

An artist's rendering of
Tacopina during the
Abner Louima trial

SKETCH BY JANE ROSENBERG

KING *of the* courtroom

BY TIMOTHY DUMAS

**JOE TACOPINA IS THE
HOTTEST YOUNG CRIMINAL
DEFENSE LAWYER IN NEW
YORK. HOW DID HE GET
THERE? BY WINNING CASES
PEOPLE SAID HE'D
NEVER WIN.**

*W*hen I get into the well of a courtroom, I smell blood a mile away. And I will bring you right there. And I will do it slowly and methodically. And I will make sure the jury sees your innards coming out of you."

This is criminal defense lawyer Joe Tacopina talking about cross-examining witnesses. He is sitting on the patio behind his handsome new clapboard house in Westport — yes, he is your neighbor. He is a striking man of thirty-six with a straight chiseled nose and thick brown hair combed back off his face. "This is not a God complex, believe me," he continues. "Some people go to Las Vegas and gamble. I'm up there taking a shot with a witness. I have some guy's life literally in my hands. This is the scary part, but it's also the part I sort of get off on."



When not battling in the courtroom, Tacopina is often found on television commentating on the latest legal controversy. Here he is pictured in the MSNBC studio of *The Abrams Report*.

Tacopina does not credit himself with a superior intellect or an encyclopedic knowledge of the law; rather, he explains his rapid ascent in the New York criminal bar as a lion might explain its ability to hunt. "Sitting here right now, I'm probably of regular, if not below average, intelligence," he says. "I like to think I have some common sense. But when I'm in the well of that courtroom, when that door closes behind me, my IQ goes up ten times. Harvard-educated U.S. attorneys, I'm toying with them. I've seen the most brilliant U.S. attorneys, who on paper run circles around me, who can make legal arguments that it takes me ten minutes to catch up to — but when the bell rings and the twelve are in the box, the people who work for a living and drive buses and have kids, all that, they're in my backyard."

This is not idle talk. Tacopina's record confirms his adroitness at winning acquittals (or at least best possible results) for persons considered public villains. His first such client was Richard Sanfilippo, one in a ring of cops accused of stealing drugs, guns and cash from drug dealers as well as innocent civilians. The cops allegedly played with their loot — snorting cocaine, firing guns, consorting with prostitutes — at an

abandoned morgue refrigerator factory in Brooklyn. Five of the so-called "Morgue Boys" confessed in 1995. Even with their testimony working against him, however, Tacopina won an acquittal for Sanfilippo.

Since then, Tacopina has successfully defended mob figures accused of murder, models accused of stalking, Orthodox Jews with ruinous stripper habits, newsmen accused of impersonating officials at Ground Zero, and — his specialty — police officers accused of violent acts. This last category has landed him in the white-hot glare of both the Abner Louima sexual torture case and the Patrick Dorismond killing, two of the most inflammatory and polarizing events in New York City's recent history. Despite a blizzard of bad publicity, neither Thomas Wiese, accused of a preliminary assault on Louima, nor Anthony Vasquez, an undercover cop whose gun went off in a tussle with Dorismond, saw a single day in jail.

Somewhat by accident, Tacopina has also made a name for himself as a civil rights lawyer. Police officer Elizabeth Bryant hired him after fellow Bronx officers taunted and threatened her for being a lesbian. Tacopina sued the city and won a [REDACTED] settlement. "This was a case where people were laughing at me. They were laughing at me! And we slaughtered them at trial." Then came the famous case of Leilani Rios. Kicked off the track team at Cal State-Fullerton for working nights as a stripper, a California lawyer advised her

to hire Tacopina, “a press savvy guy who’s not afraid to call someone a sexist pig.” From the set of the *Today* show, Tacopina demanded Leilani’s reinstatement. Shaken by pro-Rios public opinion, Cal State buckled. Then Tacopina applied the thumbscrews: The school must extend a public apology, in the press. The next day in *USA Today*, Cal State apologized for its “misjudgment.”

