Emerich Versus Tarasoff by Lorraine M. Dorfman, Ph.D. (2000)

In 1974, the collision between psychology and the law made national headlines in the landmark decision of the California Supreme court in the case of Tarasoff versus the Board of Regents of the University of California, et. al.. A University of California, Berkeley graduate student from India, by the name of Pasenbja Poddar, pursued the affections of a U.C. Berkeley undergraduate co-ed Tatiana Tarasoff, known by her friends as Tanya. Some said Tanya had toyed with the attentions of Poddar, but did not return his affection. Having been spurned by Ms. Tarasoff, Poddar experienced an emotional crisis and sought the services of the University Counseling Services. He was referred to Dr. Lawrence Moore.

Dr. Moore became alarmed when Poddar said he intended to kill Tanya upon her return to campus in fall, after spending the summer in Brazil. Dr. Moore consulted with two colleagues. He then decided to have Poddar involuntarily committed to a psychiatric hospital.

Dr. Moore called the campus police to have them pick up Poddar. 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. The campus police detained Poddar. However, Poddar appeared to be rational, had broken no laws, and promised to avoid Tanya. On this basis, the campus police believed they could not continue to hold Poddar in custody and they released him.

Coincidently, a relatively new mental health procedures law had been enacted, about which few people, including the clinic and the campus police, knew. The law specified 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 Berkley, California police department.

Under the circumstances of Dr. Moore having requested Poddar be picked up by the campus police, Poddar quite naturally refused to continue in treatment. Dr. Moore’s supervisor advised that no further action be taken to try to restrain Poddar.

Two months later, Tanya returned to campus. Poddar contracted her, but Tanya refused to talk with him. Poddar went to Tanya’s house and shot her. She did not die from the gunshot wound, however. Poddar fatally stabbed her with a kitchen knife. Then, he called the police.

Poddar stood trial and was convicted of murder in the second degree. However, the conviction was overturned because the judge had erred in his instructions to the jury. Poddar was released. Sometime later, he returned to India.

While the state was pursuing the criminal case, Tanya’s parents filed a civil wrongful death suit 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, the most important of which was the failure to warn Tanya or her family of the danger to her. The case never went to trial.

At issue were 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. There ensued a controversy over the ruling that assumed a single standard of care for every threat. The single standard was the one response of warning a potential victim.

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, the prospects were alarming.

Under a duty to warn, if a patient threatens to kill his neighbor over a property dispute, the therapist is obligated to determine the identity of the patient’s neighbor and warn the neighbor. This is in spite of the potential effect upon the neighbor receiving such a telephone call. If a patient leaves the therapist’s office under the influence of alcohol to get in his or her car to drive home, the therapist has an obligation to warn other motorists on the road that the patient is a homicidal threat. Practically, that means calling both local police and state police to say this individual may take either a local road or interstate highway to travel to his or her residence, place of employment, or any other stops along the way.

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 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 now is called Tarasoff II. The court ruled that a therapist has a duty to protect innocent people.

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. Other responses are voluntary or involuntary hospitalization, increasing the frequency of outpatient visits, changing the modality of treatment, changing medication, or bringing in local law enforcement agencies. This was a situation in which the California Supreme Court set standards of care for mental health professionals. Subsequent court cases extended the duty to protect to include non-identifiable victims (Lipari v. Sears), family members of potential victims (Hedlund v. Superior Court of Orange County), suicide victims (Abille v. U.S.), and property (Peck v. The Counseling Service of Addison County).

On December 11, 1996, the Court of Common Pleas in Philadelphia heard the case of Ronald B. Emerich, administrator of the estate of Teresa M. Hausler, versus Philadelphia Center for Human Development, Inc., owned and operated by Albert Einstein Medical Center; Ahmet Ulus, psychiatrist; Anthony Scuderi, counselor; and Harvey Freidrich, executive director. Teresa Hausler and Gad Joseph were girlfriend and boyfriend, cohabiting in Philadelphia. Both Ms. Hausler and Mr. Joseph received mental health treatment at Philadelphia Center for Human Development. Ms. Hausler had been discharged from treatment. Mr. Joseph continued to be treated for post-traumatic stress disorder, drug and alcohol dependence, and explosive and schizoaffective personality disorders. Mr. Joseph had a history of physical and verbal abuse of his ex-wife and of Ms. Hausler.

In June 1991, Ms. Hausler discontinued her relationship with Mr. Joseph. She left their Philadelphia residence and relocated to Reading, Pennsylvania. Mr. Joseph was enraged by Ms. Hausler’s action. During subsequent therapy sessions, he threatened to harm Ms. Hausler.

According to the records, “On the morning of June 27, 1991, at or about 9:25 A.M., Joseph telephoned his counselor, Mr. Scuderi, and advised him that he was going to kill Ms. Hausler. Mr. Scuderi immediately scheduled and carried out a therapy session with Joseph at 11:00 that morning. During the therapy session, Joseph told Mr. Scuderi that his irritation with Ms. Hausler was becoming worse because that day she was returning to their apartment to get her clothing, that he was under great stress, and that he was going to kill her if he found her removing her clothing from their residence.

Mr. Scuderi recommended that Joseph voluntarily commit himself to a psychiatric hospital. Joseph refused; however, he stated that he was in control and would not hurt Ms. Hausler. At 12:00 P.M., the therapy session ended, and, as stated in the complaint, Joseph was permitted to leave the Center ‘based solely upon his assurances that he would not harm’ Ms. Hausler.

At 12:15 P.M., Mr. Scuderi received a telephone call from Ms. Hausler informing him that she was in Philadelphia en route to retrieve her clothing from their apartment, located at l924 Large Street. Ms. Hausler inquired as to Joseph’s whereabouts. Mr. Scuderi instructed Ms. Hausler not to go to the apartment and to return to Reading.

In what ultimately became a fatal decision, Ms. Hausler ignored Mr. Scuderi’s instructions and went to the residence where she was fatally shot by Joseph at or about 12:30 P.M. Five minutes later, Joseph telephoned Mr. Scuderi who in turn called the police at the instruction of Director Friedrich.”

In its decision of November 25, 1998, the Supreme Court of Pennsylvania ruled “the mental health professional has a duty to warn a third party of potential harm by his patient.” The record based its decision on the California Supreme Court decision in Tarasoff of 1974, Naidu v. Laird, Bardoni v. Kim, Bradley v. Ray, and Lipari v. Sears, Roebuck & Co., stating “the concept of a duty to protect by warning, albeit limited in certain circumstances, has met with virtually universal approval” and “we believe that the Tarasoff decision and its progeny are consistent with, and supported by, Pennsylvania case law.” Reargument was denied January 13, 1999.

Prior to the Emerich case, Pennsylvania had no Tarasoff-type law. Conscientious practitioners followed the guidelines of Tarasoff II. Emerich, however, is based upon Tarasoff I. Today, the mandate for Pennsylvania mental health professionals is to warn a potential victim that is readily identifiable with a moment’s reflection. Alternative solutions permissible under Tarasoff II are not acceptable under Emerich.