

Chapter 11: Case Study: Angela “Doe”

From *The Battle and the Backlash* by David Hechler

She seems to have everything going for her. She is young and pretty, she has a steady job she likes, and she lives in an affluent suburb of New York City. She does not look injured. In fact, that was the very argument used against her in court; she appears absolutely normal.

But she does not feel normal. And the reason is that her family, which also appeared normal, was not. Angela was sexually abused by her father for a period of four years, beginning when she was 12.

Her case, unfortunately, is not unique. It is not even unique in her own family; her two sisters were also abused. But what is unique is that Angela sued her father and in 1986, when she was 22, was awarded more than \$350,000 in damages. Her lawyers believe it was the first successful case of its kind in New York State and at the time one of only a handful nationwide.

Nobody knows how many incest victims have sued their abusers—nor how many have won—but the number of cases is growing, according to Judith Musick, director of the Institute for the Study of Sexual Assault, in San Francisco. She knows the numbers are increasing, Musick said, by the number of successful case summaries included in the annual compendium the institute publishes. And the volume of calls she receives has risen, even though the organization is known to the lawyers who provide her with information mainly by word of mouth.

The largest award Musick was aware of was in a 1985 case in which the jury awarded a Texas woman \$10 million. The woman’s father filed for bankruptcy, however, and she has yet to collect any of the judgment. There have been several other very high verdicts Musick said, but these seem to have been largely symbolic gesture by juries when there appeared to be little chance the money would be collected, either because the defendant did not have it or because he had fled the jurisdiction. A great many of the cases are settled, she said, and many more are thrown out of court (often on statute of limitations issues) or are dropped by plaintiffs who succumb to the pressures of litigation—and the pain of reliving the past. And some of the most intense pressures may never appear in court (as we will see).

Although the barriers to winning such cases are still daunting it is easier to bring one today than it was a few years ago, said Musick, who was trained as a sociologist. “You’re not likely to walk into an attorney’s office and have him turn you away because he’s never heard of anything like this before,” she said, adding: “Victims and parents of victims are more likely to react with anger than with shame,” as they were until recently.

And cases like Angela’s have made future litigation easier by establishing important legal precedents. Although Angela has previously shunned publicity, she granted an interview in order to discuss the importance of her case—and the lessons it presents. She asked only that her name be changed (as it has in court papers, filed under Angela “Doe”).

The Family

When Angela decided to sue she knew the move would not be popular, but she expected at least some support from her family. If from no one else, then from her sisters.

She was wrong.

Angela described the relentless pressure to which she was subjected during an interview at a restaurant across from

Grand Central Station. (Her therapist later explained that she and Angela meet there regularly because although Angela has no problem riding the train from Westchester, she is afraid to take the subway to the therapist's Greenwich Village office—one of many fears caused by the abuse.)

“I’ve had negatives from grandparents, aunts and uncles, cousins, sisters—I’ve had it all round,” said Angela. She and her paternal grandfather have rarely spoken since the case began, and her relationship with her grandmother has also been strained.

“My grandmother,” she continued, “I mean she wants me to get what I deserve, and I think she’s finally realizing that what he did was wrong, so that’s fine, but she still doesn’t want—it’s her son and she doesn’t want to see him ...” She did not finish the sentence.

“But she still calls me up on the phone,” she said after a pause, “and she’s crying to me and I’m trying to explain it to her. I say that I just can’t, you know, this is my decision and she’s just going to have to live by it. I’m tired of living under people’s planning.”

She was particularly disappointed by the lack of support from her sisters “because I figured, you know, it happened to them, too, why aren’t they supporting me? But I don’t make it bother me because if I worried about everybody, I think I wouldn’t be here today.”

How she got “here today” is the story of a child who was exploited by her only surviving parent and who slowly, painfully, learned to fight back. In order to understand her fight, we have to go back to another struggle—this one fought by Angela’s younger sister—on a night in late October 1981. At a time when her friends were busy preparing scary Halloween costumes, the horror for Angela’s sister was all too real. The child, then just 13, was sexually assaulted that night by her father.

