

IN THE COURT OF CIVIL APPEALS

Ex parte HOUSE OF RUTH

PETITIONER,

RE: LAWRENCE B. ALLEN,

PLAINTIFF,

VS.

TESSIE J. ALLEN,

DEFENDANT.

CASE NO. _____

PETITION FOR WRIT OF MANDAMUS

CIRCUIT COURT OF DALE COUNTY, ALABAMA

CASE NO. DR 95-522-S

**BRIEF OF AMICI CURIAE
NATIONAL NETWORK TO END DOMESTIC VIOLENCE
NEW YORK STATE COALITION AGAINST DOMESTIC VIOLENCE
PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE
BATTERED WOMEN'S JUSTICE PROJECT**

By their attorneys:

Fernando R. Laguarda
Elizabeth A. Dees
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Washington, DC 20004
202/434-7300
Counsel for Amicus Curiae
National Network to End Domestic Violence

TABLE OF CONTENTS

Page

SUMMARY OF THE ARGUMENT.....

ARGUMENT.....

I. PUBLIC POLICY MANDATES THAT THE COUNSELING COMMUNICATIONS OF DOMESTIC VIOLENCE VICTIMS BE AFFORDED THE MAXIMUM PROTECTION CONSTITUTIONALLY PERMISSIBLE......

A. Acts of Domestic Violence Devastate Millions of Lives in America Every Year......

B. Congress and State Legislatures Have Articulated a Strong Public Policy in Favor of Intervention Against Domestic Violence and Provision of Confidential Services to Victims of Domestic Violence......

II. CONFIDENTIALITY IS ESSENTIAL TO GUARANTEEING THE SAFETY OF BATTERED WOMEN......

III. SUCCESSFUL COUNSELING FOR VICTIMS OF DOMESTIC VIOLENCE REQUIRES CONFIDENTIALITY AND PRIVACY......

CONCLUSION.....

SUMMARY OF THE ARGUMENT

Amici^{1/} join the Appellant, House of Ruth, Inc., in urging the Alabama Court of Appeals to recognize that the communications between a victim of domestic violence and her counselor merit the maximum extent of protection constitutionally permissible. Counseling is the cornerstone of treatment for many victims of abuse, and confidentiality is the central element of the treatment and healing process. As a matter of public policy, the epidemic of domestic violence throughout the United States and in Alabama calls for judicial recognition of the fact that confidential counseling is necessary to heal the devastating effects of violence. Domestic violence counselors provide vital services to overlapping groups of victims. Moreover, the counseling records of victims of domestic violence require especially strong protection because their abusers often continue to threaten their safety, and turn especially violent when help is sought. Even an *in camera* review of a victim's records is a threat to her privacy and safety.

For these reasons, the Court of Civil Appeals should conclude that the lower court erred in its order requiring The House of Ruth, Inc. to disclose its counseling records under seal for *in camera* review. It is no less essential that a victim's counseling records retain their privacy protection in a child custody dispute. In fact, it is clearly in the best interests of the child for her parent to have sought and obtained confidential therapeutic counseling and to have her parent's privacy and safety interests protected accordingly.

The Court of Civil Appeals should reverse the lower court's denial of petitioner's motion to quash and order compelling the disclosure of domestic violence counseling records.

ARGUMENT

^{1/} The interests of the Amici are set forth in the Appendix to this Brief.

I. PUBLIC POLICY MANDATES THAT THE COUNSELING COMMUNICATIONS OF DOMESTIC VIOLENCE VICTIMS BE AFFORDED THE MAXIMUM PROTECTION CONSTITUTIONALLY PERMISSIBLE.

A. Acts of Domestic Violence Devastate Millions of Lives in America Every Year.

Violence against women is an enormous problem throughout the United States.^{2/} The United States Department of Justice estimates that three out of every four women will be the victims of a violent crime at some point during their lives.^{3/} At least two million American women are severely assaulted by their partners every year; some experts put the number at closer to four million.^{4/} President Clinton recently noted that in 1992, nearly 30% of all female homicide victims were killed by husbands, former husbands, or boyfriends.^{5/} Domestic abuse accounts for 22% to 35% of emergency room visits by women in the United States.^{6/}

^{2/} This Brief focuses on violence against women because the victims of domestic violence and sexual assault are nearly always women. The United States Department of Justice estimates that 95% of reported assaults involving a victim's current or former spouse are committed by men against women. See H. Douglas, Assessing Violent Couples, 72 (9) Families in Society 525-535 (1991); Susan Estrich, Real Rape 81 (1987) ("[T]here is no evidence that many women in fact commit rapes").

