Miller v. Alabama as a Watershed Procedural Rule: The Case for Retroactivity

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INTRODUCTION

Three years ago, in *Miller v. Alabama*, the Supreme Court ruled that sentencing juveniles to life without parole ("LWOP") under mandatory sentencing schemes amounts to cruel and unusual punishment in violation of the Eighth Amendment.[1] Under *Miller*, courts considering sentencing juveniles—people under the age of eighteen when they committed a crime—to LWOP must: (1) have a choice between imposing LWOP or some other sentence; and (2) consider mitigating information relating to the offender's age.[2]

Over the past few years, courts have reached conflicting conclusions regarding whether the rule the Supreme Court pronounced in *Miller* applies retroactively to the cases of over 2,000 prisoners whose convictions were final when the case was decided.[3] The Supreme Court granted certiorari in *Montgomery v. Louisiana* and is now poised to decide whether *Miller* must apply retroactively.[4]

The issue has primarily been framed as a question of whether the *Miller* rule is substantive, and therefore retroactive, or procedural, and therefore not retroactive. Twelve state supreme courts have held *Miller* to apply retroactively; ten of them reached this conclusion on the grounds that *Miller* created a new substantive rule.[5] The five states that have determined *Miller*

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

[2] *See id*. at 2469 (holding "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders"); *id*. at 2475 (requiring courts to consider mitigating evidence prior to imposing LWOP on a juvenile offender).

[3] *Id*. at 2477 (Roberts, C.J., dissenting) ("The Court accepts that over 2,000 of those prisoners [juveniles serving LWOP] received that sentence because it was mandated by a legislature.").

[4] Montgomery v. Louisiana, 135 S. Ct. 1546 (2015) (granting petition for writ of certiorari).

[5] "New *substantive* rules generally apply retroactively." Schriro v. Summerlin, 542 U.S. 348, 352 (2004) (emphasis in original). The following states have concluded *Miller* is retroactive because it is substantive: Florida, Illinois, Iowa, Mississippi, Massachusetts, Nebraska, New Hampshire, South Carolina, Texas, and Wyoming. *See* Falcon v. State, 162 So. 3d 954 (Fla. 2015); People v. Davis, 6 N.E.3d 709 (Ill. 2014); State v. Ragland, 836 N.W.2d 107 (Iowa 2013); Diatchenko v. Dist. Attorney for Suffolk Dist., 1 N.E.3d 270 (Mass. 2013); Jones v. State, 122 So. 3d 698 (Miss. 2013); State v. Mantich, 842 N.W.2d 716 (Neb.

is not retroactive have done so on the basis that its rule is procedural, rather than substantive.[6] I argue that the issue of whether *Miller* is substantive or procedural is not dispositive; *Miller* should apply retroactively as a substantive rule or as a watershed rule of criminal procedural.

I agree with the majority of the lower courts that *Miller*'s rule is essentially substantive. Rules that prohibit specific sentences for certain categories of offenders are generally categorized as substantive.[7] For example, *Atkins v. Virginia*, which prohibited the death penalty for mentally retarded defendants under the Eighth Amendment, and *Roper v. Simmons*, which did the same for juveniles, were both substantive changes to the law.[8] Similarly, in *Miller*, the Court prohibited a specific sentence—mandatory LWOP—for a category of defendants—juveniles. Scholars who have considered *Miller*'s retroactivity overwhelmingly conclude that *Miller* is a substantive rule and should apply retroactively.[9]

However, there is a strong argument that the *Miller* decision is procedural because the Court required a new process—a sentencing hearing to consider mitigating evidence—before a juvenile LWOP ("JLWOP") sentence can be imposed. The Court did not "categorically bar" JLWOP; rather, it required that a "sentencer follow a certain process before imposing that penalty."[10]

2014) (finding the rule is more substantive than procedural); Petition of State of New Hampshire, 103 A.3d 227 (N.H. 2014); Aiken v. Byars, 765 S.E.2d 572 (S.C. 2014); *Ex parte* Maxwell, 424 S.W.3d 66 (Tex. Crim. App. 2014); State v. Mares, 335 P.3d 487 (Wyo. 2014). Connecticut and Arkansas have held *Miller* to be retroactive on different grounds. *See* Casiano v. Comm'r of Corr., No. 19345, 2015 WL 3388481 (Conn. May 26, 2015) (holding that *Miller* is retroactive because it is a watershed rule of criminal procedure); Kelley v. Gordon, 2015 Ark. 277 (2015) (concluding that *Miller* is retroactive because the Supreme Court granted relief to Kuntrell Jackson, an Arkansas prisoner, in the companion case to *Miller*, and it would be unfair to deny other Arkansas prisoners the same relief).