It was not the first time. Her father had first raped her a month earlier. But this time the youngster managed to fight him off and run from the house. When she reported the assault to the authorities, the family secret at last unraveled.

Frank Stern had been living alone with his three daughters since the death of his wife eight years earlier. Angela and her older sister were abused repeatedly during at least half that time. Stern admitted as much in a Westchester County Family Court hearing following the disclosure of the abuse, and at the conclusion of the hearing the two younger children, who were still minors, were placed in the custody of relatives.

Three months later, Stern pleaded guilty to a criminal charge of second-degree rape in Westchester County Court. In addition to five years’ probation, he was ordered to see a psychiatrist and to avoid unsupervised visits with his daughters.

The Genesis of a Lawsuit

And there the story might have ended, had Angela not kept in touch with her [Family Court-appointed] attorney—Andrew Vachss (see chapter 3).

When Angela called him in late 1984, however, it was not with the idea of filing a lawsuit; it was with a problem. She wanted to go to college but could not afford it. She believed that her mother had intended to pay for her education but was told by relatives that everything had been left to her father.

“Her father was approached through an intermediary and asked for money for the child to go to school,” said Vachss. “She was refused in such a way that upset her very much, and she was in great despair because her mother was dead,

her father was going to do nothing for her, and she felt truly abandoned and without resources. She wanted to know if anything could be done, and it's then that we began to discuss the possibility of bringing a legal action to make him pay for what he did.

“The idea of making a perpetrator responsible for his crime has a particular attractiveness when the criminal justice system hasn't done so,” Vachss continued. “Probation had no impact on this guy's life whatsoever. So, in effect, he was able to rape his daughter on a continuing basis and not suffer any disruption—indeed, he may have even economically benefited because, as far as I know, he stopped paying child support once the children were removed from his home.”

Vachss brought in Melvin Borowka, who specialized in personal injury cases. The two had collaborated successfully on a number of occasions in addition to the Fresh Air Fund lawsuits (chapter 3), and they said in interviews that they were working on another half-dozen suits involving children allegedly abused in schools, camps, churches, day care centers, and foster homes.

Borowka had no particular interest in or knowledge about child abuse before Vachss first called him. The association has been successful, according to Borowka, because it brings together their different backgrounds, disciplines, and legal skills. Vachss' strengths are in investigating, formulating strategy, framing appellate issues, and providing support and services for clients. Borowka's expertise is in torts and the mechanics of personal injury actions.

Despite the satisfaction of trying cases “on the cutting edge of the law” and of “creating a remedy where one has not always been available,” and despite the personal reward derived from “standing up for the right side,” Borowka doubted lawyers will soon be lining up for these cases. “It's a difficult, difficult area—one that's very gut-wrenching from an emotional level . . . and it's not a standard situation where you look at a case and you know what the value of the case will be.”

But such cases can be lucrative, he acknowledged. “I don't think anyone goes into battle without thinking that there's going to be a victory,” he said. “If we were able to do everything that we could, I believed that we could obtain a sizable judgment. . . . Judgments are only that which would adequately compensate the victim for the loss sustained. Unfortunately for the victims in these cases, the loss is large—that's why it justifies large verdicts. This is not something that's just for sympathy or for inflaming the passions of the jury. These are young people whose lives have been destroyed, in many cases.”

Victory and a large verdict were a long way off, however, when Vachss and Borowka filed their first brief in February 1985. They charged that Stern had physically, sexually, and psychologically abused Angela, had neglected to perform “the minimal duty of care required of a parent,” and, as a result, Angela had sustained severe and permanent physical and psychological injuries. They asked for \$10 million.

Stern was represented at the time by Thomas Altieri, who has a general practice with no particular interest in sexual abuse cases. In fact, Stern was the first client he had defended on such charges, representing him in the criminal and family court proceedings before the lawsuit. Altieri insisted, however, that inexperience in this area was no disadvantage and that he achieved the best possible results for his client—particularly in getting him probation in the criminal case.

In responding to the complaint, Altieri denied all charges—despite the fact that he had been standing next to his client in family court when Stern admitted he had repeatedly raped his daughter. Angela's lawyers moved for summary judgment, claiming that the facts were indisputable and that Angela had been “abused enough by defendant. She should not now have to recount the unfortunate experiences of her childhood because of [Stern's] deceit.”