^{3/} Staff of Senate Comm. on the Judiciary, 102d Cong., 2d Sess., Violence Against Women 3 (Comm. Print 1992) (citing Department of Justice Statistics).

^{4/} See H.R. Rep. No. 103-711, at 4 (1995), reprinted in 1995 U.S.C.C.A.N. 1839, 1851-52 (finding that four million women are battered by their partners each year); Women and Violence: Hearings Before the Senate Comm. on the Judiciary, 101st Cong., 117 (1990) (testimony of Angela Browne, Ph.D.) (noting that two million is conservative estimate and that most experts agree that four million is more accurate figure); see also *id.* at 79 (noting that if every woman victimized by domestic violence in a given year were to join hands, the line would extend from New York to Los Angeles and back again); Antonia C. Novello, From the Surgeon General, U.S. Public Health Service, A Medical Response to Domestic Violence, 267 JAMA 3132, 3132 (1992).

^{5/} Proclamation No. 6829, 60 Fed. Reg. 51,879 (1995) (citing Department of Justice statistics).

^{6/} See 264(8) JAMA 939; see also Developments in the Law - Legal Responses to Domestic Violence, 106 Harv. L. Rev. 1498, 1501 (1993) (hereinafter "Responses to Domestic Violence") (noting conclusion of Surgeon General's report that abuse inflicted by intimates is among leading causes of injury to women in the United States).

Fatality statistics only begin to reveal the extent of the devastation to America's families. Shattered bones, scratches, bruises, and burns are the most visible consequences, but the emotional and psychological harm can be equally severe. Battered women often fear for their safety, expect violence to recur, lose their self-esteem, feel out-of-control and trapped, develop an increased tolerance for violence and abuse, and lose faith in others.^{7/} They commonly feel a sense of terror, depression, grief, anger, rage, hatred, and shame. Battered women also are known to develop nightmares, sexual dysfunctions, concentration problems, and addictions.^{8/}

The children of abused women also suffer enormously.^{9/} As many 10 million children witness their mothers being physically battered each year.^{10/} As noted by Chief Justice Workman of the West Virginia Supreme Court:

Children learn several lessons in witnessing the abuse of one of their parents. First, they learn that such behavior appears to be approved by their most important role models and that the violence toward a loved one is acceptable. Children also fail to grasp the full range of negative consequences for the violent behavior and observe, instead, the short term reinforcements, namely compliance by the victim. Thus, they learn the use of coercive power and violence as a way to influence loved ones without being exposed to other more constructive alternatives. In addition to the effect of the destructive modeling, children who grow up in violent homes experience damaging psychological effects.

^{7/} Mary Ann Dutton, Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome, 21 Hofstra L. Rev. 1191, 1218-19 (1993) (citations omitted).

^{8/} *Id.* at 1221-22.

^{9/} Alan J. Tomkins et al., The Plight of Children who Witness Woman Battering: Psychological Knowledge and Policy Implications, 18 Law & Psychol. Rev. 137 (Spring 1994) (citing numerous sources); see also Dutton, *supra* note 12, at 1211 (citing Peter G. Jaffee et al., Children of Battered Women (1990)).

^{10/} "It is estimated that between 3.3 million . . . and 10 million . . . children in the United States are at risk of exposure to woman abuse each year. These children are at increased risk of being abused themselves (Stark and Flitcraft, 1985)." Introduction, Ending the Cycle of Violence: Community Responses to Children of Battered Women 3, 5 (Einat Peled, Peter G. Jaffee, Jeffrey L. Edleson, eds., 1995).

Patricia Ann S. v. James Daniel S., 435 S.E.2d 6, 18 (W. Va. 1993) (Workman, C.J., dissenting) (citing Laura Crites & Donna Coker, What Therapists See That Judges May Miss, The Judges' Journal 11-12 (Spring 1988)).

These children may also suffer incidental injury from being present during assaults on their mothers, or they may be targets of abuse themselves.^{11/} In addition, there is an intergenerational aspect to domestic violence. It is well established that a male who witnesses family violence as a child will be predisposed to committing family violence as an adult.^{12/}

B. Congress and State Legislatures Have Articulated a Strong Public Policy in Favor of Intervention Against Domestic Violence and Provision of Confidential Services to Victims of Domestic Violence.

