ANISHINABE LEGAL SERVICES

Anishinabe Legal Services Newsletter

Serving the Leech Lake, Red Lake, & White Earth Reservations

Cass Lake, Minnesota • January 2017

P.O. Box 157, Cass Lake, MN 56633 • Phone 218-335-2223 or 1-800-422-1335

ALS Celebrating 50 Years of Service to reservation communities in 2017!



In 1967, the Leech Lake Reservation Legal Services Project was formed by a group of concerned community members and advocates. The first ever board meeting was held on November 25, 1967 with founding board members: Robert Renner, Jerry Goodwin, Simon Howard, Charles Spike, Wayne Cronin, Erma Eichberg, Robert Merrill, and Jack Seelye.

A few years later, the Legal Services Project became a recipient of federal Legal Services Corporation funds, and the board of directors decided to change the project's name to "Anishinabe Legal Services" with an expanded service area including the Red Lake and White Earth Reservations. ALS is an independent non-profit program, separate from the tribal government.

Fifty years later, ALS still continues to provide free civil legal services, outreach and legal education to community members living on or near the Red Lake, Leech Lake, and White Earth Reservations. To commemorate this huge milestone, ALS board and staff are planning a celebration dinner to take place on June 23, 2017 and open houses covering the three reservation service area with locations to be determined. Please watch for formal announcement and invitations in the near future!

If you would like to be placed on ALS's mailing list, or provide a monetary contribution to the 50th anniversary celebration event—in-kind goods or services are appreciated also—please feel free to contact Chari at: claduke-clark@alslegal.org or Jeannie: jsmith@alslegal.org or visit our website: www.alslegal.org for an online donation link. Your donation is tax deductible.

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United States v. Bryant: A Victory for Domestic Violence Victims in Indian Country

In an 8-0 decision, the Supreme Court ruled that prior uncounseled tribal court convictions may be used in subsequent criminal cases, under 18 U.S.C. § 117 (a), when the proceedings complied with the Indian Civil Rights Act ("ICRA"). In other words, this decision makes it possible for federal prosecutors to establish habitual domestic violence offenders for enhanced sentencing under federal statute.[1]

The Domestic Violence Problem in Native American Communities

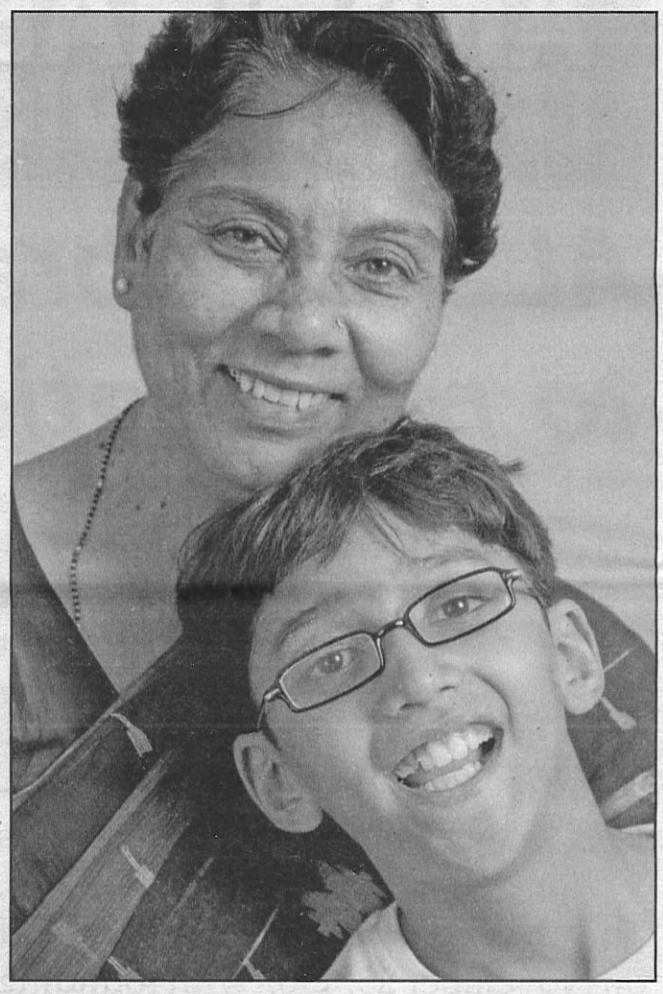
Compared to every other group in the United States, Native American women suffer the highest rates of domestic violence.[2] As many as 46% of American Indian and Alaska Native women have been victim of physical violence by an intimate partner.[3] In fact, American Indian and Alaska Native women are 2.5 times more likely to be raped or sexually assaulted than women in the United States in general.[4]