Altieri said in an interview that he knew he had a weak case and that the only question was, How much money is she going to get? Vachss and Borowka were also convinced Angela would be awarded summary judgment. In fact, Angela

herself is the only one who said she had doubts. (“I never made myself believe I was winning,” she explained. “I didn’t want to get my hopes up just in case I did lose.”) As it turned out, Angela’s pessimism was well founded.

Defeat

In a one-sentence decision, Justice Joseph Giudice denied summary judgment: “Issues of fact are present which preclude this Court from holding this plaintiff is entitled to relief as a matter of law.” Reached in his chambers, Justice Giudice said he had no recollection of the case. Asked to speculate on the reasons for the judge’s decision, even Altieri confessed that he was mystified.

But it was that very defeat that made the case so important. Without it, there would have been no appeal. And had Vachss and Borowka not appealed, there would have been no appellate decision establishing a precedent and, in effect, an incest tort in New York State.

“I’m glad that we didn’t get summary judgment,” Vachss said. “That would have been one judge doing the right thing. Now all judges in the [state] supreme court will do the right thing. That issue is now laid to rest by an Appellate Division that made a decision that was both legally and morally correct. I’m always glad to ‘lose’ like that. Make my day.”

When the appellate court awarded Angela summary judgment, they sent the case back to the trial court for the sole purpose of assessing her damages. But the appellate decision was not a total victory for Angela; it was a victory on only one of the causes of action: for assault and the intentional infliction of emotional distress. The court dismissed the negligence cause of action. As it turned out, the ruling did not affect the final result. But had the defense prepared a stronger case, the ruling might have been pivotal.

The statute of limitations for negligence is three years. Angela filed the suit within three years of having reached majority (when the statute starts running). But the negligence complaint was dismissed, leaving only the charge of assault, which carries a statute of limitations of only one year. Angela did not come close to filing within a year of majority.

But Altieri never argued that the statute of limitations had expired on either cause of action. The omission was particularly surprising because statute of limitations arguments are routinely raised by defense attorneys trying these cases—and often successfully.

Altieri said he believed the suit was brought within the prescribed time. Vachss called the statute of limitations “a bogus issue,” insisting that the clock should not necessarily begin running when an incest victim reaches her majority. “Incest certainly can traumatize you into a kind of ‘psychiatric coma’ where you walk and you talk, so you appear to be ‘normal,’ but you are severely impaired,” he said. “During that period of impairment, I don’t believe a person should have the statute of limitations running against him—specially where the original trauma took place while they were a child.”

Another argument he advanced is that the statute should not begin until a victim perceives she has been victimized and also perceives a remedy. Under that theory, Angela’s clock started “when she realized that there is a way of seeking redress”—shortly before the suit was filed. Although it did not affect Angela’s case, the issue is one that is likely to be contested again and again in courtrooms around the country.

Likewise, the negligence issue is sure to be relitigated. Vachss said that although he disagreed with the dismissal of the action, since the court simultaneously awarded summary judgment, he had no grounds on which to appeal. He still believes a negligence tort “could, should, and eventually will be made, if not by me, by someone else.” He explained his reasoning: “The law says if you’re a mother and your husband is abusing your child and you know about it but don’t do anything, you’re guilty of child neglect. If the law imposes that duty on a person who is not the perpetrator, how could

it impose a lesser duty on the person who is?”

Even though the appellate decision meant Angela had won, neither she nor her lawyers viewed what remained as a victory lap. From the outset, all three had anticipated that the highest hurdles would never appear in court or in legal briefs. And looking back they said that, if anything, they underestimated the power of family pressure.

Concerned about Angela's ability to withstand such pressure, her lawyers had her evaluated by Flora Colao shortly after they filed the suit. Colao had previously worked with the lawyers' clients in the three Fresh Air Fund suits (see chapter 3)—all under an unusual arrangement. She evaluates and treats the clients with the understanding that her fee will come out of the judgment, if the clients win (or settle), and that if they do not, Vachss and Borowka will pay her themselves.

