

# THE CROSS EXAMINER

AS SCANDALS ENGULF THE CHURCH, ONE OF THE MOST PROMINENT ANTAGONISTS IS A MARGATE LAWYER — AND A DEVOUT ROMAN CATHOLIC

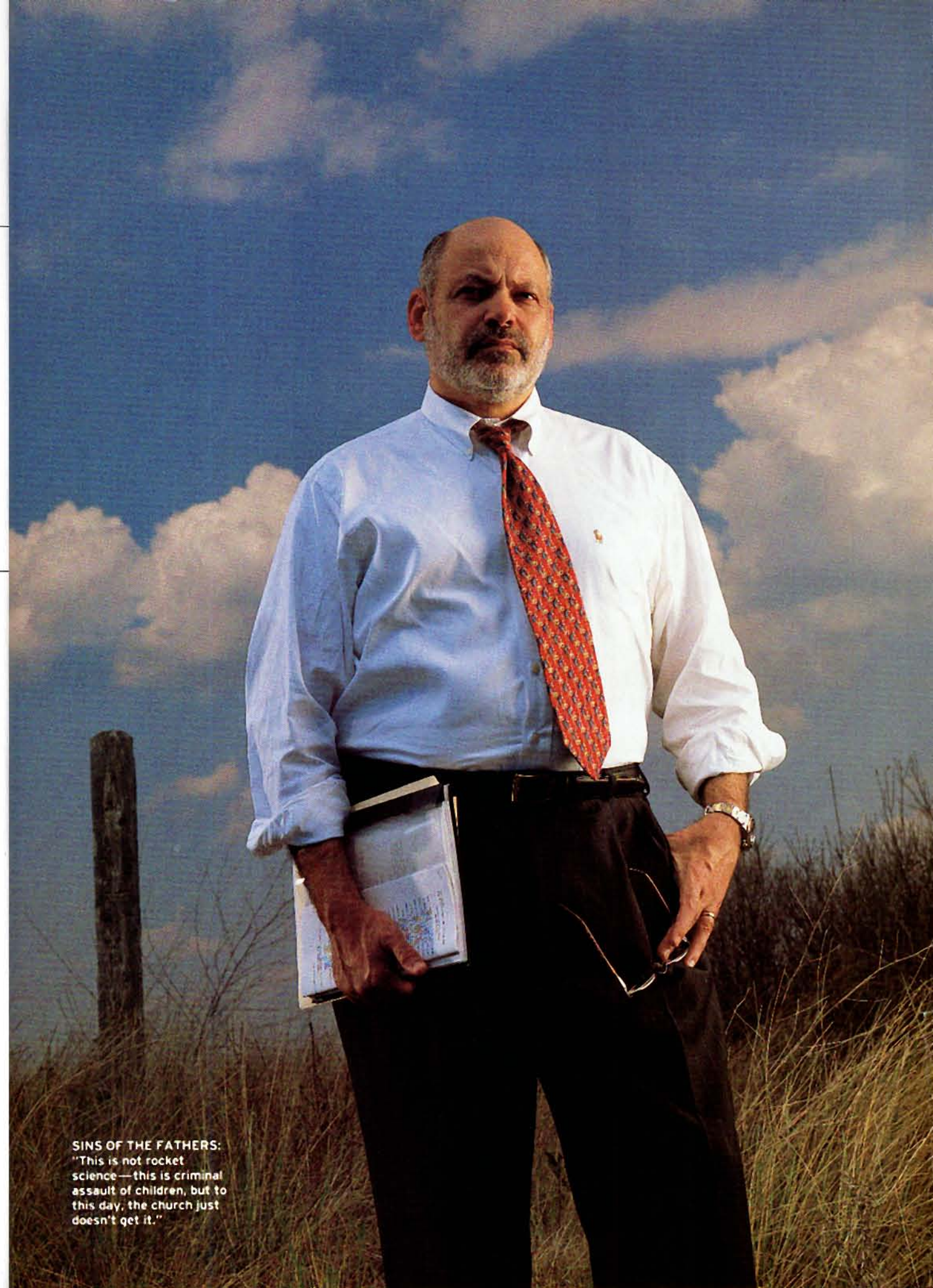
BY CHRISTOPHER McDOUGALL

THE LEGAL TEAM FOR THE DIOCESE of Camden has 11 crack lawyers and one clear objective: Make sure a jury never, *ever* hears these nightmarish tales of rape, sex rings and predator priests. Make sure the case dies right here, in this April hearing in the Atlantic City Courthouse, on the technical grounds that the plaintiffs have spoken up too late. So far, the defense lawyers are doing a great job.

