

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

ii. *Media Coverage*

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

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

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

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

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

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

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

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

Beyond media exposure, another measure of public awareness and concern is letters to the editor. Table 2 (found in Appendix 2) presents the number of letters to the editor concerning clergy sexual abuse in these same publications and period as Table 1.²³⁸ Again, one finds sudden increases in 1992 and 2002, although they are less dramatic than increases in the volume of news stories in most cases. The volume of letters in 2002 is especially notable: the *New York Times* (89), *Boston Globe* (75), *Los Angeles Times* (42), *St. Louis Post Dispatch* (60), and the *Chicago Tribune* (38).

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

²³⁵ JENKINS, *supra* note 6, at 74.

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

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

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

verdicts against dioceses in 1989 and 1998.²³⁹ Anecdotal evidence from interviews with attorneys, Church officials, and victim advocates suggests that the media attention focused on the Gauthé, Porter, and Geoghan cases sparked increases in claims against dioceses and that there was active litigation in the periods between the Gauthé and Porter cases and the Porter and Geoghan cases.²⁴⁰

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

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

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

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

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

²⁴² BIRKLAND, *supra* note 222, at 22–27.

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

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

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

b. Catholic Laity

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

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

i. Survey Data

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

²⁴⁴ Rubino Interview, *supra* note 17.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ii. *Media Coverage*

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

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

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

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

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

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

A sense of the volume of Catholic media coverage since 1984 can be obtained by tracking the number of articles on clergy sex abuse listed in the *Catholic Periodical and Literature Index* between 1983 and 2004.²⁶² Sixty-four Catholic periodicals listed in the index published 1130 stories on clergy sexual abuse during this period. The volume of stories increased dramatically (125%) in 1993 to fifty-four stories and even more so (2460%) in 2002 to 512 stories, with an additional increase (81%) in 1998 to forty-nine stories, rising to sixty-six stories (thirty-three of which were published in the *National Catholic Reporter*) in 1999. These data are presented in Table 3 (found in Appendix 3) and displayed graphically in Chart 2 (found in Appendix 5).²⁶³ Again, two of the peaks in news volume coincide with the Porter and Geoghan litigation. (The third peak coincides with another well publicized case against Father Rudolf Kos and the Dallas archdiocese in 1997).²⁶⁴

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

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

²⁶² For an explanation of methodology, see Appendix 3.

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

²⁶⁴ See *supra* note 239.

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

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

c. Victims, Lawyers, and Activists

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

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

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

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

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

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

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

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

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

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

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

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

Following the Geoghan case, victim reports of abuse skyrocketed. According to data from a study commissioned by the USCCB, 234 allegations were reported to dioceses in 2001. In 2002, that number increased to 3399.²⁸¹ The Geoghan case unleashed a tidal wave of litigation affecting dioceses across the country. In 2002, the Boston

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

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

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

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

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

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

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

archdiocese settled claims with eighty-six Geoghan victims for \$10 million, and a year later the archdiocese settled an additional 554 claims for \$85 million.²⁸² Dioceses in Portland, Spokane and Tucson filed for bankruptcy in the face of overwhelming claims.²⁸³ Hardest hit was California. In 2003 when the California state legislature suspended the statute of limitations on child sexual abuse claims for a one-year period, a flood of litigation began. Lifting the statute of limitations, combined with the lack of any charitable damage cap like that in Massachusetts, led to the filing of over 850 civil claims in California—more than 560 of them against the Archdiocese of Los Angeles involving over 200 priests and Church officials.²⁸⁴ In January 2005, the Diocese of Orange, California, settled with eighty-seven victims for \$100 million—exceeding the \$85 million settlement in Boston in 2003.²⁸⁵ Settlement talks in Los Angeles are ongoing and many claims are currently headed for trial.²⁸⁶

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

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

²⁸³ See Davis, *supra* note 8, at 14.

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

²⁸⁵ Griffin, *supra* note 284.

