The Duty to Protect and Chapter 51 in Wisconsin

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Disclosure

- Dr. Mays is not on any drug advisory boards, paid for doing drug research, or otherwise employed, funded, or consciously influenced by the pharmaceutical industry or any other corporate entity.
- No off label uses of medications will be discussed unless mentioned in the handout and by the presenter.
- No funny business.

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Agenda for Today

- Wisconsin Mental Health Law and Civil Commitment: Alberta Lessard
- The 1976 Wisconsin Mental Health Act
- The Fifth Standard
- Order to Treat
- Tarasoff and Wisconsin
- Two Diversions:
  - True Threat Doctrine
  - Delusion-Like Beliefs and Mental Illness

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Wisconsin Law

- Until 1972, the civil commitment of mentally ill individuals was legally simple: a person needed to be mentally ill and "appropriate" for inpatient care. In Wisconsin, "appropriate" meant that the person was a proper subject for custody and treatment. This was a determination base on a subjective opinion of a psychiatrist. In practice, having a mental illness was enough to support a commitment. In emergencies, a mentally ill person could be held for 5 – 145 days before any sort of hearing.

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From the Milwaukee Journal Sentinel Obituary, 4/26/2015

- Lessard was born in Ingram, Wis., the daughter of a lumberjack and a midwife. She moved to West Allis in the early 1950s and taught first grade. But the school district fired her several years later when she refused to teach what she considered to be an inferior reading program.
- Later, she was fired from Marquette University for mismanaging a reading-instruction program for education majors. She sued and was offered compensation, but Lessard refused to accept money, saying she wanted her job back and an apology.
- She became obsessed and began calling Marquette sometimes hundreds of times a day, insisting that officials rehire her. The university called the police to try to get her to stop. When the West Allis police arrived at her apartment, Lessard imagined that they were "goons" from President Richard Nixon's administration coming to kill her, and she fled out her bedroom window, dangling from the sill.

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Wisconsin Law

- **Lessard v. Schmidt (1972):** Alberta Lessard was taken in to custody in front of her residence in West Allis, WI, and taken to a mental health center. Judge Seraphim issued an order permitting the confinement of Miss Lessard for an additional ten days. Thereafter, on November 4, 1971, Dr. George Currier filed an "Application for Judicial Inquiry" with Judge Seraphim, stating that Miss Lessard was suffering from schizophrenia and recommending permanent commitment.

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The Case

- At this time Judge Seraphim ordered two physicians to examine Miss Lessard, and signed a second temporary detention document, permitting Miss Lessard's detention for ten more days from the date of the order. This period was again extended on November 12, 1971. Neither Miss Lessard nor anyone who might act on her behalf was informed of any of these proceedings. Judge Seraphim signed an order appointing Daniel A. Noonan, an attorney, as guardian *ad litem* for Miss Lessard. Miss Lessard, on her own initiative, retained counsel through the Milwaukee Legal Services.

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The Case

- At the November 24 hearing before Judge Seraphim, testimony was given by one of the police officers and three physicians and Miss Lessard was ordered committed for thirty additional days. Judge Seraphim gave no reasons for his order except to state that he found Miss Lessard to be "mentally ill."

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The Lawsuit

- Lessard claimed that Wisconsin denied her due process of law in the following respects: in permitting involuntary detention for a possible maximum period of 145 days without benefit of hearing on the necessity of detention; in failing to make notice of all hearings mandatory; in failing to give adequate and timely notice where notice is given; in failing to provide for mandatory notice of right to trial by jury; in failing to give a right to counsel or appointment of counsel at a meaningful time; in failing to permit counsel to be present at psychiatric interviews; in failing to provide for exclusion of hearsay evidence and for the privilege against self-incrimination;

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The Lawsuit (cont)

- (Wisconsin denied due process) in failing to provide access to an independent psychiatric examination by a physician of the allegedly mentally ill person's choice; in permitting commitment of a person without a determination that the person is in need of commitment beyond a reasonable doubt; and in failing to describe the standard for commitment so that persons may be able to ascertain the standard of conduct under which they may be detained with reasonable certainty.

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What Does the Supreme Court Say?

