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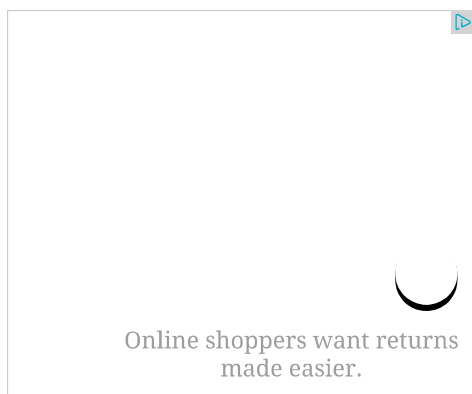


The Gold-Hoarding CEO Who Wants to Be Governor

The chairman of Overstock.com is running for governor and wants voters to get to know him as a candidate. But a spate of lawsuits have haunted his time at the company.

Jonathan Johnson, the Chairman of the Board of Overstock.com—and gold and Bitcoin stockpiler—has a message for the people of Utah: Hire me as your CEO.

On Sept. 11 of this year, the chairman of the online shopping hub anted up \$25,000 to speak at the GOP convention inside the South Towne Expo Center in Sandy, Utah. There, Johnson—a devout Mormon and California native—told 2,000 delegates about the worst-kept secret in Utah: that he intends to unseat the two-time incumbent, Governor Gary Herbert.



Online shoppers want returns made easier.

“I ask that you spend the next several months getting to know me,” Johnson said in the speech. “Put me through a rigorous interview process. I’m confident that you’ll see that my candidacy represents the difference between someone who leads and someone who merely manages.”

The Daily Beast spoke with the candidate about his road to Utah’s ballot box. It’s a path that started with his time at BYU, where the Japanese-language grad tacked on a JD; he then began clerking at the Utah Supreme Court before returning to his native Los Angeles to litigate for various white-shoe law firms.

He moved his family back to Utah in 1999 to take a general counsel gig at a startup called TenFold.

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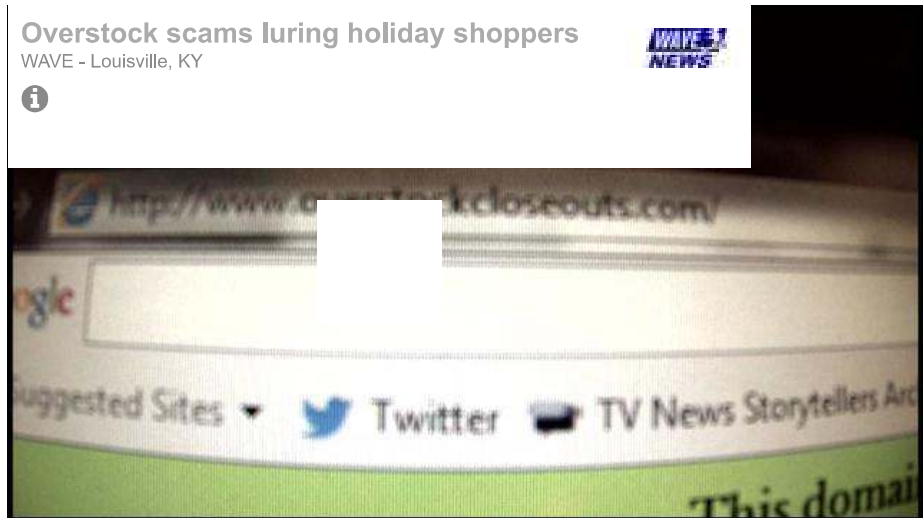


The software development company ended up in the crosshairs of the Securities and Exchange Commission (SEC) for allegedly hyping its stock price between 1999-2000 to “reap

thousands and even millions in personal profits” and for supposedly not being truthful to investors about how they were “routinely missing contractual deadlines,” according to a 2002 SEC complaint. The SEC eventually dropped all charges.

For Johnson, TenFold tanked purely because the dotcom bubble was bursting. “We had a lot of legal issues we dealt with and the company contracted significantly,” he told The Daily Beast.

And he walked away stronger. “The thing I learned most at TenFold is that during hard times there’s still problems to be solved,” he said. “And one can learn a lot that would be applicable to other business situations.”



Johnson parlayed that knowledge into a meteoric rise at Overstock, starting in **THE DAILY BEAST** POLITICS ENTERTAINMENT WORLD U.S. NEWS way to president and now chairman.

In Sept. 2002, Johnson took a shining to Patrick Byrne, the Stanford



Philosophy Ph.D and anti-Wall-Street wunderkind whose photographic memory is something to behold. At the time, Byrne was CEO of Overstock, and his bold brainstorm to use the Dutch Auction method for Overstock was an instant draw. “I thought it was a great idea,” Johnson said. The Dutch Auction —named after a famous method for selling tulips—dates back to the 1600s as an alternative way of selling securities to the public, relying on a bidding process to set the maximum price investors are willing to pay.

