

PALM BEACH LIFE

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Power of Attorney

**RICHARD LUBIN'S
DEFENSE MECHANISMS**

A Children's
Hanukkah Adventure

Home for Christmas

Hot Properties:
The Market Returns



LUBIN ON THE EDGE

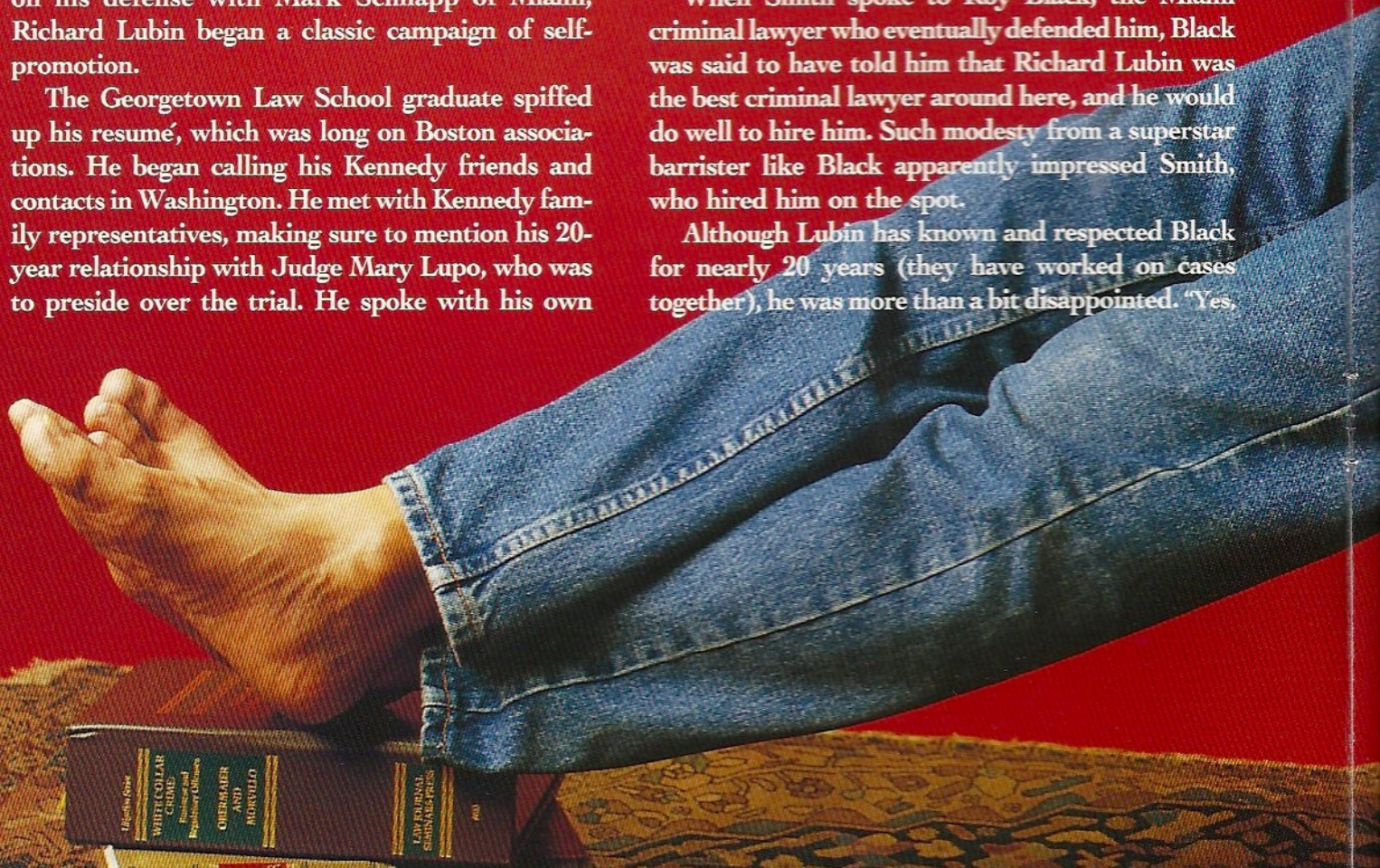
When word got out that William Kennedy Smith, who was accused of rape in Palm Beach 2-1/2 years ago, was seeking a tough criminal lawyer to work on his defense with Mark Schnapp of Miami, Richard Lubin began a classic campaign of self-promotion.

