

# The Sins of the Fathers

Westmont attorney Stephen Rubino grew up a faithful Catholic. Now he's trying to prove that the church he belongs to turned a blind eye toward abusive priests—and helped cover up the scandal.

**S**tephen Rubino huddles with his clients in the crowded hallway outside Judge George Seltzer's courtroom in Atlantic County Superior Court. Rubino, a Westmont attorney, has just spent two hours here in Atlantic City fiercely arguing with lawyers who are defending the Catholic Diocese of Camden. Rubino has filed a massive class-action lawsuit alleging a cover-up of sexual abuse of children by priests. Speaking afterward to victims and their relatives, he tries to put the best possible spin on how the case is progressing.

"We've won some issues, and we've lost some issues," he says, his reading glasses perched atop his bald head. "But unless the judge dismisses the case, we will start depositions soon."

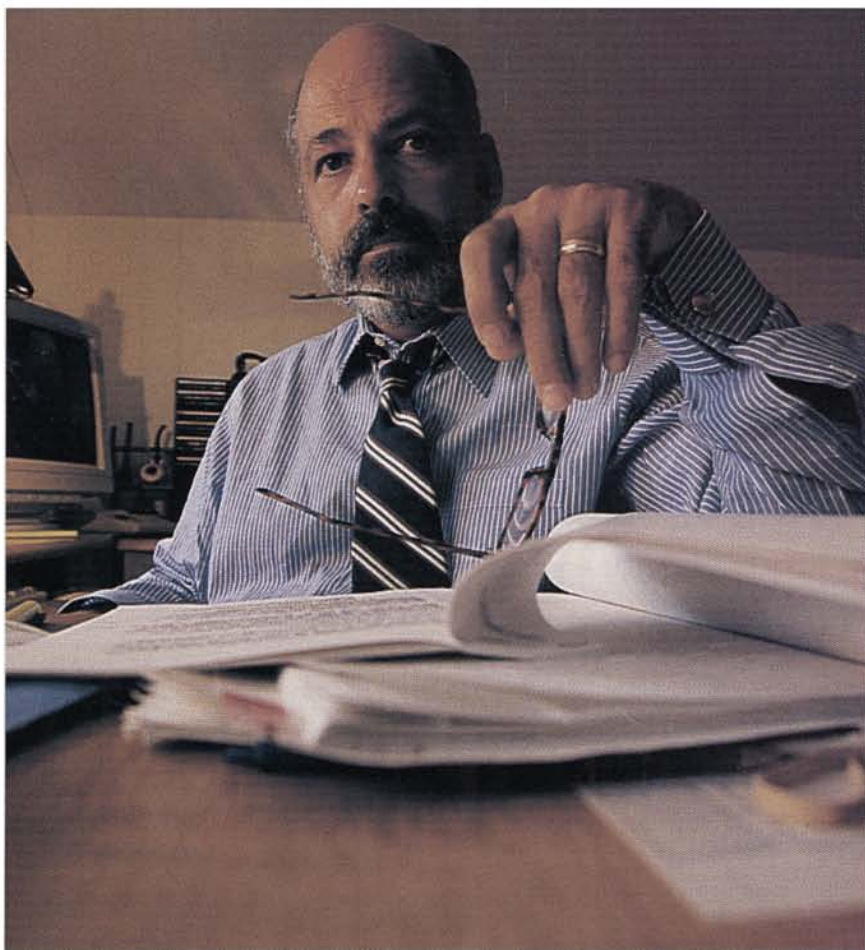
This meeting takes place last February, and Rubino tells the group that little will happen for several months as he awaits the judge's rulings on several pending matters and files appeals on others that have gone against him. Then, as he thanks everyone for coming to court that day, a gaunt, thirtyish man, with a thin, braided ponytail down his back, hustles up to Rubino. "Am I totally late?" he asks breathlessly.

"Did you just get here?" asks Rubino as he spins around.

"Yes."

"Then you're totally late," he says jokingly.

And for this particular hearing he is. But if Rubino can help it, the man is cer-



**Stephen Rubino believes the Catholic Church covered up for abusive priests.**

tainly not late for the outcome of this complicated and contentious case, which has been percolating in the courts since he filed it on October 31, 1994. Another year will likely pass before it is even heard by a jury—if it is at all.

