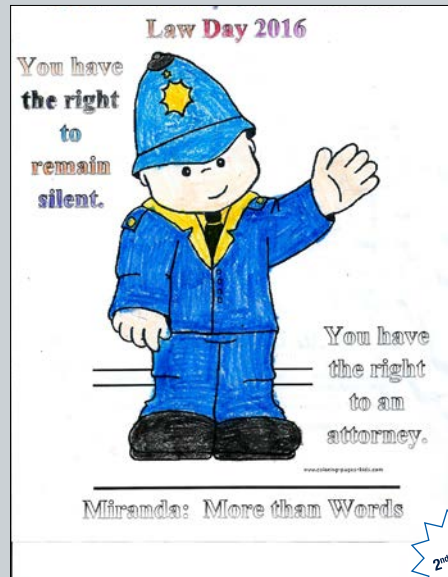


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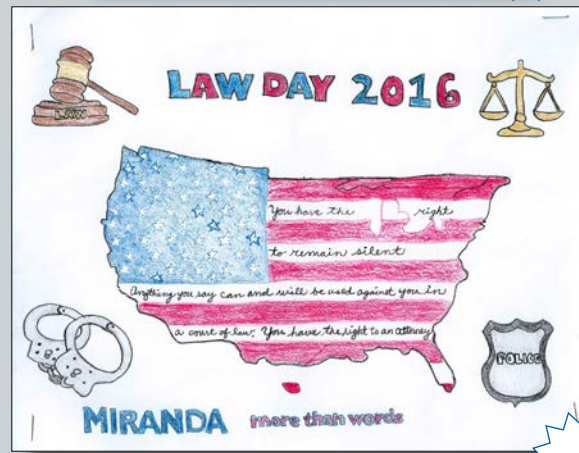
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The Flint Water Crisis

By Shayla D. Blankenship, President



Shayla D. Blankenship

The Genesee County Bar Association (GCBA) has received countless phone calls and emails from individuals and groups in the community, state, and throughout the country offering to help Flint. At the same time, we have heard from the community regarding the legal needs of our people as a result of the water crisis.

The GCBA Board of Directors has agreed to partner with Legal Services of Eastern Michigan to address the legal issues that surround the Flint water crisis. As water, filters, and money flow into Flint, we have found that many legal issues facing the poverty-stricken areas of Flint have been left unanswered.

A group of local attorneys met and formed the Flint Water Advocacy Coalition. With Legal Services of Eastern Michigan at the helm, this group is partnering with Centennial Inns of Court, the Flint branch of the ACLU, the Mallory Van Dyne Scott Bar Association, activists and many others to meet the legal needs of the many impoverished families who have been affected by the water crisis.

We are starting with a series of Ask the Lawyer educational meetings addressing the issues of housing, custody, and bankruptcy that may result from the water crisis. In addition,

the Flint Water Advocacy Coalition is working diligently to schedule a training session to bring together community groups, activists, churches and other organizations to help them spot legal issues and to provide basic legal training to attorneys who wish to offer their pro bono services.

The Flint Water Advocacy Coalition is just beginning to form and meet to figure out how we can help Flint. The GCBA recognizes the need to use our legal skills to meet these needs. We are calling on our members to donate time and money to this endeavor as we train our lawyers, hold educational programs and seminars, and offer pro bono legal services.




You can make a difference by getting involved. Write a check to Legal Services of Eastern Michigan designated to the Flint Water Advocacy Coalition. Sign up to help with pro bono services through this effort. More information will be disseminated in the days to come about this group and the plans. I look forward to the good works the GCBA will lend to the Flint Water Advocacy Coalition.



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Consequences of *Montgomery v Louisiana*

The following three articles explore the consequences of the January Supreme Court decision, making the automatic imposition of Life Imprisonment without Parole for Juvenile offenders unconstitutional and the required review retroactive.

- The *first* discusses the logistical impact of review on the courts.
- The *second* looks at the difficulties encountered by prosecutors' offices.
- The *third* considers the practical impact on the offenders affected.

Juvenile Lifer Cases: Current Issues and Developments

By Barbara A. Menear, Court Administrator

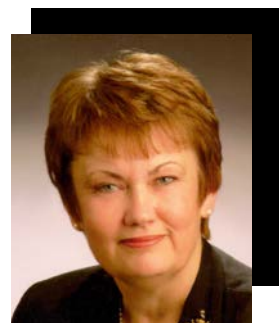
In *Miller v Alabama*, 132 S Ct 2455(2012), the United States Supreme Court ruled that the mandatory sentencing of a juvenile to a term of life imprisonment without the possibility of parole is prohibited.

