

Kindness is the extremity of justice

by SaraKay Smullens

The Philadelphia Inquirer, Thursday, December 26, 2002

The judge asked me exactly how the court was not showing mercy to my client, a woman who tried to murder her own children.

Beneath a frustrated voice, I could sense kindness and decency. I told my client's story, and he listened.

It was family court, 1995. The judge had just refused to allow me to testify, and I'd stood up in court and begged him, much to his surprise.

Truth was, I was flashing back to a time decades earlier, also in family court, when I was fighting to save Cynthia (not her real name), a child with cerebral palsy whose parents' religious beliefs prevented her from seeing a doctor. But I was silenced in court.

Sickened, I followed the lawyer outside, begging him to carry Cynthia to a hospital immediately. As he began to walk away, ignoring me, I vomited on his suit and shoes right there on the steps of 1801 Vine Street.

Cynthia died a few days later in her crib in her "home."

Fast-forward to 1995. District Attorney Lynn Abraham introduced me to Mimi Rose, then the chief of the domestic abuse and sexual violence unit in the District Attorney's office. Mimi was the rarest of prosecutors: a tough lawyer when she had to be, but able to distinguish between the truly criminal act and the crime that was a cry for help.

Now my client was named "Margaret." She had been forced into an incestuous relationship by her common-law stepfather, the father of her two daughters. Margaret truly believed that the only way to protect her daughters from her fate was for all three of them to find God's protection in heaven. One winter evening, Margaret took her stepdad's heart medication and mixed it with hot chocolate, which she gave to her daughters and drank herself. But the three were found and lived. After they recovered, the court sent Margaret's daughters to live with their father; Margaret was denied all contact, and she began intensive psychotherapy with me.

About a year into treatment, Mimi Rose pushed for me to be allowed to testify that Margaret was ready for supervised visitation with her daughters. Every other attorney and social worker involved in this case were vehemently (and understandably) opposed to the request for visitation by a mother who had tried to kill herself and her daughters.

The judge refused to let me testify. That's when I flashed back to Cynthia - her eyes begging for help - and this time I knew I could not stay silent. I stood up and implored the judge to show mercy and compassion to my client. The judge declared a recess and angrily called me forward.

That's when I told my story. And the judge listened.

Thanks to his openness, and that of prosecutor Rose, Margaret was given supervised visitation and in time, unsupervised visitation. She found a job and an apartment and later bought her own home. When her children's father died of a heart ailment, she was awarded full custody of her daughters. There is love and safety in their home.

This happened because of a prosecutor with a rare genius, a judge who could show flexibility and compassion - and my client, Margaret, who, given just a small taste of kindness, found the strength and endurance that personifies a mother's love as well as, despite everything and anything, the hope and magic of the season.