

Odawa Cultural Practices to Treat Substance Addictions: A Tour of the Healing to Wellness Court

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ABSTRACT

As the United States of America grapples with one of the worst addiction crisis of all time, the American Indian and Alaska Natives are reportedly the population affected most by drug and alcohol addiction.¹ Notably, American Indians are championing recovery from addiction by integrating their unique cultural practices into the criminal justice system, yet, the nature and impact of Indigenous cultural interventions has not been a focus of much legal scholarly attention.² This paper delineates the ethos and efficacy of Indigenous cultural interventions, as exemplified by the Traverse Bay Bands of Odawa Indians Healing to Wellness Court (Waabshki-Miigwan as in the Odawa language Daawaamwin). The paper further argues that Indigenous cultural practices should also be incorporated into Western European-based biomedical practices to promote American Indians' right to health.

Keywords: Addiction, Tribal Healing to Wellness Court, the right to health, Odawa tribe, Culture, traditional practices, International law, curative approach, incarceration, sobriety

American Indians and Substance Abuse

Any discussion about American Indians' involvement with alcohol or drugs would be wanting if it fails to dispel the prevailing assumption that substance abuse has always been a trait inherent in all American Indians. Before contact with the Europeans, American Indians in the Western Hemisphere

¹ Editorial Staff, Race Demographics Statistics on Alcoholism & Treatment, ALCOHOL.ORG (July. 30, 2019, 4:50 pm), [HTTPS://WWW.ALCOHOL.ORG/ALCOHOLISM-AND-RACE/](https://www.alcoholism-and-race/).

² Rowan Margo et al. Cultural interventions to treat addictions in indigenous populations: findings from a scoping study 41 (11) SS&M 1, 2 (1995).

³ Race Demographics Statistics on Alcoholism & Treatment, supra, note 1. While the dominant narrative states that American Indians and Alaska Natives (AI/AN) tend to abuse substances more than other racial demographics, it neither traces the history of substance abuse by Native American nor disaggregate substance abuse data according to individual tribes.

⁴ Alcohol in Colonial America: Earliest Beginnings ALCOHOL PROBLEMS AND SOLUTIONS (July. 30, 2019, 4: 55pm), <https://www.alcoholproblemsandsolutions.org/alcohol-in-colonial-america-earliest-beginnings-in-the-new-world/>.

were not overly exposed to or experienced with alcohol or drugs. Some peoples occasionally used weak fermented beers for ceremonial purposes⁵ mushrooms, chocolate and tobacco leaves. Only after after American Indians encountered the Europeans on a sustained basis settling in North America that the distillation of potent and addictive forms of alcohol traded to Indians in exchange for such things as beaver pelts, fish, and weapons did they gradually came into wider use. Problematically, since peoples in the Western Hemisphere did not have social, legal, or moral taboos to regulate alcohol use and since hallucinogens (e.g. cannabis, tobacco, chocolate) were commonly controlled for ceremonial purposes by traditional healers and spiritual leaders; the addictive distilled drinks and illicit uses of hallucinogens often destructively hit individuals and communities very hard.⁶

Accompanying consumption of addictive substances and liquors are related morbidity and mortality, domestic violence and a compounded risk of serious health complications like heart disease as well as diabetes among American Indian populations⁷ Addictive dependence on drugs by

tribal members is often fueled by the intergenerational trauma⁸ that American Indians have suffered as a result of socio-political, cultural and economic challenges like impoverishment, familial fragmentation and disintegration, discrimination, deprivation and so on.⁹

The Emergence of Healing to Wellness Courts

Since the late 1980s, the United States' criminal justice system has evolved to respond to the addiction crisis with a curative and less punitive approach.¹⁰ This was done primarily to curb the increasing number of drug related offences and address the problem of overcrowding in jails and prisons.¹¹ Similarly, many American Indian tribes have expressed interest in adopting the drug court model and redesign it to meet the cultural needs of tribal members suffering from addiction.¹²