*{He} pulled off my panties, turned me over on his knee and started spanking me. He kept telling me how evil and rotten to the core I was.* —court statement from plaintiff Elizabeth G., 12/15/95

Oral arguments on pretrial motions are rarely standing-room only. But then, this is no ordinary case. The 47-year-old Rubino is the legal mastermind behind what looked to be, at first blush, a potential landmark lawsuit. The sweeping accusations, contained in a 275-page complaint, covered alleged sexual assaults

on 34 children by 30 Camden diocese priests dating as far back as the sixties, in parishes in several towns including Berlin, Camden, Cherry Hill, Cape May, Collingswood, and Brigantine. New Jersey has five dioceses—Paterson, Metuchen, Trenton, Newark, and Camden—all overseen by bishops, except for the archdiocese of Newark, headed by an archbishop. The Camden diocese, which stretches from Camden to the Shore, includes parishes in Camden, Atlantic, Gloucester, Cape May, and Cumberland counties.

Rubino also named several church organizations, including the National Catholic Conference of Bishops, charging that they had protected the abusing priests in order to keep the problem secret and ensure that parishioners would continue to make donations. He even

claimed that Camden religious leaders violated the state's Racketeering Influenced and Corrupt Organizations statutes by harboring pedophilic priests, a statute often used when prosecuting organized crime figures. "Because of the great number of perpetrators," says Rubino, "what I've tried to do is to pull together an entire picture of how this happened, how a system of tolerance and cover-up was perpetuated, and why."

Since the mideighties, lawyers nationwide have been bringing individual claims against rogue priests. But Rubino's lawsuit was one of the first that sought to hold the church hierarchy accountable for conspiring to cover up these sexual crimes and for not taking decisive action to prevent them from occurring, says Sylvia Demerest, a Texas attorney who has consulted with Rubino and filed numerous clergy-abuse actions of her own. "Steve's case is significant because of the number of victims and the number of perpetrators," she explains. "At some point we need to take a serious look at the part that has been played by the Catholic cleric in

the epidemic of child abuse that we are seeing. Until it's recognized that the problem has existed at that level, it won't be behind us."

That may not happen anytime soon, however, or at least not in New Jersey. By early 1994, the Camden diocese had paid out more than \$3 million to clients of Rubino's to settle sex-abuse claims against priests. But by the time Rubino filed his mammoth lawsuit later that year, the church had dropped its settlement posture and had vowed to parishioners that it would adopt a bruising, bare-knuckle approach to future suits. "This [current] case is being handled with an insurance-defense mentality," says Rubino. "Whether the church believes the incidents occurred or not, they are trying to knock out as many claims as possible on procedural grounds."

And they have been successful. Although Judge Seltzer has not dismissed the suit entirely, he did dismiss a key element of Rubino's legal strategy in 1995, and the judge's rulings based on the February hearing may have severely crippled Rubino's ability to present what he believes is the conspiracy behind the church scandal. Church attorneys refused to be interviewed after court proceedings

last February. "The Diocese does not wish to have any discussion of the lawsuit in the media," said Bill DeSantis, lawyer for the Camden Diocese, in response to a request to discuss this story.

As for Rubino, he says the case has gone "almost exactly" as he had expected; he knew the biggest fight would be to get this case before a jury, and the setbacks were "predictable" given the uniqueness of the charges he's making. But Demerest, his legal compatriot, sees little to be optimistic about after her review of Judge Seltzer's recent rulings. "The case is kind of gutted, based on what I see here," she says. "The bastards are winning, and kids will continue to be abused."

*He would have me in the room alone and take my confession. At the same time he would begin to rub, undress, and molest me. This would occur almost every Friday and Saturday.*

—court statement from plaintiff Elizabeth G., 12/15/95

Before agreeing to speak about his suit against the Camden diocese, Rubino recommended that I read the 1995 book *Sex, Priests, and Power* by Richard Sipe. Sipe is a former priest who has studied and written extensively about priests' sexual disor-

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ders. He traces the problem of clergy-abuse of children back to the twelfth century, when the church ordered that its religious leaders be celibate. Sipe argues that the dictate had an economic imperative—to ensure that priests' property would pass to the church, not to a cleric's spouse or children.