The decision of *Montgomery v Louisiana*, 136 S Ct 718 (2016) gave retroactive effect to *Miller*. In anticipation of the *Miller* decision, the Michigan Legislature enacted MCL 769.25a setting forth the action necessary should the retroactivity of *Miller* be determined. These decisions affect defendants who were under the age of 18 when they committed the offense for which they were convicted.

By way of summary, within 30 days from the date that the *Montgomery* decision was final, the prosecutor is required to provide a list of the names to the chief judge of all defendants who are subject to the jurisdiction of the court and who must be resentenced under the decision.

Within 180 days, the prosecutor shall file motions for resentencing in all cases where the prosecutor will be requesting the court to impose a sentence of imprisonment for life without the possibility of parole. If the prosecutor does not seek a sentence of life without the possibility of parole, the trial court shall impose a term of imprisonment of not less than 25 years or more than 40 years on the minimum and the maximum shall be 60 years.

There are approximately 360 juvenile lifers in Michigan. Of those, 26 were sentenced pursuant to the jurisdiction of the Genesee County Circuit Court. The Genesee County Prosecutor has provided the required list of names to Chief Judge Richard B. Yuille. The oldest Genesee County case is from 1975, and the most recent is from 2014.



Barbara A. Menear

A statewide plan for the assignment of counsel for legal representation of the juvenile lifers is being developed. The State Appellate Defender Office (SADO) has agreed to provide representation to those juveniles who they previously represented on appeal. Other attorneys from around the state have agreed to provide pro bono legal services to an additional number of juveniles lifers. These attorneys are organized by the Youth Access Mitigation Committee, which includes the Criminal Defense Attorneys of Michigan (CDAM), the American Civil Liberties Union (ACLU), the University of Michigan Law School Juvenile Justice Clinic and the Dykema Gossett Law Firm.

It is expected that there will still be a small sub-set of the cases where local counsel will be appointed. I have spoken to a select group of experienced attorneys who participate with the Genesee County Defender Program about accepting assignments.

The goal is to develop coordinated statewide resource sharing and training. The Michigan Assigned Appellate Counsel System (MAACS) is working closely with all of the interested groups and local courts to ensure that counsel is appointed and resources made available.

As you may expect, prosecutors will be engaged in the time-consuming review of files and other pertinent information before moving forward in compliance with the statute.

Juvenile Lifers Get a Second Chance but Who Decides the Sentence: The Judge or the Jury?

By Joseph F. Sawka, Genesee County Assistant Prosecuting Attorney, Appellate Division

Miller v Alabama did not categorically bar life imprisonment without the possibility of parole; rather, it held that a sentencing court must take into account “how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison[,]” providing a list of factors for the trier of fact to consider in its decision, i.e., “*Miller* factors.”¹

In response to *Miller*, the Michigan Legislature enacted MCL 769.25(2), which allows the prosecution to “file a motion . . . to sentence a defendant . . . to imprisonment for life without the possibility of parole” once the juvenile defendant is convicted of a listed specified crime. Subsequently, the trial court is to hold a hearing where it shall consider the factors listed in *Miller* before imposing a sentence, choosing between a term of years or life imprisonment.²

In January 2016, in *Montgomery v Louisiana*, the U.S. Supreme Court held that *Miller* applies retroactively as it established a new substantive rule of constitutional law.³ Now, all juvenile defendants who were convicted and sentenced to life imprisonment without parole, and whose convictions are no longer subject to direct appeal, are eligible to have their sentences reviewed in accordance with the process and timelines stated in MCL 769.25a.

Genesee County has 26 cases that must be reviewed, not including those that are currently pending on appeal. This presents a problem in deciding, “Who gets to decide whether a juvenile defendant can be sentenced to life imprisonment? The judge or the jury?” Due to our Supreme Court’s recent decision in *People v Lockridge*,⁴ courts in Michigan are questioning whether the *Miller* factors codified in MCL 769.25 are “facts” that must be found by a jury or whether they are only “factors” for a court to consider when imposing a proportional sentence.

