

# The Supreme Court of Ohio

UNDER SEAL

BEFORE THE BOARD OF COMMISSIONERS

ON CHARACTER AND FITNESS OF

THE SUPREME COURT OF OHIO

In re: Application of  
Joseph Victor Libretti, Jr.

Case No. 563

14-1555

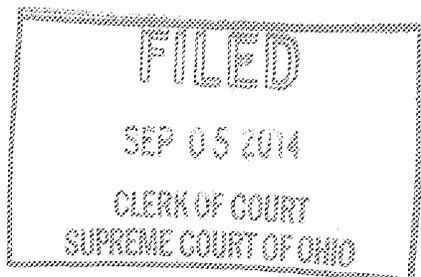
FINDINGS OF FACT AND  
RECOMMENDATION OF THE BOARD OF  
COMMISSIONERS ON CHARACTER AND  
FITNESS OF THE SUPREME COURT OF  
OHIO

This matter is before the board pursuant to its review authority as mandated by Gov. Bar R. I, Sec. 11, Div. (D)(5)(a) of the Supreme Court Rules for the Government of the Bar of Ohio.

A duly appointed panel of three Commissioners on Character and Fitness was impaneled for the purpose of hearing testimony and receiving evidence in this matter. The panel filed its report with the board on July 7, 2014.

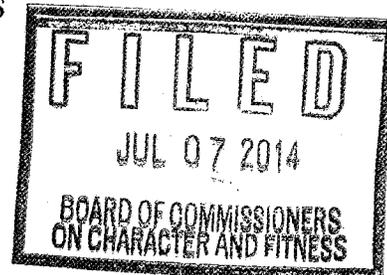
Pursuant to Gov. Bar R. I, Sec. 12(D), the board considered this matter on July 11, 2014. The board adopts the panel report, including its findings of fact and recommendation of disapproval with no provision for reapplication. The panel report is attached hereto and made a part of the board's report.

Therefore, the Board of Commissioners on Character and Fitness recommends that the applicant, Joseph Victor Libretti, Jr., be disapproved, and that he not be permitted to reapply for admission to the practice of law in Ohio.



TODD HICKS, Chair, Board of Commissioners  
on Character and Fitness for the Supreme Court  
of Ohio

BEFORE THE BOARD OF COMMISSIONERS  
ON CHARACTER AND FITNESS OF  
THE SUPREME COURT OF OHIO



IN RE: )  
 )  
APPLICATION OF ) CASE NO. 563  
JOSEPH VICTOR LIBRETTI JR. )

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PANEL REPORT AND RECOMMENDATION

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STATEMENT OF THE CASE

Applicant, Joseph V. Libretti, Jr. applied to register as a candidate for admission to the practice of law on November 14, 2012. He was interviewed by two members of the Admissions Committee for the Cleveland Metropolitan Bar Association ("CMBA") on June 6, 2013. Both members of the Admissions Committee voted to recommend approval of the application.

Libretti was arrested in 1991 and charged with numerous counts of drug, firearms, and money laundering violations, including a continuing criminal enterprise, 21 U.S.C. § 848. In 1992, after a week of compelling trial testimony, Libretti pled guilty to engaging in a continuing enterprise and was sentenced to twenty years imprisonment, to be followed by five years of supervised release. Libretti served sixteen years of the twenty year sentence. He was released from prison in May 2008. His supervised release was completed in May 2013.

Pursuant to its review authority, as mandated by Gov. Bar Rule I, Section 11(D)(5)(a) of the Ohio Supreme Court Rules for the Government of the Bar (the "Felony Rule"), a three member panel was appointed to hold a hearing on the issue of whether Applicant currently possesses the requisite character and fitness to become a member of the Bar of Ohio.

Following a two-day panel hearing conducted on November 5, 2013 and January 7, 2014, Libretti filed a motion to withdraw his application to register as a candidate for admission to the practice of law. That motion, for the reasons set forth in the Panel's Report of Recommendation, was denied by a vote of the Board on March 25, 2014.

