

**IN THE SUPREME COURT OF OHIO**

In re: :  
Application of : Case No. 2014-1555  
Joseph V. Libretti, Jr. :

---

**ANSWER BRIEF OF AMICUS CURIAE,  
CURE-OHIO  
AND FIFTEEN ATTORNEYS AND LAW PROFESSORS  
IN SUPPORT OF APPLICANT JOSEPH V. LIBRETTI, JR.**

---

James F. Lentz (0071599)  
Law Office of James F. Lentz  
P.O. Box 884  
North Olmsted, Ohio 44070-0884  
(216) 410-6345 (o) / (216) 803-1862 (f)  
jfl@case.edu (e)

*Counsel for Amici Curiae Citizens' Institute  
For Law and Public Policy and CURE-Ohio*

Cleveland Metropolitan Bar Association  
Bar Admissions Committee  
One Cleveland Center  
1375 East 9<sup>th</sup> Street, Floor 2  
Cleveland, Ohio 44114-1785

Paul G. Crist (0011894)  
2233 Wellington Circle  
Hudson, Ohio 44236  
pgcrist@yahoo.com  
*Counsel for Cleveland Metropolitan Bar  
Association (CMBA)*

Rob Wall (0082356), Staff Attorney  
Ohio Justice and Policy Center  
215 East Ninth Street, Suite 601  
Cincinnati, Ohio 45202  
*Counsel for Amicus Curiae Ohio Justice  
and Policy Center*

**TABLE OF CONTENTS**

TABLE OF CONTENTS.....i

INTEREST OF AMICUS.....ii

TABLE OF AUTHORITIES.....viii

I. INTRODUCTION.....1

II. STATEMENT OF FACTS.....1

III. LAW AND ARGUMENT.....2

**I. LENGTHY AND DISPROPORTIONATE FEDERAL SENTENCES FOR  
NON-VIOLENT CRIMES DO NOT REFLECT AN INDIVIDUALIZED  
DETERMINATION OF AN APPROPRIATE PUNISHMENT, BUT  
CAN BE EXPECTED TO EXTEND THE RE-ENTRY PERIOD.....2**

**II. THE APPLICANT’S ACCEPTANCE OF RESPONSIBILITY AND  
EVIDENCE OF REHABILITATION DISTINGUISH HIS CANDIDACY  
FROM OTHER CASES IMPOSING A PERMANENT BAN ON  
REAPPLICATION .....4**

**III. THE AMICI BRIEF IS FAR FROM ACADEMIC BUT CONTAINS WELL-  
DOCUMENTED FINDINGS REGARDING THE RE-ENTRY PROCESS  
THAT AFFECT ASSESSMENT OF CANDOR AND REMORSE.....7**

**IV. FOREVER PRECLUDING APPLICANT FROM REAPPLYING  
SERVES NO POSITIVE SOCIAL PURPOSE AND NO HARM WILL  
RESULT FROM AN OPPORTUNITY TO REAPPLY.....10**

CONCLUSION.....10

CERTIFICATE OF SERVICE

## INTEREST OF AMICUS CURIAE

**CURE-Ohio (Citizens United for Rehabilitation of Errants)** is a state chapter of National CURE, a non-profit prisoner advocacy group. Our mission is to educate the Ohio public and elected leaders about the need for responsible prison management, humane treatment of prisoners, fairness in the parole process, and training in job and life skills for Ohio prisoners so that they can become productive members of society. Our expectation is that once released, a restored citizen can become a productive member of society without the barriers of his or her prison record. CURE believes that the isolation of prisoners, the destruction of their support systems, and barriers to gainful employment discourage rehabilitation. When someone takes the initiative to obtain further education or to build a professional career, he or she should not be denied that chance.

Co-submitters **Fifteen Attorneys and Law Professors** are individual law professors and attorneys, some of whom submitted letters of recommendation on Applicant's behalf to the Admissions Committee and Board of Commissioners or who otherwise have personal knowledge of the Applicant, and who join in the above submission in support of Joe's being provided the opportunity to re-present his candidacy at a future date, subject to any conditions of the Court's choosing.

**Pamela Daiker-Middaugh** is Clinical and Director of the Pro Bono Program at Cleveland-Marshall College of Law. She previously served as the Associate Director of the Street Law Program from 1987-84. She has taught Juvenile Law and Special Education Law and also serves as a Guardian ad Litem. She has chaired the Cleveland Bar Association's Young Lawyers' Section and served as President of the Board of Trustees of the Cleveland Rape Crisis Center.

**Avery Friedman** is the principal of Avery Friedman and Associates, a civil rights firm dedicated to advancing the interests of those whose voices might not otherwise be heard. He has served as an Instructor or Visiting Lecturer at Cleveland State University, Case Western Reserve University, Stanford University Law School, Duke University Law School, University of California Berkeley, University of Michigan Law School, University of Hawaii Law School, University of Texas Law School, Tulane University Law School, Temple University Law School, and numerous others; was Special Counsel to the President of the International Association of Official Human Rights Agencies from 1996-2001, has been Visiting Professor in Constitutional Law at Ursuline College since 2005, and has been Saturday Legal Analyst for CNN since 2003.

**Joseph Buckley** and **Christopher Maher** are Cuyahoga County Assistant Public Defenders in the Felony Division. **Amy Hollaway** is a Cuyahoga County Assistant Public Defenders in the Juvenile Division. Felony Division attorneys, by assignment of the

court, represent indigent individuals in Cuyahoga County charged with felony offenses. They represent clients in trials, probation violation and psychiatric hospitalization hearings, and diversion hearings for first-time offenders. They also represent individuals seeking post-sentence relief such as expungement, shock probation and jail time credit. Juvenile Division attorneys represent indigent minors in delinquency and unruly matters, including cases in which the State desires to prosecute or “bindover” the child to adult court. They also represent parents of children who have been removed from their custody by Children and Family Services.