The Georgetown Law School graduate spiffed up his resumé, which was long on Boston associations. He began calling his Kennedy friends and contacts in Washington. He met with Kennedy family representatives, making sure to mention his 20-year relationship with Judge Mary Lupo, who was to preside over the trial. He spoke with his own

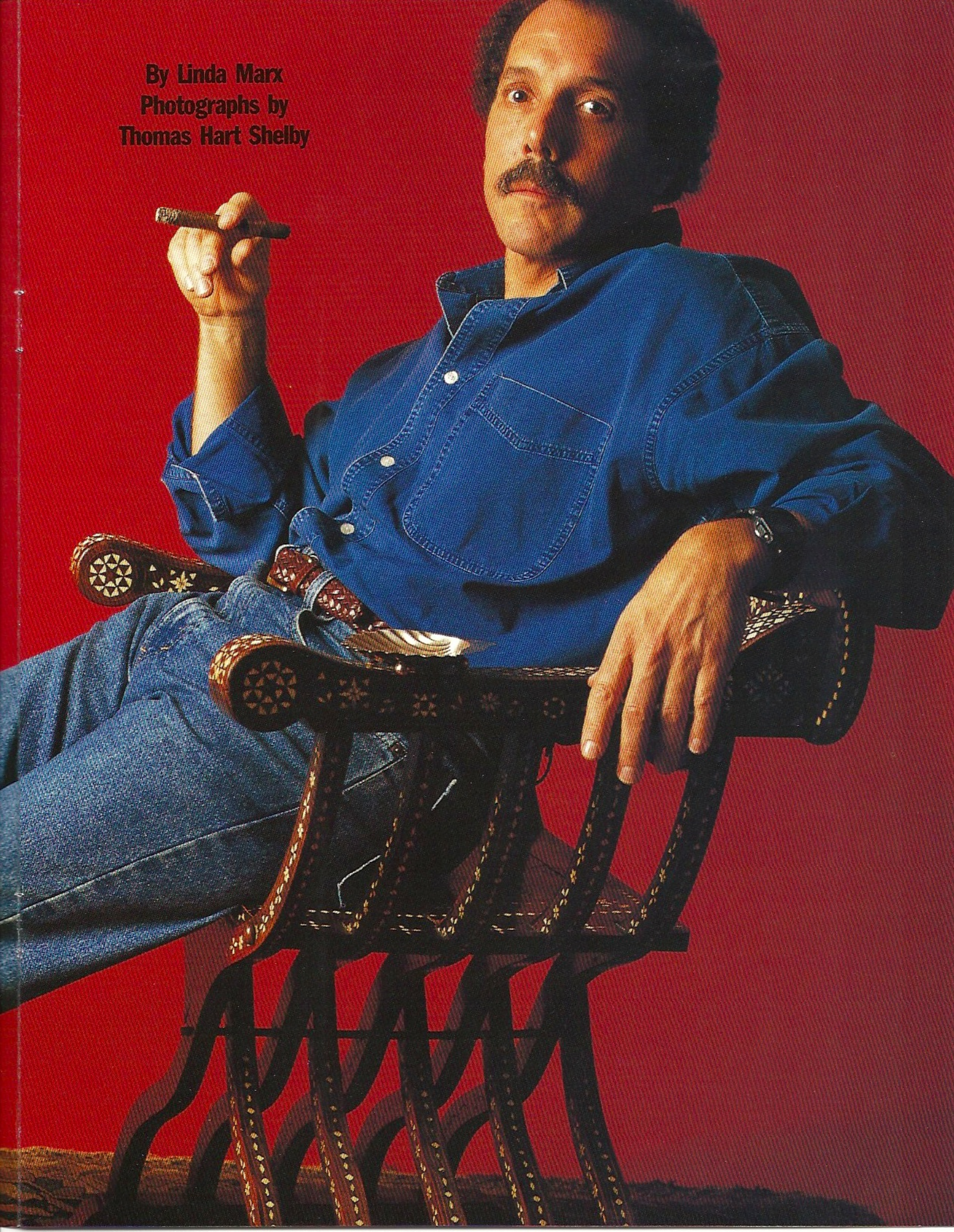
associates close to the case. "Richard asked me to help get this case for him," recalls Pat McKenna, the chief investigator on the case and Lubin's officemate.

