

## **WORKPLACE BULLYING: DOES THE DEVIL REALLY WEAR PRADA?**

Raphael O. Boyd  
Clark Atlanta University

Lila L. Carden  
University of Houston

---

*A hospital worker filed a lawsuit which claimed, in addition to other legal causes of actions based on disputes within the hospital, that a cardiovascular surgeon “aggressively charged him with clenched fists, piercing eyes, beet-red face, popping veins, and screaming and swearing at him.” This case garnered substantial nationwide attention with a great deal of media scrutiny due to its use of the concept of “workplace bullying” as applicable to the cardiovascular surgeon. However, the case received further attention once the initial jury trial found the surgeon guilty and awarded the hospital worker \$325,000. This case is appropriate for a graduate Business Law class, an undergraduate Business Law class, and a Human Resource Management class.*

---

### **THE BACKGROUND OF WORKPLACE BULLYING**

Workplace bullying is a noted phenomenon that is becoming more prevalent in a wide variety of companies across the United States. Most notably, workplace bullying is actually more common than discrimination. This fact is noted by the 2000 U.S. Hostile Workplace Survey by Bellingham, a Washington-based Workplace Bullying & Trauma Institute. This is an organization formed to research and prevent workplace bullying.

“Workplace bullying is recognized as a repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators that takes one or more of the following forms:

- Verbal abuse
- Offensive conduct/behaviors (including nonverbal) which are threatening, humiliating or intimidating

- Work interference — sabotage — which prevents work from getting done.”

Workplace bullying terminology has been synonymous with psychological violence, psychological harassment, personal harassment, and emotional abuse at work. A survey by the Workplace Bullying Institute reported that 54 million American workers (37 percent of the U.S. workforce) are victims of bullies at work. Furthermore, that number would be increased to 71 million if it included the number of persons that witnessed the workplace bullying. Additionally, human resource professionals have stated that abusive or intimidating behavior is the most outlandish type of ethical misconduct currently happening in the workplace. Often, workers are afraid to report this type of behavior.

The ethical concern that is related to workplace bullying is whether the conduct the bullying individual has engaged in is immoral and extends beyond organizational values, principles, guidelines or codes. Human resource professionals are charged with the responsibility of maintaining environments that demand ethical behaviors which include developing, monitoring, and enforcing ethics policies. Additionally, human resource professionals are usually the resources that get involved after an incident of workplace bullying has occurred. Some organizations are hiring ethics officers who are trained in resolving ethical concerns in the workplace. Tasked as individuals trained in resolving ethical dilemmas in the workplace, ethics officers are popping up in more and more organizations.

As a result of these concerns, state legislatures have gotten involved. Since 2003, 16 states have enacted some aspect of an anti-bullying Healthy Workplace Bill. In 2009, 12 states have enacted some type of active legislation. However, the most aggressive part of these bills doesn't require the employer to take any action. The employers may possibly avoid litigation if policies against workplace bullying are established and enforced.

## **THE CASE**

Joe Donner, who was employed as a perfusionist for 17 years, worked as a chief perfusionist during open-heart surgery at St. Francis Hospital. The St. Francis Hospital (hereafter referred to as “the Hospital”) is a Roman Catholic nonprofit based hospital located in Beech Grove, Indiana. A perfusionist is the individual who operates the “heart/lung” machine during open-heart surgery. This machine oxygenates the blood during surgery. This position is very important and necessary in that its proper function keeps a patient alive during surgery.



On October 25, 2001, Donner was scheduled to work in his chosen field as a perfusionist in an open-heart surgery. The surgery was performed by Dr. Beth Worthington at the Hospital. During the surgery, Donner left the operating room to handle a personal business matter. However, prior to the beginning of the surgical procedure, Donner had previously made arrangements for a different perfusionist, Jen Lane, to take over his duties for him after he left. He did not provide notice to the physician performing the surgical procedure, Dr. Worthington, or any other physician at the hospital, prior to leaving the hospital operating room. It is typically customary for the perfusionist to provide notice of an absence to the physician performing the operation. However, it is not required by the hospital policy.