In 1997, the United States Department of Justice and Drug Courts Program found it necessary to extend the notion of the drug court to the tribal justice system to meet the specific needs of the Indian Nations; consequently, a culturally sensitive training program was introduced. With the help of National Association of Drug Court

⁵ Id. 'Except for several nations in the Southwest, Native Americans did not have alcohol beverages. The Apache and Zuni drank alcoholic beverages which they produced for secular consumption. The Pima and Papago produced alcohol for religious ceremonial consumption. Papago consumption was heavy. However, they limited it to a single peaceable annual ceremony. And the other tribes' drinking was also infrequent and didn't cause problems.'

⁶ Fred Beauvais, *American Indians and Alcohol*, 22 *ALCOHOL HEALTH & RESEARCH WORLD J.* 254, 254-8 I (1998).

⁷ Brady Magie *Culture in Treatment, Culture as Treatment. A critical Appraisal of Developments in Addictions Programs for Indigenous North Americans and Australians* 41 (11) *SS&M.* 1487. 1487-8 (1995).

⁸ Christine Vestal *Fighting Opioid Abuse in Indian Country* <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/12/06/fighting-opioid-abuse-in-indian-country>.

⁹ Id.

¹⁰ U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS, *DRUG COURTS PROGRAM OFFICE HEALING TO WELLNESS COURTS: A PRELIMINARY OVERVIEW OF TRIBAL DRUG COURTS* (1999).

¹¹ Id.

¹² Id.

Professionals and the Tribal Advisory Committee, the tribal Healing to Wellness Courts program was launched.¹³

In many ways, Healing to Wellness Courts resemble the conventional drug court structure,¹⁴ however, merged with specific tribal customs and traditions that help the tribal members regain and maintain sobriety. The Healing to Wellness Courts' primary focus is on the underlying reasons for one's criminal conduct, where substance abuse was a factor, rather than focusing on the criminal act itself. The Healing to Wellness Court also involves family, extended family, and community members in the healing process.¹⁵

The Waabshki-Miigwan (White-Feather) Drug Court Program

The Waabshki-Miigwan Drug Court of the Little Traverse Bay Bands of Odawa Indians¹⁶ exemplifies the relevance and effectiveness of tribal Healing to Wellness Courts.¹⁷ The Little

Traverse Bay Bands of Odawa is one of the twelve federally recognized tribes in the State of Michigan, five of these tribes have reportedly adopted Healing to Wellness Courts, and the Waabshki-Miigwan is possibly one of the most comprehensive and well organized programs.¹⁸

The Waabshki Migwan Drug Court Program has jurisdiction over Odawa members from Charlevoix and Emmet counties who are recommended for a drug court sentence following a plea agreement entered by the participant's Defense Counsel and Tribal Prosecutor. A participant is admitted into the Healing to Wellness Program after being screened for eligibility by the Waabshki Miigwan Program Coordinator.¹⁹

Alternatively, participants who are charged with Violation of Probation are referred to the program by the Tribal Probation Officer, the Tribal Court, Defense counsel or the Prosecuting Attorney.²⁰ In order to be eligible, participants must

¹³ Id.

¹⁴ see Id.

¹⁵ Id.

¹⁶ The Little Traverse Bay Bands of Odawa are an Anishinabeg related to but distinct from Ojibway people. The Odawa migrated, as did other Anishinabeg peoples from the East Coast of North American in ancient times settling on Manitoulin Island, near the northern shores of Lake Huron, and the Bruce Peninsula in the present-day province of Ontario, Canada. They considered this their original homeland. In the 18th century, they also settled along the Ottawa River, and in the states of Michigan and Wisconsin, as well as through the Midwest south of the Great Lakes in the latter country.[3] In the 21st century, there are approximately 15,000 Odawa living in Ontario, and Michigan and Oklahoma (former Indian Territory, United States).

