FEDERAL BAR ASSOCIATION
VETERANS LAW SECTION

PROPOSAL TO ESTABLISH
TRADITIONAL TRIBAL VETERANS CENTERS

Introduction

The National Congress of the American Indian estimates that 22% of the Indian/Native American (including Alaskan and Hawaiian Natives and Pacific Islanders) are either members or veterans of the U.S. Armed Forces. This is the largest single ethnic group within the American Armed Forces. When there was a draft, the numbers of draftees from this group were relatively few, and those that did receive notices tended to enlist to receive choice of service.

There are several reasons for the extraordinary level of participation in the armed services, many of which are consistent with those of other segments of our society. Three other reasons stand out.

First is the warrior tradition, which remains strong and much honored in Indian Country. There is a strong family tradition of military service. American citizenship was not granted to American Indians until 1924. When the draft was instituted, Indians were included. However, the tradition of military service has been strong since the 1700s in the Revolution and French and Indian Wars.

Second, until 1962 Indians living on some reservations were not permitted off of the reservations without "good Indian" cards, and the armed services provided an exit from reservations.

Third, since that time the "economic draft" has provided incentive for those living on reservations where the unemployment rate is historically up to and frequently in excess of 90% and the opportunities for social and economic upward mobility are otherwise limited.

Needs of Indian/Native American Veterans

Meaningful access to the Veterans benefits claim system, A large number of Indian/Native American veterans lack access to the Veterans Benefits claim system. Traditional veterans service organizations do not maintain a strong presence in Indian Country, leaving representation for the most part to state and county personnel. In too many instances these individuals either never go on the reservations or go infrequently and ineffectively. Racism plays a significant role.

Claims are often pursued if at all, only to the first rating decision. The element of distrust of non-Indian governmental entities and personnel plays a significant role in this

situation, particularly when the issues involve psychological injury. In many instances, if a relative was denied VA benefits or treatment, the veteran will simply not ask at all. Regional Offices are frequently hundreds of miles away, and are virtually inaccessible. Access to C&P exams and Decision Review Officer hearings is limited or unavailable entirely for lack of adequate notice and transportation for the distances involved as well as other economic factors.

Encouragement to pursue appeals of denials of Veterans benefits claims. There are proportionally far fewer appeals of denials of benefits among Native American veterans than with any other group. There is a cultural inhibition against questioning what is perceived as governmental refusal. The long history of failures in the trust relationship between Indians and the US Government has resulted in an extremely fatalistic attitude about benefits. Added to this is the fractured state of the VA benefits claim system with inadequate notice provisions and arbitrary decisions. Educational deficiencies limit the ability to understand the complex language of rating decisions and statements of the case.

Limited or non-existent capable representation before the Regional Office nearly excludes any potential for appellate representation. Limited internet availability or capability further limits availability of legal representation from the relatively limited pool of attorney and non-attorney practitioners. Without meaningful representation, the appellate rights are significantly limited. Appeals from Board decisions to the CAVC are limited by the same factors: inadequate and confusing notice of appellate rights and decisions turgid with incomprehensible bureaucratic prose.

Culturally-compliant counseling. PTSD is statistically at 50% or higher in the veteran population as a whole that served in Vietnam, Afghanistan and Iraq. It may be even higher among Indian/Native American veterans. The incidence of suicide, particularly among all military personnel with multiple deployments in Southwest Asia and veterans of those deployments is a serious concern for VA and DOD. It is of particular concern in Indian country where suicide is already a mental health issue.

There is little or no culturally compliant counseling available to Indian/Native American veterans and their families, particularly in dealing with the secondary issues of self-medication, substance abuse, domestic violence and petty crime. Unaddressed issues of PTSD that lead to commission of offenses punishable by imprisonment have populated the federal prisons in the West with Indian/Native American veterans. There are few statistics kept on these veterans incarcerated, although in Montana there is some estimate that of the Indian/Native American population of the federal prisons (over 50 %of the population), three quarters of them are veterans.

Mental health care for Indian/Native American women veterans. The mental health care needs of Indian/Native American women veterans, especially for treatment of PTSD and co-morbidity, are huge and unaddressed. The statutory and regulatory definitions of "combat" for the purposes of the presumption of a stressor are particularly difficult for all women veterans. A Combat Infantry Badge has traditionally been the

prerequisite for presumptive stressors. The exclusion of women from any combat MOS places a more onerous burden on women veterans seeking compensation for PTSD and ignores the reality of counter-insurgency warfare. In many ways the needs for culturally compliant counseling and community support are greater with this group of veterans.

The plight of Indian/Native America women veterans with PTSD resulting from Military Sexual Trauma is significant and especially difficult for Indian/Native American women veterans because of the cultural ramifications attached to these experiences. These incidents are rarely reported, often not even to relatives or close friends. "Evidence" required to "prove" stressors has become reliant on other illnesses, behavioral issues, declining performance evaluations, requests for transfer and other indirect indicia of the occurrence of the event. The requirements of specificity of detail for MST are thus rarely met and the cultural ramifications of even discussing such matters pose a significant burden for the Indian/Native American woman veteran.

