

# *Confidentiality*

*Cornerstone of Safety for Women who are Battered*

When a person shares personal information with the expectation that the information will not be shared except under specific circumstances, a special, unique relationship is formed. That relationship is based on trust and the assurance that the information will remain confidential. For women who are battered, confidentiality is the cornerstone of safety and can be a matter of life or death.

Confidentiality is always a matter of respect and honors the personal sovereignty of the woman who is battered. When we tell women that we are not only advocates, but sisters, confidentiality becomes a fundamental necessity. Betrayal of trust and confidence is an extremely powerful and dangerous tactic of battering and method of colluding with the batterer. If confidentiality cannot be guaranteed, women who are battered have no logical reason to risk trusting anyone with their story or lives. Advocates must have the ability to maintain the confidentiality of women who are battered: How can true safety be provided without confidentiality?

Historically, the confidentiality of women who are battered and advocates' ability to protect that confidence has been continually challenged on a number of fronts. Women who are battered, and their children, tend to be the overwhelming losers of those challenges. The consequences can be another beating, loss of custody, having to run for their lives (again), having to return to the batterer, or death.

Breach of confidentiality always means a woman's "safe space" is diminished and her reason to believe that others can and will protect her has been destroyed. It also means that all the words women hear about "rights," "respect," "women are sacred" and "you

*"It took every ounce of courage I had to go to the shelter. It meant giving up on my marriage, giving up my home, taking my children out of school, giving up my job, giving up almost everything I worked for... even the dog. The advocate said they'd help me, support me, keep me and my kids safe. They lied. He must have filed for custody. Cops came to the shelter with a custody order. The advocate said she was sorry, but I'd have to leave... He's beaten me when I stopped him from hitting the kids. All I know is I'm alone with my kids, people lie and I don't know if I'll ever be safe."*

*—Woman Who  
Has Been Battered*

can trust me” have become warnings of impending danger, not the basis for relationships or the way they are to be treated.

## *Meeting the Challenge*



When an advocate resists challenges to a battered woman’s confidentiality, rarely is she supported for acting with the courage of her convictions. More often, the advocate faces a backlash ranging from name-calling, accusations of being “uncooperative” by state, federal and tribal agencies, shunning, to threats of legal actions against herself and/or her program. Instead of recognizing a woman’s confidentiality as primary to her safety, charges of obstruction of justice, harboring, etc., may be brought against the advocate. Focus is then effectively removed from the batterer’s accountability for his violence, including his manipulation of various systems and programs.

This situation, at best, results in an advocate sharpening her legal advocacy skills. At worst, it means the advocate compromises her integrity and ethics and participates in “turning a woman over.” In the short term, this may serve to protect other women in shelter. But in the long run, it means the shelter is no longer safe space. Either way, women who are battered get the message that there is no safety anywhere and no one can or will protect her from the batterer.

Federal grant requirements (Family Violence Prevention and Services Act, and Victims of Crime Assistance) offer minimal standards for confidentiality. Some state laws have

“privileged communication” for advocates, similar to that of doctors, lawyers, etc. Some criminal justice systems and law enforcement agencies understand the dynamics of battering, the issues of women’s safety and batterer accountability, and develop policies and procedures that recognize and uphold the relationship between confidentiality and the woman who is battered.

Tribes, as sovereign nations, have the ability to enact laws that protect the confidentiality of Native women who are battered. These laws need to reflect the understanding that shelters are sacred places that save the lives of women and their children. Supporting policy, procedure, protocol and memorandums of agreement between criminal justice systems, law enforcement agencies, and other related programs with domestic violence shelters/programs, must prioritize women’s safety and batterers’ accountability. This means when conflicts arise due to jail space shortage, overloaded court dockets, lack of resources or competing interests, battering will not be minimized and is understood as assault with intent and, often is attempted murder. Understanding the lethality of battering compels judgments that honor confidentiality over “old” fines and warrants against women escaping violence, and over enforcement of custody/visitation orders demanded by batterers while women are in shelter or in other situations where they are not safe.