Johnson was introduced to Byrne through a former TenFold colleague. “I spent quite a bit of time chatting with Patrick during the interview process and I was eager to join,” Johnson said.

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Long before Johnson announced his run for governor, the conservative executive and avid cyclist had already been pushing a political agenda through his Promote Liberty PAC, spearheading programs like fitting schoolteachers with school supply vouchers, giving terminally ill patients access to experimental drugs, and staunchly preserving “the historic role of churches.”

He's since touted Overstock's stockpiling of provisions. “We sell emergency prepared supplies, including food, and we decided to keep an extra amount of inventory so we have food should a calamity happen so

that we can feed our employees and their family,” he said.

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This survivalist thinking also extends to currency.

Johnson has been trumpeting salvation in crypto-currency and gold for when the country's financial system implodes again.

Byrne and Johnson are big on BitCoin and say that among Overstock's \$100 million in reserves, a portion of it is made up of good old-fashioned gold bricks and coins. “We have about \$10 million dollars, mostly the precious metal in gold and silver, mostly small button-sized coins that we keep outside the banking system,” the chairman said during a speech at the United Precious Metals Association last month. “We expect that when there is a financial crisis there will be a banking holiday.”

Johnson added that he thinks it's prudent to have contingencies given the volatility of the last decade. "While we have the means, it's good management and good financial planning to do this," he said.

Meanwhile, Overstock has been picking fights with big banks. It came out guns blazing against Goldman Sachs, suing them for allegedly manipulating short sales of Overstock's stock and thus causing its shares to fall. (A judge dismissed the suit in 2012.)

The company, headquartered in Salt Lake City, is also priming for another slugfest. "We're going to trial in March of next year against Merrill Lynch for significant manipulation of our stock," Johnson said. "And do our shareholders like that? I think they do.

"Does Utah want a governor who stands up on principle? I don't know but I hope they do."

And yet a spate of recent lawsuits have claimed that Overstock and its overlords may not be so clean when it comes to principles.

In 2008, when Johnson was president, the company fended off two SEC "informal investigations" scrutinizing Overstock's accounting practices. A tipster informed the SEC that Overstock had allegedly overstated its income and understated its losses after underbilling its suppliers.

Regarding those investigations, Johnson notes, Overstock was compliant and "very forthcoming" with the SEC. In both cases, he says, "we got a No Action Letter" exonerating the company. "I think that's pretty clear evidence that the SEC saw what we were doing and while we had some things that caused restatements—there was certainly no malintent or bad action that they could take action on."

But last year Overstock was ordered to fork over \$6.8 million to the State of California after a prosecutor nailed the company for inflating prices "to make it appear consumers were getting a bigger discount" than they were actually receiving, according to a statement released by Santa Cruz County District Attorney's office. Officials confirm Overstock has appealed the judgment, and therefore no money has yet changed hands.

The year before, the company's director of communications, Judson Bagley, faced several felony charges for doctoring prescription meds, according to a police report and Utah County court documents. He pleaded to a lighter charge of having "altered prescriptions," the papers say.

Johnson acknowledged that Bagley, who remains Overstock's director of communications, made "a mistake in his private life" but like many Overstock employees "deserves a second chance," he said.

"Is he still employed at Overstock? Yes. Do we believe in second chances? Yes," Johnson said, noting later in our discussion that he was not aware of the matter until after Bagley was busted.

Then there's the Stormy Simon subterfuge. Simon, a one-time entry-level saleswoman who is now a board member and Overstock's president, played a

double-agent role to woo a hedge-fund manager named David Rucker, a New Jersey-based businessman whom Overstock brass accused of plotting to drive down the price of Overstock's shares.

According to a *Fortune Magazine* article, published in 2005, "perhaps nothing illuminates the growing strangeness surrounding Overstock better than an incident involving [then-senior vice president] Stormy Simon." The article says Rucker reached out to Simon to see if she was unhappy at her job. She wasn't interested in his offer, but Byrne encouraged her to take the meeting, to see if Rucker was paying people to leak info on Overstock. Rucker and Simon agreed to meet. "Simon told Rucker that she could 'sink Byrne, I can sink his ship today,'" *Fortune* wrote. ("She showed him some thigh," Byrne says.) Rucker wasn't sure whether to believe her. He told her that if she had valid concerns, she should get a lawyer and should take them to the SEC."

Even seven years later, Johnson still flashes anger and defiance about the legal skirmish with Rucker that Overstock launched in 2005, when the company filed a civil claim against Rucker and a forensic research firm called Gradient Analytics for allegedly orchestrating "a wide-scale predatory campaign of knowingly distributing false, and covertly biased, written reports about Overstock in order to disparage Overstock and enrich themselves."

"Did I know that Stormy was going back to New York to meet with David Rucker—yes," Johnson says.

He defended the bare-knuckled tactics as "nothing illegal" and said they were called for because Overstock was battling a foe who, he argued, wasn't playing fair.