- The United States Supreme Court requires only that an individual be mentally ill and dangerous in order to be committed. The states are to determine what dangerous means.

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The Wisconsin Finding

- The court held that the Wisconsin civil commitment procedures did not provide adequate due process rights to those who were committed and ordered numerous safeguards be instituted, including adequate notice, the right to counsel, availability of the privilege against self-incrimination, and a speedy hearing.
- The court held that only a compelling state interest (interpreted as dangerousness) could justify the denial of fundamental liberty.

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The 1976 Wisconsin Mental Health Act

- In addition to procedural changes, this act specified 3 standards of dangerousness that could lead to civil commitment:
- 1) **Self-Injury**: recent threats, attempts at suicide, serious bodily harm
- 2) Substantial probability of physical **harm to others**: recent overt act of violence
- 3) **Impaired judgment**: recent acts or omissions that demonstrated a **substantial probability of physical impairment or injury to self** (walking around barefoot in a blizzard)

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The 1980 Amendment

- The Wisconsin legislature added a Fourth Standard of dangerousness, referred to as the "grave disability" provision. This states that a person may be committed if they are **unable to satisfy their basic needs** of nourishment or self-care, and without treatment of the mental illness, the person faces a substantial probability of death.
- There is some overlap with the 3rd standard of impaired judgment. In practice, this provision allowed for the continuing commitment of people who were not in danger while treated, or confined, but would become unable to take are of themselves if treatment were stopped.

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The 1995 Amendment: The 5th Standard

The Wisconsin legislature added a 5th Standard of Dangerousness for civil commitment: if, due to a mental illness, a person is unable to understand the advantages, disadvantages, or alternatives to a particular treatment (**incompetent**), or is unable or unwilling to apply them to his situation, **and requires such treatment to prevent severe mental, emotional, or physical harm, and will not be able to function independently in the community or will lose cognitive control.**

The statute does not require the person pose a substantial and direct risk of harm, nor does it rely on grave disability.

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The 5th Standard

This standard focuses on whether the individual has a history of similar symptoms as measured by at least one previous civil commitment.

It widens the definition of "dangerousness."

It is geared toward prevention.

It is the first standard that links involuntary hospitalization to mandatory treatment.

It provides help to those who have fallen through the cracks.

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5th Standard Challenge

- **State v. Dennis H (2002):** Dennis H's father, a psychiatrist, filed a 3-party petition in Milwaukee County Court to have his son committed. Dennis was diagnosed with schizophrenia and was refusing to take his medication. In the past this had led him to be hospitalized for renal failure secondary to rapid weight loss and dehydration. The petition stated that Dennis was dangerous under the Fifth Standard.
- Dennis argued that the 5th Standard was unconstitutionally vague, was overbroad, and violated his right to equal protection and due process (the Lessard argument.)

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The Wisconsin Supreme Court

- The Wisconsin Supreme Court upheld the statute. While Dennis claimed that the standard was simply a restatement of what a mental illness is, the court opined that the standard required a heightened degree of impairment than just having a mental illness. The court further stated that the standard is met only when individuals have a mental illness, they are incapable of making treatment decisions, and there is substantial probability that they will need treatment to prevent further disability, including being unable to obtain services, and they will suffer severe mental emotional, or physical harm.
- The standard does not apply if there services in the community and the person would avail themselves of the services.

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The Wisconsin Supreme Court

- The court showed a willingness to accept the 5th Standard definition of dangerousness: the effects that severe and persistent mental illness have on a person's ability to live independently and make informed treatment decisions.
- The court rejected the Lessard reasoning that dangerousness includes only behavior that upsets the public, directly involves police intervention, or is life threatening. The court indicated that the distinction between emotional harm and physical harm is not important if the results are behaviors that lead directly to a person's inability to survive in the community.

