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Case Study: Baxter and his poetry professor

By Gary Pavela

Baxter is a troubled student at a public university. His classroom behavior has become increasingly erratic, and includes refusing to respond when called upon; muttering offensive comments during presentations by other students; leaving the class early, slamming the door behind him; and writing poems full of morbid violence.

Baxter's most intimidating activity involved following his poetry professor about the campus, making unflattering remarks about the professor's clothing. This behavior culminated in a shouting match between Baxter and the professor outside the professor's office. Baxter said he was "capable" of violence and that "every shrink I've talked to knows I'm crazy enough to do it."

The last incident prompted the professor to take action. She arranged a meeting with the dean of students and the director of the university health center. The professor stated she had reason to believe Baxter was a patient at the campus mental health clinic. It was the professor's view that, as a potential victim, she was entitled to know the nature of Baxter's mental disorder. The professor also argued that Baxter should be subject to an immediate psychiatric withdrawal from the university.

The dean and director have encountered Baxter before. They know him to be litigious, especially in asserting that his history of mental illness requires "reasonable accommodation" under the Americans with Disabilities Act. How should they respond?

Commentary

1. The implicit threat of violence Baxter directed to his poetry professor requires immediate action. After conferring with the professor, the dean of students should notify the campus police or a local law enforcement agency.

2. The university should have a "threat assessment team" available to intervene in Baxter's case. The team might be composed of a police officer, a mental health specialist, and a staff member responsible for student discipline. Such a team, trained in threat assessment techniques developed by the United States Secret Service [1], would respond
quickly to behavior indicating a student posed a risk to self or others. An important function of the team (guided by a "case manager" for each referred student) would be to coordinate and assess information from teachers, administrators, students, and local authorities—culminating in one or more face-to-face meetings with the student. \[2\] In some circumstances (e.g. a student in obvious distress, who had not violated the law) the aim of the team would be therapeutic, and might include help in securing appropriate treatment or counseling, or taking prescribed medication. On other occasions the assessment team might provide information, support, and guidance resulting in disciplinary proceedings, criminal charges, and an administrative "direct threat" review to determine whether the student "represent[ed] a direct threat to the health and safety of himself. . . or others." \[3\]

3. The primary threat in Baxter's case appears to have occurred during the shouting match with the professor. A complete threat assessment, of course, will include review of his classroom conduct and the precise wording and apparent intent behind his writing. The practicalities of using writing as a basis for administrative action (distinguished from a basis to initiate personal contact and conversation) were discussed by Sharon Oard Warner (director of creative writing at the University of New Mexico) in the April 18, 2007 Inside Higher Education ("When Creative Writing Provides a Clue") \[4\]:

'It's really tricky,' [Warner said]. 'You don't know exactly whether there's a basis in fact in what they're writing about. But if they're writing something that's excessively violent, excessively sexual, excessively morbid, I usually do speak with them individually about it.' In a couple of cases over the years, she subsequently suggested counseling to students . . . Warner points out however that violent writing can often be the mark of a novice writer seeking clean endings — the violence a signal of lack of skill more so than a dangerous intent toward the self or others. In fact, she once wrote an article about her finding that about a third of beginning fiction students will kill off their main character at the end of the story, very often by suicide. 'I thought, Good grief, what a violent group of students,' Warner says. 'They weren't really.'

4. If institutional rules permit, the dean should consider suspending Baxter on an interim basis. An interim suspension \[5\] is justified on the ground that Baxter's implicit threat to assault his professor indicates he may pose a danger to her and other members of the campus community. Consideration could be given to an interim suspension that would allow Baxter to enter upon the campus only for certain specified purposes, pending resolution of his disciplinary case.

5. Baxter should be offered an immediate preliminary hearing to review the need for an interim suspension. Such a preliminary hearing would be a constitutional due process requirement at a public institution. At a private university, it should be done as a matter of fairness (e.g. to preclude the possibility of mistaken identity), and because it might be interpreted to be part of an implied contract with students that they will not be treated arbitrarily. More formal proceedings on the underlying disciplinary charge should be held promptly thereafter.