Medical record sharing between IHS, VHA and DOD. There are still large gaps in the interface between IHS, VHA and DOD medical records. Proposed legislative and regulatory initiatives, if adopted expeditiously, should ameliorate some of the record sharing issues. There are similar gaps in available health care for the wounded warrior. Those returning from OIF/OEF with severe trauma, both male and female, often require continuing wound care, physical rehabilitation and prostheses, as well as care for TBIs and paralysis. There are insufficient mechanisms in place to insure that veterans are sent to VA facilities when needed rather than IHS or IHS contract facilities.

Access to Job Training and Economic Opportunity. There is little meaningful availability of training and incentives for entrepreneurial, economic and educational development tailored to the needs of Native American veterans utilizing the resources of VA, Small Business Administration, Department of the Interior, Department of Labor and others. Significant benefits and programs exist for all veterans. Meaningful, informed access to these opportunities is significantly lacking in Indian country. The mechanics of applying for programs providing economic opportunities are extremely difficult to navigate without the availability of skilled counselors.

The only mention in the entire Department of Veterans Affairs budget of "Native Americans" is the reference to funds allocated to the Native American Veterans Housing Loan Program. Veterans applying for these loans frequently require advocacy within the tribe, since loans are made subject to tribal council approval. There is no provision in either the DVA budget or the Independent Budget, in which the terms "Indian" or "Native American" appear at all, for reconciling and coordinating economic opportunities available to Indians who happen to be veterans.

Proposed Solution: The Establishment of Traditional Tribal Veterans Centers

Mission of the Centers. The start-up on the reservations of "Traditional Tribal Veterans Centers" would address a wide range of issues for the Native American veteran.

Veterans Centers, established by VA after Vietnam, many in non-hospital suburban and urban settings, primarily provide counseling and treatment for PTSD and other mental health issues. They were designed to provide outreach for the significant number of veterans diagnosed with PTSD who were reluctant to go to medical centers. There is currently legislation to increase the number of these centers. It is important that legislation include a pilot program for start-up of Traditional Tribal Veterans Centers.

On the reservations, "Traditional Tribal Veterans' Centers" would provide an expanded range of services. They would be created as cooperative enterprises between VA, the Indian Health Service, Department of the Interior and the tribal councils, fully implementing the provisions of the MOU entered into by VA and IHS in 2003. This would provide Indian/Native American veterans with mental health services by both Western and Traditional Healing practitioners. The resurgence of cultural and religious traditions and their importance in everyday life throughout Indian Country mandates that the availability of centuries old traditional healing practices be included in any mental health program implemented for the Centers. Provisions must be made for documentation of the implementation of traditional healing as "continuing treatment" for benefits purposes.

These Centers would also provide resources for family counseling, health care for women veterans, including MST/PTSD and other women veterans' health issues. The dual modalities are particularly important for veterans in transition between combat and civilian life. DOD, VA and IHS records are currently gearing up for inter-departmental access.

How the Centers Would Work. Each reservation already has social services entities and some measure of family counseling. Incorporation of some of these elements with guidance and specialized training from VA through the tribal councils and IHS into services tailored to the veteran and his/her family would represent a significant focus of each Center. This approach should reduce the number of prosecutions of veterans in tribal courts and legitimize veterans' issues within the reservation community. If "Veterans Treatment Courts" programs are developed on the reservations, this approach would provide the treatment modality.

The Centers would also serve as sites for training of the family caregivers provided for in current legislation. Integrating home health care programs with training, certification and re-certification of home care providers at the Centers would result in heightened community awareness of the issues faced by the veterans' families. It also would obviate the necessity for long-term care in VA or state facilities that do not provide for cultural or familial needs and are far removed from the reservations and families.

Caregiver training by necessity addresses care of the residuals of trauma, including care of prostheses, and service connected diseases and disorders. Given this capability, continuing care by VA and IHS interfacing with area VA clinics and VA Medical Centers would provide a continuum of care with referral to VA facilities when

deemed appropriate. A substantial part of the VA/IHS interface would be the availability of VA medications at the Centers overseen either by VA pharmacists or IHS pharmacists provided with specialized training in the VA formulary. VA/IHS interface would also provide for medical care coordination that ensures the maintenance of VA standards of care for veterans that require medical intervention at IHS facilities, as well as oversight for use of fee-based care off the reservation.

Benefits counseling and representation would be a substantial feature of the Traditional Tribal Veterans Centers. Benefits counseling and representation by a trained Tribal Veterans Representative, accredited to the agency on the same legal footing as current state and county employees who represent veterans before the DVA would provide meaningful access to Compensation and Pension benefits. Meaningful access to the Board of Veterans Appeals and the U.S. Court of Appeals for Veterans Claims would also improve substantially. This would require statutory and regulatory changes, as existing regulations provide only for state and county employees, excluding by definition tribal representatives from this status. Tribal representatives would be employees of the tribal councils.