This report now focuses on the merits of Libretti's application to register as a candidate for admission to the practice of law.

### FACTUAL BACKGROUND

Libretti is 51 years old. He is second in his class at Cleveland-Marshall College of Law and is well liked by his fellow students and professors. He is scheduled to graduate in December 2014. There is no doubt that he is talented, intelligent, and hard-working.<sup>1</sup> The question to be answered by the Board is whether Libretti currently has the requisite character, fitness, and moral qualifications to become a member of the bar.

Applicant's criminal activity began when he was in college at the University of Denver and spanned the years of 1983 through 1990. Libretti was a drug dealer – initially selling marijuana and then moving on to dealing in cocaine. His activities were not that of some misdirected hippie: When he was indicted in January 1992, one of the charges was brought under the "Kingpin" statute – meaning he was an organizer, manager, or supervisor of a criminal enterprise. Conviction under the Kingpin Statute carried a minimum sentence of twenty years with a maximum sentence of life imprisonment.<sup>2</sup>

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<sup>1</sup> Over two dozen character letters from law professors, attorneys, students, and past employers were submitted in support of Applicant.

<sup>2</sup> Libretti's drug activities did cease for a short time in the mid-1980s. In 1985, he was served with a subpoena to testify before a federal grand jury and was granted immunity by the District Court, thereby relieving him of his Fifth Amendment protection against self-incrimination. That experience seemed to "scare him straight" for approximately eighteen months. But the allure of easy money was too strong and he resumed his cocaine dealing for the next three years. Then in December 1990, after the authorities searched his homes in Colorado and Wyoming, Libretti stopped selling drugs because he knew he was under investigation.

## APPLICANT'S RELEASE FROM PRISON AND SALE OF SPICE

Libretti served the next sixteen years in various Federal prison facilities and was ultimately released to a halfway house in late 2007. After six months, he was released from all incarceration and, in May 2008, began a five year term of supervised release. In 2009, Libretti was living in Casper, Wyoming with Brian Hohlios. The roommates met each other during their stay in the halfway house. (Hohlios was a convicted drug dealer. According to Libretti, his probation officer was aware of and approved the living arrangements.) At some point in 2009, Libretti became involved in the sale of spice.<sup>3</sup> The business was primarily directed at selling spice to wholesalers. Initially, Libretti was funding the purchase of chemicals to manufacture spice with his personal credit card. The profits from the sale of spice were run through Libretti's bank account so as to help Hohlios avoid child support garnishments. In March 2010, Libretti took over the entire spice operation in Casper due to the fact that Hohlios was sent back to prison for 90-days due to a violation of the terms of his probation. Shortly after Hohlios's release from prison, the Casper home was searched by authorities in June 2010. Among the items seized were quantities of spice, chemicals to manufacture spice, and \$7,200.00 in cash. (The cash was hidden in a heating vent.) In July 2010, Hohlios committed suicide by hanging himself in the basement of the Casper, Wyoming home.

In August 2010, Libretti started classes at Cleveland-Marshall School of Law as a first year law student. Even though he no longer lived in Wyoming, Libretti continued his spice

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<sup>3</sup> Spice is a mix of herbs (shredded plant material) and man-made chemicals with mind-altering effects. It is often called "synthetic marijuana" because some of the chemicals in it are similar to ones in marijuana; but its effects are sometimes different from marijuana and can be much stronger.

operations of selling the product and selling chemicals to manufacture spice (again primarily to wholesalers located in Colorado and Wyoming) from both Casper and Cleveland.<sup>4</sup>

In November 2010 (the day before Thanksgiving), the United States Drug Enforcement Administration issued a public notice that it would be scheduling as controlled substances five chemicals used to make spice. Throughout the period of his spice operations, Libretti sold one of the chemicals that were to be scheduled, known as "JWH-018." Thereafter, according to Libretti, he set about trying to sell off or get rid of his supply of spice chemicals.

