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Clergy Sexual Abuse Litigation: The Policymaking Role of Tort Law

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By all accounts, the prevalence of clergy sexual abuse and its cover-up by Church officials represents a massive institutional failure. Obscured by all of this attention to the Church's failure is the largely untold story of the tort system's remarkable success in bringing the scandal to light in the first place, focusing attention on the need for institutional reform, and spurring Church leaders and public officials into action. Tort litigation framed the problem of clergy sexual abuse as one of institutional failure, and it placed that problem on the policy agendas of the Catholic Church, law enforcement, and state governments. This Article examines these framing and agenda-setting effects of clergy sexual abuse litigation. It argues that private lawsuits can have a powerful and beneficial effect on policymaking.

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TIMOTHY D. LYTTON*

> "The real story should be told from legal documents."
>
> –Arthur Jones, Washington Bureau Chief of the *National Catholic Reporter*[1]

> "It would be silly not to concede that the gravity of the litigation wasn't a motivating factor in . . . keeping the church's attention focused on . . . the problems with the children."
>
> –J. Michael Hennigan, attorney for the L.A. archdiocese[2]

I. INTRODUCTION

The sexual abuse of children by Catholic clergy has been called "the greatest scandal in the history of religion in America and perhaps the most serious crisis Catholicism has faced since the Reformation."[3] By all accounts, the prevalence of clergy sexual abuse and its cover-up by Church officials represents a massive institutional failure. Obscured by all of this attention to the Church's failure is the largely untold story of the tort system's remarkable success in bringing the scandal to light, focusing attention on the need for institutional reform, and spurring Church leaders and public officials into action. Tort litigation framed the problem of clergy sexual abuse as one of institutional failure, and it placed that problem on the policy agendas of the Catholic Church, law enforcement,

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1 Jason Berry, Lead Us Not Into Temptation 73 (1992).

2 Telephone Interview with J. Michael Hennigan, Attorney for the Archdiocese of Los Angeles, in Albany, NY (Mar. 29, 2006) (transcript on file with Connecticut Law Review).

3 Richard N. Ostling, Sex Abuse Crisis Not New for Church, Associated Press, Apr. 8, 2002, available at LexisNexis Academic, News Wires (quoting Rev. Andrew Greeley).

and state governments. This Article examines these framing and agenda-setting effects of clergy sexual abuse litigation. It argues that private lawsuits can have a powerful and beneficial effect on policymaking.

The standard account of tort law sees its primary public policy impact in terms of deterring and spreading risk and articulating public norms of justice.[4] It emphasizes the policy implications of liability judgments and tort doctrines. It focuses on litigation *outcomes*. By contrast, in recent years, tort scholars have begun to pay more attention to the policy impact of the litigation *process*. For example, in case studies of tobacco and gun litigation, scholars have shown how pleading, discovery, and trial uncover hidden information, shape public perceptions, and complement legislative and agency regulation.[5] This examination of clergy sexual abuse litigation builds on these findings.

Clergy sexual abuse litigation provides an especially powerful example of tort litigation's impact on policymaking. Prior to the filing of lawsuits in the 1980s, local media reporting of sexual abuse by clergy was scant and infrequent and there was no national media coverage of the issue. Prosecutions were rare and public discussion and policy debate non-existent. Litigation was the primary force in attracting attention to the problem, shaping perceptions of it, and making it a policy priority within both the Church and state governments. Compared to tobacco and gun litigation, clergy sexual abuse litigation offers a more attractive example of tort litigation's impact on policymaking. Whereas tobacco and gun litigation have produced, at best, only modest advances in tobacco and gun control, clergy sexual abuse litigation has made it possible for child sexual abuse victims to hold one of the largest, richest, and most powerful institutions in America publicly accountable and has forced reluctant Church and government officials to adopt sensible policies to address a widespread social problem.

The successes of clergy sexual abuse litigation have not been without cost. Fear of litigation has led some Church officials to conceal information that they might otherwise have disclosed.[6] Heightened suspicion of priests has impaired their ability to perform many pastoral

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[4] *See, e.g.*, KENNETH S. ABRAHAM, THE FORMS AND FUNCTIONS OF TORT LAW 14–17 (1997); DAN B. DOBBS, THE LAW OF TORTS 13–21 (2000).

[5] *See, e.g.*, Deborah R. Hensler, *The New Social Policy Torts: Litigation as a Legislative Strategy—Some Preliminary Thoughts on a New Research Project*, 51 DEPAUL L. REV. 493, 498 (2001); Peter D. Jacobson & Kenneth E. Warner, *Litigation and Public Health Policy Making: The Case of Tobacco Control*, 24 J. HEALTH POL. POL'Y & L. 769 (1999); Timothy D. Lytton, *The Complementary Role of Tort Litigation in Regulating the Gun Industry*, *in* SUING THE GUN INDUSTRY: A BATTLE AT THE CROSSROADS OF GUN CONTROL AND MASS TORTS 250 (Timothy D. Lytton ed., 2005); Lynn Mather, *Theorizing About Trial Courts: Lawyers, Policymaking, and Tobacco Litigation*, 23 LAW & SOC. INQUIRY 897 (1998); Richard A. Nagareda, *Gun Litigation in the Mass Tort Context*, *in* SUING THE GUN INDUSTRY, *supra*, at 176; Wendy Wagner, *Stubborn Information Problems & the Regulatory Benefits of Gun Litigation*, *in* SUING THE GUN INDUSTRY, *supra*, at 271.

[6] PHILIP JENKINS, PEDOPHILES AND PRIESTS: ANATOMY OF A CONTEMPORARY CRISIS 38 (1996).

duties, and mistrust of the hierarchy has damaged the credibility of the Church as a whole.[7] Judgments, settlements, and litigation costs have forced some dioceses to scale back their educational, healthcare, and anti-poverty programs, and, in some cases, to file for bankruptcy.[8] A comprehensive assessment of the costs and benefits of clergy sexual abuse is beyond the scope of this Article. Any firm conclusion about the litigation's value requires careful attention to empirical data about the costs of the litigation and to the concrete results of the policies aimed at addressing them.[9]

My aim in this Article is more modest. Without attempting to argue that the benefits of clergy sexual abuse litigation outweigh its costs, I claim merely that framing the problem as one of institutional failure and placing institutional reform on the policy agendas of Church and government officials are two clear benefits of the litigation. In addition, I claim that these benefits are ignored by tort reform advocates who denounce litigation as inefficient and skeptics who suggest that litigation is ineffective as a means of achieving social change.[10] A case study of clergy sexual abuse litigation does not establish that framing and agenda-setting effects are always beneficial, but it does provide one clear example where they are. At the very least, these impacts on policymaking—which in some contexts are highly beneficial—should be taken into account in any fair assessment of the tort system. Thus, clergy sexual abuse litigation gives us reason to revisit the case for tort reform and to reconsider skepticism regarding the usefulness of litigation in addressing social problems.

My claim that clergy sexual abuse litigation has had significant and beneficial effects on policymaking relies on two arguments. First, I argue that tort litigation led the news media to report clergy sexual abuse and to frame it as an issue of institutional failure. Second, I argue that litigation

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[7] *See* STEPHEN J. ROSSETTI, A TRAGIC GRACE: THE CATHOLIC CHURCH AND CHILD SEXUAL ABUSE 24–44 (1996).

[8] JOHN JAY COLL. OF CRIM. JUST., THE NATURE AND SCOPE OF SEXUAL ABUSE OF MINORS BY CATHOLIC PRIESTS AND DEACONS IN THE UNITED STATES 1950–2002, at 103–20 (2004); Wendy N. Davis, *Church and Chapter 11: Dioceses Faced with Sex-Abuse Scandal Now Confront Issues in Bankruptcy Court*, ABA J., Oct. 2005, at 14, 14.

[9] For an assessment of the costs and benefits of clergy sexual abuse litigation, see TIMOTHY LYTTON, CLERGY SEXUAL ABUSE LITIGATION: THE IMPACT OF PRIVATE LAW SUITS ON POLICYMAKING (forthcoming 2007).

[10] Works by leading tort reform advocates include the following: CATHERINE CRIER, THE CASE AGAINST LAWYERS: HOW LAWYERS, POLITICIANS, AND BUREAUCRATS HAVE TURNED THE LAW INTO AN INSTRUMENT OF TYRANNY—AND WHAT WE AS CITIZENS HAVE TO DO ABOUT IT (2002); PHILIP K. HOWARD, THE COLLAPSE OF THE COMMON GOOD: HOW AMERICA'S LAWSUIT CULTURE UNDERMINES OUR FREEDOM (2001); PETER W. HUBER, LIABILITY: THE LEGAL REVOLUTION AND ITS CONSEQUENCES (1988); WALTER K. OLSON, THE RULE OF LAWYERS: HOW THE NEW LITIGATION ELITE THREATENS AMERICA'S RULE OF LAW (2003). Perhaps the most influential argument by a skeptic in recent years is GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE (1991).

and the public concern it generated placed clergy sexual abuse on the policy agendas of the Catholic Church, law enforcement, and state legislatures, and shaped policy responses to the problem. Parts II and III of this Article present these arguments, supported by theoretical models, interviews with attorneys and journalists, content analysis of news stories, surveys, and statistical data.

Part IV presents two implications of my analysis. First, tort litigation can have beneficial effects on policymaking. Clergy sexual abuse presents a stark counter-example to tort reform advocates who assert that tort litigation does more policy harm than good. Second, tort litigation can be an effective way to promote policy reform. Clergy sexual abuse litigation should give pause to litigation skeptics who suggest that "U.S. courts can almost never be effective producers of significant social reform."[11] I conclude by suggesting that we can attain a more complete understanding of the tort system if we view the litigation process as a *policy venue*—that is, as an institutional setting in which policymaking occurs.

II. TORT LITIGATION & NEWS MEDIA COVERAGE OF CLERGY SEXUAL ABUSE

In lawsuits against the Catholic Church, plaintiffs have framed clergy sexual abuse as not merely a problem of child exploitation by individual clergy members, but also as an issue of institutional failure on the part of Church officials. This frame of institutional failure quickly became the dominant frame in news media coverage of the issue.

In this section, I explain why plaintiffs' framing of clergy sexual abuse as an institutional failure by Church officials became the dominant news frame. My analysis reveals a correlation between certain features of litigation and news production that account for the influence of clergy sexual abuse lawsuits on press coverage. Complaints provided dramatic narratives with clear moral implications that made for gripping news stories. Discovery documents, deposition transcripts, and trial testimony were perceived by journalists as especially reliable sources of information. The litigation process provided a steady flow of new developments that supported ongoing coverage. And intensive coverage encouraged increasing numbers of victims to come forward and seek legal redress, spurring additional litigation, which, in turn, gave rise to more coverage, creating a self-reinforcing news theme and the perception of a "wave" of litigation and a "crisis" in the Church.

I begin by introducing three leading clergy sexual abuse cases, upon which I draw for examples throughout my analysis. I then briefly present the concept of framing, which is central to both law and journalism and to my account of the relationship between litigation and news production.

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[11] ROSENBERG, *supra* note 10, at 338 (emphasis omitted).

Next, I analyze more closely the particular features of litigation and news production that explain the plaintiffs' influence on media coverage of clergy sexual abuse. I support theoretical claims about the correlation between litigation and news production with empirical support from interviews of lawyers and journalists, content analysis of news stories, and statistical data. Finally, I explain why, in the case of clergy sexual abuse, the plaintiffs' frame of institutional responsibility dominated news media coverage of the issue despite efforts by the Church's defenders to frame the issue differently.

A. *Three Leading Cases: Gauthe, Porter, and Geoghan*

Clergy sexual abuse litigation is an enormously complex phenomenon. It includes thousands of lawsuits across the country, spanning more than twenty years from the mid-1980s to the present. A comprehensive survey of the cases and legal issues involved in the litigation is beyond the scope of this Article.[12] My aim here is merely to introduce three cases that each played a significant role within the history of clergy sexual abuse litigation and that can be used to illustrate my claims about the influence of this litigation on media coverage and the influence of that media coverage on policymaking.

In the summer of 1983, it came to light that Father Gilbert Gauthe had sexually abused dozens of children in a small parish near Lafayette, Louisiana, where he served as the local priest.[13] One family—the Gastals—refused the diocese's offer of a confidential settlement and, in 1984, filed suit against Gauthe and his superiors.[14] Alleging theories of respondeat superior and negligent supervision, the Gastals won a $1.25 million verdict against the diocese.[15] The diocese appealed, and the parties eventually settled for $1 million.[16]

Prior to the Gauthe case, incidents of clergy sexual abuse were viewed as rare and isolated occurrences, and they attracted limited local press coverage or, more often, no press coverage at all. The Gastals' civil suit against Gauthe and the Diocese of Lafayette was the first case of clergy sexual abuse to attract national attention and, in conjunction with concurrent cases around the country, it created the impression of a pervasive, nationwide problem. The Gauthe litigation inspired victims

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[12] For an overview of clergy sexual abuse litigation, see LYTTON, *supra* note 9, at chs. 1–3.

[13] BERRY, *supra* note 1, at 14–15, 18, 25–26.

[14] *Id*. at 23–26.

[15] Petition for Damages ¶ 21–22, Gastal v. Hannan, No. 84-48175 (La. 15th Dist. June 27, 1984) (on file with Connecticut Law Review); BERRY, *supra* note 1, at 163.

[16] BERRY, *supra* note 1 at 168. For a detailed account of the case, see *id*. at 148–68; J. MINOS SIMON, LAW IN THE CAJUN NATION 134–63 (1993).

around the country to come forward and, in increasing numbers, to file lawsuits.[17] It also caught the attention of Bishops around the country, who began for the first time as a group to discuss the problem and explore ways to address it.[18]

In 1992, the Diocese of Fall River, Massachusetts settled claims of sexual abuse by Father James Porter with sixty-eight victims for an undisclosed sum, reported in the *Boston Globe* as "at least $5 million."[19] This was, to date, the largest group settlement of sexual abuse claims against the Church.[20] But this was not the end of the story. The diocese subsequently settled another thirty-three claims for undisclosed sums.[21] The total number of Porter's victims is estimated at well over 100—some put the total closer to 200—abused over a fourteen-year period from 1960–1974, in five parish assignments in Massachusetts, Minnesota, New Mexico, and Texas.[22]

The Porter case attracted widespread media attention, led to a dramatic increase in the number of victims willing to come forward, and stimulated further litigation against the Church. Parallels with the Gauthe case were inescapable. The Porter affair fueled perceptions among victims and plaintiffs' attorneys of an organized conspiracy among the Bishops to protect child molesters and to conceal the widespread problem of clergy sexual abuse within the Church.[23] For their part, Church officials pledged to formulate more effective policies to prevent child sexual abuse by clergy and to respond more openly when it occurred.[24]

In 2002, litigation against the Boston archdiocese for sexual abuse committed by Father John Geoghan became a symbol for the clergy sexual abuse scandal. The archdiocese had quietly settled the claims of over fifty of Geoghan's victims in the late 1990s for over $10 million and, in 2002, it

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[17] Evidence of increased litigation following the Gauthe case is anecdotal and based on the following sources: Telephone Interview with Jeff Anderson, Senior Partner, Jeff Anderson & Associates, P.A., in Albany, NY (Mar. 10, 2006) (transcript on file with Connecticut Law Review) [hereinafter Anderson Interview]; Telephone Interview with David Clohessy, National Director, Survivors Network of those Abused by Priests (SNAP), in Albany, NY (Mar. 13, 2006) (transcript on file with Connecticut Law Review) [hereinafter Clohessy Interview]; Telephone Interview with Steve Rubino, Senior Partner, Ross & Rubino, L.L.P., in Albany, NY (Apr. 5, 2006) (transcript on file with Connecticut Law Review) [hereinafter Rubino Interview].

[18] *See infra* Part III.A.2.a.

[19] Stephen Kurkjian, *68 Victims Settle Porter Case with Catholic Church*, BOSTON GLOBE, Dec. 4, 1992, at 1, *available at* LEXIS, News Library, BGLOBE File.

[20] *Id.*

[21] Survivor Connections, Frank L. Fitzpatrick vs ex-priest James R. Porter Brief Chronology, through 1993, http://members.cox.net/survivorconnections/flfvsporter.html (last visited Jan. 2, 2006).

[22] These and other details of the case can be found in ELINOR BURKETT & FRANK BRUNI, A GOSPEL OF SHAME: CHILDREN, SEXUAL ABUSE, AND THE CATHOLIC CHURCH 8–9, 14, 17–18, 20–21, 23–24 (1993).

[23] Telephone Interview with Sylvia Demarest, Senior Partner, Demarest, Smith, Giunta & Howell, P.L.L.C., in Albany, NY (Apr. 25, 2006) (transcript on file with Connecticut Law review) [hereinafter Demarest Interview].

[24] *See infra* Part III.A.2.a.

entered into a highly-publicized settlement with an additional eighty-six victims for another $10 million.[25]

What distinguished the Geoghan case from its predecessors was the astounding scope of the abuse and the cover-up. In the end, 200 Geoghan victims, molested over a thirty-three year period, filed claims, and experts estimate that the total number of Geoghan's victims could be as high as 800.[26] Diocesan personnel files show that Church officials were aware of Geoghan's misconduct, failed to report it or notify parishioners, and repeatedly reassigned him to positions where he would have access to children.[27] The cover up implicated no less than six Bishops and ultimately forced Cardinal Bernard Law, the highly influential Archbishop of Boston, to step down and seek refuge in Rome.[28] The wave of litigation initiated by the Geoghan affair turned out to be a tidal wave which swept the country from Boston to Los Angeles.

I focus on these three cases—Gauthe, Porter, and Geoghan—because each attracted significant news media coverage which, in turn, led Church and government officials to consider new policies aimed at addressing clergy sexual abuse. As we shall see, the Gauthe case inspired the first national media coverage of the issue, and the Porter and Geoghan cases sparked dramatic increases in the volume of coverage. Each was also followed by significant policy reforms. I do not, however, mean to suggest that there were no important cases or policy efforts in the periods between these three high profile cases. Other cases have uncovered new information, tested novel legal theories, involved complex constitutional concerns, resulted in dramatic verdicts, and raised perplexing insurance coverage and bankruptcy issues.[29] The Gauthe, Porter, and Geoghan cases offer snapshots at particular times within this larger history of clergy sexual abuse lawsuits that highlight the relationship between litigation, press coverage, and policymaking.

B. *Frame Analysis*

At this point it will be helpful to introduce frame analysis, which is central to my account of the relationship between litigation, news

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[25] Walter V. Robinson, *Diocese, Plaintiffs Settle Suit: 86 Geoghan Cases to Cost up to $30M*, BOSTON GLOBE, Mar. 12, 2002, at A1, *available at* LEXIS, News Library, BGLOBE File; Walter V. Robinson & Michael Rezendez, *Geoghan Victims Agree to $10M Settlement*, BOSTON GLOBE, Sept. 19, 2002, at A1, *available at* LEXIS, News Library, BGLOBE File.

[26] INVESTIGATIVE STAFF OF THE BOSTON GLOBE, BETRAYAL: THE CRISIS IN THE CATHOLIC CHURCH 6, 14–16, 19, 22, 23, 27 (2002).

[27] *Id*. at x, 3, 8, 14, 23, 26.

[28] *Id*. at viii, x, 3, 14, 22, 24, 205–06. For further details of the Geoghan case, see DAVID FRANCE, OUR FATHERS: THE SECRET LIFE OF THE CATHOLIC CHURCH IN AN AGE OF SCANDAL 129–48 (2004).

[29] *See* LYTTON, *supra* note 9, at ch. 3.

production, and policymaking. In order to understand and communicate our experience of the world, we must select, organize, and contextualize our perceptions. Thus, facts are always presented within some larger conceptual frame. These frames allow us to make sense of the world by focusing on aspects of our experience that we consider relevant, putting them together into a coherent whole, and relating them to things we already know in order to make experience meaningful. Of course, individuals often frame the same event or issue differently, and many disputes arise out of differences in framing.

Framing is the selection, organization, and presentation of issues, events, or people that places them within a context with the aim of promoting a particular interpretation or evaluation.[30] Frames are the principles of selection, organization, and presentation that guide framing.[31] For example, whether Bernard Goetz's shooting of an unarmed assailant constitutes a justified act of self-defense or a deplorable instance of gun violence depends upon how one frames it.[32] Indeed, any particular characterization of the event—in this case, mentioning that the victim was "unarmed" (or, in this last sentence, identifying him as a "victim")—itself implies a choice of frame.

Frames can be combined in different ways. A frame can be reused repeatedly to draw connections between different events in order to suggest a pattern. A number of shootings can all be framed as similar instances of gun violence in order to suggest a gun violence "problem" or, if there are enough instances, a gun violence "epidemic." Different frames can be used to emphasize distinctions between events. Instead of reusing the same frame of gun violence to characterize all fatal shootings, one might frame some as assaults, some as accidents, and some as suicides, suggesting an array of quite dissimilar phenomena. A frame can itself be placed within another frame in ways that affect how the initial frame is viewed,[33] as when gun control advocates frame assertions of a gun violence epidemic as social science findings, or when gun rights advocates frame the same assertions as a propaganda campaign aimed at promoting gun control.

Frames often suggest a particular course of action.[34] Thus, framing the rate of highway fatalities as caused by unsafe driving suggests stricter

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[30] ROBERT M. ENTMAN, PROJECTIONS OF POWER: FRAMING NEWS, PUBLIC OPINION, AND U.S. FOREIGN POLICY 5, 23 (2004); *see also* ERVING GOFFMAN, FRAME ANALYSIS: AN ESSAY ON THE ORGANIZATION OF EXPERIENCE 10–11 (1974).

[31] TODD GITLIN, THE WHOLE WORLD IS WATCHING: MASS MEDIA IN THE MAKING & UNMAKING OF THE NEW LEFT 6 (1980).

[32] Marcia Chambers, *Choices in IRT Case*, N.Y. TIMES, Jan. 3, 1985, at B4, *available at* LEXIS, News Library, NYT File.

[33] GOFFMAN, *supra* note 30, at 82.

[34] ENTMAN, *supra* note 30, at 5; DONALD A. SCHÖN & MARTIN REIN, FRAME REFLECTION: TOWARD THE RESOLUTION OF INTRACTABLE POLICY CONTROVERSIES 29 (1994).

enforcement of traffic laws, whereas framing it as due to poor automobile design suggests imposing more rigorous design standards on car manufacturers.[35] Framing fatalities as a "problem" in the first place—as opposed to merely a necessary cost of widely accessible highway travel—itself suggests that some course of action is necessary.

As the above examples suggest, frames often compete. The ability of one frame to predominate over others depends upon a number of factors. First, the *cultural resonance* of a frame contributes to its persuasive power.[36] A frame has a high degree of cultural resonance when the language and images that it employs reinforce widely-held views or evoke shared values. Frames that resonate with popular political principles, moral commitments, and world views will be more convincing.[37] Second, the *prominence* of a frame also enhances its persuasive power. Early articulation of a frame soon after an event gives a frame prominence, as does adoption of the frame by a respected person or institution.[38] Third, *repetition* of a frame enhances its persuasive power.[39] Repetition creates a perception of widespread acceptance and leads some people to adopt it out of a desire to conform. This may even result in a reality of widespread acceptance.[40]

Information travels between people in frames. The persuasiveness of a frame determines how readily facts in it are accepted and how widely they are disseminated. The widespread diffusion of a frame has the quality of a *cascade*, building momentum and developing cumulative force as it flows.[41] Successful diffusion of culturally resonant frames reinforces the cultural values that made them persuasive in the first place, which in turn makes these frames even more persuasive over time. So too, as frames become more widely accepted, they are more likely to be championed by prominent figures and repeated more frequently. This leads other prominent figures to promote them, increasing their prominence and the frequency with which they are repeated. As the momentum of a frame builds, individuals may accept it based on deference to the opinions of experts and authorities, reliance on common sense and conventional wisdom, and social pressure to conform.[42] Successful frames thus tend to become more pervasive and persuasive as they cascade.

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[35] *See generally* RALPH NADER, UNSAFE AT ANY SPEED (1965).

[36] ENTMAN, *supra* note 30, at 6; SCHÖN & REIN, *supra* note 34, at 27.

[37] *See* ENTMAN, *supra* note 30, at 6–9, 14–17 (discussing "schemas"); SCHÖN & REIN, *supra* note 34, at 28 (discussing "metacultural frames").

[38] *See* ENTMAN, *supra* note 30, at 6–7.

[39] *Id.* at 6.

[40] *See* Timur Kuran & Cass R. Sunstein, *Availability Cascades and Risk Regulation*, 51 STAN. L. REV. 683, 685–87 (1999) (discussing informational and reputational cascades).

[41] *See generally id.*

[42] *Id.* at 686–87.

Frame analysis is helpful in understanding the relationship between tort litigation, media coverage, and policymaking. Clergy sexual abuse litigation illustrates how the litigation process is capable of generating persuasive frames that are promulgated by the news media and ultimately adopted by policy-makers. I turn next to a more detailed examination of why the litigation process led plaintiffs' lawyers to frame clergy sexual abuse as an issue of institutional failure and why the nature of the news production led journalists to promulgate this frame.

C. *The Influence of Litigation Frames on Media Frames*

Tort litigation attracts media coverage because it has many of the ingredients that make a story newsworthy: tort claims are framed in terms of personal drama about injury and wrongdoing, legal documents are readily available and viewed as highly credible sources of information, and the litigation process provides a steady stream of episodic developments as claims move forward. Tort litigation provides ready-made news frames. In the case of clergy sexual abuse litigation, as we shall see, plaintiffs' frames dominated media coverage because plaintiffs presented frames that more closely matched the demands of the news production process.[43]

1. *The Complaint's Compelling Narrative and Cultural Resonance*

Both the litigation process and the news production process provide incentives to frame issues in terms of dramatic narratives with clear moral implications. Consider first the litigation process. Most tort causes of action require that plaintiffs frame their claims in terms of injury caused by wrongdoing. The need to convince judges and jurors of the claim's merit leads plaintiffs to dramatize this basic narrative structure as a morality tale about right and wrong.[44] The value of plaintiffs' claims are enhanced by portraying injuries as severe and wrongdoing as egregious. One's chances of recovery are increased by naming defendants capable of satisfying judgments, who are often well-known figures or institutions. The familiar story of an innocent victim injured by uncaring and unaccountable corporate officers constitutes a persuasive frame.