[6] These states are: Alabama, Louisiana, Michigan, Minnesota, and Pennsylvania. *Ex parte* Williams, No. 1131160, 2015 WL 1388138 (Ala. Mar. 27, 2015); State v. Tate, 130 So. 3d 829 (La. 2013); People v. Carp, 496 Mich. 440 (2014); Roman Nose v. State, 845 N.W.2d 193 (Minn. 2014); Commonwealth v. Cunningham, 81 A.3d 1 (Pa. 2013).

[7] *See* Saffle v. Parks, 494 U.S. 484, 495 (1990).

[8] Atkins v. Virginia, 536 U.S. 304, 321 (2002); Roper v. Simmons, 543 U.S. 551, 578 (2005).

[9] *See, e.g.*, Beth Colgan, Alleyne v. United States, *Age as an Element, and the Retroactivity of* Miller v. Alabama, 61 UCLA L. REV. DISC. 262 (2013); Perry L. Moriarty, Miller v. Alabama *and the Retroactivity of Proportionality Rules*, 17 PA. J. CONST. L. 929 (2015); Tiffani N. Darden, *Juvenile Justice's Second Chance: Untangling the Retroactivity of* Miller v. Alabama *Under the* Teague *Doctrine*, 42 AM. J. CRIM L. 1, 16 (2014). *But see* Eric Schab, *Departing from* Teague: Miller v. Alabama*'s Invitation to the States to Experiment with New Retroactivity Standards*, 12 OHIO STATE J. CRIM. LAW 213, 215 (2014) (arguing that *Miller* should be construed as a watershed rule of criminal procedure because, when considered in conjunction with *Roper v. Simmons*, *Graham v. Florida*, and *JDB v. North Carolina*, it "creates a watershed rule that 'kids are different' and must be treated differently throughout the criminal process.")

[10] Miller v. Alabama, 132 S. Ct. 2455, 2471 (2012).

This Essay argues that even if the Supreme Court were to determine that *Miller* announced a new *procedural* rule, it should still apply retroactively because of its groundbreaking nature. This alternative argument for concluding that *Miller* is retroactive has been marginalized in the discourse thus far but was just relied upon by the Connecticut Supreme Court in *Casiano v. Commissioner*.[11]

I. THE WATERSHED EXCEPTION

The Supreme Court set forth the rules governing retroactivity in *Teague v. Lane*.[12] *Teague* held that new rules of criminal procedure are generally not retroactive except for: (1) substantive rules;[13] and (2) "watershed rules of criminal procedure" that are "'implicit in the concept of ordered liberty.'"[14]

In carving out this exception for "watershed rules," the Court drew heavily from Justice Harlan's concurring opinion in *Mackey v. United States*, where he argues for applying procedural rules retroactively in those "situations [where] it might be that time and growth in social capacity, as well as judicial perceptions of what we can rightly demand of the adjudicatory process, will properly alter our understanding of the *bedrock procedural elements* that must be found to vitiate the fairness of a particular conviction."[15] He points to the right to counsel as one such example.

The exception for watershed procedural rules has not received much attention in the debate over *Miller*'s retroactivity because the exception was deliberately designed to be quite narrow, and the Supreme Court has *never* found that it applies.[16] The Court has consistently pointed to *Gideon v. Wainwright*, which established the right to appointed counsel for indigent defendants in criminal trials, as an example of a watershed rule of criminal procedure; all procedural rules the Supreme Court has considered have failed to live up to this standard.[17]

I argue that *Miller*'s requirement that courts consider mitigating evidence for juvenile offenders before imposing LWOP is so groundbreaking that it is the first case to rise to the level of qualifying as a watershed rule. Sentencing juvenile offenders who have committed serious crimes without considering the mitigating circumstances of their lives is just

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[11] Casiano v. Comm'r of Corr., No. 19345, 2015 WL 3388481 (Conn. May 26, 2015).

[12] *Teague*, 489 U.S. at 288.

[13] *See* Schriro v. Summerlin, 542 U.S. 348, 352 (2004) (quoting Mackey v. United States, 401 U.S. 667, 692 (1971)) (interpreting *Teague*'s exception for "certain kinds of primary, private conduct beyond the power of the criminal law-making authority to proscribe" as applying to substantive rules).

