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TORT REMEDIES FOR INCESTUOUS ABUSE

The disquieting phenomenon of sexual contact between father and daughter is the subject of increasing study. One estimate of the current incidence of incestuous abuse indicates that approximately one million American women have been its victims and that annually, an additional 16,000 girls are similarly victimized.¹ Sexual contact between father and daughter² occurs without the daughter's consent, customarily lasts several months to several years, and usually results in psychological trauma to the daughter, the symptoms of which can be severe and long lasting. Historically, the law has offered little meaningful redress to incestuously abused daughters. Prosecution of the offending parent has proved largely unsatisfactory. Daughters seldom report the crime,³ making remote the possibility that fathers will be brought to trial. The possibility of conviction is even more chimeric.⁴ As a result, women have begun to seek civil redress

1. D. FINKELHOR, *SEXUALLY VICTIMIZED CHILDREN* 88 (1979) [hereinafter cited as FINKELHOR]. The author bases his estimate on the results of five studies, including his own, conducted between 1940 and 1978 in which women were asked to report any early sexual experiences with adults. The results of his study form the basis of his book. Other experts suggest that father-daughter incest may occur far more frequently than Finkelhor's estimate would indicate. See J. HERMAN, *FATHER-DAUGHTER INCEST* 14 (1981) [hereinafter cited as HERMAN]; S. BUTLER, *CONSPIRACY OF SILENCE* 12-15 (1978) [hereinafter cited as BUTLER]. Regardless of exact numbers, all are in agreement that the problem is serious and wide-spread.

2. Although incest occurs between family members other than father and daughter, (FINKELHOR, *supra* note 1, at 87) it is this latter which is most frequently reported and studied, and which will be the focus of this Comment.

3. HERMAN, *supra* note 1, at 163-64. The primary reason why a daughter will refrain from reporting her father's conduct results from fear of the possible consequences. See *infra* text accompanying notes 34-49. A father will warn his daughter that reporting can lead to his trial, conviction, and imprisonment. Not surprisingly, a daughter will usually choose to endure repeated sexual contact with her father rather than expose her family to these possibilities.

4. See, e.g., V. DE FRANCIS, *PROTECTING THE CHILD VICTIM OF SEX CRIMES COMMITTED BY ADULTS* 269-76 (1968) in which follow ups on 250 police reports of sexual assaults on children in New York City revealed that only nine percent of the adult male assailants were eventually sentenced to prison. This marginal conviction rate is explained in large part by the father's role as defendant in a criminal proceeding. He is guaranteed a full panoply of constitutional protections, including the right to confront his accusers in a public trial and the right to cross examine any witness against him. As one author points out, "[t]hese safeguards, designed for adversary proceedings between adults, give an enormous advantage to the defendant, where the only witness for the prosecution is a child, dependent on his care and habitually obedient to his authority." HERMAN, *supra*

for injuries inflicted by incestuous abuse.

This Comment explores the problem of incestuous abuse between father and daughter, traditional tort theories available to the incest victim/survivor⁵, defenses fathers might raise, and the availability of punitive damages to the incest victim/survivor.

I. BACKGROUND

A. DEFINITION

Incest is variously defined. Legal and dictionary definitions generally reflect societal proscription of marriage within certain degrees of consanguinity.⁶ However, recent definitions formulated by clinicians focus on the scope and nature of the incestuous behavior itself and its consequences.⁷ A much broader range

note 1, at 164-65.

Because most fathers, unless restricted by the court, have free access to their families during the pendency of the trial, tremendous pressure is brought to bear on the daughter to recant. If the daughter succeeds in withstanding this pressure, she must still undergo the ordeal of describing in detail the sexual contact between her and her father in public, before a battery of legal personnel, most likely to be men unsympathetic to her. *Id.* at 165-66. It is no wonder that when faced with prospects such as these, so few victims seek prosecutorial redress.

5. Integral to a woman's recovery from the effects of incestuous abuse is the transformation in self image from that of "victim" to that of "survivor." This is best characterized as a process whereby the woman directly confronts the incest experience, and the hurt and anger engendered by it, and seeks to understand rather than avoid the experience and its effects. As a result of this process, women develop more positive self images, and thus become better able to extricate themselves from the pattern of repeated victimization to which incest victims are particularly susceptible. HERMAN, *supra* note 1, at 178-79, 189-92, and 198-201.

6. "Sexual intercourse or interbreeding between closely related individuals esp. [sic] when they are related or regarded as related (as by reason of affinity or membership in a tribal kinship, group, or clan) within degrees wherein marriage is prohibited by law or custom." WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 141 (1976). California's statutory definition of incest is predicated upon marriage and reads "[m]arriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate." CAL. CIV. CODE § 4400 (West 1970).

7. The following are three recent definitions of incest formulated by three different clinicians. "[A]ny [physical contact] between a child and an adult in a position of paternal authority . . . that has to be kept a secret." HERMAN, *supra* note 1, at 70. "[S]exual contact between family members including not just intercourse but also mutual masturbation, hand-genital or oral-genital contact, sexual fondling, exhibition, and even sexual propositioning." FINKELHOR, *supra* note 1, at 84. "Any manual, oral, or genital sexual contact or other explicit sexual behavior that an adult family member imposes on a child

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of sexual contact than sexual intercourse alone is included in such definitions. As a result, they are more expansive than typical dictionary or legal definitions. More importantly, they account for behavior which to the adult male offender may seem innocuous, but to the female child victim is as obnoxious as sexual intercourse. As one commentator indicates:

From the point of view of the adult male, sexual activity that stops short of penile penetration is often described as "unconsummated", as though somehow it does not "count". But from a psychological point of view, especially from the child's point of view, the sexual motivation of the contact, and the fact that it must be kept secret, are far more significant than the exact nature of the act itself.⁸

Because this Comment focuses on civil redress for injuries sustained by victims of incestuous abuse, this latter perspective is critical. Therefore, for the purposes of bringing a civil action, incestuous abuse will be defined as any sexual contact between a male adult and a female child over whom he exercises paternal authority, and which results in physical, psychological, or sexual trauma to the child. "Sexual trauma" is defined as any physical contact which must be kept secret.⁹

B. THE INCESTUOUS FAMILY

Recent research indicates that incestuous abuse is most likely to occur in rigidly patriarchal families.¹⁰ In these families, the father exerts immense control over his wife and daughters, virtually isolating them from the outside world.¹¹ He is often physically abusive but is careful not to exceed limits beyond which outside intervention would be inevitable.¹² Although

which . . . results in emotional, physical, or sexual trauma." BUTLER, *supra* note 1, at 4-5.

8. HERMAN, *supra* note 1, at 70.

9. Secrecy is an essential element of incestuous abuse. See *infra* text accompanying notes 34-49.

10. HERMAN, *supra* note 1, at 54-57.

11. This paternal "supervision" becomes especially acute for the daughter when she reaches adolescence. HERMAN, *supra* note 1, at 91. Her father is likely to become intensely jealous, forbidding her to date, wear make-up or exhibit other behavior indicative of a desire to establish independent relationships with men. *Id.*

12. BUTLER, *supra* note 1, at 29. If the father is to preserve his despotic rule at home, it is imperative that his behavior appear "normal" to outsiders. Should he beat his

feared at home, he may be perceived as weak or insecure outside.¹³ He is careful to dominate only in those situations where he meets with little, if any, resistance.¹⁴ Of most significance is the father's exercise of male prerogative within the home. He expects his wife to serve him, and should she fail to do so to his satisfaction, he views it as his right to extract similar service from his daughter, including sex.¹⁵ Indeed, many such fathers regard it as an exercise of parental privilege to introduce their daughters to sex.¹⁶ If confronted with the incest, the father's first response is denial.¹⁷ If disbelieved, he blames his wife's frigidity and/or his daughter's seductiveness.¹⁸ Only when faced with trial and possible imprisonment are fathers likely to admit their wrongdoing.¹⁹

wife or daughter to the extent that medical attention is required, he has exposed himself to the certainty that his abuse will be discovered, and possibly curtailed, by outsiders. Thus, in the words of one commentator, "[the] violence, though terrifying to the mothers and children, did not exceed certain clear limits In this, as in many other aspects of family life, [fathers] seemed exquisitely sensitive to the bounds of the male prerogative, and did not exceed the socially condoned limits of violence." HERMAN, *supra* note 1, at 74.

13. Raphaling, Carpenter and Davis, *Incest: A Genealogical Study*, ARCHIVES GEN. PSYCHIATRY 505 (1967). Again, this chameleon like quality of incestuously abusive fathers to exhibit a shifting wolf/sheep identity is based on their need to hide their conduct at home from the outside world lest someone find out and put a stop to their abusive behavior. Fathers monitor their relative power in any situation and adjust their behavior accordingly. Hence, "[i]n the presence of men much more powerful than themselves, such as police, prosecutors, therapists and researchers, the fathers knew how to present themselves as pathetic, helpless and confused. . . . Face to face with men of equal or superior authority, they become engaging and submissive." HERMAN, *supra* note 1, at 74-76. Note that the group of men to which the father presents a confused, pathetic image is that group which is charged with protecting his daughter from him. By presenting such a sympathetic, even pitiful, demeanor to the world, the father ensures that his daughter's story will not be believed should she turn to these authorities for assistance.

14. HERMAN, *supra* note 1, at 76.

15. *Id.* at 79 and 83.

