

JUSTICE DENIED

What America
Must Do to Protect
Its Children

Marci A. Hamilton

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Justice Denied

There is a silent epidemic of childhood sexual abuse in the United States, and a legal system that is not effectively protecting children from predators. Recent coverage of widespread abuse in the public schools and in churches has brought the once-taboo subject of childhood sexual abuse to the forefront. The problem extends well beyond schools and churches, though: the vast majority of survivors are sexually abused by family or family acquaintances with 90 percent of abuse never reported to the authorities. Despite increasing awareness of the problem, current law does little to identify predators. Popular legal fixes, like sex offender registries, increased sentences, and pedophile-free zones, are ineffective without that knowledge. Marci A. Hamilton proposes a comprehensive yet simple solution: eliminate the arbitrary statutes of limitations for childhood sexual abuse so that survivors past and present can get into court. Most states have such short statutes of limitations that survivors cannot get to court before the doors are locked shut. Removing this arbitrary barrier would permit survivors to unmask their perpetrators, and open a path to justice and public vindication. Standing in the way, however, are formidable opponents such as the insurance industry and the hierarchy of the Roman Catholic Church.

In *Justice Denied*, Hamilton predicts a coming civil rights movement for children and explains why it is in the interest of all Americans to allow victims of childhood sexual abuse this chance to seek justice *when they are ready*.

Marci A. Hamilton is one of the United States' leading church/state scholars, as well as an expert on federalism and representation. Hamilton is Visiting Professor of Public Affairs at the Woodrow Wilson School and the Kathleen and Martin Crane Senior Research Fellow in the Law and Public Affairs Program, Princeton University, and holds the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University. She is the author of the award-winning *God vs. the Gavel: Religion and the Rule of Law* (Cambridge University Press 2005). Hamilton is a former clerk to Justice Sandra Day O'Connor and is also a columnist on constitutional issues for www.FindLaw.com.

*I dedicate this book to the millions of survivors of
childhood sexual abuse, who deserve their day in
court.*

*I also dedicate it to my wonderful husband,
Peter Kuzma, our two terrific children,
Will and Alexandra, and my mother, GrandCarol.
Thanks for your love, patience, and support!*

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1

We Have Failed Our Children

I received an e-mail from an incest survivor that beautifully and tragically captures the rotten core of the legal system's handling of childhood sexual abuse:

I am a child of sexual abuse at the hands of my father from the age of 6–12 years. He has also abused two other girls that I know of (have proof) one being a friend of mine from school and the other, our babysitter from when I was about 9 years old. I live day to day with the knowledge of these horrors and seem to get tougher day by day with the injustice of seeing nothing being done. Anyway, I called my father 4 years ago and told him that I have somehow found the self esteem and strength to now confront him and make him answer for all the horror he put myself and these two girls (children at the time) through. He basically laughed

at me and told me that there are “Statu[t]e of Limitations.” I pursued the right channels by filing a police report, called the DA’s office, contacted attorneys to see if I could pursue this, and come to find out he was right.¹

This survivor had suffered all of those years, but her father was smugly confident that the law could not make him accountable for what he had done to her – because of a legal technicality called the “statute of limitations” (SOL). He was right.

She was a victim of an arbitrary and technical legal rule that is keeping survivors like her from getting justice in almost every state. SOLs are judicial housekeeping rules: They determine how much time someone has to file a lawsuit (or a prosecutor has to initiate prosecution). Yes, they are a boring part of the legal universe, but they are exerting a cruel force throughout our society, because as the law now stands in most states, they are set to favor the child predator and shut out the sexual abuse survivor.

The Statutes of Limitation Are Arbitrary Technicalities that Routinely Protect Child Sex Abusers from Justice

SOLs are simply the deadlines set by state legislatures and courts for going to court. A litigant must file her lawsuit and a prosecutor file charges before the SOL expires. If the deadline is missed, the litigant or prosecutor is out of luck – it’s just too late to go to court. The SOLs are arbitrary rules,

and they stop litigants even when survivors have strong and just claims.

SOLs can serve good ends. They encourage litigants to get to court before evidence is lost or stale. A good example is the relatively short SOLs covering contract and property disputes. Everyone benefits from a system in which ownership of property or products is as clear as possible. These SOLs operate to make sure there is some certainty about who owns what.

At the other end of the spectrum, SOLs can be an unfair and unacceptable barrier to justice. Murder has no SOL because of the heinous nature of the crime, the fact that the victim himself will never be able to bring his cause to justice, and society's interest in identifying murderers.

The central proposition of this book is that the SOL for childhood sexual abuse should be treated like an SOL for murder, not property. Many survivors experience such abuse as the murder of their childhood or their soul. They have an inherently difficult time coming forward, and it is in society's interest to have sex abuse survivors identify child predators for the public in judicial proceedings. Childhood sexual abuse needs to be added to the list of laws that should not be subject to SOLs, and there is a growing grassroots movement in the United States to eliminate them.

This is a "how-to" book on stopping child sex abuse, empowering survivors, and helping society identify child predators. The good news is that the answer is straightforward and attainable: eliminate the SOLs.

Child sex abuse is a massive national problem: at least 25 percent of girls and 20 percent of boys are sexually abused

The next time you are sitting in a theater, on a bus, strolling through the mall, or anywhere near a group of people, look around: according to the existing studies, at least one in four of the women have been sexually abused as a child, and one in five of the men.² In a theater with sixty women and sixty men, that means fifteen of the women and twelve of the men likely were sexually abused. Most of them never told a soul.

