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IN THE
SUPREME COURT OF CALIFORNIA

In the Matter of
STEPHEN RANDALL GLASS,

Applicant for Admission.

AFTER A DECISION BY THE REVIEW DEPARTMENT OF THE STATE BAR COURT OF CALIFORNIA
CASE NO. 09-M-11736

SUPPLEMENTAL BRIEF

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IN THE
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In the Matter of
STEPHEN RANDALL GLASS,

Applicant for Admission.

SUPPLEMENTAL BRIEF

INTRODUCTION

Second chances are an American story. This case is such a story – one of redemption.

Stephen Glass has applied for admission to the California bar. For more than 13 years he has worked diligently to build a good and honest life. His present moral character is outstanding.

But he has had much to overcome. From 1996 to 1998, when Glass was 23 to 25 years old, he committed egregious misconduct, writing 42 fabricated articles for *The New Republic* (*TNR*) and other magazines until his lies were exposed and his journalism career ended. Yet Glass, now age 39, has rehabilitated himself during the past 13 years, successfully negotiating a long and difficult road. The law looks with favor upon bar applicants who redeem

themselves from prior misconduct. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058 (*Pacheco*).)

After a ten-day trial with 27 witnesses and thousands of pages of documentary evidence, the State Bar Court's Hearing Department and Review Department both concluded that Glass has achieved the good moral character required to practice law. The Committee of Bar Examiners (Committee) disagrees. This court will decide.

Key to this court's decision is the truism that reformation is a *state of mind* "which may not be disclosed by any certain or unmistakable outward sign" and "may be difficult to establish affirmatively." (*In re Andreani* (1939) 14 Cal.2d 736, 749 (*Andreani*).) Thus, in a State Bar moral character proceeding, the question of whether the applicant is sufficiently rehabilitated largely turns on the *credibility* of testimony by the applicant and any other witnesses who can attest to the applicant's state of mind. (See *In re Carpenter* (1995) 9 Cal.4th 634, 678 (*Carpenter*) ["a finding as to state of mind depends in turn on a finding as to 'demeanor and credibility'"]; *Andreani, supra,* at p. 749.)

The Committee's arguments as to why Glass supposedly is not sufficiently rehabilitated are rooted in inferences about his state of mind and thus turn on witness credibility. On each point, the State Bar Court hearing judge found Glass's testimony about his moral character and state of mind – as well as corroborating testimony by Glass's witnesses – to be credible. Given the hearing judge's superior position to observe witness demeanor, this court should – as reviewing courts traditionally do – defer to the factfinder's credibility determinations and accept as true the facts as to which the judge found Glass and his witnesses testified credibly. Those facts support Glass's admission.

Glass has made a compelling showing of his rehabilitation – a showing that the Review Department called "overwhelming." (Review Dept. opn. p. 16.) He is deeply remorseful for his misconduct. He has undergone more than a decade of psychotherapy to improve himself. Two prominent psychiatrists who evaluated Glass over hundreds of hours since 2005 have opined that he is fully rehabilitated. He has done exemplary work as a law clerk. He has achieved a stable and fulfilling personal life. He has committed himself to unrelenting honesty. Twenty-two law professors, judges, attorneys, psychotherapists and longtime friends have attested to Glass's good moral character and their confidence that he will not repeat his misconduct.

The Committee's arguments to the contrary wither in the face of the hearing judge's credibility determinations, to which this court should defer. In contrast to the overwhelming evidence that Glass presented to demonstrate his rehabilitation – evidence that the judge found credible – the Committee presented no psychiatric testimony or any other evidence pertaining to Glass's life in recent years. The Committee's five witnesses had no significant contact with Glass since 1998 or 1999 and thus had nothing meaningful to say about whether he is sufficiently rehabilitated today.

Glass has shown himself worthy of membership in the California bar.

THE "SUPPLEMENTAL" NATURE OF THIS BRIEF

The Rules of Court provide that, upon a grant of Supreme Court review in a State Bar moral character proceeding, the applicant may file a "supplemental brief." (Cal. Rules of Court, rule 9.15(a).) The rules do not, however, explain what "supplemental" means here. We take it to mean that, in adjudicating the case on its merits, the court will treat this brief as

"supplemental" to – and thus the court will also consider – the previously-filed petition for review, answer and reply.

Thus, because the previous briefs on the Committee's petition for review set forth the evidence presented to the State Bar Court, we do not fully restate that evidence here. Rather, in the "Statement of Facts and Procedure" section of this brief, we only summarize the evidence; after that, in the "Standard of Review" section, we address the guidelines that govern this court's review of the evidence in adjudicating the merits; and finally, in the "Discussion" section, we analyze the evidence and address the merits in light of the standard of review.

For a fuller recounting of the evidence – which is essential to a fully-informed assessment of Glass's present moral character – we refer the court to Glass's answer to the Committee's petition for review, to which this brief is "supplemental," as well as to Glass's brief in the Review Department.

STATEMENT OF FACTS AND PROCEDURE

A. Glass's misconduct.

In a tale of journalistic misconduct that the Review Department rightly called "staggering" and "appalling" (Review Dept. opn. pp. 4, 5), between July 1996 and May 1998, Glass wrote 42 magazine articles for *TNR*, *Rolling Stone*, *George*, *Harper's* and *Policy Review* that were partially or wholly fabricated. Glass was 23 to 25 years old at the time (he is now age 39). Glass invented sources, events and organizations. He concocted quotes. On several occasions he told mean-spirited and hurtful lies about real people. And he covered his tracks by falsifying notes and documents to mislead editors and fact-checkers. (V/RT 101-146.) Glass does not dispute the nature or extent of

his fabrications, or that his misconduct was gravely wrong. Nor does he dispute that his lies hurt his editors, readers and fellow journalists, the subjects of his stories, and the institution of journalism.

Glass achieved significant journalistic success during those two years. (II/RT 8-15.) In 1998, however, an editor at *TNR*, Charles Lane, received information suggesting one of Glass's articles was entirely false. Lane commenced an investigation, to which Glass responded with more lies – giving Lane fabricated notes and forged documents to support the article, creating bogus voicemail boxes and a phony website, and arranging for his brother to pose as a source when Lane telephoned to verify the story. Lane persisted, however, and eventually Glass confessed. Lane fired him. (II/RT 29-46; V/RT 146-176.)

The magazines were compelled to re-check the accuracy of other articles by Glass and publish retractions. (II/RT 46-53, 71-73; VIII/RT 8-11, 18-19, 21; Exh. 1, pp. 00515-00516.) Glass fully identified his fabrications to *Rolling Stone* and *Policy Review*. (VI/RT 32; IX/RT 45-46; Exh. 1, p. 00392.) With respect to *TNR*, Glass and his counsel and *TNR* and its counsel entered into a joint defense agreement to identify Glass's fabricated *TNR* articles. (VI/RT 14-16.) Glass, however, was too distraught at the time to fully participate in the process, which occurred shortly after his firing. (II/RT 136 [*TNR* owner Martin Peretz's testimony that "Steve was desolated"]; IV/RT 96 [Julie Hilden's testimony that Glass was "depressed and devastated"]; V/RT 176-177, 184 [Glass's testimony that "it was clear to me and to my parents that I was contemplating killing myself"], 189-196; VI/RT 16-22, 25; Exh. E, p. 3 [law school classmate Crispin Rigby's declaration that "Glass looked like he had suffered a mental breakdown"].)

TNR prepared, for Glass to confirm, a list of articles suspected of containing fabrications. Acting through counsel, Glass confirmed 23 articles

– most of the articles on *TNR's* list – as containing fabrications. *TNR* had previously identified four other articles as containing fabrications, for a total of 27. In reviewing the list, however, the distraught Glass omitted to identify four of the suspected articles as containing fabrications.[1/] (See VI/RT 18-19 ["I was not able to focus. . . . [¶] I couldn't even really open the list. I couldn't, like, look through it. I couldn't handle it. I was shaking . . . . I was a mess, and I could barely – I was a wreck."].) Also, Glass did not think to search for other articles that should have been on the list of suspected articles but were not. There were four such articles. Consequently, although *TNR* retracted 27 of Glass's articles as containing fabrications, eight fabricated *TNR* articles were not included in *TNR's* retractions. (II/RT 76-82; V/RT 200-203; VI/RT 14-27; VII/RT 104.)

B. Glass's rehabilitation.

His career in journalism destroyed at the age of 25, ashamed and widely reviled, Glass sought refuge in the study of law at Georgetown University Law Center, where he had enrolled in 1997. (VI/RT 41, 60-61; IX/RT 171-172.) He excelled there. (I/RT 76; II/RT 179.) One of his professors, Susan Bloch, took him under her wing and helped him to secure an internship with a federal district court judge and a post-graduation clerkship with a District of Columbia judge. (I/RT 76-84.) Glass excelled in those positions, too. (VI/RT 68-70.)

Glass also sought psychotherapy, which he continues to this day. He began seeing a psychiatrist in Washington D.C. shortly after his termination. (VI/RT 73-74; IX/RT 81.) He underwent extensive psychoanalysis from 2001

1/ The hearing judge found that none of those four additional articles "contained major fabrications, but rather involved isolated fabricated facts." (Hearing Dept. opn. p. 16, fn. 14.)

to 2004 while living in New York. (VI/RT 78-81; IX/RT 88.) After moving to California in 2004 (VI/RT 80; VII/RT 36), Glass continued his therapy with two local psychiatrists. (IV/RT 47; VI/RT 100-104; VIII/RT 91-92.) Glass's therapy has helped him to develop a higher level of self-understanding and to change for the better. (IX/RT 147.) As Glass told the hearing judge, "my lies . . . were absolutely the worst thing I'd ever done in my life, and they're something I regret greatly and will be, in many ways, defining of my life forever, but in some ways, they also defined my life slightly good, which is that they caused me to change who I was . . . ." (V/RT 38-39.)

