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Choosing Between Their Son and the Law: A Vermont Rape Suspect's Parents Went to Jail Rather than Testify Against Him. Their Case Tests the Limits of Family Loyalty and the Public's Right to Justice.

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Burlington, Vt. At first, authorities here responded in customary fashion to the report that reached them just before midnight on a bitterly cold Valentine's Day.

Police rushed to the snow-covered downtown street where a semiconscious woman lay on a frozen bed of pine needles. They studied the drops of blood on a nearby wall, the drag marks etched in the hard earth, the multiple injuries about the 23-year-old's half-naked body. They collected hair strands, empty Marlboro cigarette packages, a blue winter jacket. They tracked footprints. They appealed for witnesses. They questioned the victim. They held that blue jacket before television news cameras for all to see.

Only when the phone tips started trickling in did detectives and prosecutors vary from their well-practiced routine. Most of the callers simply identified Craig Yandow as the suspect in a particularly violent rape. One, though, added an intriguing detail: Craig, the anonymous voice advised, already had confessed--to his mother.

Craig, at age 25, still lived at home, in the nearby suburb of Williston. He worked for his father. What better witnesses for the state, it occurred to authorities, than his parents?

On the evening of Feb. 21, search warrant in hand, Burlington police detectives Tim Charland and Thomas Tremblay visited Arthur and Geneva Yandow's house. They asked them to describe their son's appearance when he came home late on Feb. 14; they asked them to reveal just what their son had confided about that night's events.

The Yandows, groping for a response, declined to provide this information.

You may be obstructing justice, the detectives warned. You may be concealing evidence. You may be accessories to a felony.

Still, the Yandows refused.

It took only 48 hours for the subpoenas to arrive. Chittenden County was commanding the Yandows to appear at an investigative proceeding and testify for the state against their son.

The Yandows studied the legal documents. He was a contractor, she the federal loan coordinator at Trinity College. They'd never seen such papers before. Nor had any other parent in Vermont, for no state prosecutor had ever played this particular card.

Circumspect in manner and appearance, natives of Vermont, raised in the Catholic Church, both in their early 50s, the Yandows chose not to lie. The Yandows chose not to deny they'd heard from Craig about the Valentine's Day assault.

We don't want to do this, the Yandows instead declared. We cannot testify against our own child.

"I can't betray my son," Arthur explained in sworn testimony. "I couldn't live with myself."

"I'd lose him forever," Geneva said. "I'd be the instrument of destroying my family and my son."

So began a wrenching, wide-ranging debate in Vermont that may never be fully resolved. Held in contempt of court after refusing to testify, the Yandows spent 41 days in jail. A judge released them in early May, but they eventually may be jailed again. Theirs is a case that promises to resonate long after the Valentine's Day rapist is convicted and sentenced.

How to weigh the sanctity of the parent-child relationship against the public's interest in learning the truth about crimes?

Should there be a parent-child confidentiality privilege?

Are you first a parent, or first a law-abiding member of a larger community?

"Home is the place where, when you have to go there, they have to take you in," Robert Frost famously observed in "Death of a Hired Man." That the lawyers for both sides claim those words support their position provides a telling sign of just how perplexing this matter is, and how far the Yandow case has transcended strict matters of law.

It is not only statutes and court rulings that citizens are presently debating in Vermont; it also is their deepest visions of the family.

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"This is not a proceeding that we went into lightly," the Chittenden County State's Atty. Scot Kline declared in court one morning. "But we believe it to be necessary. That's why we're here."

Just how necessary is a matter of dispute. Even though the rape victim recalled nothing about the assault, it can't be said authorities ever suffered from a dearth of evidence.

They started with the blue jacket, the footprints, the empty Marlboro packages. They collected vaginal swabbings; they located a witness who saw a thickly bearded man following a woman through downtown Burlington; they fielded a phone tip that identified the blue jacket's owner as

Craig. Then they visited him and found he matched the witnesses' description--but for the beard.

Yes, Craig allowed, he shaved the morning after Valentine's Day. Shaved it for a court appearance; he had a pending DWI, driving while intoxicated. That was all he had on his record--three DWIs.

The jacket? Yes, he'd worn a blue jacket the night of Valentine's Day. But it had been stolen from his truck. Around 9:30, while he sat in a bar.

