

Boston Sunday Globe

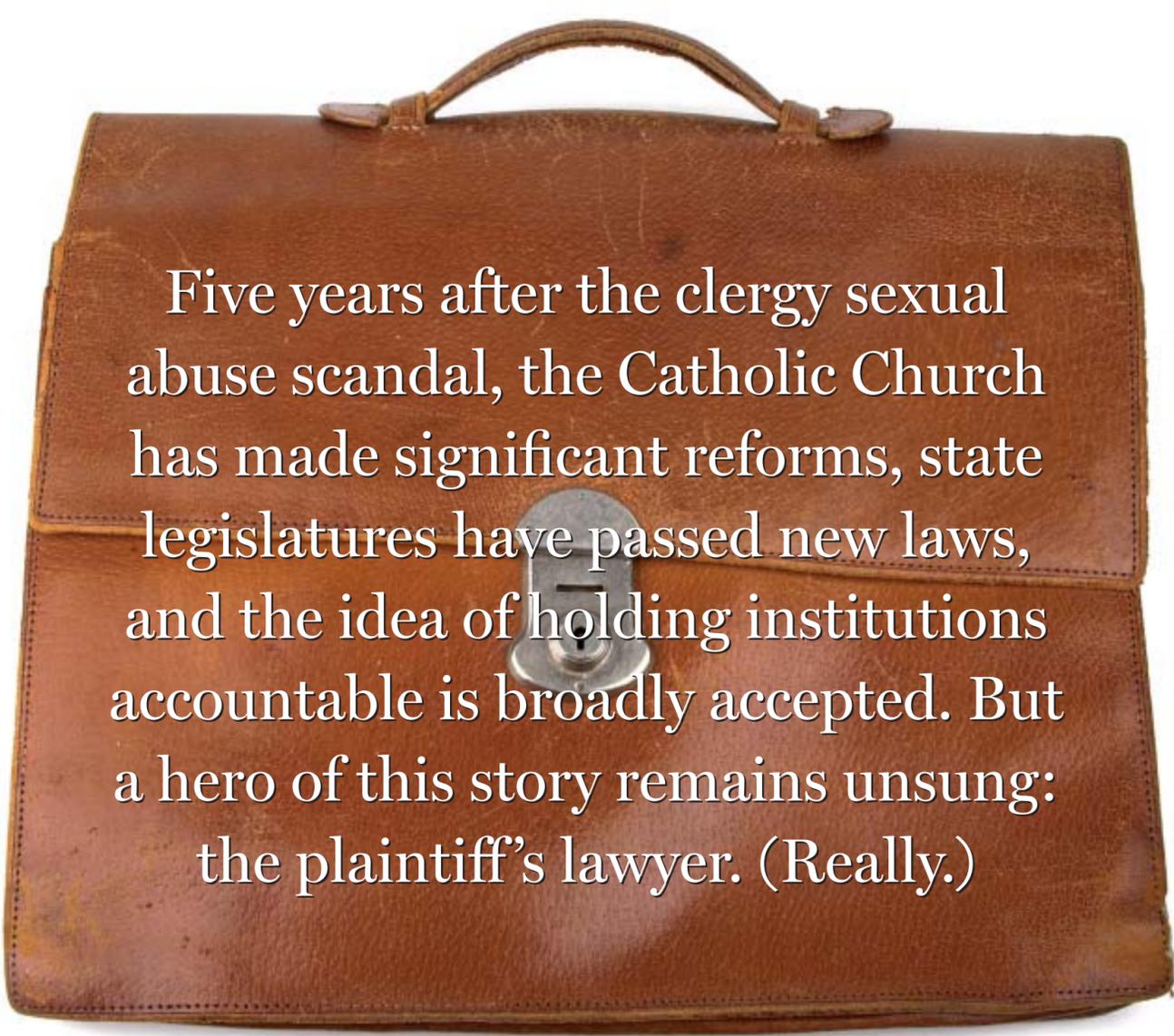
Ideas

FEBRUARY 4, 2007

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Five years after the clergy sexual abuse scandal, the Catholic Church has made significant reforms, state legislatures have passed new laws, and the idea of holding institutions accountable is broadly accepted. But a hero of this story remains unsung: the plaintiff's lawyer. (Really.)

