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November 13, 2019

The Honorable Chief Justice Tani Cantil-Sakauye and Associate Justices Supreme Court of California 350 McAllister Street San Francisco, California 94102

Re: In the Matter Re Stephen Liebb State Bar Court Case No. 17-R-05126 Amici Curiae Letter in Support of Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, rule 8.500(g), amicus curiae Dr. James Binnall, along with amici curiae C. Jason Bell, Dr. Megan Denver, Associate Professor Shon Hopwood, Dr. Mona Lynch, Dr. Becky Nash, Dr. Dina Perrone, Dr. Karemet Reiter, Dr. Carroll Seron, Clinical Professor Katherine Tinto, Ms. Alicia Viriani, Dr. Robert D. Weide, and Mr. Brendon Woods respectively urges this Court to grant petitioner Stephen Liebb's petition for review in this attorney reinstatement matter.¹

Pursuant to California Rules of Court, rule 9.16(a)(1) and (4), this Court should grant review to revisit and disapprove the line of Supreme Court cases relied upon by the trial and review courts here for the proposition that, because prison and parole are supervised environments, a bar applicant's character rehabilitation in prison and on parole is categorically of little weight in the good moral character determination. (See *In re Gossage* (2000) 23 Cal.4th 1080 (*Gossage*); *In re Menna*

California Rules of Court, rule 9.13, concerning review proceedings in attorney reinstatement matters, is unclear whether potential amici may file briefs on the merits after a grant of review, and whether the rules for amicus letters and briefs in California Rules of Court 8.500 and 8.520 even apply to these proceedings. If review is granted, amici respectfully request this letter brief in support of review be deemed an application under California Rules of Court, rule 8.520(f) for leave to file an amicus brief and amicus brief in support of petitioner.

(1995) 11 Cal.4th 975 (Menna); Seide v. Committee of Bar Examiners (1989) 49 Cal.3d 933 (Seide).) Those cases rest on unfounded and incorrect categorical assumptions that are rejected by modern scientific scholarship, which amici describe in this letter brief to assist the Court in its determination of this matter. Unless this Court grants review and reconsiders existing precedent, thousands of formerly incarcerated individuals will have their futures limited by this Court's prior adoption of now-outdated and scientifically wrong conclusions about character development.

In fact, a person's experience and conduct in prison can be highly relevant evidence of actual moral rehabilitation, especially for a long-term prisoner who has shown many signals of remorse and change. Indeed, the very premise of time off for good behavior and early release from parole—and that readmission to the bar is possible—is that people can and do change for the better. To categorically discount decades of good behavior in prison, followed by good behavior on parole, as the trial court did here for petitioner Stephen Liebb, simply because prison and parole are controlled and supervised, is improper as a matter of fact and law. Many complex factors determine why a person behaves well in prison, including that the person has truly reformed. As a result, there is no categorical reason to discount the value of good behavior in prison and on parole in evaluating whether a formerly incarcerated person has demonstrated exemplary conduct for a sufficiently prolonged period of time to be entitled to readmission to the bar. Rather, in many cases, the evidence concerning how the person behaved in prison and then on parole is compelling evidence of reform.

STATEMENT OF INTEREST OF AMICI CURIAE²

James M. Binnall, Ph.D., LL.M., J.D., is an Associate Professor of law at California State University, Long Beach, focusing on criminality and criminal justice. His research has focused on the civic marginalization of former offenders, parole and postrelease restrictions, and conditions of confinement. His current research, funded by the National Science Foundation and the American Bar Association, examines the exclusion of convicted felons from the jury process. Dr. Binnall also maintains a pro-bono law practice in which he represents law students in the California State Bar Moral Character and Fitness Determination process and attorneys involved in disciplinary actions.

As a formerly incarcerated attorney, Dr. Binnall has unique lived experience relating to imprisonment and rehabilitation, topics at the core of the case in question. The subject of how courts should evaluate good behavior while incarcerated and on parole is important to Dr. Binnall and the many formerly incarcerated persons he represents in State Bar proceedings. Thus, Dr. Binnall has a strong interest in the Court granting Mr. Liebb's Petition for Review on the issue of whether the State Bar should give greater weight to an applicant's good behavior while in prison and on parole. This letter will assist the Court by providing legal, sociological, and psychological research in support of giving greater weight to an applicant's character rehabilitation in prison and on parole when deciding whether to admit the applicant to the State Bar.

