

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

THOMAS M. UTTERBACK

Petitioner

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)

Supreme Court #SC89223

PETITIONER'S REPLY BRIEF

Petitioner *Pro Se*
Thomas M. Utterback
MoBar #23288

126 Canterbury Circle
Niceville, FL 32578
(850) 582-8525
tom@destinlawgroup.com

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REPLY TO RESPONDENT'S STATEMENT OF FACTS

Petitioner understands from Rule 84.24(g) that the record for these proceedings, which is in the nature of an appeal of an original writ, consists of all the pleadings filed to date. If so, the Record on Appeal contains many statements of facts and many, many documents dealing with the fact that Petitioner surrendered his license because he pled guilty to a felony and, in doing so, pled guilty to activities that brought discredit to his family, his profession, himself, and all the ideals by which Petitioner had attempted to live.

More salient to these proceeding are not the details are of the events that caused Petitioner to surrender his license, but what are the facts, if they exist, that would support this Court in readmitting Petitioner to the Missouri Bar.

However, before Petitioner proceeds to the argument, he is compelled to reply to Respondent's more material errors in her recitations of facts and clarifies other misstatements:

1. Respondent says that Mr. Trober agreed to finance the trip to Panama and cites R's **App. p. A278**. Actually, that statement is on **A279**, but what Respondent fails to make clear is that when the time came, Petitioner did not take

Trober's money for the trip though Trober certainly tried to get Petitioner to take the money.¹

2. Respondent states in her brief that a "more detailed account of Petitioner's crime" is set forth in the Drug Enforcement Agency's ("DEA's") report of the DEA's interview of Petitioner on November 24, 1997. Actually, this is DEA Agent Bill Campbell version of what he and Petitioner discussed. While it is for the most part correct, neither Respondent nor Petitioner has the DEA reports detailing the results of the investigation of Petitioner's criminal activities. However, the U.S. Attorney's Office had those reports and relied on same when the U.S. Attorney's Office told Judge Perry that Petitioner told the truth.

3. While Respondent correctly cites Petitioner's narrative to Agent Campbell at **R's App. p. A283** that Attorney Aleman indicated that the lack of

¹ Petitioner also notes that Respondent does not understand or fails to point out that Petitioner's narrative from which she freely cites is incomplete. The Court will note that the words at the ends of pages do not flow into the words at the beginnings of the next pages. This is because the original document from which this is copied consisted of pages that were approximately 8.5" X 13", the size of the paper given to prisoner's in Champ Dollon Prison. Petitioner speculates that when the U.S. Attorney's Office copied the document that office personnel simply copied on 8.5"X11".

documentation would not be a problem. In actuality, what Aleman said was that if there was no documentation the money could be broken into smaller amounts in the \$800,000 range and deposited into several banks.

4. Respondent also cites Petitioner's statement, at **R's App. p. A283**, that he helped Trober with the financing of a piece of real estate (a car repair garage) as proof that Petitioner's claims that he laundered money because he was coerced is a lie. In fact, Petitioner did not invoke "coercion or duress" as a defense to the criminal charge nor does he invoke "coercion or duress" as a defense herein.

Trober "encouraged" Petitioner to help him with the temporary finance of a car repair garage as an act of "good faith" on Petitioner's part. Coercion, as a defense, is only good until the point that a person has a reasonable opportunity to seek the aid of law enforcement authorities. Petitioner has never contended that he was innocent of the money laundering charge because Trober made him do it. Petitioner did, however, seek mitigation in sentencing because Trober was involved with a group of serious individuals who would not shrink from using physical force as a means of protecting themselves.

5. At **R's App. p. A286**, Respondent correctly reports that Petitioner became concerned the Panamanians were "setting them up" and they could end up dead. In clarification, Petitioner did not mean Attorney Aleman or Mr. Novey. Petitioner's concern was Omar, Trober's contact who walked the blast plugs

through Panamanian Customs like Customs didn't exist. During that night of raw fear, Petitioner came to believe that Trober's panic was related to whatever Omar – presumably a high ranking member of the Panamanian police – was telling Trober. To this day Petitioner remains puzzled why Trober did not choose to put the money into a Wells Fargo locker and “smurf” the money over the next year. While Petitioner has asked various Federal officials about that over the years, if they ever found out why, they did not tell Petitioner.