The United States Congress and many state legislatures have responded to this cycle of violence and suffering by enacting legislation to aid the victims of domestic violence. Congress enacted the Family Violence Prevention and Services Act^{13/} and the Victims of Crime Act^{14/} to provide funds to assist battered women and other victims of domestic violence. These Acts earmark funds "for the purpose of providing immediate shelter and related assistance to victims of family violence."^{15/} The recently enacted Violence Against Women Act ("VAWA")^{16/} similarly provides grants for shelters and

^{11/} Peled, et al., supra note 10; See Howard A. Davidson, Child Abuse and Domestic Violence: Legal Connections and Controversies, 29 Family L. Q. 357, 357 (Summer 1995) (noting "strong substantive correlation" between adult partner abuse and child abuse).

^{12/} Dutton, supra note 7, at 1211-12 (citing Gerald T. Hotaling & David B. Sugarman, An Analysis of Risk Markers in Husband to Wife Violence: The Current State of Knowledge, 1 Violence & Victims 101 (1986)).

^{13/} 42 U.S.C. §§ 10401 et seq. (1995).

^{14/} 42 U.S.C. §§ 10601 et seq. (1995).

^{15/} 42 U.S.C. § 10402(f) (1995).

^{16/} Violence Against Women Act of 1994, Pub. L. No. 103-322, §§ 40001-703, 108 Stat. 1796, 1902-55 (1994) (codified in scattered sections of 42 U.S.C.).

related assistance^{17/} and funds a national domestic violence hotline to facilitate access to information and assistance for battered women.^{18/}

Still, resources are scarce, and the demand for shelters far exceeds their capacity.^{19/} In Massachusetts, women's shelters turn away 71% of the women seeking shelter and 80% of the children. In Philadelphia, one shelter rejects 75% of the women who seek shelter. Another shelter in New York City turns away one hundred battered women and their children every week.^{20/}

The legislatures of all fifty states and the District of Columbia have responded to the domestic violence crisis by enacting protection order statutes that afford broad relief to adult and child victims of domestic violence.^{21/}

^{17/} See *id.* § 40121 (combat violent crimes against women); § 40151 (reduce sexual assaults against women); § 40231 (encourage arrest policies) § 40241 (battered women's shelters) § 40602 (stalking data gathering).

^{18/} See *id.* § 40211. VAWA also created criminal penalties for interstate domestic violence, including stiff jail terms. See *id.* § 40221.

^{19/} According to the National Coalition Against Domestic Violence, Stacy Plichta and J.M. Lee of the Mount Sinai School of Medicine calculated in 1995 that there were 1,842 domestic violence programs in the United States, including 1,268 shelter programs in 1994. Counseling and shelter programs furnish a variety of services, including hotlines, individual and group counseling, housing, advocacy services, physical protection, emergency medical care, food, clothing, transportation, child care, and outreach and education programs. The counseling function is an integral part of these programs for two reasons. First, a counselor can evaluate the risks posed by the abuser and identify the services and legal options that will enable the patient to escape the abuse. Second, a counselor can help the patient deal with feelings of despair, depression, fear, and shame, enabling the patient to regain the necessary self-confidence to leave the abusive relationship.

^{20/} Ann Jones, *Next Time, She'll Be Dead: Battering & How to Stop It* 229-30 (1994).

^{21/} See, e.g., Ala. Code § 30-5-1 *et seq.* (Michie 1996); Alaska Stat. §25.35.010 *et seq.* (1995); Ariz. Rev. Stat. Ann. §§ 13-3601 - 3602 (West 1995); Ark. Stat. Ann. § 9-15-101, *et seq.* (1995); Colo. Rev. Stat. § 14-4-101, *et seq.* (1995); Mass. Gen. Laws ch. 209A, § 1 *et seq.* (West 1996); Conn. Gen. Stat. § 46b-15 (West 1996); Me. Rev. Stat. Ann. tit. 19, § 761-A *et seq.* (West 1995); N.H. Rev. Stat. Ann. § 173-B:1 (Michie 1995); R.I. Gen. Laws § 8-8.1-3 (Michie 1995); 750 Ill. Comp. Stat. 60/102 *et seq.* (Michie 1996); Mo. Stat. Ann. § 455 (1995); N.M. Stat. Ann. § 40-13-1 *et seq.* (Michie 1996); N.D. Cent. Code § 14-07.1-02 (1995); S.C. Code Ann. § 16-25-50 (Law. Co-op 1993); Tenn. Code Ann. § 36-3-606 (1996); Va. Code Ann. § 16.1-253.4 (Michie 1996) (effective July 1, 1997); Wyo. Stat. Ann. §35-21-102 *et seq.* (1996).