C. Jason Bell, M.S., is an adjunct professor at San Francisco State University in the department of Criminal Justice and Sociology. He is currently the Director of Program Development for Project Rebound California State University Consortium. He has worked in and been connected to criminal/legal issues for more than 27 years and has a true passion for contributing to the sensible inclusion of formerly incarcerated people in the area of reforming our carceral system.

Dr. Binnall and Horvitz & Levy LLP prepared this letter on a fully pro bono basis. While Mr. Liebb's counsel requested amicus support, no part of this letter was prepared or funded by petitioner, nor does Dr. Binnall or any of the other amici have any biases or interest in the outcome of the petition apart from their general interest in ensuring fairness for all formerly incarcerated persons who desire to join or rejoin the legal profession.

Megan Denver, Ph.D., is an Assistant Professor in the School of Criminal Justice and Criminology at Northeastern University. Her research answers policy-relevant questions involving criminal record stigma, employment, and desistance. Dr. Denver's recent research focuses on how decision makers assess evidence of rehabilitation and how positive credentials can offset the risk of recidivism. As such, she has an interest in whether the State Bar takes into account good behavior while a person is incarcerated and/or on supervision.

Shon Hopwood, J.D., is an Associate Professor of law at Georgetown University Law Center, where he teaches a variety of criminal law-related classes. His research focuses on criminal procedure, the constitutional rights of prisoners, and reforming the criminal justice system. He maintains an active pro bono practice, in which he represents criminal defendants, civil rights plaintiffs, and those with criminal justice involvement seeking a law license. Professor Hopwood successfully represented applicant Tarra Simmons before the Washington State Supreme Court after her application had been recommended for denial by the Washington State Bar Association. (See *Matter of Simmons* (Wash. 2018) 414 P.3d 1111 [where the Court took into consideration Ms. Simmons's record of rehabilitation while she served time in a state prison].)

Professor Hopwood's legal career began not at law school, but in federal prison where he twice successfully petitioned the Supreme Court of the United States, while serving nearly eleven years for several bank robberies. As a formerly incarcerated attorney, he has unique experience relating to imprisonment and rehabilitation, topics relating to the core question in this case. He has an interest in seeing those who became rehabilitated receive law licenses.

Mona Lynch, Ph.D. is the Professor and Chair of Criminology, Law and Society at the University of California, Irvine with a courtesy appointment in the UCI School of Law. Trained as a social psychologist, her research focuses on plea and punishment bargaining, criminal sentencing. processes, institutionalized forms of bias within criminal justice settings. Her research has been funded by the National Science Foundation, the National Institute of Justice, and the Russell Sage Foundation. Her scholarship has been published in a wide range of social science journals, law reviews, and edited volumes. She is also the author of two books: Sunbelt Justice: Arizona and the Transformation of American Punishment (Stanford University Press 2009) and Hard Bargains: The Power to Punish in Federal Court (Russell Sage Foundation 2016).

Becky Nash, Ph.D., is an Associate Professor in the School of Criminology, Criminal Justice, and Emergency Management at California State University, Long Beach. As a professor working with formerly incarcerated individuals at CSULB and a board member/faculty member of Rising Scholars at Long Beach State, it is very important to Dr. Nash that all formerly incarcerated individuals who have paid their debt to society be granted the same rights as any other people who are not formerly incarcerated. Her work reflects her belief that if society expects formerly incarcerated individuals to integrate and contribute to society, then it must allow them every opportunity to do so, including by readmission to the bar.

Dina Perrone, Ph.D., is an Associate Professor in the School of Criminology, Criminal Justice, and Emergency Management at California State University, Long Beach. She studies the collateral consequences of the War on Drugs, including mass arrests and incarceration, and uses theory to explain onset, persistence, and desistance. Her work demonstrates the many systems in place that make desistance challenging, despite individual efforts to change, integrate, and contribute. Her research shows that by building social and human capital, and obtaining employment, desistance is likely.