6. The notice of interim suspension sent to Baxter might condition his prompt return to campus upon completion of a psychiatric evaluation. The dean—like other "gatekeepers" in the larger society—can be given the responsibility for requiring such an evaluation, but it would be prudent for her to confer with a mental health professional before doing so. A required psychiatric evaluation can be an invasion of privacy. It should not be undertaken lightly. Nonetheless, such a required evaluation will likely withstand legal challenge if there are reasonable grounds to suspect that the individual in question had a mental disorder and that he or she posed a danger to self or others. Also, a psychiatric evaluation may be
considered to have a "proper and privileged purpose" if it is motivated by a desire to help students with possible "personality problems" improve their academic performance. *Moire v. Temple University*, 613 F. Supp. 1360, 1376 (E.D. Penn. 1985), aff'd 800 F. 2d 1136 (3d Cir. 985).

7. There might be circumstances in which Baxter's English professor would be entitled to a warning that Baxter had expressed an intention to harm her. However, even if such a warning were required, the professor should not be given access to Baxter's complete psychiatric history or any subsequent psychiatric evaluation. Confidentiality in these matters is important if mental health professionals are expected to make accurate assessments of the individuals referred to them, or to have any prospect for success in a therapeutic relationship. The law recognizes this fact. In the absence of a valid release, disclosure to the professor might give Baxter a legal cause of action against the mental health professional who treated or evaluated him, the director of the health center, and the poetry professor herself. See *Hammonds v. Aetna Casualty and Surety Company*, 243 F. Supp. 793, 803 (N.D. Ohio, 1965): "[W]hen one induces a doctor to divulge confidential information in violation of that doctor's legal responsibility to his patient, the third party may also be held liable in damages to the patient").

8. It is possible, of course, that Baxter may refuse to submit to a psychiatric evaluation, or refuse to release his psychiatric records to any university official. Under these circumstances, it might be prudent to continue to bar him from campus until his case is resolved in a disciplinary hearing. If Baxter does submit to a psychiatric evaluation, or agree to permit a current diagnosis to be shared with the dean of students, the finding that he has a mental disorder does not mean that he should be diverted from the disciplinary process. Generally, Baxter should be held accountable for his actions, unless they are the result of a mental disorder that "grossly and demonstrably" impairs his "perception or understanding of reality." [6]

9. Baxter can be held accountable for threats of violence, even if those threats are related to a mental disorder. Pertinent advice can be found in the 1997 Equal Employment Opportunity Commission (EEOC) "Enforcement Guidance" on the Americans with Disabilities Act (ADA) and psychiatric disabilities:

[N]othing in the ADA prevents an employer from maintaining a workplace free of violence or threats of violence, or from disciplining an employee who steals or destroys property. Thus, an employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on an employee without a disability.[7]

Comparable standards apply in the higher education setting, with the caveat that "if a college, generally, considers mitigating circumstances when deciding whether to suspend or dismiss students without disabilities, it must consider similar factors for students with disabilities including whether the student, if provided reasonable accommodations, could, in the future, meet school standards" (U.S. Department of Education, Office of Civil Rights letter finding, National University, published in 00.27 SWR 1007). Federal courts, however, may not require any "reasonable accommodation" for a person with a disability who engages in acts of violence. See *Marquita Palmer v. Circuit Court of Cook County*, 117 F.3d 351 (7th Cir. 1997):

It is true that an employer has a statutory duty to make a "reasonable accommodation" to an employee's disability, that is, an adjustment in working conditions to enable the employee to overcome his disability, if the employer can do this without "undue hardship . . ." But we cannot believe that this duty runs in favor of employees who commit
or threaten to commit violent acts. See . . . Husowitz v. Runyon, 942 F. Supp. 822, 834-35 (E.D.N.Y. 1996) . . . It would be unreasonable to demand of the employer . . . either that it force its employees to put up with [threats of violence] or that it station guards to prevent the mentally disturbed employee from getting out of hand. So clear is this that we do not think a remand is necessary to explore the possibilities of accommodation.