Currently there are Tribal Veterans Representatives ("TVRs") in many areas, particularly the Northern Plains and the Northwest. Originally this highly innovative concept was designed and implemented by James R. Floyd, currently Network Director of VISN 15 in Kansas City, MO. It represents an effort to provide the Indian/Native American veteran with a trustworthy emissary to assist in seeking benefits and an advisor in dealing with the VA benefits and health care bureaucracy.

The drawback of TVRs, at least on the benefits side, is that they may only function as emissaries, in cooperation and as liaison with accredited VSOs. They lack accreditation in their own right, and are trained by VA personnel who do not have an advocate's perspective and who of necessity function within a system that has become de facto adversarial over the last two decades. This gives rise to issues of conflict of interest as well as a wholly unintended contribution to the inadequacy of representation. They should serve as a valuable resource for transition into accredited representation. The result of appropriate training would be availability of and incentive for appeal of unfavorable decisions by the Agency to the Board of Veterans Appeals and the U.S. Court of Appeals for Veterans Claims.

TVRs could serve a valuable role the delivery of veterans benefit claim assistance at Traditional Tribal Veterans Centers. They would be trained to serve as veterans advocates, rather than as advisors, and would be stationed at each Center, equipped with IT networking and library resources. Their training would include annual CLE and regular legislative, regulatory and case law updates. The Centers would also provide internship opportunities for attorneys in Indian Country with an interest in Veterans Law. Where helpful, the Centers also could provide assistance to non-Indian veterans from surrounding areas that suffer from the same geographical and economic barriers. A veteran is a veteran.

The introduction of trained TVRs would lead to greater awareness and pursuit of economic benefits by all veterans on the reservations, in applying for home and business loans, pursuing economic and employment opportunities through programs and resources offered by DVA, Small Business Administration, Department of the Interior, Department of Labor and others.

Benefits of the Centers. The economic benefits derived from these services cannot be emphasized enough. Veterans typically comprise around 10% of the population of most reservations. The delivery of entrepreneurial education, training and resources for capital, as well as increasing the flow of tax-free Compensation and Pension income, would provide economic benefits to the entire tribal community. Many of the areas of economic interest to the tribal councils and the economic development entities on the reservations, such as energy, gaming, cultural development, and general business and educational enterprises, dovetail with areas open to financial endeavor through programs designed for veterans. Even the most severely wounded veterans would gain through Vocational Rehabilitation and Independent Living programs the opportunity for economic survival and increased employment opportunities for themselves and the tribal community.

The Centers would also provide counseling in educational benefits and opportunities for veterans and dependents, including spousal benefits and benefits for widows and widowers of deceased veterans. The improvement of benefits available to widows, widowers and dependents of veterans, as well as the relaxation of re-marriage restrictions, makes this an area in which skilled counseling is a necessity. Pending legislation provides for families of severely wounded warriors to travel and be with them. This area of counseling would be available through Traditional Tribal Veterans Centers, as well the delivery of information and advice about the transition from active duty to veteran status, including the transition from one rating system to another, which remains in flux despite the intent to render the whole process "seamless."

Conclusion

The creation of an Office of Indian Affairs within the Office of the Secretary of Veterans Affairs will provide a sound basis for the improvement of rights and benefits for Indian/Native American veterans who have served their country to a much greater degree than any other group. For too long their needs and interests have been ignored by DVA, VSOs and the American public. This Office should provide further linkage with the Centers to ensure that the mission and the quality of its execution remains constant and consistent.

Establishing Traditional Tribal Veterans Centers on reservations far removed from DVA facilities is a necessity. This is particularly true because of the substantial numbers of wounded warriors in Iraq and Afghanistan with injuries seen and unseen that require special care and equipment with life-long rehabilitation needs.

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The views expressed herein represent those of the Veterans Law Section of the Federal Bar Association and not necessarily the Federal Bar Association or any other component thereof.

38 C.F.R Sect. 14.629 Requirements for accreditation of service organization representatives; agents; attorneys.

(a) *Service Organization Representatives.* A recognized organization shall file with the Office of the General Counsel VA Form 21 (Applicaion for Accreditation as Service Organization Representative) for each person it desires accredited as a representative of that organization. The form must be signed by the prspective representative and the organizations certifying official. For each of its accredited representatives, a recognized organiazation's certifying official shall complete, sign and file with the Office of General Counsel, not later thn five years after initial accreditation through that organization or the most recent recertification by that organization VA Form 21 to certify that the representative continues to meet the criteria for accreditation specified in paragraph (a)(1), (2) and (3) of this section. In recommending a person, the organization shall certify that the designee :

(1) is of good character and reputation and has demonstrated an ability to represent claimants before the VA;

(2) Is either a member in good standing or a paid employee of such organization working for it not less than 1,000 hours annually; is accredited and functioning as a representatiove of another recognized organization; or in the case of a county veterans service officer recommended by a recognized State organization *or a tribal veterans service officer recommended by a Tribal Council or other governing tribal entity*; meets the following criteria:

(i) Is a paid employee of the county *or tribe* working for it not less than 1,000 hours annually;

(ii) Has successfully completed a cour