Keramet Reiter, Ph.D., J.D., is an Associate Professor in the Department of Criminology, Law and Society at the School of Law at the University of California, Irvine, and a member in good standing of the California Bar. Her research focuses on prison law and policy, conditions of confinement, and long-term impacts of incarceration; she is also the cochair of the American Bar Association Corrections Committee. Her research has been funded by the National Science Foundation and the Langeloth Foundation, and she is the author or editor of three books about punishment, incarceration and solitary confinement (Extreme Punishment (Palgrave University Press 2015); 23/7 (Yale University Press 2016); Mass Incarceration (Oxford University Press 2017).

Dr. Reiter has also worked in prisons as an educator and as an advocate for formerly incarcerated people pursuing higher education opportunities for 20 years, and she is the UCI campus adviser for the Underground Scholars Initiative, a support and advocacy group for formerly incarcerated students at UCI. In these capacities, she actively supports students who have demonstrated good behavior while incarcerated and on parole, in applying to admission to undergraduate and graduate programs at UCI, and in applying for licensing in a variety of subject areas. Thus, Dr. Reiter has a strong interest in the Court granting review of the

issue of whether the State Bar should give greater weight to an applicant's good behavior while in prison and on parole.

Carroll Seron, Ph.D., is a Professor Emerita in the Department of Criminology, Law and Society with a courtesy appointment in the Department of Sociology at the University of California, Irvine. She is Past-President of the Law & Society Association, 2013-2015 and former Editor of the Law & Society Review, volumes 42-44. Dr. Seron studies the organizations and professions of law. Among other research endeavors, she collaborated with Charis Kubrin (UCI) on a project to examine the impact of prison downsizing in California, entitled Realigning California Corrections: Legacies of the Past, the Great Experiment & Trajectories for the Future that was published in The Annals of American Political and Social Science (2016). She has published her research in peer reviewed journals, including American Sociological Review, Law & Society Review, and Work & Occupations, as well as various law reviews.

Katharine Tinto, J.D., is a Clinical Professor of Law and Director of the Criminal Justice Clinic at UC Irvine School of Law. Professor Tinto teaches, practices, and researches in the areas of criminal law, reentry, clemency, and indigent criminal defense. Prior to entering academia, Professor Tinto worked for over seven years as a public defender in Los Angeles County. As a lawyer, advocate, and researcher, Professor Tinto's work focuses on assisting formerly incarcerated individuals in their efforts in overcome reentry obstacles following their release. These efforts include administrative advocacy and representing individuals in their petitions for certificates of rehabilitation, pardons, and other forms of postconviction relief.

Alicia Virani, J.D., is The Gilbert Foundation Associate Director of the Criminal Justice Program at UCLA School of Law. Ms. Virani teaches a clinical course on bail in her current position as well as engages in research and policy work in the areas of juvenile justice, participatory defense, and pretrial reform. Prior to this position, Ms. Virani worked for 4 years as a public defender in Los Angeles County and prior to that worked in the field of restorative justice. Ms. Virani has been working with individuals interested in forming a systems-impacted bar association in order to grow the mentorship in the legal field for individuals who have been formerly incarcerated or whose family has been impacted by the carceral state. She is committed to ensuring that law schools are actively recruiting, accepting, and supporting systems-impacted individuals during the admissions process, while in law school, and in developing their careers.

Robert D. Weide, Ph.D., is an Assistant Professor in the Department of Sociology at California State University, Los Angeles. His research focuses on street and prison gangs in Los Angeles and the California Department of Corrections (CDCR), as well as the effects of rehabilitative programming on inmate behavior in CDCR facilities. As a formerly incarcerated academic, Dr. Weide has both personal experience and an informed perspective on rehabilitation and reintegration of formerly incarcerated and justice-impacted populations, issues central to the case in question. The issues of how courts should evaluate the potential for reintegration based on demonstrated rehabilitation is important to Dr. Weide and his research on the efficacy of rehabilitative programming in the CDCR system.