**Carole Heyward** is Clinical Professor and Director of Engaged Learning at Cleveland-Marshall College of Law. She teaches in the Urban Development Law Clinic, which provides law students the opportunity to gain valuable practical skills by providing legal assistance to community development organizations that focus on improving Cleveland’s neighborhoods through real estate and economic development activities. She was previously General Counsel of the Housing Research and Advocacy Center and an associate with Messerman & Messerman, and has provided expert testimony and litigated cases in state and federal courts. She serves on the Board of Directors of the Legal Aid Society of Cleveland and the Equal Justice Foundation and volunteers as a magistrate with the Cuyahoga County Juvenile Court Juvenile Diversion Program as a diversion magistrate.

**Doron Kalir** is Clinical Professor and Director of the LL.M. Program at Cleveland-Marshall College of Law. Previously he practiced antitrust and other federal litigation law with several prominent New York firms, most notably Skadden Arps. A native of Tel Aviv, Professor Kalir served in the Israeli Defense Forces prior to obtaining his LL.B. (cum laude) and LL.M (summa cum laude) degrees from Hebrew University Law School and clerking for the Honorable Justice M. Naor, currently the Vice Chief Justice of the Israeli Supreme Court.

**Kenneth Kowalski** is Clinical Professor of Law and co-teaches (with Doron Kalir) the Civil Litigation Clinic at Cleveland-Marshall College of Law. Following law school graduation, he clerked for the Honorable Judge John D. Holshuh of the United States District Court for the Southern District of Ohio, and then practiced law, primarily in the areas of employment discrimination and other civil rights litigation. He has worked with the Employment Law Clinic at Cleveland-Marshall College of Law since 1989 and has served as its Director since 2006.

**Stephen Lazarus** is Associate Professor at Cleveland-Marshall College of Law and teaches Ethics and Professional Responsibility. He has been admitted to state and federal courts in New York, the District of Columbia, and Ohio, and has practiced with the Legal Aid Society and Williamsburg Neighborhood Legal Services in New York and with the Urban Law Institute in Washington, D.C. A Trustee and Vice President of Housing Advocates, Inc. he has been Chair of the Certified Grievance Committee of the Cleveland Metropolitan Bar Association and past Chair of the Ohio Supreme Court's Commission on Professionalism. He is also a consultant and trainer for the Legal Services Corporation Trial Advocacy Skills Training courses and a consultant and lecturer for the Supreme Bar Review course.

**Kevin O'Neill** is Associate Professor at Cleveland-Marshall College of Law, where he teaches First Amendment Rights, Civil Procedure, and Evidence. He served a Legal Director of the American Civil Liberties Union of Ohio from 1991-1995, supervising all litigation statewide as well as trying cases and lecturing on constitutional issues. Prior to that, he was a trial lawyer at Scmith & Schnacke (now Thompson, Hine) and Arter & Hadden (now Tucker, Ellis). Professor O'Neill's work has spanned all phases of trial and appellate practice, including cases decided by the Ohio and United States Supreme Courts.

**John Plecnik** is Assistant Professor at Cleveland-Marshall College of Law and Councilman-at-Large for the City of Willoughby Hills, Ohio. His scholarship focuses on the intersection of taxation and public policy. Professor Plecnik was formerly an ERISA attorney with the Wall Street law firm of Thacher Proffitt & Wood and clerked for Judge David Gustafson at the United States Tax Court following his graduation from law school. He has also taught Tax Penalties and Tax Crimes as an Adjunct Professor at the Georgetown University Law Center.

**Peter Sayegh** and **C. Timothy Murphy** are solo practitioners. Mr. Sayegh is owner of Sayegh Enterprises, Ltd. and interned with IMG, the General Counsel's Office at Cleveland State University, the Cuyahoga County Prosecutor's Office, and served as a Clinician at the Urban Development Legal Clinic at Cleveland-Marshall College of Law. C. Timothy Murphy is a general practitioner who is committed to providing affordable legal services to members of the community that might not otherwise have access to competent legal counsel.

**Daniel Dropko** is Retired Manager of the Academic Excellence Program at Cleveland-Marshall College of Law and for 13 years was an Assistant Public Defender in Jacksonville, Florida. He is licensed in both Ohio and Florida.

**Dennis Terez** is the Federal Public Defender for the Northern District of Ohio (NDOH), Acting Public Defender for the Southern District of Ohio, and Adjunct Clinical Assistant Professor of Law at the University of Michigan School of Law. From 1998 to 2006, he was an assistant federal public defender and prior to that a litigation partner with Squire, Sanders & Dempsey, L.L.P. A graduate of Georgetown University's School of Foreign Service (*summa cum laude*, valedictorian) and the University of Michigan Law School (*magna cum laude*, Order of the Coif), he served as law clerk to the late Chief Judge Frank J. Battisti. He has studied law in Germany as a Fulbright Scholar and at The Hague Academy on an American Bar Association

scholarship program, published articles in numerous law reviews and law journals, and is author of *Baldwin's Ohio Statutory Charges* and coauthor of *Baldwin's Ohio Civil Practice*.