[14] *Teague*, 489 U.S. at 311 (quoting *Mackey*, 401 U.S. at 693).

[15] *Id.* (emphasis in original) (quoting *Mackey*, 401 U.S. at 693).

[16] *See* Jessica Smith, *Retroactivity of Judge-Made Rules*, ADMINISTRATION OF JUSTICE BULL., Dec. 2004, at 1, 7, *available at* http://perma.cc/L7R9-ETJW.

[17] Gideon v. Wainwright, 372 U.S. 335, 344 (1963).

as unfair as sending people into court without lawyers. As the Court recognized in *Miller*, justice requires juveniles to be judged in light of the trauma and abuse most have suffered as children, their susceptibility to influence by others, and their poor capacities for decision-making.[18]

Miller epitomizes the situation Justice Harlan contemplated, where society's fundamental understanding of fairness has evolved due to "growth in social capacity."[19] Neuropsychological and developmental research on adolescence has emerged only recently, enhancing our "social capacity" to understand adolescent behavior, including but not limited to teenagers' participation in crime. This research has informed "judicial perceptions of what we can rightly demand," as evident from the Supreme Court's recent string of decisions pertaining to juvenile offenders.[20] In *Roper v. Simmons*, the Court overruled existing precedent and concluded that executing juveniles violates the Eighth Amendment; its conclusion was based on advances in neuropsychology that fundamentally changed its understanding of teenage behavior and caused it to conclude that juveniles *must* be treated differently than adults.[21] As Justice Harlan forecasted, such change and growth in our social consciousness "will properly alter our understanding of the *bedrock procedural elements* that must be found to vitiate the fairness of a particular conviction."[22] In *Miller*, the Supreme Court determined that fairness requires a new process for juveniles facing LWOP sentences in light of our society's advances in understanding adolescent brain development and behavior; courts must consider mitigating evidence pertaining to their youth.[23] Although no other case has been found to rise to the level of a watershed rule of criminal procedure, *Miller* seems to fit squarely within Justice Harlan's articulation of the circumstances under which a rule should qualify.

Miller has been heralded as "monumental,"[24] "revolutionary,"[25] and "remarkable."[26] Like *Gideon*, which spawned broader changes to the law than the decision required, including eventually the right to appointed

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[18] *See* Miller v. Alabama, 132 S. Ct. 2455, 2467 (2012) (quoting Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)) (discussing mitigating characteristics of youth, including irresponsibility, recklessness, susceptibility to influence, and exposure to abuse and neglect and reasoning that "'the background and mental and emotional development of a youthful defendant [must] be duly considered' in assessing his culpability.")

[19] *Id.*

[20] *Id.*

[21] Roper v. Simmons, 543 U.S. 551, 569 (2005).

[22] *See Teague*, 489 U.S. at 312 (emphasis in original) (quoting *Mackey*, 401 U.S. at 693).

[23] *See* Miller v. Alabama, 132 S. Ct. 2455, 2464–65 (2012) (discussing recent research that demonstrates key differences between adolescents and adults).

[24] Brock Jones, *Op-Ed: A Glimmer of Hope for Juveniles Sentenced to Life Without Parole*, THE COURT (Jan. 30, 2014), http://perma.cc/4X2P-F6VX .

[25] Cara H. Drinan, *The* Miller *Revolution*, 101 IOWA L. REV. ___ (2015), *available at* http://perma.cc/75HE-6M8S.

[26] Laura Cohen, *Freedom's Road: Youth Parole, and the Promise of* Miller v. Alabama *and* Graham v. Florida, 35 CARDOZO L. REV. 1031, 1034 (2014).

counsel in misdemeanor and juvenile delinquency proceedings,[27] *Miller* has inspired major changes in state laws that go far beyond the narrow requirements of its holding. The opinion is transforming our nation's approach to sentencing juvenile offenders.[28] If that is not a watershed rule, I do not know what is.

Directly in response to *Miller*, eight states have passed legislation expressly outlawing LWOP sentences for juveniles.[29] Nine other states have created new resentencing or parole procedures that go far beyond the requirements of *Miller* to offer juvenile offenders more meaningful opportunities for release at younger ages.[30] State courts have taken *Miller* to heart, concluding that mitigating information must be considered prior to sentencing juveniles to LWOP even under discretionary sentencing schemes.[31] Iowa's Supreme Court found *Miller*'s reasoning to prohibit imposing mandatory minimum sentences for juveniles,[32] and the Massachusetts Supreme Court banned LWOP entirely based on *Miller*.[33]

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[27] *See* Argersinger v. Hamlin, 407 U.S. 25, 33 (1972) (establishing the right to counsel in misdemeanor cases where incarceration is a possible sentence); In re Gault, 387 U.S. 1, 41 (1967) (establishing the right to counsel in juvenile delinquency proceedings).