6. Respondent incorrectly cites **R's App. p. A286** as the location in Petitioner's narrative to Agent Campbell where Petitioner wrote about Petitioner showing Attorney Sigillito the money and explaining that Petitioner did not have documentation on the money. That statement is on **A288**. In clarification, Petitioner does not remember ever telling Attorney Sigillito that he did not have documentation. Petitioner may have been getting ready to, but Petitioner's remembrance now is that he was trying to put Attorney Sigillito off so that Petitioner could go to sleep.

Months before, Petitioner did show Attorney Sigillito some of the fake documentation on the fake used-car deal. St. Louis is a staging location for the wholesaling of used cars, so the fake deal looked plausible. In short, Attorney Sigillito always thought he was working on a lawful transaction. (As discussed in earlier pleadings, Petitioner's memory about just when and when he jettisoned the

fake documents is unclear. Petitioner clearly remembers, however, that he pitched them so that he would not be tempted to use them.)

7. Respondent miscites **R's App. p. A288** for her proposition that Petitioner only began cooperating after Swiss authorities called the DEA Office in Bern. In fact, Petitioner asked that the DEA be called and once that occurred, Petitioner began working with Swiss authorities. Respondent's misreading is indicative of two material aspects affecting Respondent's recommendation in Petitioner's case: 1) Respondent is looking to justify her recommendation as opposed to objectively assess and advise the Court; and 2) Respondent's does not understand the background of the events in which Petitioner was involved. E.g., the Swiss had no particular interest in bringing in the American DEA. The Swiss are in the business of keeping banking confidential. All the Swiss wanted was proof of origin of the money and a negotiated fine. Fortunately, Inspector Thibault responded positively to Petitioner's concerns about police protection for his family.

8. Respondent cites **R's App. pp. A299-309** for her statement that Trober was sentenced to 63 months imprisonment for each case, with the sentences to run concurrently. She is wrong. In fact, the Illinois Federal Court sentenced Trober to 120 months. **R's App. pp. A300**. Petitioner mentions this because of two reasons: a) Respondent has regularly failed to objectively report salient facts; and b) Respondent's failure to correctly read Trober's sentencing documents is

indicative of Respondent's lack of understanding or familiarity with the Federal investigative, prosecutorial and criminal sentencing processes.

9. Respondent cited three "factors" to the Court's attention as proof of Petitioner's inability to fully admit his wrongdoing. In each instance, Respondent is simply wrong.

First, Respondent asserts that Petitioner should be blamed because he argued that the Federal prosecutors would find it more difficult to prosecute him for money laundering today because of two 2008 decisions by the United States Supreme Court that limited the breadth of the money laundering laws. In that regard, Petitioner echoed arguments made by the National Association of Criminal Defense Lawyers (NACDL) and reporting by the ABA Journal. See, P-A1-A9. The primary basis upon which Petitioner makes this argument is the uncontested fact that Petitioner had no knowledge of or involvement in whatever activities Trober or others were involved in that, in turn, produced the cash.²

² Respondent herself quotes a stipulation that Petitioner entered into with Federal prosecutors: "The defendant was aware of a high probability and believed that the currency in question constituted proceeds of drug trafficking activity and he deliberately avoided learning the truth. The investigation does not reflect that the defendant was directly involved in the illegal trafficking of controlled substances." **R's App. pp. A23-25.**

Second, Respondent persists in contending that Petitioner provided incorrect information to this Court regarding the United States Attorney's Office's position on Petitioner's reinstatement. Presumably, Respondent is still contending that "no position" is different from "no opposition," which Petitioner argues is but a distinction without a difference.

The Court should note that Petitioner enjoys a professionally good relationship with the U.S. Attorney's Office. Petitioner unconditionally guarantees two things about that Office: 1) the U.S. Attorney's Office knows that Petitioner has characterized the U.S. Attorney's "no position" as meaning "no opposition;" and 2) the United States Attorney's Office for the Eastern District of Missouri has never been shy about going after anyone who lied to that Office or about that Office.

