

THE CASE FOR TRIBAL VETERANS HEALING TO WELLNESS COURTS

Kristine A. Huskey*

I. INTRODUCTION¹

American Indians and Alaska Natives (AIAN)² have a long history of serving in the United States military in relatively high numbers, and they continue to do so to this day.³ In some conflicts, for example the Vietnam War, AIAN soldiers saw disproportionately high rates of combat and were often assigned perilous duties, such as walking point and nighttime listening posts.⁴ For this and other reasons, Native American Vietnam Veterans have exceptionally high rates of Post-Traumatic Stress Disorder (PTSD).⁵ A more recent study shows Native

* Kristine A. Huskey is a Clinical Professor of Law and the Director of the Veterans Advocacy Law Clinic at the University of Arizona James E. Rogers College of Law. Together with her students and Clinic colleague, Huskey has represented Veterans in two local Veterans Treatment Courts in Tucson, Arizona for over eight years. The author would like to thank Tom Holm for his wonderful insights and stories, as well as William C. Meadows, Lauren van Schilfgaarde, and Mark Panasiewicz for their helpful resources. Additional gratitude to Heather Whiteman Runs Him for her thoughtful review and comments, Garrett Hable (3L) for his excellent suggestions and edits, and Rebecca Plevel for her thorough and timely research. Lastly, many thanks to Dean Marc Miller for his support of Veterans and my related work.

¹ As a non-Native American woman of color, I have trepidation about the terminology I use in referring to the peoples who are the subject of this Article. Based on extensive written materials and oral presentations by Native and non-Native individuals and entities, as well as conversations with Native American Veterans and non-Veterans, this Article uses interchangeably the numerous terms I have come across: Native American, American Indian, Indian, Alaska Native, Native People(s), and Indigenous Americans/People. I use the term “Indian” when sources I cite use the term. I use the term “American Indian/Alaska Native” (AIAN), in part, because the U.S. Department of Veterans Affairs uses the category (and acronym) for much of its reporting. According to the National Museum of the American Indian, both American Indian and Native American are acceptable; however, “[t]he consensus . . . is that whenever possible, Native people prefer to be called by their specific tribal name.” Further, some Native people prefer American Indian or Indigenous American over Native American. *Frequently Asked Questions*, NAT’L MUSEUM AM. INDIAN, <https://americanindian.si.edu/nk360/faq/did-you-know> (last visited July 19, 2021).

² “An American Indian or Alaska Native is a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.” NAT’L CTR. FOR VETERANS ANALYSIS & STATS., U.S. DEP’T OF VETERANS AFFS., *MINORITY VETERANS REPORT: MILITARY SERVICE HISTORY AND VA BENEFIT UTILIZATION STATISTICS* 22 (Mar. 2017), https://www.va.gov/vetdata/docs/SpecialReports/Minority_Veterans_Report.pdf. The U.S. Census Bureau uses the same terms and definition. *About*, U.S. CENSUS BUREAU, <https://www.census.gov/topics/population/race/about.html> (last revised Oct. 16, 2020).

³ See *infra* Part II.

⁴ See WILLIAM C. MEADOWS, *NATIVE AMERICAN “WARRIORS” IN THE U.S. ARMED FORCES, INCLUSION IN THE AMERICAN MILITARY: A FORCE FOR DIVERSITY* 95 (David E. Rohall et al. eds., 2017); TOM HOLM, *STRONG HEARTS WOUNDED SOULS: NATIVE AMERICAN VETERANS OF THE VIETNAM WAR* 137-39, 150-51, tbls.3, 4 & 5 (1996).

⁵ See Lawrence William Gross, *Assisting American Indian Veterans of Iraq and Afghanistan Cope with Posttraumatic Stress Disorder: Lessons from Vietnam Veterans and the Writings of Jim Northrup*, 31 AM. INDIAN Q. 373, 375-76 (2007).

American Veterans were more than three times as likely to have PTSD than the general Veteran population.⁶ Veterans with PTSD have increased odds of substance use and psychiatric disorders.⁷ In fact, studies show that more than fifty percent of all Veterans with PTSD have at least one comorbid condition, such as depression, anxiety disorder, or substance use disorder.⁸ Unfortunately, studies have also shown that, for Veterans, there exists a linkage between PTSD, other mental disorders, and substance abuse and negative behaviors, which can lead to criminality in many instances.⁹

Veterans Treatment Courts (VTCs), which are typically situated in local, regional, state, and federal criminal courts, were developed to address this causal-chain occurrence.¹⁰ VTCs are unique problem-solving courts, modeled after drug courts, that attempt to “fix” the underlying condition(s) of Veterans, diverting them from incarceration and fines to treatment and counseling.¹¹ VTCs adopt practices and procedures geared towards the military experience, thereby increasing the likelihood of success for the Veteran participating in the treatment program.¹² So far, limited data shows these courts are successful at reducing recidivism and decreasing negative behaviors and substance abuse in Veterans.¹³ However, whether these local, regional, state, and federal VTCs are helping American Indian and Alaska Native Veterans is unknown. At the same time, whether VTCs exist in Tribal Nations to help AIAN Veterans is also far from clear. What is known is that some Tribal justice systems have “Tribal Healing to Wellness Courts” (THWCs), which were developed and modeled after drug courts, in order to resolve underlying problems of individuals in their local communities—primarily Native

⁶ See Sharon M. Smith et al., *The Association Between Post-Traumatic Stress Disorder and Lifetime DSM-5 Psychiatric Disorders Among Veterans: Data from the National Epidemiologic Survey on Alcohol and Related Conditions-III (NESARC-III)*, 82 J. PSYCHIATRIC RSCH. 16, 18-19, tbl.1 (2016).

⁷ *Id.* at 20.

⁸ *Id.* at 16-17.

⁹ See Kristine A. Huskey, *Reconceptualizing “the Crime” in Veterans Treatment Courts*, 27 FED. SENT’G REP. 178, 180-82 (2015) (citing numerous studies showing linkage between PTSD and behaviors that may lead to misconduct); Michelle Slattery et al., *Catch, Treat, and Release: Veteran Treatment Courts Address the Challenges of Returning Home*, 48 SUBSTANCE USE & MISUSE 922, 923-24 (2013) (citing various studies showing higher rates of justice involvement for veterans with PTSD, TBI, and substance abuse problems).

¹⁰ See Kristine A. Huskey, *Justice for Veterans—Does Theory Matter?*, 59 ARIZ. L. REV. 697, 702-04 (2017).

¹¹ See Kristine A. Huskey & Jayme Cassidy, *Veterans Treatment Courts*, in *SERVICEMEMBERS AND VETERANS RIGHTS* §§ 10.01[2][a], 10.02 (Brian Clauss & Stacey-Rae Simcox eds., 2016); see also Robert T. Russell, *Veterans Treatment Court: A Proactive Approach*, 35 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 357, 364 (2009).

¹² See Russell, *supra* note 11, at 364. For a lengthy discussion of the development and unique characteristics of Veterans Treatment Courts, see Huskey, *supra* note 10, at 702-09; *infra* Part III, Section A.

¹³ See Anne S. Douds et al., *Varieties of Veterans’ Courts: A Statewide Assessment of Veterans’ Treatment Court Components*, 28 CRIM. J. POL’Y REV. 740, 741 (2017); see also DOUGLAS B. MARLOWE ET AL., NAT’L DRUG COURT INST., *PAINTING THE CURRENT PICTURE: A NATIONAL REPORT ON DRUG COURTS AND OTHER PROBLEM-SOLVING COURTS IN THE UNITED STATES* 14-16 (2016), <https://www.ndci.org/wp-content/uploads/2016/05/Painting-the-Current-Picture-2016.pdf> (citing studies that show adult drug courts reduce criminal recidivism, reduce substance abuse, and improve participants’ psychosocial functioning).

Peoples.¹⁴ These Courts attempt to treat alcohol and other substance abuse conditions as well as address behavioral issues.¹⁵ Additionally, Tribal Healing to Wellness Courts incorporate Native traditional cultural and religious practices and restorative justice values.¹⁶

This Article advocates for THWCs to consider establishing Veteran-focused dockets or tracks to help American Indian and Alaska Native Veterans who are involved in the criminal justice system *and* suffering from PTSD, other mental health conditions, and/or alcohol or substance abuse. Such an individualized court or process could speak to the unique issues facing Native Americans who are also Veterans, and concurrently, the distinctive shared experiences and traditions of Native Americans who have served in the military. This combination of characteristics in a treatment court could assist a population that would greatly benefit from a tailored and specialized court, helping American Indian and Alaska Native Veterans recover from disorders and addictions potentially caused by their military service.

