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Forensic Association

Six Hour Workshop
Section D

NOT ALL SLIDES INCLUDED

Review of Tarasoff
The Ewing Decision
Patriot Act

D-1

Duty to Warn

RISK MANAGEMENT PERSPECTIVE

- *Low frequency occurrence*
- *High impact event*
- *Most states have some form of duty to warn or protect*
- *Original case: California, 1974 & 1976*

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Laws that Apply
Original California Law

Evidence Code 1024

Exception: Patient Dangerous to Himself or Others

There is no privilege under this article if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or to the person or property of another --

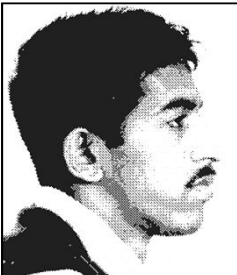
and that disclosure of the communication is necessary to prevent the threatened danger.

(1965) [4 years prior to Tatiana's death]

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Confidentiality & Privilege
Tarasoff

Tarasoff v. Regents of Univ. of CA, 17 Cal.3d 425, 444 (1976)



Prosinjit Poddar

- *Grad Student*
- *Roommate of Tatiana's Brother*
- *Jailed Briefly*
- *Returned to India*
- *Married with Children*

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Foundation of Tarasoff
Tarasoff Gets Codified in California

CIVIL CODE 43.92(a)

- *Communicated Directly to Therapist by Patient*
- *Serious Threat of Physical Harm*
 - *Imminent Danger*
- *Reasonably Identifiable Victim*
 - *“With a Moment’s Reflection”*

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Foundation of Tarasoff
Tarasoff Gets Codified in California


- **CIVIL CODE 43.92(b)**
- *Warn Victim(s)*
- *Notify Authorities*

- *From Tarasoff Decision (1976)*
- *Take Steps*

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Foundation of Tarasoff
Take Steps
(Stromberg et al, 1988)

- Increase Frequency
- Phone Contact
- Support System
- Medication
- Adjunctive Treatment
- Contract
- Hospitalization



TAKE STEPS!!!

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Tarasoff
Bennett et al., 2006

Three Steps for Therapists

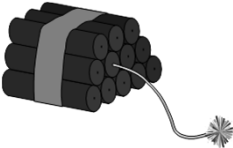
1. **Assessment**

- Using proper assessment measure
- Consult and document steps taken
- See next page for assessment plan

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Assessment for Dangerousness

- Gender
- Plan
- Feasible
- Previous Violence
- Current Problem
- Substance Use
- Symptoms
- Support System



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Tarasoff
Bennett et al., 2006

Three Steps for Therapists

2. **Development of appropriate treatment plan**

- Increase frequency of sessions
- Telephone monitoring between sessions
- Enlist support system
 - Help in removing weapons
- Medication evaluation
- Potential voluntary or involuntary confinement
- Adjunctive treatment
 - Group, anger management

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Tarasoff
Bennett et al., 2006

Three Steps for Therapists

3. **Implementation of appropriate treatment plan**

- Stay involved with client and support system
- Client remains your responsibility even if hospitalized
 - Know statutes regarding involuntary hospitalization in your county

Note: This was all in your informed consent when client began treatment "The law of no surprises..."

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Ewing v. Goldstein (2004), Cal.App.4th

- Keith's parents sued Therapist Goldstein
- TRIAL COURT granted Goldstein's motion for summary judgment
 - Basically dropping the case for lack of cause
 - Goldstein claimed no material fact
- BECAUSE:
 - It did not meet the threshold established by the Tarasoff decision of 1976.
 - WHY???

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Ewing v. Goldstein (2004), Cal.App.4th

TARASOFF REQUIREMENTS WERE NOT MET
 – According to the Appellate Court Decision

Civil Code 43.92 (Codified 1985)

1. Communicated directly by patient to therapist
 - Unless a minor or incompetent
2. Serious threat of physical harm that is imminent
3. Identifiable victim
 - "With a moment's reflection"

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Ewing v. Goldstein (2004), Cal.App.4th

Appeals Court disagreed on July 16, 2004
 Concluding trial court construed CC43.92 "too narrowly"

"Summary judgment was erroneously granted inasmuch as the communication to the therapist by a member of the patient's family of the patient's threat to kill or cause grave bodily injury to the victim raised a triable issue concerning the therapist's duty to warn the victim." p. 2)