exclusion from the family domicile, support, custody, relinquishment of weapons, and payment of losses and attorneys fees. Many states now require police departments to respond to domestic violence incidents in the same manner as they would respond to offenses involving strangers.^{22/} Likewise, many states have passed mandatory arrest statutes that require police to arrest an abuser if they have probable cause to believe that an assault has occurred or that a protective order has been violated.^{23/} More recently, at least forty-nine states and the District of Columbia have enacted anti-"stalking" laws, criminalizing harassment that threatens death or serious injury.^{24/} In addition, over 40 states have adopted codes requiring courts to consider evidence of domestic abuse when making child custody decisions.^{25/}

^{22/} See, e.g., Mo. Rev. Stat. § 455.080 (1995). Of course, implicit in this requirement is the recognition of the unfortunate fact that many police officers regard domestic violence as less serious than other violent crimes, even though statistics show women are far more likely to be assaulted or killed by their partners than by strangers. See Responses To Domestic Violence, *supra* note 6, at 1501 (noting that as many as 40% of calls to police involve domestic disturbances).

^{23/} See, e.g., Conn. Gen. Stat. Ann. § 46b-38b (West 1994); D.C. Code Ann. § 16-1031 (1994); Kan. Stat. Ann. § 22-2307 (1994); Nev. Rev. Stat. § 171.1225 (1993); N.J. Stat. Ann. § 2C 25-21 (West 1995); Or. Rev. Stat. § 133.055(2)(a) (1993).

^{24/} See, e.g., Ala. Code § 13A-6-90 (Michie 1996); D.C. Code Ann. § 22-504 (1996); Fla. Stat. Ann. § 784.048 (West 1995); Ky. Rev. Stat. Ann. § 508.140 (Baldwin 1995); 720 Ill. Comp. Stat. 5/12-7.3 (Michie 1996); Mo. Rev. Stat. §565.225 (1995); N.J. Stat. Ann. § 2C:12-10 (1995); Mass. Ann. Laws ch. 265, § 43 (Law. Co-op 1996); Conn. Gen. Stat. §53a-181c (1994); N.H. Rev. Stat. Ann. §633.3 et seq. (1995); R.I. Gen. Laws §11-59-1-3 (1995); N.M. Stat. Ann. § 30-3A-1-4 (Michie 1996); N.Y. Crim. Proc. Law § 530.11(1) (Consol. 1996); N.D. Cent. Code § 12.1-17.07.1 (1995); Ohio Rev. Code Ann. § 2903.211 (Anderson 1996); Okla. Stat. Ann. tit. 21, § 1173 (West 1995); S.C. Code Ann. § 16-3-1070 (Law Co-op 1993); Tenn. Code Ann. §39-17-315 (1995); Va. Code Ann. § 18.2-60.3 (Michie 1996) (effective July 1, 1997); Vt. Stat. Ann. tit. 13, §1061 - 1063 (1995)Wis. Stat. § 940.32 (1994); Wyo. Stat. Ann. § 6-2-506; see also 1996 Me. Advance Legis. Serv. 668; 1996 Me. Laws 668 (An Act to Prohibit Stalking).

^{25/} See, e.g., Colo. Rev. Stat. Ann. § 14-10-124 (West 1995); Fla. Stat. Ann. § 61.13 (West 1995); Minn. Stat. Ann. § 518.17 (West 1995); N.J. Stat. Ann. § 9:204 (West 1995); see also In re Custody of Vaughn, 422 Mass. 590, 664 N.E.2d 434 (1996).

Both federal and state lawmakers have recognized the importance of protecting the privacy of battered women and the confidentiality of their dealings with support services. The Family Violence Prevention and Services Act, for example, forbids grants to any program without "documentation that procedures have been developed . . . to assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services."^{26/} Additionally, the United States Postal Service is required to implement new regulations "to secure the confidentiality of domestic violence shelters and abused persons' addresses."^{27/} Because many shelters and counseling programs receive federal funding, they must resist all attempts to divulge confidential information about the battered women they serve.

Last December, the Department of Justice released a report to Congress concerning the issue of confidentiality of communications between sexual assault or domestic violence victims and their counselors.^{28/} The Department proposed model statutes to encourage victims of sexual abuse and domestic violence to seek counseling, make full disclosures to their counselors, and receive the maximum benefits from counseling.

Similarly, state legislatures have acted specifically to protect the confidentiality of battered women by restricting access to information that would reveal their locations. For example, some states including Alabama, require, or at least allow, courts to keep addresses of battered women confidential.^{29/} Others permit victims to remove their driver's license and registration information from

^{26/} U.S.C. § 10402(a)(2)(E) (1995). The Victims of Crime Act contains a similar provision. 42 U.S.C. § 10604(a) (1995).

