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The Missouri Battered Women's Clemency Coalition: A Collaborative Effort in Justice for Eleven Missouri Women

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**THE MISSOURI BATTERED WOMEN'S CLEMENCY COALITION:
A COLLABORATIVE EFFORT IN JUSTICE
FOR ELEVEN MISSOURI WOMEN**

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I. INTRODUCTION

One woman was beaten with a wooden coat hanger until she fell to the ground; when the hanger broke, her husband punched her in the face and retrieved a second wooden hanger to continue the beating. Another woman was handcuffed to a table and had a burning candle shoved in her vagina. A third woman was held off of the roof of her house. And another was tied to her bed with barbed wire.

What these women share is not only a history of horrific abuse inflicted by their husbands and boyfriends; each has also been convicted of murder for killing her abusive partner. Despite the direct link between the abuse and the killings, in each of these women's trials, evidence of the abuse never reached the triers of fact. Many of these women recall their survival as boiling down to a simple choice: kill or be killed. Each of them has been sentenced to excessive prison terms because she chose to survive.

In 1999, a group of activist Missourians, calling themselves the Missouri Battered Women's Clemency Coalition ("Clemency Coalition"), formed to help victims of domestic violence who were punished with unduly harsh sentences for killing the perpetrators of chillingly abusive acts. Ultimately, the group selected eleven women convicted of murdering their batterers to represent in petitioning and lobbying for clemency.

This article recounts the abuse the Clemency Coalition petitioners suffered both at the hands of their intimate partners and at the proverbial hands of the

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criminal justice system. Section II of this article outlines the Clemency Coalition's history and its mission. Section III provides contextual backgrounds of the women's personal histories and summarizes the Clemency Coalition's accomplishments thus far. Section IV discusses various themes that shaped the Clemency Coalition's philosophy, decisions, and actions. It describes the nationwide precedents for clemency on behalf of incarcerated battered women, sentencing discrepancies in Missouri between men and women convicted of killing an intimate partner, and the low recidivism rates and high costs of incarcerating battered women. It also explores changes in Missouri's evidentiary laws, which now permit introduction of evidence relating to Battered Women's Syndrome ("BWS"). Section V describes the status of the Clemency Coalition in Missouri and its activities spanning the gubernatorial terms from Carnahan to Holden; it details recent developments including Governor Holden's action on some of the petitions produced by the Clemency Coalition.

II. HISTORY OF THE CLEMENCY COALITION

A high school reunion can be a catalyst for many things: renewed friendships, rekindled romances, job opportunities, and plain old nostalgia. But it's not often that high school reunions launch a project that could give hope to eleven incarcerated women, involving a dozen attorneys, four law schools, and the Governor of Missouri.

The Clemency Coalition grew out of the Mercy High School 20th year class reunion for Joe Church, a St. Louis area financial planner, in 1997. At that reunion, Church learned that one of his classmates was in prison for killing her husband. After some investigation, he learned that she had been a victim of years of abuse by her spouse and that the killing came after a night of torture and sexual abuse.

Church soon learned that several other women were serving long sentences in Missouri, many even life without possibility of parole, for killing abusive spouses or boyfriends. He quickly organized a group called Project Hope, joining with women who had served time for convictions for similar situations. In the summer of 1999, Church began to affiliate with other interested people and helped form what would become the Clemency Coalition.

The Clemency Coalition today consists of two agencies and all of the law schools in the state of Missouri. Church learned that an old high school friend, Colleen Coble, was working at the Missouri Coalition Against Domestic Violence ("MCADV") which was a support network for the women. MCADV would provide the connections to the Governor's office. Law professors and law students from the University of Missouri-Columbia's Family Violence Clinic, the University of Missouri-Kansas City Legal Clinic, the Saint Louis University Legal Clinic, and the Civil Justice Clinic at Washington University

School of Law provided the legal support. This is the first time all four Missouri law schools have joined forces on such a project. Faculty from Drury College also assisted with several cases.

The participants began meeting in the summer of 1999, spurred on by Church's enthusiasm and signals that the Governor of Missouri at that time, Mel Carnahan, might be considering granting clemency to some sympathetic prisoners after the November 2000 election, when he would either be elected to the United States Senate or if he lost the election, would be retiring.

The group held a lengthy meeting in August of 1999, planning a strategy that would carry through for several years. The Clemency Coalition then began to review cases which Church brought to its attention. It became clear that quick action was necessary because two of the women had parole hearings scheduled in the coming months, with the first scheduled for September of 1999. Attorneys from the Clemency Coalition quickly researched parole issues and the facts of those two cases.

Later in 1999, as a means to gain as much information as possible about the clemency process, Clemency Coalition attorneys met with Dora Schirro, who was Director of the Department of Corrections at that time, and with members of the Missouri Board of Probation and Parole. The Clemency Coalition was able to get an agreement from the Director about law students being able to make prison visits and law students representing clients at parole hearings pursuant to Missouri Supreme Court Rule 13, the student practice rule.¹ As the four law schools involved in the Clemency Coalition all had Clinics and wanted students to be involved in the process, the law professors wanted to guarantee the opportunity for the students to have access to clients and to hearings. For an example of one of the hurdles, Parole Board rules state that an inmate is allowed only one representative at a parole hearing. This rule would have prevented a Rule 13 student and his or her attorney supervisor from both attending the hearing together. The Director and Parole Board agreed to allow both the student and supervising attorney to be present. The attorneys also clarified procedures for obtaining medical and other records for the women.²

The Clemency Coalition next scheduled a retreat in January of 2000 to learn more about how others had handled a major project requesting clemency on behalf of a group of women. The Clemency Coalition arranged for Kathleen M. Ridolfi, a Professor at Santa Clara University School of Law, to

1. MO. SUP. CT. R. 13 (2000).

2. Medical records have been an important part of the Coalition's work from the beginning. The group has spent thousands of dollars, coming entirely from generous donations from Joe Church, or arranged by him, in obtaining records from the Department of Corrections on the women's conditions and made use of them in preparing the clemency petitions and for parole hearings. This issue is discussed further in Section V(B).

visit Missouri to describe the work of the California Coalition for Battered Women in Prison. The California Coalition pursued petitions for clemency for twenty-one battered women convicted of killing their abusers. In one of the more harrowing moments for the Clemency Coalition, a van trip from St. Louis to Columbia, Missouri, for the retreat was cut short when a major snow storm hit Missouri. Clemency Coalition members saw numerous car accidents along the way. The St. Louis contingent of the group had to turn back and held a separate meeting with Professor Ridolfi, while the other members of the group who made it to Columbia planned strategy during a meeting at the University of Missouri.

The next major event in the life of the project was a second retreat held at the University of Missouri at St. Louis in September of 2000. Clemency Coalition attorneys, students, and advocates met with psychologist Mindy Mechanic to learn more about the psychological issues involved in these cases. It was soon apparent that all of the women fit into easily recognizable life patterns.

The most significant event in the development of the clemency project was a true tragedy. No one could have predicted the events of October 2000. Clemency Coalition members woke up Tuesday, October 17, knowing that a crucial time was approaching for the clemency petitions as the November elections were just a few weeks away. The hopes of the eleven women and their attorneys rested with Governor Carnahan. But the television news that morning was dominated by one story: Governor Carnahan had died the night before in the crash of a small plane. The state was in mourning.³

Clemency Coalition members found themselves mourning, not just the death of a beloved Governor, but mourning a loss of hope for the women who had rested their hopes in Governor Carnahan. The Clemency Coalition attempted to persuade the interim Governor, Roger Wilson, to take some action, but to no avail. To date, the current governor, Bob Holden, has not granted any of the petitions, but the women, and the Coalition, have hope.

III. THE CLEMENCY COALITION'S EFFORTS IN REVIEW

A. *The Selection Process*

In selecting the petitioners it would represent, the Clemency Coalition undertook a long and arduous process, mindful that it had to maintain strict standards if it were to succeed. Ultimately, the group chose twelve potential petitioners. The selected cases were fraught, *inter alia*, with serious due

3. Carolyn Tuft and Jo Annies, *Upbeat After Debate, Governor Attended City Events on Day of Crash*, ST. LOUIS POST-DISPATCH, October 17, 2000, at 3.

process violations,⁴ attorney conflicts of interest, and incompetent representation.⁵ Following are synopses of the stories behind ten of the petitioners⁶ represented by the Clemency Coalition.

1. Candice Martin⁷

Candice married Brian Martin when she was still a teenager.⁸ As a wedding gift to Brian, his mother gave him a wooden paddle to “ensure discipline in the household.” Throughout the course of the next seven years, Brian was horribly violent in the home. He threatened Candice with a shotgun; he held a knife to her throat; and he even tied her to the bed with barbed wire. The abuse did not end there. Brian also routinely beat Candice’s oldest son, Lance, with his bare hands and with the paddle. Brian once dragged Lance from his top bunk, through the family’s trailer and into the snow, with Lance’s back bleeding through his pajamas – all because Lance had not brought in the groceries that night.

Candice planned to take the children to a local women’s shelter, but as she formalized her plans on a telephone call with the shelter, Brian intercepted the call and threatened to hurt the shelter’s other residents if the shelter admitted Candice. Candice subsequently made other arrangements and moved out of the home, but Brian found her, and she returned to the relationship.

On March 14, 1987, while Candice was in the hospital recovering from injuries from one of Brian’s beatings, three men entered the Martin’s trailer and shot and killed Brian. Candice was tried and found guilty of first-degree

4. See, e.g., *infra* note 20 and accompanying text (explaining that in the case of Ginny Tobias, the 7th juror said “no” when polled by the judge about the verdict’s unanimity).

5. See, e.g., *infra* note 32 and accompanying text (discussing that at Christina Neal’s second trial, the attorney told her not to testify. Her sentence increased by ten years after this second trial). See also *infra* note 18 (petition of Catherine Burke); *infra* note 12 and accompanying text (describing Maggie Rusk’s attorney’s conflict of interest).