In *People v Skinner*, ___ Mich App ___; ___ NW2d ___ (2015) (Docket No. 317892), a two-judge majority of the Court of Appeals held that MCL 769.25, “offends the Sixth Amendment” to the extent that it automatically grants a judge, not a jury, the ability to increase a defendant’s sentence from a term of years to life without parole. However, Judge Sawyer dissented in *Skinner*, arguing that no judicial fact-finding is necessary to impose life imprisonment without parole because once the jury finds a defendant guilty, the maximum possible sentence is life

imprisonment without parole if the prosecution has filed the appropriate and timely motion.⁵

A case out of Judge Fullerton’s court has caused a conflict within the Court of Appeals on this issue. In *People v Hyatt*, ___ Mich App ___; ___ NW2d ___ (2016) (Docket No. 325741), Defendant Hyatt appealed his sentence of life imprisonment without the possibility of parole for his first-degree felony murder conviction on the basis that it was a violation of his Sixth Amendment right to have a jury determine the *Miller* factors. In a unanimous opinion, the Court of Appeals explicitly *disagreed* with the two-judge majority’s decision in *Skinner*, reasoning that because the prosecution filed a timely motion to seek life imprisonment, “nothing in MCL 769.25 premised the sentencing court’s authority to impose a term of life imprisonment without parole on any specific finding that Hyatt’s jury failed to consider in convicting Hyatt of first-degree felony murder.” In addition, it noted, “the plain language of the statute did not require the trial court to make any findings concerning aggravating or mitigating factors before the court could sentence Hyatt to life without parole.”⁶

The Court of Appeals has declared a conflict between the decisions of *Skinner* and *Hyatt*, and has convened a conflict panel under MCR 7.215(J). We must wait for a new published ruling to see who gets to decide whether a juvenile defendant is sentenced to a term of years or life imprisonment: the judge or the jury.

Endnotes

- 1 *Miller v Alabama*, 567 US at ___; 132 S Ct at 2469 (2012).
- 2 MCL 769.25(6).
- 3 *Montgomery v Louisiana*, ___ US ___; ___ S Ct ___; ___ L Ed 2d ___ (2016) (Docket No. 14-280); slip op at 8, 12, 14.
- 4 498 Mich 358; 870 NW2d 502 (2015).
- 5 *People v Skinner*, ___ Mich App ___; ___ NW2d ___ (2015) (Docket No. 317892); slip op at 1, 4, 8, 11 (Sawyer, J., dissenting).
- 6 *People v Hyatt*, ___ Mich App ___; ___ NW2d ___ (2016) (Docket No. 325741); slip op at 21–22 (citations omitted).

Michigan's Illusory Compliance with Miller v Alabama

By Scott R. Bigger



Scott R. Bigger

A one-size-fits-all approach to sentencing for juveniles and adults is not only disturbing, it's just plain wrong. Scientific studies, centered primarily on brain development, have proven that juveniles are not the same as adults in terms of culpability and ability to rehabilitate. Why then should our sentencing laws treat juveniles equally?

Over the past twelve years our nation has experienced an awakening with regard to juvenile sentencing leading to great changes in law. In 2004, the U.S. Supreme Court started by banning the use of the death penalty for juveniles.¹ Six short years later, the Court expanded upon that ruling holding that sentences of life without the opportunity for parole (hereinafter LWOP) could not be imposed for juvenile offenders committing non-homicide offenses.² But, most impactful is the Court's 2012 ruling in *Miller v. Alabama* when the Court ruled unconstitutional any law that mandated the imposition of LWOP sentences for juvenile offenders.³

In response to *Miller v. Alabama*, the Michigan legislature enacted a new sentencing scheme for juveniles convicted of offenses that carried such a mandate.⁴ The new statute still allows for LWOP sentences but also granted courts the alternative to impose a term of years. If the court does opt for a term of years, its discretion is still limited. The minimum sentence imposed must be between 25 and 40 years and the maximum sentence must be at least 60 years.

On its face, this statute appears to comply with the Supreme Court's ruling. After all, the life expectancy in Michigan is 77.8 years.⁵ A 17-year-old receiving even a 40-year minimum sentence would have an opportunity for parole at age 57 with 20 years of life expectancy remaining. But, prison life is fraught with perils. Illnesses spread easily among inmates within crowded facilities. The result is a much lower life expectancy. Juveniles serving LWOP sentences in Michigan have a life expectancy of only 50.6 years.⁶ As a result, a juvenile receiving a sentence at the median of the statutory range will have to outlive their life expectancy to have a chance at parole.

