

Myth and Narrative in Legal Ethics

What Really Happened in Lake Pleasant

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The legal profession tells itself stories to help lawyers make sense of what they do and to fortify them in doing it. Sometimes the lawyers are villains, as when President Nixon's White House Counsel, John Dean, made a list of people helping to obstruct justice and put stars by the names of all the lawyers involved (a lot).¹ Roy Cohn, counsel to Senator Joseph McCarthy and an architect of "McCarthyism," and President Trump's mentor in matters legal, is another.² Sometimes lawyers are heroes. Thurgood Marshall and his colleagues combatting Jim Crow, are good examples, as is Atticus Finch, fictional lawyer-hero of *To Kill a Mockingbird*. More ambiguous are lawyers who defend unpopular persons or causes. Criminal lawyers defending persons such as Theodore Kaczynski—the Unabomber—may fall into this category, in part because sometimes lawyers must choose between representing a person's choices or their interests. It tends to be in the interest of all lawyers, however, that lawyers in this category are seen as heroes and not villains. So that is the kind of story the profession crafts and tells.

This Article is about how and why the profession crafts such stories. It is about the fragility of stories—the psychological cost of using them to deflect moral concerns, the weakness of the protection they provide, and the personal cost to lawyers if they stop working. It is therefore about choice: the need for students and lawyers to choose, among the many paths within the profession, those that are true to who they are and not just to a story they may wish to enact. And, in this particular case, it is about the disjuncture between the story as it is commonly taught in law schools, and celebrated in the profession, and what really happened. It is about why the story is so different from the facts.

Here's what happened.

Two lawyers team up to defend a man accused of murder. One of them hypnotizes the client to adduce inculpatory information the client was not otherwise providing—about crimes the client claimed he could not remember. The second interrogates the client and, in the client's words, helps the client piece together his culpability for those crimes. The lawyers tape-record the client, make maps of crime scenes he describes, visit scenes of murders he committed but for which he had not been charged, photograph the victims (moving the skull of one victim to do so) and then destroy the tapes and maps. At trial, the lead lawyer puts the client on the stand with little consultation and without any preparation. Then—on direct examination—the lead lawyer goads the client into confessing to the charged murder, three uncharged murders, multiple uncharged rapes, sexual molestation of nine-year-old and ten-year-old girls, and bestiality.

When the client is convicted, he appeals, accusing his lawyers of acting like "wolves." Years later, when the client escapes from prison, jailers find a list he made of people he

¹ Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1 (1975).

² E.g., Michael Kruse, *The Final Lesson Donald Trump Never Learned from Roy Cohn*, POLITICO (Sept. 19, 2019), www.politico.com.

planned to kill: the two lawyers are at the top. One of the lawyers discloses arguably confidential information to help the police capture the then-former client. The police corner him and shoot him dead.³ The other lawyer (who did the direct exam of the client) is indicted, but the indictment is dismissed. The New York State Bar then issues an ethics opinion endorsing their conduct.

The lawyers are Frank Armani and Francis Belge. Armani is, in the words of the *ABA Journal* “widely regarded in the legal profession as a hero.”⁴ Professor Lisa Lerman compared Armani to Atticus Finch.⁵ At a 2007 symposium devoted to the case, Armani’s conduct was treated as exemplary by leading legal ethicists such as Monroe Freedman, Lisa Lerman, Thomas Morgan, and Richard Zitrin. In view of the facts related above, one might wonder why. The answer is that the story has not been fully told and that legal ethicists have focused on the wrong lawyer.

The law school story is that the lawyers’ devotion to professional duty forced them to keep quiet about the location of the remains of Susan Petz (21) and Alicia Hauk (16), whom their client, Robert Garrow, Sr., raped and murdered. The lawyers did not disclose the girls’ fate or the location of their remains for many months, even though the victims’ families were distraught and at least Ms. Hauk’s family held out hope that she had run away.

The lawyers kept quiet in part because they tried to trade the location of Ms. Petz’s and Ms. Hauk’s bodies in return for a plea deal for Garrow. Armani and Belge are presented as exemplifying devotion to professional duty at the expense of conventional morality, and in the face of popular condemnation.⁶ Professor Monroe Freedman invoked the value of “the dignity of the individual,” argued that “the sacred trust” of confidentiality was integral to preserving that value, and said “it was pursuant to that high trust that the lawyers acted in Lake Pleasant, New York, when they refrained from divulging their knowledge of where the bodies were buried.”⁷

³ The principal secondary sources regarding the case are TOM ALIBRANDI & FRANK H. ARMANI, *PRIVILEGED INFORMATION* 14 (1984); JIM TRACY, *SWORN TO SILENCE* (2021); and LAWRENCE P. GOOLEY, *TERROR IN THE ADIRONDACKS* (2009). Academic commentary, generally laudatory, includes Lisa G. Lerman et. al., *The Buried Bodies Case: Alive and Well After Thirty Years*, 2007 PRO. LAW. 19 [hereinafter *Still Alive*]; Thomas J. Snyder, *Attorney-Client Confidentiality Is a Moral Good: Expanding Protections of Confidentiality and Limiting Exceptions*, 32 GEO. J. LEGAL ETHICS 411, 420 (2019); Maybell Romero, *Lowball Rural Defense*, 99 WASH. U. L. REV. 1081, 1084 (2021). The case features prominently in RICHARD ZITRIN & CAROL M. LANGFORD, *THE MORAL COMPASS OF THE AMERICAN LAWYER* (1999). Zitrin and Langford use the case to illustrate conflicts between fiduciary obligations and conventional conceptions of decency.

⁴ Mark Hansen, *The Toughest Call*, ABA J., Aug. 2007, at 28, 29.

⁵ *Still Alive*, *supra* note 3, at 21.

⁶ David Luban, *Freedom and Constraint in Legal Ethics: Some Mid-Course Corrections to Lawyers and Justice*, 49 MD. L. REV. 424 (1990).

⁷ MONROE H. FREEDMAN, *LAWYERS’ ETHICS IN AN ADVERSARY SYSTEM* 8 (1975). It is perhaps a small point, but important, nonetheless. Ms. Petz’s body was shoved down a mine shaft. Ms. Hauk’s was left in a wood near a cemetery. Neither was buried.

This Article uses the transcript of Garrow's murder trial, related trial court records, and subsequent reporting by Adirondack journalists to present a more complete account of Garrow's case. That account questions the accepted legal academic understanding of the case and raises issues the case should be used to teach but which have gone unrecognized because of the collective decision to praise the two lawyers and to depict them as heroic figures.

As a purely technical matter the lawyers' representation fell below accepted professional standards in 1974, when the case tried, and fall even shorter by current standards. Accepting as true Garrow's sworn trial testimony, as well as an affidavit he wrote after trial,⁸ Armani and Belge at least refreshed their client's memory regarding multiple uncharged murders and rapes, may have persuaded him that he committed crimes he claimed not to recall committing at all, put him on the stand at trial with five minutes' notice and with no preparation, pressed him to confess to multiple uncharged crimes, and did all this in pursuit of an insanity defense, the predicate for which was that Garrow was emotionally disturbed. They induced Garrow to waive privilege by adducing disclosures of privileged communications under oath in open court, and they did so after having destroyed information that the waiver would have made subject to discovery. As a technical matter, it was a train wreck. Morally, the case has essentially nothing to say about human dignity.

Instead of a testament to human dignity as refracted through the criminal justice system the case should be understood and taught as exemplifying the profession's evident need to tell itself stories that justify the things the profession permits or requires its members to do. The case should also be taught as illustrating the fragility of that narrative as an ethical guide.

Armani was built into a hero because the profession chooses to demand of people in his position acts that ordinary conscience condemns. As shown in Part I, if he is not a hero, he is just a person whose cleverness and professional proficiency created the opportunity for Garrow to murder four young people. As shown in Part II, the case in fact should be used to illustrate the difference between lawyer-centered approaches to criminal defense (Belge) and an approach in which the lawyer sublimates judgment and personal conscience to the will of the client (Armani). Garrow's case should be understood and taught as a precursor to the Unabomber's non-trial in the 1990s,⁹ with the comparative virtue that the record in Garrow's case is more complete.

Part III uses the case to assess some prevailing theories of legal ethics. The case became a vehicle for discussing what David Luban and Brad Wendel refer to as philosophical legal ethics, a fact that seems ironic in view of the trial record. Belge's direct, if nothing else, stands as reason to reject the idea that philosophical concepts may use-

⁸ Garrow might have lied, of course—he was a con artist as well as a serial murderer, rapist, and child molester—but that probability does not change the positive-law analysis, which is supported regardless of his affidavit.

⁹ On which, see Michael Mello, *The Non-Trial of the Century: Representations of the Unabomber*, 24 VT. L. REV. 417 (2000).

fully be applied to such cases. Nor do fidelity to law, counteracting government power, or other forms of justifications for the profession fare well in the face of a monster like Robert Garrow. Probably all ethical systems are just stories, but that is certainly true of legal ethics. The story either works for you or it doesn't, but there is no unique or differential moral principle at issue either way. It is just a matter of what stories one chooses to believe, and whether and how far that belief can be sustained. Garrow was an extreme case, but its lessons scale well.

The role of hero is at best mixed, and it can cost lawyers the dignity it demands they protect in others, as arguably happened to Francis Belge when presented with a monster such as Robert Garrow. The story has been told as Armani's story, but it should be told as Belge's. He was a force of nature, a type of "old school" lawyer academe seems unable to come to grips with, but whose ethic probably animates more practicing attorneys than the justifications commonly offered in legal ethics commentary.

I. The Case

A. The Defendant: Robert Garrow

Robert Garrow was a serial rapist and murderer. Relevant to the case for which his lawyers became well known, his criminal history began in 1961. He abducted a young couple, took them at gunpoint to a secluded area, beat the boy with the gun, and raped the girl.¹ Under arrest for that crime, he confessed to an earlier abduction of two 13-year-old girls, whom he took to a secluded area where he raped one of them while forcing the other to cover the mouth of the girl he raped, so she could not scream.² Garrow pleaded guilty to the kidnapping and to the rape of the older girl in a deal where he would not be separately charged with the kidnapping and rape of the younger girls, apparently in an effort not to be imprisoned on a child molestation charge.³ He served seven years in prison and was released on parole.

In November 1972 Garrow was arrested for false imprisonment and drug possession. He had picked up Lenny Garner and Karen Lutz, who were hitchhiking, tied them up, and threatened them with a gun.⁴ Marijuana was found in Garrow's car when he was arrested. Garrow was represented by Frank Armani, who established that the marijuana belonged to Garner and Lutz. Rather than face the accusation of drug possession, a serious offense at the time, they declined to press charges and the charge against Garrow was reduced and then dropped.⁵

In late May 1973, in Geddes, New York, Garrow kidnapped and sexually assaulted two girls, ages nine and eleven. He told them he was a police officer looking for a lost dog and asked their assistance.⁶ He took them to a seclude location and forced one girl to fondle him and the other to perform oral sex on him. He was arrested on June 2, given a court date of July 12, and released on \$2,500 bail.⁷ He was again represented

¹ GOOLEY, *supra* note 3, at 114–15. The incident and the ages of the victims are reported in TRACY, *supra* note 3, at 49–52. Tracy reports the age of the boy as both 17 and 18.

² Transcript of 6/18/74 AM at 34, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10) (on file with author); GOOLEY, *supra* note 3, at 114–15; TRACY, *supra* note 3, at 52. Garrow first told the girls he was a police officer, a tactic he used later with the even younger girls in Geddes, New York.

³ TRACY, *supra* note 3, at 52.

⁴ Garrow allegedly said he picked the couple because Garner was Black and Lutz was White, TRACY, *supra* note 3, at 130–31, though he denied this at trial.

⁵ GOOLEY, *supra* note 3, at 24–25; TRACY, *supra* note 3, at 140.

⁶ GOOLEY, *supra* note 3, at 124.

⁷ TRACY, *supra* note 3, at 60.

by Frank Armani. Garrow did not appear on the 12th and the matter was continued to the 26th.⁸

On July 11, 1973, Garrow abducted 16-year-old Alicia Hauk, took her to a cemetery, raped her, and strangled her to death.⁹ He walked out of the cemetery, took his wife to the bank, took her grocery shopping, and then kept an appointment with his parole officer.¹⁰ The parole officer told Garrow that his driver's license would be revoked because Garrow's car matched the description of a car that had been seen near a high school trying to pick up girls. Though Garrow had killed Hauck that morning, the parole officer did not think Garrow was the man in question and did not take Garrow into custody. Facing court the next day, Garrow went to Sears, opened a credit account, bought a rifle and camping equipment, and left for the Adirondack mountains.

On July 14, 1973, in the Adirondacks, Garrow stabbed to death a young man named Daniel Porter and kidnapped his girlfriend, Susan Petz. Garrow kept Ms. Petz with him for three days at a campsite. He raped her frequently during this time before he killed her and disposed of her body in a mine shaft vent.¹¹ Ms. Petz is the second woman whose murder gave the case its law school name. Daniel Porter's name does not appear in most accounts of the case because his body was found by four of his friends who organized a search for him.¹²

Garrow returned home on July 17.¹³ He skipped his July 26 court date, however, and again left town on July 27. On July 29, back in the Adirondack mountains, Garrow accosted an 18-year-old man named Philip Dombrowski, who was camping with three friends. Garrow had the friends tie themselves to trees and then stabbed Dombrowski to death, apparently because he had long hair.¹⁴ The other three campers escaped, and Garrow fled into the woods. He was captured after a manhunt lasting almost two weeks, in which over 150 officers took part, as did helicopters and tracker dogs. On August 9, 1972, Garrow was shot, captured, and taken to a hospital.

⁸ *Id.* at 61.

⁹ GOOLEY, *supra* note 3, 126–27.

¹⁰ Transcript of 6/17/74 PM at 5–6, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10); Transcript of 6/18/74 PM at 25. *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹¹ GOOLEY, *supra* note 3, at 1–2, 129–30.

¹² TRACY, *supra* note 3, at 10. Porter and Petz were from Boston. Porter worked in a political consulting firm with Patrick Caddell, who went on to have a prominent career as a pollster for Democratic politicians. Cadell and his associates went to New York to look for Porter and Petz. Initially considered suspects because they were beneficiaries of Porter's \$150,000 life insurance policies, Cadell and his associates used their connections to reach Senator Ted Kennedy, who called New York officials to vouch for Cadell and who then sent his own private investigators to New York to monitor events.

¹³ TRACY, *supra* note 3, at 144.

¹⁴ *Id.* at 146.

B. The General Practitioner: Frank Armani

Frank Armani practiced law in Syracuse, New York. He was predominantly a civil litigator, but his practice included criminal law. (Armani had worked in the district attorney's office earlier in his career.)¹⁵ He did well in private practice. When Garrow hired him, Armani had recently returned from a European vacation; he bought a Mercedes to bring home with him.¹⁶ He had a timeshare on the St. Lawrence River, wore a toupee, and smoked two packs of cigarettes a day.¹⁷ Armani had a teenage daughter, Dorina, about the age of Alicia Hauk.¹⁸

Armani met Garrow in April 1972. His own co-authored account of his history with Garrow is sparse but roughly aligns with a more detailed account written in 2021 by journalist Jim Tracy. Garrow contacted Armani with a complaint about rough treatment Garrow said his son had suffered at school. Shortly thereafter Garrow contacted Armani about a minor car accident; neither matter went anywhere.¹⁹

In November 1972 Garrow called Armani when Garrow was arrested for imprisonment of Garner and Lutz and for drug possession. Armani knew Garrow as a teetotaler and he established that Garner had a prior drug arrest. Both Garner and Lutz later said that Armani visited them (separately) at their residences and pressured them into dropping charges against Garrow by threatening to accuse them of drug possession. After his visit, Karen Lutz dropped out of Syracuse University and moved to Denver.²⁰ Charges were reduced and the case assigned to City Court. Armani presented character witnesses and showed the judge Garrow's then-spotless parole record, presenting Garrow as a model of successful rehabilitation. He presented Garrow as a model of the successful, reformed parolee. The judge agreed.²¹ He said "[w]hen I see a record

¹⁵ ALIBRANDI & ARMANI, *supra* note 3, at 20; *Id.* at 57.

