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ATTORNEYS OF THE YEAR

Ellyn Garofalo

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The Recorder

A week after Playboy model Anna Nicole Smith died of an accidental drug overdose in 2007, Los Angeles attorney Ellyn Garofalo got a new client: Sandeep Kapoor, Smith's family doctor.

Smith's death set off a media firestorm, and Kapoor was soon charged with excessively prescribing drugs to an addict, and acting fraudulently to obtain those prescriptions. Smith's boyfriend and a psychiatrist faced criminal charges as well.

Garofalo argued during trial last fall that Kapoor helped Smith obtain the drugs for legitimate medical reasons, not to feed an addiction. The jury agreed, clearing Kapoor on all six felony counts, even as they convicted the other defendants on several counts.

At the time, L.A. County Superior Court Judge Robert Perry called the verdict "a stunning repudiation of the prosecution's case." (This January, Perry threw out all the guilty verdicts except for one misdemeanor conviction for Smith's psychiatrist.)

Garofalo said it was an easy decision to go to trial: There was no plea offer on the table. "The DA's office seemed intent from day one on trying this case," she said. "In my view, it was to garner publicity. It was a show trial."

Pretrial publicity was not favorable. A gossip blog, for example, referred to Kapoor as "one of the shady doctors" who "claims prosecutors have no evidence he conspired to pump her full of drugs."

Prosecutors contended that the defen-



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JASON DOY

dants were swayed by Smith's celebrity, and wanted to preserve their insider status.

But during the 10-week trial, Garofalo pointed out that the alleged crimes were being prosecuted based on rarely used statutes that were inconsistent with California Medical Board guidelines. She also educated the jury on pain management, and detailed Smith's health conditions. She stressed that her client was treating real medical conditions in good faith.

Garofalo says she distinctively remembers early in the trial when the tone of the media stories began to turn: "The press started to become more sympathetic," she said. "It was like having a second jury — it mirrored the jury shift."

But that didn't mean the case wasn't challenging, especially with an "aggressive" prosecution, she said. Garofalo made the choice not to put Kapoor on the stand. "It's always a risk to put a defendant on the

stand in a criminal case," she said.

Instead, she relied on expert testimony for evidence. After 13 days of deliberations and 42 pages of instructions, the jury ruled Kapoor not guilty.

Garofalo, 64, grew up in New York, but moved to California 40 years ago. She worked in the television industry as Johnny Carson's assistant on "The Tonight Show" before leaving work to raise her children. Years later, a visit with her son's college counselor spurred Garofalo's own interest in continuing her education.

"It was something that always interested me, but I got married fairly young," she said. "It seemed like the

right time to do it."

She attended Pepperdine University School of Law, graduating in 1992, and worked for O'Neill, Lysaght & Sun before joining Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor in 2003. At Liner, Garofalo spends half of her time on white-collar criminal work and the rest on complex business litigation.

Currently, she is representing Roger Peikin, the co-founder of the money-management firm Aletheia Research and Management Inc., in a lawsuit asserting claims arising from his ouster.

And despite the 2010 victory, Garofalo's work with Kapoor isn't over yet. The medical board has subpoenaed him in a separate investigation, and Garofalo says she expects to litigate the same issues, again.

The stakes in the case are well worth fighting for, she said: "It's gratifying to work on a case that raises such serious issues."



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