10. Baxter is also subject to discipline for his reported misbehavior in the classroom. Faculty members have significant authority to manage the classroom environment. See Salehpour v. University of Tennessee 159 F. 3d 199 (1998) (enforcement of classroom rule prohibiting first-year dental students from sitting in last row of certain classes did not infringe First Amendment rights of a student who refused to comply with the rule due to his ongoing "power struggle" with the University):

We cannot convey strongly enough that the purpose of this holding is not to discourage legitimate debate that is demonstrable or constitutes the vigorous expression of ideas in an academic setting, even when that expression may impose inconveniences. Indeed, the First Amendment right to freedom of expression of political, social, religious, and other such views may be most precious in an educational setting. However, as in the instant case, where the expression appears to have no intellectual content or even discernable purpose, and amounts to nothing more than expression of a personal proclivity designed to disrupt the educational process, such expression is not protected and does violence to the spirit and purpose of the First Amendment. Tinker, 393 U.S. at 511 . . . The rights afforded to students to freely express their ideas and views without fear of administrative reprisal, must be balanced against the compelling interest of the academicians to educate in an environment that is free of purposeless distractions and is conducive to teaching. Under the facts of this case, the balance clearly weighs in favor of the University.

It would have been best if Baxter's initial episodes of classroom misconduct had been called to the immediate attention of the threat assessment team and the dean. Early intervention—in the form of a behavioral contract developed by the dean and a referring professor—might have defined needed boundaries for Baxter, perhaps encouraging him to seek the counseling he needed. Generally, teachers who state reasonable expectations early, and enforce them consistently, help students avoid the harsher consequences that flow from serious infractions later.

11. A sample statement about classroom disruption can be found in a "Model Code of Student Conduct," published in the Spring 2000 issue of Synthesis: Law and Policy in Higher Education:

The primary responsibility for managing the classroom environment rests with the faculty. Students who engage in any prohibited or unlawful acts that result in disruption of a class may be directed by the faculty member to leave the class for the remainder of the class period. Longer suspensions from a class, or dismissal on disciplinary grounds, must be proceeded by a disciplinary conference or hearing . . . The term 'prohibited . . . acts' would include behavior prohibited by the teacher (e.g. smoking in the classroom, persistently speaking without being called upon, refusing to be seated, disrupting the class by leaving and entering the room without authorization, etc.). This provision is not designed to be used as a means to punish classroom dissent. The lawful expression of a disagreement with the teacher is not in itself 'disruptive' behavior.

12. Finally, from a broader perspective, unpleasant and unnerving encounters with students like Baxter should not be allowed to generate a climate of distrust between teachers and
students. Key studies of the school shooter phenomenon\[8\] stress that *intergenerational communication* is one of the most important preventive measures available. In her book *Rampage, the Social Roots of School Shootings* (Basic Books, 2004), Katherine S. Newman (Professor of Sociology and Public Affairs at Princeton University) tells a compelling story of one "near-miss" episode in which a potential mass shooting was averted by a student who broke solidarity with her peers and reported the plan because she "was worried that her favorite teacher might be hurt in the rampage" (p. 266). No one knows how many countless other (less extreme) incidents of rage and alienation were averted by teachers who understood the importance of reaching out to students, not retreating inward behind barriers of fear or indifference.

NOTES


[2] This approach is modeled on a draft threat response protocol developed at the University of Illinois.


[5] In rare emergency situations students can be briefly suspended prior to a hearing. In *Goss v. Lopez* 419 U.S. 565 (1975) the Supreme Court held that:  

"[T]here are recurring situations in which prior notice and hearing cannot be insisted upon. Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable . . ."

Care should be taken to provide the notice and hearing specified by the court. See our recent newsletter issue reviewing the decision in *Sara Castle v. Dr. Martha Marquardt, et al.* 632 F. Supp. 2d 1317 (N.D.Ga., 2009).


[7] (EEOC) "Enforcement Guidance" on the Americans with Disabilities Act (ADA) and psychiatric disabilities.

[8] See especially the 2003 National Research Council report *Deadly Lessons: Understanding Lethal School Violence* (a project undertaken by the councils of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine):