19. Intentional Infliction of Emotional Distress

“If only these treasures were not so fragile as they are precious and beautiful.”

– Johann Wolfgang von Goethe, *The Sorrows of Young Werther*, 1774

Introduction

The tort of intentional infliction of emotional distress is the most recent of the intentional torts. First arriving on the scene in the late 1800s, the tort won general acceptance the last half of the 1900s. It often goes by the abbreviation “IIED” and many other names as well, the most concise of which is “outrage.” Other, longer names are “intentional infliction of emotional harm,” “intentional infliction of mental distress,” and “intentional infliction of mental shock.”

Happily, in our society, people are largely civil to one another. But even when they are not, their insulting behavior rarely rises to the level required for liability under IIED. As we will see, IIED claims require unusual facts and extreme behavior.

One place where IIED does seem to pop up with some frequency is in the employment context. Sadly, there seems to be all too many people wanting to inflict misery on their co-workers. But IIED comes up in other contexts as well – not the least of which are high school hallways and social media sites.

The Elements of IIED

Here is a blackletter formulation for intentional infliction of emotional distress:

A plaintiff can establish a prima facie case for intentional infliction of emotional distress by showing that the defendant (1) intentionally or recklessly, (2) by extreme and outrageous
conduct (3) inflicted severe emotional distress on the plaintiff.

IIED: Intent

Like many other torts terms, intentional infliction of emotional distress is a misnomer. The intent element of the prima facie case is satisfied when the defendant either intended the plaintiff’s severe emotional distress, or acted in deliberate disregard of a high probability of causing the plaintiff to suffer severe emotional distress (i.e., recklessness). Thus, despite its traditional classification as an intentional personal tort, and despite the “intentional” in its name, IIED does not require that the defendant act intentionally. Recklessness will suffice.

When it comes to transferred intent, IIED is a lone wolf: Intent generally does not transfer to the outrage tort. So the intent to cause a battery, by itself, is insufficient intent for IIED. And the intent to cause person X to suffer severe emotional distress will not suffice as intent for a suit brought by Y for emotional distress.

The nonapplicability of transferred intent for IIED notwithstanding, it should be noted that some courts have held that a plaintiff can successfully sue a defendant for IIED where the defendant inflicts intentional bodily harm on the plaintiff’s immediate family member in the plaintiff’s presence – even if the defendant did not intend any emotional distress by doing so. This sort of fact scenario is probably best thought of not as transferred intent, however, but as an instance of recklessness fulfilling the intent requirement. That is, in such a situation, the defendant is construed to have acted in deliberate disregard of the likelihood that the plaintiff would be made to suffer severe emotional distress.

IIED: Extremeness and Outrageousness

While the intent element may be comparatively easy to meet in an IIED claim, the requirement of extreme and outrageous conduct is a high bar. Being rude or insulting – even startlingly rude and grossly insulting – is not nearly enough to qualify as extreme and outrageous conduct.

One vivid example of outrageousness comes from Nickerson v. Hodges, 84 So. 37 (La. 1920). The plaintiff, Miss Nickerson, earnestly believed that a pot of gold was buried on her property. Her belief was based on family rumor and bolstered by a fortune teller. The neighbors – aware that Nickerson had a history of mental illness – filled a pot with rocks and dirt, put a lid on it, and buried it where she could find it. Included with the pot were instructions to encourage Nickerson to open the pot for the first time in front of a gathering of people. She did. The court reports that “the results were quite serious indeed, and the mental suffering and humiliation must have been quite unbearable, to say nothing of the disappointment and conviction, which she carried to her grave some two years later, that she had been robbed.” Despite the death of the plaintiff before trial, her estate succeeded in winning a claim for intentional infliction of emotional distress.

Other examples of IIED include killing a pet animal in the pet owner’s presence (LaPorte v. Associated Independents, Inc. 163 So.2d 267 (Fla. 1964)) and burning a cross in the yard of an African-American person (Johnson v. Smith, 878 F.Supp. 1150 (N.D. Ill. 1995)).

Notwithstanding these examples, IIED claims do not necessarily have to involve grim spectacle. The can involve quiet, isolated suffering as well. In Kroger Co. v. Willgruber, 920 S.W.2d 61 (Ky. 1996), the court recognized an outrage claim where the complaint alleged that an employee, fired for a refusal to violate ethical rules, was then sent to chase an nonexistent job in another state.