ISTOCKPHOTO

LEGAL LEGACY

BY TIMOTHY D. LYTTON

THIS YEAR MARKS the fifth anniversary of The Boston Globe's Pulitzer Prize-winning coverage of clergy sexual abuse. The Pulitzer citation praised the Globe for its "courageous, comprehensive coverage of sexual abuse by priests, an effort that pierced secrecy, stirred local, national, and international reaction and produced changes in the Roman Catholic Church." Yet while the news media have received well-deserved recognition for their part in exposing the abuse and focusing attention on the need for institutional reform,

Timothy D. Lytton is professor of law at Albany Law School and author of the forthcoming "Holding Bishops Accountable: How Lawsuits Helped the Catholic Church Confront Clergy Sexual Abuse" (Harvard University Press).

little attention has been paid to the underlying role played by lawsuits. There's an unsung hero in this story: the plaintiff's lawyer.

Although the tort system is more often maligned than celebrated, it was the work of plaintiffs' lawyers that brought the scandal to light in the first place. Pleadings, discovery documents, and depositions in hundreds of cases during the course of more than two decades have provided most of the information underlying media coverage of the scandal. Lawsuits have fed journalists a steady supply of compelling stories of both personal suffering and official wrongdoing, and they have provided a defense against potential libel claims and political cover to criticize powerful church officials.

It was lawsuits that first publicly pointed a **LAWYERS, E4**



TERROR NETWORK

For today's marketers, desperate times call for desperate measures

BY ADAM HANFT

LAST WEEK, THERE was a successful terrorist attack in Boston. The perpetrators were Turner Broadcasting and the Cartoon Network, and they succeeded in hijacking something that every American holds dear: our attention. For a moment, Scooter and Baghdad and Mary Cheney's pregnancy were shoved aside by a talking milk shake, fries, and meatball.

There's nothing at all complicated about the desperate ideology that hatched this plan, dispersed 38 LED devices across the city, and splattered "Aqua Teen Hunger Force" across our cultural windshield. It's an ideology fueled by a fear of irrelevancy. As jaded consumers grow resistant to conventional messages and techniques, marketing becomes terrorism by other means.

The theory is simple. If a commercial message is "ambient" — meaning, in the industry jargon, that it's expressed through an unexpected medium in an unexpected place, say a device stuck on an overpass — it's more likely to sneak past our mental screening devices and warning systems. In this way, the Cartoon Network is not alone; it's actually just one of many thousands of marketing jihadists dreaming up new ways to get around our perceptual defenses, whether the message is painted on foreheads ("headvertising") or calling out to us from an airplane tray table. **NETWORK, E3**

Adam Hanft is CEO of the marketing/advertising firm Hanft Unlimited and blogs for Fast Company and the Huffington Post.

Bye Bye, Nighthawk

The Stealth fighter flies into history **E4**
By Christopher Shea

Free to disagree

Q&A with John Searle **E3**
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Brainiac

Recently on the Ideas blog: Blanket coverage of the Mooninite invasion. Plus, a Derrida dust-up, the physics of Beckham's bending ball, the best bad movie reviews, and more. For the latest, go to boston.com/ideas/brainiac

SNOW, THY ENEMY

IN BIG-CITY POLITICS, NOTHING CAN STRIKE FEAR INTO THE HEART OF A MAYOR
 QUITE LIKE THE WHITE STUFF | BY SASHA ISSENBERG

WHEN RUDY GIULIANI trekked to New Hampshire late last month, his speech at the Palace Theatre in Manchester was monitored for any hint of how serious the former New York mayor is about running for president. But when Giuliani walked out on the sidewalk and large snowflakes came down on his bald head, he offered a clear signal that he is beginning to think more like a presidential candidate and less like a big-city mayor. "It makes it feel like winter. It's so beautiful," Giuliani said of the weather.

Mayors can more commonly be found cursing snow than proclaiming its beauty. The latest victim is Denver's John

Sasha Issenberg's first book, "The Sushi Economy: Globalization and the Making of a Modern Delicacy," will be published in May.