6. The Clemency Coalition adopted a common theme of women convicted of homicide for the killing of an intimate partner. One of the cases considered did not fit this theme because the prospective petitioner had killed her abusive father (and not an intimate partner). Although a clemency petition was developed for her, it was not submitted with the other Clemency Coalition petitions, but by non-coalition attorneys and under separate cover. Another petitioner selected for representation by the Coalition has withheld consent to have her story reported in this article. Although the Coalition represents eleven Missouri women, only ten women’s experiences are recounted in this article.

7. All names have been changed to protect the women’s privacy; the stories represented are otherwise factually accurate. The facts were drawn from interviews, depositions, trial transcripts, and the petitions themselves. Redacted versions of the petitions are on file with the authors.

8. John J. Ammann, Derrick Good, Charles Curd, & Pamela Smith, *Application to the Honorable Roger Wilson, Governor, for Executive Clemency on Behalf of _____*, 1 (unpublished petition, 2000) (copy on file with the authors) (all of the facts in this section are derived from this application).

murder⁹ and was sentenced to life in prison without parole. Candice's lawyers were among the first to attempt to present evidence of a pattern of domestic abuse in accordance with Missouri's new BWS defense.¹⁰ However, the trial court excluded the relevant evidence, and the appellate court ruled that Candice was not entitled to use the BWS defense because she failed to show that at the time of the event she had an immediate fear of death or serious physical harm. Consequently, Candice and her court-appointed psychologist were barred from testifying about BWS and from explaining that she was in fact *constantly* in immediate fear of death and serious harm at her husband's hands.

Thus far, Candice has served approximately fifteen years in prison.

2. Maggie Rusk¹¹

Maggie Rusk's stepfather was the first man to hurt her.¹² When Maggie was eleven, he began physically and sexually abusing her. To escape her stepfather's abuse, Maggie married Wayne Rusk when she was only fourteen; Wayne was twenty-one. Wayne treated Maggie well for the first several years of marriage, but once the abuse began, it escalated quickly. The violence became unbearable. Maggie sought refuge in an extramarital relationship with Mitchell Henderson. Even though Mitchell was also abusive and controlling, Maggie left Wayne for Mitchell. But, Wayne harassed and threatened Maggie until she agreed to return home with him. Outraged by Maggie's and Wayne's reunion, Mitchell broke into their home one day and shot Wayne to death with a sawed off shotgun.

Maggie was tried for capital murder in Wayne's death. Her court-appointed attorney, Jonathan Mahoney, had an obvious conflict of interest in defending Maggie because he had represented her husband in their contested divorce just a few months before his death. Maggie raised the issue with Mahoney, but he dismissed her concerns and told her there was no conflict in representing her. Mahoney failed to depose *anyone* before trial, including both Mitchell and a witness to threats made by Mitchell to Wayne. Moreover, he refused to introduce any evidence of abuse at trial. He so much as admitted his own incompetence at trial. "I know I'm not making a very good record, Judge," he told the court on record, "but I don't mind that."

9. Candice admits that she had initially hired the three men as hit men, but she maintains that she later rescinded the deal in full.

10. See *infra* Section IV(C).

11. See *supra* note 7.

12. Mary Beck, Christine Hermann, & Emily Woodward, *Application to the Honorable Roger Wilson, Governor, for Executive Clemency on Behalf of _____*, 1 (unpublished petition, 2000) (copy on file with the authors) (all of the facts in this section are derived from this application).

Maggie adamantly maintained her innocence, but her persistence was useless. Mitchell had made a deal with the prosecution and testified against her at trial. While the plea Mitchell entered allowed him a sentence of no more than thirty years, Maggie was tried and convicted of capital murder, and she was sentenced to life without parole eligibility for fifty years. Mitchell has since recanted his testimony, admitting that he alone killed Wayne.

Maggie's court-appointed attorney on appeal was a partner of her trial attorney, whom Maggie believed ineffectively represented her. Despite a second conflict of interest, the appellate attorney stayed on. The trial transcript obtained by him was missing fifty pages, including forty-two pages of Maggie's direct and cross-examination testimony, the testimony of two prosecution witnesses, and part of the State's closing argument, rendering her attorney's preparation for appeal grossly deficient. Although Missouri rules provide a procedure that an appellate attorney can follow to avoid injustice for his client when trial transcripts are missing, Maggie's attorney failed to utilize the necessary procedure.¹³ The Supreme Court of Missouri, however, did not excuse Maggie for her lawyer's failures.

Maggie has already served twenty-four years in prison.

3. Sarah Commins¹⁴

Sarah Anne Commins spent much of her youth in foster care.¹⁵ To escape the foster care system, Sarah married while she was still a teenager. Her first husband beat her and burned her with cigarettes, and in time, the couple divorced. Shortly after ending her first marriage, Sarah married Russell Commins. A particularly forceful blow from Russell on the couple's wedding night knocked a pregnant Sarah out of her chair; she miscarried a week later. Russell's abuse was cruel and pervasive, reaching the level of torture on many occasions. After years of abuse, Russell tied Sarah to the kitchen table one night, inserted a candle in her vagina, lit it, and watched it burn to her flesh. That night Sarah finally told Russell she would be leaving him for good. She awoke later in the night to Russell holding a gun wrapped in a sheet, threatening to shoot her and her daughter. A struggle ensued, and Russell was shot twice.

Sarah's first murder conviction was reversed and remanded because she was not allowed to introduce evidence of domestic violence. At her second trial, despite Sarah's clear requests of her attorney, and despite the opportunity

13. MO. REV. STAT. § 30.04 (2000).

14. See *supra* note 7.

15. Mary Beck, Amy J. Lorenz, & Amy Patton, *Application to the Honorable Roger Wilson, Governor, for Executive Clemency on Behalf of _____*, 1 (unpublished petition, 2000) (copy on file with the authors) (all of the facts in this section are derived from this application).

to do so, Sarah's attorneys refused to introduce evidence of the domestic violence, and a jury again convicted her of first-degree murder. Sarah failed to appear at her sentencing hearing.

Sarah pursued appellate review of her second trial, but she was denied her appeal because the court applied the "escape rule" for her failure to appear at her sentencing hearing. Missouri's escape rule, also called the fugitive dismissal rule, provides that a defendant forfeits all rights to appeal if she/he attempts to "escape justice after conviction."¹⁶ The issue was heard by the Missouri Supreme Court and eventually by the United States Supreme Court. The United States Supreme Court held that there was no due process violation in applying the escape rule to Sarah's case. Consequently, the failure of Sarah's attorneys to introduce crucial pieces of readily available abuse evidence will never be reviewed. Neither of the juries that convicted Sarah ever saw available medical records proving abuse or heard live testimony of an available eye-witness to the abuse.

Sarah has served approximately seventeen years in prison.

4. Catherine Burke¹⁷

Catherine "Cathy" Burke was an active and affable teenager.¹⁸ She grew up in a comfortable suburban environment, attended church every Sunday, joined the cheerleading squad, and was well liked by classmates and teachers alike. At seventeen, Cathy began dating Jimmy Burke, a boy who had previously dated her neighbor, Angie, and had gained a reputation after Angie filed assault charges against him. Cathy sincerely believed she could be the one to change Jimmy. Even though he physically abused Cathy at times during the four years they were dating, the couple stayed together and eventually married. During the marriage, Jimmy abused drugs and alcohol, and the abuse escalated.

After several years of marriage and enduring Jimmy's abuse, Cathy and her four children fled to a battered women's shelter and stayed there for a month. Although she never told anyone where she was staying, Jimmy tracked her down. He told her that if she did not come back to him, he would later "hunt [her] down" and hurt her. Fearful for her life and worried for her children, Cathy went back to Jimmy. Upon Cathy's return, the abuse worsened: he kicked her down a flight of stairs, precipitating a miscarriage; he

16. *Goeke v. Branch*, 514 U.S. 115, 116 (1995).

17. *See supra* note 7.

18. Marie A. Kenyon, Derrick Good, & Charles Curd, *Application to the Honorable Roger Wilson, Governor, for Executive Clemency on Behalf of _____*, 1 (unpublished petition, 2000) (copy on file with the authors) (all of the facts in this section are derived from this application).

held her off of the roof of their home as they repaired flood damage; and on an almost regular basis, Jimmy threatened to kill Cathy and the children. Late on the evening of October 30, 1994, Jimmy returned home from work under the influence of alcohol and cocaine. He tied Cathy to the bed, raped her, and beat her with a wooden stick. Once Jimmy fell asleep, Cathy untied herself and grabbed her gun. Jimmy began to stir, and Cathy, in a panic, shot him.

Cathy faced a charge of second-degree murder, which carries a sentence of life in prison without the possibility of parole. Although Cathy acted out of genuine fear and in self-defense, she pled guilty to a lesser charge, accepting a fifteen-year jail sentence, so that she might return home to her children someday.

Cathy has served almost nine years in prison.

5. Ginny Tobias¹⁹

Ginny Tobias has a long history of abusive relationships.²⁰ Each of her three husbands physically and emotionally abused her. James Rogan, Ginny's second husband, was an alcoholic who beat Ginny to unconsciousness on countless occasions. After one such beating, Gerald Tobias found Ginny lying lifelessly on the sidewalk; Gerald took Ginny to the hospital. Soon thereafter, Ginny divorced James and began dating Gerald. The couple married in 1984, and they, with Ginny's three children, moved into a house in St. Louis. The abuse began shortly after that.

Gerald was also an alcoholic, and his verbal and emotional abuse soon escalated into serious physical beatings of Ginny and her children. Gerald often struck Ginny with closed fists or with whatever objects were close at hand. During one such fit of violence, he cracked Ginny's ribs. Because Gerald also brutally beat Ginny's children, Ginny sent her oldest son, Glenn Jr., to live with her sister, and her younger son, Darrell, to live with another sister. Ginny's daughter, Karissa, however, remained with Ginny and Gerald at home, and she consequently suffered the impact of living with Gerald's abuse.

