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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re ~~the Matter of~~)
)
STEPHEN RANDALL GLASS,)
)
on
~~Applicant for~~ Admission.)
)

Case No. S_____

SUPREME COURT
FILED
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Frederick K. Ohlrich Clerk
Deputy

PETITION OF THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA FOR WRIT OF REVIEW OF THE DECISION OF THE STATE BAR COURT REVIEW DEPARTMENT

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PETITION OF THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA FOR WRIT OF REVIEW OF THE DECISION OF THE STATE BAR COURT REVIEW DEPARTMENT

I. PRELIMINARY STATEMENT

Stephen Randall Glass ("Applicant"), an applicant for admission to practice law in California, is the perpetrator of one of the greatest journalistic frauds in history. Over a period of more than two years, he spun a web of lies and deceit, taking advantage of those who trusted him and authoring over 40 fabricated articles that were published in national magazines and widely disseminated in the public domain. Strikingly, Applicant authored several of these stories while he was in law school. Had Applicant not been caught, it was highly likely that his fraudulent behavior would have continued. Unable to gain admission to the New York Bar in 2004 because of moral character concerns, and having failed to re-establish his standing as a professional journalist, Applicant moved to California, passed the California Bar Examination, and now seeks to become a licensed attorney in this state.

In a 2-1 Decision, a majority of the State Bar Court Review Department

recommended that Applicant be certified for admission to practice law.[1] However, the Committee of Bar Examiners ("the Committee") opposes his application and requests that this Court set aside the Review Department's Decision given the seriousness of Applicant's misconduct and the lack of any meaningful and sustained moral rehabilitation.

The record, as demonstrated below, clearly establishes that Applicant's misconduct caused significant harm to the subjects of his libelous stories and the reputations of the magazines that published the works – including the editors, staff, and affiliated colleagues. On a much broader scale, Applicant's wrongdoings profoundly and indelibly impacted the entire readership of the magazines and ultimately undermined the integrity of the journalism profession as a whole. Applicant's conduct was of such magnitude that it was covered extensively by the media and even became the topic of a "60 Minutes" episode, a major motion picture, a novel, and a museum exhibit in Washington D.C. – all of which permanently memorialize the massive fraud perpetrated by Applicant on the American public and the journalistic community.

Despite its ultimate decision recommending admission, even the Review Department had to admit that Applicant's behavior was "appalling" and "his fraud was of staggering proportions." (Review Department Decision, pp. 4, 5.)

It is the Committee's position that when considering someone with Applicant's remarkable record of fraud and deceit, the State Bar of California ("State Bar") should

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[1] The Review Department Opinion is attached at Appendix A; the Hearing Department Decision at Appendix B.

demand nothing less than exemplary behavior over a sustained period of time – that is, an unblemished record coupled with outstanding conduct, which goes beyond the ordinary. This standard is necessary in a case such as this, where an applicant's past misdeeds compromise the very foundation of the legal profession – common honesty, trustworthiness, virtue, and candor. While Applicant has provided some evidence of rehabilitation, in light of the egregious acts he committed, he must do more than just live an acceptable lifestyle. He must be proactive and attempt to correct the wrongs that he imposed upon others.

Applicant has failed to meet his burden. A strong dissent agrees – "Applicant did not show proof of reform by a lengthy period of exemplary conduct to justify his admission." (Review Department Dissenting Opinion, p. 19.) When his conduct was first called into question in 1998, instead of coming clean, his immediate response was to attempt to cover up the concerns by engaging in a pattern of deception in order to preserve his career and reputation; he failed to assist the magazines in indentifying the full list of fabricated articles and only just disclosed the complete list in connection with these moral character proceedings; he made misrepresentations to the New York Bar in 2003 and had to withdraw his application for admission because of moral character concerns; in a self-serving manner, he timed the sending of his apology letters and his public appearance on "60 Minutes" to coincide with the release of his novel and his application for admission to the New York Bar; he failed to disgorge the monies he made from authoring the fraudulent articles and the substantial profits he received from the publication of his novel; and he failed to try to re-establish his standing as a journalist or

make an impressive showing of any meaningful outreach to the journalistic community, which he so disgraced.

Contrary to the Review Department's findings, the Committee was not simply "carried away by the distant tide of [Applicant]'s earlier misconduct" (see Review Department Opinion, p. 15); rather, the Committee believes that in light of his prior bad acts, Applicant has a heavy burden to meet and has fallen far short in this regard.

The Committee further contends that the State Bar Court erred in resolving all reasonable doubts in Applicant's favor. The standard applied by the State Bar Court does not comport with this Court's holding that "[w]here serious or criminal misconduct is involved, positive inferences about the applicant's moral character are more difficult to draw, and negative character inferences are stronger and more reasonable." (*In re Gossage* (2000) 23 Cal.4th 1080, 1098 [99 Cal.Rptr.2d 130, 5 P.3d 186].) Had the State Bar Court applied the correct standard in determining whether the requisite showing of rehabilitation had been made, the result, in all likelihood, would have differed.

Accordingly, the Committee of Bar Examiners respectfully requests that this Court, consistent with its duty to protect the public and preserve the integrity of the profession, reverse the decision of the State Bar Court.

II. ISSUES PRESENTED

1. Did Applicant demonstrate exemplary conduct over a sustained period of time, when weighed against the extremely egregious and pervasive nature of his prior fraudulent misconduct?

2. Where Applicant's record of fabrication and deceit is serious and undisputed, did

the State Bar Court err in resolving all reasonable doubts in Applicant's favor if equally reasonably inferences could have been drawn from the evidence?

III. GROUNDS FOR REVIEW OF STATE BAR COURT DECISION

A petition before this Court is appropriate at this time, as review within the State Bar Court has been exhausted. (Cal. Rules of Ct., rule 9.15(b).) Moreover, the State Bar Court Decision is not supported by the weight of the evidence (see Cal. Rules of Ct., rule 9.16(a)(4)), and review is necessary to settle important questions of law in the context of State Bar moral character proceedings. (Cal. Rules of Ct., rule 9.16(a)(1).)

IV. STATEMENT OF PROCEDURE

In July 2007, Applicant filed a Confidential Application and Questionnaire for Determination of Moral Character. (Review Department Opinion, p. 1.)

In February 2009, the Committee of Bar Examiners declined to certify Applicant's moral character. Applicant thereafter sought review of the Committee's decision in the State Bar Court. On August 9, 2010, the Hearing Department found that Applicant possessed the requisite good moral character required for admission to practice law in California. (Review Department Opinion, p. 1.) The Committee sought review and on July 13, 2011, the Review Department issued its Opinion. A majority of the Review Department (in a 2-1 decision) found Applicant's behavior "appalling"; the magnitude of his misconduct "staggering"; and his behavior reprehensible in that he created "long lasting harm on people who hadn't done anything wrong" and then he simply "ran away." (Review Department Opinion, pp. 4-5.)

The majority nevertheless found that Applicant established his rehabilitation from

his past moral shortcomings and concluded that he should be certified for admission to practice law. The dissenting opinion found that given the magnitude of Applicant's misconduct and his subsequent misrepresentation in his 2003 New York Bar application, he failed to show "proof of reform by a lengthy period of exemplary conduct which 'we could with confidence lay before the world' to justify his admission." (Review Department Dissenting Opinion, pp. 18-19 [citing *In re Menna* (1995) 11 Cal.4th 975, 989 [47 Cal.Rptr.2d 2, 905 P.2d 944].)

Pursuant to rule 9.15, California Rules of Court, the Committee now seeks review of the Decision of the Review Department.

V. STATEMENT OF FACTS

A summary of Applicant's *prima facie* evidence of good moral character, the Committee's rebuttal evidence, and evidence of rehabilitation is set forth in the Hearing Department Decision and the Review Department Opinion. (Hearing Department Decision, pp. 3-25; Review Department Opinion, pp. 2-14.)[2] The facts below underscore the extent of Applicant's egregious misconduct and his inability to establish rehabilitation.

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[2] In a moral character proceeding, the Applicant must present a *prima facie* case of good moral character. Here, this relatively easy showing was met by Applicant. Next, the Committee must satisfy its burden of rebutting Applicant's *prima facie* case of good moral character, which it also was able to do easily based primarily on the serial fraud committed by Applicant between 1996 and 1998. The burden then shifts to the Applicant to demonstrate moral rehabilitation. In this case, the majority found that Applicant met his burden. The minority disagreed, finding that although Applicant provided some evidence of reform, he did not show proof of rehabilitation by a lengthy period of exemplary conduct.

A. Applicant Is The Perpetrator Of One Of The Most Significant Cases Of Journalistic Fraud In History.

1. Both The Dissenting And Majority Opinions Recognized The Gravity Of Applicant's Misconduct.

The dissenting opinion best captures the pervasive scope of Applicant's misconduct:

> My colleagues acknowledge that from 1996 to 1998, Glass perpetrated a fraud of "staggering" proportions. He used his exceptional writing skills to publicly and falsely malign people and organizations for actions they did not do and for faults they did not have. He even created fake newsletters, voicemail boxes and a website to support his fabricated articles. For two years, Glass engaged in a multi-layered, complex and harmful course of public dishonesty.