In his comprehensive work addressing PTSD and AIAN Veterans of the Afghanistan and Iraq conflicts, Lawrence Gross points to their return from the battlefield, “scarred and wounded in body, heart, and mind” and issues “a call for scholars to engage in a sustained, interdisciplinary conversation about practical suggestions for relieving the suffering of our American Indian warriors.”¹⁷ This Article’s proposed consideration of Tribal Veterans Healing to Wellness Courts is a response to that call.

II. AMERICAN INDIANS & ALASKA NATIVES IN THE MILITARY

A. Participation

American Indians have served in every war America has fought, starting with the Revolutionary War.¹⁸ Though many tribes sided with the British, some fought with the colonists and, of the 250,000 soldiers in George Washington’s

¹⁴ See *infra* Part III, Section B.

¹⁵ See MARK E. PANASIEWICZ ET AL., *TRIBAL L. & POL’Y INST., TRIBAL HEALING TO WELLNESS COURTS: TREATMENT GUIDELINES* 11 (2d ed. 2017), http://www.wellnesscourts.org/files/Treatment%20Guide%202nd%20ed_%202017.pdf (in addition to treatment for alcohol and other substance abuse problems, complementary support services include parenting training, anger management, and criminal thinking interventions); JOSEPH THOMAS FLIES-AWAY ET AL., *TRIBAL L. & POL’Y INST., U.S. DEP’T OF JUST., TRIBAL HEALING TO WELLNESS COURTS: THE KEY COMPONENTS* 1 (2d ed. 2014), <http://wellnesscourts.org/files/Tribal%20Healing%20to%20Wellness%20Courts%20The%20Key%20Components.pdf> (stating that the goal of THWCs is to reduce the use and abuse of alcohol and other drugs, criminal activity, juvenile delinquency, and child neglect and abuse).

¹⁶ See KORI CORDERO ET AL., *TRIBAL L. & POL’Y INST., TRIBAL HEALING TO WELLNESS COURTS: INTERGOVERNMENTAL COLLABORATION* 5 (2021), <http://www.wellnesscourts.org/files/Tribal%20Healing%20to%20Wellness%20Court%20Intergovernmental%20Collaboration%20May%202020%202021.pdf>.

¹⁷ Gross, *supra* note 5, at 373.

¹⁸ GARY ROBINSON & PHIL LUCAS, *FROM WARRIORS TO SOLDIERS: A HISTORY OF AMERICAN INDIAN SERVICE IN THE UNITED STATES MILITARY* 23 (2010).

army, 5,500 were Natives.¹⁹ American Indians also fought in the Civil War with slightly over 4,000 siding with the Union and more than 15,000 joining the Confederacy.²⁰ This likely represented around seven to eight percent of the Native American population, which was estimated to be 250,000 by the 1890s.²¹

In World War I (WWI), estimates place American Indian service in the United States military between 12,000 and 14,000, which was approximately twenty to thirty percent of the adult male Indian population.²² Two-thirds were volunteers, even though Native Americans were not allowed to become American citizens until 1924 when the Indian Citizenship Act passed, with some exceptions.²³ In essence, Native Americans “took a military oath to defend the Constitution of the United States without possessing any rights under it.”²⁴ Little known is that Native American soldiers also served as code talkers during WWI.²⁵

Native American military service during World War II (WWII) is perhaps more well-known through iconic figures such as Ira Hayes, immortalized in the Iwo Jima Memorial, and the Navajo code talkers, whose significant war contributions came to public eye in the popular movie, “Windtalkers.”²⁶ Within six months of America’s official entry into WWII with the bombing of Pearl Harbor in 1942, 7,500 to 10,000 American Indians enlisted in the military.²⁷ It is estimated that by the end of the war, 24,000 reservation and 20,000 off-reservation Indian men served in WWII, representing more than ten percent of the Native population.²⁸ Native women also joined in substantial numbers with 800 serving during WWII.²⁹ Then Commissioner of Indian Affairs, John Collier, remarked that the number of enlisted Native Americans “represent[ed] a larger proportion than any other element of our population.”³⁰

¹⁹ Meadows, *supra* note 4, at 84.

²⁰ *Id.* at 85.

²¹ See RUSSELL THORNTON, *AMERICAN INDIAN HOLOCAUST AND SURVIVAL: A POPULATION HISTORY SINCE 1492* 43 (Univ. Okla. Press 1987).

²² ALEXANDRA N. HARRIS & MARK G. HIRSCH, WHY WE SERVE: NATIVE AMERICANS IN THE UNITED STATES ARMED FORCES 6 (2020); Meadows, *supra* note 4, at 88; ROBINSON & LUCAS, *supra* note 18, at 95 (depicting a chart of Native American military service).

²³ ROBINSON & LUCAS, *supra* note 18, at 45, 47.

²⁴ Meadows, *supra* note 4, at 88 (quoting Pamela Bennett & Thom Holm, *Indians in the Military*, in HANDBOOK OF NORTH AMERICAN INDIANS: INDIANS IN CONTEMPORARY SOCIETY 10-18 (Garrick A. Bailey & William C. Sturtevant eds., Smithsonian Inst. Press 2008)).

²⁵ ROBINSON & LUCAS, *supra* note 18, at 46. Soldiers from the Choctaw, Eastern Band Cherokee, and Comanche tribes took part in impromptu tactics, sending messages in their native languages. Meadows, *supra* note 4, at 97.

²⁶ The Marine Corp actively recruited and trained Navajo code talkers, who became part of the largest code-talking program, though other groups of soldiers from different tribes also made significant contributions to the code talking program. Code talkers provided secure real-time communications that were faster than encryption and decryption technology at the time. No Native American codes were ever broken by the enemy. William C. Meadows, *supra* note 4, at 97-98. Ironically, many code talkers who served in both world wars had attended government-run Indian boarding schools where they were forbidden to speak their Native language and were punished if caught doing so. *Id.* at 98.

²⁷ ROBINSON & LUCAS, *supra* note 18, at 47; Meadows, *supra* note 4, at 91.

²⁸ Meadows, *supra* note 4, at 91.

²⁹ HARRIS & HIRSCH, *supra* note 22, at 6.

³⁰ HARRIS & HIRSCH, *supra* note 22, at 7. Native American soldiers were also highly decorated, earning seventy-one Air medals, fifty-one Silver Stars, forty-seven Bronze Stars, thirty-four

Approximately 10,000 Native Americans served in the Korean Conflict³¹ and likely around 42,000 served in Vietnam between 1960 and 1973.³² In the Vietnam era, American Indians made up 1.4 to 2% of all troops sent to Southeast Asia, while they were not more than 0.6% of the total population in the United States at the time.³³ For comparison, roughly 5.1% of the total Native population (American Indians and Alaska Natives) served during the Vietnam era, while 1.3%-4.3% of the total population served during the same era.³⁴ A study by Native American Vietnam Veteran and preeminent scholar, Tom Holm, indicates that Indian soldiers in Vietnam were disproportionately assigned military occupations that ensured their participation in battle.³⁵ In fact, more than eighty percent saw combat with 36.5% seeing “heavy” combat.³⁶ Due to long-held stereotypes, American Indians continued to experience the “Indian Scout Syndrome” as they were often assigned the most dangerous jobs such as walking point, scouts, tunnel rats, nighttime listening posts, Army LLRP (Long Range Reconnaissance Patrol), and Marine Force Recon Battalions.³⁷

The stereotypes about Native Americans in the context of war continued into America’s conflicts in the Middle East. During the Gulf War (1990–1991), Marine Brigadier General Richard Neal referred to enemy territory as “Indian Country.”³⁸ In response to complaints, a “spokesperson for the military command in Saudi Arabia justified its use by explaining that ‘Indian Country’ was a term

Distinguished Flying Crosses, and two Congressional Medals of Honor. ROBINSON & LUCAS, *supra* note 18, at 95.

³¹ HARRIS & HIRSCH, *supra* note 22, at 7. The U.S. Department of Veterans Affairs places Native Service in the Korean Conflict at almost 30,000. NAT’L CTR. FOR VETERANS ANALYSIS & STATS., *supra* note 2, at 14.

³² HOLM, *supra* note 4, at 122-23; *see also* ROBINSON & LUCAS, *supra* note 18, at 95.

³³ *See* HOLM, *supra* note 4, at 123.