The effect today, he reports in his book, is that almost 50 percent of priests are sexually active, with 6 percent abusing minors. Sipe cites a more recent study conducted in Spain that found out of 354 priests who've had sexual relations, 14 percent were with minor boys and 12 percent were with minor girls.

"There's no question that this is a worldwide problem that is somehow involved with the whole celibate system," says Sipe, who is now a psychotherapist affiliated with Johns Hopkins University in Baltimore. "I'm not anti-celibacy, but I am against people who claim celibacy and then go out and sexually abuse minors. The hypocrisy undermines the church's religious purpose."

That, however, has not been the general view of the church. To avoid losing priests and turning off parishioners, the Catholic hierarchy has dealt with the matter mainly by transferring wayward priests to other parishes—a practice that has enabled them to molest more children. As Sipe writes in his book, "Scandal was to be avoided at all costs. The image of the priest as celibately observant and sexually abstinent was never to be questioned openly." By some estimates, between 250,000 and 400,000 American adults were abused by priests during childhood.

The lid started to come off a decade ago, as sensational cases in states like Louisiana, Massachusetts, and New Mexico began making headlines. At first, the church tried to hush up the problem—and drove victims straight to lawyers' offices. The number of suits rapidly multiplied. One attorney in St. Paul, Minnesota, took his first clergy-abuse case in 1984, and has since brought lawsuits on behalf of more than 200 accusers in nearly 27 states. Current estimates are that the church has paid more than \$600 million nationwide in settlements.

More recently, many American bishops and various church organizations have publicly offered words of healing to abuse victims. In addition, some dioceses have

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moved more aggressively to oust priests who abuse children and to provide money so victims can get therapy. But Sipe contends that most of the efforts have been designed to "pick up the pieces," rather than to prevent the abuse. "The bishops have apologized," he says, "but they don't want to get down to the nitty-gritty of what they're apologizing for."

That there is still room for improvement would seem to be especially true for the Camden diocese. In late 1994, in noting the "stark contrast between [the] bishop's sympathetic public statements and his hostile private behavior," a group of more than 3,000 victims, Survivors Network of those Abused by Priests, put Camden at the top of its list of "the most dangerous dioceses in America."

*When he (molested me), he would pull me out of my classes at the parish school. My teacher would tell me that (he) wanted to see me to "ask me about drug abuse."*

—court statement from plaintiff Gary M., 12/14/95

Stephen Rubino didn't seek out his first case against a sex-abusing priest. It came to him in 1988, when Mary McCracken, a friend of the family, said she had to speak with him right away. At the time, after more than a decade as a law professor in Florida, Rubino had been practicing in New Jersey for just three years. He had a fairly typical, low-profile law practice—a lot of personal injury and medical malpractice work, along with his share of civil rights and criminal-defense cases. All that changed when McCracken sat at the kitchen table in his house in Margate. When she told him that the police were investigating a priest from St. Francis de Sales Roman Catholic Church in Barrington who had sexually assaulted her teenage son, Rubino didn't believe her.

His own Catholic faith had created a "blind spot," as Rubino puts it. He went to Catholic school, and as the youngest of three brothers, had often been urged by his mother to enter the priesthood. "She was going to have a doctor, and she was going to have a lawyer, and a priest would just round it out perfectly," he recalls. "I was the one son that was left, and she pushed hard."

Rubino went on to receive his undergraduate and law degrees from Catholic universities, but it was the celibacy issue

that clinched his decision not to become a priest. That commitment also fostered even deeper respect for those who did become ordained. "I always thought priests were not of this world," he says. "I thought, 'What an act of humility. What an act of faith.'"

In an interview in his Margate home-office, surrounded by files relating to thousands of hours of interviews with victims, Rubino sometimes shakes his head in disbelief as he discusses his cases. "In some part of me," he says, "I wish I had never been visited upon. Sometimes I wish I was back just doing my medical malpractice cases and not involved in these issues, because it is painful for me to see the duplicity in people I had held in such high reverence."