¹⁶ ALIBRANDI & ARMANI, *supra* note 3, at 15–17, 20.

¹⁷ *Id.*

¹⁸ *Still Alive*, *supra* note 3, at 27.

¹⁹ Garrow evidently heard of Armani from coworkers at Garrow's employer, Intrastate Brand Corporation, a breadmaking company, and at a local diner Garrow frequented. TRACY, *supra* note 3, at 48.

²⁰ TRACY, *supra* note 3, at 139. Tracy quotes Karen Lutz as follows: Armani and his colleague "really painted a picture that I was going to get arrested and go to jail for the pot found in Garrow's car... They insisted there wasn't any evidence against their client, and they twisted the whole thing against me. They pressured me into dropping the charges. It was terrible." *Id.*

²¹ *Id.* at 140. It is interesting and instructive to compare Tracy's account with Armani's description of the case in 2007:

"He picks them up and fortunately for them, they got out of it alive. But he was accused of threatening them, imprisoning them, and other charges. Also, there was a charge of possession of marijuana. The case comes up and I presented a statement that it belonged to the boy who was in the car. The students are away and I get it dismissed."

Still Alive, *supra* note 3, at 24.

like this of a man who's truly turned his life around, I have to say by finding him not guilty that I am actually righting a miscarriage of justice."²²

Garrow called Armani again in June 1973 when Garrow was arrested for abducting and molesting the two girls in Geddes, New York. Geddes did not have a jail, so Garrow was placed in a jail in a nearby town. The local judge set low bail (\$2,500), reasoning that Garrow would post bail and then immediately be arrested for violating his parole, whereupon Garrow would be sent to a more secure prison in Syracuse.²³ Up to a point, everything worked as planned— Garrow was released and then taken into custody by parole officers when he arrived at his job. Unbeknownst to the trial judge, however, the United States Supreme Court had recently held in *Morissey v. Brewer*²⁴ that parolees were entitled to hearings before revocation of parole even if the basis for revocation was a subsequent arrest. Armani persuaded the department that Garrow's exemplary parole record, combined with Armani's argument that the girls' statements were too precise to be credible (presumably he argued that precision implied coaching) made revocation improper. Garrow's parole was not revoked, and he remained free pending his July 12 court date which he never made.²⁵ Instead he killed Alicia Hauk on July 11 and fled to the mountains, where he killed Daniel Porter, Susan Petz, and Philip Dombrowski.

During Garrow's killing spree, Henry McCabe, a state criminal investigator assigned to the Dombrowski murder, called Armani for information.²⁶ McCabe said the police had Garrow dead to rights for killing Dombrowski and that they suspected Garrow of killing Daniel Porter, and thus of harming Susan Petz, who remained missing.²⁷ (Both Dombrowski and Porter were killed with several shallow stab wounds aimed at the heart, which police thought both linked the two cases to one killer and showed a desire to torture victims before killing them.)²⁸ McCabe asked Armani if Garrow was dangerous; "Just by the looks of him, I'd want a .45," Armani later recalled saying to McCabe.²⁹ At the time, Garrow was Armani's client in at least the Geddes molestation matter.

During the manhunt police flew a helicopter over the woods broadcasting a plea from Garrow's wife that he surrender. Armani taped a television message in which he said:

I was hoping to say to Robert if he sees this, or hears, this, he should get rid of the gun, if he has any weapons, and get himself into a public place

²² TRACY, *supra* note 3, at 140.

²³ *Id.* at 60.

²⁴ 408 U.S. 471 (1972).

²⁵ TRACY, *supra* note 3, at 63.

²⁶ ALIBRANDI & ARMANI, *supra* note 3, at 20.

²⁷ *Id.* at 21; TRACY, *supra* note 3, at 55.

²⁸ ALIBRANDI & ARMANI, *supra* note 3, at 25.

²⁹ TRACY, *supra* note 3, at 56.

and call me or call State Police. Best thing he can do is give himself up, so I can help him or someone can help him.³⁰

When Garrow was captured Garrow's wife, Edith, phoned Armani and relayed Garrow's request that Armani represent him. Armani drove to see Garrow the next day.³¹

When Armani saw him in the hospital, Garrow claimed that the police had tortured him on the way to the hospital, trying to learn what happened to Susan Petz. As Armani was leaving an investigator asked him to disclose any information Armani learned about Petz's whereabouts, pointing out that, if she was still alive, she was at risk in the woods. Armani was noncommittal. In a testimony to the fluid and informal nature of practice and relationships in the area at the time, the next morning Armani visited the home of the judge who would hear Garrow's case.³² Armani said Garrow could not afford to pay for a lawyer and that Armani had never defended a murder case. The judge solved the first problem by appointing Armani to represent Garrow and told Armani not to worry about the second.³³

Armani returned to the hospital to begin interviewing Garrow. Garrow said he could not remember what happened with Philip Dombrewski because Garrow was suffering from severe headaches but that "I wouldn't kill anyone, Frank, you know that."³⁴ Police were most concerned to learn whether Susan Petz was alive. They thought about bugging the room where Armani and Garrow met but decided against it. Armani later claimed they hired a lip reader to watch the meetings to see what could be learned.³⁵

C. The Trial Lawyer: Francis Belge

Armani was the longtime friend of Francis (Frank) Belge,³⁶ a trial lawyer highly regarded in the area. Journalist Jim Tracy ranked Belge as the better lawyer: "By all accounts, Armani was a smart guy, but Belge was brilliant. There was no comparison intellectually."³⁷ Armani himself wrote that Belge was considered the best trial lawyer in the area.³⁸

Belge grew up in Syracuse, New York, in a devout Catholic family. At 17 he lied about his age, joined the Navy, and served in the Pacific during World War II. He

³⁰ TRACY, *supra* note 3, at 64. Armani's book quotes the broadcast differently: "Running away will do you no good Robert. I'm willing to help. Come in and you won't get hurt." ALIBRANDI & ARMANI, *supra* note 3, at 30.

³¹ ALIBRANDI & ARMANI, *supra* note 3, at 42-43.

³² *Id.* at 45.

³³ *Id.* at 46.

³⁴ *Id.* at 50.

³⁵ TRACY, *supra* note 3, at 154.

³⁶ Pronounced bell-gee.

³⁷ TRACY, *supra* note 3 at 148.

³⁸ ALIBRANDI & ARMANI, *supra* note 3, at 52.

attended Siena College (near Albany) on the GI bill, taught English for a time, and then went to Albany Law School.³⁹ Belge had two teenage daughters and two sons, one of whom died in a car accident while his wife was driving, after which his wife turned more strongly to her faith and Belge's social drinking increased.⁴⁰ Armani wrote of once encountering Belge when he was just "coming off a bender," though supposedly when Armani first raised the Garrow case with him Belge was sober.⁴¹

According to Armani, Belge initially declined to join the case because Armani's broadcast had made Garrow look guilty. Armani drew on their friendship to persuade Belge to at least visit Garrow in the hospital. Belge was not on the list of people who were cleared to see Garrow. He insisted on being admitted to Garrow's room and a shoving match ensued between Belge and state troopers, who eventually shoved him into a wall. Angered at his treatment, Belge signed on to the case.

At a 1979 conference on the case Belge contrasted the CYA approach to lawyering (Cover Your Ass) with his own: "I believe that a lawyer's professional responsibility is 'PYAL.' That means 'Putting Your Ass on the Line for your Client' within the confines of the law."⁴² When asked why he brought Belge into the case, Armani explained that his nickname for Belge was "Balls" and that "I needed someone to give me some backbone, I guess."⁴³

At trial Armani made a brief opening statement, but Belge ran *voir dire*, did the principal crosses, examined Garrow on direct, took the lead with the prosecution's chief psychiatric witnesses, and closed. He was first chair. Judging by the trial transcript, Belge was aggressive, and a big personality in court. He spoke colloquially, made aggressive speaking objections,⁴⁴ embedded argumentative characterizations in questions

³⁹ TRACY, *supra* note 3, at 152; Francis R. Belge, *Memorandum of Law in re: The Constitutional Rights of a Defendant*, People v. Belge, No 75-55 (N.Y. 1974), reprinted in TEACHING PROFESSIONAL RESPONSIBILITY: MATERIALS AND PROCEEDINGS FROM THE NATIONAL CONFERENCE 249 (1979) [hereinafter Belge, *Memorandum*].

⁴⁰ TRACY, *supra* note 3, at 151.

⁴¹ ALIBRANDI & ARMANI, *supra* note 3, at 51.

⁴² TEACHING PROFESSIONAL RESPONSIBILITY: MATERIALS AND PROCEEDINGS FROM THE NATIONAL CONFERENCE, *supra* note 48, at 315.

⁴³ *Id.* at 322. Although Armani's nickname appears gendered at first blush, and no doubt was considered so at the time, in practice it is not. Plenty of women fall within Armani's category, and plenty of men do not.

⁴⁴ Transcript of 6/10/74 PM (Fiorello), Sess. 2 at 5, People v. Garrow (Hamilton Cnty. N.Y. 1974) (No 73-10); Transcript of 6/12/74 AM Sess. at 32, People v. Garrow (Hamilton Cnty. N.Y. 1974) (No 73-10) (objecting, in the presence of the jury, to introduction of photographic evidence: "The prosecution is doing nothing but offering these photos in evidence to inflame this jury, that is, to sort of make them angry and forget their real duty in this case").

on otherwise anodyne topics,⁴⁵ badgered Garrow on direct, and in general tried to own the room.⁴⁶ Garrow was Armani's client, but the trial was Belge's trial.

D. The Prosecution Case

At trial the State was represented by William Intemann, district attorney of Hamilton County, and Norman Mordue, a Syracuse prosecutor recruited for the Garrow case.⁴⁷ Mordue was a trial lawyer who had been a football star at Syracuse University, had volunteered for service in Vietnam, where he was awarded a Distinguished Service Cross and Bronze Star. He limped noticeably from injuries he suffered there. He graduated from Syracuse University Law School in 1971 and was considered a rising star among prosecutors.⁴⁸

The indictment charged Garrow with the murder of Philip Dombrewski. The prosecution called the three friends camping with Dombrewski: Nicholas Fiorello, Carol Ann Malinowski, and David Freeman. (Malinowski and Freeman had married by the time of trial.) Ms. Malinowski and Mr. Freeman were in one tent, Fiorello and Dombrewski in another. The three surviving friends identified Garrow as the man who accosted them.

⁴⁵ A notable example was Belge's cross of a state investigator who testified that the gas needle on Garrow's car showed the tank to be full:

Q. I want to be certain about this because—

A. Yes, I understand

Q—this nut was asking for gas.

Mr. Intemann: I object to that last statement by Counsel.

The Court: Objection sustained. Counselor will refrain from using such characterizations. Mr.

Belge: I should say insane person.

Mr. Intemann: I object, your honor.

The Court: Objection sustained. The jury will disregard it.

Mr. Belge: Incompetent.

Mr. Intemann: I object to it, Your Honor. I think counsel is just acting grossly improperly at this time.

The Court. "Person" is sufficient, Mr. Belge, or "client," "Defendant."

Transcript of 6/12/74 PM at 40, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10). In some courtrooms, Belge would have walked out with his head in his hands. Nevertheless, Belge apparently had the useful skill of knowing how far he could push without serious consequence. Two transcript pages later Belge responded to an objection by the prosecution that the investigator was not competent to testify to a fact, to which Belge responded: "The only incompetent person in this room that I know of right now is sitting at my table." *Id.* at 42. He was admonished but not sanctioned.

⁴⁶ One example: on the first day of trial the prosecution sought to preclude Garrow's proposed psychiatric testimony on the ground that Garrow had not cooperated with government examinations. Belge protested: "Well, how can you make a nut comprehend what he is supposed to do?" Transcript of 6/10/74 AM at 5, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10). This comment was made out of the jury's presence. That was not always the case for Belge's commentary.

⁴⁷ Dombrewski had been killed in Hamilton County, in upstate New York. Syracuse was significantly farther South. Garrow murdered Alicia Hauk in Syracuse, but he was not then charged for that crime.

⁴⁸ TRACY, *supra* note 3, at 170-71.

They testified that he forced them to tie themselves to trees. None of the witnesses had seen Garrow stab Dombrowski, so their testimony on this point was indirect.

Malinowski testified that Garrow unzipped the tent in which she and Freeman slept, stuck a rifle into the tent and half-entered the tent before ordering them to get dressed and come out of the tent.⁴⁹ She testified that Garrow stated he was on the run from the FBI and the state police, had killed in the past, and would kill again.⁵⁰ When Garrow tied Malinowski to a tree he asked where her wedding ring was. When she replied that she was not married he said: “what would your parents think?”⁵¹ Garrow told Malinowski he planned to take her with him when he left but would probably then set her free.⁵²

Belge’s cross of Fiorello (but not of Ms. Malinowski herself) attempted to suggest that Ms. Malinowski was promiscuous and that the camping trip was seedy in some way.⁵³ His cross of Freeman adduced that it was a warm morning, and Ms. Malinowski was partially clothed on top of her sleeping bag (not inside it).⁵⁴ Belge also tried, with some success, to persuade the prosecution witnesses that Garrow was acting irrationally.⁵⁵ Some of his other conduct, including repeatedly calling a young, married mother who was a peripheral prosecution witness a “very pretty girl,” is harder to understand.⁵⁶

⁴⁹ Transcript of 6/10/74 PM (Malinowski), Sess. 2 at 19, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

⁵⁰ *Id.* at 31.

⁵¹ *Id.* at 38.

⁵² Transcript of 6/11/74 AM (Malinowski) at 48, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

⁵³ For example, he asked if Fiorello and Malinowski had dated or danced, whether he, Malinowski, Freeman and others went out together on dates,” asked how long Malinowski and Freeman had been together, and whether Malinowski and Freeman were naked in their tent. Transcript of 6/10/74 PM at 27–29, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

⁵⁴ Transcript of 6/11/74 AM (Freeman) at 38, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

⁵⁵ Transcript of 6/10/74 PM (Fiorello) at 43, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10). (“Q. So you realized, then, that you were dealing with a person that wasn’t rational, is that right? A. Right”); *id.* at 45 (“Well, you had the opinion that you were dealing with or talking to a nut, didn’t you? A. Yes”).

⁵⁶ The prosecution called Jan Tracy, a young woman who saw Garrow in the vicinity of the murder on the day of the murder. Belge’s cross included the comment “You’re a very pretty girl, at least I think so” and the question: “Q ... when he saw a very pretty girl, he slowed down to five miles an hour, waved, nodded and smiled, is that about it? A. Yes, it is.” Transcript of 6/11/74 AM (Tracy) at 69, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10). The exchange might have made sense had the defense been that Garrow did not kill Dombrowski, and his casual conduct on the same day was consistent with that defense, but the defense did not dispute that Garrow killed Dombrowski. Perhaps it is just anachronism, but Belge’s parting words to the witnesses, after redirect, are strikingly odd: “You’re still a very pretty girl, Jan. Thank you.” Ms. Tracy’s age does not appear in the record, but she was married, and a mother.

