

A judge in State A signed a death warrant for a convicted murderer. At a demonstration protesting the execution of the murderer, two opponents of the death penalty carried large signs that stated, "The judge is a murderer!" A television station broadcasted news coverage of the demonstration, including pictures of the signs carried by the two protestors. The broadcast caused the judge severe emotional distress.

If the judge asserts a claim for damages for intentional infliction of emotional distress against the television station, will he likely prevail?

- A. No, because the judge did not suffer physical harm as a consequence of the emotional distress caused by the signs.
- B. No, because the television station did not publish a false statement of fact with actual malice.
- C. Yes, because the assertion on the signs was extreme and outrageous.
- D. Yes, because the broadcast showing the signs caused the judge severe emotional distress.

## Explanation:

**Intentional infliction of emotional distress** (IIED) occurs when the defendant intentionally or recklessly causes the plaintiff severe emotional harm by engaging in extreme and outrageous conduct. But when the plaintiff is a **public figure** who alleges that his/her emotional distress was caused by the defendant's **publication** (eg, newspaper article, television broadcast), then the plaintiff must *also* show that the defendant published a **false statement of fact** with actual malice.

Here, the judge (public figure) can show that the television station's broadcast caused him severe emotional distress. But since the broadcast merely published the protestors' political opinions—not false statements of fact—the judge's IIED claim will likely fail **(Choice D)**.

**(Choice A)** Proof of physical harm is generally required to recover damages for emotional harm. However, IIED does not require proof of physical harm—only proof of *severe* emotional distress. Therefore, the fact that the judge did not suffer physical harm due to his emotional distress will not defeat his IIED claim.

**(Choice C)** Even if the protestors' message on the signs was extreme and outrageous, that message expressed an opinion—not a fact.

## Educational objective:

To recover for intentional infliction of emotional distress (IIED) based on the defendant's publication, a public figure must show that the defendant (1) acted in an extreme and outrageous manner, (2) intentionally or recklessly caused the public figure severe emotional distress, and (3) published a false statement of fact with actual malice.

## References

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 46 cmt. f (Am. Law Inst. 2012) (intentional infliction of emotional distress).

Hustler Magazine v. Falwell, 485 U.S. 46, 56 (1988) (analyzing intentional infliction of emotional distress claims brought by public figures and public officials).

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## **Intentional infliction of emotional distress against a public figure**

### Standard elements for IIED

- Defendant acted intentionally or recklessly
- Defendant engaged in extreme and outrageous conduct
- Plaintiff suffered severe emotional distress

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### Publication requirement

- Defendant published a false statement of fact with actual malice