16. Raphaling, Carpenter, and Davis, *supra* note 13, at 506.

17. HERMAN, *supra* note 1, at 22.

18. *Id.* at 42-49. Husbands claim that their wives failed to perform their marital duties, forced their daughters to assume the role of surrogate wife and tolerated the incest. As to their daughters, fathers characterize them as seductive, maintaining that they initiated, or at least consented to, the incestuous contact. The fathers' claims are substantially corroborated in the literature on the subject of incest, from medical treatises to pornography. It is perhaps not idle speculation to suggest that because most such literature is written by men, much of it for men, the corroboration found therein provides a convenient scapegoat for the "brother" whose sexual contact with his daughter is questioned. In such fashion is the male prerogative to demand sexual service from women in general, and daughters in particular, preserved for all men. *Id.*

19. *Id.* at 171.

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In stark contrast to their husbands, mothers in incestuously abusive families are virtually powerless. Because birthrates in these families are higher than the norm,²⁰ the mothers are often overburdened with multiple pregnancies²¹ and the subsequent care of their children, in which their husbands do not share.²² Mothers are discouraged from participating in activities outside the home by their husbands,²³ on whom they are completely dependent for financial support.²⁴ A common experience for these mothers, the significance of which cannot be underestimated, is disabling illness resulting frequently in their hospitalization or in their living as an invalid at home.²⁵ These illnesses render the mothers unable to fulfill their responsibilities at home, but their husbands do not assume these responsibilities themselves. Instead their daughters are expected to do so.²⁶ Once the mother becomes unable to provide a strong, competent influence at home, the possibility that her daughter will be incestuously abused increases dramatically.²⁷ If she learns of the incest, the mother perceives tolerance of it as her only choice.²⁸ Powerless

20. One study found that imprisoned incestuous fathers reported an average of 5.1 children per family. Cavallin, *Incestuous Fathers: A Clinical Report*, 122 AM. J. PSYCHIATRY 1132, 1134 (1966). In a study conducted in Ireland, incestuous families were reported to have an average of 6 or 7 children as compared with a country average of 4.5. N. Lukianowicz, *Incest*, 120 BRIT. J. PSYCHIATRY 301, 303 (1972).

21. HERMAN, *supra* note 1, at 11. Although some daughters report that their mothers wanted large families, frequently, the pregnancies were imposed on the wives. One daughter commented that her father "felt, if you're going to have sex you have to have the child. And he was the type of man who would say, if I can't get it from my wife, I'll go elsewhere. He's also the type of man where, if she didn't want to open her legs, he'd pinch her thighs." *Id.*

22. *Id.* at 54. Typically, an absolute division of labor prevails in incestuously abusive homes such that husbands provide financial support while wives care for the children and the house. *Id.*

23. *Id.* at 73. One daughter reported that although her mother worked prior to marrying her father, when she married and moved to Vermont, her husband told her not to work or drive because it was too cold and dangerous. The mother never worked or drove again. *Id.*

24. *Id.* at 72.

25. FINKELHOR, *supra* note 1, at 125. Although the cause of these illnesses is often unclear, one commentator suggests that in many cases, it is a direct result of multiple pregnancies. HERMAN, *supra* note 1, at 77.

26. HERMAN, *supra* note 1, at 79. The author notes that the fathers react to their wives' illnesses as though they, along with the children, are being deprived of mothering. Because they perceive themselves as the family providers, they consider it their right to be nurtured at home "if not by their wives, then by their daughters." *Id.*

27. *Id.* at 48. The author comments "[i]t appears . . . that only a strong alliance with a healthy mother offers a girl a modicum of protection from sexual abuse." See also FINKELHOR, *supra* note 1, at 148.

28. One must not succumb to the temptation of blaming the mother for her failure

to protect herself, she is in no position to protect her daughter.²⁹

The role of "little mother" in the family places the daughter in a unique and unenviable position. She is called upon to perform major household tasks, to mediate her parents' quarrels and to listen patiently to her father's complaints about her mother.³⁰ Her own needs for affectionate attention from her mother are unmet, a source of profound disappointment to her.³¹ The special alliance created between her and her father provides her with the only affectionate attention she receives from either parent.³² Finally, in order to keep the family together, the daughter feels obligated to fulfill the role with which she is burdened.³³ Given the foregoing, one readily comprehends why the daughter feels she must comply when her father chooses to demand sexual services from her.

C. THE ROLE OF SECRECY

Sexual contact between father and daughter can commence anytime between the daughter's infancy and her adolescence, but on the average it begins when she is nine years old.³⁴ From then until the time she leaves home, her father seeks sexual contact with her at every opportunity.³⁵ In order to ensure her

to intervene on her daughter's behalf. She fears that intervention will provoke her husband's anger or perhaps induce him to desert the family. She has minimal ability to provide financially or emotionally for herself or her children. In addition, she considers her first loyalty to be to her husband and her marriage. If maintaining these requires the sexual sacrifice of her daughter, she will not protest. Should one regard this behavior as maternal collusion in the incest, one must also remember that "[m]aternal collusion in incest, when it occurs, is a measure of maternal powerlessness." HERMAN, *supra* note 1, at 49.

29. Reporting results from a study she conducted, the author observed "[e]conomically dependent, socially isolated, in poor health, and encumbered with the care of many small children, these mothers were in no position to challenge their husbands' domination or to resist their abuses." *Id.* at 78.

30. Daughters can be quite young when they are pressed into service. Close to half of the participants in one study were under ten years old. *Id.* at 79.

31. *Id.* at 81.

32. BUTLER, *supra* note 1, at 31.

33. HERMAN, *supra* note 1, at 80. The daughter's worst fear is that her father will desert the family and her mother will fall apart completely. *Id.* In fact, her perception is not unfounded. The author's research indicates that in several families the father deserted when the daughters left home. *Id.* at 94.

34. *Id.* at 83.

35. *Id.* at 85. The author reports that although daughters invent myriad excuses to avoid sexual contact with their fathers, the fathers are persistent. *Id.* at 87. Commenting

availability to him, the father enjoins his daughter to secrecy. This is most often accomplished with threats of dire consequences should she disclose his behavior to anyone.³⁶ She is told, for example, that her father will be imprisoned, her mother will suffer a nervous breakdown, or that she herself will be sent away.³⁷ Her father's threats thus reinforce her fear that unless she complies with his demands, the family will split up.

Despite her fear of the consequences, the daughter longs to break secrecy. She is most anxious that her mother should learn of the incest in order that she come to her daughter's rescue.³⁸ Unable to tell her mother directly, as a young child, the daughter develops identifiable symptoms of distress clinicians have come to recognize as characteristic of victims of incestuous abuse.³⁹ These include nightmares, evidence of fear and withdrawal, and complaints of abdominal pains.⁴⁰ Some girls exhibit ritualized sexual behavior such as unzipping men's pants.⁴¹ If the daughter does confide in her mother, the response she receives is often disappointing. In order to protect her marriage, the mother indicates unequivocally that her husband's needs take priority over her daughter's⁴² and, therefore, she makes no attempt to stop the incestuous abuse.

As the daughter approaches puberty, her father's sexual demands are likely to become intolerable.⁴³ Fathers who haven't yet done so may attempt sexual intercourse.⁴⁴ This additional stress can precipitate disclosure.⁴⁵ Unfortunately, outsiders to

on her research results, the author states "[i]n no case was the incestuous relationship ended by the father. The daughters put a stop to the sexual contact as soon as they could, by whatever means they could. *Id.* at 95.

36. BUTLER, *supra* note 1, at 32-33.

37. HERMAN, *supra* note 1, at 88.

38. *Id.*

39. *Id.*

40. *Id.*

41. The woman who reported this behavior to the author was five years old when she began approaching male acquaintances and unzipping their pants. Another author describes encounters between a counselor and an eight year old girl. "[She] would constantly find reasons to come into my office and would rub herself suggestively and sexually against my leg, looking up into my face all the while." BUTLER, *supra* note 1, at 37.

42. HERMAN, *supra* note 1, at 89. See *supra* text accompanying notes 20-29.

43. *Id.* at 91-92.

44. *Id.* at 131.

45. *Id.* at 92. The daughter might run away or seek placement in a foster home or admission to a residential school.

whom the daughter appeals usually misunderstand, disbelieve, or punish her.⁴⁶ Until quite recently, this has been true even of professionals charged with the duty to protect victims of incestuous abuse.⁴⁷ Ignorance and a natural aversion to incest cause them to abdicate that responsibility. In addition, they, along with most of society, are loath to challenge the male prerogative to behave as he pleases in his own home.⁴⁸ This near universal societal refusal to respond appropriately to incestuous abuse punishes the victim by denying her warranted assistance, thereby compounding the psychological harm caused her by her father's conduct.⁴⁹

D. THE HARMFUL EFFECTS

Incestuous abuse frequently results in profound psychological harm to daughters. During childhood symptoms including guilt, shame, anxiety, hostility and feelings of inferiority and low self esteem are common.⁵⁰ The feelings of shame and guilt accompany daughters into adulthood, at which time other symptoms emerge. These include problems in interpersonal relations, feelings of isolation, mistrust of men and sexual dysfunction.⁵¹ Women with histories of drug and alcohol abuse, prostitution, and abusive relationships with men are likely to have been incestuously abused as children.⁵² One symptom which appears with particular frequency is the woman's perception that she is different, an outsider, and that it is her own wickedness that sets

46. BUTLER, *supra* note 1, at 8-9, 37-38.

47. In the past few years, as incest has become better understood, groups around the country have formed to respond to the daughter's, and sometimes her family's, needs for sensitive intervention. It is hoped that more such groups will be formed, since with their help, the experience of breaking silence need not continue to be debilitating rather than liberating for the daughter.