Moreover, domestic abusers exhibit high rates of recidivism (meaning that they have a high tendency to repeat the offense) and their violence often escalates in severity over time. In the U.S., over 75% of female victims of intimate partner violence have been previously victimized by the same offender.[5]

§117(a): Congress' Response to Domestic Violence Against Native American Women

Prior to the enactment of § 117 (a), the complex relationship between federal, state and tribal law made it difficult for the justice system to reduce the domestic violence epidemic against Native American women.[6]

For tribal courts, Congress had curbed tribal courts' sentencing authority. For example, until 1986, ICRA permitted sentences of imprisonment up to only six months. Since then, Congress has expanded tribal courts' sentencing authority, allowing them to impose up to three years' imprisonment. To date however, few tribes have employed this enhanced sentencing authority.[7]



1. *Breaking: SCOTUS Overturns Ninth Circuit, Upholds Tribal Court Convictions*, Indian Country Today (June 13, 2016), http://indiancountrytodaymedianetwork.com/2016/06/13/breaking-scotus-overturns-ninth-circuit-upholds-tribal-court-convictions-164779.

2. United States v. Bryant, 579 U.S.1, 2 (2016).

3. *Id.*

4. *Id.*

5. *Id.* at 3.

6. *Id.* at 4.

7. *Id.*

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In regards to States, most States lack jurisdiction over crimes committed in Indian country against Indian victims.[8] Additionally, even when capable of exercising jurisdiction, States tend to not get involved in crimes committed in Indian country due to their limited criminal justice resources.[9]

For federal law, prior to § 117 (a), felony assault subject to federal prosecution required "serious bodily injury," which meant "a substantial risk of death," "extreme pain," "protracted and obvious disfigurement," or "protracted loss or impairment of the function of a bodily member, organ or mental faculty." Thus, Indian perpetrators of domestic violence escaped felony charges "until they seriously injured or killed someone."[10]

As a result of the limitations on tribal, state and federal jurisdiction in Indian country, serial domestic violence offenders faced at most a year's imprisonment per offense- a punishment insufficient to deter repeated and escalating abuse.[11] Thus to increase the punishment of serial offenders, in 2005 Congress enacted a new federal felony offense under § 117 (a). The new law makes it a felony, punishable by up to five years, to commit domestic violence in "Indian country," if the offender is a repeat offender who has already been convicted of domestic violence at least twice in federal, state or Indian tribal court.[12]



A Model Domestic Violence Serial Offender: Michael Bryant, Jr.

The respondent in this case, Michael Bryant, Jr. ("Bryant"), is the exact type of domestic violence serial offender that § 117 (a) was established to prevent further violence against Native American women. Bryant is an enrolled member of the Northern Cheyenne Tribe and lived on the tribe's reservation in Montana. He has a record of over 100 tribal-court convictions, including several misdemeanor convictions for domestic assault.[13]

Between 1997 to 2007, Bryant pleaded guilty on at least five occasions in Northern Cheyenne tribal court to committing domestic abuse.[14] On one occasion, Bryant hit his girlfriend on the head with a beer bottle and attempted to strangle her. On another, he beat a different girlfriend, kneeing her in the face, breaking her nose, and leaving her bruised and bloodied.[15]

8 *Id.* at 5.

9 *Id.*

10 *Id.* at 6.

11 *Id.*

12 Opinion Analysis: No Constitutional Violation From Use of Tribal-Court Convictions as Predicate Offenses, Scotusblog, http://scotusblog.com/2016/06/opinion-analysis-no-constitutional-violation-from-use-of-tribal-court-convictions-as-predicate-offenses/ (last visited August 5, 2016); see 18 U.S.C. § 117 (2014).