³⁴ This estimate uses the total Native population and the total population in 1970 though the Vietnam era is considered to be 1964-1973. Meadows, *supra* note 4, at 101 tbl.5.1; *1970 Census - Population, Advance Report: Final Population Counts*, U.S. CENSUS BUREAU (Jan. 1971), <https://www.census.gov/library/publications/1971/dec/pc-v1.html>. An accurate comparison is difficult to make. 2.7 million of the general population “served in Vietnam” and 3.4 million deployed to Southeast Asia, while 8.75 million of the general population served in all Armed Forces during the Vietnam era. *Military Health History Pocket Card*, U.S. DEP’T OF VETERANS AFFAIRS, <https://www.va.gov/OAA/pocketcard/m-vietnam.asp> (last visited Feb. 25, 2022). As mentioned, data shows that 42,000 AIANs served during the Vietnam era with more than eighty percent seeing combat, which means that at least eighty percent, if not more, of the AIANs who served during the Vietnam era were deployed, while less than half of the general population who served during the Vietnam era were deployed.

³⁵ *See* HOLM, *supra* note 4, at 137.

³⁶ *Id.* at 137, 139, tbl.5.

³⁷ Meadows, *supra* note 4, at 95; HOLM, *supra* note 4, at 137-39, 150-51, tbls.3, 4 & 5. Creek Indian Vietnam Veteran Willie Haney remarked in the documentary, *A Time to Heal*, that popular movies about Vietnam rarely portrayed Indian people yet out in the field in “‘Nam” the first thing an officer would do is say “Chief, you take point.” ROBINSON & LUCAS, *supra* note 18, at 56; *see also id.* at 70-71 (conveying first-hand accounts by Native Vietnam Veterans of their experiences being called “chief” and having to “walk point,” take “listening post” duty and long-range reconnaissance because they were perceived to have innate skills).

³⁸ ROBINSON & LUCAS, *supra* note 18, at 59.

used in Vietnam to mean hostile territory.”³⁹ Approximately 24,000 Native Americans served during the Gulf War era.⁴⁰

The more recent conflicts in Afghanistan and Iraq maintained the stereotypes with the most significant being that the United States military used the code name “Geronimo” for Osama Bin Laden in the 2011 raid that resulted in his death, as well as continuing to characterize enemy territory as “Indian Country.”⁴¹ Despite a slight decline in service from the First Gulf War, the Operation Enduring Freedom/Operation Iraqi Freedom eras (2003–2011) saw 17,500 Native Americans serve, increasing to nearly 22,000 American Indians and Alaska Natives on active duty and in the reserves in 2017.⁴²

*“American Indians and Alaska Natives have served in the U.S. military at the highest rate per capita of any ethnicity.”*⁴³

This phrase has come to characterize the legacy of Native service since it was first stated during WWI, yet confirmation of its accuracy can be difficult due to how Native Americans were classified historically.⁴⁴ For example, during the Civil War, some Indians fought in the “colored” units; in WWII, many in the South were routed to either white or African-American units based on the shade of their skin; and in the Vietnam War, the category “American Indian” did not exist.⁴⁵ Despite the imprecision, historical and current data supports the proposition that “[o]f all minority groups in the U.S. Armed Forces, American-Indian veterans have long represented the highest percentage of their total population,” and continue to do so.⁴⁶

A common question raised in many scholarly works on the history of Native American military service is *why* they have served in such high numbers, so continuously, and with such palpable pride, a country that has broken treaties, attempted to eradicate their languages and cultures, denied them United States citizenship and other rights, and forced them into involuntary wardship as well as engaged in other forms of oppression and discrimination.⁴⁷ Undoubtedly, Native

³⁹ *Id.*

⁴⁰ *Id.* at 95.

⁴¹ Meadows, *supra* note 4, at 102.

⁴² HARRIS & HIRSCH, *supra* note 22, at 8. Though the U.S. Veterans Affairs and military sources record the category “American Indian/Alaska Native” only as a sole choice, which does not account for service members who choose more than one ethnicity. *Id.*

⁴³ *Id.* at 6.

⁴⁴ *Id.*

⁴⁵ *Id.* (explaining that historically Native Americans were classified incorrectly or counted as whites). Alaska Natives were not even counted until 1960 despite over 6,300 Alaska Natives (ages 12–80) volunteering to serve without pay in the newly formed Alaska Territorial Guard (“Eskimo Scouts”) during WWII. See NAT’L CTR. FOR VETERANS ANALYSIS & STATS., *supra* note 2, at 14; Sean Kimmons, *Alaska Natives Defended Their Territory 75 Years Ago*, U.S. DEP’T DEFENSE (Nov. 16, 2017), <https://www.defense.gov/Explore/News/Article/Article/1374255/alaska-natives-defended-their-territory-75-years-ago/>.

⁴⁶ Meadows, *supra* note 4, at 101 tbl.5.1; see also NAT’L CTR. FOR VETERANS ANALYSIS & STATS., *supra* note 2, fig.4.

⁴⁷ See, e.g., HARRIS & HIRSCH, *supra* note 22, at 1; Meadows, *supra* note 4, at 101.

people have served for the same reasons as others—to learn a trade, get an education, see the world, or to escape poverty and gain stability. Equally significant is the unique Indigenous experience: “adherence to family or tribal traditions and treaty alliances, as well as a commitment to defend tribal homelands,” which had been theirs for millennia.⁴⁸ In many ways, the explanation starts with the “Warrior Tradition,” which has been inextricably part of the narrative of Native peoples’ culture, religion, experiences, and lives for generations.⁴⁹ “Many Natives view contemporary military service through older tribal traditions related to warfare, using the term ‘warrior’ to describe and refer to veterans, past and present.”⁵⁰ One Northern Cheyenne Vietnam Veteran described military service as “deeper” than patriotism. It is something “passed down from generation to generation” and “warrior status was always an achievement for Indian men.”⁵¹ Holm writes that for Native Vietnam Vets, the “two words *warrior tradition* became symbolic of their identities.”⁵²

Part and parcel of the “Warrior Tradition” are the rituals performed for soldiers leaving and returning to the tribe. Before sending a tribe member off to war, many tribes hold special ceremonies that may include visiting sacred places and giving the member special medicines or protective items to carry into battle.⁵³ The return of the warrior was equally, if not more, ceremonialized in light of the safe return and an indigenous approach to warfare and its aftermath. Native traditions have commonly seen war as a “state of imbalance;” thus, once the warrior returns, cleansing ceremonies may be held not only for the individual’s health but for the health of the community as well in order to restore balance to both.⁵⁴ The ethnography *From Warriors to Soldiers* sums it up well:

Not only should veteran warriors be honored, according to American Indian practice, but they should also be cleansed of the stains of battle and restored to a harmonious position within the community. ... For thousands of veterans and their families who attend powwows, the

⁴⁸ See HARRIS & HIRSCH, *supra* note 22, at 2-3. Native nations signed approximately 370 “nation to nation” agreements with the United States in the eighteenth and nineteenth centuries. *Id.* at 2.

⁴⁹ See, e.g., *id.* at 15-16; ROBINSON & LUCAS, *supra* note 18, at 7, 62.

⁵⁰ Meadows, *supra* note 4, at 83.

⁵¹ ROBINSON & LUCAS, *supra* note 18, at 7.

⁵² HOLM, *supra* note 4, at 166.

⁵³ See, e.g., Meadows, *supra* note 4, at 103; ROBINSON & LUCAS, *supra* note 18, at 11; HOLM, *supra* note 4, at 166-67.

⁵⁴ HARRIS & HIRSCH, *supra* note 22, at 4; see Meadows, *supra* note 4, at 101; ROBINSON & LUCAS, *supra* note 18, at 72 (sharing stories of wartime is one of many Indian cultural practices that contribute to the health of the individual and the community).

ceremonies, dances and commemorations are times of genuine healing and community building.⁵⁵

Despite the existence of traditional approaches to the warrior's return from war, the transition back to civilian life has held challenges for many Native Americans, as it has for many of our nation's soldiers.

B. PTSD, Other Mental Health Issues & Substance Use Disorders

For many Veterans, the aftermath of war could include minor to severe lifelong physical and/or mental health and substance abuse disorders. For example, for Veterans from the Vietnam, Operation Desert Storm, and Operation Enduring Freedom/Operation Iraqi Freedom eras, lifetime prevalence for PTSD has ranged from 18.7% to 37.3%.⁵⁶ PTSD is one of the most common mental disorders among United States Veterans and is associated with personal, social, and health problems.⁵⁷ Indeed, studies show that more than fifty percent of Veterans with PTSD have at least one comorbid condition, such as depression, anxiety disorder, or substance use disorder.⁵⁸ In other words, Veterans with PTSD have increased odds of substance use and psychiatric disorders.⁵⁹

While there has not been abundant research focused on Native American Veterans, data from the National Epidemiologic Survey on Alcohol and Related Conditions-III (NESARC-III), which was conducted in 2012 and 2013, revealed that the lifetime prevalence of DSM-IV PTSD in Native American Veterans was 24.1%.⁶⁰ The next highest ethnic/racial group was Black Veterans at 11.03%, and then Hispanics at 7.55%.⁶¹ Female Veterans as a group had a rate of 13.22%, white Veterans were at almost six percent, and the total Veteran sample had a lifetime prevalence of PTSD at 6.9%.⁶² Thus, American Indian Veterans were more than three times as likely to have PTSD than the general Veteran population.