From 2001 through 2004, as part of his therapy, Glass wrote approximately 100 letters of apology to his former colleagues and victims of his fabrications. (VI/RT 44-48, 52-53; VIII/RT 47.) Some recipients responded positively; some negatively; some not at all. (VI/RT 52.) At four of the five publications where Glass had fabricated – *TNR, Rolling Stone, Harper's* and *Policy Review* – the magazines' highest-ranking editors have forgiven him. (II/RT 137-138 [*TNR*]; IX/RT 41, 201, 220 [*Rolling Stone*]; Exhibit V [*Harper's*]; IX/RT 46, 214-215 [*Policy Review*].) The editor of *Rolling Stone* even hired Glass to write another article. (IX/RT 41, 201.) The top editor of the fifth publication, *George*, died in 1999. (VIII/RT 3.)

In 2001, Glass began writing a novel, a portion of which was inspired by his history at *TNR*. (VIII/RT 44-45; IX/RT 189-191.) He had discussed the project with his therapists as "a therapeutic effort to come to understand some of the emotional truth about what I had done." (IX/RT 92-93, 96.) Glass also wanted the book to be "a cautionary tale" for aspiring journalists. (IX/RT 97.) The book yielded Glass net income of approximately $140,000 from 2001 to 2004, which he used to support himself and to pay for therapy and legal expenses during those three years. (IX/RT 83-87.) The book was published in April 2003 as *The Fabulist*. (IX/RT 86.) At the same time, Glass appeared

on the television news program *60 Minutes* (IX/RT 86) for the purpose of issuing a public apology, which his psychiatrist had endorsed as "a good idea." (IX/RT 174; see also VI/RT 83-85; IX/RT 174-175.)

In 2002, Glass applied for admission to the New York bar. (VIII/RT 45; Exh. 1, pp. 00182-00204.) His application included a statement that in 1998 he had "worked with" *TNR*, *George*, *Rolling Stone* and other publications "to identify which facts were true and which were false in all of my stories." (*Id.*, p. 00197.) That statement should have been more specific and complete. Glass should have stated that he himself had worked, *or acting through counsel* had *offered* to work, with the publications. (VII/RT 101.) More specifically, Glass and his counsel had worked with *TNR*, where most of his fabricated articles had appeared.[2/] Glass and his counsel had also worked with *Rolling Stone*. In addition, Glass had personally worked with *Policy Review*. (VI/RT 32; IX/RT 45-46, 221-223; Exh. 1, p. 00392.) Glass had instructed his counsel to make offers to work with the remaining two magazines, *George* and *Harper's*; but apparently, unbeknownst to Glass, his counsel may not have completed the task. (VI/RT 31-33; VII/RT 120-134; VIII/RT 19-20; IX/RT 207-208, 212, 239-252; see *post*, pp. 40-41.)

Glass withdrew his New York bar application in 2004 after receiving notice that he would not be admitted. (VI/RT 77-78.)

In 2004, Glass moved to California with attorney/author Julie Hilden, who was pursuing writing opportunities in Los Angeles. Glass and Hilden have been in a long-term relationship for more than a decade. (IV/RT 85-86, 95-96, 104-105; VI/RT 94, 97-98.)

2/ *TNR* published 35 fabricated articles; *George* published three; *Rolling Stone* published two; *Harper's* published one; and *Policy Review* published one. (Exh. 2, pp. 00004-00013.)

In Los Angeles, Glass obtained a position as a law clerk with Carpenter & Zuckerman, now Carpenter, Zuckerman & Rowley (CZ&R), where he is still employed and has thrived. (III/RT 45, 52, 59; VII/RT 39-50.) Six attorneys connected with the firm have attested to Glass's honesty and the high quality of his work. (III/RT 59-61, 66, 70; III/RT 104-105; III/RT 146-151; Exhs. A, B & D.) Partner Paul Zuckerman – who testified that he has worked with Glass five or six days per week, ten to 12 hours per day, for six years – said that Glass is his "absolute best" employee, who "brings an amazing amount of honesty and probity to the job." (III/RT 59, 70.)

C. The State Bar proceedings.

In July 2007, after passing the California bar examination, Glass applied for a moral character determination. (VI/RT 86; Exh. 1.) In February 2009, the Committee denied the application. (See Hearing Dept. opn. p. 1.) Glass sought review in the State Bar Court, and in mid-2010 a ten-day trial was held before the Hearing Department. (See *ibid.*)

During the proceedings, the Committee asked Glass to provide a declaration listing all the articles he had fabricated. (VI/RT 90.) Glass carefully read all his articles and realized that his 1998 identification of fabricated *TNR* articles had been incomplete. (VI/RT 27-28, 90-93.) Consequently, in his declaration, dated August 20, 2009, he gave a full accounting of all 42 articles from all publications, identifying fabrications paragraph by paragraph. (Exh. 2, pp. 00004-00013.)

At the hearing, Glass gave extensive testimony describing his misconduct in 1996-1998 and his life since then. (V/RT 35-203; VI/RT 14-104; VII/RT 36-70, 88-187; VIII/RT 44-74; IX/RT 2-270.) His two California psychiatrists testified that he is now scrupulously honest, is unlikely to revert

to his previous dishonesty, and would be an outstanding attorney. (IV/RT 50-51, 56-57; VIII/RT 105, 148.) He presented written and oral testimony from 20 other witnesses – including three of his law professors, the two judges for whom he worked, *TNR* owner Martin Peretz, and many attorneys and friends who have known him well (some for more than a decade) – all of whom attested to his good moral character, his rehabilitation since 1998, and their belief that he will not repeat his misconduct. (See, e.g., I/RT 85-86 [Professor Susan Bloch]; II/RT 135-136, 157-158 [Martin Peretz]; II/RT 181-182 [Professor Stephen Cohen]; III/RT 13-15 [*New York Times* journalist/author Melanie Thernstrom]; III/RT 66, 70 [attorney Paul Zuckerman]; III/RT 105-107 [attorney Jeffrey McIntyre]; III/RT 128 [attorney Alejandro Blanco]; III/RT 146-148 [attorney Adam Silverstein]; IV/RT 18 [educational software company CEO Lawrence Berger]; IV/RT 115 [attorney/partner Julie Hilden]; Exh. A [attorney Bruce Fishelman]; Exh. B [attorney Kenneth Goldman]; Exh. C [attorney Joanne Mariner]; Exh. D [attorney Jonathan Ritter]; Exh. E [attorney Crispin Rigby]; Exh. H [United States District Court Judge Ricardo Urbina]; Exh. G [District of Columbia Judge A. Franklin Burgess, Jr.]; Exh. I [Professor Jeffrey Bauman] (partial list).)

In contrast, none of the Committee's five witnesses had been in significant contact with Glass after 1998 or 1999. Charles Lane and former *TNR* staff member Joseph Landau had not spoken with Glass since 1998. (II/RT 46; VII/RT 23-24.) A former editor at *George*, Richard Bradley, also had not spoken with Glass since 1998, except for a one-hour meeting over coffee in 2003, which Glass arranged so he could apologize to Bradley in person. (VIII/RT 22-24.) The Committee's other two witnesses – a lawyer for an organization that sued Glass for defamation and settled the case in 1999 (VII/RT 81-84; Exh. 1, p. 00728-00736), and a *Harper's* editor whom Glass had never met (Harrison Stipulation, pp. 1-2; IX/RT 241-242) – did not offer

any opinion on Glass's moral character. Thus, the Committee's witnesses, by their own admission, had no knowledge of Glass's life since 1998 or 1999.

In a decision filed on August 19, 2010, the Hearing Department judge concluded that Glass "currently possesses the good moral character required for admission to the practice of law in the State of California." (Hearing Dept. opn. p. 27.) Because the judge found that Glass had made a prima facie showing of good moral character which the Committee had successfully rebutted (*id.* at pp. 3-18), the pivotal question became whether Glass had demonstrated his *rehabilitation*. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1095-1096 (*Gossage*).) The judge concluded that he had. (Hearing Dept. opn. pp. 25-27.)

The Committee appealed to the Review Department. In an opinion filed July 13, 2011, the Review Department likewise concluded, in a two-to-one decision, that Glass "currently possesses the good moral character required to practice law." (Review Dept. opn. p. 18.) The majority found there is "overwhelming evidence of Glass's reform and rehabilitation" and "he has committed himself to a high standard of honesty and ethical behavior." (*Id.* at pp. 16, 17.) A dissenting judge opined that the evidence "does not demonstrate Glass's complete rehabilitation," "[g]iven the magnitude of his misconduct and his subsequent misrepresentations on his New York Bar application." (Review Dept. dis. opn. p. 19.) This court granted review.

STANDARD OF REVIEW

I.

THIS COURT MUST INDEPENDENTLY EXAMINE AND REWEIGH THE EVIDENCE BUT SHOULD DEFER TO THE HEARING JUDGE'S CREDIBILITY DETERMINATIONS.

Critical to this court's decision is the applicable standard of review – the prism through which the court views the issue of Glass's rehabilitation. (See *People v. Lindberg* (2008) 45 Cal.4th 1, 36, fn. 12.) The hearing judge found repeatedly that Glass's testimony was "credible" (Hearing Dept. opn. pp. 15, 17, 26) and that Glass's witnesses were "outstanding," "notable" and "remarkable" (*id.* at pp. 22, 24), while finding the value of testimony by the Committee's witnesses to be "marginal, at best" for purposes of assessing Glass's rehabilitation because of their lack of recent contact with him (*id.* at p. 11). The applicable standard of review calls for this court to defer to those credibility determinations, and the exercise of appropriate deference strongly favors a finding of sufficient rehabilitation.

A. This court reweighs the evidence in moral character proceedings.

This court has described its standard of review in moral character proceedings as follows: The findings of the State Bar Court are "accorded significant weight, inasmuch as the hearing judge is in the best position to weigh intangibles such as credibility and demeanor." (*In re Menna* (1995) 11 Cal.4th 975, 985 (*Menna*); accord, *Gossage, supra,* 23 Cal.4th at p. 1096.)

Nevertheless, "[a]lthough we give 'great weight' to the findings of the hearing panel on review, they are not binding on this court. 'We examine the evidence and make our own determination as to its sufficiency . . . .'" (*Menna, supra,* at p. 984, quoting *Hightower v. State Bar* (1983) 34 Cal.3d 150, 155-156.)

That means this court will *reweigh the evidence*. (See *Gossage, supra,* 23 Cal.4th at p. 1096; *Menna, supra,* 11 Cal.4th at p. 985.)