The DEA actually scheduled as controlled substances the five chemicals, including JWH-018, on March 1, 2011. The chemicals were designated as Schedule 1 substances (the most restrictive category under the Controlled Substances Act). One day before the DEA scheduled the five chemicals, and contrary to Libretti's assertion that he was desperately taking steps to rid himself of the spice chemicals, Libretti placed a \$17,500 purchase order for JWH-018 at the request of one of his spice customers. The chemical was to be sent to Libretti, who, in turn, would then ship the chemical to his customer. Later that same day, upon learning that the scheduling was imminent, Libretti cancelled the order for JWH-018.

The DEA's March 1, 2011 action made *possessing* or selling the scheduled chemicals (or products containing them) illegal in the United States. Libretti then took the chemicals that were in his possession in Cleveland (including the JWH-018) and packaged them in a U.S. Mail priority mailing box and addressed the box to his lawyer in Casper, Wyoming. He then placed the box in the storage compartment at his Cleveland apartment building. He never sent the box to his lawyer.

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<sup>4</sup> Libretti also supplied chemicals to manufacture spice to an Arizona entity called JPL Marketing LLC. His supply of the chemicals was his "investment" in the spice manufacturer. In return, he received 42% of the profits from the sale of spice.

Unbeknownst to Libretti, in March 2011, he was indicted in Wyoming on a single count of conspiracy to distribute 50 grams of methamphetamine. He was arrested in Cleveland in late March and was extradited to Wyoming where he was incarcerated until his trial. After a seven-day trial, he was acquitted of the charges in January 2012.

At that point, Libretti returned to his studies at Cleveland-Marshall. Once in Cleveland, he began seeing a psychologist on a regular basis until later in 2012. He was diagnosed with a mild case of post-traumatic stress disorder.

As noted earlier, his supervised release concluded in May 2013 – just weeks before he was interviewed by the CMBA in June 2013.

#### DISCUSSION

As stated above, Mr. Libretti is a convicted felon. That status, *per se*, does not demonstrate that he lacks the moral character to be a member of the Bar. “But when an applicant’s background includes such a conviction, the applicant bears the burden of proving that he or she is morally fit to practice law and that he or she is *fully and completely rehabilitated.*” *In re: Application of Poignon* (2012), 132 Ohio St.3d 395, 399 (emphasis added).<sup>5</sup>

The evidence presented at the Panel hearing compels the conclusion that Libretti has not met his burden of proving by clear and convincing evidence, that he possesses the requisite character and moral qualifications to be a member of the Ohio Bar.

As an initial matter, the Panel is deeply troubled by the fact that within approximately one year after being released from the halfway house, Libretti, along with Mr. Hohlios, engaged in the business of selling spice. Applicant defends his activities on the sole basis that selling spice, at that point in time, was legal. Even in his own mind, however, the issue was not, and is

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<sup>5</sup> Gov. Bar Rule I Section 12(C)(6) requires that the applicant meet his or her [footnote continued on next page]

not, that simple. While he was engaged in selling spice, he was troubled about the morality of the activity – but again, gave in to the allure of easy money.

Q. Why did you do that? [selling spice with Hohlios]

A. Well, the short answer is because he asked me to. I looked into it, it wasn't illegal. I know he needed to make some money. When I look back on it, should I have done it? No.

Q. At the point in time that you did it, you knew that you didn't feel very good about it, did you?

A. No, you're right, I didn't.

Q. And you knew – you said yourself, I don't know whether or not – and I thought you used the word moral. You had serious questions at the point in time you were doing this that this may not be very moral; is that right?

A. I don't know if I said that, but that's true.

\* \* \*

Q. Okay. So here's – here's what I'm struggling with: You go to prison for 16 years under the kingpin statute, you've got a lot of time to think about what's moral and what's right and what's wrong, right?

A. Correct.

\* \* \*

Q. All right. So you come out, and rather than run as far away as you can from the very line that's [illegal], you get your toes right to the edge. Right to the edge with a meth dealer. You're living with a guy who's a convicted felon, who's a meth dealer, and he wants to finance a business. In fact, a business that got you real close to what you went away to prison for. And as you say, it was legal, but it was close. It was so close that it gave you moral issues about whether you should be doing it.