[28] *See, e.g.*, Drinan, *The* Miller *Revolution*, *supra* note 30.

[29] Colorado, Hawaii, Massachusetts, Nevada, Texas, Vermont, West Virginia, and Wyoming abolished LWOP sentences for juvenile offenders after the *Miller* decision. *See* COLO. REV. STAT. § 18-1.3-401(4)(b)(1) (2015); H.B. 2116, 27th Leg., Reg. Sess. (Haw. 2014); H.B. 4307, 188th Gen. Ct. (Mass. 2014); TEX. GOV'T CODE § 508.145(b) (2013); H. 62, 2015–2016 Leg. Sess. (Vt. 2015); W. VA. CODE § 61-11-23(b) (2014); H.B. 23, 62d Leg., Gen. Sess. (Wyo. 2013). They join the seven states (Alaska, Colorado, Kansas, Kentucky, Montana, New Mexico, and Oregon) that prohibited juvenile LWOP prior to the *Miller* decision. THE SENTENCING PROJECT, SLOW TO ACT: STATE RESPONSES TO 2012 SUPREME COURT MANDATE ON LIFE WITHOUT PAROLE (2014).

[30] These states are: California, Delaware, Florida, Iowa, Louisiana, Massachusetts, Nebraska, Texas, and West Virginia. *See* CAL. PENAL CODE § 3051(2014) (establishing youth offender parole hearings for juvenile offenders who have served between fifteen and twenty-five years); DEL. CODE tit. 11 § 4204A(d)(1)–(d)(2) (2013) (providing for sentencing review of nonhomicide juvenile offenders after they have served twenty years, and of homicide offenders after they have served thirty years); FLA. STAT. § 921.1402 (2015) (creating resentencing hearings for juvenile offenders sentenced to fifteen years or more after they have served fifteen, twenty, or twenty-five years, depending on the length of the original sentence); IOWA CODE § 902.1 (2015) (rendering juvenile offenders eligible for parole after serving twenty-five years); LA. STAT..§ 15:574.4(D)(1) (2014) (allowing all juveniles convicted of nonhomicide offenses the opportunity for parole hearings after serving thirty years in prison); *Id.* § 15:574.4(E)(1) (creating parole eligibility for juveniles convicted of homicide after thirty-five years in prison); MASS. GEN. LAWS ch. 119, § 72B (establishing specialized parole hearings for juvenile offenders after twenty to thirty years); NEB. REV. STAT. § 83-1, 110.04 (2014) (establishing annual parole hearings that require the consideration of youth-specific factors for juvenile offenders); TEX GOV'T CODE § 508.145(b) (2013) (establishing parole eligibility for all juvenile offenders after forty years); W. VA. CODE § 61-11-23(b) (2014) (establishing parole eligibility for all juvenile offenders sentenced to over fifteen years when the individual has served fifteen years in custody).

[31] *See, e.g.*, Aiken v. Byars, 765 S.E.2d 572 (S.C. 2014).

[32] State v. Lyle, 854 N.W.2d 378, 380 (Iowa 2014).

[33] Diatchenko v. Dist. Attorney, 1 N.E.3d 270, 285 (Mass. 2013).

These are merely a few examples of the monumental transformation in sentencing laws for juvenile offenders that *Miller* has triggered across the country, indicating that it is indeed a watershed rule.

II. MITIGATING EVIDENCE ABOUT JUVENILES IS FUNDAMENTAL TO FAIRNESS AND ACCURACY

A procedural rule rises to the level of being a retroactive "watershed" rule when it "implicate[s] the fundamental fairness and accuracy of the criminal proceeding."[34] The *Miller* rule implicates both fundamental fairness and accuracy.

