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January 20, 2016

Judge Kathleen Cardone, Chair
Judicial Conference of the United States
Ad Hoc Committee to Review the Criminal Justice Act Program
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544

Re: Intended Testimony – Jennifer Nicole Cleveland, Case No. 3:13-cr-00567-BR

Dear Judge Cardone:

Thank you for the invitation to appear before your committee to give testimony concerning the functioning of the Criminal Justice Act Program in the District of Oregon. As requested, please accept this letter as a submission of the proposed comments and testimony concerning my client, Jennifer Cleveland. Ms. Cleveland's case demonstrates the "whole client" approach of criminal defense practice in the District of Oregon. In every case, we not only investigate the proof in the allegations but seek to understand why an individual engages in criminal conduct and attempt to address the client's needs for rehabilitation. We firmly believe that it not only fosters more positive outcomes for our clients, but enhances the safety of our community and it is more cost-effective in the long run.

Ms. Cleveland was indicted on December 3, 2013, for three counts concerning distribution of methamphetamine. She was arrested on December 6, 2013, and made her initial appearance the following Monday, December 9, 2013.¹ Ms. Cleveland was interviewed by Pretrial Services and ordered released on pretrial conditions. Ms. Cleveland initially encountered difficulties as she was released to her mother's home. She was evaluated at LifeWorks NW, a drug counseling and

¹ The government had notified the Federal Defender's Office and the United States Pretrial Services Office the previous Friday that a large number of defendants would be making their initial appearance due to an investigation concerning large distributions of controlled substances. Over 25 defendants appeared on December 9, 2013. Due to the cooperation of the United States Marshal's Service, the United States Pretrial Services Office, and our office, interviews of the defendants in the courthouse commenced at 7:00 a.m. that morning.

treatment facility contracted with Pretrial Services. It became readily apparent that she needed to address her longstanding substance abuse. On December 27, 2013, Ms. Cleveland voluntarily entered the Xchange Grace Lodge treatment program. Xchange Grace Lodge is a live-in drug and alcohol treatment program. The program is not funded by the United States Pretrial Services Office or any other governmental agency. It encompasses a 12-step program that can require up to two years of attendance for successful treatment. After a successful six-month residential treatment program, Ms. Cleveland moved to a clean and sober Oxford House. She continued outpatient treatment program at the Xchange and began outreach community volunteer work.

Ms. Cleveland enrolled in Clark Community College. She performed quite well despite a sparse educational background. During her pretrial release, Ms. Cleveland completed over a year of community college with a cumulative GPA of 3.63. Two of her professors wrote the Court advising that she had been placed in an accelerated learning program and she was highly motivated, intelligent student. Additionally, one instructor noted that Jennifer had volunteered to take notes for a deaf student and was supportive of other of her classmates. Although a full-time student, Ms. Cleveland did obtain employment, initially volunteering at a community thrift store through the Grace Lodge ministry and then transitioning to a marketing position at a small used car dealership. Ms. Cleveland attended drug and alcohol treatment throughout her pretrial release and remained completely clean and sober.

Offense Conduct

Ms. Cleveland was indicted for Distribution of Methamphetamine with her then-boyfriend. After he was arrested, she continued his distribution business while he was detained. A confidential informant met and purchased methamphetamine from Ms. Cleveland. Her relevant conduct was between 20 and 35 grams of actual methamphetamine. However, due to two prior convictions (Delivery of a Controlled Substance and Robbery in the Second Degree) Ms. Cleveland was subject to a career offender enhancement. If convicted after trial, her base offense level was 32 which in Criminal History Category VI yields an advisory guideline range of 210 to 262 months.

Plea Agreement

Ms. Cleveland entered into a plea agreement wherein the government agreed not to file any sentencing enhancements. Due to mitigation material furnished the government, Ms. Cleveland's relatively minor role, her performance on pretrial release, and success in post-offense rehabilitation, the government agreed to recommend a departure/variance of six levels after acceptance of responsibility, for a sentence of 92 months. Based on additional information furnished the government after the change of plea, and Ms. Cleveland's continued success on pretrial release and solid rehabilitation, the government recommended a 70-month term of

imprisonment. The plea agreement permitted the defendant to ask the Court to impose whatever sentence the Court deemed appropriate.²

Jennifer Cleveland's Background

Investigation into Ms. Cleveland's background revealed a prolonged and consistent history of abuse and trauma. By obtaining past court, treatment, school, and criminal records, the following facts were established for the Court's consideration:

- Jennifer was physically abused by her step-father from the age of two or three until she was 10.
- Jennifer witnessed her mother being stabbed by her step-father when she was five.
- She witnessed her step-father choking her mother.
- Her step-father smothered her until she almost passed out as a child.
- Her step-father beat her so severely that she had welts and bruises all over her body when she was three.
- Another of her mother's partners sexually abused Jennifer when she was nine or 10.
- Jennifer's mother recalls Jennifer telling her that her biological father had sexually abused her.
- Jennifer's mother was usually under the influence of controlled substances until Jennifer was at least 10.
- Jennifer witnessed drug and alcohol abuse by all of the parental figures in her life as a child.

