

LOCKETT SYMPOSIUM
FOR SANDRA LOCKETT

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Like most death-penalty defense lawyers, I have days when I'm down and get to feeling that our lot is cursed. The really bad days, of course, are when we lose a countdown and a client. But then I remember that the worst of our bad days does not begin to approach the experience of desperation, destitution, deprivation, and injustice that shatter even the best days of our clients' lives.

And we do have our good days occasionally. One was July 3, 1978, when the Supreme Court decided *Lockett v. Ohio*.¹ Another was the day when we learned that Sandra was off death row and out of danger of execution once and for all.

We still have some days almost that good. It's satisfying to read opinions in which Sandra Lockett's precedent continues to upset states' efforts to sentence human beings to die without consideration of their full humanity.² It's heartening to have in mind that from Sandra's case and from Terry Williams' case³ there has emerged a vastly enriched, now pervasive, powerful technique for defending capital cases, focused on mitigation;⁴ that the legal community has responded to this development

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1. 438 U.S. 568, 608 (1978).

2. *E.g.*, *Abdul-Kabir v. Quarterman*, 550 U.S. 233, 264-65 (2007); *Poyson v. Ryan*, 879 F.3d 875, 896 (9th Cir. 2018) (en banc).

3. *Terry Williams v. Taylor*, 529 U.S. 362, 415-16 (2000).

4. *See, e.g.*, EDWARD MONAHAN & JAMES CLARK, EDS., *TELL THE CLIENT'S STORY: MITIGATION IN CRIMINAL AND DEATH PENALTY CASES* (2017); Symposium: *Death Penalty Stories*, 77 U. MO. KAN. CITY L. REV. 831 (2009); Craig M. Cooley, *Mapping the Monster's Mental Health and Social History: Why Capital Defense Attorneys and Public Defender Death Penalty Units Require the Services of Mitigation Specialists*, 30 OKLA. CITY U. L. REV. 23 (2005); Russell Stetler, *Why Capital Cases Require Mitigation Specialists*, 3:3 INDIGENT DEFENSE 1 (National Legal Aid and Defender Association, July/August, https://www.americanbar.org/content/dam/aba/uncategorized/Death_Penalty_Representation/why-mit-specs.authcheckdam.pdf); Jeffrey Toobin, *Annals of the Law: The Mitigator*, THE NEW YORKER, May 9, 2011, at 32-39; David Von Drehle,

by increasingly professionalizing and improving the practice of mitigation investigation and presentation;⁵ and that this development has been credited as responsible, in significant part, for the sharply decreasing number of death verdicts returned by capital sentencing juries and judges (or even sought by prosecutors).⁶

In time, hopefully, it will also bring about a widespread public realization that capital defendants are as human and deserving of respect for their individuality as are the rest of us—as endowed, bedeviled, complicated, circumstance-provoked, and fate-dependent as are the more fortunate judges, jurors, and lawyers whose adventitious capabilities and shortcomings determine whether they will die or live. Once that realization sinks in, deeply and broadly enough, we will see the end of capital punishment.

And that is when Sandra Lockett, whose strength of will and power to survive we are commemorating here, will take her rightful place in the history of the struggle for decency in criminal justice.

Remembering America's "Angel of Death Row," TIME, <http://time.com/4858368/death-row-angel-scharlette-holdman/>; Maurice Chammah & Scharlette Holdman, *A Force for the Defense on Death Row, Dies at 70*, NY TIMES, July 26, 2017, <https://www.nytimes.com/2017/07/22/us/scharlette-holdman-dead.html/>.

5. The explicit requirement that a mitigation specialist be included in capital defense teams was added to the ABA Guidelines in 2003. See *American Bar Association, Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (February 2003 revision), Guidelines 4.(A)(1) and 10.4(C)(2)(a), 31 HOFSTRA L. REV. 913, 952, 999-1000 (2003); see also *id.* at 959-60. Since that time, the collection and presentation of mitigating evidence in capital cases has been increasingly professionalized. See, e.g., *Supplementary Guidelines for the Mitigation of Defense Teams in Death Penalty Cases*, 36 HOFSTRA L. REV. 677 (2008).

6. See generally, BRANDON L. GARRETT, *END OF ITS ROPE* (2017).