a clinician can use such information. First, the clinician may start with these questions: Did the caregiver spend extended periods of time in the hospital or out of the home due to a chronic illness? If so, who cared for the youth and what was the nature of the care? Perhaps the youth was cared for by an older sibling whose paramour



POWERFUL NEW SENTENCING TOOL
DEFENSE SENTENCING VIDEO

GUIDELINES A PROBLEM?

“A PICTURE IS WORTH A THOUSAND WORDS”

A DEFENSE SENTENCING VIDEO

A close, personal, clear and concise interview with your client and witnesses when they are not in an intimidating courtroom.

A DEFENSE SENTENCING VIDEO

Presented with the Defense Pre-Sentence Memorandum for the Judge, Prosecutor and Probation Officer.

RESULT

The best possible impression of your client to the Sentencing Judge.

HOW MANY TIMES HAVE YOU EXPERIENCED:

- Your client stumbling at sentencing allocution?
- The judge becoming impatient after 2-3 minutes?
- Limiting your time and character witnesses?

IN A DEFENSE SENTENCING VIDEO:

- The judge will see your client as a person, not a Sentencing Guidelines number.
- Your client will be able to express remorse, take responsibility, and appeal for leniency in a calm, pressure-free venue.
- Supporters of your client — family, friends, co-workers, employers, ministers, community leaders, medical professionals — will be heard.

KATRINA DANIEL is a George F. Peabody and Matrix Award-winning Broadcast and Print Journalist with 20 years' experience in National and Local Television News, specializing in Crime, Courts, Legal Issues, and Medicine.

Katrina Daniel has a Master's Degree in Psychology. The questions she asks elicit the answers that are needed. The editing process is also critical, and her videographer/ editing team has a combined 50 years of experience in TV News and Editing.

This allows KatWalk Productions to produce a powerful resource, according to defense attorneys who have used the videos and the judges who have viewed them in cases involving fraud, child porn, drug trafficking, DUI, reconsideration and others.

KatWalk also produces 'day in the life' and mediation videos.

CONTACT WWW.KATWALKPRODUCTIONS.COM
KATRINA@KATWALKPRODUCTIONS.COM
(864) 380-6003



took this as an opportunity to repeatedly sexually abuse the youth. Did this abuse result in involvement with the child welfare system or criminal justice system? If so, the clinician will want to review records from those systems because they could contain contemporaneous impressions of the defendant's living environment and family dynamics, as well as a description of the family members and their mental health and treatment needs.

To ensure the clinician has the information needed for a thorough assessment of possible mitigating factors, it is helpful for defense counsel to obtain copies of a youth's mental health, medical health, substance abuse, academic, and criminal records. Defense counsel is urged to make sure the records are complete. For instance, if the defendant was a special education student, per federal law, every third year a student's Individual Education Plan (IEP) must be re-evaluated and should include a psychologist's evaluation. This report may or may not be housed with other IEP documents.¹⁵

If the defendant had previous convictions, it is helpful for defense counsel to obtain the related probation, incarceration and, if relevant, mental health and substance abuse records. In addition to reviewing these records, the clinician may want to talk to the probation officer to obtain yet another perspective of the youth's functioning and home environment.

In many of these proceedings, the defendant's case was transferred to adult court. If the court conducted a transfer or reverse waiver hearing, a report from a clinician (psychiatrist, psychologist, or social worker) was probably tendered to the court. The clinician conducting the *Miller* evaluation will want to review that report, as well as any raw data upon which the previous clinician relied. If it is a resentencing evaluation, and testimony was offered at the initial sentencing hearing, the clinician may want to review the court transcript for evidence that relates to the youth's developmental stage, home environment, and role in the offense.

This level of detailed information is valuable for the court during sentencing or resentencing. It enables the court to order an individualized sentence based on the totality of the circumstances influencing the youth's decision-making capacity.

3. Circumstances of the Offense

"Mandatory life without parole for a juvenile ... neglects the circumstances of

*the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him."*¹⁶

It is invaluable to the mitigation evaluation that the clinician obtain from the defendant a detailed understanding of the offense, including the circumstances leading up to and succeeding the offense. This includes information about "how age [and the factors associated with youth] could have affected his calculation of the risk that was posed, as well as his willingness to walk away at this point."¹⁷ Further, in *Miller*, the Court explicitly articulates that the roles of peers and older adults in the youth's life and in relation to the offense are germane to the sentencing hearing.¹⁸

This portion of the evaluation should be extensive and serves two purposes. First, it allows the clinician to place the offense in a developmental context by asking the defendant to answer questions from the perspective of who he or she was at the time of the offense. Typically, the evaluating clinician will ask the defendant to describe events, thoughts, and emotions leading up to the offense, during the offense, and after the offense.