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¹⁷ About the Waabshki-Miigwan Drug Court Program, LTBB, <http://www.ltbbodawa-nsn.gov/Tribal%20Court/DrugCourt/White%20Feather%20Story.html> (last visited Jul.27, 2019).

¹⁸ Id.

¹⁹ LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS TRIBAL COURT, WAABSHKI MIIGWAN POLICY BOOK 3-4 (2011).

²⁰ Id.

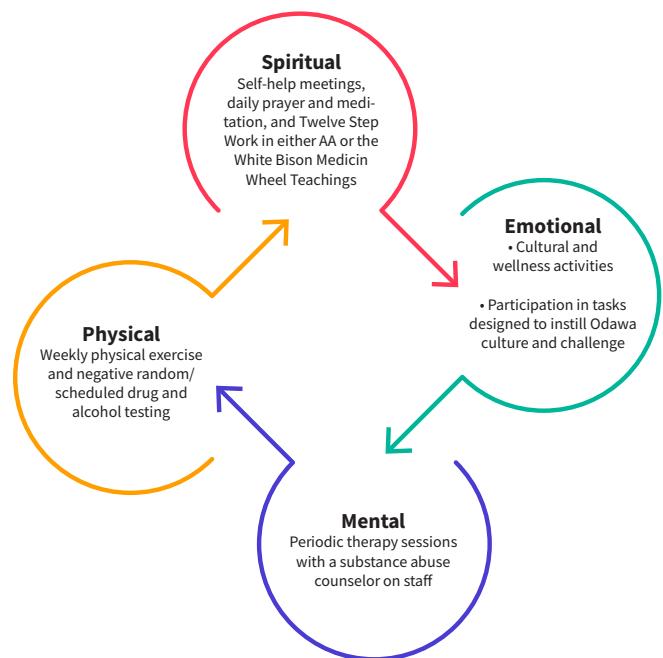
not have committed violent crimes. While the tribal drug court assumes civil jurisdiction, the trial/criminal court retains criminal jurisdiction over the offenders who will now be personally and publicly accountable for treatment progress.²²

Participants in the Waabshki-Miigwan are required to take part in a forty-four week program, which utilizes Odawa values and teachings to encourage them to adopt a healthy, and balanced lifestyle as envisioned by the Odawa ancestors.²³ In order to prevent those students living in isolated rural locations from missing attendance, the WMDCP facilitates the issuance of restricted driver's licenses to students who may have lost their driving privilege due to alcohol or drug related driving offences.²⁴ This is a major incentive for such students given that shortage of public transportation is a problem yet to be solved in the rural parts of Michigan where most of the tribal members reside.

Indigenous peoples generally take a holistic approach to wellness that goes beyond just physical wellbeing; they strive for a balance among one's tradition, culture, language, and community.²⁵ This is contrary to Western European biomedical approaches that treat wellness predominantly as physical wellbeing, characterized by the absence of diseases, while treating the mind and body separately in the treatment of addiction.²⁶ For American Indians, spiritual, emotional and mental wellbeing should complement physical wellbeing in order for one to achieve wellness to the fullest.²⁷ In situations of addiction, tribes aspire to regain sobriety through connecting with the spirit, culture and identity in sound mental shape. Using this approach, the Waabshki Miig-

wan program curriculum encompasses activities, which are designed to promote spiritual, emotional physical and mental wellness.²⁸

The diagram below summarizes how spiritual, emotional physical and mental wellness are incorporated in the weekly meetings that the participants are expected to attend throughout the Waabshki Miigwan Program.²⁹



²¹ see *Id.* The Waabshshki Miigwan program receives federal-funding and must comply with the Violent Participant requirement. Due to congressional mandate, federally funded Wellness Courts cannot accept cases involving a violent participant.

²² *Id.*

²³ Curriculum Summary, <http://www.ltbbodawansn.gov/Tribal%20Court/DrugCourt/Curriculum%20Summary.html> WAABSHKI MIIGWAN PROGRAM (last accessed July 26, 2019).