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Wisconsin Commitment Law

- be a danger to self/others as evidenced by recent acts/threats;
- be substantially probable to have physical impairment/injury to self as evidenced by recent acts/omissions;
- be unable to satisfy basic needs for nourishment, medical care, shelter or safety so that substantial probability of imminent death, serious physical injury, serious physical debilitation or serious physical disease; (Fourth Standard)
- or
- be substantially unable to make informed treatment choice, needs care or treatment to prevent deterioration, and
- be substantially probable that if untreated will lack services for health or safety and suffer severe mental, emotional or physical harm that will result in the loss of ability to function in community or loss of cognitive or volitional control over thoughts or actions (Fifth Standard)

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Wisconsin Law

- **Roberta S. v. Waukesha (1992):** A guardian lacks authority to forcibly detain a ward or enter premises or give medication. This must be done under a commitment law, after a finding of dangerousness. This stopped the use of medical guardianship for the purposes of involuntary treatment.
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- **Stensvad v. Reivitz et. al. (1985):** the court of Wisconsin held that there was a right to refuse treatment, but it could be overcome by legitimate state interest as long as professional judgment was exercised. "Civil commitment is for custody, care and treatment, and …that nonconsensual treatment is what involuntary commitment is all about."
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Wisconsin Law

- **Enis v. Dept. of Health and Social Services (1996):** WI Bob Enis was found NGRI for murder, diagnosed with psychotic Disorder, NOS. He contended that the State could not override his choice to refuse antipsychotic medication, even if he were found to be incompetent, unless he was also a danger to himself or others. The court agreed that his liberty interests were violated by forced administration of medications without a finding of dangerousness, and that his equal protection rights were violated unless he is granted the same mechanism for reviewing medications as is afforded civilly committed patients. In other words, the same rights granted **Harper**, were granted to incompetent patients. No involuntary treatment unless there is dangerousness. Adequate protection made be provided by the existence of a medical review board.

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A New Duty

- It is a well recognized legal principle that a person does not have responsibility to control the behavior of another person, or to warn a person of another's threat unless the first person has a "custodial" relationship with the potential aggressor. The courts have held that doctors are responsible for harm in cases of where such a custodial relationship exists between the doctor and the patient (wrongful discharge from the hospital, patient-inflicted harm on peers in the hospital)

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A New Duty

- In the Tarasoff decisions, the California Supreme court enunciated a new common law duty to warn or protect third parties from potential harm from patients, even on an outpatient basis when no such custodial relationship exists. The right of a patient to confidentiality has to "yield to the extent to which disclosure is essential to avert danger to others."

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Duty to Protect - Background

- Tarasoff I (1974)
  - "In this risk infested society, we can hardly tolerate the further exposure to danger that would result from a concealed knowledge of the therapist that his patient was lethal…"
- Tarasoff II (1976)
  - "When a therapist determines that his patient presents a serious danger to another, he incurs an obligation to use reasonable care and protect the intended victim…"

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The Aftermath

- In states where this issue has arisen, the case usually begins with a dispute as to whether legal duty to the third party exists. If it is determined that it does, then the issues are whether the therapist determined, or should have determined that the client was likely to be violent, whether the therapist did take, or should have taken some action that would have prevented harm to the third party. States have differed on their approach to this problem.

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Wisconsin Case Law

- Schuster v. Altenburg (1990)
  - Edith Schuster, bipolar, killed herself and paralyzed her daughter in an auto accident after leaving her appointment with Dr. Altenberg.
  - The Supreme Court of Wisconsin found that if the therapist anticipated, or should have anticipated that the client could harm a third party, known or unknown, the therapist can be held liable for damages if his care was negligent.
  - This is the broadest Tarasoff interpretation possible, and probably includes suicide as well.

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Wisconsin Case Law

- Schuster v. Altenberg (1990)
  - It is the responsibility of the therapist to weigh the competing interests of confidentiality and protection of the public.
- State of Wisconsin v. Curtis Agacki (1999)
  - Therapist David Baldridge of Milwaukee was found to have acted properly in turning in his client for carrying a gun, upholding the Wisconsin "Tarasoff" duty.

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When you might be sued…

- Examples in which psychotherapists may create a duty to third parties (Resnick):
  - Direct involvement, as in a confrontation with third party
  - Therapist instructs a patient to take an action that implicates a third party
  - Suggests that a patient initiate a suit against a third party
  - Suggests that a patient makes a public accusation of criminal behavior.
  - Suggests that a patient make major changes in interpersonal relationships, like divorce (neutrality.)
  - Possibly asking patient to seek data about memories of sexual abuse.