While mere insults and incivility are generally not outrageous enough for IIED, there are two situations in which invective alone can be enough to sustain a claim.

First is where there is a continued pattern of insults or demeaning behavior. Given enough time, simple boorishness can eventually accumulate to tortious proportions. Most people won’t stand around
and be continuously insulted if they can help it, so actionable patterns of repeated verbal abuse often happen in a context where the plaintiff is economically compelled to stay and endure the mistreatment. Workplaces and schools are frequent examples.

Second, courts have traditionally allowed even single instances of gross insult to be actionable where the defendant is an innkeeper or common carrier. Allowance of such claims harkens to an ancient ethic that demands travellers – far from home and dependent on the assistance of strangers – are to be treated especially well.

To generalize about the extreme-and-outrageous requirement, one can often see a theme of inequality between the plaintiff and defendant. Along these lines, Professor Dan B. Dobbs identifies four markers that tend to support a finding of outrageousness: (1) abusing one’s position over or power with respect to the plaintiff, (2) taking advantage of a plaintiff whom the defendant knows to be particularly vulnerable, (3) repeating offensive conduct in a situation where the plaintiff is not, as a practical matter, free to leave, and (4) perpetrating or threatening violence against a person or property in which the plaintiff is known to have a particular interest. See DAN B. DOBBS, THE LAW OF TORTS, p. 827 (2000).

Note that because the threshold for what counts as outrageous depends on societal mores. What is outrageous in one era may not be in the next. So, as our culture changes, IIED will change right along with it.

**IIED: Severe Emotional Distress**

Another high threshold for outrage claims is the requirement that the plaintiff must have suffered severe emotional distress. Suffice it to say that merely being upset or even reduced to tears is not enough. The word “severe” is key.

In an earlier era of IIED, plaintiffs had to prove some physical symptom of the distress – heart problems, stomach ulcers, teeth worn from grinding, or some other corporeal manifestation of torment. In fact, some jurisdictions still require a physical symptom. But the majority of courts today leave it up to the jury to determine
whether or not the distress is truly severe. Medical testimony is optional. Of course, where physical ailments can be proved, the plaintiff’s case benefits.

The extremeness and outrageousness of the conduct tends to go hand-in-hand with the severity of the emotional distress. A strong showing of outrageousness aids the showing of severity.

It's helpful to take a moment to contrast IIED’s requirement of severe emotional distress with assault’s requirement of an apprehension of harmful or offensive contact. A particularly stalwart plaintiff, unfazed by an apparently impending finger poke, can bring an assault claim – unflappability notwithstanding. But an emotionally tough plaintiff, one who lets the defendant’s taunts and slings roll of her or his back, is barred from claiming IIED. No severe distress, no claim.

Case: Wilson v. Monarch Paper

The following case looks at IIED in the employer/employee context, combined with an allegation of age discrimination. Among other things, the case highlights the level of dependence people have on their jobs – both for money and for a sense of well-being.

Wilson v. Monarch Paper

United States Court of Appeals for the Fifth Circuit
August 16, 1991


Circuit Judge E. GRADY JOLLY:

Because Monarch is challenging the sufficiency of the evidence, the facts are recited in the light most favorable to the jury’s verdict. In 1970, at age 48, Richard E. Wilson was hired by Monarch Paper Company. Monarch is an incorporated division
of Unisource Corporation, and Unisource is an incorporated

group of Alco Standard Corporation. Wilson served as manager

d of the Corpus Christi division until November 1, 1977, when he

was moved to the corporate staff in Houston to serve as

“Corporate Director of Physical Distribution.” During that
time, he routinely received merit raises and performance
bonuses. In 1980, Wilson received the additional title of “Vice

President.” In 1981, Wilson was given the additional title of

“Assistant to John Blankenship,” Monarch’s President at the
time.

While he was Director of Physical Distribution, Wilson received
most of his assignments from Blankenship. Blankenship always
seemed pleased with Wilson’s performance and Wilson was
never reprimanded or counseled about his performance.

Blankenship provided Wilson with objective performance
criteria at the beginning of each year, and Wilson’s bonuses at
the end of the year were based on his good performance under
that objective criteria. In 1981, Wilson was placed in charge of
the completion of an office warehouse building in Dallas, the
largest construction project Monarch had ever undertaken.

