

## **'DUTY TO WARN' MANDATES IN JAIL SETTINGS**

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## **ATTEMPTED ASSASSINATION OF EX-PRESIDENT REAGAN**

- Video Presentation
- John Hinckley, Jr. was born on May 29, 1955, in Ardmore, Oklahoma, and grew up in Texas. An off-and-on student at Texas Tech University from 1972 to 1980. In 1975 he headed to Los Angeles in the hope of becoming a songwriter.
- After repeated viewings of the 1976 movie Taxi Driver, in which a disturbed protagonist, Travis Bickle, played by Robert DeNiro, plots to assassinate a presidential candidate, Hinckley. He developed an obsession with actress Jodie Foster, who had played a child prostitute in the film.

## **ATTEMPTED ASSASSINATION OF EX-PRESIDENT REAGAN**

- Failing to develop any meaningful contact with Foster, Hinckley developed such plots as hijacking an airplane and committing suicide in front of her to gain her attention. Eventually he settled on a scheme to win her over by assassinating the president, with the theory that as a historical figure, he would be her equal.
- Penniless, he returned home once again, and despite psychiatric treatment for depression, his mental health did not improve. In 1981, he began to target the newly elected president, Ronald Reagan and he started collecting information on Lee Harvey Oswald, John F. Kennedy's alleged assassin, whom he saw as a role model.

## “TARASOFF” MANDATES

- ‘Tarasoff’ is a general term, referring to a body of case law, which applies when a client directly communicates to a mental health worker a serious threat of physical violence against a reasonably identifiable victim.
- The mental health worker must make reasonable efforts to communicate this threat both to the reasonably identifiable victim(s) and the law enforcement agency where the potential client lives.
- This ‘duty to warn’ is a required breach of confidentiality which was first mandated in 1976 in the ‘Tarasoff Vs Regents of University of California’ court decision.

## TARASOFF CASE

- Prosenjit Poddar, a student who was attending a University counseling center informed his mental health worker of his intent to harm his girlfriend, Ms. Tatiana Tarasoff. At that time, Ms. Tarasoff was in Brazil (1969).
- The mental health worker informed the campus police who questioned Poddar, taking no further action when he promised he would not harm her.
- The intended victim was out of country and she was not aware of the threats made by Mr. Poddar.

## CASE DISMISSED

- Two months later, Ms. Tarasoff returned to California.
- On October 27, 1969 Mr. Poddar killed Tatiana Tarasoff.
- The victim’s family filed suit for damages because the victim had not been warned of the threat by the mental health providers.

## CASE DISMISSED

- At trial court, the case was dismissed (not heard).
- Judge ruled that there was no cause of action, because of confidentiality between doctor and patient (Dr. Moore and Poddar). Doctor has a duty only to patient, not to third parties.

## TARASOFF APPEALS

- Tarasoff appealed, and California appeals court supported the decision of trial court and it was taken to California Supreme Court.
- California Supreme Court reversed the trial court’s decision, stating that the trial court must hear the case.
- Reasoning: “therapist bears a duty to use reasonable care to *give threatened persons warnings* as are essential to avert foreseeable danger.”

## CALIFORNIA CIVIL CODE

- California Civil Code 43.92 clarifies the Tarasoff I ‘mandate’ (1974) ‘*duty to warn*’: “where the patient has communicated to the mental health worker a serious threat of physical violence against a reasonably identifiable victim or victims.”
- In Tarasoff II case (1976), the California Supreme Court ruled: “When a mental health worker determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care ‘*to protect*’ the intended victim against such danger.”

## CALIFORNIA CIVIL CODE

- Tarasoff II decision was ruled mainly 'to protect' the intended victim(s).
- Tarasoff imposed an affirmative duty on mental health workers that the right to confidentiality ends when the public peril begins.

## TARASOFF DECISION

- In these situations, the mental health worker's duty is to make a "reasonable effort to communicate the threat to the victim or victims and to a law enforcement agency".
- Failure to act may also result in potential civil liabilities.

## REASONABLE EFFORTS

- Every situation is unique, mental health workers have to make appropriate and reasonable efforts to warn the potential victims and adhere to their state laws.
- The warnings should be discrete to protect client confidentiality. It may include statements made by the client which the mental health worker believes are necessary to convey the serious intent of the threat to the victim.