(Review Department Dissenting Opinion, p. 18.)

Even the Review Department majority recognized the severity of Applicant's misconduct:

> The scope of the fraud in this case is staggering. Between July 1996 and May 1998, all but a handful of the articles authored by Glass were fabricated to some degree (fn. omitted), including those published by *TNR* and by magazines such as *The Policy Review*, *George*, *Rolling Stone*, and *Harper's*. Glass invented sources, events and organizations, and he concocted quotes. These falsehoods added potency and color to his writing, but he often used them to demean his subjects, resulting in stories that were mean spirited.

(Review Department Opinion, p. 4.)

> Glass's misconduct clearly showed a 'disregard of the fundamental rule of ethics-that of common honesty... [Citation].' (*Borre v. State Bar* (1991) 52 Cal.3d 1047, 1053.) In constructing his tangled web, Glass exploited his colleagues' trust and he caused immeasurable reputational harm to the subjects of his articles and to the magazines that vouched for his veracity. The magazines also were burdened with re-checking the accuracy of all of his articles to defend against potential libel claims, and that at least one magazine actually was required to defend itself in defamation lawsuits.

> The former editor of *George* aptly described the sorry situation that Glass created: 'Instead of using his gifts to try to make the world a better place, [Glass] mined the crudest of raw material of our fallible human natures. And then he put it all on paper, where it could inflict tangible, long-lasting harm on people who hadn't done anything wrong, and ran away....'

(Review Department Opinion, p. 5.)

2. Applicant's Far-Reaching Acts Of Serial Fraud And Fabrication Promoted His Own Self-Interests At The Expense Of His Colleagues, His Profession, The Targets Of His Articles, And The Public.

Applicant was employed at *The New Republic* ("*TNR*") from September 1995 through May 1998. (Reporter's Transcript "RT," Vol. V, pp. 97/11-99/3; State Bar Exhibit 2, p. 2.) From July 1996 until May of 1998, when he was terminated from *TNR*, Applicant was responsible for "one of the most substantial cases of journalistic fraud in history." (State Bar Exhibit 2; RT, Vol. II, p. 119/14-15.)[3]

Applicant's saga began after he accepted a one-year internship position as a "reporter-researcher" with *TNR*, which was considered one of the most prestigious internships available to a young journalist. (RT, Vol. V, pp. 96/8-14, 98/25-99/9.) Applicant testified that he wanted to succeed as a writer at *TNR*, but when he first began work there nobody was interested in any of his articles. He believed he was failing and would not be invited to join *TNR* after his internship ended. (RT, Vol. V, pp. 99/19-100/23.)

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[3] During part of the time Applicant was committing journalistic fraud, he was also enrolled as a law student at Georgetown University. (State Bar Exhibit 1, p. 5; RT, Vol. I, p. 111/2-11; RT, Vol. IX, p. 34/10-14.) Susan Bloch, a law professor at Georgetown, acknowledged that from the very beginning of a law student's education, the Georgetown faculty tries to emphasize the importance of legal ethics in all of the courses that it offers, even if those courses are not specifically focused on ethical issues. (RT, Vol. I, pp. 110/20-111/1.)

In or about May 1996, during his employment at *TNR*, Applicant authored an article entitled "The Hall Monitor," in which he fabricated quotes from two unnamed sources in a published story about United States Representative Pete Hoekstra. (RT, Vol. V, pp. 101/9-102/19, 110/6-11.) Applicant testified that he lied because he wanted to write an "A plus" article and did not want to "wash out" at *TNR*. (RT, Vol. V, pp. 118/23-119/4.) At the end of his internship, Applicant was hired by *TNR* as an assistant editor. (RT, Vol. II, pp. 5/21-6/5.)

After authoring "The Hall Monitor" article, Applicant continued on his path of lies and fabrications. From July 1996 through May 1998, Applicant authored 35 more articles published by *TNR* that contained lies. Some articles were entirely fabricated, while others contained various degrees of lies. (State Bar Exhibit 1 pp. 509-512; State Bar Exhibit 2; RT, Vol. V, p. 102/20-23.) After he began his fabrications, more of his articles started being published. (RT, Vol. IX, p. 31/19-22.) His success at *TNR*, based on his secret lies and fabrications, opened up opportunities for him to freelance for other magazines, and in so doing he began writing fabricated articles for other publications, including *Harper's*, *George*, *Rolling Stone*, and *Policy Review*. In total, over a two-year period, Applicant authored 42 articles – some fully fabricated, some partially fabricated, but each containing some degree of lies. (State Bar Exhibit 1, pp. 238-244; State Bar Exhibit 2; RT, Vol. V, pp. 86/18-25, 131/13-14.)

Applicant's acts were calculated, and he used various techniques, based in part upon his past experience as a fact-checker, to subvert the process and get his fabrications published. (RT, Vol. IX, pp. 21/2-12, 24/3-28/13; State Bar Exhibit 35.)

In May 1998, Applicant authored an entirely fabricated article called "Hack Heaven."[4] When *TNR* became aware that the article was fabricated, Applicant was fired. At the time of Applicant's firing, *TNR* did not know the extent of the fabrications. (RT, Vol. II, pp. 41/11-46/18.) Moreover, when Applicant was caught, he was working on two other fabricated articles that were never published, one for the *New York Times* and one for *George*. (RT, Vol. IX, pp. 35/23-36/24, 37/5-38/24.)

Applicant testified that he lied because he enjoyed the excitement and success that the lies brought him.[5] He acknowledged that what people liked most about his articles were parts containing the falsehoods. (RT, Vol. V, pp. 124/7-125/8.)

When he first started at *TNR*, he believed his contributions were meaningless and valueless. However, as he began fabricating and his fabrications increased, people would get joy out of reading his stories. (State Bar Exhibit 1, pp. 32-33, 506-508; RT, Vol. V, pp. 112/4-115/15.) He loved that people liked what he was doing and he never felt better during those moments. (RT, Vol. V, p. 116/4-12.) He was one of the more popular people in the office and was called "The Hub" because he was the hub of all the office activity. (RT, Vol. II, p. 11/6-8.) The fabrication period was punctuated with moments of more pleasure than he had previously known. (RT, Vol. V, p. 123/1-3.)

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[4] Hack Heaven describes a fictitious, 15-year old computer hacker, named "Ian Restil," who extorts money from "Jukt Micronics," a non-existent company, by promising he will not hack into its computer system. (State Bar Exhibit 3, pp. 116-117.)

[5] At the time the scandal broke, Applicant was on track to earn approximately $100,000 from his fabricated articles, which was a substantial amount for an associate editor working at *TNR*. He acknowledged he was making money because of the fabrications. (RT, Vol. VIII, p. 58/18-24.)

Martin Peretz, the owner of *TNR* at the time of the fabrications, testified that Applicant found a formula for "moving up" at *TNR* and the formula was to lie. (RT, Vol. II, p. 159/20-23.) Charles Lane, the editor of *TNR* at the time, concluded that Applicant was a "con man" who had pulled an elaborate hoax on the readers and the people who worked at TNR. (RT, Vol. II, p. 95/6-16.)

3. Once Applicant's Actions Were Discovered He Attempted To Further Deceive *TNR* In Order To Preserve His Reputation.

The Review Department majority acknowledged that Applicant's acts of fraud were compounded by additional fabrications designed to cover his tracks:

> To make matters worse, Glass covered up his inventions with additional lies. Prior to publication, he systematically defrauded fact-checkers and editors by creating reporter's notes and other documents to support the facts and quotes in his articles. Glass followed up with further deceptions after publication when his articles prompted complaints or letters to the editor. He countered them with more falsely generated reporter's notes and forced documents. As a consequence, the publications stood behind his work.

(Review Department Opinion, p. 4.)

Applicant testified when he was about to be terminated, his acts of "covering up became more and more extensive." (RT, Vol. V, p. 146/16-20.) He lied to deceive his editors, colleagues, and friends in order to prevent them from discovering his lies. (RT, Vol. IX, pp. 12/1-18/7.) In virtually all of the fabricated articles, he created fake author's notes, and other supporting materials to conceal his lies. (RT, Vol. V, pp. 146/11-22, 152/16-21; RT, Vol. IX, pp. 17/15-18/7.) When victims complained that his articles contained lies, Applicant defended the articles, told his editors that the articles were true and that the subjects complaints were without merit. (State Bar Exhibit 1, p. 240; State

Bar Exhibit 2; RT, Vol. II, pp. 24/5-25/3; RT, Vol. III, p. 32/24-25.) Up to this point, Applicant's pristine reputation enabled him to perpetuate his lies and deceptions. Even his close friends at *TNR* were completely fooled by him. (RT, Vol. VII, pp. 9/18-20, 13/2-25, 14/1-15/22, 28/12-23.)