Ninety percent of the time, the public does not learn about the abuse, because the survivor does not go to the authorities.³ As you scan the crowd before you, it is guaranteed that at least one person in the crowd is a sex abuse survivor who has not yet come forward. If given enough time and the right circumstances, though, they will.

I testified before the Delaware Senate in April 2007 in favor of the sort of legislation this book supports. As part of my testimony, I recited the very statistics that you have just read, and then said that I knew there were those in the room who had not yet been able to tell their story. They were the reason I was promoting a change in the law. Then something extraordinary happened: during his remarks in support of this bill, State Sen. John Still (R-Dover North) announced for the first time in his life that a family “friend” sexually abused him when he was six years old. He said, “I have forgiven that person, but I have not forgotten.”⁴ Everyone in the room was

humbled by his modest declaration and reminded that it can take decades, even for the leaders among us, to make such a public declaration.

There are two levels of knowledge about child abuse in the United States. For the majority, childhood sexual abuse is a remote and unlikely event, in part because it never happened to them. Then there is the underground level where the survivors exist, continually adjusting to a world that does not readily acknowledge a permanent part of their identity. The effects of this underworld, though, are felt by all. Whether or not you are a survivor of childhood sexual abuse, you are paying a price in the lost output of the survivors and the mammoth medical costs of treating the physical and psychological injuries of those who have been abused and who may be trying to climb out of the dark.

The Problem Is Much Closer to Home Than the Old-Fashioned “Stranger Danger” Mythology Would Lead Us to Believe

There was a time when child abusers were referred to as “Stranger Danger.” Most of us lived in an unfortunately mythical world where “incest” was only a word in the dictionary, and sexual perverts were just rumors: lurking strangers in trench coats, but not “nice” dads, teachers, or priests. To stay safe, eight-year-old Sally simply had to refuse candy or car rides from “Mr. Stranger Danger.” In reality, though, Sally is most at risk from those who care for

her and make friends with her, from parents to the chatroom buddy who is in fact a predator.

The busy universe of abuse – for those who are not survivors – has hovered on the bare edges of our vision, like a buzzing bee circling a flower ten feet away; once in a while, you might wonder about Sally’s dad because he made you oddly uncomfortable, but the notion that he was raping her in her own bed never came into focus. She did not say anything, even to you, her best friend, because he told her it was “their little secret,” and, equally important, because she could not survive without her family. Even more fundamentally, she could not comprehend that he was stealing away the childhood her luckier friends were enjoying. It takes adulthood finally to understand just how much the abuser has taken.

We are just now piecing together the “big picture” about child abuse

Whether or not one is part of that world of abuse, the wrong-headed way our legal system handles abuse has not been readily apparent. Even if Sally’s story seeped out, it would have been regarded as the solitary account of one tragic little girl. The perpetrator was just one man, and so there was no reason to think there was a problem in the system as a whole. The abuser might go to jail, be condemned (or, sadly, protected) by his family, or be shunned by the community, but in the eyes of the public, this one bad man hardly represented a problem that demanded dramatic legal reform.

Only 10 percent of all abuse survivors have come forward to the authorities, and even then, only a tiny number of their stories appear in the news. That means that until very recently, the public would read each story as an isolated, extraordinary situation. The way the data appeared – randomly and shockingly – made it virtually impossible to connect the dots in a way that would expose the system’s defects. The inability of the public to piece the story together led survivors to feel chronic isolation; they often believed they were the only ones suffering such horrible nightmares. Perpetrators could abuse victims who were siblings, without either one suspecting the other was equally at risk.

It took orchestrated abuse within a large and venerated institution like the Roman Catholic Church to reveal the depth of the problem to the public in a clear and forceful manner. Let’s face it: none of us was looking to learn that child sex abuse is more prevalent than we ever dreamed or that we may not be able to trust – of all people – our neighborhood priest. The shocking but riveting news that the Catholic hierarchy callously shuffled predatory priests from one unsuspecting parish to another finally created an opportunity for the country to begin to see the bare outlines of a society-wide challenge.

The sensational details of the Boston Archdiocese’s and Cardinal Bernard Law’s handling of infamous former priests John Geoghan and Paul Shanley had to be absorbed before the public could start thinking about the overarching systemic problems. While priests, Geoghan abused more than

130 children,⁵ and Shanley advocated quite openly the virtues of the National American Man-Boy Love Association.⁶ Geoghan spent his years being moved around the Boston Archdiocese abusing child after child, which led some to believe it was just a local problem.⁷ In contrast, Shanley's case provided some of the earliest clues that we had a national problem on our hands: he was transferred from the East Coast to the West Coast where he continued his previous perverted practices.⁸ Once these unthinkable facts sunk in, it was inevitable for many to ask what was wrong with the system that produced them.

Even with the data in place, it can still be tempting to believe that child sex abuse is not as serious a national challenge as it is

The drive to treat abuse as an idiosyncratic problem that is not a systemic social failure has been strong. Some, like former Sen. Rick Santorum (R-PA), declared that Boston Cardinal Bernard Law's actions were peculiar to Boston, because "[w]hile it is no excuse for this scandal, it is no surprise that Boston, a seat of academic, political and cultural liberalism in America, lies at the center of the storm."⁹

Such reasoning was proven completely wrong when the Philadelphia Grand Jury Report on the Philadelphia Archdiocese was released on Sept. 21, 2005.¹⁰ The report was 423 pages, painfully explicit, and made absolutely clear that Boston's particular moral culture was not responsible for the prevalence of clergy abuse. The Philadelphia Archdiocese's