E. The Defense

1. Garrow's Testimony

Belge called Garrow as the first defense witness. Garrow testified that his lawyers did not tell him he was to testify:

Q. Until this moment, you did not know you were going to testify here?

A. No, sir, I did not. I did not expect to take the chair.⁵⁷

Belge proceeded to adduce Garrow's version of his life story. It was a series of horrors. His father drank and beat Garrow, on at least one occasion with a crowbar.⁵⁸ His mother beat him as well, sometimes with stove wood; she also stole money from her husband, lied about it, and let Garrow take the blame. At about seven his parents sent him to live and work on a farm nearby. At the farm he worked long hours and had no friends his own age for companions. Over an objection by the prosecution, Belge prodded Garrow into testifying to repeated bestiality⁵⁹ and later led him to testify to masturbating using a machine for milking cows.⁶⁰ Garrow also testified to being forced to kill animals and to drinking their blood.⁶¹ Belge's questions were forceful enough to draw an objection by the prosecution that defense counsel was badgering the defendant on direct:

Q. What did you do with those animals? ...

Q. What did you do with them?

A. (No response)

⁵⁷ Transcript of 6/17/74 AM Sess. at 5, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10). Belge affirmed this statement, Transcript of 6/17/74 AM Sess. at 17, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10) (Belge: "I'm sorry, Mr. Garrow didn't know he was going to testify until just—"), and Garrow repeated this contention on cross. Transcript of 6/18/74 AM at 9, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10). Later Armani stated that Belge surprised him by putting Garrow on the stand without consulting Armani. *Still Alive*, *supra* note 3, at 28. In Armani's telling, he had a series of witnesses lined up "to testify what a great guy he was" but that "when I get back to the courthouse, I walk in, and Belge's got Garrow on the stand. So we had to call a recess then ..." In contrast, the transcript shows Armani requesting a recess immediately after the government rested, stating, "Mr. Belge and I have to have a conference for a moment." *Id.* at 3-4. It was after this recess that Garrow took the stand. Armani's book recounts a different story, in which Belge decided to call Garrow while driving to court that morning, without consulting Armani. The three then had a short conversation during a recess, in which Belge asked Garrow to trust him. In this account, Garrow asked what questions Belge planned to ask but received no answer. Armani protested that Garrow had not been coached, but Belge insisted it was better that Garrow testify without preparation. ALIBRANDI & ARMANI, *supra* note 3, at 138-40.

⁵⁸ Transcript of 6/17/74 AM Sess. at 5, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10).

⁵⁹ *Id.* at 11.

⁶⁰ Transcript of 6/17/74 PM Sess. at 25, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10).

⁶¹ Transcript of 6/19/74 AM Sess. at 57, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10).

Q. I said, what did you do with them? You tell us.

Mr. Mordue: I object, your Honor, he is badgering his own witness.

THE COURT: Objection sustained.⁶²

Garrow returned home in his teens. He and his father got in a fistfight, he punched his father, and his father sent him to reform school.⁶³ Garrow eventually wound up in the Air Force, where he spent most of his time in jail before being discharged.⁶⁴ He got a job working for a store, which he broke into and ransacked in a dispute over his pay. He was arrested, placed on probation, bounced around a few jobs, worked on a farm (where he resumed bestiality), had his probation revoked, and was represented regarding the revocation by the same lawyer who represented him on the underlying offense.⁶⁵ That (male) lawyer set Garrow up in a studio apartment and began whipping Garrow, photographing him,⁶⁶ and having sex with Garrow against Garrow's will.⁶⁷ This went on for years, until Garrow was charged with rape.

Belge's questioning regarding the rape charge drew another prosecution objection for badgering his client and an admonition by the Court for Belge to keep his voice down.⁶⁸ Garrow's testimony regarding the rape for which he pleaded guilty and served jail time (as opposed to others he admitted to but for which he had not been caught) typified his admissions during his direct testimony. He claimed not to remember the rape itself but to have pieced together later what must have happened, though he testified that remembered clearly being mistreated by police when he was arrested.⁶⁹ Garrow served eight years for that offense. Belge pressed Garrow to testify to homosexual conduct while in prison,⁷⁰ as well as to various courses he studied in prison, including theology.⁷¹

Garrow was paroled and went to work as a mechanic for a bread manufacturer. Belge led him to admit that while on parole he began a series of rapes, for which he had not been arrested or charged:

Q. Wait a minute. What was the first unnatural act that you did, immoral act, that you did after you got back to Syracuse? ...

⁶² Transcript of 6/17/74 AM Sess. at 12, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10).

⁶³ Transcript of 6/20/74 AM at 15, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10)..

⁶⁴ TRACY, *supra* note 3, at 202-03.

⁶⁵ Transcript of 6/17/74 AM Sess. at 18-20, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10).

⁶⁶ *Id.* at 25.

⁶⁷ *Id.* at 21. There is some ambiguity in the record regarding whether the person Garrow accused was a lawyer. Transcript of 6/17/74 PM Sess. at 22, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10). Most of the time Garrow referred to him that way, however, so I follow that usage here.

⁶⁸ Transcript of 6/17/74 AM Sess. at 24, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10) ("Don't tell me what you were charged with. Tell me what you did before you got arrested.").

⁶⁹ *Id.* at 26-28.

⁷⁰ *Id.* at 29.

⁷¹ *Id.* at 31.

A.... I guess you'd call it rape. That's the term they use today. But at the time— ...

A. Listen, nobody knows about this, though, just the doctors. You're putting me in a spot here, though.

Q. I know it.

A. You know that. You put me in a spot.

Q. I know it. When was it?

A. (Sobbing)

Mr. ARMANI: You Honor, Mr. Garrow has not been prepared to take the stand. I think I should have a chance to consult with him.

Mr. BELGE: Never mind, Mr. Armani ...

THE WITNESS (Interposing): No, that's all right.⁷²

After a break, Garrow answered the question, which had been to identify the first immoral act he committed upon being paroled: "Went out and had incest with a 'broad,' I had a little argument with my wife that night and I just went out and that was it. I didn't know anything about it until two days later, though, I read about it in the paper."⁷³ Belge went on to obtain Garrow's admission that "incest" meant forced intercourse.⁷⁴ Prompted by Belge, Garrow testified that he committed "about" three more rapes after that.⁷⁵ Garrow admitted to raping one young woman in a cemetery but said:

A ... I took the blame for it. I don't know if I did it or not, I still don't know, but I still took the blame for it.

Q. Come on, you know you did it, stop putting us on.

A. It's not putting you on. It's the truth... In other words, what I mean is, at the time I didn't know I did it.⁷⁶

Belge then led Garrow to testify regarding Garrow's molestation of the nine and ten-yearold girls in Geddes, New York. He continued his pattern of making a quasi-confession tempered by a profession that he could not remember: "I supposedly had

⁷² *Id.* at 34–35. The court recessed, jurors were excused and returned, and Garrow then asked, in the presence of the jury, whether he could be prosecuted for crimes described in his testimony. Both the court and Belge cautioned him that he could be. *Id.* at 39. Garrow stated, again, in the presence of the jury, "It really does not matter because I'm living on borrowed time." *Id.* at 39–40.

⁷³ Transcript of 6/17/74 AM Sess. at 40, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

⁷⁴ *Id.* at 41.

⁷⁵ *Id.* at 41.

⁷⁶ *Id.* at 43.

sodomy with them and had incest with them”⁷⁷ but “[a]t the time it happened I didn’t know.”⁷⁸ Garrow followed the same tack when admitting to killing Daniel Porter:

Q. Tell us what happened.

A. I can’t tell exactly, but I try to tell you as much as I can by putting the pieces together. This guy got killed. Q. How did he get killed?

A. By a knife, and I was told he was stabbed several times, he was cut across the chest.⁷⁹

Garrow testified that while he fought with Daniel Porter, Susan Petz (whose name he did not know) “came out to help him, and I hit her.”⁸⁰ He took Ms. Petz to another place—“she was very polite and everything, we had a wonderful conversation.”⁸¹ Garrow raped her repeatedly over a three-day period (Belge’s characterization in his questions was “intercourse,” to which Garrow added “sodomy”⁸²) though he testified that Ms. Petz did not refuse him.⁸³ At one point, when the two were walking near a road, Ms. Petz got hold of Garrow’s hunting knife. He grabbed it, cutting his hand.⁸⁴

Q. What did you do with the knife, Robert?

A. I guess I stabbed her with it.

Q. And what did you do with the body?

A. Pushed it down the mine shaft.

Q. *Is that the one I found?*

A. Yes, sir.⁸⁵

Belge’s last question revealed his and Armani’s knowledge that Garrow had killed Ms. Petz and that they knew where her remains lay; that question sent the case on its way into the academic literature.

Part III discusses in detail why Belge might have wanted to put this fact in the public record—his conversations with Garrow and his investigation were otherwise

⁷⁷ *Id.* at 44.

⁷⁸ *Id.* at 45.

⁷⁹ *Id.* at 49.

⁸⁰ *Id.* at 50.

⁸¹ at 51.

⁸² *Id.* at 53.

⁸³ *Id.*

⁸⁴ *Id.* at 54.

⁸⁵ Transcript of 6/17/74 AM Sess. at 54, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10) (emphasis added). This line of questioning prompted prosecution objections that Belge was leading Garrow on direct. (He was.) Belge responded: “Yes, sir, I am.” *Id.* at 56.

privileged and work product, respectively.⁸⁶ But the record supports an inference that Belge sought to push Garrow to make frank confessions rather than appear evasive by testifying that he could not remember his rapes and murders. After testifying about his murder of Ms. Petz, and after a break, Garrow again insisted that “at the time any of this stuff ever happened, I didn’t know it until later, you see, I didn’t know it until last year.”⁸⁷ Having Garrow testify that he told the lawyers where to look for Ms. Petz’s remains reinforced the point that Garrow knew what he had done—he had not just read the papers and assumed it.

The point was made again as Belge shifted questioning from Garrow’s murder of Ms. Petz to his murder of Alicia Hauk. The exchange began with Belge trying to rein Garrow’s testimony in⁸⁸ and then having Garrow acknowledge that the two attorneys had spoken to Garrow extensively about his crimes.

Q. And finally, did you tell me about a cemetery?

A. Yes.

Q. Now, you tell us about that cemetery.

A. I think I told you about the young lady that I took to the cemetery...⁸⁹

Q. Now Robert, I told you about the death in the cemetery. Do you remember that, then?

A. No, not until about a month and a half later.

Q. When I came to see you.

A. Yes

Q. And did you tell me how to find the body?

A. Yes, I did. I told you and Frank how to do it.⁹⁰

The import of Garrow’s testimony was that through repeated efforts Belge and Armani caused him to piece together rapes and murders he would not otherwise have remembered:

Q. Now, let’s get back to this: you finally did remember enough to tell me how to find the body, didn’t you?

A. No, you kept coming back and asking me, I wasn’t definite because I wasn’t sure, because I didn’t have all the pieces together. You went and

⁸⁶ N.Y. State Bar Opinion 479 (1978) reached this conclusion in a retrospective justification of the lawyers’ conduct.

⁸⁷ Transcript of 6/17/74 PM Sess. at 3, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

⁸⁸ *Id.* (“Q. Hey Robert! A. Yes. Q. We just got through talking! In the other room!”).

⁸⁹ *Id.* at 4.

⁹⁰ *Id.* at 5.

looked and you came back and you showed me pictures and diagrams that we drew ... that is how we found out. The same thing in Syracuse ... it went on for about a month and a half, and finally, through the BCI [state police] and you and Frank asking me questions and showing me pictures, I started putting the pieces together.⁹¹

Garrow testified that Ms. Hauk must have grabbed his knife before he went “berserk” and killed her, but Ms. Hauk was strangled, not stabbed. Belge thus ended this line of questioning by invoking his own work in (according to Garrow) refreshing Garrow’s recollection:

Q. She didn’t die of the knife, did she?

A. No. No, she didn’t.

Q. Tell the jury what I told you about how she died.

[Objection sustained; question reframed]

A.... She was strang[le]d with a rope, or with a piece of wire or something, and I think I told you it was a rope or something like a wire that I picked up or something.

Q. It was a rope, Robert.

A. A rope.⁹²

Direct examination concluded with Garrow’s admission that he killed Philip Dombrowski, the only crime for which he was on trial: “I hit him on the wrist, and, I went berserk I guess or something and I hit him with the knife.”⁹³

The prosecution sought an early recess, with the understated “reason being in the Defendant’s Direct Examination, he has admitted to three other homicides.”⁹⁴ The court granted the request, over Belge’s objection. The prosecution also sought production of the photographs and diagrams referenced in Garrow’s testimony. Belge stated:

I took almost six days of tape recordings of the Defendant while he was in the Champlain Valley Hospital in Plattsburgh, New York. I did take and make diagrams and maps and so did Mr. Armani and we did—I did—I took photographs of the bodies, and because they were so privileged, that is I was so bound under my lawyer’s oath to keep them confidential after I discovered the bodies, despite the fact that I wanted to and Mr. Armani wanted to inform the parents about the bodies, we destroyed them.⁹⁵

⁹¹ *Id.* at 12–13.

⁹² *Id.* at 16.

⁹³ *Id.* at 39.

⁹⁴ *Id.* at 41.

⁹⁵ *Id.* at 43–44.

This exchange occurred in the presence of the jury.⁹⁶

The prosecution's cross of Garrow lasted most of two days. It was repetitious, largely because of Garrow's rambling and often incoherent answers. The transcript notes Garrow sobbed repeatedly. The cross added some detail to the offenses Garrow had confessed to on direct, and Garrow agreed that his molestation of the two young girls in Geddes effectively panicked him because he knew he would be going back to prison. Cross adduced perhaps the most striking testimony of the trial. As he did on direct, Garrow initially testified he did not recall molesting the girls but that he pieced his guilt together from various sources. He then confessed to his wife and asked her to call Armani:

By all the information I collected from the police and from my attorney, from then [sic] running around, and then I didn't believe it until I was on my way home, and I sat down, and took my wife upstairs and sat down on the bed, and I told my wife about it. And I told her, you knew what, I did—well, I explained to her, you know something, “I did this” and I asked her to call my attorney and tell him about it. I went to work Monday morning and I said “Monday morning you better call Frank and tell him.”⁹⁷

Garrow subsequently testified that his wife failed to call Armani, that at a hearing his parole officer chose not to terminate his parole and send him back to prison, and that by the time of the hearing Garrow realized he was guilty.⁹⁸

Belge's redirect continued the theme that Garrow had a horrific childhood, adding the facts that he was forced to kill pigs at age eight, butcher them (and other animals) at 10, and that he killed a bull with a sledgehammer, all on the orders of the owner of the farm where he worked.⁹⁹ On recross he testified that he enjoyed killing the bull because he got the hide and also to drink the bull's blood.¹⁰⁰ The prosecution made the fair point that Garrow recalled all these things from his childhood clearly but claimed to be unable to recall the killing of Philip Dombrewski.¹⁰¹

2. Garrow's Sisters and Mother

The defense also called Garrow's sisters. Florence Brooks's testimony confirmed many of the horrors he had testified to and added some. The Garrow family had seven

⁹⁶ Which may be why, when asked for the dates on which photographs were taken, Belge stated “[i]t was at the same time that the State Police were following us with a helicopter and a couple of their airplanes—whatever dates those were.” Transcript of 6/17/74 PM Sess. at 44, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

⁹⁷ Transcript of 6/18/74 AM at 57–58, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

⁹⁸ Transcript of 6/19/74 AM at 54–55, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

⁹⁹ *Id.*

¹⁰⁰ at 57.