Nevertheless, after bringing nearly 70 clergy-abuse suits (about half in New Jersey), he still supports the church through anonymous donations targeted at issues and programs that he believes in. He also expects to send his two-year-old son to parochial school, because of the quality of the education.

Says Sipe, "The church thinks that talking about this problem is Catholic bashing. But I don't know how much more devoted to Catholicism a person can be than to take on the very hard task of being a whistle-blower and tell people things they don't want to hear."

*When I was being sexually abused by (him) as a child, he told me it was part of my spiritual and social education.*

—court statement from  
plaintiff Margaret S., 12/15/95

In February 1990, Rubino reached an out-of-court settlement with the Camden diocese in the suit against Reverend John J. McElroy, who had molested McCracken's son over an 18-month period when the boy was aged twelve to fourteen. The fallen priest, who was a youth minister at a local parish, had been convicted of criminal charges and sentenced to five years in prison, and the diocese agreed to settle the civil charges for an estimated \$2.5 million.

By the time of that first major settlement, Rubino began to uncover and understand the decades-long pattern of sexual assaults in the Camden diocese and the ways in which top officials in the diocese allowed the assaults to continue. "I will admit that it took several years for the veil to be completely lifted and for me to come to grips with the bishops' complicity in this," says Rubino.



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He clearly had come to terms by June 1993, when he filed a suit in federal court alleging that between 1965 and 1972, two diocesan priests conspired to create a "sex ring of children" and that their bishops ignored complaints of sexual misconduct. The two priests named in the suit—the Reverend Joseph F. McGarvey and the Reverend William C. O'Connell—were accused of giving gifts, money, and alcohol to the three plaintiffs from parishes in Runnemede and Millville in exchange for sex. They also told the boys they had a "special relationship" that had to be kept secret because people wouldn't understand. Four months later, the diocese paid nearly \$400,000 to settle the claims.

One of the plaintiffs in that case was Father Gary Hayes, now 43 and a priest in Kentucky. In Hayes's first interview since the 1993 settlement, he says that he sued the diocese only after numerous attempts to have McGarvey removed from his post were in vain. He once informed a church official about the priest's deviant behavior, and was allegedly told, "He's your pastor. You need his recommendation to get into seminary. Go work things out with him." Hayes also believes that his desire to be ordained in the Camden diocese was rebuffed largely because he'd given a detailed history of McGarvey's actions.

Then in late 1992, Hayes met with Camden Bishop James T. McHugh to discuss what he calls "the tainted history of his diocese." McHugh promised an investigation, but that entailed nothing more than asking McGarvey whether anything untoward had happened. "I had to seek justice in the courts, because I received no justice in the church," says Hayes. (Rubino says that virtually every client of his had complained to church officials before seeking legal counsel.)

In late 1993, soon after the Hayes settlement, Rubino became embroiled in his most high-profile and controversial sex-abuse case—the suit he brought accusing Cardinal Joseph Bernardin of Chicago and another priest of molesting a teenager in the seventies. Then in March 1994, the plaintiff, Steven Cook, dropped the case because his memory of the abuse by Bernardin had been brought out by hypnosis, and might be unreliable. Cook had always remembered the abuse by the other priest, and Rubino settled that



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claim for an undisclosed amount.

Unaware of Cook's hypnosis when he filed the suit against the cardinal, Rubino says none of his other claims have been based upon repressed memories. "The cases I handle are based on real memory," he explains, even in instances where the victims were abused decades ago. "The abuse has always been part of their awareness. They just never understood that it might have something to do with why they can't maintain satisfying relationships, or why they are sexually dysfunctional, or why they abuse drugs and alcohol, or why they are angry all the time or carry around a tremendous amount of guilt."

*I was warned and directed by these offending and complicitous priests to bury the sexual secret of what I experienced forever, or else great harm would come to me if I did not. I lived in fear.* —court statement from plaintiff Stephen G., 12/14/95

"What I'd say to a jury is that these are cases that nobody ever wanted to see the light of day," says Rubino, when asked what his opening argument might entail if he ever gets a chance to deliver it. "When you sexually assault a child, you murder that child's spirit. And those who abuse that child's trust, who take the power they have over that child in order to sexually gratify themselves, and then sell the concept that this is a service to God, are sick. As painful as it is in an institution that has served millions of people well, there have been abuses, and these abuses need to see the light of day. Because that's the only way that we can correct them."