Earlier limited studies of Native American Vietnam Veterans indicate high rates of PTSD for the cohort.⁶³ The 1997 American Indian Vietnam Veterans Project results show that AIAN Vietnam Veterans suffer from PTSD at a higher rate than any group, with lifetime PTSD at forty-five percent for one Southwest

⁵⁵ ROBINSON & LUCAS, *supra* note 18, at 72.

⁵⁶ Smith et al., *supra* note 6, at 16. The number for these specific cohorts are not representative of the overall veteran population. The National Health and Resilience in Veterans Study reported the United States veteran population-based prevalence of probable lifetime PTSD was 7.95%. *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 17.

⁵⁹ *Id.* at 20.

⁶⁰ *Id.* at 18-19, tbl.1.

⁶¹ *Id.* at 19, tbl.1.

⁶² *Id.*

⁶³ Gross, *supra* note 5, at 375-76; see, e.g., Tom Holm, *The National Survey of Indian Vietnam Veterans*, 6 AM. INDIAN & ALASKA NATIVE MENTAL HEALTH RSCH: J. NAT'L CTR. 18, 22 (1994) (eighty-one percent experiencing problems with alcohol, eighty percent had problems with depression; other problems were sleep intrusion, flashback and feelings of anger or rage—all symptoms of PTSD).

tribe and fifty-seven percent for a northern Plains group.⁶⁴ The same study reveals the rate was forty-three percent for African-Americans, thirty-nine percent for Hispanics, and twenty-four percent for whites.⁶⁵ Notably, when exposure to combat was accounted for, the rate differential disappeared.⁶⁶ As previously mentioned, American Indians in Vietnam had exceptionally high rates of combat exposure. In fact, more than one in two Natives experienced war-related trauma, which included frequent or prolonged combat missions in enemy territory, encountering ambushes and firefights, being attacked by snipers, artillery or rockets, witnessing death and harm to their own or others' bodies, being under fire on helicopters, as well as being on very hazardous duty.⁶⁷ Their exposure to war trauma was likely for several reasons but two are worth noting here: Native American soldiers were more likely than any other ethnic group to serve in the Marines, the branch with the most combat duty, and more likely to serve in a geographical area of Vietnam that was under the greatest enemy fire.⁶⁸

In a recent study of white, Hispanic and Native *female* Veterans, results show Natives and Hispanics have “significantly higher scores” on the Clinically Administered PTSD Scale (CAPS) than whites, with Natives being slightly higher than Hispanics.⁶⁹ Native female Veterans also showed higher levels of certain personality disorders.⁷⁰ Compared to whites, Natives had higher exposure to trauma and PTSD levels, and poorer emotional functioning.⁷¹ Interestingly, this study noted that for Natives, their “symptom expression” is likely influenced by historical trauma, which happens when the dominant society perpetrates mass trauma on a people, whose biological, societal, and psychological symptoms are then passed down to successive generations, which can be exacerbated by factors such as marginalization and racism.⁷² Thus, potentially in contrast to the earlier Vietnam Veteran study, this study found that “the race-related stress experienced by Natives may be linked to more severe PTSD symptoms.”⁷³

Although American Indian and Alaska Natives may not have been specifically addressing modern-day diagnoses of PTSD in their soldiers, they have long been aware of the impact of war trauma and have sought ways to mitigate it. As previously noted, Native communities have had strong traditions around

⁶⁴ The 1997 American Indian Vietnam Veterans Project was congressionally mandated because in the previous 1988 National Vietnam Veterans Readjustment Study, no data had been collected on Native Hawaiian, Asian American, or American Indian Veterans. Gross, *supra* note 5, at 376. Ironically, Native Hawaiians and American Indians received more combat service medals than any other ethnic group. See U.S. DEP'T VETERANS AFFS., PTSD: NAT'L CTR. FOR PTSD, *Psychological Trauma for American Indians Who Served in Vietnam*, https://www.ptsd.va.gov/professional/treat/type/vietnam_american_indians.asp (last updated Oct. 14, 2019).

⁶⁵ Gross, *supra* note 5, at 376.

⁶⁶ *Id.*

⁶⁷ U.S. DEP'T OF VETERANS AFFS., *supra* note 64.

⁶⁸ *Id.*

⁶⁹ Janet C'de Baca et al., *Examining Relationships Among Ethnicity, PTSD, Life Functioning, and Comorbidity in Female OEF/OIF Veterans*, 21 J. LOSS & TRAUMA 350, 355 (2016).

⁷⁰ *Id.* at 356.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

welcoming the warrior back to the tribe. Because Native traditions consider war a “negative force” that throws not only the individual out of balance but the community and nature as well, ceremonies are required to restore the equilibrium.⁷⁴ Upon return, “cleansing” ceremonies “purge the emotional and spiritual wounds of battle and restore the warrior to a harmonious place within the community.”⁷⁵ Importantly, families and communities are the foundation of these ceremonies.⁷⁶ Family and community participation in rituals shows support for the tribe member and reassures the individual of his or her continuing role in the community. This is what Holm coins “social absorption” of wartime trauma and stress.⁷⁷

In light of the potential that social absorption and Native traditions have for helping Native American Veterans with wartime trauma, we should consider judicial mechanisms that incorporate such a philosophy when looking for ways to help those AIAN Veterans whose military experiences have directly, or indirectly, resulted in criminality.

III. VETERANS TREATMENT COURTS AND TRIBAL HEALING TO WELLNESS COURTS: SHOULD THE TWAIN MEET?

The preceding section conveys two important facts: American Indians and Alaska Natives have served and are serving in the military in great numbers, and, like many Veterans, they suffer from mental health and/or substance abuse issues, which can lead to criminality as evidence has shown.⁷⁸ The needs of this unique subpopulation of Veterans could be addressed. Veterans Treatment Courts (VTCs) exist in federal, state, and local criminal courts to help Veteran defendants, whose underlying condition(s) have resulted in criminality, get treatment.⁷⁹ Similarly, Tribal Healing to Wellness Courts (THWCs), also called Tribal Wellness Courts, exist in Tribal justice systems to help AIAN defendants receive treatment for their underlying disorders.⁸⁰ Yet, there is little, or no, published data regarding AIAN

⁷⁴ HARRIS & HIRSCH, *supra* note 22, at 17.

⁷⁵ ROBINSON & LUCAS, *supra* note 18, at 59. Vietnam Veteran Harold Barse, a Kiowa/Wichita Sioux and one of the founders of the Native American Vietnam Veterans Association notes, “Tribal societies have known all along that you have to do something in order to bring the warrior back into society, through cleansing ceremonies, sweats, to rid the person of the contamination of war.” *Id.* at 73.

⁷⁶ Gross, *supra* note 5, at 378; Tom Holm, *Strong Hearts, Wounded Souls Revisited: The Research, the Findings, and Some Observations of Recent Native Veteran Readjustment*, 32 WICAZO SA REV. 118, 125 (2017) (“[T]ribal healing is continual and community based.”).

⁷⁷ *Id.* at 123.

⁷⁸ Huskey, *supra* note 9, at 180-82 (citing numerous studies showing linkage between PTSD and behaviors that may lead to misconduct); Slattery et al., *supra* note 9, at 923-24 (citing various studies showing higher rates of justice involvement for Veterans with PTSD, TBI, and substance abuse problems).

⁷⁹ See JUSTICE FOR VETS, <https://justiceforvets.org/> (last visited July 25, 2021) (national non-profit organization that promotes and supports Veterans Treatment Courts); MARLOWE ET AL., *supra* note 13, at 25.

⁸⁰ See generally JOSEPH THOMAS FLIES-AWAY ET AL., TRIBAL L. & POL’Y INST., OVERVIEW OF TRIBAL HEALING TO WELLNESS COURTS (2014),

participation in VTCs and scant public information on Veteran participation in THWCs. Despite the lack of external data, “Tribal Veterans Wellness Courts,” or “Tribal Veterans Treatment Courts,” do exist.⁸¹ Furthermore, key stakeholders in the THWC field have been promoting the development of Veteran dockets in Tribal Wellness Courts for several years.⁸² As this Article will demonstrate, having Veteran Wellness Courts or Veteran tracks in Tribal Wellness Courts could greatly benefit Native American Veterans, their families, and communities.