Why did you get that close? What were you thinking? Why didn't you run 180 degrees the other direction? And this isn't while you're in prison saying, gee, I wish I hadn't done something in '89, '90, and '92, this is after you spent 16 years in prison.

What's the answer?

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[footnote continued from previous page] burden by clear and convincing evidence.

- A. The only answer I have is I did it because he asked me to and he said it would help him out because he needed some money.
- Q. Okay. So then he hangs himself, and rather than saying, done, done, I'm changing my life. I've already gone to prison, gotten out, went right up to the line, and the guy that I financed hung himself. What I'm now going to do is I'm going to take it over, and you run the business in two completely separate locations; one out west and one in Cleveland, after you've applied to law school.

What were you thinking then?

- A. I was thinking –
- Q. I'll make some money?
- A. Yeah, that's what I was thinking.
- Q. So – so – so, notwithstanding this moral tug of war that's going on inside of you, you say it put some serious cash in my pocket, I'm going to continue doing this, right?
- A. Yes.
- Q. When you knew it was wrong, right?
- A. I didn't feel good about it.
- Q. I'm going to leave it there. But I'm going to ask you one more time, did you think it was wrong? I didn't say legal, I said did you think it was wrong?
- A. Yeah. I did. I think I did.
- Q. And notwithstanding that, you continued to do it, right?
- A. I did.

\* \* \*

- Q. And so when you get out of prison, you go right up to the line. Why? For money?
- A. Yeah. That's why I did that.

(Hearing Transcript at 449:18-450:10; 452:5-10; 452:16-454:17; 457:6-8.)

Other aspects of Libretti's spice business were equally disconcerting to the Panel. To enhance his distribution and sale of spice, Applicant recruited a known methamphetamine dealer, William Breeden, to sell his product. Not only was Libretti's association with Breeden a violation of the terms of his probation (Libretti admitted that he failed to disclose it to his probation officer even though he was required to do so), but such a relationship with a known meth dealer at this juncture in Libretti's life reflects a blind spot in Applicant's moral filter.<sup>6</sup>

For all the protestations that his spice business was legal, Libretti was not very forthcoming (both historically or during the bar application process) about its operations or the money he made from the enterprise. Libretti testified that his probation officer learned of the spice operation only after the Wyoming residence had been searched in June 2010. (By that time Libretti and Hohlios had been operating the spice business for months but Libretti did not disclose the business to his probation officer.) The spice operation dealt with large sums of money. In 2010, Libretti expended an excess of \$360,000 to purchase chemicals to be used in the production of spice. He resold the chemicals to his customers at a profit and ran the revenues from the business through a trust that he and Hohlios had established. (Both of them were trustees as well as beneficiaries of the trust.) Notwithstanding the requirement that he report all his income to his probation officer, Libretti did not report the large sums of money he was making from the sale of spice chemicals. When asked why he failed to make the disclosure, he informed the panel that the funds technically belonged to the trust. Upon further examination, Libretti admitted it was wrong not to disclose the income to his probation officer.

Q. Okay. Did you report these revenues to your PO?

A. No.

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<sup>6</sup> Libretti told the CMBA interviewers that he fully complied with the terms of his supervised release.

Q. I thought you were supposed to advise your probation officer of the – of your income.

A. You are correct.

Q. Did you advise him of the income?

A. No.

Q. Why?

A. Because originally Brian set this up as a trust so he said legally it wasn't my income.

\* \* \*

Q. And did you tell her, by the way, I've been making a boatload of money on this stuff and putting it into a trust and here's how much I made?

A. No.

Q. Why?

A. Because Brian said technically that wasn't my income.

Q. You're taking your obligations [sic] to meet your obligations – reporting obligations to the PO, you're taking your advice on that from Brian?

