



## OFFICE OF THE FEDERAL DEFENDER

Eastern District of California

801 I Street, 3<sup>rd</sup> Floor  
Sacramento, CA 95814-2510  
(916) 498.5700

Toll Free: (855) 328.8339  
FAX (916) 498.5710

Capital Habeas Unit (CHU) (916) 498.6666  
Toll Free: (855) 829.5071 Fax (916) 498.6656

2300 Tulare Street, Suite 330  
Fresno, CA 93721-2228  
(559) 487.5561

Toll Free: (855) 656.4360  
FAX (559) 487.5950

HEATHER E. WILLIAMS  
Federal Defender

LINDA C. HARTER  
Chief Assistant Defender

JOSEPH SCHLESINGER  
CHU Supervisor

CHARLES LEE  
Fresno Branch Chief

RACHELLE BARBOUR, Editor

# Federal Defender Newsletter

## November 2014

### CJA PANEL TRAINING

Sacramento panel training will be on break until January 21, 2015, when CJA Panel Attorney Scott Cameron will present on 17(c) subpoenas. In lieu of the November panel training, the Federal Bar Association and Eastern District Historical Society invite CJA attorneys to attend: *The Investigation, Trial, and Aftermath of Unabomber Theodore Kaczynski*. District Judge Shubb will moderate the event, which will feature Judge Steve Lapham, former AUSA on this case; Quin Denvir, former Federal Defender; Terry Turchie, former FBI SA for the UNABOM Task Force; and Gary Wright, a Unabomber survivor. The program will take place on November 19, 2014 from 5:00 to 7:00 p.m. at the Federal Courthouse. A reception will follow. MCLE credits are available. Please email [fbasacramento@gmail.com](mailto:fbasacramento@gmail.com) with any questions and to reserve a spot. Please note in your RSVP that you are a CJA Panel member.

Fresno panel training will take place on November 18, 2014 (third Tuesday) at 5:30 p.m. John Balazs will be presenting *Litigating Mail and Wire Fraud Cases after U.S. v. Charikov, Cr. S. 12-0003 (E.D. Cal. 2014)*. The training will be held in the jury room of the U.S. District Court, 2500 Tulare St. in Fresno.



### SAVE THE DATE FOR THE ANNUAL CJA/FEDERAL DEFENDER HOLIDAY PARTY

Please join us Friday, December 5<sup>th</sup> between 4 and 7 p.m. for our holiday tradition at 801 I Street. As always staff, significant others, and kids are invited!

### SACRAMENTO JURY TRAINING ~ DR. SUNWOLF

Published jury communications expert Dr. SunWolf will be providing an afternoon training for defense lawyers on an afternoon-to-be-determined in December. Dr. SunWolf is a professor of communications at Santa Clara University and visiting professor at Santa Clara School of Law. We'll keep you posted.

## ONLINE MATERIALS FOR CJA PANEL TRAINING

The Federal Defender's Office distributes panel training materials through its website: [www.cae-fpd.org](http://www.cae-fpd.org). We will try to post training materials **before** the trainings for you to printout and bring to training for note taking. Any lawyer not on the panel, but wishing training materials should contact Lexi Negin, [lexi\\_negin@fd.org](mailto:lexi_negin@fd.org).

### TOPICS FOR FUTURE TRAINING SESSIONS

Do you know a good speaker for the Federal Defender's panel training program, or would you like the office to address a particular legal topic or practice area? Email suggestions to:

Fresno – Peggy Sasso, [Peggy\\_Sasso@fd.org](mailto:Peggy_Sasso@fd.org),  
Andras Farkas, [Andras\\_Farkas@fd.org](mailto:Andras_Farkas@fd.org), or  
Karen Mosher, [karen\\_mosher@fd.org](mailto:karen_mosher@fd.org)

Sacramento: Lexi Negin, [lexi\\_negin@fd.org](mailto:lexi_negin@fd.org).

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Check out [www.fd.org](http://www.fd.org) for unlimited information to help your federal practice.

