

**FRAMING CLERGY SEXUAL ABUSE AS AN
INSTITUTIONAL FAILURE: HOW TORT LITIGATION
INFLUENCES MEDIA COVERAGE**

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Tort litigation against the Catholic Church is largely responsible for the widespread understanding of clergy sexual abuse as an institutional failure on the part of Church officials.¹ I have argued elsewhere that by framing clergy sexual abuse in terms of institutional failure, uncovering information about the nature and scope of the problem, and placing it on the agendas of Church

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1. Portions of this essay were previously published in Timothy D. Lytton, *Clergy Sexual Abuse Litigation: The Policymaking Role of Tort Law*, 39 CONN. L. REV. 809 (2007) [hereinafter Lytton, *Clergy Sexual Abuse Litigation*] and Timothy D. Lytton, *Using Tort Litigation to Enhance Regulatory Policymaking: Evaluating Climate-Change Litigation in Light of Lessons from Gun-Industry and Clergy-Sexual-Abuse Lawsuits*, 86 TEX. L. REV. 1837 (2008) [hereinafter Lytton, *Using Tort Litigation to Enhance Regulatory Policymaking*]. For a more complete analysis of how tort litigation enhanced policymaking responses to clergy sexual abuse, see TIMOTHY D. LYTTON, *HOLDING BISHOPS ACCOUNTABLE: HOW LAWSUITS HELPED THE CATHOLIC CHURCH CONFRONT CLERGY SEXUAL ABUSE* (2008) [hereinafter LYTTON, *HOLDING BISHOPS ACCOUNTABLE*].

leaders and government officials, tort litigation enhanced policymaking efforts to address the problem.² This essay focuses on three features of tort litigation that explain why it exerted such a powerful influence on the framing of clergy sexual abuse. In the interest of brevity, I offer only a summary analysis and provide examples of the types of empirical evidence that illustrate this influence.³ I begin with a brief introduction to several leading clergy sexual abuse cases that I will draw upon in the analysis that follows,⁴ and I end with a brief discussion of two implications of the analysis, one for the current controversy over tort reform and the other for our understanding of child sexual abuse in institutional settings.⁵

I. BACKGROUND: THREE LEADING CLERGY SEXUAL ABUSE CASES

Clergy sexual abuse litigation includes thousands of lawsuits across the country, spanning more than twenty-five years from the mid-1980s to the present. I will focus here on three cases that individually played significant roles within the history of clergy sexual abuse litigation and that can be used to illustrate the influence of this litigation on the framing of clergy sexual abuse.⁶

In the summer of 1983, it came to light that Father Gilbert Gauthé had sexually abused dozens of children in a small parish near Lafayette, Louisiana, where he served as the local priest.⁷ One family—the Gastals—refused the diocese’s offer of a confidential settlement and, wanting to speak out publicly, filed suit against Gauthé and his superiors in 1984.⁸ Alleging theories of respondeat superior and negligent supervision, the Gastals won a \$1.25 million verdict against the diocese.⁹ The diocese appealed, and the parties

2. See generally LYTTON, HOLDING BISHOPS ACCOUNTABLE, *supra* note 1; Lytton, *Using Tort Litigation to Enhance Regulatory Policymaking*, *supra* note 1.

3. For a more comprehensive analysis and more extensive evidence, see LYTTON, HOLDING BISHOPS ACCOUNTABLE, *supra* note 1, at 82–107.

4. See *infra* Part I.

5. See *infra* Part III.

6. For a more complete history, see LYTTON, HOLDING BISHOPS ACCOUNTABLE, *supra* note 1, at 14–40. See also LEON J. PODLES, SACRILEGE: SEXUAL ABUSE IN THE CHURCH (2008) (exploring the deep roots of sexual-abuse in the Catholic Church).

7. JASON BERRY, LEAD US NOT INTO TEMPTATION: CATHOLIC PRIESTS AND THE SEXUAL ABUSE OF CHILDREN 14–15 (1992).

8. *Id.* at 23–26.

9. Petition for Damages ¶ 21–22, *Gastal v. Hannan*, No. 84-48175 (La. 15th Dist. June 27, 1984) (on file with Author); BERRY, *supra* note 7, at 163.

eventually settled for \$1 million.¹⁰

“Prior to the Gauthé case, incidents of clergy sexual abuse were viewed as rare and isolated occurrences, and they attracted limited local press coverage or, more often, no press coverage at all.”¹¹ The Gastals’ civil suit against Gauthé and the Diocese of Lafayette was the first case of clergy sexual abuse to attract national attention and, in conjunction with concurrent cases around the country, the suit created the impression of a pervasive, nationwide problem.¹² The Gauthé litigation inspired victims around the country to come forward and, in increasing numbers, to file lawsuits.¹³ It also caught the attention of bishops, who began for the first time as a group to discuss the problem and explore ways to address it.¹⁴