A. Yeah, I –

Q. You don't think that was a little convenient?

A. It was.

Q. And you're telling us under oath that you did it not so that the PO wouldn't learn about it, you did it because that's what Brian told you to do?

A. No, I'm not telling you that at all.

Q. Okay. So you knew it is wrong? You knew you needed to tell the PO, am I correct?

A. I knew that we should have, yes.

(Hearing Transcript at 460:13-23; 462:22-463:21.)

Moreover, nowhere on his Bar application does Libretti disclose his spice business. Question 23C of the application calls for that disclosure. (“Have you ever been engaged in your own business...a partner or a joint venture in any business enterprise?”) The Panel finds that given the extent of the enterprise, a complete disclosure of the spice business was required.

While Libretti did discuss his selling of spice with CMBA interviewers, albeit in more guarded terms – calling it “herbal incense,” he did not disclose that he had recruited a known methamphetamine dealer (Breedon) to distribute his product. He did not disclose that he singlehandedly ran the business in Wyoming after his partner committed suicide in July 2010 and in Cleveland when he moved to Ohio to attend law school. He did not disclose the running of the revenue through a trust. Most importantly, he did not disclose that his Cleveland apartment had been searched by federal authorities in Spring 2011. He did not disclose that as of March 1, 2011, he had in his possession -- in direct contravention of the Controlled Substances Act -- the controlled substance known as JWH-018.<sup>7</sup>

Finally, he did not inform the interviewers that he had sought immunity in the Northern District of Ohio in connection with the search of his Cleveland apartment in March 2011 and his turning over to the authorities the spice chemicals that were stored in or around his apartment. Possibly the reason why Libretti did not make the “immunity” disclosure was because it would have led to questions about his having the controlled substances in his possession.

Libretti rejects the notion that, in response to Question 20B of the Application, he should have disclosed the 2011 request for immunity. He is correct that the questions asks: “Have you ever been granted immunity from prosecution.” According to Libretti, since he never received written confirmation from the District Court in Cleveland of the grant of immunity, he was not

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<sup>7</sup> Nor did Libretti disclose to the interviewers that he had been warned by the DEA months earlier that such chemicals were going to be designated as Schedule 1 controlled substances.

compelled to answer the question affirmatively. Libretti testified that on the day he was arrested, March 30, 2011, he discussed with his counsel the possibility of obtaining immunity. (This was before he directed the authorities to the JWB-018 that was in his possession in his apartment's storage locker.) He expressly asked his attorney to request immunity and further testified that his counsel spoke to the United States Attorney about extending immunity to Libretti. Exhibit 65, the DEA's Report of Investigation (Attachment C, dated April 6, 2011, at Page 30 [hand-written]), states: "OHN AUSA Matthew Shepard received approval from OHN U.S. Attorney's Office supervision to provide Libretti immunity from prosecution in the OHN for the below listed drug evidence received in the OHN." Libretti testified that he was never informed, verbally or in writing, by his lawyer or the U.S. Attorney's Office of the approval of the immunity request. Given Applicant's history and experience in dealing with prosecutors and law enforcement, and his highly tuned distrust for such individuals and governmental agencies, it is simply not credible that Libretti did not inquire and learn of the Government's approval of the request for immunity. His testimony at the hearing on this point was evasive and not believable.<sup>8</sup> Moreover, if Gov. Bar Rule I tells applicants anything, it insists on complete candor from those seeking to take the bar examination. The panel believes that by making the request to be granted

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<sup>8</sup> On May 6, 2014, Libretti supplemented his answer to Question 20B. Frankly, that submission is less informative than the testimony he provided at the hearing. The supplement concedes that he "discussed" the granting of immunity with his lawyer. But, nowhere in the supplement does he admit to directing his lawyer to ask the authorities for immunity or acknowledge that the request was made by his lawyer to the government on his behalf.

Libretti, in his supplement to Question 20B, also informed the court (and this panel) that he made a FOIA request to receive "[a] copy of any agreement between the United States and myself for a grant of immunity in 2011." The response from the United States Department of Justice, dated April 9, 2014 indicates that "[a] search for records located in the United States' Attorney's Office for the Northern District of Ohio has revealed no responsive records regarding the above subject. However, we will initiate a search in the District of Wyoming."