### Defender Services Office Training Branch

<http://www.fd.org/navigation/training-events>

### UPCOMING TRAINING

#### TRAIN THE TRAINERS WORKSHOP

SANTA FE, NEW MEXICO | November 12 - November 14, 2014

### ♪ NOTABLE CASES ♪

US v. Morales Heredia, No. 12-50331 (Wardlaw with Kozinski and Fisher) The Ninth Circuit holds that the prosecutor breached the fast track plea agreement and the stipulated sentence in highlighting the defendant's criminal record, actions,

and disregard for the law while also asking the court to accept the plea. In finding a breach of the plea and remanding to a different judge, the Ninth Circuit makes it clear that the government cannot denigrate the defendant while recommending a stipulated sentence. It must stand by the plea. The opinion also has a helpful analysis of the immigration fast track programs and what the government gets out of them. Interestingly, the Ninth Circuit also criticizes the plea's stipulation to three years of supervised release, even though the Sentencing Commission has disfavored supervision in immigration cases.

US v. Bell, No. 13-30163 (10-22-14)(Gould with Graber; concurrence by Hawkins). The Ninth Circuit vacates the special conditions of supervised release related to alcohol and drug counseling because there was no findings by the trial court regarding why they were appropriate.

US v. Reyes, No. 12-50294 (10-22-14)(Fisher with Noonan and Wardlaw). The Ninth Circuit vacates the jury's special verdict regarding drug amount. It also vacates the sentence. The government's "expert" on drug quantities mixed both lay opinion and expert opinion, and the testimony was so intermingled, with no explanation from the trial court as to the distinction, that the error was plain and reversible.

US v. Hernandez, No. 13-50632 (per curiam with Pregerson, Tallman, and Bea). The Ninth Circuit vacates a sentence that added an aggravated felony sentencing guideline adjustment in an illegal reentry case. The prior was a California felon in possession conviction. In United States v. Aguilera-Rios, No. 12-50597 2014 WL 4800292 (9th Cir. 9-29-14), the Ninth Circuit held in the immigration context that the California felon-in-possession statute

was not a categorical fit for the federal felon in possession statute because the state statute did not have an antique-firearms exception. The categorical approach also applies in the sentencing context.

Williams v. Swarthout, No. 11-57255 (10-23-14)(Noonan with Reinhardt). At the start of a state trial, the judge told the jury the defendant pled guilty. During deliberations, the jury sent out a note asking a question about this. The court then reinstructed the jury and polled it. Later, a juror sent a note out saying that he found it difficult to follow the court's instruction because he heard the evidence through the prism of "guilty." The court dismissed the juror and re-instructed the rest. They issue a guilty verdict. On state habeas, the courts find error, but harmless. The Ninth Circuit grants the petition. Even under AEDPA, the state courts got it wrong. The Ninth Circuit holds that the presumption of innocence was violated; the curative instructions did not cure; and that due process was violated.

US v. Castro-Ponce, No. 13-10377 (Gould with Reinhardt and Berzon). The Ninth Circuit makes it clear that before a court applies an adjustment for obstruction of justice based on false testimony, it must explicitly find that (1) the testimony was false; (2) the testimony was material; and (3) the testimony was willful and intentional. In this case, the defendant was charged with conspiracy and other drug trafficking offenses. He testified as to four incidents, offering explanations that explained why he was at certain spots. The court imposed a 240-month sentence that included the obstruction adjustment. It only found that the testimony was false. Given the severity of such an adjustment, and the chilling effect on testimony, the court must also explicitly find the two other

elements in the section: materiality and intentional willfulness.

### **FORMER FEDERAL DEFENDER EMPLOYEES LOOKING FOR EMPLOYMENT**

Yvonne Jurado, [yvonneee@live.com](mailto:yvonneee@live.com),  
(916)230-0483: Paralegal, Secretarial,  
Legal Assistant, CJA voucher preparation  
and filing

Karen Sanders, [kvs.legaltech@gmail.com](mailto:kvs.legaltech@gmail.com),  
(916)454-2957 (h), (916)216-3106 (cell)  
Karen has over 20 years of experience as  
the computer systems administrator at  
FDO. She'll be providing legal technical  
and litigation support services. Hourly  
reasonable rates are available.

Lupita Llanes, [lupitallanes@gmail.com](mailto:lupitallanes@gmail.com), (559)  
360-4754: Secretarial and Office  
Management work. Bilingual  
Spanish/English services.