All morning long, the church's attorneys have been hammering plaintiffs' attorney Stephen Rubino so fiercely with objections that he sometimes can't keep track of what he's saying. At times, three of the church's attorneys are on their feet before Rubino can even open his mouth, anticipating his next point and ready to shoot it down.

Rubino's clients mutter in frustration. They've already received the disheartening news that Rubino won't even get a chance to grill the accused archvillain in the case, a retired priest alleged to have masterminded an underground diocesan sex network. If anyone really knows the sex secrets of the Camden rectories, Rubino

PHOTOGRAPHY BY ROBERT CLARK



SINS OF THE FATHERS: "This is not rocket science—this is criminal assault of children, but to this day, the church just doesn't get it."



believes, it's Monsignor Philip Rigney. But just as the day's hearing got under way, the church's attorneys delivered a letter from Rigney's doctor. At 85, he's far too ill and frail to travel, they argued, or even to testify by videophone. The judge excused Rigney from appearing.

Instead, Monsignor Joseph Pokusa takes the stand and offers cool, unshakable testimony in defense of the church. Why didn't he urge abuse victims to go to the police? "The only answer," Pokusa tells Rubino with a perplexed shrug, "is it never came to mind."

"Liar!" Rubino client Jim Smith mutters furiously in the front row. "Asshole!" Nearly 40 years ago, Smith says, he and his brother were traded around as sex toys by Dennis Rigney and two other Camden clergymen. When they mustered the courage to complain, their accusations went directly to a high church official—Dennis's brother, Philip. They were warned to keep quiet, Smith says.

"Okay, that it for today?" Judge John Himmelberger Jr. is asking. "Any unfinished business?" The church's attorneys shake their heads and snap their briefcases shut, clearly satisfied. Monsignor Pokusa nods goodbye, picks up his hat, prepares to go. The church's hired spokesman heads outside to tell the news cameras why the case really should be thrown out of court.

And then Rubino speaks up. "Umm, Your Honor?" he says. "There is, uh, one last thing." His tone is so offhand, he could be asking for men's room directions—but the church's attorneys stop dead, listening intently. "We retained a private investigator over the weekend," Rubino says. And guess what—remember that doctor's note about Monsignor Rigney being too ill to testify? "We have him on video driving a car, going to mass, and going out to lunch with his sister," Rubino says.

church to adopt a more penitent tone, talk like that earned Rubino the kind of vituperation that Catholic loyalists usually reserve for Satan himself. The late Bishop James McHugh of Camden called Rubino a terrorist, and accused him of using a "twisted legal theory" to bilk the church out of millions of dollars. Pro-Catholic magazines like *Commonweal* and *Catalyst* used to call him "greedy," criticize his "chutzpah," and suggest that he was cashing in on anti-Catholic bigotry.

From his Margate office window, Rubino can look across the street and watch the kids troop into Blessed Sacrament grammar school each morning. He marched in those same distinctively straight lines decades ago, as a parochial-school kid in Washington, D.C. In fact, all of his education came under the sign of the cross: He went on to Mount St. Mary's College in Maryland, then to Catholic University of America's law school. His mother even urged him to join the priesthood. "It's the Italian-Catholic tradition," he explains. "She wanted her sons to be a doctor, a lawyer and a priest, and she picked me to wear the collar."

At 53, he could pass for a cleric. His hair has retreated to a monk-like tonsure, and his short, bristly beard is spiked with gray. He's a tall, imposing man to begin with, and because he's so harassed for time, he wears a constant semi-squint of preoccupation. (In the past three months, he has signed on 180 new clients—including one in Alaska.) Ask him an irritating question, like, "How can you detest church practices without detesting the church?" and annoyance will overwhelm his face. Ask him about his clients, though, or the passion for the outdoors he shares with his wife, three children and two grandchildren (woody scenes and carved tchotchke bears decorate his office, and old copies of *Backpacker* magazine fill the end tables), and he becomes personable and surprisingly open, with a quick smile

## RUBINO ACCEPTS THAT IT'S PARTLY HIS FAULT SOME ABUSIVE PRIESTS ARE STILL ON THE LOOSE—A MORAL DILEMMA THAT IS "HUGELY TROUBLESOME," HE SAYS.

"The tape is on its way here now."

The church's attorneys look stunned. The judge calls an immediate conference in his chambers. Rubino's clients are thrilled. A gumshoe trailing the suspect, secret evidence speeding to the courthouse... they're finally getting a glimpse of why Rubino is considered one of the best in the country at nailing abusive priests. And to think—for a good part of his career, he wasn't even allowed to practice law.