A. Veterans Treatment Courts

A VTC is a problem-solving court similar in modality to drug and mental health courts, which favor treatment over incarceration.⁸³ Also called diversion courts, such courts divert the offender from the conventional criminal justice system to a special program where treatment is the primary force driving resolution of the case. Rather than jail and fines, successful completion of the program may result in dismissed charges and/or reduced sentence or fines.⁸⁴ Like other problem-solving courts, a VTC works with community service providers to address the defendant’s social, behavioral, psychological, or substance abuse problems, taking a “collaborative, multidisciplinary, problem-solving approach to address the underlying issues of individuals appearing in court.”⁸⁵ In VTCs, the defendants are Veterans and, in some courts, active Servicemembers are also permitted to

<http://www.wellnesscourts.org/files/THWC%20Overview%20Final%20-%20Sept%20%202014.pdf>.

⁸¹ Based on attendance at symposia and engagement with key individuals in the THWC arena, the author is aware that some Tribal Veterans Wellness Courts or Tribal Veterans Treatment Courts exist. For example, in attending the *11th Annual Tribal Healing to Wellness Court Virtual Enhancement Training*, the author learned that the Alamo-To’hajiilee Judicial District of the Navajo Nation has a Tribal Wellness Court and a specialized Veterans track within the Court. See *11th Annual Tribal Healing to Wellness Court Virtual Enhancement Training*, TRIBAL L. & POL’Y INST., <https://www.enhancementtraining.org/> (last visited Aug. 1, 2021). Regina Begay-Roanhorse, an Army Veteran and Court Administrator, developed a special Veterans track within her judicial district and works tirelessly to promote Veterans Wellness Courts in other Tribal Courts. See *Brochure for Alamo-To’hajiilee Tribal Healing to Wellness Court*, <http://www.courts.navajonnsn.gov/PressReleases/HTWBrochure.pdf> (last visited Aug. 1, 2021) (indicating role of “Veterans Justice Coordinator”).

⁸² See, e.g., BUREAU OF JUST. ASSISTANCE, *11th Annual Tribal Healing to Wellness Court Virtual Enhancement Training*, <https://bjatta.bja.ojp.gov/media/event/11th-annual-tribal-healing-wellness-court-virtual-enhancement-training> (last visited July 25, 2021) (listing “Veterans Courts” as one of four tracks); OFF. OF JUST. PROGRAMS, U.S. DEP’T OF JUST., FY 2020 PROGRAM SUMMARIES 161 (2019), <https://www.justice.gov/jmd/page/file/1160581/download>; U.S. DEP’T OF VETERANS AFFS., RESOURCES FOR JUSTICE-INVOLVED VETERANS: A GUIDE FOR TRIBAL JUSTICE SYSTEMS, https://www.va.gov/TRIBALGOVERNMENT/docs/resources/Resources_for_Justice-Involved_Veterans-Final_Version.pdf (last visited July 25, 2021); *The Tribal Law and Order Act—Five Years Later: How Have the Justice Systems in Indian Country Improved: Hearing Before the Comm. on Indian Affs.*, 114th Cong. 45-47 (2015) (statement of Carol Scott regarding need for Veterans Treatment Courts in Tribal justice systems).

⁸³ See Huskey & Cassidy, *supra* note 11, §§ 10.01[2][a], 10.02.

⁸⁴ See Huskey, *supra* note 9, at 179.

⁸⁵ See Pamela M. Casey & David B. Rottman, *Problem-Solving Courts: Models and Trends*, 26 JUST. SYS. J. 35, 35 (2005); see also MARLOWE ET AL., *supra* note 13, at 12-14.

participate. The early VTCs were established in 2008 and 2009 to address the seemingly disproportionate number of Veterans in the criminal justice system, a 2008 RAND report showing high rates of PTSD and other mental health and substance abuse conditions in Post-9/11 Veterans, and the connection between the two.⁸⁶ For many Veteran defendants in a VTC, their combat and/or other traumatic military experiences, such as military sexual trauma (MST), *led directly* to the misconduct that landed them in criminal court.⁸⁷ A VTC can address the unique needs of justice-involved Veterans, whose shared military experiences create an opportunity for a culturally sensitive courtroom and treatment that increase the chances of success for the program participant.⁸⁸ Preliminary research demonstrates that VTCs are as successful as the drug and mental health courts upon which they are modeled.⁸⁹ However, several studies also suggest that research and data on VTCs is still limited and more is needed.⁹⁰

With its problem-solving approach, VTCs meld treatment with intense court supervision; the “treatment team” typically consists of a judge, prosecutor, defense counsel, and treatment providers.⁹¹ Unique to VTCs, these courts often rely heavily on the U.S. Department of Veterans Affairs for coordination of services and treatment or counseling.⁹² An additional distinctive feature is the participation of Veteran peer mentors, who, being personally familiar with military culture, can provide extremely effective support and camaraderie for participants, as well as other services, such as transportation to court hearings or counseling sessions.⁹³ With some modification, VTCs have adopted the well-known drug court ten “key components,” which establish the operational guidelines for a judicially-based treatment program.⁹⁴ The VTC components will be discussed in more detail below.

Since the establishment of the first VTC in 2008 by Judge Robert Russell, presiding judge in Buffalo’s Drug and Mental Health Courts at the time, VTCs

⁸⁶ Huskey, *supra* note 10, at 702-04.

⁸⁷ *Id.* at 706-09. *See generally* Eric B. Elbogen et al., *Criminal Justice Involvement, Trauma, and Negative Affect in Iraq and Afghanistan War Era Veterans*, 80 J. CONSULTING & CLINICAL PSYCH. 1097 (2012); Eric B. Elbogen et al., *Correlates of Anger and Hostility among Iraq and Afghanistan War Veterans*, 167 AM. J. PSYCHIATRY 1051 (2010).

⁸⁸ Russell, *supra* note 11, at 364. For a lengthy discussion of the development and unique characteristics of Veterans Treatment Courts, *see* Huskey, *supra* note 10, at 702-09. “Traumatic exposure during combat, difficulty reintegrating into civil society after discharge, and the unique socialization processes of military culture may require veteran-specific services to be delivered in separate court-based programs by fellow veterans who are familiar with combat and military lifestyle.” MARLOWE ET AL., *supra* note 13, at 27.

⁸⁹ Douds et al., *supra* note 13, at 741; *see also* MARLOWE ET AL., *supra* note 13, at 14-16 (citing studies that show adult drug courts reduce criminal recidivism, reduce substance abuse, and improve participants’ psychosocial functioning).

⁹⁰ *See, e.g.*, OFF. OF JUST. PROGRAMS, *supra* note 82, at 162; MARLOWE ET AL., *supra* note 13, at 27.

⁹¹ *See* MARLOWE ET AL., *supra* note 13, at 26; Douds et al., *supra* note 13, at 742.

⁹² Douds et al., *supra* note 13, at 742; *see* MARLOWE ET AL., *supra* note 13, at 27.

⁹³ Douds et al., *supra* note 13, at 743.

⁹⁴ *See generally* HUSKEY & CASSIDY, *supra* note 11, § 10.03[2] (listing the Ten Key Components of Veterans Treatment Court); *see also* NAT’L ASS’N OF DRUG CT. PROS., U.S. DEP’T OF JUSTICE, *DEFINING DRUG COURTS: THE KEY COMPONENTS* (1997), <https://www.ojp.gov/pdffiles1/bja/205621.pdf>.

have proliferated across the country.⁹⁵ In 2009, there were nine such courts; by the end of 2014, there were 266; and as of June 2018, there were 551 of these veteran-focused treatment courts.⁹⁶ It is worth noting that the report providing data for 2009 and 2014 does not specify the jurisdictions in which the VTCs were located.⁹⁷ Thus, it is unclear whether these numbers include veteran-specific courts in Tribal justice systems.⁹⁸ The 2018 report, though implying that VTCs in Tribal courts *are* included in the overall number, does not distinguish how many of the 551 VTCs are in these courts.⁹⁹ Overall, reporting on *where* VTCs are located is fairly murky.¹⁰⁰ It is clear that little is known about these types of veteran-focused treatment programs in Tribal justice systems.¹⁰¹ Yet, as previously mentioned, advocates of THWCs have long identified Veterans as a target population.¹⁰²

B. Tribal Healing to Wellness Courts

A THWC, or Tribal Wellness Court, is a problem-solving court that, like a VTC, follows the drug court model by favoring rehabilitation over punishment by addressing criminal misconduct with treatment rather than incarceration and fines.¹⁰³ Like a VTC, Tribal Wellness Courts address a defendant's underlying

⁹⁵ Russell, *supra* note 11, at 357, 364. Some accounts note that the first informal veterans court program originated in Anchorage, Alaska, four years earlier. *See, e.g.*, Michael Daly Hawkins, *Coming Home: Accommodating the Special Needs of Military Veterans to the Criminal Justice System*, 7 OHIO ST. J. CRIM. L. 563, 565 (2009).