On July 4, 1988, Gerald forced Karissa to watch as he beat the family dog with a wooden coat hanger. When Ginny tried to intervene, Gerald turned the coat hanger on Ginny, and when it broke, he punched her in the face and retrieved another wooden hanger to continue the beating. Ginny demanded

19. See *supra* note 7.

20. John J. Ammann, Derrick Good, & Pamela Smith, *Application to the Honorable Roger Wilson, Governor, for Executive Clemency on Behalf of _____*, 1 (unpublished petition, 2000) (copy on file with the authors) (all of the facts in this section are derived from this application).

that Gerald leave, but he only scoffed, “The only ways I’m gonna leave here is if I’m dead!”

That day, Ginny told her son, Darrell, that she wished Gerald was dead. Darrell responded that his friend, Jorge, had killed someone once before and would kill Gerald. Ginny replied that at that point she did not care what happened to Gerald. Later in the day, when she returned home, Gerald was dead.

At trial, Ginny’s lawyer refused to introduce evidence that Ginny and her children had suffered severe and continued physical abuse by Gerald. The attorney told Ginny that by bringing the abuse into evidence, they would only provide the jury with a motive for her involvement in the murder. Ginny was convicted of first-degree murder and was sentenced to life in prison without possibility of parole. After Ginny’s conviction, Darrell and Jorge pled guilty to second-degree murder, and they were each sentenced to life in prison.

Ginny has served approximately fourteen years in prison. She has exhausted all appeals and post-conviction relief.

6. Lorraine Kalbach²¹

Lorraine Kalbach’s mother died when Lorraine was just three years old.²² Her father had always blamed her for her mother’s death and began to verbally and physically abuse her when she was still a toddler. The abuse continued throughout Lorraine’s formative years and eventually forced her to leave home as a young girl. Seeking the affection so conspicuously absent from her life, Lorraine met and fell in love with Chris Needels. A short time later the two married, moved to Kansas City, Missouri, and started a family. Almost immediately, Chris began to abuse Lorraine, and he continued to do so throughout their marriage. The abuse took many forms and was directed at both Lorraine and the couple’s children. After many years of suffering, Lorraine ended the marriage.

A few years after leaving Chris, Lorraine met storeowner Elbert Kalbach. The two dated for a few months and married in 1976. The couple lived in Middle Grove, Missouri, where once again physical and emotional abuse quickly entered the marital relationship. At Elbert’s insistence, Lorraine hid the abuse from others, but her children, of course, were well aware of it. On February 6, 1978, Kenneth Needels, Lorraine’s son from her first marriage and a self-professed drug addict, entered Elbert and Lorraine’s trailer, where he shot and stabbed Elbert to death. After killing Elbert, Kenneth forced Lorraine

21. See *supra* note 7.

22. Jane Aiken, *Application to the Honorable Roger Wilson, Governor, for Executive Clemency on Behalf of _____*, 1 (unpublished petition, 2000) (copy on file with the authors) (all of the facts in this section are derived from this application).

to open the couple's safe; he then struck her in the face with the gun and tied her up with rope.

When questioned about the events surrounding her husband's murder, Lorraine originally told police that she did not know the assailant. Later, she admitted that she had lied to protect her son but denied being involved in her husband's death. On June 11, 1981, the State of Missouri convinced a jury that Lorraine had offered to pay her son to commit the crime, and Lorraine was sentenced to life in prison without the possibility of parole for fifty years.

Now an elderly woman, Lorraine has been confined in the Missouri Department of Corrections for over twenty-three years.

7. Diana DiCarlo²³

Diana DiCarlo has been abused her entire life.²⁴ As a child, Diana's mother physically abused her, and her father physically and sexually abused her. Marrying Robert DiCarlo appealed to Diana as an opportunity to improve her situation. She married him while he was on leave from Vietnam, and when he permanently returned to Missouri, the two formally began their married life, established their own home, and started a family. However, it was never a peaceful marriage. Robert drank heavily and was verbally abusive to Diana. One night in the eighth month of her first pregnancy, Diana was not feeling well and did not prepare dinner. When Robert came home to a bare dinner table, he threw Diana against the kitchen sink so hard it induced premature labor. This early episode signaled the beginning of a series of severe abuse.

Over the years, Robert berated Diana in front of friends and family, made harassing phone calls to her place of work, threw objects at her, attempted to strangle her, tried to drown her in the backyard pool, and threatened her life. One night, a drunken Robert held a gun to Diana's head and pulled the trigger several times. Luckily for Diana, the bullet chambers were empty. Diana had confided about some of the abuse to her friend and co-worker, Shirley, and it was around the time of the incident with the gun that Shirley told Diana she would "take care of it." Diana let herself believe that Shirley was only going to have him "roughed up," but on some level she knew, and even hoped, that he would be removed from her life. Shirley independently arranged with two men for Robert's murder.

Diana was tried for the murder. Her request for a pre-sentencing investigation was denied, and she received a life sentence for second-degree

23. See *supra* note 7.

24. Jane Aiken, Kelly Battley, & Lisa Bivens Adams, *Application to the Honorable Roger Wilson, Governor, for Executive Clemency on Behalf of _____*, 1 (unpublished petition, 2000) (copy on file with the authors) (all of the facts in this section are derived from this application).

murder. Shirley and each of the two men who participated in killing Diana's husband have already been released from prison. Diana has been denied parole.

Diana has served approximately seventeen years in prison.

8. Ellen Abernathy²⁵

Ellen Abernathy and Bill Rowles met in a nightclub.²⁶ They were together for about five years before the physical abuse ever began. After the abuse did commence, it would ebb and flow in a pattern reflective of a textbook case of the cycle of violence.²⁷ Tension between the two would build and build until Bill's anger exploded in a violent episode. Bill would then offer apologies and gifts to woo Ellen's forgiveness, and the relationship would carry along smoothly for a period of time; at some point, though, tension would again begin to build, and the cycle would recur. For Ellen, the tension first exploded when Bill came home drunk and upset one night and punched Ellen in the eye. She woke up the next morning with a black eye, which she hid with sunglasses. It was only the first of many times she would have to wear sunglasses to hide a black eye.

After especially violent beatings – at least a dozen that she can remember – Ellen would usually hide at her mother's house. Each time, Bill would find her there, apologize, beg for her forgiveness, and swear that it would never happen again. He would take her out to dinner, take her shopping, and lavish her with gifts and money. Ellen returned to the relationship and to the home she shared with Bill every time. She could not leave Bill²⁸ for the simple reason that she truly loved him, albeit a love she herself recognized as self-destructive and sick.²⁹

The extent of the violence even shocked Bill himself. On one occasion, for example, Bill, in a drunken fury, blackened Ellen's eyes and left bruises across

25. See *supra* note 7.

26. John Ammann & Mary Kay Kisthardt, *Application to the Honorable Roger Wilson, Governor, for Executive Clemency on Behalf of _____*, 1 (unpublished petition, 2000) (copy on file with the authors) (all of the facts in this section are derived from this application).

27. Lenore E. Walker, *Post Traumatic Stress Disorder in Women: Diagnosis and Treatment of Battered Women's Syndrome*, 28 *PSYCHOTHERAPY* 21, 21-29 (1991).

28. The psychological effects of the abuse often account for the reason that battered women do not leave their batterers. "The abuse is so severe, for so long a time, and the threat of bodily harm so constant, it creates a standard mental attitude in its victims. Battered women are terror-stricken people whose mental state is distorted and bears a marked resemblance to that of a hostage or a prisoner of war." *State v. Edwards*, 60 S.W.3d 602, 613 (Mo. Ct. App. 2001).

29. After acts of abuse comes the "calm, loving respite." This is also known as the honeymoon phase in which the batterer "constantly behaves in a charming and loving manner. He is usually sorry for his actions in the previous phase . . . he begs for her forgiveness and promises he'll never do it again." LENORE E. WALKER, *THE BATTERED WOMAN* 65-70 (1979).

her body. The next day, in a remarkable show of denial, he asked Ellen who had beat her, swearing to make whoever had done it pay for hurting her.

On the night that she killed him, Ellen and some friends went to a bar, where she unexpectedly saw Bill playing pool with a woman. Bill, drunk and angry, demanded that Ellen leave. When she stood up, he smacked her, knocking her glasses to the floor. Gripping her arms, he shoved her, making her stumble backwards through the bar, into a hallway, and finally into the lobby of the adjacent hotel. There, he shoved her again, and she fell backwards over a stack of chairs. She picked herself up, but Bill was still vigorously coming at her. Fearing for her life, Ellen reached into her purse for the pistol she had purchased to defend against Bill. When he grabbed for it, she shot him twice.

Ellen's trial lasted just three days. Her attorney did not call any fact or expert witnesses; he introduced no evidence of the habitual abuse Bill inflicted on Ellen; he failed to invoke the newly available BWS defense;³⁰ and he refused to present any evidence of BWS at Ellen's trial. The jury sentenced Ellen to life in prison.

Ellen has served approximately fifteen years in prison.

9. Christina Neal³¹

Though Christina Neal grew up in a nonviolent household with her mother, Annie, and stepfather, she was keenly aware that her biological father, Nathan Curtis, had severely abused her mother throughout their relationship.³² Although Annie had left Nathan while pregnant with Christina, Annie insisted that Christina maintain contact with her biological father. Christina grew up confused about her father's role in her life as well as about relationships with men. When Christina was seven, her four year old sister was raped by a neighbor, leaving Christina even more conflicted about intimate relationships.

After attending community college for secretarial studies, Christina worked as a clerk and typist in several hospitals, then at Western Union Telegraph Company, where she would remain employed for eight years. Though her career was going well, her personal life became increasingly plagued by violence. After leaving a marriage with violence, Christina entered a serious relationship with another abusive man.

