Avoiding Liability for Client Violent Acts

Can we be held negligent and liable by the court system for failing to predict that a client will be violent?

> In short, it is extremely unlikely that any court will hold a provider liable for failing to predict patient behavior. Although, it may feel like it.
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> The fact is that, given the state-of-the-art, we simply cannot predict behavior. People are too complex to predict. Almost all courts will agree and often make statements that they do not hold providers liable for failing to predict behavior but find liability only when a provider breaches the standard of care.
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> Dr. John Monahan, one of the country's preeminent experts on violence risk, commented,
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> > Most of the Tarasoff like cases on which I have worked have faulted clinicians not for making an inaccurate prediction but for failing to gather information that would have made a reasonable effort at prediction possible. Monahan, *Limiting Therapist Exposure to Tarasoff Liability,* American Psychologist, 242- 250, 243, March 1993.

What can we do to reduce the risk that we will be held liable when a client is violent to others?

> While we cannot predict behavior, we can adequately assess risk when the process is guided by the best evidence-based tools. The consensus in the literature is that the assessment of the risk of violence to others should not be intuitive but rather "structured."
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> "...but all of... [the literature] suggests that only a minority of mental health professionals routinely employ structured risk assessment." Monahan, *Tarasoff at Thirty: How Developments in Science and Policy Shape the Law,* 75 Univ. of Cincinnati Law Review 497 (2007).

Researchers and other experts have developed a variety of structured risk assessment instruments which are all based on the best evidence available concerning violence risk and which are intended to guide the professional through the process of risk assessment while focusing on evidence-based risk factors.

Structured assessment instruments also guide the professional in treatment and safety planning and make it significantly more likely that all treatable risk factors will be identified. Since structured assessments contain a checklist of evidence-based risk factors, they help the professional know what is unknown and what to ask questions about.

Three of the best structured risk assessments for assessing the risk of violence/danger to others are the Historical Clinical Risk-20 (HCR-20), the Sexual Violence Risk-20 (SVR-20), and the Spousal Assault Risk Assessment-20 (SARA-20). The SARA is somewhat misnamed as it is intended for assessing and planning for intimate partner violence as well as potential secondary targets such as other family and friends living in the home.