With his unusual array of cases, Tacopina has become easily the most visible young lawyer in New York City. Almost every week one can find him on cable TV news shows — *Larry King Live*, *Hardball*, *The O’Reilly Factor* — sometimes with operatic volume and much eye-rolling, depending on the recalcitrance of opposing commentators. “The guy is just made for television,” says Phil Griffin, vice president of prime-time programming at MSNBC. “He’s got the looks, he’s got the voice, that all plays into it, but it’s really his authority and his honesty that are so refreshing. There are guests who fill the time with banter, and there’s Joe, who’s like, ‘You’re wrong!’ ”

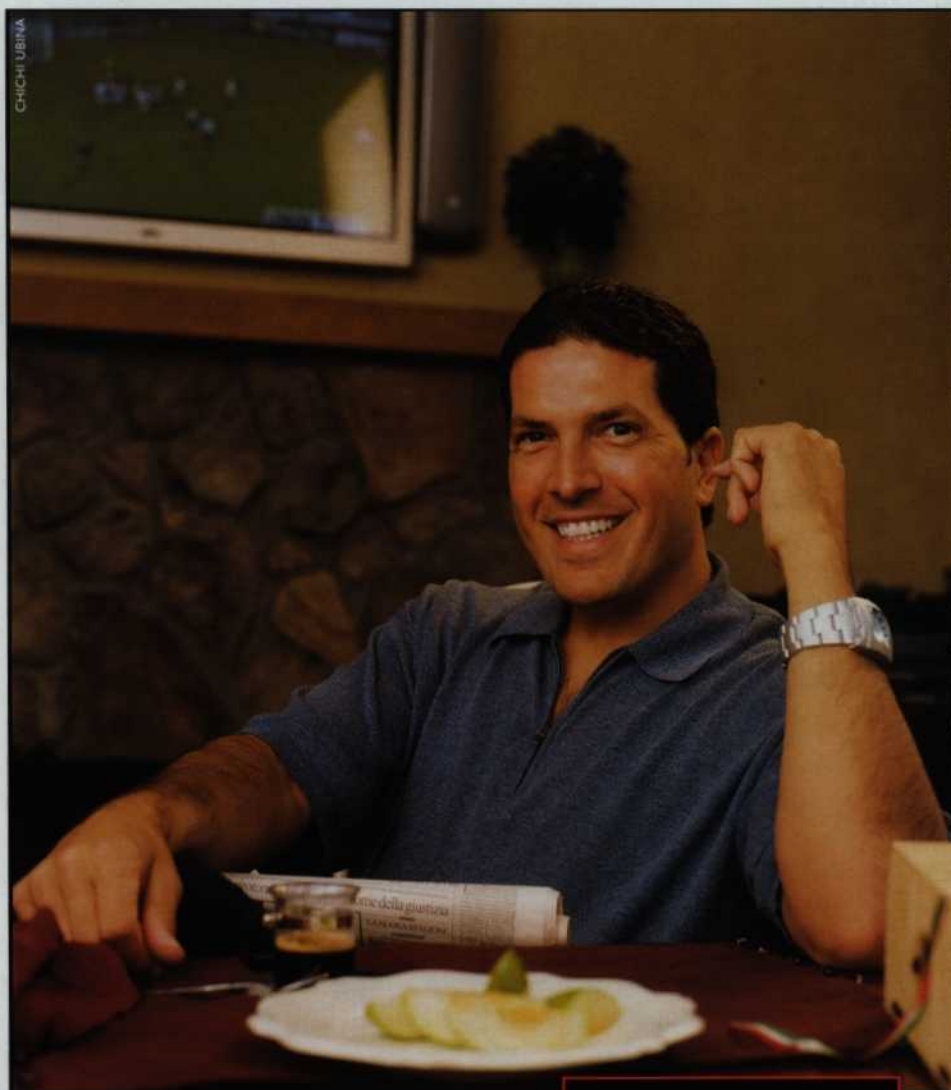
Sometimes Tacopina wonders how he arrived at such an altitude so quickly. “I’ll tell you how he didn’t do it,” says Michael Skakel’s defense lawyer Mickey Sherman, no stranger to the limelight himself. “He didn’t do it by getting his face on TV and glad-handing people. He did it by winning cases and getting excellent results for his clients. Everything else is window dressing.”