B. This court should defer to credibility determinations unless testimony is inherently improbable.

Although this court reweighs the evidence, the court should not reassess witness credibility. Reviewing courts generally will not do so in any context. "The cold record cannot give the look or manner of the witnesses; their hesitations, their doubts, their variations of language, their precipitancy, their calmness or consideration." (*Maslow v. Maslow* (1953) 117 Cal.App.2d 237, 243.)

Thus, a cardinal rule of appellate review is that the reviewing court should not second-guess the factfinder's credibility determinations. "[I]t is not a proper appellate function to reassess the credibility of the witnesses." (*People v. Jones* (1990) 51 Cal.3d 294, 314-315.) This court has invoked that rule specifically in State Bar proceedings – for example, deferring to credibility determinations by members of a disciplinary hearing committee because "[t]hey observed [the witnesses'] conduct and demeanor while testifying," "they evidently believed [petitioner] was telling the truth," and "[t]he members of the committee were in far better position to pass upon the truthfulness of petitioner's testimony than . . . are the members of this court." (*Werner v. The State Bar* (1939) 13 Cal.2d 666, 676 (*Werner*); accord, e.g.,

Kelson v. State Bar (1976) 17 Cal.3d 1, 5; *Zitny v. State Bar* (1966) 64 Cal.2d 787, 790 (*Zitny*).)[3/]

To be sure, this cardinal rule does not apply where testimony is "inherently improbable" and thus is incredible *as a matter of law*. (*People v. Huston* (1943) 21 Cal.2d 690, 693 (*Huston*).) Such situations, however, are rare. "To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions." (*Ibid.*)

For example, in *Lubetzky v. State Bar* (1991) 54 Cal.3d 308, 322, this court determined that, "[o]n a cold record," the testimony of a witness in a moral character proceeding was not "convincing" because, among other things, he had made a contrary admission in a secretly-recorded telephone conversation; thus the falsity of the witness's testimony was apparent without resort to inferences or deductions. But unless testimony is inherently improbable, this court should not second-guess a hearing judge's decision to believe that testimony.

3/ An example of the factfinder's unique advantage can be found in the record of Glass's hearing, where Julie Hilden, asked on cross-examination whether she and Glass were engaged to be married, testified: "No. I'm not going to marry anyone until gay people can marry who they choose, for one thing, and I think Steve feels the same way. Sorry. I don't mean to be so emotional about it, but yes." (IV/RT 123.) The cold paper record does not indicate what the hearing judge could see – that Hilden *shed tears* when she spoke those words. The reader can surmise this only because of her comment five pages later that "I'm going to weep again." (IV/RT 128.) No written description of her tearful demeanor can have the same impact as *seeing* it.

C. This court's review is independent but not de novo.

Review by this court in moral character proceedings highlights a subtle difference, rarely encountered in practice, between "independent" and "de novo" review – terms that are commonly but not always accurately used interchangeably. This court and the United States Supreme Court have elucidated the distinction when conducting independent review in cases implicating the First Amendment, where "an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'" (*Bose Corp. v. Consumers Union of U.S., Inc.* (1984) 466 U.S. 485, 499 (*Bose*), quoting *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 285; accord, *In re George T.* (2004) 33 Cal.4th 620, 631 (*George T.*).) As this court has explained: "Independent review is not the equivalent of de novo review 'in which a reviewing court makes an original appraisal of all the evidence to decide whether or not it believes' the outcome should have been different." (*George T., supra,* 33 Cal.4th at p. 634, quoting *Bose, supra,* at p. 514, fn. 31.) "Because the trier of fact is in a superior position to observe the demeanor of witnesses, *credibility determinations are not subject to independent review* . . . ." (*Ibid.,* italics added.)

Thus, even where the reviewing court must independently examine the record, the court will "defer" to the factfinder's credibility determinations. (*George T., supra,* 33 Cal.4th at p. 634; see also *Bose, supra,* 466 U.S. at p. 499-500; *Smith v. Novato Unified School Dist.* (2007) 150 Cal.App.4th 1439, 1454; *McCoy v. Hearst Corp.* (1991) 227 Cal.App.3d 1657, 1666 [conc. opn. of King, J.] ["even within the context of independent appellate review, substantial deference is to be afforded to trial court credibility determinations 'because the trier of fact has had the "opportunity to observe the demeanor of

the witnesses . . .""].) Consequently, although the State Bar Court's *ultimate finding* of Glass's moral fitness is "not binding on this court" (*Menna, supra,* 11 Cal.4th at p. 984), this court should defer to the hearing judge's *credibility determinations* in reaching that finding, to the same extent this court traditionally defers to any factfinder's credibility determinations. (See *id.* at p. 991 ["We do not question" hearing department's determination that applicant testified "'with notable credibility and sincerity'"].)

D. Independent review means this court should defer to credibility determinations regarding Glass's state of mind.

The significance of this subtle distinction between independent and de novo review for purposes of the present case is that, although this court reweighs the evidence, this court should *not* attempt to reassess the credibility of witnesses, but instead should defer to the hearing judge's credibility determinations unless testimony is inherently improbable. This point is critical because the Committee's challenge to Glass's rehabilitation turns largely on his *state of mind* – e.g., his subjective reasons for writing *The Fabulist* and appearing on *60 Minutes*, for writing his apology letters, for deficiencies in his New York bar application, and for not fully identifying all of his fabricated articles until 2009. Glass testified on each of these matters, and the hearing judge found his testimony to be credible – in some instances expressly, and otherwise impliedly. (See *Werner, supra,* 13 Cal.2d at p. 676 ["As [the disciplinary hearing committee members] found in favor of the petitioner, they evidently believed he was telling the truth . . . ."]; *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58 [appellate court will infer that trial judge "made all factual findings necessary to support the judgment"].) The

judge likewise determined that Glass's witnesses, many of whom gave testimony pertinent to his state of mind, were credible. None of that testimony is inherently improbable – there are no instances of "physical impossibility" or falsity that is "apparent without resorting to inferences or deductions." (*Huston, supra,* 21 Cal.2d at p. 693.)

This means that the facts as to which the hearing judge found that Glass and his witnesses credibly testified – notably, the facts regarding Glass's state of mind on key occasions since 1998 – should be taken as true on this court's review, given that "a finding as to state of mind depends . . . on a finding as to 'demeanor and credibility.'" (*Carpenter, supra,* 9 Cal.4th at p. 678.) Those facts, as determined by the hearing judge in assessing credibility, weigh in favor of Glass's admission. This court's task on independent review is to decide *how much* weight to afford such favorable evidence, not to reassess its credibility.[4/]

This supplemental brief demonstrates how Glass, a former notorious liar, has rehabilitated himself; why, a dozen years after his misconduct, the hearing judge found Glass to be credible; how the evidence favors his admission; and why this court should afford that evidence determinative weight.

4/ Unusually, in the present case the "cold record" (*Maslow v. Maslow, supra,* 117 Cal.App.2d at p. 243) is not even all that cold. The transcript of Glass's testimony and that of his witnesses is quite vivid, compelling even on the printed page. Thus, even if this court were to go beyond what we perceive to be the applicable standard of review and make an effort to re-assess witness credibility de novo, the result here ought to be the same: The record reflects the credibility of Glass and his witnesses, and the weight of the evidence demonstrates his rehabilitation and moral fitness. (See *post*, pp. 25-47; Answer to Petition For Review (APFR) 9-36.)

II.

WHERE EVIDENCE RAISES EQUALLY REASONABLE INFERENCES, THE INFERENCE FAVORING THE APPLICANT SHOULD BE ACCEPTED.

This Court has repeatedly stated that in State Bar disciplinary and moral character proceedings, "If two or more equally reasonable inferences may be drawn from a proved fact," the inference favoring the applicant "will be accepted." (*Zitny, supra,* 64 Cal.2d at p. 790; accord, e.g., *Gossage, supra,* 23 Cal.4th at p. 1098 [citing *Zitny* with parenthetical statement that "applicant benefits from any conflicting, equally reasonable inferences flowing from an established fact"]; *Vaughn v. State Bar* (1973) 9 Cal.3d 698, 701 ["Reasonable doubt must be resolved in favor of the petitioner and, if equally reasonable inferences may be drawn from a proven fact, the inference leading to his innocence will be accepted"]; see also *Menna, supra,* 11 Cal.4th at p. 986; *Hallinan v. Committee of Bar Examiners* (1966) 65 Cal.2d 447, 451 (*Hallinan*).)

The Committee contends that this well-settled rule favoring applicants is no longer operative because it purportedly "is contrary to the standard applied most recently by this Court" in *Gossage, supra,* 23 Cal.4th at page 1098. (Reply Brief (RB) 13; see Petition For Review (PFR) 43-44.) Here, the Committee relies entirely on a single sentence in *Gossage*, which states: "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." (*Gossage, supra,* at p. 1098.) That sentence, however, immediately follows a citation in *Gossage* to *Zitny*, with the parenthetical statement that an "applicant benefits from any conflicting, equally reasonable inferences flowing from an established fact."

(*Ibid.*) The Committee's position seems to be that the statement the Committee quotes from *Gossage* extinguishes the rule for equally reasonable inferences – even though *Gossage's* immediately-preceding citation to *Zitny* articulates the very rule that the Committee claims is no longer operative. The Committee achieves this sleight-of-hand through selective deletion – quoting *Gossage* but deleting the opinion's parenthetical description of *Zitny* and replacing it with the bare notation "(Citations)". (PFR 43.)

This court is not, of course, in the habit of disapproving its prior decisions sub silentio, and there is no indication that it intended to so do so in *Gossage*. (See *Calvillo-Silva v. Home Grocery* (1998) 19 Cal.4th 714, 739-740 (conc. & dis. opn. by Werdegar, J.) ["On full reexamination, after open and reasoned debate, we might possibly decide to overturn this long-standing rule of California law [permitting a person convicted by plea to litigate guilt in a subsequent civil trial]. We should certainly not do so sub silentio and without any stated reason."].) It seems particularly unlikely that this court would sub silentio disapprove a rule it has stated and re-stated numerous times for nearly a century. (See *Hallinan, supra,* 65 Cal.2d at p. 451 [citing cases dating back to 1921].) The Committee's position would effectively nullify that rule, because virtually all reported State Bar admissions cases that have come before this court in modern times have involved serious misconduct.