In 1992, the Diocese of Fall River, Massachusetts, settled claims of sexual abuse by Father James Porter with sixty-eight victims for an undisclosed sum, reported in *The Boston Globe* as “at least \$5 million.”¹⁵ To date, this was the largest group settlement of sexual abuse claims against the Church.¹⁶ But it was not the end of the story. The diocese subsequently settled another thirty-three claims for undisclosed sums.¹⁷ The total number of Porter’s victims is estimated at well over 100—some put the total closer to 200—abused over a fourteen-year period from 1960 to 1974, in five parish assignments in Massachusetts, Minnesota, New Mexico, and Texas.¹⁸

The Porter case attracted widespread media attention, led to a dramatic increase in the number of victims willing to come

10. BERRY, *supra* note 7, at 168. For a detailed account of the case, see BERRY, *supra* note 7, at 147–68; J. MINOS SIMON, *LAW IN THE CAJUN NATION* 134–63 (1993).

11. LYTTON, *HOLDING BISHOPS ACCOUNTABLE*, *supra* note 1, at 13.

12. *See id.* at 14.

13. *See id.* at 15–18 (chanceries received 328 abuse reports in the five years prior to the Gauthé litigation and 817 abuse reports in the five years following Gauthé); *see also id.* at 49–54 (showing empirical evidence of a dramatic increase in such lawsuits after 1984).

14. *Id.* at 14–17.

15. Stephen Kurkjian, *68 Victims Settle Porter Case with Catholic Church*, *THE BOSTON GLOBE*, Dec. 4, 1992, at 1.

16. *Id.*

17. Survivor Connections, Frank L. Fitzpatrick vs. ex-priest James R. Porter Brief Chronology, through 1993, <http://survivorconnections/llfvsporter.html> (last visited Sept. 19, 2009).

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

forward, and stimulated further litigation against the Church. Parallels with the Gauthe case were inescapable. The Porter affair fueled perceptions among victims and plaintiffs' attorneys of "an organized conspiracy among the bishops to protect child molesters and to conceal the widespread problem of clergy sexual abuse within the Church."¹⁹ For their part, Church officials pledged to formulate more effective policies to prevent child sexual abuse by clergy and to respond more openly when it occurred.²⁰

In 2002, litigation against the Boston archdiocese for sexual abuse committed by Father John Geoghan became a symbol for the clergy sexual abuse scandal. The archdiocese had quietly settled the claims of over fifty of Geoghan's victims in the late 1990s for over \$10 million.²¹ In 2002, the archdiocese entered into a highly publicized settlement with an additional eighty-six victims for another \$10 million.²²

What distinguished the Geoghan case from its predecessors was the astounding scope of the abuse and the cover-up. In the end, 200 Geoghan victims, molested over a thirty-three year period, filed claims, and experts estimate that the total number of Geoghan's victims could be as high as 800.²³ Diocesan personnel files show that Church officials were aware of Geoghan's misconduct, failed to report it or notify parishioners, and repeatedly reassigned him to positions where he would have access to children.²⁴ The cover up implicated no fewer than six bishops and ultimately forced Cardinal Bernard Law, the highly influential Archbishop of Boston, to step down and seek refuge in Rome.²⁵ "The wave of litigation initiated by the Geoghan affair turned out to be a tidal wave that swept the country from Boston to Los Angeles."²⁶

19. LYTTON, HOLDING BISHOPS ACCOUNTABLE, *supra* note 1, at 25.

20. *Id.* at 24–25.

21. Lytton, *Using Tort Litigation to Enhance Regulatory Policymaking*, *supra* note 1, at 1851.

22. Walter V. Robinson, *Diocese, Plaintiffs Settle Suit: 86 Geoghan Cases to Cost up to \$30M*, THE BOSTON GLOBE, Mar. 12, 2002, at A1; Walter V. Robinson & Michael Rezendez, *Geoghan Victims Agree to \$10M Settlement*, THE BOSTON GLOBE, Sept. 19, 2002, at A1.

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

24. *Id.* at x, 3, 8, 14, 23, 26.

25. *Id.* at x, 3, 14, 22, 24.

26. Lytton, *Using Tort Litigation to Enhance Regulatory Policymaking*, *supra* note 1, at 1851.

II. EXPLAINING THE INFLUENCE OF TORT LITIGATION ON THE FRAMING OF CLERGY SEXUAL ABUSE

Since the Gauthé case, different parties have attempted to frame clergy sexual abuse within the Catholic Church in a variety of ways.²⁷ These include:

- *Blame the priest:* Clergy sexual abuse is a matter of individual culpability on the part of a few “bad apples” within the priesthood.
- *Blame the press:* Anti-Catholic media bias has unfairly singled out the Catholic Church for coverage of child sexual abuse, which is just as or more prevalent in other institutions, such as schools and youth programs.
- *Blame the legal system:* The problem of clergy sexual abuse has been blown out of proportion by money-hungry plaintiffs’ attorneys who file suit in order to profit from the misfortunes of their clients and by defense attorneys who advised bishops to deny legitimate abuse allegations for fear of liability exposure and aggressively defend tort claims instead of settling them.
- *Blame the parents:* The parents of abuse victims are to blame for entrusting their children to the care of priests about whom they did not know enough and for re-victimizing their children by dragging them through the litigation process.
- *Blame the dominant culture:* An over-sexed popular culture and tolerance of homosexuality within the Church have corroded the moral teachings of the Church and undermined clerical celibacy.
- *Blame the bishops:* The real problem is not so much the occurrence of sexual abuse by priests but rather the widespread and systematic failure of Catholic Church officials to properly investigate allegations of child sexual abuse, to report credible allegations to criminal justice authorities, and to remove from ministry priests whom they knew posed a threat to children.