When Smith spoke to Roy Black, the Miami criminal lawyer who eventually defended him, Black was said to have told him that Richard Lubin was the best criminal lawyer around here, and he would do well to hire him. Such modesty from a superstar barrister like Black apparently impressed Smith, who hired him on the spot.

Although Lubin has known and respected Black for nearly 20 years (they have worked on cases together), he was more than a bit disappointed. "Yes,



By Linda Marx
Photographs by
Thomas Hart Shelby



I was very interested in the Smith case," Lubin admits, "but Black is a good friend, and I helped him out with local information."

"Lubin was devastated when he didn't get the case, not only because it was a Kennedy, a Democrat and a high-profile opportunity, but because he has a tremendous ego and felt nobody could manipulate Judge Mary Lupo better than himself," said one of Lubin's legal associates, who asked to remain anonymous.

It is a truly rare case when the aggressive approach of Richard Lubin fails; his self-promotion is as legendary as his litigation skill. He'll tell you he is on the board of the National Association of Criminal Lawyers; president of the Palm

Beach Association of Criminal Defense Lawyers and on the state board of directors; a long-time member and past president of Legal Aid. He is listed in the book *Best Lawyers in America* ("the only one in this county besides F. Lee Bailey," he points out); and he's listed in the National Directory of Criminal Lawyers and Martindale-Hubbell, the prestigious legal phone book. He lectures about criminal defense all over the country and teaches at the National Criminal Defense College in Macon, Ga., the only school in America for criminal lawyers.

His continuous bravado becomes more palatable, however, when you learn that Lubin, a partner in Lubin & Gano of West Palm Beach, is not only his own best fan, he believes he is the champion of the underdog, too. He says his job is to protect his clients' constitutional rights no matter how heinous the crime. He will work around the clock until he has a defense that will dazzle the opposition. His theatrics in the courtroom usually work to his advantage. He'll pound the table or throw something around if it proves his point.

"Richard is liberty's last champion. He believes a person is entitled to the best defense despite his or her reputation," says Barry Krischer, a criminal attorney and now district attorney for Palm Beach County. "I had trouble with that theory. Richard doesn't. He truly believes

it and lives it. That's why he is great."

Lubin, 45, has created an amazing law career in the '80s and '90s as one of the last local defenders of the credos of the radical '60s. Upholding the rights of the downtrodden has become his motto, something right out of the

love-and-peace generation. He believes that trials are about people, that "people come first." He continues to study the law. He continues to question the questionable. He makes a dramatic production of every case, nurturing it like a newborn baby until the evidence is solid and wise enough to stand on its own.

"I realize you can use the law and the Constitution for social change," Lubin says. "By fighting to uphold the Constitution, you keep it from dying."

In addition to criminal work, Lubin handles civil rights litigation, an extension of the kind of anti-war and envi-

ronmental activism he joined during the turbulent 1960s.

The combination of '60s idealism with lucrative, high-profile criminal defense work is only one of the curious contradictions that make up Richard Lubin. He is a nice-looking man who favors dark boots, black leather jackets and faded jeans when he rides his Harley-Davidson motorcycle on the weekend. But perhaps it makes sense that Lubin should be defined by unexpected combinations: he makes his living by proving that reality — or truth — is a mosaic of what is demonstrable and of that which cannot be disproved.

And his track record is extraordinary. "Just look at the types and results of cases he has tried," says Tony Natale, a defense lawyer who acted as co-counsel with Lubin on the recent Linda Cooney murder case, which ended in acquittal. "He is talented and skilled and in my opinion, the finest lawyer in our county. He cares a great deal that people's rights are not trampled on. He communicates that in his cases."