### **LETTER FROM THE DEFENDER**

This summer, Sacramento County Superior Court initiated its Veterans Treatment Court. (Isabelle Taft, "Veterans Treatment Court debuts in Sacramento this week," *Sacramento Bee* (7/1/2014) <http://www.sacbee.com/news/local/crime/article2602669.html>). Recently, members of our various federal court agencies attended a Veterans Treatment Court session, hopefully with an eye to implementing one in our District Court if we see more veterans sadly being involved in our justice system.

In Arizona, I was part of the committee to create a Veterans Court, which started shortly after I moved to Sacramento. I've been talking with others about starting a veterans court here since I arrived.

I propose a diversion program and/or treatment court for those in or discharged from our armed forces who, but for the side-effects or after-effects of their military service, would never have become involved in the criminal justice system. This proposal's goal is to give

those defendants a fresh start through pretrial supervision's guidance and support without sustaining a criminal conviction.

*Many people refer to the World War II generation as the greatest one, but we've had greatness in every single generation of Americans who have served. I know of none greater than the generation of GIs now fighting for our country in Iraq and Afghanistan and serving around the world. Someday soon, they'll need us to fight for them.*

~ General Colin L. Powell  
*Why We Serve* (Parade Magazine, 11/6/11)

Since the Vietnam War, our criminal justice system has seen an inordinate number of our veterans, many suffering the effects of Post-Trauma Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) and/or having failed to transition from "soldier" to "civilian," charged with drunk in public, disorderly conduct, and DUI, to drug offenses, assaults, and murder, with many of these related to domestic violence.

*Because when soldiers come home, that's when the hard work for those [military and veteran] families begins. We're talking about the mental health issues that come with post-traumatic stress disorder, with spouses dealing with reconnection.*

~ First Lady Michelle Obama  
*Mothers in Arms* (AARP the Magazine Sept/Oct 2011)

We owe those who laid down their lives for our freedoms and security the opportunity and support to regain the honorable paths they followed as soldiers.

This proposal provides the bases needed to create a realistic and effective Diversion or Treatment Court Program -- focusing on counseling, education and/or employment, and stable housing -- permitting our veteran and military defendants to confront the crime he or she committed, battle what led to its commission, and leave our system with a new start.

*The impact of war lasts forever. So we can't turn our heads when things feel good and we feel safe. This is a forever initiative.*

~ First Lady Michelle Obama

## INTRODUCTION

*There's a condition in combat. Most people know about it. It's when a fighting person's nervous system has been stressed to its absolute peak and maximum. Can't take anymore input. The nervous system has either \*click\* snapped or is about to snap.*

*In the First World War, that condition was called "shell shock." Simple, honest, direct language. Two syllables - shell shock. Almost sounds like the guns themselves. That was seventy years ago. Then a whole generation went by and the Second World War came along and very same combat condition was called "battle fatigue." Four syllables now. Takes a little longer to say. Doesn't seem to hurt as much. "Fatigue" is a nicer word than "shock." **Shell shock!** Battle fatigue. Then we had the war in Korea, 1950. Madison Avenue was riding high by that time, and the very same combat condition was called "operational exhaustion." Hey, we're up to eight syllables now! And the humanity has been squeezed completely out of the phrase. It's totally sterile now. "Operational exhaustion." Sounds like something that might happen to your car.*

*Then, of course, came the war in Vietnam, which has only been over for about sixteen or seventeen years, and thanks to the lies and deceptions surrounding that war, I guess it's no surprise that the very same condition was called "post-traumatic stress disorder." Still eight syllables, but we've added a hyphen! And the pain is completely buried under jargon. "Post-traumatic stress disorder."*

*I'll bet you if we'd of still been calling it shell shock, some of those Vietnam*

*veterans might have gotten the attention they needed at the time. I'll betcha. I'll betcha.*

~ George Carlin, *Parental Advisory - Explicit Lyrics* (CD 1990)

For over 13 years, our country has been at war in Afghanistan, most of that time also in Iraq. Not only has our active military been there in multiple and lengthy tours, but our Reservists and National Guard have been there in lengthy and multiple tours.