The last of these—the frame of institutional failure on the part of bishops—was advanced by plaintiffs’ attorneys in lawsuits against the Church.²⁸ It became the dominant understanding of clergy

27. For a more detailed account of the alternative frames for clergy sexual abuse, see Lytton, *Clergy Sexual Abuse Litigation*, *supra* note 1, at 841–47 and LYTTON, *HOLDING BISHOPS ACCOUNTABLE*, *supra* note 1, at 101–06.

28. See Lytton, *Using Tort Litigation to Enhance Regulatory Policy Making*, *supra* note 1, at 1853–57.

sexual abuse within the Church among the public and policymakers because it was adopted by the news media.²⁹ Clergy sexual abuse illustrates in a particularly clear manner how tort litigation can influence media framing of an issue. I will focus on three features of tort litigation that explain this influence.

A. Correspondence between the Strategic Considerations that Shape Tort Claims and the Criteria of Newsworthiness

The influence of tort litigation on media framing can be explained in part by the close correspondence between the strategic considerations that shape the framing of tort claims and the criteria of newsworthiness upon which journalists rely in constructing news that will attract a large audience. Consider first the framing of tort claims. Most tort causes of action require that plaintiffs frame their claims in terms of injury caused by wrongdoing. The need to convince judges and jurors of the claim's merit leads plaintiffs to dramatize this basic narrative structure as a morality tale about right and wrong.³⁰ In addition, the value of plaintiffs' claims are enhanced by portraying injuries as severe and wrongdoing as egregious, and one's chances of recovery are increased by naming defendants capable of satisfying judgments, who are often well-known figures or institutions.³¹ Thus, plaintiffs' attorneys frequently frame claims in terms of the familiar story of an innocent victim injured by uncaring and unaccountable corporate officers.

News reporting, like filing a tort claim, is also an act of framing.³² Reporters, editors, publishers, and broadcasters frame

29. Media scholars have suggested that media coverage of an issue offers a proxy for public awareness of and concern about an issue. See SHANTO IYENGAR & DONALD R. KINDER, NEWS THAT MATTERS: TELEVISION AND AMERICAN OPINION 16 (1987); John Bohte et al., *One Voice Among Many: The Supreme Court's Influence on Attentiveness to Issues in the United States, 1947-1992*, in LEVERAGING THE LAW: USING THE COURTS TO ACHIEVE SOCIAL CHANGE 23-24 (David A. Schultz ed., 1998). Based on these studies, I assume for the purposes of this analysis that media coverage both influences and reflects the way that issues are framed by the public and policymakers.

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

31. Lytton, *Clergy Sexual Abuse Litigation*, *supra* note 1, at 820.

32. For an analysis of news as a frame, see TODD GITLIN, THE WHOLE WORLD IS WATCHING: MASS MEDIA IN THE MAKING & UNMAKING OF THE NEW LEFT 6-7, 49-51 (1980); GAYE TUCHMAN, MAKING NEWS: A STUDY IN THE CONSTRUCTION OF REALITY 1,

events, issues, and people in order to create news stories that will attract an audience. Journalists refer to such stories as being “newsworthy.” A story is more likely to be considered newsworthy if it can be framed as a dramatic narrative that involves active characters and exciting events.³³ The magnitude of an event and the extent of its impact also influence its newsworthiness.³⁴ A narrative with clear implications and straightforward moral lessons is considered more newsworthy than a narrative open to many different interpretations.³⁵ The news media favor stories that are set in frames that are culturally familiar to readers.³⁶ The familiarity of the frame allows readers to understand and relate to a news story without the need for extensive background information. At the same time, a story that portrays the unexpected or unusual within familiar frames is considered more newsworthy.³⁷ Events that are surprising attract more attention than those that are routine. And finally, a story about elites or well-known figures is considered more newsworthy.³⁸ Newswriters use these criteria in both selecting and shaping news stories.³⁹

92 (1978).