Take the James Sullivan case. The Palm Beach millionaire and former chairman of the Landmarks Preservation Commission was accused by the U.S. attorney general in Atlanta of arranging to have his wife Lita Sullivan killed on the morning of the preliminary hearing in their divorce case there. "What a case," Lubin says. "There was a lot of publicity that he was a suspect. The cops focused on him as a likely suspect because Lita wanted his property and his money. The case highlighted the criminal justice system in this country: The rich can defend themselves in this costly process, but people can be wrongfully accused whether they are rich or poor."

Lubin spent hours trying to prove that new leads pointed away from Sullivan and toward other possible suspects. He also presented evidence, according to court documents, that Lita was having an affair with a married man who was in love with her and had threatened to kill her if he found her with another man, thus establishing reasonable doubt about Jim Sullivan as a suspect. "The lover even threatened her in front of a cop who wrote up a report on it," Lubin said. "The jealous lover drove his car through her garage door but he wasn't arrested for the murder. He was

FOUR THINGS BELONG TO HEAR COURT

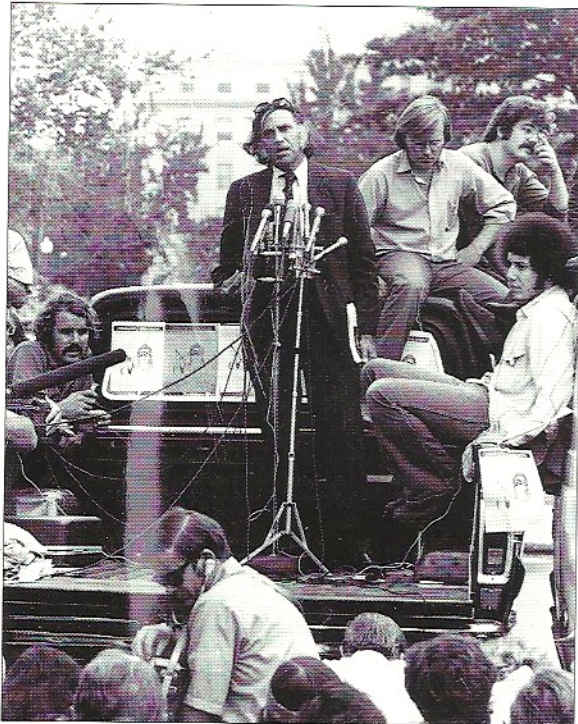


Getting defensive: Lubin has become known for taking on cases that seem impossible to win. He successfully defended Palm Beacher Jim Sullivan, *above*, who was accused of murdering his wife; and Linda Cooney, *above right*, who was accused of murdering her ex-husband.



ronmental activism he joined during the turbulent 1960s.

His continuous bravado becomes



When he was a law student at Georgetown, Lubin, far right, helped organize many demonstrations, including this one featuring activist and attorney William Kuntzler.

having surgery at the time. And Sullivan wasn't accused of doing it himself because he was in Florida."

But what about the phone calls Sullivan made to Atlanta before and after Lita was killed? Lubin has an answer for that, too. "Sullivan had a business and a divorce going on in Georgia. Why shouldn't he make calls? No one showed those calls were made to thugs or that they had anything to do with the murder. They couldn't prove he was guilty so he isn't."

The federal judge in Atlanta dropped the murder conspiracy charges against Sullivan on Nov. 23, 1992.

Does Lubin really believe Sullivan was innocent, even after his third wife, Suki Choi Sullivan, testified during her divorce trial from Sullivan that he admitted to having Lita killed?

"I don't think Sullivan did it, and the evidence didn't show it," Lubin says easily. "And their witness list was a circus."

Before Sullivan's case, Lubin handled the Timothy Toward case. In 1991, the state charged Toward, a gun-collecting chiropractor from Riviera Beach, with hiring a hit man to kill his ex-wife. And prosecutors argued it was all recorded on videotape. Tough evidence to beat for many lawyers. But not for Lubin, who decided to focus on the background of the informant, Daniel Bever. "People don't realize the incredible power that

informants working undercover have to create crime in our society," he says. "If you saw this in a movie, you'd say, 'get real.'"