Already, our federal, state and local criminal courts have seen increasing numbers of defendants who have served our country honorably, risking life and limb, as well as former jobs which employers could not keep open, spouses and children who got on without their military family members and hardly recognize who he or she has become. We have seen their increased alcohol and substance abuse<sup>i</sup> and their difficulty in holding down work and maintaining relationships. We see them too emotionally injured to recognize the depth of what has happened to them, too proud to admit a problem or seek help.

The jobless rate amongst these war veterans was a year ago 27% higher than the general population.<sup>ii</sup> According to a Pentagon report in December 2009, about one in four soldiers admitted to abusing prescription drugs, mostly pain relievers, and greater numbers of soldiers acknowledged suicidal ideations, binge drinking and PTSD.<sup>iii</sup>

According to a Veteran's Administration (VA) Health Care System official, in discussing the veterans of Operations Enduring Freedom and Iraqi Freedom:

1. mental health is the second most treated condition by the VA;
2. most are treated for PTSD, followed by Depressive Disorders, Anxiety Disorders, and substance abuse; and
3. many veterans suffer from Traumatic Brain Injury (TBI) which manifests like PTSD, but they may not realize they have it and may be improperly diagnosed because 85% are "closed head" injuries caused by blasts or explosions with no visible wounds.<sup>iv</sup>

Federal Defender Offices and Panel lawyers have seen increasing numbers of these veterans facing charges of assault, drug smuggling, and gun charges. It is up to us - defense lawyers and prosecutors, judges, Probation and Pretrial - to find a way to help them, to invite them back into society and to welcome them with something more than a Guidelines Manual that denies recognition of their particular history and characteristics.

## **WHY DIVERSION FOR MILITARY VETERANS IS IMPORTANT**

### **The Numbers**

Over one in every 20 Californians is a veteran.<sup>v</sup> In the Eastern District, it is almost one in every 17. The United States has close to 22 million veterans.

One in five homeless adults are veterans.<sup>vi</sup>

In 2013, while national unemployment ran 6.7% to 7.9%,<sup>vii</sup> In April, Iraq and Afghanistan veterans' unemployment was 9%, compared with 6.8% for nonveterans and 6.6% for veterans overall. In November 2011, Congress passed the Veteran Jobs Bill. The new legislation gave:

- up to \$9,600 in tax credits to employers who hire disabled veterans.
- \$5,600 in tax credits to companies who hire veterans who have been on the job hunt for about six months; and
- \$2,400 for veterans who have been out of work for at least a month or longer.

### **What Happens?**

During the Vietnam War, soldiers' tours were generally singular and a year or less in length. Since Vietnam, our soldiers have seen combat in Grenada (Operation Urgent Fury 1983), Panama (Operation Just Cause 1989-1990), Kuwait (Operation Desert Storm, 1990-1991), Somalia (Operation Restore Hope 1992-1994), and, now, Iraq and Afghanistan (2002-present).

In Iraq and Afghanistan, some of our soldiers have seen multiple combat tours, with

some tours up to 15 months.<sup>viii</sup> This intense cycling caused increased divorce rates, epidemic levels of drug and alcohol abuse, and a record number of suicides.<sup>ix</sup> Post-trauma Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) is a highly recognized result of deployment.

This affects those soldiers who see combat and those who do not - the stresses of possibly being called to battle and constant interaction with those who have seen battle affects both categories of soldiers. Further, being home does not cure the affects; soldiers grieve their lost comrades, their perceived lack of purpose, the lost constant adrenaline, and survivor's guilt. At home, soldiers feel naked without a gun, fear crowds and strangers, lose sleep, are anxious, disoriented, and feel out of control.<sup>x</sup>

TBI manifests in headaches, memory loss, nightmares, and anger-control issues.<sup>xi</sup>

Also, in being home without sufficient or appropriate transition, soldiers must readjust to their families' rhythms, previously existing without the soldier's presence. This leads to feelings of being in the way, not being needed or wanted, and that those closest to the soldier do not understand, appreciate what the soldier experienced away from home. "Since the start of Operation Enduring Freedom, the divorce rate has increased from 2.6 percent in 2001 to 3.6 percent in 2009 [and] 2010."<sup>xii</sup> Divorce rates for female soldiers are more than twice as high.<sup>xiii</sup>

For those soldiers recently discharged from the military, and for those high numbers of soldiers from Reservist and National Guard Units (deployed in higher numbers than ever before) whose service interrupted lives and careers, unemployment is high. Former employers of Reservist and National Guard members may not have kept jobs waiting or fail to offer comparable jobs to these returning soldiers. Legal help in resolving these violations may benefit some veterans. Also, credentialing (earning licenses and diplomas for the civilian equivalents of their military jobs) may help bridge the time to re-employment.

