

Book Review

DEFENDING THE DEVIL: MY STORY AS TED BUNDY'S LAST LAWYER. By Polly Nelson.¹ New York: William Morrow and Company, Inc. 1994. Pp. 336. \$23.00.

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In 1986, a few months after she had joined the distinguished Washington, D.C. law firm of Wilmer, Cutler and Pickering, Polly Nelson, 35 years old and a 1984 graduate of the law school of the University of Minnesota, where she was President of the School's Law Review, accepted a *pro bono* assignment to participate with other lawyers in the firm in proceedings to save Ted Bundy, serial killer of many young women over a six-year period, from death in Florida's electric chair. (He had first been sentenced to death in 1979, two years before Ms. Nelson entered law school.) The assignment lasted over three years. Her book tells the story of her efforts in vivid and most of the time highly readable fashion. The book is well worth reading for those interested in death penalty issues, or the pathology of psychopaths, or in a candid and revealing partial autobiography of a remarkable woman who turned out to be unsuited for private practice. Her firm told her to find another job after she had completed the assignment and had participated in the expenditure of a million and a half dollars of the firm's funds in extending Bundy's life for three years—about a half million dollars a year.³

1. Member, District of Columbia Board of Parole, Washington, D.C.

2. AB Harvard College '35; LLB Yale Law School '38; Professor of Law Emeritus, University of Minnesota. Polly Nelson, the author of the book herein reviewed, was a student of mine in Civil Procedure in 1981-82. From time to time while she was in law school, Ms. Nelson sought my professional advice on her career. I recommended her for a clerkship position for the U.S. Court of Appeals for the Second Circuit.

3. Undoubtedly, this million and a half figure is not based exclusively on actual dollar expenditures by the law firm; rather, it was calculated on the assumption that if the associates had not been working on Bundy's case, their time would have been earning, hour for hour, the maximum rate charged paying clients.

While the book is not divided into three parts, it is helpful both in reviewing and reading the book to consider it from three different aspects. First, there is the author's detailed description of the legal maneuvers to save her client from the electric chair. Second, much in the book consists of the author's own analysis of her intellectual and emotional development—a search for her own motivations. Finally, the book describes efforts made by Bundy and psychiatrists to explain why this serial, sadistic killer of young women did what he did.

Legal Maneuvering to Defeat the Death Penalty in Florida. This is the most lawyer-like and, to this reviewer, the least interesting part of the book. Bundy had been convicted by the Florida courts in two separate cases of murdering three young women: two in the same incident in a Chi Omega sorority house at Florida State University in Tallahassee and another woman in Lake City. The two cases were at different stages when Wilmer, Cutler began to act as counsel. This both complicated the situation and gave Bundy's lawyers more opportunities to delay his death.

Perhaps because this reviewer has lived most of his professional life in three jurisdictions, none of which allows the death penalty, he regards the issue much as do Western European lawyers, who are dumbfounded that most Americans still favor capital punishment. Yet there are distinguished American thinkers who have favored it. For example, Edward Levi, former President of the University of Chicago and Attorney General, whose intellectual stature cannot be doubted, favored it for a few types of particularly heinous crimes. But Levi's position was that if the death penalty is to work as a deterrent, it must be imposed both swiftly and surely.⁴ Yet lawyers at Wilmer, Cutler and at other great law firms apparently regard it as in the public interest to defeat prompt use of the death penalty. Perhaps because of continuing doubts about the moral validity of capital punishment, courts continue to permit lawyers to file and litigate motions seeking to delay or defeat the imposition of the death sentence. But in the end, in many of the United States we kill people to demonstrate it is wrong to kill people. But we do so only after many years of litigation; in Bundy's case, his death came 11 years after his commission of the crime for which he was convicted.