²⁴ Interview with Michael Wolf, LTBB Court Administrator In Petoskey MI (June. 18, 2019).

²⁵ Margo et al. *supra* note 2, at 2.

²⁶ *Id.*

²⁷ Joseph Thomas et al *Tribal Healing to Wellness Courts: Key Components*, 2nd ed. TRIBAL LAW AND POLICY INST. 32 (2014)

²⁸ *Id.*

²⁹ About the Waabshki Miigwan Drug Court Program, *supra* note 15.

During the weekly meetings, participants are given the opportunity to individually reflect upon the journey to sobriety, looking back to where they came from and acknowledging the noticeable improvements in their lifestyle and personality attributable to participation in the Waabshki Miigwan program, and ultimately pledging commitment to a life of sobriety.³⁰

Participants are expected to complete these weekly spiritual, emotional, physical, and mental health activities simultaneously.³¹ The successful completion of the assigned tasks determines whether a student advances to the following week's assignments or not. Compliant participants are usually rewarded as a way of recognizing and reinforcing progress.³² Conversely, failure to complete all assigned tasks not only impedes a student from proceeding to the following week, but also subjects him/her to different kinds of sanctions for instance, community service or a fine payable to the tribal drug court.³³

The Healing to Wellness Court utilizes an interdisciplinary team approach comprising of the judge, Waabshki Miigwan Court Coordinator, LTBB Adult Tribal Probation Officer, Cultural Resource Advisor and Tribal Law Enforcement.³⁴ It is through an amalgamation of skills from each of the above parties that a participant's progress is monitored and supported.³⁵ For the purposes of this discussion, focus shall be placed on the Tribal Cultural Resource Advisor, and the central role of culture and spirituality in America Indian peoples' journey to wellness.

The Role of Culture in the Healing to Wellness Court

The incorporation of American Indian cultural and traditional practices into tribal drug courts is what distinguishes such courts from the conventional drug court systems. Tribal drug courts are designed to instill a sense of direction, vision, and purpose using culture and spirituality as the primary tools. This point was elaborated by the Waabshiki Miigwan Cultural Resource Advisor who said; "The opposite of having an addiction problem is having a connection with your culture, a sense of belonging and direction...because when a person gets addicted to alcohol or drugs he/she turns away from the community and loses touch with culture while finding solace in being alone."³⁶

In order to inspire the sense of direction, vision, and purpose within the Waabshki Miigwan participants, the Cultural Resource Advisor plays a significant role. The Cultural Resource Advisor is a cultural coordinator who uses folklore to teach the students about the tribe's cultural roots,

³⁰Id. The weekly activities mainly comprise of All the projects and assignments laid out in the WMDCP week-by-week workbook, Attendance at all assigned counseling, probation, court, and self-help meetings assigned in the WMDCP week-by-week planner; and Compliance with all the WMDCP rules and regulations with an emphasis on maintaining sobriety and clean time.

³¹Id.

³²WAABSHKI MIIGWAN POLICY BOOK, *Supra*, note; 17 at 4. Some of the rewards include encouragement and praise from the Drug Court Judge, decreased drug court testing and frequencies for court appearances, while sanctions may range from warning to escalation of periods of jail confinement.

³³Id.

³⁴About the Waabshki-Miigwan Drug Court Program, *supra* note 15.

³⁵Id.

³⁶Interview with Antony Davis LTBB Cultural Resource Advisor in Petoskey MI (June. 18, 2019).

giving them knowledge on certain values developed and upheld by their predecessors. A perfect example of such values is the Waabshki-Miigwan (white feather) program itself, which was built in honor of an elderly LTBB Appellate Justice, Hon. Rita Gasco-Shephard who during her lifetime made significant contributions to the development of tribal values and also inspired a culture of tolerance towards addiction.³⁷

