INTRODUCTION TO THE *"LOCKETT v. OHIO* AT 40 SYMPOSIUM": RETHINKING THE DEATH PENALTY 40 YEARS AFTER THE U.S. SUPREME COURT DECISION

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Thank you to our speakers (present and participating by web), attending lawyers, law students, faculty, staff, members of the community here and participating by web–thank you all for joining in our *Lockett v. Ohio at 40 Symposium*.[1]

I am Marge Koosed, a Professor of Law Emerita here at the University of Akron School of Law. I have taught in the area of criminal law, criminal procedure, and death penalty law for over 40 years. I first arrived at the law school in 1974, the same year Ohio enacted the death penalty law we will be discussing, Ohio Revised Code Section 2929.04. Indeed, as I recall, as then Coordinator of the Legal Clinic's Appellate Review Office, I assisted four death-sentenced Akron-area inmates on certiorari to the United States Supreme Court challenging that law. Ultimately, the Court accepted review in two other cases—that of Akron-area death row inmate Sandra Lockett and Cincinnati-area juvenile death row inmate Willie Lee Bell. The Court's response, set forth in the *Lockett v. Ohio*[2] decision, is our subject today.

As we will see, the U.S. Supreme Court's ruling in *Lockett* hinges on individualized sentencing, on respect for the uniqueness of each individual facing a capital charge. Though we will focus on defendant's lives, as the Court did in that case, I want us to acknowledge at this time the uniqueness and respect we also owe the victims of homicide, and the loss experienced by their families, in all of these death penalty cases. The

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1. An audio recording of the *Lockett* Symposium is available at this link on YouTube (Oct. 15, 2018), and program materials are available at this link.

2. 438 U.S. 586 (1978).

Supreme Court would later make that clear in *Payne v. Tennessee*.[3] But the loss remains—we know that no law or Supreme Court decision can restore those lives lost.

This past spring, the Center for Constitutional Law here at the University of Akron School of Law, one of two established by Congress in celebration of the bicentennial of the Constitution, issued a call for papers to commemorate the July 3, 1978 *Lockett v. Ohio* decision from the U.S. Supreme Court. As our call related:

> Argued by the brilliant Professor Tony Amsterdam, the decision laid the framework for narrowing application of the death penalty. *Lockett* not only overturned Ohio's 1974 era death penalty law, it heralded the significance and breadth of mitigating factors that must be considered by jurors and judges making the life or death decision in the penalty phase of capital cases, and tapped in to issues of disproportionate sentencing (those decided and yet to be).

The papers submitted are published here as part of this symposium. Our writing contributors include all of Sandra's counsel in the U.S. Supreme Court, her co-defendant's counsel, law professors at New York University and City University of New York, a Fulbright scholar in France, and the National Mitigation Coordinator for federal public defender agencies.

In addition, in attendance we have Sandra Lockett's co-counsel in the state appellate and lower federal courts, and Sandra Lockett Young herself. Finally, we are pleased that the executive director of Ohioans to Stop Executions, and both the executive director and chief researcher of the nationally recognized Washington D.C. based Death Penalty Information Center (DPIC), are participating by web. We also have two of the most experienced death penalty defense litigators in Ohio available for comments.

We proceed to first look at the *Lockett* litigation itself, hearing from her counsel, other counsel, and from Sandra Lockett. Then we address the impact of the Supreme Court decision on death penalty litigation, its significance, and engage in some critique with our writers. Finally, we discuss the current condition and future of the death penalty, nationally and in Ohio.

Before we address the *Lockett* litigation itself, it helps to sketch out the historical context and a few critical Supreme Court precedents. As described in Chapter 1 of Hugo Bedau's classic work *The Death Penalty*

3. 501 U.S. 808 (1991).

in America: Current Controversies,[4] in the colonial and early American period, execution was a common sentence for murder (but not manslaughter), and at times rape, robbery, and kidnapping.[5] An evolution away from the death penalty began in the 19th century when Pennsylvania and other jurisdictions began to distinguish first degree murder and second degree murder, the latter being punished by incarceration, and states began to choose incarceration for commission of other major felonies.[6] A few states abolished the death penalty in all cases.[7] In the 1932 decision of *Powell v. Alabama*,[8] and reaffirmed in the 1963 *Gideon v. Wainwright* case,[9] the U.S. Supreme Court ruled that impoverished capitally-charged defendants were entitled to counsel paid for at state expense, to assure reliable determinations of guilt or innocence.

