

The Importance of Confidentiality Between Domestic Violence Advocates and Domestic Violence Victims

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Domestic violence is a critical problem, and confidentiality and privacy are essential to protecting victims from perpetrators' recurring violence.

Countries in Central and Eastern Europe (CEE) and the Former Soviet Union (FSU) working to end domestic violence and hold batterers accountable for their crimes of violence should pass laws to protect the confidential communications of domestic violence advocates and domestic violence victims. The lessons learned by domestic violence advocates in the United States, where issues of confidentiality and privacy have not always been addressed effectively, may be helpful to advocates in CEE/FSU countries. Confidentiality and privacy lead to increased safety for victims of domestic violence.

Perpetrators of domestic violence create a pattern of fear and cause serious injury and even death to their intimate partners and children across the world. The prevalence and pervasiveness of domestic violence is well documented. On average, at least one in three women is beaten, coerced into sex, or otherwise abused by an intimate partner in the course of her lifetime.¹ According to the World Bank, "women aged 15-44 are more at risk from rape and domestic violence than from cancer, motor accidents, war and malaria."² The World Health Organization (WHO) also reported that studies from a range of countries show that 40-70% of female murder victims were killed by an intimate partner.³

While domestic violence can be lethal, it involves an ongoing pattern of abuse and control by perpetrators. Indeed, "[i]t is vital to understand that battering is not a series of blow-ups. It is a process of delicate intimidation intended to coerce the victim to do the will of the victimizer."⁴ Due to intimidation and embarrassment, many victims do not seek help from the police. According to the United States National Crime Victimization Survey, the most common reasons given by victims for not contacting the police were that they considered the incident a private, personal matter; they feared retaliation; or they felt the police would not be able to do anything about the incident.⁵ In the United States, at least 1 in 6 women victims seek help from victim services agencies.⁶ "A 2005 WHO study based on data from 24,000 women in ten countries noted that 55% to 95% of women who had been physically abused by their partners had

¹ *Unite to End Violence Against Women Fact Sheet*, United Nations Secretary General's Campaign, United Nations Department of Public Information (DPI/2498), February 2008.

² *Id.*

³ *Id.*

⁴ Ann Jones, *Next Time, She'll Be Dead: Battering and How to Stop It*, 88 (1994).

⁵ Lawrence A. Greenfeld, *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends*, Bureau of Justice Statistics, 21 (March 1998).

⁶ *Id.* at 20.

never contacted the police, non-governmental organizations or shelters for help.”⁷
The WHO study cites fear and shame as reasons for not seeking help.⁸

Confidentiality and privacy are essential for domestic violence programs to protect victims of domestic violence.

Women using domestic violence program services are taking courageous steps toward freedom. Domestic violence programs do not simply offer shelter from the storm of domestic violence; they offer advocacy services. That advocacy is rooted in providing safety, so it must remain confidential in order to provide battered women with a refuge in which to weigh options and make plans for achieving freedom from the batterer’s violence. Safety planning, including taking steps to ensure that a victim’s location, telephone number, and other contact information will not be revealed, is essential. This is why domestic violence programs do not release confidential information without the consent of victims.

Without the assurance of confidentiality, many victims would not seek help from a shelter or domestic violence program. The communications of advocates and victims need to be confidential because the danger the victim is in cannot be assessed properly without full disclosure of the history of abuse. Legal options cannot be considered thoroughly without knowing intimate details of the battered woman’s life and a proper safety plan cannot be created without knowledge of her circumstances. As noted above, battered women fear their information will be shared with others. Domestic violence programs should not be forced to share information that would shatter the safety battered women are seeking.

In 1995, Bonnie J. Campbell, the Director of the United States Violence Against Women Office, presented a report to Congress about the need for domestic violence programs to have confidentiality with the victims to whom they speak.⁹ Ms. Campbell stated:

“Domestic violence victims must be able to communicate freely with their counselors, secure in the knowledge that the private thoughts and feelings they reveal ... will not be publicized as a result of reporting the crime. Without assurances of confidentiality, sexual assault and domestic violence victims will be reluctant to contact rape crisis centers and battered women’s shelters. Moreover, without the ... benefits of counseling, victims may be hesitant to report crimes and aid in their prosecutions.”¹⁰

⁷ *Unite to End Violence Against Women Fact Sheet*, United Nations Secretary General’s Campaign, United Nations Department of Public Information (DPI/2498), February 2008.