¹⁰¹ *Id.* at 58.

children (the sister had nine), one of whom was given away in infancy. The children and parents all slept together in one room; the parents often had sex in the room with the children present.¹⁰² When young, Robert Garrow and his sister would walk a mile to a store to get a case of beer for their father, which they put in a little wagon to take back to the house.¹⁰³ He would sometimes get drunk and pass out in the road in front of the house. Garrow's mother would place railroad ties on either side of her husband so cars would not run over him, a practice followed by other women in the neighborhood with their husbands.¹⁰⁴ Ms. Brooks testified that her mother was about 5'5" tall, 380 pounds, and a "very strong woman and a brutal woman."¹⁰⁵

Agnes Mandy was the sister Garrow visited after murdering Susan Petz, and who treated the cut on his hand.¹⁰⁶ She testified that a couple of days later Garrow came back to her house with his wife and children. He took his son camping at the site he had kept Ms. Petz and then, the next night, took his wife camping there while the children stayed with Ms. Mandy. In his examination Belge made sure jurors got the point—Garrow took his wife to the campsite to have sex with her in the place he had raped Ms. Petz repeatedly just days before.¹⁰⁷

Garrow's last percipient witness was his mother, whom Garrow and his sisters had condemned in their testimony. (Garrow's father was brought to court but did not testify because, as Belge announced in front of the jury, he was paralyzed; both parents were subpoenaed.¹⁰⁸) Mrs. Garrow apparently had difficulty speaking English;¹⁰⁹ the judge allowed leading questions in the hope of producing intelligible answers. She testified that she was unable to write and had quit school in the second grade.¹¹⁰

Mrs. Garrow denied hitting Garrow with a strap or stealing money from her husband and lying about doing so by blaming Garrow.¹¹¹ She confirmed that her husband sometimes drank and passed out in the street in front of her house, and she confirmed

¹⁰² Transcript of 6/19/74 PM at 30, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹⁰³ *Id.* at 20.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 30. Ms. Brooks had given a statement to the state police. Armani asked for a copy, but only after she concluded her testimony. In response to the request, Mordue said "We didn't burn ours, by the way, and destroy them" prompting a rejoinder from Belge: "My ethics are a little higher than yours." *Id.* at 46.

¹⁰⁶ Because she assisted Garrow during his flight and did not report him, she showed up with her own lawyer.

¹⁰⁷ Transcript of 6/20/74 AM at 41, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10) ("Q. So he took his wife back to this camp up in the mountaintop? ... Q. Did you learn later that is the very same place where he had a woman? ... Q. So he took his wife back up there for a 'honeymoon' after he had that woman?"). The prosecution objected to the last question.

¹⁰⁸ Transcript of 6/20/74 PM at 3, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹⁰⁹ Mrs. Garrow was evidently French Canadian and testified that she had a hard time with English. 6/20/74 PM Tr. at 30, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹¹⁰ at 8.

¹¹¹ Transcript of 6/20/74 AM at 8, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

using railroad ties to protect him.¹¹² Her answers likely appeared evasive, however (“I never did it, far as I know”)¹¹³ and the purpose of calling her may well have been to bolster the account of Garrow and his sisters, who called Mrs. Garrow a liar and a brute.

3. Psychiatric Testimony

Both Garrow and the prosecution called multiple psychiatric experts. Garrow’s first expert, Dr. Franklin Reed, testified that he suffered from “latent schizophrenia” or “psuedopsychotic schizophrenia.”¹¹⁴ In substance the defense experts testified that Garrow’s childhood mistreatment led him to hate his parents and want to kill them, and that he would occasionally be overcome by feelings of rage and hate. It was during such periods that he would commit rape and murder.¹¹⁵ On direct Belge asked Reed whether Garrow had tried to lie to him or fake him out; the psychiatrist testified that Garrow had done so on several occasions.¹¹⁶

Mordue’s cross was effective. He elicited testimony that Reed’s first report stated that he did not think schizophrenia was a proper diagnosis of Mr. Garrow,¹¹⁷ that when Garrow stabbed Dombrowski it was probable that Garrow did or could have known that killing was wrong and that there was no evidence suggesting that Garrow did not know that stabbing Dombrowski would kill him.¹¹⁸ Reed testified on cross that Garrow sometimes tried to convince Reed that Garrow was not a bad person, sometimes portrayed himself as sick, “but the most compelling thing is an incredible obsequiousness most of the time, kind of a grasping, pleading, self-pitying sort of demeanor.”¹¹⁹ Perhaps unhelpfully, on cross Reed also testified that Garrow displayed “flashes of something that came out there, that just scared me do death ...”¹²⁰

Belge’s style was aptly captured by his last question on redirect, which was whether Reed had an opinion as to whether Garrow would ever be released or cured if placed into a mental institution.¹²¹ The point of the question was to suggest to jurors that an

¹¹² Transcript of 6/20/74 PM at 9, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹¹³ *Id.*

¹¹⁴ Transcript of 6/21/74 AM at 8, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10). Reed testified that he did not offer the opinion that Garrow was schizophrenic. Transcript of 6/21/74 PM at 22, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹¹⁵ Transcript of 6/21/74 AM at 32–33, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹¹⁶ *Id.* at 34.

¹¹⁷ *Id.*

¹¹⁸ Transcript of 6/21/74 AM 2d Sess. at 27, 29, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹¹⁹ Transcript of 6/21/74 PM Sess. at 49, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹²⁰ *Id.*

¹²¹ Transcript of 6/21/74 PM 2d Sess. at 29, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

acquittal on grounds of insanity would not lead to Garrow's release. The prosecution's objection—"that's so improper, it's incredible"—was sustained.¹²²

The prosecution called its own psychiatrists, including William Holt, who testified that Garrow had told him Garrow had no memory of the killing of Philip Dombrowski.¹²³ Holt testified that Garrow had the capacity to understand the nature and consequences of his actions (the statutory test for the insanity defense).¹²⁴ Holt testified that Garrow's claimed selective amnesia was just a lie.¹²⁵ Belge's cross adduced the concession that it was possible—in the sense that Holt could not rule it out though his opinion was otherwise—that Garrow suffered from hallucinations when he killed Dombrowski but then came to his senses and was in touch with reality, including memory, afterwards.¹²⁶ Holt conceded that a person suffering from schizophrenia might answer questions in so disjointed a manner that listeners could not follow the answers.¹²⁷

4. Closing¹²⁸

Belge's closing began with an apology—"Mr. Armani and myself apologize if, during this trial, we did anything that in any way offended you. The things we did were done for the purpose of defending Mr. Garrow to the best of our ability ..."¹²⁹ Likely mindful of the risk that Garrow's testimony would disgust jurors, he told them:

Mr. Armani and I suffered anxiety in our bosom until you heard all of the terrible facts we knew about this case, as I say, for almost a year. We revealed these facts so that you might have a complete understanding of Mr. Garrow. We revealed them so that you would understand that Mr. Garrow, for the killing of Mr. Dombrowski, was not criminally responsible for his acts at the time of that killing.¹³⁰

¹²² *Id.*

¹²³ Transcript of 6/24/74 AM at 10, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10).

¹²⁴ *Id.* at 16-17.

¹²⁵ *Id.* at 20.

¹²⁶ *Id.* at 39, 43.

¹²⁷ Transcript of 6/24/74 AM at 43, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10). Belge made confidentiality an issue in his examination of the prosecution's second psychiatrist, Walter Osinski, who had examined Garrow before in connection with Garrow's arrest for robbing his workplace and in connection with the rape charge for which Garrow was imprisoned. Osinski had spoken to a reporter after Garrow's arrest and Belge accused Osinski of violating a confidentiality obligation. Transcript of 6/24/74 PM 2d Sess. at 4-7, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10). His point was that the witness committed to his testimony before examining Garrow.

¹²⁸ Shortly before closing argument, as the parties reviewed jury instructions, Belge indicated that he might ask the judge to charge jurors regarding manslaughter—intentional killing under conditions of extreme emotional disturbance. He didn't.

¹²⁹ Transcript of 6/24/74 AM at 2, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73-10).

¹³⁰ *Id.*

...

[We] had admitted the killing of Philip Dombleski. We have admitted also the killing of three others. We have admitted the killing of four people. We also have admitted seven rapes, and we have admitted these rapes, these killings, for one purpose: to show you that our client, Mr. Garrow is, in common language, insane.¹³¹

Belge's closing continued his aggressive style. Carol Ann Malinowski (Freeman) had testified that she did not think Garrow was insane. Belge pointed out that she had met with prosecutors and he "put it to you that it is quite possible to do so by the District Attorney."¹³² There was no foundation for the innuendo, which was heightened by an ill-judged objection from the prosecution, which was overruled. The gist of his closing was that, psychiatric expert testimony aside, insanity could be judged as a matter of common sense applied to Garrow's conduct: "He had to be insane in order to act the way he did."¹³³

Belge's description of Garrow's testimony drew a line between humans and animals for the purpose of questioning where Garrow belonged:

He gave you a tale that, Mr. Armani and I, have held within us for a long time. It is a sad, horrible tale of a human being, if you even now consider him a human being, because, as you know from other testimony, from the very early part of his childhood, he started to consider himself no better than an animal. No, as a matter of fact, less than an animal.¹³⁴

Belge confirmed that he had called Garrow's mother in part to point the finger at her (though perhaps also to show that Garrow had a mother).¹³⁵ He disparaged Garrow's testimony as proof of insanity.¹³⁶ Garrow had testified to tying Dombleski

¹³¹ *Id.* at 3–4.

¹³² *Id.* at 7.

¹³³ *Id.*

¹³⁴ Transcript of 6/24/74 AM at 13, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹³⁵ *Id.* at 14–15.

If there is any guilty people now living concerning these crimes, I put it to you it is his parents, as sad as Mrs. Garrow, Robert's mother, was on the stand, and I do not wish to comment about her condition because I don't believe at any stage during her life she could help herself, but as we all know, if was those formative years, those formative years that placed Robert in the state of mine he was at the time of the killing of Philip Dombleski! At the time he killed the others! At the time he committed those rapes!

See also id. at 21 ("I must say right now, the two people that should be in this courtroom are Mr. Garrow's parents!! They are the guilty ones! They are the ones that formed Mr. Garrow's thinking, who formed him into the person—or, as he thinks, the beast, or lesser beast, that he is!").

¹³⁶ Transcript of 6/24/74 AM at 18, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10) ("Of course Mr. Garrow rambled on, as you know. His answers and his thought content, as far as I was concerned, well, most of the time there just wasn't any").

to a tree after stabbing him, on which Belge commented by calling Garrow a “depraved person” saying “Just how sick can you be!”¹³⁷ He called Ms. Mandy, Garrow’s sister, a “sad, sick pitiful woman,”¹³⁸ and condemned the parents as:

[T]he people that made Robert, after he had killed Miss Petz at his campsite in Mineville, bring his wife up there two days later, to sleep with her, and in that same tent where he had slept with Miss Petz, and just a few days ago, had killed her and placed her in a mineshaft.¹³⁹

Belge discounted evidence from prosecution psychiatric evidence in part on the clever theory that by warning Garrow that his statements could be used against him they put Garrow on his guard and thus were unable to get a fair assessment of his condition.¹⁴⁰ He disparaged Dr. Osinski for violating his ethical obligations of confidentiality—“the same ones that Mr. Armani and I have ... [a]s you know, communications from our clients are secret... [i]t is our oath ...”¹⁴¹ Belge conceded that “Robert Garrow is guilty of murder. We admit it” but that he was not guilty by reason of insanity.¹⁴² He concluded with an appeal to Garrow’s humanity:

I say to you that this lump of humanity, this mass, who, by right, should not be here but instead his parents, this person who has caused all that anxiety and grief to so many people, I say he is still a creature of God! And I say you should find him not guilty by reason of insanity.¹⁴³

The jurors retired at 4:11 pm. They returned at 5:45 to listen to testimony read from the transcript, retired at 6:00, and at 6:26 returned its verdict: guilty of murder.¹⁴⁴ He was sentenced to 25 years to life, the maximum penalty then possible under New York law.¹⁴⁵

E. Public Reaction

Press coverage was extensive, generally unsympathetic, and sometimes flawed. During trial an article quoted Belge as saying “I have spent many sleepless nights over the inability to reveal the information,” particularly after meeting with Susan Petz’s

¹³⁷ *Id.*

¹³⁸ Transcript of 6/24/74 AM at 22, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹³⁹ Transcript of 6/24/74 AM at 24, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹⁴⁰ Transcript of 6/24/74 AM at 36, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹⁴¹ *Id.*

¹⁴² Transcript of 6/24/74 AM at 40, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹⁴³ Transcript of 6/24/74 AM at 41, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹⁴⁴ Transcript of 6/24/74 AM at 44, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

¹⁴⁵ *People v. Garrow*, 52 A.D.2d 982, 983 (1976).

father.¹⁴⁶ (Armani, not Belge, met with Mr. Peltz.) The comment prompted a letter to the editor: “You spent sleepless nights? What do you think Alicia’s parents did?”¹⁴⁷ Letters to the editor of a local paper were aptly summarized by captions: “Sick ethics,” “Absolute Horror,” and “Impotent fury,” the last of these called for the ABA to do something but concluded, presciently, that “It will certainly be the final disillusionment if once again this association upholds its own, and declares the bizarre actions of Armani and Belge in this matter not only legal but ETHICAL.”¹⁴⁸ The *Albany Times Union* ran an editorial entitled “Justice Shamed,” which condemned the lawyers for using their knowledge to try to cut a deal for Garrow. Its view was nicely captured by an editorial cartoon:

Reporting of the manner of disclosure was imprecise and misleading. *Time* magazine wrote that the lawyers’ knowledge was revealed when Garrow “blurted out” details linking him to the uncharged murders.¹⁴⁹ The *New York Times* story used the same language.¹⁵⁰ The L.A. Times wrote that [w]hen Garrow testified at his trial about the other three killings he said he committed, the lawyers felt they had been released from their obligation of secrecy and disclosed that they had known the location of the bodies.¹⁵¹ All of this was misleading. Garrow was goaded, and it was Belge himself who first revealed his knowledge. Standard accounts make it appear that the lawyers effectively confessed to the press, but most of what they said was adduced in open court on direct. The press conference was likely aimed at shaping public opinion, which the lawyers quite reasonably might have thought would affect jurors.

Having confessed under oath to the murders of Daniel Porter, Susan Petz, and Alicia Hauk, Garrow pleaded guilty to those murders.¹⁵² On July 3, 1974, two weeks after Garrow was convicted, John Holcombe, the DA in Onondaga County, where Ms. Hauk was raped and strangled to death, issued a press release announcing his intention to submit a case against Armani and Belge to the grand jury and stating his position.¹⁵³ The release acknowledged the importance of attorney-client privilege but argued that it was not absolute and did not extend to communications regarding continuing crimes,

¹⁴⁶ In the Matter of a Grand Jury Inquiry Concerning FRANK H. ARMANI, ESQ., Cr. 74-702 Exh. 1, *Garrow’s Lawyers Baffle Officials*.

