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## Impact my train and I'll sue you

**C**HUTZPAH, the old joke goes, is when you murder your mother and your father and then throw yourself on the mercy of the court as an orphan. A new definition: Chutzpah is when you run over someone with a train and sue him for hurting your feelings.

Not very funny, I admit, but then I thought it was a bad joke when I picked up the paper Tuesday and read that the crew of the locomotive that ran down peace activist S. Brian Willson had sued Willson for mental anguish. As you no doubt recall, Willson and others were blocking the tracks at the Concord Naval Weapons station in a protest against what they claimed were illegal arms shipments to Central America.

Willson survived being hit by the train, and I'm sure he must still be wondering how that happened, but he lost his legs.

The train crew members, meanwhile, claimed in their suit that Willson and two other men, Duncan Murphy and the Rev. David Duncombe, "intended to physically stop said train by having their bodies physically impact with said train, with conscious and deliberate disregard to the rights, feelings and consequences to plaintiffs."

For their "humiliation, embarrassment, mental anguish and emotional and physical distress," the plaintiffs asked for monetary damages.

**I**THINK Brian Willson could explain a thing or two about emotional and physical distress to these guys. Emotional and physical distress, he might say, is when you look down and see that your legs are gone. It is being nearly killed for participating in a peaceful protest. Emotional and physical distress is having your body "physically impact" with a train.

Willson could say that, but he didn't when I spoke with him Tuesday.

"My response is that I do feel empathy for the train crew," he said. "They haven't had a chance for expressing their perspective on what happened. I think they are somewhat misdirected in focusing their grief and suffering on me, a person with no money, who was simply exercising my First Amendment rights. They would perhaps be better advised to address their concerns to the Navy, which ordered them to move the train and has money."

Willson's attorney, Tom Steel, was less understanding. "I would take a considerably harder line on this than Brian has taken. I just feel that they should take responsibility for what they did, rather than shift it onto the victim. It seems to me there is some measure of arrogance in filing a lawsuit like this. In a sense, it's the same arrogance that led them to barrel down on legal protesters at three times the legal speed limit and never attempt to brake before running them over."

The crew was ordered to roll, true, but the Navy's own investigation found that the locomotive was traveling at about 15 miles an hour, as opposed to the limit of 5. The Navy's report said the train crew admitted spotting Willson on the tracks about 120 feet away. Had they been going 5 mph, the report said, the train could have been stopped in 40 feet.

"We were visible for several hundred yards to the spotters on front of the train," Willson said. "Even speeding at the rate they were, they could have easily stopped in time. I think it's quite unexplainable."

**O**NE QUESTION that has bothered many people is why Willson failed to jump from the path of the train. He had the right to protest, and if that protest was illegal, he should have been arrested, not run over. But why didn't he move?

"To this date, I have total amnesia of the incident," he said Tuesday. "I've seen the video many times. I've talked to my wife and kid many times in terms of what was going on in my mind. But I have no memory. In some ways, that's a blessing. I do know this: I believed in all my heart and with all my rational powers that the train would stop."

The train didn't, and now the operators of the train are suing Willson.

"I've never heard of any such suit like that," said Steve Sugarman, who teaches tort law at UC-Berkeley's Boalt Hall Law School. He suggested one motive for the suit might be to initiate the proceedings in Contra Costa County, where there might be more sympathy for the Navy's operations than elsewhere.

"Whether or not there is a case would depend on showing he (Willson) did something wrong, which is a matter of debate here," Sugarman said. "Furthermore, they would have to show that he foreseeably subjected them to this risk of harm. What makes them think they can show that he deliberately allowed himself to be hit by the train with the knowledge that he was subjecting them to the risk of emotional upset?"

Beats me. I think it's ridiculous.

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