48. HERMAN, *supra* note 1, at 129. See also *supra* note 3.

49. In addition, it acts to insulate the father even further from accountability for his conduct.

50. DE FRANCIS, *supra* note 4, at 159-61.

51. Tsai, Feldman - Summers and Edgar, *Childhood Molestation: Variables Related to Differential Impacts on Psychological Functioning in Adult Women*, 88 J. ABNORMAL PSYCHOLOGY 407, 414 (1979).

52. One rape relief group reports that 35% of its victims had been incestuously abused. HERMAN, *supra* note 1, at 30. Separate research indicates that of 136 street prostitutes interviewed, 25% had been molested by fathers, stepfathers, or foster fathers. James and Meyerding, *Early Sexual Experiences and Prostitution*, 134 AM. J. PSYCHIATRY 1381, 1383 (1977). Twenty percent of the participants in a third study had experienced alcohol or drug dependency. HERMAN, *supra* note 1, at 99.

her apart.⁵³ Because she considers herself to be evil, the daughter perceives the incest and later rapes or beatings as deserved punishment.⁵⁴ This then, is the legacy of the daughter: robbed of childhood by maternal disability and robbed of innocence by paternal depravity.

II. THE TORT THEORIES

The incest victim/survivor has much to gain by pursuing a civil action for damages against her father. Confronting him in court, although intensely emotional for her, can be empowering.⁵⁵ More important, a successful litigant receives direct compensation for the harm done her.⁵⁶ In addition, should she prevail, the daughter witnesses the court place the blame for the incestuous abuse squarely on her father's shoulders.⁵⁷ To the extent that punitive damages are awarded, the blameworthiness of her father's conduct is emphasized. The daughter and her attorney should balance these factors against the potential success

53. *Id.* at 96-97. The author comments "[t]he sense of being an outsider . . . often reached extreme proportions. . . . With depressing regularity, these women referred to themselves as bitches, witches, and whores." *Id.* at 97. She concludes that this identity as fundamentally "bad," acts as a defense against the utter powerlessness most of these women experienced as children when dominated and overwhelmed by their fathers. *Id.* at 98.

54. *Id.* at 98, 101-102.

55. Telephone interview with S. Butler, author, CONSPIRACY OF SILENCE *supra* note 1, (Aug. 10, 1982). Although the incest victim/survivor participates in a similar confrontation if she appears as a witness for the prosecution in a criminal proceeding, the psychological dynamic is quite different. In a criminal proceeding, the State confronts the father as an adversary, with authority equal to his. The daughter's authority is that of a subordinate, just as it is/was at home. By contrast, in a civil proceeding, the daughter is her father's adversary. Her authority is equal to, if not greater than, his. This dramatic shift in power can affect the daughter's psychological recovery process. See HERMAN, *supra* note 1, at 177-201. (The powerlessness experienced by incest victims is a recurrent theme in the literature on the subject. See generally BUTLER, *supra* note 1, and HERMAN, *supra* note 1.) On the other hand, the confrontation has the potential of impeding the daughter's recovery process. Before choosing to proceed, both attorney and client must carefully consider the likely impact of the proceeding on the client.

56. This is significant as compared with the benefit incest victims derive from successful prosecution. When they file suit, most daughters are likely to be adults, living apart from their families. As such, prosecution resulting in her father's imprisonment is useful to the daughter only to the extent that her father has access to her. As an adult, living on her own, she has already terminated access and is no longer in need of the protection from her father which prosecution offers her. (Of course, if she has younger sisters living at home, their father's imprisonment will protect them.) Therefore, it is of greater benefit to her to seek payment from her father for the injuries she has sustained as a result of his conduct. This is best accomplished through civil litigation.

57. On the issue of blame, see *supra* text accompanying note 18.

and emotional repercussions of this kind of litigation in deciding whether or not to file suit.⁵⁸ Other practical problems might arise and must be included in the preliminary discussions between the daughter and her attorney. These include: (1) judicial reluctance to permit an award of damages where to do so would impoverish the father and/or his family and (2) the need for a guardian ad litem to sue on the minor daughter's behalf.⁵⁹ If a decision is made to go forward with the case, at least four causes of action can be alleged.

A. THE INTENTIONAL TORT THEORIES

1. *Intent*

Of the three intentional tort theories available to the daughter, two require proof that her father acted intentionally, that is, either purposefully to cause, or with knowledge that his conduct was substantially certain to cause, specific results prescribed by law.⁶⁰ These results are different with respect to each of the two theories. As to assault, intent is established if the father approached his daughter with the purpose of causing her reasonably to believe that harmful or offensive contact with him was imminent, or with knowledge that his daughter was substantially certain to have such a reasonable belief.⁶¹ A cause of action in

58. In two suits daughters have won against their fathers since 1975, damages awarded have been substantial. See *Elkington v. Foust*, 618 P.2d 37 (Utah 1980) in which a step-daughter was awarded \$42,000 in damages against her stepfather for sexual assault and battery; *X v. Melder*, 3 Civil 20125 (on appeal from the Superior Ct., Butte County, CA) in which a daughter was awarded \$906,465 of which \$300,000 was punitive damages. The case was re-submitted on Feb. 28, 1983.

59. The author recognizes that these problems can exist and might act to deter certain daughters from filing suit against their fathers. Any discussion of these problems is, however, beyond the scope of this Comment.

60. The third intentional tort theory, the intentional infliction of emotional distress, requires a showing that the father has intentionally or recklessly acted so as to cause his daughter severe emotional distress. See *RESTATEMENT (SECOND) OF TORTS*, § 46 (1977) which reads in relevant part "[o]ne who . . . intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress. . . ." *Id.* An intent requirement alone would present the same proof problem the daughter encounters in establishing her assault and battery causes of action. See *supra* text accompanying notes 60-73. However, since the intentional infliction of emotional distress can be alleged on the basis of reckless conduct alone, the daughter need not prove her father intended to cause her severe emotional distress. Proof that he behaved in reckless disregard of that probability is sufficient. For proof of recklessness, see *supra* text accompanying notes 86-90.

61. *RESTATEMENT (SECOND) OF TORTS*, *supra* note 60, at § 21 which reads in pertinent part: §(1) "[a]n actor is subject to liability to another for assault if (a) [s/he] acts

battery requires a showing that the father approached his daughter purposefully to cause harmful or offensive contact with her, or to cause her to believe that such contact was imminent.⁶² If the father knew that such contact or apprehension was substantially certain to occur as a result of his conduct, tortious intent can be established.⁶³

In view of the intent requirement for either assault or battery, a daughter will have to show that her father knew when he molested her that she would apprehend imminent contact and that such contact was offensive to her. It is the father's knowledge of offensiveness which, at least in theory, poses a significant proof problem for the daughter. As discussed earlier, fathers perceive the sexual contact demanded of their daughters as implicit in their paternal role.⁶⁴ If questioned about this contact with his daughter, a father is likely to deny the incest or blame it on his wife or daughter.⁶⁵ Although daughters characteristically invent myriad excuses to ward off sexual contact with their fathers, fathers persist in their sexual advances.⁶⁶ A suggested reason for this is the father's "infantile longings for nurturance and care"⁶⁷ which he seeks to satisfy through his daughter. In addition, one commentator concludes that the father must find the sexual contact itself so rewarding that it approaches an addiction.⁶⁸ This same commentator suggests that in some cases,

intending to cause a harmful or offensive contact with the person of the other . . . or an imminent apprehension of such contact. . . ." Further, "[a]n act is done with the intention of putting the other in apprehension of an immediate harmful or offensive contact if it is done for the purpose of causing such an apprehension or with knowledge that, to a substantial certainty, such apprehension will result." *Id.* at comment d.

62. RESTATEMENT OF TORTS, *supra* note 60, at § 18 which provides in relevant part: "(1) [a]n actor is subject to liability to another for battery if (a) [s/he] acts intending to cause a harmful or offensive contact with the person of the other . . . or an imminent apprehension of such a contact. . . ." In addition, "[i]n order that an actor may be liable . . . it is necessary that an act be done for the purpose of bringing about a harmful or offensive contact or an apprehension of such contact . . . or with knowledge that such a result will, to a substantial certainty, be produced by [her/his] act." *Id.* at comment e.

63. *Id.*

64. See *supra* text accompanying notes 14-16.

65. See *supra* text accompanying notes 17-18.

66. HERMAN, *supra* note 1, at 86-7. The author reports that one of the women who participated in her study stated "I don't know why he went along with it, because I never responded. Every time I'd say 'Daddy, I gotta go pee.' You know, anything to get out of it." *Id.* at 86.

67. *Id.* at 87.

68. *Id.* The author points out that the father needn't fear any judgment of his performance and that the secrecy required by the forbidden nature of incest heightens his

unhappiness manifested by the daughter contributes to her father's enjoyment of his sexual contact with her.⁶⁹ She concludes that these fathers are motivated by power and dominance rather than sexual pleasure.⁷⁰ The preceding profile is not that of a man who knows that his daughter is likely to find his behavior offensive, but rather depicts a man so self absorbed as to be totally oblivious to her probable response. This mental state, therefore, does not conform to that required to establish intent.