The late Honorable Rita Gasco-Shepard developed the belief that the community can still accept a person suffering from addiction regardless of how irredeemable he/she may appear, and help them become clean, just like how a “dirty and mangled feather can be picked from the muck and then transformed into a beautiful clean feather.”³⁸ Subsequently, the Honorable Rita’s white feather teaching along with other important Odawa tribal teachings, like the Medicine Wheel Teaching, help the participants internalize that regaining and maintaining sobriety is a very achievable goal.³⁹

The Medicine Wheel Teaching

The Medicine Wheel Teaching is based on the belief that Living Beings and their communities are governed by a system of circles that repeat and renew in ever-changing ways.⁴⁰ The Medicine Wheel teaches about the four cyclic directions of human growth—emotional, mental, physical, and spiritual.⁴¹ These four can take place simultaneously when experienced from the vantage point of the center.⁴²

The teaching continues, it is the disharmony or imbalance between human life and the natural

principles, laws, and essential values of life worth that trigger challenges like addiction, disturbing the functionality of the cycles in human life. However, because situations taking place in human life are believed to be interdependent, interrelated and joined,⁴³ addiction is viewed as an inevitable life ‘conflict’ which is actually not an enemy but a necessary friend that is needed, for it precedes clarity. The clarity is found in community or an individual to find resolution to a problem like addiction.⁴⁴

Cultural and spiritual wellbeing are complemented by physical wellbeing which manifests itself in a healthy body free from ailments. The body’s main function is housing the spirit, moving, living and contributing to the community.⁴⁵ Both physical and mental wellness enable the person to listen to the spirit, which nurtures their understanding about the meaning of life through intuition.⁴⁶ Harmoniously, emotional well-being helps the physical being foster his/her relationship with, culture, other living beings, like animals and plants, thereby attaining wellness through connections to other people, land and creation in their lives.⁴⁷

After complying with the ten month, Four Phase program, the participants will graduate and an event to celebrate the participant is held.⁴⁸

⁴¹ Id at 1933.

⁴² see Id.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Margo et al supra note 2 at 4.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ WAABSHKI MIIGWAN POLICY BOOK supra note 17 at 8

The graduating participant narrates his/her recovery story and will be conferred with a certificate of completion.⁴⁹ Alumni from the program can optionally attend the drug court hearing and graduation ceremonies from time to time providing encouragement and serving as living examples of the effectiveness of the Healing to Wellness court to the current students.⁵⁰

It would be careless of me not to mention that Healing to Wellness Courts face impediments that diminish their strength.⁵¹ As tribal civil and criminal jurisdiction is usually construed very narrowly, the jurisdictional barrier extends to Healing to Wellness Court hampering the courts' ability to implement an effective drug court process.⁵² Adding to that, the Healing to Wellness Courts face other logistical constraints like isolated rural locations, lack of resources and services, and so on.⁵³

More so, a general set back that all drug courts, either Western or Tribal face is stigmatization. The longstanding stigma around addiction has persisted, even though scientific basis has been established to support the theory that addiction is a disease.⁵⁴ For some, addiction still remains a moral failing to which incarceration not treatment is the most appropriate response.⁵⁵ Consequently, platforms that provide a compassionate and less punitive response to substance addiction, like the Healing to Wellness Courts, are not adequately embraced by both individual members of the society and institutions that regard addiction as a crime.⁵⁶

Indigenous Cultural Interventions, a Human Rights-Based Approach

International human rights laws and concepts have constantly been redefined to guarantee Indigenous wellness by encouraging States to use culturally focused health practices for indigenous people.⁵⁷ Groundbreaking scientific studies have proved that addiction is a chronic brain disorder that impedes the right to health.⁵⁸ Accordingly, Indigenous cultural interventions should be integrated not only into the criminal justice system but also into the conventional biomedical health care practices to cater for all American Indians with addictions.

Regionally, one of the most recent comprehensive human rights instruments for indigenous people in the Americas, the American Declaration on the Rights of Indigenous Peoples enjoins States to promote intercultural systems or practices in the medical and health services provided in indigenous communities, including training of indigenous technical and professional health care personnel.⁵⁹

⁴⁹ Id.

