Overview of Our Accomplishments - Child Victims Act Clergy Sexual Abuse Cases

As attorneys practicing for more than 30 years in the area of plaintiffs' civil litigation, Smalline and Harri has had the great honor to become involved in the fight for justice for clergy sexual abuse survivors of the Roman Catholic Church.  When we first began our firm in 1995, we became involved in litigation concerning child victims of the Roman Catholic Diocese of Albany, New York who were housed at St. Coleman's School in Cohoes, New York.  Following this, in 2002, we represented a victim of a priest who had been ordained in Boston, Massachusetts, but was transferred to two parishes in Altamont, New York where he was a serial sexual offender.  We recovered the maximum amount available for this client under the groundbreaking Boston Diocese settlement in 2002.  Then, beginning in 2019, with the passage of the New York State Child Victims' Act legislation (the "CVA"), Smalline and Harri was retained in several newsworthy actions commenced under the CVA for child sexual abuse committed by clergy members, including Bishop Howard Hubbard, the Bishop of the Roman Catholic Diocese of Albany, New York in the 1970's and 1980's.  The statute permitted a look back period that allowed these claims to be prosecuted.

      In the process of litigating these actions, Smalline and Harri secured the first significant appellate court victory for discovery of several nonparty priest personnel and disciplinary files in the Appellate Division, Third Department in Melfe v. Roman Catholic Diocese of Albany, NY, (3d Dept., 2021), 196 AD3d 811, which significantly expanded the application of the doctrine of "habit evidence" to a finding of negligence. The discovery was relevant to whether the diocese had followed a "habit' or custom" in dealing with priests suspected of sexually abusing children.  As the Appellate Court wrote, although "New York courts have long resisted allowing evidence of specific acts of carelessness or carefulness to create an inference that such conduct was repeated when like circumstances were again presented" Id. at 813, "where the issue involves proof of a deliberate and repetitive practice, a party should be able, by introducing evidence of such habit or regular usage to allow the inference of its persistence, and hence negligence on a particular occasion." Id. at 814. The Appellate decision has been utilized as precedent by other attorney's representing child victims in obtaining records that will support their claims that the negligence of the Church has been persistent and repetitive.   The case underlying this decision received significant press coverage at the time of its filing.

https://www.timesunion.com/news/article/Schenectady-priest-led-secret-life-marred-by-14300551.php

     In another CVA matter, it became apparent that sexual abuse victims of Bishops did not have the same access to the disciplinary records of their sexual offenders as victims of a parish priests under the CVA.  In the face of a First Amendment challenge by the Archdiocese of New York, Smalline and Harri obtained a pivotal ruling from the New York State Supreme Court, Albany County, ordering the Archdiocese of New York to turn over more than 1400 pages of Bishop Hubbard’s (former Bishop of Albany Diocese) disciplinary file to the court for an in-camera review. This put an end to "the shell game" played by the Church in concealing records related to its Bishops, as described in the Albany Times Union Articles:

<https://www.timesunion.com/state/article/Judge-orders-NY-Archdiocese-to-show-him-its-17601894.php>   
<https://www.timesunion.com/news/article/archdiocese-wants-to-keep-bishops-files-secret-17414954.php>

     Three days before this decision was entered, Bishop Hubbard announced his unprecedented decision to request that the Vatican remove him from the clerical state, or laicize him.  See <https://www.ncronline.org/news/bishop-hubbard-facing-multiple-claims-sexual-abuse-asks-vatican-laicization>

      In yet another significant CVA matter, Smalline and Harri successfully established that the Albany Diocese was responsible for the heinous sexual abuse of two young boys by an order priest, not formally employed by the Albany Diocese, by arguing that the Diocese had the requisite control over the priest despite the lack of formal employment.  This paved the way for other victims of Order Priests used by the Diocese to obtain fair compensation.  A feature article concerning this lawsuit was published in the Albany Times Union. https://www.timesunion.com/local/article/Legal-papers-outline-alleged-sex-assaults-by-14061512.php