

## Student Discipline Based on Facebook Postings?

Can a student be disciplined by a university based upon the student's Facebook postings? The Court of Appeals of Minnesota was recently faced with that question. In that case, Amanda Tatro (Tatro), a mortuary science student enrolled in an anatomy-laboratory course at the University of Minnesota (University) made "status" postings on her Facebook page that included a statement that she "wanted to stab a certain someone in the throat with a trocar" and that she "might spend the evening updating [her] 'Death List #5.'" Tatro's Facebook settings allowed these postings to be viewed by her "friends" and "friends of friends," which included hundreds of people.

A fellow student reported the postings to the University's office for student conduct and academic integrity. That office submitted a formal complaint against Tatro alleging, among other things, that she violated the university's student-conduct code by engaging in threatening, harassing, or assaultive conduct. Tatro argued that the entries, "when read in context, were obviously literary expression, intended to be satirical, vent emotion, and incorporate popular culture references." Several faculty members expressed personal concerns about whether the posts were directed toward them, especially Tatro's statement about wanting "to stab a certain someone in the throat with a trocar." Some University students also expressed concern about the posts. The University concluded that the postings constituted threatening conduct and imposed several sanctions, including reducing her grade for the laboratory course from a "C+" to an "F." Tatro then filed a certiorari appeal to the Court of Appeals of Minnesota. In her appeal, Tatro argued that the University could not punish her for off campus acts and that her free speech rights had been violated.

The Court of Appeals held that the University did have authority to discipline a student for off campus misconduct where that misconduct has an adverse effect on a substantial university interest and poses a potential danger or threat to its students or others. *Tatro v. University of Minnesota*, 800 N.W.2d 811 (Minn.App. Jul. 11, 2011). Here, the Court found that the University had a substantial interest in protecting the safety of its students and faculty. In addressing Tatro's free speech claim, the Court began by noting that student speech is afforded broad constitutional protection and that state colleges and universities "are not enclaves immune from the sweep of the First Amendment." However, the Court went on to note that the United States Supreme Court has recognized that "the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings." Further, the Supreme Court has held schools may limit or discipline student expression if school officials "reasonably conclude that it will 'materially and substantially disrupt the work and discipline of the school.'" The Court rejected Tatro's free speech claim by finding that there was a material and substantial disruption of the work and discipline of the University, since both faculty and students expressed concern that the threats in the postings were real and that some of the postings were jeopardizing the donation of cadavers for use by mortuary-science students.

This case serves as a reminder that a university may discipline a student for off campus misconduct, even when that misconduct takes place in the context of a social media internet site.