## REASONABLE EFFORTS

- Mental health workers are required to warn the intended victim or individuals who would warn the victim, notify the police and take other 'reasonable' protective measures.

## ASSESSMENT OF VIOLENCE

- It is important for mental health workers to conduct Assessment of Violence.
- Investigation of any threat of violence by the patient must be done carefully by the mental health workers.

## IMPORTANT PARAMETERS

- Mental health workers have to establish four important parameters.
- Type of harm
- Seriousness of harm
- Imminence of harm
- Likelihood of harm.

## MAJOR RISK FACTORS

- Mental health workers have to determine which threats are likely to be real, based on details about the threat.
- Past history of violence (the most important risk factor for future violence), impulsiveness, ability to resist violent impulses, reaction to violence, motivation to maintain self-control, and use of alcohol and drugs (another major risk factor of violence).
- Try to obtain data from other family members or collateral resources about their history.

## TYPES OF THREATS

- Types of threats are:
- Veiled
- Conditional
- Direct
- Aside from taking the disclosed threat as credible, and at face value avoid making assumptions.
- 1st commit disclosure of threat in writing

## CREDIBILITY OF THREATS

- If time permits, but without undue delay, it is first preferable to commit that information which was disclosed to you in writing in sufficient enough detail so as to create an accurate record and be used as the vehicle by which to (1) report the matter to law enforcement and (2) notify the potential victims.
- This ensures the accuracy of that information which is being conveyed and creates a permanent record you have fulfilled your reporting requirement.

## BASIC PRINCIPLES

- In adopting Tarasoff ruling, the courts have followed three basic principles in assessing liability.
- Foreseeability of harm (e.g., a verbal threat to an identifiable victim).
- Identifiability of a victim.
- Feasibility of therapist intervention.

## PROCEDURES

- Mental health workers have to call the local law enforcement agency and inform them of the situation, write the officer's name(s) and badge number(s).
- Follow up phone call with a certified letter addressed to both the law enforcement agency and the intended victim about your concerns.
- When the mental health workers provide such information to the law enforcement officer or the intended victims, they should be discreet and include only things pertaining to the threats of violence against the intended victim.

## NECESSARY STEPS WHEN YOU DECIDE TO 'WARN'

- Contact relatives or others who can apprise the potential victim of the danger.
- Initiate voluntary or involuntary commitment.
- This will shift the burden of decision-making to the courts.
- Document all your observations and efforts in the client's medical file.

## DISCHARGING THE DUTY

- The discharge of duty to warn may require the mental health worker to take one or more of various steps.
- It may call for mental health workers to warn the intended victim, to notify the law enforcement agency, or to take whatever steps that are reasonably necessary under the circumstances.
- Changing the treatment program for the patient.

## DISCHARGING THE DUTY

- Requesting the patient to be voluntarily committed.
- Civil commitment (California: 5150).
- Warning the potential victim.
- Warning others who would be likely to notify the victim.
- Contacting the law enforcement agency in the area of the victim or the patient.

## DUTY TO PROTECT

- Mental health workers have ethical and legal obligations to prevent their clients from physically harming themselves or others.
- When a mental health worker believes that their client is dangerous, they have to make reasonable and conscientious efforts to both protect and warn the potential victim of their client's violence.
- Tarasoff's ruling expanded after the Hedlund case which emphasized the mental health worker's duty to protect and warn the intended victim.

## PROBLEMS WITH 'DUTY TO PROTECT'

- Disruption of therapeutic alliance.
- Possible precipitation of violence (by victim, or by patient if he/she subsequently does not seek treatment).
- Stigmatization of the patient.
- Fear of Liability by the Psychiatrist, therapist, mental health worker or Psychologist resulting in change of practice.

## VIDEO OF AVERTED COLLEGE SHOOTING

- On April 26, 2001 under skies of gray outside of the Santa Clara County Superior Court, Judge Robert Ahern found Al Joseph De Guzman guilty on 108 felony charges for a plot to attack De Anza College with a hail of explosives and gunfire. The discovery of De Guzman's plot triggered a mass evacuation of the De Anza campus, Ahern determined that not only did De Guzman possess 54 bombs, he possessed them with the intent to kill.
- De Guzman was sentenced in 2003 to 80 years in prison. He committed suicide in his cell at the prison in 2004.

## HEDLUND CASE

- The Hedlund decision extended mental health workers' 'duty to warn' to reasonably identifiable bystanders who might suffer if a client carried out a threat of violence.
- Hedlund involved a charge that mental health providers negligently failed to warn an adult woman, LaNita Wilson of threats made against her by their patient. At the time of the shooting, Ms. Wilson's son Darryl was present, and later claimed emotional injuries as a result of witnessing the attack upon his mother.

## HEDLUND DECISION

- The Hedlund V Superior court of Orange county (1983) decision found the duty to warn extended to Ms. Wilson's child in that a risk was foreseeable and the child was a person who might be injured if a dangerous patient attacked the parent.
- The Hedlund decision extended mental health workers' 'duty to warn' to reasonably identifiable bystanders who might suffer if a client carried out a threat of violence.

## STATUTE OF LIMITAION

- Hedlund decision adds liability for harm to close relatives and associates (foreseeable bystanders) of those specifically threatened.
- It was established that the three year statute of limitation for filing suits associated with professional liability applies in such cases.
- After Tarasoff and Hedlund cases, there were several other cases such as Ewing case that changed the way mental health workers have to not only protect their clients but also others whom their clients identified as potential victims.

## EWING CASE

- Gene Collelo, a former member of LAPD, sought therapy from Dr. Goldstein on June 19, 2001 regarding relationship issues with his former girlfriend.
- Collelo's depression increased after the breakup with the girlfriend leading Dr. Goldstein to indicate to Collelo that he should admit himself to a psychiatric hospital, which Collelo did.

## EWING CASE

- A day prior to Collelo's scheduled release from the hospital, Collelo's father called Dr. Goldstein informing him of the release plans and that his son remained a danger.
- Dr. Goldstein communicated with a Dr. Levison at the hospital, informing him of the threat and urging him to keep Collelo through the weekend.

## EWING CASE

- Instead, Collelo was released and on June 23, 2001 he murdered his ex-girlfriend's new boyfriend Keith Ewing.
- Suit was brought resulting in establishment of new case law (2002) extending the duty to warn to situations where threats of violence were learned as a result of communications from close family members.

## REACTION TO EWING'S DECISION

- The most important question is what does the Ewing decision mean for psychotherapists in California?
- The court decision means that therapists in California could be held liable for failure to issue a Tarasoff warning, when the information regarding the dangerousness of one of their clients comes from a patient's family member rather than the client.

## REACTION TO EWING'S DECISION

- There has been different reactions to the Ewing decision within our profession. Many experts are deeply concerned with the potential for further deterioration of psychotherapy privacy as a result of the decision.

## THERAPIST DISCRETION

- Others are concerned that the decision will be misused in family, custody and other disputes, the way child abuse reporting has been misused.
- Yet, other experts view the alarmed responses as exaggerated and believe that the impact of the decision is rather limited.

## IMPLICATIONS

- However, the new court decision may have further significant implications for California mental health workers as it leaves open extremely important questions, such as who is considered to be a family member?
- How does one verify that the person who communicates to the mental health worker is who he says he is?
- What about a credible third party report of threat?

## CREDIBILITY OF THE REPORTS

- How does the communication take place: e-mail, fax, phone call?
- How is the potential victim identified?
- At this time, these and many other questions remain unanswered for the most part.

## WHEN DO THERAPISTS HAVE A DUTY TO WARN?

- Mental health workers have a duty to warn.
- They should reveal the threat of violence whenever there is reasonable cause to believe a client is dangerous to a person or to property.

## CORE CHARACTERISTICS

- "Reasonable cause" is determined by two core characteristics.
- First, the threat must be towards a specific person, identifiable person or defined party rather than a large group or category.
- It may be towards self and could include intentions such as self-mutilation, suicide or even self-neglect.

## CORE CHARACTERISTICS

- Another core characteristic is that the threat has to be believable.
- It has to be explicit and not vague.
- Motives count as well as the client's personal history of threats or violent behavior.

## LIABILITY ISSUES

- In order to minimize liability, mental health workers have to take certain steps.
- Consult with colleagues.
- Document all steps taken, document details about how violence was assessed, conclusion of determination of violence based on the assessment.

