

*LOCKETT SYMPOSIUM*

**REFLECTIONS ON THE SANDRA LOCKETT CASE**

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As a lawyer working in New York with the NAACP Legal Defense Fund (LDF), I was charged in the 1970s with monitoring and helping on the defense side of capital cases in several states, including Ohio. I was devoted to the work. LDF's focus on racial justice aroused concerns about the death penalty because of its disproportionate use against people of color, and more fundamentally, my colleagues and I believed that executing people is inconsistent with an appropriate respect for human life and dignity. In the years since my time at LDF, I have thought and written a great deal about why respect for the dignity of each person should be a first principle in our constitutional jurisprudence. Respect for human dignity not only protects against the abuse of marginalized minority people; it also expresses commitment to the principle that all people are endowed with inalienable rights. Just as the experiences of the Holocaust in Germany, Apartheid in South Africa, and colonialism and the caste system in India led to the drafting of constitutions that dictate respect for the lives and dignity of all people, our experience of slavery and the racism that was its residue should lead us to interpret our constitution—magnificently reformed after Union victory in the Civil War—as one that keeps respect for the dignity of all as a bedrock principle.

Sandra Lockett's case was outstanding among the many cases on which I worked. Because of the "felony murder" rule, she was convicted and sentenced to die as a result of a killing that occurred in her absence, and without her knowledge or agreement. Opinions in the *Lockett* case describe the events of that fateful night so many years ago in the words of the testimony of the co-defendant who entered a plea, avoided suffering a death sentence himself, and testified against the others who were arrested for the crime.<sup>1</sup> By all accounts, that man's finger was on the trigger when

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1. *Lockett v. Ohio*, 438 U.S. 586, 589 (1978).

the shot was fired that killed the victim in a pawnshop robbery gone wrong, while Sandra Lockett waited outside the shop.<sup>2</sup>

Sandra Lockett refused three times to accept a guilty plea that would later save her life.<sup>3</sup> On the advice of her mother—a woman suffering the agony of seeing both a daughter and a son threatened with execution as the result of a killing that neither directly caused—Sandra Lockett did not take the stand to give her version of the fateful events in and around the pawnshop.<sup>4</sup> With only the triggerman’s testimony before them, the jury convicted Sandra Lockett of a capital offense, and Ohio law left no room for the judge to impose a sentence other than death.<sup>5</sup>

I recently reviewed my letters to Sandra during the many years when she was on Death Row, first to offer LDF’s help in her case and then to follow its progress through appellate courts. She once wrote that she “kept her head to the sky.” I marveled at her courage under what seemed to be surreal circumstances. Most of the Death Row inmates with whom I corresponded were men who had been found guilty of directly inflicting pain and of directly causing death. Some of them might have been innocent, but no others were as remotely linked to the killings of which they were accused. But here was a young woman sentenced to die for something that happened in a struggle that occurred in her absence. I appreciated her refusal to accept a plea, and I marveled to think what a raging sense of injustice she must feel to have been one of the very small percent of criminal defendants whom the State of Ohio—my home state—had decided to kill.

Justices of the Supreme Court must have sensed the disproportionality of Sandra Lockett’s sentence on any account of the events leading to the pawn broker’s death. They held that it was a violation of her right—as a citizen and as a person possessed with human dignity—to enjoy life, liberty and the equal protection of our nation’s laws and to be protected against cruel and unusual punishment.<sup>6</sup> Happily, Sandra Lockett is alive and still strong today. Sadly, however, the Supreme Court has yet to recognize that no system for deciding to kill people for what we might understand to have been their crimes can ever be so precise as to capture only the most blameworthy and dangerous criminal defendants. No system for deciding to kill people can be free of prejudice. And no

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2. *Id.* at 590.

3. *Id.* at 592.

4. *Id.*

5. *Id.* at 593-94.

6. *Id.* at 608.

system for deciding to kill people is consistent with the respect we should have for every member of the human family.

Criminal justice systems are too often recklessly driven by crude, fearful and vengeful responses to tragic events. The story of Sandra Lockett reminds us that the law should moderate those responses and give each criminal defendant the equal respect that her life commands.