Thirdly, Respondent believes that Petitioner's narrative about the most terrifying night of life is an attempt to reduce culpability. Respondent's indignation says more about Respondent's experience and understanding of the world we live than it says about Petitioner. For example, a high percentage of the persons massacred along the Mexican Border are persons that we would characterize as bad guys. That is, the warfare in Mexico is primarily between gangs for control of drug importation into this country. However, even though the murdered might be criminals in the eyes of the law, Petitioner is certain that each person killed had a

mother, most had kids for whom they wanted a better life, and everyone of them felt terror before and during whatever gruesome death they met.

When Trober did not buy Petitioner's suggestion about putting the money into a secured locker and emotions ran high, the best that Petitioner can say for himself is that he did not go back to Attorney Aleman and agree to break the money up into four or five chunks. Petitioner freely admits that any idea of reinstatement was not in Petitioner's mind. Events in Panama had gotten so out of control that Petitioner believed that he needed to get the heck out of there anyway he could. If Trober decided that he didn't need Petitioner anymore, the likelihood existed that Trober might decide that no good business reason existed for Petitioner not to have a regrettable accident in Panama.

10. Respondent complains that Petitioner criticized Respondent for failing to contact the DEA or the United States Attorney's Office to verify Petitioner's cooperation with law enforcement. Respondent protests that she did contact both the DEA and the United States Attorney's Office when Petitioner sought reinstatement in 2005 and as part of this reinstatement application. However, she does not recount either the questions she asked or the answers given except to say that Petitioner's conduct since 1997 has been acceptable.

In a recent response to Petitioner's inquiry about when or if Respondent had ever seen the Downward Departure Motion, Respondent said that in 2005 that she

had requested documents from AUSA Crowe who suggested that she obtain copies from Petitioner because Judge Perry had sealed the court file. Apparently – and this Petitioner surmises – Respondent requested documents from Attorney Burton Shostak, who represented Petitioner in his first application. Attorney Shostak, who had obtained documents from Petitioner’s defense attorneys, gave Respondent whatever he had. Respondent never informed Petitioner’s counsel or his attorneys what she had or what she was missing. We all presumed that she would want to get her own set of documents from the court file.

Had Petitioner been in Respondent’s position, he would have obtained a certified copy of the Court file, would not have accepted copies of court pleadings from any applicant, and, in reporting what federal authorities said in interviews, Petitioner would also report the questions asked and the answers given in as near a verbatim form as possible.

In the many investigative reports that Petitioner has drafted for governmental authorities, Petitioner always strove to present the various versions of the “truth” in as much detail and as objectively as possible. When a staff person is preparing a decision-maker to make a decision – even if a staffer’s recommendation comes with it – it professionally behooves the staffer to remember who the decision-maker is and to fully document the staffer’s recommendation.

From the date that Petitioner filed his Initial Brief to the date that Respondent filed her Response, Petitioner exchanged emails with Respondent as Petitioner attempted to obtain the rest of the federal court file. In fact, Petitioner successfully obtained the sentencing transcript, which Respondent included in her Appendix. See, R's App. pp. A310-330.³ In one of the email exchanges, Petitioner asked Respondent that if she had seen the DDM first and had started her investigation with the knowledge that Petitioner's facts checked out, would Respondent's investigation have turned out a different recommendation?

Petitioner, of course, having learned that Respondent never saw the most important document that federal authorities had regarding Petitioner's application for reinstatement, was interested to see if Respondent had the capacity to admit that the DDM merited material attention.

³ Petitioner remembers Judge Perry sentencing Petitioner because he was an attorney. In fact, Judge Perry says that she did not hold that against him. Petitioner was wrong in his representation to the Court. In addition, in reading Attorney Mays presentation (which Petitioner does not remember at all), Petitioner believes Attorney Mays treated Petitioner too nicely. While Petitioner had never knowingly dealt with a person of Trober's level in the illegal drug business, Petitioner had represented police departments in all kinds of matters and well knew the general extent and pervasiveness of the illegal drug business in this country.

Respondent did not answer that email.