Second, it allows the FMHE to understand how the defendant presently feels about the offense. During the interview, the FMHE will ask the defendant to reflect on the offense from the perspective of who he or she is at the time of the evaluation. In doing so, the clinician will want to inquire about the defendant's feelings about the offense itself, the defendant's role in the offense, and how it impacted the victims and the community.

To assist the clinician in preparing for and obtaining the interview with the defendant, defense counsel should provide the clinician with police records that describe the offense as well as any previous statements the defendant gave related to the offense. It may be helpful to provide statements from the co-defendants, if they exist.

For example, the court should consider that the defendant never thought about saying no when his co-defendant suggested the crime because the defendant was afraid that the co-defendant would hurt him. Moreover, hypothetically, at the time of the offense, the defendant knew of the co-defendant's previous acts of violence in the community. In this case, the clinician may want to interview third parties who can confirm that the co-defendant was violent. If this is not possible, the clinician may want to review the

co-defendant's arrest and conviction record. If this is a resentencing hearing, the court was not presented with this information during the initial sentencing hearing. Thus, this is of interest to the court during the hearing in deciding an individualized sentence.

4. Possibility for Rehabilitation

*"[M]andatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it."*¹⁹

In *Miller*, the Court said that, compared to adults, juveniles have a "heightened capacity for change."²⁰ In developing mitigation evidence, both defense counsel and the clinician can draw from a wealth of information to show the defendant's capacity for change by demonstrating the possibility for rehabilitation. For example, the clinician will want to review documentation about the defendant's behavior while detained to glean indicators of the defendant's rehabilitation, growth, and maturity. For those being resentenced, depending on how long it has been since the initial sentence, this can significantly expand the scope of evaluation.

First, the FMHE should consider what programming and services were available in the institution, and if the defendant participated in them. It is often the case that individuals serving life sentences have limited opportunities to participate in services and programs. If this is the case, defense counsel should provide the contact information for someone in the institution (ideally at the management or supervisory level) who can provide the clinician with more information and context.

Second, the clinician will also want to consider other avenues for demonstrating what type of person the defendant has become while in prison as this relates to the possibilities of rehabilitation. Citing *Roper* and *Graham*, the Court in *Miller* referred to "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption."²¹ The Court took the position that most defendants will mature and continue to develop out of the "unfortunate ... immaturity."²²

Consistent with this view, the Court stated that the sentence "must provide 'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'"²³ To provide this information, the FMHE may want to interview prison personnel. For example, if the defendant was able to work, the FMHE may want to

interview the staff who oversaw the work. If the defendant was not able to work because of the length of his sentence, other actions may indicate growth, such as tutoring other inmates. In this case, the clinician may want to talk to some of those inmates. At a minimum, defense counsel could obtain affidavits in which the inmates describe the defendant's tutoring and assistance.

Third, if the defendant received mental health treatment while incarcerated, it is important that the defense counsel obtain these records as well. In some institutions, the records are kept separately and thus may require more than one release of records. The clinician may want to use them during the interview with the defendant to obtain a better understanding of the defendant's mental state while incarcerated.

In addition to signs of growth and rehabilitation possibilities, the clinician will also want to review and contextualize any infractions committed by the defendant while detained or incarcerated. During the clinical interview, the clinician should provide the defendant an opportunity to put the infractions in context. However, the clinician may also want to put the defendant's number and type of infractions in an institutional context. To do this, defense counsel will need to obtain data from the correctional institution related to the average number and type of infractions an inmate obtains per year. If this information is not available, the clinician may want to refer to Attapol Kuanliang's article, *Juvenile Inmates in an Adult Prison System: Rates of Disciplinary Misconduct and Violence*,²⁴ for a point of reference.

If possible, it is helpful for defense counsel to request this information be provided separately for all inmates and for those who are serving LWOP sentences. In reviewing the defendant's history of infractions, the clinician should also consider how the number and type may be related to the defendant's developmental changes.