Hickenlooper, who saw 2 feet of the white stuff arrive in his city the week before Christmas. The storm closed county school districts, crippled a major hub airport, and stranded 20 drivers who needed to be rescued by the National Guard. But it claimed only one casualty: Hickenlooper's untouchable reputation as a big-city manager.

Hickenlooper, a charismatic geologist and former brewpub owner approaching the end of his first term, had been named one of Time magazine's five best mayors — representing a generation of post-partisan technocrats admired for their sensible governing style. But when city trucks failed to clear snow in many of Denver's neighborhoods, all while the mayor assured the public that help was on the way, some residents questioned their leader's administrative skill. The Denver Post went so far as to speculate that Hicken- **SNOW, E2**



Critical Faculties | Christopher Shea



NOW YOU SEE IT...

THE LAST DAYS OF THE F-117 STEALTH FIGHTER AND THE DEBATE OVER WHAT KIND OF AIR FORCE AMERICA NEEDS

ALTHOUGH BEAUTIFUL BY few standards, the F-117 Nighthawk — the Air Force's black, angular, "Stealth" fighter — looked like the future when it was unveiled in 1988.

Sculpted to evade radar, the plane — despite its name it's really a precision bomber, or "strike" plane, not an air-to-air fighter — became a star of the first Gulf War, flying some 1,300 sorties, and it got the call for some of the most sensitive missions of the second Iraq war, too. In 1999, it helped drive the Serbs out of Kosovo,

Christopher Shea's column appears biweekly in Ideas. E-mail critical.faculties@verizon.net.

though not before a Serbian anti-aircraft missile managed to knock one out of the sky. The pilot ejected, and was safely plucked out of enemy territory, but that one of these superplanes was laid low made news around the world.

To hear its fans tell it, the F-117's place in aviation history is secure. "It moved stealth technology to the fore for the Air Force," says Lloyd W. Newton, a retired four-star general who flew F-117s while leading an air wing at Holloman Air Force Base in New Mexico in the early 1990s. "You could take this plane right into the jaws of the enemy, without worrying that you were going to be picked up."

Nevertheless, all 55 current Stealth fighters will be retired by September 2008, a surprising turn of events for those old enough to remember the F-117's splashy debut. (Twenty larger B-2 Stealth bombers, cousins of the F-117 that became operational in 1993 and that bear a family resemblance, will continue to fly.) Given that the Air Force continues to rely on such earlier-generation planes as the F-15 fighter (first flight: 1972), the B-52 bomber (1954), and the slow, ungainly, but bullet-resistant A-10 "Warthog" (1975) — albeit with lots of new technology stuffed into them — it may seem puzzling that the once-cutting-edge F-117 is already being mothballed.

The Air Force stresses that the F-117 is older than it seems, since it first flew in 1981, seven years before the public became aware of it. Still, the retirement of one of the most celebrated military planes of the last two decades of the 20th century underscores the strategic and financial balancing acts the Air Force must perform as it tries to gauge what future enemies of the United States will look like.

Unsurprisingly, the Pentagon's last Quadrennial Defense Review, in 2006, affirmed

that "irregular" combat, against low-tech armies or insurgents, would be the "dominant form of warfare" for the near term. In those conflicts, low-tech and sturdy — like the A-10 Warthog (designed to circle battlefields slowly, take fire, and protect troops) or the lumbering AC-130 gunship (deployed recently against suspected Al Qaeda terrorists in Somalia) — can be more effective than the leading-edge planes that define the Air Force to the world, and perhaps to itself.

Critics often charge that the Air Force is biased toward the high-tech planes, as opposed to workhorse machines that directly support ground troops. That's why there was an outcry in 2003, when the Pentagon proposed grounding the A-10 to save money. (Under the same plan, the F-117 would have flown for at least another decade). After vocal protests on behalf of "the Hog that saves the grunts," that plane was saved, meaning cuts had to be found elsewhere.

At least for now, says Robert Coram, the biographer of John Boyd, a leading air-power strategist who died in 1997, "the Hog and the AC-130 rule, and that must cause a lot of heartburn among the four-stars."