ARGUMENT

I.

THE SUPREME COURT SHOULD REINSTATE PETITIONER BECAUSE HE HAS MET HIS HEAVY BURDEN OF SHOWING HE IS OF GOOD MORAL CHARACTER.

Respondent has concluded that the cause for Petitioner's disbarment has abated, but that Petitioner had not met his burden of showing good moral character. Yet, in all the years of begging Respondent to tell Petitioner what else he could do and researching hundreds of case, ABA Guidelines and Missouri Rules, Petitioner finds nothing other to satisfy this heavy burden than what he has already done.

To summarize the information set out in Petitioner's application, since 1997 Petitioner has:

- a) led a normal law-abiding existence (normal except for 25 months in FPC Eglin);
- b) traveled the country and evened visited Europe while on supervised release;
- c) been released from supervised release three (3) years early based on the recommendation of his probation officer while the U.S. Attorney's Office took "no position," which, Petitioner believes, the trial judge took to mean "no opposition;"

- d) worked with federal authorities to prosecute Trober after Petitioner completed his sentence including supervised release;
- e) passed three bar exams;
- f) completed all CLE and MPRE requirements;
- g) been investigated by the Florida Real Estate Commission, which passed Petitioner and allowed him to take the real estate salesperson examination (Petitioner has held a Florida Real Estate License since 2003);
- h) been investigated by the Florida Governor's Office (Gov. Bush) as a result of Petitioner's request to expedite his petition for restoration of civil rights so that he could take the Florida Bar Examination (which Gov. Bush expedited)⁴;
- i) been investigated by the Florida Governor's Office of Executive Clemency, which restored Petitioner's civil rights;

⁴ Petitioner does not contend this was a big investigative effort. Petitioner sent a bunch of documents to the Governor's Office and then bugged and bothered a staff attorney. Petitioner attaches a copy of a fax he sent to Susan Dalpina, AUSA Crowe's staff assistant, on July 6, 2006. *See*, P-A10. The Governor's Office of Executive Clemency notified Petitioner on Friday, July 21, 2006, that he was cleared to take the Florida Bar on July 25 & 26, 2006.

j) worked for the last four (4) years for two law firms, gaining the respect and recommendations of his colleagues; and

k) made positive contributions to the lives of his family, his friends, and the clients served by the attorneys for whom Petitioner has worked.

Having summarized the above, Petitioner would do more if “more” could be defined.

Petitioner asserts that this Court should use his cooperation with law enforcement and that he provided truthful information to law enforcement as evidence of good moral character. Furthermore, he asserts he never wanted to be part of Mr. Trober’s “gang.” Petitioner also agrees with Respondent that Petitioner’s cooperation with law enforcement, in itself, does not mean he is of good moral character.

Respondent compliments Petitioner by accusing him of being “a very intelligent businessman;” Yet, apparently Respondent does not think that Petitioner was smart enough to launder Trober’s money once he got it to Panama. Respondent accuses Petitioner of knowing that the best way to obtain a reduced sentence was to cooperate with authorities. To this, Petitioner pleads “guilty.” Petitioner also knew that in order for Trober to amass the money that he did, Trober had to have been working in an important position in a criminal

organization that had eluded detection by police authorities or, conversely, was being aided and abetted by people in law enforcement.

Mostly, though, what Petitioner did not know caused Petitioner the greatest concern. As to Respondent's correct accusation that Petitioner was interested in saving "his own skin," Petitioner urges the Court to read the page at **R's App. p. A297.**

Petitioner also asserts that the U.S. Attorney's Downward Departure Motion is a positive factor in this Court's consideration of Petitioner's application. In Petitioner's career, he has learned the truth of Mark Twain's admonition that "there are lies, there are damned lies, and there are statistics."

Respondent is correct that data from the U.S. Sentencing Commission shows that in 1998 there were 53 individuals in the Eighth Circuit who were convicted of money laundering offenses and that the average sentence imposed was 36 months, the same sentence Petitioner received. U.S. Sentencing Commission, 1998 Datafile, OPAFY 98. However, those same statistics show that nationwide the median sentence for money laundering was 18 months and the median downward departure for money laundering, where "substantial assistance" was credited to a defendant, was 21 months. U.S. Sentencing Commission, 1998 Source Book, OPAFY 98.