Donner's action, although seemingly just a minor scheduling issue, became a part of a larger group of actions that led to a more challenging situation. There were three perfusionists working at the hospital. Once Donner left the hospital and Lane took over his duties in surgery, this left only one available perfusionist, Joe Bond. However, when Bond was called into surgery, there weren't any perfusionist available for duty for a short period of time.

Dan Ross, a prominent cardiovascular surgeon with 20 years of extensive cardiovascular experience, worked at St. Francis Hospital as a chief heart surgeon. He had an excellent reputation as a surgeon and has helped to save hundreds of lives. Ross was confronted with an emergency heart surgery which he needed to perform immediately at the hospital. However, with the three perfusionists unavailable, he could not act upon the emergency immediately. Although Ross had an excellent professional reputation, his reputation was noted to be quite different as it pertained to his temperament. Ross reportedly had a history of yelling and screaming at coworkers. By one worker's report, he was noted to be seen "stomping through hospital halls, cursing and threatening employees."

In keeping with this noted type of temperament history, Ross became angry, outraged, and incensed when there were not any perfusionist available when the emergency occurred. He later cornered both Lane and Bond and yelled at both of them about the earlier scheduling issue. The incident affected both perfusionists greatly. Ross's counsel stated that this type of action in "high-stress" and "intense situations such as heart surgery and patient care" is not unusual in this type of environment. The counsel also stated that "sometimes there are things said in the heat of the moment you don't mean."

The next day when Bond told Donner about Ross's explosion, Donner was greatly affected. Donner felt that he had to do something to express the displeasure he felt concerning Ross's actions. Donner decided to resign his position as chief perfusion-

ist as a form of “protest” after thinking about the situation. However, Donner did not leave the hospital. He continued to work at the hospital as a staff perfusionist.

On November 2, 2001, Donner was required to work as a perfusionist in a heart surgery performed by Ross. The surgery apparently was performed without incident. However, after the surgery, Ross approached Donner to discuss “coverage issues” similar to the previous coverage situation as a result of Donner’s absence. Donner informed Ross of his previous resignation as chief perfusionist and that “coverage issues were not his concern.” The two men ended the discussion without further incident.

Later that same day, Donner and Ross were together in the area located between the operating rooms in the hospital’s open-heart surgery area called the “pump-room.” After a brief discussion, an argument broke out between the two men. The argument became very heated and combative. Ross became very angry and he looked as if he were ready to take action against Donner. His “body stiffened, his face turned red, and his jugular vein became extended.” Ross then moved toward Donner “with clenched fists, piercing eyes, beet-red face, popping veins, and screaming and swearing at him.” Ross’s clenched fists were at his side. Donner then stated that Ross’s “demeanor and purposeful walk caused him to back up against the wall and raise his hands in defense.” Donner stated that he feared for his safety and truly felt Ross was going to hit him.

Donner then stated that this conversation was over. Donner reported that Ross then “suddenly stopped, turned, and stormed past Donner and left the room. However, momentarily pausing, Ross then turned and yelled to Donner declaring that “You’re over. You’re history. You’re finished.” Donner stated that he really thought Ross was going to “smack the s\*\*\* out of him or do something”.

Later, Donner testified that he felt assaulted because of “the advancement, the look in Ross’s eye, and Ross’s body positioning.” Donner viewed Ross as a “domineering manager who viewed himself as untouchable.”

Ross predictably described the situation differently. He characterized the incident as a disagreement between two equally paired co-workers concerning a workplace matter. He viewed Donner as an “active participant” in the dispute. Further, Ross stated that the incident was a “shouting match between two strong-willed individuals.”

### **THE DECISION TO SUE**

This incident with Ross really affected Donner. He became very “depressed and anxious, exhibited heightened anxiety, developed sleep problems, and experienced



loss of appetite.” Donner further stated that he “lost his confidence,” couldn’t make split decisions, and his earning ability was impacted.