13 Bryant, 579 U.S. at 10.

14 *Id.*

15 *Id.*

For most of these acts of domestic violence by Bryant, the tribal court sentenced terms of imprisonment which never exceed one year.[16]

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Bryant v. U.S: The Supreme Court Makes a Statement

In 2011, Bryant was arrested once again for assaulting women. In February, he attacked his then girlfriend, dragging her off the bed, pulling her hair and repeatedly punching and kicking her.[17] During an interview with law enforcement officers, Bryant admitted that he had assaulted the victim five or six other times.[18]

Three months later, he assaulted another woman who was living with him at the time, waking her by yelling that he could not find his truck keys and then choking her until she almost lost consciousness. Bryant later admitted to having assaulted this victim on three separate occasions.1 ing that he could not find his truck keys and then choking her until she almost lost consciousness. Bryant later admitted to having assaulted this victim on three separate occasions.[19]

Based on these 2011 assaults, a federal grand jury in Montana indicted Bryant on two counts of domestic assault by a habitual offender, in violation of § 117(a).[20]

The issue with this decision however was that Bryant was convicted at tribal court for these offenses when indigent and not appointed counsel. This, Bryant argued, was a violation of the Sixth Amendment since it requires appointment of counsel for indigent defendants whenever a sentence of imprisonment is imposed.[21]

However, the Bill of Rights, including the Sixth Amendment, does not apply in tribal-court proceedings. Instead, tribal courts follow ICRA, which unlike in federal or state court, for a sentence of imprisonment up to one year may be imposed without according indigent defendants the right to appointed counsel.[22]

Thus, Justice Ginsberg in her majority opinion held that because Bryant's tribal-court convictions occurred in proceedings that complied with ICRA, and therefore were valid when entered, use of those convictions as predicate offenses in a §117(a) prosecution was valid and did not violate the Constitution.[23]

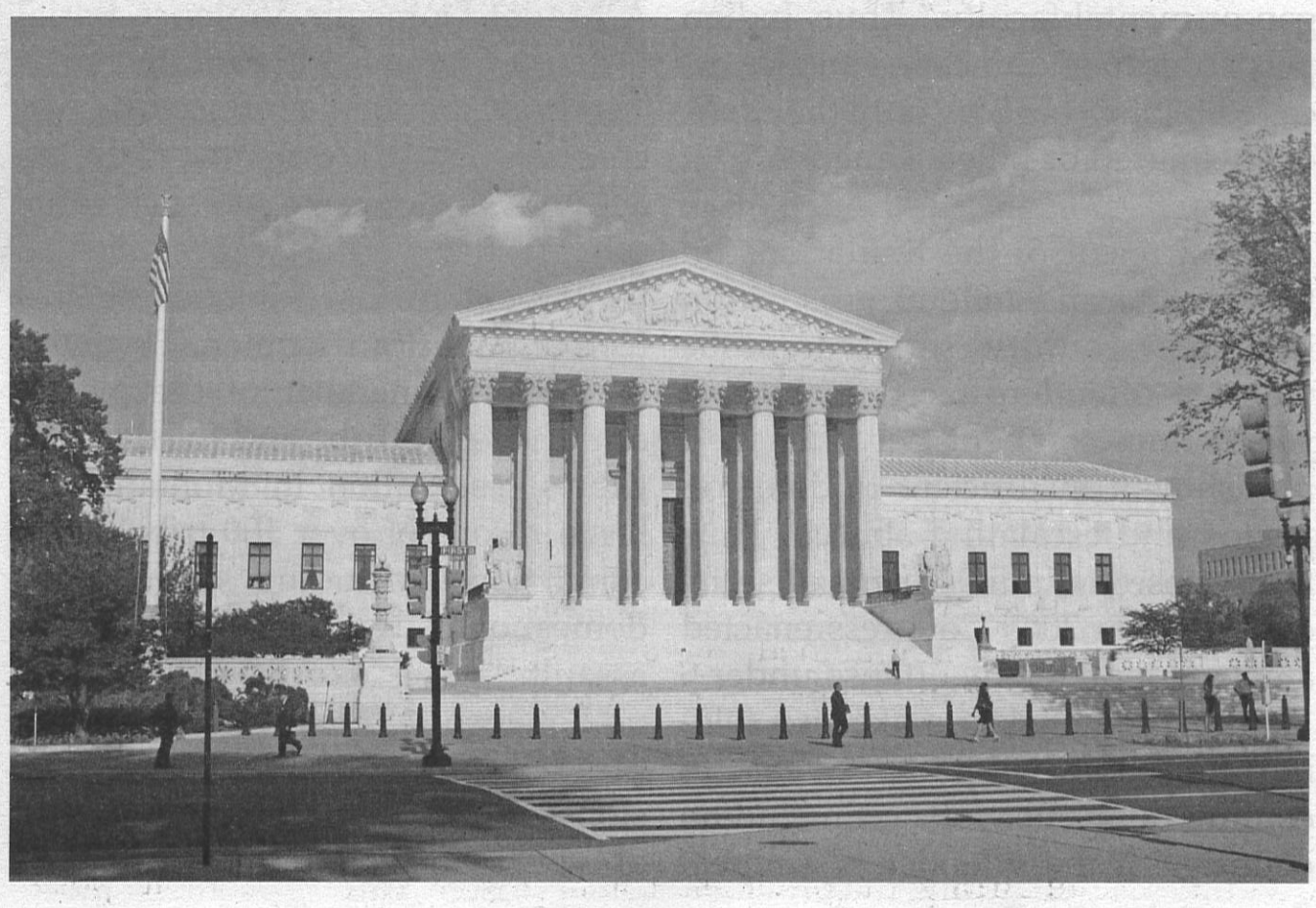
How will United States v. Bryant Promote Changes in Indian Country?