“I told them that I thought that it was very important that she undertake [the lawsuit],” Colao said. “I felt that it was a real act of strength on her part to be doing that and that yes, it was going to be difficult, but I really felt she could handle it.” It was nearly a year before Angela began seeing the therapist, however. The reason, Colao said, is that “she saw going to therapy as a sign of weakness and going to therapy also made her have to deal with the reality of the aftereffects [of the incest]. . . . She was very busily running away from her feelings. When she found she couldn't run anymore and [the trial] was getting closer and her anxiety built up, she came to me to relieve the anxiety.”

The Trial

As the trial approached, Angela's lawyers anticipated two main problems: they did not know how their client would hold up—both in and out of court—and they did not know how their evidence would be received. It can be difficult establishing damages that cannot be seen, explained Vachss, adding, “Lawyers would rather have a broken finger than a cluster [migraine] headache because they can prove the break . . . They want to know: ‘Where's the medicals? Where's the X rays?’ Even the concept of psychiatric damages, unaccompanied by physical trauma, is difficult.”

The lawyers decided to waive a jury and let the judge try the case in order to expedite the trial and avoid forcing Angela to testify before a group of strangers. The move also made it easier to avoid unwanted publicity. And finally, the lawyers were wary of problems that a jury might create, such as confusing the question of damages with Stern's responsibility for causing them (which had already been decided by the appellate court), or coming in with a verdict. As it turned out Altieri was also looking to waive a jury, fearing their emotions might lead to a very large verdict. “Plus,” Altieri added, “this particular judge, when he was a private practitioner, spent his career in the personal injury field . . . I felt that he, the judge, would turn to plaintiff's counsel and say, in effect, ‘Yes, you're entitled to damages. Let's not get emotional about this case. I mean the facts are horrendous, but what the hell are her damages here? What has she sustained? Now you haven't brought me a doctor, you haven't brought me a psychiatrist, you haven't shown a series of medical treatment . . .’” Without any corroborating evidence from an M.D., he did not even think the judge would allow in Colao's testimony.

The speculation ended July 28, 1986. Seventeen months after the suit was filed and nearly five years after the abuse was first disclosed, the trial itself lasted less than three hours.

Colao was qualified as an expert witness and testified about Angela's fears and anxieties, her low self-esteem, her inability to trust others, and her sense of having been betrayed. She spoke of Angela's feeling “that part of her died when this happened and that it's a part of her that she'll never get back—that she lost her childhood . . .” Angela attempts to block out unpleasant memories by working extremely hard in school, at her job, and in the gym so as to avoid having to think about them, Colao added.

Finally it was Angela's turn. Her anxiety had been building as the day approached—much of it centered on the impend-

ing confrontation with her father. “I was mostly afraid of him,” she said, “having to face him, say things about him in court.” Although she was nervous at first, she said the judge’s reassurances helped calm her. Borowka asked her very few questions—basically, when the events occurred, how she felt about the situation, and how she felt generally. “Our position,” he explained, “is that she would not really be competent to testify as to her damage, and the framework for that was established by the testimony of the certified social worker, who said that the plaintiff blocked all of this out.”

The cross-examination was conducted by Rocco Cardillo, Jr., whom Altieri brought in to handle the trial (he was out of town). It too was very brief. “As I recall,” said Cardillo, “I only asked her basic things: whether or not she was working, where she was residing, trying to elicit that she has a fairly normal life-style. I mean she’s not confined to a bed, she’s working, she went to school, she went to college . . . she’s gainfully employed, she has a good work record, that was basically what I was trying to show.” Cardillo acknowledged that the main reason he did not cross-examine Angela more extensively was to avoid creating sympathy for her.

Plaintiff rested, and that was it for the testimony. There was no rebuttal evidence at all. “This [case] is all on the testimony of the social worker,” Altieri explained. “Looking back in hindsight is very easy, but at the time, when this person is testifying, you have to conclude that this was an extremely weak case as far as damages were concerned. . . . let’s drop it all here and let the judge decide.”