At this moment, Tacopina feels loose and happy. Earlier in the day, a Brooklyn jury had given up hope of reaching a verdict against his client Westley Polascio, charged with killing mobster Joseph “Joey O” Massella in 1999. Polascio, a small-time bookmaker known as “Mickey the Dunce,” supposedly was motivated by a \$26,000 gambling debt to Massella, a made man in the DeCavalcante crime family, the clan on which *The Sopranos* is said to be modeled. Given these disagreeable characters, given the present unforgiving legal climate, Tacopina privately believed Polascio had no chance of escaping a guilty verdict. As it turned out, he convinced nine of twelve jurors of Polascio’s innocence — a hung jury — but as resounding a victory as he could have hoped for, not to mention a stunning blow to federal prosecutors.

When Tacopina defends clients who are not eminently defensible, he is likely to employ a disarming strategy. He will own up to the client’s general badness. That way, the client is no longer on trial for being unsavory — a

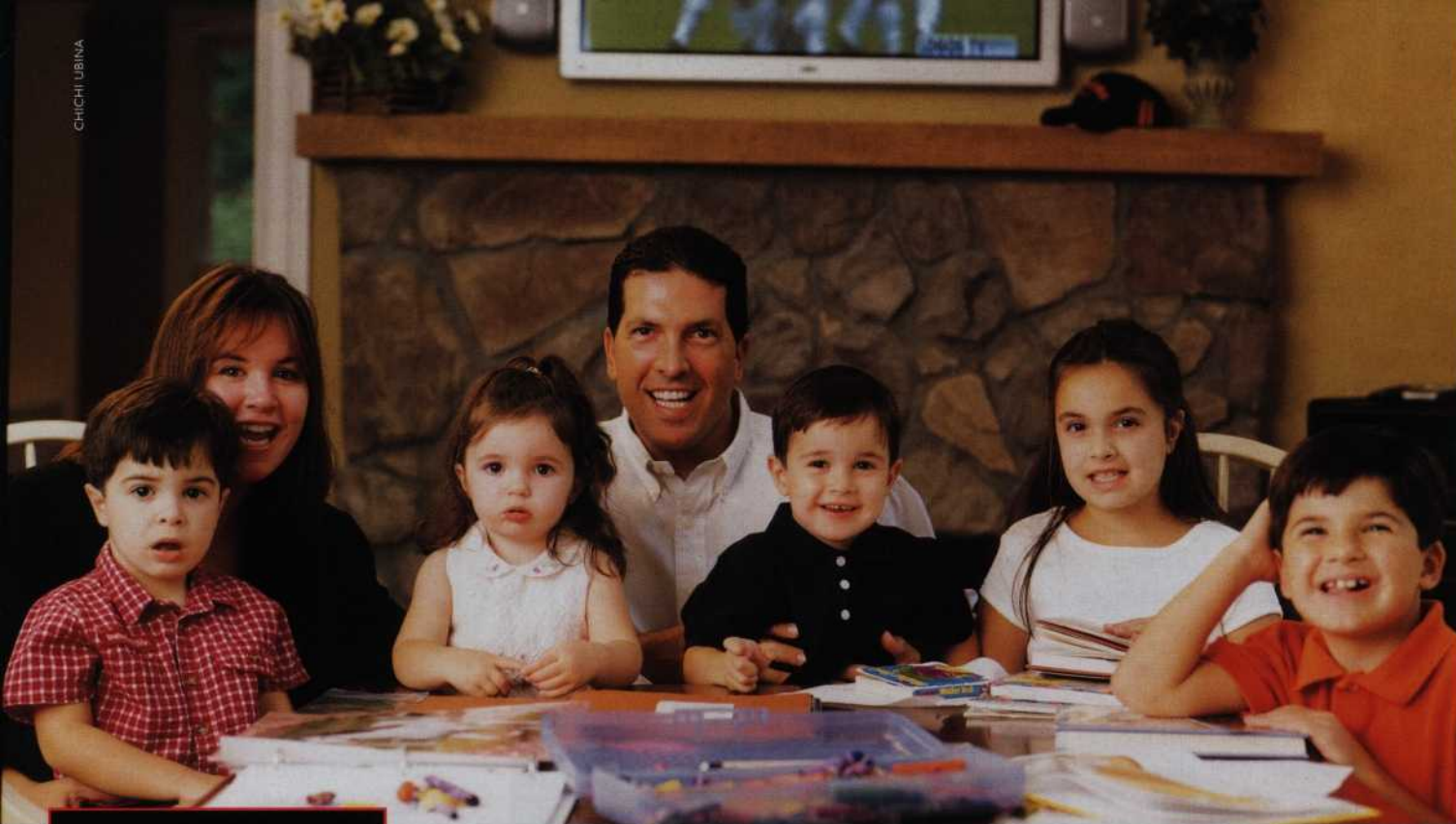
revelation that can go a long way toward convicting him — but only for the charge at hand. “Too many lawyers get up there and say, ‘My client’s a plumber!’ And it’s this young creep in a \$2,000 suit. ‘They don’t like him because he plays cards, but he’s only a plumber!’ Gimme a break. You don’t spit in the jury’s eye. ‘I’m supposed to believe anything else you say to me, Mr. Lawyer?’ Call a spade a spade, and let’s bring it down to the real level.”