But there's another side to the story. Some Air Force leaders worry that Pentagon planners, understandably attuned to Iraq, are too single-mindedly focused on low-tech insurgencies. At a meeting of the Defense Writers Group, in Washington, D.C., in November, General Ronald E. Keys, head of the Air Force's air combat command at Langley Air Force Base, stressed that the defense of Taiwan, or South Korea, or conflict with Iran, would require far more sophisticated equipment than the conflict in Iraq, which often involves "trying to find one white SUV racing down the road."

And high-tech in the Air Force today means the F-22 and the F-35. The first of the new F-22 fighters, which cost \$135 million each, joined the force in 2005. Like the F-117, the F-22 is stealthy, but unlike it, the F-22 is also supersonic and highly maneuverable — it's dogfight-ready. The Air Force had wanted 380, but Donald Rumsfeld limited them to 183. The Air Force is also finishing testing on the F-35, another stealthy fighter, which is slightly less capable but is also less expensive (\$40 to \$65 million apiece) and will be purchased in much greater numbers. (The F-35 is viewed as the replacement of the A-10, which will ultimately be phased out, as well as of older fighters like the F-16.)

As a second-best high-tech plane, the F-117 suddenly became vulnerable, caught between the high-tech and lower-tech prongs of strategic planning. "There is no mission where you'd rather have an F-117 than an F-22," says Rebecca Grant, president of Iris Independent Research, a defense-consulting firm. Killing the F-117 will save \$200 million annually in flying and maintenance costs.

One pressing problem that won't really be addressed by the Stealth fighter's retirement, because it's not a particularly old plane, is the ever-rising average age of Air Force aircraft. In the Vietnam era, the typical plane was 8.5 years old, according to the service's public affairs office, while today it's at an ominous 24 years and climbing.

The F-117 has its fans within the Air Force, and it has its place not just in military but also in cultural history. (This is the plane that helped give birth to such terms as "stealth advertising," after all.) But thanks to financial and strategic pressures, it will soon be flying — presumably undetected — into the sunset.

Lawyers *Continued from page E1*

finger at church officials and focused attention on the need for institutional reform. Unlike criminal law, with its narrow focus on individual wrongdoing, tort law — which allows individuals to sue for harm done to them by others — often looks beyond the immediate cause of an injury to uncover the role of institutional leaders, such as corporate executives, or in this case, bishops, who failed to do what they should have to prevent harm. This is in part because institutional defendants have deeper pockets and are therefore capable of paying damages if they lose. But thanks to tort claims, we now understand that clergy sexual abuse is not only a problem of individual priests who molest children but also of church officials who failed to report abuse and, in some instances, even facilitated it.

The remarkable success of clergy sexual abuse litigation stands out among the many recent attempts to use civil lawsuits to address social problems, most prominently against tobacco companies (aimed at reducing smoking) and against gun-makers (designed to produce stricter gun control). Tobacco and gun litigation have played significant but relatively small roles in larger antismoking and gun-control movements that predated them by decades. And while lawsuits have focused attention on the role of the tobacco and gun industries in contributing to smoking addiction and gun violence, the results in terms of industry reform and government regulation have been modest.

By contrast, clergy sexual abuse litigation has had an especially powerful impact on policy making, drawing attention to the role of church officials and placing the issue on the agendas of church and government policy makers. Tort reform advocates — pointing to what they call unjustified costs to business and society — argue that tort litigation is an ineffective and illegitimate way to influence policy making. The story of how lawyers brought clergy sexual abuse to light and prompted the Catholic Church to change its ways suggests otherwise.

Against the filing of a 1984 lawsuit against Father Gilbert Gauthé and the Diocese of Lafayette, La., for Gauthé's molestation of dozens of boys over many years, local media reporting of clergy sexual abuse was scant and infrequent and there was no national media coverage of the issue. Prosecutions were rare, public discussion and policy debate nonexistent. In Lafayette, the ongoing litigation drama — pleadings that named high church officials as defendants, shocking revelations during the discovery process, and tearful trial testimony by an 11-year-old sexual



GEORGE MARTELL/FTP

In August 2002, Bernard Cardinal Law of the Boston Archdiocese appeared in court for a deposition regarding his knowledge and handling of the Father John Geoghan child sex abuse case.

abuse victim — generated sustained local coverage and attracted regional and national media attention.