33. HERBERT J. GANS, *DECIDING WHAT’S NEWS: A STUDY OF CBS EVENING NEWS, NBC NIGHTLY NEWS, NEWSWEEK, AND TIME* 171–72 (25th anniv. ed. 2004); GITLIN, *supra* note 32, at 28; WILLIAM HALTOM, *REPORTING ON THE COURTS: HOW THE MASS MEDIA COVER JUDICIAL ACTIONS* 186–87 (1998); MICHAEL SCHUDSON, *THE SOCIOLOGY OF NEWS* 48, 178–79 (2003); Graham Murdock, *Political Deviance: The Press Presentation of a Militant Mass Demonstration*, in *THE MANUFACTURE OF NEWS: SOCIAL PROBLEMS, DEVIANCE AND THE MASS MEDIA* 165 (Stanley Cohen & Jock Young eds., 1973).

34. GANS, *supra* note 33, at 151; Johan Galtung & Mari Ruge, *Structuring and Selecting News*, in *THE MANUFACTURE OF NEWS: SOCIAL PROBLEMS, DEVIANCE AND THE MASS MEDIA* 54 (Stanley Cohen & Jock Young eds., rev. ed. 1981).

35. Galtung & Ruge, *supra* note 34, at 54.

36. *Id.*; Murdock, *supra* note 33, at 164–65.

37. Galtung & Ruge, *supra* note 34, at 54.

38. *Id.* at 56.

39. *Id.* at 60–61.

Figure 1

Strategic Considerations that Shape Tort Claims	Criteria of Newsworthiness
<ul style="list-style-type: none"> • Narrative of wrongdoing, causation & injury • Egregious wrongdoing & severe injury • Clear right & wrong • Familiar story • Well known or institutional defendants 	<ul style="list-style-type: none"> • Dramatic narrative • Magnitude • Clear moral lesson • Cultural familiarity • Elites

As Figure 1 illustrates, there is a correspondence between the strategic considerations that shape the framing of tort claims and the criteria of newsworthiness upon which journalists rely in constructing the news. This should come as no great surprise. After all, even though they work in very different institutional settings, both lawyers and journalists are in the business of constructing persuasive frames for audiences that include both elites and members of the general public.

The *Gauthe* case offers a good example of this correspondence between litigation and news production. In that case, the complaint named as defendants:

Archbishop Philip M. Hannan; Bishop Gerald L. Frey; Vicar General Richard Von Puhl Mouton; Monsignor Harry E. Benefiel; Monsignor H. A. Larroque; The Archdiocese Of New Orleans, D/B/A The Roman Catholic Church; The Roman Catholic Church for the Diocese Of Lafayette; The Roman Catholic Church; St. John Parish Representing The Communities Of Esther And Henry, Vermillion Parish, Louisiana; Certain Underwriters at Lloyd's of London; Interstate Insurance Company, and Father Gilbert Gauthe.

By listing first well-known Church officials and institutions, including “The Roman Catholic Church,” the title of the case began the process of framing the sexual abuse committed by Gauthe as an institutional failure.⁴⁰ The complaint alleged that Gauthe “recruited, enticed and coerced numerous young children

40. Case file cover page, *Gastal v. Interstate Ins. Co.*, No. 84-48175 (La. 15th Dist. Jun. 27, 1984) (on file with Author).

of the congregation of the aforementioned Parishes to engage in sex initiation rings under the guise of religious initiation rites, training, and tutelage.”⁴¹ Against the background of highly publicized allegations around the country in the early 1980s of childcare workers running child sex rings and engaging in ritual child sex abuse, these allegations would have sounded familiar to the judge as well as many, if not most, prospective jurors.⁴² The most detailed allegations were against Church officials, whom the plaintiffs asserted “made possible” the abuse by Gauthe by failing to remove him from ministry or inform parishioners even after the officials knew of his repeated sexual abuse of children.⁴³ A supplemental complaint filed by plaintiffs’ attorney, J. Minos Simon, further alleged that “[C]hurch officials made a studied effort to conceal and withhold . . . information concerning Gauthe’s misconduct from members and families of the [C]hurch,” and that Church officials, “having full knowledge . . . of his tendencies to sexually abuse young children,” moved him from one parish to another. In doing so, Simon’s supplemental complaint concluded that Church officials “knowingly created an environment which operated to maximize opportunities for Gauthe to further wantonly sexually abuse innocent young children.”⁴⁴ The complaint referred to Church officials as “corporate officers,” undermining feelings of personal allegiance to them and making the allegations sound like a typical story of corporate malfeasance and cover-up.⁴⁵ Thus, the plaintiffs’ complaint offers a culturally familiar dramatic narrative involving elites with a clear moral lesson—institutional cover-up by high-ranking Church officials of ritual child sexual abuse.

Examples of media coverage of the Gauthe case reflect the media’s adoption of this frame of institutional failure. In the first print coverage of the Gauthe litigation, published by a local weekly,

41. Petition for Damages, *supra* note 9, ¶10.

42. DAVID HECHLER, *THE BATTLE AND THE BACKLASH: THE CHILD SEXUAL ABUSE WAR* xiii-xiv (1988) (on sex rings); PHILIP JENKINS, *PEDOPHILES AND PRIESTS: ANATOMY OF A CONTEMPORARY CRISIS* 141-42 (1996) (on ritual abuse). See generally DEBBIE NATHAN & MICHAEL SNEDEKER, *SATAN’S SILENCE: RITUAL ABUSE AND THE MAKING OF A MODERN AMERICAN WITCH HUNT* (1995) (examining, analyzing, and discussing the childcare worker sex ring claims of the 1980s).