30. By the time of Ellen's trial, Missouri law provided for the Battered Women's Syndrome defense. See MO. REV. STAT. § 563.033 (2000).

31. See *supra* note 7.

32. Jane Aiken, Joan Ritchey & Tricia Chia, *Application to the Honorable Roger Wilson, Governor, for Executive Clemency on Behalf of _____*, 1 (unpublished petition, 2000) (copy on file with the authors) (all of the facts in this section are derived from this application).

After leaving that relationship, Christina met Jeff Matthews; he seemed different – more of a gentleman. Christina believed she had finally found a lifelong partner in Jeff, and she was pleased when she learned she was pregnant. It was not until months later that Jeff disclosed he was married to another woman. Not long after that, he began to abuse Christina. He often pushed, punched, kicked, and choked her, but his abuse was not limited to physical battery. He also threatened her, destroyed her personal property, and on one occasion broke her glasses and threw out her contact lenses, rendering her badly disabled. The physical abuse escalated: he pushed her down a flight of stairs; he beat her in private settings; and eventually he beat her relentlessly at her Western Union job in front of her boss and co-workers. At times, she would try to fight back, but he would always overpower her, threatening to kill her for resisting. Although she tried to leave Jeff several times, she always returned to him.

On April 22, 1988, Christina visited Jeff at the house of a mutual friend, Jack Mills, in order to retrieve the house keys, which were in his possession at the time. Jeff refused to give Christina the keys, becoming angry and violent. He struck her, knocking off her glasses and causing her to fall off of Jack's porch. She attempted to flee, but Jeff caught her and hit her again. Jack eventually restrained Jeff, which allowed Christina time to get into her car. In the car, crying and without her glasses, she saw whom she thought was Jeff charging towards her. She ran into a parked car, knocking the charging man to the ground, and then ran him over. She was beside herself with devastation when she realized she had hit Jack, not Jeff. Christina then turned herself into the police.

Christina was charged with second-degree murder and tried in 1989. The court denied Christina's request to present expert testimony regarding battering and its effects, which would have bolstered her self-defense argument. The court held that such expert testimony was admissible only in cases where the domestic violence victim was abused by a spouse. Because Jeff and Christina were not married, the court disallowed the expert testimony. Christina was sentenced to twenty years of imprisonment.

On appeal, the Eastern District Court of Appeals of Missouri reversed Christina's conviction and ordered a retrial, holding that expert testimony concerning battering and its effects is admissible in cases of partner abuse, regardless of whether the partners are married. On retrial, however, Christina's attorney convinced Christina not to testify, but to rely exclusively on the expert testimony. On December 14, 1990, the jury sentenced Christina to thirty years imprisonment – ten years more than at her first trial.

After serving more than ten years of her sentence, Christina has been released from prison on parole.

10. Liz McAndrew³³

Liz McAndrew has led a life as a victim of abuse.³⁴ At the age of four, her seventeen-year-old cousin sodomized her. At age eight, her stepfather began raping her. She tried to free herself from the abuse by moving in with her aunt and uncle, but her uncle, too, molested her. So desperate to escape, she attempted suicide. When she was eighteen years old, Liz met Gary McAndrew and believed that a relationship with him would finally allow her to escape the abuse that had come to dominate her life.

Gary had also grown up in an abusive family, and Liz believed that because he knew first hand the horrors of abuse, he would never hurt her. Initially, he did not. However, after their first child was born, Gary grew violent. One evening, to keep the baby from crying, Gary smothered the child with a pillow. When Liz frantically tried to stop him, he beat and sodomized her. This was to be the first of many beatings.

Over the years, Liz suffered multiple broken ribs and a broken hand. Gary also beat their two children. Nicole, their six-year-old daughter, learned that if the abuse was particularly bad, she was to put the baby in the car seat and start the car, so Liz and the children could get away from the house quickly.

Liz fell in love with a woman, Shelly Griffin. Shelly took Liz to a divorce attorney, but Liz would not sign the papers. She was too afraid of Gary's violence and of losing her children to a dangerous and violent man. She was terrified that she would be denied custody on the basis of her homosexual activity. Indeed, both the law and public sentiment weighed heavily against homosexuals in the late 1970's in Missouri. In 1979, when Liz went to trial for killing Gary, the media focused on her "lesbian love affair."

Five men conspired to kill Gary on the night of February 3, 1979. After their arrests, the five men were deposed, and their testimony seriously conflicted with one another. But, by the time they got to trial, each man had the same story: Liz had made them do it. Liz's defense attorney failed to call the court's attention to any of the conflicting testimony.

Liz's attorney represented her at her capital murder trial only six weeks after he entered his appearance. He visited his client only once before the trial. He did not subpoena important defense witnesses, question the State's witnesses about their contradictory testimony, or introduce any evidence of

33. See *supra* note 7.

34. John Ammann & Barbara Glesner Fines, *Application to the Honorable Roger Wilson, Governor, for Executive Clemency on Behalf of _____*, 1 (unpublished petition, 2000) (copy on file with the authors) (all of the facts in this section are derived from this application).

abuse.³⁵ Liz was sentenced to life in prison without the possibility of parole for fifty years.

Prison has been difficult for Liz, and her health is failing. In 1980, Liz was brutally beaten by another inmate with an iron. She still suffers seizures and memory loss due to the attack. In 1994, she was given an experimental drug, Felbatol, to combat the seizures. The drug was taken off the market later that year because of fatal side effects. It has been determined that the Felbatol caused growths in Liz's wrists, feet, breasts, and liver. She has undergone five surgeries to remove the growths. Recently Liz has been staying in her dorm and out of the yard. Two "lifers" have been attacked from behind at Chillicothe, where Liz is serving her sentence, and she does not want to become the third.

Liz has already served twenty-four years in prison; she is not eligible to seek parole for another twenty-six years.

B. Developing the Petitions

Each team of students and professors faced strategic decisions in developing the petitions. The women's histories of abuse, the legal injustices plaguing many of the cases, and other reasons discussed in Section IV easily convinced the Clemency Coalition that continued incarceration did not represent justice. The real dilemma was determining what strategy would be most effective in moving the Governor to grant these women mercy.

1. Clemency: Justice and Mercy

Arguing for clemency is a unique legal strategy. Unlike any other type of relief, it is begged for, not demanded; and unlike any other party to the legal system, a petitioner for clemency gains justice through the unusual route of an executive grant of mercy. The Clemency Coalition strove to balance properly the elements of justice and mercy in each petition. Focusing too much on justice would transform the petition into an appeal; asking only for mercy would transform the petition into an application for parole. By pleading for mercy, the Clemency Coalition beseeched the Governor to have compassion for these women, who have each been twice imprisoned: once by an abusive relationship and once by the justice system.

In most of the Clemency Coalition's cases, the defense attorneys – whether because they were prevented to do so by law, because they were ineffective as counsel, or simply because they were ignorant as to the complicated dynamics

35. It was not until eight years after Liz was sentenced to life in prison that Missouri passed a statute recognizing Battered Women's Syndrome, MO. REV. STAT. § 563.033 (2000), and three years after that when the defense was actually used in a Missouri court. *See State v. Williams*, 787 S.W. 2d 308 (Mo. Ct. App. 1990).

of domestic violence – neither called witnesses to testify to nor presented physical or documentary evidence of the abuse the women had suffered. The juries consequently based their decisions on grossly incomplete sets of facts, and the women were denied justice from the outset.

2. Writing the Petitions: Interviewing and Information Gathering

At trial, none of the petitioners had been permitted to tell the story of her abuse. The Clemency Coalition engaged each petitioner in a series of thorough interviews. The interview process allowed each petitioner to participate actively, often for the first time, in a legal process that recognized the significance of the horrendous abuse that was the backdrop against which her partner was killed.

The Clemency Coalition also interviewed the petitioners' family members to gather details of the relationships and abuse. Importantly, the families expressed their willingness to assist the petitioners if they were released. That information provided the petitioners with a basis to prove that they would have the necessary support network to succeed outside of prison.

The Clemency Coalition teams next thoroughly reviewed each petitioner's trial transcripts and, if any existed, attorneys' files. Many of the records were completely void of evidence of abuse, and none of the trial or appellate attorneys fully utilized the BWS defense. Finally, the Clemency Coalition teams reviewed the records kept by the correctional facilities. The records overwhelmingly reflected that the petitioners had used their time in prison to overcome the debilitating effects of abuse, defeat the cycle of violence, and educate and otherwise improve themselves and others.³⁶

While each team of students and attorneys fashioned their petitions to the individual petitioner they were representing, the group ultimately sought to impose some level of consistency. All the petitions included the woman's story, including her background and history of abuse. Most of the petitions discussed the absence of evidence of BWS at trial and the petitioners' lack of prior criminal records. All of the petitions highlighted the petitioners' plans to re-enter society as productive members upon their release. The Clemency Coalition ultimately unified the petitions by developing a common theme for "lobbying" purposes. The theme that wove the petitions together was: *women convicted of homicide for the killing of an intimate abuser*.

C. "Lobbying" Efforts

After completing the formal written petitions, the Clemency Coalition began its lobbying efforts. Communication with Governor Mel Carnahan's Chief Legal Counsel, Joe Bednar, began in late 1999. MCADV Director

36. See *infra* Section V.

Colleen Coble became the Clemency Coalition's informal liaison for most of the preliminary communications, maintaining close contact with the Office of the Chief Legal Counsel and relaying lobbying information to the other Clemency Coalition members. Bednar advised the Clemency Coalition that "timing is everything," and he suggested that, before submitting the petitions to the governor, the Clemency Coalition develop a limited number of "test cases" for his review. Bednar and the Clemency Coalition sustained frequent and open communication to ensure that no steps were taken that would alienate the Governor or make him reluctant to act on the petitions.