Rubino has never had to try a clergy-abuse case in court, because they have all settled. And with the current suit against the Camden diocese, he may not go to trial again—but not because he's reached a settlement.

Even before Rubino filed the claim in late 1994, Bishop McHugh of Camden had declared that he would rather fight than settle. "We recognize that people have a right to legal representation and court process," he stated in a letter read at Sunday Masses throughout the diocese. "If they choose that path, the diocese also has a right and obligation to defend itself vigorously and to use all the legal defenses available to it when such allegations

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are taken to the courts. At this time, that is what we have chosen to do.”

Three days after the suit was filed, McHugh told reporters that accusations saying the diocese protected pedophilic priests were “outrageous” and a “new type of terrorism” against the church. In court, that view is winning out.

In June 1995, after a series of packed courtroom hearings, Judge Seltzer dismissed the racketeering allegations against the diocese. He stated in his ruling that Rubino failed to prove that each of the plaintiffs had suffered financially from the alleged abuse. The judge, however, left the door open for legal arguments that could reinstate this aspect of the suit. “I think we can provide him with a successful amendment, but that remains to be seen,” Rubino says.

The judge has also dismissed various church organizations that were named as defendants, but much of the past year has been spent with legal wrangling over what is the crux of the suit—whether the statute of limitations on the plaintiffs’ claims had lapsed before they filed the suit. New Jersey law gives sexual abuse victims two years to bring a suit against their attackers. Because only two of the abuse claims in the complaint fall within that time frame, Rubino has had to argue the statute of delayed discovery for all the others. In the case of minors, there are legal provisions recognizing that people may suppress childhood trauma and not immediately understand its connection to their adult problems. The question is, when should they have seen the link?

*It was not until I saw various survivor accounts published in the media in January 1994 that I began to understand and realize that I was not the guilty party, but a victim.*

—court statement from plaintiff Stephen G., 12/14/95

In court documents, most of the plaintiffs indicated they “discovered” their injury in late 1993 or early 1994, when there was a flurry of media coverage on the Hayes settlement and the issue of clergy-abuse in general. “The cause of action accrues not to the act, but to when they realized the damage,” Rubino told Judge Seltzer at the February pretrial hearing.

Defense attorneys countered that the

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plaintiffs, many of whom have said that they knew what happened to them was wrong at the time it happened, should have taken legal action much sooner. Toward the end of the court session, the judge reviewed a chart showing how much time had passed between the alleged abuses and when the suit was filed. The message was clear: The claims have expired and should be tossed.

After February's hearing, Judge Seltzer has ruled that the plaintiffs should have been aware of the ramifications of childhood sexual abuse by October 23, 1992. He selected that date based on his review of the extensive national media coverage of clergy-abuse, and his choice couldn't have been more timely. "The judge said the clock could not start ticking later than 10/23/92," says attorney Sylvia Demerest, "and that is two years and eight days before Steve filed his case on 10/31/94."

In late May, Rubino filed a brief with the state appellate division charging that the judge "erred in arbitrarily selecting a date of 'reasonable' discovery" and asking for a review of the ruling. Whether or not that happens, Rubino expects to proceed with filing papers to have the case certified as a class-action suit and to start taking depositions this fall.

Nevertheless, he acknowledges that he "could have the whole case thrown out other than the two claims" that were based on abuses in 1994. That would certainly undercut the force of his legal efforts to prove a conspiracy, and leave him with a still-heavy load of individual claims related to this suit and others. He has several cases pending against New Jersey dioceses other than Camden, and at least three additional claims in the state that he might file soon.

Father Hayes worries that the Camden diocese, by successfully engaging in hard-ball legal tactics, will be able to put the issue to rest and once again push it underground. "I've done all I can in my power to have an impact and make the situation better in Camden," he says. "But if the diocese doesn't lose badly, it would bother me that children might be exposed to more abusers and it would be more difficult for victims to come forward and get help. I think it would make for a terribly unsafe environment for children." ■

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*Stephen Barr is editor at large.*