Though Tacopina sometimes defends mobsters — as most of the city’s prominent criminal defense lawyers do — he considers defending cops his toughest legal mission. This is partly because of the underlying narrative of trust betrayed: As we imagine violent criminals will do us harm, so we imagine



police will protect us. But Tacopina’s career was fated to blossom in “Giuliani time,” to invoke an infamous phrase. Abner Louima had claimed that the cops who attacked him said,

Joe, in a rare relaxed mode, kicks back at his Westport home.



He may be King of the courtroom, but at home Joe (with his wife, Tish and their five children) trades closing arguments and stenographers for Crayolas and storybooks.

In that fraught atmosphere, the citizens of New York seemed unwilling to give police the benefit of the doubt. "People say, 'You defend cops. Great. You get to wave the American flag when you try a case.' But to me, cops have a profound lack of due process in today's legal system. An honest, good cop who makes a judgment call that no one could ever imagine the gravity of having to make — put yourself in those shoes. Split seconds to make a life or death decision. And if you do shoot, and it turns out you were wrong in that split second, God help you."

In the public firestorm that inevitably follows, Tacopina observes, even fellow criminal defense lawyers are quick to abandon restraint, as they did in the Amadou Diallo shooting, when cops fired forty-one shots at an unarmed black man. "Why do defense lawyers forget about the presumption of innocence when a cop is accused? When a local drug dealer is accused, the presumption of innocence and the Constitution are encrypted in our fiber. When a cop is charged, he's presumed guilty, and let's just get to the sentencing."

Tacopina bristles slightly when asked about the Louima

"There's no more Dinkins; it's Giuliani time," but later admitted this was a lie told at the behest of a family advisor. Still, the phrase suggested a broader truth about the combustible relations between New York's police and its wary minorities.

case — the only topic that thus affects him — because it proved both draining and ceaseless. "Five years and I'm still not over it," he grumbles. "But I'm tired of it. I've had my fill of Louima. I learned a lot, but I also spent five years of my legal life on this case. It's an ugly case to begin with."

That it is. On August 9, 1997, in the bathroom of a Brooklyn station house, police officer Justin Volpe thrust a broken mop handle up the Haitian immigrant's rectum, rupturing his colon and bladder. Beyond these nightmarish facts, all is hazy.