Petitioner's guideline sentence at 29 points set a maximum sentence of 108 months. Thus, Petitioner's sentence before the DDM exceeded the median sentence for money laundering by 90 months and his downward departure exceeded the median for substantial assistance by 51 months (108 months – 36 months [Petitioner's sentence] – 21 months [the median departure for substantial assistance] = 51 months [the amount of months that Petitioner's downward departure exceeded the national median]).

While learned folks can argue back and forth about the efficacy and justice of the Sentencing Guidelines, the application of same in Petitioner's case gives credence to Petitioner's statement that he did not want to be part of Mr. Trober's gang. By that Petitioner means that no one in the criminal justice system involved in the investigation into Petitioner's criminal acts believes that that Petitioner took any steps to make his relationship with Trober anything more than a one-shot deal.

Having stated this, Petitioner reminds the Court that Petitioner's duty was not to avoid involvement or try to pretend that he was above it all or find some middle way to avoid taking responsibility. Petitioner's duty was to see that Trober was prosecuted. One is either part of the solution or part of the problem. No middle ground exists. Petitioner failed to assume the responsibility that citizenship in this country imposes on him and he failed to live up to the higher standards required by his profession.

In her brief, Respondent quotes one of Petitioner’s missives to the DEA, i.e., “I was tempted by Ed’s proposition. As it turns out, more than tempted. . . . [T]his started the deterioration in my marriage, my concentration, and my moral surrender to the promise of easy money.” **R's App. pp. A275-76.** Then, in the next paragraph Respondent asserts that Petitioner cannot admit his weakness to this Court or to the general public. Yet, if being tempted by easy money (aka ‘greed’) is not a weakness, Petitioner does not know what a weakness is.

In contending that Petitioner does not know his weaknesses, Respondent ignores the findings not only of federal investigators, but also of two mental health professions – one selected by Petitioner and the other selected by Respondent. Both mental health professions (Dr. Oas’s affidavit is attached to Petitioner’s application and Dr. Deborah Doxsee’s Report is attached to Petitioner’s Reply to OCDC’s Report and Recommendation) confirm that Petitioner is remorseful, understands his weaknesses, and wishes to make amends.

In preparing this Reply, Petitioner spoke briefly with Dr. Oas and with another Destin area psychologist. Petitioner asked the doctors how one goes about beating the test. Both psychologists said the tests either work to provide a profile or no profile is obtained. When a person tries to beat the test, the number of the questions, the types of the questions, and the time limit in which the questions

must be answered will give a “fake-good” return. That is, the tests and analyses will show that the subject attempted to beat the tests. He/she faked good.

Respondent cites *In re Arrotta*, 96 P.3d 213, 217 (Ariz. 2004) for the proposition that a disbarred attorney must first show that he has identified just what weakness caused the misconduct and then demonstrate that he has overcome those weaknesses. Arrotta worked a huge scam involving a crooked claims adjuster and perpetrated his fraudulent scheme for an extended period. In explaining his conduct, Arrotta, like Petitioner, cited greed as a motivating factor. However, Arrotta offered no testimony from a mental health professional explaining his misconduct or that he had identified the weakness and was working to overcome same. Thus, the Arizona Supreme Court found that evidence from mental health professionals is probative of whether or not the applicant understands the reasons for his ethical violations and whether or not the applicant is capable of abstaining from future misconduct. *In re Arrotta* at 218-219.

In Petitioner’s application, and every document Petitioner has filed with this Court, he has demonstrated that he understands what went wrong with Petitioner’s moral compass, that he is committed to living the life he always intended, and that he would rather die than risk dishonor.

II.

THIS COURT SHOULD REINSTATE PETITIONER BECAUSE SUCH AN ACT WOULD DEMONSTRATE TO THE PUBLIC THAT THE JUDICIAL SYSTEM RECOGNIZES THE TRADITIONAL AMERICAN BELIEF IN FORGIVENESS AND RENEWAL.

