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A Tribute to Professor Catherine Mahern

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A TRIBUTE TO PROFESSOR CATHERINE MAHERN

LAWRENCE RAFUL[†]

To be honest, when I first met Kate Mahern, she did not at all fit the model of what I had envisioned as the first director of our new legal clinic.

I had been honored to be selected to serve as the dean of the Creighton Law School in 1988, and I came because I wanted to live in the Midwest, and I was enamored to work in a Jesuit law school. I was surprised, though, when I came and found that Creighton did not yet have a legal services clinic, which most American law schools had by that time. When I first met with the University President, Father Michael Morrison, SJ, I told him that my first two priorities were to find the money to start a legal clinic for the poor, meeting the Jesuit's famous preferential option for the poor, and to add a small food service area because law students famously needed coffee all day. Father Morrison supported both objectives.

We were able to find some clinic startup funds, and we advertised for a director. I guess that in my mind I envisioned a passionate, outspoken, serious defender of the poor, a person who pounds her fist on the podium as she addresses the court, a crusading champion for human rights. I was thinking of someone like Texas Congresswoman Barbara Jordan, who had electrified the nation with her brilliant and passionate rhetoric during the Nixon impeachment hearings. Her most famous quote was "I am not going to sit here and be an idle spectator to the diminution, the subversion, the destruction of the Constitution."

Professor Mahern's resume certainly had enough "heft" to merit serious attention. Even though her educational background started off in a forestry major in college at Purdue, she had served most recently as the clinic director at a historically African American law school. So then we invited her to come to Omaha and interview for the position, and that's where the confusion began.

Kate Mahern was not Barbara Jordan! She was sweet and funny and confident and pragmatic. There did not appear to be a dogmatic bone in her body. She did not spin tales of rapture about what the legal clinic could do for the poor of Omaha, and how the clinic could

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meet the Jesuit goals of Creighton. She did not come with a list of the kinds of cases she would like students to dive into. But—and this became the key for me—Kate Mahern was nice and smart and reasonable and personable and was absolutely committed to the principles of promoting legal education in the clinic. I thought, “Well, maybe Barbara Jordan is not what we’re aiming for here at Creighton.”

And now, years later, I see what I had missed many years ago when I first met Kate, the clues I should have seen which would tell me that she was in fact the perfect person to run the legal clinic and the promise of spectacular educational achievement that she encouraged for so many years, and for so many students. Oh sure, she probably had a list in her mind of the kinds of cases that she felt comfortable accepting, but in reality, Kate’s mission, or as they say in Jesuit schools, her “ministry,” was accepting what came through the doors and turning each and every case, each and every client, into a learning experience about the nature of the practice of law and about justice. Kate Mahern’s “justice” was not some pie in the sky idealism, like I had first envisioned it in my naive and somewhat ignorant theory of a clinic. Kate saw justice—Kate sees justice—as getting a tenant some satisfaction in regard to an unfair housing practice by a landlord or helping a client with a discrimination claim in employment.

Kate always understood the “small stuff,” and for that I thank her on behalf of the hundreds of clients who cannot thank her today in the pages of a law review article. Justice in the Creighton Legal Clinic came one case at a time, and the students came to understand the Mahern method, to calmly understand the parameters of what you can do and what you can’t do. She didn’t encourage students to think of grand visions of justice, but she really made sure that students helped the client in the immediate nature of what each might need.

A good friend told me, when I mentioned early on that I wanted to start a legal clinic, that I had better be prepared for some tough times one day. “Listen, Raful, if at some point you get an angry phone call from the President or a board member or some disgruntled local politician or even a law school donor about ‘that damn clinic,’ then you’ll know you are doing the right thing!” Well, I got that phone call once. Father Morrison called one day to ask why the Legal Clinic was suing Creighton University. No anger in his voice—he was not that type of man. But he just wondered what was going on?

I told him that I had to check with Kate and would get right back to him. I called Kate, got the story, and then called him back and told him the tale of a poor guy who lived in a rather crummy apartment building. The manager had let some leaks go unrepaired, and now the carpet in this fellow’s apartment was soaked. He somehow wandered into the Clinic. Kate had the carpet immediately dragged

from the apartment onto the sidewalk (Kate did not suffer from indecision), and then filed a complaint against the apartment. Of course the apartment complex turned out to be owned by Creighton University. I explained to Father Morrison why she was therefore suing the school.

There was a pause, and then Father Morrison chuckled, said, “Tell Kate to keep up the good work,” and then hung up the phone. My one and only “official complaint” phone call had turned out just fine, thank you, because Kate Mahern did the Lord’s work.

I think Kate’s proudest moment, and certainly one of my proudest moments as dean, came when the Nebraska Supreme Court came for their once-a-year visit to the law school. The Court had agreed to hear four or five cases in a regular morning session in the spring of each year at the school, and they could not promise but would attempt to calendar a set of cases that could be understood by students and had some relevance to the typical law school subjects they might be studying.

One year, the Clinic had been engaged in a complex and difficult litigation which wound up in the Nebraska Supreme Court. And to our surprise and pleasure, they calendared the case for their visit to the school. Kate, as usual, had students argue the case—Kate almost ALWAYS had students argue Clinic cases while she stepped back—and the case was set for argument. In front the student body, the faculty, and many University onlookers, when the case was called, our Clinic students argued with intelligence, passion, and determination. They were very prepared, much like finalists in a typical law school moot court final round, and the judges on the bench were very impressed with their presentation. Kate and I could not have been prouder, and we won that case.

Kate did not only use her notion of justice to ruffle the feathers of the local bar. She also ruffled the feathers of the local Archbishop. Kate was a practicing Catholic, if a liberal one, but believed in the “liberation theology” of the church mission which was so prevalent among the Jesuits. She was active in her local Catholic Church, and her outspoken views on Church matters would occasionally get her sideways with the diocesan officials. Again, to his credit, this did not seem to bother Father Morrison at all, or if it did, he certainly never said anything to me about it. I was pretty sure that God was on Kate’s side.

One last example of Kate’s influence: The fact that we were able to raise two million dollars to endow the Clinic to ensure the continuation of its work was due to two people, Milton Abrahams, and Allan Lozier. Milt Abrahams, of blessed memory, was a 1927 Creighton Law graduate and one of the leading lights of the Omaha legal community. For many, many years he served as the lawyer for the Lozier

Corporation, a huge and very successful company headquartered in Omaha. I met Milt early in my deanship and fell in love with him. He was certainly the finest lawyer I ever met.

Milt had met Kate soon after she arrived, and he was thrilled that his *alma mater* would start such a clinic. He thought the world of Kate and always looked forward to hearing stories about the kind of cases she was accepting. At some point, when I started to worry about budget cycles and the need for continuation funds for the Clinic, we decided to try to raise an endowment. I asked Milt if I could go to see Mr. Lozier and he said he would make the introduction. I spent maybe all of ten minutes with Mr. Lozier, and it was clear that Milt had “greased the skids” on this deal. He was happy to give us the million-dollar donation so that the Clinic would be assured of continuation, and that we would name the Clinic in Milt’s honor to publicly acknowledge the greatness of this humble and extraordinary man. All of this happened because people met Kate and believed in her work.

So, by now you can tell that I am not unbiased on this subject—I am a fan. Kate and her husband Gary and her two sons have been a great addition to Omaha, and what Kate did for the mission of Creighton Law School cannot be measured. There is no adequate way to thank her for her service, except to simply say that she made a difference in the lives of students and clients. She was—is—a force of nature, and we were blessed and honored to have her in our Clinic. She was the best.

Of course, she was no Barbara Jordan!