He thought of the stress through the years while working side-by-side with Ross and experiencing abuse and one specific incident came to mind. Donner thought of a personal matter between him and Ross. Donner’s uncle was dying in New Orleans, Louisiana. Donner planned to be present at his uncle’s funeral and informed Ross that he would be attending the impending funeral. Ross was not pleased upon hearing this request. He informed Donner that “You’re not going anywhere. You’re staying here.” Donner was caught totally off-guard by this answer. He reflected on the commitment he had given the hospital in the past. Donner stated that “I put my heart and soul into that place. It was my career for life. I planned on staying at St. Francis, retiring from there.”

As if that exchange was not enough, there was another important area that Donner was experiencing which really occupied his thoughts. Donner’s personal life had been substantially impacted by the past events. He was having trouble relating with those close to him. More specifically to this point, Donner stated that his ability to “interact with his wife, his family, and people in general” was affected. This meant that the core aspects of his life were not settled. He felt he was not balanced or grounded. Donner felt that he would have to make some changes in his life. As a result, Donner decided to leave St. Francis and gave up his \$100,000 dollar a year position as a staff perfusionist. He is currently working as a \$20,000 dollar a year worker in a dog kennel. One evening while contemplating this past ordeal and the negative effect it had on his life, Donner decided to take action. He obtained the legal services of a well-known attorney and decided to have the matter resolved in court.

### **LEGAL ACTION SUMMARY**

The case began in the Marion Superior Court, Indiana. Donner sued Ross for various civil torts. The concept of workplace bullying was discussed and garnered much attention nationwide. There was substantial interest in the case because the concept of workplace bullying was a theme which seemed to resonate with the public. The initial trial resulted in a verdict of \$325,000 for lost wages. The jury did not award punitive damages (punishing defendant for the actions.) The Court of Appeals of Indiana reversed the trial court’s ruling. The court had several concerns with the lower court’s rulings. Specifically, the court expressed a concern involving the use of the concept of workplace bullying. As a result, the matter was appealed to the Indiana Supreme Court and the highest court in the state of Indiana was going to provide its impact.

## **DISCUSSION QUESTIONS**

### **Legal Concerns**

1. Discuss the possible legal arguments utilizing the appropriate corresponding facts supporting Joe Donner's position.
2. Discuss the possible legal arguments/defenses utilizing the appropriate corresponding facts supporting Dan Ross's position.

### **Additional Concerns**

3. Identify and discuss any public policy concerns for Dan Ross as well as possible alternative methods that could have been used to resolve the situation.
4. Do you think the hospital needs to develop a workplace bullying policy and why? If so, what does the policy need to include?

## **EXHIBIT 1**

### **Workplace Bullying Policy**

"Workplace bullying is repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators that takes one or more of the following forms:

- Verbal abuse
- Offensive conduct/behaviors (including nonverbal) which are threatening, humiliating or intimidating
- Work interference — sabotage — which prevents work from getting done."

"Workplace bullying includes the following types of behavior examples:

- **Verbal Bullying:** slandering, ridiculing or maligning a person or his/her family; persistent name calling which is hurtful, insulting or humiliating; using a person as butt of jokes; abusive and offensive remarks.
- **Physical Bullying:** pushing; shoving; kicking; poking; tripping; assault, or threat of physical assault; damage to a person's work area or property.

- **Gesture Bullying:** non-verbal threatening gestures, glances which can convey threatening messages.
- **Exclusion:** socially or physically excluding or disregarding a person in work-related activities.”

**Source(s):** <http://www.workplacebullying.org/targets/problem/definition.html>  
[http://www.shrm.org/TemplatesTools/Samples/Policies/Pages/CMS\\_018350.aspx](http://www.shrm.org/TemplatesTools/Samples/Policies/Pages/CMS_018350.aspx)

## **EXHIBIT 2**

### **Tort Liability**

“An action may arise under the law of torts (the word *tort* is French for wrong).”  
Listed below are certain torts.