Petitioner's path to reinstatement, if granted, will not have been easy and should not have been easy. When people commit serious crimes, redemption must be earned, but our society must allow malefactors to earn their way back. Our country, founded on concepts derived from the Judeo-Christian ethic, has always stood for new beginnings and, yes, forgiveness.

Respondent says that she is concerned about what impression it would make on the public to reinstate Petitioner. Yet, what message would this Court be sending if Petitioner is denied reinstatement?

No voice, other than Respondent's, has been raised against Petitioner in the four years of public filings. The very people who prosecuted Petitioner have sought to help Petitioner obtain an appointment to the Rule of Law Program in Iraq. AUSA Larry Ferrell's recommendation is unequivocal in stating that Mr. Ferrell dearly wants to have Petitioner working for the betterment of Iraq and our country's interest in bringing the rule of law to Iraq.

Respondent cites *In re Page*, 866 P.2d 1207, 1212-1213 (Okla. 1993) in support of her argument that sometimes crimes are just too serious to allow reinstatement. Yet, Page, as an assistant district attorney and a special district judge, accepted bribes and conspired to accept bribes in return for interference in pending criminal investigations and litigation. Page was convicted of using his office to interfere with the judicial processes of law enforcement.

Here, Petitioner did not contend that he was innocent as Page did in the face of tape recordings of his own larcenous conversations. From November 20, 1997, to the present, Petitioner has done nothing other than confess his guilt; the exact nature and extent of which has been verified by federal investigators and reflected in the magnitude of the downward departure suggested by the U.S. Attorney's Office and confirmed by Judge Catherine Perry.

Nothing has changed in all of that since 1997-1998 except that we now know that Respondent did not have the benefit of the DDM until recently and that Respondent ignores her own mental health expert, Dr. Doxsee, just as she has ignored anything Petitioner has written or said about what he has learned from being incarcerated and the process of spiritual renewal.

Contrary to what Respondent says, Petitioner does not contend that the crime he committed was not serious. It was serious in a lot of ways Respondent has failed to recognize. All that Petitioner did in his arguments is to attempt to put the

crime in perspective. When Respondent argues that Petitioner's crime was so heinous that the very criminal act necessitates a denial of reinstatement, Petitioner would be derelict not to point out that the crime to which he pled guilty was not even a crime until 1986 and that there were no "victims" of the crime he committed as the law defines same.⁵

As to Respondent's dismissal of all the work that went into the U.S. Sentencing Guidelines, Petitioner still maintains that the Guidelines are a serious attempt to bring objectivity and definition to criminal sentencing through a

⁵ Petitioner knows much better than Respondent how drug abuse affects our society. This is why he used the qualifier "as the law defines" what a victim is. However, Petitioner rejects Respondent's hysterical belief that Petitioner is responsible for the state of drug abuse in America. Petitioner has worked very hard to deal with that of which he is guilty. Petitioner has spent a career fighting drug and alcohol abuse whenever he could in any way he could. Respondent apparently does not understand that the primary drug abused by Missourians is a legal drug, alcohol, and that the trends in drug abuse are in the direction of legal pharmaceuticals like Oxycontin and Xanax. *See*, The Missouri Department of Mental Health's 2008 publication, *The Burden of Substance Abuse on the State of Missouri*.

comparative analyses of the nature of crime and its affect on society and individual citizens.

On the other hand, Respondent is unduly enamored of her belief that the determination of the seriousness of a crime in the context of whether a disbarred attorney should be reinstated should be a subjective analysis, not something subject to fitting into a formula. In citing *In re Hughes v. Board of Professional Responsibility*, 259 S.W.3d 631, 646 (Tenn. 2008) in support of this position, Respondent failed to point out that Hughes bribed witnesses in the course of a murder trial.

In citing *In re Hird*, 184 P.3d 535, 540 (Okla. 2008) for the proposition that money laundering is a serious crime, Respondent omits the fact that Hird's crime involved a bank fraud that cost victims perhaps a hundred million dollars. In citing *In re Rorrer*, 222 S.W.2d 223, 229 (Ken. 2007), Respondent fails to point out that Rorrer instigated the money laundering activity and professed his innocence throughout. In citing *In re Greenberg*, 749 A.2d 434, 437 (Penn. 2000), Respondent fails to point out that Greenberg repeatedly provided false information to a court of law, committed major felonies by concealing more than \$2 million from creditors, and then provided false information in court about his concealment.

