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Extending Immunity to Private Contractors on Government Contracts: *Boyle v. United Technologies Corp.*

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NOTE

Extending Immunity to Private Contractors on Government Contracts: *Boyle v. United Technologies Corp.*

A long-established goal of the United States government is to provide security and protection for its citizens. One way the government works toward this goal is by furthering military technology. This often necessitates that the government enter into contracts with the private sector. When contracting with the private sector, the government reserves immunity for itself in most circumstances.¹

In recent years, there has been confusion concerning whether governmental immunity extends to private contractors participating in government contracts. In *Boyle v. United Technologies Corp.*,² the United States Supreme Court examined the extension of governmental immunity to private contractors for design defects in products manufactured for the military. The *Boyle* Court held that immunity would extend to the contractor if the government approved reasonably precise specifications, the equipment conformed to those specifications, and the contractor warned the United States of any dangers known to the contractor of which the United States was unaware.³

This casenote examines past circuit court standards for extending governmental immunity to private contractors, the standard established by the Supreme Court in *Boyle* for extending governmental immunity, and the purposes underlying the *Boyle* Court's standard. This note then concludes by discussing the public policies supporting the *Boyle* Court's equitable approach

1. See, e.g., 28 U.S.C. § 1491 (1982).

2. 108 S. Ct. 2510 (1988).

3. *Id.* at 2518.

and the potential concerns of misinterpretation, misapplication, and expansion of the *Boyle* Court's standard.

I. THE *Boyle v. United Technologies Corp.* CASE

On April 27, 1983, David Boyle, a United States Marine, died when the helicopter he was copiloting crashed off the coast of Virginia Beach, Virginia. Boyle survived the impact of the crash but was unable to escape from the helicopter and drowned.⁴ Boyle's father (plaintiff) brought an action in federal court against the manufacturer of the helicopter, the Sikorsky Division of United Technologies Corporation (Sikorsky). Plaintiff contended that Sikorsky was liable under state law because (1) Sikorsky had defectively repaired the helicopter's automatic flight control system (which allegedly caused the crash), and (2) Sikorsky had defectively designed the copilot's emergency escape hatch to open out instead of in (making it inoperable in the submerged craft because of water pressure).⁵

In the United States District Court for the Eastern District of Virginia, the jury found defendant Sikorsky liable and awarded plaintiff \$725,000.⁶ On appeal, the United States Court of Appeals for the Fourth Circuit reversed.⁷ The Fourth Circuit held that Sikorsky was not liable for either alleged defect. Sikorsky could not be held liable for the alleged defect of the automatic flight system because plaintiff had failed to prove that the defective material in the automatic flight system was introduced by Sikorsky rather than by the Navy.⁸ Likewise, Sikorsky was immune from liability for the alleged defective design of the copilot's emergency escape hatch because the design of the hatch had been approved by the government.⁹

On appeal to the United States Supreme Court, plaintiff challenged only the finding of no liability for design of the escape hatch. Plaintiff made three contentions: (1) there was no justification under federal law for shielding private contractors

4. *Id.* at 2513. *But see* N.Y. Times, Aug. 4, 1988, at 24, col. 6 (a letter to the editor from Robert H. Arnold, attorney for the defense in *Boyle*, in which he claims that the Court overlooked the essential fact that David Boyle never attempted to open his escape hatch following impact).

5. *Boyle*, 108 S. Ct. at 2513.

6. *Id.*

7. *Boyle v. United Technologies Corp.*, 792 F.2d 413 (4th Cir. 1986).

8. *Id.* at 415-16.

9. *Id.* at 414-15.

from liability for design defects in military equipment; (2) in the alternative, even if such a defense should exist, the court of appeals' formulation of the conditions for its application was inappropriate; and (3) the court of appeals erred in not remanding the case for a jury determination of whether the elements of the defense were met in the case.¹⁰

The Supreme Court began its opinion by declaring that the design of military equipment is a discretionary function exempt from the Federal Torts Claims Act.¹¹ The Court then established a standard for extending governmental immunity to private contractors. The Court's standard states that liability for design defects in military equipment cannot be imposed upon a private contractor when (1) the United States government approves reasonably precise specifications, (2) the equipment conforms to those specifications, and (3) the contractor warns the United States of dangers not known to the government concerning the use of the equipment.¹² In so holding, the Court expressly renounced the test used by the Eleventh Circuit and upheld the tests used by the Fourth and the Ninth Circuits.¹³

Four justices dissented from the *Boyle* opinion.¹⁴ Three of the justices contended that the majority's immunity standard conflicted with precedent and was far too broad in that (1) there are no limits as to what products it could extend to cover, (2) there are no restrictions as against whom the private contractor could invoke the immunity (i.e., whether it could be extended to bar claims of injured non-military claimants), (3) there is no requirement that the government specifically intend to bypass safety procedures and allow the design defect for other compel-

10. *Boyle*, 108 S. Ct. at 2513.