LONG BEFORE THE *BOSTON GLOBE* EXPOSED THE Boston archdiocese's problem with pedophile priests and turned the Roman Catholic Church's failure to police its own into a worldwide scandal, a Margate personal-injury lawyer was acting as national strategist and information clearinghouse for clergy malpractice cases. The reason the fight was based in his office and not in some federal agency is that for many years—14, to be exact—Steve Rubino couldn't convince the world that the abuse was epidemic and the Catholic Church was covering it up.

"This idea that child abuse is a moral failing that can be cleaned up with a little penance is pure horseshit," Rubino says. "This is not rocket science—this is criminal sexual assault of children, but to this day, the church just doesn't get it. They tell these predators, 'Don't do it again,' and give them second and third chances. Everywhere else, they go to jail."

In the past, before the recent media onslaught prompted the

and a disarming laugh. He seems, ironically, much like a religious zealot—a basically good-hearted man who's gotten caught up in something overwhelming and exhausting.

Rubino still goes to mass and donates to Catholic charities (though he declines to say where he attends church, out of concern for his family's security). He draws a fine line between the Catholic faith and its custodians on Earth. Rubino feels bedrock Catholic beliefs are a distinct set of precepts unaffected by Catholic bishops—a good number of whom, he's certain, have willfully turned a blind eye to sexual abuse. "Time and again," Rubino says, "very powerful church officials have been made aware of the facts, but decided to exploit the interests of children because they were afraid it would weaken their institution."

Few other attorneys have made that point more aggressively or inventively. Rubino has been involved in more than 250 clerical cases over the past decade, winning a fortune in settlements and helping drive church legal bills so high that some dioceses, including ones in Texas and New Mexico, have been threatened with bankruptcy. His claims for damages are, to say the least, innovative—he has sought compensation for "loss of faith" and "loss of salvation." In 1993, he startled his fellow attorneys when he labeled the church an organized-crime syndicate and went after it under the same racketeering laws the Justice Department uses against the Mafia. (The hardball worked—the church paid to settle.)





SAVING FAITH: Above, calls from new clients have Rubino's phone in "meltdown"; below, the late Cardinal Joseph Bernardin, against whom Rubino filed suit in 1993.



At the same time, he has become a tremendous source of consolation for abuse victims. "There's nothing so degrading as being a victim, and Steve Rubino knows it," Jim Smith, 54, says during a break in the Atlantic City hearing. "He's done more for me than I can explain." Before he became a Rubino client, Stephen Gandy says, his single boyhood experience of being fondled by his parish priest had led to a lifelong fear of older men that doctors failed to calm with Prozac.

"You have to understand how horribly shameful this is," says Gandy. "All my life, I thought this was my fault. I wondered what was wrong with *me* for making him do that. After my mother went to another priest for help, she was scolded for badmouthing a 'prince of the church.' So I kept quiet." What finally provoked Gandy to speak up was Bishop McHugh's response when the racketeering lawsuit was filed. The bishop accused Rubino of perverting the facts to extort settlement money under the threat of scandal. "These charges are intended to create the impression that our priests are immoral and dangerous," McHugh thundered. He vowed to fight Rubino to the bitter end, and never to settle.

Which is why, eight years later, a videotape is speeding across South Jersey toward the Atlantic City Courthouse. McHugh has since died, but his defiance lives on: The case of *Smith et al. v. McIntyre et al.* continues, even though many of the defendants have also died, left the priesthood, gone to prison, or simply disappeared from the clergy directory.

The 400-page *Smith* complaint reads like the Marquis de Sade's memoirs, and has led SNAP—the 3,000-member "Survivors Network of those Abused by Priests"—to list Camden among "the most dangerous dioceses in America." According to the complaint, one Camden priest raped a six-year-old girl in the rectory basement. Another priest twice assaulted girls and four times underwent pedophilia therapy, the complaint says, but was still assigned to a new parish, with no warning to parishioners that he was a known sexual predator. The suit alleges that a priest threatened to stab another priest to death if the rival got between him and his favorite altar boy, and that several priests got together every weekend for beer and group sex with altar boys. "It would start by Father Kelly saying that he would hear my confession," a former altar boy claims in the complaint. "At the same time, he would begin to undress me and molest me. This would occur almost every Friday and Saturday night."

The complaint concludes that sexual misconduct had gone unchecked in Camden since the diocese's founding in 1937. It was covered up by a decades-long conspiracy of silence, the suit charges, extending from parish priests up to their presiding bishops.

So far, the diocese hasn't specifically denied the charges. "Most of the accused parties are no longer around to defend themselves," says Jay Devine of Tierney Communications, a public relations firm hired by the diocese's lawyers. "That's why the diocese is opposing the suit on statute of limitations grounds—because time has made the charges impossible to verify."