## INCIDENTS AT MAGUIRE JAIL

- At Maguire jail, on an average there are about four incidents per year resulting in "Tarasoff" warnings.
- When an inmate communicates to mental health staff a threat of physical violence towards a reasonably identifiable victim, staff further interviews the inmate to assess the plausibility and seriousness of the threat.
- Mental health staff then informs the Sheriff's Office staff who call the appropriate law enforcement agency to cross report.

## INCIDENTS AT MAGUIRE JAIL

- Sheriff staff files an incident report and serve as an intermediary by contacting the potential victim on behalf of mental health staff working in jail.
- Mental health staff separately send a written report to the appropriate agency, and also document the information in their medical file.
- Prior to the release, these inmates are reassessed by mental health staff for dangerousness and usually withdraw their original threats.

## ASSESSMENT OF INFORMATION

- Is it time sensitive / critical?
- Make an assessment of how time sensitive the information you have received is. This may dictate your immediate steps. For instance, is your client disclosing a plot / plan which involves other co-defendants, does not require his or her direct involvement, and has potentially progressed to the point where harm to the victim is imminent. In such a case, notification to law enforcement and the victim(s) should be immediate.

## ASSESSMENT OF INFORMATION

- In the setting of a correctional facility where the client is incarcerated, the intended victim is not in custody, and there are no coconspirators, then notification is straight forward.
- If the intended victim is also in custody, the matter is more complicated. Under those circumstances, constructive steps must be taken by law enforcement officials to immediately separate to keep the involved parties away from one another (stay-away, no contact classifications, or prohibitions).



## DETRIMENTAL RELIANCE

- Never provide potential victims with your assessment of *how* credible a threat may or may not be. If asked, you should tell them they should consider any such threat as credible.
- Never make any representation to potential victims that their safety will be safeguarded by authorities and or that you can or will do anything which might protect them.
- If asked, you should tell them that they should take whatever legal steps they deem necessary to ensure their own safety.

## EXPECTATIONS FROM LAW ENFORCEMENT

- Once the threat is made they take immediate and constructive steps.
- Check the welfare of the intended and potential victims and notify them of the disclosed threat.
- Conduct an investigation into the matter, to determine if a crime has been committed –the specific intent of your patient to harm another coupled with any overt act in furtherance of that goal is a crime, an attempt.

## EXPECTATIONS FROM LAW ENFORCEMENT

- Depending on the facts involved in the case, an investigation by Law Enforcement may require they interview you, perhaps more than once and the client.
- That they seek and obtain a Temporary Restraining Order or Emergency Protective Order, barring your client from making further threats, from having any contact with the victim, either directly or through surrogates.
- Conduct interviews of persons identified as being in a position to have witnessed any act or acts by your client in furtherance of his / her threats.

## RESPONSIBILITY OF LAW ENFORCEMENT

- In a correctional setting, where the potential victim or victims are in our care and custody, we are directly and therefore absolutely responsible for their safety and wellbeing.
- Where the intended victim or victims are not in our care and custody, things are not as clear. Legally, unless we have evidence and or information which would suggest a felony has been committed (probable cause), we are not legally required to act.
- However, morally and from a liability standpoint law enforcement should act –take constructive steps to investigate the matter and warn potential victims of any articulated threat.

## SERIAL VS. SPREE KILLERS

- Serial Killer
- Kills three or more people in three or more separate events over a period of more than 30 days
- "Emotional cooling-off" period
- Psychopaths with personality disorders
- Victims have something in common
- Sex may play a role

## SERIAL VS. SPREE KILLERS

- Spree Killer
- Kills at two or more locations with almost no time break between murders
- "Spontaneous act"
- Justification of act - leads up to the time of the attack
- Victims – certain targets, and then whoever gets in their way
- Most end in suicide of killer

## VIRGINIA TECH MASSACRE

- Video presentation
- Seung-Hui Cho
- Birth: 01/18/1984, Seoul, South Korea
- Immigrated to U.S. at age 8 with parents and older sister, Sun-Kyung Cho
- Seoul, South Korea → Detroit, MI → Centreville, VA (permanent residence)
- English major at Virginia Polytechnic Institute and State University
- Ignore Behavior – during college

## VIRGINIA TECH MASSACRE

- Seung-Hui recommended for counseling
- Strange behavior seen by classmates and professors
- Plays written caused concern
- Writings were cause for concern
- Unorthodox behavior
- Burning desire for revenge
- Suicide threat was made

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