²⁸⁶ Guccione & Garvey, *supra* note 284.

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

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

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

²⁹⁰ Voice of the Faithful, *Highlights from the “Response of the Faithful” Convention*, <http://www.votf.org/Convention/highlights.html> (last visited Oct. 5, 2006).

2. Church Policy Agendas

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

a. The Bishops

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

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

In 2001, the USCCB was created out of a merger between the United States Catholic Conference (USCC) and the National Conference of Catholic Bishops (NCCB), both founded in 1966.²⁹² The NCCB was also a membership organization of Bishops created to coordinate their activities nationwide. The USCCB, like the NCCB before it, holds semi-annual meetings every June and November and has various committees that meet throughout the year.

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

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

²⁹² *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³⁰¹ See *id.* at 423–28.

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

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

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

b. The Vatican

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

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

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

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

³⁰⁴ *Id.*

³⁰⁵ *Id.* at 190, 210.

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

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

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

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

c. The Priesthood

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

Clergy sexual abuse has also been prominent on the agenda of the National Federation of Priests Councils (NFPC), a national organization of priests founded in 1968.³¹³ At national conventions and regional convocations, former NFPC president, Father Bob Silva, often discussed the problem. At the organization's 2003 fall convocation in Cincinnati, he addressed "how priests are coping with the scandal."³¹⁴ Following the public release of the USCCB national survey of the problem in 2004, he issued a public statement calling it "downright scandalous" and said that it "shows the failure of a system of silence and secrecy that allowed such abuse to take place."³¹⁵ At his address to the 2005 annual convention in Portland, Oregon, he listed clergy sexual abuse sixth in a list of eight issues on the "agenda for the priests of the United States in the circumstances of

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

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

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

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

³¹² *Id.* at 8.

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

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

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

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

3. *Government Policy Agendas*

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

a. *Law Enforcement*

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

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

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

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

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

³¹⁸ See BERRY, *supra* note 1, at 25.

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

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

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

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

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

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

³²¹ *Id.* at 49.

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

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

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

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

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

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

³²⁴ *Id.* at 197–98.

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

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

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

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

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

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

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

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

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

³³⁰ *Id.* at cover letter 2, i–ii.

³³¹ *Id.* at 74–76.

³³² *Id.* at cover letter 2–3.

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

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

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

b. Legislatures

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

B. *Shaping Policy Alternatives*

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

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

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

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

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

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

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

1. *Church Policies*

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

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

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

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

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

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

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

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

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

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

³⁴³ NCCB Establishes Committee on Sexual Abuse, *supra* note 296, at 105 (emphasis added).

³⁴⁴ FRANCE, *supra* note 28, at 231.

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

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

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

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

2. Government Policies

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

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

³⁴⁶ U.S. CONFERENCE OF CATHOLIC BISHOPS, CHARTER FOR THE PROTECTION OF CHILDREN AND YOUNG PEOPLE, pmb1. (2002), available at <http://www.usccb.org/ocyp/charter.shtml> (emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³⁵⁴ *Id.* at 338.

³⁵⁵ *Id.*

³⁵⁶ *Id.*

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

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

V. CONCLUSION: VIEWING TORT LITIGATION AS A POLICY VENUE

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

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

³⁵⁷ *Id.* at 342.

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

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

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

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

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

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

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

APPENDICES

APPENDIX 1:
NEWSPAPER AND MAGAZINE ARTICLES (TABLE 1)

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

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

Table 1. Newspaper & Magazine Articles

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

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

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

* LA Times coverage begins January 1, 1985.

** Chicago Tribune coverage begins January 1, 1985.

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

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

APPENDIX 2:
LETTERS TO THE EDITOR (TABLE 2)

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

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

* LA Times coverage begins January 1, 1985.