Brendon Woods, J.D., has been the Chief Public Defender of Alameda County since 2012 and has been a Public Defender for 23 years. His experiences as his office's recruitment officer for several years, and now as the Chief Public Defender, have served to validate his belief in second chances, and have demonstrated that people with prior convictions bring unique and valuable experience to the work. Attorneys and other individuals that have experienced a criminal conviction often are the most compassionate and dedicated advocates.

LEGAL DISCUSSION

This Court should grant review to revisit its line of cases categorically giving little weight to an applicant's good behavior in prison and on parole because they rest on improper assumptions.

A. The possibility of reinstatement to the bar rests on the notion that people can and do change, and that notion is well-supported by social science literature.

The national governing body of legal practitioners in the United States, the American Bar Association (ABA), asserts that "[t]he primary purpose of character and fitness screening before admission to the bar is the protection of the public and the system of justice." (National Conference of Bar Examiners and American Bar Association Section of Legal Education and Admissions to the Bar, Comprehensive

Guide to Bar Admission Requirements 2019 (Gunderson & Guback edits., 2019) p. vii. (hereafter Gunderson & Guback).) Though bar examinations test professional competence, the ABA theorizes that "[t]he lawyer licensing process is incomplete if only testing for minimal competence is undertaken" because "[t]he public is inadequately protected by a system that fails to evaluate character and fitness as those elements relate to the practice of law." (*Ibid.*)

Thus, the ABA recommends that in each jurisdiction "[t]he bar examining authority should determine whether the present character and fitness of an applicant qualifies the applicant for admission" (Gunderson & Guback, supra, at p. ix), and whether an applicant is "one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them" (id. at p. viii). Under the ABA's recommended standards for evaluating the character of a bar applicant, licensing authorities should consider evidence of character rehabilitation. (Id. at p. ix.) In this respect, the ABA acknowledges that character is not a fixed concept, that prosocial change is possible, and, in fact, required for a positive determination of moral character.

The fact that character is a malleable concept is well-supported by academic and scientific literature.

Traditional conceptions of character "assume that we have a certain sort of character, comprised of enduring, global character traits—traits that are not just consistent across time, but also across situations, and that manifest not just sporadically, but reliably." (Kaye, Does Situationist Psychology Have Radical Implications for Criminal Responsibility? (2008) 59 Ala. L.Rev. 611, 647 (hereafter Kaye).) This static conceptualization of character harkens back to the Aristotelian formulation of human nature which places "[a]n emphasis on robust traits and behavioral consistency" (Doris, Lack of Character: Personality & Moral Behavior (2002) p. 18 (hereafter Doris)), and speculates that "[k]nowing something about a person's character is supposed to render their behavior intelligible and help observers determine what behaviors to expect" (id. at p. 5).

This conventional view of character also holds that "every person chooses to develop good or bad character through autonomous actions," and "[o]nce a person [chooses] their character... he or she [is] not free to simply undo the choice." (Yankah, Good Guys and Bad Guys: Punishing Character, Equality and the Irrelevance of Moral Character to Criminal Punishment (2004) 25 Cardozo L.Rev. 1019, 1028.) Moreover, traditional character theorists posit that often, one socially unacceptable act is adequate evidence that one possesses a normatively undesirable

trait. In this way, bad character "require[s] very little in the way of behavioral consistency." (Doris, supra, at p. 20.) Thus, "one doesn't have to reliably falter, but only sporadically falter" (ibid.) to win the traditionalist's pejorative distinction of possessing bad character. Scholars describe this view of character as "[g]lobalism," contending that under the globalist theory of character, "[i]f a person possesses a trait, that person will engage in trait-relevant behaviors in trait-relevant eliciting conditions with markedly above chance probability." (Doris, supra, at pp. 19, 22-23.) Specifically, globalism dictates that traits are: 1) consistent, 2) stable, and 3) evaluatively integrative. (Id. at p. 22.) For example, if one possesses the trait of dishonesty, that person will consistently act in a dishonest fashion in a host of varied situations. Moreover, in such situations, a dishonest person is also more likely to exhibit other traits of equal reprehensibility.