The consequences of Ms. Cleveland's childhood were predictable:

- She was left to her own devices without any parental supervision.
- She was alone most of the time, and could not enter into any meaningful relationships with friends or family members.
- She developed coping skills to deal with the trauma and sense of rejection and relied on denial as a defense and then turned to the use of methamphetamine as an escape from her feelings of fear and rejection.
- She turned to selling drugs to finance her own drug use as well as to gain a sense of control over her own life.
- She duplicated many aspects of her parental figures – drug use, acceptance of violence, and allowing other priorities to supersede her responsibility to her children.

² A partial basis of the government's motion for a variance/departure has been sealed.

Psychiatric Expert

Given the extraordinary abuse and trauma that Ms. Cleveland suffered and her extraordinary rehabilitation efforts, a clinical and forensic psychologist was retained to conduct a comprehensive psychological evaluation. The forensic expert was able to opine and explain to the Court that children who suffer abuse and trauma experience a number of adverse effects, including anxiety disorders. Such children have difficulty soothing themselves and regulating their emotional states. As such, they abuse drugs and alcohol and find it difficult to modulate their impulses. In sum, the psychiatric expert was able to establish that the abuse and trauma Ms. Cleveland suffered was very detrimental to her developmental integrity.

Sentencing

Ms. Cleveland appeared before the Honorable Anna J. Brown, United States District Court Judge, on March 25, 2015. Defendant moved the Court to sentence Ms. Cleveland to a five-year term of probation based on all the factors under 18 U.S.C. § 3553(a), including her extraordinary post-offense rehabilitation, over-representative career offender status, ongoing medical difficulties, minor role in the offense, and the trauma and abuse she suffered as a child. The government acknowledged the Court's discretion to depart or vary from the advisory guidelines and recommended a sentence of 70 months. The Court contrasted Ms. Cleveland's case with a number of sentencing decisions in this District. The Court indicated it had never granted such a large departure/variance, and sentenced Ms. Cleveland to a five-year term of probation. However, the Court continued sentencing to determine what length of time Ms. Cleveland would be required to reside in a residential reentry center as a condition of her probation. The Court ultimately required Ms. Cleveland to serve nine months at the reentry center with a prerelease component to be determined by the residential reentry center manager and the United States Probation Office.

Conclusion

To be sure, there were numerous factors in play that caused the Court to arrive at such an extraordinary departure/variance for this career offender drug defendant. Counsel submits, however, that this type of outcome would not have been possible without defense counsel's ability to explore and utilize a number of resources, such as investigative and psychiatric experts. The United States Pretrial Services Office was equipped to have Ms. Cleveland evaluated quite quickly to determine if she was an appropriate candidate for residential or outpatient drug treatment and counseling. Defense counsel's investigator was able to obtain confidential records, interview witnesses, and regularly consult with the defendant to assist with and monitor her post-offense rehabilitation. Defense counsel was able to obtain authorization to have the defendant participate in a comprehensive psychiatric evaluation to assist the Court in determining if the client's rehabilitation efforts were genuine and opine concerning her prognosis for the future. The United States Probation Office gave the Court input concerning the conditions of the defendant's probation and how the reentry center would be able to assist in supervising Ms. Cleveland as well

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as permit her to continue with her education and employment while assuring the safety of the community. Finally, the United States Attorney's Office, although objecting to the ultimate sentence, was receptive to obtaining all of counsel's mitigation materials and arriving at a recommended sentence that was far below the advisory guideline range.

Ms. Cleveland is now a productive member of society and will be filing her first income tax return this year. She has remained completely clean and sober, and crime-free. Although the benefits to Ms. Cleveland are obvious, counsel submits the safety of the community is also enhanced as Ms. Cleveland's rehabilitation is firmly rooted. Additionally, it is important to note there is a financial savings as the annual cost of imprisonment for a criminal defendant is over \$29,000 while the supervision of Ms. Cleveland (who has now been released from the reentry center) is a little over \$3,000 a year.

Ms. Cleveland and counsel look forward to addressing any questions, concerns, or comments by the Committee.

Respectfully submitted,



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Assistant Federal Public Defender

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cc: Jennifer Horvath, CJA Resource Attorney
Lisa C. Hay, Federal Public Defender
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