Other high profile cases filed across the country over the next two decades involved such notorious pedophiles as James Porter in Fall River, Mass.; Rudolph Kos in Dallas; Oliver O'Grady in Orange County, Calif.; and, of course, John Geoghan in Boston. These cases all led to key policy reforms within the church. Following the Gauthé case in 1984, the National Conference of Catholic Bishops held intensive discussions on the issue in Collegetown, Minn. After the Porter case in 1992, the bishops adopted a nonbinding policy consisting of five principles for addressing allegations. And in the wake of the Geoghan case in 2002, the bishops promulgated a new mandatory national policy — the Charter for the Protection of Children and Young People — subsequently approved by the Vatican.

The policy results have been dramatic — compensation and treatment for victims, removal of proven perpetrators from ministry, training for church personnel in detecting and investigating abuse allegations, and public disclosure of church

It was lawsuits that first publicly pointed a finger at church officials and focused attention on the need for institutional reform.

officials' role in facilitating decades of child sexual abuse. While victim advocates debate the effectiveness of these policies, there can be no doubt that they represent a significant change in the way the church deals with the problem.

Government policy-makers have also been spurred into action. Twenty years of civil litigation and the public outrage it has generated have made it politically safe for local prosecutors and state attorneys general to launch extensive investigations, publish detailed reports on abuse within their jurisdictions and, in some cases, to prosecute perpetrators. In the wake of civil litigation and at the urging of abuse victims and their attorneys, state legislatures have passed laws mandating that clergy members report abuse, imposing new criminal penalties for child endangerment, removing civil damage caps, and extending statutes of limitation for child sexual abuse.

But these lawsuits have done more than merely reform the church. They have also heightened sensitivity to the sexual abuse of children in other contexts. Consider the recent congressional page scandal.

Last September, The New York Times ran a front-page story about Florida Congressman Mark Foley's resignation headlined "Lawmaker Quits Over E-Mail Sent to Teenage Pages." That story ran below the fold. Four days later, another story on the scandal made it to the top of the front page — only now it was about the failure of House Speaker Dennis Hastert to take action against Foley earlier. That same day, the Times Op-Ed page ran an essay by a former page, now a law professor, outlining institutional reforms for the oversight of the page program. For those who missed the 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."

The focus on the institutional failures that facilitate child sexual abuse is one of the most important legacies of clergy sexual abuse litigation. As a lawyer

for the Los Angeles Archdiocese put it, "now, of course, it's widely understood that organizations do bear responsibility for the criminal misbehavior of members to the extent that it is foreseeable. That's probably a positive thing that came out of all this: That the law, in its wisdom and experience, examined this phenomenon and decided that we need deeper levels of accountability."

If these lawsuits against the Catholic Church have been a resounding success, why have lawsuits against the tobacco and gun industries not fared nearly as well? One reason is simply that allegations of widespread child sexual molestation by compulsive pedophile priests covered up at the highest levels of the church made for an especially scandalous narrative, and one that fueled an unusual level of moral outrage. This is not to belittle the horrific nature of lung cancer and gun violence but only to point out that nothing stokes public indignation quite like a sex scandal — especially involving minors.

And whereas tobacco and gun litigation have been criticized as attempts to circumvent the legislative process and regulation by government agencies, clergy sexual abuse litigation has helped other regulatory institutions — the US bishops, law enforcement officials, state legislators — do their jobs better. Clergy sexual abuse litigation is, in short, a poster child for the policy-making benefits of tort litigation.

The use of civil lawsuits to pursue regulatory policy is of course highly controversial. 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 and that widespread fear of liability leads to the withdrawal of essential products and services and stifles safety innovation. For example, the website of Common Good, a leading tort reform organization, is replete with stories linking increases in childhood obesity to the shortening of recess hours and bans on playing tag by school officials who fear potential liability from playground accidents.

Of course, assessing the regulatory benefits of tort litigation in other contexts requires case-by-case analysis. At the very least, however, the example of clergy sexual abuse litigation — by prompting reluctant church and government officials to adopt sensible policies to address a widespread social problem — offers a compelling counterexample to the sweeping claims of tort reform advocates. That's one legacy of the Catholic Church scandal that few might have anticipated.