Armed with a court order, detectives returned to take photos of Craig's body. Scratches on the shoulders and arms, abrasions on the knees--to the detectives, they looked consistent with injuries that would be sustained while struggling atop a woman on the frozen ground.

A day later, another tipster called, linking him to the rape. Then came the call claiming he had confessed to his parents.

When detectives arrived at the Yandows' house that night, they found two empty Marlboro packages in Craig's bedroom. They also found a pair of boots in the garage that appeared to match the tread pattern found at the scene of the attack.

Who owns the boots? Sgt. Thomas Tremblay asked Arthur.

He stammered, cleared his throat, inquired as to their size. "Oh, those would be mine," he finally said.

Sitting in the county prosecutor's office, Kline weighed his options. He expected that the parents could provide critical evidence; the state didn't have another source for the suspect's possible admissions, or how he looked after the assault. In time, they'd have lab results--the swabs, the footprints, the strands of hair. They didn't have those results now, though.

On the streets of Burlington, an agitated community was marching and staging vigils. This had been a particularly violent assault; the victim had sustained a fractured skull and bloodied left eye. She'd spent several days in a hospital; she still suffered from a loss of taste, smell and short-term memory.

The passage of time meant a likely suspect remained free. It meant memories of other witnesses were fading. It meant evidence might disappear. It meant a rapist might attack again.

Kline decided not to wait for lab results, decided not to rely only on his witnesses and phone tipsters.

It would be highly unusual to command the Yandows to testify against their son. It would put the parents in an exceedingly difficult position. Vermont, though, didn't recognize a parent-child confidentiality privilege. In fact, courts across the country almost universally had rejected such a concept. That Craig was an adult made a claim of privilege even more dubious.

Yes, the parent-child relationship ought to be sedulously fostered. It seemed to Kline, though, that learning the truth about a heinous crime easily outweighed any concerns over harming family relationships.

Besides--who could say that betraying your child would truly damage your relationship with him?

Wouldn't parents and children still love each other despite the breaches?

Was not, in other words, Robert Frost right? Was it not true that "home is the place where, when you have to go there, they have to take you in?"

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The deliberate, quiet-spoken couple shifted in their chairs. They were sitting in the office of their defense attorney, Paul Volk. Their son faced a possible life sentence if charged and convicted of aggravated sexual assault.

We don't want to do this, Arthur said finally. Is there a legal way not to have to do this?

Volk studied the Yandows. They were not the usual sort he represented; accused drug dealers were more commonly his clients. Married 31 years, they looked almost like brother and sister, each with short brown hair and plain clear-plastic eyeglasses. Arthur had been an altar boy through 10th grade; Geneva (Jeanie) had attended catechism classes and church summer schools. They lived in a brown frame home on a 2.5-acre lot in a rural subdivision that Arthur had developed a decade ago. Their house stood on a bare rise overlooking McJay Drive, which Arthur had named for his family. McJay formed an acronym: Mark (their elder son). Craig. Jeanie. Arthur. Yandow.

Craig always had lived with them, the Yandows explained, except for one year when he was at a special college. Craig suffers from dyslexia. Craig has learning disabilities.

I very much love my child, Arthur said. I'd be destroying his life and my life forever. I'd be betraying myself.

Volk reflected.

Rules about the confidentiality privilege are both murky and controversial, for understandable reasons. Here, law professors point out, is one area where legal rules actually relate to the real world; they can change people's conduct outside the courtroom. They can affect how a wife relates to a husband, for example. Or how a child relates to a parent.

Judges and legislators, therefore, have hesitated to define too categorically what relationships merit a confidentiality privilege. Attorney-client, clergy-penitent and spousal confidentiality

privileges almost always get recognized, but most states and courts essentially decide other questions case by case. Doctor-patient privileges usually get recognized. Parent-child relationships almost never do.

The exceptions include a 1975 fatal hit-and-run accident in New York that involved an adult child, like Craig. The judge there waxed fairly eloquent--“A troubled young person, perhaps beset with remorse and guilt, turns for counsel and guidance to his mother and father. There is nothing more natural, more consistent with our concept of the parental role. . . . Shall it be said to those parents, ‘listen to your son at the risk of being compelled to testify about his confidences.’ . . . ?”

Higher courts had rejected this ruling, though, and other judges had ignored it. Vermont had never addressed the issue.

Volk saw only one option: Convince Vermont that the public’s interest in preserving close family bonds outweighed its interest in solving crimes. Then convince Vermont that confidentiality represented an essential element of the relationship between the Yandows and their son. Talk to Vermont, in other words, less about the law than about the value and character of family love.