^{27/} 42 U.S.C. § 13951 (1995).

^{28/} Department of Justice, Report to Congress on the Confidentiality of Communications Between Sexual Assault or Domestic Violence Victims and Their Counselors, Findings and Model Legislation (1995).

^{29/} See, e.g., Ala. Code § 15-23-42(b)(Michie 1996); N.J. Rev. Stat. Ann. § 2C:25-26 (West 1995); Tex. Fam. Code Ann. § 71.111 (West 1995); Wis. Stat. Ann. §§ 813.125, 895.67 (West 1995).

the public record.^{30/} The Violent Crime Control and Law Enforcement Act of 1994 makes provisions for preventing states from releasing and using personal information from State motor vehicle records.^{31/} Colorado allows a battered woman to make any public record confidential if she submits an affidavit stating that she believes she will be harassed or threatened with bodily harm.^{32/} New Jersey and Washington enable a battered woman to register to vote without disclosing her street address.^{33/} Additionally, Washington State has enacted an Address Confidentiality Program so that its abused citizens need never disclose their addresses except to the Secretary of State's office.^{34/}

In 1982, in an effort to protect further the confidentiality of battered women, the President's Task Force on Victims of Crime recommended that legislation be enacted "to ensure that designated victim counseling is legally privileged and not subject to defense discovery or subpoena."^{35/} The recommendation specifically recommended a privilege that would cover social workers, nurses, and victims counselors, not just psychiatrists and psychologists who serve wealthier clients.

As the statistics demonstrate, and as Congress and state legislatures have properly recognized, domestic violence is a national tragedy and its victims desperately need assistance to deal with the

^{30/} See, e.g., Ark. Code Ann. §§ 27-50-906 - 908 (Michie 1994); Cal. Veh. Code § 1808.21 (West 1995); Minn. Stat. Ann. § 171.12 (1986 & Supp. 1995).

^{31/} 18 U.S.C. §§ 2721-2725 (1996).

^{32/} Colo. Rev. Stat. Ann. § 24-72-204 (West 1995).

^{33/} N.J. Rev. Stat. Ann. §§ 2C 25-26, 19:31-3.2 (West 1995); Wash. Rev. Code §§ 40.24.060-.24.070 (1995); see also Joan Zorza, Protecting a Battered Woman's Address from Disclosure, 1 Domestic Violence Report 3, 13 (Oct./Nov. 1995). The New Jersey legislature enacted its statute after a court held that a battered woman could register to vote without disclosing her street address. See D.C. v. Superintendent of Elections, 618 A.2d 931, 932 (N.J. Super. Ct. 1992).

^{34/} Jeffrey T. Egan, Washington's Address Confidentiality Program: Relocation Assistance for Victims of Domestic Violence, 31 Gonz. L. Rev. 523, 523-48 (1996); Joan Zorza, Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women, 29 Fam. L. Q. 273, 289 (1995).

^{35/} President's Task Force on Victims of Crime, Final Report 17, 22 (1982).

effects of abuse. Domestic violence programs are considered the most effective means for recovering physical and mental health because they "offer a combination of services that cannot be found in any other type of helping organization."^{36/} Shelter and counseling services are "havens where [a battered woman] can recuperate from her wounds, recover her sense of self, and re-evaluate her situation."^{37/} It is therefore not surprising that Congress authorized \$182 million for fiscal years 1996 through 2000 to support shelters where women can recuperate and receive counseling.^{38/}

So crucial is protecting victims of domestic violence and their children that Congress enacted a statutory provision that makes flight from an incident or pattern of domestic violence a complete defense to the offense of international parental abduction.^{39/}

II. CONFIDENTIALITY IS ESSENTIAL TO GUARANTEEING THE SAFETY OF BATTERED WOMEN.

Merely by seeking help, battered women often expose themselves to grievous harm:

Most victims of domestic violence have been threatened with further assault or even death if they ever reveal what their abusers have done to them. Almost all battered women are terrified of these threats. . . .

Without assurances of confidentiality, few battered women would contact domestic violence programs or open up to battered women's counselors.^{40/}

Abused women have reason to believe the threats of their batterers: The risk of violent assaults increases when a woman makes an effort to leave and after she has left, and divorced or separated

^{36/} Lee H. Bowker, *Ending the Violence* 86 (1986).

^{37/} Del Martin, *Battered Wives* 197 (1976).

