Make No Assumptions: Barriers to Justice for Domestic Violence Victims

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Barriers to Justice for Domestic Violence Victims

By Casey Ross-Petherick and Kelly Gaines Stoner

**Assumption # 1: Domestic violence rates in Oklahoma are declining.** The truth: Despite national statistics indicating that domestic violence is on the decline, domestic-related violence is reaching epidemic proportions in Oklahoma. The Oklahoma Fatality Review Board reports there were 776 domestic violence-related deaths between 1998 and 2007.1 Oklahoma currently ranks fourth in the nation for the intimate partner homicides.2 According to Renee Brewer,3 the Executive Director of the Native Alliance Against Violence,4 the statistics are only getting worse. "Oklahoma is on track this year to be the state with the most domestic violence-related homicides in the country. The victim service programs in our state are overwhelmed, and there is not enough funding to assist programs in addressing the many needs that are created by this crisis."

**Assumption # 2: Victims of domestic violence are all the same.** The truth: Domestic violence affects every segment of the population. Victims come from every socioeconomic level, every community, every culture and every race. Although the vast majority of reported domestic cases involve women victims, there are also several cases involving male victims. In a survey by the National Institute of Justice, Centers for Disease Control, 7.5 percent of men surveyed reported they had been victims of intimate partner violence.5 This number is suspected as deflated due to lower reporting rates among male victims. Some demographics are victimized at higher rates than others. American Indian women experience the highest rates of intimate partner violence.6 Immigrant victims face additional barriers to justice, and are less likely to report domestic violence for fear of placing their status in jeopardy.

**Assumption # 3: Domestic violence victims need victim services more than they need legal services.** The truth: According to Shelley Miller,7 a victims’ advocate and project director of the Apache Tribe’s Violence Free Living Program, access to legal representation is one of the most important needs victims have. "Most victims need transitional housing, financial assistance and employment support, but those needs can be addressed by a variety of resources, including community partners, family and friends. Not just anyone can help a victim in court. There are not enough well-trained attorneys willing to help with legal needs, and nearly every victim we see needs representation in court for something arising as a result of the abusive relationship. Victims need representation on victims rights issues, protective orders, divorce, child custody and bankruptcy proceedings that are brought about as a result of the victim breaking free.”

**Assumption # 4: Any lawyer can represent a victim of domestic violence.** The truth: Domestic violence representation is one of the most dangerous areas of law to practice. The Native American Legal Resource Center (NALRC) at OCU School of Law has developed a collaborative service-providing model for representing victims of domestic violence, pairing each attorney with a victims’ advocate. Ruseal Brewer,8 a project attorney at the NALRC explains, “As an attorney representing a victim, my first thought is to aggressively represent my client to get her every remedy she can seek in court. But our victims’ advocates see the situation from a safety-based perspective, and often pull me out of the litigation mindset to ensure we do not enrage the batterer and put..."
The victim in more danger than she already is. I worry how I might have endangered my clients without even knowing it before my training taught me to focus on safety. Working with a victims’ advocate in each case ensures our clients’ safety and our own safety.” Shelley Miller agrees. “Safety is the number one concern in working with victims of domestic violence. It is a life or death situation for the victim, her family, the service providers and the attorney handling the case. Having an attorney who is not trained to focus on safety is worse than having no attorney at all.”

Assumption #5: Domestic violence only affects the adults in a relationship. The truth: Children in homes where domestic violence is occurring are much more likely to suffer physical, emotional and sexual abuse than children in non-abusive homes. Victims are less likely to be in a position to protect their children from abuse after separation. According to the American Bar Association Domestic Violence Commission, victims in domestic violence cases lose custody of their children in approximately 70 percent of the cases. Renee Brewer explains, “Victims are typically very traumatized by the abuse, and often do not present well in court, where they see the batterer face-to-face, and are forced to re-live the horrific events. Batterers, however, are master manipulators, and typically present very well in court. Many judges misunderstand the dynamics, fault the victim and reward the batterer by awarding custody to the offending parent.”

Assumption #6: All batterers can be criminally prosecuted for committing domestic violence crimes. The truth: Jurisdictional gaps exist that create safe havens for batterers in Oklahoma Indian Country. The status of criminal jurisdiction in Indian Country is a complex and confusing web of federal statutes and U.S. Supreme Court case law that creates a gap in prosecutorial authority for crimes committed on Indian land. With Oklahoma’s unique checkerboard pattern of tribal land intermingled with non-Indian land, determining proper exercise of authority for investigating and prosecuting domestic violence cases becomes even more difficult.