Applicant went to great extremes in trying to cover up his fabrications, as evidenced by his efforts to "hinder" Charles Lane, the editor at *TNR*, from uncovering the truth regarding the article "Hack Heaven." (RT, Vol. V, p. 176/6-18; State Bar Exhibit 2; State Bar Exhibit 35.) Applicant's fabrications came to light in May 1998, when Adam Penenberg, a journalist with *Forbes Digital Tool*, contacted Lane at *TNR* and told him he could not verify the claims made by Applicant in "Hack Heaven." (RT, Vol. II, pp. 26/1-5, 29/4-20; State Bar Exhibit 35.) Lane then confronted Applicant and asked for supporting documents. Instead of confessing that "Hack Heaven" was fabricated, Applicant denied any allegations of falsehoods and told Lane that he would go home and get the corroborating documentation. (RT, Vol. II, pp. 29/16-32/9; State Bar Exhibit 35.) Applicant then stayed up all night to fabricate materials in support of his claim that the article was true. (RT, Vol. V, p. 152/15-21; State Bar Exhibit 35.) He set up voice mail boxes and recorded fake messages for the bogus people identified in the article. (RT, Vol. V, p. 152/20-25; State Bar Exhibit 35.) He fabricated author's notes and a business card for a non-existent person. (RT, Vol. II, p. 34/4-6; RT, Vol. V, pp. 153/5-154/3; State Bar Exhibit 35.) He constructed a sham website for Jukt Micronics, the company referenced in the article. The website went so far as to include a sham attack against *TNR* purportedly in response to the "Hack Heaven" article. (RT, Vol. V, p. 154/6-21; State

Bar Exhibit 35.) Finally, he created a fake newsletter. (RT, Vol. V, p. 154/23-25; State Bar Exhibit 35.) He even went so far as to arrange for his brother to pose as a source when Lane called to verify the story. (Review Department Opinion, p. 5; RT, Vol. II, pp. 30/16-31/25, 43/17-44/4; RT, Vol. V, p. 172/18-25.)

Applicant continued the attempted cover-up when he participated in a conference call with Adam Penenberg and Kambiz Foroohar of *Forbes Digital Tool* and at no time during the conversation did he tell any of the parties that the article was a lie. (RT, Vol. II, pp. 33/3-34/1.)

When Lane began to suspect that Applicant was lying, he asked Applicant to take him to the place where the events in "Hack Heaven" occurred. (RT, Vol. II, pp. 34/13-35/22; State Bar Exhibit 35.) Again, instead of admitting the article and location were fabricated, Applicant directed Lane to a randomly chosen building and continued his lies. (RT, Vol. II, pp. 34/13-35/22; State Bar Exhibit 35.) After Lane questioned the validity of the location, Applicant continued his deceit until he finally broke down and gave a partial confession where he represented that all the people in "Hack Heaven" were true but that he lied about stating that he attended a conference where the fabricated events occurred. This was simply another lie because the entire story was fabricated. (RT, Vol. II, pp. 34/13-37/3; State Bar Exhibit 35.) Applicant repeated this version of events when the parties returned to *TNR* and met with *TNR* Executive Director, Jonathan Cohn. Cohn, who was lobbied by Applicant, was inclined to be lenient because the offense seemed limited. (RT, Vol. II, pp. 40/12-23, 42/6-24.)

Lane then decided to suspend Applicant from *TNR* for two years rather than fire

him. (RT, Vol. II, pp. 42/25-43/5.) But when Lane subsequently discovered that Applicant's brother may have posed as a source, he confronted Applicant who initially denied this allegation. Applicant later admitted that his brother was involved. Lane then fired Applicant. (RT, Vol. II, pp. 43/22-46/9.)

4. Applicant's Articles Were Frequently Cruel And Mean-Spirited.

As acknowledged by the Review Department majority, Applicant's fabrications were often used to demean his subjects, "resulting in stories that were mean-spirited." (Review Department Opinion, p. 4.) Applicant testified that he was arrogant at *TNR*; that he looked down on people; and that he purposefully "wrote nasty, mean-spirited, horrible things about people." (RT, Vol. V, pp. 133/23-134/4.)

He mocked and criticized people and organizations for actions they did not do and for faults they did not have. For example, in at least two articles, he repeated false, damaging racial stereotypes about African Americans. In "Taxis and the Meaning of Work," he falsely portrayed African American cab drivers as lazy and lecherous. (State Bar Exhibit 2, pp. 4-5; State Bar Exhibit 3, pp. 11-15.) In "Prophets and Losses," he similarly targeted African Americans, falsely maligning them as ignorant, superstitious, and financially irresponsible. (State Bar Exhibit 4.)

"Deliverance," which was published by *TNR* in November 1996, included a "cruel fabrication" where Applicant claimed that a customer service representative from Gateway disgraced him and called him a "kike," an anti-Semitic slur. (RT, Vol. II, p.

84/10-16; RT, Vol. V, pp. 141/11-142/1.)[6]

In "Shalom Y'All," published by *TNR* in December 1996, Applicant concocted an unflattering stereotype of Southern Baptists. He created a false story about an ignorant, southern red-neck Baptist who chain smoked, ate fried chicken legs by the bucket, and who had a fanatical determination to convert Jews to the Baptist faith. (State Bar Exhibit 2, p. 5/12-20; State Bar Exhibit 3, pp. 20-21.)

"Spring Breakdown" was a fabricated article written by Applicant that ridiculed members of the Young Republicans. Applicant falsified a story about eight politically conservative mid-western college students attending a Conservative Political Action Conference, who engaged in debauchery and attempted to seduce an unattractive young woman and then deliberately humiliate her. (State Bar Exhibit 3, pp. 49-52; RT, Vol. II, pp. 130/10-12, 155/20-22.) In his article, Applicant described the Young Republicans as such: "This is the face of young conservatism in 1997: pissed off and pissed; dejected, depressed, drunk and dumb." (State Bar Exhibit 3, p. 49; RT, Vol. II, pp. 130/10-12,155/20-22.) Martin Peretz of *TNR* described this article as "mean-spirited" and done with a "malicious" intent. (RT, Vol. II, p. 155/5-24.)

In 1997 and again in 1998, *Rolling Stone* published "Don't You Dare," where

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[6] In real life, Applicant had ordered a personal computer from Gateway and became frustrated when the computer was not delivered to him. (RT, Vol. V, p. 141/11-15.) Applicant contacted Gateway and Federal Express, but they were not able to solve the problem. (RT, Vol. V, p. 141/11-15.) The experience was so "horribly frustrating" to Applicant, that he wrote a letter to Gateway falsely accusing it of anti-Semitism. (RT, Vol. V, p. 143/2-5.) He then publicly recounted the lie in "Deliverance." The article was written even though Applicant had brought the false accusations to the attention of Ted Waitt, Chairman and CEO of Gateway, who in turn, wrote Applicant a letter of apology. (State Bar Exhibits 10, 11; RT, Vol. V, p 142/14-17.)

Applicant falsely accused D.A.R.E., a drug awareness organization, of, among other things, using threats of violence to silence its critics. (RT, Vol. IX, pp. 2/23-4/2; State Bar Exhibit 1, pp. 730-736.)[7]

In April 1997, Applicant authored an article entitled "The Jungle." Applicant admitted that the lies in the article may have damaged Congressman Bill Thomas' reputation and caused him pain and humiliation. (State Bar Exhibit 1, p. 240.)

In April 1997, Applicant wrote "A Fine Mess," about Newt Gingrich and his wife. Applicant acknowledged that the lies in this piece were "exceptionally cruel and unfair." (State Bar Exhibit 1, p. 240.)

The Review Department specifically referenced an untrue article Applicant wrote for *George* in 1998 called "The Vernon Question." In the article, Vernon Jordan, a trusted member of President Clinton's inner circle, is described as "crude," "boorish," and a man with a reputation for "making sexual advances to female dinner partners." He is also accused of being "totally unaware of the issues" relating to the various corporate boards he served on and of being loose with corporate ethics and bending guidelines to boost his income. (Review Department Opinion, p. 4.) Among the more egregious fabrications in the article, Applicant completely invented the following sources and quotes: "I always wear a bra around Jordan, one woman admitted. Otherwise he stares at my tits." "Washington socialites and Democrats, however, have a different nickname for Jordan. They call him 'Pussy Man.'" (RT, Vol. VIII, pp. 52/7-53/8.)

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[7] The organization ultimately filed a lawsuit against Applicant, which resulted in a $25,000 settlement. (State Bar Exhibit 1, pp. 528-529; RT, Vol. III, p. 84/2-6.)

5. Applicant's Serial Fabrications Caused Extensive Harm.

Applicant represented that his fabrications "hurt a lot of people, from the people I lied about, to my editors, to my colleagues, to my readers, and to the community of journalists. It hurt my parents, my brother, and my girlfriend at the time." Clearly, among others, he betrayed the readers, the people he wrote about, his close friends and family, and the institution of journalism. (State Bar Exhibit 1, pp. 31, 238-244; RT, Vol. IX, p. 30/14-18.)