11. 28 U.S.C. §§ 1346(b), 2680(a) (1982). The Federal Tort Claims Act establishes conditions for suits and claims against the federal government. The Act preserves governmental immunity for most intentional torts and acts or omissions within a federal agency's discretionary function.

12. *Boyle*, 108 S. Ct. at 2518. The Court also remanded the case to the court of appeals for clarification of whether the court of appeals' determination of Sikorsky's liability had been based on a separate factual evaluation or whether it had merely applied a legal standard to the findings of the district court. *Id.* at 2519. In addition, the Court addressed the issue of preemption. The Court held that because the liability of private contractors is an area of "unique federal interest" and because the state law significantly conflicted with this unique federal interest, the state law was preempted. *Id.* at 2513-18.

13. See *infra* notes 23, 27-31 with accompanying text.

14. Justice Brennan wrote a dissenting opinion in which Justice Marshall and Justice Blackmun joined. *Boyle*, 108 S. Ct. at 2519. Justice Stevens authored a separate dissenting opinion. *Id.* at 2528.

ling reasons, and (4) the immunity is available regardless of the ease of remedying the defect or its blatancy.¹⁵ All four dissenting justices argued that the Court lacked both authority and expertise to create an adequately balanced test for extending immunity; fashioning such a test was a task for Congress, not for the Court.¹⁶

II. ANALYSIS

An examination of the circuit courts' standards for extending immunity, the *Boyle* Court's standard for extending immunity, and public policy issues reveals that the *Boyle* majority's standard is both logical and necessary. Nonetheless, because the *Boyle* Court (1) enumerated broad purposes to justify its standard, (2) did not expressly limit its standard to design defects in product liability, and (3) did not address the problems associated with the bureaucratic nature of the government, there may be a potential for misapplication, misinterpretation, and expansion of the *Boyle* standard.

A. Circuit Courts' Standards for Extending Governmental Immunity to Private Contractors

Before the *Boyle* decision, there were no consistent standards used among the circuit courts in determining whether to extend governmental immunity to private contractors on government contracts.¹⁷ However, each circuit did acknowledge that some sort of limited immunity was available to private contractors on government contracts.¹⁸ Each circuit's standard also focused on substantially the same factors and concerns—the existing governmental immunity, the government involvement in the design, and the extent of open communication between the private contractor and the government concerning possible dangers in the design.¹⁹ Yet, despite the similar factors and concerns, each circuit saw the extension of immunity in a different

15. *Id.* at 2519-20 (Brennan, J., dissenting).

16. *Id.* at 2520 (Brennan, J., dissenting), 2528 (Stevens, J., dissenting).

17. See generally *Dowd v. Textron, Inc.*, 792 F.2d 409 (4th Cir. 1986); *Tozer v. LTV Corp.*, 792 F.2d 403 (4th Cir. 1986); *Shaw v. Grumman Aerospace Corp.*, 778 F.2d 736 (11th Cir. 1985); *Koutsoubos v. Boeing Vertol*, 755 F.2d 352 (3d Cir.), *cert. denied*, 474 U.S. 821 (1985); *McKay v. Rockwell Int'l Corp.*, 704 F.2d 444 (9th Cir. 1983), *cert. denied* 464 U.S. 1043 (1984).

