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Ethical Decision-Making: Supervision Suggestions Utilizing a Review of the *Ewing v. Goldstein* Court Case

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Abstract

A challenge for counselor educators, counselor trainees, and supervisors alike is how to process ethical and legal conflicts supervisees have when making decisions about client care. This paper begins with a court case review and then outlines the Wheeler and Bertram (2012) ethical decision-making model that can be utilized to demonstrate supervision strategies. This paper provides a legal case history of the *Ewing v. Goldstein* case and delineates possible discussion topics. This court case has merit for discussion as it adds another dimension to the Tarasoff "duty to warn." Counselor educators and counseling supervisors can enhance student learning of ethical codes and legal processes and principles by following a similar process described in this article. This article includes one of several ethical decision-making processes or models, potential legal and ethical concerns, and questions for supervisees, supervisors, and counselor educators.

Keywords: ethical decision-making, counselor supervision, *Ewing v. Goldstein*

Court Case History

Ewing v. Goldstein was a court case which transpired from 2001 through 2004 in the state of California (*Ewing v. Goldstein*, 2004). The case consisted of Cal Ewing, Janet Ewing, and the Ewing family versus David Goldstein. The court case summary detailed the events which happened in June of 2001 that led to the murder of Keith Ewing by

Geno Colello and Geno's subsequent suicide, which followed immediately after (*Ewing v. Goldstein*, 2004). David Goldstein was Geno Colello's marriage and family therapist between 1997 and 2001. Geno Colello was a former member of the Los Angeles Police Department and sought assistance for work-related emotional problems. He also attained the therapist to assist with his relationship problems with his former girlfriend, Diana Williams.

The *Ewing v. Goldstein* (2014) court case summaries contained other pertinent case history. It is unknown if the details in the court case summaries are complete or reflect an accurate description of all of the events. The following information was described in the court case summaries. In early 2001, Colello became increasingly depressed over the termination of his relationship with Williams. In June, Colello's depression significantly increased after learning that Williams was romantically involved with Keith Ewing. On June 19, 2001, Goldstein held a final face-to-face counseling session with Colello. On June 20, Goldstein spoke to Colello over the phone about his increased depression. Colello admitted to having thoughts about suicide but told Goldstein he was not actively planning on completing suicide at the time. Goldstein asked Colello to voluntarily check himself into an inpatient hospital to seek treatment.

According to the court case summaries, on June 21, 2001, Colello had dinner with his parents, and he told his father he was suicidal and wanted to kill Keith Ewing (*Ewing v. Goldstein*, 2004). Geno's father called Goldstein and told him about his son being suicidal and wanting to harm Ewing; thus, Goldstein recommended the father to speak to the son about voluntarily admitting himself into the Northridge Hospital Medical Center to seek psychiatric help. Geno checked himself into the Northridge Hospital on June 21 and received care under Dr. Gary Levinson.

On June 22, Levinson, a psychiatrist, planned to discharge Geno from the hospital and called the father to tell him that Geno was not suicidal (*Ewing v. Goldstein*, 2004). Colello's father subsequently called Goldstein who then called Levinson to plead with him to keep Goldstein in care; but Levinson released Colello. On June 23, Colello killed Ewing and completed suicide. As a result, the Ewing family, primarily consisting of parents Cal and Janet, sued the hospital and Goldstein over a failure to warn Ewing. The trial court ruled in favor of Goldstein on the statute of *Tarasoff v. Regents of the University of California* (1976). However, the case was moved up to the California Court of Appeals, Second District, Division Eight, and Goldstein was ruled guilty of failing to warn Ewing about his client's danger to harm, which was listed as wrongful death based on professional negligence (*Ewing v. Goldstein*, 2004).

Ethical Considerations in the Case of *Ewing v. Goldstein*

"Duty to warn" was a legal standard adopted first in California (*Tarasoff v. Regents of the University of California*, 1976), with some individual states following suit. This concept is covered as an exemption in Section B.2.a. entitled "Serious and Forseeable Harm and Legal Requirements" in the American Counseling Association's (ACA) *Code of Ethics* (ACA, 2014). According to the *Tarasoff v. Regents of the University of California* (1976) court case decision, a therapist "who knows or should have known that a patient poses a serious danger of violence to another and does not exercise reasonable care to protect the intended victim or notify the police can be held

liable (p. 345).” The “duty to warn” statute in California placed risk on the confidentiality ethical standard because it broke therapist-client confidentiality in order to act on the risk of harm to others. The *Ewing v. Goldstein* (2004) court brief quoted the Tarasoff ruling and withheld in the trial court that the Tarasoff case held precedent over *Ewing v. Goldstein* in that a therapist’s “duty to warn” was not enacted until the therapist has reason to believe the client poses a serious danger of violence to another within information from the boundaries of confidentiality between the client and the therapist. However, the court of appeals in the *Ewing v. Goldstein* overruled the trial court to include third party members to the client, specifically family members.