Ultimately, it is for the jury to decide whether the intent requirement has been met. It might choose to disbelieve the father or, if it believes him, to conclude that his purported ignorance of his daughter's probable reaction is indicative of insanity. Although at first blush this conclusion would seem to provide the father with a defense, at common law, and by statute in California, insane persons are held liable for their tortious acts.⁷¹

The jury, then, has three possible alternatives: (1) it can disbelieve the father; (2) it can believe him but find his perceptions so bizarre as to constitute a form of insanity; or (3) it can believe him without any question of the reasonableness of his perceptions. It is only the last of these alternatives which would undermine the daughter's case. However, in cases of sexual battery between non-related men and women, courts have awarded damages with little or no discussion of tortious intent.⁷² In addi-

excitement. Finally, any detrimental consequences of his behavior are suffered by his daughter, not him.

69. *Id.*

70. *Id.* One researcher who interviewed convicted incest offenders concluded that their behavior was indicative of hostility to all women, acted out on those women least capable of retaliation, their daughters. Cavallin, *supra* note 20, at 1137.

71. *McGuire v. Almy*, 297 Mass. 323, 8 N.E.2d 760 (1937) in which defendant struck plaintiff, a registered nurse hired to care for defendant (whom plaintiff knew to be insane), with the leg of a highboy when plaintiff entered the room to attempt to remove furniture defendant had broken during a fit. *See also* CAL. CIV. CODE § 41 (West 1982) which reads in relevant part: "[a] . . . person of unsound mind, of whatever degree, is civilly liable for any wrong done by [her/him] . . ."

By way of speculation, if one accepts researchers' conclusions that incestuous abuse is wide-spread (*see supra* note 1), that it is a by-product of structuring one's family to rigid patriarchal standards (*see supra* note 10), and that a jury might find incestuously abusive fathers to be insane, one is compelled to conclude that extreme patriarchy breeds insanity in men. Therefore, since modern society is predominantly patriarchal, untold numbers of its male members must be insane.

72. *See e.g. Skousen v. Nidy*, 90 Ariz. 215, 367 P.2d 248 (1961) in which plaintiff's

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tion, the two daughters who have brought suit to date have prevailed on intentional tort theories.⁷³ This indicates that although the law as pronounced in texts and scholarly commentaries requires proof of specific elements of a cause of action, as a practical matter, where courts are persuaded of the validity of plaintiff's claim, actual proof of these elements may be waived. Nevertheless, daughters cannot take the risk that their claims will similarly persuade courts to forego any discussion of paternal intent and should be prepared to offer proof of that intent.

2. Assault

Daughters, like all others, have an actionable right to be free from the intentionally inflicted, reasonably held apprehension of imminent, unwanted offensive contact.⁷⁴ When a father approaches his daughter, without her consent, intending⁷⁵ to cause this apprehension in her, he is liable for civil assault.⁷⁶ Incestuously abusive fathers ordinarily seek frequent sexual contact with their daughters for an extended period of time.⁷⁷ As a result, a pattern of paternal behavior is established which the daughter dreads.⁷⁸ From this pattern, the daughter is likely to

employer (defendant) was held to answer for constructive discharge because of his repeated "indecent assaults" upon plaintiff. Without mention of intent, the court concluded that plaintiff stated a good cause of action for assault and battery. In cases permitting damages for attempted rape, courts have noted without any indication as to what a showing of tortious intent requires, that proof of intent to rape is unnecessary to prove tortious intent. *See e.g. Lutterman v. Romey*, 121 N.W. 1040 (1909) in which defendant was held liable for assault and battery upon plaintiff whom he had touched sexually without her consent. In cases alleging rape of a minor, courts have focused on the issue of plaintiff's legal inability to consent in awarding damages to her. *See e.g. Altman v. Eckermann*, 132 S.W. 523 (1910) in which defendant raped his thirteen old ward. The court stated "the touching of her person with the intent to injure her, she being incapable of giving her consent thereto, constituted an assault. Surely it cannot be said that in having intercourse with a thirteen year old girl, the appellee had no intention to injure her." *Id.* Although the court concluded that defendant's conduct was intentional, its reference to "intent to injure" reveals the court's concern with something more akin to criminal than tortious intent.

73. *See supra* note 58.

74. RESTATEMENT (SECOND) OF TORTS, *supra* note 60, at § 21 which reads in pertinent part: "[a]n actor is subject to liability to another for assault if (a) [s/he] acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such contact, and (b) the other is thereby put in such imminent apprehension."

75. *See supra* text accompanying notes 60-73.

76. *See supra* note 74.

77. *See supra* text accompanying notes 35.

78. HERMAN, *supra* note 1, at 84-86.

learn to distinguish between instances of paternal approach which presage molestation and those which do not. Therefore, it is reasonable for her to apprehend impending sexual contact with her father when he approaches her in a manner she recognizes as similar to the manner he evidenced on previous occasions immediately prior to molesting her. Her reasonable apprehension of imminent offensive contact, in conjunction with a showing that her father intended to cause this apprehension, suffices to establish his liability for tortious assault.

3. Battery

The interest protected by the tort of battery is freedom from intentional, unwanted, harmful or offensive contact with one's person.⁷⁹ Contact sufficiently offensive to establish liability "[offends] the ordinary person . . . one not unduly sensitive as to [her] personal dignity."⁸⁰ This measure of a daughter's reaction to her father's conduct is, in essence, a reasonable person standard. That the aggregate of "reasonable persons" known as society has refused, until quite recently, to respond appropriately to the pervasive problem of incestuous abuse is evidence that the "reasonable person" finds incestuously abusive contact odious.

The daughter must allege that her father's contact was intentional. Whether or not the father knew that his daughter was substantially certain to find sexual contact with him offensive is a jury question.⁸¹ However, with no discussion of tortious assault, numerous courts have awarded women damages for sexual assault and battery.⁸² In addition, those cases in which women have been awarded damages for incestuous assault and battery

79. PROSSER, LAW OF TORTS § 9, 34 (4th ed. 1971) which reads in relevant part: "[t]he interest in freedom from intentional and unpermitted contacts with the plaintiff's person is protected by an action for the tort commonly called battery."

80. RESTATEMENT (SECOND) OF TORTS, *supra* note 60, at § 19 comment a which reads:

In order that a contact be offensive to a reasonable sense of personal dignity, it must be one which would offend the ordinary person and as such one not unduly sensitive as to [her/his] personal dignity. It must, therefore, be a contact which is unwarranted by the social usages prevalent at the time and place at which it is inflicted.

81. See *supra* text accompanying notes 71-72.

82. See *supra* note 64.

were won with no discussion of tortious intent.⁸³ It would seem that juries are persuaded by the repellent nature of the acts in question, and do not closely examine the literal character of the defendant's thinking at the time the act(s) occurred. This augurs well for daughters seeking compensation from their fathers for the trauma they have sustained as a result of incestuous abuse.

4. *Intentional Infliction of Emotional Distress*

Daughters have a protectible interest in freedom from severe interference with their emotional tranquility caused by their father's intentional or reckless, outrageous conduct.⁸⁴ In order to establish that her father's incestuously abusive contact renders him liable, the daughter must allege that (1) his conduct was outrageous; (2) he intended to cause or recklessly disregarded the probability of causing her severe emotional distress; (3) she suffered severe emotional distress; and (4) her father's outrageous conduct actually and proximately caused her emotional distress.⁸⁵

Proof that her father intended to cause her severe emotional distress poses the same problem for the daughter that she confronts in establishing the requisite intent for assault and bat-

83. See *supra* note 58.

84. *State Rubbish Collectors v. Siliznoff*, 38 Cal. 2d 330, 337-8, 240 P.2d 282, 286 (1952). In a suit for payment of promissory notes, defendant cross complained seeking damages for assault based on plaintiff's alleged use of intimidatory tactics to force defendant to sign the notes. In this landmark case, the California Supreme Court held that because plaintiff's threats to ruin defendant's business and to beat him were outrageous, and the fright defendant suffered as a result of those threats was severe, plaintiff's liability for the intentional infliction of emotional distress was established. The court relied on an outline of the elements of the tort of intentional infliction of emotional distress found in *RESTATEMENT (SECOND) OF TORTS*, *supra* note 60, § 46, which reads: "[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm."

85. *Fletcher v. Western National Life Ins. Co.*, 10 Cal. App. 3d 376, 394, 89 Cal. Rptr. 78, 88 (1970). Defendant insurance company was held liable for intentional infliction of emotional distress as a result of its bad faith refusal to make disability payments under plaintiff's policy. Defendant also sent threatening letters containing false statements to plaintiff in an effort to induce plaintiff to surrender his policy or to settle a non-existent dispute to his disadvantage. Defendant conceded that its entire course of conduct was outrageous. Due to his disability, plaintiff was unable to work and defendant's refusal to pay him under his policy forced him to suffer substantial financial loss. This, in conjunction with plaintiff's knowledge that he was unable to pay defendant what it demanded of him, caused plaintiff to suffer from anxiety and worry sufficient to qualify as severe emotional distress.

tery.⁸⁶ She must assert that her father sexually abused her either purposefully or with the knowledge that she was substantially certain to suffer severe emotional distress as a result.⁸⁷ However, the intentional infliction of emotional distress permits the alternative pleading of recklessness to define her father's mental state.⁸⁸ When a father incestuously abuses his daughter, his conduct is reckless if he knows or has reason to know of facts from which a reasonable person would realize that such conduct puts his daughter at substantial risk of suffering severe emotional distress.⁸⁹

Because his daughter is a child, a father knows that she is dependent on him for survival. He knows that her emotional well being is dependent on his adequate provision of nurturance and affection, and that she will obey him in order to earn that affection. Because of her extreme youth, he has reason to know of her inability to comprehend or deter his sexual advances. It is unthinkable that a reasonable person in possession of the same facts would fail to perceive the terrible risk of severe emotional harm to his daughter the father creates when he requires her to pay with her body for the affection and care she deserves free of any price. Therefore, a father evidences reckless disregard of the probability of causing his daughter severe emotional distress.