Over this entire period, when a deliberating jury found a capital defendant guilty, the jury would immediately proceed to simultaneously deliberate on whether to recommend mercy (a life sentence) or not—hearing no additional evidence respecting the appropriateness of a death or life sentence.[10] Few states imposed a mandatory death sentence–instead the jury was given full discretion, and little, if any, information to make this literally life or death decision.[11]

In the 1960's an informal moratorium on carrying out executions developed, due to concerns about race discrimination, arbitrary impositions, and wrongful convictions.[12] In 1971, the U.S. Supreme Court agreed to examine this death penalty system. In the landmark case of *Furman v. Georgia*,[13] argued by the same Professor Tony Amsterdam who would later argue Sandra Lockett's case, the Supreme Court ruled the system violated the Eighth Amendment cruel and unusual punishment clause and the Fourteenth Amendment due process and equal protection clauses. Two justices found the death penalty per se unconstitutional.[14] Three found that discretionary sentencing, unguided by legislatively

4. HUGO BEDAU, THE DEATH PENALTY IN AMERICA: CURRENT CONTROVERSIES (Oxford University Press 1997).
5. *Id.* at 3-4.
6. *Id.* at 4-6.
7. *Id*. at 7-8.
8. 287 U.S. 45 (1932).
9. 372 U.S. 335 (1963).
10. BEDAU, *supra* note 4, at 5-6
11. *Id.*
12. *Id.* at 13-16.
13. 408 U.S. 238 (1972).
14. *Id.* at 305-06 (Brennan, J., concurring) and *id.* at 370-71 (Marshall, J., concurring).

defined standards, was unconstitutional.[15] All of the death sentences then imposed throughout the country were ultimately overturned and replaced by life sentences.

Many state legislatures responded by passing new death penalty provisions establishing guided discretion systems, using as a model the Model Penal Code Section 210.6.[16] Other states adopted mandatory death sentencing schemes. In 1976, the Court heard five cases addressing five of these legislative responses.

In *Gregg v. Georgia*,[17] the Court (5-4) upheld the guided discretion scheme in Georgia that included three features: a requirement of proof of statutory aggravating circumstances that narrowed the class of eligible murderers, allowed for consideration of mitigating circumstances calling for a sentence less than death, and required state appellate review directed at assuring against arbitrary and capricious or discriminatory death-sentencing.[18] The sentencing schemes of Florida and Texas appeared to roughly approximate these requirements, and were upheld in *Proffitt v. Florida* and *Jurek v. Texas*.[19]

At the same time, in 1976, the mandatory death sentencing schemes established by North Carolina and Louisiana were struck down because they undermined reliability as jurors were sometimes refusing to convict when the death sentence was automatic, and because mandatory sentencing was not individualized–it failed to permit consideration of the character and record of the individual offender and the circumstances of the particular offense.[20]

This is the backdrop when Ohio's 1974 era death penalty legislation reaches the Court two years later, in 1978. Ohio's scheme provided for proof of aggravating circumstances and a two-stage appellate review, but required a death sentence unless the sentencing judge found one of the following by a preponderance of the evidence: 1) the victim had induced or facilitated the offense, or 2) it was unlikely the offender would have committed the offense but for the fact the offender was under duress, coercion, or strong provocation, or 3) the offense was primarily the product of the offender's psychosis or mental deficiency.[21]

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15. *Id*. at 257 (Douglas, J., concurring), *id.* at 310 (Stewart, J., concurring), and *id*. at 313 (White, J. concurring).

16. American Law Institute, Proposed Official Draft 1962.

17. 428 U.S. 153 (1976).

18. *Id.* at 205-07.

19. Proffitt v. Florida, 428 U.S. 242 (1976); Jurek v. Texas, 428 U.S. 262 (1976).

20. Woodson v. North Carolina, 428 U.S. 280, 293, 304 (1976); Roberts v. Louisiana, 431 U.S. 633, 637 (1976). Both of these cases, and *Jurek*, were argued by Professor Tony Amsterdam.

21. *Lockett*, 438 U.S. at 593-94 (1978) (referencing then §§ O.R.C. 2929.03 and 2929.04).