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HIV, Duty to Protect, Confidentiality

- If a mental health professional knows that a client with HIV is having unprotected sex or sharing needles with unknowing partners, should the professional maintain confidentiality or should the professional act to protect the unsuspecting partner?
- There is general disagreement among mental health professionals about whether the risk that HIV+ clients pose to others is comparable to risks that typically taken to initiate a Tarasoff duty. Clinicians often have strong opinions but are often ignorant of HIV transmission risk or have other biases.

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State Laws on HIV and Duty to Warn

- States differ in their statutory prohibitions. For instance, Pennsylvania law mandates that mental health professionals "may not break confidentiality to warn that a client poses a threat to others through HIV/AIDS" . On the other hand, Montana and Texas provide legal protection for mental health professionals who break confidentiality to warn third parties of possible harm.

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Wisconsin's HIV Confidentiality Statute

- Wisconsin's HIV confidentiality statute (Wis. Stat. Section 252.15) provides that no health care provider, blood bank, or testing site may disclose a individual's HIV testing result.
- In Wisconsin, patients are offered either a confidential HIV test (usually by a personal physician and the result is kept in the medical record) or an anonymous HIV test (person uses a numerical code at a clinic.)
- A health care provider is permitted to disclose HIV status without consent to: other health care providers of the person, the parent of a <14 year-old, the holder of health care power of attorney, a first responder who has had significant exposure, the state epidemiologist, etc.
- If an HIV+ person dies, Wisconsin allows disclosure of the HIV status to needle-sharing contacts or sexual partners.

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Wisconsin Criminal Law

- If a person with HIV engages in unprotected sex or shares needles with others, they may face criminal liability. The criminal charge most commonly used is "reckless endangerment." The crime requires proof that the defendant recklessly endangered the safety of another with utter disregard of human life. It is a felony that can carry a prison term of up to 10 years.

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AIDS, Therapeutic Confidentiality and Warning Third Parties

D Hermann, R Gagliano
Maryland Law Review 48:1 1988

- Pro-Tarasoff arguments:
  - The Tarasoff duty is about promoting the health of society
  - Not warning a potential victim is like allowing them to walk into an ambush – it is the equivalent of a threat of physical violence
  - If there is the risk of pregnancy, the infant may be infected
  - A refusal to notify others at risk is itself an indication of malicious intent
- Pro-Confidentiality:
  - Failure of the HIV+ person to notify those at risk is not the same as threatening someone with violence, which is what Tarasoff is concerned with
  - The danger posed is a matter of degree, often stated as less than 1% after a single sexual contact. The danger is largely hypothetical.
  - Notifications may make people less likely to seek care

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HIV and Duty to Protect

- There is no clear answer for Wisconsin practitioners. Acquino et al. make the following suggestions:
- Discuss limits of confidentiality at the beginning of treatment concerning Tarasoff.
- Be aware of one's own attitude and biases
- Speak of your concerns about safety of others and the client's behavior
- Utilize consultation and supervision
- If you feel confidentiality must be broken, discuss it with the client

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Jacob Dougherty

HIV Prevention Coordinator, Wisc DHS

- "I would encourage any physician working with an HIV-positive patient to ensure that patient understands that if they achieve and sustain an undetectable viral load, they have effectively no risk of transmitting HIV to partners sexually. This new scientific finding should encourage more patients to remain adherent to their antiretroviral therapy, which will not only benefit them but their partners as well. We also work with providers around the state to increase awareness and uptake of pre-exposure prophylaxis (or PrEP), which is a pill that an HIV-negative person can take to reduce their chances of acquiring HIV by 92% or more. "

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Jacob Dougherty

HIV Prevention Coordinator, Wisc DHS

- "In our experience, positive reinforcement with patients (affirming their accomplishment in adhering to medication and achieving an undetectable viral load, supporting them when they encounter barriers) is much more effective than creating a fearful environment by warning them not to have unprotected sex with partners. There are many factors that may play into a person's decision to disclose or not to disclose their HIV status to a partner, including stigma and fear of rejection. We want to reduce the risk of HIV transmission to the greatest extent possible for both the person living with HIV and the HIV negative partners."