Officer Charles Schwarz was convicted of restraining Louima during the attack, despite wide uncertainty whether he had entered the bathroom that night. That verdict was overturned on a technicality. (In September Schwarz avoided another trial by reaching an unusual sentencing agreement: He'll spend a maximum of five years behind bars for perjury, but is barred from claiming he is innocent of complicity in the attack.) Inconveniently, Thomas Wiese, Tacopina's client, does claim to have entered the bathroom, after the attack. "Within days of this happening, Tommy made a very brave decision — against my legal advice. He said, 'Joe, I walked into the bathroom. I wish I didn't, but I did. I saw Volpe over this guy. I probably should have arrested him at that second, but I didn't, I panicked; I didn't know what to do. But I will tell you, Chuck Schwarz was not in there.'"

Wiese told investigators this story, but it was never aired at trial, chiefly because prosecutors theorized that Wiese fabricated his account to cover for Schwarz — a theory Tacopina calls "Twilight Zoneish." Nevertheless, while Wiese was acquitted of assaulting Louima en route to the station house,

he was found guilty of obstructing justice by lying to investigators. The seesaw saga ended happily for Wiese: An appeals court overturned the obstruction verdict, and prosecutors will not retry him.

A defining moment in Tacopina's career, one that highlights his talent and his temperament, came on May 4, 1999, the opening day of the first Louima trial. When Volpe's lawyer, Marvyn Kornberg, made the startling claim that Louima's injuries resulted from consensual gay sex, Tacopina sensed the jurors' indignation. "Kornberg's going on about gay, gay, gay, and I can see daggers in the jury's eyes," he recalls. "I knew I had to do something." When Tacopina got up to speak, he stood behind Volpe and Kornberg and promptly broke ranks. "My biggest fear, what keeps me up at night," he said, "is what you might think because we are sitting five feet from Justin Volpe. Just so you know where we stand: My client despises Justin Volpe. Justin Volpe is a monster."

In one swift stroke, Tacopina had cut Wiese down from Volpe's noose — or at the very least, punctured the notion that all five cops stood in corrupt solidarity. Volpe pleaded guilty in midtrial. Was Kornberg angry at Tacopina? "Ooh, yeah." What did he say? " 'Fuck you.' "

Tacopina's willingness to offend in the service of his clients, his flat-out nerve, has endowed him with the reputation of a legal street brawler.

There is some truth in this. Beyond his "take no prisoners" mindset, Tacopina has an imposing physicality in the courtroom, honed on the football fields and wrestling mats and hockey rinks of his youth. He wrestled only in his senior year at Poly Prep, a private high school in Brooklyn, but won the state championship and placed eighth at the nationals. His real sporting passion, though, was hockey. He set a dubious NCAA record at Skidmore — for penalty minutes in a single season (412). The record still stands.

Tacopina grew up in Sheepshead Bay, Brooklyn, the third child of Cosmo, a salesman of designer paper boxes, and Josephine, a bookkeeper; but coming so many years after his sisters, Joe's youth was more like that of an only child. He invented variations on baseball using only a Spalden and the seven front steps of his brick rowhouse. He invented games

with dice. He wrote little books. His beagle was his best friend. This sounds like an introvert's path, and to be sure, his old friends marvel at watching a boisterous Tacopina joust on *Court TV*. "He was always a nice guy, but he used to be so quiet and humble. Now you can't shut him up, especially if he's talking about himself," remarks his chop-busting friend Arthur Aidala, a Poly Prep cohort who is now a criminal defense lawyer himself.

The nerve comes from his mother. It was Josephine, without connections, who convinced Poly Prep to leapfrog Joe from thirty-two to one on the school waiting list. It was Josephine who got six-year-old Joe up to attend hockey practice in far-off Queens, though this entailed 4 a.m. wakeup calls and lots of kicking and screaming. And it was Josephine who meted out discipline. "The worst thing I ever did was spray paint the Verrazano Bridge after we won a football game. The beating I caught was unbearable!"

At Skidmore, Tacopina chanced upon Joe McGinniss' book *Fatal Vision*, a bestseller about Sam Shepherd, an army doctor charged with, and ultimately convicted of the murder of his family. "Did he do it? Did he not do it? On page one I thought he did, the next I was like, there's no way. I was so intrigued by the fact that I kept going back and forth." Tacopina found himself crafting the accused man's legal strategy, and from there it

was a short hop to wanting — hungering — to be the next Clarence Darrow.