One matter is troubling with regard to Libretti's FOIA request. In the January 9, 2014 letter containing that request, he states: "The records are requested for the purposes of scholarly research and for educational purposes. I am a law student. The records are not being requested for a commercial purpose." Later in the letter, he states: "Because these records are being requested for an educational purpose and not for a commercial purpose, I am requesting a fee waiver." The panel is disturbed by the knowingly false nature of the two statements contained in his FOIA request.

immunity with regard to the 2011 arrest and search of his Cleveland apartment, Libretti should have disclosed that information in response to Question 20B. Frankly, this was just one example of multiple instances that the panel felt Libretti was walking a fine line with regard to his disclosures.

On this point, the panel draws attention to Libretti's testimony on redirect.

Q. Okay. With respect to the spice business, you agree – you've acknowledged that there isn't anywhere in the application that discloses the spice business; is that right?

A. Correct.

Q. Okay. And you can appreciate the panel's concerns about your – your participation in this – in the spice business, right, even though you – you believe it was legal?

A. Yes, I do.

Q. So I mean, it's kind of convenient that it never appears in these pages.

A. Well, it's certainly not something I'm proud of.

Q. And so would you have –

A. I mean, if I had to fill out the application again today, would I do things a little differently? Yes. I think I most certainly would.

Q. And if you were given the opportunity to supplement that application, would you disclose that information?

A. Yes.

Q. Okay. And did the spice business come up during your – your character interview with Mr. Kline and Mr. Rosman?

A. It did. It did. Yeah. I told them what we were doing.

Q. And did you tell them your involvement with it?

A. I did, *but I didn't go into the extent of it. Had they asked, I would have.*

(Hearing Transcript at 491:1-24; 492:1-9.) (Emphasis added.)<sup>9</sup>

Finally, the panel notes Libretti's characterization of his criminal activity as being "stupid" or "foolish." The panel was struck by Libretti's amoral viewpoint as it pertained to his criminal activities and spice operation. Possibly, James Kline, one of the interviewers for the CMBA who was called to testify at the hearing, described it best as he shared with the panel his reaction to his interview with Libretti.

It was – I'll say he expressed regret that it was foolish conduct and that there was regret over being caught and the harm it had caused him and the impact it had on him. He did acknowledge at some point that his conduct had resulted in humiliation and pain for his family. And, again, I ascribed that, though, to the impact it had, in a sense on him. But at no point did he ever express the view as to the harm that his conduct had on others.

(Hearing Transcript at 613:17-614:2) That is precisely the reaction the panel had after listening to Libretti testify for several hours during the two-day hearing. But the panel was uncomfortable, not only with Libretti's amoral view of what he had done, but also with his demeanor and reluctant – sometimes combative – responses. Stated bluntly, after observing Libretti for a number of hours on the witness stand, the panel did not trust Applicant to be truthful or forthcoming.

One final aspect of Libretti's conduct causes the panel concern. As noted, he pled guilty under the Kingpin statute. He entered into a plea agreement providing that the government would recommend that he receive the statutory minimum sentence. In return for that recommendation and an agreement by the government not to pursue other criminal charges

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<sup>9</sup> Libretti does mention (in a single sentence) his spice business in the May 6, 2014 supplement. However, this is not a situation where an applicant overlooks an event or a circumstance and later files a supplement in due course so that the record is complete. Here, Applicant was fully cognizant of the spice business activity and purposely failed to disclose it in his initial application. Even the disclosure itself ("At various times between October of 2009 and March of 2011 I provided capital, manufactured and sold legal versions of Spice, or sold legal ingredients that could be used to make Spice") gives little indication that this was a continuing business involving significant monetary transactions.