For their part, defendants seek to reframe plaintiffs' allegations in doctrinally significant and culturally familiar terms of consensual risk taking, the plaintiff's own or some third party's carelessness, or just bad

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[43] For a discussion of the adoption of plaintiffs' frames by the media in tobacco litigation, see Mather, *supra* note 4, at 914–16; *cf.* WILLIAM HALTOM, REPORTING ON THE COURTS: HOW THE MASS MEDIA COVER JUDICIAL ACTIONS 205, 238 (1998) (suggesting that civil cases are less newsworthy than criminal cases and attract little coverage); WILLIAM HALTOM & MICHAEL MCCANN, DISTORTING THE LAW: POLITICS, MEDIA, AND THE LITIGATION CRISIS 20, 158, 243–45 (2004) (questioning the newsworthiness of plaintiffs' claims, but noting tobacco claims as a rare exception).

[44] *See* NEAL FEIGENSON, LEGAL BLAME: HOW JURORS THINK AND TALK ABOUT ACCIDENTS 92 (2000) (explaining that jurors are attracted to conceptions of accidents that take the form of melodramas).

luck. In arguing before a jury, defense lawyers often counter plaintiffs' frames of corporate malfeasance with their own narratives about undeserving plaintiffs seeking to hold innocent business defendants liable for normal misfortunes.[45] These frames, which have gained widespread cultural resonance thanks to public campaigns for tort reform, can be just as persuasive as plaintiffs' frames.[46]

Like filing a claim, reporting news is an act of framing.[47] Sources, reporters, editors, publishers, and broadcasters frame events, issues, and people in order to create news stories. One powerful influence on the construction of news is audience demand. Newsmaking is a business that depends upon advertising revenue, and advertising rates are determined by circulation.[48] News organizations are thus sensitive to what readers want. Media scholars have identified criteria that journalists use in selecting and framing news stories based on their perception of what readers want. These criteria define what makes a story newsworthy.

The newsworthiness of a story depends largely on its form. First, a story is more likely to be considered newsworthy if it can be framed as a *dramatic narrative* that involves active characters and exciting events.[49] Personal conflict provides a common premise for such dramatic narrative, and groups and institutions are commonly personified in order to increase dramatic effect.[50] A central event, or "peg," provides an attention-getting image around which the narrative can be organized.[51] Second, the *magnitude* of an event and the extent of its impact influence its newsworthiness.[52] All things being equal, the more powerful the storm and the more widespread its destruction, the more newsworthy it is. The magnitude and impact of an event can be increased by framing it as a part of a larger trend or crisis, such as the worst hurricane season of the century. Third, a narrative with clear implications and straightforward *moral lessons* is considered more newsworthy than one open to many different

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[45] *Id.* at 97–98.

[46] *See* HALTOM & MCCANN, *supra* note 43, at 33–72.

[47] For analysis of news as a frame, see GITLIN, *supra* note 31, at 6–7, 49; GAYE TUCHMAN, MAKING NEWS: A STUDY IN THE CONSTRUCTION OF REALITY 1, 92 (1978).

[48] MICHAEL SCHUDSON, THE SOCIOLOGY OF NEWS 117–33 (2003); Graham Murdock, *Political Deviance: The Press Presentation of a Militant Mass Demonstration*, *in* THE MANUFACTURE OF NEWS: SOCIAL PROBLEMS, DEVIANCE AND THE MASS MEDIA 158 (Stanley Cohen & Jock Young eds., 1973).

[49] HERBERT J. GANS, DECIDING WHAT'S NEWS: A STUDY OF THE CBS EVENING NEWS, NBC NIGHTLY NEWS, NEWSWEEK, AND TIME 171 (1979); GITLIN, *supra* note 31, at 28; HALTOM, *supra* note 43, at 185–86; SCHUDSON, *supra* note 48, at 48, 178; Murdock, *supra* note 48, at 165.

[50] On personal conflict, see GANS, *supra* note 49, at 22; GITLIN, *supra* note 31, at 28; SCHUDSON, *supra* note 48, at 48. On personification, see GANS, *supra* note 49, at 8, 19; GITLIN, *supra* note 31, at 28; Johan Galtung & Mari Ruge, *Structuring and Selecting News*, *in* THE MANUFACTURE OF NEWS: SOCIAL PROBLEMS, DEVIANCE AND THE MASS MEDIA 52, 57 (Stanley Cohen & Jock Young eds., rev. ed. 1981).

[51] GANS, *supra* note 49, at 168; GITLIN, *supra* note 31, at 35.

[52] GANS, *supra* note 49, at 151; Galtung & Ruge, *supra* note 50, at 54.

interpretations.[53] Fourth, the news media favor stories that are set in frames that are *culturally familiar* to readers.[54] The familiarity of the frame allows readers to understand and relate to a news story without the need for extensive background information. The use of stereotypes is a common way to enhance the familiarity of a news frame.[55] The media may also tell a story in a way that they think readers expect or want it to unfold.[56] Fifth, a story that portrays the *unexpected or unusual* within familiar frames is considered more newsworthy.[57] Events that are surprising attract more attention than those that are routine. A story that is old or stale is not newsworthy—as one scholar explains, "news is a depletable consumer product that must be made fresh daily."[58] Sixth, a story about *elites* or well-known figures is considered more newsworthy.[59] Sometimes the media creates well-known figures—most commonly crime victims or perpetrators—to enhance the newsworthiness of a story.[60] Newsworkers use these criteria in both selecting and shaping news stories.[61]

On a theoretical level, there is a close correspondence between the doctrinal, rhetorical, and strategic considerations that shape the framing of tort claims on one hand and the criteria of newsworthiness upon which journalists rely in constructing the news on the other hand. This should come as no great surprise. After all, even though they work in very different institutional settings, both lawyers and journalists are in the business of constructing persuasive frames for audiences that include both elites and members of the general public.

Empirical support for this theoretical correspondence between litigation and news production can be found by examining clergy sexual abuse litigation. The Gauthe case is a good place to begin. In that case, the complaint named as defendants:

> ARCHBISHOP PHILIP M. HANNAN; BISHOP GERALD L. FREY; VICAR GENERAL RICHARD VON PUHL MOUTON; MONSIGNOR HARRY E. BENEFIEL; MONSIGNOR H. A. LARROQUE; THE ARCHDIOCESE OF NEW ORLEANS, d/b/a THE ROMAN CATHOLIC CHURCH; THE ROMAN CATHOLIC CHURCH FOR THE DIOCESE OF LAFAYETTE; THE ROMAN CATHOLIC

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[53] Galtung & Ruge, *supra* note 50, at 54.

[54] *Id.*; Murdock, *supra* note 48, at 214.

[55] Stanley Cohen, *Mods and Rockers: The Inventory as Manufactured News*, *in* THE MANUFACTURE OF NEWS, *supra* note 48, at 263, 276.

[56] Galtung & Ruge, *supra* note 50, at 54–55.

[57] *Id.* at 55.

[58] TUCHMAN, *supra* note 47, at 31.

[59] Galtung & Ruge, *supra* note 50, at 56.

[60] GANS, *supra* note 49, at 13–15.

[61] Galtung & Ruge, *supra* note 50, at 60–61.

> CHURCH; ST. JOHN PARISH REPRESENTING THE COMMUNITIES OF ESTHER AND HENRY, VERMILLION PARISH, LOUISIANA; CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON; INTERSTATE INSURANCE COMPANY AND FATHER GILBERT GAUTHE.

By listing first well-known Church officials and institutions, including "THE ROMAN CATHOLIC CHURCH," the title of the case began the process of framing the sexual abuse committed by Gauthe as an institutional failure.[62]

The complaint alleged that Gauthe "recruited, enticed and coerced numerous young children of the congregation of the aforementioned Parishes to engage in sex initiation rings under the guise of religious initiation rites, training and tutelage."[63] This characterization must have had great cultural resonance against the background of highly publicized allegations around the country in the early 1980s of childcare workers running child sex rings and engaging in ritual child sex abuse.[64] These allegations would have been well-known to the judge as well as many, if not most, prospective jurors.

The most detailed allegations, however, were against Church officials, whom the plaintiffs asserted "made possible" the abuse by Gauthe by failing to remove him from ministry or inform parishioners even after the officials knew of his repeated sexual abuse of children.[65] A supplemental complaint filed by plaintiffs' attorney, J. Minos Simon, further alleged that "[C]hurch officials made a studied effort to conceal and withhold . . . information concerning Gauthe's misconduct from members and families of the [C]hurch," and that Church officials, "having full knowledge . . . of his tendencies to sexually abuse young children," moved him from one parish to another. In doing so, Simon's supplemental complaint concluded that Church officials "knowingly created an environment which operated to maximize opportunities for Gauthe to further wantonly sexually abuse innocent young children."[66] The complaint also referred to Church officials as "corporate officers," undermining feelings of personal

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[62] It may be a sign of the court's, or at least the clerk's, sympathy for the Church that the case file lists the case as "Glen Gastal, et al. versus Interstate Insurance Co., et al." Case file cover page, Gastal v. Interstate Insurance Co. (La. 15th Dist. Jun. 27, 1984) (on file with Connecticut Law Review).

[63] Petition for Damages, *supra* note 15, ¶10.

[64] DAVID HECHLER, THE BATTLE AND THE BACKLASH: THE CHILD SEXUAL ABUSE WAR xiii (1988) (on sex rings); JENKINS, *supra* note 6, at 141–42 (on ritual abuse). *See generally* DEBBIE NATHAN & MICHAEL SNEDEKER, SATAN'S SILENCE: RITUAL ABUSE AND THE MAKING OF A MODERN AMERICAN WITCH HUNT (1995) (examining, analyzing, and discussing the childcare worker sex ring claims of the 1980s).

[65] Petition for Damages, *supra* note 15, ¶ 23.

[66] First Supplemental and Amended Petition ¶ 5, Gastal v. Hannan, No. 84-48175-A (La. 15th Dist. Oct. 25, 1984) (on file with Connecticut Law Review).

allegiance to them and making the allegations sound like a typical story of corporate malfeasance and cover-up.[67]

Answers filed by the Church and insurance defendants simply denied the allegations. They make for much less compelling reading than the complaint.[68] Gauthe's answer alleges that at he was "insane at all times material" and, therefore, "not legally responsible" for any of the conduct alleged in the complaint.[69] His answer also argues that he successfully deceived Church officials by concealing his sexual activity with children—that the Church, like the children and their parents, was one of Gauthe's victims.[70] He implies that the Church—like the children and their parents—was one of Gauthe's victims.

The first print coverage of the Gauthe litigation was published in a local weekly, the *Times of Acadiana*, by Barry Yeoman, on November 1, 1984. It was entitled "Is Nothing Sacred?"[71] The article is a feature which places the Gauthe affair within the context of rising local awareness of child sexual abuse and community responses to it, and it features a sidebar focusing on the litigation itself. The sidebar essentially adopts the frame presented by the plaintiffs' pleadings. The only photograph in the sidebar is of plaintiffs' attorney, Simon, with a caption that states in large bold font, "Church officials made a studied effort to conceal Gauthe's misconduct"—a direct quote from Simon's supplement to the complaint.[72] Of the thirty-one paragraphs in the sidebar, thirteen discuss the plaintiffs' case, quoting extensively from the original complaint and supplement. Only five paragraphs are dedicated to the defense, all of them based on the assertions of insanity and deception in Gauthe's answer. In contrast to two colorful quotes from an interview with Simon, the sidebar states that "[n]either the Diocese of Lafayette nor the Archdiocese in New Orleans would comment on the suit."[73]

Reading Yeoman's sidebar after having analyzed the pleadings provides insight into why the news media adopted the frame presented by the plaintiffs' pleadings. To begin with, the plaintiffs' complaint offers a dramatic narrative of ritual child sex abuse rings and corporate cover-up, a

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[67] Petition for Damages, *supra* note 15, ¶ 23(l)–(m).

[68] Answer [on behalf of institutional church defendants], Gastal v. Hannan, No. 84-48175 (La. 15th Dist. Oct. 1, 1984) (on file with Connecticut Law Review); Answer [on behalf of insurance defendants], Gastal v. Hannan, No. 84-48175 (La. 15th Dist. Oct. 16, 1984) (on file with Connecticut Law Review).

[69] Answer on Behalf of Gilbert Gauthe at 1, Gastal v. Hannan, No. 84-48175 (La. 15th Dist. Oct. 16, 1984) (on file with Connecticut Law Review).

[70] *Id.* ¶¶ 21, 23.

[71] Prior to Yeoman's article, print coverage of the Gauthe affair was limited to the criminal proceedings and consisted of an article by Bruce Schultz published in the *Baton Rouge Morning Advocate*, which was adopted by the *Associated Press*. E-mail from Jason Berry, Author, *Lead Us Not Into Temptation, Catholic Priests and the Sexual Abuse of Children* (July 6, 2005 12:53 PM) (on file with Connecticut Law Review).

[72] Barry Yeoman, *Is Nothing Sacred?*, TIMES OF ACADIANA, Nov. 1, 1984, at 16, 17.

[73] *Id.* at 21.

stark morality tale with innocent children victimized by an evil sexual predator and callous corporate officials. The cultural resonance of this frame, with contemporaneous stories from around the country about child sex rings, ritual child sex abuse, and corporate wrongdoing and cover-up, made the frame all the more compelling.[74] By contrast, the flat denials in answers by the Church and insurance defendants did not offer much in the way of alternative frames. Gauthe's assertions of insanity and deception did provide an alternative frame, although one with less drama and cultural resonance than that provided by the plaintiffs. Moreover, Simon's readiness to speak to the press allowed him to advocate for his frame, whereas the defense attorneys' refusal to comment did little to promote their views in the press.

The final paragraph ends by not only reinforcing the plaintiffs' frame, but also highlighting the importance of drama and cultural familiarity in Yeoman's adoption of the plaintiffs' frame. "The most interesting aspect of the Gauthe case," Yeoman concludes, "stands to be the Church's role in the civil case. Like Paul Newman in *The Verdict*, attorney Simon will be trying to establish not only Gauthe's guilt but also the guilt of a seemingly omnipotent institution."[75] The plaintiffs' frame is compelling, according to Yeoman, because it has all of the drama of a blockbuster Hollywood film.[76]

The second print article, "Church Knew of Abuses, Sex Case Depositions Show," by John Pope, appeared on the front page of the *New Orleans Times Picayune* on November 9, 1984.[77] The headline's adoption of the plaintiffs' frame was reinforced by the opening paragraph reporting that "Catholic Church officials knew for almost seven years about the Rev. Gilbert Gauthe's sexual activities with boys at churches in south-west Louisiana, according to two depositions filed this week in a court case."[78]

Examination of subsequent press coverage illustrates how this frame cascaded throughout the media—becoming more prominent in later news stories, being reported more widely, and growing in significance as this version of the Gauthe litigation itself came to frame the larger phenomenon of clergy sexual abuse. The influence of the plaintiffs' frame of institutional failure is illustrated by an *Associated Press* report of January 25, 1985 entitled, "Bishop Says He Got Word of Gauthe's Actions 10

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[74] HECHLER, *supra* note 64, at viii (on sex rings); Kirk Hanson, *What The Bishops Failed to Learn From Corporate Ethics Disasters*, *in* SIN AGAINST THE INNOCENTS: SEXUAL ABUSE BY PRIESTS AND THE ROLE OF THE CATHOLIC CHURCH 169 (Thomas Plante ed., 2004) (on corporate scandals).

[75] Yeoman, *supra* note 72, at 21.

[76] *Id.*

[77] John Pope, *Church Knew of Abuses, Sex Case Depositions Show*, NEW ORLEANS TIMES-PICAYUNE, Nov. 9, 1984, at A1.

[78] *Id.*

Years Ago" which begins, "The bishop of the Catholic Diocese of Lafayette, in sworn testimony, says he first learned of the Rev. Gilbert Gauthe's sexual activities with little boys about 10 years before ordering him suspended."[79] Details of Gauthe's actions and mention of his criminal indictment are relegated to five short paragraphs near the end of the article. The *Times of Acadiana*—in May and June of 1985—framed a three-part, in-depth investigation of the Gauthe litigation by Jason Berry with an editorial suggesting that "[a]t issue in the final stages of this tragedy are the troubled lives of dozens of Acadiana families, millions of dollars in damages claims and *the responsibility of the Roman Catholic Church's Lafayette Diocese for the actions of one of its priests*."[80]

Regional coverage projected the frame of institutional failure to a larger audience. A May 26, 1985 *Dallas Morning News* article, on the front page of the Sunday edition, reported the litigation as a "[c]hild abuse scandal" and quoted plaintiff Glen Gastal saying, "[a]s far as I'm concerned, I would like to see the bishop behind bars. He was an accessory to the crime. He knew about it back in 1973. . . . If he had done something then, this wouldn't have happened to my child."[81] The next day, the *Houston Post* ran a story entitled "Parents Say Church Knew Priest Was Child Molester," which opened with the same quote from Gastal.[82] The lengthy *Dallas Morning News* story only briefly mentioned the defendants' assertion that they were themselves deceived by Gauthe, and this alternative frame is missing altogether from the shorter *Houston Post* article.[83] The *Dallas Morning News* article also uses the Gauthe litigation to frame a listing of similar cases around the country—in Idaho, Minnesota, Oregon, Pennsylvania, and Rhode Island —provided by plaintiffs' attorney Simon.[84]

National coverage began with two investigative articles in the June 7, 1985 edition of the *National Catholic Reporter* (NCR). A front-page editorial introduces the articles. The opening sentence of the editorial explains that "[i]n cases throughout the nation, the Catholic Church is facing scandals and being forced to pay millions of dollars in claims to families whose sons have been molested by Catholic priests," lending a sense of magnitude to the issue by suggesting that clergy sexual abuse was

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[79] *Bishop Says He Got Word of Gauthe's Actions 10 Years Ago*, ASSOCIATED PRESS, Jan 25, 1985, at 8b.

[80] Editors, *The Tragedy of Gilbert Gauthe*, TIMES OF ACADIANA, May 23, 1985, at 18, 18 (emphasis added) (on file with Connecticut Law Review).

[81] Steve Blow, *Priest Indicted: Child Abuse Scandal Underscores Homosexual Issue Among Clergy*, DALLAS MORNING NEWS, May 26, 1985, at 1A, *available at* 1985 WLNR 13299150.

[82] UPI, *Parents Say Church Knew Priest Was Child Molester*, HOUSTON POST, May 27, 1985, at 18A, *available at* LEXIS, News Library, DALLASMN File.

[83] Blow, *supra* note 81; UPI, *supra* note 82.

[84] Blow, *supra* note 81.

national in scope.[85] The second paragraph goes on to place responsibility for this national problem on the Church, suggesting that, beyond the harm suffered by victims and damage to the Church's reputation, "a related and broader scandal seemingly rests with local Bishops and a national episcopal leadership that has, as yet, no set policy on how to respond to these cases."[86] The last paragraph emphasizes the primacy of institutional failure over individual instances of abuse:

> [T]he tragedy, and scandal, as NCR sees it, is not only with the actions of the individual priests—these are serious enough—but with church structures in which bishops, chanceries and seminaries fail to respond to complaints, or even engage in cover-ups; sadly, keeping the affair quiet has usually assumed greater importance than any possible effect on the victims themselves.[87]

This frame of institutional failure presented by the *NCR* editors was itself derived from their knowledge of the specific cases in the two investigative articles, in which the Gauthe litigation was the most extensively researched and the most prominently featured.[88] And, as we have seen, the version of the Gauthe case in the news media was that of the plaintiffs. Thus, the plaintiffs' framing of clergy sexual abuse in the Gauthe case came not only to dominate local, regional, and national press coverage of that particular case, but of the whole nationwide phenomenon of clergy sexual abuse.

The *National Catholic Reporter* coverage began a frame cascade through the national media.[89] On June 9, the *Washington Post* ran a story on the Gauthe litigation, borrowing heavily from prior coverage by the *Times of Acadiana* and the *National Catholic Reporter*.[90] On June 20, the *New York Times* published a story on the Gauthe litigation, quoting the *National Catholic Reporter* editorial emphasizing the institutional failure

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[85] *Priest Child Abuse Cases Victimizing Families; Bishops Lack Policy Response*, NAT'L CATH. REP., June 7, 1985, at 1.

[86] *Id.*

[87] *Id.* at 4.

[88] The first article, to which Berry contributed research, begins with the Gauthe case and goes on to discuss several other similar cases from around the country. Arthur Jones, *Legal Actions Against Pedophile Priests Grow as Frustrated and Angry Parents Seek Remedies*, NAT'L CATH. REP., June 7, 1985, at 4. The second article, written by Berry, is exclusively dedicated to the Gauthe case, and is a shorter version of his three-part series for the *Times of Acadiana*. Jason Berry, *Pedophile Priest: Study in Inept Church Response*, NAT'L CATH. REP., June 7, 1985, at 6.

[89] JENKINS, *supra* note 6, at 65.

[90] Kathy Sawyer, *Priest's Child-Molestation Case Traumatizes Catholic Community*, WASH. POST, June 9, 1985, at A6, *available at* LEXIS, News Library, WPOST File.

over Gauthe's individual actions.[91] In its July 1 issue, *Time Magazine* published a short item on the Gauthe litigation, citing the *Times of Acadiana* series and the *National Catholic Reporter* coverage as its primary sources.[92] Thus, the use of other news organizations as sources—which were highly influenced by the plaintiffs' framing of the issue—fueled the cascading of this frame throughout the national media.

In later coverage of the issue over the next two decades, the Gauthe litigation acquired special status as "the seminal case" of clergy sexual abuse.[93] As national coverage of the scandal reached its peak in late 2002, the *Associated Press* published a list of "key dates in the abuse crisis in the U.S. Roman Catholic Church," the first significant entry being the Gauthe case in 1985.[94] The Gauthe litigation is still the invariable first term in frequent litanies of notorious cases, including the Porter and Geoghan cases.[95]

The focus on Church officials' institutional responsibility, rather than on the individual culpability of the abusers, remained a dominant theme in later coverage. For example, one of the first *Boston Globe* stories on the Porter case was entitled "Some Fault Church on Sex Abuse by Priests," and it began as follows: "Despite continuing disclosures about sexual misconduct by its priests . . . the Catholic Church is not responding to the problem as aggressively or as uniformly as other religious denominations."[96] The *Globe* followed this article with another a few days later, which framed clergy sexual abuse as an instance of corporate misconduct. The article quoted a Porter victim who, in explaining his reason for filing suit against the diocese, opined that "we all know that huge corporations—and that includes the Catholic Church—often don't change their behavior until they get hurt financially."[97]

Television coverage of the Porter case also emphasized the frame of the Church's institutional responsibility. In February 1993, ABC's *Nightline* aired the first of many examinations of clergy sexual abuse.

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[91] Jon Nordheimer, *Sex Charges Against Priest Embroil Louisiana Parents*, N.Y. TIMES, June 20, 1985, at A24, *available at* LEXIS, News Library, NYT File.

[92] *Painful Secrets; Priests Accused of Pederasty*, TIME, July 1, 1985, at 51.

[93] *See, e.g.*, Bruce Nolan, *Bishops to Revise Rules on Sex Abuse; Retroactive "1-Strike" Policy Among Church Proposals*, NEW ORLEANS TIMES PICAYUNE, June 13, 2002, at 1, *available at* LEXIS, News Library, NOTPIC File.

[94] *Chronology: Church Sex-Abuse Scandal*, ASSOCIATED PRESS, Dec. 13, 2002, *available at* http://www.foxnews.com/printer_friendly_story/0,3566,72919,00.html.

[95] *E.g.*, Alan Cooperman & Rob Stein, *Pedophile Ex-Priest Is Killed In Prison; Fellow Inmate Strangled Geoghan*, WASH. POST, Aug. 24, 2003, at A1, *available at* LEXIS, News Library, WPOST File. A LEXIS search of print and broadcast news items in 2002 in the "News, All (English, Full Text)" data base produced twenty-five news items that mentioned Gauthe, Porter, and Geoghan in the same story (last searched Oct. 3, 2006).

[96] Alison Bass, *Some Fault Church on Sex Abuse by Priests*, BOSTON GLOBE, May 11, 1992, at 1, *available at* LEXIS, News Library, BGLOBE File.

[97] Alison Bass, *Law Limits Church Liability to $20,000; Victims of Abuse Criticize Statute*, BOSTON GLOBE, May 13, 1992, at 8, *available at* LEXIS, News Library, BGLOBE File.

Host Ted Koppel introduced the broadcast by stating: "For years, the Church looked the other way."[98] In a subsequent *Nightline* broadcast in December of that year, host Chris Wallace began the show by suggesting that while Porter's abuse of children was shocking, "[e]ven worse . . . the Catholic Church transferred him from one parish to another, finally into treatment, and then back to a church."[99] In March 1993, the CBS show *60 Minutes* broadcast a segment on clergy sexual abuse in the Archdiocese of New Mexico under the title: "The Archbishop: Cover Up by Roman Catholic Church of Pedophilia by its Priests." Host Mike Wallace pointedly asked the mother of two boys abused by a New Mexico priest, "Do you hold the archbishop responsible for all of this?" to which she replied, "A hundred percent."[100] Similar examples can be found on ABC's *Primetime Live*,[101] and a CNN special report.[102]

The frame of institutional responsibility was even more pronounced in coverage of the Geoghan case and its aftermath in Boston. A January 2002 *Boston Globe* article, entitled "Church Allowed Abuse by Priest for Years," is typical:

> Now, as Geoghan faces the first of two criminal trials next week, details about his sexual compulsion are likely to be overshadowed by a question that many Catholics find even more troubling: Why did it take a succession of three cardinals and many bishops 34 years to place children out of Geoghan's reach?[103]

In television coverage, ABC's *Nightline* led the field in hammering away throughout 2002 on the theme of the Church's institutional responsibility. In a January episode on the Geoghan case, host Chris Bury

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[98] *Nightline: Child Sexual Abuse in the Catholic Church* (ABC television broadcast Feb. 24, 1993), *available at* LEXIS, News Library, ABCNEW File.