According to the final court papers filed by Judge Mary Lupo after hearing the case, Bever, an admitted perjurer and a convicted felon, spent 20 years working as a paid informant for various police agencies in South Florida, earning between \$50,000 and \$60,000 a year, tax-free. On one occasion, according to the papers, law enforcement agents allowed Bever to keep \$400,000 that he had earned illegally from smuggling drugs. The papers also indicate that he has been allowed to target any

person he chooses without direction or supervision.

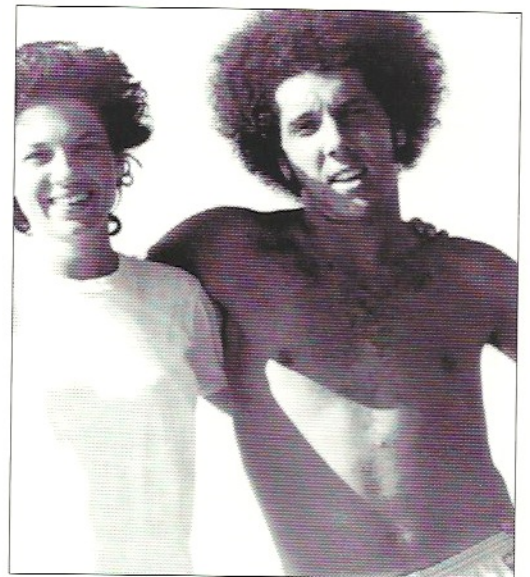
Bever, Lupo wrote, has functioned as an informant whenever he has been in trouble with the law. After he finds people who want to commit crimes, he trades their arrests for a reduction or dismissal of his own charges, she wrote. As an informant, he has made a practice of telling his targets one thing, telling law enforcement agents another, and lying to both.

In October 1989, Bever was broke and charged in state court with dealing in stolen property. The prosecutor in the case wanted to see Bever behind bars. But Bever decided to "go to work" as an informant. He allegedly chose to target Toward, who was known to have a large gun collection. Bever con-

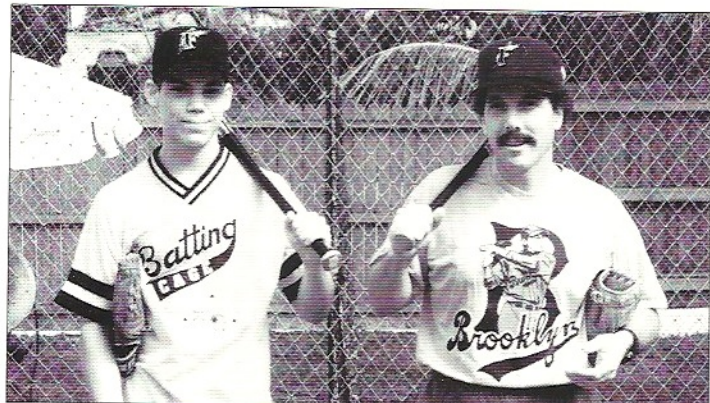
tacted him, ostensibly for treatment, and tried to induce Toward into illegally shipping weapons to South America. When the attempt to involve Toward in the smuggling plot failed, Bever became Toward's patient and the solicitation to murder Toward's wife allegedly followed. Because Bever procured Toward's arrest in the murder-plot case, his felony charge was reduced to a misdemeanor. He pleaded guilty, was sentenced to time served (one day) and agreed to testify in Toward's trial or face one year in prison.

At the beginning of the investigation, Bever was told by police to have no contact with Toward. In direct defiance of those orders, Bever had at least two unauthorized and unsupervised meetings and some phone conversations with the chiropractor. According to court papers, he intimidated Toward, making him feel he would be in danger if he didn't go along with the informant's wishes.

During one unauthorized meeting,
continued on page 72



A groovy kind of love: Lubin with first wife Lois Frankel, above right, who shared his passion for activism at Boston University and for law at Georgetown. Lubin shares a passion for baseball with Benjamin, right, his 15-year-old son with Frankel.



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Bever said Toward told him that he wanted to kill his ex-wife. "We proved the videotape Bever used against Toward was taken out of context and (that he) had used trickery and lies," Lubin says. "We also proved Bever lied to and deceived law enforcement. He lied to Toward then lied to the Bureau of Alcohol, Tobacco and Firearms. This case shows that everything is not what it seems and that law enforcement needs to be checked. People think I only represent dregs of society — but somebody needs to keep cops and prosecutors honest."