43. Petition for Damages, *supra* note 9, ¶ 23.

44. First Supplemental and Amended Petition ¶ 5, *Gastal v. Hannan*, No. 84-48175-A (La. 15th Dist. Oct. 25, 1984) (on file with William Mitchell Law Review).

45. Petition for Damages, *supra* note 9, ¶ 23(l)-(m).

the *Times of Acadiana* in 1984, reporter Barry Yeoman asserted that “[t]he most interesting aspect of the Gauthe case stands to be the church’s role in the civil case.”⁴⁶ The second print article, by reporter John Pope, appeared on the front page of the regional paper, the *New Orleans Times-Picayune* under the headline “Church Knew of Abuses, Sex Case Depositions Show.”⁴⁷ The first national coverage appeared in a front-page editorial in the *National Catholic Reporter* (NCR), which asserted that

[t]he tragedy, and scandal, as NCR sees it, is not only with the actions of the individual priests—these are serious enough—but with church structures in which bishops, chanceries and seminaries fail to respond to complaints, or even engage in cover-ups; sadly, keeping the affair quiet has usually assumed greater importance than any possible effect on the victims themselves.⁴⁸

In all of these examples, media coverage emphasizes the primacy of institutional failure on the part of Church officials over the individual culpability of Gauthe. The plaintiffs’ framing of clergy sexual abuse in the Gauthe case as a problem of institutional failure came to dominate local, regional, and national press coverage of the case and, eventually, the whole nationwide phenomenon of clergy sexual abuse.

The focus on Church officials’ institutional responsibility rather than on the individual culpability of abusers remained a dominant theme in later media coverage. For example, one of the first stories in *The Boston Globe* on the Porter case was entitled “Some Fault Church on Sex Abuse by Priests.”⁴⁹ Television coverage of the Porter case also emphasized the frame of the Church’s institutional responsibility. In February 1993, on ABC’s *Nightline*, host Ted Koppel introduced the broadcast by stating: “For years, the Church looked the other way.”⁵⁰ In March 1993, the CBS show *60 Minutes* broadcast a segment on clergy sexual abuse in the Archdiocese of New Mexico under the title: “The Archbishop:

46. Barry Yeoman, *Is Nothing Sacred?*, *TIMES OF ACADIANA*, Nov. 1, 1984, at 21.

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

48. Editorial, *Priest child abuse cases victimizing families; bishops lack policy response*, *NAT’L CATH. REP.* (Kansas City, MO), June 7, 1985, at 1, 4.

49. Alison Bass, *Some Fault Church on Sex Abuse by Priests*, *THE BOSTON GLOBE*, May 11, 1992, at 1.

50. *Nightline: Child Sexual Abuse in the Catholic Church* (ABC television broadcast Feb. 24, 1993).

Coverup by Roman Catholic Church of Pedophilia by its Priests.”⁵¹ Again, the focus in all of these examples is on the failure of Church officials rather than on the offending priest.

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

Now, as Geoghan faces the first of two criminal trials next week, details about his sexual compulsion are likely to be overshadowed by a question that many Catholics find even more troubling: Why did it take a succession of three cardinals and many bishops thirty-four years to place children out of Geoghan’s reach?⁵²

Television coverage was also dominated by the theme of the Church’s institutional responsibility. On a June *Nightline* program, Koppel lectured Minneapolis Archbishop Harry Flynn, chairman of the USCCB’s ad hoc committee on sexual abuse, about the feelings of American Catholics about the scandal:

The disappointment, Your Excellency, if I may suggest, it seems to be not so much about the behavior of the priests themselves—of course there is great anger about that—but about the failure of the establishment of the American Catholic—of the Catholic Church in America to do something about it.⁵³

To which the Archbishop replied, “And I would agree 100 percent with that.”⁵⁴

Aside from this anecdotal evidence, there is some statistical support for the predominance of the institutional responsibility frame. A LexisNexis search of news stories in *The New York Times* on clergy sexual abuse in 1993, during intensive coverage of a number of cases around the country sparked by the Porter case, found reference to the role of Bishops in twenty-four of thirty-two articles (75%).⁵⁵ A similar search for 2002 during media coverage of the

51. *60 Minutes: The Archbishop; Coverup by Roman Catholic Church of Pedophilia by its Priests* (CBS television broadcast Mar. 21, 1993).

52. Michael Rezendes, *Church Allowed Abuse by Priest for Years*, THE BOSTON GLOBE, Jan. 6, 2002, at A1.

53. *Nightline: The Sins of the Fathers: A National Accounting* (ABC television broadcast June 11, 2002).