[99] *Nightline* (ABC television broadcast Dec. 6, 1993), *available at* LEXIS, News Library, ABCNEW File.

[100] *60 Minutes*: *The Archbishop: Coverup by Roman Catholic Church of Pedophilia by its Priests* (CBS television broadcast Mar. 21, 1993), *available at* LEXIS, News Library, CBSNEW File.

[101] *Primetime Live: Secret No More Follow-Up* (ABC television broadcast July 23, 1992), *available at* LEXIS, News Library, ABCNEW File. Host Diane Sawyer explained that Catholics in one community were "in a state of outrage . . . not just because of Father Porter and what he did twenty years ago, but [also because] the Church . . . deceived its own diocese." *Id*.

[102] *CNN Specials: Fall From Grace, Part 1—Clergy Pedophilia Revealed* (CNN television broadcast Nov. 14, 1993), *available at* LEXIS, News Library, CNNTRN File. Host Bonnie Anderson introduced the topic by explaining that "[t]he Roman Catholic Church in the United States is in unparalleled turmoil" over clergy sexual abuse. *Id*. The show included an extensive interview with activist Bonnie Miller who suggested that "the subsequent abuse by the institution was more destructive" than the initial abuse by an individual priest. *CNN Specials: Fall From Grace, Part 4—Alleged Victims Band Together* (CNN television broadcast Nov. 14, 1993), *available at* LEXIS, News Library, CNNTRN File.

[103] Michael Rezendes, *Church Allowed Abuse by Priest for Years*, BOSTON GLOBE, Jan. 6, 2002, at A1, *available at* LEXIS, News Library, BGLOBE File.

invoked the familiar frame of corporate misconduct, saying that "parallels to the Enron debacle are striking."[104] In the same broadcast, he suggestively asked General Counsel for the United States Conference of Catholic Bishops (USCCB) Mark Chopko, "How much responsibility does the Catholic Church have for the actions of its priests?"[105] In a February episode, host Ted Koppel began with the question: "What can be done that will restore confidence in the ability of the institution to clean house?"[106] In March, Bury introduced a show by stating: "At one time, the Roman Catholic Church could confidently proclaim that individual cases of sexually abusive priests were just that: Bad apples, aberrations, isolated examples. That argument is getting harder to make."[107] A second show on the topic in March focused on the claims of "critics" asserting that "[f]or too long . . . the Roman Catholic Church protected its priests."[108] In April, Bury introduced a broadcast, titled "Turning a Blind Eye: Victims and Families of Sex Abuse by Catholic Priests hold Boston Cardinal Law Responsible," by asserting that "the cover-up can be far more damaging than the crime."[109] During a second show on the topic in April, Koppel peppered Washington, D.C. Archbishop Cardinal Theodore McCarrick with questions about "responsibility among the princes of the Church and among the bishops" and their active participation in "a cover-up, moving priests from one location to another" and "the general public perception, now . . . of a church that has handled this thing very poorly."[110] In June, Koppel opened the program by summarizing the current state of the scandal in Boston as follows: "Former priest, John Geoghan, imprisoned. Former priest, Paul Shanley, charged with child rape. Cardinal Law, accused of cover-up."[111] This placed Cardinal Law on par with the nation's most notorious clergy sexual abusers. Indeed, Cardinal Law eventually eclipsed Geoghan as ABC's *Good Morning America* deemed him "the man at the center of" the Catholic Church's sexual abuse

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[104] *Nightline: Sins of the Fathers: Interview with Mark Chopko & Jason Berry* (ABC television broadcast Jan. 28, 2002), *available at* LEXIS, News Library, ABCNEW File.

[105] *Id.*

[106] *Nightline: Sins of the Fathers: Catholic Church Deals with Sexual Abuse of Minors by Priests in Wake of Former Priest, John Geoghan, being Charged with Sexual Abuse and Sentenced to Prison* (ABC television broadcast Feb. 21, 2002), *available at* LEXIS, News Library, ABCNEW File [hereinafter *Nightline: Sins of the Fathers; Catholic Church Deals*].

[107] *Nightline: Sins of the Fathers: The Rising Costs of the Scandal* (ABC television broadcast Mar. 14, 2002), *available at* LEXIS, News Library, ABCNEW File.

[108] *Nightline: Sins of the Fathers: Spiritual Treatment, Secular Justice* (ABC television broadcast Mar. 25, 2002), *available at* LEXIS, News Library, ABCNEW File.

[109] *Nightline: Sins of the Fathers: Turning a Blind Eye* (ABC television broadcast Apr. 9, 2002), *available at* LEXIS, News Library, ABCNEW File.

[110] *Nightline: Sins of the Fathers: Trying to Repair the Breach* (ABC television broadcast Apr. 24, 2002), *available at* LEXIS, News Library, ABCNEW File.

[111] *Nightline: Sins of the Fathers: A National Accounting* (ABC television broadcast June 11, 2002), *available at* LEXIS, News Library, ABCNEW File.

scandal.[112] On the June *Nightline* program, Koppel lectured Minneapolis Archbishop Harry Flynn, chairman of the USCCB's ad hoc committee on sexual abuse, on the feelings of American Catholics about the scandal:

> The disappointment, Your Excellency, if I may suggest, it seems to be not so much about the behavior of the priests themselves—of course there is great anger about that—but about the failure of the establishment of the American Catholic—of the Catholic Church in America to do something about it.[113]

To which the Archbishop replied, "And I would agree 100 percent with that."[114] In a second June program on the issue, Koppel concluded that in developing policies to detect and punish abusive priests, the Bishops had "finessed" the issue of disciplining Bishops who had facilitated abuse.[115] In December, *Nightline* wrapped up its 2002 coverage of the issue with a program on Cardinal Law's resignation and its implications for other Bishops.[116] The frame of institutional responsibility appeared prominently on ABC's *Good Morning America*[117] and *20/20*;[118] and CBS's *60 Minutes*,[119] *60 Minutes II*,[120] and *Sunday Morning*.[121]

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[112] *Good Morning America: Cardinal Law Resignation* (ABC television broadcast, Dec. 13, 2002), *available at* LEXIS, News Library, ABCNEW File.

[113] *Nightline: Sins of the Fathers: A National Accounting*, *supra* note 110.

[114] *Id*.

[115] *Nightline: Sins of the Fathers: A Parish Loses Its Priest* (ABC television broadcast June 27, 2002), *available at* LEXIS, News Library, ABCNEW File.

[116] *Nightline: Sins of the Fathers* (ABC television broadcast Dec. 13, 2002), *available at* LEXIS, News Library, ABCNEW File.

[117] *See, e.g.*, *Good Morning America: Bishop Wilton Gregory Discusses the New U.S. Catholic Church Policy to Deal With Sexual Abuse* (ABC television broadcast June 17, 2002), *available at* LEXIS, News Library, ABCNEW File ("[The Church was] soundly criticized for not taking prompt action."); *Good Morning America: Cardinals Return to U.S. after Meeting with the Pope on Sexual Abuse Scandal* (ABC television broadcast Apr. 25, 2002), *available at* LEXIS, News Library, ABCNEW File (opening with "Boston's Bernard Law, whose mismanagement of abusive priests helped create this scandal"); *Good Morning America: Father George Spagnolia Discusses Case of Sexual Abuse Brought by Former Parishioner* (ABC television broadcast Feb. 27, 2002), *available at* LEXIS, News Library, ABCNEW File ("All this year, we have been watching the Catholic Church confront disclosures that priests accused of sexual molestation continued to serve, often moved from parish to parish. . . . Church officials, including Cardinal Bernard Law, came under fire for allowing Geoghan to continue working for years, despite knowing he was a pedophile."); *Good Morning America: Mark Serrano and Other Victims of Abuse by Priest Talk to Father Frank Roddhammer about What Could Have and Still Should be Done to Stop Abuse by Priests* (ABC television broadcast Apr. 23, 2002), *available at* LEXIS, News Library, ABCNEW File (showing "a group of men as they confront a bishop they say let a predator inflict so much pain on them years ago"); *Good Morning America: Monsignor Clement Connolly, from Los Angeles, Discusses Changes Needed in Wake of Sexual Abuse Scandal in Catholic Church* (ABC television broadcast Mar. 19, 2002), *available at* LEXIS, News Library, ABCNEW File ("In California, a prominent monsignor is calling on Church leaders to be accountable and to change everything."); *Good Morning America: Victims of Priest Sexual Abuse Get Chance to Meet with Bishops in Dallas at Catholic Bishops Conference* (ABC television broadcast June 13, 2002), *available at* LEXIS, News Library, ABCNEW File (Mark Serrano "organized a group that confronted a bishop who had protected a priest who had abused him").

Aside from this anecdotal evidence, there is some statistical support for the predominance of the institutional responsibility frame. A LexisNexis search of *New York Times* news stories on clergy sexual abuse in 1993, during intensive coverage of a number of cases around the country sparked by the Porter case, found reference to the role of Bishops in twenty-four of thirty-two articles (75%).[122] A similar search for 2002 during media coverage of the Geoghan and other cases found reference to the role of Bishops in 488 of 604 articles (76%).[123]

A number of factors supported this frame of institutional responsibility. First, news coverage of the Gauthe litigation provided a template for later coverage.[124] For example, in a June 2002 broadcast of *60 Minutes II*, host Ed Bradley opened the program with the question, "Why is it taking the Roman Catholic leadership so long to make the church safe for its children?" "We found some answers," Bradley suggested, "in Louisiana, in a case which could have taught the church nearly everything it needed to know about that nineteen years ago."[125] The program then combined old news footage of the Gauthe case and interviews with parties to the litigation and their attorneys to frame the discussion of the Bishops' response to clergy sexual abuse in 2002.[126]

Second, many news stories relied on the expertise of individuals involved in the Gauthe case, most notably journalist Jason Berry, whose analysis of clergy sexual abuse was shaped by his own coverage of the

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[118] *20/20: Christopher Dixon and Others Claim Sexual Abuse by Pedophile Catholic Priests* (ABC television broadcast Mar. 22, 2002), *available at* LEXIS, News Library, ABCNEW File. Host Barbara Walters introduced the segment by suggesting that "the sins of the fathers are rocking the foundations of the church." *Id.*

[119] *60 Minutes: Catholic Church Dealing with Issues of Sex, Priests Abusing Children and Birth Control* (CBS television broadcast Mar. 31, 2002), *available at* LEXIS, News Library, CBSNEW File. Commentator Andy Rooney concluded: "It seems as though the Catholic Church should change its rules." *Id.*

[120] *60 Minutes II: The Church on Trial* (CBS television broadcast June 12, 2002), *available at* LEXIS, News Library, CBSNEW File ("Why is it taking the Roman Catholic leadership so long to make the church safe for its children?").

[121] *Sunday Morning: New Priests in Catholic Church Will Have to Earn Trust* (CBS television broadcast Apr. 21, 2002), *available at* LEXIS, News Library, CBSNEW File (focusing on the way the "church has handled the sexual abuse scandal").

[122] I used the search terms "date is 1993 and (priest or clergy w/15 abus! or moles!) and (bishop or archbishop or cardinal) and not substance or alcohol or drug or military or 'human rights' or spouse or husband or army or guerillas or labor" to generate the first figure, and "date is 1993 and (priest or clergy w/15 abus! or moles!) and not substance or alcohol or drug or military or 'human rights' or spouse or husband or army or guerillas or labor" to generate the second figure. For both, I excluded articles that were not on topic, and I did not count articles that appeared more than once in the search results (last searched Aug. 15, 2006).

[123] *See supra* note 122 (determined by using the same search methodology, but changing the year to 2002).

[124] On media templates, see JENNY KITZINGER, FRAMING ABUSE: MEDIA INFLUENCE AND PUBLIC UNDERSTANDING OF SEXUAL VIOLENCE AGAINST CHILDREN 54–78 (2004).

[125] *60 Minutes II: The Church on Trial*, *supra* note 120.

[126] *Id.*

case. Berry was quoted extensively throughout the print media.[127] A LexisNexis search of the *New York Times*, *Washington Post*, *Chicago Tribune*, and *Los Angeles Times* between 1990 and 2004 produced eighty-two Berry quotations and citations.[128] A 2002 *Washington Post* article referred to Berry as "a figure of legend in the coverage of sexual abuse by priests."[129] Berry appeared on *Nightline* as an expert on clergy sexual abuse in 1993, twice in 2002, and then once again in 2003.[130]

Third, a steady flow of subsequent legal claims that highlighted the failures of Church officials provided the basis for news stories. Following the Gauthe case, hundreds of clergy sexual abuse lawsuits between 1984 and 2002 named Church officials as defendants. Some of these later claims were modeled explicitly on the Gauthe case. Others were influenced less directly by interest in institutional liability for clergy sexual abuse among a growing circle of plaintiffs' lawyers that was fueled, in part, by the widely publicized success of the Gauthe case as well other concurrent cases that garnered less publicity. We will return to this mobilizing effect of the Gauthe litigation on plaintiffs' attorneys later.[131]

2. *Reliance on Litigation Documents and Plaintiffs' Attorneys as News Sources*

Audience demand is not the only ingredient of newsworthiness. In order to get published, a story must also be credible. According to one British broadcaster, "[c]redibility . . . is the *sine qua non* of news."[132] Credibility is the key to the power of journalism as an authoritative source of information.

Journalists rely on sources to provide information and to promote the credibility of their stories. Sources that are themselves perceived as credible are especially attractive to journalists. Hence, news stories

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[127] *See, e.g.*, Leslie Bennetts, *Unholy Alliances*, VANITY FAIR, Dec. 1991, at 224, 227; David Hechler, *Sins of the Father: A Girl's Abuse by Her Priest*, MCCALL'S, Sept. 1993, at 113, 118; Richard N. Ostling, *Sins of the Fathers: A Honolulu Bishop is Accused of Sex Abuse in a Federal Lawsuit As Catholic Scandals Keep Spreading*, TIME, Aug. 19, 1991, at 51. For further discussion of the use of journalists and prior coverage as sources for news stories, see *infra* Part II.C.2.

[128] I used the search terms "(priest or clergy w/15 abus! or moles!) and 'jason berry' and not substance or alcohol or drug or military or 'human rights' or spouse or husband or army or guerillas or labor and date (geq (Jan. 1, 1990) and leq (Dec. 31, 2004))" (last searched July 18, 2006).

[129] Steve Twomey, *For 3 Who Warned Church, Fears Borne Out: Priest, Journalist and Professor Who Foresaw Sex Abuse Scandal Frustrated by Bishops' Response*, WASH. POST, June 13, 2002, at A1, *available at* LEXIS, News Library, WPOST File.

[130] *See Nightline: Child Sexual Abuse in the Catholic Church*, *supra* note 98; *Nightline: Sins of the Fathers* (ABC television broadcast June 17, 2003), *available at* LEXIS, News Library, ABCNEW File; *Nightline: Sins of the Fathers; Catholic Church Deals*, *supra* note 106; *Nightline: Sins of the Fathers*, *supra* note 104;.

[131] *See infra* Part III.A.1.c.

[132] TUCHMAN, *supra* note 47, at 83 (quoting Anthony Smith, British newscaster) (emphasis added).

commonly quote official documents. They also regularly rely on experts or officials.[133] The media not only rely on experts, they also create them, because sources themselves gain credibility by being cited as experts in the media.[134] Expert opinion ratifies a news story, and media coverage ratifies the expert's opinion. Using experts and officials to boost the credibility of news stories enhances the prominence of news media frames by attributing them to respected figures.

A second reason for the news media's adoption of the plaintiffs' framing of clergy sexual abuse is heavy reliance on litigation documents as sources for news stories, supplemented by interviews with plaintiffs and their attorneys. Pleadings, depositions, discovery documents, and trial transcripts—either filed in court and available as public documents or provided directly to reporters by lawyers—are treated by journalists as authoritative sources of information. Journalists and the public at large tend to view legal documents as especially credible. Perhaps one explanation for this phenomenon is that pleadings are supposed to contain only facts with a sufficient evidentiary basis, and depositions and trial testimony are given under oath. It may also be that filing documents in a court gives them an official status that inspires confidence in the truthfulness of their contents. There may also be an element of naive belief that individuals involved in legal proceedings do not lie. Whatever the case may be, litigation documents provide the credibility that journalists seek in their sources and are thus often the origin of news frames.

Media coverage of clergy sexual abuse relies heavily on litigation documents as primary sources for news stories. One regularly finds news stories based on pleadings, depositions, discovery documents, and trial transcripts. As we have seen, Barry Yeoman's initial print coverage of the Gauthe litigation in the *Times of Acadiana* was based almost entirely on the plaintiffs' pleadings. In a recent interview, Yeoman recalled that "there was a sense in the newsroom that we should cover the story responsibly . . . to write about childhood sex abuse as a broader issue and discuss the civil case in a factual, dispassionate sidebar."[135] The sidebar was "written almost entirely from pleadings as a way to give the community a sense that we were just reporting the facts, rather than inflaming passions." "The editor," he explained, "was a stickler for using the court record as the primary source [based on] a sense that if you quote from court documents you are less open to a libel suit than if you quote an individual." Yeoman suggested that in "hewing to the structure of the

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[133] *See* SCHUDSON, *supra* note 48, at 54; TUCHMAN, *supra* note 47, at 90 (noting that journalists "intermesh fact and source").

[134] *See* TUCHMAN, *supra* note 47, at 92–93.

[135] Telephone Interview with Barry Yeoman, Writer, *Times of Acadiana*, in Albany, NY (Jan. 12, 2005) (on file with Connecticut Law Review).

lawsuits," the story was "based on the plaintiffs' original assertions" and "framed by the plaintiffs' framing of the issue."[136]

John Pope's subsequent story in the *New Orleans Times Picayune* was based on and quoted extensively from depositions that were filed by plaintiffs' attorney Simon precisely in order to put them into the public record and make them accessible to the press.[137] In an interview, Pope suggested that he was merely reporting what he found in the public record. You just go out and "see what you find," he explained, "you don't go into a story with an *idée fixe*."[138] Of his heavy reliance on the depositions, he said: "it is sworn testimony, testimony under oath, not just someone on the street talking about vague details. You want information that you feel you can take to the bank."[139] Subsequent local, regional, and national coverage of the case regularly cites the same pleadings, depositions, and, in later coverage, trial testimony.[140] In the *National Catholic Reporter*'s early investigative articles, information about cases of clergy sexual abuse from around the country was based almost entirely on litigation documents.[141]

One finds frequent reliance on litigation documents and proceedings in later coverage as well. For example, the *Boston Globe*'s first article on the Porter case relied heavily on a demand letter written to the diocese by plaintiffs' attorney, Roderick MacLeish, Jr., on behalf of a group of nine victims.[142] *The Globe*'s Pulitzer Prize winning coverage of clergy sexual abuse in 2002 was based largely on sealed court files in the Geoghan case that the paper successfully litigated to have unsealed.[143]

A LexisNexis search of *New York Times* news stories on clergy sexual abuse in 1993, found explicit reference to litigation documents or proceedings in twenty-two out of forty-four articles (50%).[144] A similar

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[136] *Id.*

[137] *See* John Pope, *Church Knew of Abuses, Sex Case Depositions Show*, NEW ORLEANS TIMES PICAYUNE, Nov. 9, 1984, at A1; *see also* SIMON, *supra* note 16, at 146.

[138] Telephone Interview with John Pope, Writer, *New Orleans Times Picayune*, in Albany, NY (Jan. 6, 2005) (on file with Connecticut Law Review) [hereinafter Pope Interview].

[139] *Id.*

[140] *See, e.g.*, Associated Press, *Bishop Says He Got Word of Gauthe's Actions 10 Years Ago*, BATON ROUGE MORNING ADVOC., Jan. 25, 1985, at B8; Blow, *supra* note 81; Sawyer, *supra* note 90.

[141] *See, e.g.*, Jason Berry, *Pedophile Priest: Study in Inept Church Response*, NAT'L CATH. REP., June 7, 1985, at 6, 6; Arthur Jones, *Legal Actions Against Pedophile Priests Grow*, NAT'L CATH. REP., June 7, 1985, at 1, 4.

[142] Alison Bass, *Nine Allege Priest Abused Them, Threaten to Sue Church*, BOSTON GLOBE, May 8, 1992, at 1, *available at* LEXIS, News Library, BGLOBE File.

[143] *See* THE INVESTIGATIVE STAFF OF THE BOSTON GLOBE, BETRAYAL: THE CRISIS IN THE CATHOLIC CHURCH 262 (paperback ed. 2003).

[144] I used the search terms "date is 1993 and (priest or clergy w/15 abus! or moles!) and (lawsuit! or plaintiff! or court! or pleading! or deposition! or testimon! or discovery or trial!) and not substance or alcohol or drug or military or "human rights" or spouse or husband or army or guerillas or labor" to generate the first figure and "date is 1993 and (priest or clergy w/15 abus! or moles!) and not substance or alcohol or drug or military or "human rights" or spouse or husband or army or guerillas or labor" to

search for 2002 found explicit mention of litigation documents or proceedings in 312 out of 692 articles (45%).[145] Of course, these figures under-represent reliance on litigation as a news source since they include only stories that *explicitly* mention litigation documents or proceedings.

The leading books on the clergy sex abuse scandal—all by journalists—also rely heavily on litigation documents. Jason Berry states in the introduction to *Lead Us Not Into Temptation*, "[c]ivil lawsuits provided the documentation on most of the cases I wrote about," "the baseline on which I built my reporting," and he discloses in the prologue, "[m]y primary sources were transcripts of civil testimony given under oath by Bishops and priests in lawsuits across the country."[146] In their book *Gospel of Shame*, *New York Times* reporter Frank Bruni and free lance journalist Elinor Burkett acknowledge "J. Minos Simon, who actually let us take three fifty-pound boxes of his files to a hotel room for the weekend."[147] The notes to their book suggest that they relied most heavily on news reports of the cases that they covered, which were themselves largely based on litigation documents.[148] The Investigative Staff of the *Boston Globe*, who won a Pulitzer prize for their coverage of the scandal, explains in the notes to their book *Betrayal* that they relied heavily "on a large number of Church documents filed in connection with criminal and civil court cases."[149] David France, who covered the story for *Newsweek* magazine, states in the notes to his book *Our Fathers*, "[m]y key resource for this book was tens of thousands of pages of court documents . . . [especially] the extensive record of court depositions."[150]

In both news stories and books, these documentary sources are supplemented with interviews. As we have seen, interviews with plaintiffs' attorney Simon were often quoted in news stories about the Gauthe litigation, and he is acknowledged as a key source in the books by Berry and Bruni and Burkett.[151] Plaintiffs' attorneys figure prominently in news stories and in lists of attorneys interviewed for the books.[152] These plaintiffs' attorneys functioned as what media scholars call "parajournalists"—organizational spokespersons whose job it is to provide

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generate the second figure. For both, I did not count articles that appeared more than once in the search results (last searched Aug. 9, 2005).

[145] I used the same search methodology as *supra* note 144, changing the year to 2002 (last searched Sept. 28, 2006).

[146] BERRY, *supra* note 1, at ix, xxii, 47.

[147] BURKETT & BRUNI, *supra* note 22, at vii–viii.

[148] *Id.* at 269 n.142.

[149] INVESTIGATIVE STAFF OF THE BOSTON GLOBE, *supra* note 26, at 262. The Globe's 2002 coverage was itself sparked by the filing of claims against Fr. Geoghan. *See* Michael Rezendes, *Scandal: The Boston Globe and Sexual Abuse in the Catholic Church*, *in* SIN AGAINST THE INNOCENTS: SEXUAL ABUSE BY PRIESTS AND THE ROLE OF THE CATHOLIC CHURCH 1, 4 (Thomas Plante ed., 2004).

[150] FRANCE, *supra* note 28, at 599.

[151] BERRY, *supra* note 1, at xxvii; BURKETT & BRUNI, *supra* note 22, at vii–viii.

[152] BERRY, *supra* note 1, at xxvi–xxvii; BURKETT & BRUNI, *supra* note 22, at vii–viii.

ready-made news stories to journalists.[153] In perhaps the most extreme example, in April 2002, plaintiffs' attorney Eric MacLeish held a previously announced news conference in the ballroom of the Sheraton Boston Hotel and Towers. The conference lasted over two hours, complete with victim testimonials and a Power Point presentation of eighty-seven documents relating to claims against Father Paul Shanley, at the end of which MacLeish distributed 800-page document packets to dozens of journalists in attendance.[154] Plaintiffs themselves are also frequently quoted in news stories, either in sworn testimony or personal interviews. By contrast, defense attorneys—especially Church and insurance company attorneys—regularly refused comment, as did Church officials.

In general, plaintiffs lawyers, and to a lesser degree plaintiffs themselves, are eager to speak with reporters and publicize their cases—providing ready-made frames for the press—because it serves their litigation goals.[155] Favorable publicity in the media can influence potential jurors. When news stories adopt the plaintiffs' frames, they make those frames more familiar, and hence more persuasive, to jurors exposed to them in media coverage. The long-term effects of such publicity are especially powerful. Whereas once it might have been difficult to convince judges and juries that a Catholic priest could be capable of sexually abusing children, in the wake of twenty years of highly publicized litigation, this is no longer the case. Press coverage can also increase settlement pressure on defendants eager to staunch the flow of embarrassing information to the public. Throughout the scandal, the Church has entered into confidential settlements in order to avoid negative publicity.[156] Press interviews also enable plaintiffs to air their claims against the Church publicly, a common goal of plaintiffs in clergy sex abuse litigation.[157] Finally, plaintiffs' attorneys often seek to enhance their reputations, and getting the plaintiffs' story reported in a favorable light serves this end.