^{38/} See 42 U.S.C. §§ 10409(a)-(b) and §§ 10402(a), (f).

^{39/} 18 U.S.C. § 1204.

^{40/} Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 *Fam. L. Q.* 273, 295 (Summer 1995).

persons have the highest rate of violent crimes committed by relatives.^{41/} Not only does non-fatal violence escalate, but deadly violence also increases.^{42/} Women are most likely to be murdered when attempting to report abuse or to leave an abusive relationship.^{43/} Thus, confidentiality is not just helpful to developing the counseling relationship -- it is often absolutely necessary.^{44/}

The statutory privilege protecting the relationship between a counselor and the victim of domestic violence protects the physical safety of the victim and her children. The first step in communications between a counselor and a battered woman is to ensure the physical safety of the battered woman and her children. Even if the record of those confidential communications does not reveal the victim's whereabouts, the very contents of the record may anger the abuser and thereby increase the risk and level of physical violence. Disclosure of a victim's fear, despair, and trauma resulting from the assault confirms for perpetrators that violence has been highly effective. Disclosure thus may encourage escalated coercion and sexual violence to maintain control over a battered woman or to impede her departure from the relationship.

^{41/} *Id.* at 294 (citing Lenore E. Walker, The Battered Woman Syndrome 25-26 (1984)); see also Mary P. Koss et al., No Safe Haven: Male Violence Against Women at Home, at Work, and in the Community 98-99 (1994); Dutton, *supra* note 12, at 1212; Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 Mich. L. Rev. 1, 5-6 (1991); J.M. Lawrence, Fleeing Abuse Is Often Deadly For Women, *Boston Herald*, Oct. 15, 1995, at 26; Bureau of Justice Statistics, U.S. Department of Justice, Criminal Victimization in the United States, 1990 (1992).

^{42/} See David Adams, Identifying the Assaultive Husband in Court: You Be the Judge, 13 *Response* 13 (1990).

^{43/} See Dutton, *supra* note 12, at 1212; Lan Nguyen, Police Say Man Stalked Wife Before Killing, *Wash. Post*, Dec. 28, 1995, at B1 (describing battered woman murdered by husband one day after he was arrested and released for stalking and five months after separation).

^{44/} Fearing future retaliation and violence, battered women often go to great lengths to preserve the confidentiality of their location once they leave the batterer. See Zorza, *supra* note 40, at 280 (quoting Catherine Kirkwood, Leaving Abusive Partners: From the Scars of Survival to the Wisdom for Change 103 (1993) (describing efforts, such as paying utility bills under aliases, to remove "any indication of existence"))).

Since the inception of domestic violence counseling and shelter services in the mid-1970s, domestic violence programs have recognized that the safety of victims depends on their vigilance in protecting the confidentiality of communications between victims and counselors. Domestic violence programs take every precaution to ensure the confidentiality necessary to protect battered women from their abusers.^{45/} Domestic violence programs rarely publish the addresses of shelters and safe home services, nor do they reveal the whereabouts of battered women once they leave home. All programs maintain confidentiality policies. Most train their counselors to refuse to disclose any information about a battered woman without her consent.^{46/} Shelters and counseling programs have tailored telephone practices to prevent disclosure of counseling relationships and communications.

Unless afforded robust legal protection, all of the communications so vigilantly protected in the interest of safety may be compromised when abusers succeed in extracting confidential information, such as the details of battered women's location or escape plans, under an exculpatory evidence argument. This court must consider that granting access to confidential communications -- whatever the grounds -- raises the prospect that the safety of battered women and their children will be compromised, along with the safety of the people and organizations who assist them. In addition, compelled disclosure of any shelter record may jeopardize the state's ability to receive federal money for domestic violence programs.

^{45/} Barbara J. Hart, Lynn A. Marks, Joanne Schulman, and Laurie Woods, Protecting Confidentiality of Victim-Counselor Communications 47 (Susan H. Rauch, ed. 1993).

^{46/} For example, the Statement of Confidentiality for My Sister's Place, a Washington, D.C., shelter, provides that service volunteers "will never reveal the location of the shelter to anyone" and that any information relating to clients "is confidential and not to be shared or repeated to anyone." See also Hart et al., *supra* note 45 (discussing Model Pennsylvania Confidentiality Policy, which provides that women's center and its employees will "hold confidential all communications, observations and information made by, between, or about clients").