## TABLE OF AUTHORITIES

### Ohio Opinions

<i>In re Davis</i> , 38 Ohio St. 2d 273, 313 N.E.2d 363 (1974) .....	6
<i>In re Davis</i> , 61 Ohio St. 2d 371, 403 N.E.2d 189 (1980) .....	6
<i>In re McKinney</i> , 134 Ohio St. 3d 260, 2012-Ohio-5635 (2012) .....	5
<i>In re Kapel</i> , 87 Ohio St. 3d 122, 717 N.E.2d 704 (1999) .....	6
<i>In re Keita</i> , 74 Ohio St. 3d 46, 656 N.E.2d 620 (1995) .....	6
<i>In re Nerren</i> , 79 Ohio St. 3d 322, 681 N.E.2d 906 (1997) .....	6
<i>In re Poignon</i> , 132 Ohio St. 3d 395, 2012-Ohio-2915 (2012) .....	6
<i>In re Cvammen</i> , 102 Ohio St. 3d 13, 2004-Ohio-1584, 806 N.E.2d 498 (2004) .....	6
<i>In re Wiseman</i> , 135 Ohio St. 3d 267, 2013-Ohio-763 (2013) .....	6
<i>In re Holzhauser</i> , 66 Ohio St. 3d 43 (1993) .....	5

### Ohio State Statutes

Ohio Rev. Code Ann. § 2925.03 .....	3
Ohio Rev. Code Ann. § 2919.14 .....	3

### United States Legislation

Public Law 99-570 (The Anti-Drug Abuse Act of 1986).....	2
--	---

### Other

Haney, <i>The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment</i> , University of California, Santa Cruz, December 2001. Accessed 6 May 2014 at <a href="http://img2.timg.co.il/CommunaFiles/19852476.pdf">http://img2.timg.co.il/CommunaFiles/19852476.pdf</a> .....	8,9
Harper, <i>The effects of prisonization on the employability of former prisoners: First-hand voices</i> (January 1, 2011). ProQuest Paper AAI3455383. Abstract accessed 1 December 2014 at <a href="http://repository.upenn.edu/dissertations/AAI3455383">http://repository.upenn.edu/dissertations/AAI3455383</a> .....	7
Hopwood, <i>Law Man: My Story of Robbing Banks, Winning Supreme Court Cases, and Finding Redemption</i> , Random House (2012). .....	4
Karp, <i>Unlocking Men, Unblocking Masculinities: Doing Men's Work in Prison</i> . The Journal of Men's Studies, Vol. 18 No. 1, Winter 2010. Accessed 27 Apr 2014 at <a href="http://www.skidmore.edu/~dkarp/Karp%20Vitae_files/Unlocking_Masculinities.pdf">http://www.skidmore.edu/~dkarp/Karp%20Vitae_files/Unlocking_Masculinities.pdf</a> ...	8
Sweig, <i>In Felony's Mirror, Reflections on Pain and Promise</i> , Institute for People With Criminal Records (2014).....	10

United States Sentencing Commission, *Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (2011). Accessed 3 December 2014 at <http://www.ussc.gov/news/congressional-testimony-and-reports/mandatory-minimum-penalties/report-congress-mandatory-minimum-penalties-federal-criminal-justice-system>.....2,3

United States Sentencing Commission, *Results of Survey of United States District Judges January 2010 Through March 2010*. Accessed 4 December 2014 at [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20100608\\_Judge\\_Survey.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/20100608_Judge_Survey.pdf).....3

Visher and Travis, *Transitions from Prison to Community: Understanding Individual Pathways*, Vol. 29 Annual Review of Sociology 89 (2003).....7

## **INTRODUCTION**

Now comes Amicus Curiae CURE-Ohio and submits its Answer to CMBA's Brief filed with this Court on November 21, 2014. In June 2013 the Admissions Committee of the Cleveland Metropolitan Bar Association ("Admissions Committee") determined that Joe's Application to Register As A Candidate for Admission to the Bar should be approved without conditions, although the third member of the Committee who was unable to be present noted her preference for seeing "more years of work experience post-incarceration" prior to approving his application prior to a decision being made (Ex. A). After a hearing before a three-member Panel of the Board of Commissioners on Character and Fitness ("Panel"), the Board recommended Joe's Application be denied and that he never be permitted to re-apply. Joe's Motion to Withdraw his Application in order to have more time to demonstrate his character and fitness had previously been denied by the Board without explanation. An Order to Show Cause was issued from this Court on September 4, 2014, followed by briefing and submissions by amici curiae. Oral argument in this matter is scheduled for February 25, 2015.

## **STATEMENT OF FACTS**

Joseph V. Libretti, Jr. is the top-ranked student in his law school class and a Senior Editor of its Law Review. Joe received a full scholarship to law school, has earned numerous awards, and has been practicing law under a Legal Intern Certificate for over a year. He has never lost a motion argued in Court under his Certificate and recently participated in oral argument at the Eight District Court of Appeals (State of Ohio v. Jeffrey A. Hood, Jr., Case No. CA 101200). More than two dozen letters of recommendation from attorneys, law professors, former employers, and others were submitted on his behalf in support of his Application,

and copies of several more recently submitted to the Board have been included in his individual Answer filed separately herein.

Amicus CURE-Ohio and the additional undersigned submitters support the granting of additional time for the Applicant to demonstrate his character and fitness under the guidance of those in the legal community who are familiar with his work and who have come forward to support his Application, and respectfully request this Court not confirm the recommendation that he be forever precluded from re-applying. The unusual circumstances of this case, the level of documented talent possessed by the candidate, and the support of the legal community make this the most appropriate result.

## LAW AND ARGUMENT

### **I. LENGTHY AND DISPROPORTIONATE FEDERAL SENTENCES FOR NON-VIOLENT CRIMES DO NOT REFLECT AN INDIVIDUALIZED DETERMINATION OF AN APPROPRIATE PUNISHMENT, BUT CAN BE EXPECTED TO EXTEND THE RE-ENTRY PERIOD.**

CMBA's Brief ("Brief") notes, correctly, that the Applicant spent a substantial portion of his adult life in prison, having been sentenced to a mandatory minimum sentence of 20 years for distributing controlled substances in Colorado and Wyoming in the 1980s (Brief 1). The Anti-Drug Abuse Act of 1986 established the basic framework of mandatory minimum penalties currently applicable to federal drug trafficking offenses. The drug quantities triggering those mandatory minimum penalties, which range from five years to life imprisonment, differ for various drugs, and in some cases different forms of the same drug *See*, United States Sentencing Commission, *Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (2011), 349. Mandatory minimum sentences by their nature remove discretion

from the sentencing judge and require that an individual receive a particular sentence for an offense, thus eliminating the sentencing judge's ability to fit the punishment to the individual and the circumstances of his or her offense. According to the United States Judicial Conference, mandatory minimums create a situation whereby:

a severe penalty that might be appropriate for the most egregious of offenders will likewise be required for the least culpable violator . . . . The ramification for this less culpable offender can be quite stark, as such an offender will often be serving a sentence that is greatly disproportionate to his or her conduct.<sup>1</sup>

Moreover, in a 2010 survey of federal district judges, nearly 2/3 of responding judges found the mandatory minimum penalties to be too high (Mandatory Minimum Report 94).