By contrast, the Church has been eager to avoid press coverage altogether for fear initially of igniting and later fueling public scandal.[158]

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[153] SCHUDSON, *supra* note 48, at 3, 138.

[154] FRANCE, *supra* note 28, at 395–401.

[155] *See, e.g.*, Mather, *supra* note 5, at 917 (discussing plaintiffs' lawyers cultivation of press coverage in tobacco litigation). *But see* HALTOM, *supra* note 43, at 207–10 (asserting that civil lawyers shun publicity and are not considered as reliable sources by journalists).

[156] INVESTIGATIVE STAFF OF THE BOSTON GLOBE, *supra* note 26, at 47.

[157] *See, e.g.*, SIMON, *supra* note 16, at 138–39.

[158] For a lengthy analysis of the church hierarchy's desire to avoid publicity, see Barbara Balboni, Through the "Lens" of the Organizational Culture Perspective: A Descriptive Study of American Catholic Bishops' Understanding of Clergy Sexual Molestation and Abuse of Children and Adolescents (Sept. 1998) (unpublished Ph.D. dissertation, Bridgewater State College), *available at* http://webhost.bridgew.edu/bbalboni/dissertation.htm. The asymmetry between plaintiff and defense attitudes toward media coverage may also be based on differences in professional culture and client confidentiality

This reluctance of defendants and their attorneys to speak with the press has made their compulsory testimony in litigation documents—such as depositions and trial transcripts—all the more influential as a source for media coverage. This further benefits plaintiffs, as this testimony is elicited by plaintiffs' attorneys seeking to use it to support their frames.

3. *Litigation as an Unfolding Drama*

In the news production process, a news story with *continuity*, that unfolds over time and can be released in episodes, is considered more newsworthy.[159] Such an ongoing story is said in news jargon to "have legs."[160] The protracted and dramatic nature of the litigation process lends litigation frames continuity and enhances their newsworthiness.[161]

The litigation process gave the clergy sex abuse story legs because it generated a steady flow of litigation events that each provided new revelations and pegs for news stories. In the Gauthe litigation, for example, the filing of pleadings, the taking of depositions, hearings on motions, trial events, appeals, and settlements all gave rise to media stories.[162] In this manner, subsequent lawsuits since 1985 have supported coverage of clergy sexual abuse for the past twenty years.[163]

At times, the drama of the litigation itself—the competition between attorneys—sustains the coverage. Part two of Berry's 1985 three-part investigative series in the *Times of Acadiana* examines the "legal dramas unfolding as a result of [Gauthe's] crimes," and features on the first page, side-by-side photos of plaintiffs' attorney Simon and defense attorney

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concerns. Plaintiffs' lawyers are story-tellers by profession who often like to talk and, as they do not bill by the hour, are freer with their time. By contrast, defense attorneys more regularly play the role of confidential counselors and are less willing to take time to chat about cases. In addition, a plaintiffs' lawyer with many clients can talk in general terms without breaching client confidentiality, whereas defense attorneys usually have one large client—such as a diocese—and may find it harder to speak in general terms without breaching client confidentiality. I am grateful to Howard Erichson for these insights. For an example of defense counsel's refusal to speak to the press in the Gauthe case, see Sawyer, *supra* note 90. For discussion of plaintiffs' lawyers' cultivation of the media in tobacco litigation, see Mather, *supra* note 5, at 917.

[159] Galtung & Ruge, *supra* note 50, at 55.

[160] SCHUDSON, *supra* note 48, at 180.

[161] *Cf.* HALTOM, REPORTING, *supra* note 43, at 210, 216, 235 (asserting that civil litigation lacks news pegs and legs).

[162] *See, e.g.*, Jason Berry, *Church Accepts Liability*, TIMES OF ACADIANA, July 18, 1985, at 16 (on file with Connecticut Law Review) (citing stipulation of church liability); David McCormick, *Church On Trial For Allegedly Harboring Priest in Sex Abuse Case*, ASSOCIATED PRESS, Feb. 3, 1986, *available at* LexisNexis Academic, News Wires (citing jury selection); David McCormick, *Mother: Faith Shattered After Son Molested by Priest*, ASSOCIATED PRESS, Feb. 4, 1986, *available at* LexisNexis Academic, News Wires (citing trial testimony); Dave Miller, *Decision Reached in Priest Sex Suit*, BATON ROUGE MORNING ADVOC., Feb. 8, 1986, at B1 (citing jury verdict); Pope, *supra* note 77, at A1 (citing depositions); Staff, *Sex Abuse Damage Trial Goes to Jury Today*, DAILY ADVERTISER, Feb. 7, 1986 (citing submission to jury) (on file with Connecticut Law Review); Yeoman, *supra* note 72, at 17 (citing pleadings).

[163] *See infra* Parts II.D, III.A.1.b.ii.

F. Ray Mouton.[164] Next to each photo, is a bold caption in large font. The one next to Simon reads: "Attorney Minos Simon's suit on behalf of the Gastals rests on the premise that Church officials not only had prior knowledge of Gauthe's crimes but also had long tolerated homosexuality among other clerics in the sprawling diocese," and the one next to Mouton states that "Defense attorney F. Ray Mouton has entered an insanity plea to Gauthe's criminal indictment. The jury will have to decide if the priest was capable of telling right from wrong at the time he molested his victims."[165] The photos and their captions illustrate nicely that litigation is essentially frame competition in which articulate attorneys engage in drawn out and, at times, dramatic conflict, all of which makes for an attractive news story.

Subsequent coverage also played up the drama of litigation. CNN Anchor Bonnie Anderson characterized the filing of a countersuit for defamation against a plaintiff "just the start of the Archdiocese counterattack."[166] Videotaped depositions of Cardinal Law in the Geoghan and *Shanley* cases were posted on the Web by the *Boston Globe*, and dramatic excerpts were played on the evening news and included in newspaper stories.[167]

4. *Clergy Sexual Abuse as a News Theme*

In addition to audience demand and credibility, editorial concerns influence news production. In composing the daily paper or news program, editors must select and organize news stories. In order to do so, they employ themes that provide selection criteria and principles of organization. "A news theme," explains media scholar Mark Fishman, "is a unifying concept. It presents a specific news event, or a number of such events in terms of some broader concept . . . . A news theme allows journalists to cast an incident as an *instance* of something."[168] The extent to which a particular story fits within a theme makes it more newsworthy.

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[164] Jason Berry, *The Tragedy of Gilbert Gauthe, Part II*, TIMES OF ACADIANA, May 30, 1985, at 16, 16.

[165] *Id.*

[166] *CNN Specials: Fall From Grace, Part 2 Clergy Protectionism* (CNN television broadcast Nov. 14, 1993), *available at* LEXIS, News Library, CNNTRN File.

[167] Boston Globe, Documents: Abuse in the Catholic Church, Depositions of Cardinal Law, *available at* http://www.boston.com/globe/spotlight/abuse/documents/law_depositions.htm (last visited Feb. 2, 2007). For excerpts from the depositions broadcast on television, see, for example, *CBS Morning News: Videotape Shows Boston's Cardinal Bernard Law Knew of Secretive Church Policy when Dealing with Abusive Priests* (CBS television broadcast Aug. 14, 2002), *available at* LEXIS, News Library, CBSNEW File. For deposition excerpts in print media see, for example, Pam Belluck, *Cardinal Law Said His Policy Shielded Priests*, N.Y. TIMES, Aug. 14, 2002, at A1, *available at* LEXIS, News Library, NYT File.

[168] Mark Fishman, *Crime Waves as Ideology*, *in* THE MANUFACTURE OF NEWS, *supra* note 50, at 102.

The development of themes over time enhances the continuity of the news and allows news organizations to frame individual stories as episodes within an unfolding drama.[169]

The tendency to select news stories that fit a theme applies not only within a particular news organization, but among news organizations as a whole. Once one media outlet has identified a theme, other news organizations are likely to view it as newsworthy and to report on it as well. As we have seen, news organizations rely heavily on each other's judgments of newsworthiness.[170] Expanding coverage of the theme is self-reinforcing. As Fishman explains:

> [W]hen a . . . theme is beginning to spread through more and more media organizations, the "reality" of the theme is confirmed for the media organizations who first reported it. They now see others using the same theme. Moreover, as the theme persists, news organizations already using the theme will not hesitate to report new instances . . . . Thus, each use of the theme confirms and justifies its prior use.[171]

Moreover, official and public reaction to the theme further confirms it and generates additional stories.[172] Sources seeking to attract media coverage frame the information they provide in terms of the theme.[173] Fishman's analysis of news themes describes a kind of frame cascade that further helps to explain the persuasiveness and pervasiveness of news media frames.

One reason for the news media's adoption of the plaintiffs' framing of clergy sexual abuse is that filing of numerous claims against the Church created a sustained and familiar news theme. Filing multiple claims simultaneously or aggregating many claims in class action or government entity litigation has become an increasingly common strategy among tort plaintiffs that increases pressure on defendants to settle.[174] This increases the magnitude of the alleged wrongdoing and harm, as well as the litigation itself, and it frames individual claims as part of a larger trend, which provides a news theme. As the news theme cascades among news organizations and grows, it often leads the media to portray the claims as part of a larger crisis.

As originally reported by Yeoman, the Gauthe litigation was framed as part of a larger news theme of child sexual abuse in general. The multiple

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[169] GITLIN, *supra* note 31, at 100; Fishman, *supra* note 168, at 106.

[170] Fishman, *supra* note 168, at 106 (discussing the interrelation between local, regional, and national coverage of the Gauthe, Porter, and Geoghan cases).

[171] *Id.* at 107. Fishman illustrates this point by showing how the proliferation of themes accounts for the creation of crime waves by the media even when the crime rate is declining.

[172] *Id.* at 111.

[173] *Id.*

[174] RICHARD A. NAGAREDA, MASS TORTS IN A WORLD OF SETTLEMENT (forthcoming 2007).

claims filed against the Church by Gauthe's victims and his subsequent criminal indictment, however, generated enough stories to make the Gauthe litigation a news theme in its own right. As Berry and others uncovered and reported other clergy abuse litigation around the country, the theme became clergy sexual abuse in the Catholic Church. As we have seen, these initial news frames cascaded throughout the media, and media coverage encouraged more victims to come forward and file suit, in turn generating more media coverage. In June of 1985, the *National Catholic Reporter* called clergy sexual abuse a national "crisis" in the Catholic Church. In 1991, *Time Magazine* referred to it as "[w]ithout doubt . . . the worst wave of moral scandals ever to beset Roman Catholicism in North America,"[175] and by 2002 the press was regularly characterizing it as what "may be the greatest scandal in the history of religion in America and perhaps the most serious crisis Catholicism has faced since the Reformation."[176]

It is significant that the rate of sexual abuse by Catholic clergy rose in the 1950s and 1960s, peaked in the 1970s, and began a steady decline starting in the mid-1980s, all before the scandal broke publicly.[177] It was thus the commencement and growth of litigation, not any rise in the rate of clergy sexual abuse that supported the news theme of a crisis in the Church.[178]

D. EXPLAINING THE DOMINANCE OF PLAINTIFFS' FRAMING OF CLERGY SEXUAL ABUSE

So far in this Part, I have argued that tort litigation provided a venue for plaintiffs' framing of clergy sexual abuse as an issue of institutional failure and that this became the dominant frame for news media coverage. The dominance of plaintiffs' framing of the issue, however, was by no means inevitable. Beginning with the Gauthe litigation, defense lawyers, Church officials, and commentators constructed and promoted alternative frames. I will canvas some of the most prominent contenders and then suggest why the plaintiffs' frame ultimately prevailed.

In pleadings, at trial, and in statements to the press, defense counsel in the Gauthe case Bob Wright, suggested that the Gastal parents were partly responsible for the damage suffered by their son by subjecting him to a

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[175] Ostling, *supra* note 127, at 51.

[176] Ostling, *supra* note 3 (internal quotation omitted).

[177] KAREN TERRY & MARGARET LELAND SMITH, THE NATURE AND SCOPE OF SEXUAL ABUSE OF MINORS BY CATHOLIC PRIESTS AND DEACONS IN THE UNITED STATES: SUPPLEMENTARY DATA ANALYSIS 4 (2006), *available at* http://www.usccb.org/ocyp/JohnJayReport.pdf.

[178] *See* PETER STEINFELS, A PEOPLE ADRIFT: THE CRISIS OF THE ROMAN CATHOLIC CHURCH IN AMERICA 44–45, 53–54 (2003).

public trial.[179] In a statement to the press during the trial, Wright said that "[t]he boy's psychologist . . . advised the Gastal family not to bring the matter to trial. He told the Gastals that publicity would only make their son's condition worse. We contend that exposing the matter in a trial has interfered with his chances of recovery."[180] Wright and the plaintiffs' original attorneys—Bencomo and Hebert—insisted that secret settlements were necessary to protect the privacy of the victims.[181] Wright also told the press that the Gastal parents sought an excessive recovery, implying that they were using the litigation for financial gain.[182] Speaking generally of the phenomenon of clergy sex abuse litigation against the Church, scholarly commentator Philip Jenkins asserts that high damage awards are a primary motivation for pursuing the litigation. "[T]he potentially lucrative rewards of church litigation," he writes, "are an obvious temptation."[183] According to this frame, the litigation process itself is a form of child exploitation.

A related defense frame offered by the Church is that parents have been contributorily negligent in allowing their children to spend so much time in the unsupervised care of a priest, especially where there might have been indications of excessive interest on the part of the priest or unusual behavior on the part of the victim. Defense lawyers and Church officials are somewhat reticent to promote this frame as it implies common knowledge of clergy sexual abuse—and therefore toleration of it by Church officials—and it smacks of blaming the victim.[184]

Defenders of the Church also frequently blame the legal system for exacerbating the crisis. Church officials dealing with abuse allegations in the 1960s, 70s, and 80s, on this account, did the best they could with the resources available at the time. They relied on what we now know to be erroneous advice that the best response to child abuse is confidentiality to protect victims and psychotherapy to rehabilitate offenders. "Some of the mistakes that bishops made," asserts Patrick Schiltz, "would have been made by just about any of us at that time. Those mistakes did not reflect bad faith, but an honest misunderstanding of the nature of sexual abuse and the impact on its victims—an honest misunderstanding shared by most

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[179] Supplemental and Amending Answer ¶ I.7, Gastal v. Hannan, No. 84-48175-A (La. 15th Dist. Dec. 13, 1985) (on file with Connecticut Law Review); SIMON, *supra* note 16, at 149; David Milner, *Testimony Begins in Suit Against Diocese*, BATON ROUGE MORNING ADVOC., Feb. 5, 1986, at 2B, *available at* 1986 WL 4425600.

[180] Milner, *supra* note 179.

[181] Berry, *Tragedy Part II*, *supra* note 164, at 27; Associated Press, *supra* note 140; UPI, *Lawyer Wants Bishop to List Likely Victims*, BATON ROUGE MORNING ADVOC., Jan. 30, 1985, at 10B, *available at* 1985 WL 4057212.

[182] Milner, *supra* note 179.

[183] JENKINS, *supra* note 6, at 130; *see also id.* at 125–32.

[184] Telephone interview with Bob Wright, Church defense counsel in the Gauthe case, Albany, NY (May 25, 2005) (on file with Connecticut Law Review); *see also* Boston Globe, *supra* note 167.

Americans at the time."[185] Between 1992 and 2002, according to Schiltz, the Church could have preempted the post-2002 storm of litigation by admitting its mistakes, holding accountable the priests who committed abuse and the officials who facilitated it, and compensating victims.[186] The Church failed to do this, asserts Schiltz, because diocesan attorneys and insurance company lawyers took an adversarial approach to the problem and advised Bishops to share no information, make no apologies, offer no assistance to victims, and impose no punishments on abusers since any of these actions could be construed as an admission of wrongdoing and could be used by plaintiffs to support their legal claims.[187] The post-2002 litigation boom has also been fueled, continues Schiltz, by plaintiffs' attorneys seeking to profit from clergy sexual abuse who discourage any contact between victims and the Church that might lead to reconciliation and who encourage victims to inflate the extent of their injuries.[188]

Since the very beginning of the litigation, the Church has sought to portray itself as a victim of abusive priests who concealed their crimes from diocesan officials. In a deposition statement widely reported in the press, Lafayette's Bishop Frey referred to Gauthe in the following terms: "I think you have to understand the man we're talking about . . . . He's a very, very unique person. He's got a sort of Dr. Jekyll and Mr. Hyde personality, where he can fool people very easily. And he certainly deceived me."[189] In 1997, twelve years later, Church officials were quoted as insisting "they lacked knowledge about pedophiles' incurability until the early 1990s and now are moving to flush out 'wolves in sheep's clothing.'"[190]

Church officials have also sought to downplay the magnitude of the problem. In the wake of revelations concerning Porter, Cardinal Law suggested that priests who sexually abuse children are "the rare exception."[191] Former Boston Mayor and U.S. Ambassador to the Vatican, Ray Flynn, began a 2002 interview on *Nightline* by suggesting, "Let's not

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[185] Patrick Schiltz, Speech at the University of Dayton School of Law, Too Much Law, Too Little Justice: How Lawyers Helped to Turn a Clergy Sexual Abuse Problem Into a Clergy Sexual Abuse Crisis 3 (Jan. 10, 2005) (transcript on file with Connecticut Law Review). For a similar analysis, see Eugene Cullen Kennedy, *About Those Priests*, CHI. TRIB., Oct. 14, 2005, at C23, *available at* LEXIS, News Library, CHTRIB file.

[186] Schiltz, *supra* note 185.

[187] *Id.* at 1–2, 6.

[188] Patrick J. Schiltz, *Defending the Church*, 29 LITIG. 19, 21, 25 (2003).

[189] Barry Yeoman, *How Much Did the Church Know?*, TIMES OF ACADIANA, Feb. 7, 1985. This quote was repeated in other news articles. *See, e.g.*, Blow, *supra* note 81.

[190] Brooks Egerton, *Documents Show Bishops Transferred Known Abuser; Church Officials Say Policies Have Since Changed*, DALLAS MORNING NEWS, Aug. 31, 1997, at A1, *available at* LEXIS, News Library, DALNWS file.

[191] Kay Longcope, *Sexual Abuse by Priests is a "Betrayal," "Rare," Law Says*, BOSTON GLOBE, May 14, 1992, at 29, *available at* LEXIS, News Library, BGLOBE File.

just try to bring down the Catholic church here because of a handful of bad apples in the barrel."[192]

The Church and its defenders have also sought to portray the Church as a victim of an anti-Catholic press. In 1985, the *Daily Advertiser* of Lafayette criticized the *Times of Acadiana* coverage in a stinging editorial, proclaiming that "[i]t's time to call a halt to the exploitation of the Gilbert Gauthe affair," and asking rhetorically,

> Now will those who thrive on the misery of others permit the matter to rest, content to let the judicial system work or will they turn it all into some extravaganza exploiting pornography while condemning the Catholic Church and all the priests who serve it? Will the vultures of yellow journalism and sadistic movie making creeps attempt to convert the sexual aberrations of one man to best selling porn status on the bookshelf and another mini-series that violates mankind's universal code of decency?[193]

The editorial went on to insist that "[t]he Catholic Church is not on trial in the Gauthe affair," and it ended with a call to forgive "any unscrupulous individuals who for one reason or another attempt to blacken the reputation of our entire religious community."[194] Similar sentiments were expressed at a 1992 meeting of 500 Boston area priests who met to discuss reforms proposed by the Boston archdiocese. One priest reportedly said that press coverage of clergy sex abuse was "just like in Germany when the Nazis crushed the church."[195] Also in 1992, Cardinal Law himself issued an angry denunciation of press coverage of the Porter affair. "'The good and dedicated people who serve the church deserve better than what they have been getting day in and day out in the media,' Law declared. . . . 'By all means, we call down God's power on the media, particularly the *Globe*!'"[196] Jenkins alleges that the press unfairly singled out the Catholic Church in its coverage of clergy sexual abuse, and that press framing and rhetoric grow out of a tradition of centuries-old anti-Catholic polemic.[197] One-time religion correspondent for the *New York Times*, Peter Steinfels, laments "just how antagonistic to Catholicism the media culture has become."[198]

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[192] *Nightline: Sins of the Fathers; Catholic Church Deals*, *supra* note 106.

[193] Editorial, *The Catholic Church is Not on Trial!*, DAILY ADVERTISER, June 16, 1985.

[194] *Id.*

[195] James L. Franklin, *Catholics Struggle with Delay*, BOSTON GLOBE, Nov. 22, 1992, at 1, *available at* LEXIS, News Library, BGLOBE File. For a similar sentiment expressed by a Honduran cardinal, see STEINFELS, *supra* note 178, at 63.

[196] FRANCE, *supra* note 28, at 213.

[197] JENKINS, *supra* note 6, at 19, 24–25, 32.

[198] STEINFELS, *supra* note 178, at 65. For other examples of this frame, see L. Martin Nussbaum, *Changing the Rules: Selective Justice for Catholic Institutions*, AM., May 15, 2006, 13, 13 (alleging that press coverage has created the false impression that child sexual abuse is a Catholic problem);

Defenders of the Church have combined efforts to minimize the problem with claims of anti-Catholic bias by characterizing the incidence of clergy sexual abuse within the Church as low compared to the incidence of child sexual abuse in other social institutions. In a 2006 advertisement on the editorial page of the *New York Times*, Catholic League President William Donohue, citing data that there were only nine credible sexual abuse allegations against Catholic priests in 2005—".02 percent of priests"—argued:

> It is highly unlikely that there are many institutions or demographic groups with a better record than this (e.g., it is estimated that the rate of sexual abuse of public school students is more than 100 times the abuse by priests). Obviously, one victim is too many. But when 99.98 percent of priests today are not under suspicion—and indeed most are good men—it is outrageous that they continue to be subjected to vile depictions in the media, sneering remarks by educators and inequitable treatment by lawmakers. Stereotypes do not die easily, but it is high time our cultural elite began to treat priests with the degree of respect they've earned. Sweeping condemnations of any group is rightly regarded as bigotry. Including Catholic priests.[199]

On this account, the Catholic Church is in fact a leader in addressing the problem of child sexual abuse and a victim of widespread anti-Catholic bias.

Individuals on both sides of the issue have attempted to place blame for clergy sexual abuse of children on homosexuality among priests. Plaintiffs' attorney in the Gauthe case, Minos Simon, believed that pedophilia was "a species of homosexuality" and that "homosexuality *per se* was a risk-producing activity."[200] Based on these beliefs, he argued that "knowledge on the part of church officials concerning the existence of homosexual activity would result in a duty on the part of the church officials to take affirmative steps to protect altar boys from homosexual priests."[201] The relationship between homosexuality and pedophilia in the Gauthe case was analyzed and debated in early media coverage of the litigation.[202] Berry suggested that hypocritical tolerance of homosexual

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Nightline: Sins of the Fathers; Catholic Church Deals, *supra* note 106 (Ray Flynn suggests that press attention to clergy sexual abuse in the Boston archdiocese is disproportionate).

[199] *Scandal in the Church: Four Years Later*, N.Y. TIMES, July 7, 2006, at A23, *available at* LEXIS, News Library, NYT File.

[200] SIMON, *supra* note 16, at 146.

[201] *Id.* at 147.

[202] Blow, *supra* note 81; Associated Press, *supra* note 140.

activity among priests within the Church contributed to a clerical culture that turned a blind eye toward other forms of sexual activity also forbidden by Church doctrine.[203] American Bishops and Vatican officials also sought to frame clergy sexual abuse as a result of accepting homosexuals within the priesthood.[204] In response to the scandal in late 2005, the Vatican issued a new policy banning candidates for the priesthood "who are actively homosexual, have deep-seated homosexual tendencies, or support the so-called 'gay culture.'"[205]

Church officials have also sought to frame clergy sex abuse as a matter of sin, a moral failing that is best addressed by Church doctrines of repentance and forgiveness, rather than as a crime or a civil wrong to be turned over to the secular justice system.[206] In explaining why he failed to check on Gauthe's behavior as a parish priest, even after he knew of Gauthe's sexual misconduct with children at a previous parish, diocesan official Monsignor Richard Mouton explained: "I am trained to forget people's sins, as a priest."[207] As Cardinal Law explained in a 1992 *Boston Globe* article, "we live out our life as a community of faith, very much like a family . . . . My hope is that we can evolve a policy that can effectively deal with the issue without gearing it into a legal mode."[208]

Commentators have attempted to downplay the scandal by drawing a distinction between sexual molestation of prepubescent children—"pedophilia"—and postpubescent adolescent children—"ephebophilia"—noting that cases of the former are relatively rare among reported cases of clergy sexual abuse, while the latter are more common.[209] Framing the abuse of prepubescent children as a distinct phenomenon from that of adolescents allows them to portray pedophilia as a relatively minor problem within the Church and divert attention to sexual relations between

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[203] *See* BERRY, *supra* note 1, at 243–44; *see also* JENKINS, *supra* note 6, at 103–04.

[204] FRANCE, *supra* note 28, at 357. This stance has sparked debate within the Church. The *Los Angeles Times* Poll quoted one priest as saying in response: "The bishops not only perpetuated harm upon those sexually abused, but now they put at social, spiritual, and physical risk those of a different sexual orientation. Shame!" L.A. TIMES POLL, A SURVEY OF ROMAN CATHOLIC PRIESTS IN THE UNITED STATES AND PUERTO RICO 3 (2002), *available at* http://www.latimesinteractive.com/pdfarchive/special/la-timespollpriests-471book.pdf.