In providing for consideration of a limited list of possible mitigating circumstances calling for a penalty less than death, this legislation was akin to those upheld in Texas and Florida two years earlier. But it still did not permit the sentencing judge to consider as mitigating factors Sandra Lockett's character, her prior record (minor misdemeanors but no felony offenses), her age (of 21),[22] her lack of specific intent to cause death (indeed, no one planned to kill the pawnshop owner in the course of the contemplated robbery, but the owner grabbed the gun and it went off), and her relatively minor part in the crime of robbery (even acceding to the prosecution's theory of the case, which was based on testimony from the trigger-person who struck a deal, she was not even in the pawnshop).[23] As we will see, the Supreme Court in *Lockett* (6-2) finds the Ohio statute offends the Eighth Amendment principle of individualized sentencing identified in *Woodson v. North Carolina*, and that Ohio's quasi-mandatory sentencing scheme must be struck down.[24]

The two year period between *Jurek*, *Proffitt*, and the Court's decision in *Lockett* may have been critical. The delay was brought about by Ohio, unlike the two other states, having provided for an intermediate appellate review in the district courts of appeal before a death case proceeded to the Ohio Supreme Court. Sandra Lockett's co-counsel Joel Berger at the NAACP Legal Defense Fund later suggested that had Ohio's scheme reached the U.S. Supreme Court in 1976 with *Jurek*, the similarities between the Ohio and Texas schemes might have led to the Court finding Ohio's scheme fell into the "*Jurek* sinkhole," and Sandra Lockett's death sentence may have been affirmed. Instead, the *Lockett* decision's requirement that the sentencing jury be able to consider and give effect to all relevant mitigating evidence prevailed. Over the following decade, Florida's 1976-approved system of limiting the sentencer to statutory mitigating factors was unanimously found to violate the *Lockett* line of cases (eventually, after 16 executions under it raising the issue).[25] Similarly, Texas' 1976-approved system also fell in most respects to *Lockett*'s mandate.[26]

As a direct consequence of the *Lockett* decision, Sandra Lockett's death sentence, and that of about one hundred others on Ohio death row, was overturned.

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22. The companion case of *Bell v. Ohio*, 438 U.S. 637 (1978), involved the younger age of 16,

23. *Lockett*, 438 U.S. at 590, 597.

24. *Id.*

25. Hitchcock v. Dugger, 481 U.S. 393 (1987); *see* DAVID VON DREHLE, AMONG THE LOWEST OF THE DEAD: THE CULTURE OF DEATH ROW 300-01 (1995).

26. *See* Penry v. Lynaugh, 492 U.S. 302 (1989); *but see* Johnson v. Texas, 509 U.S. 350 (1993).

As an aside, one might wonder how Sandra Lockett was convicted of the death-eligible crime of aggravated murder with the aggravating circumstance of felony murder on these facts. The prosecution was also concerned, and thrice offered her a plea to a lesser offense after a co-defendant who was in the pawnshop was sentenced to life due to mental deficiency, and after the trigger-person received life through a plea deal. The prosecution once offered a plea to voluntary manslaughter and aggravated robbery, and then just prior to, and during trial, a plea to aggravated murder without specifications.[27] She refused the offers, and was convicted on the basis of a felony-murder *mens rea* jury instruction that would, a year later, be declared unconstitutional as creating a presumption that an accomplice intended to kill, a presumption that conflicted with the burden that is always on the prosecutor to prove the element of intent to kill beyond a reasonable doubt.[28] Sadly, her counsel failed to object to this jury instruction at trial, and Sandra's later petition for federal habeas corpus relief to overturn her conviction on this basis was denied because trial counsel had not preserved the issue.[29] Sandra was released on parole in 1993, returned to Akron, and completed her parole period. She has been kind enough to speak to my classes often, and to do so today.