** Chicago Tribune coverage begins January 1, 1985.

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

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

APPENDIX 3:
ARTICLES IN CATHOLIC PERIODICALS (TABLE 3)

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

Table 3. Articles in Catholic Periodicals

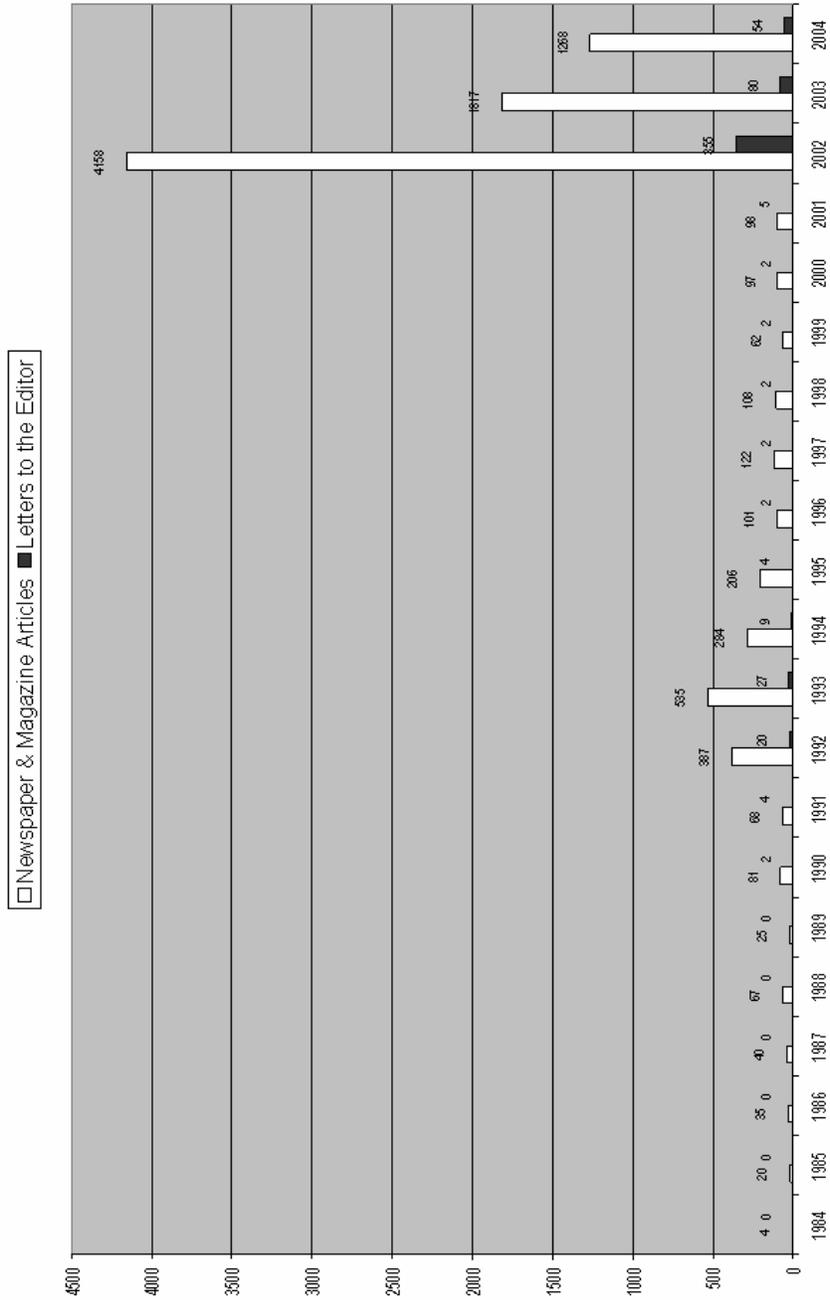
	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	
Aeta Apostolicae Sedis	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
America	0	0	0	0	0	1	0	0	4	5	3	0	0	0	0	2	2	1	47	7	5	
Amer. Catholic Studies	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Amer. Catholic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

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

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

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

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



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