The Clemency Coalition learned that the Governor was interested in working on domestic violence issues. Having learned from other clemency advocacy groups in the United States that focusing on a central theme in the petitions most effectively presented the issues for the petitioners, the Clemency Coalition developed its theme (women convicted of homicide for the killing of an intimate abuser) and conducted the remainder of its lobbying efforts accordingly. Through communications with the Governor's Office, the Clemency Coalition also determined that tying in former Governor Ashcroft's sentence commutations of two incarcerated battered women neutralized the party politics inherent in clemency decisions. The Clemency Coalition enlisted support from Democratic and Republican legislators trusted by the Governor and prosecutors and judges from some of the women's cases, as they would inevitably be contacted by the Probation and Parole Board.

On October 16, 2000, Governor Mel Carnahan died in a tragic plane crash.³⁷ Naturally, his death put a halt to the Clemency Coalition's lobbying efforts. Lt. Governor Roger Wilson assumed the governorship until the end of Carnahan's term.³⁸ The Clemency Coalition officially submitted the petitions to the Wilson administration, but the lobbying efforts were muted by the tragic change in governors.

Upon Governor Bob Holden's inauguration in January 2001, the Clemency Coalition renewed its efforts in advancing the clemency petitions. Governor Holden selected Judge Glenn Norton as his first Chief Legal Counsel, and Judge Norton took an active interest in the petitions. The Clemency Coalition members met with Judge Norton in Jefferson City and summarized the petitions, highlighting the abuse suffered by the women, the procedural irregularities in the petitioners' cases, the unusually harsh sentences given to the petitioners, and the options available for clemency, including commutations of sentence and pardons. Judge Norton requested the group prepare videotaped interviews with each of the petitioners, as well as a

37. Virginia Young, *Governor, Son Randy and Aide Die in Plane Crash Acting Gov. Roger Wilson Mourns with Missourians*, ST. LOUIS POST-DISPATCH, Oct. 17, 2000, at 1.

38. *Id.*

composite sentence list for each of the women. Although supportive of the Clemency Coalition's efforts, Norton emphasized that Governor Holden had endured a politically difficult period since he assumed office and had already been subjected to intense public scrutiny. Upon taking office on January 8, 2001, Governor Holden encountered a major budget shortfall from the Carnahan Administration and was forced to address several budget cut issues.³⁹ Then, Republicans took control of the Missouri Senate for the first time in fifty years, requiring Holden to forego some of his campaign promises.⁴⁰ Furthermore, the media and public at large criticized Governor Holden for excessive spending on his inaugural celebration and for frequently using state airplanes.⁴¹ With this "rough start" as a backdrop to the Holden Administration, Judge Norton intimated that the possibility of a political backlash presented a great hurdle in the clemency process.

Yet Judge Norton's overall message was encouraging, and the Clemency Coalition felt its prospects were promising. But Governor Holden took no action. Then, on April 3, 2002, Governor Holden appointed Norton to fill a vacancy on the Missouri Court of Appeals for the Eastern District,⁴² and the Clemency Coalition's advancements were again stilted. Nearly four months passed before Governor Holden appointed Jane Dueker as his new Chief Legal Counsel. Though new to the Governor's Office and the Clemency Coalition's efforts, Dueker promptly contacted the Clemency Coalition and requested a meeting. In September 2002, Dueker invited the Clemency Coalition members to meet with her to discuss the eleven petitions. At the meeting the Clemency Coalition presented the cases, highlighting the unusually harsh sentences, the discrepancies in sentences between men and women convicted of killing an intimate partner, the changes in evidentiary and sentencing laws since many of the petitioners' convictions, the characteristically low recidivism rates of incarcerated battered women, and the high costs of incarceration, including medical costs for elderly and ill petitioners. On January 21, 2003, the Clemency Coalition learned that Dueker, Chris Baumann, the Assistant Legal Counsel, and Shelley Freund, an attorney who previously worked for the Probation and Parole Board, had reviewed 100 clemency petitions earlier that month. They had not come to any final decisions on the Clemency Coalition's eleven petitions but had agreed to meet again in a month after making further inquiries into the remaining petitions. Then, Governor Holden appointed

39. David A. Leib, *Governor Gets a 'B' for Effort: Holden has Faced Unexpected Woes*, ASSOCIATED PRESS, July 16, 2001, available at <http://archive.showmenews.com/2001/jul/20010716news019.asp>.

40. *Id.*

41. *Id.*

42. *Holden Names Legal Counsel to Missouri Appeals Court*, JEFFERSON CITY NEWS TRIB., April 4, 2002, available at http://www.newstribune.com/stories/040402/sta_0404020921.asp.

Dueker as his Chief of Staff, effective April 1, 2003.⁴³ On July 17, 2003, David Cosgrove was named as Holden's new Chief Legal Counsel.⁴⁴ Around that same time, Dueker suggested to the Clemency Coalition that it arrange a meeting with Cosgrove to discuss the petitions.

In July 2003, Mary Beck, one of the Clemency Coalition members, attended a meeting with Cosgrove that had been arranged by another attorney working for clemency on behalf of five women. Beck urged clemency on behalf of the ten⁴⁵ petitioners, once again highlighting the unusually harsh sentences, the low recidivism rates, the high costs of incarceration, etc. The meeting produced no concrete plan of action for the Clemency Coalition's ten petitions. In mid-August 2003, the Clemency Coalition received word that a clemency meeting in the Governor's Office earlier that month had yielded some tangible results and a plan for Shelly Freund to brief the Board of Probation of Parole on both sides of the petitioners' cases, using the clemency petitions as well as trial transcripts in her presentation. The Board was then to issue its recommendations to the Governor by early October or mid-October at the latest.

With the Christmas holiday approaching in late 2003, Coalition members again began to feel a renewed sense of hope. The Deans of the Missouri law schools wrote to the Governor in December in support of the petitions. However, instead of positive news, or even a lack of news for the holiday, which the Coalition members expected, they received word on December sixteenth that the Governor had denied four of the clemency petitions. One of the four petitions denied related to a woman released in December under a medical parole, so that denial was not surprising. Yet it is unclear why the Governor waited three years without taking action but chose to deny four of the petitions a week before Christmas.

The Governor still has seven of the Coalition's petitions on his desk. David Cosgrove, his Chief Legal Counsel, reported to the Coalition in late December, 2003, that four of the cases had been referred back to the Board of Probation and Parole for further investigation and recommendations. Three of the petitions remain in the Governor's office for review. He reported that progress had been made on the petitions, and additional information was being gathered. The Governor's office reports that the remaining seven are "worthy of more consideration."

43. *Dueker Becomes Governor's New Chief of Staff*, WOMEN'S NEWS, available at <http://www.umsl.edu/~iwpl/jdueker.htm> (last visited Jan. 9, 2004).

44. Press Release, Missouri Governor Bob Holden, Holden Names Cosgrove Chief Legal Counsel (July 17, 2003), available at <http://www.go.missouri.gov/press/press071703f.htm>.

45. As Christina Neal had been released from prison, her petition was not mentioned at this meeting.

The Coalition recognizes that the next logical time for significant action is after the November 2004 elections.

D. Watching Developments Elsewhere

The Clemency Coalition has kept a close eye on developments that might have an impact on the clemency petitions, even indirectly. Clemency Coalition members scanned local and national media for events which might influence the Governor's consideration, especially if those events evidenced the changing attitude of society toward victims of domestic violence.

In January of 2001, a thoughtful commentary in the *St. Louis Post Dispatch* advocated for clemency for the women represented by the Clemency Coalition. The commentary urged then-Governor Wilson to use his last days in office to show mercy for the incarcerated women.⁴⁶ There was hope that Governor Wilson, with little risk of political fallout, might take some action, but he did not.

In May of 2002, Governor Davis of California granted parole for a domestic violence victim. The woman had served seventeen years in prison for killing her husband before being released.⁴⁷

In September of 2002, the Clemency Coalition noted with great interest that Faye Copeland was paroled by the Missouri Department of Corrections.⁴⁸ Copeland had been convicted and sentenced to death for helping her husband kill transients, after using the transients to buy cattle with bad checks. She was granted a medical parole after suffering a stroke. Faye Copeland had stated that she was a bystander to the crimes and was a victim of BWS, being forced by her husband to engage in the crimes against the transient men. The Clemency Coalition noted that there was no criticism, in the press or public, when she was released. Faye Copeland died recently at a nursing home.⁴⁹

In 2003, there was a flurry of activity, not directly related to the clemency project, but which certainly had an effect on those involved on all sides of the issue. Perhaps the bombshell, the effect of which has not truly been understood for the Missouri cases, was the action in January of 2003 by then-Governor George Ryan of Illinois to grant clemency to 167 people on death row in Illinois.⁵⁰ At first review, it appeared Governor Ryan's bold move could be used by other governors as political cover to grant clemency in other

46. Sue Caba, *Commentary: We Should Show These Eleven Women the Mercy They've Never Known*, ST. LOUIS POST-DISPATCH, Jan. 5, 2001, at B7.

47. See *infra* notes 67-68.

48. *Elderly Woman Sentenced to Life Without Parole for Role in 5 Murders is Paroled*, ST. LOUIS POST-DISPATCH, Sept. 3, 2002, at B2.

49. *Woman Condemned in Killings Dies at 82*, ST. LOUIS POST-DISPATCH, Dec. 31, 2003, at B3.

50. *Ryan To Commute All Death Row Sentences*, CHI. SUN TIMES, Jan. 11, 2003, at 4.

situations, including for victims of domestic violence. However, as public sentiment was gauged, it became clear that many people viewed the move in Illinois critically. The Ryan Administration, under scrutiny for unrelated scandals, did not get much praise in public opinion for the clemency actions. It was not the cover the Clemency Coalition hoped it would be for Governor Holden to take action.