The striking length of Applicant's sentence can therefore not be held to reflect an individualized determination as to the level of threat to society he represented. Indeed, in Joe's case the sentencing judge expressed regret at the sentence he was obligated to impose (Tr. 488). Shortly before his release, Joe received a letter from the former United States Attorney who had prosecuted him, expressing regret for the length of the sentence, acknowledging the misuse of firearms allegations in charging practices, referring to him as a "true entrepreneur" whom she hoped would not give in to bitterness and hatred of the system as a result of his experiences, and noting he would have made "an excellent attorney" (Ex. B). That opportunity, so long delayed, should not be permanently foreclosed.

There is moreover a large disparity between federal and state-level sentences for parallel conduct.<sup>2</sup> It is axiomatic that someone who receives a lengthy sentence will spend a large

---

<sup>1</sup> United States Judicial Conference, quoted in United States Sentencing Commission, Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (2011), 92 (hereafter "Mandatory Minimum Report").

<sup>2</sup> Penalties in Ohio for drug trafficking range from 6 months to 11 years and for racketeering 10 years. R.C. 2925.03, 2929.14.

portion of his or her adult life in prison. Had Joe's case been heard in state court instead of federal, chances are he would have been released in the 1990's rather than in 2007 with a remaining period of supervised release which, as CMBA correctly points out, ended just one month before his initial interview with the Admissions Committee in 2013. Although the length of the federal sentence delayed the start of Joe's return to society, which could have taken place a decade or more before it did, it should not be used in support of precluding him from ever joining a profession for which he has shown so much aptitude and received so much support.

Applicant's achievements are all the more striking, as detailed below, considering the psychological impact of incarceration and the typical fate of a former prisoner attempting re-entry. Only a handful of former prisoners have gone on to complete a law degree, and none of them approach the length of the sentence completed by Applicant or the academic and professional success he has engendered in the process. The closest perhaps is Shon Hopwood, a college dropout who completed a ten-year sentence for armed robbery in 2008, assisted a fellow prisoner in drafting a petition for certiorari to the United States Supreme Court case while incarcerated, and is currently clerking for a federal appellate judge. *See Hopwood, Law Man: My Story of Robbing Banks, Winning Supreme Court Cases, and Finding Redemption*, Random House (2012). The present Applicant is also one of the rare exceptions, as the undersigned would encourage the Court to consider in its deliberations. As those in the re-entry community well know, it is "unheard of" for someone to complete as lengthy a sentence as Joe has and gone on to succeed to the degree he has, as was expressed in an unexpected communication Joe received from a federal judge to whom he had submitted an employment application (Ex. C).

## II. JOE’S ACCEPTANCE OF RESPONSIBILITY AND EVIDENCE OF REHABILITATION DISTINGUISH HIS CANDIDACY FROM OTHER CASES IMPOSING A PERMANENT BAN ON REAPPLICATION.

One of the most striking aspects of Applicant’s candidacy, and one that distinguishes it sharply from other cases in which an applicant has been permanently banned from re-applying to take the bar examination in Ohio, is his blunt acceptance of responsibility: “[T]he issue in any direct appeal wasn’t whether I sold drugs. I did that. I own that. I don’t deny that. I never have.” (Objections and Brief in Support 42). The initial Admissions Committee noted he said, “I deserved to be caught and punished” (CMBA Ex. 56). As noted above, Joe received acceptance of responsibility points at his sentencing for his 1980s activity. He did and continues to express remorse and to accept responsibility for his conduct.

This Court has historically rejected Board recommendations that an applicant never be permitted to re-apply in favor of a delay, where there is evidence of an applicant’s redeeming qualities. In *Application of McKinney*, the applicant had provided what the Panel, Board, and Court found to be a false reason for her employment termination, did so repeatedly, and gave multiple explanations under oath for not telling the truth initially. *See McKinney*, 134 Ohio St.3d 260, 2012-Ohio-5635, 981 N.E.2d 847, ¶ 23. The Court did not find it determinative that she made a false statement on her Application and ultimately permitted her to reapply and submit to a new investigation. *Id.* at ¶ 22. In *Application of Holzhauser* (66 Ohio St. 3d 43) the Board’s recommendation of a permanent ban was set aside in favor of a two-year delay because the Court found the Applicant did not “completely lack rehabilitation potential.” This is all the more true as concerns Joe, who has displayed rehabilitation and redeeming qualities, and who would only ask at a minimum that this Court provide him with additional time to demonstrate those qualities and

to continue to develop his professional qualities under the guidance of those in the legal community who have been generous enough to lend their advice and support to his candidacy. Even the Panel's Report does not go so far as to unequivocally state that Joe lacks any rehabilitation potential but limits its finding to its "doubt whether he is, or in the future will be, rehabilitated" based on "noted lack of candor" (Report 17).