Among other things, defense counsel will have to decide the ultimate goal of the hearing — for the court to resentence the defendant to something other than LWOP, or to resentence the defendant to a specific period of years. It is important that the defense counsel inform the clinician of the ultimate goal as it can also impact the scope of the clinician's work. For example, if counsel will ask the court to impose a new sentence that allows the defendant to be released within the immediate future, then counsel may want the clinician to

include some aspects of a re-entry plan. Additionally, when defense counsel is asking that the defendant be released in the immediate future, the court may expect some type of formal assessment of risk for reoffending or risk for violence. Defense counsel should discuss this expectation with the clinician. On the other hand, if defense counsel is not requesting a new sentence that would require that defendant be released in the near future (e.g., 12-24 months), then a re-entry plan or risk assessment may be "stale" and of little use by the time defendant is released.

Conclusion

Miller builds upon *Graham* and makes it clear to the courts that regardless of the offense, a juvenile is not eligible for an automatic sentence of life without parole, and is required to have an individualized sentencing hearing. The Supreme Court clearly articulates variables the judge should consider before imposing the sentence. Using the work of a skilled FMHE, defense counsel can present the court with meaningful mitigation evidence that (1) underscores the impact of the defendant's development, family and peer relationships, and (2) results in a fair sentence based both on the totality of the circumstances before, during, and after the crime was committed, as well as the rehabilitation possibilities and opportunities of the defendant.

Notes

1. *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

2. This article pertains to cases in which a defendant initially received a sentence of LWOP, but because of the *Graham* or *Miller* decision, the defendant is afforded a new sentencing hearing. As *Miller* is the more recent case, this type of hearing shall be referred to as a *Miller* resentencing hearing.

3. In contrast, experts may be retained to address narrow aspects of mitigation as indicated in the following examples: defense counsel may decide to retain an expert on prison overcrowding to put the defendant's behavior in prison in context for the court without addressing the defendant's life before prison; or the defense could retain an expert on Fetal Alcohol Syndrome to educate the court on how this disorder impacted the defendant without addressing other aspects of the defendant's life.

4. *Miller*, 132 S. Ct. at 2469.

5. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

6. The following are a few initial resources that a lawyer may want to share with the clinician who does not routinely conduct forensic evaluations: (1) Grigorenko, *Handbook of Juvenile Forensic Psychology and Psychiatry* (2012); (2) Grisso, *Forensic Evaluation of Juveniles* (2nd ed., 2013); and (3) Heilbrun et al., *Foundations of Forensic Mental Health Assessment* (2008).

7. Although these guidelines are aspirational, they are a valuable resource: <https://www.apa.org/practice/guidelines/forensic-psychology.aspx>.

8. http://nofsw.org/?page_id=16.

9. <http://www.aapl.org/ethics.htm>.

10. <http://www.njdc.info>.

11. From this point on, the terms clinician and forensic mental health expert (FMHE) are used interchangeably.

12. *Miller v. Alabama*, *supra* note 1.

13. *Id.* at 2468.

14. *Id.* at 2467.

15. 34 C.F.R. §§300.303(b)(2)-300.305.

16. *Miller*, 132 S. Ct. at 2468.

17. *Id.*

18. *Id.* at 2458.

19. *Id.* at 2468.

20. *Id.* at 2469.

21. *Miller* at 2469; *Graham v. Florida*, 560 U.S. ___, 130 S. Ct. 2011, 2026-2027 (2010); *Roper v. Simmons*, 543 U.S. 551, 573 (2005).

22. *Miller* at 2469.

23. *Id.*

24. Attapol Kuanliang et al., *Juvenile Inmates in an Adult Prison System: Rates of Disciplinary Misconduct and Violence*, 35 CRIM. JUST. & BEHAV. 1186 (2008); (<http://www.sagepub.com/stohrstudy/articles/11/Kuanliang.pdf>). ■

About the Author

Dr. Antoinette Kavanaugh is Board



Certified in Forensic Psychology and is the former Clinical Director of the Juvenile Justice Division — Cook County Juvenile Court Clinic. In private practice since

1999, she has been retained as an expert in multiple *Miller* cases.

Antoinette Kavanaugh Ph.D., ABPP

30 North Michigan Avenue

Suite 1604

Chicago, IL 60602

312-726-2914

Fax 888-502-6088

E-MAIL antoinette@drkavanaugh.com