Conduct sufficiently outrageous to establish liability for the intentional infliction of emotional distress can arise from defendant's abuse of his relationship with the plaintiff when that relationship places defendant in a position of authority over plaintiff, or gives defendant the power to affect plaintiff's interests.⁹⁰

86. See *supra* text accompanying notes 60-63.

87. RESTATEMENT (SECOND) OF TORTS, *supra* note 60, § 46 comment i which reads in relevant part: "[t]he rule stated in this Section applies where the actor . . . knows that [severe emotional] distress is . . . substantially certain . . . to result from [her/his] conduct."

88. *Id.* "[The rule] applies also where [the actor] acts recklessly. . . ."

89. *Id.* at § 500 which reads in pertinent part:

The actor's conduct is . . . reckless . . . if [s/he] does an act . . . knowing or having reason to know of facts which would lead a reasonable [person] to realize . . . that [her/his] conduct creates an unreasonable risk of . . . harm to another [and] that such risk is substantially greater than that which is necessary to make [her/his] conduct negligent.

90. *Id.* at § 46 comment e "[t]he extreme and outrageous character of the conduct may arise from an abuse by the actor of a position, or a relation with the other, which

The father-daughter relationship is imbued with both these characteristics. Fathers have a substantial, if not total, degree of control over their young daughters' lives. In addition, if necessary, they can compel obedience from their daughters with threats of terrifying consequences, which the daughters know their fathers can produce.⁹¹ Incestuously abusive fathers exploit the power and authority inherent in the parent-child relationship which results in a profound corruption of that bond. It is precisely this sort of behavior that is contemplated by the requirement that conduct be outrageous in order to establish liability for the intentional infliction of emotional distress.⁹²

The daughter's emotional distress must be severe as determined by whether a reasonable person could be expected to endure similar emotional distress.⁹³ The duration and intensity of the distress can be considered in analyzing its severity.⁹⁴ If no physical harm is alleged, some courts might "look for more in the way of extreme outrage" to protect against fictitious claims.⁹⁵

gives [her/him] actual or apparent authority over the other, or power to affect [her/his] interest."

91. See *supra* text accompanying notes 35-37.

92. For an early case assessing liability for emotional harm resulting from intentional abuse of the type of relationship specified in RESTATEMENT (SECOND) OF TORTS § 46 comment e see *Johnson v. Sampson*, 167 Minn. 203, 208 N.W. 814 (1926). A fifteen year old schoolgirl was accused by her principal of engaging in sex with several men. He threatened to send her to reform school unless she confessed. As a result, a confession was extorted from her and she suffered great emotional distress.

It is useful to note the similarity of relationship between a school girl and her principal and a daughter and her father. In each case, the parties are an adult male and a female child over whom he wields tremendous power. The use of threats to ensure the child's compliance with the adult's demands is common to both. Of particular significance is the traditional *parens patriae* role played by school authorities. The care and discipline of children normally exercised by their parents is transferred to school authorities by day. These striking similarities dictate that just as the school principal was held liable for his abuse of authority, so too incestuously abusive fathers must be held liable for their abuses of authority.

93. RESTATEMENT (SECOND) OF TORTS, *supra* note 60, at § 46 comment j which reads: "[t]he law intervenes only where the distress inflicted is so severe that no reasonable [person] could be expected to endure it."

94. *Id.* "The intensity and the duration of the distress are factors to be considered in determining its severity." See also *Fletcher v. Western National Life Ins. Co.*, 10 Cal. App. 3d 376, 89 Cal. Rptr. 78 (1970).

95. RESTATEMENT (SECOND) OF TORTS, *supra* note 60, at § 46 comment k which reads in pertinent part:

Normally, severe emotional distress is accompanied or followed by shock, illness, or other bodily harm, which in itself

Daughters typically suffer from guilt, shame, anxiety, low self esteem, and inability to trust men or form satisfying relationships with their peers.⁹⁶ These symptoms persist for years.⁹⁷ The daughter is likely to have suffered some physical distress as well, particularly if the sexual conduct with her father included vaginal penetration.⁹⁸ The multiplicity of symptoms of emotional distress experienced by victims of incestuous abuse, in conjunction with the length of time these symptoms tend to persist, provide compelling evidence that the daughter's emotional distress is severe.

Having established the foregoing, daughters must allege that their fathers' conduct actually and proximately caused their emotional distress.⁹⁹ As noted above, research indicates conclusively that daughters who have been incestuously abused suffer serious emotional repercussions.¹⁰⁰ Because it is their fathers who sexually abuse them, it follows *a fortiori* that their fathers' conduct caused their emotional distress. This conclusion can be substantiated by psychiatric testimony regarding the nature and cause of the daughters' emotional distress.¹⁰¹

Fathers who incestuously abuse their daughters recklessly exploit their daughters' trust in and dependency on them. This corruption of the parent-child bond inflicts substantial and enduring emotional distress on the daughters. As a result, their ability to lead emotionally healthy and rewarding adult lives is

affords evidence that the distress is genuine and severe. The rule stated is not, however, limited to cases where there has been bodily harm; and if the conduct is sufficiently extreme and outrageous there may be liability for the emotional distress alone, without such harm. In such cases the courts may perhaps tend to look for more in the way of outrage as a guarantee that the claim is genuine. . . .

96. See *supra* text accompanying notes 50-51. These symptoms conform to those listed as acceptable evidence of severe emotional distress. See RESTATEMENT (SECOND) OF TORTS, *supra* note 60, at § 46 comment j which reads in pertinent part: "[e]motional distress . . . includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea."

97. See *supra* text accompanying notes 50-51.

98. Incest victims commonly suffer shock, HERMAN, *supra* note 1, at 28, which is considered bodily harm. See RESTATEMENT (SECOND) OF TORTS, *supra* note 95.

99. See *supra* text accompanying notes 85.

100. See *supra* text accompanying notes 50-53.

101. Since many incest victims eventually seek therapy (HERMAN, *supra* note 1, at 177), the daughter's own therapist, if willing, could act as the daughter's expert witness.

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placed in jeopardy. Therefore, it is incontrovertible that these fathers are liable for the intentional infliction of emotional distress.

B. THE NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

The State of California does not permit insurance companies to indemnify their policy holders against intentional tort liability.¹⁰² Therefore, if money damages are sought, daughters are advised to plead that their fathers' conduct renders them liable for the negligent infliction of emotional distress. At least eight states, including California, presently recognize an independent cause of action for negligently inflicted emotional distress.¹⁰³ California does not require proof of physical injury to substantiate plaintiff's claim of emotional distress as long as serious emotional distress to plaintiff was a reasonably foreseeable conse-

102. See CAL. INS. CODE § 533 (West 1972) which reads in relevant part: "[a]n insurer is not liable for a loss caused by the wilful act of the insured; but [s/he] is not exonerated by the negligence of the insured . . ." See also CAL. CIV. CODE § 1668 (West 1973) which reads in pertinent part "[a]ll contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for [her/his] own . . . willful injury to the person . . . of another . . . are against the policy of the law."

103. Seven states which recognize the cause of action do not require a showing of physical harm. They are California (*see Molien v. Kaiser Found. Hosp.*, 27 Cal. 3d 916, 616 P.2d 813, 167 Cal. Rptr. 831 (1980) in which defendant hospital negligently diagnosed plaintiff's wife as having syphilis thus causing the couple to file for divorce.); Connecticut (*see Montineiri v. Southern New England Tel. Co.*, 175 Conn. 337, 398 A.2d 1180 (1978) in which the telephone company revealed plaintiff's telephone number to a stranger who used the number to locate and kidnap plaintiff. Because plaintiff failed to demonstrate that the defendant could have foreseen plaintiff's emotional distress, plaintiff failed to state a cause of action for the negligent infliction of emotional distress.); Alabama (*see Taylor v. Baptist Medical Center, Inc.*, 400 So. 2d 369 (Ala. 1981) in which a mother went into premature labor. Her doctor's failure to attend to her after receiving notice from the hospital nursing staff that plaintiff had gone into labor, constituted negligent infliction of emotional distress.); Hawaii (*see Rodrigues v. State of Hawaii*, 52 Haw. 156, 472 P.2d 509 (1970) in which plaintiff's home was damaged as a result of flooding caused by negligent maintenance.); Louisiana (*see Chapetta v. Bowman Transportation, Inc.*, 415 So. 2d 1019 (La. App. 1982) in which plaintiff suffered anxiety and tension as a result of an accident caused by defendant's negligence.); New York (*see Johnson v. State of New York*, 37 N.Y.2d 378, 372 N.Y.S.2d 638, 334 N.E.2d 590 (1975) in which defendant's hospital negligently informed plaintiff that her mother was dead.); Maine (*see Wallace v. Coca Cola Bottling Plants, Inc.*, 269 A.2d 117 (Me. 1970) in which plaintiff drank from a bottle of Coca Cola that contained a used prophylactic.)