III. **SUCCESSFUL COUNSELING FOR VICTIMS OF DOMESTIC VIOLENCE REQUIRES CONFIDENTIALITY AND PRIVACY**

Confidential domestic violence counseling is a service of immense social value. Cf. Jaffee v. Redmond, 116 S.Ct. 1923, 1928 (1996) (the value of counseling "outweighs the need for probative evidence."). Confidentiality is vital to protect the safety of battered women, and it is the cornerstone of successful counseling programs for victims of domestic violence or sexual assault. Without assurances of confidentiality, few victims would divulge their private thoughts and feelings, even though such disclosures are necessary to recovery.^{47/}

Battered women often feel humiliated by their situation, including their inability to stop the violence of their abusers.^{48/} Few women would broach these most private subjects without express assurances of confidentiality.^{49/} Without a guarantee that her communications will be kept confidential, a woman who needs counseling may be afraid to seek assistance at all.^{50/} Once the counseling relationship has begun, any risk of disclosure necessarily inhibits the victim from freely revealing her

^{47/} The devastating effects of sexual assault present in many violent relationships only magnifies the compelling need for a counseling relationship that enables the victim to cope with her trauma. Rape affects its victims like no other crime. See, e.g., Commonwealth v. Wilson, 602 A.2d 1290, 1295 (Pa.), cert. denied, 112 S. Ct. 2952 (1992). A rape victim suffers an intensely personal and unsettling invasion of bodily privacy, triggering a number of emotional and psychological reactions ranging from shock and fear to distrust, anger, guilt, shame and disgust. In re Pittsburgh, 426 A.2d at 138 (Larsen, J., dissenting). The traumatizing effects have been labeled "Rape Trauma Syndrome." The benefits of counseling to a rape victim inure to the benefit of those in relationships with her, and unless victims are encouraged and provided with an opportunity for therapy, many women and their relationships will remain mere "shells." Id. at 140 (Larsen, J., dissenting).

^{48/} Zorza, *supra* note 40, at 295.

^{49/} See, e.g., Roberta L. Valente, Addressing Domestic Violence: The Role of the Family Law Practitioner, 29 Fam. L. Q. 187, 187-88 (Summer 1995) ("[V]ictims are not always comfortable admitting to the violence in their homes. They have good reason to be mistrustful because our society has not yet shown it is willing to offer consistent support to victims of domestic violence.").

^{50/} See Ralph Slovenko, Psychiatry and a Second Look at the Medical Privilege, 6 Wayne L. Rev. 175, 188-89 (1960).

fears, feelings, and anxieties, thereby limiting the effectiveness of the counseling.^{51/} Any hesitation to disclose this sensitive information to the counselor impairs the counselor's ability to help the victim recover.^{52/}

Confidentiality also is necessary to reestablish and protect the dignity of women who have been abused or assaulted. In a violent relationship, an abuser treats a battered woman as inferior and worthless, ignoring and ridiculing her feelings and ideas. To convince her that she is insignificant, an abuser often isolates a woman from everyone and everything she values. Assuring confidentiality demonstrates to the victim that her concerns and feelings are significant and worthy of protection, thus helping to rebuild her dignity. The forced betrayal of a victim's confidences would further damage her dignity. Indeed, it would be a "great irony" that an attacker could safely confess to his attorney the details of the crime he has committed, with full confidence that this information is not available to others to be used against him during trial, but that the victim of such an assault has no such guarantee.^{53/}

In sum, domestic violence results in physical and psychological injury to millions of women in this country every year. The insidious impact of the violence ripples through families, communities and even generations. For both victims and society, domestic violence levies an enormous physical, mental and financial toll.

^{51/} See *In re Pittsburgh*, 428 A.2d at 126, 146-47 & n.2 (Pa. 1981) (Larsen, J., dissenting) (discussing how rape victims asked that their records be destroyed and anonymous telephone calls increased after publicity from case called into question rape counseling center's ability to maintain confidentiality).

^{52/} See Hart et al., *supra* note 45, at 46 (describing need for complete and accurate details in order to assess level of danger, design safety plan, and consider legal options).

^{53/} See *People v. Pena*, 487 N.Y.S.2d 935, 939 (N.Y. Sup. Ct. 1985).

CONCLUSION

There is an irrefutable public interest in helping domestic violence victims regain their sense of well-being and return to being productive members of society. Encouraging women to seek counseling and to benefit fully from this therapeutic experience has been recognized as an integral component of the healing process. Thus, the public's interest in nurturing the relationship between a domestic violence victim and her counselor is compelling.