¹⁴⁷ In the Matter of a Grand Jury Inquiry Concerning FRANK H. ARMANI, ESQ., Cr. 74-702 Exh. 1, *Time to Change the Code*.

¹⁴⁸ In the Matter of a Grand Jury Inquiry Concerning FRANK H. ARMANI, ESQ., Cr. 74-702 Exh. 1.

¹⁴⁹ In the Matter of a Grand Jury Inquiry Concerning FRANK H. ARMANI, ESQ., Cr. 74-702 Exh. 1, *A Question of Confidence*, TIME, July 1, 1974.

¹⁵⁰ *Slayer’s 2 Lawyers Kept Secret of 2 More Killings*, N.Y. TIMES, June 20, 1974, at 1, 26.

¹⁵¹ Bryce Nelson, *Ethical Dilemma: Should Lawyers Turn In Clients?*, L.A. TIMES, July 2, 1974, at 1 (reprinted in Andrew L. Kaufman & David B. Wilkins, PROBLEMS IN PROFESSIONAL RESPONSIBILITY FOR A CHANGING PROFESSION 200 (2002)).

¹⁵² *People v. Garrow*, 52 A.D.2d 982, 982 (1976).

¹⁵³ Affidavit of Emil M. Rossi, In the Matter of a Grand Jury Inquiry Concerning FRANK H. ARMANI, ESQ., Cr. 74-702.

As Hy ROSEN Sees It



"SHE'S ONLY A VICTIM OF CRIME BUT YOU ARE A CLIENT!"

a claim for which authority did exist.¹⁵⁴ Holcombe argued that leaving Ms. Petz's and Ms. Hauk's bodies unburied was a continuing violation of a statute requiring a decent burial.¹⁵⁵ That argument suggests that the charge was selected to try to evade the attorneys' claim that privilege barred disclosure. This framing was clever but proved too much, for it implied that murderers would have to direct authorities to their victims, a premise that would collapse in the face of the right against self-incrimination.¹⁵⁶

Holcombe's press release would be improper under modern standards,¹⁵⁷ and was improper at the time as well.¹⁵⁸ More improper still was a letter Holcombe wrote to the Chief of the Syracuse Police Department, which Holcombe released along with the press release. Obviously written for public consumption, that letter recounted the extensive search for Garrow and Ms. Petz (35,000 hours of police time) and for Ms. Hauk (over 300 hours of police time). Holcombe stated: "Most terrifying of all was the continued emotional wrong done to the parents, relatives, and friends of the unburied. No law should sanction such conduct!"¹⁵⁹

Armani retained counsel, asked that the grand jury be instructed by the court regarding a lawyer's ethical obligations and that grand jurors be subjected to *voire dire* to determine whether they were biased against him.¹⁶⁰ Armani based his motion in part on Holcombe's press release and in part on widespread negative publicity regarding his conduct.

Belge was indicted for violation of one statute requiring that any person aware of a death without medical attendance notify the county coroner of the death and

¹⁵⁴ Holcombe also argued that Armani and Belge could only remain silent for a reasonable time, citing a case, *State ex rel. Sowers v. Olwell*, 64 Wash. 2d 828 (1964), in which privileged information led a defense attorney to take possession of a knife suspected of having been used in a murder. The court held that the attorney could retain the knife for a reasonable time but would then have to produce the knife to prosecutors. Holcombe's reliance on *Sowers* was unpersuasive because by taking possession of the knife the lawyer in that case prevented prosecutors from finding it. Belge's observation of Mr. Hauk's skeleton did not prevent its discovery, though his movement of her skull wrongly altered the scene of the crime.

¹⁵⁵ Affidavit of Emil M. Rossi, In the Matter of a Grand Jury Inquiry Concerning FRANK H. ARMANI, ESQ., Cr. 74-702, Exh at 5-7.

¹⁵⁶ In re Armani, 79 Misc. 2d 231, 234, 359 N.Y.S.2d 231, 234 (Co. Ct. 1974).

¹⁵⁷ ABA Rule 3.8(f) requires prosecutors to refrain from "making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused." A press release issued before presentation to a grand jury would seem superfluous in view of prosecutors' traditional influence with grand juries. Either way, Holcombe's release would not fall within the exception for statements "that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose."

¹⁵⁸ N.Y. Code Prof'l Resp. DR 7-107 (regulating pretrial publicity).

¹⁵⁹ Affidavit of Emil M. Rossi, In the Matter of a Grand Jury Inquiry Concerning FRANK H. ARMANI, ESQ., Cr. 74-702, Exh at 5-7.

¹⁶⁰ In the Matter of a Grand Jury Inquiry Concerning FRANK H. ARMANI, ESQ., Cr. 74-702. Belge sought to intervene for the purpose of asking that any argument be held in chambers and not open to the public because both Armani and Belge continued to represent Garrow.

another requiring that the body of a deceased person be buried or incinerated.¹⁶¹ He was unrepentant. Belge wrote a memorandum in the county court that was erudite and cheeky. It concluded with what may fairly be regarded as a summary of Belge's approach to criminal matters.¹⁶²

DISNONIRREGARDESSLY SO OR NOT

Once that young lad took his oath of office as an attorney and counsellor at law, he swore to uphold the Constitutions of the State of New York and of the United States, which in essence, means

"I shall, as an attorney and counsellor at law, within the bounds of law, do my damndest to defend any client that I represent."

Respectfully yours,

Francis R. Belge

Referring to indictment under "a pseudo-criminal statute on the other, which has seldom been brought into play,"¹⁶³ the trial court dismissed the indictment, while noting that "[i]f the Grand Jury had returned an indictment charging Mr. Belge with obstruction of justice under a proper statute, the work of this Court would have been much more difficult than it is."¹⁶⁴ The court was no doubt correct; the odd charge stemmed from Holcombe's desire to shoehorn moral outrage over the case into a recognized exception to the attorney-client privilege.

F. Garrow's Appeal

Garrow appealed his conviction for the murder of Philip Dombrowski, and his arguments targeted Armani and Belge. In substance he argued that they ceased acting

¹⁶¹ People v. Belge, 83 Misc. 2d 186, 188, 372 N.Y.S.2d 798, 800 (Co. Ct.), aff'd, 50 A.D.2d 1088, 376 N.Y.S.2d 771 (1975), aff'd, 41 N.Y.2d 60, 359 N.E.2d 377 (1976)

¹⁶² TEACHING PROFESSIONAL RESPONSIBILITY: MATERIALS AND PROCEEDINGS FROM THE NATIONAL CONFERENCE 255 (1979).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

as his lawyers and turned themselves into investigators and witnesses against him. According to an affidavit Garrow submitted to the trial court (and which he appears to have written) while the appeal was pending, Armani and Belge interviewed Garrow in the hospital while he was “incoherent by reasons of many extremity [sic] of physical and mental disturbances,” taped the conversations, drew maps during the interviews “that were so material that each attorney under the law were [sic] a witness before and after the fact.”¹⁶⁵

Garrow wrote that evidence relevant to his killing of Philip Dombrewski was “linked with a combination by” Armani and Belge created by “questions and answers relating to the death of many other persons,” including Susan Petz, Alicia Hauk, and Daniel Porter.¹⁶⁶ The lawyers, he wrote, acted as “*detectives*” rather than “client and attorney, oppressed [Garrow’s] mind in believing the more bodies that he place[d] at his ‘door steps’ whether [Garrow] committed the crime or not, would relieve [Garrow] in the Court granting a defense of insanity.”¹⁶⁷ Garrow claimed that because of his mental status, “without seeing a psychologist or psychiatrist immediately after the crime for a diagnosis of his mental disorder” Garrow became the victim of “two court-appointed wolves of attorneys speaking public interest to their own benefit.”¹⁶⁸

Garrow claimed the court erred by not charging Armani and Belge for “destruction of tapes, maps, and photographs,” which he claimed the lawyers used to convince him that he was guilty of those crimes. Garrow insisted that Armani and Belge undertook “the discovery of bodies that deponent had no knowledge [of] until the discovery was pressed to his mental mind in believing that he had committed the other crimes” and that the court should have discharged them as counsel for their unlawful behavior. He asserted that Armani and Belge investigated other crimes “in order to profit for their gain,” after the trial. The trial court, Garrow said, condoned “evil antics committed by Court-appointed attorneys” including breaches of the code of ethics and unspecified criminal acts.¹⁶⁹

The court of appeal was unpersuaded. It characterized Garrow as arguing that Armani and Belge had a conflict because they sought to avoid prosecution by having him confess on direct.¹⁷⁰ The court rightly pointed out that his testimony would not have exculpated them for the period before he testified, and that Belge was indicted, but these points were weak. Belge’s indictment was dismissed and as discussed below, there was no serious argument that Armani or Belge broke the law just by remaining

¹⁶⁵ Affidavit In Support of Notice of Motion, ¶ 9, August 14, 1975, *People v. Garrow*, No. 73–10 (Hamilton Cnty., N.Y. 1974),.

¹⁶⁶ *Id.* at ¶ 10.

¹⁶⁷ *Id.* at ¶ 12.

¹⁶⁸ *Id.* at ¶ 13.

¹⁶⁹ According to journalist Jim Tracy, in May 1975 Garrow sued Armani (seeking \$1 million) and Belge (seeking \$3 million) as well as John Holcombe, the district attorney of Onandaga County, where Garrow murdered Alicia Hauk.

¹⁷⁰ *People v. Garrow*, 51 A.D.2d 814 (1976); TRACY, *supra* note 3, at 291.

silent. The court acknowledged that some might question the tactic of goading Garrow to confess on direct (a candidate for any judicial understatement award) but opined that this decision did not rise to the level of “a farce or mockery of justice” warranting reversal. Unmentioned were the undisputed facts that Garrow did not expect to be called, appeared not to have been prepared by his lawyers to testify, and that he claimed that he did not recall the crimes that Armani and Belge insisted he had committed. Similarly unmentioned was the destruction of tapes, maps, and photographs, though it is not clear how that destruction itself could have prejudiced Garrow.¹⁷¹ A separate appeal arguing that his confessions to the murders of Susan Petz, Alicia Hauk, and Daniel Porter were improperly admitted was rejected as well.¹⁷²

G. Garrow’s Death

The end of Garrow’s story was almost as bizarre as the beginning. He had been shot when he was captured. He claimed he was partially paralyzed, and he was in a wheelchair during trial. According to journalist Jim Tracy, once imprisoned Garrow turned himself into a litigious pest. He complained at least about his diet, medical care, and access to the law library.¹⁷³ He sought transfer to a facility for elderly and handicapped patients, at Fishkill, which was rejected because he was a maximum-security prisoner. He was examined repeatedly; some doctors thought he remained injured; others thought there was nothing wrong with him.¹⁷⁴ Still in his wheelchair, Garrow was eventually transferred to Fishkill in February 1978. In September 1978 he stepped out of his wheelchair, climbed a 15-foot fence, and escaped.¹⁷⁵

In Garrow’s cell was a list of persons he planned to kill, including Belge (at the top) and Armani. The state police contacted Armani, who advised them based on his knowledge of Garrow’s conduct during the manhunt after Garrow killed Philip Dombrewski. When asked why he (as he put it) “eventually violated a confidence of my client,” Armani said: “I was on a death list. He had sued me. And my family was threatened, my wife and children. Nothing goes before that.”¹⁷⁶ (The risk of future harm distinguished this disclosure from trial, obviously.) Armani advised that if Garrow had a radio he would likely stay close to the prison until the search moved away and then try to get away. Garrow escaped on a Friday. On the following Monday officers found

¹⁷¹ The court also rejected Garrow’s argument that venue should have been changed; an argument that court previously had rejected. The court noted that Garrow had not exhausted his peremptory challenges—a very weak point given that a peremptory would not result in the seating of a juror from a different venue.

¹⁷² *People v. Garrow*, 52 A.D.2d 982, 982, 383 N.Y.S.2d 428, 429 (1976).

¹⁷³ TRACY, *supra* note 3, at 293.

¹⁷⁴ TRACY, *supra* note 3, at 294.

¹⁷⁵ TRACY, *supra* note 3, at 303–04.

¹⁷⁶ Lerman, *supra* note 3, at 30.

a radio he had owned, and then spotted Garrow, who shot at them, wounding one officer. Garrow was shot dead in his turn.

Armani's practice suffered because of Garrow's case but the profession embraced him, as the symposium showed. Belge divorced, quit practice, moved to Florida, and died in 1989, aged 63.¹⁷⁷ John Holcombe, the Onondaga DA who indicted Belge, was arrested for drunk driving, accused of sexually harassing an employee, and resigned. The lawyer who groomed Garrow and kept him as essentially a sex slave was never named at trial (Garrow withdrew an initial identification) and there is no record of further action against him. Norman Mordue became a distinguished prosecutor and judge.

¹⁷⁷ TRACY, *supra* note 3, at 328.

II. Positive Law Considerations

Academic discussions of the case tend to approve of Armani and Belge's decision not to disclose their knowledge of the fate of Ms. Petz and Ms. Hauk, to sympathize with the strain their concealment put them under, to ignore the fact that it was Belge himself who disclosed their knowledge, and to ignore the broader context of the case, including Armani's role in ensuring Garrow's parole was not revoked after Garrow molested the young girls in Geddes, Armani's taped appeal to Garrow to turn himself in, and the Garrow's claim that the lawyers refreshed his memory and persuaded him that he had committed uncharged crimes that he supposedly did not remember committing.

Perhaps the most influential commentator was Professor Monroe Freedman, who wrote about the case after trial but before the appellate decisions issued, and whose comments were cited in the appellate decision in *Belge*. His article may be read as a rejoinder to Holcombe's press release and public letter. Professor Freedman wrote that not only did Armani and Belge "behave properly, ... they would have committed a serious breach of professional responsibility if they divulged the information contrary to their client's interests."¹ Professor Freedman rightly rebutted the notion that Armani and Belge were freed from their confidentiality obligation because they used their knowledge to try to cut a plea deal.² Professor Freedman also praised Armani and Belge for investigating the facts behind the murders of Ms. Petz and Ms. Hauk, on the ground that criminal defense attorneys have a duty to conduct "a thorough investigation of all aspects of the case ..."³ He argued that "upon investigation, the attorneys in the Lake Pleasant case might have discovered that the client's belief that he had killed other people was false, which would have had important bearing on an insanity defense."⁴

A. Grading Garrow's Lawyers

Because the standard account holds that Armani and Belge satisfied their professional obligations it is useful to begin by refuting that claim. From a positive law point of view, Garrow's case was a train wreck of lawyering.

¹ Freedman, *supra* note 3, at 2.

² *Id.* at 7. Professor Freedman stated that Garrow authorized disclosure for the purpose of plea bargaining. *Id.* It is not clear to me that Garrow was asked that question, but it is reasonable to presume that Armani and Belge would not have sought a deal they did not think they could close.

