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PRAXIS AND PEDAGOGY: DOMESTIC VIOLENCE

*Cynthia Grant Bowman**

*Eden Kusmiersky***

This article, written in the form of a six-act play, is a dialogue between a law professor and her former student, based upon their memories of a course taught in the fall of 1993 at Northwestern University School of Law, in which the students brought clemency petitions on behalf of women incarcerated in Illinois prisons for having killed their abusers. Based on the professor's involvement in the domestic violence movement, an extraordinary law school course on domestic violence was created, including an activist component that proved to be an especially effective educational experience for the students.

ACT 1. INITIATION OF THE PROJECT

Scene 1. The Teacher

In 1993, I received a call from an attorney with a small neighborhood law office who was known for defending battered women who had killed their abusers. She asked if I would participate in a project to represent every woman in the Illinois prison system convicted of killing her spouse or boyfriend in response to battering. Similar clemency projects had been carried out in a number of other states,¹ and in Ohio had succeeded in bringing about the release of a

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1. See generally Joan H. Krause, *Of Merciful Justice and Justified Mercy: Commuting the Sentences of Battered Women Who Kill*, 46 FLA. L. REV. 699 (1994) (discussing clemency projects in several states).

large number of women.² Because of my own interest in domestic violence issues, I quickly agreed to help with a similar campaign in Illinois.

Soon after, a group of us—law professors, attorneys active in the field of domestic violence, and some law students—met to discuss how to implement this vast project. At our first meeting, we decided that law students would represent the women, to the extent possible through law school classes on domestic violence, so that the students would receive both supervision and law school credit for their work.

In the beginning we relied on a number of potential clients familiar to the attorneys in the group to spread word about the project to other women within the prison system. We also put a notice in a prison newsletter. Our selection criteria were simple: the woman had killed her spouse or boyfriend and there was a history of domestic violence linked to the killing. Law students volunteered to do the initial screening interviews over the summer. At this point we decided to organize officially as the Illinois Clemency Project for Battered Women.

I went back to my law school and approached the dean about teaching a course on domestic violence with a clinical component. I sketched out a syllabus to show him that the course would contain real intellectual content and explained what the students would do. As it turned out, the Dean felt most comfortable with the notion that this was simply a regular seminar course, with the clemency petition taking the place of the multi-draft papers normally required in seminars at Northwestern. I assured him that there would be plenty of drafts and editing. I then wrote up a course description and advertised it through the regular course guide and registration materials for the fall. Twelve students signed up—ten women and two men; among them was Eden Kusmiersky.

Scene 2. The Student

I was not the typical law student. I spent a few years after college working for nonprofit organizations prior to attending graduate school. I applied to law school to gain more “tools” for social

2. *See id.* at 719-25.

change. I never intended to formally practice law, but expected, rather, to use the knowledge and degree to address social concerns in other ways.

I chose to attend law school for a number of reasons, one of which was the diversity of courses included in the school catalogues. I was quite surprised to learn that the lists seemed to include every course ever taught at a school, not just courses currently available. Unfortunately, most of the courses that had caught my attention, like poverty law, proved to be mere fossils imprinted in the catalogues.

Then, of course, there was the human element. I knew that law school would not feel or look like an undergraduate experience. I expected to disagree with my classmates, but I did not expect to find the faculty to be so like-minded, so homogeneous, so white, male, and conservative. Furthermore, the campus was more isolated than I had anticipated. In response to this atmosphere, I looked for any opportunity to break the traditional mold of the three-year law school experience. I sought out every "law and . . ." seminar and became overextended in politically focused extracurricular activities—anything to stretch my law school education beyond the typical IRAC formula.

Needless to say, a course on domestic violence, taught by a woman professor who believed domestic violence to be a serious societal problem, was unusual at my law school. This course combined everything I had struggled to force into my curriculum: the topic was a high priority of mine; the grade was based on classroom conversations and thoughtful written work; and the professor did not fit the majority mold. The political action component was an unimaginable bonus. Because I had not been interested in legal practice, the clinical component of the course was unfamiliar, and a bit intimidating, to me. However, my dedication to fighting domestic violence far outweighed any hesitation I might have had.

On the first day of class, I was very nervous, not only about making it into the class, but also about the challenge of working for a client who had such limited options.

ACT 2. THE COURSE BEGINS

Scene 1. The Teacher

This was not an ordinary course by any stretch of the imagination; it was a real challenge. I had to teach the students not only about domestic violence but also about interviewing clients. In particular, I had to teach the students about interviewing clients with a history of domestic violence who had committed murder. The students had to learn how to investigate a case, the facts of which had taken place some time in the past—to locate witnesses, documents, police reports, old hospital records, and the like. They needed to locate placements for the women, if they were released, and design a plan for the future that would look good to the Illinois Prisoner Review Board. They also needed to learn how to draft a major legal document by successive approximations, through multiple drafts and editing. Finally, I had to teach them how to put on witnesses and argue a case before the Prisoner Review Board, a panel charged both with parole hearings and with making recommendations to the governor about clemency.

