

**THREAT ASSESSMENT FROM TARASOFF TO ELONIS:
PERCEPTION VERSUS INTENT**

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*In its 2015 decision in *Elonis v. U.S.*, the United States Supreme Court overturned a conviction under a 1939 federal statute making it a crime to communicate threats in interstate commerce. Defendant Anthony Douglas Elonis claimed that his Facebook rap lyrics fantasizing the murder of his estranged wife were purely therapeutic. His wife, the FBI and ultimately the jury, however, had taken his social media rants as serious threats of harm.*

On appeal, the Supreme Court ruled that the trial court erred in instructing the jury to apply a negligence standard (what a “reasonable person” would have perceived as a threat) to a criminal case (in which the defendant’s mental state is critical). The question for the jury, ruled the Supreme Court, should have been whether Elonis actually intended to threaten or—at the very least—exhibited reckless disregard for whether his Facebook postings would be perceived as a threat. These have become questions psychologists may be called upon to consider in evaluation of individuals in forensic settings in which statements on social media are at issue.

*Pursuant to the 1976 decision in *Tarasoff v. Regents*, psychologists in California and many other states risk liability if they fail to warn potential victims of dangers posed by their clients. While the potential deadly consequences of underestimating threats may lead mental health and law enforcement professionals to err on the side of caution, over-prediction of violence has serious consequences as well—in terms of damage to therapeutic relationships, personal liberty and free speech. What does the research say about how accurately we are able to assess threat? How should the courts apply that research in constructing appropriate standards in both criminal and civil cases in an age of social media, where a lack of informative context has raised a whole new set of issues?*

**REMEMBERING EMOTIONAL, CENTRAL AND PERIPHERAL
INFORMATION: HOW DIFFERENT MEMORY TASKS AND INDIVIDUAL
DIFFERENCES INFLUENCE EYEWITNESS TESTIMONY**

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Few researchers have explored how individuals remember details of criminal events in the context of eyewitness testimony. With more detailed information, jurors, for example, could deduce psychological causality and attribute responsibility more accurately. Memory research reveals that remembering specific details is dependent on the type of task used.

When using recall, individuals have difficulty remembering emotional details that could provide insight into the intentions of the criminal. However, recognition favors memory for emotional details, providing greater depth of knowledge. Differences in personality, such as emotional intelligence, can influence memory as well. We explored these factors by testing memory of a fictional rape scene using three categories of information: emotional, central and peripheral. For recall and recognition, there were significant differences between emotional, central and peripheral details. Recognition favored emotional details; recall favored central and peripheral details. In addition, we found advantageous processing of information for emotionally intelligent individuals. Our research reveals how individuals possess a range of knowledge about criminal events, which provides valuable information to jurors for deducing psychological causality. We show how individual differences and the type of memory task used can impact remembering, which has implications for the cognitive interview.

**COMMENTARY: DEVELOPMENTS ON ATTACKS AND RESTRICTIONS
ON EXPERT WITNESSES**

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