The threat of disclosure of confidential communications threatens each victim's safety, and impairs her ability to obtain effective counseling. Without confidentiality, a battered woman's potential for complete recovery is dramatically reduced. In fact, if allowed to

stand, the lower court's decision will deter victims from seeking assistance for fear of disclosure and renewed violence, and it will undermine trust in the counseling relationship.

Respectfully submitted,
THE AMICLCURIAE
By their attorneys,

Fernando Laguarda
Elizabeth A. Dees
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Ave., N.W.
Washington, DC 20004
(202) 434-7300

Dated: December 20, 1996

F1/61439.1

IN THE COURT OF CIVIL APPEALS

Ex parte HOUSE OF RUTH

PETITIONER,

RE: LAWRENCE B. ALLEN,

PLAINTIFF,

VS.

TESSIE J. ALLEN,

DEFENDANT.

CASE NO. _____

PETITION FOR WRIT OF MANDAMUS

CIRCUIT COURT OF DALE COUNTY, ALABAMA

CASE NO. DR 95-522-S

**APPENDIX TO BRIEF OF AMICI CURIAE
NATIONAL NETWORK TO END DOMESTIC VIOLENCE
NEW YORK STATE COALITION AGAINST DOMESTIC VIOLENCE
PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE
BATTERED WOMEN'S JUSTICE PROJECT**

INTERESTS OF THE AMICLCURIAE

NATIONAL NETWORK TO END DOMESTIC VIOLENCE

National Network to End Domestic Violence, Inc. The National Network to End Domestic Violence ("NNEDV") is a not-for-profit organization incorporated in the District of Columbia in 1995. NNEDV is a network of state domestic violence coalitions, representing over 1,600 member programs nationally. NNEDV's mission is to end domestic violence through public policy and education.

PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE

The Pennsylvania Coalition Against Domestic Violence, Inc. The Pennsylvania Coalition Against Domestic Violence ("PCADV") is a not-for-profit organization incorporated in the Commonwealth of Pennsylvania. PCADV provides services and advocacy on behalf of the victims of Domestic Violence. PCADV is a membership organization of 64 shelters, hotlines, counseling programs, safe home networks, legal advocacy projects, and transitional housing for battered women and their dependent children. For almost 20 years, PCADV has provided training and technical assistance to domestic violence programs, the bar, the courts and law enforcement agencies on issues of domestic violence. In 1993, PCADV was named by the U.S. Department of Health and Human Services as a Partner with the Battered Women's Justice Project (BWJP). The Civil Law Center of BWJP, a Project of PCADV, provides national training, technical assistance and other resources related to domestic violence, civil court access and representation. The services provided are intended to assist legal advocates, judges, attorneys and government agencies through the country.

PCADV and BWJP Civil Center are deeply committed to the preservation of the confidentiality privilege that domestic violence shelters maintain related to the communications between domestic violence counselors and victims. This privilege allows victims of domestic violence to speak openly to counselors and shelters without fear of such communications being revealed. Such a privilege is vital to ensure that victims are given the utmost support and respect as they attempt to leave an abusive relationship.

PCADV and BWJP Civil Center join the brief of amicus curiae to assist the Alabama Court of Civil Appeals in its consideration of this vital confidentiality issue related to domestic violence.

THE NEW YORK STATE COALITION AGAINST DOMESTIC VIOLENCE

The New York State Coalition Against Domestic Violence, Inc. The New York State Coalition Against Domestic Violence is a not-for-profit membership organization organized in 1981 in the State of New York with the goal of preventing and eliminating domestic violence through advocacy, education, public awareness and program development. The Coalition has been the driving force behind the development of hundreds of programs throughout New York State that provides services to abused women and children. The Coalition's members include the State's shelters, safe home projects and advocacy programs and counseling programs for domestic violence, as well as many women concerned individuals who share the goal and philosophy of providing services to battered women and their children and eradicating family violence. The Coalition sponsors a bimonthly, bilingual newsletter providing information on important domestic violence issues; a 24-hour toll-free statewide hotline providing information and referral; a resource library; technical assistance and support to domestic violence service providers; outreach and community education; and assistance and consultation in the development of public policy and strategies for the prevention of domestic violence.

The Coalition knows that battered women and their children who use domestic violence programs expect confidentiality, and that few of them would use these services if they were not assured of confidentiality. Likewise, a few of them would open up to counsels if confidentiality were not guaranteed. Most victims of domestic violence are legitimately fearful of retaliation by their abusers who have threatened them with serious bodily or deadly harm should they ever disclose the abuse. Compelling disclosure of these records would do untold harm to all victims of domestic violence, including the children, eroding their faith in domestic violence programs and services.