The more plausible reading of this sentence in *Gossage* is simply that inferences to be drawn from a proven fact are *less likely to be equally reasonable* in cases involving "serious or criminal misconduct," because in such cases "positive inferences about the applicant's moral character are *more difficult to draw*, and negative character inferences are stronger and more reasonable." (*Gossage, supra,* 23 Cal.4th at p. 1098, italics added.) To the extent that such difficulty is overcome and there *are* equally reasonable

inferences, however, the *Gossage* citation to *Zitny* indicates that the rule remains that the inference favoring the applicant will be accepted.

This understanding of *Gossage* is consistent with the policy, in moral character proceedings, that "'"the law looks with favor upon rewarding with the opportunity to serve, one who has achieved 'reformation and regeneration.'"'" (*Pacheco, supra,* 43 Cal.3d at p. 1058; accord, *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1078 (*Kwasnik*) (conc. opn. of Kennard, J.).) Given that policy, if equally reasonable inferences *can* be drawn, the inference favoring the applicant *should* be drawn, for the law believes in redemption.

Glass's misconduct was certainly serious, which means that, according to *Gossage*, "positive inferences about the applicant's moral character are more difficult to draw." (*Gossage, supra,* 23 Cal.4th at p. 1098.) This supplemental brief demonstrates that, despite this difficulty, Glass has presented compelling evidence – his own testimony and that of the 22 lay witnesses and psychiatrists who testified on his behalf and whom the hearing judge found to be credible – from which positive inferences about his moral character can be drawn. Where contrary equally reasonable inferences can also be drawn, this court should accept the inference favoring Glass – especially given the paucity of evidence presented by the Committee regarding Glass's present moral character.

III.

THE RELEVANT PERIOD FOR PURPOSES OF ASSESSING GLASS'S REHABILITATION IS 1998 TO THE PRESENT.

"Cases authorizing admission on the basis of rehabilitation commonly involve a *substantial period* of exemplary conduct following the applicant's misdeeds." (*Gossage, supra,* 23 Cal.4th at p. 1096, italics added.) Thus, the length of Glass's rehabilitation period is important. The Committee contends that "the operative rehabilitation period is measured from the date of the last act of misconduct to when Applicant sought a moral character determination from the Committee." (RB 9.) According to the Committee, this period is "approximately 3 years," commencing "in 2003 when he made a misrepresentation to the New York Bar" and ending when he "fil[ed] his moral character application in California in 2007." (*Ibid.*)[5/]

A. The rehabilitation period commenced in 1998.

The Committee's commencement date assumes the resolution of a key credibility issue in the Committee's favor – specifically, whether Glass made an *intentional* misrepresentation, and thus committed a "misdeed" (*Gossage, supra,* 23 Cal.4th at p. 1096), on his 2002 New York bar application. As this supplemental brief demonstrates, however, the hearing judge made a *contrary* credibility determination regarding Glass's state of mind on that occasion, finding that the testimony Glass presented was "credible" and that there had

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5/ Glass actually submitted his New York bar application in 2002 (not 2003), which would mean that, by the Committee's reasoning, the rehabilitation period would have commenced in 2002 and ended in 2007 – a period of five years.

only been "inadvertence" by Glass. (Hearing Dept. opn. pp. 15, 16; see *post*, pp. 38-42.) Accorded its due deference, that credibility determination means that Glass committed no misdeed in the New York bar proceedings, and thus his last act of misconduct, and the commencement of his rehabilitation period, was in 1998 when he was fired from *TNR*.[6/]

B. The rehabilitation period should run to the present.

The Committee's proposed end date for Glass's rehabilitation period is July 2007, when Glass sought his moral character determination. That date is based on a statement in *Gossage* that the applicant's "relevant time frame falls between July 1984 . . . and January 1994, when he sought a moral character determination from the Committee." (*Gossage, supra,* 23 Cal.4th at p. 1099.) The case law is in conflict, however, as to when the rehabilitation period ends, yielding three possible dates. The weight of precedent has the relevant period of rehabilitation running through to the present.

Thus, while *Gossage* pegged the end date as the time the applicant submitted his moral character application, in many other cases this court considered the applicant's conduct *through the period of Supreme Court review* – that is, up to the present. (*Pacheco, supra,* 43 Cal.3d at pp. 1048, 1051 [1987 opinion deeming that alleged misconduct between 1969 and 1977 "is at least 10 years old"]; *Martin B. v. Committee of Bar Examiners* (1983) 33 Cal.3d 717, 726 [April 1983 opinion, where last act of misconduct was in October 1973, observing that "the passage of nine years with an unblemished, exemplary record, in itself, should be sufficient to show rehabilitation"]; *Hall*

6/ Likewise, the hearing judge made credibility determinations in Glass's favor regarding his subjective reasons for writing *The Fabulist*, appearing on *60 Minutes*, and writing his apology letters (see *post*, pp. 45-47), which means there were no misdeeds at those times to change the commencement date.

v. Committee of Bar Examiners (1979) 25 Cal.3d 730, 742 [November 1979 opinion, where last act of misconduct was in 1974, observing that "six years have elapsed . . . during which time no complaints of any kind have been lodged against Hall . . . ."]; see also *Kwasnik, supra,* 50 Cal.3th at p. 1078 (conc. opn. of Kennard, J.) [1990 opinion, where no misconduct had occurred since 1981, observing that "nine years have passed" with conduct "free of reproach"].) And *Menna* pegs the end date as the time of the State Bar Court hearing, which in *Menna* occurred two years after the applicant passed the bar exam and sought admission but more than three years before the decision on Supreme Court review. (*Menna, supra,* 11 Cal.4th at pp. 980, 989.)

We submit that the best approach here is the one that is supported by the weight of precedent in the *Pacheco*, *Martin B.* and *Hall* line of cases – considering Glass's conduct *through to the present.* There are three reasons why.

First, an applicant's conduct as of the present tells the more complete story of his or her post-misconduct life and the persistence of rehabilitation. Several years can pass from the time a moral character application is filed until the completion of Supreme Court review. (As of this writing, it has been four-and-a-half years since Glass filed his moral character application.)[7/] Those years can be a significant period of continuing moral improvement, and they should be counted, given that the burden is to show "*present* moral fitness." (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811, italics added.) If Glass must show present fitness, then this court should consider his conduct to the present,

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7/ When the court decides this case, more than five years will have passed since Glass submitted his application. By comparison, a disbarred attorney, whose burden for reinstatement is greater than that of an applicant for admission, may apply for reinstatement in five years' time. (See Rules of the State Bar of Cal., rule 5.442(B); *In the Matter of Brown* (1993) 2 Cal.State Bar Ct.Rptr. 309, 316.)

including continuing exemplary conduct since he filed his moral character application (just as this court would surely consider any *misconduct* since then).

Second, the State Bar rules impose on the applicant an affirmative "continuing duty" to *update* the moral character application "whenever information provided in the application has changed or there is new information relevant to the application." (Rules of the State Bar of Cal., rule 4.42.)[8/] This continuing duty naturally contemplates that information updated to the present will be considered in the process of assessing moral character.

Third, the hearing judge in this case *actually did* consider Glass's conduct through to the present, concluding: "From 1998 *to the present*, applicant has engaged in a regular course of conduct that shows a concerted effort to rehabilitate from [his] serious errors in judgment." (Hearing Dept. opn. pp. 18-19, italics added.)

The relevant period here should be 1998 through to the present.[9/] This supplemental brief demonstrates how the weight of the evidence establishes that, for Glass, this has been "a substantial period of exemplary conduct." (*Gossage, supra,* 23 Cal.4th at p. 1096.)

8/ At the time Glass filed his application, the State Bar rules then in effect (which therefore apply here) similarly imposed a "continuing obligation" to update the application "whenever there is an addition to or a change to information previously furnished the Committee." (Former Rules Regulating Admission to Practice Law in Cal., rule VI, § 7.)

9/ Alternatively, at the very least, pursuant to *Menna*, the end date should be the time of the 2010 hearing, as of which the judge considered Glass's conduct.

DISCUSSION

I.

THE EVIDENCE OF GLASS'S REHABILITATION IS COMPELLING.

A. Glass has built a good and honest life in the years since 1998.

There is no question that from 1996 to 1998, when Glass was 23 to 25 years old, he committed egregious misconduct. Glass, now age 39, well understands that.

At no point during Glass's five days of testimony did he minimize his misconduct in any way. To the contrary, he repeatedly acknowledged its gravity and severity. Numerous other witnesses testified that in their years of experience with Glass, he has never minimized his past misconduct. (See, e.g., I/RT 86 [testimony of Professor Susan Bloch: Glass "has never minimized his wrongdoings"]; II/RT 177 [testimony of Professor Stephen Cohen: "What struck me very profoundly about Steve is that there was none of that minimizing or glossing over what he had done. He admitted in great detail that what he had done was immoral, unethical, and wrong. . . . He did not try to offer excuses, and I felt that the degree to which he directly faced what he had done was very unusual, you know, and I was impressed by it."] ; III/RT 134-135 [testimony of attorney Alejandro Blanco: Glass discussed his misconduct in "minute" detail]; Hearing Dept. opn. p. 10.)

The question is whether now, more than 13 years later, Glass has achieved sufficient rehabilitation to be admitted to the practice of law. This

court, in reweighing the evidence upon independent review, should conclude that the evidence weighs compellingly in Glass's favor.

Glass's burden of showing sufficient rehabilitation is considerable, given the seriousness of his misconduct. (See *Gossage, supra,* 23 Cal.4th at p. 1096 ["the more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be"].) We submit, however, that he has sustained that burden. The Committee argues that sufficient rehabilitation requires him to "do more than just live an acceptable lifestyle" (PFR 3), but Glass has done much more than that.

1. Remorse.

"Fully acknowledging the wrongfulness of [] actions is an essential step towards rehabilitation." (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940 (*Seide*). Glass took that step long ago – for example, writing approximately 100 apology letters in 2001-2004 to those he had harmed, with each letter providing Glass's contact information should the recipient wish to discuss the matter further. (VI/RT 45.)