In reading Ms. Nelson's account, one is struck by the fact that one reason so many states retain the death penalty is to en-

4. See *Hearings on Nomination of Edward H. Levi of Ill. to be Atty. Gen.*, Judiciary Committee, U.S. Senate, 94th Cong., 1st Sess. (1975) 35-6; 71.

joy revenge. "What about the rights of the victims" was an oft-repeated refrain in Ms. Nelson's account of her efforts to save Bundy's life. It is hard to understand how a murdered victim has any rights left. But the living members of her family still have rights, and many insist that one of those rights is to revenge her death by killing her killer. The end of Ms. Nelson's book contains photographs of Floridians, standing together outside the prison during the impending electrocution of Ted Bundy, some of them smiling in anticipation of what they termed the "frying" of Ted Bundy.

Ms. Nelson's Analysis of Herself and Her Relationship With Her Client. Above all else be true to one's self. But to be true to one's self one has to know one's self. And it took Polly Nelson, according to her interesting, sometimes fascinating account of her own development, many years to understand her motivations. One cannot help admiring her ability to set down in writing her life story, including mention of her troubled family background, her alcoholism (which she conquered), her claimed mistake in starting her working career in social work, her phenomenal success in law school, her job as a law clerk to a Second Circuit Judge (which she found "boring and tedious")⁵, her acceptance of a job offer from Wilmer, Cutler and Pickering, and her collapse after Florida killed her client, followed by a long bout with depression until finally she could work again, at which time she was appointed to the District of Columbia Board of Parole.

During my years as a partner at a large Washington, D.C. law firm and as a member of its Hiring Committee, it became clear to me that most people (doubtless there are exceptions) who become lawyers in hopes of changing society for the better (or for what they believe to be the better) are not going to be happy in private practice with firms having large corporations as clients. Some of the people with outstanding law school records accept offers from firms of that type as a means of obtaining first-rate training, but the majority, apparently attracted by high salaries and the firms' *pro bono* departments, think that they can succeed in carrying water on both shoulders. Polly Nelson was one of these brilliant, honorable and apparently misguided young lawyers who was determined not to wear the "golden handcuffs."⁶

5. Nelson, *Defending the Devil*, 16.

6. See *id.* at 116-17. "Golden handcuffs" is a figure of speech referring to the difficulty in drastically reducing the cost of living which would be experienced by a young

The author's complex and extraordinary relationship with her client is also revealed in the book. For example, here is a passage describing a moment in her client's last day on earth:

Ted had laid his head down on his hands, but his handcuffs cut him and he was unable to concentrate. I cupped his head in my hands. I had never been this way with Ted before, touching him, comforting him. But today was . . . very, very different.⁷

At the same time, the author reveals the intensity of her feeling about her efforts to save her client's life in these words:

At nine o'clock I rose to leave. To my amazement, I was propelled against the glass to kiss and hug Ted, as best we could. I didn't know how I got there; it was a force from within, beyond my control. I left him alone with Diana [Weiner] for a final goodbye and walked out the door. I burst into tears . . .⁸

Diana Weiner was a young Florida lawyer who joined the group defending Bundy as a result of her retention by a psychologist who was trying to prepare a psychological evaluation of Bundy.⁹ It appears that Bundy became sexually attracted to Ms. Weiner. She was the woman he most wanted to be with in the last hours of his life.¹⁰

This example of the kind of material that makes the book a vivid description of what life is like for some young lawyers raises difficult questions concerning propriety. Is Polly Nelson to be excused for violating a fundamental rule of attorney-client relations: Don't get emotionally involved? She was a former social worker turned lawyer in a case in which she sought to prevent her client from being killed by the State and she represented him in the last hours of his life. If there is ever an exception to any rule, this would be the situation justifying the exception.

Polly Nelson's bonding with her client on death row is not unique. A lawyer in another law firm who represented another defendant who was ultimately executed has described her relationship with him in these words:

lawyer in private practice were she to switch to a government job or to public interest practice.

7. See *id.* at 297.

8. *Id.* at 304.

9. See *id.* at 79 and 120.

10. *Id.* at 304.

