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- There will be a Q & A session at the end of the presentation.
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# Collaborating with Respect for Information Sharing Norms

September 27, 2016

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# Your Host:



Casey Gwinn, Esq  
President  
Alliance for HOPE International

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April 4-6, 2017  
Hilton Milwaukee  
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17th Annual International Family Justice Center Conference





# Next Advanced Strangulation Course October 18-21 in Ft. Worth, Texas



**Advanced Course  
on Strangulation Prevention**  
Class 8  
San Diego, California  
August 23 - 26, 2016

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# Your presenter today:



Alicia L. Aiken, JD  
Director, Confidentiality Institute  
Principal Consultant, Aiken Strategic Partners





# COLLABORATING WITH RESPECT FOR INFORMATION SHARING NORMS

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Alicia L. Aiken, J.D.

[alicia@confidentialityinstitute.org](mailto:alicia@confidentialityinstitute.org)

# Alicia Aiken

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- Attorney who has practiced in urban, suburban, and rural areas.
- Help collaborations navigate privacy.
- 15 years representing survivors of violence & people living in poverty.
- Experience in criminal defense and civil rights cases.



# Thanks OVW!

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# Learning Objectives

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- Articulate the distinctions between privacy, confidentiality & privilege.
- Compare ethical & legal directives about information for various professionals.
- Increase understanding between allied professionals about information sharing practices.



# Collaboration

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- Bring professions together
  - Because each brings unique resources
- Seek understanding of others
  - Without judging each other for differences
- Find synergy & efficiencies
  - While respecting limits asserted by partners





# Privacy Concepts

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# Privacy Concepts

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***Privacy***

***Confidentiality***

You have a duty  
to protect my  
information.

***Privilege***



# Privacy Concepts

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***Privacy***

***Confidentiality***

***Privilege***

They can't  
make you  
share my  
information.



# Privacy Concepts

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## ***Privacy***

I decide who knows my information.

## ***Confidentiality***

You have a duty to protect my information.

## ***Privilege***

They can't make you share my information.



# Transparency

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- Default ethic in many government functions
  - Including law enforcement, prosecutor, probation, courts
- Confidentiality only in special circumstances
  - Sometimes cannot be offered even if professional wants to do so





# Confidentiality

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- By Ethical Requirement
  - License at risk if violate
  - Liability if harm from the disclosure
  - Ethical exceptions can differ
- By Law
  - Possible crime
  - Fines
  - Revocation of funding
  - Liability if harm from disclosure



# “It’s Confidential”

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- Is *not* a useful generic term
- Does not mean the same thing to everyone
  - not to clients
  - not to professionals



# Professions Collaborating in Family Justice Centers

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- **Victim Advocacy**
- **Legal Services**
- **Law Enforcement**
- **Prosecution**
- **Victim Witness**
- **Medical Services**
- **Chaplain Services**
- **Mental Health Services**
- **Probation**
- **Social Services**
- **Housing Programs**
- **Public Benefits Agencies**



# Law Enf/Prosecutor Norms

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- Accused and witnesses do not have confidentiality with LE/Prosecution
- Information is revealed or withheld to serve investigation & justice
- Transparency required:
  - Public records requests
  - Disclosures to criminal defendants



# “Brady” Disclosures

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- Prosecutors & law enforcement **must** disclose “exculpatory” evidence
  - Tends to show defendant not guilty
- Failure to disclose?
  - Conviction overturned
  - Lost law license
  - Jail time (2013, Texas)





# Victim Witness Assistants

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- If work for Law Enf or Prosecutor,
  - Subject to same disclosure rules
- If work for community-based non-profit,
  - Subject to Advocate info-sharing norms
- The test is *who* you work for,
  - Not *where* your desk is



# Court Information Norms

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- Public institutions accountable to the public
- Transparency & open records is generally the norm
  - Unless special requests or statutory protections to seal



# Probation & Pre-Trial Supervision

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- Generally an extension of the court
- Balancing public safety, community right to know and *probationer's* privacy



# Gov't Agency Norms

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- General norm of government transparency, accountability and open records
- Personally identifying information protected from public disclosure
- Sharing between government agencies to achieve public good



# Attorney Norms: Confidentiality

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- Rule of Professional Conduct 1.6
  - Shall not reveal info acquired during the professional relationship unless:
    - the client gives informed consent
    - the disclosure is impliedly authorized to carry out the representation
    - the disclosure is permitted or required by this rule





# Attorney Norms: Confidentiality

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- Rule 1.6 Exceptions
  - (b) MAY reveal if reasonably necessary to:
    - Comply with law or court order
    - Prevent crime by client
    - Prevent reasonably certain death or bodily harm
    - Fix crime/fraud done with lawyer's services
    - Get legal advice for attorney/check conflicts/comply with state bar assistance



# Victim Services Norms:

## Federal Confidentiality Law

- VAWA 2013 & FVPSA 2010 & VOCA Regulation
  - To ensure safety of victims of family violence, domestic violence, dating violence, sexual assault, or stalking, and their families:
  - Grantees shall protect the confidentiality and privacy of persons receiving services.
- Violation?
  - Revocation of funding & no future funding
  - Lawsuit liability



# VAWA/FVPSA/VOCA Prohibition

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- Grantees shall **NOT** disclose, reveal or release:
  - personally identifying information (PII)
  - individual information [VAWA/VOCA]
  - collected in connection with program services requested, utilized, or denied
- Unless written consent or court/statutory mandate



# Victim Services: Ethical Principles

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- Survivor of violence chooses who knows what
  - Survivors are experts in their own lives
  - Survivors choose which risks are acceptable and which are not.