There were other, less-publicized cases that did provide some hope. In February of 2003, a woman in Jefferson County, Missouri, pleaded guilty to arranging the killing of her husband and received a sentence of just seven years.⁵¹ The woman had not made any claim of domestic violence. The story provided some support for the view that by today's standards, in a difficult case, prosecutors will agree to dispositions that result in sentences far less than those received by the women represented by the Clemency Coalition.

The Clemency Coalition was encouraged later that year by reports that many states, facing budget crises, were shortening the sentences of many prisoners to save money. An editorial in the *Post Dispatch* encouraged the Governor to look into this possibility.⁵² A senior administration official downplayed the idea of cost-savings for clemency, arguing that judges would simply replace the paroled person with a new woman to fill the empty bed.

Later in 2003, the Clemency Coalition learned of a woman sentenced for killing her former boyfriend in a case which did involve a claim that she was the victim of domestic violence. The woman pleaded guilty in St. Louis County to voluntary manslaughter for killing her former boyfriend when she fired five shots at him in August of 2001. She was sentenced to eleven years in prison. Although the defendant had claimed self-defense and said she had been beaten before she shot the man, two of the shots struck the man in the back. This story again supported the Clemency Coalition's view that the criminal justice system views these situations with greater empathy than it did even ten years ago. The Clemency Coalition forwarded this story to the Governor's office as proof that today's standards have evolved significantly from the time when most of the Clemency Coalition women were sentenced.⁵³

IV. THEMES URGING CLEMENCY

A. *Clemency Defined*

51. Tim Rowden, *Women Gets Seven Years In Husband's Killing*, ST. LOUIS POST-DISPATCH, Feb. 1, 2003, at 6.

52. Editorial, *A Place to Save Money*, ST. LOUIS POST-DISPATCH, Mar. 6, 2003, at B6.

53. William Lhotka, *Woman Gets Eleven Years in Killing of Her Ex-Boyfriend*, ST. LOUIS POST-DISPATCH, June 27, 2003, at B4.

"Clemency is an ancient equitable concept, rooted in the power of a sovereign to both punish and forgive."⁵⁴ Clemency power has survived in recognition that "the strict or misapplication or inadequacy of the law can bring harsh, unfair and unjust results."⁵⁵ It generally includes the power to pardon, commute sentences, and grant reprieves and amnesty.⁵⁶

At the federal level, the President's power to grant clemency is derived from the United States Constitution, which states that the President "shall have the Power to grant Reprieves and Pardons for all Offences against the United States, except in Cases of Impeachment."⁵⁷ At the state level, the Missouri Constitution grants the Governor the power to grant pardons and commute sentences.⁵⁸ A State Board of Probation and Parole investigates all clemency applications and submits reports and nonbinding recommendations to the Governor.⁵⁹

Clemency at both the federal and state levels has become a highly discretionary process, influenced by politics, morality, public opinion, and the law.⁶⁰

B. *Nationwide Precedent*

"While a [battered] woman's crime may not have been specifically contemplated by the framers [of the Constitution]," the language granting clemency power "cover[s] a multitude of situations, including killing an abuser in self-defense."⁶¹ The fact that many incarcerated battered women all over the country have been granted clemency evidences the appropriateness of exercising the power for domestic violence victims who kill their abusers in self-defense; this is especially true because strict application of the law rarely offers recourse to this group of women.

Support for grants of clemency to victims of domestic violence has been largely bipartisan. Both Democratic and Republican Governors in various states have commuted the sentences of women serving prison sentences for

54. Jacqueline St. Joan & Nancy Ehrenreich, *Putting Theory Into Practice: A Battered Women's Clemency Clinic*, 8 CLINICAL L. REV. 171, 179 (2001).

55. Linda L. Ammons, *Discretionary Justice: A Legal & Policy Analysis of a Governor's Use of the Clemency Power in the Cases of Incarcerated Battered Women*, 3 J.L. & POL'Y 1, 78 (1994).

56. St. Joan & Ehrenreich, *supra* note 54, at 179.

57. U.S. CONST. art. II, § 2.

58. MO. CONST. art. IV, § 7.

59. SAMUEL P. STAFFORD II, CLEMENCY: LEGAL AUTHORITY, PROCEDURE & STRUCTURE 47 (1997).

60. St. Joan & Ehrenreich, *supra* note 54, at 179.

61. Ammons, *supra* note 55, at 74.

killing their intimate abusers.⁶² In the early 1990s several governors granted clemencies *en masse*. Ohio Governor Celeste granted twenty-five commutations to victims of domestic violence in his last month in office in 1990 – the largest number of commutations granted at any one time.⁶³ Governor Schaefer commuted the sentences of eleven battered women in Maryland, and Governor Edgar of Illinois granted clemency to nine women.⁶⁴

Perhaps most relevant to the Clemency Coalition petitions is that, in 1992, Missouri Governor John Ashcroft commuted the sentences of two incarcerated battered women from life without the possibility of parole for fifty years to life, which allowed them earlier parole eligibility dates.⁶⁵ Both of the women had been convicted of killing their abusers, and both are now out of prison.⁶⁶

While clemency initiatives faded after the spurt in the early 1990s, a recent move by former California Governor Davis offers a beacon of hope for those women currently incarcerated for killing their intimate partners. In May of 2002, Governor Davis granted parole to Cheryl Sellers, who had served seventeen years for killing her abusive husband.⁶⁷ According to the current coordinator of the California Coalition for Battered Women in Prison, Olivia Wang, “what happens here could have real effects in other states.”⁶⁸ Four similar petitions are currently under review in California.⁶⁹

62. See NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN, BATTERED WOMEN WHO HAVE RECEIVED CLEMENCY 1 (2000).

63. *Id.*

64. Clemency has been granted to victims of domestic violence in large numbers in many other states as well, including: Florida (sixteen commutations by Governor Chiles), Kentucky (thirteen clemency grants by Governor Jones), and Louisiana (Governor Edwards granted clemency to six women). *Id.* In addition to the mass clemencies, many other state governors have granted clemency to incarcerated battered women. Governor Romer of Colorado commuted the sentences of four women. *Id.* In 1993, Governor Wilson of California also commuted the sentences of four battered women. *Id.* The Governors in New Hampshire, New Jersey, New York, and Nevada commuted the sentences of two incarcerated battered women in each of their states. *Id.* Governors in the following states have commuted individual battered women’s sentences: Alabama, Arizona, Connecticut, Iowa, Kansas, Nebraska, Oregon, Tennessee, Texas, Virginia, and Washington. *Id.*

65. Jane Aiken, *Memorandum in Support of the Applications to the Honorable Roger Wilson, Governor, for Executive Clemency*, 12 (unpublished group petition, 2000) (on file with the authors).

66. *Id.* at 12.

67. Pamela Burke, *Governor Davis Commutes Battered Woman’s Sentence*, WOMEN’S E-NEWS, May 17, 2002, at <http://www.now.org/eNews/may2002/051702davis.html>. Cheryl shot her husband in bed after he had threatened to kidnap and kill her daughter while forcing Cheryl to watch. *Id.*

68. *Id.* at 4.

69. *Id.*

C. *Missouri Law and Precedent*

In 1987, under the Ashcroft administration, the Missouri legislature enacted a statute, later codified as Mo. Rev. Stat. § 563.033, (the “BWS statute”), which provides a defense for battered women who kill their abusers. “Evidence that the actor was suffering from the battered spouse syndrome⁷⁰ shall be admissible upon the issue of whether the actor acted in self-defense.”⁷¹ Prior to the passage of the BWS statute, most battered women who killed their spouses had no self-defense claim because the law allowed the use of deadly force in the name of self-defense only where an immediate threat of serious bodily injury or death existed, and the defendant acted reasonably and without any premeditation in response to that threat. Battered women often perceive an immediate threat where a fact finder, uninformed about the dynamics of abuse, would be unlikely to see the threat as urgent. In fact, many battered women kill their husbands during a period of non-aggression or even dormancy, which, of course, is an unjustifiable act under a pure self-defense statute. The BWS statute allows a defendant to present expert testimony to explain to a lay jury the cycle of violence and the complicated psychological effects of abuse. This testimony can aid the jury in assessing whether or not the accused reasonably believed that she was in enough danger to warrant the use of life threatening force.

The Missouri Court of Appeals has recently recognized that “[b]attered women are terror stricken people whose mental state is distorted and bears a marked resemblance to that of a hostage or prisoner of war.”⁷² The BWS statute allows the jury to focus on the reasonableness of the woman’s actions in light of the abuse she endured. Though passed in 1987, the statute was not used until the 1990s.⁷³ Five of the Clemency Coalition’s petitioners were convicted prior to the statute’s enactment,⁷⁴ and several of the petitioners were tried shortly after the statute’s enactment,⁷⁵ when courts and attorneys were

70. Though the statute uses the word “spouse,” Missouri courts have applied the defense to cases in which the defendant and the victim were not married. *State v. Williams*, 787 S.W.2d 308 (Mo. Ct. App. 1990).

71. MO. REV. STAT. § 563.033 (2000).

72. *State v. Edwards*, 60 S.W.3d 602, 613 (Mo. Ct. App. 2001) (stating that evidence of Battered Women’s Syndrome should have been admitted because the defendant’s actions occurred immediately after abuse, and the defendant believed that her batterer would kill her).

73. Aiken, *supra* note 65, at 13.

74. Maggie Rusk, Sarah Commins, Lorraine Kalbach, Diana DiCarlo, and Liz McAndrew were convicted prior to the enactment of the BWS statute.

75. Candice Martin attempted to use the BWS defense, but the court ruled she was not entitled. The court denied expert testimony regarding BWS in Christina Neal’s first trial but allowed it in the second trial. At Ginny Tobias’s trial in 1989, her attorney decided not to raise the abuse issue. At Ellen Abernathy’s trial in 1988, only she testified about the abuse; no corroborating experts were used.

still reluctant to use it. Still other petitioners pled guilty without BWS evidence being introduced.