With that backdrop, the symposium proceeded with Sandra Lockett, Gerry Simmons (her co-counsel in the state appeals and lower federal courts), and writing contributor Dennis Balske (her brother and co-defendant James Lockett's counsel), relating their insights on the trial, state appeal, and later federal habeas corpus litigation. Sandra described the isolation she felt, death row conditions, how she adjusted to life by living each day as fully as she could, and what effective representation of a capital defendant should entail from the client's perspective. Gerry Simmons focused on the pre-trial and trial aspects of the case. He got involved in Sandra's case before trial when her family retained him for $1,000 after Sandra and her family were disappointed by her appointed counsel. But he was told by the trial judge that he would not be allowed to take an active role because he was an out-of-town lawyer and that local counsel would handle the case. He returned the retainer to the family. He regrets not being involved, because he would have made needed objections to the court's actions. But on the other hand, he rejoices in the fact that Sandra's conviction and death sentence ultimately led to life

27. *Id.* at 591-92.
28. *See* Sandstrom v. Montana, 442 U.S. 510 (1979).
29. *See* Lockett v. Arn, 740 F.2d 407 (6th Cir. 1984).

sentences for hundreds of others in Ohio and around the country due to the U.S. Supreme Court decision. Simmons later co-counselled the state appeals and federal habeas proceedings with the very well-respected Capital University Law School Clinical Professor Max Kravitz, who has since passed away. Simmons went to Cleveland Marshall Law School, practices criminal defense in Columbus, has handled many capital cases, with no death verdicts for the last 34 years, and has served on the boards of the Franklin County Public Defender Commission and the Ohio Association of Criminal Defense Lawyers. Here, he provides death penalty practice pointers in addition to his thoughts on the case.

At the symposium and in his written submission, Dennis Balske, counsel for Sandra's brother (and separately tried co-defendant) James Lockett, describes James' litigation which included a mistrial and retrial. He relates his impressions of the trial judge and prosecutors, and the later gross and tawdry professional misconduct of the trial judge. Dennis Balske is well-known to capital defense litigators, having served as what I would call a "guru" in the field. Dennis Balske got his J.D. from Ohio State Law School and taught their criminal defense practicum from 1975-1978. He then joined the Southern Poverty Law Center, defending capitally charged defendants throughout the South, and becoming the Center's Legal Director. During that period, at my invitation, Dennis wrote the seminal article on defending capital cases for the *Akron Law Review*.[30] In 1986, he entered private practice, and later founded the Alabama Criminal Defense Lawyers Association and served on the board of the National Association of Criminal Defense Lawyers, chairing its Death Penalty and Amicus Curiae Committees. Dennis Balske eventually relocated to Portland, Oregon where he spent nine years in the federal public defender office, and is now in private practice specializing in post-conviction litigation.

At the U.S. Supreme Court, Sandra was represented by Professor Anthony Amsterdam, and by Peggy Cooper-Davis and Joel Berger, then with the NAACP Legal Defense Fund ("LDF"). LDF was founded by Thurgood Marshall in 1940; it has fought against racial discrimination and defended murder cases around the country.

Writing contributor and advocate at the U. S. Supreme Court, now New York University Professor, Tony Amsterdam provides a tribute to Sandra Lockett for this symposium that concisely and beautifully conveys the highs and lows of capital defense litigation, the importance of the case

30. Dennis N. Balske, *New Strategies for the Defense of Capital Cases*, 13 AKRON LAW REV. 331 (1979).

he won that has significantly reduced the frequency of seeking and imposing death in this country, and the hope that it will eventually lead to abolition. Amsterdam is a brilliant legal scholar and litigator, the most accomplished Clinical Professor in the United States (first at Penn, then Stanford, then NYU), and indeed, through his work on the ABA's McCrate Report, he was instrumental in assuring that all law students get ample skills training. For decades Tony Amsterdam was the foremost pro bono attorney and advocate on civil rights and criminal cases in the U.S. When a case is headed to the Supreme Court, Tony was the person you wanted to argue it, or if that is or was not possible, you sought his insights and direction. I had the privilege of being part of Tony's working groups on several death penalty cases–the words "amazing" and "awe-inspiring" do not do him justice. Unfortunately, Tony has now retired from teaching and is "living in the boondocks" as he told me, where videoconferencing is not practicable, and for other reasons he has somewhat limited his pro bono workload. But he could not let these circumstances prevent his participation in this symposium. He asked that I "read this short tribute to Sandra with my love" at this conference. He closes his moving tribute with the observation that when abolition is achieved "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".

Now at NYU Law School as well, writing contributor Professor Peggy Cooper Davis co-counselled Sandra's case in the Supreme Court while at LDF. She now teaches constitutional law, evidence, and social sciences and the law. Unfortunately, she taught class and could not join the symposium, but also asked that we include her letter. In it, Professor Davis provides further insight into race and the death penalty, and recalls how she marveled at Sandra Lockett's "courage under what seemed to be the surreal circumstances" of being sent to death row while so "remotely linked to the killings of which (she was) accused," and the "raging sense of injustice she must feel." She posits that "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."