IN OTHER WORDS: Ewing v Goldstein should have been decided at original trial

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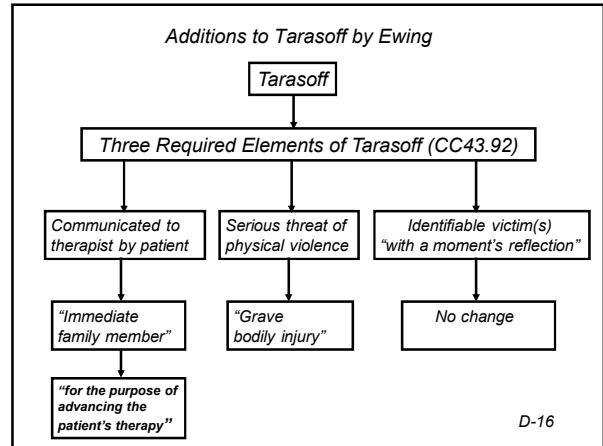
Ewing v. Goldstein (2004), Cal.App.4th

DISCUSSION
APPEALS COURT:
 A communication from a family member to the patient's therapist, made for the purpose of advancing the patient's therapy, is a "patient communication" within the meaning of section CC43.92.

"When the communication of the serious threat of physical violence is received by the therapist from a member of the patient's immediate family and is shared for the purpose of facilitating and furthering the patient's treatment, the fact that the family member is not technically a "patient" is not crucial to the statute's purpose." (p. 8)

IN OTHER WORDS: We are charged with determining if the communication from an immediate family member is for the purpose of "advancing the patient's therapy..."

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The Patriot Act
 Section 215

1978 Congress Created Foreign Intelligence Surveillance Act (FISA)

- FBI surveillance in foreign intelligence investigations
- FBI is required to apply to FISA Court for Federal court order to investigate against terrorism
- FISA Court meets in secret, rarely publishes decisions
- Allows only government to appear before it

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The Patriot Act
 Section 215

Troublesome exception to confidentiality
 Order for investigation to obtain information

- Director of FBI or designee may apply
 - Rank no lower than Assistant Special Agent in Charge
- Makes application for order to obtain intelligence information
 - Protection against terrorism or clandestine activities

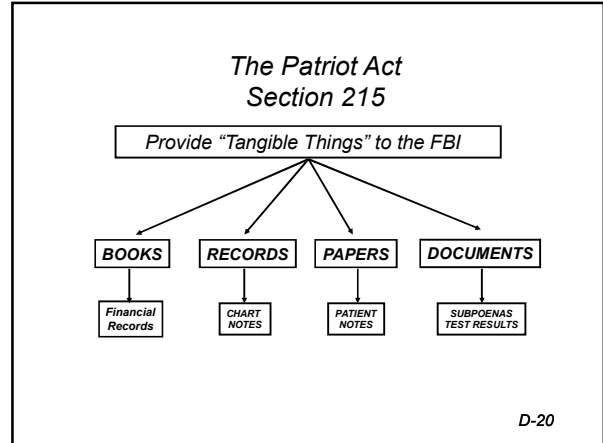
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The Patriot Act

USA PATRIOT

U – Uniting and	P – Providing
S – Strengthening	A – Appropriate
A – America	T – Tools
	R – Required to
	I – Intercept and
	O – Obstruct
	T – Terrorism

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The Patriot Act Section 215 (e)

A federal court order is sought from a federal judge
 If approved, our patient's records are sought

"A person (psychotherapist) who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context."

IN OTHER WORDS: we are not required to provide this information to any one other than the original person seeking the information one time only.

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The Patriot Act Section 215 (d)

~~"No person shall disclose to any other person that the FBI has sought or obtained tangible things under this section."~~

This was revised by congress in 2006
 WE MAY NOW CONSULT WITH ATTORNEY

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The Patriot Act Section 215

Consequences of notifying client/patient and others about complying with FBI court order

- **No sanction is set forth for violation**
- **Generally punishable as contempt of court**
 - Covered by 18 U.S.C. 401
 - Generally financial fine and/or imprisonment

"There is no prescribed sentence for a person found guilty of contempt of court. The judge should impose a sentence that is commensurate with the nature of the contempt."

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The Patriot Act Section 215

- To defy Section 215 is a violation of Federal Law - **HOWEVER**
 - To comply is a breach of confidentiality
 - Therapy permanently damaged by gag order
 - Severe conflict of interest
 - Creates unethical multiple relationship
 - What are the options
 - Premature termination without telling client why?
 - Patient abandonment?
 - Unfortunately, too big a topic for discussion here
 - **HIGHLY UNLIKELY** this will happen to any of us
 - Consult and document

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Bibliography

Alverson, H. et al. (2007). Ethnocultural variations in mental illness discourse: Some implications for building therapeutic alliances. Psychiatric Services, 58(12), 1541-1546.

Jacobson, N., & Greenley, D. (2001). What is recovery? A conceptual model and explication. Psychiatric Services, 52(4), 482-485.

Frese, F. et al. (2001). Integrating evidence-based practices and the recovery model. Psychiatric Services, 58(11), 1462-1468.

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