

For a sense of how far outside the bounds of accepted behavior Mr. Gordon's conduct was, the court may look to the reactions he elicited. The record shows evidence of three reactions to his behavior. First, two of Ms. Bauer's family members left the funeral to request that he turn off the music. Second, his actions were of enough interest to be published in a newspaper the next day. Third, Ms. Bauer's cousin was quoted saying the family was upset by the intrusion caused by the loud music at such a sensitive time. None of the three reactions leads to the inference that Mr. Gordon's actions were extreme and outrageous. The first reaction is consistent with the finding that Mr. Gordon failed to observe the expected courtesy of silent respect at a funeral, resulting in a request that he observe the standard of silence. He did so. The second reaction suggests that his behavior was a curiosity and out of the ordinary; however, there is no evidence that the reporter was appalled at the conduct or otherwise felt Mr. Gordon surpassed the bounds of tolerable behavior. Lastly, the quote in the newspaper comes closest to showing a reaction indicative of behavior outside the bounds of possible decency, but the quote – from participants at the funeral, who would be closest to the action and therefore most able to reliably comment on it – lacks a demonstration of shock or horror at his failure to observe the code of silence expected for a funeral. Accordingly, Mr. Gordon's behavior would likely not be seen as extreme and outrageous under Indiana law.

Comment [A1]: Is this what the court does to determine whether a defendant violated a cultural norm? Some authority for this approach would be helpful here and in your rule statement for the element.

Comment [A2]: This is a nice use of the facts of our case to make your argument. What's missing is a comparison to the case law. IF the case law supports this approach (looking at reactions to the defendant's behavior to determine whether his behavior is extreme and outrageous), compare these reactions to Gordon's behavior with the reactions of plaintiffs (and others) in the precedent cases to show why Gordon's behavior violates an expected courtesy rather than a cultural norm (or whatever your rule ends up being for when conduct becomes outrageous).