And that was what they did. Cardillo said he could not recall his summation well enough to synopsise. According to Borowka, Cardillo argued for no damages whatsoever, asserting that nothing was wrong with Angela, that she was perfectly normal, as evidenced by her employment and scholastic records. If anything was wrong with her, however, it was attributable to her mother’s death. Furthermore, he claimed that Stem gave his daughter money from time to time and that she sent him a Father’s Day card, indicating that the relationship was not as bad as described.

In his own summation, Borowka basically reviewed Colao’s testimony, emphasizing the trauma and its severe and permanent effects, such as her loss of childhood, her inability to cultivate intimate relationships with members of either sex, her feelings that she is “different” and is a “bad person.”

Altieri said he expected a verdict of “under \$50,000.” Cardillo would not say what he expected. Vachss and Borowka said only that they expected considerably more than the \$100,000 they were willing to settle for at the pretrial conference. The judge did not disappoint them. He announced his verdict from the bench: \$350,000 general damages, \$11,700 special damages (to pay for therapy), and \$255 court costs, totaling \$361,955.

Cardillo was “surprised,” Altieri “taken aback” by the size of the verdict. In an interview, justice Vincent Guraian said it would be “inappropriate” to discuss how he arrived at the figure. He acknowledged that “it’s probably a little more difficult to set [damages] on psychological [injuries] because it’s something less tangible” but added that it was not an especially difficult case to decide. “I mean it was not an easy case to decide in the sense of how you arrive at the figure,” he continued, “but there’s nothing peculiar about the case itself other than the peculiar set of facts from which it emanates.”

The judge said he was unaware that the suit was apparently the first of its kind in the state. “I never made any assumption one way or another,” he said. “To me, it’s another lawsuit. Someone claims a wrongful act and they claim they were damaged as a result of the wrongful act. There was no defense issued. There was no testimony to rebut any of the testimony produced by the plaintiff’s case. Strictly—it almost came down to an inquest.”

Angela was both “relieved” and “shocked” by the result. “I didn’t expect that much,” she said. But “I didn’t feel sorry for my father,” she added firmly. “I just felt he was stupid enough taking me all this way thinking he could win—I guess he was misadvised by his own lawyers—but I didn’t feel sorry for him.”

Nor did she believe her father had learned anything from the lawsuit. “He’s still the same way,” she said, “he still doesn’t

think he did anything wrong . . . If he would have come and said he's sorry to me or said something, then I would have maybe, you know—but he never said anything.”

Angela's therapist saw the suit as the first step in her patient's struggle to change “from victim to survivor.” Asked what the victory means to her, Angela said: “Freedom. It means to me that he can't—there's no way anymore that he could manipulate me, knowing that if he tried, I wouldn't stand still and just take his abuse.”

She hoped that the money, too, would buy her freedom. “I would like to move out [of her aunt and uncle's house] and find a place of my own, get my life together, do some things I've never done,” like travel, she said.

Beyond what the victory meant to his client, Vachss believed its implications for other victims and potential victims may be vast. Most experts believe few incest offenders are prosecuted, fewer are convicted, and fewer still are punished significantly. “Most incest offenders operate under the assumption that their child will grow up and they will get away with what they did, that there will never be retribution,” said Vachss. “Taking financial resources from a perpetrator may do more to deter other such activity than the very remote threat of criminal prosecution.”

In July 1987, the judgment was satisfied in full. Angela agreed to accept a cash payment of \$150,000 along with an interest in property owned by her father, Borowka said.

Yet according to Angela the family pressure, far from diminishing, actually increased following the verdict. Early in the case, her relatives did not consider it likely she would win. When she not only won but was awarded a large sum, the response from virtually all her relatives was identical. “Their feeling was, ‘Take what you deserve, but don't throw him out in the street,’” she said. They wanted her to settle for less, despite the verdict.

Although she seemed weary—battle-worn—from the long succession of confrontations, Angela clearly relished the validation she found in victory.

“Finally,” she said, “I won this one.”

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Angela's victory continues to have repercussions.

Read *The New York Times* 2008 article, “Child Welfare Tightens Law on Removal” here:

<http://www.vachss.com/support/nytimes2008.html>