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May 4, 2016

Character Reference Letter Regarding: Mr. Mark J. Avery, J.D.
Sentencing May 23, 2016

To The Honorable Judge Ralph R. Beistline,

I am writing this letter in support of Mr. Mark J. Avery, J.D. My name is Evelyn Miccio, and I am a California licensed clinical psychologist, and the Director of Neuropsychological Services at the Kaiser Permanente Medical Center in San Francisco, California. I also have a history of working at the San Diego Superior Court during my undergraduate training from 1989 until 1993. I worked in the Superior Court Records Department assisting Deputy D.A.s in their document preparations for felony trials. My professional, academic and clinical experience has contributed to my work as a neuropsychologist and individual who is skilled at character and personality assessment.

Mr. Avery first sought treatment in the Psychiatry Department at Kaiser in San Francisco in July of 2014, at the age of 55 years old. He apparently was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD): Combined Type, at the second appointment with his psychiatrist Dr. Christy Waters. This reportedly was the first time he became aware of this condition in relation to his cognitive, emotional and psychosocial orientation. Mr. Avery's level of academic intelligence, conscientious work habits, and likely cognitive compensatory strategies (e.g. Mr. Avery has always carried a notebook and pen to document important things he would otherwise forget) allowed him to function without detection of an ADHD diagnosis. Although this is a common developmental trajectory, life experiences such as interpersonal problems at home and at work, substance use, or a change in work demands, can cause impairment where the individual is no longer able to successful function without psychiatric assistance for the ADHD symptoms.

I first became acquainted with Mr. Avery during his participation in an Adult ADHD class at Kaiser Permanente in San Francisco, beginning in March of 2015. As the class facilitator I have the opportunity to work with individuals in the classroom setting. During these classes, Mr. Avery has offered thoughtful comments, inquired about various aspects of ADHD and has offered useful commentary for his fellow classmates. I have also had the opportunity to talk with him individually on several occasions. During these clinical interactions, I have found Mr. Avery to be a reflective man who is eagerly working to understand the symptoms and aspects of ADHD that have influenced him directly. Oftentimes people, clinicians included, are unfamiliar with the nuances of the diagnosis of an adult attention deficit hyperactivity disorder and fail to recognize that the disorder is beyond simple attention challenges. Despite being an educated attorney, Mr. Avery has openly discussed the ways in which the disorder may have presented in his life, such as a failure to recognize critical details, or challenges effectively communicating with others. Finally, he has

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reflected on the ways in which his social interactions may have been compromised due to challenges identifying nonverbal social cues or subtle social communications from others.

While some individuals perceive ADHD as an excuse, I have been fortunate enough to develop expertise in adult ADHD, and have been instrumental in our Northern California Kaiser Permanente Hospital System training programs to assist clinicians in better assessment of the condition, beyond checklists and subjective endorsement of symptoms. **ADHD is often unrecognized because patients generally present with a host of other clinical problems such as depression, anxiety, or a challenging personality style, rather than the core symptoms of ADHD.** For example, in reviewing the Psychological Assessment Report by Dr. John M. Shields compiled as a result of his interactions with Mr. Avery in the fall of 2008 and winter of 2009, it was noteworthy to me that many of the problems directly associated with ADHD were not categorized as such. At the onset of the extensive and thorough report, Dr. Shields indicates on page three, “the actions of Mr. Avery in the present matter before the court are largely, yet not entirely, the product of three elements” and he continues to outline these three elements as a business meeting, an individual, and “Mr. Avery’s own oversights and poor choices.” As an ADHD expert, these reported elements, directly represent the functional impairments (oversights, poor choices, and failure to recognize unsavory individuals) directly associated with the symptoms, or impairments of ADHD.

Conceptually, ADHD is a complex neurocognitive condition that can compromise functioning in a variety of domains, including personal, academic, professional, interpersonal, and health management. The interplay between these domains is what creates the functional impairments requiring individuals to ultimately seek psychiatric interventions. In an effort to be concise, I would like to offer an example of how ADHD might have influenced the trajectory of Mr. Avery’s life.

Intelligent individuals such as Mr. Avery can perform well in circumscribed situations, such as an academic setting, as the guidelines and expectations are clear, leaving little to interpretation. The problems that generally arise are related to psychosocial functioning, or interpersonal interactions, where nuances of communication, expectations and roles are not always clearly defined. Finally, insight into the intentions of others and nonverbal communication is often limited in ADHD, due to impaired brain functioning (e.g. mirror neurons, cognitive rigidity, naiveté), and recognition of subtle nonverbal messages. **This often compromises an individual’s judgments about situations, as the entire picture is not available to the ADHD impaired decision maker. Mr. Avery is likely to miss facial expressions, sarcasm, or other forms of indirect communication. Given his history prior to the current case as a law abiding citizen, it is highly likely that his ability to place himself in the mindset of a deviant character, would be limited, as he simply didn’t think that way, and as a result, he was susceptible to being taken advantage of, or complying with a situation that was against better judgment.**

The complexities of ADHD often takes hours to explain to skilled clinicians, therefore, I am aware that I will not be able to offer the clarity that I feel is warranted in this brief letter, but if your Honor is inclined, I welcome a telephone conversation to further elaborate my points regarding the dynamic conceptualization of ADHD, Mr. Avery, and the current legal case, sentencing and punishment he is facing.

It should be noted that Mr. Avery's consistent attendance, engagement with the homework assignments and feedback suggests an active participation in the psychiatric work, as well as a degree of motivation that is admirable. ADHD is a dense diagnosis with a host of challenges that are not easily remedied. This means that an individual must implement compensatory strategies to improve their functioning. This requires diligence, resilience and an active commitment to improving their quality of life. Mr. Avery demonstrates each one of these treatment requirements and his consistent participation in psychiatric care is demonstrative of this level of commitment.

While I recognize that the norm for letters of recommendation, or character references, is for one to be verbose, please do not mistake my brevity as a less than hearty endorsement of Mr. Avery. In a short, Mr. Avery presents as an individual with decades of exemplary public service work as an EMT, Deputy Prosecuting Attorney in several districts, volunteer police work, and a general stand up citizen. More recently, despite the odds, he has demonstrated impressive psychological work and is committed to improving his functioning and overall quality of life. **I encourage you to call me directly at 415 833-0208, should you desire more information.**

Thank you for taking the time to read my letter of recommendation, and consider an alternative perspective in understanding Mr. Avery's neurocognitive presentation.

Respectfully submitted,



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Cc:

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2. PDF copy emailed to Ms. Barb Brink, J.D., Investigator (Barb_Brink@fd.org)

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