As Glass testified, "my lies . . . were absolutely the worst thing I'd ever done in my life, and they're something I regret greatly . . . ." (V/RT 38-39.) Consequently, Glass testified that, in addition to apologizing to those he harmed, "I have also tried to change who I am as a person, which I think is the most important thing that one can do in making amends . . . ." (IX/RT 204.)

The Committee argues that "this delayed remorse" is "contrived." (PFR 36.) But many recipients of Glass's letters concluded otherwise and accepted his apology. Three witnesses described their observations of Glass during the period when he wrote the letters and corroborated his testimony about the seriousness with which he undertook the process of writing them. (III/RT 21;

IV/RT 19, 112.) The hearing judge determined, contrary to the Committee's argument, that Glass "has credibly shown remorse and shame for his acts." (Hearing Dept. opn. p. 26.) That is a credibility determination concerning Glass's state of mind, to which the Review Department gave "great deference" (Review Dept. opn. p. 8) and to which this court should likewise defer.

Glass shoulders full responsibility for his misconduct. While he testified about his difficult childhood and the intense pressure within his family to achieve, he repeatedly made clear that he was doing so in order to "help explain, but not in any way as an excuse," and that he was *not* "blaming my parents or saying my parents are at fault for what I did wrong. . . . I think we had a very problematic family in lots of ways, but I take the ownership of that." (V/RT 38.)

2. Therapy.

Voluntary participation in counseling "may serve as an indicium of rehabilitation." (*Seide, supra,* 49 Cal.3d at p. 941.) Glass began long-term therapy in 1998, soon after he was fired, when he was depressed and was having suicidal thoughts. (VI/RT 73-76.) He continued therapy after moving to New York, where he was in psychoanalysis as often as four days per week. (VI/RT 78-81.) At that point he was no longer having suicidal thoughts, and the therapy focused on making amends and rebuilding his life. (VI/RT 81-82.) In more recent years, one of his California psychiatrists, Richard Friedman, M.D., has assisted Glass with "day-to-day" matters, while the other, Richard Rosenthal, M.D., has focused more on psychoanalytical introspection. (VI/RT 103-104.)

Both of Glass's psychiatrists are extremely well-qualified. Friedman, who serves on the UCLA faculty, has been in private practice for more than

40 years. (IV/RT 40, 44; Exh. K.) Rosenthal, also on the UCLA faculty, has served on the Ethics Committee of the Southern California Psychiatric Society and is a distinguished life fellow of the American Psychiatric Association. (VIII/RT 81, 84-85.) Rosenthal was a co-author of the DSM-IV, serving on the "committee that was responsible for the impulse control disorders." (VIII/RT 84.) While in the United States Navy, Rosenthal's primary job was to perform "evaluations of people who were manipulating, people who were faking various things to get out of the service." (VIII/RT 78, 120.)

Glass has benefitted enormously from his therapy. According to Friedman, Glass had been a "very, very immature" young man, and with the assistance of therapy he "grew up." (IV/RT 64.) Rosenthal testified that Glass has "done a tremendous amount of work" in therapy, has "evolved as a human being," and is now "extremely honest, and conscientiously so." (VIII/RT 102, 105.) As Glass put it, his decade of therapy "saved my life." (VI/RT 103.)

3. Diligent and honest work.

Since 2004, Glass has worked as a law clerk at CZ&R. Partner Paul Zuckerman describes Glass as the firm's "absolute best" employee. (III/RT 59.) Glass helps with "the most difficult cases, the really hard law-and-motion stuff," among other projects. (III/RT 61.) As Glass put it, he is "assigned, typically, to the more complex cases, and to the clients who need special hand-holding." (VII/RT 43.) The firm sometimes represents homeless, mentally-ill and drug-addicted clients. In Zuckerman's view, Glass's history of misconduct and redemption has enabled him "to really sit down and relate" to such clients and "create the necessary rapport that you need to effectively represent" them. (III/RT 62.) As Zuckerman put it, "brilliance untempered by

failure is purely arrogance, but brilliance that's overcome failure can be truly useful, you know, to [your] fellow man." (III/RT 61.)

In one case, where a homeless, drug-addicted, mentally-handicapped client had lost his leg when he was struck by a garbage truck, Glass was instrumental in helping the client get clean, sober, adequately fed and sheltered, and involved in volunteer work. (III/RT 62-64; VII/RT 45-46.) In another case, where an alcoholic mentally-ill client had been struck by a bus and suffered catastrophic injuries requiring a colostomy, Glass got the client into a sober living environment and secured the client's regular care by a colostomy nurse, at times even personally cleaning the man when he was covered in his own filth. (III/RT 64-65; VII/RT 47-49.) In a case Glass was working on during the State Bar Court hearing, Glass described "many hours every week" that he spent assisting a brain-damaged client with discovery, seeing him on weekends, taking him to the movies, and helping him to achieve his goal of completing a 5-K run. (VII/RT 43-45.)

When asked about Glass's work ethic, Zuckerman answered: "Nothing like it. He has that rare thing that I look for in people, which is that proprietary interest in the work that he does. . . . He will do the best work possible, and he will make sure that he gets it done on time." (III/RT 65.)

Glass has also performed hundreds of hours of pro bono work, providing legal research for victims of race-based violence, drunk driving victims, and a non-profit athletic group serving underprivileged youth. (IX/RT 224-228; Exh. B, p. 9.) During his years in California he has always worked on at least one pro bono project, and often two simultaneously. (IX/RT 225.)[10/]

10/ The Committee challenges Glass's characterization of this work as pro bono, arguing that it "was done solely in connection with his employment at Carpenter, Zuckerman & Rowley, LLP, where Applicant is a salaried employee." (RB 12-13.) This argument is untrue. In addition to pro bono

4. A stable and fulfilling personal life.

Glass has been in a long-term relationship with Julie Hilden, an attorney and writer, since 2000, and they have lived together since 2002. (IV/RT 96-105; VI/RT 94, 97-98.) Hilden graduated from Yale Law School; is admitted to practice in New York and the District of Columbia; clerked for the Honorable Stephen Breyer, then Chief Judge of the United States Court of Appeals for the First Circuit, and the Honorable Kimba Wood of the United States District Court for the Southern District of New York; was a Lecturer in Legal Writing at Cornell Law School; and was an associate at a large Washington D.C. law firm. She is also a well-published author on legal subjects, among others. (IV/RT 86-96.) The hearing judge found Hilden to be "a remarkable individual" who was "[p]erhaps the most persuasive witness" Glass presented and "spoke sincerely and eloquently regarding his current moral character." (Hearing Dept. opn. pp. 10, 24.)

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work with CZ&R, Glass performed more than 100 hours of pro bono work for victims of drunk drivers under the supervision of Alejandro Blanco, an attorney who does not work for CZ&R. (III/RT 131; IX/RT 228.) Glass also volunteered at a senior center and for a charitable food-delivery service, neither of which was connected with CZ&R. (VII/RT 52; IX/RT 204-205.)

The Committee claims that "[e]ven the State Bar Court had difficulty identifying" Glass's pro bono work at CZ&R "as *pro bono* work." (RB 13, original italics, citing IX/RT 227.) It is true that, initially, the hearing judge said "I'm having a little difficulty identifying this as pro bono work, if you're paid." (IX/RT 227.) (Evidently, the judge meant that Glass was paid his salary while working on pro bono matters, not that the firm was compensated.) But Glass explained: "I do work evenings, mostly, on these cases, or try to, so it's not during the normal workday. Sometimes that's not possible, because there will be things like court filings or stuff, and then I work later during the evenings on other work, but I try to focus on these projects in the evenings." (IX/RT 227.) A salaried employee's additional work after-hours on the firm's pro bono cases is widely considered to be pro bono work.

Early in their relationship, Glass saw Hilden through a lengthy and serious illness, and she has seen him through his full rehabilitation. (IV/RT 102-109.) Glass testified that Hilden has "helped me to become a better person." (VI/RT 98.) Hilden testified that Glass has evolved into "a caring, empathetic person" who "is there for his family and friends . . . without really asking for any thanks . . . or special acknowledgment." (IV/RT 121.)

A stable and fulfilling personal life can be an anchor for rehabilitation. Hilden has been that anchor for Glass.

5. A commitment to rehabilitation.

As a young man, Glass not only betrayed the trust of others, but also sustained a terrible self-inflicted wound which, to overcome, would require a commitment to unrelenting honesty. He has made every effort to chart a steady course in the many years since then.

Dr. Rosenthal, who has treated Glass once or twice each month since 2005 (VIII/RT 91-92), testified that "in the years that I've been working with him," Glass has been "extremely honest, and conscientiously so, that he really makes a point of disclosing things, and avoiding any appearance of impropriety . . . he's a much stronger and better person than he was before." (VIII/RT 102.)

Dr. Friedman, who has treated Glass weekly since 2005 (IV/RT 47), testified that Glass has become "a scrupulously honest person. . . . [¶] He is responsible. He has very good judgment. He has the capacity to handle very, very difficult, frustrating experiences with poise and reflectiveness, and I think

that, you know, some people grow out of trauma, and I think that he's one of those people." (IV/RT 50-51.)[11/]

Paul Zuckerman testified: "I love having him at the office, because he is like my touchstone, my benchmark, for honest and proper conduct. You know, it's like it's . . . 'What would Steve do?'" (III/RT 66.)

Julie Hilden testified that by the time she began dating Glass in 2000,"it had become a hugely important value to him to be honest," and "[i]t's an overriding concern" that is "really important to him." (IV/RT 115.)

Glass makes no effort to hide his past. Whenever he commences any communication with a client or significant involvement in a case, he discloses his history so that the client has the opportunity to exclude him from the case, although "the clients have overwhelmingly been very happy with my participation." (VII/RT 49-50.)

The Committee claims that Glass reverted to dishonesty in 2002 on his New York bar application. (PFR 28-30, 34-36.) But the hearing judge made a contrary credibility determination, finding that Glass's testimony about the New York bar application was "credible" and that there had only been "inadvertence" by Glass on that occasion. (Hearing Dept. opn. pp. 15, 16; see *post*, pp. 38-42.) Glass has made no such mistakes in the decade since then.