A. Fairness

In order to qualify as "watershed," a rule must "alter our understanding of the *bedrock procedural elements* essential to the fairness of a proceeding" such that the new rule is considered "implicit in the concept of ordered liberty."[35]

The rapid changes in the law born out of *Miller* demonstrate that our societal understanding of fairness in the realm of juvenile sentencing has fundamentally changed. The *Miller* opinion critiques mandatory LWOP sentencing schemes because they "contravene[] . . . [the] foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children."[36] This foundational principle—that "youth matters" in sentencing—represents a fundamental shift in the law.[37] It is now widely accepted that considering the differences between youth and adults is a prerequisite to fairness in juvenile sentencing.[38]

This shift in understanding is supported by research. Indeed, considering mitigating evidence in juvenile sentencing proceedings *is* essential to fairness. Most juveniles who commit serious offenses have experienced childhoods filled with abuse, neglect, and trauma.[39] Many have

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[34] Saffle v. Parks, 494 U.S. 484, 495 (1990).

[35] Teague v. Lane, 489 U.S. 288, 311 (2005) (emphasis in original).

[36] Miller v. Alabama, 132 S. Ct. 2455, 2466 (2012).

[37] *Id.* at 2465 (stating that "youth matters" in sentencing).

[38] *See, e.g.*, Jennifer Breen & John Mills, *Mandating Discretion: Juvenile Sentencing Schemes after* Miller v. Alabama, 52 AM. CRIM. L. REV. 293, 294 (2015) (arguing that *Miller* "establishes a new right for juvenile defendants; namely, that youth be taken into consideration as a factor in individualized sentencing"); Drinan, *The* Miller *Revolution*, *supra* note 30 (exploring revolutionary changes to sentencing juvenile offenders rooted in the *Miller* decision); *supra* notes 34–35.

[39] *See* ASHLEY NELLIS, THE SENTENCING PROJECT, THE LIVES OF JUVENILE LIFERS: FINDINGS FROM A NATIONAL SURVEY 2 (2012) (finding that among juvenile lifers, 79% witnessed violence in their homes and 46.9% experienced physical abuse), *available at* http://perma.cc/E7GR-NAQU.

mental health issues.[40] Their criminal behavior is shaped by these experiences, as well as by the immutable characteristics of youth the Supreme Court has recognized, including susceptibility to influence by others, limited decision-making capabilities, an inability to remove themselves from problematic homes or communities, and their unique capacity to change as they mature.[41] Considering mitigating evidence in juvenile cases is essential to fair sentencing because people support less severe punishments when they learn more about an individual's history of child abuse or the circumstances surrounding the crime.[42] These circumstances are particularly relevant in juvenile cases because of the unique characteristics of youth.

The idea that "youth matters" in sentencing has gained traction in the United States,[43] and is arguably a concept that is now fundamental to our understanding of fairness. In the international context, *Miller*'s move to require mitigating evidence prior to imposing JLWOP would be construed as "implicit in the concept of ordered liberty."[44] The United States is the only country in the world to impose JLWOP, a practice which itself is widely viewed as a violation of fundamental human rights.[45] The United Nations Committee Against Torture has criticized the United States for sentencing juveniles to LWOP and has urged the U.S. to "adopt all appropriate measures to review the situation of persons already serving such

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[40] *See, e.g.*, Elizabeth Cauffman & Thomas Grisso, *Mental Health Issues Among Minority Offenders in the Juvenile Justice System*, *in* OUR CHILDREN, THEIR CHILDREN: CONFRONTING RACIAL AND ETHNIC DIFFERENCES IN AMERICAN JUVENILE JUSTICE 390, 398 (Darnell F. Hawkins & Kimberly Kempf-Leonard eds., 2005) (finding 65% of boys and 71% of girls in a Chicago juvenile detention facility met the criteria for diagnosis with a psychiatric disorder).

[41] *See* Roper v. Simmons, 543 U.S. 551, 569 (2005) (summarizing research on distinguishing characteristics of adolescence); *see also* ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE (2010).

[42] *See* Andrew E. Taslitz, *The Criminal Republic: Democratic Breakdown as a Cause of Mass Incarceration*, 9 OHIO ST. J. CRIM. L. 133, 175 (2011).

[43] In *Miller*, the Supreme Court explained that "youth matters in determining the appropriateness of a lifetime incarceration without the possibility of parole." 132 S. Ct. 2455, 2565 (2012). State courts have expanded the concept that "youth matters" in criminal sentencing beyond LWOP cases. *See, e.g.*, State v. Dull, No. 106,437, 2015 WL 3533883, at *22 (Ka. June 5, 2015) (holding that mandatory post-release supervision of a juvenile violates the Eighth Amendment); State v. Lyle, 854 N.W.2d 378, 393 (Iowa 2014) (finding mandatory sentencing schemes for juveniles to violate the Iowa Constitution due to the fundamental differences between youth and adults the Supreme Court has recognized); *see also supra* notes 34–35.

