Tarasoff Warnings Resulting in Criminal Charges: Two Case Reports

Jeffrey R. Weiner, MD

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The 1976 *Tarasoff* decision[1] established in California a psychotherapist's duty to warn potential victims of violent threats made by a patient. Subsequent laws enacted by many states carried forth this new exception to psychotherapist-patient confidentiality.[2,3] The intent of these statutes is to protect potential victims from harm with the implied principle that, in certain instances, the safety of society outweighs the benefits of maintaining confidentiality in psychotherapy.

In a recent article in the Journal,[4] Dr. Paul B. Herbert wrote a critique of the duty to warn, in which he argued that confidentiality is instrumental to psychotherapy. Violent thoughts and even threats of suicide or harm toward others are frequently expressed in treatment and constitute grist for the therapeutic mill. He concluded that the mandatory reporting of violent threats may, in fact, do more harm than good, both to the patient and to society at large (by eroding confidence in the value of revealing violent thoughts in therapy).

Dr. Herbert cited a malpractice suit in which a jury awarded $280,000 to a police officer whose career, financial security, marriage, and friendships were damaged severely as the result of a *Tarasoff* warning issued by his treating psychologist.[5]

The cases reported in this article concern two individuals who suffered criminal prosecution as a result of *Tarasoff* warnings. In separate incidents, each was arrested while being evaluated as a patient in a locked psychiatric emergency service in a California hospital. Each patient was charged with making "criminal threats," as defined by § 422 of the California Penal Code (PC 422). The statute reads, in part:

> Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.[6]

In each of the cases described herein, the criminal charge was the direct consequence of a *Tarasoff* warning made by the mental health staff. The *Tarasoff* warning itself was considered to be the vehicle for conveying a threat to an intended victim. These cases illustrate yet another potential harmful consequence of the duty to warn—namely, that a patient can be subject to criminal prosecution because of remarks made to a treating mental health professional.

Case Reports

Mr. A

Mr. A was stopped by the police for drunken driving. His blood alcohol level was nearly four times the legal limit. At a screening facility he made suicidal statements and therefore was placed on an involuntary hold and transferred to the psychiatric emergency service of a local hospital.

During the psychiatric evaluation, Mr. A spoke not only of his depression and thoughts of suicide, but also described specific violent and homicidal

Dr. Weiner is Assistant Clinical Professor of Psychiatry, University of California at San Francisco. Address correspondence to: Jeffrey Weiner, MD, 215 N. San Mateo Drive, Suite 10, San Mateo, CA 94401. E-mail: jeffwto@aol.com

thoughts about his former girlfriend, her family, and the son she and Mr. A had had together. Mr. A was on probation for a previous domestic violence offense against her.

A psychiatric nurse made a *Tarasoff* warning to the former girlfriend's family and notified the police. A police officer came to the psychiatric emergency service and interviewed Mr. A to verify the statements he had made. The officer then interviewed the woman and her family to confirm that they took the threat seriously. The officer returned to the hospital later that night and arrested Mr. A for making criminal threats.

Mr. A was found guilty of a felony in a court trial. The court concluded that Mr. A had in fact meant his threats to be taken seriously and that he intended the threats to be communicated to the persons involved. Mr. A was sentenced to several years in state prison. His conviction was appealed and the appeal is pending.

Ms. B

Ms. B was a woman with a history of psychotic symptoms. She was summoned to court to respond to two jaywalking tickets. She did not remember getting the tickets, and when the judge insisted that she enter a plea, she became angry. Upon leaving the courthouse, Ms. B began thinking about stabbing the judge in the throat. She did not have a weapon. Ms. B was concerned about the violent thoughts, so she took a bus to a local hospital and asked to be seen in psychiatric emergency services.

At the hospital Ms. B continued to express thoughts of harming the judge. The staff placed her on an involuntary hold and, in accordance with *Tarasoff*, notified the police and warned the judge. Later that night she was arrested and transferred to the county jail, charged with making criminal threats.

Ms. B. eventually agreed to plead no contest to a misdemeanor and was released on probation after several months in jail.

Discussion

The statute involved in these cases, PC 422, defines a crime when a threat of death or great bodily injury is communicated, even if there is no actual intent to carry it out. These cases are exceptional, however, in that neither patient/defendant directly communicated the threats to the potential victims. In effect, the mental health professionals communicated the threats by means of the *Tarasoff* warnings.

In his critique of the duty to warn, Dr. Herbert proposed that statutes make *Tarasoff* warnings elective, rather than mandatory, and that the psychotherapist be immune from civil liability, whether the decision is to warn or not to warn.[4] If the duty to warn were elective in the cases discussed herein, the mental health professionals could have chosen not to call the police and to defer warning potential victims. They could have elected to hold the patients on an involuntary basis and to continue to evaluate and treat. Both individuals were in a locked psychiatric unit and posed no immediate danger to others.

Even if the duty to warn were elective, the individuals described in these cases would still be subject to criminal prosecution under PC 422, if the staff decided to make the warnings. I am not aware of instances in other jurisdictions, in which psychiatric patients in a locked facility have been prosecuted for "criminal threats" as a result of *Tarasoff* warnings. The arrests described in these case reports may be an unusual outcome based on this particular California statute and/or the result of unusual prosecutorial zeal.

Prosecuting individuals for disclosing violent thoughts to mental health professionals (especially on a psychiatric emergency service) is not sound public policy. Justice William Clark, in his dissenting opinion in *Tarasoff v. Regents*, cautioned that diminished confidentiality (by the duty to warn) might inhibit or prevent effective psychiatric treatment:

> Given the importance of confidentiality to the practice of psychiatry, it becomes clear the duty to warn. . .will cripple the use and effectiveness of psychiatry. Many people, potentially violent—yet susceptible to treatment—will be deterred from seeking it; those seeking it will be inhibited from making revelations necessary to effective treatment. . .[Ref. 1, p 360, dissenting opinion].

Conclusion

The protection of potential victims is a desirable goal. Yet mental health professionals must also strive to do no harm to psychiatric patients. Criminal prosecution as the result of a *Tarasoff* warning is certainly harmful to the patient and potentially harmful to society if this practice inhibits persons with violent thoughts from seeking treatment. One possible rem-

edy to the prosecution of patients such as those described in this case report would be for the California legislature to amend the criminal threats statute. The amended law could specifically exclude threats expressed in the context of a mental health evaluation as cause for criminal prosecution.[7] If this were the case, then *Tarasoff* warnings would still serve to protect potential victims and patients could seek and obtain treatment without fear of criminal prosecution.

References

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