

Martin Garbus, a partner at Davis & Gilbert, has taught constitutional law at Columbia and trial practice at Yale. *The National Law Journal* named him one of America's top 10 litigators. He's appeared before the U.S. Supreme Court, and *Newsweek* reported that he was the nation's "most prominent First Amendment lawyer."

But the 70-year-old lawyer is also a storyteller — both in and out of the courtroom. As he puts it, "a trial is like a play — with a beginning, middle and end — and you win the case when the jury accepts your story instead of that of the opposing attorney."

"You have to be the person the jury is watching," he explains, "and the person in control in the courtroom. You're telling a story and the jury has to believe your story." But this is no campfire tale. If you lose your audience, you lose more than just applause. In a capital case, you could lose someone's life.

Outside the courtroom, storytelling has taken on a different meaning for Garbus. He has written four nonfiction books, and not surprisingly, they're all autobiographical narratives of his life in the law. "I have no illusion that I'm a great writer or even a good writer," he says, "but I do have the illusion I'm truly a great trial lawyer."

"Each book seems to come out of some urge to look at what I've done over a given period of time," he says. *Ready for the Defense* covers his trial work; *Traitors and Heroes* tells the story of his human rights litigation across the globe; and *Tough Talk* delivers what ABC News anchor Diane Sawyer calls "a kind of First Amendment war journal, with free speech turf, the treasure and the prize."

Tough Talk also delivers plain talk on hard-hitting issues — like the impact religious groups have on freedom of speech. Garbus' defense of free speech — which he considers crucial to the health of the nation — has put him in conflict with an unexpected adversary: the Motion Picture Association of America. "As I tried cases," he explains, "I discovered the excessive influence of the Catholic Church and evangelical Christians on the MPAA film ratings," which can limit a film's commercial potential — or spell its death knell — by limiting the audience that can see it (with NC-17 and R ratings). "Through the MPAA, church groups have successfully limited depictions of sexual relations or the use of foul language in film — violating the First Amendment and infringing on free speech in this country."

In his next book, due out later this year, Garbus looks ahead and things don't seem much brighter: "The U.S. Supreme Court is going to make you forget the very meaning of the words freedom, privacy and civil rights. This is a court, like the Bush administration that appointed its new leader, that is committed to enriching the rich and impoverishing the poor."

According to Garbus, our moral compass is at risk elsewhere: as well, and he cites a case that at first glance bears little resemblance to the battles of *Tough Talk*. In fact, this was a case in which he fought against free speech, when he felt that this speech could actually subvert the intent of the First Amendment.

It all started one morning in 1973, when actor Robert Redford called to tell him he'd received in the mail a package of cigarettes called "Redford," manufactured by the Lorillard tobacco company.

Martin Garbus tells stories as good as those told by the entertainers he protects

ty. The package showed the sun rising above a rugged mountain terrain, with the Redford version of the Marlboro man — complete with dark blond hair and trim mustache — lighting up a cigarette that was supposedly "fresh as the wind."

"The thing that astonished me was the blatant lying by Lorillard," says Garbus. "The whole thing was preposterous. They had a picture of a blond guy standing in front of a mountain who looked like Redford with a cigarette named Redford, and claimed that it had nothing to do with Redford." The tobacco company also took a poll that showed that about 80 percent of Americans associated the cigarette name with Robert Redford, but it denied the existence of this poll in court. After about a year of discovery, Garbus found out about the poll, confronted Lorillard with it, and the company first claimed it wasn't relevant and then withdrew the cigarette from the market. Garbus describes it as business as usual for the industry: "Redford is an environmentally sensitive public figure and the company was obviously leveraging his name for a less-than-environmentally-sensitive product."

Redford credits Garbus with the rout of a seemingly invincible opponent. "I'd been told by everyone — including other lawyers — that the odds were stacked against me," he says. "They said, 'Don't waste your time taking on a giant tobacco company,' but Marty was undeterred. He took on the case and won it for me."

Garbus later sent the actor a package of the infamous (and now defunct) cigarettes. But like so many of Lorillard's customers, the souvenir was short-lived. As Redford explains, "Friends of my kids ended up smoking it."

While Redford cigarettes may have gone down in flames, the lawyer-client relationship lived on. "Over the years, I've always had great comfort in getting Marty's counsel," he says. "He's sort of rabbinical in his manner."

And that rabbinical manner has breathed life into more than just tobacco litigation. As Harvey Weinstein, founder of Miramax Films and co-chairman of The Weinstein Company, says, "continued on page 89"

continued from page 19 Company, puts it, "Marty is a man of incredible integrity and a dynamic champion of freedom of speech. In my mind, he is an American hero."

Garbus' entertainment clients also include actor Al Pacino and director Garry Marshall (*Pravly Woman*, *The Princess Diaries*). Garbus says that "with a client like Al Pacino, who, like me, grew up in the Bronx from a disadvantaged background, you can develop a closer bond based on your common experience." This common bond translates into common attitudes toward work as well, as Garbus notes that both men have given up major financial windfalls to pursue things they feel are more important. "For Al, it means doing the off-Broadway play *Salome* [for actor's minimum] instead of a \$10 million movie role with a gun in his hand. For me, it means going to court for fascinating cases instead of taking on lucrative cases for clients whose values I don't respect."