The ex-wife was never killed. But Toward's property was tied up, he couldn't sell his house or get credit because he was accused of solicitation to commit first-degree murder. After Lubin spent 1,000 hours preparing the case, the two-week trial ended with a hung jury. Toward was acquitted. "The whole thing was a setup by Bever," Lubin said. "In the meantime, Dr. Toward's life was devastated."

Judge Lupo, in her ruling, said that the Toward case proves that the use of informants can be a hindrance to justice. "Bever is a pathological liar with no conscience and no ability to recognize the truth," she wrote in the ruling. "For law enforcement to use the likes of Bever as an informant is outrageous, uncivilized and shocking. His conduct in this case is utterly deplorable and cannot be tolerated in a democracy."

For Margaret Hallberg a battered wife from Fort Lauderdale, Lubin opened doors that Hallberg didn't know were accessible. He got her acquitted of charges that she murdered her husband, a respected Coast Guard lawyer, who Lubin proved was also an abusive alcoholic. Hallberg told Lubin of the trouble that dated back 30 years in a miserable marriage. "This case was an incredible experience because Margaret had been abused by her husband for so many years that we had to regress her through the entire marriage," Lubin said. "She said he tied a fishing line across the living room so she would trip, then he raped her. I used self-defense in the courtroom. It took us a week to get her on the stand. Her knuckles were white as she gripped the microphone. She thought it was her fault."

The jury did not.

In the Ronald Sayles vs. Joel Weissman case, Lubin, who represented

Weissman, spent hundreds of hours going through records to prove Weissman did not steal money from the law firm Sayles & Weissman in the mid-1980s, as Sayles alleged. The trial became a public fight between two high-profile Palm Beach County divorce lawyers. "Ron locked Joel out while he was on vacation, took his clients and his office and personal supplies," Lubin said. "Ron felt he had invested a lot in Joel and feared the younger lawyer would leave him."

The five-week trial was a media and legal circus with dozens of lawyers on hand. "I felt like I was on trial," Lubin says. "We tried to show Weissman, who is flashy and wears jewelry, had good character by calling bar members and judges to testify. We attacked Ron's character. We showed his accusations against Joel did not hold water. We showed checks and documents to prove he didn't steal. I used my persuasive powers to get people to go on the record."

It worked. Lubin got Weissman off and saved his reputation.

An obsession with fairness has been the hallmark of Lubin's life. A Brooklyn native, Lubin was raised in Great Neck, N.Y., with his older sister (now a therapist in New York). His father had dropped out of the ninth grade, but later developed a moderately successful zipper business. The elder Lubin eventually got a high school diploma and a degree from Barry University in Miami.

In 1966, Lubin enrolled at Boston University, in what must have been one of the most exciting college towns in the country during those years. He was president of the 25,000-member student body, an activist for anti-war and environmental causes, a star soccer player and an excellent student who lusted for the political side of law.

"Richard was the type of all-around person you would hate in college because he did everything well," laughs Barry Krischer, who has known Lubin since childhood. "He was also good with women."

Lubin hit it off particularly well with Lois Frankel, a politically active student who went on to become a West Palm Beach lawyer and state representative. Even though both Lubin and Frankel came from Great Neck, they didn't meet until college. "Lois was also an activist, a brain who made top grades and spent her time in the library," Lubin said.

They married in 1971, a year after Lubin received his bachelor's degree from Boston University and had taken a year off to travel around the country. "I was an organizer and draft counselor and was interested in anti-war work like (Abbie) Hoffman and (Jerry) Rubin," Lubin says of his year in exile. "I wasn't ready for school — I wanted to channel my education into areas of social change."

The couple enrolled at Georgetown Law School after they were married. While a law student in Washington, D.C., Lubin also worked as a prison counselor at the federal penitentiary in Lorton, Va. One day a week, he would give free legal advice to prisoners. As a trainee, he even slept there, building a solid foundation for helping those in need. "I learned these guys were people too," he says. "They were so appreciative. Even though I was nervous about sleeping there they were nice to me. They knew I was on their side."