The eighth state which recognizes a cause of action for the negligent infliction of emotional distress requires a showing that plaintiff suffered physical harm in order to recover. *See Payton v. Abbott Labs*, 386 Mass. 540, 437 N.E.2d 171 (1982), a class action filed on behalf of plaintiff and 4,000 other DES daughters who had not developed cancer at the time the suit was filed.

quence of defendant's conduct¹⁰⁴ and as long as plaintiff can demonstrate the genuineness of her emotional distress.¹⁰⁵ This standard posits an objective measure of the father's conduct. Hence, his daughter need not prove that he himself perceived the risk of emotional distress to his daughter incurred by his conduct. Rather, she need prove only that the reasonable person in like circumstances would have perceived and avoided creation of the risk.

Children are generally not capable of providing for their own physical and emotional well being.¹⁰⁶ They must rely on their parents for the satisfaction of those needs. This creates a tremendously uneven balance of power between parents and their children which renders children particularly vulnerable to parental abuse. Fathers exploit that vulnerability when they force their daughters to submit to sexual contact with them. Such conduct manifestly creates an unreasonable risk that the daughter will thereby suffer serious emotional distress.

It is indisputable that incestuously abused daughters suffer severe emotional distress as a result of their fathers' conduct,¹⁰⁷ the symptoms of which may be verified by expert testimony. No reasonable person should be expected to endure the emotional distress incestuously abused daughters typically suffer.¹⁰⁸ This, in conjunction with the reasonable foreseeability of emotional distress as a consequence of sexual contact with one's father, establishes the incestuously abusive father's liability for the negligent infliction of emotional distress.

III. DEFENSES

A. TIME-BAR ARGUMENT BASED ON THE STATUTE OF LIMITATIONS

In California, the incest victim/survivor must file suit no later than one year after the claims against her father have accrued.¹⁰⁹ Traditionally, California courts have held that a tort

104. *Molien*, 27 Cal. 3d at 923, 616 P.2d at 817, 167 Cal. Rptr. at 835.

105. *Id.* at 930, 616 P.2d at 821, 167 Cal. Rptr. at 821, 839.

106. *See supra* notes 89-90 and accompanying text.

107. *See supra* notes 50-53 and accompanying text.

108. The Supreme Court of Hawaii has adopted this standard to prove that plaintiff's claim is genuine. *See Rodrigues v. State of Hawaii*, 472 P.2d 509 (Hawaii 1970).

109. *See CAL. CIV. PROC. CODE* § 312 (West 1982) which reads in relevant part:

cause of action accrues as of the date of injury.¹¹⁰ Strict application of a date of injury measure of accrual bars lawsuits filed more than one year after the injury was inflicted. In recognition of the manifest injustice which results from barring suits by persons justifiably in ignorance of their causes of action, courts have developed a "date of discovery" exception to the date of injury rule of accrual.¹¹¹ The basic postulate of the exception is that the statute of limitations can be tolled until such time as the plaintiff knows, or through the exercise of reasonable diligence should know, of her injury and its cause.¹¹²

Courts have applied the discovery exception to cases in which plaintiff's injuries failed to manifest themselves immedi-

"[c]ivil actions . . . can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued. . . ." Actions for assault, battery, intentional infliction of emotional distress, and negligent infliction of emotional distress must be filed within one year of accrual. See CAL. CIV. PROC. CODE § 340(3) (West 1982) which reads in relevant part: "[a]n action for . . . assault, battery, . . . or for injury to . . . one caused by the wrongful act or neglect of another. . . ." shall be brought within one year. See *Murphy v. Allstate Ins. Co.*, 83 Cal. App. 3d 38, 51, 147 Cal. Rptr. 565, 575 (1978) for the proposition that these sections govern actions for the intentional infliction of emotional distress.

110. See e.g. *Lambert v. McKenzie*, 135 Cal. 100, 103, 67 P.2d 6, 7 (1901), in which defendant failed to pay plaintiff an amount owed to plaintiff under a contract formed between the two. Plaintiff failed to file suit until more than two years after defendant's failure to pay. The court held against plaintiff on the basis of his failure to file suit within the prescribed statutory period. In so holding, the court noted "[i]t is the date of the act and fact which fixes the time for the running of the statute. . . . [T]hroughout the law . . . it is the time of the act, and not the time of discovery which sets the statute in motion." *Id.*

111. For a review of the development of the discovery exception in California, see Comment, *Accrual of Statutes of Limitations: California's Discovery Exceptions Swallow the Rule*, 68 CALIF. L. REV. 106 (1980) [hereinafter cited as Comment, *Accrual of Statutes of Limitations*].

112. *Warrington v. Charles Pfizer & Co., Inc.*, 274 Cal. App. 2d 564, 567, 80 Cal. Rptr. 130, 131 (1969). Plaintiff's child developed cerebral palsy as a result of plaintiff's ingestion of diabenese during her pregnancy. Plaintiff did not find out until two years after she took the drug that it could have caused her son's illness. She filed suit within one year of this discovery but more than one year after she took the drug. In holding that her cause of action did not accrue until she discovered that diabenese might have caused her son's illness, the court stated "if there is some valid excuse for the ignorance [of the injury] . . . the strict rule will not be applied." *Id.* As to knowledge of cause, see *G.D. Searle & Co. v. Superior Court*, 49 Cal. App. 3d 22, 25, 722 Cal. Rptr. 218, 220 (1975), a product liability action for injuries incurred through ingestion of oral contraceptives. Plaintiff filed suit approximately six years after she last used the product in question. She failed to allege why, with the exercise of reasonable diligence, she could not have made an earlier discovery of her injuries. As a result, a demurrer to her complaint was sustained with leave to amend.

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ately upon infliction¹¹³ and to cases in which plaintiff, though aware of her injury, suffered from impaired ability to ascertain the cause of her injury.¹¹⁴ In permitting plaintiff to invoke the exception, California courts require plaintiff to plead facts alleging "(1) the time and manner of discovery and (2) the circumstances excusing delayed discovery"¹¹⁵ of her injury and its cause.

In incest cases, the victim should be permitted to use the date of discovery exception. First, it is unlikely that she will know she has been injured until well after she puts a stop to her father's abusive behavior. The psychological injury from which she suffers manifests itself by various symptoms.¹¹⁶ Some of these symptoms fail to appear until the daughter is much older than she was when the abuse began.¹¹⁷ More significantly, none of these symptoms by themselves are sufficiently alarming to compel the daughter to conclude that she has been injured. It is only when she perceives that she has been suffering from an array of symptoms, all of which have persisted for an unnatural length of time, that the daughter is likely to suspect that she was injured.

As to discovery of cause, daughters are led to believe, both by their fathers and society at large, that they are to blame for the incestuous abuse.¹¹⁸ Consequently, even though a daughter may know that she has been injured, until such time as she is able to shift the blame for the incestuous abuse to her father, it will be impossible for her to realize that his behavior caused her psychological disorders. As with discovery of injury, discovery of cause can take years. In addition, precisely because incestuous

113. See *Young v. Clinchfield R.R. Co.*, 288 F.2d 499, 502 (4th Cir. 1961). Plaintiff, a locomotive fireman, contracted silicosis during the course of his employment with defendant. The court stated "[some] types of injuries are not immediately detectable. Since the effects are usually long delayed, the victim does not know that [s/he] has been injured till [s/he] observes definite symptoms referable to the injury." *Id.*

114. See e.g. *Warrington*, 274 Cal. App. 2d at 571, 80 Cal. Rptr. at 134. Because defendant had represented to plaintiff's doctor that diabetes was perfectly safe, plaintiff's ability to learn the cause of her injuries was substantially impaired.

115. See *G.D. Searle*, 49 Cal. App. 3d at 25, 722 Cal. Rptr. at 220.

116. See *supra* notes 50-54 and accompanying text.

117. *Id.*

118. *Id.* See also *supra* note 18 and accompanying text and note 46 and accompanying text.

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abuse is poorly understood by society and because the injuries it engenders are psychological, professional intervention may be required before the daughter can discover her injury and its cause. This too contributes to delayed discovery.

As the foregoing demonstrates, the daughter can meet her burden of proof so that she falls within the discovery exception to the date of injury rule of accrual. There are additional arguments available to the daughter, however, sufficient to convince a reluctant court that her's is an appropriate case in which to apply the exception. The modern trend is toward expanded application of the discovery exception.¹¹⁹ The traditional policy justification for application of the statute of limitation, protection of defendants from "the threat of liability for deeds in the distant past,"¹²⁰ is singularly unpersuasive. Incest victim/survivors have been harmed as a result of a most egregious violation of the parent/child relationship. In addition, society and the offending fathers conspire to keep the daughter in coerced silence.¹²¹ As a result, the daughter is doubly victimized, first by a father who sexually abuses her and second by a society that holds her responsible for her own victimization. To protect her father at her expense works an intolerable perversion of justice.