According to Wheeler and Bertram (2012), in regards to the ruling in California for *Ewing v. Goldstein*, the “duty to warn” by a psychotherapist includes those who predicted or believed a patient posed a threat of serious bodily injury or death to a third person, even when the therapist was told the information from a family member of the patient. The court case summary discussed the special relationship between the client and the therapist along with the therapist-patient privilege being preserved (*Ewing v. Goldstein*, 2004; Wheeler & Bertram, 2012). Wheeler and Bertram asserted that the privilege is to be kept unless it conflicts with the protection of life or the ACA *Code of Ethics* overarching principle of nonmaleficence, which occurs in the code’s Preamble. In order to improve the privacy and care for the client and prevent further harm, Zur’s (2009) discussion of the court decision suggested a safety net for those cases in which the therapist was informed of intent to harm information by a family member. This discussion also broadened the definition of who was to be considered a family member (Zur, 2009). Zur (2009) wrote that the decision in this court case was not beneficial to treatment professionals due to the ambiguity created with defining how a therapist can act in regards to breaking confidentiality, the possibility of privacy issues, and the precedent created that could encourage a rupture to client-therapist privilege and therapeutic alliances.

Supervision and Training Caveats to Consider

The precedent set by the California court was a precipitous one in the realm of counselors and other mental health professionals because it challenged the ethical principle of confidentiality and did not fully define who a family member consisted of for “duty to warn” or “duty to protect” purposes (Zur, 2009). The confidentiality ethical principle was formed to better establish a therapeutic alliance between the counselor and the client so the bond and trust can grow and the client can feel free to discuss subjects more openly with the counselor without repercussions for the most part. The American Psychological Association (2014) challenged the *Ewing v. Goldstein* ruling and placed a letter in support of petition in the California Supreme Court in 2004, but the court denied the case for further review and the case may no longer be ruled on any further nor reviewed.

According to the American Counseling Association’s *Code of Ethics* (2014), confidentiality includes respecting the privacy of the client, multicultural considerations, exceptions, and client access. The client in the *Ewing v. Goldstein* (2004) case had rights regarding his or her own care and privacy. However, the family communication between the father and the therapist was viewed as a patient communication aspect in the *Ewing v.*

Goldstein ruling, thus challenging these ethical standards. The decision has been interpreted as an attempt to add to existing legislation that promoted a broader exemption to confidentiality (*Ewing v. Goldstein*, 2004). The *Code of Ethics* discusses reasonable efforts to exempt confidentiality in regards to best protect the client and other people, but it does not discuss the third party family exception regarding “duty to warn” and “duty to protect” (ACA, 2014). The California case law and statutes regarding “duty to warn” provided a broader terminology for an intended safety net for all clients and potential harm toward others, but also conflicted with the American Counseling Association’s *Code of Ethics* regarding confidentiality and exceptions to the rule.

Legal Implications

There are legal implications for counselor trainees and supervisees which merit discussion in considering such a court decision. One challenge for counselor educators would be to encourage students to research the statutes of confidentiality for the states in which they hope to practice. For example, Ohio law has had a “duty to warn” law in place since 1999, which is the Ohio Revised Code Annotated 2305.51 (National Conference of State Legislatures, 2013). The statute indicates that only the client or knowledgeable person may communicate the knowledge of the situation to where the mental health professional must act or suffer charges if liable for damage or a civil suit. The law also includes directions on what acceptable actions a mental health care professional must take in order to be immune to “duty to warn” charges (National Conference of State Legislatures, 2013).

Ethical Decision-Making Discussion

The textbook *Counselor and the Law* provides a legal and ethical decision-making model developed by Wheeler and Bertram (2012). The model consists of defining the problem, dilemma, and sub-issues; identifying the relevant variables; knowing the law, ethics codes, and institutional policy; being alert to personal influences; obtaining outside perspective; enumerating options and consequences; deciding and taking action; and documenting decision-making and follow-up actions (Wheeler & Bertram, p. 37). These steps will be discussed with possible suggestions for utilizing the court case information provided in the *Ewing v. Goldstein* (2004) ruling.