He was a clerk for law professors and was director of the Criminal Justice Clinic, a program where students ran their own law offices. Lubin worked for the director and found he could handle both civil rights litigation and criminal work. "I had no question I wanted to be a criminal defense lawyer, especially a public defender," he said. "Lois wanted to be a prosecutor."

In 1974, Lubin and Frankel graduated and left Washington. They moved to South Florida, where both sets of parents had settled. "I wasn't crazy about Florida but we moved here anyway," Lubin said.

In Miami, Frankel worked with Janet Reno in the state attorney's office but was interested in joining David Bludworth's team in Palm Beach County. It didn't happen immediately because the district attorney's office in Palm Beach County was conservative. "Bludworth was afraid Lois was too radical," Lubin said. "He thought she would disrupt the office. But he was soon convinced by a Boston-educated judge to hire both Lubins. We went to work trying murder cases. I loved it."

They rented a two-bedroom, one-bath house on Franklin Road in West Palm Beach before buying a home in Lake Clarke Shores.

After a few years in the district attorney's office, Lubin decided that he

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needed to make more money. In 1976, he joined and later became a partner in Nason, Gildan, Yaegar & Gerson. He was hired as a litigator and learned civil procedures. He stayed for three years but got itchy to go out on his own. "I had to have my own firm so I could do what I wanted," he recalls. "I was also president of Legal Aid and quite busy."

In 1980, with Nancy Hamill, the staff attorney for Legal Aid, Lubin formed his own firm, Lubin & Hamill. The duo handled criminal defense cases, court-appointed cases, county litigation, divorce and injury cases, everything but real estate actions. Things were going well and the firm was growing when Hamill was stricken with cancer. The experience affected him for years. "I watched her die of cancer," he says. "It was the saddest thing I can remember."

Lubin kept working and became partners with Joe Mintzberg, a crack-erjack criminal defense attorney, but his personal life was unraveling. Lubin and Frankel, who had one son, Benjamin, now 15, separated in 1981 and were divorced three years later. Although the divorce was traumatic, there were no custody fights and no divorce lawyers. They didn't want to raise Benjamin with confrontations so they agreed on joint custody.

"Lois and I had a lot in common. I still have the most respect for her, and we remain good friends," Lubin says.

Frankel agrees. "Richard is a wonderful father who was always there for Benjamin. He was willing to diaper, give baths, cook dinner, go to teachers meetings. . . he's always been there. He remains one of my best friends. He is an excellent, ethical lawyer with a great track record. He doesn't quit until he's ready. If I got in trouble, I would hire Richard Lubin."

In 1987, Lubin met Susan Williams, owner of Biopath, a company that provides testing equipment for food and beverage clients. The couple recently divorced after a four-year marriage. Lubin says they had "grown apart." At about the time that he got married for the second time, Lubin and Mintzberg split up (Mintzberg recently retired from the law because of a heart condition). Tom Gano, who worked for Lubin in the early 1980s, went away, returned and became a partner. They now do

mostly criminal cases. "I came back to do criminal law with Richard, who is to a fault one of the most generous and seriously concerned people I know," Gano said. "He wants to represent people who no one else will touch. He takes the cases for free and pays out-of-pocket expenses himself. I have never seen a better lawyer on his feet. I do the preparation but Richard is the best trial lawyer there is."

Last year, John Early, a real estate salesman, was charged with kidnapping and raping a young girl and her baby sitter. He was charged with 14 felonies. He came to Lubin and explained that he wasn't near the area in Delray Beach when the incident occurred. After careful research, Lubin was able to prove that the police investigation was botched..

"When cops showed Early's picture to the baby sitter, she said he was not the guy who raped her," Lubin says. "And the little girl was sure of two things: The man had a tattoo on his chest and had crooked teeth. Early had neither."

Lubin showed that the police had convinced themselves Early did it so they ignored the files and other evidence. "Early is not a world-famous guy and had to sit in jail nine months for a crime he didn't commit. Someone needs to investigate the cops," Lubin says.

