LOCKETT SYMPOSIUM

FOR SANDRA LOCKETT

Anthony G. Amsterdam*

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

---

* University Professor and Professor of Law Emeritus, New York University School of Law. Professor Amsterdam was lead counsel for Sandra Lockett in the U.S. Supreme Court
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.

---

\(^5\) 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).