54. *Id.*

55. I used the search terms “date is 1993 and (priest or clergy w/15 abus! or moles!) and (bishop or archbishop or cardinal) and not substance or alcohol or drug or military or ‘human rights’ or spouse or husband or army or guerillas or

Geoghan and other cases found reference to the role of Bishops in 488 of 604 articles (81%).⁵⁶

B. Litigation Documents as Credible News Sources

A second reason why plaintiffs' frame of institutional failure was adopted by media coverage of clergy sexual abuse is that journalists relied on litigation documents as news sources.⁵⁷ Journalists rely on sources to provide information and to promote the credibility of their stories. Sources that are themselves perceived as credible are especially attractive to journalists. Hence, news stories commonly quote official documents.⁵⁸

Media coverage of clergy sexual abuse relied heavily on litigation documents as primary sources for news stories. One regularly finds news stories based on pleadings, depositions, discovery documents, and trial transcripts. Reporter Barry Yeoman's initial print coverage of the Gauthe litigation in the *Times of Acadiana* was based almost entirely on the plaintiffs' pleadings. In an interview, Yeoman recalled that his coverage was "written almost entirely from pleadings as a way to give the community a sense that we were just reporting the facts, rather than inflaming passions."⁵⁹ Reporter John Pope's subsequent story in the *New Orleans Times Picayune* was based on and quoted extensively from depositions that were filed by plaintiffs' attorney Simon precisely in order to put them into the public record and make them accessible to the press.⁶⁰ In an interview, Pope suggested that he was merely

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

56. See *supra* note 55 (determined by using the same search methodology but changing the year to 2002).

57. See, e.g., Lytton, *Clergy Sexual Abuse Litigation*, *supra* note 1, at 835 (citing Pope, *supra* note 47) (describing journalist's use of depositions taken by plaintiffs' counsel).

58. See SCHUDSON, *supra* note 33, at 54 (stating that "news is . . . official and dependent on legitimate public sources . . ."); see generally, TUCHMAN, *supra* note 32, at 84–90 (discussing how sources and facts are used by reporters to create credibility for assertions).

59. Telephone Interview with Barry Yeoman, Writer, *Times of Acadiana*, in Albany, N.Y. (Jan. 12, 2005).

60. Lytton, *Clergy Sexual Abuse Litigation*, *supra* note 1, at 835 (citing Pope, *supra* note 47); see also SIMON, *supra* note 10, at 146 (describing how plaintiff's

reporting what he found in the public record. You just go out and “see what you find,” he explained, “you don’t go into a story with an *idée fixe*.”⁶¹ Of his heavy reliance on the depositions, he said: “it is sworn testimony, testimony under oath, not just someone on the street talking about vague details. You want information that you feel you can take to the bank.”⁶²

One finds frequent reliance on litigation documents and proceedings in later coverage as well. For example, *The Boston Globe*’s first article on the Porter case relied heavily on a demand letter written to the diocese by plaintiffs’ attorney, Roderick MacLeish, Jr., on behalf of a group of nine victims.⁶³ *The Boston Globe*’s Pulitzer Prize-winning coverage of clergy sexual abuse in 2002 was based largely on sealed court files in the Geoghan case that the paper successfully litigated to have unsealed.⁶⁴

A LexisNexis search of news stories in *The New York Times* on clergy sexual abuse in 1993, found explicit reference to litigation documents or proceedings in 22 out of 44 articles (50%).⁶⁵ A similar search for 2002 found explicit mention of litigation documents or proceedings in 312 out of 692 articles (45%).⁶⁶ These figures under-represent reliance on litigation as a news source because they include only stories that *explicitly* mention litigation documents or proceedings.

The leading books on the clergy sex abuse scandal—all by

counsel put the victim’s deposition into the public record in order to get other victims from the country to come forward with other allegations of clergy sexual abuse).

61. Lytton, *Clergy Sexual Abuse Litigation*, *supra* note 1, at 835 (quoting Telephone Interview with John Pope, Writer, *New Orleans Times Picayune*, in Albany, N.Y. (Jan. 6, 2005)).

62. *Id.*

63. Alison Bass, *Nine Allege Priest Abused Them, Threaten to Sue Church*, THE BOSTON GLOBE, May 8, 1992, at 1.

64. See INVESTIGATIVE STAFF OF THE BOSTON GLOBE, BETRAYAL, *supra* note 23, at 262.

65. I used the search terms “date is 1993 and (priest or clergy w/15 abus! or moles!) and (lawsuit! or plaintiff! or court! or pleading! or deposition! or testimon! or discovery or trial!) and not substance or alcohol or drug or military or “human rights” or spouse or husband or army or guerillas or labor” to generate the first figure and “date is 1993 and (priest or clergy w/15 abus! or moles!) and not substance or alcohol or drug or military or “human rights” or spouse or husband or army or guerillas or labor” to generate the second figure. For both, I did not count articles that appeared more than once in the search results (last searched Aug. 9, 2005).