But there are two sides to the Lubin story. "Richard Lubin believes the most horrendous criminals are innocent, much to the frustration of arresting officers and other people in law enforcement," said a West Palm Beach private investigator who wanted to remain unnamed. "The amazing part of it is that he truly believes in their innocence despite their heinous crimes."

Another local law enforcement officer who didn't want his name used said arresting officers are not exactly thrilled when Lubin is on the defense. "He frustrates cops," he said. "He can beat almost any rap."

One rap many thought couldn't be beat recently pitted several local art galleries against the tax collector. Last January, Lubin took on the cases of three Worth Avenue art dealers — Helander Gallery, Irving Galleries and Ariq Gasiunasen Fine Arts. All were subpoenaed for their sales records, including customer names and invoices under the suspicion that they had evaded paying

sales taxes. The investigation involved the Florida Department of Revenue, the Palm Beach County state attorney's office and Florida Department of Law Enforcement.

In-state sales taxes must be collected when a customer buys a piece of art that will remain in Florida. If the customer wants an artwork shipped out of state, the item is exempt from Florida sales tax, but he or she must pay a "use" tax in the state where the piece is to be shipped.

The dealers cooperated but were upset that such an investigation, which involved questioning their customers, was taking place during the height of the season.

"The investigation just ruined the season for me," said Bruce Helander of the Helander Gallery, "but Richard Lubin has done a fantastic job of working things out."

What Lubin worked out was a plea agreement. The gallery owners pleaded no contest to the charges, paid \$50 each to cover court costs and signed a letter stating that they "now understand much more clearly" what their duties and responsibilities are in collecting state sales taxes.

Although the art-tax case received considerable local media attention, it is the emotionally charged murder and rape cases that have made Lubin a notorious figure in the courtroom. One such case was the highly publicized Linda Cooney trial. Lubin maintained that Juno Beach resident Linda Cooney shot her ex-husband James Cooney in self-defense after he lunged at her with an 8-inch kitchen knife. She says she did not know that James was coming over that evening to fetch their young sons. She had made other plans with a friend, attorney Stephen Cook, and his son.

The prosecution said the shooting was premeditated, a murderous plot that would allow Linda to keep custody of their children and take over the \$1 million estate earmarked for them. After the shooting, prosecutors said, Linda planted the knife in her ex-husband's hand. And she was not able to take a call from emergency operators, they said, because she was busily attempting to cover up the crime she had committed.

Since she had call waiting on her telephone, Lubin said a call from 911 operators created the sound of a ringing

phone. But she was calling Cook, who was on his way to her house. The following day, Cook found the call on his answering machine.

During the eight-day trial, Lubin and his team asked for a mistrial twice (both denied) and continuously called the investigation by the Palm Beach County sheriff's office sloppy and incompetent. Lubin said if the investigation had been carried out properly and accurately, his client would never have been charged with murder because it was a clear-cut case of self-defense with no evidence to link the shooting to murder.

So confident was he in the merits of his own case, Lubin didn't even put Linda Cooney on the stand. He pounded on the podium during closing arguments while criticizing the police investigation. He countered each piece of circumstantial evidence with solid explanations. "We felt the jury had heard all they needed," Lubin said.

After deliberating less than two hours, the jury agreed with Lubin. "Richard did a good job of getting to the substance of this case," said David Roth, a criminal lawyer in Palm Beach County. "He is a skilled practitioner who left the jury with reasonable doubt."

With so much success, Lubin might prefer to spend more time riding his Harley-Davidson with sheriff's Lt. Kent Glover ("Richard is just one of the guys"); more time watching baseball ("I live for spring training each year"); more time reading his favorite books (lawyer novels); more time relaxing and maybe even writing his own law novel.

Instead he dwells on the frustration of being a criminal lawyer. He wishes judges would focus on the legal issues instead of just hard crime. He wishes the IRS wasn't trying to reform client fees. He wishes criminal lawyers summoned to grand jury investigations weren't asked to disclose information which could damage their clients. He wishes good criminal lawyers always under attack wouldn't be driven away by the stress. He feels the good ones who fight for their clients get lambasted by the media, by the prosecution, by the general aura of the case. That's why Lubin continues to teach the art of trying cases, winning them the ethical way: "I teach a lot," he says, "to make sure we stay smarter than they are." ■

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