Civil and Criminal Commitment for Homicidal Ideation

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Objectives

• Understand the definition and characteristics of homicidal thoughts

• Understand the basis of civil commitment

• Understand the basis of evolving criminal standards as it relates to homicidal thoughts

Format

• Introduction
• Case Presentation (Civil)
• Legal Discussion (Civil)
• Case Presentation (Criminal)
• Legal Discussion (Criminal)
Homicidal Ideation

- Thoughts of Killing Another Individual

Types of Thoughts

- Fleeting
- Welcome
- Intrusive
- Normal

Normal Homicidal thoughts
Fantasy

• Day dreaming:
  – Any cognitive activity representing a shift of attention away from a task

• Fantasy:
  – An elaborated set of cognitions characterized by preoccupation, anchored in emotion, and originating in daydreams.
  • Can be thoughts but also involve the use of images, feelings and internal dialogue


Relationship of Fantasy to Act

• 86% of serial sexual murderers had “obtrusive” fantasies compared to 23% in single sexual murderers¹
• Intelligence plays a role in translating the fantasy into reality²
• When fantasy creates unbearable inner stress, action is required²


Diagnosis

• No Diagnosis

• Personality Disorder
  – e.g. Antisocial, Borderline and Narcissistic

• Mood Disorder
  – Filicide

• Psychotic Disorders
Prevalence of Homicidal Ideation

- Survey of Undergraduate Psychology Students (n=312)
  - 68% Reported having fantasies
    - Males 73%
    - Females 66%
  - Men had more often and they lasted longer
  - 18% within the last month and 71% within the last year


Triggering Events

<table>
<thead>
<tr>
<th>Event</th>
<th>Overall</th>
<th>Male</th>
<th>Female</th>
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<tr>
<td>Personal Threat</td>
<td>55%</td>
<td>55%</td>
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<td>Public Humiliation</td>
<td>53%</td>
<td>53%</td>
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<tr>
<td>Threats to Someone Else</td>
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<td>47%</td>
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<td>Personal Attack</td>
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<td>35%</td>
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<td>Lover’s Quarrel</td>
<td>30%</td>
<td>21%</td>
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<td>Family Argument</td>
<td>28%</td>
<td>20%</td>
<td>38%</td>
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<td>Dispute Over Money</td>
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<td>Work Dispute</td>
<td>16%</td>
<td>23%</td>
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<tr>
<td>Roadway Hassle</td>
<td>15%</td>
<td>19%</td>
<td>12%</td>
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Victims of Most Recent Fantasies

A Civil Case of Homicidal Ideation

Background History

- 18 year old Caucasian male
- Parents divorced in early teen years
  - Lives with Mother
  - Father lives out of state
- Physical abuse
  - Father – Pushing/grabbing
  - Brother – “more than playful fighting”
Education

• Senior in High School in private school

• No expulsions or suspensions

• Grades - B's (3.0)

• No extracurricular activities

Hobbies + Interests

• “Surfing the internet”

• Playing video games
  – Call of Duty and Battlefield
    • 12 hours per week playing
    • “Taught me a lot about firearms”

• TV: Arrested Development, Dexter and The Walking Dead

• Smokes Marijuana 3x/month

• Tried LSD + Mushrooms in the past

Legal and Violence History

• No history of violence

• Was arrested after text message:
  – “Believe me when I say I want to chop you up so no one can find you.”
  – Charges were dropped.

• No other criminal history or misdemeanors
Psychiatric History

• Seeing psychotherapist for ~ 1 year for Adjustment Disorder

• Psychiatrist with concern for Bipolar Disorder
  – Started mood stabilizer (Lamictal)
  – Antidepressant (Lexapro)

• No history of psychiatric hospitalizations

Risk Assessment?

• What do you think?

Risk Assessment?

Forensic Psychiatry Consult
  - Violence Risk Assessment
Therapy

- Told therapist about “fantasies” of killing people that
  - Began in 8th grade
  - “something that you wish you could do.”
  - 10th grade when they became daily

- Therapist called police to go to house
  - Transferred to ED where risk assessment was performed
  - Directly admitted to hospital

- Two prominent “fantasies”
  - Killing a stranger
  - Performing a school shooting

Fantasy: Killing a stranger

- Breaking into a stranger’s house by “picking the lock.”
  - Researched how to pick locks
- He had thoughts of torturing the tenants
  - “carving them with a knife”
- Use their kitchen knife to kill them to avoid detection
- Never chose a victim
  - Less detectable if random
- Why?
  - Would provide an emotional release
Fantasy: School Shooting

• Began while taking his final exam previous semester

• AR-15 - shooting “into the crowd.”
  – Would cause the students to run towards the doorway
  – “easier to kill more people.”

• Why “kill these children”
  – “they aren’t children, they are adolescents.”
  – “I never said they deserved to die.”

Firearms

• Brother has a gun

• Reported being a “big second amendment advocate”

• Concern over being involuntarily hospitalized, wanted to obtain a firearm

• Posted on Facebook about wanting to obtain “a rifle that has no serial number”

Risk Assessment?

• What do you think?
Static Risk Factors
• Age (18 - 29 have the highest risk of violence)
• Sex (males > females in the general population)
• Past History of Violence
  – Sent a threatening text message to his ex-girlfriend that resulted in his arrest.
• Violent Thoughts
  – Violent thoughts spanning four years.
  – Progressed to plans
    ▰ Steps to act on those plans (researching lock picking on the internet)
  – Not rehearsed violent acts.

Dynamic Risk Factors
• Mental illness
  – Depressive Disorder, NOS (DSM-IV)
  – Some symptoms of Borderline Personality Disorder
• Substance Abuse
  – MJ
  – ETOH
  – Hallucinogens
• Poor Insight!
  – The seriousness of his statements of violence.
  – Substance Use

Recommendations
• He should receive mental health treatment on a regular basis:
  – Diagnostic evaluations - assure the correct diagnosis.
  – Medication management.
  – Violence risk assessments on an ongoing basis to determine frequency and severity.
  – Psychotherapy for Borderline Personality Disorder.
  – Increase his insight - symptoms, substance use and violent thoughts.
What Happened?

- Stayed on unit for 7 months.
- Month 5 - Hired lawyer
  - Magistrate determined need for continued hospitalization
- Transferred to State Hospital Civil Commitment unit.
  - Discharged after 4 weeks.
- No further F/U noted

Civil Commitment

Overview

Historical Perspectives
Legal Criteria
Implications
Definitions

- Involuntary commitment
- Civil commitment
- Emergent detention
- Inpatient versus outpatient

Historical Perspective

- Mrs. Packard (1860s)
- Need for treatment
- Shift to dangerousness

Legal Bases for Civil Commitment

- Parens Patriae - parent of the country
- Police power – state’s authority to protect its citizens
"Pendulum" Shifts

Lake v. Cameron
- Washington D.C. Court of Appeals (1964)
- Judge Bazelon
- "Least restrictive alternative"

O'Connor v. Donaldson
- U.S. Supreme Court (1975)
- Donaldson was confined for 15 years
- The state cannot Constitutionally confine without more, a non-dangerous mentally ill person who is capable of surviving safely in freedom by himself or with the help of family or friends
Lessard v. Schmidt

- Federal District Court (1972)
- Declared unconstitutional Wisconsin’s statute on civil commitment
- Criminalization of civil commitment
- Pendulum: high water mark of protection of liberty

Lessard v. Schmidt (cont.)

- Right to request jury trial
- Exclusion of hearsay evidence
- Warning that patient may remain silent
- Commitment criteria must be proved beyond a reasonable doubt

Standards of Proof
Addington v. Texas

- U.S. Supreme Court (1979)
- Standard of Proof: Clear and Convincing Evidence

Foucha v. Louisiana

- U.S. Supreme Court (1992)
- Insanity acquittees
- Insanity acquittees who are dangerous but no longer mentally ill cannot be held

Criteria for Civil Commitment

- Mental illness
- Dangerousness
- Treatability
Civil Commitment Criteria

- Mental illness
- Danger to self
- Danger to others
- Grave disability
- Least restrictive alternative

Definition of Mental Illness for Civil Commitment

- Varies by jurisdiction
- Does not equate with the DSM-5
- Statutory or case law
- Some jurisdictions exclude specific diagnoses

Danger to Others

- Imminent harm
  - Recent action or attempts to inflict bodily harm
  - Threatens serious bodily harm
- “Serious” bodily harm
- Likelihood of bodily harm
Civil Commitment
Myths & Implications

- Easy to commit most people with serious mental illness
- Commitment is based on treatment need
- Adequate numbers of psychiatric hospital beds
- Under treatment or delayed treatment

Key Points

- “Pendulum” swing from parens patriae to dangerousness as basis for commitment
- Addington emphasizes balance of liberty and need for treatment
- Continued “pendulum” movement

Criminal Commitment for Homicidal Ideation
“Cannibal Cop”

Gilberto Valle (NYPD)

Arrested in October 2012 and charged with Conspiracy to Commit Murder

Potential victims included his wife and other acquaintances

Case centered on separating fantasy from plans


• Born in Queens, New York in 1984

• Graduated from University of Maryland in 2006 with a Degree in Psychology

• Joined New York City Police Department in 2006

Met online in fall of 2009

Kathleen became pregnant in 2010

Married June 2010

Baby Daughter born in 2011

Behavior Change

- Kathleen became suspicious because Gilberto was acting odd
- She installed spyware on his computer
- Found disturbing images and conversations regarding herself and others
- Immediately left, provided laptop to the FBI

Investigation

- Investigation uncovered disturbing fantasies, communications and plans
- Fantasies involved Murder, Rape, Torture and Cannibalism
- Attempted to discern information about potential victims
- Attempted to contact some individuals to inquire about their routine

Investigation

- Found two dozen individuals whom Valle talked about kidnaping
- During a one week time frame Valle committed:
  - to delivering his wife to India
  - Kidnapping and delivering woman to New Jersey
  - Kidnapping a woman from Ohio
Investigation

• Made no attempts to purchase plane tickets or make other travel arrangements

• Stated in multiple places “its all make believe”

• “If I was absolutely 100% sure to get away with it, I think I would think about kidnapping a woman”

Francescani, Chris. “Cannibal Cop” kidnap plots were fantasy: defense lawyers.

 Arrest and Trial

• Arrested in October 2012

• Charged with Conspiracy to Commit Murder and Illegally Gaining Access to Law Enforcement Database

• Trial centered on what was fantasy and what was actually planned
  – Charged with activity related to only 3 victims

Francescani, Chris. “Cannibal Cop” kidnap plots were fantasy: defense lawyers.

Conversations

• “cook her over low heat, keep her alive as long as possible”

• When asked how big his oven was:
  – “Big enough to fit one of these girls if I folded their legs.”

• When warned against mercy:
  – “If she cries out, don’t show her mercy.”
  – “Don’t worry. We’ll gag her.”

Goldstein, Joseph. Officer Plotted to Abduct, Cook and Eat Women, Authorities Say.
**Trial**

- Evidence presented at trial showed that he used the screen name Girlmeat Hunter and visited darkfetish.net

- Internet searches:
  - Best rope to tie with
  - Information on “white slavery”
  - How to make chloroform
  - Recipes for human flesh

  *Handbook, Simon. “He was going to watch the blood rush from my body…” DailyMail.com, February 26, 2013.*

**Victims**

- Kimberly Sauer
  - College friend of Gilberto
  - Him and his wife visited her in July 2012
  - 3 days before Gilberto told a co-conspirator:
    - “When I see her Sunday my mouth will be watering”
    - “Eyeing her from head to toe… for the day I cram a chloroform-soaked rag in her face.”
  - After the meeting:
    - “She looked absolutely mouthwatering. I could hardly contain myself”


**Legal Course**

- Arrested in October 2012

- Convicted in Federal District Court in March 2013 by unanimous jury verdict after a 12 day trial

- Conviction overturned on June 30, 2014 (Not Guilty, Notwithstanding the verdict)

- Overturned conviction upheld by Federal Appeals Court in 2015 (2:1 Vote)

Dismissal

- “Despite the highly disturbing nature of Valle’s deviant and depraved sexual interests, his chats and emails about these interests are not sufficient — standing alone — to make out the elements of conspiracy to commit kidnapping.” - Judge Paul Gardephe

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Dangerous Mind: Criminal Commitment

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Elements of Crimes
Mens Rea & Culpability

Thoughts Alone

- Insufficient
- Need guilty mind and guilty act
- Evidence of acts may seem minor
  - Threat
  - Social media communication

Crimes for Making Threats: The Classics

- Assault
- Criminal threats
- Terrorist threats
- Domestic violence
- Harassment
Classic Elements

- Willful threat
- Threat communicated to intended victim
- Reasonable person believes threat likely to be carried out
- Target believes threat will be carried out

Additional Crimes

- Threats in interstate communication
- Conspiracy

Conspiracy

- Punishes individuals who:
  - Agree to commit a crime
  - At least one conspirator makes an “overt act”
  - Intend to commit the offense that is the object of the conspiracy
- Overt act indicates the conspiracy has gone beyond the purely “mental state”
Example: Elonis v. U.S. “Facebook Threat”

• U.S. Supreme Court (2015)
• Interstate Threats Statute, 18 U.S. Code 875
• Postings on social media: threat vs lyric
• Criminal law
• First Amendment Freedom of Speech

Elonis on Facebook October 2010

• “There’s one way to love you but a thousand ways to kill you. I’m not going to rest until your body is a mess, soaked in blood and dying from all the little cuts. Hurry up and die…”

First Amendment & Freedom of Speech

• Protected Speech - Constitutional protection
• Unprotected Speech
  – Obscenities
  – Child pornography
  – Libel
  – Incitement to violence
  – True threats
True Threat

- Definition remains unclear
- Focus on response to the speech

Elonis v. U.S. (cont.)

- More than prove that reasonable people would view statements as threats
- The defendant’s own state of mind matters
- Prosecution did not do enough to prove Elonis’s intent when he posted threatening lyrics on Facebook
- Did not decide level of mens rea

Patient Threatens Violence in Therapy Session

- Clinician Tarasoff-type responsibilities
- Charges for criminal threats after telling therapist thoughts to murder
Patient Reveals Threats

- Jurisdictions vary
- Some jurisdictions - patient cannot be criminally liable for threats revealed in therapy
- Some jurisdictions unclear/undecided
- Threats made directly to victim are subject to prosecution

Policy Considerations

- Controversy whether to prosecute patients
- Law enforcement – leave victim without protection
- Mental health – worry about “chilling effect”
- Disincentive for patients to discuss issues
- Turn therapists into agents of the police

Key Points

- Cases from “criminal threats” are complex
- Jurisdictional variation
- Fact specific
- Intent of the person making the threat is relevant