B. CONSENT

Plaintiff's consent to intentionally tortious conduct insulates a defendant from liability for that conduct.¹²² Therefore, daughters must anticipate that their fathers will attempt to avoid liability for their incestuously abusive behavior by alleging that their daughters willingly participated in the incestuous contact. Several compelling arguments available to daughters negate their fathers' claims of consent. First, as a matter of law, children are incapable of consenting to intentional invasions of their legally protected interests.¹²³ On the average, incestuous abuse

119. See *Warrington*, 274 Cal. App. 2d at 567, 80 Cal. Rptr. at 132. "There appears to be a definite trend toward the discovery rule and away from the strict rule in respect of the time for the accrual of the cause of action for personal injuries." *Id.*

120. See Comment, *Accrual of Statutes of Limitations*, *supra* note 111, at 118.

121. See *supra* notes 34-39 and accompanying text.

122. PROSSER, *supra* note 79, § 18 at 101. "As to intentional invasions of the plaintiff's interests, [her/his] consent negatives the wrongful element of the defendant's act, and prevents the existence of a tort."

123. *Id.* at § 18, p. 102 which reads in relevant part: "[i]f the plaintiff is known to be incapable of giving consent because of infancy . . . [her/his] failure to object, or even

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commences when the daughter is approximately nine years old, but the incidence of onset at a much earlier age is not uncommon.¹²⁴ This, in conjunction with the fact that incestuous abuse constitutes intentionally tortious conduct, renders daughters incapable in the eyes of the law of giving such consent.¹²⁵

In addition, daughters are *psychologically* incapable of consenting. Implicit in the concept of consent is freedom of choice. The unequal power between daughter and father predisposes her to acquiesce in his demands and precludes her exercise of free choice.¹²⁶ Daughters are also unable to understand the meaning of the sexual contact forced on them which further restricts their capacity to consent to it.¹²⁷

Finally, should intercourse between them take place, statutory rape laws protect the daughter from her father's claim that she consented to the intercourse, provided she was under the statutorily imposed age of consent when the intercourse occurred.¹²⁸

Consent is a smokescreen used by the father to induce the court to accept his contention that his daughter seduced him. That he raises the defense at all is indicative of the degree to

[her/his] active manifestation of consent will not protect the defendant."

124. HERMAN, *supra* note 1, at 84.

125. See *Elkington v. Foust*, 618 P.2d 37 (Utah 1980), in which a 16-year-old-girl was sexually abused by her stepfather from her ninth year until her sixteenth when she left home. In response to the defendant's allegations that she consented to the incestuous abuse, the court observed that "because she was a minor [she was] incapable of giving consent to acts of this nature." *Id.* at 40.

126. HERMAN, *supra* note 1, at 27. The author comments

Adults have more power than children . . . Children are essentially a captive population, totally dependent upon their parents or other adults for their basic needs. Thus they will do whatever they perceive to be necessary to preserve a relationship with their caretakers. . . . [T]he final choice in the matter of sexual relations between adults and children rests with the adult.

Id.

127. BUTLER, *supra* note 1, at 30.

128. See *Gaither v. Meacham*, 214 Ala. 343, 344-5, 108 So. 2, 3 (1926) in which plaintiff, a 15 year old girl, was raped by defendant. In holding that she was incapable of consenting to intercourse because of her age, the court stated "we hold it is the policy of the law to protect the person of the girl of immature years and discretion against the lusts of men; that she is incapable of giving consent to illicit intercourse. . . ." *Id.*

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which the father refuses to acknowledge his responsibility for his daughter's injuries. Rejection of this defense by courts and commentators alike, however, is evidence that, beyond a certain point, society will not indulge the father's attempts to evade responsibility for his conduct and its harmful consequences.

C. PARENT-CHILD IMMUNITY

It is likely that fathers will raise a parent-child immunity argument to evade liability for their incestuously abusive conduct. Extension of immunity to this type of paternal conduct is completely inappropriate. The doctrine of parent-child immunity protects a parent from liability for personal injuries inflicted on his minor children.¹²⁹ The doctrine was judicially established in the United States in 1891¹³⁰ and by 1905 it was considered established law.¹³¹ Since its inception, it has received much criticism and courts have drastically limited its scope.¹³²

129. Incestuous abuse occurs when the daughters are minors. Therefore, despite the fact that many daughters will not sue until after they have reached majority, parent-child immunity can be raised as a defense.

130. *Hewellette v. George*, 9 So. 885 (Miss. 1891). A daughter sued her mother for wrongfully imprisoning her in an insane asylum. Without reference to any statute or case law, the court concluded that:

The peace of society, and of the families composing society, and a sound public policy, designed to subserve the repose of families and the best interests of society, forbid to the minor child a right to appear in court in the assertion of a claim to civil redress for the personal injuries suffered at the hands of the parent.

Id. at 887.

131. In 1903, the Supreme Court of Tennessee in *McKelvey v. McKelvey*, 77 S.W. 664 (Tenn. 1903), dismissed a suit in which a child sued a parent and a stepparent for cruel and inhuman conduct. The court based its dismissal on the rule of parent-child immunity for which it could cite only to *Hewellette v. George*, 9 So. 885 (Miss. 1891). Despite the obvious lack of substantial precedent for its decision, the court called the doctrine "well settled law." 77 S.W. at 665.

In the third case in the trilogy establishing parent-child immunity in the area of personal injury, *Roller v. Roller*, 79 P.788 (Wash. 1905), the Supreme Court of Washington denied recovery to a 15 year old girl whose father had been convicted of raping her. It is peculiarly ironic that one of the cases primarily responsible for fixing parent-child immunity as established law should have precisely the same facts as to which it is now urged that that immunity be abandoned.

132. Many jurisdictions have abrogated the doctrine altogether in cases in which children are injured in car accidents as a result of their parents' negligent driving. *See e.g.* *Nocktonick v. Nocktonick*, 611 P.2d 135 (Kan. 1980); *see also* *Hebel v. Hebel*, 435 P.2d 8 (Alaska 1967). Other jurisdictions have abolished the doctrine as to all causes of action in negligence. *See e.g.* *Gelbam v. Gelbam*, 23 N.Y.2d 434, 297 N.Y.S.2d 529, 245 N.E.2d 192 (1969); *see also* *Briere v. Briere*, 107 N.H. 432, 224 A.2d 588 (1966). Certain jurisdictions have abolished the doctrine in negligence causes of action with two excep-

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In California, the doctrine is not applied to willful or malicious torts,¹³³ and is also not applied to negligence actions except where the parental conduct complained of conforms to a reasonably prudent parent standard.¹³⁴

In deciding cases on the basis of public policy, courts have been concerned that suits by minor children against their parents would disrupt family harmony and interfere with a parent's duty to care for and discipline her/his children.¹³⁵ Where family

tions: (1) negligent acts involving reasonable exercise of parental discipline and (2) negligent acts within the scope of ordinary parental discretion with respect to provisions for the care and necessities of the child. See e.g. *Goller v. White*, 122 N.W.2d 193 (Wis. 1963); see also *Turner v. Turner*, 304 N.W.2d 786 (Iowa 1981). Other jurisdictions have abolished the doctrine absolutely. See e.g. *Falco v. Pados*, 444 Pa. 372, 282 A.2d 351 (1971); see also *Rupert v. Stienne*, 90 Nev. 397, 528 P.2d 1013 (1974). For a discussion of the history of exceptions to the doctrine of parent-child immunity, see *Hebel v. Hebel*, 435 P.2d 8 (Alaska 1967).

133. See *Emery v. Emery*, 45 Cal. 2d 421, 289 P.2d 218 (1955) in which a minor child who had been driving for several hours on unfamiliar roads at excessive speeds fell asleep causing an accident in which his minor sisters were injured. His father, a passenger in the car, was aware of the boy's condition and did not compel him either to slow down or permit someone else to drive. The court held that the father's conduct was willful, and therefore did not permit him to invoke the doctrine of parent-child immunity to shield himself from liability to his minor daughters for their injuries.

134. See *Gibson v. Gibson*, 3 Cal. 3d 914, 479 P.2d 648, 92 Cal. Rptr. 288 (1971) in which a father and his minor son were towing a jeep at night. The father stopped the car and asked the son to straighten out the jeep's wheels. In so doing, the son was struck by another car and injured. The court held that parents have a duty to exercise authority over their minor children but that such prerogative "must be exercised within reasonable limits. . . . we think the proper test of a parent's conduct is this: What would an ordinarily reasonable and prudent parent have done in similar circumstances?" *Id.* at 921, 479 P.2d at 653, 92 Cal. Rptr. at 293.

135. Although these two policy reasons are of principal concern to courts, two other policy reasons are cited: (1) protection of family assets and (2) the danger of fraud and collusion between parent and child. See *Parental Immunity - The First District Declines to Adopt the Doctrine of Parental Immunity*, 10 FLA. ST. U.L. REV. 185, 194 (1982).