All too often, however, our veterans and soldiers -- proud, having succeeded in a culture of not complaining, of accepting their plights despite pain, fear, and insecurity, for the benefit of the unit or of the patrol -- do not know how to ask for help, to admit to not being totally self-reliant, to needing assistance.<sup>xiv</sup> These veterans may fall into substance abuse for relief or escape, or resort to committing crime (to replace the adrenaline or to earn some money), rather than asking for help, or may lash out in violence out of mental illness and injury.<sup>xv</sup>

### **Veterans with Criminal Convictions**<sup>xvi</sup>

Statistics are not available to tell us the number of veterans who sustained criminal convictions - felony or misdemeanor - since their military service.

The most recent study, taking a snapshot of the number of veterans in state and federal prison in 2004, found an estimated 140,000 veterans in custody: state prisons held 127,500, and federal prisons held 12,500.

The study found:

- Most veterans in prison were male (99 percent).
- Among adult males, veterans were half as likely as non-veterans to be in prison<sup>xvii</sup> (630 prisoners per 100,000 veterans, compared to 1,390 prisoners per 100,000 non-veteran U.S. residents). The difference was largely explained by age: 2/3 of male veterans were at least 55 years old, compared to 17 percent of non-veteran men. (NOTE: 2004 WAS 30 YEARS AFTER THE END OF THE VIETNAM WAR.)
- The percentage of state prisoners who reported prior service in the U.S. Armed Forces (10%) was half of the level reported in 1986 (20%).
- The estimated number of veterans in state and federal prison increased by more than 50,000 between 1985 and 2000, coinciding with a rapid growth in total prison populations. Since 2000, the number of veterans in prison has fallen 13,100 (9%).
- The average length of military service of veterans in prison was about four years, and six in 10 received an honorable

discharge. The majority of veterans in state (54%) and federal (64%) prisons served during a wartime period, but a much lower percentage (20% of veterans in state prisons, 26% of federal) reported seeing combat.

- 36% = Vietnam-era veterans;
- 14% = 1990-91 Persian Gulf War;
- 4% = Afghanistan and Iraq veterans (only 2 years into post-9/11 combat).
- Over half of veterans (57%) were serving time for violent offenses, compared to 47% of non-veterans.
  - Sexual assaults (including rape)= 23% veterans (vs. 9% non-veterans);
  - Female victims (domestic violence?) = 60% veterans (vs. 41% non-veterans);
  - Minor victims (domestic violence?) = 40% veterans (vs. 24% non-veterans).
- Veterans were much older than other inmates: 45 years old vs. 33.
- Veterans were more likely to be white (54%) than non-veterans (33%).
- Veterans were better educated than other state prisoners: 91% veterans reported at least a high school diploma or GED vs. 60% non-veterans.
- College attendance was three times higher among veterans: 33% vs. 10%.
- Veterans were less likely to report drug use in the month before their offense (42%) than other state prisoners (58%).

Of course, earning potential for formerly incarcerated individuals is greatly reduced when compared with the general population, creating a further downward spiral for all involved, including our former soldiers.<sup>xviii</sup>

Recognizing there may be increasingly more military and veterans involved with the criminal justice system, the Veteran's Health Administration (VHA) identified junctures when they can intercept veterans, hopefully to steer them away from the criminal justice system.<sup>xix</sup> These services should include medical, behavioral health, substance abuse, transitional housing, training/education and employment, and VA benefits. "[T]reatment programs for war-related illnesses, among other problems, . . . aren't available in the prison system."<sup>xx</sup>

### **Effect of Arrest and Conviction of Veteran's Benefits (from VA Website)**

*Disability Compensation:* VA disability compensation payments are reduced if a veteran is convicted of a felony and imprisoned for more than 60 days. Veterans rated 20% or more are limited to the 10% disability rate. For a veteran whose disability rating is 10%, the payment is reduced by one-half. Once a veteran is released from prison, compensation payments may be reinstated based upon the severity of the service connected disability(ies) at that time.