This decision in United States v. Bryant is a victory for Native American women and a huge step to reducing domestic violence in reservation communities. It means that U.S. Attorneys can make full use of the Habitual Domestic Violence Offender statute, § 117(a), to protect American

16 *Id.*

17 *Id.*

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Federal Bar Article 2016:
The Native American Children's Safety Act of 2016: Avoiding Unintended Consequences

This past June, President Obama signed into law the Native American Children's Safety Act (NACSA), legislation intended to provide greater protections for Native American youth placed within the tribal foster care system by tribal courts. Amending the Indian Child Protection and Family Violence Protection Act, the NACSA requires substantially heightened background checks for individuals residing within tribal foster care homes and increases foster care license recertification requirements.



Specifically, the NACSA requires that each tribal social services agency: 1) preform criminal records checks, including fingerprint-based checks of national crime databases, 2) check any abuse registries maintained by the tribe, 3) check any child abuse and neglect registry maintained by the state, and any other tribal abuse registries maintained within the state in which the individual resides, 4) request any other state in which the individual resided during the previous five years to enable the agency to check its registry; and 5) any other additional requirements the tribe determines is necessary and allowable within its existing authority. (It is important to note that these requirements do not apply to emergency foster care placements.)

The NACSA prohibits any foster care placements from being ordered if the investigation reveals that an individual residing within a potential placement has been found guilty by a federal, state, or tribal court of a felony involving abuse or neglect, spousal abuse, a crime against a child, violence, or drugs.

Any individual moving into a tribal foster care placement post-investigation is subject to the above requirements, and placements are required to periodically recertify to ensure compliance. The NACSA also directs the Department of the Interior to issue guidance on procedures for these background checks, as well as self-reporting requirements for foster care placements having knowledge that an individual residing on their premises will fail a background check.

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Precipitated at least in part by the recent child welfare tragedies at Spirit Lake in North Dakota, the NACSA was enacted with little opposition, and with broad tribal support. After all, protecting vulnerable youth from further abuse and neglect is a universal goal shared by tribal and non-tribal communities alike.

However, that being said, there are potential unintended consequences that tribal advocates, social services agencies, and courts are keeping mindful of and working to avoid.

For example, it is very common for households within reservations to house temporary residents. These residents often include extended family members, adult children, family friends, and/or other community members in need. These temporary household members may have successfully completed healing-to-wellness court programs (or other diversionary wellness programs) with a long record of sobriety, but under the NACSA, tribes may no longer have any flexibility or discretion if the person has a previous drug related offense, even when that person demonstrates no likelihood of further use. Additionally, the NACSA requires tribes to enforce the self-reporting provisions, but it is unclear how this can be accomplished.

Another concern is the law's underlying assumption that state agencies will cooperate to facilitate timely searches. The NACSA does not provide tribes with any meaningful legal tools to compel this essential cooperation. This becomes even more concerning with the fact that under the law, tribes will have to undertake searches for every state that each household member has lived in within the past 5 years. Even in states with tremendous tribal/state cooperation, tribes may experience significant delays and other issues trying to work with unfamiliar out of state agencies (which eventually will entail tribes having to work with agencies throughout all 50 states).