The U.S. Supreme Court has dictated that tribes cannot exercise criminal jurisdiction over non-Indians. If the crime is an interracial crime involving an non-Indian perpetrator and an Indian victim, the state cannot prosecute. In those cases only the federal government can prosecute, but limitations of resources and manpower often result in declinations of cases not involving great bodily injury or death.

Assumption #7: Victims of domestic violence in Oklahoma have access to attorneys for their legal needs. The truth: Most victims of domestic violence do not have a lawyer for their cases. There are few resources for victims, who most often, cannot afford legal representation as a result of financial control exercised by the batterer. Legal Aid Services of Oklahoma provides pro bono representation in many areas, but there are far more cases than their programs can handle. A handful of programs scattered throughout the state offer some form of legal representation to victims, but uncertain grant funding and eligibility limitations often frustrate the intent behind the programs.

Assumption #8: I cannot help. The truth: You can be part of the solution.

OBU law’s NALRC and Pro Bono Program are teaming up with Legal Aid Services of Oklahoma, the Oklahoma Bar Association’s Access to Justice Committee and attorneys across the state to make a difference in the number of well-trained attorneys willing to take pro bono cases to represent victims of domestic violence.

Sign up to be placed on a resource list for the American Bar Association’s Domestic Violence Commission. Listed attorneys commit to take one pro bono domestic violence case per year. In exchange for this commitment, participants benefit from the following:

- Free domestic violence training. OBU law will provide 12 continuing legal education credits, including one ethics credit, at no cost to all program participants. The training will focus on best practices for attorneys representing domestic violence victims, safety planning, jurisdictional considerations and developing cultural competencies in representing diverse clients. Each listed attorney must complete the training before being assigned a case.

- Support. OBU law’s NALRC will provide sup-
port and research assistance to all program participants. The NALRC will provide advice and guidance to participants during the pendency of their pro bono case. Current law students will be available to research new and difficult legal issues as they arise.

Assumption #9: If I do not respond, others will. The question: If you do not step up to help victims of domestic violence, who will?

For more information, or to join the effort, please contact the Native American Legal Resource Center at OCU School of Law, by e-mail at dvlist@okcu.edu or by phone at (405) 208-5017.

Ms. Ross-Petherick is the deputy director of the Native American Legal Resource Center at OCU law. Ms. Stoner is a professor of law, and serves as the director of the Native American Legal Resource Center and Clinical Programs at OCU law.

3. Renee Brewer has over 10 years experience working with victims of domestic violence as a victims’ advocate, having represented over 500 victims. She is a commissioned reserve police officer of the Seminole Nation Lighthorse Police force. Renee is a citizen of the Muscogee (Creek) Nation.
4. The Native Alliance Against Violence (NAAV) is the new statewide coalition for tribal domestic violence programs in Oklahoma. The NAAV seeks to synergize the domestic violence programs of the 38 tribal governments in Oklahoma to offer comprehensive solutions for expansion of services for Native victims and families. The NAAV is funded through a grant program of the Office on Violence against Women.

10. The unique land issues in Oklahoma result from the federal Indian policy of disbanding reservations that were held in common ownership and allotting parcels of land to individuals, many of which are still under the superintendence of the federal government.

Judicial Compensation Board Requests Comments on State Judicial Salaries

The Board on Judicial Compensation will hold a meeting on Tuesday, September 15, 2009. The Board wants to solicit public input as to the appropriate salary for the following Oklahoma state court judicial positions:

1. Chief Justice of the Supreme Court;
2. Associate Justices of the Supreme Court;
3. Presiding Judge of the Court of Criminal Appeals;
4. Judges of the Court of Criminal Appeals;
5. Presiding Judge of the Court of Civil Appeals;
6. Judges of the Court of Civil Appeals;
7. District court judges;
8. Associate district court judges; and
9. Special district court judges.

The Board will only consider written responses that are dated, signed by the person submitting them and received by 5:00 p.m., September 1, 2009. Responses should be submitted to the following address:

Judicial Compensation Board
c/o Administrative Office of the Courts
1915 North Stiles, Suite 305
Oklahoma City, OK 73105

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