Due in part to the statute's disuse, Congress passed a resolution in 1992 urging courts to be more accepting of the BWS defense.

Expert testimony concerning the nature and effect of domestic violence, including the description of the experiences of battered women, should be admissible when offered in a state court by the defendant in a criminal case to assist the trier of fact in understanding the behavior, beliefs or perceptions of such defendant in a domestic relationship in which abuse has occurred.⁷⁶

More recently, Missouri courts have readily recognized the defense as well as allowed evidence of the abuse and expert testimony addressing the effects of BWS.

*State v. Edwards*⁷⁷ was a landmark decision signifying Missouri's acceptance of BWS. The defendant, Larna Edwards, had shot her batterer of forty years four times in the back, killing him.⁷⁸ The facts and circumstances relevant to Ms. Edwards's case were not dissimilar to the facts and circumstances relevant to some of the Clemency Coalition petitioners. At trial in the *Edwards* case, the jury did hear evidence of the abuse inflicted upon the defendant and evidence of the tactics her abuser used to control her.⁷⁹ Ms. Edwards was consequently sentenced to five years in prison, which represented the most lenient possible disposition short of acquittal. Even so, the case was remanded by the appellate court because the jury was not given instructions that properly explained the law's recognition of BWS.⁸⁰ The court recognized that the ramifications of an abusive intimate relationship are beyond the understanding of the average juror. It allowed both expert testimony and detailed jury instructions to aid the jury in its consideration of BWS and its effects on the defendant.

D. The Unusual Severity of Battered Women's Sentences

Not only have Missouri's evidentiary laws and case precedent evolved significantly, but Missouri has also changed its sentencing guidelines following many of the petitioners' trials. For example, life without the possibility of parole for fifty years, which several of the petitioners received,

76. H.R. 89, 102d Cong. (1992).

77. *Edwards*, 60 S.W.3d at 613.

78. *Id.* at 607.

79. *Id.*

80. *Id.*

was considered so harsh that the statute allowing the sentence was repealed in 1983.⁸¹

Many of the eleven petitioners received unusually harsh sentences and have already served a substantial portion of them. Maggie Rusk has been in prison for twenty-two years but has twenty-eight years left before she can be considered for parole. Liz McAndrew and Lorraine Kalbach have each served twenty-one years, and each still must wait almost thirty more years before they will be considered for parole.⁸²

The sentences for the petitioners significantly exceed the overall average sentences for individuals convicted of the same crimes. The average maximum state court sentence for murder in 2000 was 219 months.⁸³ The average time actually served, based on a mean sentence of 248 months was 158 months or 64% of the time sentenced.⁸⁴ All but two of the petitioners have already served well over the average total time served by others convicted of the same crime. Therefore, granting clemency to the petitioners would change their sentences only to bring them more in line with the average sentences for comparable crimes.

81. MO. REV. STAT. § 565.008, *repealed by* S.B. 276, 83d Gen. Assem., 1st Reg. Sess. (Mo. 1985).

82. Others that have served less time have already served more than would have been expected given their conviction. Aiken, *supra* note 65, at 15.

83. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, STATE COURT SENTENCING OF CONVICTED FELONS, 2000 Tables 1-3, 1-8 (2003).

84. *Id.* Table 1-5.

E. Incarceration in Missouri: Plagued with Discrepancies

The unusually harsh nature of the petitioners' sentences is further highlighted by contrasting their sentences to the sentences received by males convicted for the homicide of an intimate partner during the same period. A study conducted in Missouri prisons indicated that of eighteen women and twenty-three men incarcerated for the death of their intimate partner, 39% of the women were charged with capital murder, while none of the men were charged with capital murder.⁸⁵ The study further indicated that juries gave harsher sentences to women convicted of partner homicide.⁸⁶ Juries tried twelve of the eighteen women; of those twelve, nine received a sentence of life in prison without parole.⁸⁷ In contrast, juries tried thirteen of the twenty-three men; but, of those thirteen, none received sentences of life without parole, and only six received life sentences.⁸⁸ The drastic disparity in jury sentences to women as compared to men evidences an indefensible gender bias against women who killed intimate partners.

The sentences of the eleven petitioners are disproportionate even when compared with cases of other women convicted of killing their husbands. In *State v. Danforth*, for example, a Missouri woman was convicted of conspiracy to commit capital murder in the death of her husband, but she was sentenced to only ten years.⁸⁹ While Maggie Rusk, Liz McAndrew, and Lorraine Kalbach – who were convicted of the same crime – all remain in prison, Mrs. Danforth has entered and exited the criminal justice system in a fraction of the time. Maggie, Liz, and Lorraine were all victims of startlingly brutal domestic violence. In contrast, the case reports show no indications that domestic violence played any role in the relationship between the defendant and decedent in *State v. Danforth*.

Still further evidence of sentencing discrepancies lies within the petitioners' cases themselves. Many of the women received much harsher sentences for their role in the death of their intimate partner than did the relative or acquaintance that actually killed the abuser. Liz McAndrew, for example, was convicted of capital murder and sentenced to life imprisonment without possibility of parole for fifty years.⁹⁰ The two men who actually

85. MISSOURI TASK FORCE ON GENDER AND JUSTICE, REPORT 156 (1993).

86. Karen D. Stout & Patricia Brown, Legal and Social Differences Between Men and Women Who Kill Intimate Partners, 7 (Oct. 11, 1994) (unpublished report) (on file with the National Clearinghouse for the Defense of Battered Women).

87. *Id.*

88. *Id.*

89. *State v. Danforth*, 654 S.W.2d 912 (Mo. Ct. App. 1983). Mr. Danforth was killed shortly after revising his will to make his recently wed twenty-two year-old-wife the beneficiary of his estate. *Id.*

90. Ammann & Glesner Fines, *supra* note 34, at 12.

cornered and shot Liz's husband did not receive such harsh sentences. One was originally charged with capital murder, but he was given a reduced sentence of eighteen years for second-degree murder in exchange for his testimony against Liz.⁹¹ Three other men involved in the killing were granted full immunity in exchange for their trial testimony fingering Liz as the individual who solicited and arranged the murder.⁹² Similarly, Diana DiCarlo's close female friend Shirley arranged for the killing of Diana's abuser. Shirley and the two men Shirley hired to carry out the killing have already been released from prison.⁹³ Maggie Rusk received a sentence of life imprisonment without parole eligibility for fifty years, while the man who later admitted full responsibility for the killing received a lesser sentence and has already been released from prison. Lorraine Kalbach's son stabbed and shot Elbert Kalbach.⁹⁴ He was sentenced to thirty-five years; Lorraine Kalbach, on the other hand, received life imprisonment without parole for fifty years for her alleged involvement in the homicide.⁹⁵ Inescapable is the conclusion that battered women in Missouri receive harsher sentences than all other groups of people involved in the death of an intimate partner. For the Clemency Coalition petitioners, clemency is now the only route to affect justice.

F. *High Incarceration Costs and Low Recidivism Rate*

Statistics predict an extremely low recidivism rate for incarcerated battered women.⁹⁶ Of the twenty-six women granted clemency by Ohio Governor Celeste in 1989, only one has returned to prison (for a drug offense).⁹⁷ Of the twelve Illinois women released on clemency grounds between 1988 and 1998, no recidivism instances have been reported.⁹⁸ Compared to a recidivism rate of 40% for prisoners in general,⁹⁹ incarcerated battered women distinguish themselves as a very low-risk population.

Moreover, providing medical care to elderly women is extremely costly. In fact, several of the eleven petitioners already have significant health problems. Providing the proper health care to these women will become increasingly difficult and costly for the prison system as time passes, their

91. *Id.*

92. *Id.* The men's testimony conflicted in many respects with their depositions. *Id.*

93. Aiken, *supra* note 65, at 9.

94. Aiken, *supra* note 22, at 5.

95. *Id.* at 5-6.

96. See Margaret Byrne, *More About the Illinois Clemency Project for Battered Women*, at <http://pubweb.acns.nwu.edu/~mva472/clemency2> (last visited Jan. 9, 2004).

97. *Id.*

98. *Id.*

99. *Id.*

conditions worsen, and health care costs rise.¹⁰⁰ Liz McAndrew has suffered from seizures ever since another inmate assaulted her. Candice Martin suffers from a permanent spinal injury and had much of her jaw removed due to the abuse she endured. Ginny Tobias has diabetes exacerbated by dangerously high blood pressure.¹⁰¹ All of the petitioners will be elderly in the state prison system before their sentences end.

When considered in the light of the very low risk of recidivism for these women, the cost of their care while in prison is grossly disproportionate to the potential cost to society for their release. In 2000, the Missouri Department of Corrections had a fiscal budget of \$500,700,874.¹⁰² For the year of 1999, the Department of Corrections spent an average of \$12,997.65 per inmate.¹⁰³ The projected cost of incarcerating these women for their lifetimes is staggering.¹⁰⁴ Incarcerating just one woman serving a fifty year sentence would cost \$649,882.50.¹⁰⁵

The eleven Clemency Coalition petitioners, with their excellent institutional records¹⁰⁶ and concrete plans for their futures,¹⁰⁷ pose a particularly low risk for recidivism. Accordingly, clemency is appropriate for them and wise for the state.

V. THE FUTURE OF THE MISSOURI CLEMENCY INITIATIVE

A. *Lessons from Other Clemency Projects*

The Clemency Coalition has learned important lessons from the experiences of other clemency projects nationwide. Other clemency groups have emphasized the role political considerations play in the process.

100. See also *infra* Section V(B) (discussing Medical Parole).

101. Though she has no serious "health problems," Lorraine Kalbach is seventy-two years old.

102. MISSOURI DEP'T OF CORRECTIONS, MAY 2001 MONTHLY FACT SHEET (2001), available at <http://www.corrections.state.mo.us/division/factsheet/factsheet.htm>. This information may also be obtained by calling the Public Information Office at (573) 522-5569.