### *Outside the Criminal Justice System*

Confidentiality and the implied respect for battered women’s right and ability to live freely are violated on a regular basis by others outside the criminal justice system. Though obviously integral to protecting women who are battered, the legal system can not be the only system to guarantee the right to confidentiality. In communities where a battered woman’s right to confidentiality has been openly challenged, it has usually

*“There should be consequences for bad behavior. That is our way. Beating up a woman was never traditional. We had consequences for doing that. We have to set standards.”*

*—Council Representative*

*I used to think that “family disputes” or domestic violence cases were really a counseling issue or because of drinking. Sometimes I’d sentence them both to counseling. Then my sister was murdered by her ex-husband. As a judge, a brother and Indian man, I have to live knowing maybe that has happened or could happen to women that came before me in court, because I didn’t realize domestic violence is assault with intent...and sometimes murder. As a judge I hold offenders accountable for their behavior. As a judge, brother and relative, I have to hold myself and the court accountable to women, my relatives that have been battered.*

*—Tribal Judge*

Every part of me hurt - my head, ribs, face, legs... He kicked me with his boots on, used a cast iron skillet. I was so scared, so alone, so tired. Nothing stopped it. I couldn't stand the pain, the fear, all those people who did nothing. So I got really drunk, made it all go away for a little while. Ended up in treatment. The counselor said I had to be honest about everything. During family days I'm sitting there with my husband, my batterer, and the counselor says to him "Your wife told me about your anger problem..." On the way home he said nothing, but I knew what was coming... Last thing I remember about that night was him grabbing my hair and his fist coming at my face...

—Woman Who  
Has Been Battered

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been the shelter/domestic violence program that has defended confidentiality.

These programs base their stand on written policy and procedure established to reinforce the safety and personal sovereignty of women who are battered. Given the historic, earned mistrust of programs and agencies by Native people and the lethality of battering, confidentiality and other rights of every woman who is battered must be pro-actively supported by all programs, agencies and systems. Unfortunately, this is not the usual case.

Those that refuse to see battering as a crime, and as a gender/civil rights issue, tend to minimize the accountability of the batterer. They "treat" women who are battered as mental health cases, and identify the causes as a lack of communication, co-dependency or other "illnesses." Rather than deal with a human being who has been victimized on a continual basis by violence, they "treat" a "sick" person who must be fixed. A phenomenon unique to the dominant American medical model then kicks in. As happens with other people in America identified as "ill" or "sick," women who are battered are treated as though their I.Q. has dropped. There is an assumption that they can no longer be trusted to know what they need, make decisions for themselves or their children, or to name their reality for themselves.

The professionals, those "that know," must rescue them. There tends to be a free flow of information within the medical model; confidentiality tends to be "qualified" by the judgement and involvement of a variety of service providers depending upon what is deemed "best for the client." Mental health assessments, diagnosis, case staffings, team meetings, and/or treatment planning takes place. These case conferences between social services, child protection, the prosecutor's office- supposedly for the "case" or "client" benefit, are usually conducted without her request, consent or participation, even though decisions made during these sessions may impact a woman's (and her

children's) life forever. These are major violations of confidence and confidentiality.

Battering is defined as a system of tactics aimed at maintaining power and control over another; how then is a method that makes decisions by, for, and without a woman any different from the tactics used by her batterer? Same song, different verse.

Women who are battered go to shelters and other helping agencies to regain their basic rights to safety and the resources to get their lives back. Women are not coming to shelters to exchange conditions of male ownership for program ownership.

On another level, the medical model, as a social service/mental health approach focusing on direct services to isolated individuals is extremely dangerous to Native women. It excludes the Native world view and ignores the impact of colonization and oppression on Native people. Colonization can also be defined as a system of tactics aimed at maintaining power and control over entire groups of people; how then is a system that re-defines our relationships with each other and distorts our world view any different from that tactics used by the batterer or oppressors? Same song, different verse.

### *Respectful Paperwork*

Our indigenous grassroots perspective supports women's rights to confidentiality and leads us away from programming that requires documentation unrelated to the violence against a woman, eligibility issues, case management and other activities that open the door to breach of confidentiality. If this grassroots perspective is honored, there is no need for concern about documentation of a woman's behavior, emotional state, parenting skills, etc.

*Coming from a different field, I was used to a lot of paperwork. I never gave a second thought about why we asked for the information we did. It was a real eye opener to work in a domestic violence program and be challenged to think about why we needed information. I never thought about how invasive and disrespectful paperwork can be. Now I focus on documenting his violence and making sure I don't objectify her. She's not just a "client," she's my sister.*

—Advocate