Thus, Petitioner's facts and circumstances are markedly different from every case cited by Respondent. In terms of cases, however, Petitioner has

stated in other pleadings that his survey of cases revealed that most often reinstatement hinged on whether or not the respective state Supreme Court believed that the applicant had learned his/her lesson and whether or not the applicant eagerly sought redemption.

Petitioner contends that he faced his demons and worked within himself and with family and friends to get back on the right-fold path in the many years before Petitioner even thought there might be a hope that reinstatement was possible.

CONCLUSION

Respondent cites Petitioner's 1997 assessment of Trober as "a good man who had done unlawful things." **R's App. p. A268.** Petitioner wonders if he truly believed that when he said it or if he said it to convince himself that committing a crime with a good person was better than committing a crime with a bad person.

Petitioner does know that he wanted Trober to become a snitch for reasons discussed in other pleadings.

Recently, our local community here in the Destin/Niceville/Fort Walton Beach area has been rocked by the indictment of the long time sheriff, Charlie Morris. Morris set up a kick back scheme where he would give bonuses to selected deputies and then take most of the "bonus" back. Deputy Maj. Larry Ashley and George Wilson, director of maintenance, were the primary individuals who brought Morris down.

While the FBI investigation is on going and while newspaper reports indicate that Sheriff Morris may have had other criminal events going on, the local newspaper interviewed Ashley and Wilson. Petitioner attaches a copy of a May 12, 2009 article in which Wilson expresses his concern that "You back somebody into a corner like that, they realize what they're going to lose, you don't know what's going to happen." See, P-A11-14.

Ashley, an impressive, much-decorated major in the Sheriff's Department, commented about the FBI: "A big concern was, are you [FBI] gonna take the case? Because if you're not, if this case is not gonna be investigated and not gonna be prosecuted, then I don't want to be talking to you." *See*, P-A11-14.

Petitioner understands their concerns and wishes that he had had the courage of his convictions back in 1997 as Maj. Ashley did in 2009.

But what is, is – and the only way to make amends is to move forward and do better.

Respondent correctly reports that if Petitioner is reinstated that he intends to continue to try for an Iraq or Afghanistan appointment with the Rule of Law Program. This is not likely to happen, but reinstatement will at least move Petitioner from the category of "no chance" to "slim chance." If lightning should strike, Petitioner does hope to parlay a good performance in the Middle East to something as meaningful back in the U.S.

What are the odds of this? Small.

More likely, if the Court reinstates Petitioner, he will practice here in Destin with John N.C. Ledbetter, Petitioner's long-suffering sponsor. Petitioner's application to the Florida Bar awaits only a certificate of good standing from Missouri. However, no matter where Petitioner winds up, Petitioner promises the

Court this: Petitioner will make the Supreme Court of the State of Missouri proud that they gave Petitioner a second chance.

Respectfully submitted,

Thomas M. Utterback – Petitioner
126 Canterbury Circle
Niceville, FL 32578
(850) 582-8525
tom@destinlawgroup.com

Certificate of Service

I hereby certify that on this 18th Day of May 2009, two copies of Petitioner's Reply Brief and a diskette containing the brief in Microsoft Word format have been sent via First Class mail to OCDC Staff Counsel Nancy Ripperger, 3335 American Avenue, Jefferson City, Missouri 65109.

Thomas M. Utterback

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 5,619 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That AVG 8.0 software was used to scan the disk for viruses and that it is virus free.

Thomas M. Utterback

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Note: The last two documents in the Appendix are attached because the U.S. Attorney's Office sent them to Petitioner the before last. In emailing the documents to Respondent, Petitioner promised Respondent that he would include them in his Appendix. A15-17 responds to Petitioner's Suggestions in Support of Motion for Reconsideration, which is at A33-44 of the Appendix to Petitioner's Initial Brief. A18, above, denies Petitioner's motion.