103. See *id.* (figured from daily expenditure value, figure not directly found on Missouri D.O.C. fact sheet).

104. U.S. CENSUS BUREAU, PROJECTED LIFE EXPECTANCY AT BIRTH BY RACE AND HISPANIC ORIGIN Table C (2000), available at <http://www.census.gov/population/documentation/twps0038/tabC.txt>.

105. See *id.*; MISSOURI DEP'T OF CORRECTIONS, *supra* note 102 (inflation rates were not entered into this calculation).

106. All of the women have actively participated in prison programs aimed at developing their self-esteem. Some of the women have excelled academically. For example, Liz McAndrew has received an Associate degree, and Maggie Rusk has received her G.E.D. See Aiken, *supra* note 65.

107. See *infra* Section V(C).

Governors choosing to grant clemency “will need to explain to the media and their constituents how they came to their conclusions,” given that the decision may elicit concerns about “the propriety of setting a ‘killer’ free.”¹⁰⁸ As discussed in Section III (C), one of the former Chief Legal Counsel’s primary concerns with the clemency petitions in Missouri was the potential for political backlash. A Democratic Administration may be especially concerned about avoiding the perception of being “soft on crime.” Therefore, the emphasis on the bipartisan support for battered women has become important to the Clemency Coalition’s strategy. In Missouri, the fact that Republican Governor Ashcroft previously commuted the sentences of two incarcerated battered women may help remove the “sting” associated with post-clemency party politics.

In addition to the influence of political considerations on the clemency process, the Clemency Coalition has come to realize that the importance of the media must not be underestimated. In fact, “clemency projects have succeeded or failed in large part because of their ability or inability to get sympathetic media attention while minimizing negative coverage.”¹⁰⁹ In recognition of the media’s influence, the Battered Women’s Clemency Reform Project of Colorado (“Colorado Project”) rigorously prepared for media coverage of its project.¹¹⁰ The Colorado Project members held mock press conferences and prepared press packets that contained information on domestic violence in general and on their individual clients.¹¹¹ Acting more like a corporation launching a major service than a grassroots organization, the Colorado Project developed a “sound-bite” message¹¹² to use with the press. While their sound-bite “worked well” in that it was used repeatedly in the media coverage,¹¹³ the group felt the message came across as less savvy than they had imagined. In retrospect, they felt it reinforced rather than challenged the “prevailing stereotypes of battered women as passively pleading for rescue . . . [The Project] still ha[s] a nagging doubt about whether [it] should have been able to come up with a better approach.”¹¹⁴

The Colorado group reported both positive and negative interactions with journalists. The media fervently pursued interviewing the victims themselves

108. Ammons, *supra* note 55, at 76.

109. St. Joan and Ehrenreich, *supra* note 54, at 224.

110. *Id.*

111. *Id.*

112. Ultimately the Colorado Project decided on: “This case is not about guilt or innocence. Clemency is a grant of mercy given by the governor. It does not indicate that the person was legally justified in doing what she did. Rather, it simply means that she has paid her debt to society, that she has suffered enough, and should be set free.” *Id.* at 227.

113. *Id.*

114. St. Joan and Ehrenreich, *supra* note 54, at 229-30.

but expressed little interest in the students' and attorneys' perspectives on the project.¹¹⁵ Of course, petitioners must decide individually whether contact with the media will further their personal goals, but some practitioners urge against it, explaining that media coverage can harm, not only the individual petitioners, but also clemency projects in general, as well as other individual battered women.¹¹⁶ The media's ratings-focused objectives are not necessarily aligned with presenting a petitioner's case in a way that serves her best interest.¹¹⁷ The Colorado Project's experience instructs that should a petitioner or a clemency project advocate agree to participate in a media event, she must prepare for difficult questions and strategize about how to dispel misconceptions, while advancing the goal of promoting the grant of clemency.¹¹⁸

B. Medical Parole as an Alternative

Throughout its experience, the Clemency Coalition has learned about other possible approaches that petitioners might consider to gain freedom from incarceration. Medical parole is one such alternative. According to the medical parole guidelines in Missouri, a prisoner is eligible only if: (1) she is "afflicted with a terminal disease in which [death is anticipated within six months];" or, (2) she is advanced in age to the extent that there is a need of long-term nursing care; or, (3) when confinement will necessarily greatly endanger or shorten the offender's life.¹¹⁹

Battered women are at a significantly greater risk than women on average of suffering from severe medical problems, as many such problems arise because of incidents of abuse and failure to seek proper medical attention after such incidents. Overcrowded prisons exacerbate the problem because there are insufficient resources to treat properly the already ailing women. Taken to its logical limit, this has the effect of turning a sentence of a term of years into a life sentence. Incarcerated battered women's health problems will require the prison system to provide costly medical treatment.

Medical parole is the decent, humane, and most cost-effective approach available to deal with elderly and terminally ill prisoners, and it has several advantages over clemency. Parole is a formal process that does not rely on the favor of the governor. Medical parole, like clemency, addresses concerns about excessive punishment and the cost effectiveness of incarceration.

115. *Id.* at 226-27.

116. BARBARA DAVIDSON ET AL., NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN, WHEN YOU ARE ASKED TO DO A MEDIA EVENT (1990).

117. *See id.*

118. *See id.* at 25.

119. MO. REV. STAT. § 217.250 (2000).

However, unlike clemency, which is deeply rooted in the intangible notions of equity, justice, and mercy, medical parole relies on “scientific evidence.” A primary care physician determines if the offender meets the medical parole requirements. Then the prisoner submits the physician’s recommendation to the Probation & Parole Board, and the Board then makes a decision.

Executive officers may wish to avoid clemency grants due to fear of political fallout. Within medical parole, there is much less political risk. The public is more likely to be sympathetic to and less fearful of a medically needy prisoner.¹²⁰ Many of the women who are appealing for clemency suffer from common illnesses such as heart problems, diabetes, and seizure disorders – all of which the public can understand and sympathize with. Even if sympathy fails, the financial benefits of release may appeal to the public, who as taxpayers bear the burden of the immense costs of medical treatment for elderly and ill prisoners.¹²¹

Medical parole can help prison systems avoid the high costs of maintaining inmates who need expensive medical care.¹²² Meanwhile, medical parole accomplishes the same ultimate goal of clemency. It “prevents the injustice of over punishment relative to desert, and the disturbance of equity that would occur if the sentence were allowed to run its course.”¹²³

C. *Petitioners’ Plans for the Future*

Each of the Clemency Coalition’s petitioners has used her time in prison to focus on bettering and rehabilitating themselves. And, each one has concrete plans for a healthy and productive future, should Governor Holden decide to grant clemency.

The petitioners have each completed numerous self-improvement programs, amongst them, Breaking Barriers, Moving Beyond Your Past, Impact of Crime on Victims, and Nutrition and Life Skills for Missouri Families. Ellen Abernathy, for example, has completed a degree in Funeral Services Management from Tarkio College, a course on Domestic Violence through The Missouri Juvenile Justice Association, and a course on Adult Children of Alcoholics. She has participated in Residents Encounter Christ,

120. See Elizabeth Rapaport, *Symposium on Law, Psychology, and the Emotions: Retribution and Redemption in the Operation of Executive Clemency*, 74 CHI.-KENT. L. REV. 1501, 1522 (2000).

121. Nadine Curran, *Blue Hairs in the Bighouse: The Rise in the Elderly Inmate Population, Its Effect on the Overcrowding Dilemma and Solutions to Correct It*, 27 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT. 225, 245 (2000).

122. In fact, the medical costs for caring for a terminally ill person at home is about half that of treating her while she is incarcerated. Jason S. Ornduff, *Releasing the Elderly Inmate: Solution to Prison Overcrowding*, 4 ELDER L. J. 173, 193 (1996).

123. Rapaport, *supra* note 120, at 1522.

Realistic Encounters About Life, and Sisters in Christ. She is now focused on working with other women to help them overcome their hurdles toward self-improvement. Ellen is appreciated by the staff members at Chillicothe Correctional Center, who see her “as a role model for other citizens.”¹²⁴ Many of the other petitioners are committed to helping other abused women after their release.

Many of the petitioners have already arranged for jobs, living accommodations, and therapeutic and other community resources. Ellen has a room waiting for her in her brother’s home; and her family has purchased her a car and has arranged for her to work in the community church. Ellen is just one example. Each of the women is independently an excellent candidate for clemency. They have each made great strides while in prison, present little to no danger to society at large, and have made concrete arrangements for adjusting to their release and re-assimilating to their communities.

VI. CONCLUSION

The Missouri Battered Women’s Clemency Coalition formed over four years ago to confront the reality that absent clemency, many victims of severe and persistent domestic violence would have to endure many years (or the rest of their lives) in the Missouri prison system for the murder of their abusers despite the fact that evidence of the abuse never reached the triers of fact. Incarcerated battered women in general, and these eleven petitioners in particular, were uniquely suited for clemency because their cases involved chilling incidents of abuse, surprising legal injustices, and unusually harsh sentences. The changes in evidentiary and sentencing laws since the time of many of the petitioners’ convictions, coupled with the characteristically low recidivism rates for incarcerated battered women, provide further reasons why Missouri’s Governor should bestow clemency on these eleven women.

Two of the eleven women represented by the Clemency Coalition have now been released on parole. One was released for medical reasons; the other was released after serving the maximum of the range allowed for her crime.

As of the publication date of this article, this story’s ending has not been written. It will either be a story which ends in mercy or a story which ends in lost potential, lost motherhood, and lost hope. While granting clemency requires a certain degree of political courage, the Coalition has provided Governor Holden with an opportunity to distinguish himself. After enduring many years of intimate violence, eleven women were subsequently stripped of their liberty by the State. Only clemency can restore their dignity.

124. Ammann & Kirstardt, *supra* note 26, at Exhibit A, Letter from Beverly J. Schnieder, Corrections Officer, Chillicothe Correctional Center.

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