Payments are not reduced for recipients participating in work release programs, residing in halfway houses (also known as "residential re-entry centers"), or under community control.

*Pension:* Veterans in receipt of VA pension will have payments terminated 61 days after imprisonment in a Federal, State, or local penal institution for conviction of a felony or misdemeanor. Payments may be resumed upon release from prison if the veteran meets VA eligibility requirements.

*Education Benefits:* Beneficiaries incarcerated for other than a felony can receive full monthly benefits, if otherwise entitled. Convicted felons residing in halfway houses (also known as "residential re-entry centers"), or participating in work-release programs also can receive full monthly benefits.

Claimants incarcerated for a felony conviction can be paid only the costs of tuition, fees, and necessary books, equipment, and supplies.

### **DIVERSION FOR VETERANS**

#### **Authority to Offer Diversion Based Upon Military Service**

*Holder Memo: Department Policy on Charging and Sentencing (5/19/10):* In charging, plea agreements (and presumably other non-trial resolutions), and sentencing, Attorney General Holder's memorandum, at each stage, emphasizes "an individualized

assessment of the defendant's conduct," "an individualized assessment of the specific facts and circumstances in each case," and a sentence which will ". . . provide just punishment, afford deterrence, . . . and offer defendants an opportunity for effective rehabilitation."

**U.S.S.G. § 5H1.11. Military . . . Service. . . (Policy Statement)**

Military service may be relevant in determining whether a departure is warranted, if the military service, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines.<sup>xxi</sup>

**Veterans Courts**

Veterans' Courts have sprung up at various levels in municipal and state courts around the United States. The National Association of Drug Court Professionals, in its Justice for Vets program, is dedicated to "ensuring the veterans involved in the criminal justice have access to Veterans Treatment Courts and the benefits, services and treatment they have earned."<sup>xxii</sup>

"The goal of the courts, which serve veterans of any era, is to keep defendants out of prison."<sup>xxiii</sup> In Veterans' Courts, charges are dropped after successful completion of the program.<sup>xxiv</sup>

**Pretrial Diversion Program**

"After veterans complete treatment [via veterans' courts], some prosecutors' offices drop the criminal charges . . . ."<sup>xxv</sup>

The U.S. Attorneys Manual provides guidance for referring individuals to Pretrial Diversion.<sup>xxvi</sup> "The U.S. Attorney, in his/her discretion, may divert any individual against whom a prosecutable case exists and who" meets the following eligibility criteria:

- Anyone who has one or no felony convictions;

- Anyone accused or could be accused of a federal offense, rather than one "which, under existing Department guidelines, should be diverted to the State for prosecution;"
- Anyone who is not a public official or former public official accused of an offense arising out of an alleged violation of a public trust; or
- Anyone who is not "[a]ccused of an offense related to national security or foreign affairs."<sup>xxvii</sup>

Either Pretrial Services or the U.S. Attorney's Office should routinely inquire whether or not a suspect or offender is in the military or is a veteran. The process for any consideration for referral to the federal diversion program process is:

1. Divertee retains or is appointed counsel.
2. Participation is voluntary.
3. Divertee signs a contract, upon advice of counsel, agreeing to waive:
  - a. his/her rights to speedy trial, and
  - b. presentment of his/her case within the statute of limitations.
4. All participants to the diversion referral agree all information obtained while deciding whether to divert remains confidential, to include the divertee's required "acknowledg[ment of] responsibility for his or her behavior, but [the divertee] is not asked to admit guilt."<sup>xxviii</sup>

If a person is charged and appointed counsel, defense counsel must be trained to routinely ask clients their military histories and, if a client has such history, routinely request the client's military records.