⁸ *Id.*

⁹ *Report to Congress: The Confidentiality of Communications Between Sexual Assault or Domestic Violence Victims and Their Counselors, Findings and Model Legislation* (hereinafter *Report to the United States Congress*) available at: <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=169588> (last accessed 19 September 2007)

¹⁰ *Id.* at 2.

This Report to the United States Congress also stated that the services offered by domestic violence programs “are the most effective means of protecting battered women and ending domestic violence because of the special nature of domestic violence and the unique combination of services offered... Battered women’s programs [are] essential to battered women’s ability to end the violent relationship and rebuild her life.”¹¹

Forcing disclosure of domestic violence organizational records will have a chilling impact on the relationship between domestic violence victims and their advocates and will compromise the safety of battered women.

Divulging confidential information about the victim or subpoenaing the advocate or the program’s records will have a “substantial chilling effect”¹² on the victim/advocate relationship, including that victims will be “reluctant to be open and honest about their experiences.”¹³ “Experience has shown that the communications between victims and counselors are so extremely personal that the mere possibility of exposure to just one individual other than one’s personal counselor may inhibit a victim ... There is some evidence that concerns about potential disclosure in litigation do inhibit victims.”¹⁴

The safety of victims is guaranteed only to the extent that they can trust programs to offer confidential and private services. For that reason, many shelters have secret locations and confidentiality policies requiring staff and residents to honor the confidences and privacy of those who seek services. If women feel that their confidences will be broken, the program will stop being a “haven[] where [a battered woman] can recuperate from her wounds, recover her sense of self, and re-evaluate her situation.”¹⁵

Just as a bell cannot be unrung, once confidentiality and privacy have been breached, the battered woman’s safety and sense of trust cannot be repaired. The records of domestic violence victims are confidential and private and therefore should be protected from discovery or exposure during the trial process. The negative impact of disclosure reaches beyond the individual case. Once an advocacy program is forced to disclose information, the program’s reputation as a place of safety is lost.

Forcing disclosure of domestic violence organizational records will have a negative impact on battered women reporting violence and cooperating with prosecution.

Forcing disclosure of advocacy records will deter many victims who would otherwise seek important services. After the *Pittsburgh Action Against Rape* (1981) decision, a court decision in the United States in which the court

¹¹ *Id.* at 13-14.

¹² *Report to the United States Congress* at 19.

¹³ *Id.*

¹⁴ *Id.* at 20-21.

¹⁵ Del Martin, *BATTERED WIVES*, 197 (1976).

allowed access to a rape crisis center's records, victims requested their records be returned and many victims terminated their relationship with the crisis center altogether out of fear that their information would become public.¹⁶

In the state of Massachusetts, the *Commonwealth v. Stockhammer*¹⁷ and *Commonwealth v. Figueroa*¹⁸ cases allowed defense counsel to gain access to confidential rape crisis center records. These decisions led to defense counsel routinely filing motions for access to rape crisis center records for the purposes of harassment of the victim and with the goal of obtaining conflicting statements.¹⁹ These requests were rarely denied.²⁰ As a result there was a significant decline in the number of women seeking the services of rape crisis centers in the state of Massachusetts. There was a 30% increase in the number of questions about confidentiality of records, a 10% increase in the refusal of help from centers and a staggering 20% drop in the number of rape crisis center victims reporting the assault to the police.²¹ These court decisions left rape victims with a choice: seek legal action knowing that all information from counselors could be accessed or suffer in silence.²²

In order to protect victims of violence and hold batterers accountable, countries in the CEE/FSU should carefully examine the lessons learned by advocates in the United States where domestic violence laws have been in effect for over thirty years. Ensuring that laws protect the confidential communications of domestic violence advocates and domestic violence victims creates an environment of safety for all and is a critical component of breaking the cycle of violence.

¹⁶ *Commonwealth v. Wilson*, 529 Pa. 268, 276 n. 6 (Pa. 1992); see also *Pittsburg Action Against Rape*, 494 Pa. 15, 428 A.2d 126 (1981).

¹⁷ *Commonwealth v. Stockhammer*, 570 N.E.2d 992 (Mass. 1991).

¹⁸ *Commonwealth v. Figueroa*, 595 N.E.2d 779 (Mass. 1992).

¹⁹ Anna Y. Joo, *Note: Broadening the Scope of Counselor-Patient Privilege to Protect the Privacy of the Sexual Assault Survivor*, 32 Harv. J. on Legis. 255, 284 (Winter 1995).

²⁰ *Id.* at 284.

²¹ *Id.* at 284, n. 183.

²² *Id.*