Richard Bradley,[8] the former executive editor at *George* magazine at the time Applicant was employed at *TNR*, testified that Applicant's fabrications "required us (*George* magazine) to conduct a lot of work to try to determine what was true and what was not in Stephen's stories. It was harmful to the reputation of the magazine. In a less tangible way, it was demoralizing to the people who worked at the magazine. It hurt our professional reputations, and it was a disillusioning experience." (RT, Vol. VIII, p. 21/1-11.) He testified that Applicant's articles were damaging to the people he wrote about because he caricatured and mocked them and these perceptions could not be corrected as easily as a factual mistake. (RT, Vol. VIII, p. 31/2-10.)

Bradley further believed that Applicant built a level of trust, "then exploited that trust to repeatedly deceive ... in a way that benefitted his professional status." (RT, Vol. VIII, p. 26/2-5.) In a 2003 article, Bradley summed up his relationship with Applicant as follows:

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[8] Bradley was previously known as Richard Blow before changing his name. (RT, Vol. V, p. 186/13-14; RT, Vol. IX, p. 41/19-20.) Bradley is now the current editor at *Worth*.

> To really understand why the story of Steve Glass still causes such pain, you have to know that making up facts was only part of what Glass did to his colleagues. We opened ourselves up to him, and in turn he probed our minds, pinpointing our vulnerabilities, our vanities, our prejudices. He exploited the worst in us and betrayed the best. And then he just vanished – until now. Now he's back, promoting a tale of fall and redemption....
>
> And this is really the main reason why those of us who worked with Steve find it so hard to forgive him. Instead of using his gifts to try to make the world a better place, Steve mined the crudest raw material of our fallible human natures. And then he put it all on paper, where it could inflict tangible, long-lasting harm on people who hadn't done anything wrong, and ran away.

(State Bar Exhibit 5.)

Charles Lane, who was the editor of *TNR* during the time of Applicant's fabrications, testified about the extensive efforts that had to be made to identify all of the fabrications, including damage assessment, the involvement of *TNR's* attorneys, hiring investigators, and spending weeks conducting an exhaustive review of all of Applicant's articles for the magazine. (RT, Vol. II, pp. 46/12-47/9, 49/24-50/3, 51/12-18, 71/15-23.) *TNR* incurred legal expenses and was exposed to a real reputational risk. There was also an "intangible harm" suffered by people in the offices of *TNR* – "People who had been his close friends, and really trusted him, and taken him under their wing, in many cases, were terribly disappointed and disillusioned, to the point where I think most of them have not spoken with him since then." (RT, Vol. II, pp. 95/17-96/18.) Lane testified that Applicant's fabrications were "a kind of a con" and an "elaborate hoax that he was pulling not only on our readers, but on all the other people who worked at *The New Republic*..." (RT, Vol. II, p. 95/4-16.)

Rolling Stone, *George*, and *Policy Review* did their own investigations and all

were compelled to publish notes explaining their investigation and stating why they determined the articles to be false. (State Bar Exhibit 1, p. 515.)

D.A.R.E. filed a lawsuit against Applicant and *Rolling Stone*. Applicant settled the lawsuit against him for $25,000 and was required to submit a declaration outlining the fabricated portions of the article. (RT, Vol. IX, p. 4/4-19; State Bar Exhibit 1, pp. 49, 728-737.)

Applicant went so far as to involve his own brother in his scheme of fabrications by having him pose as "George Sims," a representative of a fictitious company, in an effort to deceive Charles Lane. (RT, Vol. IX, pp. 61/5-25, 65/2-24.)

6. Applicant's Misconduct Is So Significant, It Is Permanently Memorialized In A National Museum Exhibit Showcasing Journalistic Fraud.

Applicant's conduct clearly tarnished the entire journalism profession. As noted by the Review Department, Applicant's "breaches of journalistic standards were well reported in the news media, and he became an infamous example of an ethical lapse in the field of journalism. His deception even landed him an ignominious place in the 'Newseum,' a museum dedicated to the history of news and journalism located in Washington, D. C." (State Bar Exhibit 8; Review Department Opinion, p. 8.) Applicant is featured in a permanent exhibit there named "Press Scandals Erode Public's Trust." (State Bar Exhibit 8, p. 12.)

The display includes a copy of the fax Applicant created to deceive the fact-checkers at *TNR* concerning the article "Hack Heaven." (State Bar Exhibit 8, pp. 14-15; RT, Vol. II, pp. 106/14-108/7.) Also included is a sign that reads in part: "In the early

1970's, television newsman Walter Cronkite was called 'the most trusted man in America.' But a string of scandals in the latter part of the 20th century and early in the 21st – plagiarisms, fabrication and other ethical lapses – took its toll. In a 2005 poll, just 28 percent of Americans said they had 'a great deal' or 'quite a lot' of confidence in newspaper and television news." (State Bar Exhibit 8, p. 12.)

7. Applicant Failed To Re-Establish Himself In The Journalism Community.

Even though Applicant endeavored to become a journalist, he has never resumed that career and it appears that it would take an extraordinary effort to do so, given his reputation as a known fabricator. Applicant testified before the New York Bar that: "What I did was such a severe breach of journalism rules that I will never be welcomed within journalism and rightly so." (State Bar Exhibit 1, p. 535/11-13.)

Charles Lane testified that Applicant's fabrications are: "very, very famous" because his misconduct "...is one of the instances in which the greatest number of fabricated stories made it into print...." (RT, Vol. II, p. 109/6-10.) Lane further testified that Applicant:

> [H]as shown himself to be flagrantly incapable of producing honest journalism or accurate journalism, and, furthermore, it would be terribly embarrassing, I believe, to any publication that I work for to hire Mr. Glass to work as a journalist, given his notoriety...his record is as having systematically deceived the last publication that he worked for, and all of its readers, having subsequently not come completely clean with us, with them...We talked earlier it was one of the most substantial cases of journalistic fraud in history. I mean, somebody with that on his resume, in my judgment, cannot be hired as a journalist.

(RT, Vol. II, p. 119/2-17.)

Similarly, Richard Bradley testified that he would never hire Applicant as a

journalist because "[o]n a personal level, I wouldn't trust Stephen. On a professional level, Stephen's byline, at this point, comes with so much baggage that any article with his name on it would probably not be considered credible...." (RT, Vol. VIII, p. 32/7-15.)

Even Applicant's own character witness, Martin Peretz, could not state with unconditional affirmation that he would hire Applicant as a journalist. (RT, Vol. II, p. 137/8-15.)

B. Applicant's Conduct Since He Was Exposed Has Not Been Exemplary When Balanced Against The Magnitude Of His Acts Of Deceit.

1. A Summary Of Applicant's Actions Since His Termination At *TNR*.

The severity and scope of Applicant's fraudulent acts of journalistic fabrication are fully set forth in the record. Subsequent to his conduct being discovered in 1998, Applicant undertook the following endeavors, a majority of which appear to support his own self-interests:

- When his conduct was first called into question in 1998, Applicant's immediate response was to attempt to cover up the concerns by engaging in further deception in order to preserve his career and reputation. (See e.g., RT, Vol. II, pp. 26/1-5, 29/4-20; RT, Vol. V, p. 176/6-18; State Bar Exhibit 2; State Bar Exhibit 35.)

- Applicant, through his attorneys, placed the burden on *TNR* to come up with a list of documents that *TNR* believed contained fabricated information and then Applicant would only stipulate to whether *TNR's* findings were correct or incorrect. He essentially left *TNR* on its own to discover the errors. (RT, Vol. II, p. 77/2-12.)

- Applicant began therapy in 1998. As of 2005, Applicant was still in the process of understanding and accepting responsibility for, and dealing with, his past misconduct. (Review Department Opinion, p. 9; Review Department Dissenting Opinion, p. 19; RT, Vol. VIII, p. 148/9-22.)

- Applicant continued his law school program at Georgetown, which he began in 1997, and graduated in 2000. (RT, Vol. IX, pp. 33/21-34/14.)

- Applicant held various law related jobs between 1998 and 2000. (RT, Vol. IX, p. 72/3-20)

- In 2001, Applicant entered into an agreement with Simon & Schuster to publish a novel based on his fraudulent conduct, ultimately receiving a $175,000 advance and an additional $15,000 in subsidiary rights. (RT, Vol. IX, pp. 85/12-86/3.)

- In 2003, Applicant's novel was published and he appeared on "60 Minutes" to promote and publicize the novel. (RT, Vol. IX, p. 86/12-21.)

- Applicant applied to the New York Bar in 2002. He withdrew his application in 2004 when he became aware that the New York Bar was going to deny him admission based on moral character grounds. (State Bar Exhibit 1, p. 7/26-27.)

- Applicant wrote over 100 apology letters, with a vast majority of those letters being written in 2002-2004 (see RT, Vol. VIII, p. 24/11-19), four to six years after he had been exposed as a fraud, and during the pendency of his New York Bar application. (State Bar Exhibit 1, p. 7/26-27.)

