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### Fleeing the shepherd

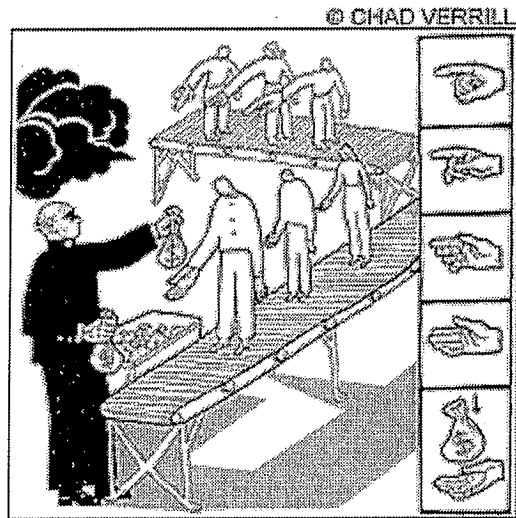
#### Will the Church settle the sexual-abuse cases this time around?

BY HARVEY A. SILVERGLATE

NO GOOD DEED goes unpunished," the old adage tells us. It's a bitter lesson for the Roman Catholic Archdiocese of Boston and the Dioceses of Worcester and Springfield, which are facing yet another tidal wave of child-sex-abuse claims — barely a year after the Church avoided a nasty court battle by agreeing to settle a previous round of claims for a costly sum. This time, however, it has greater reason to defend itself in court. And if the Church does choose to fight, it will have two crucial advantages — one that is new, and another that it chose not to exploit the first time around.

The current litigation comes on the heels of the precedent-shattering 2003 settlement, in which the Boston archdiocese paid \$85 million to resolve 541 civil cases alleging that priests sexually abused children and other parishioners. In Springfield, the diocese paid \$7.5 million to settle 45 similar complaints; the Worcester diocese, reportedly with more reluctance, settled a few claims as well. The affected Church entities did not enter the sex-abuse litigation in terrific financial shape — the Boston archdiocese, in particular, had been running a substantial deficit for years — and while most of the 2003 settlements have been or likely will be covered by insurance, the disastrous financial fallout from the scandal continues. In particular, the Church is receiving fewer contributions from parishioners and donors, who are largely disgusted with both the abusive priests' conduct and a Church hierarchy that, instead of disciplining wayward priests, frequently transferred them to other parishes, where they could continue to prey on children. A year later, a financially crippled local Church is entering a new round of claims much better able to defend itself, making another all-encompassing massive settlement less likely.

First, there is considerable doubt about the veracity of many of the new claims, quite a few of which were made after it became apparent that the Church was willing to settle sex-abuse cases for big bucks. Indeed, in Boston and Springfield, the Church agreed to blanket settlements, meaning that it conceded liability across the board without regard to whether a claim seemed genuine or questionable. The cases were settled en masse, with each assigned a dollar figure based on the egregiousness of the misconduct alleged and the amount of harm demonstrated (or at least claimed) by each plaintiff-victim. But the cases in this new round are likely to receive more scrutiny. Indeed, some knowledgeable observers



and participants suspect that public outrage has settled down sufficiently to allow the Church to sift the meritorious cases from those that are likely false or highly exaggerated.

The timing and nature of the new cases, not to mention the reported rhetoric of some of the plaintiffs' lawyers, should raise a few eyebrows. In September, *Boston Globe* reporter Kevin Cullen quoted Carmen L. Durso, who represented a large number of plaintiffs in last year's mass settlement and who has since submitted new claims to the Church, explaining why another crop of plaintiffs has suddenly arisen — not only decades after the alleged abuse, but several years after the first round of cases was filed, and scarcely a year after they were settled for big money. "These are largely timid souls who said they didn't know what they could go through," Durso reportedly told Cullen. "They felt it was safe to come forward now that they'd be treated okay." One wonders whether "okay treatment" refers to a gentler approach to victims since Archbishop Seán O'Malley replaced Bernard Cardinal Law as head of the Boston archdiocese — or to the perceived ease of wringing a settlement from a battered, publicity-shy, and scandal-averse Church leadership.

Another lawyer prominent in the first round of cases, Mitchell Garabedian, told Cullen that he represents 41 new plaintiffs against the Church. His explanation for why his clients have come forward only in the wake of last year's lucrative settlement was that they had feared the "stigma" associated with claiming abuse and the "emotional strain" of seeking redress. "These are the results of the wholesale molestation of children over a period of 50 years or more," he told Cullen. "It would be naive to think that this would culminate in five or six years." Others, of course, might think it naive to believe all the new claims in light of this history. Especially controversial are the claims based on the phenomenon of "recovered memory," in which repressed memories are "recovered" via hypnosis or other therapeutic techniques. Many experts regard this as a largely bogus and unscientific practice, in which false memories result from suggestion or even convenience.

Still, the claims continue to proliferate. John J. Stobierski of Greenfield, an attorney for 45 plaintiffs whose cases against the Diocese of Springfield were settled in the first round, has an additional crop of claimants — people who, he told the *Globe*, were either fearful or too skeptical to proceed earlier. "I think they needed to see the diocese was serious about settling before they would come forward," Stobierski is quoted as saying. Such an explanation is bound to raise questions among the more skeptical of the Church's officials and lawyers. Why should the Church's willingness to settle the earlier cases suddenly eliminate the fear and timidity of someone who did not bring a claim until he saw the money flow to other plaintiffs?

BUT THOSE looking for a repeat of the 2003 settlement may be facing serious obstacles. In the first round of litigation, the Church momentarily raised but declined to press what legal observers have long considered its ace in the hole: the "charitable limitation on liability," a legal doctrine that could well protect the Church from having to pay more than \$20,000 to any one of the plaintiffs. It's a potent defense that could be invoked in any case claiming the Church acted negligently in failing to properly supervise and assign parish priests, which is precisely the major legal claim being made against the institutional church. (After all, the Church did not commit the acts of abuse, but instead failed in its duty to assign priests in a manner that would protect children.) The Church declined to pursue the defense earlier for fear of compounding the public-relations damage inflicted by revelations about pedophile priests and the Church officials — particularly then-Boston archbishop Bernard Cardinal Law — who failed to stop them. In the first round of cases, the Church ultimately settled on average for far more than \$20,000 each.

The charitable-limitation defense, which exists today in only eight other states, is a long-standing legal doctrine in Massachusetts. In the 19th century, Bay State courts began granting full charitable immunity to philanthropic nonprofits such as churches and public hospitals. This immunity protected them from court judgments arising out of claims that the organizations or their authorized agents acted negligently and thereby inflicted harm upon an individual claimant. The theory behind such immunity was that allowing unlimited money-damage claims for negligence against such organizations would severely impair, if not cripple, their ability to carry out their charitable missions. Further, it recognized the donors' right to see their contributions go to fund the charitable enterprise, not damage claimants.