Instances in which a candidate has been permanently banned from reapplication include a former pharmacist whose license had been revoked for felony drug theft, and who ten years later still blamed his supervisor, the pharmaceutical profession, and his attorney for the outcome. See *In re Poignon*, 132 Ohio St. 3d 395, 2012-Ohio-2915 (2012). Another permanently banned applicant failed to take responsibility even for admitted violent conduct (*In re Keita*, 74 Ohio St. 3d 46, 656 N.E.2d 620). The holdings in *In re Nerren*, *In re Cvammen*, 102 Ohio St. 3d 13, 2004-Ohio-1584, 806 N.E.2d 498, and *In re Wiseman*, 135 Ohio St. 3d 267, 2013-Ohio-763, all involved candidates who refused to accept responsibility for their actions, indicating that this Court judges most severely not the person who engages in conduct she or he acknowledges was unwise but the person unable to admit to error, and hence to correct it.

Joe's acceptance of responsibility weighs strongly in favor of his being permitted to re-apply for permission to register as a candidate for the practice of law, an opportunity this Court granted to the applicant in the seminal case of *In Re Davis* 38 Ohio St. 2d 273, 313 N.E.2d 363 (1974) and 61 Ohio St. 2d 371, 403 N.E.2d 189 (1980). Though the Court had "significant doubts" due to Davis' evasiveness while testifying, the Court remanded the Application to the Board with instructions to hold another hearing in 6 months to consider "current evidence," noting Davis' accomplishments, which included academic achievements and a prior position of considerable responsibility. *Id.* at 276, 313 N.E.2d 363. Upon rehearing the Board again

disapproved Davis, but the Court held that despite some evidence which supported the Board's decision, it was impressed with his academic and professional accomplishments to approve his application. *In re Davis*, 61 Ohio St. 2d at 373-374, 405 N.E.2 at 189.

### **III. THE AMICI BRIEF IS FAR FROM ACADEMIC BUT CONTAINS WELL-DOCUMENTED FINDINGS REGARDING THE RE-ENTRY PROCESS THAT AFFECT ASSESSMENT OF CANDOR AND REMORSE.**

As discussed in the amicus brief previously submitted by this organization, there are documented stages of re-integration that accompany a former prisoner's return to the outside world and that parallel in reverse a process that occurs upon entering prison. These phenomena are well-noted in many different contexts and have specific applicability to the present Applicant who is returning from a lengthy sentence. Logic would suggest that a longer period of adaptation would require a longer period of re-adjustment. In addition to those previously submitted, a study was recently conducted on the psychological impact of imprisonment on interactional habits as that affects employment prospects, and the need to deconstruct some adaptations. *See Harper, The effects of prisonization on the employability of former prisoners: First-hand voices* (January 1, 2011). The final stage of reintegration, a process that begins with the expectancy of release from incarceration, has been identified as that of post-release integration (employment, re-adaptation to family roles, participation in larger civil society such as voting, volunteering and neighborhood involvement), ultimately resulting in full integration back into the outside world. *See Visher and Travis, Transitions from Prison to Community: Understanding Individual Pathways*, Vol. 29 Annual Review of Sociology 89 (2003), 94.

It is logical that an Applicant with a lengthy sentence would need a longer period of time than others to acquire (or re-acquire) the nuanced knowledge to implement unwritten rules that

most attorneys who have been through the bar approval process have encountered and that favor such things as expansive answers to inquiries over literal ones and unquestioning submission to a jurist or other authority, even one behaving in a disrespectful or abusive fashion. Even former United States Attorney Woodhouse acknowledged that the length of Joe's sentence makes it "much more difficult" than had he been "subject to a more reasonable sentence" (Ex. B). The support of future colleagues cannot but be crucial in this process.

As previously mentioned, a prison environment is typically characterized by a complete lack of control and social status, as well as an unwritten set of norms or "prison code" to which an inmate must adapt in order to survive and stay safe in an institutional environment. For reasons of survival and accommodation, habits are typically acquired of not showing fear, not trusting, not informing, avoiding fights by looking capable, keeping your problems to yourself, and not sharing personal information or showing emotions that might indicate weakness, such as sadness, fear or shame. See Karp, *Unlocking Men, Unblocking Masculinities: Doing Men's Work in Prison*, *The Journal of Men's Studies*, Vol. 18 No. 1, 66, 67, and 78 (Winter 2010). The most universal adaptation is the "prison mask," a hypermasculine public façade that covers a more nuanced private identity and that protects the inmate from revealing vulnerabilities and weaknesses that might provide an opening for exploitation or domination. Karp, 66. As one volunteer in a prison program known as Inner Circle put it (Karp, 77):

There is a look about men who have spent a long time in prison. I just call it the "look."... It's dead, the face gives off no hint. You may be thinking homicidal thoughts or you may be in ecstasy, but your face doesn't give anything away because in prison it's dangerous. That whole culture says, "Don't show what's going on inside, be a mask."

This construct has relevance to a licensing panel's evaluation of a candidate's candor and remorse regarding the events leading to a conviction based on his or her demeanor. Here, the

panel admittedly found the candidate’s demeanor “reluctant” and “combative” under intense cross-examination (Report 13), and came to the most negative possible conclusion concerning the meaning of that demeanor, even to the extent of refusing permission to withdraw the Application and resubmit at a later date and a later stage of integration. It is not clear from the record whether the information presented at the panel level, which was nearly identical to the amicus brief previously submitted, was considered in the panel’s deliberations.

It is well-documented that the emotional over-control demonstrated by former prisoners can cause difficulties with promoting “trust and authenticity.” Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment*, University of California, Santa Cruz, 15 (December 2001). This is so even where no cause for distrust exists, resulting in interpersonal difficulties as a result of the adaptations they have made that need to be unlearned (Haney 8, 10). In contrast to the opaque social veneer necessary to adapt to incarceration, the unwritten norms of civil society include displaying an openness in gestures and demeanor in order to inculcate trust in a business context. Attorneys and future attorneys must also adapt themselves to the necessity of displaying complete and utter deference before a licensing or disciplinary authority, even under circumstances where their integrity and worth is questioned in a harsh and demeaning fashion as may happen during the bar admissions process. An adaptive response in this context—utter deference and submission—would have made an inmate an easy target for abuse, exploitation, and possibly death while incarcerated. Yet an important part of the bar admissions experience is the panel’s evaluation of a candidate’s remorse as a demonstration of his or her rehabilitation. Remorse in the outside world is expected to be accompanied by tears and wringing of hands, and not by a stoicism that has been termed “emotional flatness” (Haney 15)

and that occurs both in individuals experiencing post-traumatic stress (which also affects this candidate) and in those who have experienced incarceration.