Once the U.S. Attorney decides the divertee is eligible and wishes to make the referral, the divertee is sent a letter (USA Form 185, Letter to Offender) and Pretrial Services is contacted to evaluate the divertee for "potential suitability of the offender for supervision."<sup>xxix</sup> Once Pretrial concludes the divertee is appropriate for Pretrial Diversion, a supervision plan is devised and agreed to by everyone, and is "tailored to the offender's needs and may include employment, counseling, education, job training, psychiatric care, etc. Many districts have successfully required restitution



or forms of community service as part of the pretrial program. Innovative approaches are strongly encouraged.<sup>xxx</sup>

The Pretrial Diversion Contract (U.S. Attorney Form 186) signing starts the diversion period, which should not exceed 18 months, but can be shortened based upon the divertee's successes.<sup>xxxii</sup>

In the case of Federal employees, the PTD Agreement will not require the offender's resignation from Federal service but will explicitly state that administrative action by the Federal agency will not be precluded and need not be delayed by the prosecutor's disposition of the case through diversion. The PTD Agreement may require that the U.S. Attorney provide a copy of the Agreement to the Federal agency by which the divertee is employed.<sup>xxxiii</sup>

Pretrial then send the FBI their FBI Form 1-12 *Flash Notice*, indicating diversion and requesting notification if the divertee is arrested for some other offense. Upon such an arrest or other breach of the Diversion Agreement's conditions by the divertee, Pretrial will contact the U.S. Attorney, who, solely within his/her discretion and upon consultation with Pretrial,

(a) may decide to continue diversion with possible additional conditions, meetings or innovative solutions; or

(b) may terminate the divertee from continuing diversion participation and (re)initiate prosecution.<sup>xxxiii</sup>

If prosecution is resumed, the U.S. Attorney must furnish the offender with notice.<sup>xxxiv</sup>

However, upon successful, satisfactory completion of the diversion program, Pretrial provides the U.S. Attorney a *Notice of Satisfactory Completion* and the U.S. Attorney will formally decline prosecution. Once charges are dropped, Pretrial will submit to the FBI their FBI Disposition Form R-84 so the divertee's record will indicate successful completion/charges dropped.<sup>xxxv</sup>

## Conclusion

Clearly, this approach can be the needed path to improvement and recovery for our military and veterans, and beneficial to their families, the community, and our court. We owe them nothing less than that chance.

~ Heather E. Williams  
Federal Defender, Eastern District of California

## Endnotes

- <sup>i</sup> Greg Zoraya, *Alcohol abuse by GIs soars since '03*, USA TODAY, p.A-1 (6/19-21/09).  
[http://www.usatoday.com/news/military/2009-06-18-army-alcohol-problems\\_N.htm](http://www.usatoday.com/news/military/2009-06-18-army-alcohol-problems_N.htm).
- <sup>ii</sup> Gregg Zoroya, *Jobless Rate at 11.2% for Veterans of Iraq, Afghanistan*, USA TODAY (3/20/09),  
[http://www.usatoday.com/news/nation/2009-03-19-jobless-veterans\\_N.htm](http://www.usatoday.com/news/nation/2009-03-19-jobless-veterans_N.htm).
- <sup>iii</sup> Gregg Zoroya, *U.S. Troops Admit Abusing Prescription Drugs*, USA Today (12/17/09),  
[http://www.usatoday.com/news/military/2009-12-16-milhealth\\_N.htm](http://www.usatoday.com/news/military/2009-12-16-milhealth_N.htm).
- <sup>iv</sup> Cara Wilson, *PowerPoint Presentation: Operation Enduring Freedom, Operation Iraqi Freedom (OEF/OIF): Access to Care*,  
[http://www.afbh.org/files/Presentation\\_for\\_11\\_10.ppt](http://www.afbh.org/files/Presentation_for_11_10.ppt)
- <sup>v</sup> 2010 U.S. Census,  
<http://quickfacts.census.gov/qfd/states/06000.html>
- <sup>vi</sup> <http://www.voan-cnn.org/Our-Services/Greater-Sacramento-Services/Veterans-Services>
- <sup>vii</sup> U.S. Bureau of Labor Statistics.
- <sup>viii</sup> *Iraq, Afghanistan veterans report more disorders*, AZ DAILY STAR (9/24/06); Nancy Youssef, *Soldiers' war tours are cut to 9 months*, AZ DAILY STAR, p.A-1, 8/6/11.
- <sup>ix</sup> Youssef, fn.4; Gregg Zoroya, *Addictions hit injured soldiers* (USA Today 1/26/11). See also U.S. Army, *Army Health Promotion, Risk Reduction, Suicide Prevention, Report 2010*.  
<http://csf.army.mil/downloads/HP-RR-SPReport2010.pdf>
- <sup>x</sup> Tim Jones & Jason Grotto, *Dollar & cents show cost of vets' stress, and it's huge*, AZ DAILY STAR, p.A-3 (4/18/10); Jessica Yadegaran, *Female soldiers bearing scars of war*, AZ DAILY STAR, p.A-14 (1/24/10).
- <sup>xi</sup> Barbara Barrett, *Brain-injured veterans run into 'culture of no' at VA, advocates say*, AZ DAILY STAR, p.A-18 (5/23/10).