Within days, the defense attorney had his position staked out.

I represent two deeply moral people who believe that family is the cornerstone of this country and themselves, Volk declared to reporters and judges alike. This would irreparably harm their relationship with their son. This won’t ever stop, the state will make the Yandows witnesses all the way through a trial. Craig’s lawyers in turn will have to attack the parents. Parents pitted against child for the duration, made adversaries by the legal system. We must not destroy families like this. We protect marriages by allowing spousal confidentiality. Decency commands that as a matter of public policy, we also protect families.

As he finished his legal brief, it occurred to Volk that by quoting a line from Frost, he could quite aptly capture the essence of his message. He began to write: “Home is the place where, when you have to go there, they have to take you in.”

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“When was Craig born?”

Arthur hesitated before answering the question posed by deputy state’s attorney Matthew Pawa. He was sitting on the witness stand at a hearing called in late February to decide whether the state could compel the Yandows to testify against their son.

“May 11, 1970,” Arthur finally replied.

“Are you sure? Please don’t look at the other witness for confirmation.”

“Yeah, I think so.”

“You think?”

“Yeah, I think so.”

“Are you sure?”

“No . . . “

So went the state’s inquiry into just how close a family the Yandows were.

Names of best friends, names of girlfriends, how often Craig shared secrets--all morning long, as many parents might, both Arthur and Geneva struggled over their replies. “I can’t think of them right off . . . Again, I’m absolutely terrible with names. . . . I like to think so, but you don’t always know . . . I’m guessing . . . “

In time, the prosecutor honed in on the central issue: Would betraying each other’s secrets destroy the Yandow family?

“If you disclosed a secret to Craig and Craig divulged that secret against your wishes,” Pawa asked, “would you still love Craig?”

Once again, the Yandows could not dissemble.

Arthur whispered his answer. “Yes.”

“Would you speak a little louder, please.”

Arthur appeared obviously distressed. “Yes, I would.”

“If Craig had disclosed a secret against your wishes, would you still let him live with you?”

“Yes.”

“If Craig shared a secret with you and you disclosed it, do you think he would still love you?”

“I think so.”

“If you disclosed a secret against Craig’s wishes that Craig had shared with you, would you still love him?”

“Of course.”

When her turn on the witness stand came, Geneva agreed utterly: Yes, she'd forgive Craig; yes, Craig would forgive her; yes they would still love each other. Yes, she repeated to each question. Yes, yes, yes.

The outcome wasn't hard to predict. "Disclosure would not adversely affect the relationship between the parents and child," Judge Edward J. Cashman ruled at the hearing's end. "Both parents are very clear about that . . . I certainly understand the parents' situation and feel very strongly for their predicament. I think it is a difficult predicament. But I don't see it. I don't see it."

Nor did the Vermont state supreme court, where the Yandows filed an appeal.

The parents have not proved confidentiality was essential to their relationship with their son, five justices ruled unanimously in a precedent-setting decision in late March. Even if they had, Craig was a competent adult who need not have confided in his parents in the first place. "The relationship between an adult child and a parent is not one requiring confidentiality. . . . It is not this court's, or any court's, duty to encourage adult children to share confidences with their parents."

Days later, in his Burlington courtroom, Cashman asked to speak to Arthur and Geneva separately, in each case without their lawyer. When they emerged from those five-minute sessions, he issued his order.

"Arthur and Geneva Yandow willfully refused to answer certain questions . . . after a direct order from the court," the judge declared. "The court orders them held in custody . . . until such time as each will answer said questions."

Snow blanketed the nearby mountains on the day Arthur and Geneva were taken to jail. Craig went skiing.

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Although it would not become public knowledge for weeks, the state by early April had virtually made its case against Craig even without his parents' testimony. In the first days of that month, five new witnesses came forward--acquaintances who all said they'd heard Craig tearfully confess in some form or another.

Yet with the Yandows now securely imprisoned, the proceedings against them continued. State's Atty. Kline, known as a particularly careful and tight-lipped prosecutor, won't say precisely why. Perhaps he thought his case still wasn't strong enough; perhaps he wanted to settle a fundamental legal issue; perhaps he was trying to force Craig to confess.

Or perhaps, sensing the public's outrage, the prosecutor wanted the parents of a rape suspect to display as much loyalty to their community as to their son.