⁹⁶ MARLOWE ET AL., *supra* note 13, at 35 tbl.4; OFF. OF JUST. PROGRAMS, *supra* note 82, at 161.

⁹⁷ MARLOWE ET AL., *supra* note 13, at 35 tbl.4.

⁹⁸ It could be assumed that the VTC numbers do *not* include those in tribal courts because “Tribal Wellness Drug Courts” are listed separately in the report. *See id.*

⁹⁹ OFF. OF JUST. PROGRAMS, *supra* note 82, at 161. The VTC Program Summary states that the goal of the Program is to “increase the number of awards to tribal VTCs,” among other goals. Thus, presumably the number, 551, includes tribal VTCs.

¹⁰⁰ *See, e.g.*, U.S. DEP’T OF VETERAN AFFS., VETERANS COURT INVENTORY 2014 UPDATE: CHARACTERISTICS OF AND VA INVOLVEMENT IN VETERANS TREATMENT COURTS, DOCKETS, AND TRACKS FROM THE VETERANS JUSTICE OUTREACH SPECIALIST PERSPECTIVE (Feb. 2016), <http://www.va.gov/HOMELESS/docs/VTC-Inventory-FactSheet-0216.pdf>; U.S. DEP’T OF VETERAN AFFS., VETERANS COURT INVENTORY 2016 UPDATE: CHARACTERISTICS OF AND VA INVOLVEMENT IN VETERANS TREATMENT COURTS AND OTHER VETERAN-FOCUSED COURT PROGRAMS FROM THE VETERANS JUSTICE OUTREACH SPECIALIST PERSPECTIVE (Mar. 2017), <https://www.va.gov/HOMELESS/nchav/resources/docs/justice-involved/incarcerated/2016-Veterans-Court-Inventory-Update-VJO-Fact-Sheet-508.pdf>. Neither reports’ “Jurisdiction” data include tribal courts.

¹⁰¹ As mentioned earlier, such veteran-focused treatment programs in Tribal courts *do* exist. *See supra* note 81. Yet, the author’s discussions with Tribal Wellness Court experts, such as Mark Panasiewicz, Project Director and Tribal Wellness Court specialist with Justice For Vets, and Lauren van Schilfgaarde, former Tribal Law Specialist with the Tribal Law and Policy Institute, have revealed that there is little public data on specific Veteran treatment programs within THWCs.

¹⁰² *See generally supra* note 82.

¹⁰³ *See FLIES-AWAY ET AL., supra* note 80, at 1-2.

alcohol and/or other substance abuse problems as well as social and behavioral issues.¹⁰⁴

THWCs are the inspired outcome of AIAN Tribal leaders and judges learning of the drug court movement, which began in the United States in the late 1980s.¹⁰⁵ Seeing the potential benefits, they were particularly concerned with addressing the high rates of alcoholism and associated crimes in Indian country.¹⁰⁶

Thus, in 1997, the U.S. Department of Justice's Drug Court Program Office (DCPO)¹⁰⁷ created a program to assist Tribal councils/governments with establishing drug courts in their respective jurisdictions.¹⁰⁸ Through the collaboration of the DCPO, the National Association of Drug Court Professionals, and Tribal court and substance abuse experts, a culturally sensitive, adapted curriculum for tribal drug court training sessions was designed.¹⁰⁹ The training sessions brought together tribal councils/governments, law enforcement, treatment providers, tribal citizens and community members, and various human service organizations to develop plans individualized for specific tribal communities that incorporate native culture and tradition.¹¹⁰ Tribal stakeholders sought to use a term different from "drug court" in order to recognize alcohol as the primary substance abuse problem in Tribal communities and to "culturally connect to the tribal community to allow it to take ownership [of the court]."¹¹¹ Accordingly, court names include [Tribal] Healing to Wellness Court, Wellness Court, Healing Court, Treatment Court, Substance Abuse Court, Alternative Court, and others in various Tribal languages.¹¹²

THWCs are uniquely adapted to the tribal community in which they sit and are intended to reflect traditional indigenous dispute resolution systems and "reinforce tribal values related to restorative justice."¹¹³ In contrast to Western-

¹⁰⁴ See PANASIEWICZ ET AL., *supra* note 15, at 11 (in addition to treatment for alcohol and other substance abuse problems, complementary support services include parenting training, anger management, and criminal thinking interventions); FLIES-AWAY ET AL., *supra* note 15, at 1 (goal of THWCs is to reduce the use and abuse of alcohol and other drugs, criminal activity, juvenile delinquency, and child neglect and abuse).

¹⁰⁵ FLIES-AWAY ET AL., *supra* note 80, at 1. For an excellent explanation of drug courts, their development, and the development of other problem-solving courts, see MARLOWE ET AL., *supra* note 13, at 11-14.

¹⁰⁶ FLIES-AWAY ET AL., *supra* note 80, at 1; see also 2018 NSDUH Detailed Tables, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN (Aug. 20, 2019), <https://www.samhsa.gov/data/report/2018-nsduh-detailed-tables> (2018 survey showing rate of "past month" (35.9%) and "past year" (54.3%) alcohol use among Native Americans was significantly higher than other ethnic groups and rate of Native Americans with an alcohol use disorder (7.1%) was higher than that of the total population (5.4%)).

¹⁰⁷ FLIES-AWAY ET AL., *supra* note 80, at 1. The Drug Court Program Office eventually merged with the Bureau of Justice Assistance.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 2.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ CORDERO ET AL., *supra* note 16, at 5.

style punitive justice, THWCs are seen as a more traditional method of justice for Indian people by:

(1) creating an environment that focuses on the problems underlying the criminal act rather than the act itself and (2) stressing family, extended family, and community involvement in the healing process. In traditional Native societies, accountability to the community was a responsibility that was kept in balance through cultural norms and values. The Tribal Healing to Wellness Courts are a modern revitalization of guiding Native principles of justice - truth, honor, respect, harmony, balance, healing, wellness, apology or contrition, restitution, rehabilitation, and an holistic approach.¹¹⁴

Indeed, Tribal Wellness Courts blend a conventional drug court approach with Native restorative justice principles, whose primary purpose is one of healing.¹¹⁵ Indigenous healing attempts to address the root causes of the imbalance, which was caused by the harm.¹¹⁶ Indigenous restorative justice places great emphasis on the role of community by “shifting the healing, restorative functions back to the community.”¹¹⁷ The community is expected to participate in the resolution of a dispute or harm committed, ensure compliance by the parties or offender, provide protection to the victim, and “own” the problem.¹¹⁸ Family is also crucial to indigenous restorative justice principles and processes.¹¹⁹ Judge Joseph Thomas Flies-Away of the Hualapai Nation Court writes that families, which are “fundamental to Indigenous cosmology and centerpieces of Native societies,” are empowered by THWCs through their connection to the program participant.¹²⁰ Thus, Tribal Wellness Courts, with their Western-style drug court collaborative approach to problem-solving, are by nature conducive to restorative justice

¹¹⁴ TRIBAL L. & POL’Y INST., U.S. DEP’T OF JUST., HEALING TO WELLNESS COURTS: A PRELIMINARY OVERVIEW OF TRIBAL DRUG COURTS 9 (1999), http://www.wellnesscourts.org/files/Pub_THWC%20-%20Overview1999.pdf.

¹¹⁵ PANASIEWICZ ET AL., *supra* note 15, at 4; *see also* Ronald Eagle Johnny, *The Duckwater Shoshone Drug Court, 1997-2000: Melding Traditional Dispute Resolution with Due Process*, 26 AM. INDIAN L. REV. 261, 270 (2002) (counseling and other supportive services participants received in Duckwater Drug Court melded traditional dispute resolution methods and goals with key components of drug court); James W. Zion, *Punishment Versus Healing: How Does Traditional Indian Law Work?*, in JUSTICE AS HEALING: INDIGENOUS WAYS 68, 70 (Wanda D. McCaslin ed., 2005) (“Whereas Western law is based on punishment, Indian law is based on healing.”).

¹¹⁶ WANDA D. MCCASLIN, JUSTICE AS HEALING: INDIGENOUS WAYS 89 (Wanda D. McCaslin ed., 2005).

¹¹⁷ BRIA HUCULAK, *From the Power to Punish to the Power to Heal*, in JUSTICE AS HEALING: INDIGENOUS WAYS 161, 164 (Wanda D. McCaslin ed., 2005).