66. I used the same search methodology as *supra* note 55, changing the year to 2002 (last searched Sept. 28, 2006).

journalists—also rely heavily on litigation documents. Jason Berry states in the introduction to *Lead Us Not Into Temptation*, “Civil lawsuits provided the documentation on most of the cases I wrote about.”⁶⁷ He calls these cases “the baseline on which I built my reporting,”⁶⁸ and discloses in the prologue, “My primary sources were transcripts of civil testimony given under oath by bishops and priests in lawsuits across the country.”⁶⁹ In their book *Gospel of Shame*, *New York Times* reporter Frank Bruni and freelance journalist Elinor Burkett acknowledge “J. Minos Simon, who actually let us take three fifty-pound boxes of his files to a hotel room for the weekend.”⁷⁰ The notes to their book suggest that they relied most heavily on news reports of the cases that they covered, which were themselves largely based on litigation documents.⁷¹ The Investigative Staff of *The Boston Globe*, who won a Pulitzer Prize for their coverage of the scandal, explains in the notes to their book *Betrayal* that they relied heavily “on a large number of Church documents filed in connection with criminal and civil court cases.”⁷² David France, who covered the story for *Newsweek* magazine, states in the notes to his book *Our Fathers*, “My key resource for this book was tens of thousands of pages of court documents . . . [especially] the extensive record of court depositions.”⁷³

C. *Litigation as an Unfolding Drama*

In the news production process, a news story with *continuity*, that unfolds over time and can be released in episodes, is considered more newsworthy.⁷⁴ Such an ongoing story is said in

67. JASON BERRY, *LEAD US NOT INTO TEMPTATION: CATHOLIC PRIESTS AND THE SEXUAL ABUSE OF CHILDREN* ix (2000).

68. BERRY, *supra* note 7, at 47.

69. BERRY, *supra* note 67, at xxii.

70. BURKETT & BRUNI, *supra* note 18, at viii.

71. *See, e.g.*, BURKETT & BRUNI, *supra* note 18, at 269 n.142.

72. THE INVESTIGATIVE STAFF OF THE BOSTON GLOBE, *supra* note 23, at 262. The *Globe*'s 2002 coverage was sparked by the filing of claims against Fr. Geoghan; *see* Michael Rezendes, *Scandal: The Boston Globe and Sexual Abuse in the Catholic Church, in SIN AGAINST THE INNOCENTS: SEXUAL ABUSE BY PRIESTS AND THE ROLE OF THE CATHOLIC CHURCH* 1, 4 (2004).

73. DAVID FRANCE, *OUR FATHERS: THE SECRET LIFE OF THE CATHOLIC CHURCH IN AN AGE OF SCANDAL* 599 (2004).

74. *See* SCHUDSON, *supra* note 33, at 180 (comparing one hit wonders with stories that generate subsequent articles). *Cf.* Galtung & Ruge, *supra* note 34, at 53 (explaining that a story chronicling the death of one soldier during a battle where

news jargon to “have legs.”⁷⁵ The protracted and dramatic nature of the litigation process lends litigation frames continuity and enhances their newsworthiness. This provides a third explanation for the influence of tort litigation on media coverage of clergy sexual abuse.

The litigation process gave the clergy sex abuse story legs because it generated a steady flow of litigation events that each provided new revelations and pegs for news stories. In the Gauthre litigation, for example, the filing of pleadings, the taking of depositions, hearings on motions, trial events, appeals, and settlements all gave rise to media stories.⁷⁶ In this manner, subsequent lawsuits like the Porter and Geoghan cases have supported ongoing coverage of clergy sexual abuse for over twenty-five years.

III. IMPLICATIONS FOR TORT REFORM AND CHILD SEXUAL ABUSE

Having highlighted three features of tort litigation that explain the dominance of plaintiffs’ framing of clergy sexual abuse as a problem of institutional failure in media coverage, I conclude with a brief mention of two implications of this analysis.

First, framing is one significant benefit of tort litigation that is underappreciated in the current debate over tort reform. Tort reform advocates argue that tort litigation is largely frivolous and wasteful and that it produces perverse regulatory outcomes.⁷⁷ They allege that rampant litigation and inflated jury awards constitute a major drain on society’s resources, and they assert that widespread fear of liability created by the tort system leads to the withdrawal of

many are killed would make little sense unless newspapers were published every minute).

75. See SCHUDSON, *supra* note 33, at 180.

76. See, e.g., Jason Berry, *Church Accepts Liability*, TIMES OF ACADIANA, July 18, 1985, at 16 (citing stipulation of church liability); David McCormick, *Church On Trial For Allegedly Harboring Priest in Sex Abuse Case*, ASSOCIATED PRESS, Feb. 3, 1986 (citing jury selection); David McCormick, *Mother: Faith Shattered After Son Molested by Priest*, ASSOCIATED PRESS, Feb. 4, 1986 (citing trial testimony); Dave Milner, *Decision Reached in Priest Sex Suit*, THE BATON ROUGE MORNING ADVOC., Feb. 8, 1986, at B1 (citing jury verdict); Pope, *supra* note 47, at A1 (citing depositions); Staff, *Sex Abuse Damage Trial Goes to Jury Today*, THE DAILY ADVERTISER (Lafayette, La.), Feb. 7, 1986 (citing submission to jury); Yeoman, *supra* note 46, at 17 (citing pleadings).

