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Judge Kathleen Cardone, Chair
Committee to Review the Criminal Justice Act Program
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, DC 20544

Dear Judge Cardone and Members of the Committee,

I am a criminal defense attorney and a member of the CJA panel in the District of Oregon. I started in indigent defense working as a law clerk in the Portland office of the Federal Public Defender while a law student in 2002. Upon earning my JD in 2004, I worked in private practice as an associate of CJA attorney and former Chief Federal Public Defender of Hawaii Michael Levine, focusing largely on federal district court and Ninth Circuit appellate cases, including many CJA cases. After a stint as a trial attorney at a county-level public defender office, I returned to private practice 2007. I practice criminal defense at all levels—trial, appellate, and post-conviction/habeas—in state and federal courts. I have been a member of the CJA Trial Panel in Oregon since 2010.

I appreciate the effort and important work the Committee is doing, and wish to express my gratitude for being invited to testify before the Committee in Portland on February 3rd, 2016. I submit the following comments in advance of my testimony.

While I am happy to discuss any of the issues the Committee is interested in at the hearing, including training, case assignment, vouchers, and compensation, I focus my written comments on the importance of using experts in my cases. I understand this is a topic of discussion for the Committee, and I would like to stress how critical it is to have well-qualified experts available to in these cases.

I often seek CJA funding for experts, though I never do so automatically, and certainly not in every case. I first review my client's case and history, both with my client and through any collateral sources. If I identify a specific need for an expert that can be of potential benefit to my client's defense or mitigate an eventual sentence, it is only then that I seek funding. In those cases where an expert is needed, I feel my ability to retain the services of qualified experts is essential to meet my defense obligations. My opinion is based on tangible results—I can point to several cases where the just outcomes we achieved would not have been possible without funding for experts. The following are summaries of some representative cases.

Italia Porter is a former client of mine who will be testifying before the Committee with me on February 3rd. In 2014 the government indicted this remarkable young woman on multiple charges of sex trafficking of a minor for and violations of the Mann Act for her involvement in the transport a 16 year-old girl from Washington to Oregon for sexual purposes. Each charge carried a 10-year mandatory minimum. Admittedly, Italia's case looked very bad on its face—she was one of two co-defendants, and at least preliminarily looked like an organizer of the transport. Her version of the events—that she was manipulated by a pimp in California whom she had never met in person—understandably seemed suspect to the government. Italia was released on pretrial supervision and immediately found full-time employment. I engaged Dr. Linda Grounds, Ph.D. (who will also be testifying before the Committee) to conduct a thorough psychological evaluation. Dr. Grounds was uniquely qualified, as she has long focused on psychological issues affecting women in the criminal justice system. The evaluation was critical—Dr. Grounds's report showed Italia was a victim herself, and her history and psychological profile shed light on her version of the events that made them not just believable, but clearly true and understandable. With the help of Pretrial Services Officer Mike McFarland, Italia began working with two different recovery organizations assisting women trying to remove themselves from the sex worker industry. After reviewing Dr. Grounds's report and seeing the dedicated effort Italia made since her arrest, the U.S. Attorney's Office moved to dismiss the case.

Italia and I agree that without the services of Dr. Grounds, she would very likely be facing an unjust federal conviction for a sex-trafficking offense and the accompanying prison time. Dr. Grounds's work allowed us to present Italia's circumstances to the United States Attorney and the District Court in a credible

way, and also gave Italia the insight she needed to make the necessary changes in her life.

In another case, a Native American client charged being a Felon in Possession of a Firearm faced a low-end guideline sentence of 46 months prison due to his lengthy criminal history. I used CJA funds to retain an investigator, Steve Wilson, to obtain the tribal court records for my client (no easy task), and a psychologist, Dr. Megan McNeal, to evaluate my client. Through this, I learned that my client's criminal history, though lengthy, was non-violent and due in large part to his struggles with untreated alcoholism and an impoverished life on the reservation. I also learned my client's substance abuse issues originated with significant emotional trauma as a child and young adult, including the suicide deaths of three older brothers, which were never dealt with in a professional therapeutic setting. I worked with the Native American Rehabilitation Association (NARA) in St. Helens, Oregon, and secured an inpatient treatment bed for my client to be available at the time of his eventual sentencing. At sentencing, my client had served 8 months in pretrial custody. After reviewing Dr. McNeal's report and my sentencing letter, Judge Michael Simon (with the support of the government) sentenced my client to time-served, with a condition of supervision that he participate in an inpatient treatment program through NARA. Two days later a bed became available, and he began his treatment. 6 months after that I attended his graduation with his family. Because of my client's status as a tribal member, his treatment at NARA came at no cost to taxpayers.

Again, this outcome would not have been possible were it not for the excellent work of the investigator and psychologist; without their assistance we would not have been able to present my client's full profile and character to the Court or government.

In a case charging my 60 year-old female client with conspiracy to distribute methamphetamine carrying 10 year mandatory minimums, my client was one of several co-defendants. The evidence was not good—multiple recorded calls and texts between my client and the main defendant, as well as a significant amount of methamphetamine found in her home when search warrants were executed (a home where another defendant occasionally stayed and stashed drugs). I again retained Dr. Grounds. Through Dr. Grounds's report, we established that my client's 40-year addiction to methamphetamine and alcohol was due in large part to being brutally abused at the hands of her various husbands, starting in her late teens, and continuing into her adult life. We also learned of an undiagnosed and untreated psychotic break when she was a child. Though my client started at a level 26 on

the guidelines, I argued to Judge Michael Mosman that based on the report she should be sentenced as Level 11, under Zone B. Unfortunately my client had multiple violations while on pretrial release, mostly due to relapses, and had been in custody at the time of sentencing for a little over a month. Judge Mosman sentenced her to time-served and 6-months home-detention followed by a term of post-prison supervision with conditions to include drug and mental health treatment. At sentencing, Judge Mosman discussed on the record Dr. Grounds's feeling that, despite her multiple pretrial violations, my client had recently "turned a corner" after learning of her psychological diagnoses for the first time. Judge Mosman admitted he was somewhat skeptical of that, but noted he placed weight in Dr. Grounds's professional opinion. My client has had no violations during her supervision and continues to progress in her treatment.

I would also like to comment on the use of e-discovery experts. In multi-defendant cases in this district, CJA attorneys routinely receive literally tens of thousands of files in discovery. Often several of those files contain hundreds of pages of data themselves. The files are a broad range of types: .pdfs, audio files, native files, line sheets, html documents, emails, word documents, etc. In these cases, for just a few hundred dollars of CJA funds, I can retain the services of an e-discovery expert. The expert constructs a database and provides software that allows me to do focused, custom searches of this massive amount of data. In one representative case, in less than an hour I narrowed the scope of files pertaining to my client from over 36,000 to 41. The use of this expert saves hours of CJA billing time that would otherwise be charged by an attorney, paralegal, or investigator.

The use of experts not only leads to just outcomes for our clients, but also to significant cost savings. Whether by vastly cutting the hours required to review discovery or by saving limited public funds through less incarceration and more community-based probation and treatment programs, the intelligent use of experts leads to lower expenses for the criminal justice system as a whole.

I hope these comments are enlightening and useful. I look forward to discussing them and other matters with the Committee on February 3rd.

Very Truly Yours,

Handwritten signature of Matthew McHenry in cursive, with the initials "FB" written to the right of the signature.

Matthew McHenry
Attorney at Law