- In or around 2003, Applicant made a total of three volunteer speaking appearances: (1) Columbia University's Journalism School; (2) George Washington University; and (3) CORO, an organization that trains high school kids in civic responsibilities. (RT, Vol. IX, pp. 203/9-24.)

- In or around 2003 and 2004, Applicant engaged in limited community service, volunteering in bingo at a senior center in New York one day a week for over a year. (Review Department Opinion, pp. 11-12; State Bar Exhibit 1, p. 544; RT, Vol. IX, pp. 204/13-205/25.)

- In 2004, Applicant moved to California. He began working as a law clerk at a California law firm. (State Bar Exhibit 1, p. 6.) He volunteered for a charitable food delivery service, but could not continue due to work demands. (Review Department Opinion, pp. 11-12; RT, Vol. IX, pp. 204/13-205/25.)

- Applicant took and passed the California Bar Examination, and in 2007 he submitted his Moral Character Application. (Review Department Opinion,

p. 3.)

What's clearly lacking from this record was duly noted in a 2003 article written by Richard Bradley, one of the editors from *George* who was deceived by Applicant:

> What would it take for me to forgive Steve Glass? Nothing so saintly, actually. He'll probably need to do more than just write me a letter. He could start by actually apologizing to everyone who was ever hurt by what he wrote and what he did – individually. In person, if possible. Maybe he could pay back the money he accepted from magazines for the stories he made up. By defrauding his employers, Glass essentially stole that money – and with his book, he's compounding the original theft. He could donate some cash to the Columbia School of Journalism for a course or a lecture series on journalistic ethics. To say there is no point in even trying seems terribly convenient.

(State Bar Exhibit 5, p. 6.)

2. Applicant Failed To Publicly Identify All Of The Fabricated Articles He Authored At *TNR* And Those Articles Continue To Remain In The Public Domain.

Applicant failed to formally disclose to the editors of *TNR* at least eight fabricated articles, and to this day, those fabricated articles remain in the public domain. Consequently, in 1998, *TNR* reported to the public that only 27 articles authored by Applicant were fabricated. (RT, Vol. II, pp. 89/11-90/4.)

In the days immediately after Applicant was fired from *TNR*, Charles Lane and his staff spent weeks going through all of Applicant's articles in an effort to determine whether those articles contained lies. (RT, Vol. II, p. 71/15-23.) Although Applicant's assistance was needed, Applicant insisted *TNR* communicate only with Applicant's attorney. *TNR* was forced to compile a list of articles, which it believed contained fabrications, and then present the list to Applicant's attorney. Applicant would, in turn,

review the list and say "yes" or "no" as to whether an article included false information. (RT, Vol. II, pp. 76/20-77/25, 82/2-25.) Applicant did not provide any information to *TNR* that was not included on the list or otherwise assist *TNR* to identify the specific fabrications. (RT, Vol. II, p. 115/2-14.) If an article was not on the list, *TNR* was on its own. (RT, Vol. II, p. 77/8-9.)

On June 1, 1998, *TNR* published a retraction note, identifying four articles it believed were fabricated. On June 29, 1998, it published a second note identifying 23 additional articles. (State Bar Exhibit 1, Subsection 1, pp. 84-85.) The retractions were, however, incomplete. Applicant failed to identify a total of eight other fabricated articles. Four of those articles were on the list he reviewed but were not identified by Applicant as containing fabrications. (RT, Vol. II, pp. 82/11-83/5, 92/21-93/25; State Bar Exhibit 2.) Applicant was aware of the retraction notes *TNR* published and had seen them at times. Nonetheless, he testified that he had not reviewed them carefully until these proceedings, and, had he done so, he would have known they were incomplete. (RT, Vol. VII, pp. 113/22-114/4, 118/19-119/3.)

Susan Bloch, Applicant's own character witness, testified that: "I would be troubled if there were information that Steve knew and should have disclosed, and didn't. That would trouble me a lot." (RT, Vol. I, pp. 130/21-131/4.)

Lane was shocked when he learned for the first time during the course of these proceedings that Applicant never disclosed all of his fabrications to *TNR*. What shocked him the most was that the "Deliverance" article – and statement that Applicant had been called a "kike" by a Gateway customer service representative – had not previously been

identified as fabricated. (RT, Vol. II, pp. 91/11-94/10.)

3. Applicant Failed To Publicly Identify His Fabrications In Articles Published By *George* Magazine And One Article Published By *Harper's* Magazine.

Richard Bradley, the then-editor of *George*, spoke with Applicant regarding the three articles he had authored for *George* and told him it would be "enormously helpful" if Applicant could help him determine what information was false. Applicant told Bradley that he was not psychologically capable at that time of helping. (RT, Vol. VIII, pp. 11/19-12/9.) Applicant never contacted Bradley at a future time to identify the fabrications in any of the articles. (RT, Vol. VIII, p. 19/5-8.) *George* subsequently published a retraction note identifying that Applicant authored the article "The Vernon Question." The magazine could only state that the article was generally fabricated because it could not identify the specific falsehoods. As with the *TNR* notes, Applicant only carefully read the *George* note for the first time in preparation for the State Bar of California moral character proceedings. (RT, Vol. VII, pp. 131/12-132/18.)

Similarly, *Harper's* sought Applicant's assistance in identifying fabrications in the article "Prophets and Losses," as it wanted to disclose any fabrications to its readers. (Harrison Stipulation, pp. 1/25-2/4.) Applicant's attorney told Colin Harrison, *Harper's* editor, that Applicant was in a difficult situation and under great pressure. (Harrison Stipulation, p. 2/8-9.) Neither Applicant nor Applicant's attorney ever contacted Harrison and *Harper's* was never able to identify the article as fabricated. (Harrison Stipulation, p. 2/11-17.) The falsehoods contained in the article – damaging racial stereotypes of African Americans as ignorant, superstitious, and financially irresponsible

– remain in the public domain today. Richard Bradley testified that "...if stereotypes or portrayals were damaging, and you didn't have access to the truth of the process of the writing and editing of the articles, those stereotypes might linger." (RT, Vol. VIII, pp. 31/16-32/2.)

As conceded by the Review Department, Applicant's initial efforts to correct the record were inadequate at best, and to date, Applicant has still not set the record straight with all of the magazines. (Review Department Opinion, p. 6.) Applicant proffered the explanation that he was emotionally not up to the task at the time. (Review Department Opinion, p. 6.) However, in the period immediately following the scandal he was able to complete law school at Georgetown, pass the New York Bar Examination, work in various law clerk positions, sign a contract with Simon & Schuster to author a novel that resulted in a six-figure advance, write the novel, and submit it for publication. In any event, his excuse of acute mental anguish in 1998 does not excuse him from failing to follow through with the magazines at a later date. (Review Department Opinion, p. 6.)

4. Applicant Benefitted Monetarily From His Acts Of Deception And Made No Effort To Voluntarily Disgorge Those Profits.

In 2001, Applicant entered into an agreement with Simon & Schuster to publish a novel based on his fraudulent conduct, receiving a $175,000 advance and entitlement to a share of the royalties and a percentage of the secondary rights to his work.[9] (RT, Vol. IX, pp. 83/6-11, 85/19-25.) The novel, *The Fabulist*, was published in 2003 and was inspired by Applicant's lies and acts of deceit as a journalist.

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[9] Including royalties, Applicant received a total of $190,000 less approximately 25% in agent's fees. (RT, Vol. IX, pp. 83/6-11, 85/19-25.)

No evidence was presented that Applicant ever donated any of the money to a program dedicated to journalistic ethics or donated a substantial portion of that money to any charitable cause. To the contrary, he used the money for his own personal and financial gain. (RT, Vol. IX, pp. 86/5-87/9.)

Richard Bradley testified that it would have been important for Applicant to consider reimbursing *George* for the articles he was paid to write:

> ... I thought that that deception that Stephen practiced was a breach of contract, and I thought that addressing the acceptance of monies for fraudulent work was wrong, and so I thought that – it was my opinion that part of Stephen's process of addressing what had happened might involve returning those monies or donating them to some worthy cause.

(RT, Vol. VIII, pp. 40/11-41/10.)

Charles Lane testified that at no time did Applicant offer to pay the legal expenses incurred by *TNR* or return the salary he received. (RT, Vol. p. 96/19-25.)[10]

5. The Timing Of Applicant's Apology Letters Coincide With His Pending New York Bar Application And The Publication Of His Novel.

A majority of the Review Department found in support of Applicant's rehabilitation that in 2001 and continuing through 2004, Applicant began apologizing privately by writing over 100 apology letters to those he had harmed. (Review Department Opinion, p. 7.) A vast majority of the apology letters were written between

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[10] Applicant testified that in or about 2007 or 2008, when he "reconnected" with Martin Peretz at an informal event, he offered to return his prior salary. (RT, Vol. IX, p. 41/1-9.) Notably, Applicant was making a considerable amount of money at time, earning $154,000 a year working as a law clerk at a California Law Firm. (RT, Vol. IX, p. 162/7-8.) Also, coincidentally enough, his California Bar application was pending. Similar offers, however, were not extended to the other magazines. (RT, Vol. IX, pp. 41/4-43/7.)