Joel Berger, then also at LDF, co-counselled and sat second-chair at the *Lockett* oral argument. Now in private practice in New York City specializing in civil rights cases, submitted his recollections in writing. In his piece, Berger recalls the briefing process, the expectation that the *Bell* case would become the lead case, and some difficult moments during the oral argument.

Transitioning to the impact of the *Lockett* decision and its significance, as Professor Tony Amsterdam noted, *Lockett* has led to a focus on mitigation as a defense against imposition of the death penalty. Writing contributor Russ Stetler has served as the National Mitigation Coordinator for the federal death penalty projects for the last thirteen years and has authored many articles on mitigation investigation in his work around the country over the last 38 years. He writes that *Lockett* has engendered a team approach to capital defense litigation, with mitigation specialist professionals conducting full social history investigations to provide defense lawyers and fact-finders with information leading to or constituting relevant mitigating evidence, and he details capital defense counsel's duty to investigate and present such relevant mitigating evidence.

Writing contributor City University of New York Law School Professor Jeff Kirchmeier is a Case Western Reserve University Law School graduate who was a staff attorney at the Arizona Capital Representation Project. He previously taught at Tulane Law School. He has written extensively on criminal procedure, constitutional law, and the death penalty, including the racial implications of use of that penalty in his book *Imprisoned by the Past: Warren McCleskey, Race, and the American Death Penalty*. He writes that by requiring the consideration of individualized mitigating factors, the *Lockett* decision saved the death penalty, but that it may be a poison pill which at the same time condemned the death penalty by means of creeping arbitrary or discriminatory decision-making.

Writing contributor Jordan Berman is presently doing federal habeas and state clemency defense as a research and writing attorney at the Federal Public Defender in Columbus. He also serves as an adjunct professor on appellate advocacy at the Ohio State University Moritz School of Law. His written contribution to the symposium focuses on Justice White's *Lockett* concurrence. Justice White dissented from the plurality's position on consideration of mitigating circumstances,[31] but concurred in reversal of the death sentence in this case because there was no finding that Sandra Lockett "possessed a purpose to cause the death of the victim."[32] As Berman discusses, this concurrence led to an evolving *mens rea* standard for death-eligibility in later cases addressing

31. 438 U.S. at 621-24.
32. *Id*. at 625.

disproportionate sentencing.[33] He urges the Court to maintain Justice White's mandate.

Writing contributor Karen Steele is a capital defense lawyer in Oregon. With her J.D. from Washington University, she has written on neuroscience and the law and *mens rea*. She writes about the threat to *Lockett's* mandate arising from double-edged evidence, *i.e.* rightfully mitigating evidence that could be seen as aggravating, often as establishing future dangerousness. She urges specialized jury instructions to assure that the evidence is seen solely as mitigating.

Steele's concern is well-appreciated in most death-sentencing states, where aggravating and mitigating circumstances are both found or determined in the penalty phase, and/or where future dangerousness is specified as an aggravating factor. As I have written elsewhere,[34] Ohio's present scheme differs from that of other states in ways that reduce this concern. Future dangerousness is not specified as an aggravating factor in Ohio. Further, in Ohio, the statutory aggravating circumstances are set forth in the indictment, proven beyond a reasonable doubt in the trial (not penalty) phase, and if proven and non-duplicative, are carried over into the penalty phase with no expansion–it is only the statutory aggravating circumstances so proven that are weighed against mitigation.[35] The penalty phase is designed for the presentation of mitigation alone, and the prosecutor is limited to presenting only such evidence that denies or rebuts the existence of those mitigating factors raised by the defense.[36] Because no non-statutory aggravating circumstances are to be weighed, it is less likely that rebuttal of a mitigating circumstance will lead to aggravating weight being accorded. In addition, because Ohio judges "should not instruct on mitigating factors not raised by the defense,"[37] there is less likelihood the jury will learn of other mitigating factors that were not presented and somehow turn their absence into aggravating facts. So Ohio practice provides some assurances against Ms. Steele's quite-appropriate concern.