against him, Libretti agreed to a forfeiture that would transfer all bank accounts, investment accounts, retirement accounts and all cash. In addition to sentencing him to the statutory minimum and ordering forfeiture pursuant to plea agreement, the court required him to pay \$5,050, consisting of a \$5,000 fine and a \$50 assessment; finally, he was also required to perform 500 hours of community service. Despite receiving what the Court of Appeals described as a “favorable plea agreement” after the government had presented “overwhelming evidence of his guilt,” Libretti appealed each provision of his sentence (including the \$50 assessment) except for the statutory minimum prison term. As the Court of Appeals for the Tenth Circuit aptly summarized:

Libretti has been persistent in challenging the validity of his guilty plea, and in particular, the forfeiture aspect of his sentence. *See United States v. Libretti*, 2000 U.S. App. LEXIS 2499, No. 99-8047, 2000 WL 192944 (10<sup>th</sup> Cir. Feb. 17, 2000) (concerning motion for return of \$33,160 in currency taken in defective administrative forfeiture); *United States v. Libretti*, 1998 LEXIS 22011, Nos. 97-8039, 97-8044, 97-8089, 1998 WL 644265 (10<sup>th</sup> Cir. Sept. 9, 1998) (concerning appeal of final order of forfeiture and challenge to administrative forfeiture of \$33,160 in currency);...

The Court went on also to detail the numerous civil actions commenced by Libretti:

*Libretti v. Mecham*, 1996 U.S. App. LEXIS 13353, No. 95-8073, 1996 WL 293822 (10<sup>th</sup> Cir. June 4, 1996) (holding that Libretti’s guilty plea precluded civil rights complaint investigation of drug trafficking); *Libretti v. Meyer*, 1995 U.S. App. LEXIS 20, No. 94-1413, 1995 WL 3956 (10<sup>th</sup> Cir. Jan. 4, 1995) (affirming dismissal of civil rights claim of improper search of Libretti’s property in Lakewood, Colorado); *Libretti v. Bray*, 1994 U.S. App. LEXIS 29323, Nos. 93-8096, 93-8097, 1994 WL 57319 (10<sup>th</sup> Cir. Oct. 19, 1994) (affirming entry of summary judgment on civil rights claim arising from execution of searches of Libretti’s property in Green River, Wyoming); *Libretti v. Dwyer*, 1994 U.S. App. LEXIS 29228, No. 93-1373, 1994 WL 573929 (10<sup>th</sup> Cir. Oct. 19, 1994) (rejecting Libretti’s requests for return of forfeited firearms and firearms accessories); *In re Search of 2440 Willow Lane*, 1994 U.S. App. LEXIS 29227, No. 93-1134, 1994 WL 573930 (10<sup>th</sup> Cir.

Oct. 19, 1994) (dismissing appeal of order denying a return of forfeited property); *Libretti v. Miller*, 1994 U.S. App. LEXIS 29324, No. 1068, 1994 WL 573936 (10<sup>th</sup> Cir. Oct. 19, 1994) (dismissing appeal concerning search of rental storage unit). *See also United States v. Libretti*, 1998 U.S. App. LEXIS 17651, No. 97-8040, 1998 WL 458557 (10<sup>th</sup> Cir. July 31, 1998) (rejecting third-party claim to certain forfeited property).

The Court then concluded its recitation of Libretti's cases with the understated observation that "In the instant cases, Libretti continues this practice." *United States v. Libretti*, 201 U.S. App. LEXIS 21412 (Oct. 3, 2001).

While the panel understands that an individual is entitled to pursue a vindication of his rights in a court of law, at some point the pursuit becomes vexatious litigation. The panel believes the Libretti may have crossed the line into litigiousness, especially since many of the claims were duplicative and were dismissed on *res judicata* or collateral estoppel grounds. For example, he sued each of BATF Special Agent Ken Bray, Wyoming DCI Agent Tony Young, Green River Police Department Lieutenant Monty Mecham multiple times and sued other DEA and Colorado law enforcement agents. Indeed, Libretti's continual filing of claims caused one federal district judge to issue an order stating that it would no longer consider any pleadings filed by Libretti *pro se*. Even this directive did not stop him. Ex. 60, Dkt. No. 148; 157. This pattern of repetitive litigation does not indicate an individual who has respect for the law, but rather someone who views the law as a weapon to be used to harass.