This is NOT compliance with the Supreme Court's ruling. This statute fails to provide a "meaningful opportunity to obtain release" as required.⁷ The illusion the statute creates is nothing more than political smoke and mirrors.

So, what do we do about it? Juvenile sentencing laws are like shifting sand right now. The law is still evolving. Just last year, the Michigan Court of Appeals ruled that the Sixth Amendment prohibits LWOP sentences being imposed on

juveniles unless a jury is allowed to make the findings required by statute.⁸ After an appeal from a Genesee County case, the Court of Appeals has now convened a special panel to rethink and possibly overturn that holding.⁹ While the courts are continuing to sort through these issues, the question of whether Michigan's statute actually provides a meaningful opportunity to obtain release is an issue that should be raised at all juvenile sentencing hearings until the appellate courts weigh in. Change must happen.

Endnotes

- 1 *Roper v. Simmons*, 543 US 551; 125 S Ct 1183; 161 L Ed 2d 1 (2004).
- 2 *Graham v. Florida*, 560 US 48; 130 S Ct 2011; 176 L Ed 2d 825 (2010).
- 3 *Miller v. Alabama*, 567 US ____; 132 S Ct 2455; 183 L Ed 2d 407 (2012) (given retroactive application by *Montgomery v. Louisiana*, 577 US ____; 136 S Ct 718 (2016)).
- 4 MCL 769.25
- 5 Michigan Department of Health and Human Services, *Michigan 2011 Critical Health Indicators*, <http://www.michigan.gov/documents/mdch/LifeExpectancy_380403_7.pdf> (accessed February 20, 2016).
- 6 ACLU of Michigan Juvenile Life Without Parole Initiative, *Michigan Life Expectancy Data For Youth Serving Natural Life Sentences*, <<http://fairsentencingofyouth.org/wp-content/uploads/2010/02/Michigan-Life-Expectancy-Data-Youth-Serving-Life.pdf>> (accessed February 20, 2016).
- 7 *Miller*, 567 US at ____.
- 8 *People v. Skinner*, ____ Mich App ____; ____ NW 2d ____ (2015) (Docket No. 317892).
- 9 *People v. Hyatt*, ____ Mich App ____; ____ NW 2d ____; (2016) (Docket No. 325741).



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Second Annual Bankruptcy Seminar

By Sherri L. Belknap



Sherri L. Belknap

Everything changes. On December 1, 2015, the bankruptcy forms changed and two months later, on February 1, 2016, the Local Bankruptcy Rules were amended. These changes were discussed at the Genesee County Bar Association's Second Annual Bankruptcy Seminar. It was held at the Holiday Inn – Gateway Centre on February 5, 2016. Topics included discussions of case law, forms, and rule updates. The day was split between Chapter 7 Bankruptcy in the morning and Chapter 13 Bankruptcy in the afternoon. The attendees included attorney's staff, attorneys new to bankruptcy and seasoned attorneys.

Seminar speakers included Chapter 7 Trustees Samuel D. Sweet and Collene K. Corcoran, Chapter 13 Trustee Carl Bekofske, Leo Foley from the Chapter 13 Trustee's Office, and Judge Daniel S. Opperman of the Eastern District of Michigan Bankruptcy Court Eastern Division for Bay City and Flint. In addition, Thomas Beadle presented "Objections to Exemptions." Laura Breckenridge provided information on the rules pertaining to Social Security in Chapter 13 bankruptcies.

A presentation by Stacy Davis and Kimberly Lubinski covered Preferences, Fraudulent Transfers and how to recognize, object and resolve the issues involved. John Butler and Karen Rowse-Oberle covered Objections to Schedule I and J in Chapter 13 matters.

The informal seminar allowed participants to discuss the topics and ask questions. Those who did not attend missed the Skype session with Judge Opperman, the discussion on the "sniff" test for objections to Schedules I & J, and how the City of Flint water crisis may impact a client's bankruptcy. There was also a great discussion on current cases involving exemptions.

Those who attended found the seminar informative and interesting. It was also affordable thanks to a grant from the Louis D. McGregor CLE Fund provided by the Genesee County Bar Foundation.