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Duty to Protect: Principles

- The therapist must determine that interpersonal violence is the issues. (Few states consider property damage as invoking a duty to protect.)
- The therapist must consider the severity of the potential harm.
- The therapist must judge the likelihood of the event occurring.
- The therapist must judge the imminence of the threat.
- The therapist must be familiar with the state law.

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Wisc. State Statute 51.17, 2017

- Any health care provider that reasonable believes an individual has a substantial probability of harm to himself or herself or to another person fulfills any duty to warn a 3rd party by doing any of the following:
- 1) Contacting a law enforcement officer…
- 2) Contacting a county department that the health care provider reasonably believes is responsible for approving the need for emergency detention…
- 3) …approving an emergency detention, (if appropriate)
- 4) Taking any other action that a reasonable health care provider would consider as fulfilling the duty to warn a 3rd party of substantial probability of harm.

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WSS 51:17

- Any person or health care provider that acts in accordance with this section is not civilly or criminally liable for actions taken in good faith. The good faith of the actor shall be presumed in a civil action. Whoever asserts that the individual who acts in accordance has not acted in good faith has the burden of proving that the assertion by evidence that is clear, satisfactory , and convincing.

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The Problem

- When is a threat a criminal action (18 USC S 875c) and when is it free speech?
- All crimes require both a guilty act (*actus rea*) and a guilty mind (*mens rea*.) How should we measure the intent of a threat: should threats be interpreted under a "reasonable speaker" rule (what the threatener was thinking) or a "reasonable recipient" rule (what the recipient was thinking)?

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Threats and the First Amendment

- Over time, the Supreme Court has determined that freedom of speech is a limited right. Exceptions to the right of free speech include:
- **Incitement**
- Advocacy of the use of force is not protected when it is "directed to inciting or producing "imminent lawless action." (1969) This rule limited the previous standard (1919) which stated a "clear and present danger" could justify the government curtailing free speech.
- In 2017, the Massachusetts Supreme Court said that someone could be "virtually" present and could be found guilty of involuntary manslaughter. The case (Commonwealth v. Michelle Carter) dealt with a17 year-old who goaded her boyfriend into killing himself via text messaging.

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Exceptions to Free Speech

- **False Statement of Facts**
- This is very complicated, but telling lies, at times, is not protected free speech. (You can sue someone for slander.) At other times it is.
- **Obscenity**
- **Child pornography**
- **Speech owned by others** (copyrights, trademarks)
- **Commercial speech:** Commercial speech has "diminished protection". False advertising can be prohibited. Other types of speech (for example, political) are considered much more important.

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Provocative and Offensive Speech

- **Provocative and offensive speech**
- In 1942, the Supreme Court held that speech is unprotected if it constitutes "fighting words", speech that "tend[s] to incite an immediate breach of the peace" by provoking a fight, like a direct personal insult. The court has stopped short of curtailing free speech simply because it causes emotional distress.

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Snyder v. Phelps (2011)

- This case brought up the issue of whether or not the First Amendment protects public protestors at a funeral.

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The Facts of the Case

- On March 3, 2006, US Marine Lance Corporal Matthew A. Snyder was killed in Iraq. On March 10, Westboro Baptist Church picketed Snyder's funeral, as it had done at thousands of other funerals throughout the U.S. in protest of what they considered an increasing tolerance of homosexuality in the United States. Picketers displayed placards such as "America is doomed", "You're going to hell", "God hates you", ”Fag troops", ”Semper Fi fags" and "Thank God for dead soldiers". They published statements on their website that denounced Albert Snyder and his ex-wife for raising their son Catholic, stating they "taught Matthew to defy his creator", "raised him for the devil", and "taught him that God was a liar".

