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Mulhearn: Horace Mann report reflects need for SOL reform

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*Attorney Kevin Mulhearn has been battling for sexual abuse victims for years: The Orangeburg, N.Y., attorney overcame numerous legal obstacles to settle a landmark lawsuit filed by a dozen men who claimed **Poly Prep covered up years of assaults** by the elite Brooklyn school's longtime football coach, Phil Foglietta. Mulhearn has also represented men and women who claimed two other iconic New York schools, **Horace Mann** and **Yeshiva University**, also covered up years of sexual abuse by staff and faculty members.*

*In the following column, Mulhearn explains why New York lawmakers should pass the **Child Victims Act**. The bill sponsored by Assemblywoman Margaret Markey (D-Queens) calls for the elimination of criminal and civil statutes of limitations for future child abuse victims; it would also open up a one-year window for victims of past crimes to pursue criminal and civil cases.*

Last week, the Honorable Leslie Crocker Snyder (ret.), founder of the Manhattan DA's Sex Crimes Prosecution Bureau and co-author of New York State's Rape Shield Law, issued her report on sexual abuse that occurred at the elite Horace Mann School in the Bronx in the '70s, '80s and '90s. The report, titled "Making Schools Safe," commissioned by the Horace Mann Action Coalition, concludes that at Horace Mann at least 64 students were sexually abused by as many as 22 faculty and staff. Judge Snyder's report describes the scope and extent of the parade of sexual abuse at Horace Mann and makes pointed recommendations for how independent schools can protect our children. For anyone with children in New York schools, especially private schools, this thoughtful and insightful Report, despite (or maybe because of) its repugnant subject matter, should be required reading.

The squalid abuse facts themselves are horrendous in their own right but the most disturbing component of the report is the craven response of various school officials and trustees to sex abuse complaints made by abused students. The report describes a prolonged, multi-decade Horace Mann cover-up, highlighted by the loss or destruction of voluminous sex abuse records and the deliberate
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and sex predator employees than the children entrusted to their care.

The report also states that when Horace Mann's acts and omissions were finally publicly revealed in 2012 (after Amos Kamil's groundbreaking *New York Times Magazine* story), Horace Mann's insurers concluded that all of the victims' claims were "fully defensible due to New York's statute of limitations." The insurers' position reflects accurately the status quo in New York State. This is the harsh reality: New York state and federal courts have worked overtime to ensure that schools that actively cover up the sexual abuse of students by teachers, coaches, and administrators, thus guaranteeing that more unsuspecting and innocent children will be sexually assaulted, will face no legal accountability once the schools' own misconduct is exposed.

Statutes of limitation derive from a public policy to make persons secure in their reasonable expectation that the slate has been wiped clean of ancient obligations. But they are designed to foster, not hinder, litigants' search for the truth. Statutes of limitation are not designed to protect an institution which actively conceals its own misconduct from legal culpability, but that is exactly how they are being used by schools and their partners in crime, enabling courts.

New York state and federal courts have concluded time and time again that because the abuse victims knew the identity of their abuser, and that their abuser was employed by the school, the victims—traumatized, sexually assaulted children—would have discovered the school's own facilitation of their abuse had they conducted a diligent post-abuse inquiry. This case-ending conclusion has been reached even when survivors allege that they did report their abuse to school officials, but were met with lies, threats of reprisal and challenges to their credibility. This exalted legal standard, which has been embraced by the courts of this state like a long-lost child, is a perversion of justice and an insult to logic, decency and common sense.

The real reason why these courts adhere to such a draconian and counterintuitive legal standard, which transmogrifies "justice" into "injustice" with the stroke of a pen, is an unstated but paramount policy. The courts are worried that Pandora's Box will open if these "old" sex abuse cases gain traction. They are worried that they will be faced with a flood of litigation against complicit schools; accordingly, they hold their collective noses and continue to embrace legal fiction mounted atop legal fantasy. Again and again.

After one reads Judge Snyder's Report on Horace Mann, or the pleadings in the Poly Prep or Yeshiva University High School for Boys cases, however, the milquetoast foundation of this obstructive judicial policy crumbles in the face of the sordid, almost hard-to-imagine, facts. Schools and school officials that engage in such reprehensible conduct—that let children get raped by known sexual predator employees—deserve no protection, no financial relief, regardless of when their concealed bad acts

finally get exposed (i.e., regardless of how long they succeed in their sex abuse cover-ups). The simplest solution, as proposed by Judge Snyder, is the enactment into law of the Child Victims Act, the latest version of a bill proposed by Queens Assemblywoman Margaret Markey, which would substantially reform and broaden New York's statute of limitations for sex abuse cases.

Adult survivors of childhood sexual abuse are no longer victims. After all, it takes enormous strength and courage for them to confront their abusers and their abusers' enablers and demand some measure of accountability. But unless this bill passes, courts are likely to continue to deny survivors legal redress and will thus continue to reward schools for conducting successful and prolonged sex abuse cover-ups. This status quo, while absurd, grossly unfair, and violent to all principles of equity, is for now deeply entrenched in New York law.

Time will tell whether "truth and justice" is a guiding principle or an empty slogan in New York State. In this arena, where nothing less than the safety and well-being of our children is at stake, there is no more room for pussy-footing. The time for statute of limitations reform is now.

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