But the plaintiffs' stories could have a profound effect on a jury. Only seven clerical-abuse cases have ever gone to trial in the U.S., and each one ended with a jury award of millions in punitive damages to the victims. Still, Rubino knows the case is a gamble. He doesn't earn a dime unless he wins, and the longer the church keeps him from trial, the more money of his own he must invest in exhibits, appeals and expert witnesses, and the greater the chance that memories will fade, defendants will die, and victims will lose heart. (continued on page 102)





ADVERTISEMENT



ADVERTISEMENT

## Cross Examiner

(continued from page 79)

That's why major law firms generally opt for the defense, where, win or lose, they can charge their wealthy corporate and ecclesiastical clients hefty retainers and high hourly fees. Often, then, the ones who represent the little guys are small practitioners like Rubino—the lawyers of last resort.

There is, however, big money to be made representing little guys. Rubino, like all plaintiffs' attorneys, takes a significant cut of whatever settlements he can win for his clients—the common practice is one-third, though some attorneys insist on more. Rubino says he has no idea of the total value of settlements he's gotten for his clients, but his chief rival in the clerical abuse field, Minnesota attorney Jeffrey Anderson, estimates his own settlements with Catholic dioceses at \$60 million. "I'm not into that kind of notch-counting," says Rubino. "I know it's in the millions of dollars, but I don't keep score that way."

FOR YEARS, STEPHEN RUBINO WAS the ultimate legal outsider. His career got off to a promising start, but soon went sour. Recruited right out of Catholic University's law school, he was helping try murder cases for the district attorney's office in Vero Beach, Florida, before he'd even taken his bar exam. His rise as a prosecutor seemed guaranteed—until he flunked the state's bar exam three times in a row. That's the maximum number of attempts permitted in Florida, and he immediately lost his job with the D.A.

Failure, however, forced him to develop a skill that would ultimately lead to his success. Unable to practice law, he began hiring himself out as a freelance legal researcher. Quick to master computer data searches, he became expert at digging out arcane precedents and concealed documents. After toiling for 10 years at legal scut work, Rubino began wondering how he could have such a head for law and still have flunked the bar exam. He consulted a cognitive psychologist, who diagnosed a learning disorder and recommended a basic thought-organizing text called *How To Study in College*. (Rubino has reread it annually, he says, for the past 17 years.)

By 1985 he had decided to leave Vero Beach and take another stab at his lawyer's license in a different state. He landed a job with one of his research clients in New Jersey, where the bar exam is easier and the beaches are still close by. This time, Rubino passed, and he was soon handling small criminal defense and personal injury cases.

Rubino's first year as a lawyer was, coincidentally, the first time a major sex-abuse

case was brought against the Catholic Church. In 1985, a Louisiana archdiocese paid an \$18 million settlement after one of its priests admitted to molesting some 70 children. Three years later, the relatively raw Rubino got his own chance at this challenging new area of litigation when a family friend told him her 12-year-old son had been sexually assaulted for 18 months by their family priest. He took the case, and won a \$2.5 million settlement.

Rubino discovered that he had a knack for clerical cases. Beyond his personal knowledge of priests and parishes, he was adept at the toughest part of a clerical suit: unearthing information. The church is massively wealthy, but thanks to First Amendment safeguards for religious groups, it's entitled to a level of secrecy Enron could only dream of. In a case Rubino currently has on appeal, the church is contesting a seminarian's sexual-harassment suit on grounds that it's a question of canon law—private church business, in other words. Rubino sometimes worries whether embarrassing documents have been hidden with the pope's representative in Washington,

**“YOU HAVE TO KNOW TO ASK FOR THE SECRET FILES,” SAYS RUBINO, “OR YOU WON'T FIND OUT ANYTHING.”**

D.C., who enjoys diplomatic immunity from subpoenas. “Comb through your files,” Auxiliary Bishop James Quinn of Cleveland advised the Midwest Canon Lawyers Conference in a 1990 memo. “If there's something there you really don't want people to see, you might send it off to the Apostolic Delegate, because they have immunity to protect something that is potentially dangerous.”

In addition, some dioceses keep two sets of personnel files, Rubino says—an office copy, and a secret one accessible only by the bishop. “You have to know to ask for the secret files,” he says, “or you won't find out anything.” But no matter how sharp one's investigative skills, building a case against any big corporation is difficult. So Rubino developed a simpler expedient: Rather than ferret out all the facts, he would simply show the diocese the embarrassing ones he already had. A settlement usually followed.