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The Facts of the Case

- Albert Snyder, Matthew Snyder's father, sued Fred Phelps, Westboro Baptist Church and two of Phelps's daughters, Rebekah Phelps-Davis and for defamation, intentional infliction of emotional distress and several other issues. The facts of the case were essentially undisputed at trial. Albert Snyder testified:
- “They turned this funeral into a media circus and they wanted to hurt my family. They wanted their message heard and they didn't care who they stepped over. My son should have been buried with dignity, not with a bunch of clowns outside".

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The Case

- On October 31, 2007, the jury found for the Plaintiff and awarded Snyder $2.9 million in compensatory damages, later adding a decision to award $6 million in punitive damages and an additional $2 million for causing emotional distress (a total of $10.9 million).
- The case was appealed.

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The Decision

- In an 8–1 decision the US Supreme Court ruled in favor of Phelps. Chief Justice John Roberts wrote the majority opinion stating "What Westboro said, in the whole context of how and where it chose to say it, is entitled to 'special protection' under the First Amendment and that protection cannot be overcome by a jury finding that the picketing was outrageous."
- "Westboro stayed well away from the memorial service, Snyder could see no more than the tops of the picketers' signs, and there is no indication that the picketing interfered with the funeral service itself."

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Back to Threats…

- **Watts v. United States** (1969): Robert Watts was an 18 year-old who threatened the President of the United States by saying at a political rally, "If they ever make me carry a rifle the first man I want to get in my sights is LBJ…"
- He was found guilty of knowlingly and willingly threatening the President by a lower court. His appeal was heard by the Supreme Court.

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Watts v. United States

- The Supreme Court recognized that "uninhibited, robust, and wide-open" political debate can at times be characterized by "vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." In light of the context of Watts' statement - and the laughter that it received from the crowd - the Court found that it was more "a kind of very crude offensive method of stating a political opposition to the President" than a "true threat." The charge against Watts was dropped.
- However, the Court established that there is a "true threat" exception to protected speech, but the threat must be viewed in its context and distinguished from protected hyperbole. The opinion, however, stopped short of defining precisely what constituted a "true threat."

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Cases

- **NAACP v. Claiborne Hardware** (1982): Charles Evers, making politically impassioned speeches for a boycott of certain white-owned businesses in Mississippi, said, among other things, “If we catch any one of you going in any of them racist stores, we’re gonna break your damn neck…”
- He was convicted of making threats and incitement to lawlessness. The Supreme Court overturned his conviction, affirming consitutional protection for charged political speech.

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Cases

- **Virginia v. Black** (2003): Ku Klux Klan leader Barry Black burned a cross on the front lawn of an African American family, which broke a Virginia law again cross-burning. The Supreme Court opined that the factfinder must determine if the purpose of the cross-burning was to intimidate, i.e. the intent of the burning. Otherwise, cross-burning could be a considered a protected act under the First Amendment.

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Cases

- **Planned Parenthood v. American Coalition for Life Activists (ACLA)** (2002): In 1996 the ACLA published dossiers on abortion providers, politicians, judges, clinic employees, and other abortion rights supporters. They did not post any threats, but the doctors in this case had been targeted by "Wanted" style posters, and their web site marked off previous names if they were injured or killed.
- A lower court rendered a $107 million verdict for the plaintiffs. The case was appealed to the Ninth Circuit which affirmed the decision except for punitive damages. The Ninth Circuit held that the posters at issue constituted a true "threat of force" under the Freedom of Access to Clinic Entrances statute, and found adequate evidence that the posters had been prepared and disseminated in order to intimidate physicians from providing reproductive health services.

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Elonis v. United States (2013)

- Anthony Douglas Elonis made a series of Facebook posts talking about violence:
- "That's it. I've had enough. I'm checking out and making a name for myself. Enough elementary schools in a ten mile radius to initiate the most heinous school shooting ever imagined and Hell hath no fury like a crazy man in a kindergarten class. The only question is which one…"
- He was visited by the FBI and then made the following post:
- "Little Agent Lady stood so close Took all the strength I had not to turn the bitch ghost Pull my knife Flick my wrist and slit her throat."