However, most scholars today reject this "globalist" view of character, and instead suggest that "philosophical explanations referencing character traits are generally inferior to those adduced from experimental social psychology" because "[t]hey presuppose the existence of character structures that actual people do not very often possess." (Doris, *supra*, at p. 6.) Simply, modern research indicates that behavior may primarily derive from the situations that confront an actor, rather than an actor's "dispositional structure." (*Id.* at p. 26.)

A series of experiments, now famous in social psychological literature, strengthens the claim that one's behaviors are largely a product of one's environment. By manipulating situational factors, researchers have been able to induce striking behaviors (see generally Milgram, Obedience to Authority: An Experimental View (2004); Milgram, Behavioral Study of Obedience (1963) 67 J. Abnormal & Social Psychology 371; Zimbardo, The Lucifer Effect: Understanding How Good People Turn Evil (2007); Darley & Batson, "From Jerusalem to Jericho": A Study of Situational and Dispositional Variables in Helping Behavior (1973) 27 J. Personality & Social Psychology 100), demonstrating that "situational influences can easily cause us to act in ways we would not approve" (Kaye, supra, 59 Ala. L.Rev. at p. 639). Researchers term this phenomenon the "puppet problem," noting that quantifiable data show that our acts are intimately connected to our surroundings. (Ibid.)

The situationist conceptualization of character challenges conventional views in several respects. Situationism holds that 1) "[b]ehavioral variation across a population owes more to situational differences than dispositional differences among persons"; 2) "[p]eople will quite typically behave inconsistently with respect to the attributive standards associated with a trait, and whatever behavioral

consistency is displayed may be readily disrupted by situational variation"; and 3) "evaluatively inconsistent dispositions may 'cohabitate' in a single personality." (Doris, *supra*, at pp. 24-25.) Returning to our dishonest straw person, the situationist would argue that one who is dishonest may only act untruthfully in certain situations, but he or she may behave quite honestly if other circumstances present. In this way, the dishonest person has the capability to be both forthright and deceptive.

In denying petitioner's request for reinstatement to the practice of law in California, however, both the Hearing Department and the Reviewing Department of the State Bar Court of California based their decisions on a line of California Supreme Court cases that categorically give little weight to an applicant's good behavior in prison and on parole. (In the Matter of Liebb (Hearing Dept. 2019, No. 17-R-05126-PEM) at p. 25; In the Matter of Liebb (Review Dept. 2019, No. 17-R-05126) at p. 13; see Gossage, supra, 23 Cal.4th at p. 1099 ["Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole"]; Menna, supra, 11 Cal.4th at p. 989 ["Good conduct is normally demanded of a prisoner and a parolee"]; Seide, supra, 49 Cal.3d at p. 939 ["It is not enough that petitioner kept out of trouble while being watched on probation; he must affirmatively demonstrate over a prolonged period his sincere regret and rehabilitation"].) These cases are based on the categorical assumptions that the supervised, restrictive environments of prison and parole mask negative character traits that would otherwise be exhibited in an unsupervised, unrestricted environment.

To the contrary, current social science and criminology research show that prison conditions do not necessarily force good behavior from someone who would otherwise not exhibit it. In fact, as will be described further below, such conditions of confinement and supervision promote misbehavior and make lapses in good character easier to identify. Thus, where a person has exhibited good moral character in that environment consistently for a prolonged period, such behavior can be highly probative of actual moral rehabilitation and the ability to maintain good moral character in any environment, including an unrestricted environment.

B. Evidence of good behavior in prison and on parole is highly probative of true moral reform.

There is no sound reason to treat prison good behavior with greater skepticism than postrelease behavior. Good behavior should, at the very least, score analogously to good behavior postincarceration because prison conditions are replete with violence and manipulation, making maintenance of a discipline-free record while incarcerated an exceptional and commendable feat. Firsthand accounts of prison environments make this clear. (See generally Hassine, Life Without Parole: Living and Dying in Prison Today (5th ed. 2010); Abbott, In the Belly of the Beast: Letters From Prison (1981); Conover, NewJack: Guarding Sing Sing (2001); Bauer, American Prison: A Reporter's Undercover Journey into the Business of Punishment (2018).) In addition, if a person lacks the ability to exercise self-restraint and good moral character, prison authorities will assuredly discover and report any such character flaws that present during a term of incarceration. In other words, simply being in prison makes it more likely that misconduct will be detected. Thus, a pattern of good behavior while incarcerated is noteworthy.