Wilson successfully completed that project within budget.

In 1981, Wilson saw a portion of Monarch’s long-range plans
that indicated that Monarch was presently advancing younger
persons in all levels of Monarch management. Tom Davis, who
was hired as Employee Relations Manager of Monarch in 1979,
testified that from the time he started to work at Monarch, he
heard repeated references by the division managers (including
Larry Clark, who later became the Executive Vice President of
Monarch) to the age of employees on the corporate staff,
including Wilson.

In October 1981, Blankenship became Chairman of Monarch
and Unisource brought in a new, 42-year-old president from
outside the company, Hamilton Bisbee. An announcement was
made that Larry Clark would be assuming expanded
responsibilities in physical distribution.” When Bisbee arrived at
Monarch in November 1981, Wilson was still deeply involved in
the Dallas construction project. Richard Gozon, who was 43
Blankenship was diagnosed with cancer in February 1982. In March 1982, Wilson was hospitalized for orthopedic surgery. Immediately after Blankenship’s death in June 1982, Bisbee and Snelgrove gave Wilson three options: (1) he could take a sales job in Corpus Christi at half his pay; (2) he could be terminated with three months’ severance pay; or (3) he could accept a job as warehouse supervisor in the Houston warehouse at the same salary but with a reduction in benefits. The benefits included participation in the management bonus plan, and the loss of the use of a company car, a company club membership, and a company expense account.
Wilson accepted the warehouse position. Wilson believed that he was being offered the position of Warehouse Manager, the only vacant position in the Houston warehouse at the time. When Wilson reported for duty at the warehouse on August 16, 1982, however, he was placed instead in the position of an entry level supervisor, a position that required no more than one year’s experience in the paper business. Wilson, with his thirty years of experience in the paper business and a college degree, was vastly overqualified and overpaid for that position.

Soon after he went to the warehouse, Wilson was subjected to harassment and verbal abuse by his supervisor, Operations Manager and Acting Warehouse Manager Paul Bradley (who had previously been subordinate to Wilson). Bradley referred to Wilson as “old man” and admitted posting a sign in the warehouse that said “Wilson is old.” In Bradley’s absence, Wilson was placed under the supervision of a man in his twenties. Finally, Wilson was further demeaned when he was placed in charge of housekeeping but was not given any employees to assist him in the housekeeping duties. Wilson, the former vice-president and assistant to the president, was thus reduced finally to sweeping the floors and cleaning up the employees’ cafeteria, duties which occupied 75 percent of his working time.

In the late fall of 1982, Wilson began suffering from respiratory problems caused by the dusty conditions in the warehouse and stress from the unrelenting harassment by his employer. On January 6, 1983, Wilson left work to see a doctor about his respiratory problems. He was advised to stay out of a dusty environment and was later advised that he had a clinically significant allergy to dust. Shortly after January 6, 1983, Wilson consulted a psychiatrist who diagnosed him as suffering from reactive depression, possibly suicidal, because of on-the-job stress. The psychiatrist also advised that Wilson should stay away from work indefinitely.

Wilson filed an age discrimination charge with the EEOC in January 1983. Although he continued being treated by a psychiatrist, his condition deteriorated to the point that in
March 1983, he was involuntarily hospitalized with a psychotic manic episode. Prior to the difficulties with his employer, Wilson had no history of emotional illness.

Wilson’s emotional illness was severe and long-lasting. He was diagnosed with manic-depressive illness or bipolar disorder. After his first hospitalization for a manic episode, in which he was locked in a padded cell and heavily sedated, he fell into a deep depression. The depression was unremitting for over two years and necessitated an additional hospital stay in which he was given electroconvulsive therapy (shock treatments). It was not until 1987 that Wilson’s illness began remission, thus allowing him to carry on a semblance of a normal life.

II

On February 27, 1984, Wilson filed suit against the defendants, alleging age discrimination and various state law tort and contract claims. The defendants filed a counterclaim, seeking damages in excess of $10,000 for libel and slander, but later dismissed it. On November 30 and December 28, 1988, the case was tried before a jury on Wilson’s remaining claims that the defendants (1) reassigned him because of his age; (2) intentionally inflicted emotional distress; and (3) terminated his long-term disability benefits in retaliation for filing charges of age discrimination under the Age Discrimination in Employment Act (ADEA).