There is a serious and valid concern that taking away all tribal flexibility and discretion on licensing, along with potentially creating major licensing delays will further limit the availability of eligible homes in

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tribal communities. It is crucial that tribal foster care homes are available in tribal communities for Native American youth; there is already a considerable and alarming lack of these homes, harming tribal youth and tribal communities. It is imperative that no suitable tribal foster care homes become unavailable due to the unintended consequences of this law.

The other primary concern involves resources. The NACSA does not provide tribal courts or social services agencies with any additional resources to carry out these mandates. Resource-poor tribes will now have to expend far greater resources to remain compliant with these mandates, and failing to do so will jeopardize the already scarce (yet vital) federal funds that go towards the courts and social services.

The NACSA is a well-intentioned law with potential to provide great benefits for vulnerable Native American children throughout tribal communities. However, to avoid potential unintended consequences harming tribal youth and tribal communities, the NACSA should include amendments: a) allowing tribal courts and agencies greater discretion to solve problems at the local level b) guaranteeing effective tribal/state cooperation, and c) allocating funding to help tribes meet these mandates. Failing that, the Department of the Interior must work closely with tribes to ensure that the law is implemented in ways that avoid these unintended consequences.

For additional information regarding the NACSA, as well as potential unintended consequences, please visit:
https://turtletalk.wordpress.com/2016/06/14/commentary-on-the-native-american-childrens-safety-act/ and
http://www.narf.org/nill/bulletins/legislation/114_uslegislation.html

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18 *Id.* at 10-11

19 *Id.* at 11.

20 *Id.*

21 *Id.* at 7.

22 *Id.* at 8.

23 *Id.* at 16.

ndian women from those who commit serial acts of domestic violence against them.[24] With this legal tool that can be used to provide firmer legal protection to domestic violence victims, offenders will be more easily deterred and punished for their acts of violence. Thus, through United States v. Bryant, the Supreme Court took a big step in fighting this problem, even though it took several years and generations of victims to get to this victory.

24 *See supra* note 1.

Get Replacement Social Security Tax Forms Online with Ease

It's that time of year again. Preparing for tax season can seem overwhelming. Some forms and paperwork might be difficult to track down. If you misplaced your Benefits Statement or haven't received it by the end of January, we've made it easy for you to go online to request a replacement with my Social Security.

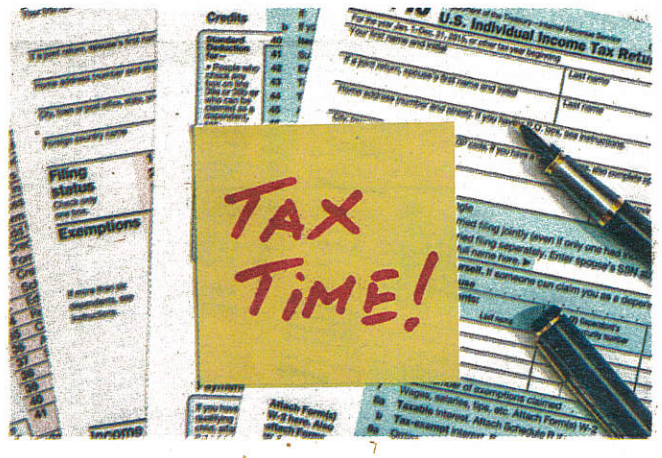
An SSA-1099, also called a Benefit Statement, is a tax form Social Security mails each year in January to the more than 60 million people who receive Social Security benefits. It shows the total amount of benefits received from Social Security in the previous year so people know how much Social Security income to report to the IRS on their tax return.

For noncitizens who live outside of the United States and received or repaid Social Security benefits last year, we'll send form SSA-1042S instead. The forms SSA-1099 and SSA-1042S are not available for people who receive Supplemental Security Income (SSI).

If you currently live in the United States and need a replacement form SSA-1099, we have a way for you to get a replacement quickly and easily. Go online and request a replacement form with a my Social Security account at www.socialsecurity.gov/myaccount. Online replacement forms are available beginning February 1, 2017.

Every working person in the U.S. should create a my Social Security account. The secure and personalized features of my Social Security are invaluable in securing a comfortable retirement — for today and tomorrow.

This article is compliments of the Bemidji Social Security office and written by Tammy Fluto, SSA office Manager.



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