[205] Ian Fisher & Laurie Goodstein, *In Strong Terms, Rome is to Ban Gays as Priests*, N.Y. TIMES, Nov. 23, 2005, A1, *available at* LEXIS, News Library, NYT File.

[206] *See* Balboni, *supra* note 158, at ch. 5.

[207] Pope, *supra* note 77.

[208] Franklin, *supra* note 195. Jenkins suggests that the rejection of sin as a frame for clergy sexual abuse reflects a more general trend of rejecting religious authority and outlook in favor of secular ideas and state power: "Whereas once the religious institutions would have been thought worthy of enforcing internal standards of behavior and morality, the current trend is to seek external controls from civil and criminal law, and to impose the value systems of nonreligious groups." JENKINS, *supra* note 6, at 161–62.

[209] *See, e.g.*, JENKINS *supra* note 6, at 79. On the distinction, see L. M. Lothstein, *Psychological Theories of Pedophilia and Ephebophilia*, *in* SLAYER OF THE SOUL: CHILD SEXUAL ABUSE AND THE CATHOLIC CHURCH 20–21 (Stephen Rossetti ed., 1990); Stephen Rossetti & L. M. Lothstein, *Myths of the Child Molester*, *in* SLAYER OF THE SOUL, *supra*, at 14.

clergy and postpubescent adolescents, which are considered less scandalous. Relying on this distinction, Jenkins suggests that:

> In the prevailing psychiatric opinion of the 1970s and early 1980s, it would have been quite appropriate to return to a parish setting a man who had been successfully treated for ephebophilia but not for pedophilia, and it was precisely this issue of the employment of past offenders that led to such scandal following the Gauthe case."[210]

He goes on to quote a Canadian bishop who framed a clergy sex abuse scandal in Nova Scotia in the following terms: "We are not dealing with classic pedophilia. I do not want to argue that homosexual activity between a priest and an adolescent is therefore moral. Rather it does not have the horrific character of pedophilia."[211] Jenkins, himself, concludes:

> Suggesting that the church concealed or tolerated pedophiles is much more destructive than the charge that it granted a certain degree of tolerance to priests involved in consensual relationships with older boys or young men. In Catholic church law, the age of heterosexual consent is sixteen rather than the eighteen common to most American jurisdictions.[212]

As these alternative frames suggest, there has been a great deal of frame competition over how to characterize clergy sex abuse. One could plausibly frame it as a matter of parental exploitation of abused children, victimization of the Church by a small number of deceitful priests, anti-Catholic secular media coverage, homosexuality in the priesthood, the appropriateness of treating child sexual abuse as a sin rather than a crime or a tort, or largely an issue of consensual sexual relations between priests and adolescent boys and young men.[213] The dominant news media frame, however, is clearly that of plaintiffs who portray the issue as one of institutional failure and episcopal responsibility.

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[210] JENKINS, *supra* note 6, at 79.

[211] *Id*.

[212] *Id*. For a similar apologetic sentiment, see John S. Baker, Jr., *Prosecuting Dioceses and Bishops*, 44 B.C. L. REV. 1061, 1084 (2003).

[213] These examples do not exhaust the frames presented in debates over clergy sex abuse. Common frames within the church include reformers' frames of celibacy requirements as a cause of clerical sexual abuse, lack of democracy and transparency in church governance as a cause of the institutional failure of the Bishops, and conservatives' frame of a breakdown in sexual doctrines and priestly discipline. For the reform view, see JIMMY BRESLIN, THE CHURCH THAT FORGOT CHRIST (2004); PAUL R. DOKECKI, THE CLERGY SEXUAL ABUSE CRISIS: REFORM AND RENEWAL IN THE CATHOLIC COMMUNITY (2004). For the conservative view, see SHAKEN BY SCANDALS: CATHOLICS SPEAK OUT ABOUT PRIESTS' SEXUAL ABUSE (Paul Thigpen ed., 2002).

As we have seen, there are four reasons that explain the news media's adoption of plaintiffs' framing of clergy sexual abuse as an issue of institutional failure. First, the plaintiffs' complaint in the Gauthe case offered the kind of frame appealing to most news audiences: a narrative drama with a clear moral lesson involving personal conflict between innocent children, a compulsive pedophile, and allegedly uncaring elites in positions of power. Against the background of widespread news reports in the early 1980s of ritual child sexual abuse among daycare workers, this plaintiffs' frame offered a culturally familiar story with a novel clerical element. The Gauthe case's dramatic narrative provided a template for subsequent litigation over the next twenty years, enhancing the cultural familiarity of the frame over time.[214]

Second, the media's desire for credible sources led it to rely heavily on litigation documents, which it viewed as providing, in the words of John Pope, "the kind of information you feel you can take to the bank."[215] The media supplemented these documentary sources with interviews, mostly of plaintiffs' attorneys—like J. Minos Simon—acting as parajournalists and eventually of reporters themselves—like Jason Berry—presented as experts.

Third, a steady flow of litigation events provided news pegs and facilitated continuous episodic coverage of the story. The protracted drama of the litigation itself attracted attention, as illustrated by such news items as the side-by-side photos and quotes of attorneys Simon and Mouton in the Gauthe case.

Fourth, the continuous supply and growing volume of litigation provided the basis for a news theme, portrayed eventually as a "crisis" in the Church. True to the dynamics of news themes, this "crisis" grew in magnitude and significance as time went on, becoming an increasingly salient theme for news editors. At the outset of the litigation, in the mid-1980s, there was considerable ambivalence, and in some cases resistance, to this frame among editors.[216] Nevertheless, the initial newsworthiness of the story and eventual momentum of the theme as it cascaded through the media overcame most of this reticence, until the media gave the plaintiffs' litigation frame of institutional failure a place of clear predominance.

III. TORT LITIGATION & POLICY RESPONSES TO CLERGY SEXUAL ABUSE

Having argued that tort litigation led the news media to report clergy sexual abuse and to frame it as an issue of institutional failure, I now show that litigation placed clergy sexual abuse on the policy agendas of the Catholic Church, law enforcement, and state legislatures, and shaped

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[214] *See* KITZINGER, *supra* note 124, at 54–55, 74.
[215] Pope Interview, *supra* note 138.
[216] *See* BERRY, *supra* note 1, at 237; Editorial, *supra* note 193.

policy responses to the problem. Once publicized, litigation and the news coverage it generated raised concern about the issue among large segments of the general public and the Catholic laity. Litigation and news coverage also mobilized elites: they enabled victims, lawyers, and activists to join forces in advocating for policy reforms. As we shall see, the pressure exerted by all of these groups increased over time. By 2002, the efforts to address clergy sexual abuse consumed the American Bishops, became an area of major concern among law enforcement, and were taken up by state legislatures around the country. Moreover, so powerful was the frame of institutional failure—created by plaintiffs and adopted by the news media—that policy debate focused almost entirely on institutional reform.[217]

A. *Agenda Access*

Policy debate can be viewed as essentially a contest of frames. In analyzing the competition between frames within the policymaking process, scholars have developed the idea of an agenda. Public policy scholars Roger Cobb and Charles Elder distinguish between two distinct but related types of agendas. The first type is *public agendas*, consisting of "issues that are commonly perceived by members of the political community as meriting public attention and as involving matters within the legitimate jurisdiction of existing governmental authority."[218] The relevant political community can be either all members of a polity or some political subdivision. The second type of agenda is *institutional agendas*, consisting of "that set of items explicitly up for the active and serious consideration of authoritative decisionmakers."[219] In analyzing the impact of clergy sexual abuse, I distinguish between the public agendas of the general public and the Catholic laity and the institutional agendas of Church officials, law enforcement, and state legislatures.

1. *Expansion of the Issue to Larger Publics*

The presence of an issue on a public agenda may create pressure to place that issue on an institutional agenda. Put more simply, public pressure may attract the attention of policymakers and spur them into action. Thus, "the expansion of issues to larger publics acts as a prelude to formal agenda consideration."[220] The key to attracting public attention is

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[217] My account of the mobilization, agenda-setting, and framing effects of litigation owes much to Lynn Mather's trail-breaking study of tobacco litigation. *See* Mather, *supra* note 5, at 912–25.

[218] ROGER W. COBB & CHARLES D. ELDER, PARTICIPATION IN AMERICAN POLITICS: THE DYNAMICS OF AGENDA BUILDING 85 (1972); *see also* JOHN W. KINGDON, AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES 3–4 (1984).

[219] COBB & ELDER, *supra* note 218, at 86; KINGDON, *supra* note 218, at 3–4.

[220] COBB & ELDER, *supra* note 218, at 160.

persuasive framing. Public policy scholars have identified a number of features that make issue frames persuasive to larger publics. Elaine Sharp suggests that frames are more likely to attract public attention when they have a *dramatic character*, *personal relevance*, and elements of *novelty*.[221] Sharp explains widespread public concern with drug abuse based on the use of dramatic stories of personal tragedy used to frame the issue, widespread personal experience with the negative social consequences of drug abuse, and the periodic appearance of new drugs. Ellen Frankel Paul observes that framing issues in the context of dramatic, *catastrophic events* increases their salience, and public attention to them can be sustained by subsequent recurrent events of a similar nature.[222] National concern with hurricane response in the wake of hurricane Katrina in New Orleans and subsequent hurricanes in Houston and Florida offers a recent example.[223] Frank Baumgartner and Bryan Jones point out that framing issues in *relation to other currently salient issues* also attracts attention.[224] For example, framing airline regulation in terms of safety may make it more salient if transportation safety is already on the public agenda. All of these findings complement the frame analysis of litigation and news production suggesting that dramatic narratives with momentous events and familiar themes enhance the persuasiveness of frames. That is, the same features that make frames persuasive to judges and juries and appealing to journalists also attract the attention of larger publics.

a. General Public

In examining general public awareness of and concern about clergy sexual abuse, I turn first to survey data, the most direct measure. Unfortunately, there is no relevant survey data prior to 2002. In order to supplement the survey data, I look at the venues and volume of media coverage of the issue over a longer period–between 1984 and 2004. While not a direct measure of public awareness, the venues and volume of media coverage during this period indicate the public's exposure to the issue, which may be viewed as a "surrogate indicator of what issues the public is likely to believe are important."[225] I look also at the volume of letters to

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[221] Elaine B. Sharp, *Paradoxes of National Antidrug Policymaking*, *in* THE POLITICS OF PROBLEM DEFINITION: SHAPING THE POLICY AGENDA 98, 103–05 (David A. Rochefort & Roger W. Cobb eds., 1994).

[222] Ellen Frankel Paul, *Sexual Harassment: A Defining Moment and Its Repercussions*, *in* THE POLITICS OF PROBLEM DEFINITION, *supra* note 221, at 67, 94; *see also* THOMAS A. BIRKLAND, AFTER DISASTER: AGENDA SETTING, PUBLIC POLICY, AND FOCUSING EVENTS 3 (1997); KINGDON, *supra* note 218, at 99–100.

[223] *See* BIRKLAND, *supra* note 222, at 47 (discussing how natural disasters serve as focusing events).

[224] Frank K Baumgartner & Bryan D. Jones, *Attention, Boundary Effects, and Large-Scale Policy Change in Air Transportation Policy*, *in* THE POLITICS OF PROBLEM DEFINITION, *supra* note 221, at 50, 53.

[225] John Bohte et al., *One Voice Among Many: The Supreme Court's Influence on Attentiveness to Issues in the United States, 1947–1992*, *in* LEVERAGING THE LAW: USING THE COURTS TO ACHIEVE

the editor, which provides a more direct measure of public awareness and concern but for which there is less data available. Aside from news coverage, I also examine an online comprehensive bibliography of official, professional, scholarly, and artistic materials on clergy sexual abuse.

i. *Survey Data*

Five surveys conducted in 2002 suggest a high level of public awareness of and concern about clergy sexual abuse. A February ABC News poll of a random national sample of 1008 adults found that 60% of them agreed with the characterization of clergy sexual abuse as "a major problem that requires immediate attention," 26% viewed it as a "less immediate problem," 12% saw it as "not much of a problem at all," and only 3% had no opinion.[226] In a subsequent March Washington Post/ABC/Beliefnet poll of a random sample of 1086 adults found that those viewing it as a "major problem" had risen to 76%, with 16% characterizing it as a "less immediate problem," 6% "not much of a problem at all," and only 2% had no opinion. Eighty percent of respondents in this poll characterized the issue as a "crisis" for the Church.[227] A June *Washington Post* poll of a national random sample of 1004 adults asked respondents whether they approved or disapproved of "the way the Catholic Church has handled the issue of sexual abuse of children by priests" and found that 77% disapproved, 19% approved, and 4% had no opinion. [228] A May New York Times/CBS News poll of a random national sample of 1172 adults asked: "How closely have you been following the news about the recent charges against Catholic priests involving sexual abuse of children and teenagers?" Twenty-eight percent responded "very", 41% "somewhat", 21% "not very", 9% "not at all," 0% "no opinion."[229] Finally, *Associated Press* readers selected the clergy abuse scandal as the third most important news story of 2002.[230]

Together these five polls suggest a high degree of public awareness, with between 96% and 100% offering some opinion on the matter. They

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SOCIAL CHANGE 23–24 (David Schultz ed., 1998); *see also* SHANTO IYENGAR & DONALD R. KINDER, NEWS THAT MATTERS: TELEVISION AND AMERICAN OPINION 16 (1987).

[226] Gary Langer, ABCNews.com, *Not Doing Enough Poll: Many Americans Concerned About Sex Abuse by Priests*, Apr. 8, 2002, http://www.abcnews.go.com/sections/-us/DailyNews/churchsex_poll020221.html. Full data is available at Post/ABC/Beliefnet Poll: The Catholic Church, Apr. 4, 2002, http://www.washingtonpost.com/wp-srv/politics/polls/vault/stories/data040402.htm [hereinafter Apr. 4, 2002 Poll].

[227] Apr. 4, 2002 Poll, *supra* note 226.

[228] WashingtonPost.com, Washington Post Poll: The Catholic Church, June 18, 2002, http://www.washintonpost.com/wp-srv/politics/polls/vault/stories/data061802.htm [hereinafter June 18, 2002 Poll].

[229] New York Times/CBS News Poll, Apr. 28–May 1, 2002 (on file with Connecticut Law Review).

[230] DOKECKI, *supra* note 213, at 1.

also suggest a relatively high level of concern about the issue, with between 60% and 76% characterizing it as a "major problem that demands immediate attention," and 80% calling it a "crisis."[231] Recall that 2002 was the year that litigation documents in the Geoghan case were unsealed and widely reported in the media, abuse allegations skyrocketed, and the volume of litigation exploded from Boston to Los Angeles. Unfortunately, poll data can tell us nothing about the levels of general public awareness and concern prior to 2002. For this, we will have to rely on the venues and volume of press coverage, for which there is data available back to the initial coverage of the Gauthe litigation.

ii. *Media Coverage*

The venues and volume of press coverage may be used to gauge the level of public awareness and concern about an issue. Media scholars Shanto Iyengar and Donald Kinder, based on studies of television coverage, have shown that "those problems that receive prominent attention on the national news become the problems the viewing public regards as the nation's most important."[232] Political scientists Roy Flemming, John Bohte, and Dan Wood point out that "[r]elations between the media and the public are obviously reciprocal in nature. The media faces market incentives to follow events and develop stories that attract audiences. At the same time, public concerns over issues reflect in part the media's coverage."[233] Regardless of the direction of influence, however, media coverage—which can be measured by the placement, or venue, of stories and the volume of stories—offers a proxy for public awareness and concern.

Consider first the venues in which stories about clergy sexual abuse appeared. As we have seen, the Gauthe litigation generated stories in national news venues such as the *New York Times*, the *Washington Post*, *Time Magazine*, the *AP* and *UPI* wire services. It was also the basis for an episode of the CBS news magazine *West 57th*, and it inspired the 1990 Home Box Office movie *Judgment*. The Porter case also attracted significant national media attention in 1992 and 1993, including stories in the *New York Times*, *Newsweek*, and *People*; segments on *Prime Time Live* and *60 Minutes*; and episodes of *Geraldo*, *Oprah Winfrey*, *Phil Donahue*, and *Sally Jessy Raphael*.[234] Between 1992 and 1994, stories on clergy abuse were also published or broadcast in *Time*, *The Nation*, the *New Yorker*, the *National Review*, *Ms. Magazine*, *Redbook*, *McCall's*, *Playboy*,

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[231] *See supra* notes 213–16 and accompanying text.

[232] IYENGAR & KINDER, *supra* note 225, at 16–33.

[233] Roy Flemming et al., *One Voice Among Many: The Supreme Court's Influence on Attentiveness to Issues in the United States, 1947–1992*, in LEVERAGING THE LAW, *supra* note 225, at 21, 23.

[234] BURKETT & BRUNI, *supra* note 22, at 14–15.

Rolling Stone, *ABC's Primetime Live*, *Dateline NBC*, *CNN Reports*, Arts and Entertainment Network's *Investigative Reports*, and Court Television.[235] Another surge of media occurred at the time of the Geoghan case in Boston, generating thousands of newspaper articles in 2002 and placing the issue on the covers of *Newsweek*, *Time*, and *U.S. News and World Report*, "a journalistic trifecta usually reserved for war, politics, plane crashes and colossal natural disasters."[236]

A sense of the volume of press coverage can be obtained by tracking newspaper and magazine coverage for each of the years from 1984 to 2004. Table 1 (found in Appendix 1) presents the number of stories published in thirteen major newspapers and nine popular magazines each year during this period.[237] These news outlets all have relatively large audiences and are available on the LexisNexis and Westlaw databases back to 1984 or 1985. For almost all of these news outlets, there is a sharp increase in the number of stories in 1992 and again in 2002. During the peak years of 1993 and 2002, press coverage was relatively heavy in several of the news outlets examined. For example, in 1993, the *New York Times*, *Washington Post*, *Los Angeles Times*, *Boston Globe*, and *St. Louis Post Dispatch* each ran between forty and eighty-six articles. The *Chicago Tribune* in that year ran 111 stories. These numbers are even more dramatic in 2002, when they each ran between 337 and 773 articles. The heavy volume of news stories continued in 2003 and 2004.

Beyond media exposure, another measure of public awareness and concern is letters to the editor. Table 2 (found in Appendix 2) presents the number of letters to the editor concerning clergy sexual abuse in these same publications and period as Table 1.[238] Again, one finds sudden increases in 1992 and 2002, although they are less dramatic than increases in the volume of news stories in most cases. The volume of letters in 2002 is especially notable: the *New York Times* (89), *Boston Globe* (75), *Los Angeles Times* (42), *St. Louis Post Dispatch* (60), and the *Chicago Tribune* (38).

The increases in media attention during 1992–1993 and 2002–2004 coincide with the Porter and Geoghan cases respectively. It is, however, doubtful that the shape of the curve is due to the absence of litigation in the periods between the Gauthe and Porter cases (1985–1991) and between the Porter and Geoghan cases (1994–2001). Indeed, there were two landmark

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[235] JENKINS, *supra* note 6, at 74.

[236] STEINFELS, *supra* note 178, at 40 (estimating 12,000 articles in major newspapers, television networks, cable outlets, wire services, and newsmagazines).

[237] Table 1 can be found at the end of this Article in Appendix 1 on page 881 along with an explanation of methodology.

[238] Table 2 can be found at the end of this Article in Appendix 2 on page 885 along with an explanation of methodology.

verdicts against dioceses in 1989 and 1998.[239] Anecdotal evidence from interviews with attorneys, Church officials, and victim advocates suggests that the media attention focused on the Gauthe, Porter, and Geoghan cases sparked increases in claims against dioceses and that there was active litigation in the periods between the Gauthe and Porter cases and the Porter and Geoghan cases.[240]

One possible explanation for the spikes in media coverage that coincide with the Porter and Geoghan cases is that these cases provided what policy scholars call focusing events.[241] Thomas Birkland defines focusing events as sudden, rare events that affect a relatively large number of people and thereby attract media coverage and capture the attention of larger publics and policymakers.[242] Typical examples include natural disasters or political crises. Focusing events influence policy agendas by expanding awareness of issues to larger publics and by spurring the mobilization of groups seeking policy change. The Gauthe, Porter, and Geoghan cases served as focusing events: they suddenly exposed what were thought to be rare instances of clergy sexual abuse involving large numbers of victims. The Porter and Geoghan cases each reportedly involved over 200 victims and gave rise to dozens of lawsuits.[243] As we have seen in this section and will see in the next, news coverage of these two cases expanded the issue to both the general public and the Catholic laity. And, as we shall see, they facilitated the mobilization of victims, lawyers, and activists seeking policy change.

In addition to the influence of the Gauthe, Porter, and Geoghan cases in increasing news media coverage, there are other factors that tended to dampen news media coverage in the periods in between. In the 1985–1991 period, most claims were settled quietly with confidentiality agreements that bound the parties to secrecy, and case files were commonly sealed by

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[239] In the 1989 case of *Mrozka v. Archdiocese of St. Paul and Minneapolis and Diocese of Winona*, a jury found Church defendants liable for willful indifference and awarded a plaintiff $821,250 in compensatory damages and $2.7 million in punitive damages—the first punitive damages award against the Church in a clergy sexual abuse case. The punitive damage award was reduced by the trial judge to $187,000. *See* Diocese of Winona v. Interstate Fire & Cas. Co., 89 F.3d 1386, 1389 (8th Cir. 1986). In the 1989 case *John Doe I v. Rudolph Kos*, a jury awarded plaintiffs a record $119.6 million verdict, $101 million in compensation and $18.6 million in punitive damages. The Church appealed the verdict, and the plaintiffs eventually settled for $31 million. *See* INVESTIGATIVE STAFF OF THE BOSTON GLOBE, *supra* note 26, at 43.

[240] Telephone Interview with David Clohessy, in Albany, NY, at 3 (Mar. 13, 2006) (on file with Connecticut Law Review); Interview with Bishop Howard Hubbard, in Albany, NY, at 3 (Mar. 29, 2006) (on file with Connecticut Law Review); Rubino Interview, *supra* note 17; Demarest Interview, *supra* note 23, at 6.

[241] KINGDON, *supra* note 218, at 99–101.

[242] BIRKLAND, supra note 222, at 22–27.

[243] BURKETT & BRUNI, *supra* note 22, at 24 (estimating Porter's victims at more than 200); INVESTIGATIVE STAFF OF THE BOSTON GLOBE, *supra* note 26, at photo following p. 114 (estimating Geoghan's victims at 200); Rezendes, *supra* note 149, at 4 (filing of claims against Geoghan sparked the *Globe*'s coverage).

trial judges.[244] The drop in coverage between 1994–2002 was due not only to the continuing use of confidentiality agreements and the sealing of court files but also to media reticence to cover the story in the wake of widely publicized allegations against Chicago's Cardinal Bernadin that were subsequently withdrawn.[245] Peaks in media coverage coinciding with the Porter and Geoghan cases are highlighted in Chart 1 (found in Appendix 4), which graphs the annual number of articles and letters in all of the publications surveyed.[246]

In addition to media coverage, an online bibliography of clergy sexual abuse lists, as of June 2005, 1430 books, chapters, magazine articles, scholarly monographs, theses, official reports, videos, audiotapes, novels, poems, and works of art, and dozens of new entries are added every six months.[247]

b. Catholic Laity

Evidence that clergy sexual abuse features prominently on the agenda of lay Catholics can similarly be found in survey data and media coverage. Concern among lay Catholics was a significant source of pressure on Church officials to take up the problem of clergy sexual abuse. As USCCB General Counsel Mark Chopko explains, the key to understanding the Gauthe case's impact was:

> the energy that it gave to the people in the pews . . . . [I]t's not a problem for bishops if the *New York Times* gets excited about it. It's a real problem for bishops to know that their people are outraged by it, and both of these things were happening at the same time.[248]

i. *Survey Data*

Survey data show that clergy sexual abuse has been a major concern among the Catholic laity since the Porter case. A 1992 *Boston Globe* poll of 401 self-identified Massachusetts Catholics found that 96% said that "they were aware of recent news stories about 'inappropriate sexual contact' between priests and young people" and that 69% agreed with the

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[244] Rubino Interview, *supra* note 17.

[245] On the use of confidentiality agreements and sealing of court files, see INVESTIGATIVE STAFF OF THE BOSTON GLOBE, *supra* note 26, at ix, 47–50. On the affect of the allegations against Cardinal Bernadin on media coverage, see STEINFELS, *supra* note 178, at 60–61.

[246] Chart 1 can be found at the end of this Article in Appendix 4 on page 894.

[247] JAMES S. EVINGER, ADVOCATEWEB ANNOTATED BIBLIOGRAPHY OF CLERGY SEXUAL ABUSE (9th rev. 2005), http://www.advocateweb.org/hope/bibliographyje/default.asp.

[248] Telephone interview with Mark Chopko, General Counsel, U.S. Conference of Catholic Bishops, in Albany, NY (Mar. 22, 2006) (transcript on file with Connecticut Law Review) [hereinafter Chopko Interview].

statement that "the church has not done enough to address these kinds of incidents."[249] A 1993 National Catholic Reporter/Gallup poll of 800 Catholics found that, according to 50% of respondents, reports of clergy sexual abuse "weakened their faith and commitment" to the Church.[250] The magazine *Emerging Trends* reported in 1993 that "nearly half of U.S. Catholics (48 percent) believe that sexual abuse of young people by priests is a widespread problem," and that "a majority of 53 percent believe the Catholic Church has done a bad job of dealing with the problem, and 64 percent say it has been more concerned with protecting its own image than with solving the problem."[251]

Subsequent polls from 2002 also indicate concern among the laity. A February ABC News poll of 232 Catholics from around the nation found that 48% considered it a "major problem," 29% a "less immediate problem," 21% "not much of a problem at all," and 2% had no opinion.[252] A follow-up Washington Post/ABC/Beliefnet poll of 503 Catholics from around the nation found that 71% now considered it a "major problem," 19% a "less immediate problem", 9% "not much of a problem at all," and 1% had no opinion.[253] A February Boston Globe/WBZ-TV poll of 800 Boston archdiocese Catholics asked respondents "How closely have you been following recent news stories detailing instances of sexual abuse of children by priests?" 49% responded "very," 43% "somewhat," and 8% "not."[254] A May USA Today/CNN/Gallup poll of 256 Catholics from around the nation found that 75% of respondents thought that the Catholic Church has "done a bad job in dealing with the problem of sexual abuse committed by its priests," 20% thought the Church was doing a good job, and 5% had no opinion.[255] A June *Washington Post* poll of 355 self-identified Catholics from around the nation found that 70% disapproved of "the way the Catholic Church has handled the issue of sexual abuse of children by priests," 27% approved, and only 3% had no opinion.[256]

More recent surveys suggest that the Catholic laity remains concerned about clergy sexual abuse. In a 2003 *Boston Globe* survey of 400 Boston archdiocese Catholics, 41% said that they considered "addressing clergy sexual abuse" to be "the most important problem facing the Boston

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[249] James Franklin, *Mass. Catholics Fault Church on Handling of Sex Charges*, BOSTON GLOBE, July 26, 1992, at Metro 1, *available at* LEXIS, News Library, BGLOBE File.