He was determined to work the following summer for the best criminal defense lawyer in New York City. That lawyer, he decided, was one Jimmy LaRosa, much in the news then for representing Gambino boss Paul Castellano. "I'll work for free," Tacopina told LaRosa, "but I have to be in your office." His job was listening to hours upon hours of wiretaps and digesting their sometimes hilarious contents (such as the hissing sound an early model penile implant makes). It so happened that on Christmas break — in midtrial — underling John Gotti had Castellano shot dead outside a New York steakhouse. "And the next summer I got a call from Bruce Cutler, who was working on the Gotti trial."

The biggest trial in Gotham offered Tacopina an

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— Mickey Sherman on Tacopina

intoxicating view of criminal law. But he was still a drone. His Darrowian aspirations required law school (at University of Connecticut) and a real-world teeth-cutting (in the Brooklyn district attorney's office). But first, a prime example of the Tacopina nerve. One day during law school, Joe wandered into the Storrs Marriott after a workout. He was wearing Spandex shorts and a tank top and had his hair slicked back. Seeking refreshment, he discovered instead a comely hotel manager named Tish MacDonald. "I saw her and said, 'That's it. I'm in love.' And I actually told my friends, 'See that girl? I promise you, I am going to marry her.'"

Tish's response was slightly less enthusiastic. "Actually, I was engaged to somebody else," she reports. "I wasn't the least bit interested."

Tacopina pleaded for a date, and Tish granted it only because her parents, dismayed that she planned to join her fiancé in New Zealand, urged her to give the young man the sixty minutes he requested. Tacopina acquitted himself well

under pressure of the clock, but nearly wrecked his chances immediately afterward by jimmying into Tish's Mazda to leave a rose and a love note — a Brooklyn tactic, and Tish was a Westport girl. "I was scared, I really was," she says. "That was only after the first hour, he did that." She glances over at Joe and smiles. "We got engaged seven weeks later."

Now they have five young children, four dogs and a bird. "I call it the Tacopina circus," says his childhood pal Arthur Aidala. "And Joe's the freakin' whipping boy. He's the lowest one on the totem pole. Everybody in that house has got more juice than he does." Indeed, the courtroom lion does resemble a lamb once he sets foot in his house. By way of explanation, he offers simply, "Tish is the best thing that ever happened to me. Far and away."

In the Brooklyn district attorney's office, Tacopina quickly distinguished himself for his hunger to try cases. If another district attorney complained of so much as a hangnail, Tacopina would volunteer to take over, just for the thrill of arguing before a jury. He ended up winning thirty-nine of forty jury trials, most of them as homicide prosecutor. He decided to leave when the assembly-line nature of the

prosecutor's work began to wear him down; once he even forgot the murder victim's name while addressing the jury. "I just started calling him 'the deceased.' That's when I said, 'Ay-yay-yay, I'm doing too many of these.'"

Tacopina's entrance into private practice, in 1995, was anything but grand. He had one child, another on the way, a new house in Fairfield, and zero clients — "the psychological profile of a suicide bomber." He didn't even have an office. What he did have was a package deal that provided him with an answering service ("Mr. Tropicana just stepped out . . ."), a respectable mailing address (on Madison Avenue), and eight hours of conference room time a month. He would do his actual work at Manhattan diners. (Today he works out of an office at 321 Broadway in New York City.) "I'd have a bagel and twenty-two cups of coffee and sit there for the afternoon" while waitresses eyed him warily. He conducted his business with a cell phone and scratch-off phone cards, since he couldn't afford the wireless roaming rates. And he worked nights at the Inn at Longshore, as a coat-check man. "I remember some people would throw the coat at me in the most condescending way. 'Don't put this on a wire hanger! Do you understand, son? It's a mink!' I'm sitting there thinking, 'Look, I've been to law school. I've prosecuted cold-blooded killers. Don't tell me about a wire 'freakin'

hanger.' " Tacopina reflects a moment. "This wasn't that long ago. That's the scary part."