11/ This and other testimony by Glass's psychiatrists belies the Committee's assertion that his "recovery process is still on-going." (PFR 39.) Both psychiatrists testified that they believe he will not repeat his misconduct. (IV/RT 56-57; VIII/RT 105.) The dissenting Review Department judge said that "as late as 2005, Glass told one psychiatrist that he was still in the process of understanding and accepting his misconduct" (Review Dept. dis. opn. pp. 18-19), but this is incorrect. Rosenthal testified that when he began treating Glass in 2005, Glass was still in the process of "overcoming the enormous shame that he was still feeling in 2005" (VIII/RT 94-95) – not dealing with his former dishonesty. Friedman testified that "from the beginning" he was not treating Glass for a "propensity for lying." (IV/RT 49; see APFR 16-17.)

B. Glass's character evidence should be accorded substantial weight.

Character evidence "does not alone establish the requisite good character" (*Seide, supra,* 49 Cal.3d at p. 939), but it should be accorded substantial weight. "In reaching a fair conclusion on the question of reformation . . . , the favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living . . . should weigh heavily in the scale of justice." (*Andreani, supra,* 14 Cal.2d at pp. 749-750.)

Nobody knows better than the 20 law professors, judges, attorneys and others with whom Glass has worked and associated since 1998 whether he has attained sufficient rehabilitation to possess the good moral character required to practice law. "Traditionally [this court has] accorded significant weight to testimonials submitted by attorneys and judges regarding an applicant's moral fitness, on the assumption that such persons possess a keen sense of responsibility for the integrity of the legal profession." (*Kwasnik, supra,* 50 Cal.3d at p. 1068.)

Consider these comments, among the many attestations to Glass's good moral character:[12/]

- *Martin Peretz*, editor-in-chief and sole owner of *TNR* for 33 years (I/RT 139, 147): "I believe that Steve was caught in a psychological morass, and it is my impression . . . that he is a man of probity, a man who has learned, painfully, from his mistakes . . . ." (II/RT 157-158.) "I don't think what Steve

12/ This list is only partial. Twenty character witnesses (plus Glass's two psychiatrists) attested to Glass's good moral character. (See APFR 22-36.)

committed, and his journey after, should condemn him to be exiled from respectable, ethical society." (II/RT 137.)

- *Professor Susan Bloch*, Glass's constitutional law professor, who has remained in touch with him (I/RT 76, 84-85): "Based on my experience in 27 years of teaching law students, as well as other experiences I've had in my life, I would say that I think Steve has learned from his past wrongdoings, that the experience was so traumatic that I can't imagine Steve ever repeating anything remotely like that, and, in my opinion, he is totally rehabilitated. . . . [¶] I believe he is totally honest." (I/RT 85-86.)

- *Professor Stephen Cohen*, Glass's taxation professor, who has also remained in touch with him (II/RT 175-176, 184): Q: "Would you trust Mr. Glass with your own legal affairs?" A: "Absolutely, and my children's." (II/RT 182.)

- *United States District Judge Ricardo Urbina*, for whom Glass interned (Exh. 1, pp. 00209-00210): "I am aware of his background and believe that he has matured and ripened into a very responsible and honest individual who is fit to join the legal profession." (*Id.* at p. 00210)

- *District of Columbia Judge A. Franklin Burgess, Jr.*, for whom Glass clerked (Exh. 1, p. 00207): "He displayed intellectual honesty and respect for accuracy in his legal research, analysis

and writing. . . . He was ethical in his conduct in this office." (*Id.* at pp. 00207-00208.)

- *Attorney Paul Zuckerman*, who worked with Glass "five, six days a week for six years" (III/RT 66): "[H]e could have my mother's maiden name or Social Security number." (III/RT 74.)

- *Attorney Alejandro Blanco*, for whom Glass conducted legal research on numerous cases (III/RT 126): "I believe Stephen Glass to be a man of upright character, trustworthy. I'd trust him with my life. . . . [¶] You earn trust. And in the last two and a half years where I've dealt with Stephen Glass, he has earned my trust. . . . [¶] If he were admitted to practice law, I would fight Paul Zuckerman for Stephen Glass, although I think I would lose." (III/RT 128.)

- *Attorney Jeffrey McIntyre*, formerly "of counsel" with CZ&R, who worked with Glass and saw him "virtually every day" for three years (III/RT 101-103): "He went out of his way at all times to make sure that he was doing the right thing, that he was being honest . . . . I would say he was assiduous or scrupulous in making sure that when he told you something, the smallest detail, that it was correct . . . . He was scrupulous in making sure that it was accurate." (III/RT 105-106.)

- *Educational software company CEO Lawrence Berger*, a close friend for more than a decade (IV/RT 13-14, 17): "Stephen's moral character today is a quite remarkably ethically and

dedicated and devoted one, both in the way that he has been a devoted friend to my wife and to me, but also as exhibited in all of the interactions that I see between him and Julie [Hilden], and also the work that he's done professionally, in which I've seen him be really committed to the causes and clients that he is involved in helping to represent." (IV/RT 18.)

- *New York Times journalist/author Melanie Thernstrom*, another close friend for more than a decade (III/RT 9): "[W]e asked him and Julie to be the godparents of our children . . . . [W]e did pick the godparents as the moral and spiritual role models for your children, and I think that Steve really is a wonderful example of that. [¶] I think he's a particularly honest person, and I was very moved to read the personal statement he wrote to the Bar, and my husband and I talked about how I would like to show it to the children one day, when they're teenagers, so that they know, if they ever do something bad, that they can take responsibility for it, they can learn and grow from it, and they can work on becoming a better person." (III/RT 13.)

Three of these witnesses described how they and others were initially deeply skeptical of Glass, and how, subsequently, over time, he earned their respect and confidence. (See III/RT 10 [Melanie Thernstrom]; III/RT 52-54, 60-61 [Paul Zuckerman]; IV/RT 98, 101-105 [Julie Hilden].) As Melanie Thernstrom put it, "this journey I took from horror to affirmation is one that I saw every one of Julie's friends go through over the years." (III/RT 10.) Even Dr. Rosenthal testified that he changed his opinion of Glass after initially

having a "strong bias" against him because of his fabrications. (VIII/RT 147-148.)

The Committee contends that the State Bar Court erred in giving more weight to the testimony of Glass's witnesses than the testimony of the Committee's witnesses, arguing that *TNR* owner Martin Peretz "had only sporadic contact with Applicant over the years" while Charles Lane, a former editor at *TNR*, "was one of the victims most affected by Applicant's misconduct." (RB 11, 12.) But Peretz was *TNR's* "sole loss payor" for 33 years (I/RT 139) and thus was the person most hurt by Glass's fabrications. And Glass presented many more witnesses than just Peretz – a total of 22. Witness after witness who has had regular and close contact with Glass from 1998 through the present – his professors, employers, coworkers, psychiatrists and friends – attested to his rehabilitation in the years since his misconduct. In contrast, none of the Committee's witnesses has had any significant contact with Glass since 1998 or 1999. It makes perfect sense that the State Bar Court afforded greater weight to the testimony of Glass's character witnesses on the question of his rehabilitation: They have known him during that period, while the Committee's witnesses have not. This court should likewise afford significant weight to the testimony of Glass's witnesses, which unequivocally and consistently demonstrates that Glass is fully rehabilitated.[13/]

13/ Without citing to the record, the Committee argues that "none of Applicant's character witnesses knew the full nature and extent of his lies and the harm he caused to his victims." (PFR 41.) This unsupported statement is inaccurate. To begin with, Glass's witnesses described ample awareness of what he had done. (E.g., I/RT 91-94; III/RT 25-31, 75-79, 108-109, 135-136.) Further, virtually all of Glass's witnesses testified that they had read not only Glass's pretrial statement, but also the Committee's, which fully elucidated the Committee's allegations in the Committee's own words. (E.g., I/RT 87; III/RT 20, 66, 106, 127, 152; see *In the Matter of Riordan* (2007) 5 Cal.State Bar Ct. Rptr. 41, 50, fn. 20 [character witness's knowledge of attorney's misconduct may be established by showing that the witness reviewed pretrial statements].)

II.

THE HEARING JUDGE'S CREDIBILITY DETERMINATIONS REFUTE EACH OF THE COMMITTEE'S ARGUMENTS ON REHABILITATION.

The Committee asserts multiple reasons why, in its view, Glass has not achieved "any meaningful and sustained moral rehabilitation." (PFR 2.) Each of these assertions, however, concerns Glass's state of mind and thus turns on the credibility of his testimony and the pertinent testimony of his witnesses. On each point, the hearing judge expressly or impliedly found Glass's testimony and that of his witnesses to be credible, and none of that testimony is inherently improbable. There are no instances of "physical impossibility" or falsity that is "apparent without resort to inferences or deductions." (*Huston, supra,* 21 Cal.2d at p. 693.) Thus, given the hearing judge's superior position to observe the witnesses' demeanor, this court should accept as true the facts as to which the judge found Glass and his witnesses credibly testified. Those facts refute each of the Committee's arguments against Glass's admission.

A. Glass did not intend to mislead the New York bar committee in 2002.

We begin with the point mentioned by the dissenting Review Department judge – the deficiencies in Glass's 2002 New York bar application. (See Review Dept. dis. opn. p. 19.) The Committee contends the application was "[l]ess [t]han [f]orthright" (PFR 29) in two respects: Glass did not identify all of his fabricated articles, and Glass mischaracterized the

assistance he gave the magazines in 1998 to identify the fabricated articles. (PFR 34-35.)

1. Glass's identification of fewer than all of his fabricated articles.

First, the Committee's claim that Glass did not identify all of his fabricated articles to the New York bar committee assumes that Glass should have answered a different question than the one the New York committee asked. The New York committee specifically asked Glass to identify only those articles containing fabricated negative statements about *actual persons and entities*.

In a contemporaneous letter that Glass wrote to the New York committee, he made clear his understanding of this limited nature of the committee's request. In that letter, Glass memorialized that the committee had only "requested that I provide information about any instance in which my journalistic fabrications had a harmful impact on real individuals," and that in response he was identifying only those articles "in which potentially harmful, false statements were made about actual persons and actual organizations . . . in distinction to the fabrications in which I wrote fictional statements about fake people and fake organizations or false positive or neutral statements about real people and organizations." (Exh. 1, p. 00236; see also p. 00238.)