[250] Jim Davidson, *Generational Differences among Catholics Emerge*, NAT'L CATH. REP., Oct. 8, 1993, at 29.

[251] 15 EMERGING TRENDS, Oct. 1993, at 5.

[252] Langer, *supra* note 226. Full data available at Apr. 4, 2002 Poll, *supra* note 226.

[253] Apr. 4, 2002 Poll, *supra* note 226.

[254] Michael Paulson, *Most Catholics in Poll Fault Law's Performance*, BOSTON GLOBE, Feb. 8, 2002, at A1, *available at* LEXIS, News Library, BGLOBE File.

[255] USATODAY.com, USA TODAY/CNN/Gallup Poll, May 28–29, 2002, http://www.usatoday.com/news/nation/2002/06/03/catholic-poll-results.htm.

[256] June 18, 2002 Poll, *supra* note 228.

Catholic archdiocese today."[257] And finally, an April 2005 Quinnipiac University poll of 500 Catholics from around the nation found that 86% thought that "under the next Pope . . . the Catholic Church [should] do more to combat sexual abuse of young people by priests," while 11% thought that the Church's "current position about right," and 4% had no opinion or did not know.[258]

This survey data suggests that, as early as 1992 among Massachusetts Catholics, there was widespread awareness (96%) of the issue and concern among the great majority (69%) that the Church was not doing enough. National surveys in 1993 reflect serious concern about the problem among roughly 50% of Catholics. Polls in 2002 show that by mid-year, an overwhelming majority of Catholics nationwide considered the issue a major problem, and that no more than 5% in any poll had no opinion on the matter. Polls since 2002 consistently suggest ongoing concern about the problem.

ii. *Media Coverage*

Aside from survey data, another indication that clergy sexual abuse holds a prominent place on the agenda of the laity is the venues and volume of coverage in the Catholic media. The issue has been covered in such widely read Catholic and Christian periodicals as *America*, *Commonweal*, *U.S. Catholic*, *Church and State*, *Episcopal Life*, and *Christian Century*. The *National Catholic Reporter*, which, as we have seen, began its coverage of the issue in 1985, has provided sustained coverage since that time.[259] A computer search for "clergy sex abuse" in the weekly's online archives yielded 423 items in the twenty-two weeks between February 6, 2004 and July 15, 2005—nineteen articles or references to the topic per week.[260] A similar search in the recent online archives of the *Catholic News Service*, an independent division of the USCCB used frequently as a news source by the approximately 170 U.S. Catholic newspapers and broadcasters, yielded 297 news items in the thirteen weeks between April 1 and July 29, 2005—an average of twenty-

[257] KRC/Communications Research, Globe Poll Results, May 4–6, 2003, http://www.boston.com/globe/spotlight/abuse/poll/Q5.htm.

[258] Quinnipiac University Polling Institute, New Pope Must Do More to Curb Abuse by Priests, U.S. Catholics Say 8-1, Apr. 14, 2005, *available at* http://www.quinnipiac.edu/x1295.xml?ReleaseID=675.

[259] *See* JENKINS, *supra* note 6, at 103, 106, 116, 151 (commenting on coverage by the paper in the years from the Gauthe to Porter cases).

[260] I conducted this search on August 5, 2005, requesting documents including all of the terms "clergy," "sex," and "abuse" from the online index at http://www.picosearch.com/cgi-bin/ts.pl (first page of results on file with Connecticut Law Review).

three items per week.[261] These two publications are among the most prestigious and widely read Catholic news outlets, and although these figures are far from comprehensive, they do provide evidence of heavy recent exposure to the issue among the Catholic news media audience.

A sense of the volume of Catholic media coverage since 1984 can be obtained by tracking the number of articles on clergy sex abuse listed in the *Catholic Periodical and Literature Index* between 1983 and 2004.[262] Sixty-four Catholic periodicals listed in the index published 1130 stories on clergy sexual abuse during this period. The volume of stories increased dramatically (125%) in 1993 to fifty-four stories and even more so (2460%) in 2002 to 512 stories, with an additional increase (81%) in 1998 to forty-nine stories, rising to sixty-six stories (thirty-three of which were published in the *National Catholic Reporter*) in 1999. These data are presented in Table 3 (found in Appendix 3) and displayed graphically in Chart 2 (found in Appendix 5).[263] Again, two of the peaks in news volume coincide with the Porter and Geoghan litigation. (The third peak coincides with another well publicized case against Father Rudolf Kos and the Dallas archdiocese in 1997).[264]

Evidence of not only exposure to, but also engagement with, the issue of clergy sexual abuse among the laity may be gleaned from a search for web pages on the Internet. A recent Google search for web pages including the terms "sex" and "abuse" and either "church," "clergy," or "priest" produced 3,250,000 web pages.[265] The same search terms produced a listing of 89,300 discussion groups (many with multiple comments by multiple authors) in Google's online discussion group service.[266] This last figure includes only those online discussion groups sponsored by Google, so the number of comments posted to online chat sites is likely to be considerably larger. There have been several websites dedicated entirely to clergy sexual abuse, providing news, analysis, documents, and studies of the issue, such as bishop-accountability.org, bishopswatch.org, and many others that offer extensive and sustained coverage of the issue. These latter include websites of the *Boston Globe* and the *National Catholic Reporter*, as well as beliefnet.com.

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[261] I conducted this search on August 5, 2005, requesting documents including all of the terms "clergy," "sexual," and "abuse" from the online index at http://search.atomz.com/search/?sp-i=1&sp-q=clergy+sexual+abuse&sp-a=sp1001892c&sp-s=1&sp-f=iso-8859-1.

[262] For an explanation of methodology, see Appendix 3.

[263] Table 3 can be found at the end of this Article in Appendix 3 on page 889, and Chart 2 can be found in Appendix 5 on page 895.

[264] *See supra* note 239.

[265] Search conducted Aug. 5, 2005 (first page of search results on file with Connecticut Law Review).

[266] Search conducted Aug. 5, 2005 (first page of search results on file with Connecticut Law Review).

c. Victims, Lawyers, and Activists

Victims, their lawyers, and activists make up a third significant public that exerted pressure to put clergy sexual abuse on the institutional policy agendas of Church and government officials. Litigation often has the effect of mobilizing such groups. Lawsuits personalize and dramatize social issues, and resulting press coverage disseminates information about them. This can encourage more litigation, which in turn enhances mobilization. Lawsuits also provide lawyers with an education about how to litigate more effectively, and they provide activists a flag around which to rally.[267] Clergy sexual abuse litigation has been a central force in mobilizing victims, lawyers, and activists.

The mobilizing effect of the Gauthe case on victims was dramatic. Following news reports of the case, abuse victims began to come forward in increasing numbers. They complained to their local Bishop. Based on data from a study commissioned by the USCCB, dioceses received 328 abuse reports in the five years prior to national coverage of the Gauthe litigation (1980–1984). That number rose to 817 in the five years following (1985–1989).[268] Victims and their families also contacted lawyers. Jeff Anderson, a plaintiffs' attorney, reports that following news coverage of a lawsuit that he filed in 1984 against the Archdiocese of St. Paul and Minneapolis based on the sexual misconduct of Father Thomas Adamson, "other survivors began to stream, literally, into my office . . . . [They were] outraged by the [Church's] denial and [had] now come to realize that they weren't alone . . . . And that led me to just start to file suit pretty vigorously on behalf of them."[269] Steve Rubino, another plaintiffs' attorney, reports that, in the years following the Gauthe case, "hundreds of cases around the country were being quietly settled."[270]

The years following the Gauthe case were also a significant period of learning for plaintiffs' attorneys—learning fueled by litigation against the Church. In early cases, discovery yielded little proof of any knowledge on the part of Bishops that abuse was occurring on their watch. Bishops denied knowingly reassigning priests with a history of abuse, and diocesan personnel files offered little or no evidence. Jeff Anderson recounts how he learned that Bishops kept damaging information about priests in a "secret archive," rather than in personnel files.[271] As mandated by Canon

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[267] MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION 279 (1994); Mather, *supra* note 5, at 923.

[268] E-mail from Margaret Leland Smith, Criminologist, Member of the Institute for Criminal Justice Ethics at John Jay College and Coordinator of Prisons Self Help Legal Clinic in Newark, NJ, and Statistician for the *John Jay Report* (July 21, 2006) (data on file with Connecticut Law Review).

[269] Anderson Interview, *supra* note 17, at 5.

[270] Rubino Interview, *supra* note 17; Clohessy Interview, *supra* note 17.

[271] Anderson Interview, *supra* note 17, at 6.

law, only the bishop had a key to this "secret archive."[272] "I began to realize," recalls Anderson, "that those [secret] files contained excruciatingly clear evidence of [the Bishops'] knowledge and their complicity and their protection of multiple offenders . . . . I then began to subpoena the files in every case."[273]

Steve Rubino recounts how he learned of *The Official Catholic Directory*, an annual publication that includes information about the clerical assignments of U.S. priests.[274] This allowed him to trace the assignment history of any particular priest, which might include periods of sick leave, assignment to treatment facilities, or periods without any assignment.[275] The subsequent assignment of the priest to a new parish offered clues about the practice of reassigning known offenders.[276]

The combination of documents from the secret file, and information from the directory provided a "road map for depositions," explains Rubino. "We learned exactly what to ask."[277] Anderson and Rubino collaborated with Church insiders advocating reforms, meeting to talk informally about cases, discuss strategy, and share information.[278] Thus, in the aftermath of the Gauthe case, plaintiffs' lawyers waged a long-term campaign to collect more discovery information in each case they litigated—what Anderson describes as "a base of knowledge that is cumulatively obtained."[279]

Like the Gauthe case, the Porter case led many victims to come forward for the first time. David Clohessy, National Director of the Survivors Network of those Abused by Priests (SNAP)—a victim support and advocacy group formed in 1989—recalls that "any time the issue's in the press, some survivors get the courage and the strength to come forward and report to police or the prosecutors or [to seek out] civil attorneys or support groups . . . . We began in 1989, but certainly . . . we got a lot more calls after the Porter case."[280]

Following the Geoghan case, victim reports of abuse skyrocketed. According to data from a study commissioned by the USCCB, 234 allegations were reported to dioceses in 2001. In 2002, that number increased to 3399.[281] The Geoghan case unleashed a tidal wave of litigation affecting dioceses across the country. In 2002, the Boston

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[272] THE CODE OF CANON LAW: A TEXT AND COMMENTARY, Canons 489–90, p. 396–97 (James A. Coriden et al. eds., 1985).

[273] Anderson Interview, *supra* note 17, at 6, 8.

[274] Rubino Interview, *supra* note 17, at 7.

[275] *Id.*

[276] *Id.*

[277] *Id.*

[278] *Id.*

[279] Anderson Interview, *supra* note 17, at 7.

[280] Clohessy Interview, *supra* note 17; *see also* SNAP National Office, http://www.snapnetwork.org/snap_regional_offices/national_office.htm (last visited Jan. 29, 2007) (providing SNAP information).

[281] E-mail from Margaret Leland Smith, *supra* note 268.

archdiocese settled claims with eighty-six Geoghan victims for $10 million, and a year later the archdiocese settled an additional 554 claims for $85 million.[282] Dioceses in Portland, Spokane and Tucson filed for bankruptcy in the face of overwhelming claims.[283] Hardest hit was California. In 2003 when the California state legislature suspended the statute of limitations on child sexual abuse claims for a one-year period, a flood of litigation began. Lifting the statute of limitations, combined with the lack of any charitable damage cap like that in Massachusetts, led to the filing of over 850 civil claims in California—more than 560 of them against the Archdiocese of Los Angeles involving over 200 priests and Church officials.[284] In January 2005, the Diocese of Orange, California, settled with eighty-seven victims for $100 million—exceeding the $85 million settlement in Boston in 2003.[285] Settlement talks in Los Angeles are ongoing and many claims are currently headed for trial.[286]

Membership organizations dedicated to the issue of clergy sexual abuse have also grown since 2002. According to SNAP National Director, David Clohessy, as of June 2005 his organization had 5200 members and sixty chapters in thirty-five states.[287] Another well-known organization, the Healing Alliance—founded in 1991 and formerly known as LinkUp—counts over 3000 members.[288] Voice of the Faithful, a Church reform organization founded in 2002 in response to the clergy abuse problem in Boston, claims "tens of thousands of members today throughout the world," and 25,000 supporters.[289] In July 2002, the group attracted 4200 attendees and 125 journalists from thirty-six states and seven countries to its first conference in Boston.[290]

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[282] Fox Butterfield, *Church in Boston to Pay $85 Million in Abuse Lawsuits*, N.Y. TIMES, Sept. 10, 2003, at A1, *available at* LEXIS, News Library, NYT File; Walter V. Robinson & Michael Rezendez, *Geoghan Victims Agree to $10M Settlement*, BOSTON GLOBE, Sept. 19, 2002, at A1, *available at* LEXIS, News Library, BGLOBE File.

[283] *See* Davis, *supra* note 8, at 14.

[284] *An Explanation of the Clergy Abuse Litigation in California*, ASSOCIATED PRESS, Oct. 9, 2004, *available at* LexisNexis Academic, News Wires; Jean Guccione & Megan Garvey, *Abuse Cases Could Go to Trial in '06*, L.A. TIMES, Nov. 8, 2005, at B1, *available at* LEXIS, News Library, LAT File; Drew Griffin, *California Diocese Settles Clergy Sexual Abuse Cases*, CNN.COM, Dec. 3, 2004, http://www5.cnn.com/2004/LAW/12/03/church.abuse/.

[285] Griffin, *supra* note 284.

[286] Guccione & Garvey, *supra* note 284.

[287] Telephone Interview with David Clohessy, National Director, SNAP, in Albany, NY (June 17, 2005) (on file with Connecticut Law Review).

[288] *See* The Healing Alliance, http://www.healingall.org/ (last visited Oct. 1, 2006); s*ee also* Mary Nevans-Pederson, *Groups Offer Support, Healing: Victims of Abuse by Clergy Find Help*, TELEGRAPH HERALD, March 11, 2006, *available at* http://www.snap-greatplains.org/dubuque/My_Homepage _Files/Page7.html.

[289] Voice of the Faithful, The Voice of the Faithful Story, http://www.votf.org/Who_We_Are/ story.html (last visited Oct. 1, 2006).

[290] Voice of the Faithful, Highlights from the "Response of the Faithful" Convention, http://www.votf.org/Convention/highlights.html (last visited Oct. 5, 2006).

2. *Church Policy Agendas*

There are at least three clear indicators that litigation helped place the issue of clergy sexual abuse on the policy agenda of the Catholic Church. The first is the attention paid to it by Bishops—both individually and as a group. The second are public statements by Pope John Paul II and Vatican officials. The third is widespread concern about the issue among clergy. As we shall see, heightened attention to the issue by these three groups coincides with the Gauthe, Porter, and Geoghan cases and with the concern among the general public, the Catholic laity, and elites advocating policy reform.

a. The Bishops

The USCCB is a membership organization of U.S. Bishops headquartered in Washington, D.C. with a 350-person staff. The purposes of the USCCB are outlined by its corporate charter:

> To unify, coordinate, encourage, promote and carry on Catholic activities in the United States; to organize and conduct religious, charitable and social welfare work at home and abroad; to aid in education; to care for immigrants; and generally to enter into and promote by education, publication and direction the objects of its being.[291]

In 2001, the USCCB was created out of a merger between the United States Catholic Conference (USCC) and the National Conference of Catholic Bishops (NCCB), both founded in 1966.[292] The NCCB was also a membership organization of Bishops created to coordinate their activities nationwide. The USCCB, like the NCCB before it, holds semi-annual meetings every June and November and has various committees that meet throughout the year.

In response to the Gauthe case and the growing revelation of a nationwide problem, NCCB staff began to research the problem of clergy sexual abuse and to offer advice to Bishops facing allegations within their dioceses.[293] Concurrently, Gauthe attorney Ray Mouton, Canon lawyer Father Thomas Doyle, and psychiatrist Father Michael Peterson—the director of a treatment program for priest sex abusers—wrote a report entitled *The Problem of Sexual Molestation by Roman Catholic Clergy:*

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[291] United States Conference of Catholic Bishops, About Us, http://www.usccb.org/whoweare.htm (last visited Oct. 1, 2006).

[292] *Id.*

[293] *See* BERRY, *supra* note 1, at 96–102, 110–12; JASON BERRY & GERALD RENNER, VOWS OF SILENCE: THE ABUSE OF POWER IN THE PAPACY OF JOHN PAUL II 45–46, 48 (2004); BURKETT & BRUNI, *supra* note 22, at 164, 173; FRANCE *supra* note 28, at 230; INVESTIGATIVE STAFF OF THE BOSTON GLOBE, *supra* note 26, at 39–40; Chopko Interview, *supra* note 248; United States Conference of Catholic Bishops, Efforts To Combat Clergy Sexual Abuse Against Minors: A Chronology, http://www.usccb.org/comm/kit2.shtml (last visited Oct. 1, 2006).

Meeting the Problem in a Comprehensive and Responsible Manner, which they subsequently distributed to Bishops. At a June 1985 NCCB meeting in Collegeville, Minnesota, the Bishops dedicated an entire day of executive session to examining the psychological, legal, and moral aspects of clergy sexual abuse within the Church. They also considered non-binding recommendations for how individual dioceses could best respond to the problem, and they charged the Committee on Priestly Life & Ministry to undertake further consideration of the matter. Following the meeting, NCCB staff conducted research on the spread of litigation, addressing clergy sexual abuse around the country. NCCB staff also helped dioceses develop training programs to prevent child abuse, policies for reporting it, and protocols for assisting victims and their families. Some individual Bishops took it upon themselves to investigate abuse in their own dioceses, issue reports, and create new procedures for dealing with claims.

The Porter case in 1992 put the issue of clergy sexual abuse back at the top of the NCCB's agenda. At their June meeting, the Bishops dedicated most of their eight-hour closed executive session to the question of whether priests who had sexually abused children should be allowed to return to ministry.[294] At their November meeting later that year, the Bishops formally endorsed a non-binding set of "Five Principles" to guide Bishops' responses to clergy sexual abuse: (1) prompt response to allegations, (2) immediate suspension of accused priests and investigation of allegations, (3) compliance with reporting requirements under civil law and cooperation with criminal investigations, (4) victim outreach, and (5) greater transparency in dealing with the issue.[295] A year later, at their June 1993 meeting, the Bishops issued public statements of remorse, created an ad hoc sub-committee on sexual abuse, and adopted a brief non-binding resolution pledging an "appropriate and effective" response to the problem.[296] As in the wake of the 1985 Collegeville meeting, the issue continued to receive attention in committees and individual dioceses.[297]

If clergy sexual abuse first appeared on the NCCB agenda in 1985 and rose to the top of it in 1992 and 1993, it is fair to say that it completely dominated the Bishops' agenda in 2002. The Geoghan case and its aftermath concerned the Bishops throughout the year. In fact, the only item on the agenda for the June 2002 meeting in Dallas was clergy sex

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[294] BURKETT & BRUNI, *supra* note 22, at 173–74.

[295] Harry J. Flynn, *Dallas and Beyond–Perspectives of a Bishop and Pastor*, *in* SEXUAL ABUSE IN THE CATHOLIC CHURCH: TRUSTING THE CLERGY? 13, 15 (Marie M. Fortune & W. Merle Longwood eds., 2003); *see also* STEINFELS, *supra* note 178, at 48.

[296] FRANCE, *supra* note 28, at 230–31; *see also* STEINFELS, *supra* note 178, at 48; Flynn, *supra* note 295, at 15; *NCCB Establishes Committee on Sexual Abuse*, 23 ORIGINS 104 (1993).

[297] *See* STEINFELS, *supra* note 178, at 50–52, 56–61; Flynn, *supra* note 295, at 15–17.

abuse.[298] The *Boston Globe's* investigative staff described the atmosphere of the meeting as "the kind of circus that normally attends a presidential convention: seven hundred reporters and producers and camera crews; theologians and laypeople and priests and nuns; protesters representing the full spectrum of causes lined up outside the Fairmont Hotel beside the television tents and the small army of police."[299]

After highly publicized proceedings, the Bishops adopted the Charter for the Protection of Children & Young People, a binding policy that proclaimed "zero tolerance" for clergy sexual abuse within the Church, along with a set of Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons to guide implementation of the Charter.[300] The Charter created lay review boards in each diocese to assess claims and make recommendations to the bishop, a National Review Board charged with overseeing compliance with the policy and commissioning a comprehensive study of the problem, and an Office of Child and Youth Protection to assist with implementation of the policy.[301] Subsequent revisions to the Charter and Norms demanded by the Vatican, ongoing debate over its provisions and implementation, and publication of the comprehensive study have maintained clergy sexual abuse on the USCCB's agenda. Throughout 2002, individual Bishops in their dioceses also implemented additional reforms.[302]

The prominence of clergy sexual abuse on NCCB/USCCB's meeting agendas in 1985, 1992–1993, and 2002 coincides with the Gauthe, Porter, and Geoghan cases. As we saw earlier, these three cases also increased concern over clergy sexual abuse among the general public, the Catholic laity, and elites advocating policy reform. These findings suggest—consistent with theories of agenda access—that litigation may have influenced the Bishops' policy agenda by providing focusing events that expanded concern over clergy sexual abuse to larger publics, thereby creating pressure to place the issue on the Bishops' institutional agenda.

We should be careful not to overstate the case. It would be inaccurate to say that there was no policymaking activity among the Bishops in the years between the Gauthe and Porter cases (1985–1991) and the Porter and Geoghan cases (1994–2001). NCCB staff and subcommittees were busy gathering information and assisting individual dioceses in developing new policies during both of these periods. The momentary rise of clergy sexual

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[298] *See* FRANCE, *supra* note 28, at 362.

[299] INVESTIGATIVE STAFF OF THE BOSTON GLOBE, *supra* note 26, at 210.

[300] *See* Raymond O'Brien, *Clergy, Sex and the American Way*, 31 PEPP. L. REV. 363, 408 (2004).

[301] *See id.* at 423–28.

[302] *See, e.g.*, DIOCESE OF MANCHESTER, DIOCESAN TASK FORCE ON SEXUAL MISCONDUCT POLICY, REPORT TO THE BISHOP OF MANCHESTER (2003), *available at* http://www.bishop-accountability.org/resources/resource-files/reports/ManchesterTaskForceReport.pdf; *A Look at the Impact of the Roman Catholic Sex Abuse Scandal on the States*, ASSOCIATED PRESS, Apr. 27, 2002, *available at* LexisNexis Academic, News Wires.

abuse to the top of the NCCB/USCCB's agenda in 1992 and 2002, and the flurry of policy initiatives that followed, might best be characterized as what Kingdon calls policy windows. These are "occasions during which a problem becomes pressing, creating an opportunity for advocates of proposals to attach their solutions to it."[303] Focusing events, explains Kingdon, often open a window of opportunity for policy change.[304] Successful proposals for change do not merely appear when a policy window opens. Rather, those actively pursuing policy change—"policy entrepreneurs"—push steadily for consideration of their proposals and increase their salience with the public and policy elites so that when a policy window does open, conditions are ripe for adoption of the policy. Kingdon calls this "softening up the system."[305]

I would like to suggest that the Gauthe, Porter, and Geoghan cases served as focusing events that opened up policy windows which policy entrepreneurs—victims' advocates, plaintiffs' attorneys, and reformers within the Church—used to promote policy change. Ongoing litigation in the periods of diminished press coverage played an essential role in softening up the system.

b. The Vatican

Clergy sexual abuse also made it onto the Vatican's policy agenda. Responding to intense media coverage of the Porter case, the Pope made his first public statement about the issue in 1993 while addressing a group of visiting U.S. Bishops in Rome, saying that he shared their "sadness and disappointment when those entrusted with the ministry fail in their commitment, becoming a cause of public scandal," and denouncing "sensationalism" in the news media.[306]

In 2002, at the height of press coverage about the issue, papal spokesman Joaquín Navarro-Valls made statements to the press blaming the crisis on homosexuality among priests.[307] Prior to the Dallas meeting, the Pope summoned the American Cardinals to Rome for two days in April 2002 and suggested that the Church was leading an effort to grapple with a general crisis in sexual morality:

> The abuse of the young is a grave symptom of a crisis affecting not only the Church but society as a whole. It is a deep-seated crisis of sexual morality, even of human

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[303] KINGDON, *supra* note 218, at 177.

[304] *Id.*

[305] *Id.* at 190, 210.

[306] Alan Cooperman, *During His Long Reign*, WASH. POST, Apr. 2, 2005, at A36, *available at* LEXIS, News Library, WPOST File.

[307] FRANCE, *supra* note 28, at 357; INVESTIGATIVE STAFF OF THE BOSTON GLOBE, *supra* note 26, at 169.