18. See cases cited *supra* note 17.

19. See cases cited *supra* note 17.

light. Accordingly, each circuit manipulated the standard and the burden of proof to fit its interpretation. As a result, outcomes among the circuits often conflicted.²⁰ In fashioning the *Boyle* test, the Supreme Court focused on the standards enumerated in three circuits: the Eleventh, the Fourth and the Ninth.²¹

The Eleventh Circuit enumerated its standard for extending governmental immunity in *Shaw v. Grumman Aerospace Corp.*²² The issue in *Shaw* centered on the liability of a manufacturer of naval airplanes. The Eleventh Circuit held that the private contractor bears the burden of proof and that immunity will extend to it only if it proves (1) that it participated minimally, if at all, in the design of the defective products, or (2) that it timely warned the military of the risks of design and notified the military of safer alternatives and, despite knowing the alternatives, the military authorized the dangerous design.²³

This Eleventh Circuit standard was insufficient in the context of government contracts.²⁴ It placed too heavy a burden on the contractor to find all the design defects, deterred active participation by a contractor in the design process, and was unfair to private contractors because the design finally chosen could have merely reflected a policy judgment by a government official and had nothing to do with who created the design.²⁵ Accordingly, the *Boyle* Court implied that its standard for extending

20. Compare, e.g., *Shaw*, 778 F.2d 736, with *Tozer*, 792 F.2d 403.

21. The standards of the Third and Fifth Circuits are also in accord with the *Boyle* standard and therefore may have influenced the *Boyle* Court. The Third Circuit enumerated its standard for extending governmental immunity to private contractors in *Koutsoubos v. Boeing Vertol*, 755 F.2d 352 (3d Cir.), cert. denied, 474 U.S. 821 (1985). In *Koutsoubos* the issue was whether the manufacturer of military helicopters could be held liable for a design defect. The court stated that immunity would be extended if: (1) the government established specifications for the helicopter; (2) the helicopter met those specifications in all material aspects; and (3) the government knew as much or more than the manufacturer about the hazards of the product. *Id.* at 354-55. The Fifth Circuit's standard for extending governmental immunity held the private contractor immune from liability to the injured persons if (1) it manufactured the equipment in accordance with precise design specifications furnished by the government, and (2) it knew of no dangers in the equipment, either patent or latent, of which the government did not know. *Bynum v. FMC Corp.*, 770 F.2d 556, 574-76 (5th Cir. 1985).

22. 778 F.2d 736 (11th Cir. 1985).

23. *Id.* at 745-46.

24. See *Boyle*, 108 S. Ct. at 2518.

25. *Id.*

immunity was not to include any inferences arising from the Eleventh Circuit's standard.²⁶

The *Boyle* Court also examined the standards of the Fourth and Ninth Circuits for extending governmental immunity. The Fourth Circuit enumerated its standards for extending governmental immunity to private contractors in two decisions, *Dowd v. Textron, Inc.*²⁷ and *Tozer v. LTV Corp.*²⁸ The *Dowd* court held that immunity for design defects would extend to a private contractor on a government contract for Army equipment only when (1) the Army was familiar with the capabilities and problems of the design, and (2) the Army had declined to implement the modifications suggested by the manufacturer to alleviate the danger.²⁹ The *Tozer* court, using a less structured standard, held simply that because the design had been carefully analyzed, tested, found adequate and approved by the Navy, immunity would extend to protect the contractor.³⁰ The Ninth Circuit standard for extending governmental immunity was more inclusive; it stated that a private contractor is immune for design defects if: (1) the United States is immune from liability; (2) the United States established or approved reasonably precise design specifications; (3) the equipment conformed to such specifications; and (4) the contractor warned the United States of any patent errors in design known to it but not to the United States.³¹

The *Boyle* Court implied that the standards of the Fourth and Ninth Circuits were sufficient to fulfill the needs inherent in extending governmental immunity to military contractors. Accordingly, the Court substantially adopted the standards of these two circuits.

26. *Id.*

27. 792 F.2d 409 (4th Cir. 1986).

28. 792 F.2d 403 (4th Cir. 1986).

29. *Dowd*, 792 F.2d at 411-12.

30. *Tozer*, 792 F.2d at 405.

31. *McKay v. Rockwell Int'l Corp.*, 704 F.2d 444, 451-53 (9th Cir. 1983), *cert denied*, 464 U.S. 1043 (1984). In *McKay*, the Ninth Circuit said its standard for extending governmental immunity applied only to design defects and not to defects in manufacturing. *Id.* at 451. Though the *Boyle* Court specifically followed the *McKay* court standard, the *Boyle* standard does not explicitly make a distinction between design defects and manufacturing defects as the *McKay* court did. *See generally Boyle*, 108 S. Ct. at 2518.

