Ethics Versus the Law

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Excerpts from Bad Karma by Deborah Blum

 It is 1969. Counter-culture beatniks have given way to hippies. The counter culture is picking up steam. The older generation is bombarded with youth culture messages. The baby-boom generation is rushing toward adulthood with a vengeance. They are mocking and contemptuous of old ideas of nationalism with an “in your face” presence, while professing peace and love. They fly in the face of convention with their unisex look. They demonstrate their allegiance to the downtrodden underclasses by adopting what their elders consider an unclean, unkempt, and trashy look. Males have shoulder length hair and females go bra-less. While professing individuality and “doing your own thing,” the adolescent uniform of the day is blue denim from bottom to top, bell bottom, hip-hugger pants and 18-inch fringe hanging from jackets, vests, and purses. They hand embroider cotton and tool leather.

 Indian culture, with its impoverished masses, is the poster background of the times. Youth are reading Sidhartha, listening to Rave Shankhar sitar music, and buying buffalo leather sandals and gauzy Indian cotton shirts and dresses. People are learning about the Kama Sutra and transcendental meditation. Small groups join together to chant about Krishna, dressed in saffron colored cotton dashikis.

 There is much unrest and mounting tension concerning the Vietnam War. The music sings out anti-war protest and escapist sex and drugs. Timothy Leary, an ex-Harvard professor, is advocating LSD trips. “Sunshine,” Oxley’s Oxalate,” and “brown dot” are names of types of acid, and everyone knows Zigzag papers are for rolling joints. The youth culture is pressing for freedom: Freedom from the war, freedom form oppression, freedom from sexism, and freedom from reproduction. Slogans such as “peace, drugs and rock and roll” and Abbie Hoffman’s admonition to not trust anyone over thirty ring out. There are demonstrations and be-ins and love-ins. In August, a small farming community in upstate New York will be overrun by hippies at a music festival called “Woodstock.”

 Meanwhile, spring on the West Coast is heating up. On May 14th, demonstrators attempt to take back People’s Park in Berkeley, California for the people. Ronald Reagan, the ex-actor of B movies, is governor. Two thousand National Guardsmen, carrying gas grenades, rifles, and unsheathed bayonets move on the demonstrators.

 Two years earlier, 1967, Prosenjitt (pronounced Prosenjet) Poddar was living in a rural village of the Ganges Delta, 200 miles north of Calcutta. In his home with his parents and five younger brothers, there was no running water, no toilet, and no electricity. His mother cooked over a stove fueled by burning dung patties. Poddar was born an untouchable in India’s class system. According to the class system, which is generational, priests are the highest class, followed by warriors, merchants, and servitors. Untouchables are below servitors, considered unclean. Poddar’s mother worked as a servant. Her very presence was a threat to the cleanliness of the household. She devised a method of making noise when she had to transverse the house so that the family of the house would know how to avoid her.

 At the age of sixteen, Prosenjitt distinguished himself as one of 1200 chosen from 80,000 applicants to attend the Indian Institute of Technology, an engineering college. Prosenjitt was in the upper tenth of the first percentile. He was the only untouchable at IIT. He was studying naval architecture. After five years, he was second in his class. In 1967, he won a scholarship to study in graduate school at the University of California in Berkeley. His father had to borrow 6000 rupees, an enormous sum for such a poor family of untouchables, to send Prosenjitt to the United States.

 Prosenjitt was twenty-one years of age that year. He arrived in a country very different from his place of birth. Although American youth dabbled in Indian exports, they were not extremely warm to immigrants. Poddar roomed at International House at UC Berkeley. He had few other Indian colleagues and none of them were untouchables, so they out-classed him.

 It was at a dance at International House in 1968 that Poddar met Tatiana Tarasoff. Her friends called her Tanya. She was nineteen then, attending Merritt Junior College in Oakland, and living at home. She had a brother two years younger and a six-year-old sister. Her parents were Russian immigrants. Her father worked as a mechanic. He was an alcoholic and a tyrant over his wife and children. His drinking often led to accusations and violence. Tanya’s mother was what those in the field of drug and alcohol rehabilitation would call co-dependent, afraid to stand up to her husband. Tanya’s father would not permit Tanya to have a driver’s license or to attend the university. Tanya had to catch her father before he passed out on the sofa to give her a ride or tip toe out of the house after he started his nightly drinking. Tanya had led a life that sheltered her and she dreamed of breaking out and being a coed at Berkeley and having a boyfriend.