¹¹⁸ ADA PECOS MELTON, *Indigenous Justice Systems and Tribal Society*, in JUSTICE AS HEALING: INDIGENOUS WAYS 108, 117 (Wanda D. McCaslin ed., 2005).

¹¹⁹ *See, e.g.*, Robert Yazzie, *Life Comes from It: Navajo Justice Concepts*, 24 N.M. L. REV. 175, 182-84 (1994) (family helping offender confront results of his/her actions). In Navajo justice, relatives are responsible for helping to compensate the victim. *Id.* at 185.

¹²⁰ *See* Joseph Thomas Flies-Away & Carrie E. Garrow, *Healing to Wellness Courts: Therapeutic Jurisprudence+*, 2013 MICH. ST. L. REV. 403, 408 (2013).

principles of healing and a process that includes family, extended family, and community.¹²¹

Another feature distinguishing THWCs from conventional drug courts is the incorporation of Native cultural and traditional practices.¹²² For example, the Tribal Law and Policy Institute's "Treatment Guidelines" suggest among other program activities: (1) using ceremony to promote spiritual healing and encourage participation; (2) including clan relatives, elders, medicine men and others as healers, mentors and advisors to participants; (3) using meaningful symbols of healing such as the medicine wheel, an eagle feather, and other Tribal objects in Wellness Court activities; (4) using nature walks to discuss the interconnectedness of life; and (5) incorporate Tribal cleansing rituals.¹²³

The importance of tradition, culture, and community is well reflected in the Tribal Wellness Court "treatment team" whose members include judges, presenting officers, prosecutors, legal advocates, public defenders, case managers, substance abuse and mental health treatment providers, police officers, and probation officers and, may also include social services workers, school representatives, traditional knowledge holders and healers, Tribal elders, education and employment representatives, vocational training representatives, and other community representatives.¹²⁴ For example, the Waabshki-Miigwan Drug Court of the Little Traverse Bay Bands of Odawa Indians includes a "Cultural Resource Advisor" on the team, who uses traditional stories to teach about cultural roots, "giving [the participants] knowledge on certain values developed and upheld by their predecessors."¹²⁵

A THWC also relies on ten "key components" that form the foundation and operational guidelines of the court treatment program.¹²⁶ Importantly, the THWC Key Components differ from the conventional drug court components by reflecting "tribal notions of healing and wellness," in particular, and the idea of a "healing to wellness journey."¹²⁷ The THWC Key Components will be discussed in further detail below and in conjunction with the Veterans Treatment Court Key Components.

Comprehensive data on THWCs is sparse and confirming just how many THWCs presently exist is difficult.¹²⁸ Indeed, an "inaugural survey project" of THWCs, is currently underway.¹²⁹ A 2016 report lists the number of Tribal

¹²¹ TRIBAL L. & POL'Y INST., *supra* note 114, at 9.

¹²² See PANASIEWICZ ET AL., *supra* note 15, at 32-34; *see, e.g.*, Leonard Mukosi, *Odawa Cultural Practices to Treat Substance Addictions: A Tour of the Healing to Wellness Court*, 20 *FOURTH WORLD J.* 41, 45 (2020).

¹²³ PANASIEWICZ ET AL., *supra* note 15, at 33.

¹²⁴ *Id.* at 15; FLIES-AWAY ET AL., *supra* note 15, at 2.

¹²⁵ Mukosi, *supra* note 122, at 45-46.

¹²⁶ FLIES-AWAY ET AL., *supra* note 80, at 4 (citing NAT'L ASS'N OF DRUG CT. PROS., *supra* note 94).

¹²⁷ *Id.*

¹²⁸ In multiple discussions with experts in the Tribal Healing to Wellness Court movement, the author discerned that there is little to no comprehensive or current data on these courts, such as how many are in existence, their basic policies and procedures, eligibility requirements, and outcomes.

¹²⁹ The purpose of the survey is to determine the number of THWCs in operation within tribal nations in the United States and to understand their structure, operation, outcomes, and challenges. Posting of Tribal Law and Policy Institute, wellness@tlpi.org, to LISTSERV (July 21, 2012) (on file with

Wellness Courts at eighty-nine in 2009 and 138 in 2014.¹³⁰ Yet, these numbers appear to conflict with other sources.¹³¹ Only a handful of Tribal Wellness Courts—less than twenty—have codified their treatment program procedures, thus verification through traditional research means is equally challenging.¹³² Not only is comprehensive data lacking, current information reveals little to nothing about the existence of Veteran-focused courts or tracks in Tribal Wellness Courts, as mentioned earlier. There could be many reasons why data is not collected or publicly available, including lack of funding or resources, choice, or confidentiality. It is also challenging to find comprehensive data on conventional VTCs. The next section intends to contribute to the THWC dialogue and bolster the notion that these courts consider incorporating veteran-specific tracks to address the needs of justice-involved AIAN Veterans.

C. Merging Two Specialty Courts

The marriage of two specialized treatment courts would address a unique population that could greatly benefit from a problem-solving court sensitive to *both* military culture and experiences *and* Tribal traditions and restorative justice practices. As demonstrated earlier in this Article, AIANs have an unparalleled history of military service and continue to serve in high numbers.¹³³ As a consequence, many Native American Veterans have substantially high rates of

author). The survey is sponsored by the U.S. Bureau of Justice Assistance, the Tribal Law and Policy Institute, and the National Drug Court Resource Center. *Id.* Email communications between the author and Drs. Kristen DeVall and Christina Lanier, who are conducting the survey, confirm that no current nationwide data on THWCs exists. E-mail from Dr. Kristen DeVall, Professor of Socio. and Criminology, to author (July 9, 2021) (on file with author).

¹³⁰ MARLOWE ET AL., *supra* note 13, at 35 tbl.4.

¹³¹ See Flies-Away & Garrow, *supra* note 120, at 418 (stating there were eighty-nine such courts in 2012); see also TRIBAL L. & POL'Y INST., <http://wellnesscourts.org/> (last visited Aug. 1, 2021) (the Tribal Law and Policy Institute hosted website, "Tribal Healing to Wellness Courts," lists 100 Tribal Healing to Wellness Courts).

¹³² See, e.g., EASTERN BAND OF THE CHEROKEE NATION CODE ch. 7C (Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi (Cherokee Wellness Court 2021)), https://library.municode.com/tribes_and_tribal_nations/eastern_band_of_cherokee_indians/codes/code_of_ordinances?nodeId=PTIICOOR_CH7CT--T-SCHWECO; PUEBLO OF LAGUNA CODE app. C, § 4, rule 38 (Wellness Court 2021), https://library.municode.com/nm/pueblo_of_laguna/codes/tribal_code?nodeId=APXCRUPR_S4PULARUCRPR; LAW AND ORDER CODE OF THE SHOSHONE-BANNOCK TRIBES, tit. 2, pt. IV, § 3-2-21 (Tribal Specialty Courts 2021), https://library.municode.com/tribes_and_tribal_nations/shoshone-bannock_tribes/codes/the_law_and_order_code?nodeId=CD_TIT3SHNNTRCO_CH2JUCOCO_PTIVTRJU_S3-2-21TRSPCO. It would be remiss, however, not to mention here the small number of articles that address specific THWCs. See generally Mukosi, *supra* note 122; KAREN GOTTLIEB, PROCESS AND OUTCOME EVALUATIONS IN FOUR TRIBAL WELLNESS COURTS, NAT'L INST. OF JUST. (2005), <https://nij.ojp.gov/library/publications/process-and-outcome-evaluations-four-tribal-wellness-courts>; Johnny, *supra* note 115. While they are ground-breaking and illustrative, they are limited to the particular Wellness Courts studied. It should be noted that few conventional treatment courts codify their policies or procedures, either.

¹³³ See *supra* Part II, Section A.

PTSD, which indicate the likelihood of other mental disorders and/or alcohol and substance abuse.¹³⁴ Such disorders can contribute, if not directly lead, to misconduct.¹³⁵ VTCs were developed to meet the needs of justice-involved Veterans and their underlying conditions of PTSD, as well as other mental health and substance abuse issues.¹³⁶ However, most such known VTCs are not in Tribal jurisdictions nor are they geared to towards Native American culture.¹³⁷ Tribal Healing to Wellness Courts, developed to address high rates of alcohol and other substance dependency and associated crime, do incorporate Indigenous traditions and principles, yet typically may be less adept at addressing mental health issues, such as PTSD and MST. Thus, a Wellness Court geared towards Veterans would go far in meeting the needs of this important subpopulation of Native Americans.