B. *The Boyle Standard for Extending Governmental Immunity to Private Contractors*

In an attempt to both clear the confusion relating to the standard for extending governmental immunity to private contractors and to satisfy the concerns expressed in the standards of the circuits, the Court in *Boyle* outlined three specific criteria necessary to extend governmental immunity. The Court stated that liability for design defects in military equipment cannot be imposed, pursuant to state law, when (1) the United States approved reasonably precise specifications; (2) the equipment conformed to those specifications; and (3) the supplier warned the United States about the dangers in the use of the equipment that were known to the supplier but not to the United States.³² The Court justified each prong of its standard by explaining the need and purpose of each criterion. The first two prongs, the Court stated, assure that the design feature challenged is conscientiously considered by the government and not merely decided by the private contractor alone.³³ The third prong serves to ensure that the private contractor has no motivation, under state law, to withhold knowledge of known risks in an effort to avoid disrupting either the contract or potential future liability.³⁴

C. *Public Policy Supports the Standard Established in Boyle*

There are four compelling public policy considerations that support the *Boyle* standard. The first two considerations support the extension of some immunity to private contractors while the next two considerations argue for a limitation on that extension of immunity.

The first argument for immunity is the basic dissimilarity between government contracts for military equipment and government contracts for non-military equipment. In government contracts for military equipment, the government must take into consideration its need and duty to stay abreast in the armaments race. Staying abreast may require foregoing thorough safety examinations and tests on weaponry in order to speed up production and prevent obsolescence or to satisfy overriding mil-

32. *Boyle*, 108 S. Ct. at 2518.

33. *Id.*

34. *Id.*

itary and strategic concerns.³⁵ Ordinary contracts with the government, not involving military equipment, create no such concerns. Accordingly, the needs of the government and its accelerated schedules justify a reasonably lenient standard for extending immunity to private contractors manufacturing military equipment.

There is a second reason for extending some immunity. Were the courts to hold the private contractor liable for design defects in military equipment, the resulting hardship to the contractor would have a chilling effect, leading to undesirable results for the government.³⁶ The contractor would either (1) decline to manufacture the precise design specified by the government, or (2) raise its price when contracting with the government in order to cover or insure against potential liability. Under either result, the interests of the United States would suffer. Such outcomes would merely be a subterfuge of the immunity granted to the government as the government would ultimately carry the burden resulting from holding the private contractor liable. Accordingly, the standard adopted by the Supreme Court in *Boyle* is a necessary extension of governmental immunity.

On the other hand, by establishing an immunity standard that requires significant governmental involvement, the *Boyle* majority placed a proper limit on immunity and positively affected how independent contractors will work with the government on future contracts. For example, to ensure an extension of immunity, private contractors will feel compelled to work in closer contact with the government in fulfilling their contracts. They will desire more governmental approvals and inspections. They will give more warnings and instructions. In general, they will have greater communication with the government at every level of product development.³⁷ These inspections, approvals, and increased communications justify the *Boyle* standard because they promote designs consciously balanced between safety and efficiency.

Likewise, the *Boyle* Court effectively placed liability on the responsible party by requiring the government to be significantly involved in the design of military equipment in order for

35. See *McKay*, 704 F.2d at 449-50.

36. *Boyle*, 108 S. Ct. at 2515; *Tozer v. LTV Corp.*, 792 F.2d 403, 407 (4th Cir. 1986).

37. See *McKay*, 704 F.2d at 450.

an extension of immunity. A party's liability depends on the extent of its responsibility. Responsibility in turn depends on the amount of a party's potential control. Therefore, when the government plays a greater, more exclusive role in determining design specifications for military equipment, the amount of government responsibility for the design outcome increases because of its increased control. Accordingly, by making immunity contingent upon substantial governmental involvement, the *Boyle* standard effectively allocates liability to the party with the greatest control over design, the government, and ensures that derived immunity for a private contractor rests on the same principles as governmental immunity itself.

D. Potential Concerns for Misapplication, Misinterpretation, and Expansion

The possibility for misapplication, misinterpretation, or expansion of a standard always exists regardless of the makers' efforts for clarity. In the *Boyle* case, there are three areas where these problems may occur.³⁸

The first area centers on the Court's lack of clarity. The *Boyle* Court's holding had several aspects that were not completely clear. For example, the Court was unclear whether its immunity standard was limited solely to design defect liability or whether it extended to failure-to-warn liability and to general negligence-based causes of action.³⁹ Further, the dissenting jus-

38. It has been argued that another area of concern arises from the Court's apparent limitation of the immunity standard to cover only military equipment and not products once available to the public in the open market. This distinction, it is contended, may allow for unjustified, arbitrary discrimination. For example, a contractor who initially advances his product through government channels, rather than through open-market channels, may receive an extension of immunity as against injured military personnel whereas a contractor who initially advances his product through open-market channels, and then subsequently supplies it to the government, may not receive any immunity. Willmore, *Boyle in Court: Invitation for New Litigation Strategies*, *Legal Times*, July 18, 1988, at 16, col. 3. However, such an interpretation of the *Boyle* Court's decision is extreme. Such conflicting factual interests were not before the Court.