> relationships, and its prime victims are the family and the young. In addressing the problem of abuse with clarity and determination, the Church will help society to understand and deal with the crisis in its midst.[308]

Vatican attention to the issue continued after the Dallas meeting, with successful efforts in the summer of 2002 to revise the Dallas Charter and Norms.[309] Just as we saw in examining the Bishops' agenda, the appearance of clergy sexual abuse on the Vatican's agenda coincides with the Porter and Geoghan cases.

c. The Priesthood

Clergy sexual abuse also found a prominent place on the agenda of priests as a group. A 1993 *Los Angeles Times* poll of 2087 Catholic priests in eighty dioceses found that 41% said they considered "pedophilia within the priesthood" a "very serious problem," and another 31% ranked it as "somewhat serious," while 18% called it "not too serious or not at all serious."[310] A subsequent 2002 *Los Angeles Times* poll of 1854 priests found that 69% agreed, in reference to clergy sexual abuse, that "[t]he Catholic church in America is now facing its biggest crisis in the last century."[311] Additionally, 18% ranked it as the most important problem facing the Church.[312]

Clergy sexual abuse has also been prominent on the agenda of the National Federation of Priests Councils (NFPC), a national organization of priests founded in 1968.[313] At national conventions and regional convocations, former NFPC president, Father Bob Silva, often discussed the problem. At the organization's 2003 fall convocation in Cincinnati, he addressed "how priests are coping with the scandal."[314] Following the public release of the USCCB national survey of the problem in 2004, he issued a public statement calling it "downright scandalous" and said that it "shows the failure of a system of silence and secrecy that allowed such abuse to take place."[315] At his address to the 2005 annual convention in Portland, Oregon, he listed clergy sexual abuse sixth in a list of eight issues on the "agenda for the priests of the United States in the circumstances of

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[308] FRANCE, *supra* note 28, at 420; *see also* INVESTIGATIVE STAFF OF THE BOSTON GLOBE, *supra* note 26, at 200.

[309] INVESTIGATIVE STAFF OF THE BOSTON GLOBE, *supra* note 26, at 212–13.

[310] Larry B. Stammer, *Conservative Trend Found in Younger Priests*, L.A. TIMES, Feb. 21, 1994, at A1, *available at* LEXIS, News Library, LAT File.

[311] L.A. TIMES POLL, *supra* note 204, at 2.

[312] *Id.* at 8.

[313] Notre Dame Archives, PFPC National Federation of Priests' Councils: Printed Material, http://archives.nd.edu/findaids/ead/index/FPC020.htm (last visited Jan. 25, 2007).

[314] National Federation of Priests' Councils, Fall Convocation of Priests, Oct. 28, 2003, http://www.nfpc.org/archives_10-28-03-FCOP.html [hereinafter Fall Convocation Address].

[315] National Federation of Priests' Councils, Statement of the NFPC, Feb. 27, 2004, http://www.nfpc.org/archives_NFPC_statement_02-27-04.html [hereinafter Statement of the NFPC].

the Church today."[316] According to a 2004 national survey of NFPC member diocesan councils, "[s]ex abuse has jumped up to the top of the list as a key agenda item."[317]

3. *Government Policy Agendas*

Litigation also placed clergy sexual abuse on the agendas of law enforcement and state legislatures. In the wake of civil litigation, one finds law enforcement more willing to investigate and prosecute child sexual abuse by clergy and to address it as a serious policy concern. Legislatures have also taken up proposals to eliminate the clergy exclusion to mandatory reporting laws and remove barriers to prosecution such as statutes of limitation.

a. Law Enforcement

Tort litigation against the Church and the public concern it generated increased efforts to investigate and prosecute clergy sexual abuse. Of course, it would be a gross overstatement to suggest that in all cases civil litigation was responsible for increased investigation and prosecution. Indeed, in some cases, secrecy agreements in civil settlements proved to be a hindrance to enforcement and prosecution. Nevertheless, there is evidence that civil litigation placed clergy abuse litigation on the agenda of many law enforcement officers and agencies.

Accounts of high profile cases offer anecdotal evidence that tort litigation increased criminal investigation and prosecution of clergy sexual abuse. Berry relates that criminal prosecution of Gauthe did not occur until after civil suits were filed and reported in the news media.[318] Plaintiffs' attorney Simon suggests in his account of the Gauthe affair that District Attorney Nathan Stansbury was reluctant to prosecute Gauthe, and that press coverage of the civil suits provided the pressure, or at least the cover, necessary to proceed against the Church.[319]

National press coverage of the Gauthe litigation influenced law enforcement officials beyond Lafayette, Louisiana. As Philip Jenkins writes:

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[316] National Federation of Priests' Councils, Fr. Bob Silva's Address to NFPC Portland Convention, April 12, 2005, http://www.nfpc.org/pres_address.html.

[317] National Federation of Priests' Councils, Council Survey 2004, http://www.nfpc.org/archives_survey-2004.html.

[318] *See* BERRY, *supra* note 1, at 25.

[319] *See* SIMON, *supra* note 16, at 137, 141. *But see* BERRY, *supra* note 1, at 20, 25, 49–50, 118–19, 121–24 (painting a different picture, Berry credits plaintiffs' attorney Hebert with first bringing the matter to Stansbury's attention and providing him with key witnesses, and he portrays Stansbury as pursuing a prompt and vigorous prosecution based on his own desire to see Gauthe punished for his crimes).

> Before 1984, there was a conspicuous lack of public agencies with a desire or ability to intervene officially in cases, and police and prosecutors were usually reluctant to offend so powerful a constituent as the local Catholic church . . . . The Gauthe case shaped reporting of a series of scandals that broke between 1984 and 1986, in which Catholic priests or religious had sexual contacts with minors, sometimes children who were in their charge in the capacity of pupils or altar boys. Nationwide there were at least forty instances in those years in which Catholic priests would be charged with multiple acts of molestation and outright rape. Courts now showed themselves more willing to intervene in the hitherto confidential disciplinary proceedings of the Catholic Church. Prosecutors also became increasingly prepared to press criminal charges in such cases, and in 1985 and 1986 notorious criminal trials ensued in some strongly Catholic communities . . . . After 1985 . . . criminal justice agencies realized that traditional qualms about embarrassing church authorities were increasingly questionable, and restraint that once seemed politically wise would now be legally dangerous.[320]

Jenkins also documents how, after 1985, reluctance to prosecute clergy or to challenge the Church could even become a political liability for prosecutors facing reelection.[321]

Plaintiffs' attorney Eric MacLeish's use of the press, without even filing a formal complaint, provided essential pressure for prosecution of James Porter by the local district attorney.[322] Having been rebuffed by the district attorney more than once, several Porter victims came to MacLeish, who helped them attract media coverage of their story in leading media venues such as the *New York Times*, *Newsweek*, *People*, *Prime Time Live*, *60 Minutes*, *Geraldo*, *Oprah Winfrey*, *Phil Donahue*, and *Sally Jessy Raphael*. With an entourage of press, the victims then filed a complaint with the local police. Ten days later, the district attorney launched an investigation that eventually culminated in the prosecution and conviction of Porter. For Bruni and Burkett, the Porter case in 1992

> marked a watershed in the public's awareness of child sexual abuse by Catholic priests, [and] it also marked a change in the reactions of secular authorities to cases of priests who molest. . . . America's prosecutors and judges

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[320] JENKINS, *supra* note 6, at 14, 36, 48.

[321] *Id.* at 49.

[322] This paragraph draws heavily on FRANCE, *supra* note 28, at 208–11, 215, and BURKETT & BRUNI, *supra* note 22, at 13–17.

> and reporters seemed to awaken on a national level . . . . Authorities stopped trusting the Church to handle its own malfeasants."[323]

As proof for this contention, they offer examples of prosecutions in Massachusetts, Missouri, and Illinois immediately following the Porter revelations.[324]

In addition to individual prosecutions, public concern surrounding the Geoghan litigation in 2002 motivated law enforcement officials to issue official reports on clergy sexual abuse and to offer policy reforms for dealing with the problem. In 2002, grand juries were convened in Westchester and Suffolk counties in New York. Both grand juries issued highly publicized official reports containing detailed findings and policy recommendations. The Suffolk grand jury report is 181 pages long and concludes with twenty-one recommended legislative reforms. Both documents recommend elimination of the statute of limitations for the sexual abuse of a minor, mandatory reporting by clergy of possible sexual abuse, criminal liability for supervisors who allow employees with a known record of child sexual abuse access to minors, and prohibition of confidentiality agreements in civil settlements involving sexual abuse of a minor.[325]

Grand jury proceedings in Hillsborough, New Hampshire, that same year resulted in an agreement between New Hampshire Attorney General Peter Heed and the Diocese of Manchester, whereby the attorney general agreed not to press charges in exchange for mandatory reporting by diocesan personnel of possible sex abuse; the development and implementation by the diocese of policies, procedures, and training to address the problem of sex abuse; an annual audit of the diocese by the attorney general; public disclosure of the agreement; and publication by the attorney general of a report on the investigation.[326] The Attorney General's report runs 154 pages, and details the misconduct of eight priests and the

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[323] BURKETT & BRUNI, *supra* note 22, at 197.

[324] *Id.* at 197–98.

[325] REPORT OF THE APRIL "E" 2002 WESTCHESTER COUNTY GRAND JURY CONCERNING COMPLAINTS OF SEXUAL ABUSE AND MISCONDUCT AGAINST MINORS BY MEMBERS OF THE CLERGY 1–2 (2002), *available at* http://www.bishop-accountability.org/resources/resource-files/reports/WestchesterGrandJuryReport.pdf [hereinafter WESTCHESTER GRAND JURY REPORT]; SUFFOLK COUNTY SUP. CT. SPECIAL GRAND JURY, MAY 6, 2002 TERM ID, GRAND JURY REPORT CPL § 190.85(1)(C) 175–79 (2003), *available at* http://www.bishop-accountability.org/resources/resource-files/reports/SuffolkGrandJuryReport.pdf [hereinafter SUFFOLK GRAND JURY REPORT].

[326] AGREEMENT BETWEEN THE STATE OF N.H. AND THE DIOCESE OF MANCHESTER, *IN RE* GRAND JURY PROCEEDINGS, NO. 02-S-1154, N.H. SUPER. CT., at 2–7 (Dec. 10, 2002), *available at* http://www.bishop-accountability.org/resources/resource-files/reports/NewHampshireAgreement.pdf [hereinafter N.H. AGREEMENT].

diocese's role in facilitating and covering it up.[327] In 2003, a Philadelphia grand jury issued an 800-page scathing critique of archdiocesan officials, asserting that "the Archdiocese's 'handling' of the abuse scandal was at least as immoral as the abuse itself."[328] Grand juries were also empanelled to investigate clergy sexual abuse in Cincinnati, Cleveland, Los Angeles , and Phoenix.

In 2003, Massachusetts Attorney General Thomas Reilly published a lengthy report following grand jury proceedings and additional investigation, entitled: "The Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston."[329] Although the report concluded that the investigation "did not produce evidence sufficient to charge the archdiocese or its senior managers with crimes under applicable state law," it did detail misconduct by archdiocesan officials, such as failing to respond to or report clergy sexual abuse and transferring known abusers to new parishes in the wake of allegations.[330] It also recommended specific reporting and disciplinary policies to be adopted by the archdiocese.[331] In the cover letter to the report, Reilly suggested that the purpose of publishing the report was to confirm "that this tragedy was real," and "to create an official public record of what occurred so that this type of widespread abuse of children might never happen again here or elsewhere."[332] In 2004, Maine Attorney General, G. Steven Rowe, issued a similar report on clergy sexual abuse allegations in the Catholic Church in Maine.[333]

The impact of media coverage of clergy abuse litigation on official investigations and criminal prosecution is difficult to quantify. Based on reports from private attorneys and a review of news coverage, Doyle suggests:

> Although there are isolated instances of criminal and civil court actions prior to 1984, the [Gauthe] case appears to have opened a wide gate. Since that time there have been

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[327] REPORT ON THE INVESTIGATION OF THE DIOCESE OF MANCHESTER (2003), *available at* http://www.bishop-accountability.org/resources/resource-files/reports/NewHampshireAGReport.pdf [hereinafter N.H. AG REPORT].

[328] REPORT OF THE GRAND JURY, *IN RE* COUNTY INVESTIGATING GRAND JURY, COURT OF COM. PL., FIRST JUDICIAL DISTRICT OF PA., CRIM. TRIAL DIV., MISC. NO. 03-00-239, at 4 (2003), *available at* http://www.bishop-accountability.org/pa_philadelphia/Philly_GJ_report.htm (follow "Introduction to Grand Jury Report" hyperlink).

[329] OFFICE OF THE ATT'Y GEN., THE SEXUAL ABUSE OF CHILDREN IN THE ROMAN CATHOLIC ARCHDIOCESE OF BOSTON, cover letter 2 (2003), *available at* http://www.bishop-accountability.org/resources/resource-files/reports/ReillyReport.pdf [hereinafter MASS. AG REPORT].

[330] *Id.* at cover letter 2, i–ii.

[331] *Id.* at 74–76.

[332] *Id.* at cover letter 2–3.

[333] OFFICE OF THE ATT'Y GEN., ON THE ALLEGATIONS OF SEXUAL ABUSE OF CHILDREN BY PRIESTS AND OTHER CLERGY MEMBERS ASSOCIATED WITH THE ROMAN CATHOLIC CHURCH IN ME. 1–3, 9, 12 (2004), *available at* http://www.bishop-accountability.org/resources/resource-files/reports/MaineAG.pdf [hereinafter ME. AG REPORT].

> several hundred criminal prosecutions of Catholic clerics throughout the United States. Charges have varied from child endangerment to alienation of affection and aggravated rape. Sentences have varied from probation, to multiple life terms. It is estimated that perhaps 250–300 Catholic clerics have received sentences through the criminal justice system.[334]

A study commissioned by the USCCB found 252 priests convicted for child sexual abuse.[335]

b. Legislatures

Since the Geoghan case in 2002, litigation and public concern have placed the issue of clergy sexual abuse on the agendas of state legislatures across the country. News stories posted on a SNAP webpage covering statutory proposals concerning clergy sexual abuse mention state legislative activity in Arizona, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Virginia, West Virginia, Wisconsin, and Washington.[336] The proposals would extend or eliminate statutes of limitation for child sexual abuse, remove clergy exemptions to mandatory child abuse reporting laws, create child endangerment provisions that would make diocesan supervisors criminally liable for assigning known abusers to positions where they will have access to children, and remove civil damage caps for charitable organizations in cases of sexual abuse.[337] While some of these proposals have fared better than others, they are powerful evidence that clergy abuse was placed on state legislative agendas in response to the wave of media coverage and public concern in 2002.

B. *Shaping Policy Alternatives*

In discussing the dynamics of agenda access and policy change, John Kingdon makes an important distinction between obtaining *agenda access*

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[334] Thomas P. Doyle & Stephen C. Rubino, *Catholic Clergy Sexual Abuse Meets the Civil Law*, 31 FORDHAM URB. L.J. 549, 550–51 (2004).

[335] JOHN JAY COLL. OF CRIM. JUST., *supra* note 8, at 61.

[336] This count is based on news stories posted on the SNAP website at http://www.snapnetwork.org/legislation/legisindex.htm (June 22, 2005) [hereinafter SNAP Web Articles] and 2005 Bill Tracking, H.B. 2226, 79th Leg. (W. Va. 2005).

[337] Jesse Belcher-Timme, Note, *Unholy Acts: The Clergy Sex Scandal in Massachusetts and the Legislative Response*, 30 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 243, 270–72 (2004); Memorandum from Chrissta Forslund to Professor Leslie Griffin, Child Abuse Reporting Statutes and Clergy (July 25, 2004) (on file with Connecticut Law Review); SNAP Web Articles, *supra* note 336.

for an issue and defining the *policy alternatives*.[338] The success of a group in placing an issue on an agenda is not a guarantee against reframing of the issue as a different problem or adoption of policy alternatives not favored by the group. In discussing the impact of tort litigation on policy responses to clergy sexual abuse litigation, I have already discussed the impact of litigation on framing the problem and placing the problem on public and institutional agendas. I turn now to how litigation shaped policy alternatives to address the problem.

Tort litigation and the news media coverage that it inspired have decisively shaped the terms in which the issue has been debated and helped define the policy alternatives proposed to address the problem. Plaintiffs' framing, adopted by the news media, placed primary responsibility for clergy sexual abuse on diocesan officials who knew it was happening, failed to stop it, and, by concealing it, allowed it to proliferate. The real scandal, according to this view, was not the occurrence of child sexual abuse within the Church, but the complicity of Church officials. As one victim put it: "The Church is the real sodomist."[339] Public and official reaction to the issue reveal the dominance of this frame in efforts to find policy solutions to the problem of clergy sexual abuse.

1. *Church Policies*

The frame of institutional responsibility has dominated discussion of clergy sexual abuse within the Church. Meetings of the USCCB, and the NCCB before it, in 1985, 1992 and 1993, and 2002 to the present have focused on institutional norms and procedures to be adopted by Bishops as a matter of diocesan policy.[340] Public admissions of institutional responsibility, however, came only gradually. In 1992, NCCB President and Cincinnati Archbishop Daniel Pilarczyk issued a vague statement admitting only that "[i]n the matter of priests and sexual abuse, undoubtedly mistakes have been made in the past,"[341] and the Bishops at their November meeting issued a similarly vague resolution expressing their "profound concern for all those who have been victims of sexual abuse, particularly when that abuse has been committed by a member of the clergy."[342] Addressing the June 1993 NCCB conference, the Ad Hoc Committee on Sexual Abuse chair, Bishop John Kinney, suggested:

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[338] *See* KINGDON, *supra* note 218, at 4.

[339] BURKETT & BRUNI, *supra* note 22, at 136.

[340] U.S. Conference of Catholic Bishops, Office of Media Relations, Efforts to Combat Clergy Sexual Abuse Against Minors: A Chronology, http://www.usccb.org/comm/combatefforts.shtml (last visited Dec. 11, 2006).

[341] Brooks Egerton, *Documents Show Bishops Transferred Known Abuser; Church Officials Say Policies Have Since Changed*, DALLAS MORNING NEWS, Aug. 31, 1997, at 1A, available at LEXIS, News Library, DALNWS File.

[342] Thomas J. Reese, *Women's Pastoral Fails*, AM., Dec. 5, 1992, at 443, 444, *available at* http://www.americamagazine.org/reese/america/nc9211.htm.

> It is not the sexuality of it all. It is rather the dynamic of the misuse of power, domination and the violation of trust between *pastor* and parishioner, *priest* and child, *teacher* and student, *counselor* and counselee. Victims, their friends and families have felt betrayed by those they trusted and who were given to them in authority. And then once abused and betrayed, *some* in authority did not listen to their cries for help or *were perceived* as not hearing them.[343]

From this statement, it appears that the NCCB leader on the issue first blamed offending priests and only then "some in authority"—presumably Bishops—chalking part of the problem up to misperceptions among victims. Some Bishops did not even allude to their own role, publicly attributing the problem to "the terrible offenses of the few."[344]

By 2002, the USCCB President, Bishop Wilton Gregory, signaled that the USCCB leadership had itself—at least publicly—adopted the frame of institutional failure and episcopal responsibility. He began his address to the June 2002 conference by stating that

> The crisis, in truth, is about a profound loss of confidence by the faithful in our leadership as shepherds, *because of our failures* in addressing the crime of sexual abuse of children and young people by priests and Church personnel . . . . The penance that is necessary here is not the obligation of the Church at large in the United States, but *the responsibility of the bishops ourselves*. Both "what we have done" and "what we failed to do" contributed to the sexual abuse of children and young people by clergy and Church personnel . . . . It is we who need to confess; and so we do. We are the ones, whether through ignorance or lack of vigilance, or—God forbid—with knowledge, who allowed priest abusers to remain in ministry and reassigned them to communities where they continued to abuse. We are the ones who chose not to report the criminal actions of priests to the authorities, because the law did not require this. We are the ones who worried more about the possibility of scandal than in bringing about the kinds of openness that helps prevent abuse. And we are the ones who, at times, responded to victims and their families as adversaries and not as suffering members of the Church. . . . [I]n my own name and in the name of *all the bishops*, I express the most profound apology to each of you

[343] *NCCB Establishes Committee on Sexual Abuse*, *supra* note 296, at 105 (emphasis added).
[344] FRANCE, *supra* note 28, at 231.

> who have suffered sexual abuse by a priest or other official of the Church . . . . We ask your forgiveness.[345]

The Dallas Charter opens with a similarly bold statement of episcopal responsibility:

> The sexual abuse of children and young people by some deacons, priests, and bishops, and *the ways in which these crimes and sins were addressed*, have caused enormous pain, anger, and confusion. *As bishops, we have acknowledged our mistakes and our roles in that suffering, and we apologize and take responsibility again for too often failing victims and the Catholic people in the past*.[346]

Debate about the non-binding policies of the 1993 and 2002 Charter and Norms has been framed in terms of the extent of and proper responses to institutional failures. The 2002 *Los Angeles Times* poll of Catholic priests found that in response to the question "what one aspect of the crisis bothers you the most," the most popular response (21%) was "[t]he way the bishops have responded to the crisis," ahead of due process for accused priests (16%) and media coverage of the crisis (14%). The fourth most popular response (9%) was "[b]ishops covering up guilt on the part of abusive priests."[347] In a 2004 statement to the press, NFPC President Silva said that the most disturbing aspect of the clergy abuse problem in the Church was "the negligence and failure of leadership to address the sin and crime within the system."[348] Surveys of laity, like those of the general public, reflect that a majority of Catholics blamed the Church as an institution and its leadership. They disapproved of the way the Church as an institution dealt with clergy sexual abuse, believed that it had done a bad job in dealing with the problem or that it should have done more to combat the problem, and called for the resignation of Bishops who failed to report abuse.[349]

2. *Government Policies*

The frame of institutional responsibility has figured prominently in policy reforms considered by law enforcement, and legislators have framed their policy proposals as responses to institutional failure. While the grand jury and state attorney general reports detail individual incidents of abuse, Attorney General Reilly's conclusion is typical of the reports—"the widespread abuse of children was due to an institutional acceptance of

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[345] SHAKEN BY SCANDALS, *supra* note 213, at 221–23 (emphasis added).

[346] U.S. CONFERENCE OF CATHOLIC BISHOPS, CHARTER FOR THE PROTECTION OF CHILDREN AND YOUNG PEOPLE, pmbl. (2002), *available at* http://www.usccb.org/ocyp/charter.shtml (emphasis added).

[347] L.A. TIMES POLL, *supra* note 204, at 27.

[348] Statement of the NFPC, *supra* note 315.

[349] See poll data in text accompanying *supra* notes 226–29.

abuse and a massive and pervasive failure of leadership."[350] Legislative proposals such as mandatory reporting requirements, criminal penalties for child endangerment, and removing damage caps are all directly related to the liability of Church officials and dioceses as institutional actors. Eliminating the statute of limitations for civil suits is also aimed at allowing courts to impose liability on these institutional actors. Whether successful or not, government policy proposals focused lobbying efforts and debate on the institutional dimensions of the problem. That is, policy discussion was framed in terms of addressing institutional failure and episcopal responsibility.

IV. A CHALLENGE TO TORT-REFORM ADVOCATES AND LITIGATION SKEPTICS

In challenging tort-reform advocates who denounce the litigation process as inefficient and litigation skeptics who suggest that litigation is an ineffective means of achieving social change, it is important first to clarify the limits of my claims in this Article. My analysis of clergy sex abuse litigation rests on two causal claims: (1) tort litigation led the news media to report clergy sexual abuse and to frame it as an issue of institutional failure, and (2) litigation and the news media coverage it generated placed clergy sexual abuse on public and institutional policy agendas and shaped policy responses to it.

My evidence for the first causal connection between clergy sexual abuse litigation and media coverage is (a) the correlation between the timing and content of particular lawsuits (Gauthe, 1984; Porter, 1992; Geoghan, 2002) and news coverage and (b) journalists' statements about their reliance on litigation as a source for their stories. This empirical evidence is supported by a theoretical model that suggests a correlation between certain features of tort litigation—such as the framing of claims in terms of dramatic narrative, the public availability of litigation documents, and the protracted and dramatic nature of litigation—and the primary forces that shape the process of news production—in particular, sensitivity

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[350] MASS. AG REPORT, *supra* note 329, at 73; *see also*, ME. AG REPORT, *supra* note 333, at 10–11 (detailing the inadequacy of the diocese response to allegations of clergy sexual abuse); N.H. AGREEMENT, *supra* note 326, at 1 (focusing on the question of whether "the Diocese itself or any of its agents committed any crimes in connection with the handling of sexual abuse incidents by clergy"); N.H. AG REPORT, *supra* note 327, at 154 (concluding that the "Diocese breached a duty of care" to victims and their families); SUFFOLK GRAND JURY REPORT, *supra* note 325, at 174 (finding "the actions of Diocesan officials who were responsible for making and implementing policy reprehensible"); WESTCHESTER GRAND JURY REPORT, *supra* note 325, at 2 (referring to the need to address "a systematic failure by the religious institution that these clergy members serve to respond appropriately when receiving a report of this activity").

to audience demand, a desire to project credibility, and the construction of news themes.

I do not mean to imply that litigation was the only cause of news coverage or the only influence on news frames, just that it was a dominant one. Moreover, it is important to note that the causal influence between the litigation and the news coverage was reciprocal. Not only did the litigation influence news coverage, news coverage influenced the litigation. By promoting the plaintiffs' frames, news coverage encouraged other victims to file suit and made plaintiffs' frames more culturally resonant among judges and potential jurors in future cases. Indeed, news coverage of ritual child sex abuse and corporate scandals, prior to clergy sex abuse litigation, accounts for much of the persuasive power of the plaintiffs' frames in the first place.