The district court denied the defendants’ motions for directed verdict. The jury returned a special verdict in favor of Wilson on his age discrimination claim, awarding him $156,000 in damages, plus an equal amount in liquidated damages. The jury also found in favor of Wilson on his claim for intentional infliction of emotional distress, awarding him past damages of $622,359.15, future damages of $225,000, and punitive damages of $2,250,000. The jury found in favor of the defendants on Wilson’s retaliation claim. The district court entered judgment for $3,409,359.15 plus prejudgment interest. The district court denied the defendants’ motions for judgment NOV, new trial, or, alternatively, a remittitur. The defendants appeal.
To prevail on a claim for intentional infliction of emotional distress, Texas law requires that the following four elements be established:

1. that the defendant acted intentionally or recklessly;
2. that the conduct was ‘extreme and outrageous’;
3. that the actions of the defendant caused the plaintiff emotional distress; and
4. that the emotional distress suffered by the plaintiff was severe.

The sole issue before us is whether Monarch’s conduct was “extreme and outrageous.”

“Extreme and outrageous conduct” is an amorphous phrase that escapes precise definition. In Dean v. Ford Motor Credit Co., supra, however, we stated that

[Liability [for outrageous conduct] has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.... Generally, the case is one in which a recitation of the facts to an average member of the community would lead him to exclaim, “Outrageous.”]

885 F.2d at 306 (citing Restatement (Second) of Torts § 46, Comment d (1965)). The Restatement also provides for some limits on jury verdicts by stating that liability “does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.... There is no occasion for the law to intervene in every case where someone’s feelings are hurt.” Rest. (Second) of Torts § 46.

The facts of a given claim of outrageous conduct must be analyzed in context, and ours is the employment setting. We are
cognizant that “the work culture in some situations may contemplate a degree of teasing and taunting that in other circumstances might be considered cruel and outrageous.” Keeton, et al., Prosser & Keeton on Torts (5th ed. 1984 & 1988 Supp.). We further recognize that properly to manage its business, every employer must on occasion review, criticize, demote, transfer, and discipline employees. We also acknowledge that it is not unusual for an employer, instead of directly discharging an employee, to create unpleasant and onerous work conditions designed to force an employee to quit, i.e., “constructively” to discharge the employee. In short, although this sort of conduct often rises to the level of illegality, except in the most unusual cases it is not the sort of conduct, as deplorable as it may sometimes be, that constitutes “extreme and outrageous” conduct.

Wilson contends that Monarch’s conduct was equally outrageous as the “incidents” in Dean. Generally, Wilson argues that an average member of the community would exclaim “Outrageous!” upon hearing that a 60-year-old man, with 30 years of experience in his industry, was subjected to a year-long campaign of harassment and abuse because his company wanted to force him out of his job as part of its expressed written goal of getting rid of older employees and moving younger people into management.

Most of Monarch’s conduct is similar in degree to conduct in Dean that failed to reach the level of outrageousness. We hold that all of this conduct, except as explicated below, is within the “realm of an ordinary employment dispute,” and, in the context of the employment milieu, is not so extreme and outrageous as to be properly addressed outside of Wilson’s ADEA claim.

Wilson argues, however, that what takes this case out of the realm of an ordinary employment dispute is the degrading and humiliating way that he was stripped of his duties and demoted from an executive manager to an entry level warehouse supervisor with menial and demeaning duties. We agree.

Monarch argues that assigning an executive with a college education and thirty years experience to janitorial duties is not
extreme and outrageous conduct. The jury did not agree and neither do we. We find it difficult to conceive a workplace scenario more painful and embarrassing than an executive, indeed a vice-president and the assistant to the president, being subjected before his fellow employees to the most menial janitorial services and duties of cleaning up after entry level employees: the steep downhill push to total humiliation was complete. The evidence, considered as a whole, will fully support the view, which the jury apparently held, that Monarch, unwilling to fire Wilson outright, intentionally and systematically set out to humiliate him in the hopes that he would quit. A reasonable jury could have found that this employer conduct was intentional and mean spirited, so severe that it resulted in institutional confinement and treatment for someone with no history of mental problems. Finally, the evidence supports the conclusion that this conduct was, indeed, so outrageous that civilized society should not tolerate it. Accordingly, the judgment of the district court in denying Monarch’s motions for directed verdict, JNOV and a new trial on this claim is affirmed.