Welcome New Members

Attorney: Hon. Daniel S. Opperman

Employer: Bankruptcy Court, U.S. District of Eastern Michigan

Undergrad School: Eastern Michigan University

Law School: Wayne State University

Attorney: Susan Williamson

Employer: Munger & Associates P.C.

Undergrad School: Saginaw Valley State University

Law School: The University of Detroit Mercy

Affiliate: Betty Grisi

Employer: City of Flint Legal Department

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Employer: Sherri C. Frame, PLLC

2016 John S. Beagle Scholarship Available

Applications are being accepted for the John S. Beagle Scholarship established through the Genesee County Bar Foundation. It was first awarded in 1993 to now board member Michael Gildner. Its purpose is to assist students from Genesee County with financial support during their second or third year of law school. The deadline for application for the scholarship coincides with the annual Law Day observance, May 1st. The late John S. Beagle and his family established the scholarship to assist promising students who might otherwise not be able to continue their legal studies. The only criterion for the award is graduation from an ABA accredited law school. Those who do not finish will be required to return the grant.

John S. Beagle passed away in 2000. He was a distinguished member of the Genesee County Bar Foundation and Genesee County Bar Association. He was affectionately known as "Legal Beagle," a man of impeccable character

The late John S. Beagle and his family established the scholarship to assist promising students who might otherwise not be able to continue their legal studies.



and good will with a passion for justice. He was also a man who recognized the struggles of those less fortunate and thought that economics should not be a barrier to attending law school. Although future recipients of a John S. Beagle Scholarship will not have the opportunity to know this eminent attorney, they will embrace his memory.

A minimum scholarship of \$5,000 will be awarded. The application deadline is May 1, 2016. Those interested in learning more about the Genesee County Bar Foundation and the John S. Beagle Scholarship can find information at <http://tinyurl.com/beagle-scholarship> or by calling the Foundation at (810) 232-6000.

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Cycling Saigon To Bangkok

By Shelley R. Spivack

From the lush back roads of the Mekong Delta to a mesmerizing sunset on the Gulf of Thailand, my recent cycling trip from Saigon to Bangkok was well worth the 25 hours spent in the air and in airports from Chicago to Tokyo. While many would question the sanity of a 61-year-old woman who chooses to spend her vacation cycling 400 miles on dusty and dirt covered roads in the 90 degree heat, I eagerly returned to Southeast Asia for my fourth bicycle tour in this region. Along with 14 other cyclists from Europe, Australia, Hawaii, and England, we rode, hiked, and ate our way through Vietnam, Cambodia and Thailand during the last two weeks in February.

As I had previously toured Vietnam, Thailand and Sri Lanka, my goal this year was to visit Cambodia – in particular the ruins of the ancient Khmer kingdom. I started the trip in Saigon, arriving two days early so that I could wander around the city and become accustomed to the 12 hour time difference. Having already visited many of the war museums in Hanoi, I spent my time in Saigon dodging the motorbikes and enjoying the festivities of the Chinese New Year, including a lively music and dance performance at the Saigon Opera House.

The first three days spent riding on pathways through the delta of the mighty Mekong River proved to be a feast for the eyes and the senses. The color green saturated the atmosphere. Villages appeared out of nowhere and at every turn a bridge or ferry to transport us across the waterways. On our last day in Vietnam, we took a break from the bikes and boarded a speed-boat for a three-hour cruise up the Mekong

River and across the border into Cambodia.

The differences between the two countries were startling.

From the boat we could see pavement turn to dirt and motorbikes become aging bicycles. Arriving in Phnom Penh, we sensed a city trying to rebuild itself after the devastation wreaked upon it by the Pol Pot regime and years of civil war. Trips to the S 21 prison and the “Killing Fields” were a stark reminder that a quarter of the population was “lost” during these years.

Riding out of Phnom Penh and into the countryside our clothing turned red from the mud-baked roads. But the friendliness and hospitality of the Khmer people made it all worthwhile as they welcomed us into their homes and villages.

As we travelled further into the country, we began to encounter the remainders of the ancient Khmer civilization. Buildings and relics from the seventh century began to populate the terrain. By the time we arrived in the ancient capital of Siem Riep we were ready for the wonders of Angkor Wat. Words cannot describe the experience of riding our bikes through the forest to arrive at palaces and temples that put Versailles and the Vatican to shame.

More photos from the trip can be found at: <https://www.flickr.com/photos/shoshannarobin/albums>



Shelley R. Spivack





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