³ *Id.*

⁴ *Id.*

It is true that positive law, both then and now, forbade the lawyers from disclosing their knowledge of the fate and location of Ms. Petz and Ms. Hauk.⁵ It is unlikely that either lawyer would have been disciplined for disclosure before trial—they certainly were not disciplined for Belge’s disclosure during trial—but to the extent one attributes normative significance to disciplinary rules the lawyers’ pre-trial silence was proper. The same goes for their attempt to use their knowledge to cut a plea deal for Garrow. With three eyewitnesses to Philip Dombrowski’s murder the lawyers had a terrible case. It is hard to blame them for playing one of the only two cards they thought they had, callous as that both seemed and was. Professor Freedman addressed this fact with a light touch, but he was right to say that plea bargaining is integral to the justice system and thus to an effective defense.⁶

But the confidentiality obligation flips from shield to sword with respect to Garrow’s direct examination. Belge was no more authorized to disclose his knowledge during direct examination, as a means of leading Garrow through confessions, than he was before trial. Consent to disclosure was required and there is no evidence that Garrow consented. Instead, the trial record and Garrow’s self-serving post-trial affidavit all concur that he was put on the stand with minimal consultation (to the extent five minutes of “trust me” could count as consultation),⁷ and with no preparation. That Garrow had to ask the Court during his direct examination whether he might be prosecuted for the crimes he was confessing to seems decisive on this point.⁸ Astonishing is the only word for those facts. With respect to the core issue of confidentiality, at least with respect to Belge the standard account has things backwards. The duty of confidentiality lay in shreds on the floor by the end of direct.

Professor Heidi Li Feldman has argued that positive law could have justified either silence or disclosure, though she views the case for disclosure as weaker.⁹ The case for disclosure was basically that failing to disclose the location of Ms. Petz’s and Ms.

⁵ The relevant rule then, drawn from the ABA Model Code of Professional Conduct, was New York’s Code of Professional Responsibility DR 4-101(B), which forbade disclosure of client “confidences” and “secrets.” On the provenance of this language, see Dave McGowan, *California’s Duty of Confidentiality: A Case Study in Code Interpretation*, <https://ssrn.com/abstract=2476085><https://ssrn.com/abstract=2476085>. The current rule is ABA Rule of Professional Conduct 1.6.

⁶ Morgan H. Freedman, *Where the Bodies Are Buried: The Adversary System and the Obligation of Confidentiality*, 10 CRIM. L. BULL. 987, 987–988 (1974). It is less clear to me that Garrow authorized such disclosure, as Professor Freedman assumed.

⁷ Cf. *McClure v. Thompson*, 323 F.3d 1233 (9th Cir. 2003) (defendant did not give effective consent to disclosure of location of children he had buried alive where counsel did not properly consult with defendant regarding the significance of consent). *Wainwright v. Sykes*, 433 U.S. 72, 93 n.1 (1977), stated in dicta that “[o]nly such basic decisions as whether to plead guilty, waive a jury, or testify in one’s own behalf are ultimately for the accused to make.” For this proposition the Court cited the 1971 Draft ABA Standards for Criminal Justice.

⁸ Transcript of 6/17/74 AM at 39–40, *People v. Garrow* (Hamilton Cnty. N.Y. 1974) (No 73–10).

⁹ Heidi Li Feldman, *Codes and Virtues: Can Good Lawyers Be Good Ethical Deliberators?* 69 S. CAL. L. REV. 885 (1996).

Hauk's remains could be construed as obstruction of justice and thus as unlawful.¹⁰ She questions whether a distinction between failing to disclose and concealing could be sustained under the rules. I think the rules formally require that distinction; the stronger argument is that Armani and Belge followed the confidentiality rules up until Garrow took the stand, but not after. Belge's press statement acknowledging the lawyers' knowledge was made the afternoon of the first day of Garrow's testimony, and thus in the middle of trial.¹¹ Notionally it was based on the idea that Garrow's testimony let the cat out of the bag, but Garrow's testimony was adduced by Belge.

To the extent performance is measured in relation to client dignity or autonomy, or the fiduciary concept of loyalty to a client, then by conventional standards, both then and now, the choice to put Garrow on the stand without warning or preparation, and the direct examination itself, was outrageous. Defendants rarely testify. They should not do so unless their lawyers tell them what to expect, including what bad things could happen to them and their case, what points they should make, and what to expect on cross.¹² It doesn't get more basic than that. The best reading of the transcript is that Belge called Garrow by surprise and then badgered Garrow into confessing heinous acts that would help Belge put on the insanity defense as he thought best.¹³ When Garrow waffled or dissimulated, Belge pushed. Dignity and autonomy had nothing to do with it. By modern standards, Belge's conduct would be subject to discipline under at least Rule 1.2(a), which allocates to the client, after consultation, the choice whether to testify, and Rule 1.4, which requires consultation sufficient to give the client information they need to make decisions regarding the representation.¹⁴ On a complete

¹⁰ *Id.* at 895. Professor Feldman thought an Alaska case that postdated Belge's indictment, *Morell v. State*, 575 P.2d 1200 (Alaska 1978), might support this reading. But *Morell* involved a lawyer who temporarily took possession of evidence, which Armani and Belge did not (setting aside Belge's alteration of the scene, which was probably indictable). Viewing evidence without removing it, even temporarily, creates no such obligation. See Kevin R. Reitz, *Clients, Lawyers, and the Fifth Amendment: The Need for A Projected Privilege*, 41 DUKE L.J. 572, 591 (1991) ("Alaska's concealment of evidence statute, like those in other states, required some affirmative act of concealment beyond a mere failure to come forward with evidence before criminal liability would attach.").

¹¹ Armani, *supra* note 3, at 148–49.

¹² For each point, see for example, James Farragher Campbell, *Ethical Concerns in Grooming the Criminal Defendant for the Witness Stand*, 36 HOFSTRA L. REV. 265, 270 (2007) ("It is my contention that criminal defense counsel is mandated to prepare his client for testimony as vigorously as possible and that the only limitation thereto lies with the aforementioned proscription against presenting false evidence.").

¹³ Armani's account states that Belge did not warn either Garrow or Armani that Belge planned to call Garrow. According to Armani, preparation and consultation took ten minutes during a recess in which Belge told Garrow to trust Belge's judgment. Armani, *supra* note 3, at 138–39. The transcript reflects a five-minute recess. 6-17-74 AM Tr. at 4. According to Armani, Garrow asked what questions he would be asked but received no answer. Armani also states that Garrow threatened Belge if the tactic did not work. Armani, *supra* note 3, at 138–140.

¹⁴ The court of appeals decision rejecting Garrow's appeal is a bit of a whitewash on this point. It said only that "while the strategy of putting defendant on the stand might be questioned by some, we cannot say that it was unreasonable to expect that he would buttress his defense of insanity by his

record, to present the Lake Pleasant case as illustrating devotion to client dignity, or fiduciary faithfulness, is irony.

Client dignity is one thing. Effective lawyering is another. Calling Garrow without preparation and badgering him into confession may in fact have been best for the insanity defense Belge wanted to present, which was pretty much the only defense he had. Garrow was, after all, crafty and evasive, and there is no reason to think he was less so with his lawyers than with the prison officials he duped into thinking he couldn't walk. By modern standards Belge's conduct probably would count as ineffective assistance of counsel, and should have been grounds for reversal, but that conclusion rests heavily on the idea that there is a normative element to ineffective assistance of counsel claims in which consultation with a defendant regarding important decisions is treated as a "basic duty" of defense counsel, failure in which would presumptively constitute ineffective assistance even if, as with Garrow, counsel had a plausible tactical reason to sucker punch a client.¹⁵ One might posit a distinction between a client's dignity as a person and their legal interests as a defendant, but it is not a distinction the rules or the ineffective assistance of counsel doctrine would recognize to the extent Belge pressed the point with Garrow.

Finally, by modern standards whether a criminal defense attorney is professionally obliged to learn the facts is a question of judgment, not an unvarying mandate. A lawyer who learned facts that would show a client's testimony to be false would impede a lawyer's ability to adduce perjured testimony on direct examination.¹⁶ It could be smarter for a lawyer to avoid actual knowledge of such facts, and instead to use indirect means to find out what the prosecution's case might be while maintaining a fig leaf of deniability with respect to whether they "know" testimony would be false.¹⁷ The law in this regard was not as well-developed in 1975 as it is now,¹⁸ and Professor Freedman famously argued in favor of a professional permission to facilitate perjury,¹⁹ but this premise does not scale well over time. It was apt for Garrow's case, however, because Belge's strategy was to depict Garrow as so monstrous that jurors would feel compelled

testimony as to his past crimes and bizarre behavior." *People v. Garrow*, 51 A.D.2d 814, (N.Y. App. Div. 1976). Sure. But that is at best a misleadingly anodyne description of what happened.

¹⁵ *Strickland v. Washington*, 466 U.S. 668, 688 (1984) ("From counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.").

¹⁶ MODEL RULES OF PRO. RESP. 3.3(a)(3) (AM. BAR. ASS'N).

¹⁷ Under ABA Rule 1.0(f) knowledge for purposes of Rule 3.3 means "actual knowledge," which is what makes the indirect approach theoretically feasible, subject to the further qualification in Rule 1.0 that knowledge may be inferred from the facts. Various standards for knowledge have been advanced in the caselaw, but in general the standards are lenient in favor of defense counsel. See David McGowan, *DEVELOPING JUDGMENT ABOUT PRACTICING LAW* 959–60 (4th ed. 2023).

¹⁸ *Nix v. Whiteside*, 475 U.S. 157 (1986) held that it is not ineffective assistance for counsel to refuse to assist a client in committing perjury.

¹⁹ *Id.* at 23.

to conclude Garrow had to have been insane to do the things he had done. The more crimes the better, from that angle.

B. Two Conceptions of Defense Counsel's Role

Faced with a deluge of motion practice in a trade defamation case, South Dakota Judge Cheryle Gering admonished counsel: “You need to be trial lawyers. A litigator drinks wine and takes depositions. A trial lawyer drinks whiskey and tries cases.”²⁰ Armani was a litigator. Belge was a trial lawyer, and it was his trial. It is among the many ironies of the case that Armani became renowned for decisions he did not make and likely opposed at the time—notably calling Garrow, forcing his confessions, and badgering him on the stand, not to mention the press statement that Belge made during trial.

1. The Lawyer In Charge

Why did Belge act as he did? He certainly lived up to his code—he put his ass on the line for his client. But there was both a psychological and instrumental logic to his approach as well. A plausible explanation, well-supported by the record, is that Belge pursued a reasonable defense of Garrow's interests at the expense of Garrow's dignity, autonomy, and likely his wishes. Belge had an almost impossible case (three eyewitnesses to murder), a monstrous but sly client, and very few cards to play. He reasonably chose insanity as the only plausible defense, reasonably decided that the shock value of Garrow's life and crimes was the most potent part of that defense, reasonably concluded that Garrow was likely to prevaricate and attempt to weasel around when asked about his past acts, reasonably decided to call Garrow without notice or preparation to put him on the defensive and adduce more candid testimony, and reasonably smacked him (verbally) on direct when Garrow got out of line.

On this account, Belge thought he knew best, thought that Garrow was mentally deranged, and decided that he would be damned if his client screwed up his (Belge's) defense. Belge aimed to take the shock and horror of Dombrowski's murder and amplify it to an extent that jurors decided that Garrow simply had to have been crazy to have done what he did. Waffling and evasion might seem rational to jurors—as if Garrow knew what he had done, appreciated how horrible it was, and thus tried to minimize his actions—so Belge used his knowledge of the facts to discipline Garrow and force him to own up to his crimes when Garrow began to waffle about his culpability. Contemporaneous news reports and the transcript state that Garrow broke down and

²⁰ Jonathan Ellis, *Judge to Lawyers in BPI Case: Act Like Whiskey Drinkers*, ARGUS LEADER (June 2, 2017), www.argusleader.com.

sobbed multiple times.²¹ It may have been from humiliation; the record shows Garrow simpering at times and indulging in self-pity, but it shows no sign of remorse. From this perspective, the abstractions that came to animate academic legal ethics—dignity and autonomy among them—could and should be dismissed on the ground that if Garrow knew what was good for him he wouldn't have been a client in the first place.

Belge's efforts to discipline Garrow were rationally related to the defense, but they resulted in disclosure of attorney-client communications. Belge's questions let the jury know that he and Armani had known about Ms. Petz and Ms. Hauk's murder for months. Belge had to close, and he did not want jurors to resent him, so he put effort into placing his silence into context. The first thing he did in closing was apologize if anything in the defense had offended jurors, he castigated one of the prosecution psychologists for breaking confidentiality, and he likely held the press conference in the middle of trial because he assumed that popular sentiment would seep into jurors' minds, the court's admonitions notwithstanding.²² His self-interest in putting a favorable spin on the lawyers' silence no doubt played a part as well—that was one of the bases of Garrow's appeal, which the court of appeals dismissed on the weak hindsight ground that disclosing at trial would not exculpate the lawyers for prior silence and that Belge had been indicted.²³ Garrow's claim that the lawyers labored under a conflict is unpersuasive—Belge put himself in the crosshairs of public opinion through tactics reasonably related to put on the strongest form of the only defense available to him. Everything after that was damage control.

This account tends to give some credence to Garrow's post-trial claim that he felt his lawyers had turned against him. To the extent one credits anything Garrow said, forced public confession of such humiliating acts might lead one to view one's lawyers as wolves. Garrow might justly feel his autonomy and dignity had been undermined, though it would not follow that Belge had a better option available to him or that Garrow would have done better with lawyers less inclined to take control of the case. At the end of the day, either Belge or Garrow would be in charge. Belge made sure it was him. He no doubt had Garrow's best (legal) interests in mind, but Garrow himself, as a person? Maybe not so much.

²¹ *E.g.*, *My Father Killed Me: Garrow Told Psychiatrists*, ROME DAILY SENTINEL July 5, 1974, at 13 ("Belge persisted and Garrow, often weeping, continued to unfold the story of his life").

²² Armani offered a different explanation, more in line with Garrow's appeal. In his account, John Holcombe, the DA for Onondaga County, stated publicly that he planned to investigate Armani and Belge and Belge's statement aimed to counter Holcombe's. *Still Alive*, *supra* note 3, at 29. This account is compatible with my read to the extent that Belge might reasonably have worried that Holcombe's statement would filter its way to the jury.

²³ *People v. Garrow*, 51 A.D.2d 814 (1976).

2. The lawyer as mouthpiece

Belge's lawyer-in-charge model contrasts with Armani's more conventional conception of the role. An unsympathetic assessment would cast Armani as an apparatchik, skillfully making conventional moves but leaving the important calls to the client. That is not a criticism of the results Armani obtained. The best piece of lawyering in the entire story belongs to Armani, and it was purely conventional. He persuaded the parole officials in New York not to revoke Garrow's parole and thus kept Garrow out of prison after Garrow was arrested for molesting the two little girls in Geddes. That was an incredible result. Garrow was on parole from a rape charge that included, as part of a plea, rape of a 13-year-old girl. To keep him out of prison after the Geddes arrest was an impressive bit of lawyering—an almost literally unbelievable result. Were it not so morally disgusting it would be the kind of result lawyers might toast at the bar after work as an astonishing win.

Keeping Garrow out of jail on the molestation charge was part of an impressive run. Apart from what appears to have been a bit of witness intimidation with Lenny Garner and Karen Lutz, Armani managed to sell New York judges and parole officials on the story that Garrow was a poster boy for reform (and thus the success of the parole system) while Garrow led a life of rape and molestation. Armani's book tried to downplay his knowledge of the truth, but the effort rings hollow and is irrelevant anyway: from a conventional perspective Armani was right not to care whether Garrow was guilty. That wasn't his job.

If the trial had been up to Armani, it is a fair question whether Garrow would have testified at all. Armani seems to have spent a lot of time lining up—the mind reels—character witnesses for Garrow.²⁴ On his own he likely would have presented a much more small-bore defense, though there is no reason to think the result would have been different than the more dramatic show Belge put on. While Armani was willing to strong-arm Garner and Lutz for the sake of his client, there is no evidence that he would have taken control of Garrow as Belge did. He objected in court to Belge's direct, the two got into that fistfight during trial,²⁵ and Armani's praise of Belge in later years was tempered at best. Were it not for Belge, the case would not have entered the legal ethics canon at all.