#### Assault, Battery, Intentional Infliction of Emotional Distress, False Imprisonment

##### ***Assault:***

This tort is noted as “any intentional unexcused act that creates in another a reasonable apprehension or fear of immediate harmful or offensive contact.”

##### ***Battery:***

This tort is noted as “an unexcused and harmful or offensive physical contact intentionally performed.”

##### ***Intentional Infliction of Emotional Distress:***

This tort is noted as “an intentional act that amounts to extreme and outrageous conduct resulting in severe emotional distress to another.”

##### ***False Imprisonment:***

This tort is noted as “an intentional confinement or restraint of another’s person’s activities without justification.”

#### Defenses to Certain Tort Liability

##### ***Self-Defense:***

“An individual who is defending her or his life or physical well-being can claim self-defense. In a situation of either real or apparent danger, a person may normally use whatever force is reasonably necessary to prevent harmful contact.”

##### ***Defense of Others:***

“An individual can act in a reasonable manner to protect others who are in real or apparent danger.”



**Defense of Property:**

“Reasonable force may be used in attempting to remove intruders from one’s home, although force that is likely to cause death or great bodily injury normally cannot be used just to protect property.”

**Consent:**

“When a person consents to the act that is allegedly tortuous, there may be a complete or partial defense to liability.”

**Source(s):** Raess v. Doescher, No. 49S02-0710-CV-424, Indiana Supreme Court (April 8, 2008). Cross, Frank B. and Miller, Roger L., “West’s Legal Environment of Business”, 7<sup>th</sup> Edition, South-Western, Cengage Learning, 2009, pp. 290-294.

**REFERENCES**

Raess v. Doescher, No. 49S02-0710-CV-424, Indiana Supreme Court (April 8, 2008).

Raess v. Doescher, 883 N.E.2d 790 (Apr. 8, 2008).

Joseph E. Doescher v. Daniel H. Raess, M.D., 2005, <http://www.workdoctor.com/press/indy030505.html>

Mirzaie v. Smith Cogeneration Inc., 1998 OK CIV APP 123; 962 P.2d 678; 1998 Okla. Civ. App., Employee Relations Law Journal, Vol. 32, No. 3, p. 38, Winter 2006.

Cross, Frank B. and Miller, Roger L., “West’s Legal Environment of Business”, 7<sup>th</sup> Edition, South-Western, Cengage Learning, 2009, pp. 290-294.

**Web sites**

[Http://www.workplacebullying.org/targets/solution/indiana/post-trial.html](http://www.workplacebullying.org/targets/solution/indiana/post-trial.html)

[Http://www.workplacebullying.org/targets/solution/indiana/pre-appl.html](http://www.workplacebullying.org/targets/solution/indiana/pre-appl.html)

[Http://www.jacksonlewis.com/legalupdates/article.cfm?aid=1357](http://www.jacksonlewis.com/legalupdates/article.cfm?aid=1357)

[Http://www.thehrorganization.com/rl-workplac-bullying.html](http://www.thehrorganization.com/rl-workplac-bullying.html)

[Http://www.laborlawyers.com/showarticle.aspx?Workplace-Bullying](http://www.laborlawyers.com/showarticle.aspx?Workplace-Bullying)

[Http://www.ogletreedeakins.com/publications/index.cfm?Fuseaction](http://www.ogletreedeakins.com/publications/index.cfm?Fuseaction)

[Http://www.workplacebullying.org/targets/problem/definition.html](http://www.workplacebullying.org/targets/problem/definition.html)

[Http://www.shrm.org/Research/Articles/Articles/Pages/Business\\_20Ethics\\_20Series\\_20Part\\_20I\\_20Business\\_20Ethics\\_20Overview.aspx](http://www.shrm.org/Research/Articles/Articles/Pages/Business_20Ethics_20Series_20Part_20I_20Business_20Ethics_20Overview.aspx)

[Http://www.shrm.org/hrdisciplines/ethics/Pages/EthicsIntro.aspx](http://www.shrm.org/hrdisciplines/ethics/Pages/EthicsIntro.aspx)