



Ewing, Confidentiality and the Decision to Warn

Michael P. Donner, Ph.D., and Bram Fridhandler, Ph.D.

Psychologists are trying to understand how the *Ewing v. Goldstein* decision (Wittenberg, 2005) effects confidentiality, Tarasoff warnings, and the therapeutic frame. We hope this article helps psychologists evaluate not just the application, but the meaning of this decision.

For many years, psychologists in the California Psychological Association and elsewhere have raised the alarm over erosion of confidentiality. Karbelnig (1999), decried "assaults on privacy," writing that "organized psychology has failed to sufficiently establish the importance of...confidentiality and privacy as the very foundation" of psychotherapy (p. 36). The CPA Committee on Privacy and Confidentiality, writing for a national audience, described "a mysterious trend toward legislation that would seriously impair our efforts to strengthen confidentiality" (Everstine et al., 1980, p. 839) and advocated "a middle course between the implacable demands of conscience and the siren song of attorneys (p. 839)." Toward this end, they urged psychologists to be "watchful as developments occur." Now is such a time.

What does the Ewing decision mean?

Simply put, the court clarified that a therapist could be held liable for failure to issue a Tarasoff warning, even if the information indicating dangerousness comes from a patient's family member rather than from the patient.

We believe that the impact of this decision will be determined more by the way it filters out is presented to psychologists than by any other factor. For some time now, we have observed the Scylla and Charybdis of erosion of confidentiality and increased fears of liability. Official sources emphasize playing it safe by reporting broadly, and readers are left with the belief that reporting broadly is what is required and what their colleagues are doing. Many psychologists are now more concerned with being sued than they are about privacy for their patients or the protection of the public.

We have already encountered practitioners with a grossly exaggerated concept of Ewing, believing that it requires them to issue a Tarasoff warning whenever a third party tells them they have a dangerous patient. On the contrary, as Wittenberg clarified, the decision leaves much to the therapist, including "the discretion...to determine who constitutes an appropriate 'family member' and whether the intent of the communication from that person is to 'facilitate treatment'. (p. 25)" And the Ewing decision itself states, interpreting California Civil Code §43.92, "a therapist has a duty to warn if, and only if, the threat which the therapist has learned — whether from the patient or a family member — actually leads him

or her to believe the patient poses a risk of grave bodily injury to another person. (*Ewing v Goldstein*, 2004)"

Our understanding, then, is that the impact of the decision is quite limited. The decision appears to mean merely that therapists cannot ignore third-party statements about dangerousness. It is not clear that this should make much difference in the way therapists practice. After all, we very much doubt that, prior to this decision, many therapists thought they could simply ignore such third-party statements. We think that informed therapists, all along, have integrated such statements with their overall evaluations of their patients, then made decisions about Tarasoff warnings based on these overall evaluations. This approach seems perfectly consistent with the Ewing decision.

We hope that psychologists do not view the Ewing decision as requiring ever broader disclosures of patient information, and thus respond with action rather than contemplation. We believe that a careful analysis of the danger posed by a patient must be undertaken prior to violating patient confidentiality.

References

Everstine, L., Everstine, D. S., Heymann, G.M., True, R. H., Frey, D. H., Johnson, H. G., & Seiden, R.H. (1980). Privacy and confidentiality in psychotherapy. *American Psychologist*, 35, 828-840.

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

Karbelnig, A. M. (1999). Assaults on privacy: Reflections on the erosion of confidentiality in psychotherapy. *California Psychologist*, May/June 1999, 34-37.

Wittenberg, G. (2005). Tarasoff revisited...and expanded? *California Psychologist*, Jan./Feb. 2005, 22-23, 25.



Dr. Donner is a member of the California Psychological Association Ethics Committee and the Ethics Chair for the Alameda County Psychological Association.

Bram Fridhandler, Ph.D. is Ethics Chair of the San Francisco Psychological Association and Chair of the Division I Expertise Series Task Force.

HELP WANTED

Sharped eyed proofreader needed for California Psychologist Magazine—checking copy for errors for the next four issues in 2005. Major work to be done the weeks of March 7, May 9, July 11 and September 12. The editor will provide lunch. Contact Connie Holmes, holmestead@aol.com.