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33. *See, e.g.,* Enmund v. Florida, 458 U.S. 782 (1982); Tison v. Arizona, 481 U.S. 137 (1987) (like *Lockett*, felony-murder cases); Atkins v. Virginia, 536 U.S. 304 (2002) (imposition of death on those with intellectual disabilities).

34. *See* Margery Koosed, "Rethinking How We Bifurcate: the Ohio Example" in *Averting Mistaken Executions by Adopting the Model Penal Code's Exclusion of Death in the Presence of Lingering Doubt*, 19 NO. ILLINOIS LAW REV. 41, 104-07 (2001).

35. *See* Ohio Revised Code §§ 2929.03 & 2929.04.

36. State v. DePew, 528 N.E.2d 542 (1988).

37. Ohio Jury Instructions, Criminal CR 503.010, cmt. p. 78 (Ohio Judicial Conference, 3/2015) (citing *DePew*).

Writing contributor Dr. Cynthia Boyer appears by web from France where she teaches civil liberties, American Constitutional Law, and Political Developments at the Institut National Universitaire Champollion, Universite Toulouse Capitole. A Fulbright Alumni in U.S. Politics and Law, she writes that it has been difficult to define mitigating factors or their impacts on a fair trial, that the Supreme Court is divided in its appreciation of the individualization mandate, and that there are concerns about stare decisis.

Having a helpful picture of the impact of the *Lockett* decision, the symposium proceeds to turn to the lingering concerns surrounding the death penalty, and its possible future, with five go-to experts on the subject. Writing contributor Kevin Werner is Executive Director of the non-profit Ohioans to Stop Executions, on which I sit as a member of the board. A day before the symposium, he penned an op-ed in the local Akron Beacon Journal newspaper, entitled "Ohio's Broken Death Penalty."[38] Werner relates the failures of Ohio's system to protect innocents from wrongful convictions and death sentences (Ohio has had nine death-sentenced exonerees), the racial and geographic disparities in imposition of the Ohio death penalty, the enormous costs in pursuing death as opposed to life sentences, and the relative waste of taxpayer funds as prosecutors fail to get the death penalty in almost 90% of these expensive cases.

In discussion, four other experts on death penalty litigation confirmed the Ohio experience, and that it is consistent with what is occurring at the national level. Rob Dunham is Executive Director of the Death Penalty Information Center (DPIC) in Washington D.C., the nationally-recognized and oft-awarded resource of all things death penalty. Before coming to the DPIC position in 2015, Rob litigated death penalty cases and taught this area of the law at Villanova Law School. Rob provides insights into the possible impact of Justice Kennedy's departure and replacement on the U.S. Supreme Court, recent trends in race and geographic disparity, and relative costs of the death penalty. Ngozi Ndulue, a capital defense litigator and Yale J.D., just joined the DPIC as the Director of Research and Special Projects, having served in a similar capacity at the Ohio Justice and Policy Center in Cincinnati, and as Senior Director of Criminal Justice Programs at the national NAACP in New York City. In discussion, she expanded on Rob's points, and speaks to the moral lessons gleaned from the *Lockett* decision.

38. AKRON BEACON J., Oct. 14, 2018, at https://www.ohio.com/opinion/20181014/kevin-werner-ohios-broken-death-penalty.

Lastly, in discussion, are experienced Ohio capital defense litigators David Stebbins and Jeff Gamso. David Stebbins is another Cleveland Marshall J.D., and probably the most-experienced death penalty appellate/post-conviction defense lawyer in Ohio. I first got to know David when he started the death penalty section at the Ohio Public Defender Office in 1982. I worked with him on capital defense training materials and more for 11 years, when he went briefly to the Tennessee Capital Resource Center. He returned to Ohio in 1995 and did capital defense work in private practice until 2008, when he joined the Capital Habeas Unit of the Federal Public Defenders Office in Columbus. He provides a view from the federal habeas trenches, which bears out others' concerns and more. Similarly, capital defense lawyer Jeff Gamso, now at the Cuyahoga County Public Defender Appellate Division, formerly in private practice in Toledo and Legal Director of the Ohio ACLU, comments further on the importance of mitigation. He considers the *Lockett* decision among the most significant of U.S. Supreme Court cases.

While much has been written here and elsewhere, given the significance of the *Lockett* decision, there will undoubtedly be more to come. We hope that by this *Lockett v. Ohio at 40 Symposium*, we have "done justice" to this watershed case, its progeny, and those it has impacted.