2002-2004, four to six years after he was terminated from *TNR*, and just on the eve of the release of his novel and while the State Bar of New York was evaluating his moral character application. (RT, Vol. VIII, p. 47/8-20; RT, Vol. IV, pp. 112/16-113/1.)

In May 2003, Applicant's girlfriend contacted Richard Bradley to see if Bradley would meet with Applicant. At their meeting, Applicant apologized, but Bradley found the apology unconvincing and the conversation frustrating. (RT, Vol. VIII, p. 24/4-6.) He felt Applicant's explanation for his conduct was superficial and that the apology was motivated by self-interest:

> ... [T]he timing of the apology struck me as self-interested. It came just a short time, days or a week or so, before the publication of Stephen's novel, The Fabulist, and I was concerned that this apology, coming when it did, could be considered a kind of pre-emptive strike on Stephen's part, that he was trying to soften or negate potential criticism from some of the editors with whom he had most closely worked, and who had been most affected by his earlier fabrications...

(RT, Vol. VIII, p. 24/11-19.)

6. Applicant's Misconduct Prevented His Admission To The New York Bar And He Withdrew His New York Bar Application After Notice Of An Impending Unfavorable Moral Character Determination.

Applicant took and passed the New York Bar Examination in 2000. In July 2002, he applied for admission to the State Bar of New York. In May 2004, a subcommittee of the New York Bar's Office of the Committee on Character and Fitness commenced a hearing into Applicant's moral character. After the hearing concluded, Applicant became aware that the Committee intended to make an unfavorable moral character determination. On September 22, 2004, Applicant sent a letter to the Committee requesting that he be permitted to withdraw his application. On September 30, 2004, the

Committee confirmed that his application would be put on hold. Applicant did not reapply for admission to the New York Bar and instead moved to California and applied for admission to the California Bar. (State Bar Exhibit 1, pp. 726-727.)

7. Applicant Was Less Than Forthright On His New York Bar Application.

Applicant represented to the New York Bar that: "I worked with all three magazines and other publications where I had written freelance articles to identify which facts were true and which were false in all of my stories, so that they could publish clarifications for their readers." (RT, Vol. II, pp. 114/2-115/14.) Lane, however, testified that the statement was not true:

> Well, he didn't work with us. The effort we went through, over the course of nearly a month, to investigate all those stories would have been unnecessary if he had worked with us, and simply come forward and laid bare everything that was untrue in his stories. Instead, he sought legal counsel and, in effect, clammed up.
>
> As I believe I testified earlier, when I read the statement that he's laid out in this proceeding, I discovered that, even to this day, he has not – or had not – come clean about everything. So I'm a little amazed to see that he was representing to somebody that he worked with *The New Republic* to separate fact from fiction in his articles. That was definitely not my experience.

(RT, Vol. II, pp. 114/2-115/14.)

Applicant only recently conceded during these proceedings, that it was inaccurate to say on his New York Bar application that he worked with the magazines (*TNR, George, and Harper's)* to identify what was true and what was false in the articles published. Applicant testified that he should have stated that he only "offered" to work with the magazines. (RT, Vol. VI, p. 32/12-25; RT, VII, pp. 100/20-101/21; RT, VII, pp.

133/10-135/1.) And by "offered" to work, he meant through counsel. (RT, Vol. VI, p. 32/12-25.) However, Applicant could not confirm that such an offer was actually extended, and could only testify that he believed his attorney had made the offer. (RT, Vol. VII, pp. 133/10-135/1.)

In an October 22, 2003 letter to the Committee on Character and Fitness for the New York Bar, Applicant represented that he went through all of his articles to identify those in which potentially harmful, false statements were made about actual persons and actual organizations. (State Bar Exhibit 1, p. 236.) Absent from the list was the article "Deliverance," a particularly malicious article that attributed anti-semitic remarks to Gateway, an actual organization, and garnered an apology from the company CEO. Applicant admitted that his article could have harmed the company but he did not think to include it in his response to the New York Bar. (RT, Vol. VII, pp. 135/11-137/14.)

VI. ARGUMENT

A. In Light Of The Uncontroverted Evidence Of Applicant's Massive Fraud, Applicant Failed To Establish The High Level Of Rehabilitation Necessary To Overcome His Prior Misconduct, Consistent With This Court's Mandates In *In Re Menna* And *In Re Gossage*.

The amount of rehabilitative evidence required to justify admission varies according to the seriousness of the misconduct at issue. (*In re Menna, supra,* 11 Cal.4th at p. 987.) An applicant's required showing of rehabilitation increases with the severity and scope of the underlying conduct. (*In re Gossage, supra*, 23 Cal.4th at p. 1096 [only "compelling showing of reform" will suffice in light of the egregiousness of the misconduct].) Where, as here, the misconduct is extremely egregious, Applicant must

demonstrate exemplary conduct over a sustained period of time and make a compelling showing of reform.

Applicant apparently does not understand this concept, as he argued before the State Bar Court that his past misconduct is irrelevant to his claim of present good moral character. (Applicant's Responsive Brief on Review, p. 20.)[11] This argument is incorrect and inconsistent with Supreme Court decisions cited above emphasizing that an applicant's past behavior is crucial in evaluating evidence offered to prove moral reform.

Applicant characterizes his past acts as "deficient" or "very deficient." (Applicant's Responsive Brief on Review, pp. 20-21.) This is a gross understatement. Applicant is by all accounts the perpetrator of one of the greatest journalistic frauds in history. Applicant used the power of his pen to promote racial stereotypes and assassinate the reputations of well-known and well-respected public figures and companies; his lies penetrated deeply and impacted the magazines he worked for, his editors, colleagues, family, and friends. But the carnage didn't end there – it spilled over and tainted the entire journalism community. Readers who believed in the truthfulness of Applicant's articles lost faith in the entire news media.

Given this back drop, Applicant has a heavy burden to prove rehabilitation through exemplary conduct over a sustained and meaningful period of time. Applicant fell short in his endeavor however, and failed to demonstrate this necessary requirement for certification to admission to practice law in California.

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[11] Specifically Applicant states: "[I]t is important to stress that the focus of this proceeding is on Mr. Glass's present moral character, not his moral character of 12 years ago, when he was a journalist." (Applicant's Responsive Brief on Review, p. 20/20-22.)

1. No Sustained Period of Time to Demonstrate Reform.

For purposes of evaluating the appropriate period of rehabilitation, the relevant time frame runs from the last act of misconduct to the time when the applicant sought a moral character determination. (*In re Gossage, supra*, 23 Cal.4th at p. 1099.) This is because good conduct is generally expected from someone who has applied for admission to practice law, and whose character is under scrutiny by the State Bar. (*Ibid.*)

Here, assuming Applicant's last act of misconduct was in 2003 (when he made misrepresentations on his New York Bar application), only four years had elapsed before he applied for moral character in California in 2007.[12] In light of the gravity and totality of his bad acts, this time period is insufficient. (See e.g., *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061,1071-1072 [269 Cal.Rptr. 749, 791 P.2d 319][emphasizing a nine-and-a-half year period that elapsed since applicant wrongfully evaded payment of a civil judgment]; *Martin B. v. Committee of Bar Examiners* (1983) 33 Cal.3d 717, 726 [190 Cal.Rptr. 610, 661 P.2d 160] [highlighting passage of nine-year unblemished record after applicant was accused of rape as a Marine]; *Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 742[159 Cal.Rptr. 848, 602 P.2d 768] [stressing importance of six-year period in which no complaints were lodged against applicant's employment business after his business license was temporarily suspended by an administrative agency]; *In re Menna, supra,* 11 Cal.4th at p. 989 [holding that applicant's five and one-half years of unsupervised good

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[12] Arguably, Applicant should not get rehabilitation credit during the period of time he was under scrutiny by the New York Bar (July 2002-September 2004). (State Bar Exhibit 1, pp. 726-727.) Using this calculation Applicant would only have approximately three years of reform before filing his moral character application in California in 2007.

conduct not a sufficient period of time to demonstrate genuine reform considering prior misconduct].)

2. No Compelling Showing of Exemplary Conduct.

Further, the Committee argues that Applicant not only failed to demonstrate rehabilitation over a sustained period of time, but he also failed to demonstrate a compelling showing of exemplary conduct. While his conduct may have been commendable (he did work for a law firm, he did do limited community service, and he did seek medical help and therapy for his issues), it does not rise to the level of exemplary, and in many circumstances it arguably falls below acceptable standards. (See *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 941[264 Cal.Rptr. 361, 782 P.2d 602] [being a model prisoner, getting married, or holding a steady job fails to indicate the type of rehabilitation normally expected in a case where serious or criminal behavior is at issue, and applicant's post-incarceration activities constituted only "what is ordinarily expected as a member of society"].)

a. Applicant Did Not Disgorge the Profits from His Course of Serial Fraud.