Armani liked the notoriety and excitement of the case, but he was not prepared or willing to try it. He needed help. In the end he and Garrow got more than they bargained for. As Armani quoted Belge (probably apocryphally) when Belge was pushed into the wall by state troopers outside Garrow's hospital room, "they mess with the

²⁴ *Still Alive*, *supra* note 3, at 28 ("In preparing for the trial, I had subpoenaed and lined up different witnesses. I had a nun. I had a nurse. I had a fellow worker. They were all going to testify...and I had his parole officer subpoenaed. He was a model parolee. They were going to testify what a great guy he was.")

²⁵ Which Armani's book claims he won—I have my doubts.

bull, they get the horns.”²⁶ Belge’s recollection of his statement sounds more plausible: “Frank, you just got yourself a goddamned trial lawyer.”²⁷ Same thing.

²⁶ *Privileged Information*, *supra* note 3, at 136.

²⁷ TEACHING PROFESSIONAL RESPONSIBILITY: MATERIALS AND PROCEEDINGS FROM THE NATIONAL CONFERENCE, *supra* note 48, at 316.

III. Myth and Narrative in Legal Ethics

In view of the trial record, the duty of confidentiality and its personal cost to lawyers is neither the best nor the most important lesson that can be studied using the Lake Pleasant case. It should be studied both to understand why it became a fixture of legal ethics literature and to understand the limits philosophical concepts face in helping students and lawyers think about their professional lives.

A. Growth of the standard account

The case became an icon of legal ethics discourse in part because of timing. 1974–1975 were important years in the history of academic legal ethics. President Nixon resigned because of the Watergate scandal, in which many lawyers played important roles, a point noted in Richard Wasserstrom’s foundational article *Lawyers as Professionals: Some Moral Issues*,¹ which began what David Luban and Brad Wendel refer to as the first generation of Philosophical Legal Ethics.² Wasserstrom questioned whether lawyers’ professional partiality—the view that only the client’s interests matter—is morally defensible. In keeping with the tenor of the times, he sought to distinguish between the partiality of criminal defense attorneys, whose “amorality” he thought “justifiable,” and the lawyers who employed dirty tricks on behalf of President Nixon.³ Wasserstrom’s reasons for treating defense attorneys with moral kid gloves were instrumental: liberty is a serious thing, the state has vast power, punishment may be excessive or otherwise unjust. Though he did not discuss Armani and Belge, the case provided grounds to question whether these contingent considerations should matter from a moral point of view.

As interest in legal ethics grew the case quickly became an important example in legal ethics literature. Its appeal was largely grounded in pathos only loosely tied to the facts. In brief, it was presented as a story illustrating professional integrity, with dramatic tension supplied by Armani’s conflicting desires to relieve the suffering of Alicia Hauk’s and Susan Petz’s parents and to fulfill his “sworn duty,” even in the face

¹ Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1 (1975).

² Luban, David and Wendel, W. Bradley, *Philosophical Legal Ethics: An Affectionate History*, 30 GEORGETOWN JOURNAL OF LEGAL ETHICS 337 (2017).

³ Wasserstrom, *supra* note 5, at 12.

of social condemnation. Armani's was the dominant voice because Belge, who ran the trial, did not popularize the case much beyond his initial statements during trial.⁴

This point became clear in an exchange between Professor Wasserstrom and Professor Luban relating to Professor Luban's iconic *Lawyers and Justice*.⁵ Professor Luban had used the case to illustrate what he favored as an exception for criminal defense lawyers to his general view that lawyers should act morally not merely as inhabitants of a role. Confidentiality was necessary to guarantee an adequate defense, and an adequate defense served the moral good of "overprotecting individual rights against encroachment of the state."⁶ The case illustrated what Luban set forth as a four-step argument sometimes offered in defense of lawyer partiality: (i) justify an institution as morally good; (ii) justify a role in relation to the institution; (iii) justify role obligations as essential to the role; (iv) justify an act as obliged by the role.

Wasserstrom pointed out that this assertion is inadequate on its own even by its own terms. As a factual matter, unless there was reason to believe that disclosure would be contagious and thus undercut the normal operations of the criminal justice system there is no connection between Armani's and Belge's silence and any systemic justification of confidentiality, even assuming that overprotecting either Garrow or defendants generally is justifiable. No such reasons existed then or now. Disclosure is not contagious, like a cold. It is rare even where permitted.⁷ Wasserstrom could have added that, as a factual matter in the Lake Pleasant case, the opposite was true—Belge eventually disclosed and forced disclosures in open court to try to strengthen the defense. Silence was not necessary to the operation of the criminal justice system or even to Belge's defense, so systemic justifications of the lawyers' behavior fail.⁸

Professor Luban's response emphasized Armani's moral dilemma and read Armani's reference to "sworn duty" to invoke on his behalf systemic justifications of the role of criminal defense lawyers within the criminal justice system, but he also rightly framed Armani as juxtaposing the morality of consequences (the Hauk and Petz families' distress) against the morality of duty (his oath). He rightly conceded that disclosure in the Garrow case would not have undermined confidentiality as a practice, much less the criminal justice system. The point is reinforced by the fact that Belge ultimately did disclose—his treatment of Garrow astonishes in multiple respects, but that disclosure did not cause an outbreak of similar behavior. Most defendants remain unbadgered

⁴ The case was an example of essentially this point in Professor Postema's influential article, *Moral Responsibility in Professional Ethics*, 55 N.Y.U. L. REV. 55, 65 (1980).

⁵ David Luban, *LAWYERS AND JUSTICE* (1988).

⁶ *Id.* at 149.

⁷ For example, as it is now under the Sarbanes-Oxley rules.

⁸ There is a timing issue here. It is not clear when Belge decided that Garrow had to testify or when he decided that disclosing his own prior knowledge would help the defense—the latter conclusion was probably made on the spot during direct examination. And until it became clear that the DA would not agree to a reduced charge for Garrow silence was necessary to preserve the secret Armani and Belge proposed to trade in the deal. Once it was clear that no deal was on offer, however, it was only a matter of time until disclosure was made, at least once Garrow took the stand.

by their own lawyers into confessing to uncharged murders and rapes. But Luban maintained his view that Armani and Belge acted properly, arguing that even if the four-step argument did not justify their actions it could “help[] Armani determine how strong the duty of confidentiality really is, in order to decide whether the appalling circumstances of the Garrow case suffice to override it.”⁹

Drawing on Armani’s own book, in 1998 Richard Zitrin and Carol Langford made the case part of their study *The Moral Compass of the American Lawyer*. Their telling credited Armani’s account that he did not think Garrow was the monster he turned out to be. They treat the molestation of the girls in Geddes as presenting a tough call for Armani: was Garrow lying or had the police coached the girls?¹⁰ Given Armani’s willingness to subordinate personal morality to professional duty it should not have mattered whether he thought Garrow guilty, but Armani is a more sympathetic figure if one thinks he harbored doubts.¹¹ *The Moral Compass* emphasized the personal cost to both the lawyers and the Petz and Hauk families, but presented the case as an example of faithful fiduciaries putting the client’s interests first. As discussed below, the trial record calls that view strongly into question, as does Garrow’s (self-serving) description of the lawyers as “wolves.”

To sum up a bit, from the 1970s through at least 2007 the case achieved iconic status in legal academe. A 2007 symposium featuring Armani and legal ethicists Professors Lisa Lerman, Thomas Morgan, and Monroe Freedman provided a useful retrospective on how this happened.¹² Professor Morgan noted that the case was well-documented, had been featured on TV, could be told in broad outline in about 30 seconds (I disagree), and “is the kind of story that puts into sharp relief the issues of what a lawyer’s duties are.”¹³ Professor Morgan was right to say it became “is a central case in the development of our understanding and appreciation of what it means to be a lawyer.”¹⁴

Professor Freedman tied Armani and Belge’s conduct to the value of human dignity, which he felt was served by the criminal justice system: “[b]efore we will permit the state to deprive any person of life, liberty, or property, we require that certain processes be duly followed which ensure regard for the dignity of the individual, irrespective of the impact of those processes upon determination of the truth.”¹⁵ In the mid-1960s

⁹ David Luban, *Freedom and Constraint in Legal Ethics: Some Mid-course Corrections to Lawyers and Justice*, 49 MD. L. REV. 424, 432 (1990).

¹⁰ Zitrin & Langford, *supra* note 3, at 9.

¹¹ Zitrin and Langford mention that Armani knew Garrow was on parole from a rape conviction but do not mention that the plea in that matter included Garrow’s kidnapping and rape of a 13-year-old girl. Armani’s book references Garrow’s plea for raping a teenager. As noted above, the victims for which he was arrested were 17 or 18. They discuss Armani’s representation of Garrow when Garrow was arrested for falsely imprisoning Garner and Lutz, but Armani’s visits to the victims appear not to have been reported at the time they wrote.

¹² Lerman, *supra* note 3.

¹³ *Id.* at 21.

¹⁴ *Id.* at 22.

¹⁵ *Id.* at 3.

Professor Freedman had written a robust defense of lawyer partiality to clients on the ground that concerns of human dignity justified lawyers in preferring their clients' interests over other moral concerns;¹⁶ his defense of Armani and Belge extended this theme. Professor Freedman was a respected and influential scholar; his assessment of the case set the tone for the case's second life as an example of exemplary ethical conduct.¹⁷

In view of the trial record, it is a bit odd that the case became so identified with philosophical legal ethics. Only by taking a thin slice of the case does it serve as a useful example for such purposes. The full record suggests that philosophical legal ethics diverged far enough from practice that it should be considered (and I think would prefer to be) a subset of philosophy rather than of law. Their retrospective of the field ends with this: "We are tempted to conclude with a sign on the desk of a German philosopher: 'I can't solve your problems; my job is to help you enjoy them.'"¹⁸ It's a great line, and aptly captures the spirit of a body of work that is illuminating and (for those with the taste) fun to read. But for me it provokes an unfair, cranky reaction as well—the sort of reaction some people had to Professor Fried's metaphor of the lawyer as friend. To be Garrow's lawyer must one be his friend, or anything close to it? That is not a mistake Belge would make. The pedagogical utility of the case lies in the differing approaches of Armani and Belge, the differing personal and social costs of those approaches, and the profession's reaction to the case.

B. Causation and the standard account

Frank Armani's skillful lawyering was a but-for cause of the stabbing deaths of David Porter and Philip Dombrowski and of the rape and murder of Alicia Hauk and Susan Petz. There is no serious factual doubt on this point. Armani successfully sold the story of Garrow as a model parolee and thus kept Garrow out of jail after Garrow abducted Garner and Lutz and after Garrow molested the little girls in Geddes. In later years, to explain why he and Belge visited murder scenes, Armani said "as a defense counsel, I always feel that I should know all the facts."¹⁹ But with respect to

¹⁶ Monroe H. Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 MICH. L. REV. 1469 (1966).

¹⁷ That point was reinforced by a 1978 New York State Bar Association Ethics Opinion supporting Armani and Belge's refusal to disclose, destruction of their work product, and their attempt to use their knowledge to negotiate a plea. The Opinion offered only mild condemnation of Belge's conduct in moving Ms. Hauk's skull to photograph it, stating that alteration or concealment of physical evidence could constitute obstruction and even if done without ill intent could create the appearance of impropriety. NY State Bar Ass'n Formal Op. 479. An attorney in Albany, New York, Jeffrey Chamberlain offered a contemporaneous defense of their conduct as well. Jeffrey F. Chamberlain, *Legal Ethics: Confidentiality and the Case of Robert Garrow's Lawyers*, 25 BUFF. L. REV. 211 (1975).

¹⁸ *Philosophical Legal Ethics*, *supra* note [n] at 364.

¹⁹ *Still Alive*, *supra* note 3, at 24.

his work that kept Garrow out of jail Armani claimed not to know them. He gave an anodyne recitation of the Garner and Lutz charge, omitting his visits to the victims, and claimed to have believed Garrow was innocent of the molestation charge,²⁰ though as noted above, Garrow had concluded that he was guilty of the molestation charge and instructed his wife to tell Armani, which she apparently failed to do. As Armani's book put it, "if Garrow had killed that kid in the Adirondacks, he had been free to do it in part because, in representing his client's interests to the best of his ability, Frank Armani had been instrumental in allowing him to walk the streets."²¹ Testimony at trial showed that it was the pressure of the impending arraignment on the molestation charge that made Garrow snap and led to his killing spree.²²

A strand of the standard philosophical defenses of criminal representation seek to render facts such as these irrelevant by subsuming them in essentially consequentialist propositions about the injustice of the criminal justice system and of society more generally.²³ The defense resolves a series of essentially political propositions about the supposedly all-powerful state or excessively punitive legislatures or prosecutors.²⁴ But there is no logical relationship between aggressive defense lawyering in a particular case and either the cause or cure of injustice in the criminal justice system generally.²⁵ On purely consequentialist grounds there is good reason to believe the defense threatens to undermine itself to the extent individual acts of defense work may provoke backlash through democratic means. Negative public reaction to the successful insanity defense of John Hinckley for the attempted assassination of President Reagan exemplifies the point,²⁶ as does opportunistic political use of cases in which parolees commit crimes.²⁷

Nor are depictions of the government as some all-powerful Leviathan persuasive. Parole officials and judges in New York were part of the government, and Armani played them like a fiddle. If one has a parole system, or works within it, or even worse, believes in it, one will want to believe it serves a purpose and does some good. One

²⁰ *Privileged Information*, *supra* note 3 at 19–20.

²¹ *Id.* at 19.

²² *Supra* notes 106–107.

²³ Such arguments are well presented in Barbara Allen Babcock, *Defending the Guilty*, 32 CLEV. ST. L. REV. 175, 179 (1983–1984), and Abbe Smith, *Representing Rapists: The Cruelty of Cross Examination and Other Challenges for a Feminist Criminal Defense Lawyer*, 53 AM. CRIM. L. REV. 255 (Spring 2016).

²⁴ Most of which I basically agree with.

²⁵ The classic critique is William H. Simon, *The Ethics of Criminal Defense*, 91 MICH. L. REV. 1703 (1992).

Available at: scholarship.law.columbia.edu.

²⁶ Peter W. Low, John Calvin Jeffries, Jr., Richard C. Bonnie, THE TRIAL OF JOHN W. HINCKLEY JR. 117 ("The acquittal of John Hinckley shocked and angered the American public.")

²⁷ Peter Baker, *Bush Made Willie Horton an Issue in 1988, and the Racial Scars Are Still Fresh*, N.Y. TIMES, Dec. 3, 2018, <https://www.nytimes.com/2018/12/03/us/politics/bush-willie-horton.html>. Professor Simon makes essentially this point with respect to police practices. Simon, *supra* note [N] at 1711–1712. He refers to demagoguery, though the baseline for such an assessment is obscure.

will want there to be success stories. And one might be loath to give up on one of those stories, particularly if one (or even the system generally) has bought into the story for years. That would mean admitting a mistake, perhaps incompetence, or even that the whole idea is suspect.²⁸ Those are unpleasant conclusions for any bureaucracy. They explain why Garrow was free to do what he did. They are not consistent with the idea of an all-powerful government.

