

A client's story that yields many lessons



[By Jacob Stilman](#)

Professional detachment: an attribute essential in order to survive the emotional intensity of a life in the courtroom. We criminal lawyers see it all in this business, from the drug-addicted client and the ruination that brings to his or her life, to the impact which a history of sexual and domestic abuse will bring, to the unbearable tragedy of mental illness.

We also see the impact that some of our clients' actions have on their victims: the physical injury, the emotional scaring and sometimes the loss of a loved one due to a deliberate act of violence perpetrated by the person we stand beside in court.

Faced with these daily pressures, if lawyers became too emotionally invested in our cases we would not survive for very long in this business. And yet, sometimes a case comes along which even the most thick-skinned, professionally detached amongst us cannot help but be moved by, far beyond our obligations as professionals. This occurs when the lawyer believes not simply in the generic value of our role as a bulwark against state tyranny, but in the "factual innocence" of the client and the righteousness of the case for the defence.

In this piece I will share such a recent experience and the important lessons it taught.

My client escaped China in her early 20s following the Tiananmen massacre. She came to this country with nothing, but managed to support herself with restaurant jobs and by teaching piano, in which she had been formally trained at a conservatory in China. She gave birth to her only child during her first year in Canada but was abandoned by her husband shortly thereafter. She raised her daughter alone, provided for her and continued to enrich the lives of others through her teaching of music.

Then she made a big mistake. She entered into a relationship with a psychopathic, manipulative man. Within months she was being emotionally and physically terrorized, sexually assaulted and subjected regularly to credible threats of violence against herself and her cherished daughter.

Then things got worse. The man compelled my client, again under threat, to assist him with his large-scale outdoor marijuana grow operation in a remote region north of Toronto. Fearing for her safety and that of her daughter my client had little choice but to do his bidding. And that is where she was discovered when the police, raiding the property in full tactical gear with a trained-dog unit, arrested her.

At trial, a defence of duress was advanced before a jury. The fact that my client was caught at the grow site was obviously not in dispute, nor were the other essential elements of the Crown's case.

However, our law provides that where a person is compelled, under direct threat of imminent physical harm or death to oneself or others to perform a criminal act, that the crime can be excused.

The evidence at trial seemed highly persuasive: my client was uncontrollably emotional when describing her experience with the boyfriend. The cross-examination conducted by the Crown served only to elicit even greater sobbing and further emotional breakdown from the client, the dramatic effect being of benefit to the defence.

Other aspects of the Crown's case served to buttress the case for a finding of duress. The daughter testified and gave equally

compelling evidence of the two terrifying years of living with a psychopath. An expert on spousal abuse syndrome testified that my client showed clear signs of serial abuse and that she had suffered as a battered woman, with complete loss of agency over her life decisions.

The jury deliberated for three days ... and convicted.

The story is tragic on many fronts and the final tally has yet to be counted since my client may well face deportation back to China, putting almost 10,000 km between herself and her only daughter.

The silver lining, to the extent that one can be found, is that at sentencing the trial judge, accepting the evidence at trial of multiple experts on the subject, found that my client was indeed a battered woman, that she suffered from a complex post-traumatic stress disorder condition and that sending her to jail would be potentially life threatening due to her mental fragility.

Rather than adopt the absurd sentencing position of the Crown of a four-year prison sentence, the judge gave my client a conditional sentence and placed her on house arrest for 12 months.

What is truly frightening is that, with the advent of mandatory minimum sentences for marijuana production (the arrest of my client pre-dated the changes to the law, hence she was not subject to the mandatory minimums), a conditional sentence would now not even be available. For her minor role of assisting in putting some plants into the ground this serially abused, highly traumatized and utterly victimized woman would have had to go to prison for three years or longer had this event occurred recently. No discretion. No exceptions. No mercy.

But this is not a piece about the folly of the Harper crime agenda and the devastating impact that its draconian laws will impart. As I contemplate my experience in defending this most deserving of clients, I can say that even after 25 years of “professional detachment” and combatting my emotions in court, this case touched me profoundly.

A deserving client, intelligent, vulnerable and flawed as she was, was first victimized by her demonic boyfriend and then further victimized by a heartless prosecution.

Being on the side of the angels doesn't occur very often for people in my profession, but when it does, letting go of the rules that ordinarily serve to govern our emotions is not only inevitable, but serves as a vital reminder of the essential role which we, as defence lawyers, play in our society.