

FACEBOOK POSTING LEADS TO AN “F”

We all know that the right of free speech has its limits. There is no right to shout “Fire!” in a crowded theater. Those limits apply even in settings most closely associated with the free exchange of ideas, such as colleges and universities. In that academic setting, limits also exist even for speech that takes place off campus, such as on a social networking website, but that is connected to a student's academic program.

A student in a state university's mortuary science program learned these constitutional law lessons the hard way when the university gave her a failing grade in an anatomy class and imposed other sanctions against her for comments she had posted, to hundreds of her “friends,” on her Facebook account.

The hard lesson for the student continued when a state high court rejected her lawsuit asserting that the disciplinary measures were invalid because they were an infringement of her right to free speech. Of course, words matter, so what the student had actually said was pivotal to the outcome of her case.

While she was taking an anatomy lab, the student posted what she thought were humorous comments about a cadaver she had been assigned to dissect. That was bad enough, but the student also posted a comment about wishing to “stab a certain someone in the throat” with an embalming instrument.

Not surprisingly, university officials were not amused when they learned of the postings, though the student portrayed her remarks as “satirical.” But the university's defense of the subsequent disciplinary actions rested on more than just the sensibilities of the university officials—though, to be sure, the whole story caused much embarrassment and a public relations problem for the school.

The student's postings, in which she gave the cadaver a name derived from a comedy film about a corpse and wrote about “playing” with the cadaver, taking her “aggression” out on it, and keeping a “[l]ock of hair” in her pocket, resulted in letters and calls to the university's anatomy bequest program from donor families and the public.

Most importantly from a legal standpoint, the student's conduct violated clear program rules prohibiting both disrespectful conversational language outside the laboratory about cadaver dissection and Internet blogging about cadaver dissection or the anatomy lab. In order to be in the mortuary science program, the student was aware of, and had to agree to abide by, such rules. There is no free speech infringement when the conduct in question, as in this case, violates academic program rules that are narrowly tailored and directly related to established professional conduct standards.

Even as it rejected the student's First Amendment contentions, the court acknowledged some settled principles of law that could allow free speech claims by students to succeed when based on more defensible factual scenarios. A university's interest in academic freedom does not immunize the university altogether from First Amendment challenges.

For example, a university generally cannot use a code of ethics as a pretext for punishing a student's protected speech; nor can it impose a course requirement that forces a student to agree to otherwise invalid restrictions on her free speech rights. But a university can discipline students for violation of professional conduct standards that are in keeping with the academic environment of the student's particular program of study.

Helpful Guidelines

Whatever you post on the internet through email, a blog, Facebook or LinkedIn lives on the internet forever.

Here's a rhyme to help you remember this point.

Say it with flowers
Say it with mink
But never say it with electronic ink!