Between 1988 and 1993, this proved an effective formula. Then Rubino overreached—he went after the most powerful Catholic in America, Cardinal Joseph Bernardin of Chicago. With Rubino by his



**ADVERTISEMENT**





ADVERTISEMENT



ADVERTISEMENT

## Cross Examiner

side, a former Philadelphia seminarian named Steven Cook went on CNN and accused Bernardin of having molested him when Cook was a 17-year-old parishioner in Cincinnati. Cook was 34 when he made the charges, and claimed that bottling up the trauma had pushed him into a life of drugs and promiscuous sex, eventually leading to his arrest on narcotics charges and infection with HIV. Only after a Philadelphia therapist hypnotized him, Cook said, did he recall what Bernardin had done.

The cardinal, once considered a contender to become the first American pope, was suddenly bombarded with questions from the press about his possible resignation. But within months, the case unraveled. A police transcript showed that Cook had mentioned being molested by two priests when he'd been arrested for drugs in 1985—years before his “repressed memory” supposedly first emerged. And Cook's therapist, it turned out, had only studied hypnosis for three hours in a school founded by a New Age guru. Cook won a settlement against another priest but dropped Bernardin as a defendant, saying his memory of the alleged incident was unreliable. The cardinal forgave Cook shortly before both men died the following year, Cook of AIDS complications, Bernardin of pancreatic cancer.

Rubino, however, got no such absolution. His fellow attorneys blistered him, accusing him of rushing to the media with an unverified case so that news of the suit would coincide with a Catholic bishops' conference. “Steve Rubino is a great, compassionate attorney, but that case set the movement back a decade,” says Jeffrey Anderson, who has handled more than 400 clergy malpractice clients. “It still lingers every day—the odor won't go away.” Northwestern University devoted an entire conference to “Guilt by Allegation: Lessons from the Cardinal Bernardin Case,” while legal ethicist Thomas Scorza was referring specifically to Rubino when he wrote in the *Wall Street Journal*: “... [T]here will always be lawyers willing to take on hopeless causes just for their publicity and client-generating value.”


Today, Rubino offers a simple defense for using media pressure against the church. “Look how suddenly interested prosecutors have become ever since the *Globe* ripped the story open,” he points out. “Where were they before?” Though he concedes that adding Bernardin to the Cook suit might have been a mistake, he remains unapologetic about the fallout. “It was traumatic at the time,” he explains, “but I don't feel guilty about it at all. We were representing a client, but during the

process the client felt his memory was unreliable. That's all there is to it."

**FOUR DAYS INTO THE ATLANTIC** City hearing, Rubino is sagging back in an office chair, facing a table strewn with documents for the ongoing *Smith* battle. The triumph of his videotape surprise has already faded. The ploy would force Rigney to testify a few days later from Florida by videophone, but the old monsignor's testimony did little to help Rubino's case. By the first week in May, Judge Himmelberger will have thrown out Rubino's motion, ruling that the attorney failed to prove the church's influence had prevented two of his clients from joining the suit before the statute of limitations expired. But in announcing his decision, Himmelberger also questioned whether the church's aggressive defense might be "at odds with its stance as a moral force in society. ... From where I sit, playing legal hardball doesn't seem quite right."

If Rubino manages to prevail through the next round of appeals, he hopes the 18 *Smith* plaintiffs will finally get their day in court later this year. If that happens, he'll face a whole new challenge—he's never actually tried one of these cases before a jury. In the past, he settled them quietly, with the victims in most cases receiving compensation in exchange for a promise of secrecy. "Historically, the church has been highly effective at buying the survivors' silence," says attorney Anderson, "or wearing them down in litigation."

Under the terms of these deals, however, nothing prevented the church from assigning an abusive priest to a new parish, where he could pose a fresh threat to unsuspecting children and their families. Rubino accepts that it's partly his fault some abusive priests are still on the loose. As a moral dilemma, he terms this "hugely troublesome." That's why he has a new policy: no more cash-for-confidentiality. Since the *Globe* released its bombshell in January, Rubino says, his phone has been "in meltdown" with new clients clamoring for his services, but he has decided he will only consider their cases if they agree to come forward and help put predators away. What made up his mind, he says, was reading an account of a case in Florida and realizing with horror that it involved a priest with whom he'd settled a case years before.

"We're seeing a dawning now that's absolutely unprecedented, and we have to make sure we do it right," Rubino says. "If I never had to deal with this kind of sadness and cruelty again, I'd find another kind of law to practice—and believe me, I'd be a happier man." 

E-mail: [mail@phillymag.com](mailto:mail@phillymag.com)



ADVERTISEMENT



ADVERTISEMENT