Applicant profited through his wrongdoing and "profited handsomely" when he received approximately $190,000 for writing a novel about his fraudulent conduct. While certainly not illegal, keeping the money for personal gain appears inconsistent with the notion of moral rehabilitation. Applicant could have, and the Committee believes should have, used the money to correct his wrongs, to pay back the victims of his lies, or to fund ethics programs benefiting the journalism profession which he damaged so greatly. It

wasn't until roughly 2007 or 2008, almost ten years after the scandal broke, that Applicant claims he offered to return money to Martin Peretz when he ran into him at an informal event. (RT, Vol. IX, p. 41/1-9.) Applicant never made a formal offer to *TNR* and never offered to make amends to the other magazines, their editors, or employees.

b. Applicant Omitted Information and Made Misrepresentations on His 2003 New York Bar Application and Declaration.

The Review Department conceded that Applicant did not disclose to the New York Bar the full number of articles he fabricated. The Review Department also found that Applicant mischaracterized the degree to which he cooperated with the magazines to indentify the fabricated materials. (Review Department Opinion, p. 8.)

i. Applicant failed to include a complete list of his fabricated works.

Applicant filed an incomplete and inaccurate application with the New York Bar. In 2003, Applicant submitted a declaration to the New York State Bar as part of the admissions process identifying 23 fabricated articles that he believed had caused harmed to real persons and real organizations. (State Bar Exhibit 1, p. 236.) This number was woefully less than the number of fraudulent articles he actually authored. He later testified at the New York moral character hearing that he had fabricated between 30 and 40 articles. He explained that he identified only 23 articles because the remaining articles were about fictitious individuals and entities that could not have been harmed by his falsehoods. (Review Department Opinion, p. 8.) However, even this statement to the New York Bar was misleading as Applicant knowingly did not disclose the existence of the article "Deliverance," which contained false statements about an actual company.

(RT, Vol. VII, pp. 135/11-137/14.) There is no finding by the Review Department that the omissions were the product of an innocent mistake.

At a time when he was under scrutiny by the New York Bar, Applicant should have been "scrupulously honest" and more than forthcoming with information regarding the extent of his misconduct. (See Review Department Dissenting Opinion, p. 18.) In an abundance of caution, he should have opted for full disclosure of all fabricated articles. However, Applicant again exhibited his self-serving ways and chose to disclose the existence of roughly 20 articles, when in fact the number was closer to 40. As duly noted by the dissenting judge, "[H]e presented an inaccurate application because it benefitted him – the same behavior as his earlier misconduct." (Review Department Dissenting Opinion, p. 18.)

Applicant's failure to provide this information is clearly not indicative of good moral character becoming of an attorney in this state. As recognized by this Court: "Whether it caused by intentional concealment, reckless disregard for the truth, or an unreasonable refusal to perceive the need for disclosure, such an omission is itself strong evidence that the applicant lacks the 'integrity' and/or 'intellectual discernment' required to be an attorney." (*Gossage, supra,* 23 Cal.4th at p. 1102.)

ii. Applicant mischaracterized the assistance he gave to the magazines after the scandal broke.

As a further example of Applicant's persistent refusal or inability to perceive the need for candid disclosure, in 2010, Applicant admitted for the first time that he did not work with the magazines (*TNR, George, and Harper's*) to identify what was true and

what was false in the articles published. Applicant testified before the State Bar Court that his statements to the New York Bar were untrue and that he should have stated that he only "offered" to work with the magazines. (RT, Vol. VI, p. 32/12-25; RT, VII, pp. 100/20-101/21; RT, VII, pp. 133/10-135/1.)

c. Applicant's Apologies in 2003 Appeared Insincere and Self-Serving.

The Review Department gave considerable weight to the fact that Applicant wrote over 100 apology letters, ostensibly seeking to make amends. (Review Department Opinion, p. 14.) The Review Department found his attempts to be genuine, focusing on the fact that that the letters were personalized and not simply computer generated form-letters. (Review Department Opinion, p. 7.) The Review Department missed the point however. The timing of the letters was suspect. The majority of the letters were sent between 2002 and 2004, when Applicant was under consideration for admission to the State Bar of New York. (Review Department Opinion, p. 7.) Also during this time, Applicant's novel *The Fabulist* was being published. More importantly, Applicant waited several years after the misconduct occurred to write these letters. One trying to demonstrate exemplary conduct arguably would have rendered his apologies in a timelier manner. To many, this delayed remorse seemed distant and contrived. One witness testified that he felt the timing of the apology struck him as "self-interested" as it came just a shortly before the publication of his novel. (RT, Vol. VIII, p. 24/11-19).

In the attorney discipline context, this Court has held that: "[E]xpressing remorse for one's misconduct is an elementary moral precept which, standing alone, deserves no special consideration in determining the appropriate discipline." (*Hipolito v. State Bar*

(1989) 48 Cal.3d 621, 627, fn. 2 [257 Cal.Rptr. 331, 770 P.2d 743].) To be given credit for mitigation, objective steps must be taken designed to "timely atone" for any consequences of the member's misconduct. (Standards of Attorney Sanctions for Professional Misconduct, std. 1.2 (e)(vii).) This standard is equally applicable in a moral character proceeding. (See *In re Menna, supra,* 11 Cal.4th at pp. 990-991[remorse alone does not demonstrate rehabilitation; "a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is … fit to practice law...."].)

d. Applicant's Appearance on "60 Minutes" Also Appears Self-Serving.

Applicant testified that in 2003 he decided to make an appearance on the television news-show "60 Minutes" because: "I had wanted an opportunity to talk somewhat publicly, or talk publicly about what I had done, and I wanted to make that clear that I had lied, and make it known in a very public way, since what I had done was very public…" (RT, Vol. IV, p. 83/3-6.) The Review Department majority similarly noted that: "Applicant appeared on "60 Minutes" in 2003 to publicly discuss his fabrications. He recounted his history as a journalist and detailed his very public outing as a fraud. He admitted his conduct was wrong and acknowledged that he hurt other people." (Review Department Opinion, p. 7.)

Yet again, the Review Department failed to appreciate the suspect timing of this event. Given Applicant's notoriety at the time and the media attention the scandal brought, if he truly wanted to publicly acknowledge his wrongdoings, this interview

appearance could have taken place in 1998, 1999, 2000, 2001, or 2002 – closer in proximity to the actual misconduct. However, the interview took place in 2003, on the eve of the release of Applicant's novel *The Fabulist* and at the behest of Applicant's publisher Simon & Schuster.[13] (RT, Vol. VI, pp. 83/21-25-84/1-16.) Once more, Applicant's efforts appear to be more self-serving in nature, than a matter of rehabilitation and model conduct.

e. Applicant's Own Therapist Admitted He Was Still in the Process of Understanding and Accepting His Past Misconduct.

The Review Department gave substantial weight to Applicant's dedication to therapy as evidence of rehabilitation, noting that he began seeing a therapist shortly after his departure from *TNR* in 1998 and has continued in therapy since. (Review Department Opinion, pp. 9-11.) Applicant testified that his therapy has been an essential part of his recovery plan, helping him to curb his desires to lie and to "gain[ ] insight into his feelings of gross inadequacy and a self-destructive need for approval as a result of extreme parental pressures to excel." (Review Department Opinion, pp. 9-10.)

In *In re Menna* this Court found that while therapeutic efforts are laudable, they are somewhat mitigated by the personal benefit an applicant receives in maintaining his

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[13] Applicant testified that he wrote *The Fabulist* as a "therapeutic effort to come to understand some of the emotional truth about what [he] has done..." (RT, Vol., IX, pp. 92/22-93/1.) He also testified that he wrote *The Fabulist* as a "cautionary tale that would be helpful to journalism students..." (RT, Vol. IX, p. 97/1-6.) However, *The Fabulist* is a fictional story, where Applicant plays the protagonist. If Applicant's novel was truly a cathartic effort and he genuinely wanted to tell the truth and relay to journalist students the importance of ethics, Applicant could have written a real-life account of events that actually transpired. Instead, his fictionalized version, gave him the opportunity to continue to concoct new stories and invent new tales – simply perpetuating his talent for creating fact out of fiction.

own recovery. (*In re Menna, supra,* 11 Cal.4th p. 990 [applicant's participation in Gamblers Anonymous commendable, but without giving back to larger community, it alone did not establish rehabilitation].) The Review Department failed to diminish the amount of weight given to Applicant's therapy based on the fact that it resulted in minimal community outreach, and primarily aided in Applicant's own recovery efforts.

Moreover, the record clearly indicates that despite his extensive therapy, Applicant continued to engage in less than exemplary conduct. In 2003 he made multiple misrepresentations to the New York Bar. Further, it wasn't until 2009, during the course of these California moral character proceedings that Applicant finally disclosed the full list of all of his fabricated articles. And even to date, he has still never formally contacted most of the magazines to set the record straight with them as to the complete list of fabrications.