We took on five clients, with the students assigned to two- or three-member teams to represent them. From the beginning, I was determined that the women would be the *students'* clients and that all contact would be with them, rather than with me. To begin, we held a training session conducted by a psychotherapist who was very knowledgeable about battered women.

Scene 2. The Student

When I entered the training session, there was very little I did not need to learn. My existing interviewing skills included my empathy, patience, and ability to listen. The list of what I needed to learn was much longer because I had never had a legal “client,” never been to prison, never knowingly met someone who had killed another person, nor had I ever conducted research beyond the scope of a library. Plus, there was the very sensitive issue of domestic violence; I had never questioned anyone directly about abuse they had suffered from those closest to them. Probably my biggest fear was of hurting our client—hurting both her feelings and her chances for clemency. Additionally, our group of three included one man.

Granted, he happened to be one of the nicest men I have met, but I was still nervous about how our client would respond to him.

The training was crucial and valuable. We learned how to conduct a successful interview and were introduced to some of the problems we were likely to face with our client. For example, we learned that a common coping mechanism for victims of severe abuse is forgetting or minimizing bad experiences. Unfortunately, those bad experiences were exactly what we would need to learn about and try to substantiate for the clemency petition. We were told to listen carefully for names of other people from our client's life who might better remember dates or verify information. Possibly the most important thing that we learned was not to mislead our client about her chances for clemency, not to be overly optimistic.

The training gave us an invisible hand to hold as we headed off to Dwight Correctional Center. No one could write or ask our questions for us; no one could predict every problem we would face in our research. All any instructor could do was give us basic tools that we could use as we needed them.

My memories of our first visit to prison are vivid. I remember the dirt parking lot in front of the prison, and the dingy white waiting room where we signed in, where our hands were stamped with black ink. Then there was the hallway of doors leading to the large visitors' room, where the guard sat at a desk against the back wall. There were a few small conference rooms with windows facing the guard. That is where we met our client, whom I will call Pat.

Pat was a slight woman, with an almost apologetic presence. She started off nervously, but after just a short while, she had a lot to say. Pat was not an easy client for many reasons. She was racist, homophobic, and repeatedly said things like, "I still love him. I would do anything to have him back." Not really the best quote for her clemency petition. But she also spent many hours telling three strangers the personal details of her tragic life.

Pat had a history of sexual abuse by the men in her life—her grandfather, her father, and her brothers. When she met Rick, he seemed different. Pat believed that she had found her safe haven: Rick would accept her and protect her from her abusive past. Unfortunately, Pat's estimation of Rick was terribly wrong. She had exchanged one world of abuse and fear for another. Shortly after

their marriage, Rick began physically and mentally abusing Pat. This continued fairly consistently for the sixteen years prior to Rick's death.

ACT 3. THEORY AND PRACTICE

Scene 1. The Teacher

At this point, I was teaching what were really two courses, while also engaged as an active board member of the statewide project. One of the two courses was of a familiar sort—a seminar, for which I had to select and assign readings, come up with interesting ways to present them, and stimulate discussion—in other words, to get across a body of substantive material much as one does in teaching any law school course. The students needed to know and think critically about the causes of domestic violence and society's response to it and be stimulated to think about what might be done about this enormous social problem. The knowledge derived from social science and legal literature could be used to understand their clients and their clients' legal problems, as well as to support the arguments they presented in their petitions. At the same time, I had to treat the twelve students as clinical students and guide them through the necessary skill acquisition, fact investigation, drafting, and oral arguments that would follow.

In the evenings several times a month, and by telephone in between, I met with the other members of the Clemency Project board. We raised funds and held a press conference to publicize the filing of the petitions. We politicked—contacting state legislators, getting prominent religious leaders to support the campaign, advertising our cases, and circulating letters and petitions in support of the clients.

Scene 2. The Student

When we began investigating the facts of Pat's story, we learned just how difficult our project was going to be. We were on a roller coaster ride, at times advancing at a glacial pace, at other times speeding forward nearly out of control.

Not surprisingly, most of the people Pat told us about were not listed in any telephone directory. Pat spent most of her time living in trailer parks and other lower-income communities, where people did

not always have the luxury of a private phone, where they came and left unpredictably, often hoping no one, including the police, could find them. We did, however, find one friend of Pat's to support her history with Rick. She signed an affidavit and a letter of support for Pat's clemency petition.