39. The *Boyle* Court specifically stated that its standard for extending immunity applied to "design defects in military equipment." *Boyle*, 108 S. Ct. at 2518 (emphasis added). This implies a limitation of the *Boyle* standard solely to design defects. However, some confusion concerning this issue persists. See *Garner v. Santoro*, No. 87-4538 (5th Cir. Jan. 26, 1989) (WL 4997) (debating the applicability of the *Boyle* standard to failure-to-warn in product liability); *McGonigal v. Gearhart Indus., Inc.*, 851 F.2d 774 (5th Cir. 1988) (government contract immunity does not extend to manufacturers for negligence in manufacturing military equipment, as opposed to defects in design). See generally Willmore, *supra* note 38, at 16, col. 3.

tices contended that the majority's lack of clarity made the Court's standard inadequate, far too broad, and bound to lead to misapplication and misinterpretation.⁴⁰ The dissenters argued that the standard enunciated by the Court could be further extended to all government contracts, beyond contracts for military equipment, and thereby produce unjust results.⁴¹ For example, the dissenters argued that the majority's standard could be extended to allow immunity for the designer of a government building if an elevator cable snapped or the walls of the building collapsed.⁴² In addition, the dissenting justices suggested that the *Boyle* majority's standard could produce unjust results by allowing immunity for private contractors when innocent citizens, not military personnel, were injured as a result of a design defect in military equipment.⁴³

These contentions may be insightful, yet they are not persuasive in the context of the *Boyle* facts.⁴⁴ *Boyle* concerned an action brought on behalf of a military officer for design defects in strategic military equipment. Any extensions of the *Boyle* standard as suggested by the dissenting justices would necessarily ignore unique essential factual elements present in the *Boyle* case. Therefore, to avoid any unjust extensions, courts facing issues of extending governmental immunity to private contractors should limit the application of the *Boyle* standard to factual settings substantially similar to those found in *Boyle*. By so doing, the potential for misapplication, misinterpretation, or expansion will be substantially reduced.

The second area of potential problems derives from the *Boyle* Court's enumeration of purposes for each prong of their standard.⁴⁵ These purposes were (1) to assure conscientious consideration by the government of any design feature and (2) to assure that the private contractor has no motivation to withhold knowledge of known risks.⁴⁶ On their face, these purposes appear to stabilize and secure consistent interpretations of the Court's standard. However, this appearance of restraint is illusory. In

40. *Boyle*, 108 S. Ct. at 2519-20 (Brennan, J., dissenting).

41. *Id.* at 2524-25 (Brennan, J., dissenting).

42. *Id.* at 2520 (Brennan, J., dissenting).

43. *Id.* at 2524 (Brennan, J., dissenting).

44. The Court specified that whether the immunity of government officials might extend to nongovernmental employees, such as government contractors, was not being addressed and was not before the Court. *Id.* at 2514 n.1.

45. See *supra* notes 33-34 with accompanying text.

46. *Boyle*, 108 S. Ct. at 2518.

applying these purposes to subsequent cases, unjustified expansion of the *Boyle* Court's standard is likely because the stated purposes are capable of being satisfied by a variety of requirements, requirements that could be extreme extensions of the *Boyle* Court's standard.⁴⁷ For example, the Eleventh Circuit's standard, which was severely criticized by the *Boyle* Court, requires (1) that the private contractor participate minimally, if at all, in the design and timely warn the government of risks in design and of safer alternatives, or (2) that the government, despite knowing of safer alternatives, authorize the dangerous design.⁴⁸ When this Eleventh Circuit standard is matched against the *Boyle* Court's purposes of both (1) conscientious governmental consideration of design and (2) no motivation for the contractor to withhold known risks, the Eleventh Circuit's standard clearly satisfies each purpose. Accordingly, the *Boyle* Court's purposes may act as a springboard for relaxing the *Boyle* standard rather than adding clarity and stability to that standard.⁴⁹