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Elonis V. United States (2013)

- The FBI ultimately arrested Elonis and a grand jury indicted him for making threats to harm coworkers, his estranged wife, a kindergarten class, and the FBI agent. Elonis said these were rap music lyrics and while he knew the statements might be provocative, he was exercising his First Amendment Rights. Many individuals in Elonis' life said they felt intimidated and threatened. He was convicted.
- On appeal, the United States Supreme Court reversed the conviction on June 1, 2015, eight-one, holding that the court must prove intention (mens rea) to be a "true threat", not simply negligence.

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Bottom Line: Threats

- The Supreme Court has ruled that "true threats" do not warrant First Amendment protection, but they didn't give a test for determining what a true threat is. Some courts have set a "reasonable person" standard. Others have considered the impact of the threat on the recipient, or whether the threat was given in person.
- The area is evolving, especially in light of increasing threats made toward schools.

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Bottom Line: Threats

- Clarifying the individual's intention is often the key question. Many "threats" (I could kill him!!) are impulsive, born of frustration, with no intention to harm or intimidate. Many people who make threats do not pose a threat.
- All contextual factors must be considered. What has the individual conveyed to others? Has he engaged in behaviors intended to intimidate (stalking)? Does the person have a history of mental illness or violence? Etc.

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What to Do to Act on a Tarasoff Duty

- The courts have recognized a number of different steps that can be taken to protect a potential victim other than warning the victim, which may not provide much safety:
  - changing the treatment program (medication, behavioral treatment geared toward impulse control, involving others in the treatment, etc.)
  - requesting a voluntary hospitalization
  - initiating civil commitment
  - warning others who would warn the victim
  - contacting the police (this may not be very productive, although it does provide documentation of doing something, and the police may disarm the client.)

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The Duty to Protect - Final Thoughts

- The therapist must have a rudimentary knowledge of risk assessment.
- The professional does not need to be clairvoyant, just capable of applying and documenting risk assessment principles.
- A review of 1985 – 2006 Tarasoff cases (612) shows only 4 decided for the plaintiff as a Tarasoff decision.

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DSM-5 and Overvalued Beliefs

- The DSM-5 describes a strongly held belief as "less than delusional intensity" says that "the distinction between a delusion and a strongly held idea is sometimes difficult to make and depends on part on the degree of conviction with which the belief is held despite clear or reasonable contradictory evidence regarding its veracity."

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Terrorism and Overvalued Ideas

- Psychologists, economists, the FBI profilers have not found a specific personality profile or situational condition (poverty, oppression, lack of education) that explains terrorism. Such behavior does not usually meet classic personality disorder criteria.
- Rather than mental illness, extreme overvalued beliefs are the predominant motive behind global and domestic terrorist attacks.

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The Facts of the Case

(Rahman 2016)

- In July 2011, Anders Breivik detonated a bomb in Oslo, Norway, killing 8 people. He then traveled to a Workers' Youth League summer camp on the island of Utoya, and shot dead 69 young people.
- Breivik's history reveals that he was arrested as a young person and rejected for military service. He joined the Norwegian anti-immigration party at 20, leaving in 2006, joining a gun club and the Freemasons.
- On the day of the attack, Breivik circulated a number of texts (1500 pages) outlining his anti-Islam, anti-feminist ideas. He stated that he carried out he attacks so that people would read his manifesto. After his incarceration he identified himself as a fascist and Nazi.

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The Facts of the Case

- During Breivik's trial he was evaluated by two teams of forensic evaluators. The first team diagnosed him with paranoid schizophrenia and opined that he was legally insane. Public opinion against this finding was so strong that the court appointed a second team of evaluators. They found that Brievik suffered from narcissistic and antisocial personality disorder and was legally sane.
- Neither team believed that Breivik had disorganized behavior, hallucinations, cognitive impairment, or a history of mental illness. Both teams agreed that he manifested pathological grandiosity.
- They disagreed about whether his beliefs were delusional.

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Sane or Insane?

- The court declared that Breivik's rigidly espoused beliefs were the source of his violence and were shared by other right-wing groups in Norway. They were not idiosyncratic, fixed, false beliefs (delusions.) Similar rigidly espoused beliefs are found in terrorism of many sorts: Islamic, pro-environmentalism, antiabortionist, anti-US federal government, etc.