In conclusion, we express real concern about the consequences of applying the cause of action of intentional infliction of emotional distress to the workplace. This concern is, however, primarily a concern for the State of Texas, its courts and its legislature. Although the award in this case is astonishingly high, neither the quantum of damages, nor the applicability of punitive damages has been appealed.

AFFIRMED.

Questions to Ponder About Wilson v. Monarch Paper

A. Is this the kind of thing that a would-be plaintiff should just “put up with”? Or is it a good thing that people in Wilson’s position can sue?

B. The court expressed “real concern about the consequences of applying [IIED] to the workplace.” Are there special dangers to recognizing a cause of action for IIED in the employment context?
Would it be a good idea for a state legislature to bar such claims by statute?

C. The court says that “extreme and outrageous” is amorphous and eludes attempts at precise definition. With favor, the court notes the trope that extreme and outrageous conduct is the kind of conduct that would cause a person to exclaim, “Outrageous.” Is this approach to defining the tort circular? And if so, is it therefore, unhelpful? Or does this explanation help to communicate something of the gestalt of IIED?

**Case: Dzamko v. Dossantos**

The following case looks at IIED in the modern social-media context.

*Dzamko v. Dossantos*

Superior Court of Connecticut

October 23, 2013


**JON C. BLUE, JUDGE.**

The Motion To Strike now before the court involves allegations of well-established torts committed in the age of the internet. Although the facts are novel, the applicable law is not. As Holmes, J. once wrote, “I am frightened weekly but always when you walk up to the lion and lay hold the hide comes off and the same old donkey of a question of law is underneath.”

The alleged facts (assumed, for present purposes, to be true) arise out of a mistaken identity scenario, worthy of a modern Shakespeare, involving the intersection of Facebook pilferage and an internet sting operation. In 2012, the defendant, Joseph C. Dossantos, initiated sexually explicit conversations in an internet chat room, optimistically labeled “Connecticut Romance.” Dossantos mistakenly believed that he was communicating with two fourteen-year-old girls. In fact, as courtwatchers will already surmise, the “fourteen-year-old girls” were, in fact, police detectives. Dossantos, who was forty years
old, wanted his correspondents to believe that he was younger than he was. To bolster his claim, he sent three digital images of “himself” to one of the “girls.” Unhappily, the images were not images of Dossantos. They were, rather, images of the plaintiff, Joseph Dzamko (“Joseph”), appropriated by Dossantos from Joseph’s Facebook page. The images of Joseph were not themselves compromising. They were perfectly normal photographs. But the context in which Dossantos used them plainly made it appear that the person thus depicted was engaged in sexually predatory behavior.

The detective receiving the transmissions recognized the person so depicted. It was Joseph. By malign fate, Joseph was a police officer in another town and had been a Police Academy classmate of the detective. The detective forwarded the images of Joseph to Internal Affairs. Internal Affairs investigated, and Joseph had to tell his wife, Sarah Dzamko (“Sarah”) what had happened. The investigating officers eventually traced Joseph’s Facebook images to Dossantos. Dossantos, confronted with the evidence, admitted that he had not only sent Joseph’s images to the detective as images of himself but that he had done the same thing with at least twenty other females (or persons who he presumed to be females) on the internet. Forensic review of Dossantos’ computer revealed that these transmissions had occurred in the context of sexually explicit conversations. All of this caused Joseph and Sarah great distress.

On April 9, 2013, Joseph and Sarah commenced this action against Dossantos by service of process. Their Revised Complaint consists of ten counts, but four of these counts (the Second, Sixth, Seventh, and Tenth Counts) have been withdrawn. Three additional counts (the First, Third, and Eighth Counts) are not the subject of the motion now before the court and can be ignored for present purposes. That leaves three counts in contention: the Fourth Count (alleging publicity placing Joseph in a false light), the Fifth Count (alleging intentional infliction of emotional distress as to Joseph), and the Ninth Count (alleging intentional infliction of emotional distress as to Sarah).
On July 19, 2013, Dossantos filed the Motion To Strike now before the Court. The Motion seeks to strike the Fourth, Fifth, and Ninth Counts (as well as some counts that have been withdrawn and need not be further discussed). The Motion contends that these counts fail to state claims upon which relief can be granted. The Motion was argued on October 21, 2013. The counts in question will be considered in order.