 It was with Poddar that she practiced flirting and receiving attention from a male. Beyond that, she had no particular interest in him. He, however, was smitten with her from the first time he saw her. Each time she appeared at the International House for their ethnic dances, Poddar found ways to approach her. His sense of propriety that he learned from his culture prevented him from being too bold with his advances. With Tanya, a westernized female, and Poddar, an eastern male, there was a clash of cultures and misunderstanding of behavior and meaning. The net result was that Poddar became obsessed with Tanya even while she spurned him.

 During the summer of 1969, Tanya went to visit her mother’s sister in Brazil for two months. Poddar’s acquaintances became concerned about him and encouraged him to seek help. Dr. Donna Dickenson, the foreign student advisor at International House, was contacted. Eventually, Poddar went to the University Counseling service. Dr. Stuart Gold, in charge of inpatient services, prescribed Thorazine and Compazine for paranoid schizophrenia and Cogentin for the side effects of the first two medications. He referred Poddar for outpatient treatment with Dr. Lawrence Moore, one of forty therapists at the center.

 Dr. Moore became alarmed when Poddar said that he intended to kill Tanya. Dr. Moore consulted with two colleagues. He then decided to have Poddar involuntarily committed to a mental health hospital.

 Dr. Moore called the campus police to have them pick up Poddar. According to the Welfare and Institutions Code and Laws Relating to Social Welfare, Poddar could be detained for observation only after a written request was made. In a follow-up letter to the campus police Dr. Moore stated that Poddar was undergoing an acute and severe paranoid schizophrenic reaction and that, while at times he appeared quite rational, at other times he could be very psychotic and a danger to others. On August 22, 1969, the campus police detained Poddar. However, Poddar appeared to be rational, had broken no laws, and promised to avoid Tanya. Therefore, the campus police believed they could not continue to hold Poddar in custody and they let him go.

 Coincidently, a relatively new mental health procedures law had been enacted about which few people knew, including the clinic and the campus police. The law specified that they should have called an off-campus agency. In this case the campus police did not have jurisdiction. It was a technical error, or error in procedure, on the part of the clinic to call the campus police rather than notifying the Berkeley, California police department.

 On August 28, 1969, Dr. Harvey Powelson placed Dr. Moore on probation for the action he took in the Poddar case. Under the circumstances of Dr. Moore having requested Poddar be picked up by the campus police, Poddar quite naturally refused to continue in treatment.

 After semester break, Tanya returned to Berkeley from Brazil. Poddar contacted her, but Tanya refused to talk with him. On October 26, 1969, Poddar went to Tanya’s house and shot her with a pellet gun. She did not die from the gunshot wound, however. Poddar fatally stabbed her eight times in her chest, abdomen, and back with a thirteen-inch, serrated edge kitchen knife. Then, he called the police. Tanya was six weeks pregnant.

 Poddar stood trial and plead insanity. On August 26, 1970, he was convicted of murder in the second degree. He was sentenced to five years at a California medical facility.

 He appealed. Four years later, his conviction was overturned because the judge erred in his instructions to the jury, not giving them adequate instructions on diminished capacity. A new trial was ordered. The new trial judge agreed to the compromise that Poddar could be released if he agreed to deportation to India.

 In September 1974, Poddar returned to Calcutta. His father arranged a marriage for him. Two years later, he won a scholarship to resume his study of naval architecture at an institute in Hanover, Germany.

 While the state was pursuing the criminal case, in 1970 Tanya’s parents filed a civil, wrongful death suit in the amount of $200,000 against Dr. Moore, the regents of the University of California, the psychiatrist who supervised Moore, and the University of California campus police. The suit made several claims. For our discussion, the most important was the failure to warn Tanya or her family of the danger to her. The case never went to trial.

 At issue was the legal action and whether a therapist is liable for the action of a client. In the Tarasoff situation, the psychologist, the supervisor, the clinic, and the campus police thought they did everything correctly. Once the courts became involved, however, a new standard of care emerged. The court ruled that if the practitioner had told Tanya about the patient’s dangerousness, she might be alive today. The fact that she was killed indicates that the practitioner had a duty to warn her. The California Supreme Court said the case could go to trial on that basis. The motion before the court was to dismiss the case because at that time there was no statutory or case law requiring psychotherapists to warn potential victims of possible violence.

 The climate in the country at the time was that people were angered when mental patients were released into their communities. They were (and still are) afraid of the mentally ill. They wanted someone to be held accountable.

 In 1974, the California Supreme Court ruled in favor of Tarasoff. It said that the therapist has a duty to warn. A therapist has a duty to warn known potential victims about threats made by dangerous patients.

 Can you guess what controversy ensued? The controversy was that the ruling assumed a single standard of care for every threat. That single standard was the one response of warning a potential victim.