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More Examples

- Jonestown, Guyana – mass suicide of 909 inhabitants egged on by Reverend Jim Jones in 1978
- Heaven's Gate, CA – mass suicide of 39 followers in preparation for boarding a spaceship following a comet.
- Movement for the Restoration of the Ten Commandments of God, Uganda – mass suicide and murder of 778 because of the "coming apocalypse."

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What to Make of Overvalued Beliefs

- There are hundreds of thousands of people in the United States who believe things that seem bizarre.
  - The US has and uses control of the weather as a weapon.
  - The majority of frogs in the US are homosexual due to US chemical weapon tests.
  - The Sandy Hook shooting was staged by actors.
  - Hillary Clinton ran a child sex ring out of a pizza parlor in Washington, DC.
  - "Chemtrailing" from jets is being used to keep us compliant and docile.
  - Moon landing hoaxers, vaccine conspiracy believers, etc.
- Do these beliefs constitute psychopathology?

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Demographics and the Internet

- The rate of delusion-like beliefs varies broadly from 1.3 to 91 % in general population samples, including 47% of people reporting paranoid ideation and 66-79% endorsing paranormal beliefs.
- A nationally representative survey found 50% of the US population believes in at least one *implausible* conspiracy theory.
- Studies have shown that the majority of people entering a cult do not exhibit psychopathology and most members of cults appear psychologically well-adjusted.

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Delusion-like Beliefs and the Internet

- Sharing unusual beliefs online can provide access to millions of potential co-believers for even the most fringe beliefs. False news spreads faster and more extensively online than does true news. Search engines are optimized to promote confirmation bias in order to keep users online. Access to all this "information can give the false impression that the user is "informed," thereby self-confirming the belief as "reasonable."

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History of the "Overvalued Idea"

- Carl Wernicke first proposed the concept of overvalued idea in 1900. It is defined in *DSM-5* as "an unreasonable and sustained belief that is maintained with less than delusional intensity (i.e. the person is able to acknowledge the possibility that the belief may not be true.) The belief is not one that is ordinarily accepted by other members of the person's culture or subculture."
- People with overvalued ideas are fanatics, but it remains difficult to differentiate overvalued ideas from delusions

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Obsessions, Delusions, Overvalued Ideas

- An obsessional belief is recognized by an individual as intruding forcibly into his mind. The belief is often unpleasant and is actively resisted (ego-dystonic.)
- A delusion is a fixed, false, and idiosyncratic belief (usually not shared by others.)
- An overvalued idea is a preoccupying, rigidly held belief that is shared by others in a person's culture or subculture. The ideas are not resisted, but instead are amplified and and defended (ego-syntonic.)

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Extreme Overvalued Belief

(Rahman et al. 2016)

- An extreme overvalued belief is one that is shared by others in a person's cultural, religious, or subcultural group. The belief is often relished, amplified, and defended by the possessor of the belief and should be differentiated from an obsession or a delusion. The belief grows more dominant over time, more refined and more resistant to challenge. The individual has an intense emotional commitment to the belief and may carry out violent behavior in its service, generally with a sense of moral superiority.

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In Summary…

- In the legal system we deal with issues of cognition that affect competency and responsibility.
- Delusional beliefs occur as part of schizophrenia, mood disorders, paranoid personality and delusional disorder.
- There are hundreds of thousands of people who believe bizarre, implausible things. The internet has contributed to an increase in these numbers.

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In Summary…

- These people often do not show any other psychopathology. Previously they were diagnosed with the mental illness “delusional disorder.”
- There is a general consensus that most people who share their bizarre beliefs with others, who embrace them with strong emotional commitments and moral superiority, and identify strongly with those who share their beliefs are not mentally ill. Instead we describe them as having “extreme overvalued beliefs.”

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In Summary…

- One conception of extreme overvalued beliefs is that they are on a continuum of beliefs formed by cognitive distortions, from the normal to the eccentric to the fringe to the delusional.
- Courts have not found those who exhibit overvalued beliefs to be incompetent or legally insane.
- In terms of risk assessment, people with extreme overvalued beliefs, narcissism, and a sense of moral superiority pose a greater risk to the community than people with psychotic mental illnesses.

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