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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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Clergy Sexual Abuse Litigation: The Policymaking Role of Tort Law

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. archdiocese²

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 nonexistent. 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

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

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.

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: Gauthé, 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 Gauthé 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 Gauthé 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 Gauthé 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 Gauthé 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 Gauthé litigation inspired victims

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 Gauthé 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

¹⁷ Evidence of increased litigation following the Gauthé 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/flfvsporther.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

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

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—itsself 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.

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

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

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 Newswriters 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 Gauthé 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

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

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

⁵⁵ Stanley Cohen, *Muds 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

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 Gauthé'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 Gauthé's victims.⁷⁰ He implies that the Church—like the children and their parents—was one of Gauthé's victims.

The first print coverage of the Gauthé 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 Gauthé 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 Gauthé'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 Gauthé'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

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 Gauthé 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 Gauthé 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

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 Gauthé’s sexual activities with little boys about 10 years before ordering him suspended.”⁷⁹ Details of Gauthé’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 Gauthé 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 Gauthé, and this alternative frame is missing altogether from the shorter *Houston Post* article.⁸³ The *Dallas Morning News* article also uses the Gauthé 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

⁷⁹ *Bishop Says He Got Word of Gauthé’s Actions 10 Years Ago*, ASSOCIATED PRESS, Jan 25, 1985, at 8b.

⁸⁰ Editors, *The Tragedy of Gilbert Gauthé*, 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 Gauthé litigation was the most extensively researched and the most prominently featured.⁸⁸ And, as we have seen, the version of the Gauthé case in the news media was that of the plaintiffs. Thus, the plaintiffs' framing of clergy sexual abuse in the Gauthé 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 Gauthé 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 Gauthé litigation, quoting the *National Catholic Reporter* editorial emphasizing the institutional failure

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 Gauthé 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 Gauthé 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 Gauthé's individual actions.⁹¹ In its July 1 issue, *Time Magazine* published a short item on the Gauthé 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 Gauthé 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 Gauthé case in 1985.⁹⁴ The Gauthé 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.

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 “I-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 Gauthé, 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

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

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

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

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

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

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

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 Gauthier’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

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

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

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.

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

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 Gauthé's victims and his subsequent criminal indictment, however, generated enough stories to make the Gauthé 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 Gauthé 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 Gauthé case Bob Wright, suggested that the Gatal parents were partly responsible for the damage suffered by their son by subjecting him to a

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

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 Gauthé 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

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

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

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 Gauthier’s behavior as a parish priest, even after he knew of Gauthier’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

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.

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. DOECKI, *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 Gauthé 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 Gauthé 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 Gauthé 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

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

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

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

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.washingtonpost.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.