Marshall, who played hoops with Garbus in the Bronx when they were kids, says that his friend's roots in the law were planted at an early age. He can still remember young Marty's scary scowl as he stood guard over the Tootsie Rolls and Bazooka bubble gum at his father's tiny candy shop in the Bronx. Marshall made use of this in the film *Frankie and Johnny* in a scene where Al Pacino and Michelle Pfeiffer are at a used-book stall in New York's Union Square. Garbus makes his film debut as the proprietor of the stall, scowling at Pacino's hands as he peruses the books.

Marshall, who was the captain of their pick-up league basketball team, also remembers giving Garbus the benefit of his wisdom regarding a court of a different kind. His pivotal advice during their high school basketball days was "Don't shoot." Garbus took his advice and thus never scored a point. Marshall wound up rewarding Garbus years later in the 2004 movie *Raising Helen*, when the announcer at a basketball games yells, "GARBUS SHOOT, SCORES!" — making Garbus the only lawyer in the country to score more points in a single movie than he did in his entire high school basketball career.

Garbus' practice is hard to pin down, running the gamut from human rights to entertainment law to criminal defense. And that's just the way he likes it. "I'm not your typical lawyer," he says. "I don't play golf, I don't go to parties and openings, I don't go to legal conferences in Hawaii. I read about two books a week, and the world in which I live is basically a literary world rather than a political world."

That literary world, nonetheless, has intersected with the political arena. In 1964, barely 30 years old and five years out of law school, Garbus was thrust headlong into the political world for the first time. Defending legendary comic Lenny Bruce against obscenity charges, Garbus saw how social and political forces can shape legal proceedings — and destroy people's lives.

The central issue in the case was whether Bruce's social satire in a Greenwich Village nightclub — which included graphic language — constituted obscenity. If the defense could demonstrate any redeeming social value to his artistic expression, it would be enough to save the comic from going to jail. Eventually, Garbus' team did just that. But not in time for Bruce. Banned from working in New York and unable to make a living, the once-stellar satirist was bankrupt within a year of his conviction. Nine months later he was dead of a drug overdose. And 18 months after that, the conviction that led to his downfall was reversed. It was a tough case for Garbus at the start of his career, but he says it was even tougher on Bruce.

"In the final reckoning, Lenny was vindicated. His quaintly persistent faith that justice will somehow find its way was confirmed. But what he never quite understood was that even when it works well, the law often works slowly. Justice has a rhythm of its own ... Lenny just ran out of time."

The empathy that Garbus felt for Bruce at the outset of his career would never leave him. And it would find its voice again and again, as he went on to represent political dissidents from Andrei Sakharov to Nelson Mandela.

Even when defending the weak or the destitute, difficult moral questions can be raised.

"What happens in so many government prosecutions is that the jury gets confused by the complexities of the case," Garbus explains, "which is a problem for the prosecution." It's also a key tactical error by prosecutors who don't know how to present their case. And according to Garbus, the end of the story isn't pretty. "I've won cases because of this mistake where my client was guilty."

So how does he reconcile this outcome with his conscience? "I don't represent drug dealers or organized crime figures," he says, "but I do represent people who may have been involved in violent acts. I once represented a young man who killed someone while stealing money for drugs, and I got him off. Might he do it again if faced with the same situation? Perhaps. But there's another priority here, too, which is to prevent police brutality that can result in confessions of innocent people. It's very important to keep the police honest, and sometimes a case like this can help accomplish that goal."

As Garbus points out, the law is by nature highlighted by shades of gray. There's room for multiple interpretations — even (or perhaps especially) regarding the most divisive ethical issues. Critics may take issue with his stands, but he unapologetically says that there are many sides to every moral equation, and he tries to view the issues with an open mind to the truth.

This becomes evident as he delves deeper into the case at hand. Referring to the young man who killed while addicted to drugs, he says, "This kid grew up in a culture where opportunities are nonexistent, so he's unemployable" and beyond rehabilitation. "What he did was awful, but he alone does not bear responsibility for the crime — the society that trapped him in this environment shares responsibility as well."

The kid, whom we'll call Salvatore, was not exactly a poster child for the "soccer mom" set. Reared in Spanish Harlem, he was raised by a strict, loving old woman who took him in when he was about 12. He lived with her, on and off, until he was 20. Before that, he lived with his drug-addicted "parents." They were a two-income family: His mother worked as a prostitute and his father made a living as a thief (except for the two years he was in jail). In the end, like so many children, Salvatore was a study in contradictions — a gentle kid who was also a survivor on the mean streets of Harlem. "I'm not saying he was a saint — far from it," says Garbus, "but ultimately he was a product of an environment that could have led to the same results for any of us — including me."

Without empathy, of course, one can't make this intellectual leap. But this is precisely the leap that Garbus has made, and that puts him in a place far from the rarefied precincts of the law. Given his story — and the broad, inclusive boundaries of his life — this isn't hard to understand. As he explains it, since his mother died when he was barely 3 years old, "I understand loss and confusion and hopelessness ... so I can understand how, without the benefits I had, I could have ended up someplace like Salvatore." ♦