Elsewhere in the country that very week, after all, another family was quite prominently giving up its own. Just five days after the Yandows were led off to jail, federal authorities, heeding David Kaczynski's warning that his brother might be the Unabomber, made their arrest in Montana.

It's not the same, insisted defense attorneys connected to the Yandows; the Feds needed the tip from the Unabomber's brother, but the police don't need the Yandows. It's easy to say rat out your kid, but wait until you're in that position. Wait until it's your kid.

Here and there, a few people agreed--"the state shouldn't force the Yandows, that's how the Gestapo started"--but only a few. The vicious assault, the ski trip on the day his parents were jailed, his temper and drinking, certain barroom threats he started making against potential witnesses--even Craig's friends found themselves shaking their heads. So did the Roman Catholic Diocese of Burlington, which swore in affidavits and testimony that neither Catechism nor Canon Law supported the family's stance. So also did a cascade of voices in the readers forum of the Burlington Free Press:

"How could a son let his parents sit in jail?"

"This is not a 5-year-old who stole candy. . . . If you protect him, you are as guilty as he is. . . ."

"This is not betrayal of your son; it is loving him and helping him with his problem. . . ."

"What if he does it again? How could they live with themselves. . . .?"

"I would cry all the way to the jail, but you've got to think about humanity as a whole."

Through it all, Arthur and Geneva remained unbent. Brought into court for a review after one month in jail, they sounded even more certain than before. Shackled in leg irons, they sat side by side during the three-hour hearing, holding hands, united in their private commitment, an indelible and undeniable confirmation of Frost's words.

"By being forced to testify," Arthur murmured, speaking just above a whisper, "I would lose everything that means anything to me . . . I myself, I would never be the same. I could never live with myself . . . I feel like I'm being told that . . . my family isn't worth anything . . . I cannot do what's being asked of me, I cannot under any circumstances. I never will."

"For me to go against my children," Geneva added, "would be to say that I was the devil, and the devil is evil. . . . What it would do to me would be to destroy me . . . I love my child more than I love myself, and it would destroy me . . . I don't believe you give up your children. Children are gifts of God."

Cashman remained as unyielding as they. "The court finds that further reflection in confinement will lead them to reevaluate their stance . . ." he ruled at the hearing's end. "The Yandows may seek an annual review of the contempt proceedings. Additionally, of course, they may

purge themselves of contempt at any time by agreeing to comply with the court order.”

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It was a molecular biologist, rather than a lawyer, who finally rescued the legal system and the Yandows from their unresolvable quagmire.

Just before 10 on the drizzly morning of May 8, phones rang in lawyers’ offices throughout Burlington. The police finally had arrested Craig, without benefit of his parents’ testimony. Craig, all parties were informed, would be arraigned late that morning.

Detectives, it soon emerged, had taken blood and pubic hair samples from him three weeks before. On April 17, the state police lab, using one type of test, had concluded that spermatozoa recovered from the vaginal swabs were “consistent to have originated with Craig Yandow.” Then, late the day before Craig’s arrest, the last piece of the puzzle had arrived from a private forensic lab.

Using a more sophisticated type of DNA test, a molecular biologist there also had concluded that the recovered spermatozoa was “consistent to have originated from Craig Yandow’s DNA blood standard.” The percentage of the Caucasian population with these results, the scientist said, was about 1 in 950,000.

Shortly before noon, officers ushered Craig into the Vermont District Court, where he was arraigned on a charge of aggravated sexual assault. He pleaded not guilty, and was lodged for lack of \$ 150,000 bail in the Chittenden Community Correctional Center--the same institution that had been home to his parents for 41 days.

Hours later, Arthur and Geneva walked free from that facility, their contempt charge lifted by Cashman after the state relented to a defense motion.

“At least my mom is out for Mother’s Day,” Craig told one of the acquaintances who’d revealed his confession. “You probably did me a favor, you know. . . . It’s over now.”

Only for the time being, though.

Depositions still loom, then a trial. Both offer fresh chances to grind private rules of family into public rules of community.

“We do anticipate serving subpoenas on the parents,” State’s Atty. Kline advised Cashman on the day the Yandows left jail. “We do still want them to come in and testify.”

Cashman raised his eyebrows. “We could be revisiting this?” he asked. “In a different form, the same issue?”

“Yes,” Kline replied. “Yes, we could.”