When Garrow abducted Lutz and Garner, and especially when Garrow molested the little girls, Armani could have acted differently. After the molestation arrest Armani could have effectively acquiesced in revocation of Garrow's parole. At a minimum he could have chosen not to impugn (with essentially no foundation) the honesty of the girls Garrow molested. If he had learned all the facts, as he said was his practice, and his reason for locating Ms. Petz and Ms. Hauk, he would have known they were telling the truth.

Would that have fulfilled Armani's positive-law obligations? Probably not. Would it have broken faith with Garrow? Of course. Would Alicia Hauk, Susan Petz, David Porter, and Philip Domblewski be alive? Almost certainly. Would anything bad have happened to Frank Armani? Almost certainly not. He and Belge humiliated Garrow, forced confessions, revealed privileged communications in open court, and did so on a record confirming that they had not prepared Garrow to testify. The result was an ethics opinion praising them. It is true that they were not praised for their trial conduct, but neither were they condemned. They were praised by the bar only for the things that outraged the public.²⁹

One might respond to this point by saying that acquiescence would have betrayed the law to which Armani owed, in Brad Wendel's framework, fidelity.³⁰ Or, to adapt Justice Scalia's phrase, Armani could not ride with the robber while rooting for the cops.³¹ But the moral value of fidelity derives from the moral value of the underlying rules. Laws coordinate but coordination alone has no moral valence. Deviations from the law may improve it, and the law is malleable.

The confidentiality rule prevailing at the time did not allow for disclosure to avoid substantial bodily harm, yet both Armani and Belge were clear that they would have disclosed Susan Petz's location if they had found her alive.³² Would that have been

²⁸ Professor Simon captures this point well:

"It is more plausible to portray the typical defendant as facing a small number of harassed, overworked bureaucrats. Of course, state agencies can focus their resources on particular defendants and, when they do so, their power can be formidable. But the state cannot possibly focus its power this way on all defendants or even most of them."

Simon, *supra* note 238, at 1707.

²⁹ To repeat, he ended up at least acceding to Belge's probable breaches of duty anyway.

³⁰ W. Bradley Wendel, *LAWYERS AND FIDELITY TO LAW* (2010).

³¹ Rankin v. McPherson, 483 U.S. 378, 394 (1987).

³² *Still Alive*, *supra* note 3, at 24 (Armani stating that they visited the site of Susan Petz's murder in part out of concern that she might be still alive).

unfaithful? One could argue, as Belge did,³³ that if Ms. Petz had been found alive disclosure would have been permissible to stop a future crime, presumably on the theory that though Garrow's actions were in the past her death would create a new crime, homicide, on top of the many she had already suffered. That is a plausible argument,³⁴ though it does not quite fit with the text permitting disclosure of "[t]he intention of a client to commit a crime and the information necessary to prevent the crime."³⁵ But if that is what had happened the risk of discipline would have been zero—the bar would never have had the guts to take such a formalistic approach—and once the interpretive camel gets its nose under the tent all sorts of things are possible.

The fidelity concept must confront head on a question the Lake Pleasant case presents nicely: is the constant and true fidelity shown by Edith Garrow, who knew who her husband was and quite a lot of what he did, really the measure of ethical lawyering?³⁶ No. Neither is it the case that to disregard the formal duties of defense counsel would have displayed disdain for Armani's fellow citizens, as the fidelity concept would have it.³⁷ What might such disdain look like? Impugning the veracity of the girls Garrow molested with the goal of turning him loose on those fellow citizens, for a start. One might argue that this is indifference—professional indifference at that—but how is that different from disdain?

Of course, this question is tainted by hindsight and to that extent unfair. Had Garrow not gone on a murder spree it would not arise. And one can tell tales about the poor receiving less justice than the rich, or the camel's nose under the tent, or the risks of lawyers playing God; there is some truth in each tale. Some. There is enough truth to say that Armani was not required to pull his punches and let Garrow's parole be revoked, but there is not enough truth to condemn him if he did. Even without hindsight Armani had enough information to know the risk Garrow posed. Armani had discretion and he used it. And that is enough to say that he is morally accountable for his acts. Everyone is accountable for their acts, if only to themselves.³⁸ The point is so obvious the only surprising thing is that such effort is spent trying to deny it. The myth of the case casts Armani as a hero, a latter-day Atticus Finch, serves in part to divert attention from these facts.

³³ TEACHING PROFESSIONAL RESPONSIBILITY: MATERIALS AND PROCEEDINGS FROM THE NATIONAL CONFERENCE, *supra* note 48, at 321.

³⁴ Left unresolved in *McClure v. Thompson*, 323 F.3d 1233 (9th Cir. 2003).

³⁵ DR 4-101(c).

³⁶ Wendel engages with the marital metaphor in W. Bradley Wendel, *Legal Ethics Is About the Law, Not Morality or Justice: A Reply to Critics*, 90 TEX. L. REV. 727, 731 n.18 (2012).

³⁷ *Id.*

³⁸ I do not agree with Professor Freedman's argument, later in his career, that lawyers have a moral obligation to justify themselves to anyone else. Monroe H. Freedman, *The Lawyer's Moral Obligation of Justification*, 74 TEX. L. REV. 111 (1995), scholarlycommons.law.hofstra.edu. His argument focused on a lawyer's choice of client rather than tactics once a choice was made, but there is neither a logical nor a pragmatic basis for drawing the line there.

Perhaps for this reason Armani described his conception of his role in religious terms. He explained his decision not to disclose by reference not to the law, which he did not know, but to his oath “to defend the Constitution of the United States, the Constitution of the State of New York, and to keep inviolate the secrets and communications of our clients. And that’s what we went by. That’s ... That oath was a sacred oath to us.”³⁹ This framework places a kind of moral exponent on the duty of confidentiality. Whether that suffices is a subjective question. It does little for nonbelievers, and it had its limits for Armani, too.

At the 2010 symposium a woman stood to address Armani: “I’m Alcia Hauck’s sister.”⁴⁰ She described the pain her family felt and said she was moved to speak because Armani mentioned that the case caused him to miss his annual ski trip in Europe. Armani had no answer for the pain he caused Ms. Hauk, and to his credit he never tried to offer one. She was an indirect victim of Garrow’s crimes, and Professor Smith eloquently described defense counsel’s relation to victims: “Defense lawyers do not get to apologize—no matter how much we may want to. To do so would be narcissistic and vain. Victims of serious crime get to hate us. It is the least we can do for them.”⁴¹ That was particularly true of Alicia Hauk, whom Garrow killed as the stress of his molestation arrest multiplied, and by extension is true of her sister.

Symposia, accolades, and a story about systemic justice all may help a lawyer reconcile the requirements of a role with its consequences, but at the end of the day they are just stories. They either work for an individual or they don’t. There is nothing else. The profession may give you a cape, but that doesn’t mean you can fly. To his credit, Armani never pretended otherwise. The standard criminal defense story, and his assimilation of that story to his faith, worked for him. That was enough for him, which means the story sometimes works and is therefore useful. Which is different from being true.

C. Animal.

It is a tenet of modern defense-oriented jurisprudence that it is improper for a prosecutor to compare a criminal defendant to an animal. Doing so is most improper when the defendant is a member of a minority group; such a comparison is thought to heighten the risk that jurors would perceive the defendant as “other” and thus be more likely to convict.⁴² Race was not an issue in Garrow’s case—he and his victims were White—but Belge’s closing argument repeatedly alluded to Garrow as a beast. (Belge

³⁹ *Still Alive*, *supra* note 3, at 29.

⁴⁰ TRACY, *supra* note 3, at 329.

⁴¹ Abbe Smith, *Representing Rapists: The Cruelty of Cross Examination and Other Challenges for a Feminist Criminal Defense Lawyer*, 53 AM. CRIM. L. REV. 255 (Spring 2016).

⁴² *E.g.*, Mary Nicol Bowman, *Confronting Racist Prosecutorial Rhetoric at Trial*, 71 CASE W. RES. L. REV. 39 (2020), scholarlycommons.law.case.edu; CAL. PENAL CODE § 745(h)(4) (defining “racially discriminatory language to include language that compares the defendant to an animal”).

softened the allusions by framing them as Garrow's own self-perception—but it was not much softening.) It fit with Belge's conception of the insanity defense—Garrow's insanity was so pronounced that he was effectively inhuman and thus not responsible for his actions—but the tactic was striking. It also raises two questions: was there an essential humanity to Robert Garrow, and how might such a question be answered? What criteria would be applied?

This question identifies a more nonconsequentialist strand to the standard defense of criminal defense practice. It is a strand that insists—essentially by stipulation—that there is an irreducible dignity to all persons that each of us is morally obliged to respect. Or, what comes to the same thing, that each of us is morally obliged to treat all persons as if they possess such dignity even if we disagree. Professor Freedman tied his belief in these principles to his faith and the civil rights tradition.⁴³ Stipulation is a weak form of persuasion, however, and one might be excused for finding dignity or humanity lacking in Robert Garrow. It is a matter of perspective. As with most foundational beliefs, discussion reaches the point of diminishing returns quickly.

There are a lot of ways to view Garrow. One of them is that Garrow was a sly and manipulative monster, Belge knew it full well, and he therefore treated Garrow as an object to be manipulated for his own good. Another is that Garrow's simpering and weeping on the stand were real—he was a shattered soul except when knifing or raping others. (I don't buy it, but the story could be told that way.) Still another is that Garrow was a tragic figure whose mistreatment wounded him so profoundly that normal behavior was beyond his reach. My point is not that any of these is the "right" story, but rather that there is not much to choose between them. Nor is there any strong reason either to accept or reject the claim that Garrow was an animal lacking in human dignity. From the perspective of a trial lawyer such as Belge, it would not matter.

A story reported by journalist Jim Tracy is relevant. He wrote that a young journalist in New York (who asked to remain anonymous) signed a contract with Garrow to write Garrow's life story. The journalist wanted to focus on whether Garrow might have turned out differently had his youth not been so horrid. The journalist recounted:

He told me how he drove [Susan Petz] to Witherbee and pitched a tent on a mountain just above where his parents lived. He then told me about stabbing her and throwing her body in the nearby shaft. He said after that he drove back to Syracuse and got his wife, and brought her to the exact same location where he had left the tent up. He told me how he and his wife had sex less than 100 feet from where the girl lay dead. 'What kind of guy would do a thing like that?' Garrow said with a hearty laugh.⁴⁴

⁴³ *Still Alive*, *supra* note 3, at 23.

⁴⁴ TRACY, *supra* note 3, at 334. The story is double hearsay, and it has a feel of a story too bad to be true. But a lot of Garrow's case reads that way, and the worst parts were confirmed.

Why would any sane professional ethics standard *require* a person to subordinate their will, talents, and morality to act as a mere mouthpiece for someone like that? The best argument is that to accept a client is effectively to promise them loyalty and fidelity. Probably most clients have little understanding of the default rules of representation, but the reliance argument has the moral force of at least an implied promise. But the contract framework is weak support for such a requirement. It raises the prospect of efficient breach, for example, which returns us to the question whether moral subordination should be compulsory. Sure, one could choose to subordinate one's will to a Garrow, relying on one of many potential professional narratives, as Armani did, but to require it? That's not obvious, in no small part because the narratives are so weak. And subordination was not part of Belge's character.

Perhaps not surprisingly, the profession doesn't require subordination, not really. If it did the bar would not have circled the wagons in Lake Pleasant case. The rules function to prop up the narrative, not because it is true, but to help lawyers who need to rely on it. Lots of them do good work, and they need all the help they can get. **D. It's Complicated.**

Belge was a fighter. To borrow from *True Detective*, he seems the type of man "would pick a fight with the sky, he didn't like its shade of blue." Representing Garrow gave him something to fight about, and he fought everyone—Armani (literally), Garrow, the prosecution in Garrow's case, the DA in Syracuse—everyone. The idea that Belge should spend his time and talent empowering Garrow or acting as a mere mouthpiece for him, rather than fighting the government, probably would have seemed absurd to Belge. Belge's work reflects the ethos Barbara Babcock articulated so eloquently when she wrote of the role ego and adrenaline play in criminal trial defense. Writing of a case in which she used a flimsy insanity argument to secure an acquittal of a factually guilty defendant, who congratulated her on the result, Professor Babcock wrote "Geraldine was right. The case became my case, not hers."⁴⁵

To paraphrase Professor Butler, it's complex. To say that trial is exciting, that one gets a rush out of doing something one is good at, that it's fun to fight and fun to win, that sticking it to insufferable, self-important pedants (many prosecutors, in the view of many defense lawyers) is satisfying,⁴⁶ that flipping the bird to "the man" is its own reward—all that sounds worse than saying one is combatting poverty, protecting dignity, righting the imbalance of an unjust system, or something along those lines. It's just that the logic of those stories is so poor. The best academic works on this point, such as those of Professors Babcock and Smith, acknowledge the point, while still defending the broader social narratives. Professor Babcock was likely right to say that "the fundamental mind-set of most criminal defense lawyers toward defending the

⁴⁵ Barbara Allen Babcock, *Defending the Guilty*, 32 CLEV. ST. L. REV. 175, 179 (1983–1984).

⁴⁶ It is important to exclude Norman Mordue from this description. He and Belge were well-matched, perhaps because of their respective military experience. Mordue and Belge fought each other hard during trial, but Mordue did not think Belge had done anything wrong. TRACY, *supra* note 3, at 288.

guilty is one of staggering indifference to the question.”⁴⁷ That was certainly true of Armani and Belge at trial. She also notes that “the indifference to their clients’ guilt takes its psychological toll on members of the defense bar,”⁴⁸ which sounds right as well.

Belge refused to subordinate his will.⁴⁹ Not from any notion of Garrow’s intrinsic dignity. No such claim could survive encounter with the transcript. He refused because independence was the essence of his craft. His ethos and character are immensely attractive. He was a true successor to Darrow. Belge, I think, was the better person, for as a lawyer he was never anything other than himself. But one may grow weary of fighting for the sake of the fight. Perhaps that is why the weight of the profession ultimately became too much for him.

⁴⁷ Babcock, *supra* note 258, at 180.

⁴⁸ *Id.*

⁴⁹ It is tempting to view his conduct through the prism of how one should treat a client with diminished capacity, but Garrow was not found incompetent, and did seem to understand what was going on (particularly if one believes his incoherence was an artifice). And the rule in such cases is to treat the client, insofar as possible, as any other client. MODEL RULES OF PRO. RESP. 1.14(a) (AM. BAR. ASS’N). I expect that is what Belge did—he would take control of any case as he took control of Garrow’s.

Conclusion

The roster of lawyerly conduct in the Lake Pleasant case doesn't look good. One lawyer who turned his client into a sex slave, two who treated their client as Garrow was treated, a grandstanding DA who indicted Belge and later resigned in disgrace: not much of an ad for the profession. That it has been taught as a tale akin to the deeds of Atticus Finch is a testament to the narrative skill of the profession. The case was more Quentin Tarantino than Harper Lee.

The best and truest thing ever written about legal ethics was (co)written by the indispensable Arthur Leff: "A lawyer is a person who on behalf of some people treats other people the way bureaucracies treat all people-as nonpeople."¹ The stories the profession tells itself are not true. There is no point dancing around the fact. But perhaps, in the end, they are necessary. Those for whom the stories work should be a little ashamed that they do. Those for whom they do not work have it harder. And nowhere was it truer than in the case of Robert Garrow.

Who is buried in the cemetery next to the wood where he raped and murdered Alicia Hauk.

¹ Edward Dauer & Arthur Allen Leff, *Correspondence*, 86 YALE L.J. 573 (1977).

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