Further, as the Review Department noted, Glass testified at the New York bar hearing "that he listed only 23 fabricated articles on his application because he was responding to the request that he disclose only those articles that had harmed actual individuals." (Review Dept. opn. p. 16.)

Glass did not mislead the New York committee in this respect. To the contrary, his contemporaneous letter demonstrates their mutual understanding regarding the scope of the request.

The Committee also mentions a single fabricated article that the Committee claims should have been added to the list because, while the article's fabrication was about an imaginary person, the fabricated person was said to work for "an actual company." (PFR 34.) Glass testified, however, that he inadvertently omitted that article because, as he was dividing his articles into those that discussed real persons and those that discussed imaginary persons, he identified that fabrication as regarding "a made-up character, and so I didn't put that in the pile of 'real person.'" (VI/RT 37-38.) Glass further testified that he later wrote to the company to apologize for the article (VI/RT 38), which demonstrates that he did in fact take responsibility for that fabrication. This single omission was not deliberately misleading, and the hearing judge did not find it so. (See Hearing Dept. opn. p. 17.)[14/]

2. The statement that Glass "worked with" the magazines to identify fabricated articles.

Second, the Committee claims that on the New York bar application, Glass mischaracterized the assistance he had given the magazines in 1998. The application stated that Glass had "worked with" the magazines to identify his fabrications. (Exh. 1, p. 00197.) Ideally, Glass should have written more completely that Glass himself had worked, *or acting through counsel* had

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14/ The Committee argued in the State Bar Court that there were two other articles that Glass should have put on the list for the New York committee, but the hearing judge dismissed those arguments (see Hearing Dept. opn. pp. 16-17), and the Committee's petition for review does not assert them, so they are properly treated as waived in this court.

offered to work, with the publications. He personally worked with *Policy Review*; he worked with *TNR* and *Rolling Stone* through the assistance of his counsel; and he instructed his counsel to work with *George* and *Harper's* (although apparently, unbeknownst to Glass, his counsel may not have completed the task). (See *ante*, p. 8.)

Glass testified, however, that he had "made efforts to be complete" in his New York bar application (VI/RT 87); that he had not meant "to make any misrepresentation or exaggeration" when stating that he had worked with the magazines to identify fabrications (VI/RT 32); that he had believed that his counsel had, in fact, worked with the magazines to identify fabrications (VII/RT 95, 127-128, 133-134; IX/RT 207, 212, 242); and that he believed he had fully cooperated (VI/RT 24-25). After hearing hours of testimony on this subject, the hearing judge concluded: "The *credible testimony* at trial was that applicant and his attorney worked together identifying the articles that contained fabrications. . . . To the extent that the attorney failed to 'work with' some of the magazines, the court concludes that this perhaps overly-broad statement was made through *inadvertence* on applicant's part." (Hearing Dept. opn. pp. 15-16, italics added.)

Corroborating evidence bolsters this credibility determination. With respect to *TNR* and *Rolling Stone*, Glass, through his counsel, actually worked with both magazines to identify his fabrications, which the magazines' retractions expressly reflect. (Exh. 1, p. 00394 [statement in *TNR* retraction that "we sought comment from Glass, who made further admissions"]; *id.* at p. 00392 [statement in *Rolling Stone* retraction that "Glass now acknowledges" his fabrications]; see also IX/RT 221-223.)

With respect to *Policy Review*, Glass personally confirmed his fabrications in a telephone call with the magazine's editor. (VI/RT 32; IX/RT 45-46.)

As for *George* and *Harper's*, Glass testified that he directed his counsel to "communicate" and "cooperate" with those publications and "to offer the same joint defense agreement" he had made with *TNR*. (VI/RT 31; VII/RT 94-95.) Glass further testified that he had believed that his counsel had spoken to editors at both magazines, and he recalled being billed for the telephone calls. (Glass refreshed his recollection with the bills, which were not admitted.) (IX/RT 207-212.) Moreover, Glass thought this belief was confirmed when he later wrote an apology letter to Lewis Lapham, the top editor of *Harper's*, who accepted the apology. (IX/RT 243.)

All of this testimony by Glass pertained to his state of mind – what he *intended* when preparing the New York bar application. The hearing judge's decision to credit this testimony – dependent as it was on the judge's favorable assessment of Glass's demeanor as a witness – is entitled to deference. Accordingly, this court should take it as established that Glass did not intend for his New York bar application to be misleading. (See *Hallinan, supra,* 65 Cal.2d at p. 473 ["unintentional nondisclosure has been held not to justify exclusion from the bar"]; 2 Hazard & Hodes, The Law of Lawyering (3d ed. 2008 supp.) § 62.3, p. 62-5 [applicant's statements "must not be *knowingly* false" (italics added)].)

Moreover, even if this inaccuracy on the New York bar application were treated as a moral failing (despite the hearing judge's finding of inadvertence), it should not preclude Glass's admission to the practice of law. It happened in 2002. Glass has had a decade of exemplary conduct since then. (Cf. *In the Matter of Bodell* (2002) 4 Cal.State Bar Ct.Rptr. 459, 462, 468 (*Bodell*) [reinstatement ten years after conviction of mail fraud].)

B. Glass was distraught in 1998 when asked to list the articles he had fabricated at *TNR*, and he did not realize until 2009 that his accounting had been incomplete.

The Committee argues that Glass "only just compiled a full list of his fabricated articles in August 2009 . . . and only then in connection with these moral character proceedings." (RB 3.) Further, says the Committee, because Glass did not identify eight fabricated *TNR* articles in 1998, so that *TNR* did not retract those articles at that time (see *ante*, pp. 5-6), they still "remain in the public domain." (PFR 23.)

The Committee's implication is that Glass *deliberately* withheld full disclosure until 2009. Glass, however, testified otherwise. He explained that in 1998, when he went through the list of articles that *TNR* had compiled, he was distraught: "I just wanted it to end, and I kept crying, and I kept saying I had to stop for a bit . . . . [¶] I wasn't even thinking. I didn't have any master list of stories. I didn't have access to a computer. It didn't even occur to me at the time to go looking through other lists to see if there were other stories." (VI/RT 20-21.) "I believed I fully cooperated. It was a punishing and difficult experience. I was very upset, and I believed that I had answered the questions truthfully that were put to me." (VI/RT 24-25.) Witnesses who observed Glass at the time confirmed that he was extremely distressed. (See *ante*, p. 5.)

The reason why Glass did not disclose the remaining eight fabricated articles until 2009 was that he did not *realize* until then – upon preparing his declaration for the Committee and carefully reading all of his magazine articles and comparing his declaration to the *TNR* list – that the *TNR* list had been incomplete. (VI/RT 28, 93.) The Committee argues that Glass's "excuse of acute mental anguish in 1998 does not excuse him from failing to follow

through with the magazines at a later date" (PFR 26), but he had *no reason* to "follow through" (*ibid.*), as he did not even realize that the *TNR* list had been incomplete, and he believed that his counsel had worked with the magazines to identify his fabrications. (See *ante*, pp. 41-42.)

Once again, this testimony concerned Glass's state of mind, so that its assessment for credibility was peculiarly within the province of the hearing judge. With due deference to the judge's assessment of Glass's credibility, this court should take it as established that Glass did not deliberately withhold full disclosure.

As for the notion that eight fabricated articles "remain in the public domain" (PFR 23), *all* of Glass's 1996-1998 magazine articles have been thoroughly and publicly discredited – the entire body of work. As *New York Times* journalist/author Melanie Thernstrom testified: "None of the articles that he wrote, even the ones that are true, have any credibility whatsoever." (III/RT 38.) *TNR's* editor-in-chief Martin Peretz testified that there has been no ongoing request by *TNR* for further information about Glass's fabrications (I/RT 140), and Peretz testified that he saw no need for *TNR* to now proclaim, so many years later, that those eight articles, too, were false. (II/RT 166-167.) Given the extensive press coverage devoted to Glass's fabrications, the precise number of fabricated articles is, in Peretz's view, "irrelevant." (II/RT 166.) The Review Department agreed, explaining that "after 1998, it became increasingly less necessary to ferret out and retract every one of the published lies because Glass's entire body of work had been so thoroughly and publicly discredited." (Review Dept. opn. p. 6.)

C. Glass wrote *The Fabulist* for therapeutic purposes, not to profit from his misconduct.

The Committee condemns Glass for writing *The Fabulist* in 2001-2003 as a way of "cashing in on his infamy." (RB 6.) But Glass testified that he had other purposes: The book was "a therapeutic effort to come to understand some of the emotional truth about what I had done" (IX/RT 92-93); it was intended to be "a cautionary tale that would be helpful to journalism students and people like that" (IX/RT 97);[15/] it was "[p]artially cathartic" (IX/RT 93); and both before and while writing it he discussed it with three different psychotherapists (IX/RT 94 ["it really went through multiple therapists"]). The hearing judge believed Glass, concluding: "His purpose in writing the book was as a kind of therapy: a way 'to confront what he had done.'" (Hearing Dept. opn. p. 19.)

Once again, this was state-of-mind testimony, going to Glass's intent, as to which the hearing judge's assessment of credibility should be accorded deference. One might infer that Glass wrote the book chiefly for profit, but Glass's testimony raises the equally reasonable inference that he wrote the book primarily for therapeutic reasons. The inference favoring Glass should be accepted. The hearing judge, having believed Glass's testimony, properly accepted that inference.

15/ In this vein, Glass has spoken to students at Columbia University and George Washington University about the ethical implications of his misconduct, as well as speaking at Coro, an organization that, as Glass put it, "trains young people to be ethically minded civic leaders of the future." (IX/RT 203.)