As luck would have it, the Morgue Boys case landed on Tacopina's desk just as he began his stint in the cloak-room. Initially he was given a slender file containing eight police reports and some photos. "Then the FBI agents came in and delivered sixteen boxes of crap to my nonexistent office." He'd sit in the cloak-

room, his boxes laid out on the floor, reading, highlighting, getting up to retrieve a coat. "The guy's facing twenty years, and I never told him, 'Don't worry, I'm prepping for your case checking coats.'"

These are hard, weird times for criminal defense lawyers. The older ones moon over the good old days, when the battlefield was (by their lights) more or less even. The last two decades have seen the advent of mandatory minimums, federal sentencing guidelines and three-strike statutes, adding, in New York, to drug laws that even some conservatives

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consider Draconian. In short, the justice system has become so powerful that lawyers feel they've been reduced to mere plea hagglers. "Unfortunately," Tacopina says, "the art of the trial is fading into the mist."

This is most true of federal court cases, an increasingly big part of the high-profile defense lawyer's workload. Defendants are strong-armed into accepting a plea offer; if they decline and lose at trial, a variety of "enhancements" are added on to the original crime, such as obstructing justice and perjury (because losing means the defendant lied). "They shake that guideline book and stuff comes out of there like you would never imagine," Tacopina says. "You wind up, from a plea offer of twenty-one months, with a conceivable nine years. So who's going to go to trial? Who's going to say, 'I could do a year and a half of jail time, or if I lose, I could get nine years'?"

"So many lawyers in the federal practice are all about trying to get a quick plea and get out of Dodge. Because it's scary to go to trial in federal court. If you lose, you lose hard." Tacopina seems, momentarily, on the verge of anger. "I'm sorry, I hate saying this because this is, like, perverted. But I've seen too many people acknowledge a crime they did not commit because they were afraid of having their life terminated, basically."

Should a defendant insist on a trial, he must face the ominous fact that, in federal court, prosecutors win a majority of the time. How does Tacopina deal with this dire reality? Often by going to trial. Tacopina has tried roughly seventy-five cases in his ten-year career (this includes his tenure as a prosecutor), more than most lawyers do in a lifetime. His courtroom reputation is a weapon in itself: "I have no problem calling a spade a spade if I think the prosecution is playing dirty. I think

they know I'll go there if I have to."

Tacopina's colleagues warn against construing his trial lust as a headstrong indulgence. Beneath his warrior's carapace, they suggest, beats the cool heart of a tactician. "He'll look at a case and discover where the holes and weaknesses are, and then he'll exploit them," says Greenwich resident Ron Fischetti, who defended Charles Schwarz. "He's an excellent strategist." Mickey Sherman adds, "He's fearless, but not reckless."

But his defiance of convention means that his law practice must operate differently from most. Because trials are so time-consuming, he accepts fewer cases and charges more money. Prospective clients sometimes suffer a kind of legal sticker shock: "'You say a hundred thousand dollars? The guy down the block told me ten!' 'I know, but I only take five cases. This is the way I do it. You'll get 110 percent. If it's a dollars- and-cents game and nothing more, then I'm definitely not your guy. But if you want me to put my life into this thing, that's what I do.'"

Every so often, Tacopina gets the urge to go squash grapes in Tuscany or drive a cab in Lake Como. This won't happen, of course. Some suggest it's far likelier that he'll one day host his own TV show. Tacopina has some misgivings about this view of his future. As the renowned criminal defense lawyer Gerald Shargel notes (paraphrasing Woody Allen), "Some of the hottest places in hell are reserved for lawyers who appear on TV."

In the end, it seems, the courtroom will prove more seductive than the cameras. "It's not like I try cases to prove something," Tacopina says. "But it bothers me, it scares me, when I see people put into positions where there's no equity, where there's a sense of imbalance. You know, the bigger the bully is, the more I like the fight." W