#### GOV. BAR RULE I, SECTION 11(D)(4) FACTORS

In making its decision, the panel – and ultimately the Board – are to consider the following factors as they pertain to an applicant's prior conduct.

(a) *Age of the applicant at the time of the conduct:* Libretti was a drug dealer from the time he was approximately 20 years old until he was sentenced when he was 28 years old.

Applicant sold spice from 2009 until 2011 – when he was 48 years old. This factor does not weigh in favor of Libretti.

(b) *Recency of conduct:* The panel appreciates the fact that his cocaine drug dealing occurred many years ago. However, the panel, as noted above, is concerned with Applicant's behavior since his release in 2008. Had the DEA not scheduled the chemicals used to make spice – there is no indication that Libretti would have stopped selling the product. This factor does not weigh in favor of Libretti. Moreover, his failures to make the appropriate disclosures about his spice business and the 2011 immunity are recent in time.

(c) *Reliability of the information concerning the conduct:* The panel is still not convinced that it has received a complete, candid, and full accounting of all pertinent information relating to the activities that give pause to the panel. It is noted from Libretti's own testimony, he views the onus is on the panel to ask the right questions before he will give a complete answer. His testimony at the hearing was consistent with that viewpoint and it is inconsistent with the candor called for in Gov. Bar Rule I.

(d) *Seriousness of the conduct:* The conduct in question can be only characterized as serious. This factor does not weigh in Libretti's favor.

(e) *Factors underlying the conduct:* This is one of the most troubling aspects of the evidence and testimony. Much of his conduct is a function of greed and an amoral view of the harm arising from that conduct. This factor does not weigh in favor of Libretti.

(f) *Cumulative effect of the conduct:* Neither the panel nor Libretti can measure the cumulative effect of his conduct both as a drug dealer and with respect to his activities in selling spice. One thing is clear, the effect is not positive. This factor does not weigh in favor of Libretti.

(g) *Evidence of rehabilitation:* There is no doubt that Libretti is smart, has done well in law school, and is hard working. He is to be commended for the services he has provided to those who cannot afford legal representation. But there appears to be another side to Applicant. His noted lack of candor leads the panel to doubt whether he is, or in the future will be, rehabilitated.

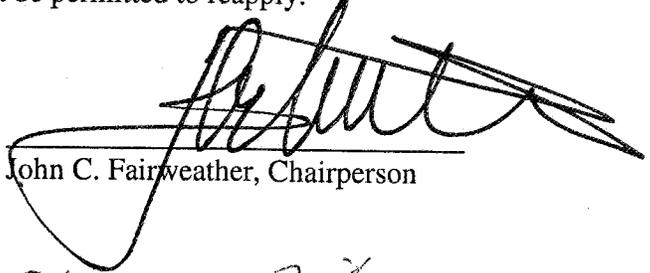
(h) *Positive social contributions of the Applicant since the conduct:* The Applicant's law school record and multiple letters of recommendation speak volumes on this factor. This factor weighs in favor of Libretti.

(i) *Candor of the Applicant in admissions process:* For the reasons stated above, the panel does not believe this factor weighs in Libretti's favor.

(j) *Materiality of any omissions or misrepresentations:* For the reasons noted above, this factor does not weigh in favor of Libretti.

#### RECOMMENDATION

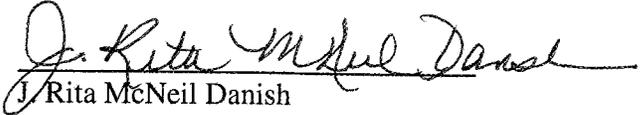
The panel recommends that Libretti's application to register as a candidate for admission to the practice of law be disapproved and that he not be permitted to reapply.



John C. Fairweather, Chairperson



Suzanne K. Richards



J. Rita McNeil Danish

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