Finding police and medical records was a different story. According to an Assistant Police Chief in Pat's home town, they had many records of phone calls from Pat regarding Rick's threats to her. The Assistant Police Chief also informed us of reports of Rick's violence and his violation of a restraining order. Unfortunately, the Police Department would not release these records to us without a subpoena, which the Chairman of the Prisoner Review Board refused to grant. Needless to say, the inaccessibility of these crucial records was extremely frustrating. However, we were able to gain copies of numerous medical records from various hospitals in the area, coinciding with the general dates Pat gave us for Rick's attacks. There was no doubt that Pat had suffered substantial physical injury during her marriage. However, because she pled guilty, and thus had no trial, no court had ever heard any of this evidence as a mitigating factor of her crime.

An additional barrier between Pat and clemency was her total alienation from any social network of support outside of prison. She had come from an abusive family and was estranged from her children, who had been living with her dead husband's family since her incarceration and were likely to oppose her clemency petition. If Pat did receive clemency from the governor, she did not have anywhere to go. We did manage to secure temporary housing for her at a shelter for women in Chicago, but she was not very interested in this option.

Pat was not exactly a "poster child" for the crusade against domestic violence, either. She had had substance abuse problems most of her life; she had periodically neglected her children over the years; her education level peaked when she received her GED; and her employment history was inconsistent at best. In fact, Pat was so physically and emotionally damaged that she had spent much of her life receiving disability payments. Swinging back and forth between optimism and despondency, we did our best to search for evidence, witnesses, and support for Pat's story. Quietly, though, we all

doubted that the governor would select Pat as a citizen who deserved a second chance.

Compared to this class, my other course work clearly did not measure up. How could the Rules of Evidence possibly compare to a woman's tragic life and our responsibility to help her? Nevertheless, the research, analysis and multiple drafts certainly improved our basic legal skills in a way that would apply to any course.

ACT 4. DRAFTING THE CLEMENCY PETITIONS

Scene 1. The Teacher

After the facts were gathered, the next major task was to prepare the petitions on behalf of each of our clients. We looked at a model submitted in a previous, successful clemency case, read the guidelines set out by the Prisoner Review Board, and took off from there. The Director of the Clemency Project—the attorney who had called us all together in the first place—also held a training session to emphasize what the Review Board would be looking for and thus what facts and arguments to include in our petitions. The basis upon which clemency petitions were likely to be granted was that key information about the couple's history of domestic violence had not come out at trial.

Many of the cases the project accepted had never gone to trial in the first place. For a variety of reasons—including a sense of guilt, a desire to spare family members further grief, and bad legal advice—many of the women had decided to accept guilty pleas. In these cases, of course, the record was undeveloped. In other cases, both a trial and an appeal had taken place. From the point of view of fact investigation, these cases had easier starting points, and in some cases there was even a transcript. Overall, however, the cases that had gone to trial were more difficult because we had to present enough evidence to justify what amounted to overturning a jury verdict. Our petitions needed to show that the domestic violence had been either overlooked or inadequately considered during the trial. With so much to prove, we attached as much supporting documentation to each petition as we could.

Teaching about investigating facts, drafting documents, and performing legal analysis was familiar to me from clinical teaching.

Students would write me memos about their client interviews and facts they had uncovered, and I would meet with them, mostly to ask questions. Additionally, they would submit first drafts of their petitions, and I would run them through several more revisions in order to produce petitions that were crisper, more succinct, with clearer and more persuasive arguments.

The students also learned to “politic,” as they gathered letters in support of their clients and circulated petitions. We were asking for clemency from a Republican governor who was running for reelection. He was facing the first woman ever to run for governor of Illinois. As a result, we could push him to show sensitivity for women’s issues.

Scene 2. The Student

Probably the most challenging aspect of drafting the petition was learning how to work as a team within a law school environment. From day one of our first year, we had been pitted against each other academically, everyone hoping someone else would anchor the grading curve. Although a seminar setting could have minimized that isolation, competition was still deeply embedded in the backs of our minds. Thus, when I was expected to collaborate with two other classmates, I needed to remember how to let my guard down and trust that we all made the client’s best interests our main priority.

Furthermore, all three of us were opinionated people with our own methods for completing work and meeting deadlines. Splitting up the research was easy; we simply divided it categorically—medical records, police records, legal records, family and friends, and the like. Real compromise became important when we began discussing writing style, information we each thought to be persuasive, and how to coordinate our efforts to follow the same schedule.

These challenges may sound simplistic, like the routine requirements of a legal practice; but up to that point, none of us had much experience with professional collaboration. We were very independent, sometimes divergent, people, and all three of us had learned the tough lessons of the first year of law school. Learning, or re-learning, teamwork skills was a practical lesson that prepared me

for future work experiences, and it was a lesson that I could learn in no other law school class.