77. See CATHERINE CRIER, THE CASE AGAINST LAWYERS: HOW LAWYERS, POLITICIANS, AND BUREAUCRATS HAVE TURNED THE LAW INTO AN INSTRUMENT OF TYRANNY—AND WHAT WE AS CITIZENS HAVE TO DO ABOUT IT 60 (2002) (pointing out that twenty years passed before airbags were approved).

essential products and services and stifles safety innovation.⁷⁸ They suggest that the litigation process in particular—pleading, discovery, and trial—is an ineffective and inefficient means to achieve the purported goals of the tort system of compensating injury victims and deterring wrongful behavior.⁷⁹ As this analysis of clergy sexual abuse litigation has shown, however, the tort litigation process can highlight institutional failures that give rise to social problems and direct the attention of policymakers toward institutional reform. Before we undertake to curtail the litigation process, we would be wise to consider more carefully the ways in which it can promote better policymaking.

Second, and perhaps even more significant, clergy sexual abuse litigation against the Catholic Church has led to the understanding of child sexual abuse in other institutional settings as a problem of institutional failure. There is, perhaps, no better example of this than the Congressional page scandal in the fall of 2006.⁸⁰ On September 30, *The New York Times* ran a front page story below the fold entitled “Lawmaker Quits over E-Mail Sent to Teenage Pages” that reported Florida Congressman Mark Foley’s resignation in the face of reports that he had sent sexually explicit email messages to Congressional pages in 2005.⁸¹ Four days later,

78. *See id.* at 12 (positing that the decline of medical specialists is a consequence of medical malpractice insurance costs).

79. *See id.* at 21 (explaining that assumption of risk and contributory negligence are decreasing in prevalence while joint and several liability is increasing); PHILIP K. HOWARD, *THE COLLAPSE OF THE COMMON GOOD: HOW AMERICA’S LAWSUIT CULTURE UNDERMINES OUR FREEDOM* 57–62 (2001) (explaining the importance of judicial standards); PETER W. HUBER, *LIABILITY: THE LEGAL REVOLUTION AND ITS CONSEQUENCES* 11–14 (1988) (suggesting the new tort system will settle for a wealthy defendant when no careless defendant exists); *see also* WALTER K. OLSON, *THE RULE OF LAWYERS: HOW THE NEW LITIGATION ELITE THREATENS AMERICA’S RULE OF LAW* 295–97 (2003) (discussing the somewhat unfair retroactive laws targeting tobacco companies’ past practices). 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), by suggesting that litigation is a complement to public policy.

80. For an excellent analysis of the relationship between the clergy sexual abuse scandal and the Congressional page scandal, see Marci Hamilton, *Congressman Mark Foley’s Disgrace and Resignation: What Congress Should Have Learned—And Didn’t—From the Catholic Church Clergy Abuse Scandal*, Oct. 5, 2006, available at <http://writ.news.findlaw.com/hamilton/20061005.html>.

81. Kate Zernike & Abby Goodnough, *Lawmaker Quits over E-Mail Sent to*

the story made it to the top of the front page and was now about the failure of Speaker of the House Dennis Hastert to take action against Foley earlier.⁸² The headline, “Hastert Fights to Save His Job in Page Scandal,” reflects how easily a story, which prior to clergy sexual abuse litigation would have been confined to the misconduct of a single Congressman, was cast in the now familiar frame of institutional failure and managerial responsibility. The story continued inside the A-section with a large chart that detailed what Hastert knew and when he knew it. The Op-Ed page ran an essay by a former page, now a law professor, outlining institutional reforms to improve oversight of the page program.⁸³ For those who missed the obvious influence of the clergy sexual abuse scandal on the framing of the Congressional page scandal, the Sunday Week in Review section printed a cartoon depicting Hastert dressed as a bishop whispering to an aide wearing a Roman collar, “We should’ve just moved Foley to another Parish.”⁸⁴

Teenage Pages, N.Y. TIMES, Sept. 30, 2006, at A1.

82. Carl Hulse & Jeff Zeleny, *Hastert Fights to Save His Job in Page Scandal*, N.Y. TIMES, Oct. 4, 2006, at A1.

83. Jonathan Turley, Op-Ed., *Get Congress Out of the Page Business*, N.Y. TIMES, Oct. 4, 2006, at A31.

84. Mike Peters, Cartoonist Group, Oct. 8, 2006, available at <http://www.cartoonistsgroup.com/store/add.php?iid=14898> (last visited Sept. 26, 2009).