See also *Dunlap v. Dunlap*, 84 N.H. 352, 150 A. 905 (1930) in which a child employed by his father was injured during the course of his employment. The court held that because the relational context in which the injury occurred was not that of parent and child, the father could not invoke parent-child immunity. In a particularly insightful analysis of the development and applicability of parent-child immunity, the court noted that the doctrine did not exist at common law and that an appropriate evaluation of a minor child's right to sue her/his parent(s) begins with that child's "general right to demand reparations." *Id.* at 354, 150 A. at 906. The court noted that denial of recovery is not based on a perception that the parent was innocent of wrongdoing, nor even that such wrongdoing was excused; rather, the parent escapes liability because "it has been thought that a right of recovery would lead to worse results" than denial thereof. *Id.* at 362, 150 A. at 910. The court concluded that the immunity should exist only when to permit trial of the suit would result in disruption of family harmony or interfere with

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harmony and reasonable parental disciplinary and caretaking discretion are not jeopardized, however, a minor child's suit against her parent has been permitted.¹³⁶ Family harmony in the incestuously abusive family, if it exists at all, is purely superficial. "Harmony" in these families encompasses no more than co-existence in the same dwelling, and is predicated on a father-daughter alliance which depends for its survival on secrecy and fundamental corruption of the parent-child relationship. To the extent that any real harmony existed in the family prior to the onset of the father's incestuous abuse, his conduct unilaterally destroyed that harmony. Therefore, it is difficult to contend that by filing suit against their fathers, incestuously abused daughters disrupt family harmony. Furthermore, one cannot rationally conclude that incestuous abuse protects a father's discretion reasonably to discipline or to maintain and care for his daughter.

It is dishonest for any father to defend his incestuously abusive conduct as a legitimate exercise of parental authority or to claim that his daughter's action in filing suit threatens to disrupt family harmony. Nonetheless, daughters must anticipate that their fathers will make these arguments. However, as the foregoing illustrates, assertion of parent-child immunity in these cases is untenable.

IV. PUNITIVE DAMAGES

Incestuously abused daughters may recover punitive damages from their fathers.¹³⁷ The dual purpose of punitive damages is to punish the defendant and to deter the defendant and others from engaging in similar conduct in the future.¹³⁸ In Cali-

reasonable parental discipline. *Id.* at 372, 150 A. at 915. The court obliquely criticized the Washington Supreme Court for its decision in *Roller v. Roller*, 79 P. 788 (Wash. 1905), when it commented that "[t]he father who . . . outrages his daughter ought not to be heard to plead his parenthood and the peace of the home as answer to an action seeking compensation for the wrong." *Dunlap* 84 N.H. at 361, 150 A. at 910.

136. See *supra* note 135.

137. The daughter and her attorney must first consider whether an award of punitive damages will bankrupt the father. If so, it is unlikely that a court will permit such an award to stand. In addition, public policy prevents insurance companies in California from indemnifying their policy holders for punitive damages levied against them. See *infra* note 145 and accompanying text.

138. See *Zhadan v. Downtown L.A. Motors*, 66 Cal. App. 3d 481, 136 Cal. Rptr. 132 (1976) in which defendant wrongfully converted plaintiff's car when she refused to pay excessive charges for repairs improperly performed on her car. The court noted the principle that "the purpose of punitive damages [is] to punish the defendant and make an

fornia, punitive damages are authorized by statute.¹³⁹ To state a cause of action for punitive damages, daughters must prove that their fathers' conduct was malicious,¹⁴⁰ whereupon the jury has absolute discretion to determine whether or not to award punitive damages.¹⁴¹

Malice is statutorily defined as "conduct which is intended by the defendant to cause injury to the plaintiff or conduct which is carried on by the defendant with a conscious disregard for the rights or safety of others."¹⁴² As has been discussed, incestuously abusive fathers molest their daughters knowing or having reason to know that their daughters will certainly suffer injury.¹⁴³ Thus, abusive fathers act with "malice" and their conduct warrants punishment. An award of punitive damages will also put other fathers on notice that incestuous abuse is unacceptable behavior and thus, it is hoped, deter any further similar abuses. Perhaps where threats of imprisonment fail to deter, threats of financial loss will succeed.

In determining how much to assess as punitive damages, juries consider the amount of compensatory damages awarded and

example of [her/him]" *Id.* at 496, 136 Cal. Rptr. at 140. *See also* CAL. CIV. CODE § 3294 (West 1982) which reads in relevant part: "plaintiff . . . may recover punitive damages for the sake of example and by way of punishing the defendant." *See also* Egan v. Mutual of Omaha Ins. Co., 24 Cal. 3d 809, 598 P.2d 452, 157 Cal. Rptr. 482 (1979) in which defendant failed to properly investigate plaintiff's claim under a valid insurance policy issued to him by defendant. This failure rendered defendant liable for breach of the covenant of good faith and fair dealing implied in all insurance contracts. The court focused its discussion of punitive damages on the deterrence function.

139. CAL. CIV. CODE § 3294 (West 1982) which reads in relevant part: "[i]n an action for breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice . . . the plaintiff . . . may recover damages for the sake of example and by way of punishing the defendant."

140. CAL. CIV. CODE § 3294 (West 1982). Malice is defined as "conduct which is intended by the defendant to cause injury to the plaintiff or conduct which is carried on by the defendant with a conscious disregard of the rights or safety of others." *Id.* at (c) (1). Conduct which is oppressive or fraudulent falls within the scope of § 3294. However, incestuously abusive conduct is best defined as malicious and therefore, fraud and oppression need not be addressed.

141. *Brewer v. Second Baptist Church*, 32 Cal. 2d 791, 801, 197 P.2d 713, 719 (1948). The court stated "[t]he granting or withholding of punitive damages is wholly within the control of the jury Upon the clearest proof of malice in fact, it is still the exclusive province of the jury to say whether or not punitive damages shall be awarded." *Id.*

142. CAL. CIV. CODE § 3294 (West 1982).

143. *See supra* notes 74-108 and accompanying text.

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the defendant's wealth.¹⁴⁴ However, since California does not permit defendants to seek indemnification by their insurance companies for punitive damages,¹⁴⁵ juries cannot include in their assessment of the father's wealth the value of any insurance policy he holds. If a jury's award of punitive damages is grossly disproportionate to defendants' wealth and the amount of compensatory damages awarded, the court may overturn or reduce the award.¹⁴⁶ Because incestuous abuse is particularly abhorrent conduct, it is possible that juries will be induced to make large awards of punitive damages. However, this should not deter daughters from asking for punitive damages, as excessive awards can be modified.

Recently, two courts permitted jury awards of punitive damages to daughters who sued their fathers for incestuous abuse.¹⁴⁷ It is anticipated that other daughters who present similar claims will meet with similar success.

CONCLUSION

Incestuous abuse, and its debilitating effects, is a grim fact of life for an alarming number of children and women in our society. Its occurrence has been only minimally checked by those in a position to guard against it, including the victim's family, her minister or rabbi, and child protective services. Daughters seeking societal vindication of their inherent right to freedom from paternal sexual abuse have been ignored, disbelieved, or blamed for the incestuous abuse. Those daughters who have at-

144. *Neal v. Farmers Insurance Exchange*, 21 Cal. 3d 910, 582 P.2d 980, 148 Cal. Rptr. 389 (1978). Defendant was held liable for its bad faith refusal to settle plaintiff's legitimate claim under a valid policy.

145. *City Products Corp. v. Globe Indemnity Co.*, 88 Cal. App. 3d 31, 151 Cal. Rptr. 494 (1979). The court noted that refusal to permit indemnification is based on the purpose of punitive damages. "[T]he policy of this state with respect to punitive damages would be frustrated by permitting the party against whom they are awarded to pass on the liability to an insurance carrier. The objective is to impose such damages in an amount which will appropriately punish the defendant . . ." *Id.* at 42, 151 Cal. Rptr. at 500. Obviously, defendants will neither be punished nor deterred if they themselves do not pay the punitive damages.

146. *Zhadan*, 66 Cal. App. 3d at 499, 136 Cal. Rptr. at 142.

147. *See Elkington v. Foust*, 618 P.2d 37 (Utah 1980), in which plaintiff was awarded \$30,000 in punitive damages; *see also X v. Melder*, 3 Civil 20125 (on appeal from the Superior Ct., Butte County, Ca.), in which plaintiff was awarded an unprecedented \$300,000 in punitive damages. (The case was resubmitted for an appellate decision on Feb. 28, 1983).

tempted to invoke legal protection of their rights have encountered a criminal justice system that prefers to protect the offending fathers. However, tort litigation in this area may provide certain daughters the avenue to public acknowledgement they need in order to recover from the trauma engendered by the incestuous abuse.

Suing one's own father is not without certain specific practical and procedural problems. For example, the potential emotional repercussions of this kind of litigation may inhibit some daughters from attempting it at all. In addition, daughters are unlikely to sue fathers with insufficient assets to pay off a judgment against them. Those daughters who do go forward with their cases must anticipate the three defenses their fathers are likely to raise: consent, parent-child immunity, and expiry of the statute of limitations. Only the last of the three poses any serious obstacle to the daughter but it can, if unsurmounted, bar her suit altogether.

These enumerated difficulties should not obscure the fact that there are definite benefits to be derived from tort litigation. For example, monetary compensation enables daughters to pay for the costly therapy many of them require to overcome the emotional damage resulting from incestuous abuse. Perhaps the greatest benefit inuring to the daughter from tort litigation is an intangible one, public designation of her father as the wrongdoer. Its significance must not be overlooked. Coupled with this is the daughter's sense that she has overcome the powerlessness her father's conduct imposed on her. As one attorney recently commented, "[w]hat good does it do for the victim to have the father or stepfather put in jail? Damages can pay for some therapy, and its some kind of compensation. [I]t gives [the victim] a sense that she [can] do something about [being abused]."¹⁴⁸ For some victims, this is exactly what they need.

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148. Curry, *How Incest Victims Are Making Their Fathers Pay*, S.F. Chronicle, June 3, 1982, at 45 col. 1.

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