# Social Worker Norms:

## Confidentiality

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- Social worker should protect the confidentiality
- Of all information obtained during service
- Except for compelling professional reasons
- May disclose with valid consent from the person
- Disclose minimum amount necessary
- NASW Code of Ethics [Rule 1.07](#)



# Spiritual Adviser Norms

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- Strong tradition of not sharing what is said when seeking spiritual counsel
  - Definitions of “spiritual counsel” differ
- Shifting social norms after revelations of abuse by priests



# Confidentiality Circle

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## Inside the Circle

Confidential  
professional and  
associates in same  
organization/unit

## Outside the Circle

- Law Enforcement
- Government offices
- Other confidential professionals in different units
- Non-confidential professionals
- Funders
- Allies



# “I am a Mandatory Reporter”

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- Some professions required by law
  - To make specific kind of report in a specific way
    - Definitions differ widely
- Some professions allowed to report
  - Not “mandatory” reporters
- Some privileged professions prohibited from reporting





# Communicate Your Norms

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# MOU's Communicate Norms

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- Use MOU to explain your norms
- Use MOU to set collaboration norms
- Want a template MOU?
  - Request a template from [safetynet@nnedv.org](mailto:safetynet@nnedv.org)



# Assumptions:

## Giving ↔ Receiving

- What kind of information exchange is necessary to “collaborate”?
- How can you collaborate without violating information sharing norms?



# Concrete Ways to Collaborate

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- Be transparent with each other about organizational processes
  - And organizational limitations
- Take advantage of geographic proximity to facilitate survivor control of sharing
  - Don't assume every survivor should share
- Use informed releases only to implement survivor wishes & instructions
  - Releases should never be “expected” or routinely completed



# Further Questions & TA

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- Alicia Aiken,  
[alicia@confidentialityinstitute.org](mailto:alicia@confidentialityinstitute.org)
- NNEDV Safety Net,  
[safetynet@nnedv.org](mailto:safetynet@nnedv.org)
- Confidentiality Toolkit  
[www.techsafety.org/toolkit-page](http://www.techsafety.org/toolkit-page)





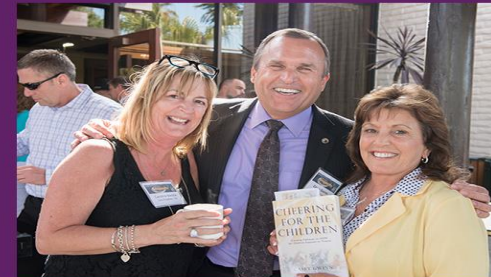
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*Thank you!*

# Save the Date!

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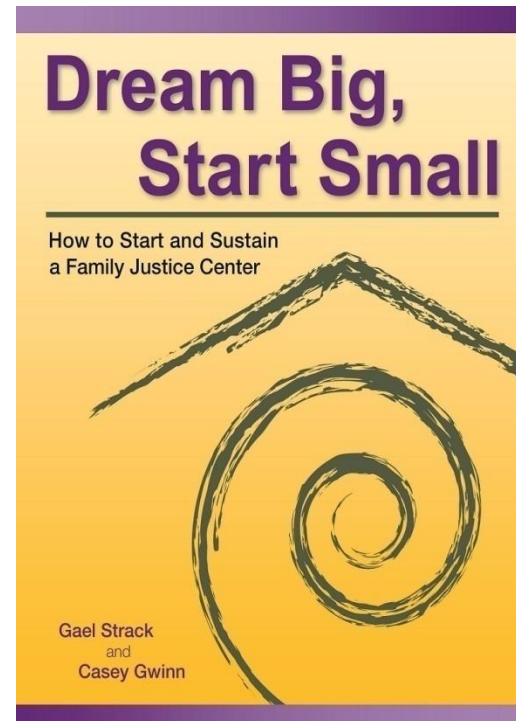
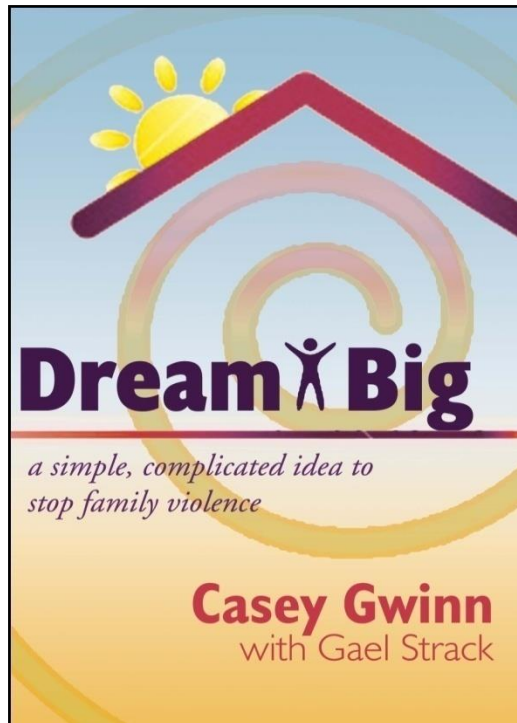
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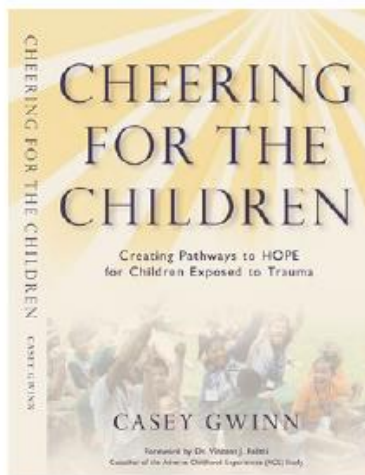
# The Why & the How



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# Cheering for the Children



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