Furthermore, the fact that incarcerated people are in structured, supervised environments does not mean they will behave well. This is because prisons are also environments in which "opportunities to engage in misconduct are ubiquitous." (Cochran & Mears, The Path of Least Desistance: Inmate Compliance and Recidivism (2017) 34 Just. Q. 431, 435 (hereafter Cochran & Mears).) Decades of criminology research has shown that the "level of deprivation and degradation" experienced in prison has a tendency to reduce "people to a basic state of despair and anger where they lash out at one another." (Haney, The Perversions of Prison: On the Origins of Hypermasculinity and Sexual Violence in Confinement (2011) 48 The prison environment "produces unusual Am. Crim. L.Rev. 121, 131.) psychological stresses and strains" under which [l]ife becomes a milieu of tension, fear, and force in which violence is an accepted response and coping mechanism." (Carriere, The Dilemma of Individual Violence in Prisons (1980) 6 New England J. on Prison L. 195, 210; see also Cochran & Mears, supra, at p. 435 [deprivations and fear in prison "propel many inmates toward misconduct"].) And "[s]tudies indicate that inmates with histories of violent behavior who had served time for violent behavior, or whose current incarceration was for a violent crime, have committed more rule infractions and engaged in more assaultive behavior while incarcerated." (Lahm, Inmate-on-Inmate Assault: A Multilevel Examination of Prison Violence (2008) 35 Crim. Just. & Behav. 120, 122 (hereafter Lahm).)

Prison overcrowding makes the deprivations experienced in prison even more pronounced, as more people are competing for even fewer resources. As observed by the United States Supreme Court, evidence shows that overcrowding in California prisons "promote[s] unrest and violence" and makes supervision of individual prisoners difficult. (*Brown v. Plata* (2011) 563 U.S. 493, 519-521 [131 S.Ct. 1910, 179 L.Ed.2d 969]; see also *id.* at p. 535 [former warden of San Quentin testified that the conditions were "'"mak[ing] people worse"'"]; Lahm, *supra*, at pp. 124, 134-135 [crowding has been shown to be a strong predictor of prison violence].)

Overall, whether a person behaves well during incarceration is the product of many case-specific factors, including not only the level of deprivation involved, but also personal characteristics like age, maturity, mental capacity, and the crime of conviction. (See Sorensen & Reidy, Nothing to Lose?: An Examination of Prison Misconduct Among Life-Without-Parole Inmates (2019) 99 Prison J. 46, 48, 50-51 (hereafter Sorensen & Reidy).) Research has shown that prison inmates with long-term sentences tend to behave well not simply because they are supervised, but because they learn the importance of getting along—in other words, they overcome antisocial tendencies, "progress[ing] through phases of increased conscience, remorse, self-discovery, and redemption through service to others." (Kreager & Kruttschnitt, Inmate Society in the Era of Mass Incarceration (2018) 1 Ann. Rev. Criminology 261, 269; see also Sorensen & Reidy, supra, at p. 58 ["Changes in adaptation by these long-term inmates to the rigors of incapacitation have been attributed to self-generated improvement in emotional reactivity and behavior, and finding a social niche"].)

Taken together, the above research shows that simply being in prison does not compel a person to behave well and often, the contrary is true—being in prison can promote violent behavior and other forms of misconduct. This makes it all the more remarkable when an inmate refrains from violence or other rule infractions while incarcerated. In fact, a long history of good behavior is highly probative that the applicant is now a compliant, prosocial citizen. Thus, contrary to the above-mentioned line of California Supreme Court cases giving little weight to good behavior in prison, good behavior while incarcerated is actually good evidence of true rehabilitation.