The Key Components of both courts are a good starting point for envisioning this marriage of two specialized problem-solving courts. As stated earlier, the Key Components of both Tribal Wellness Courts and Veterans Treatment Courts are modeled after conventional drug court “key components.”¹³⁸ Thus, both refer to: (1) a collaborative interdisciplinary team approach to achieve sobriety, recovery, and wellbeing of program participants; (2) referral points and eligibility of participant, type of process (fair and non-adversarial); (3) types of treatment; (4) intensive supervision and alcohol/drug testing; (5) strategies for compliance; (6) judicial interaction with the participant; (7) monitoring and evaluation; (8) continuing education of court and treatment team; and (9) team and community interaction.¹³⁹ The respective Key Components of the two courts also reflect the customized aspects of each court with the goal of recognizing the target audience’s unique characteristics, thus further enabling a successful program.

Marrying the two courts to create a Tribal Veterans Wellness Court would require integrating specific Key Components from each court in order to address the unique characteristics of AIAN Veterans. Specific component factors stand out in this regard: (1) incorporating a physical and spiritual healing philosophy that includes holding substance-abusing individuals and their families accountable;¹⁴⁰ (2) involving the Veterans Administration Healthcare Network and Veterans support organizations in the collaborative team approach;¹⁴¹ (3) incorporating the

¹³⁴ See *supra* Part II, Section B.

¹³⁵ See Huskey, *supra* note 78 (explaining link between PTSD, other mental health conditions, and substance abuse and criminality).

¹³⁶ See *supra* Part III, Section A.

¹³⁷ But see Traci Rosenbaum, ‘I Would’ve Lost Myself’: Veterans Treatment Court in Great Falls Gives Graduate ‘Second Chance’, GREAT FALLS TRIBUNE (Jan. 15, 2020, 6:00 AM), <https://www.greatfallstribune.com/story/news/2020/01/15/second-chance-great-falls-veterans-treatment-court/4470050002/> (describing Native American-specific branch of the Great Falls Veterans Treatment Court presided over by Cascade County District Court Judge Greg Pinski).

¹³⁸ See *supra* notes 94, 126.

¹³⁹ See *supra* note 94; TRIBAL L. & POL’Y INST., U.S. DEP’T OF JUST., TRIBAL HEALING TO WELLNESS COURTS: THE KEY COMPONENTS 1 (May 2014), <http://wellnesscourts.org/files/Tribal%20Healing%20to%20Wellness%20Courts%20The%20Key%20Components.pdf>.

¹⁴⁰ FLIES-AWAY ET AL., *supra* note 15, at 1 (THWC Key Component #1).

¹⁴¹ JUSTICE FOR VETS, THE TEN KEY COMPONENTS OF VETERANS TREATMENT COURTS 1 (2017), <https://justiceforvets.org/wp-content/uploads/2017/02/The-Ten-Key-Components-of-Veterans->

appropriate Native cultures and traditions in treatment and services, *inter alia*, the critical involvement of family, extended family, and the community in the healing process;¹⁴² (4) continuing team and community education that includes the Veterans Administration (VA) and Veteran volunteer mentors;¹⁴³ (5) forming coalitions between private community-based organizations, criminal justice agencies, and the VA;¹⁴⁴ and (6) ongoing interaction and relationships between team and community that includes community and tribe members.¹⁴⁵

A “newly combined” Ten Key Components of a Tribal Veterans Wellness Court could exemplify optimal operational guidelines of a successful treatment program for justice-involved Native American Veterans. Importantly, the components also speak to the concept of Holm’s “social absorption,” the term used to refer to the significance of family and community in the process of recovering from wartime trauma and stress.¹⁴⁶ Holm was also referring to the use of traditional cleansing ceremonies for returning Native American Vietnam Veterans to “work through” PTSD symptoms—rage, sleep intrusion, and feelings of isolation.¹⁴⁷ Individual anecdotes by Native American Veterans about the cleansing ceremonies show consistent themes of feeling honored and supported in their healing by their families and communities.¹⁴⁸ This lines up with Tribal Wellness Court Key Components and its emphasis on the use of Tribal traditions and culture, such as ceremonies and the involvement of family, extended family, and the community.

In my article, *Does Theory Matter*, I suggest restorative justice as an appropriate foundational theory of justice for VTCs on account of the community-based aspect of both.¹⁴⁹ As elucidated earlier and depicted by the THWC Key Components, restorative justice principles place some responsibility on the community for addressing the harm caused by the individual.¹⁵⁰ In the same

Treatment-Courts.pdf (VTC Key Component #1).

¹⁴² FLIES-AWAY ET AL., *supra* note 15, at 28 (THWC Key Component #4).

¹⁴³ JUSTICE FOR VETS, THE TEN KEY COMPONENTS OF VETERANS TREATMENT COURTS 3 (2017), <https://justiceforvets.org/wp-content/uploads/2017/02/The-Ten-Key-Components-of-Veterans-Treatment-Courts.pdf> (VTC Key Component #9); FLIES-AWAY ET AL., *supra* note 15, at 70 (THWC Key Component #9).

¹⁴⁴ JUSTICE FOR VETS, THE TEN KEY COMPONENTS OF VETERANS TREATMENT COURTS 3 (2017), <https://justiceforvets.org/wp-content/uploads/2017/02/The-Ten-Key-Components-of-Veterans-Treatment-Courts.pdf> (VTC Key Component #10). Such partnerships expand the continuum of services to Veterans and inform the community of VTC concepts. *See id.*

¹⁴⁵ FLIES-AWAY ET AL., *supra* note 15, at 74 (THWC Key Component #10). “The overarching goals are stable and effective government and the health and welfare of tribal member individuals, their families, and the tribal community.” *Id.* at 75.

¹⁴⁶ *See supra* notes 76-77.

¹⁴⁷ Holm, *supra* note 76, at 123. Indeed, sixty-four percent of respondents in Holm’s *National Survey* believed that tribal ceremonies could aid in the healing process. Holm, *supra* note 63, at 25. Veterans who underwent traditional ceremonies, such as Navajo Enemy Way and Cherokee Going to Water, participated in Pow Wows, or who were initiated into warrior and dance societies, have attested to their help in readjusting to a postwar life. Meadows, *supra* note 4, at 93; *see also* ROBINSON & LUCAS, *supra* note 18, at 72-75 (various testimonials by several Indian Veterans who were positively affected by native homecoming rituals).

¹⁴⁸ *See, e.g.*, Holm, *supra* note 76, at 123; ROBINSON & LUCAS, *supra* note 18, at 73.

¹⁴⁹ *See generally* Huskey, *supra* note 10, at 729-36.

¹⁵⁰ *See supra* notes 117, 118, 142, 145. *See also* TRIBAL L. & POL’Y INST., U.S. DEP’T OF JUST., TRIBAL

fashion, VTCs may see the Veteran's misconduct as a community responsibility due to the causal factor of military service, which is understood to be a sacrifice for the country.¹⁵¹ This evolved notion of community responsibility for the acts and misdeeds of our Servicemembers and Veterans speaks to what Wanda McCaslin eloquently states when explaining restorative justice:

Instead of placing all the blame on the offender, our traditions acknowledge that everyone in the community has played some role in the patterns that culminated in hurtful actions. The responsibility for harms is distributed and shared. Doing justice requires a community.¹⁵²

Thus, VTCs, whether in local, state, federal or Tribal Lands, are a community's response to the shared problem of sending its men and women to war. As such, VTCs are already conducive to certain restorative justice principles imbuing Tribal Wellness Courts.

IV. CONCLUSION

A Tribal Veterans Healing to Wellness Court, or a Veteran-focused track within a THWC, or Tribal Wellness Court, could greatly benefit justice-involved American Indian and Alaska Native Veterans by addressing their underlying conditions of PTSD, other mental health problems, and alcohol/substance abuse issues, and ultimately help them to reintegrate back into their families and communities. A treatment or wellness court individualized for *both* military experiences and Native traditions, including restorative justice principles, could speak to the unique status of being both a Native and a warrior, thus increasing successful participation and outcomes in the treatment program. American Indians and Alaska Natives have served in the military in great numbers and have borne the consequences of their service and their Indigenous identity. The American Indian or Alaska Native Veteran may identify as both a Native and a Veteran, but she is one whole person, who may benefit from marrying the two in a judicial wellness program.

HEALING TO WELLNESS COURTS: THE KEY COMPONENTS 1 (2014), <http://wellnesscourts.org/files/Tribal%20Healing%20to%20Wellness%20Courts%20The%20Key%20Components.pdf>.

¹⁵¹ See Huskey, *supra* note 9, at 182; Huskey, *supra* note 10, at 730-32.

¹⁵² McCaslin, *supra* note 116, at 89.