Aside from my work for Pat, I also participated in the planning of a fundraising event for the Clemency Project. As members of the feminist organization on campus, one of my petition partners and I rallied to have the organization sponsor and plan the event. Due to the nature of the organization, very little rallying was needed. We found a restaurant to donate food, and we all made personal invitations, pressuring our classmates to support the cause. By campus standards the event was a success, with substantial attendance. In this way, we were able to support the program beyond the boundaries of our single petition.

ACT 5. THE CLEMENCY HEARINGS

Scene 1. The Teacher

In January 1994, the Illinois Prisoner Review Board held public hearings for several days in Chicago. By the time the hearings were scheduled, the Review Board was aware of the campaign for clemency on behalf of more than twenty imprisoned women. They allocated approximately twenty minutes to each case. In some cases, a State's Attorney from the county where the case had been tried appeared at the hearing to oppose the petition; but more typically, the State's Attorneys just submitted letters in opposition. These opposition letters were not available to us until the morning of the hearings. Thus, the students had to be prepared to deal with surprises. To make matters more tense, members of the deceased's family would often appear to present an emotional plea not to release the woman. In contrast to some other states, the prisoner herself was not allowed to be present. The students were her only voice. But the students could also present testimony from witnesses, friends, or family members, or a psychologist, if it would fit into the twenty minutes allotted.

Although I went to all of the hearings with my students, I decided not to sit with them at counsel table. I mooted their arguments several times in advance, but they were on their own when their cases were called. I sat through the hearings as a member of the audience, which was a very difficult and scary thing to do. I had to

trust the students in a new and frightening situation. They were up against a lineup of officials who I knew were capable of being nasty and abusive. I could only hope that I had prepared them well.

Scene 2. The Student

All three of us were nervous preparing for the argument before the Prisoner Review Board, mostly because we knew how hostile they would be toward Pat's petition and us. Who knew if they had even read the petition, or if they even intended to consider what we were going to say? Also, we had to worry about our client's children coming to protest the petition as they had done in the past. Not a friendly combination. Personally, I struggled with a bit of stage fright, as my only oral argument experience was in my legal writing course from the year before. Regardless of these concerns, we prepared our statements, selecting the arguments and information we considered most persuasive. We divided up the presentation so that we would each present one-third of the argument. We practiced, worried, and waited.

A press conference was held at our campus about a week before the hearings. Several of my classmates and I attended, listening as the Project's supervising attorney, Peggy Byrne, answered questions about the petitions. Finally, the reporters asked for a statement from one of the students, and suddenly I found myself being volunteered by Ms. Byrne. So there I was, spokesperson for all of the students on the Project. Decidedly nervous, I vaguely remember feeling like a verbal klutz. Ultimately, however, I was very proud to have been given the chance to publicly tell the world how important this issue was.

When the day of the hearings finally arrived, we found ourselves sitting before an unfriendly panel. I remember thinking to myself that they looked as cold and disinterested as I had expected. We made our presentation, and Pat's children were there to oppose it, their harsh and bitter words interrupted only by tears. It ended, and we had done the best that we could for Pat. Yet deep down I think all three of us knew that she probably would not gain clemency this time.

ACT 6. THE OUTCOME

Scene 1. The Teacher

We did not receive the results until several months after the hearings had taken place. Of the twenty-plus cases, clemency was granted to only three women. None of those women were our class's clients. The board of the Clemency Project spent a good deal of time pondering why some won and others lost, often directly contrary to our predictions. Board members tried to determine patterns for the decisions, but could discern none. The only distinction we saw was that all of the successful cases were from Cook County, a Democratic stronghold, and ours were all from downstate Illinois. And, the State's Attorneys opposing clemency from downstate were local Republican Party notables, whom the incumbent Republican governor running for reelection was likely to be very reluctant to overrule.

I can say that the representation all the women received from my students was absolutely first-rate. I am convinced the women got the best representation possible. It was clearly better than they would have received if an experienced but busy attorney had taken their cases. The students poured their hearts and energy into their clients' cases.

Scene 2. The Student

This course was one of the best formal classes that I took during my three years in law school. The reading materials were outstanding, including a varied collection of legal, social science, and political materials that could not be found in one book. The clinical training was also noteworthy; with the support and expertise of our professor and the Project Director, we were as prepared to produce a clemency petition as one could be. My most valuable lesson, however, came from Pat herself, as she stretched the limits of my world far beyond any level I could have imagined. As I had said during the press conference, when the class began, I felt that I had a better-than-average understanding of the domestic violence problem in our society, that my eyes were open to the crisis. But over the course of less than a year, my eyes were painfully opened even wider. And unlike other, more traditional law courses, I remember not only the skills that I learned, but also the content. While after three short years

I can hardly remember my class schedules, I will always remember Pat, and I will always send her my best wishes.