Finally, the *Boyle* standard creates one other area of concern, the actual effect of which is, as yet, unknown. This area of concern arises from the problems of government bureaucracy and the meaning of the first prong in the *Boyle* standard which requires that the United States approve the equipment's specifications. The concern is that the bureaucratic nature of the government will turn government approval into a merely procedural act, a rubber-stamping without substantial investigation into the merits of the specifications.⁵⁰ If this were the case, a private con-

47. Conceivably, expansion of every judicial standard is intended. Each established standard is used as a guide to subsequent courts facing similar issues. When subsequent courts applying an established standard face issues containing factors not considered by the original court that established the original standard, the subsequent court expands the original standard to meet the situation before it. Under these circumstances, enumerated purposes for a standard (such as those expressed by the *Boyle* Court) would help guide the expansion. However, the purposes stated by the *Boyle* Court appear to be excessively broad.

48. *Shaw v. Grumman Aerospace Corp.*, 778 F.2d 736, 745-46 (11th Cir. 1985). See *supra* note 23 with accompanying text.

49. The Court could have avoided this potential problem by not enumerating any purposes in justification of its standard. It is true that the prongs of the Court's standard are the Court's holding while the stated purposes are merely secondary and may be viewed as dicta. However, categorizing language as dicta is of little value as future courts will utilize the *Boyle* Court's entire opinion when struggling to fit new factors within *Boyle*'s binding precedent. Therefore, by refraining from expressing specific purposes as justification for their standard, the *Boyle* Court could have avoided one possibility for misinterpretation, misapplication, or expansion of its standard.

50. See *Boyle*, 108 S. Ct. at 2519-29 (Brennan, J., dissenting and Stevens, J., dis-

tractor could cut costs by cutting safety in its design, provide the government with the lowest bid, obtain a rubber-stamp approval, and enjoy the benefits of governmental immunity for any design defects in the product produced. Therefore, in actual application, the *Boyle* standard may encourage future defective designs and result in inefficient equipment and dangers to society. This contention would substantiate the dissenting justices' view that the courts are ill-equipped to fashion a remedy for extending governmental immunity to private contractors.⁵¹

The majority may have failed to respond to this potential concern because they felt that it was mooted by the third prong of its standard for extending immunity. The third prong of the Court's standard requires the contractor to warn the government of dangers, not known to the government, in the use of the equipment. Therefore, the argument would continue, if the government were informed of the dangers in the equipment's design, then award of the contract, its subsequent approval, or governmental immunity would be withheld if the dangers of design were compelling. However, this line of argument skirts the issue that warning the government of known dangers will have little meaning if the government approval is merely procedural and in actuality the warning is never taken into account. Consequently, because the extent of governmental examination is not explicitly stated in the *Boyle* standard, the bureaucratic nature of the government may result in the granting of immunity to private contractors for unconscionable dangers in design.⁵²

III. CONCLUSION

The Supreme Court in *Boyle* cleared the confusion among the circuits by enumerating a standard for extending govern-

senting) (wherein the dissenting justices assert the Court's need to defer to Congress to fashion an adequate standard for future application); *Tozer v. LTV Corp.*, 792 F.2d 403, 407-08 (4th Cir. 1986).

51. See *Boyle* 108 S. Ct. at 2519-29 (Brennan, J., dissenting and Stevens, J., dissenting).

52. The Court may have been able to avoid this problem by establishing some minimal level of governmental approval before immunity would extend. For example, the Court could have required that final approval be given only by a high ranking government official. The Court could have then suggested that the name of the government official be published beside the name of the design he or she approved. Because the job security of public officials often depends on public approval, publication of responsibility may have added incentive to the government official to ensure that conscientious consideration of each submitted design actually occur.

mental immunity to private contractors for design defects in military equipment. The Court's standard is an equitable approach, extending immunity only when specific criteria have been satisfied. Public policy mandates a reasonably lenient standard, such as the *Boyle* Court's standard. Nonetheless, by (1) being unclear in many aspects of their decision, (2) enumerating broad purposes to justify each prong of its standard, and (3) not addressing the problems inherent in the bureaucratic nature of the government, the *Boyle* Court created the potential for misapplication, misinterpretation, and unjustified expansion of its standard.

James E. Ellsworth