Amicus would reiterate its previously-expressed concern that an admissions panel that rates a candidate's level of remorse based on a view of expressive norms—in other words, judging what remorse should look like based on what it looks like in those who have not experienced post-traumatic stress or the trauma of incarceration—that does not take into consideration the context of a former prisoner's experience risks seriously misjudging the nature and extent of a candidate's remorse. It would also urge the Court to consider actions that demonstrate rehabilitation—in this case educational achievements, respect and positive evaluation by supervisors and peers, volunteer work, and speaking engagements regarding the subject of one's regrets—over a subjective evaluation of the Applicant's reserved demeanor in determining remorse as a component of character and fitness.

As indicated in his individual Answer submitted herein, Joe deeply regrets the conduct as well as the demeanor that led to a finding of lack of disclosure, has done his best to remedy that non-disclosure and is preparing a third supplement to his previous Application, and continues to accept full responsibility for his actions.

**IV. FOREVER PRECLUDING APPLICANT FROM REAPPLYING SERVES NO POSITIVE SOCIAL PURPOSE AND NO HARM WILL RESULT FROM AN OPPORTUNITY TO REAPPLY.**

The Applicant has indicated his desire to continue working in the public service sector as a public defender in order to assist others and make amends for his past. Permanently precluding him from the opportunity even to re-apply at a more suitable time for character and fitness determination serves no positive purpose and deprives future low-income clients of high quality

legal assistance. Joe's candidacy presents an unparalleled opportunity to give back to the community through application of the principles of restorative justice. *See* Sweig, Michael, *In Felony's Mirror, Reflections on Pain and Promise*, Institute for People With Criminal Records (2014), 30. No harm will result to the community as a result of his being permitted to continue to learn and improve, and possibly to re-apply in future to register as a candidate for admission.

### CONCLUSION

Amici curiae respectfully request the Court consider all the issues raised above in its evaluation of this Applicant, and that it grant the Applicant's request for the opportunity to re-apply to register as a candidate for admission in the future, if possible by being permitted to withdraw the Application as previously requested. The Applicant has expressed his willingness to submit to conditions such as additional speaking engagements or acquiring a mentor, and CURE-Ohio would urge the Court to grant this request in lieu of permanently prohibiting Applicant from re-applying.

The undersigned are grateful for the opportunity to provide the enclosed information in consideration of the important issues raised by this Application.

Dated: January 28, 2015

Respectfully submitted,

/s/ James F. Lentz

James F. Lentz (0073360)

Law Office of James F. Lentz

P.O. Box 884

North Olmsted Ohio 44070-0884

(216) 410-6345 (o)

(216) 803-1862 (f)

jfl@case.edu (e)

*Counsel for Amicus Curiae CURE-Ohio*

The undersigned join in the above submission and extend their support to Joe's being permitted to withdraw and re-present his candidacy at a future date, subject to any conditions of the Court's choosing:

/s/ Pamela Daiker-Middaugh  
Pamela Daiker-Middaugh, Esq. (#0041716)  
Cleveland-Marshall College of Law  
1801 Euclid Avenue  
Cleveland, OH 44115-2223  
(216) 687-6878

/s/ Avery Friedman  
Avery Friedman, Esq. (#0006103)  
701 The City Club Building  
850 Euclid Avenue  
Cleveland, OH 44114-3358  
(216) 621-9282

/s/ C. Timothy Murphy  
C. Timothy Murphy, Esq. (#0091128)  
5247 Wilson Mills Road # 211  
1801 Euclid Avenue  
Cleveland, OH 44143  
(440) 941-3846

/s/ Amy Hollaway  
Amy Hollaway, Esq. (#0092665)  
Assistant Cuyahoga County Public Defender  
310 W. Lakeside Avenue, Suite 400  
Cleveland, OH 44113  
216-443-3355

/s/ Carole Heyward  
Carole Heyward, Esq. (#0061750)  
Cleveland-Marshall College of Law  
Cleveland State University  
2121 Euclid Ave. LB 138  
Cleveland, OH 44115-2214  
(216) 687-5508

/s/ Doron Kalir  
Doron Kalir, Esq. (#0088894)  
Cleveland-Marshall College of Law  
Cleveland State University  
2121 Euclid Ave. LB 138  
Cleveland, OH 44115-2214  
(216) 687-3948

/s/ Kenneth Kowalski  
Kenneth Kowalski, Esq. (#0024878)  
Cleveland-Marshall College of Law  
Cleveland State University  
2121 Euclid Ave. LB 138  
Cleveland, OH 44115  
(216) 687- 3947

/s/ Stephen Lazarus  
Stephen Lazarus, Esq. (#0014693)  
Cleveland-Marshall College of Law  
Cleveland State University  
1801 Euclid Avenue  
Cleveland, OH 44115-2223  
(216) 687-2347

/s/ Kevin O'Neill

Kevin O'Neill, Esq. (#0010481)  
Cleveland-Marshall College of Law  
Cleveland State University  
1801 Euclid Avenue  
Cleveland, OH 44115-2223  
(216) 687-5282

/s/ John Plecnik

John Plecnik, Esq. (New York #4465746)  
Cleveland-Marshall College of Law  
Cleveland State University  
2121 Euclid Ave. LB 222  
Cleveland, OH 44115  
(216) 687- 2346

/s/ Peter Sayegh

Peter Sayegh, Esq. (#0091547)  
1175 Irene Road  
Lyndhurst, OH 44124  
(440) 821-5548