**Fifth Count—Intentional Infliction of Emotional Distress (Joseph).**

The Fifth Count alleges intentional infliction of emotional distress as to Joseph. The elements of this cause of action are “(1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant’s conduct was the cause of the plaintiff’s distress; and (4) that the emotional distress sustained by the plaintiff was severe.” Perez–Dickson v. City of Bridgeport, 304 Conn. 483, 526–27 (2012). (Internal quotation marks and citation omitted.) The Fifth Count adequately pleads these elements.

With respect to the first element, the Revised Complaint sufficiently alleges facts from which it could reasonably be inferred that, at a minimum, Dossantos should have known that emotional distress would be the likely result of his conduct. It is very well known that images transmitted on the internet are not likely to remain private for very long. All too often, they are retransmitted to the world. Think of the much-publicized issue of “sexting” images sent by clueless teenagers. These images, once sent to a single, supposedly private source, end up being resent to hundreds, and soon thousands, of other people. Any reasonable person could foretell that eventually someone was going to recognize the person in the images transmitted by Dossantos and draw conclusions that would, in turn, cause that person to suffer emotional distress.

Dossantos denies that his conduct was extreme and outrageous, but he cannot do that with a straight face. The test is whether “the recitation of the facts to an average member of the community would arouse his resentment against the actor and
lead him to exclaim, Outrageous!” Perez–Dickson, 304 Conn. at 527. This is such a case.

Dossantos does not dispute the remaining elements of the alleged tort. Special damages are not an element of intentional infliction of emotional distress and have never been thought to be so. See Restatement (Second) of Torts § 46 cmt. k (1965). (“[I]f the enormity of the outrage carries conviction that there has in fact been severe emotional distress, bodily harm is not required.”) The emotional distress sustained by the plaintiff must, of course, be severe, but that is sufficiently alleged here.

**Ninth Count—Intentional Infliction of Emotional Distress—Sarah.**

The Ninth Count alleges intentional infliction of emotional distress as to Sarah. That count alleges that Dossantos’s conduct “was carried out with the knowledge that it probably would cause … Sarah … to suffer emotional distress.” This is not, as Dossantos argues, an allegation of bystander emotional distress, such as that of a witness to an automobile accident. Dossantos’s conduct implied that Joseph was a sexual predator. This would naturally reflect on Joseph’s spouse and cause her great personal embarrassment and natural concern for her own personal health quite apart from the distress she may have experienced from observing Joseph’s own travail. Under these circumstances, the tort of intentional infliction of emotional distress with respect to Sarah has been adequately pleaded.

The Motion To Strike is denied~.

**Questions to Ponder About Dzamko v. Dossantos**

A. As with the Wilson court, the Dzamko court also references the exclamation-of-the-average-member-of-the-community idea for explaining extremeness and outrageousness. There are a couple of differences, however. For one, the Dzamko court uses an exclamation point (“Outrageous!”). The other difference is that the Dzamko court calls it a “test.” Is it a good test? And what do you think of the Dzamko court’s application of the test to the facts of this case? Would the average person exclaim “Outrageous!” upon learning of Dossantos’s conduct? Did you?
B. The Dzamko court allows an IIED claim not only for Joseph Dzamko, but also for his wife, Sarah, brushing aside concerns that this is “bystander emotional distress.” Do you agree that Sarah should have a claim? Supposing the Dzamkos had children, should they be able to bring claims as well? If Joseph’s mother and father had been aware of this, should they also have claims?

The First Amendment Defense to IIED

As a final note, it’s worth considering that an IIED cause of action can be trumped by the First Amendment – at least where the cause of the emotional distress is speech about a matter of public concern.

In Hustler Magazine, Inc. v. Falwell, 485 U.S. 46 (1988), the U.S. Supreme Court unanimously held that a magazine had a protectable free-speech interest in lampooning a politically active televangelist, Jerry Falwell, by publishing an account of a fictional sexual encounter between Falwell and his mother. More recently, in Snyder v. Phelps, 131 S.Ct. 1207 (2011), the father of a Marine killed in the Iraq War sought to uphold an IIED verdict against a group that protested his son’s funeral. The protestors used the funeral as a platform to voice anti-gay and anti-Catholic views. Standing on public sidewalks, they held placards with slogans including “You are going to hell” and “Thank God for dead soldiers.” The Supreme Court held 8-1 that the father’s IIED cause of action was barred by the First Amendment.