D. Glass took the opportunity to appear on *60 Minutes* to make a public apology.

The Committee claims that the "suspect timing" of Glass's appearance on *60 Minutes* indicates it was "more self-serving in nature, than a matter of rehabilitation and model conduct." (PFR 37, 38.) Here again are two reasonable inferences. On one hand, one might infer that Glass's appearance on *60 Minutes* – at the same time his book was published – was intended to promote the book. On the other hand, Glass credibly testified that, although his publisher "coordinated" the *60 Minutes* appearance (VI/RT 84), he "wanted an opportunity" to "do a public apology" (VI/RT 83); that his intent in going forward with the interview had *not* been to promote the book, which "I barely talked about" on the program (VI/RT 84; IX/RT 174); that "[f]or me, it was a way to apologize in a very public manner on a TV show that everyone knows is hard-hitting and won't ask you the softball questions" (IX/RT 174); that "[m]y therapist thought it would be a good idea" (IX/RT 174); and that "it was clear to me that both my analyst and myself thought this was a good step in this process, this journey, really, to moving on" (VI/RT 85).

Thus, it is an equally reasonable inference that Glass appeared on *60 Minutes* to make a public apology and achieve therapeutic benefit rather than to promote the book. Again, the inference favoring Glass should be accepted.

E. Glass wrote his apology letters as part of his therapy, not out of self-interest.

The Committee similarly asserts that, with regard to Glass's 2001-2004 apology letters, "[t]he timing of the letters was suspect," the letters having been sent during the pendency of Glass's New York bar application and

around the time *The Fabulist* was published. (PFR 36.) Here, yet again, is a credibility issue. The timing of the letters might suggest self-interested intent, but Glass credibly testified that, to the contrary, the letters were not timed with the book's release but "were done in the process of therapy, over an extended period of time. . . . [M]y book came out in 2003, and a large number of letters did go out in 2003, but they were not coordinated to . . . mute the blows of critics or something." (IX/RT 175.) He did not keep copies of the letters (VI/RT 48), which he surely would have done had he intended them to be useful later. Three witnesses corroborated Glass's sincerity in writing the letters. (See III/RT 20 [Melanie Thernstrom's testimony that she spoke with Glass "numerous times" about the letters and observed him "working on them," and it was "a very difficult and anguished process" for him]; IV/RT 112 [Julie Hilden's testimony that the letter-writing was "difficult for him" and "preoccupied him for a significant amount of time"]; IV/RT 19 [Lawrence Berger's testimony that each letter "was being thought through personally, and involved a real commitment to getting right what's the right way to say that you're sorry"].)

The hearing judge believed Glass and the corroborating witnesses. (See Hearing Dept. opn. p. 19 [Glass wrote apology letters "[a]s part of this therapy"].) This court should defer to that credibility determination.

III.

THE COMMITTEE MAKES UNREASONABLE DEMANDS OF GLASS.

A. Sackcloth, ashes and a vow of poverty are not required for Glass to become a worthy member of the California bar.

The Committee condemns Glass for failing to "[d]isgorge" his profits from *The Fabulist* and use the money "to correct his wrongs, to pay back the victims of his lies, or to fund ethics programs benefitting the journalism profession which he damaged so greatly." (PFR 33.) Instead, argues the Committee, he had the temerity to use the money – some $140,000 in net income – to pay for three years of living expenses in New York City, a significant amount of legal fees, and the therapy he needed so dearly. (RB 6.)

The Committee's thinking seems to be that, in order to show sufficient rehabilitation, Glass should have donned sackcloth and ashes, made a vow of poverty, and gone without the very thing he most needed to pick up the pieces of his life and rehabilitate himself – a sustained period of intensive therapy. No doubt, if Glass had used the money to do good deeds for the profession of journalism instead of paying for therapy, the Committee would now be arguing that he is not worthy of admission to the practice of law because he did not seek therapy over a sustained period of time.

With Glass's magazine articles having been thoroughly and very publicly discredited, it cannot be said that they continue to inflict any significant reputational harm that still needs to be redressed. Only two victims filed lawsuits against Glass; one lawsuit was quickly dismissed without any settlement (VI/RT 55-57), and the other was settled on terms calling for an

apology, a retraction, and payment of litigation expenses (VII/RT 81-84). *TNR* owner Martin Peretz – Glass's principal victim – testified that he never asked Glass to pay the legal fees *TNR* had incurred as a result of his misconduct, or to pay back the salary he earned while at *TNR* (which Glass offered to Peretz when they reconnected some ten years later); in Peretz's view, the modest amount of those fees paled in comparison to the size of the magazine's annual budget, and Peretz testified that he found the idea of Glass repaying his salary "outlandish." (II/RT 134-135; IX/RT 41.)[16/] Glass also asked editors at *George*, *Policy Review* and *Rolling Stone* what he could to do make amends, but none of them asked him for repayment. (IX/RT 41, 45, 201.) The evidence thus indicates that Glass's victims *did not want* the repayment on which the Committee insists. As the Review Department noted, "Glass's efforts to mitigate the effects of his lies are more appropriately tailored to the reputational harm he caused than monetary restitution." (Review Dept. opn. p. 14.)

Glass has done many good deeds during his years in California. That he might have been more saintly should not matter. As the Review Department said: "Perfection is not required in these proceedings." (Review Dept. opn. p. 16.)

16/ Indeed, Peretz – *TNR's* "sole loss payor" for 33 years (I/RT 139) – gave testimony suggesting that *TNR* ultimately did not even lose money as a result of Glass's misconduct: "I actually think that the scandal reawakened people to the existence of *The New Republic*, and the movie probably helped our circulation. I mean, I'm not proud of that, but there it is." (II/RT 134.) (The movie to which Peretz referred was a 2003 film inspired by Glass's fabrications. The film was not an adaptation of Glass's novel. Glass was not involved in the film's production, nor did he receive any compensation from the film. (See Hearing Dept. opn. p. 24, fn. 24.))

B. The Committee demands the impossible in requiring Glass to reestablish himself in journalism.

The Committee's agenda in this case is transparent: In the Committee's view, Glass's misconduct as a journalist puts him beyond any possibility of rehabilitation.

Thus, the Committee tells this court that Glass should be excluded from the practice of law because he "failed to re-establish himself in the journalism community." (PFR 20, capitalization and underscoring omitted.) In the State Bar Court, the Committee argued: "Until Glass repairs his journalistic reputation for dishonesty, his evidence of rehabilitation is materially incomplete." (Opening Brief on State Bar Court Review (OB) 10.)

Yet the Committee's own witness, Charles Lane, testified that Glass can *never* re-establish himself in journalism: "[I]t 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. . . . [H]e's not qualified, based on his record. . . . [¶] [I]t was one of the most substantial cases of journalistic fraud in history. I mean, somebody with that on his resume, in my judgment, can't be hired as a journalist." (II/RT 119.) As Glass himself testified in the New York bar proceedings – testimony that the Committee quotes to this court (PFR 20): "What I did was such a severe breach of journalism rules I will never be welcomed within journalism and rightly so." (Exh. 1, p. 00535.) The Committee concludes: "It is highly likely that Glass's reputation as a liar prevents him from resuming his career as a journalist." (OB 11.)

So, here is the Committee's logic: Glass should not be admitted to the practice of law until he re-establishes himself in journalism; Glass can never re-establish himself in journalism; therefore Glass should never be admitted to the practice of law. Joseph Heller would smile.

The flaw in this "Catch-22" logic is its unspoken premise: that Glass's misconduct is beyond redemption. It is the policy of the law of the State of California – not to mention most religious and humanist traditions – that *no* misconduct (except, some might say, the vilest of crimes) is beyond redemption. (See *Pacheco, supra,* 43 Cal.3d at p. 1058.) The Committee has lost sight of this noble precept.

CONCLUSION

The Committee suggests that the present case bears a "striking" resemblance to *Menna, supra,* 11 Cal.4th 975, where an attorney who had been disbarred in New Jersey sought admission in California, but this court, as the Committee puts it, "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." (PFR 41.)

We posit, however, that this case is more like *Bodell, supra*, 4 Cal.State Bar Ct.Rptr. 459. In *Bodell*, an attorney had resigned from the State Bar, with disciplinary charges pending, after being convicted of a serious crime – mail fraud, stemming from what the State Bar Court Review Department called a "nefarious scheme practiced by a group of insurance defense attorneys" to defraud insurers. (*Id.* at p. 462.) The scheme had been "not only dishonest, but for a lawyer, especially reprehensible in its affront to the fair administration of justice." (*Id.* at p. 464.) Eleven witnesses, however – eight of them attorneys – attested to Bodell's rehabilitation during the decade after his resignation. (*Id.* at p. 465.) Bodell worked as a law clerk during that period, and his employer attested to "his prominent role in ensuring high ethical standards for practice" in that law office. (*Id.* at p. 466.) Bodell expressed "sincere

remorse" for his prior misconduct. (*Ibid.*) An attorney who had investigated the fraudulent scheme testified: "'My personal view is that he should be given a second chance . . . . He was young and inexperienced.'" (*Id.* at p. 465, fn. 4.) The Committee's witnesses, in contrast, focused only on the severity of Bodell's prior misconduct and were largely unaware of his rehabilitation efforts; one of them opined that the misconduct had been "so grave that 'no one who would engage in that conduct could at some point in time be rehabilitated.'" (*Id.* at pp. 466-467.)

The facts and arguments in the present case are echoed in *Bodell*. Yet the Review Department concluded that Bodell *had* been sufficiently rehabilitated in the ten years since his resignation; the evidence "established [his] success in overcoming the weaknesses that led to his earlier dishonest behavior and showed his success in establishing himself as a successful law clerk, making important contributions to his church and being highly sensitive to ethical behavior." (*Bodell, supra,* 4 Cal.State Bar Ct.Rptr. at p. 468.) The Committee did not ask for review by this court.

Bodell is a story of moral failure and subsequent redemption. That is Stephen Glass's story, too. Like Bodell, as a young man Glass committed misconduct that was especially reprehensible, but since then, over a substantial period of time, he has engaged in exemplary conduct that has earned him a reputation for scrupulous honesty among the attorneys, law professors, judges, therapists and friends who know him best. He has persevered in California State Bar proceedings since 2007 in order to attain the privilege of practicing law. (See *Pacheco, supra,* 43 Cal.3d at p. 1058 [applicant's "perseverance during his seven-year quest to gain certification merits commendation"].)

This court should admit Stephen Glass to membership in the California bar.

Dated: January 3, 2012

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The text of this brief consists of 14,577 words as counted by the Corel WordPerfect version 10 word-processing program used to generate the brief.

Dated: January 3, 2012

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