Like good behavior in prison, an applicant's good behavior on parole should be given greater weight on an individual-by-individual basis than current case law suggests. As in prison, parole involves a high-supervision environment in which it is easier to get into trouble than it is when no one is watching or establishing strict rules of conduct. (Hyatt & Barnes, *An Experimental Evaluation of the Impact of*

Intensive Supervision on the Recidivism of High-Risk Probationers (2017) 63 Crime & Delinq. 3, 5-6, 26.) For example, in the context of intense supervision programs (ISP), one study found that "[t]here is strong, though limited, evidence that the conditions that make ISP intense are so onerous that some offenders prefer prison." (Petersilia & Turner, Intensive Probation and Parole (1993) 17 Crime & Just. 281, 324.) Multiple studies of intensive supervision parole reveal that closer observation leads to higher rates of detection of misconduct. (Ibid.) An applicant's good behavior while on parole thus reflects the fact that he or she is actually reformed, since if a person's character flaws were unresolved, they would very likely be noticed by the parole officer.

Furthermore, "[w]ell-designed longitudinal studies, across cultures, now reveal that the effect of prison is, if anything, criminogenic." (Listwan et al., *The Pains of Imprisonment Revisited: The Impact of Strain on Inmate Recidivism* (2013) 30 Just. Q. 144, 146.) Thus, there are high rates of parole failure. (*Ibid.*) Since the tendencies to engage in antisocial and criminal behavior may actually increase as a result of having spent time incarcerated, the fact that an applicant exhibits exemplary conduct immediately after release from incarceration is strong evidence of his or her true reform from antisocial behavior.

CONCLUSION

In sum, the Gossage, Menna, and Seide cases rely on outdated assumptions that are contrary to modern scientific research. The incorrect categorical assumption that little weight should be given to an applicant's good and even exemplary behavior while incarcerated or on parole should not remain enshrined in the case law in a manner that virtually guarantees that long-term prisoners will never be able to qualify for reinstatement to the practice of law in California, even though they might dedicate their lives to helping other prisoners. Long-term prisoners who are released when they are in their fifties or sixties do not have the luxury of being able to wait seven to ten years to prove exemplary behavior outside of prison and off parole. Therefore, this Court should grant the petition for review and disapprove of the Gossage, Menna, and Seide cases to the extent that they hold categorically that little weight should be given to an applicant's good behavior in prison and on parole.

Here, petitioner displayed a significant lapse in character when he committed the crime that ultimately led to his imprisonment. But petitioner has also demonstrated exceptionally prosocial character as an inmate, a parolee, and now as a citizen. Under modern conceptions of moral character, supported by social science and criminology research, a person's successful navigation of both prison and parole without issue is probative of the fact that he or she may, even under the most negative situational influences, be able to maintain exemplary, prosocial character.

This Court should grant the petition for review and make clear that time in prison and on parole may be considered in evaluating an applicant's good moral character.

Respectfully submitted,

HORVITZ & LEVY LLP JEREMY B. ROSEN EMILY V. CUATTO

JAMES M. BINNALL, ESQ.

Bv:

Emily V. Cuatto

Attorneys for Amici Curiae JAMES M. BINNALL, J.D., LL.M., Ph.D., et al.

PROOF OF SERVICE

In the Matter of STEPHEN LIEBB Case No. S258547

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On November 13, 2019, I served true copies of the following document(s) described as **AMICUS CURIAE LETTER** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 13, 2019, at Burbank, California.

Cassandra St. George

Cassandra St. George

SERVICE LIST In the Matter of STEPHEN LIEBB Case No. S258547

Daniel Purcell (SBN 191424) Jason S. George (SBN 307707) Keker, Van Nest & Peters LLP 633 Battery Street San Francisco, California 94111-1809 Tel.: (415) 391-5400 Fax: (415) 397-7188	Counsel for Petitioner Stephen Liebb [Via Truefiling.]
Melanie J. Lawrence (SBN 230102) Allen Blumenthal (SBN 110243) Manuel Jimenez (SBN 218234) State Bar of California Office of Chief Trial Counsel 180 Howard Street San Francisco, California 94105-1639 Tel.: (415) 538-2288	Chief Trial Counsel [Via U.S. Mail.]
State Bar Court of California Review Department 180 Howard Street, 6th Floor San Francisco, California 94105-1639	Case No. 17-R-05126 [Via U.S. Mail.]