In May, 1992, I waited with a client in a cell outside the electric chair during the last few hours of his life. I had worked on the case for two years and developed a friendship with the client.¹¹

This same lawyer has put the case for pro bono representation of death row clients, even when guilty of the crime for which they have been sentenced to death, in these words:

Because of my personal experience with how savage and useless capital punishment can be, I feel an ethical and moral obligation to work to stop executions in this country.

*Trying to Determine Why Bundy Became a Sadistic Woman Killer.*¹² To this reviewer the most interesting part of the book is that part which recites the efforts by both Bundy himself, his lawyers (particularly the author), and psychoanalysts to find out why he did the terrible things he did. To understand it, the reader should be aware that though Bundy's judgment was bad when seeking to act as his own lawyer, he was relatively well educated, though he did flunk out of law school twice.¹³ Nevertheless, his language skills were impressive and when dressed in a suit and tie, he looked like he could be an associate or young partner in a law firm.¹⁴ But the author emphasizes that Bundy's judgment was atrocious and he "never contributed anything of use to his case."¹⁵

Bundy apparently was eager to participate in efforts to "psych" him because it might result in keeping him alive longer and it gave him a chance to bolster his ego and at least gave the appearance of doing something worthwhile during his last days. The book contains a verbatim account of his last conversation with a psychiatrist several hours before he was electrocuted. Bundy expressed difficulty in explaining or understanding what changed him from the appearance and action of a normal person to a mad dog torturer and killer of young women. Then he lamented, in describing his Chi Omega murders, "I'd never bitten anyone before."¹⁶ The one point, however, that he said he was sure of was that pornographic movies or pictures stimulated his

11. Both of the quotations in this paragraph are taken from page 2 in a bulletin issued by a Washington, D.C. law firm dated September 1994, entitled "Pro Bono."

12. Although significant materials on this subject appear throughout *Defending the Devil*, see especially Chap. XVI, 273-300.

13. See *id.* at 55, 220-24.

14. See picture of Bundy in court reproduced in the review of Ms. Nelson's book in the *Los Angeles Times*, Aug. 21, 1994, p. 3 of Book Rev. Section.

15. Nelson, *Defending the Devil*, at 61.

16. *Id.* at 293.

urge to injure and kill women. During his long, 11th-hour death row conversation with the psychiatrist he said:

. . . I know that if the police had . . . let me get drunk . . . and showed me some really hard-core pornography, I could have talked to them in that voice [the voice of a serial killer-torturer while preparing to and committing his crimes] . . .¹⁷

Bundy was puzzled that “the vast majority of people can view the kind of so-called pornography I’ve been talking about and not be moved this way. Why?”¹⁸

Ms. Nelson stresses that Bundy was “sincere” in his conviction that adult pornography was the trigger—or at least *a* trigger. She wrote:

He had tried to encourage the FBI to stake out adult movie houses and follow the patrons as they left. He was certain . . . that the men who preyed on women were there.¹⁹

Conclusion

The first sentence in the first chapter of Nelson’s book is: “I was born to represent Ted Bundy.” Her explanation of that dramatic sentence is that from an early age she found it “important” to “meet the needs of . . . those who seemed unhappy.”²⁰ This reader finished her book convinced that its author was a highly talented person capable of high achievement, but not in the conventional private practice of law. Her book is a tribute to the author’s special skills at self-analysis, but also is strong evidence in support of the growing conviction that too many highly talented people in this country are going into the law rather than other professions where their abilities are sorely needed.²¹

17. *Id.* at 287.

18. *Id.* at 297.

19. *Id.* at 319.

20. *Id.* at 13.

21. See Derek C. Bok, *The Cost of Talent: How Executives and Professionals Are Paid and How it Affects America* 233-42 (Free Press, 1993).

After this review was written, Ms. Nelson filed suit in the U.S. District Court for the District of Columbia against John Grisham and his publisher Doubleday for copyright infringement. According to Daniel Klaidman, writing in the *Legal Times*, Nelson alleges that Grisham’s latest book, *The Chamber*, “‘blatantly’ appropriates central themes, plot twists, characters and descriptive details” from *Defending the Devil*. (See *Legal Times*, 2/16/95, p. 2, col. 2).