 The mental health professionals were deeply concerned about this new imposed duty because it meant they would have to warn any identifiable person that had been threatened in a therapy session regardless of the seriousness of the threat. Given the frequency with which these types of threats are heard in therapy sessions, the prospects were alarming.

 Suppose a woman who discovers her husband’s infidelity tells her therapist, “I could kill my husband.” The therapist may not believe this to be a serious threat but rather an expression of her hurt and anger. With a court imposed standard requiring warning known potential victims the therapist would have to call the husband. This would not be a therapeutic gesture. In fact, calling the husband likely would undermine the therapy. The intended victim may end up harming the patient. If the therapist warned the husband and the patient was paranoid, the therapist might be placing him/herself in danger.

 Community advocacy groups and mental health professionals petitioned the California Supreme Court to reconsider the verdict. The mental health community argued correctly that (1) psychotherapists cannot predict dangerousness and that (2) warning in all cases was too narrow a mandate and (3) was a violation of confidentiality required for therapeutic relationships. Mental health practitioners noted that other interventions could be equally effective without the potential harm to the ongoing therapeutic relationship.

 Following these persuasive arguments against the single standard of warning, the court agreed to re-hear the case. In 1976, the California Supreme Court modified its decision in what is now called Tarasoff II. The court ruled that a therapist has a duty to protect innocent people. The Tarasoff family was awarded an undisclosed sum of money.

 The duty to protect has greater latitude than a duty to warn. A duty to warn is one step in the duty to protect. A duty to protect includes the option of warning the intended victim.

 According to the people and the law, physicians and therapists have an obligation to protect society that takes precedent over confidentiality. For instance, physicians have an obligation to protect the family if a patient has a contagious disease such as tuberculosis or a sexually transmitted disease. Several states hold hospitals and doctors liable for potential dangerousness when they propose to release patients.

 This was a situation in which the California Supreme Court set standards of care for mental health professionals. The mental health practitioners found that the courts that represent the people have a different idea of the responsibilities of mental health providers than do the mental health providers.

 The important issue is that the ruling clearly extends the therapist’s duty to known or unknown identifiable others and it requires that the therapist take appropriate action to protect potential victims. The duty to protect may be more onerous for the professional that the duty to warn because once the damage has been done it always can be argued that the practitioner did not do enough to protect an injured third party.

 The pitfall of the Tarasoff ruling in the eyes of the professionals is that it violates confidentiality of the therapy. If the individual knows that the therapist is legally obligated to report certain kinds of information provided within the context of therapeutic treatment, the patient will withhold pertinent information that could alter the outcome of treatment. But the court held that, while they recognize the effect of therapy is based upon confidentiality, confidentiality has to yield to disclosure in order to prevent danger to others.

 Practitioners tread a precarious balance between client rights of confidentiality and society’s right to be protected from violence. The majority and dissenting opinions in the California Supreme Court ruling on the famous Tarasoff v. Regents of the University of California case underscore the crux of the conflicting issues between one’s protective duties versus confidentiality.

 In addition, the ruling placed a burden on the professional to predict likely future conduct. Research data have indicated that psychology cannot predict violent behavior with any great accuracy.

 The Tarasoff II decision was specific about a therapist’s duty to protect identifiable potential victims. First, even though a patient might not reveal a potential victims name, the therapist is required to put some thought into determining the victim’s identity. Second, the therapist has an actual duty to protect. To determine what protective steps to take, the mental health practitioner must weigh confidentiality against the potential danger and the effect that divulging patient information may have on the therapeutic relationship.

 A therapist is not obligated to interrogate clients or conduct independent investigations of potential victims who are unknown. However, the ruling established a standard to protect, which permits the therapist to use any and all tools available to protect potential victims of violent behavior. The practitioner’s responses include (1) voluntary or involuntary hospitalization, (2) increase the frequency of outpatient visits, (3) change the modality of treatment, (4) change medication, (5) bring in law enforcement agencies, and if these other measures won’t work, a therapist has to (6) warn the victim.

 Subsequent cases attempted to expand the duty to protect to include non-identifiable victims, family member of potential victims, property, and suicide victims. It is difficult to take applicable meaning from the case law, much of which seems to contradict itself with differing outcomes in similar situations.

 Important cases following the footsteps of Tarasoff run in two veins: Cases that applied or expanded the Tarasoff duty to protect and legal situations where a defendant practitioner doubted the ability to have foreseen such an event, but the court says, for example, “had you obtained prior records or had the intake physician written down the verbal threat, you could have prevented the tragedy.” Where the system plays a key role in getting information to the therapist and the system fails, the court usually finds the standards of care not met.