Defining the Problem, Dilemma, and Sub-Issues

The primary problem when reviewing the *Ewing v. Goldstein* (2004) case was the lack of how the psychotherapist defined and operationalized the “risk of harm” to the client’s self and another person. According to the ACA *Code of Ethics* (2014) Section B., numbers 1.b. and 1.c., counselors are to respect a client’s privacy and respect a client’s confidentiality. In this case, Colello had not spoken directly to the therapist about his intent to harm another person (i.e., his ex-girlfriend’s new boyfriend ; *Ewing v. Goldstein*, 2004). The definition of the problem is complicated in this case because the impetus for a perceived lack of action to warn others by the therapist was based on a report by the client’s father. The ACA 2014 *Code of Ethics* Section B.2.a., labeled “Serious and Foreseeable Harm and Legal Requirements,” addresses guidelines for counselors about

one exclusion of confidentiality, but the dilemma occurs due to the fact that statements the client made were not given directly to the therapist.

One dilemma when considering the ethical decision-making process was that the therapist did not have direct contact with the client after the client had been voluntarily hospitalized (*Ewing v. Goldstein*, 2004). One sub-issue was it would be difficult to assess continuous lethality without direct daily contact with a client. Another sub-issue to this dilemma was that the therapist may have confidentiality concerns when discussing client's privileged information with a family member without verbal or written consent. This situation created a dilemma because of fidelity, one of the overarching principles in the ACA *Code of Ethics* preamble (ACA, 2014). Another sub-issue was the therapist who understood the client's distress had limited knowledge about whether the client's stated intentions would be acted upon or if the statements were said during a crisis or "heated moment." The client may have waived or not have had an intention to act upon those statements, but the fact that the client acted upon his stated intentions created the need for further review of ethical dilemmas for practicing professionals.

Identifying the Relevant Variables

There is an ethical decision-making dilemma for counselors who are faced with issues with balancing "do not harm," also known as nonmaleficence, breaching confidentiality, and fidelity, all important guiding concepts of counselor practice noted in the ACA *Code of Ethics*. All of those elements were evident in this court case. In this case, a most pressing relevant variable was that the client previously had suicidal thoughts, and the client had been voluntarily hospitalized. Another important variable was that the client had remained in the hospital for only one day due to his voluntary admission (*Ewing v. Goldstein*, 2004). An ethical decision-making model discussion might evolve around these variables with the debate on whether or not this short-term hospitalization was an insufficient treatment or merited review of the hospital services. Contact with the client's father was not a part of the "duty to warn" legal principle or the ethical duties for a therapist, but the previous talks with the client may have indicated a need for psychiatric services. An important consideration for counselor trainees and supervisees in identifying the variables is to realize was that the client had a rapport with the therapist and had previously spoken to him about his emotional issues and depression. The suicidal thoughts which occurred after the client's discharge from the hospital should have merited further evaluation by another treatment professional to determine the mental health status of the client and subsequent decisions to be made for the sake of client care.

Knowing the Law, Ethical Codes, and Institutional Policy

One primary ethical decision-making issue was the risk of harm to self and another, which was reported by the Colello's father. Many state laws contain a mandatory "duty to warn" statute, but in most instances, these statutes do not delineate what a therapist is responsible for when a family member communicates the possibility of harm. The *Ewing v. Goldstein* (2004) California case law had posited a new caveat in this case and broadened the definition of "duty to warn" to include information given by family members, which beforehand was not part of the definition or criteria for "duty to warn." The ACA ethical code of confidentiality (Section B.1.c.) was applied by the therapist in this matter; however, a duty for the therapist to break confidentiality in order to prevent

the client from harming himself and others may have been called for in this case. The client should have been hospitalized longer if the counselor had reason to believe the client had considered “harm to self or others” (ACA, 2014, Section B.2.a.).

Being Alert to Personal Influences

The personal influences of potential counselors in this matter could vary. One possible personal influence alert for counselors occurs in how to proceed with making an ethical decision when faced with conflicting ethical standards of care. Another potential alert for counselors happens when the conflicts of privacy and/or confidentiality versus safeguarding potential victims and family members happens. If a therapist was following the guidelines of confidentiality due to a personal bias upholding fidelity, then a conflict would occur with the “duty to warn” guidelines and not having had a direct conversation with the client within a reasonable time frame in order to evaluate his mental status.

Obtaining Outside Perspective

One suggestion for supervision discussion would be how a counselor could seek proper supervision or discuss with colleagues about how to proceed in a case such as this. There could have been an importance placed on a collaboration between psychiatrist and therapist with a case review or an assertive stance on continued hospitalization taken by the therapist with Dr. Levinson, the psychiatrist who discharged Colello from the Northridge Hospital after a one-day stay (*Ewing v. Goldstein*, 2004). In this case, a family meeting including the client’s father, the client, and the therapist may have changed the outcome.