⁵⁰ Id.

⁵¹ U.S. D.O.J PROGRAMS *supra*, note 9 at 2.

⁵² Id.

⁵³ Id.

⁵⁴ Avery Appelman, New Study Proves Addiction is a Brain Disease. APPELLEMAN LAW FIRM. LLC July 30, 2019, 4:40 pm), <https://aacriminallaw.com/scientists-prove-addiction-brain-disease/>.

⁵⁵ Margo et al *supra* note 2 at 4.

⁵⁶ Interview with Antony Davis *supra* note 34; During this interview Mr. Davis mentioned that the health care system is one of the main sources of the stigma against addicts.

⁵⁷ Siegfried Wiessner The Cultural rights of indigenous Peoples: Achievements and continuing challenges, 22 E.J.I. L 122, 127 (2011).

⁵⁸ Appelman, *supra* note 52.

⁵⁹ G.A Res. 288 (XLVI-O/16, American Declaration on the Rights of Indigenous Peoples (June. 15, 2016) at Art XVIII (4)

At United Nations level, the United Nations Declaration on the Rights of Indigenous People, also a milestone in the advancement of indigenous peoples' rights globally, recognizes indigenous peoples' right to use health practices that they find suitable.⁶⁰ Fortifying this notion is the International Labor Organization Convention 169⁶¹ which mandates member states to provide adequate and, where possible, community based health services to the indigenous peoples.⁶²

In the same spirit, the Manual on the International Labor Organization Convention 169 requires that cultural conditions, traditional preventive care, healing practices and medicines be taken into account when providing indigenous health services.⁶³ The Convention additionally acknowledges that wellness for indigenous peoples constitutes more than just physical well-being, or freedom from diseases, but also spiritual and emotional wellbeing in harmony with nature.⁶⁴

The World Health Organization (WHO) and the Pan American Health Organization (PAHO) adopted a resolution in 2006 urging member states to embrace and incorporate traditional indigenous health systems and perspectives into

the attainment of the Millennium Development Goals and national health policies.⁶⁵ Other member states of Organization of American States such as Nicaragua, have since aligned their health care systems with international human rights standards by integrating a "cosmovision" of the communities into practice, to define the cultural-specific meaning of full wellness and complete health.⁶⁶

The United States' criminal justice system has commendably promoted the development of tribal drug courts to meet the specific needs of Indian Nations. In turn, American Indian tribal governments are making the most of their self-determination to combat the growing drug and alcohol addiction among tribal members through incorporating their cultural practices in the Healing to Wellness Court. Given the demonstrated success of a culturally relevant approach used in the Healing to Wellness Court, such practices should not only be used to curb overcrowding in prisons but to also promote and protect American Indians' right to health by being incorporated into the conventional health care system to curb the addiction epidemic among all American Indians.

⁶⁰ G.A. Res 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Oct.2, 2007).

⁶¹ Indigenous and Tribal Peoples Convention, C169, June 27 1989.

⁶² Id at Art 25.2; 'Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.'

⁶³ The International Labor Organization: Development Cooperation Internal Governance Manual" https://www.ilo.org/wcmsp5/groups/public/---dgreports/---exrel/documents/publication/wcms_452076.pdf

⁶⁴ see Id.

⁶⁵ WHO & PAHO Res. 2006/18 (September. 8, 2006).

⁶⁶ Heather Carrie et al Integrating Traditional Indigenous Medicine and Western Biomedicine into Health Systems: A Review of Nicaraguan Health policies and Miskitu Mealth Services INT J EQUITY HEALTH 2015; 14: 129. The Nicaraguan Ministry of Health has created "revitalize popular and traditional medicine" as a necessary response to the high costs of imported pharmaceutical materials. Creation of an intercultural healthcare division (National Centre of Popular and Traditional Medicine) that is responsible for organizing traditional medicine research; training health care providers in traditional medicine practices; and commercializing the production of medicinal plants.

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