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xii Nicole Lutton, *Report states military divorce rate slowing down: DoD reports support programs aid in divorce rate stabilizing*, (1/20/11)  
<http://www.northwestmilitary.com/families/support/2011/01/northwest-military-ranger-airlifter-newspaper-JBLM-military-divorce-rate-support-programs/>. The Pentagon's data doesn't include divorce rates of Reserve and National Guard members or on service members who divorced after leaving the military. The U.S. civilian divorce rate for 2009 was 3.4 %. Centers for Disease Control and Prevention, *National Vital Statistics Report*, Vol.58, #25 (8/27/10)  
[http://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58\\_25.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58_25.pdf).

xiii *Id.*

xiv Sometimes, the Veteran's Administration does not respond to requests or complaints for help. *Veterans for Common Sense v. Eric K. Shinseki*, 644 F.3d 845 (9<sup>th</sup> Cir. 2011).

xv Carol Ann Alaimo, *Army finds mayhem in war affected slain soldier*, p.A-1 (AZ Daily Star 2/12/10).

xvi *Veterans in State and Federal Prison*, 2004 (NCJ-217199), was written by Dept. of Justice's Bureau of Justice Statistics (BJS) statistician Margaret E. Noonan and BJS policy analyst Christopher J. Mumola.

<http://www.bjs.gov/content/pub/pdf/vsfp04.pdf>

xvii This number actually represents a higher than non-veteran percentage of the veteran population coming into the criminal justice system.

xviii The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effects on Economic Mobility*, p.16-17 (2010).

[http://www.economicmobility.org/assets/pdfs/EMP\\_Incarceration.pdf](http://www.economicmobility.org/assets/pdfs/EMP_Incarceration.pdf).

xix Under Secretary for Health's Information Letter, *Information and Recommendations for Services Provided by VHA Facilities to Veterans in the Criminal Justice System* (4/30/09).

xx Amir Efrati, *Judges Consider New Factor at Sentencing: Military Service*, WALL ST JOURNAL (12/31/09)

<http://online.wsj.com/article/SB126221697769110969.html>

xxi John Schwartz, *Defendants Fresh from War Find Service Counts in Court*, NY TIMES (3/15/10)  
<http://www.nytimes.com/2010/03/16/us/16soldiers.html>; Efrati *supra*.

xxii See also ARIZONA ATTORNEY, *Service Repaid: Homeland Justice for Veterans*, Vol.47, #3 (11/2010).

xxiii Efrati *supra*.

xxiv Carol Ann Alaimo, *Court diverts ex-military into treatment program*, AZ DAILY STAR (7/15/10).

xxv Efrati *supra*.

xxvi *U.S. Attorneys Manual*, Title 9, Chap.9-22.000.

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xxvii *Id.*, §9-22-100; *U.S. Attorneys Criminal Resource Manual*, §712(A).

xxviii *Criminal Resource Manual*, §712(B), (C), and (F).

xxix *Id.*, §712(D); USA Form 184, Pretrial Diversion Referral Letter to Chief Pretrial Services Officer.

xxx *Id.*, §712(E).

xxxi *Id.*, §712(F).

xxxii *Id.*

xxxiii *Id.*, §712(H).

xxxiv *Id.*

xxxv *Id.*, §712(G).