/s/ Daniel Dropko

Daniel Dropko, Esq. (0075817)  
(Retired) Manager, Academic Excellence  
Program  
Cleveland-Marshall College of Law  
2121 Euclid Ave. LB 138  
Cleveland, OH 44115

/s/ Joseph Buckley

Joseph Buckley, Esq. (#0041290)  
Assistant Cuyahoga County Public Defender  
310 W. Lakeside Avenue, Suite 400  
Cleveland, OH 44113  
Cleveland, OH 44115  
(216) 443-7223

/s/ Christopher Maher

Christopher Maher, Esq. (#0055318)  
Assistant Cuyahoga County Public Defender  
310 W. Lakeside Avenue, Suite 400  
Cleveland, OH 44113  
216-443-3664

/s/ Dennis Terez

Dennis Terez, Esq. (#0024878)  
Northern District of Ohio Federal Public Defender  
Skylight Office Tower, Suite 750  
1660 West Second Street  
Cleveland, OH 44113  
(216) 522-4856

BEFORE THE SUPREME COURT OF OHIO

In the Matter of the Application of

Admissions Committee Report

Joseph Libretti  
for Admission to the Practice of Law

Approval

The Admissions Committee certifies that it has reviewed the application and the NCBE report of the above applicant, personally interviewed the applicant, and applied the standards promulgated by the Supreme Court in Gov. Bar R. I, Section 11(D) in considering the applicant's character, fitness, and moral qualifications to practice law.

The Committee further certifies that the applicant currently possesses the character, fitness, and moral qualifications required for admission to the practice of law in Ohio.

The Committee recommends that the applicant be approved as to character, fitness, and moral qualifications to practice.

This is a:

- Per phone call (ma)* Provisional Report
- Final Report
- Both Provisional and Final Reports



CMBA  
Admissions Committee

RECEIVED

JUN 20 2013

ADMISSIONS OFFICE  
SUPREME COURT OF OHIO

Ellen K Meehan, vice-chair  
Name of Chair

Ellen K Meehan \*  
Signature of Chair

6/18/13  
Date

*As vice-chair I'm signing off on this approval because the two interviewers approved the applicant. However, if it was up to me, I would like to see more years of work experience post-incarceration prior to approving his application.*



LIBERTY & JUSTICE FOR ALL



**GAY WOODHOUSE LAW OFFICE, P.C.**

Gay Woodhouse  
gay@woodhouselaw.com

Lori L. Brand – Associate\*  
gaywoodhouselaw2@aol.com

211 West 19<sup>th</sup> Street, Suite 308  
Cheyenne, Wyoming 82001

307-432-9399  
307-432-7522 (Fax)

\*Also licensed in Colorado

April 13, 2005

Joseph V. Libretti  
#04705-091  
FCI Phoenix  
Federal Correctional Institution  
37910 North 45<sup>th</sup> Avenue  
Phoenix, AZ 85086

Dear Mr. Libretti:

I have been thinking about you over the years and even more so recently because I know that you will be released next year. My career has changed a great deal over the years and I am now working as a criminal defense attorney. My attitude about the long sentences which are being imposed on people who have been convicted of drug crimes has changed dramatically over the past several years. I have seen the disparate treatment of people who are convicted of drug offenses as opposed to huge financial crimes and other crimes. There is a marked difference between sentences for cases involving marijuana and those of methamphetamine or crack cocaine. The addition of any type of gun used or not really used in the drug trade also adds on significant mandatory minimum sentences, as you well know.

Now that I'm on the other side and I see the gung ho prosecutors always trying to get the absolute maximum sentence, I have a completely different perspective on it than I had when I was handling your case back in 1990 and 1991. I now see that a much shorter sentence would have the effect of deterring people and keeping the public safe. I also see that when people are addicted to these illegal substances (I know that you were not), no amount of prison time will help them if they don't get into a treatment program and learn how to live life without those substances. Of course, Congress has other ideas and their legitimate concerns about how to fight the drug war has been largely superficially fulfilled by keeping the federal prison population at record levels without confronting head on the underlying issues of finding ways to deal with the root causes of the drug problem in America.

EXHIBIT  
D

EXHIBIT  
B

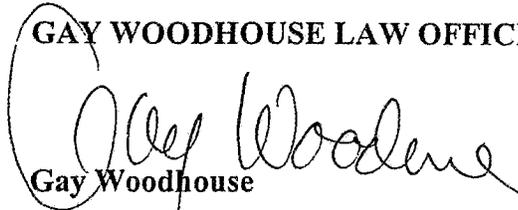
Leaving the philosophical discussion aside, I will tell you that I was extremely impressed by you as a young man. You were very ambitious, extremely bright and a true entrepreneur. Even at the time I was working on your case, I thought that you could have been a millionaire with your talent and hard work alone even at your young age no matter what course you decided to follow. I know from seeing your legal briefs and arguments that you have done on your behalf that you would have been an excellent attorney. You probably know more law and are a better legal researcher and writer than a lot of attorneys in the field.

In any event, I know that you will be released in a relatively short period of time. I have every confidence that you can continue using your considerable talents to make a good life for yourself and it is my sincere hope that you will be able to do so. I believe that the length of your sentence makes it much more difficult than it would have been had you been subject to a more reasonable sentence. I imagine, too, that your bitterness and hatred of the system no doubt has only grown over these many years. I cannot blame you for that at all. In fact, being on the defense side of the system, I can see the oppressive impersonal way the government deals with human beings and I cringe to think that at one time I was convinced this was the best and only way to deal with these problems.

It is my great hope that you will be able to put aside your bitterness and hatred of the system that has imprisoned you for so long and really accomplish great things in your life. I am sure this will be difficult, but I know that it is very hard for anyone to move forward when we are chained to the past by our own anger and hatred. I sincerely want to see you move forward and have a decent, productive and rewarding life in every possible way.