[44] Teague v. Lane, 489 U.S. 288, 307 (1989) (quoting *Mackey v. United States*, 401 U.S. 667, 693 (1971).

[45] HUMAN RIGHTS WATCH, "Executive Summary," THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR YOUTH OFFENDERS IN THE UNITED STATES IN 2008 8–9 (2008), *available at* http://perma.cc/MY7M-P8JH.

sentences."[46] The international community would surely construe *Miller*'s rule as an important step towards creating fairer laws, more in line with "the concept of ordered liberty" than our previous sentencing rules.

B. Accuracy

To be considered "watershed," a rule must also be "central to an accurate determination of innocence or guilt."[47] It must be a rule "without which the likelihood of an accurate conviction is seriously diminished."[48]

According to the Connecticut Supreme Court, "[i]n the sentencing context, where the issue is no longer one of guilt or innocence, the second criterion asks whether the new procedure is central to an accurate determination that the sentence imposed is a proportionate one."[49] The Connecticut court concluded that *Miller*'s individualized sentencing scheme is "'central to an accurate determination' that the sentence imposed is a proportionate one."[50] If the Supreme Court adopts Connecticut's rule that accuracy here applies to the proportionality of the sentence, *Miller* would clearly satisfy this prong. The Court specifically stated in *Miller* that failing to consider youth and its accompanying characteristics in sentencing "poses too great a risk of disproportionate punishment."[51]

But *Miller*'s mitigation requirement is also critical to ensuring the accuracy of the conviction itself. Most criminal cases resolve through the plea bargaining process—ninety-four percent of state court convictions, and ninety-seven percent of federal convictions, are guilty pleas.[52] Mitigating evidence directly impacts plea bargains; it may evoke empathy in a prosecutor or raise concerns about the strength of the case, causing the prosecutor to offer a plea to a less serious offense. *Miller* specifically acknowledged the centrality of youth to the plea bargaining process, stating that procedures that ignore features of youth "ignore[] that [the defendant] might have been charged and convicted of a lesser offense if not for the incompetencies associated with youth."[53]

Mitigating evidence can also give rise to new defenses, which would impact the accuracy of the conviction either in the plea bargaining process or at trial. Now that *Miller* requires such evidence to be considered at

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[46] Human Rights Comm., *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observation of the Human Rights Committee: United States of America*, ¶ 34, U.N. Doc. CCPR/C/USA/CO/3 (Sept. 15, 2006).

[47] *Teague*, 489 U.S. at 313.

[48] Saffle v. Parks, 494 U.S. 484, 495 (1990).

[49] Casiano v. Comm'r of Corr., No. 19345, 2015 WL 3388481, at *7 (Conn. May 26, 2015).

[50] *Id.* at *8 (quoting *Teague*, 489 U.S. at 313).

[51] Miller v. Alabama, 132 S. Ct. 2455, 2469 (2012).

[52] Missouri v. Frye, 132 S. Ct. 1399, 1407 (2012).

[53] *Miller*, 132 S. Ct. at 2468.

sentencing, attorneys will be forced to gather mitigating evidence they might not otherwise have uncovered. This information will likely impact convictions. For example, information about susceptibility to influence could relate to a defense of duress, or evidence about childhood abuse could give rise to a jury instruction on self-defense if the homicide victim were the perpetrator of past child abuse. Mitigating evidence might bear upon the mens rea required for the charged offense, such that a prosecutor or jury would find the individual is guilty only of a lesser offense. Mitigating information is not just germane to sentencing but often has a profound impact on the guilt and innocence phase of a trial, particularly for young offenders, and is therefore central to the accuracy of convictions.

CONCLUSION

Miller v. Alabama announced a watershed rule of criminal procedure that is transforming our nation's approach to sentencing juvenile offenders in adult courts. The opinion's far-reaching influence over state legislatures and courts is a strong indication that it is in fact a "watershed rule." Considering mitigating evidence prior to sentencing juveniles to LWOP is necessary to ensure fairness, accuracy, and proportionality. As Judge O'Meara proclaimed in *Hill v. Snyder*: "If ever there was a legal rule that should—as a matter of law and morality—be given retroactive effect, it is the rule announced in *Miller*. To hold otherwise would allow the state to impose unconstitutional punishment on some persons but not others, an intolerable miscarriage of justice."[54]

[54] Hill v. Snyder, No. 10-14568, 2013 WL 364198, at *2 (E.D. Mich. Jan 30, 2013).