My evidence for the second causal connection between litigation and news coverage on the one hand and the presence of clergy sex abuse on public and institutional agendas and the policy responses to it on the other hand is (a) poll data; (b) data concerning the high volume and prominent venues of media coverage; (c) grass roots activism among victims, lawyers, and Catholic reformers; and (d) the promulgation of policies addressing the institutional dimensions of the issue by Church policy makers, law enforcement officials, and legislatures. As I have shown, there is a correlation between significant litigation events and increases in attention to the issue among the general public, the Catholic laity, policy elites, and policymakers as measured by these empirical indicators. This correlation is consistent with theoretical models drawn from media and policy scholarship suggesting that focusing events, such as high-stakes litigation, influence public agendas and that public agendas influence institutional agendas and policy debate.

My evidence for this second causal claim has important limitations. Poll data is never entirely reliable and press coverage is merely a proxy for public awareness. Together, however, they do offer some evidence of the presence and prominence of the issue on public agendas.

In addition, the correlation between focusing events and the presence of an issue on policy agendas is not definitive proof of a causal relationship. Rarely, however, does social theory offer definitive proof of causal connections. Moreover, there were certainly other causal influences on these agendas and policy alternatives, but since so much of what members of the public and policymakers know about issues comes from the media—which was in this case based largely on information and frames generated by litigation—it is likely that litigation played a significant role.

In short, I have argued that the tort litigation process has had a significant and beneficial impact on policymaking in the case of clergy sexual abuse. Clergy sexual abuse litigation made it possible for child

sexual abuse victims to hold one of the largest, richest, and most powerful institutions in America publicly accountable. It put the Church on trial, not only in the civil courts but also in the courts of public and Catholic lay opinion. It led the USCCB to issue public apologies to the victims, to the Church, and to the public at large. Moreover, the litigation forced reluctant Church and government officials to adopt sensible policies to address a widespread social problem. The Charter for the Protection of Children & Young People, the Essential Norms, the diocesan and national review boards, and the Office of Child and Youth Protection are all carefully considered concrete measures that Church officials have taken to address the problem. Investigations and reports by grand juries and state attorneys general, criminal prosecutions, mandatory reporting requirements for clergy, new penalties for child endangerment, the removal of damage caps, and extensions or elimination of statutes of limitation are similarly concrete examples of government policy responses prompted by the litigation.

While I view the framing and agenda-setting effects of clergy sexual abuse litigation as generally favorable, I recognize that these effects may not always promote such a positive outcome. Tort reform advocates argue that tort litigation is largely frivolous and wasteful and that it produces perverse regulatory outcomes. They allege that rampant litigation and inflated jury awards constitute a major drain on society's resources. They assert that widespread fear of liability created by the tort system leads to the withdrawal of essential products and services and stifles safety innovation.[351] Defenders of the current tort regime have responded by pointing to the benefits of tort litigation for regulatory policymaking in terms of uncovering concealed information of corporate wrongdoing, framing, and agenda setting. The debate to date has been largely anecdotal with tort reform advocates citing horror stories and defenders offering counterexamples. Unfortunately, this Article does not advance the debate beyond the battle of examples. It does, however, provide the clearest example to date of the benefits of tort litigation for policymaking. While I have not argued that these benefits outweigh the costs of the litigation, I have shown that they are significant. Of course, one should be careful about making general claims concerning the policymaking benefits of tort litigation solely on the basis of clergy sexual abuse litigation. Assessing

[351] *See, e.g.*, CRIER, *supra* note 10; HOWARD, *supra* note 10, at 57–62; HUBER, *supra* note 10, at 11–14; OLSON, *supra* note 10, at 98, 295–97. These critics also claim that private lawsuits are meant to resolve private disputes, not to make public policy. In the American constitutional scheme, they assert policymaking is a task for elected legislatures not common law courts. I have addressed these claims in Timothy D. Lytton, *Using Litigation to Make Public Health Policy: Theoretical and Empirical Challenges in Assessing Product Liability, Tobacco, and Gun Litigation*, 32 J.L. MED. & ETHICS 556, 558–59 (2004).

the contribution of litigation to policymaking in other contexts requires case-by-case analysis. At the very least, however, the lessons of clergy sexual abuse litigation should cause tort reform advocates to take another, more careful look at the benefits of tort litigation for policymaking.

The case of clergy sexual abuse presents a challenge not only to tort reformers who argue that tort litigation has had substantial negative effects, but also to skeptics who argue that it is ineffective as a means of achieving social change.[352] Adherents to what Gerald Rosenberg terms the "Constrained Court" view suggest that among the reasons litigation is ineffective at producing social change is that "framing issues in legally sound ways robs them of 'political and purposive appeal.'"[353] Rosenberg himself suggests that "courts are in a weak position to produce change [since] . . . [o]nly a minority of Americans know what the courts have done on important issues."[354] Moreover, quoting another scholar, he adds, "litigation, by its complexity and technical nature and by its lack of dramatic moments, furnishes an ineffective peg around which to build a mass movement." "Rally round the flag is one thing," Rosenberg concludes, "but rally round the brief (or opinion) is quite another!"[355]

Rosenberg's contention that "U.S. courts can *almost never* be effective producers of significant social reform"[356] is built on careful empirical and historical analysis of U.S. Supreme Court decisions regarding racial segregation, abortion, environmental protection, electoral reapportionment, and criminal procedure reforms. When we shift our attention to the work of plaintiffs' lawyers in litigation against the Catholic Church, we see a very different picture. As we have seen, framing claims in "legally sound ways" enhances their appeal. Good litigation strategy demands that plaintiffs' claims be framed in terms of compelling narrative drama. For this very reason, they are newsworthy and news coverage generates widespread public awareness of them. Even if Rosenberg is right that the public is largely unaware of what *courts* do in these cases, they are very aware—as the case of clergy sex abuse litigation shows—of the claims made and the frames generated by the *litigants*. Clergy sexual abuse litigation was neither complex nor technical, and it provided a highly effective "peg" on which to base news stories and around which to organize and energize groups such as Voices of the Faithful, SNAP, and The Linkup. Neither the public nor policy makers rallied around briefs or opinions in clergy abuse litigation. They did, however, rally around the

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[352] My use of clergy sexual abuse litigation as a counterexample to litigation skeptics builds on over a decade of scholarship critiquing skepticism about the efficacy of litigation as a reform strategy. *See, e.g.*, HALTOM & MCCANN, *supra* note 43; David Schultz, *Courts and Law in American Society*, *in* LEVERAGING THE LAW, *supra* note 225, at 7–8; Mather, *supra* note 5, at 899–900, 902.

[353] ROSENBERG, *supra* note 10, at 12.

[354] *Id.* at 338.

[355] *Id.*

[356] *Id.*

frames launched by the litigation. While I do not wish here to challenge Rosenberg's sweeping claim that "U.S. courts can *almost never* be effective producers of significant social reform," I do wish to suggest that the efforts of litigants in clergy sexual abuse litigation *were* effective in producing major policy changes within the Catholic Church and among law enforcement officers, and smaller but still significant policy changes within state legislatures across the country. The extent to which this is also true of litigation against tobacco companies, gun makers, and pharmaceutical manufacturers varies. I would suggest—and Rosenberg's work provides an excellent model—that we begin examination of these examples based on empirical facts rather than generalized claims.[357]

Rosenberg criticizes defenders of the "Dynamic Court" view—that court decisions do effect significant social change—for their failure to spell out the precise mechanisms and causal connections by which this purported change occurs. In developing an account of the agenda-setting and framing effects of the tort litigation process, I have attempted to do just that by explaining why tort litigation is an influential source of news coverage and how the news coverage it generates shapes public discourse and policymaking.

V. CONCLUSION: VIEWING TORT LITIGATION AS A POLICY VENUE

Tort litigation has traditionally been viewed as a means of dispute resolution and risk regulation. My analysis of clergy sexual abuse litigation suggests that we should view it also as a *policy venue*—an institutional setting in which policymaking occurs.[358] Clergy sexual abuse litigation illustrates how this venue can be used to promote policy change by framing issues, achieving agenda access, and shaping policy alternatives.

Viewing tort litigation as a policy venue is, of course, entirely compatible with viewing it as a means of dispute resolution and risk regulation. There is no reason why litigation cannot serve all three of these functions. The policy-venue perspective adds significantly to our understanding of the tort system. For one thing, it enhances our appreciation of the value of the litigation process. Traditional views focus on litigation outcomes and have generated justifiable criticisms of the litigation process as an often inefficient means of dispute resolution and risk regulation.[359] There are, to be sure, quicker, less expensive, and more direct ways to settle disputes and regulate risk than litigation. Viewing tort

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[357] *Id.* at 342.

[358] FRANK R. BAUMGARTNER & BRYAN D. JONES, AGENDAS AND INSTABILITY IN AMERICAN POLITICS 32 (1993).

[359] *See, e.g.*, HUBER, *supra* note 10, at 15, 188–89; OLSON, *supra* note 10, at 98, 120, 295–97.

litigation as a policy venue, by contrast, draws our attention to the litigation process and allows us to appreciate its value in enhancing policymaking.

Viewing tort litigation as a policy venue also allows us to attain a clearer understanding of the relationship between the tort system and other regulatory institutions. The traditional risk regulation perspective tends to view tort litigation as an alternative to other forms of regulation. Tort litigation, on this account, *competes* with self-regulation, legislative regulation, or agency regulation. According to the traditional risk-regulation view, regulation by tort law only makes sense where these other forms of regulation do not exist or where they fail to operate effectively.[360] When viewed as a policy venue, however, tort litigation *complements* these other forms of regulation. Uncovering information, framing issues, attracting attention to them, shaping policy alternatives, and exerting pressure on policymakers are all ways in which tort litigation enhances the performance of other regulatory institutions.

As I suggested in the introduction, this view of tort litigation is not new. Scholars have been developing a better understanding of how tort litigation enhances policymaking in case studies of products liability, medical malpractice, tobacco litigation, and lawsuits against the gun industry.[361] What this case study of clergy sexual abuse adds is an especially compelling example. Tort litigation has transformed the Catholic Church's institutional failure to protect children from child sexual abuse into an opportunity to address the problem in meaningful ways, not only within the Church, but in society at large.

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[360] *See, e.g.*, NEIL K. KOMESAR, IMPERFECT ALTERNATIVES: CHOOSING INSTITUTIONS IN LAW, ECONOMICS, AND PUBLIC POLICY 150 (1994) (discussing the conditions under which court adjudication should be "substituted" for agency or market regulation); PETER H. SCHUCK, THE LIMITS OF LAW 350, 360–61, 363 (2000) (analyzing common law solutions to mass torts as a result of legislative inaction); W. Kip Viscusi, *Overview*, *in* REGULATION THROUGH LITIGATION 1, 20 (W. Kip Viscusi ed., 2002) (examining the perception that regulation by means of tort litigation is necessary where agency regulators fail to address potential harms to society).

[361] *See, e.g.*, TOM BAKER, THE MEDICAL MALPRACTICE MYTH 6, 14, 19–21 (2005); Jacobson & Warner, *supra* note 5, at 770–72; Mather, *supra* note 5, at 932–36; S. Teret & M. Jacobs, *Prevention and Torts: the Role of Litigation in Injury Control*, 17 J.L. MED. & HEALTH CARE 17–22 (1985); Wendy Wagner, *When All Else Fails: Regulating Risky Products through Litigation*, 95 GEO. L.J. (forthcoming 2007).

APPENDICES

APPENDIX 1: NEWSPAPER AND MAGAZINE ARTICLES (TABLE 1)

For all data sets, news outlets searched in the LexisNexis electronic database were the *New York Times*, *Chicago Tribune*, *Los Angeles Times*, *Washington Post*, *Christian Science Monitor*, *Time*, *Newsweek*, *The Nation*, *Forbes*, *U.S. News & World Report*, and *People*. News outlets searched in the Westlaw electronic database were the *Boston Globe*, *Miami Herald*, *Philadelphia Inquirer*, *San Francisco Chronicle*, *Seattle Times*, *St. Louis Post Dispatch*, *San Jose Mercury News*, *Wall St. Journal* abstracts, *Cosmopolitan*, and *Esquire*. The search terms on LexisNexis were "date is [YEAR] and (priest or clergy w/15 abus! or moles!) and not substance or alcohol or drug or military or "human rights" or spouse or husband or army or guerillas or labor". The search terms for Westlaw were "da([YEAR]) & (priest clergy w/15 abus! moles!) % substance alcohol drug military "human rights" spouse husband army guerillas labor".

Search results were reviewed in accordance with the following guidelines. Articles that are the same or nearly the same, and appear on the same day in separate editions of the same newspaper, were counted once. Nearly the same was defined as most of the words in the article being identical. Many times a later edition contained an abbreviated version of an article printed in the morning edition. It was very clear when an article had been shortened or slightly modified and included in a later edition. Tangentially related articles were included in the count. For example, articles about non-Catholic clergy sexual abuse, financial or ethical issues related to clergy sexual abuse, international cases, etc. were all counted. Articles that merely mentioned or alluded to the clergy abuse scandal were not counted. This was common in the *Boston Globe*, for example. Completely off-topic articles often included allusions to clergy sex abuse.

Table 1. Newspaper & Magazine Articles

	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Boston Globe	2	4	3	0	1	0	3	6	104	86	43	26	16	24	22	12	14	25	773	372	222
New York Times	1	2	3	3	9	0	6	2	19	44	18	11	12	9	16	5	10	11	692	297	142
LA Times*	0	4	14	12	14	7	21	18	29	74	42	22	10	16	10	6	14	17	469	288	171
Chicago Tribune**	0	6	6	12	6	1	7	24	91	111	54	23	13	19	13	8	12	10	410	178	155
St. Louis Post Dispatch	0	0	0	0	2	1	8	5	16	57	49	17	6	6	6	8	5	3	354	138	130
Washington Post	0	1	1	1	9	3	9	8	24	40	10	30	11	8	6	6	2	3	337	127	107
Miami Herald	0	2	4	3	7	3	11	1	16	19	12	15	6	18	12	3	4	14	265	126	70
Philadelphia Inquirer	1	0	0	0	6	4	3	1	12	25	15	10	1	4	3	0	1	4	234	89	87
San Jose Mercury News***	0	0	3	8	13	1	12	0	30	35	12	12	8	5	5	3	11	3	196	57	41
Seattle Times	0	0	0	0	0	4	1	3	17	19	7	10	5	9	8	3	6	3	180	64	75
San Francisco Chronicle****	0	0	0	0	0	1	0	2	19	17	17	27	13	3	5	7	18	4	116	37	38
Christian Science Monitor	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	36	14	12
Newsweek Magazine	0	0	0	1	0	0	0	1	2	4	1	0	0	0	0	1	0	0	35	4	6
U.S. News & World Report	0	0	0	0	0	0	0	0	2	0	1	0	0	0	0	0	0	0	23	7	2
Time Magazine	0	1	0	0	0	0	0	0	2	2	2	3	0	1	2	0	0	1	22	6	5
Wall St. Journal Abstracts	0	0	0	0	0	0	0	0	3	2	1	0	0	0	0	0	0	0	8	4	2
People Magazine	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	5	2	2

	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
The Nation Magazine	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	2	3	1
Cosmopolitan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Esquire	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Harpers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Forbes Magazine	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4	0
TOTAL FOR YEAR:	4	20	35	40	67	25	81	68	387	535	284	206	101	122	108	62	97	98	4158	1817	1268

Identical or nearly identical articles that appeared in multiple editions of the same newspaper were not counted in these tallies.

* LA Times coverage begins January 1, 1985.

** Chicago Tribune coverage begins January 1, 1985.

*** San Jose Mercury News coverage begins June 1985.

**** San Francisco Chronicle coverage begins February 9, 1985.

APPENDIX 2:
LETTERS TO THE EDITOR (TABLE 2)

Search terms in the LexisNexis search were "date is [YEAR] and section (letter) or headline (letter edit!) or (section (editorial) and body (to the editor)) or terms (letters) and (priest or clergy w/15 abus! or moles!) and not substance or alcohol or drug or military or "human rights" or spouse or husband or army or guerillas or labor." Search terms in the Westlaw search were "oi(letter editor) & da([YEAR]) & (priest clergy w/15 abus! moles!) % substance alcohol drug military "human rights" spouse husband army guerillas labor." Search results were reviewed and duplicates and off-topic letters were not counted.

Table 2. Letters to the Editor

	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
New York Times	0	0	0	0	0	0	0	0	2	3	0	1	1	0	0	0	0	0	89	24	8
Boston Globe	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	2	2	75	24	17
St. Louis Post Dispatch	0	0	0	0	0	0	0	0	0	2	3	0	0	0	0	0	0	0	60	5	8
LA Times*	0	0	0	0	0	0	1	3	3	6	2	0	0	0	1	0	0	3	42	11	11
Chicago Tribune**	0	0	0	0	0	0	0	1	14	8	1	0	1	1	0	0	0	0	38	7	6
Washington Post	0	0	0	0	0	0	1	0	1	5	1	3	0	0	0	1	0	0	13	2	1
Seattle Times	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	22	1	1
San Francisco Chronicle****	0	0	0	0	0	0	0	0	0	2	1	0	0	0	0	0	0	0	8	3	1
Newsweek Magazine	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4	0	0
People Magazine	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0
Wall St. Journal Abstracts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	3	0
Time Magazine	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	1	0	0
Cosmopolitan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Esquire	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Harpers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Miami Herald	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Philadelphia Inquirer	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
San Jose Mercury News***	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Christian Science Monitor	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		0	0	0

	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Forbes Magazine	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
The Nation Magazine	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
U.S. News & World Report	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL FOR YEAR:	0	0	0	0	0	0	2	4	20	27	9	4	2	2	2	2	2	5	355	80	54

* LA Times coverage begins January 1, 1985.

** Chicago Tribune coverage begins January 1, 1985.

*** San Jose Mercury News coverage begins June 1985.

**** San Francisco Chronicle coverage begins February 9, 1985.

APPENDIX 3:
ARTICLES IN CATHOLIC PERIODICALS (TABLE 3)

This search was conducted in the Catholic Periodical and Literature Index database using the following search terms: " sex* misconduct", "sex* abus*", "sex* crim*", "child* abus*", "child* molest*", and "pedophile*". Search results were reviewed and articles were included if (1) the title of article indicated that subject matter was sexual abuse of minors by clergy or other church personnel (e.g. nuns, brothers . . .); (2) the article was listed under relevant subject indexing such as "child sexual abuse by clergy," "child sexual abuse by religious," "victims of sex crimes," and " sexual misconduct by clergy"; (3) the title of the article referred to a nationwide (or worldwide) sex abuse scandal; (4) a review of the text of the article revealed relevance to clergy sexual abuse; (5) subject indexing or the title referred to names of individuals or events strongly connected with clergy sexual abuse; and (6) the title of the article used phrasing frequently used in connection with clergy sexual abuse. Discretion was used where subject indexing or the title of article was ambiguous. Articles were considered duplicates, and therefore not counted, if they had the same title, author, and subject.

Table 3. Articles in Catholic Periodicals

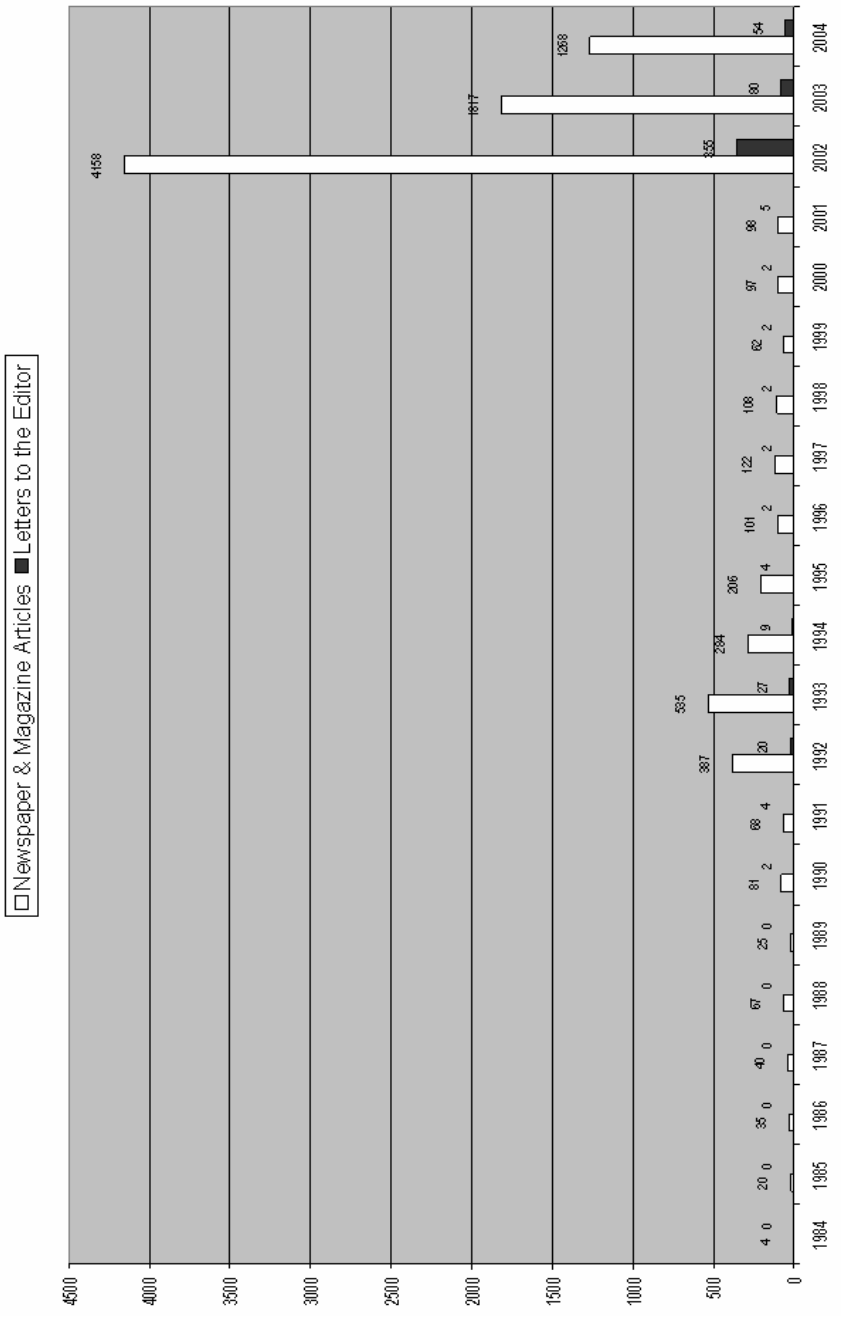
	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Aeta Apostilicae Sedis	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
America	0	0	0	0	0	1	0	0	4	5	3	0	0	0	0	2	2	1	47	7	5
Amer. Catholic Studies	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Amer. Catholic Newsletter	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Canadian Catholic Report	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0
CARA Report	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Catholic Digest	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	8	1	0
Catholic Education	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Catholic Lawyer	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	0
Cath. Theo. Soc. of Amer. Proc.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	2	0
Christ to the World	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	0
Church	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	5	3	0
Columbia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Commonweal	0	0	0	0	0	0	0	0	1	1	1	1	0	0	0	0	1	0	22	7	0
Crisis	0	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	1	2	1	1
Critic	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Cross Currents	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Doctrine and Life	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4	0	0
Ethics and Medics	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0

	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Etudes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0
Furrow	0	0	0	0	0	0	0	0	0	1	0	1	2	0	1	2	0	1	11	6	0
Health Progress	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Heythrop Journal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Homiletic and Pastoral Review	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	2	0
Human Development	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	3	12
Inside the Vatican	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	13	2	1
Irish Theo. Quarterly	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	1
Jurist	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0
La Civilta Cattolica	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	1	0
Liguorian	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	4	0	0
Louvain Studies	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Momentum	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0
Month	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
National Cath. Register	0	0	3	0	1	0	0	0	1	2	3	1	2	2	11	4	1	3	55	12	5
National Cath. Reporter	0	3	2	0	2	1	5	0	6	13	10	6	5	18	21	34	14	5	137	60	22
New Blackfrairs	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
New Covenant	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
New Oxford Review	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	1	0
New Theo. Review	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Origins	0	0	0	0	1	1	1	0	4	9	3	0	0	0	3	0	1	0	53	10	13

	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Osservatore Romano	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Osservatore Romano (Wkly)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5	0	3
Our Sunday Visitor	0	0	0	0	0	0	0	0	0	4	1	0	3	2	4	0	0	1	58	23	3
Pastoral Life	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	1
Periodica de Re Canonica	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
The Pope Speaks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Priest	0	0	0	0	0	1	1	0	0	1	1	0	0	0	0	0	1	0	8	2	1
Priests and People	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	0	3	1
Review for Religious	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Rite	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Seminarium	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Social Justice Review	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1	0	0	0	2	1	1
St. Anthony Messenger	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	9	9	2
Stimmen der Zeit	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Studia Cononica	0	0	0	0	1	0	1	0	2	1	0	0	0	0	0	0	0	1	0	0	0
Studies	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5	0	0	0	0
Tablet	0	0	0	0	0	0	0	1	1	4	1	1	1	4	6	24	18	6	28	8	4
Theological Studies	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	0	0
Todays Cath. Teacher	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0

	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Today's Parish	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	2	0	0
U.S. Catholic	0	0	0	0	0	0	0	0	0	5	0	0	0	0	0	0	0	0	9	0	0
The Way	0	0	0	0	0	0	0	0	0	5	0	0	0	0	0	0	0	0	0	1	0
TOTAL FOR YEAR:	0	3	0	0	6	4	9	2	24	54	27	12	14	27	49	66	46	20	512	172	78

APPENDIX 4:
NEWSPAPER & MAGAZINE ARTICLES AND LETTERS TO THE EDITOR, 1984–2004 (CHART 1)



APPENDIX 5:
ARTICLES IN SELECTED CATHOLIC PERIODICALS, 1984–2004 (CHART 2)