Sincerely,

GAY WOODHOUSE LAW OFFICE, P.C.



Gay Woodhouse

**Khan, Rasheeda**

---

**From:** Khan, Rasheeda  
**Sent:** Thursday, November 07, 2013 3:18 PM  
**To:** Khan, Rasheeda  
**Subject:** FW: application/Libretti

---

**From:** Joseph Libretti [<mailto:joelibretti45@yahoo.com>]  
**Sent:** Tuesday, November 05, 2013 9:30 PM  
**To:** Khan, Rasheeda  
**Subject:** Fw: application/Libretti

----- Forwarded Message -----

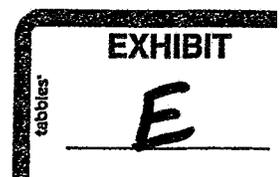
**From:** "[William Sawyer@almb.uscourts.gov](mailto:William_Sawyer@almb.uscourts.gov)" <[William\\_Sawyer@almb.uscourts.gov](mailto:William_Sawyer@almb.uscourts.gov)>  
**To:** [joelibretti45@yahoo.com](mailto:joelibretti45@yahoo.com)  
**Sent:** Thursday, August 15, 2013 12:27 PM  
**Subject:** application

Dear Mr. Libretti:

I have carefully reviewed your application for my clerkship position and I am tremendously impressed by your personal story. In my experience as an Assistant United States Attorney, it is unheard of for someone to spend as much time in prison as you have and yet has succeeded to the degree you have. In my former life as an AUSA, I frequently clashed with colleagues regarding the length of prison sentences for drug offenders as I thought they were ridiculously long. Moreover, I thought our use of money laundering and conspiracy counts to run up the guidelines was, in some cases, unconscionable. As you are aware, the vast majority of individuals who serve long prison sentences do not come out the better for it. I say this because I want you to know how much I admire what you have done and to further understand I am not rejecting your application because of your criminal record.

While I would like to talk with you, Government regulations do not permit me to reimburse travel expenses and it would be unfair to you to ask you to come to an interview for a job that I would probably offer to someone else. Based upon my review of your application, I do not believe that you would make a good fit here as your bankruptcy and commercial law qualifications are not particularly strong. I further question whether you would be content doing bankruptcy law.

Having said that, I believe that with your talent and your drive, that you will be very successful. Please accept my best wishes for your future.



Kindest Personal Regards,

William R. Sawyer  
United States Bankruptcy Judge  
Middle District of Alabama

**CERTIFICATE OF SERVICE**

A true copy of the foregoing has been served by email (by U.S. mail as to Admissions Committee) this 29th day of January, 2015 upon the following:

Paul G. Crist (0011894)  
2233 Wellington Circle  
Hudson, Ohio 44236  
pgcrist@yahoo.com  
*Counsel for Cleveland Metropolitan  
Bar Association (CMBA)*

Cleveland Metropolitan Bar Association  
Bar Admissions Committee  
1375 East 9<sup>th</sup> Street, Floor 2  
Cleveland, OH 44114-1785

Deborah Zaccaro Hoffman (0071599)  
Law Office of Deborah Zaccaro Hoffman  
The Jefferson Centre Building  
5001 Mayfield Road, Suite 201  
Lyndhurst, Ohio 44124  
(216) 381-3400 (o)  
(216) 381-3865 (f)  
dzh@dzh-law.com (e)  
*Counsel for Applicant, Joseph V. Libretti, Jr.*

Rob Wall (0082356), Staff Attorney  
Ohio Justice and Policy Center  
215 East Ninth Street, Suite 601  
Cincinnati, Ohio 45202  
(513) 421-1108 x 18 (o)  
(513) 562-3200 (f)  
rwall@ohiojpc.org (e)  
*Counsel for Ohio Justice  
and Policy Center*

Robert L. Tobik (0029286)  
John T. Martin (0020606)  
Erika Cunliffe (0074480)  
Jeffrey M. Gamso (0043869)  
Linda Hricko (0077012)  
Paul Kuzmins (0074475)  
Christopher Scott Maher (0055318)  
Cullen Sweeney (0077187)  
310 Lakeside Avenue, Suite 200  
Cleveland, Ohio 44113  
(216) 443-7583  
ecunliffe@cuyahogacounty.us  
*Counsel for Amici Curiae in support of  
Joseph V. Libretti, Jr.*

Respectfully submitted,

/s/ James F. Lentz  
James F. Lentz, Esq. (0073360)  
*Counsel for Amici Curiae Citizens' Institute  
For Law and Public Policy and CURE-Ohio*

/s/ Pamela Daiker-Middaugh  
Pamela Daiker-Middaugh, Esq. (#0041716)

/s/ Avery Friedman  
Avery Friedman, Esq. (#0006103)

/s/ C. Timothy Murphy  
C. Timothy Murphy, Esq. (#0091128)

/s/ Amy Hollaway  
Amy Hollaway, Esq. (#0092665)

/s/ Carole Heyward  
Carole Heyward, Esq. (#0061750)

/s/ Doron Kalir  
Doron Kalir, Esq. (#0088894)

/s/ Kenneth Kowalski  
Kenneth Kowalski, Esq. (#0024878)

/s/ Stephen Lazarus  
Stephen Lazarus, Esq. (#0014693)

/s/ Kevin O'Neill  
Kevin O'Neill, Esq. (#0010481)

/s/ John Plecnik  
John Plecnik, Esq. (New York #4465746)

/s/ Peter Sayegh  
Peter Sayegh, Esq. (#0091547)

/s/ Daniel Dropko  
Daniel Dropko, Esq. (0075817)

/s/ Joseph Buckley  
Joseph Buckley, Esq. (#0041290)

/s/ Christopher Maher  
Christopher Maher, Esq. (#0055318)

/s/ Dennis Terez  
Dennis Terez, Esq. (#0024878)