Enumerating Options and Consequences

In considering options for this case, the therapist had a possible choice of whether or not to speak directly with a client the night of the release in order to re-evaluate him for continued hospitalization. This option could have resulted in a more positive consequence. One important lesson for counselors, supervisees, and counselor educators would be the benefit of understanding the importance of evaluating the client for potential intentions of harm to self or others or related symptoms after hearing about client intentions by someone other than the client. When evaluations of a client who expressed thoughts of harming others are missed, there are many possible negative consequences. Also, a lesson about ethical decision-making was evident in the timing of the decisions. When a client is suicidal or homicidal, it is an important consideration to evaluate clients on an urgent or crisis basis for a more potential positive consequence.

Deciding and Taking Action

The knowledge of a particularly vulnerable situation for the client needed to trigger the ethical principles of beneficence and nonmaleficence for the therapist regarding the Wheeler and Bertram (2012) ethical decision-making model. The therapist needed to speak directly with the client after the one-day voluntary hospitalization and assess whether or not the client’s symptoms warranted continued hospitalization. Should a client become suicidal or homicidal again after discharge, therapists could possibly find other resources or psychiatric hospitals for admission.

Documenting Decision-Making and Follow-Up Actions

The actions and notes were properly documented by the therapist according to the *Ewing v. Goldstein* (2004) case file, and this is an important task. Another possible lesson for supervisees was that the one-day voluntary hospitalization did not meet the needs of the client in this instance. Immediate follow-up services may have met Colello's needs at the time, but it is also possible that a lack of follow-up contact with the client resulted in the actions of the client the following day after discharge. Although treatment professionals cannot predict client behavior, having an ethical decision-making model as a guide to documenting decisions and goals made with the client are important.

Conclusions

One way counselor educators and supervisors can increase the knowledge base of supervisees and counselor trainees is to inject a review of a court case and discuss the aspects of an ethical-decision-making model. The *Ewing v. Goldstein* (2004) case contains many concepts covered in the ACA 2014 *Code of Ethics*, but the dilemmas occur when there are competing ethical standards and legal statutes that have yet to be written in many states. For example, the lack of a proper definition for what the court considered a "family member" created controversy regarding which third party members may be considered family members who may provide valuable information to assist with the client's treatment (Zur, 2009). The bright side of this ruling for counselors was that the state of California has been the only state in which this precedent is in effect (Wheeler & Bertram, 2012). The topic of state legal implications merits discussion because some states have diverse statutes. An alternative view of "duty to warn" was located when comparing state laws about confidentiality; legislators in Texas refused to adopt statutes that could present ethical dilemmas or exceptions to confidentiality (Wheeler & Bertram, 2012). One challenge for counselors is to become fully aware of the legal and ethical definitions for "duty to warn" or "duty to protect" in each state's practice guidelines or legislative acts. For example, in 2006, a bill was passed in the state of California whereas "duty to warn" became a law and notifying the intended victim and law enforcement became mandated for the therapist, social worker, or other mental health worker in order to be considered immune to liability charges (Zur, 2009).

Examining ethical dilemmas is important for future and present counselors. We recommend that this court case review format be utilized by counselor educators in teaching ethics and legal aspects of counseling. Any ethical decision-making model could be beneficial when comparing case outcomes with ethical standards. Broadening the "duty to warn" guidelines and liabilities for professional counselors creates conflicts that have the potential to harm the credibility of the mental health profession. If state statutes and ethical dilemmas that apply to counseling situations are not fully compared and reviewed by professional counselors and counselor educators, it is possible that clients will find limits to confidentiality unacceptable, thereby eroding the trust that is so important to the professional counseling relationship. It is recommended that professional counselors and counselor educators work with state legislators to ensure that the nuances and importance of confidentiality, and its limitations, are maintained in law. A lack of trust towards the counselor's moral judgment and fidelity may complicate further services for multiple clients who are in desperate need of mental health services.

References

- American Counseling Association (ACA). (2014). *Code of ethics*. Alexandria, VA: Author.
- American Psychological Association. (2014). *Ewing v. Goldstein*. Retrieved from <http://www.apa.org/about/offices/ogc/amicus/ewing.aspx>
- Ewing v. Goldstein, 120 Cal. App. 4th 807 (2004). Retrieved from <http://www.lawlink.com/research/CaseLevel3/81474>
- National Conference of State Legislatures. (2013, January). *Mental health professionals' duty to protect/warn*. Retrieved from <http://www.ncsl.org/research/health/mental-health-professionals-duty-to-warn.aspx>
- Tarasoff v. Regents of the University of California, 551 P.2d 332 (Cal. 1976).
- Wheeler, A. M., & Bertram, B. (2012). *The counselor and the law* (6th ed.). Alexandria, VA: American Counseling Association.
- Zur, O. (2009). *Tarasoff and 'Ewing vs. Goldstein' statute in California*. Zur Institute. Retrieved from <http://www.zurinstitute.com/tarasoff.html>

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