What is abundantly apparent is that Applicant's recovery process is still on-going. Even as late as 2005, his own therapist acknowledged that Applicant was "still in the process of understanding and accepting his past misconduct." (Review Department Dissenting Opinion, pp. 18-19.)

Applicant applied for admission to the State Bar of California just two years later in 2007. If the period of rehabilitation is measured from that date, at is should be, then at this juncture, Applicant simply has not shown rehabilitative efforts of an exemplary nature over a sustained period of time.

f. Character References Are Not Enough.

"Character testimony, however laudatory, does not alone establish the requisite

good moral character" necessary for admission to practice law in California. (*Seide v. Committee of Bar Examiners, supra,* 49 Cal.3d at p. 939.)

The State Bar Court gave great weight to Applicant's character witnesses, finding them to be "outstanding." (Review Department Opinion, p. 12.) In the same breath, the Court gave little weight to the Committee's witnesses, including Applicant's former editors, finding that they had had very little contact with Applicant over the past ten years. (Review Department Opinion, p. 13.) The State Bar Court's assessment of weight in this regard is simply wrong.

The Committee's witnesses were victims of Applicant's lies and frauds; individuals who could intimately evaluate the long-lasting impact of Applicant's bad behavior. Charles Lane testified about Applicant's present reputation for dishonesty in journalism, his continuing failure to publicly disclose eight of the fabricated articles published by *TNR*, the financial and reputational harm caused to *TNR*, and Applicant's failure to make amends for that harm.

Richard Bradley testified about Applicant's present reputation for dishonesty in journalism, his continuing failure to publicly disclose any of the articles he fabricated for *George*, his insincere apology, his failure to correct the harm likely caused by the false racial stereotypes in his articles, and his failure to either make restitution of the monies he was paid by *George*, or to donate that money to charity.

And finally Joseph Landau testified about Applicant's lies at *TNR* and the inadequate apology letter he received from Applicant.

These witnesses and their testimony are entitled to greater weight.

Moreover, while some weight is rightly accorded to Applicant's witnesses, the State Bar Court overlooked the fact that none of Applicant's character witnesses knew the full nature and extent of his lies and the harm he caused to his victims. Nor did they know in detail whether Applicant had made amends to the people and organizations he harmed. Notably, no one was aware of the full list of fabricated articles since Applicant only disclosed it for the first time during these proceedings.

Curiously, Applicant did not call his parents or his brother to testify as to his reformed nature.

g. Applicant Failed to Make Amends to the Journalism Community, to which He Brought Shame and Dishonor.

Although there is no licensing requirement in journalism, by all accounts, and even by his own admission, Applicant was essentially "disbarred" from that profession. Since his abrupt departure, Applicant has not tried to seek redemption and make amends by giving back to the community he hurt. The comparison to *In re Menna* is striking. In I*n re Menna*, a New Jersey attorney was permanently disbarred in that state based on numerous acts of serious and criminal misconduct. (*In re Menna, supra,* 11 Cal.4th at p. 980.) The attorney then sought admission to practice law in California. In denying his petition, this Court found that his five-and-a-half years of unsupervised good conduct, therapeutic efforts at curbing his addictions, genuine remorse, and community service were insufficient to overcome his prior bad acts:

> His previous misconduct was sufficiently egregious to warrant the ultimate sanction of permanent disbarment in New Jersey. It is not unreasonable, therefore, to require a truly compelling demonstration of moral rehabilitation as a condition of his admission to the bar of [California], i.e.,

> 'overwhelming[] proof of reform ... which we could with confidence lay before the world in justification of a judgment again installing him in the profession ...' (Citation.) The record evidence does not satisfy this standard.

(*In re Menna* at p. 989.)

This Court further emphasized that: "[I]n our view ... the record [does not] show applicant has engaged in truly exemplary conduct in the sense of returning something to the community he betrayed." (*In re Menna, supra,* 11 Cal.4th at p. 990.) "[I]f applicant is committed to assisting those who 'need help in the legal system' opportunities are available such as providing *pro bono* or volunteer work as well as other non-legal means of contributing as a 'productive member of society.'" (*In re Menna* at p. 991.)

Here, if Applicant were truly dedicated to giving back to the journalism community, he could have contributed to charitable causes or made repeated and consistent appearances to talk about journalistic ethics and professional responsibilities; however his mere showing of three appearances since 1998 is far from exemplary. Applicant has not returned anything to the profession he betrayed.

B. Given The Serious Nature Of Applicant's Misconduct, The State Bar Court Erred In Resolving All Reasonable Doubts About Applicant's Rehabilitation In His Favor.

The Review Department resolved all reasonable doubts about Applicant's rehabilitation in his favor and gave him the benefit of any conflicting but equally reasonable inferences flowing from the evidence. (Review Department Opinion, p. 15.) The Review Department further found that the Committee had been "loath to apply these inferences in analyzing Glass's evidence of rehabilitation" because the Committee

"allowed itself to be carried away by the distant tide of [Glass's] earlier misconduct. (Citation)." (Review Department Opinion, p. 15.)

Although historically in moral character proceedings all reasonable doubts have been resolved in an applicant's favor, in *In re Menna* this Court held that where an applicant had previously been disbarred in another state, the applicant was not entitled to the benefit of the doubt if equally reasonable inferences could be drawn from a proven fact. (*In re Menna, supra,* 11 Cal.4th at p. 986.) Five years later, in *In re Gossage*, this Court further explained:

> [The applicant's] heavy burden [of moral rehabilitation] is commensurate with the gravity of his crimes. As ... suggested by the Committee, similar considerations affect the manner in which the evidence is weighed in determining whether the requisite showing of rehabilitation has been made. (Citations). Where serious or criminal misconduct is involved, positive inferences about the applicant's moral character are more difficult to draw, and negative character inferences are stronger and more reasonable. Likewise, numerous illegal and bad acts committed by the applicant cannot reasonably be viewed each in isolation, and instead suggest a pattern of anti-social behavior casting doubt on his moral character.

(*In re Gossage, supra,* 23 Cal.4th at p. 1098.)

Applicant undisputedly engaged in massive journalistic fraud over the course of several years. He is a pervasive and documented liar and should not be given the benefit of positive inferences as the Review Department accorded him in determining his rehabilitative efforts. Rather, given his serious misconduct, negative inferences should have been given stronger and more reasonable weight.

Applying the correct standard would, in all likelihood, have affected the State Bar Court's conclusions with respect to the sufficiency of the period of Applicant's

exemplary conduct, his stated motives, his level of assistance in indentifying fabricated articles, his mischaracterizations about the number of articles he fabricated, his misrepresentations to the New York Bar, his failure to disgorge the profits he made from his fraudulent acts, and the timing and sincerity of written apologies and his appearance on "60 Minutes". Had the State Bar Court applied this standard, it should have found that Applicant is not currently fit to practice law.

VII. CONCLUSION

Journalism and law share core fundamental principles – those of common honesty and trust. Having literally shattered these basic values in the journalism profession, without redemption, Applicant now seeks admission to the legal profession in California.

"If [Glass] is admitted to practice law, California courts and others will rely on his word as an officer of the court.... Indeed, if Glass where to fabricate evidence in legal matters as readily and effectively as he falsified material for magazine articles, the harm to the public and the profession would be immeasurable." (Review Department Dissenting Opinion, p. 19.)[14]

The Committee therefore respectfully requests that in light of his serious misconduct and lack of any meaningful and sustained rehabilitation, this Court should set aside the Decision of the State Bar Court, and decline to certify Stephen Randall Glass as

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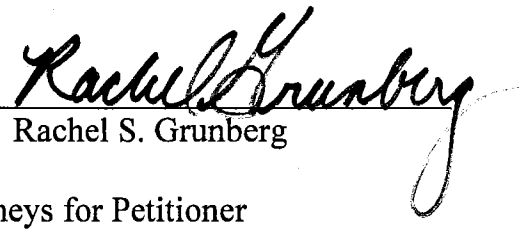
[14] In California, the duties of an attorney include, among other things: "maintaining the causes confided to him or her [by] means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law." (Bus. & Prof. Code, § 6068, subd. (d).)

an attorney eligible to practice law in this state.

Dated: September 12, 2011

Respectfully submitted,

STARR BABCOCK
RICHARD J. ZANASSI
RACHEL S. GRUNBERG

By: 
Rachel S. Grunberg

Attorneys for Petitioner
The Committee of Bar Examiners of
The State Bar of California

WORD COUNT CERTIFICATE PURSUANT TO CALIFORNIA RULE OF COURT 8.504(d)(1)

I, Joan E. Sundt, state as follows:

I. I am the secretary to counsel for real party of interest The State Bar of California in the above-entitled action.

II. I certify that the word count of the computer software program used to prepare this document is 12,814 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 12, 2011, at San Francisco, California.

Joan E. Sundt