No regulator or law enforcement agency ever went after Rucker or Gradient for short-selling conspiracies. In the end, the two sides were forced to duke it out in a California court, with Rucker publicly settling in 2009, one year after Gradient did the same.

In a victory lap, Byrne boasted in an official Overstock letter "the good guys won" and said Rucker had paid \$5 million to Overstock. In the letter, Byrne also touted his pet website, DeepCapture.com, "where my opinions were expressed without filtering."

Simon was promoted to president after the Rucker stunt and according to the company's own SEC filing back in 2007, even accepted a loan "up to \$1.5 million" out-of-pocket from Byrne back in 2007. But Johnson promised that Overstock employees who behave inappropriately are duly dealt with.

"I'm not going to open our HR files to you but have people been censured and appropriate action been taken? Yes. Every time," he said.

And then there's the strange lawsuit involving DeepCapture.com, Patrick Byrne's pet project.

The convoluted case involves multiple civil lawsuits filed back in 2011 by a 62-year-old Canadian businessman named Altaf Ali Nazerali. Nazerali demanded damages for allegedly defamatory statements made by Byrne and Deep

Capture's Illinois-based lead reporter, Mark Mitchell. The matter has since been tried in British Columbia's Supreme Court in Vancouver and awaits a judge's decision, which could come before the New Year.

Nazerali is suing over a series of articles, titled "The Miscreants' Global Bustout," which was published on Deep Capture in May 2011. The website, as described by Mark Mitchell in a blog post, is Byrne's "crusade against market manipulators who seemed to threaten the stability of the financial system."

In the Deep Capture series—which was taken down after a Oct. 19, 2011 injunction imposed by a Canadian Supreme Court judge—Mitchell described Nazerali as a man in cahoots with "Osama Bin Laden's favorite financier," and said that he worked with a variety of criminal outfits around the globe, including La Cosa Nostra, the Columbian drug cartel, the Russian mafia, and various "jihadi terrorist groups" including al Qaeda's Golden Chain. According to court documents, Deep Capture also accused Nazerali of "delivering weapons to war zones in Africa and to the mujahedeen in Afghanistan," of orchestrating "small-time 'pump and dump' scams... [and] bust-outs, death spiral finance and naked short selling," and of carrying out dirty work for "a Pakistani ISIS asset" who "works for the Iranian regime."

"These were allegations offered up without any proof," Nazerali's lawyer Daniel Burnett told The Daily Beast. "They have him at a party with hookers smoking cigars with Russian gangsters. It's bad fantasy and terrible, terrible writing."

During his years in finance, at companies such as First Commerce Securities and the Gulf Group, Nazerali "sold stocks in a legitimate way," Burnett told The Daily Beast.

According to the Deep Capture article, the Gulf Group was "intertwined with Pakistan's intelligence services" and First Commerce Securities was a "subsidiary of the BCCI syndicate... the greatest criminal bank of all time, controlled by future financiers of al Qaeda"—a reference to the Bank of Credit and Commerce International, which went down for massive fraud back in the 1980s.

The 21-chapter Deep Capture series also mentioned a former business partner of Nazerali's at First Commerce Securities, Irving Kott, who was charged by Dutch authorities for cheating investors out of millions. Kott denied wrongdoing, but ultimately settled. In 2006, Kott dodged jail time on a 48-count indictment against him for filing bogus SEC reports on his Beverly Hills-based brokerage firm JB Oxford. He died in 2009.

After the Deep Capture series was published, Nazerali asked Mitchell to retract "outright falsehoods" in the article, according to an affidavit made on Oct. 7, 2011. The court documents say Mitchell wrote back the next day on Sep. 7, 2011 to say that "nothing in the story is written in stone" and that he'd consider "rewriting it altogether" because he experienced a "radical transformation in my worldview" since publishing the series. He also offered to "remove all previous mentions of your name on Deep Capture" if Nazerali became a source. (It's unclear if Byrne was privy to Mitchell's pitch about altering the original article.)

“Like I said, some facts are more interesting than others and I’d gladly take your name out of the story altogether in exchange for having you as a source. Let me know what you think,” Mitchell wrote, according to court documents.

Nazerali ignored the offer and instead sought an attorney who won an injunction on Deep Capture and filed lawsuits in the Canadian Supreme Court a month later.

On the Deep Capture website, Mitchell says the injunction was done without his or Byrne’s awareness. And Byrne told The Daily Beast that Deep Capture was down for three months as a result. “[It is] disgraceful that certain American [host] companies blacked us off the Internet on a foreign court order,” Byrne wrote in an email.

In addition to suing Deep Capture and Byrne, Nazerali and his lawyers named Overstock as a co-defendant on the libel suit. As the trial commenced, Overstock tried and failed to emancipate itself from the lawsuit.

In a Response to Civil Claim filed on July 2014 Overstock’s attorney Stephen Schachter asked the judge for relief stating “that Deep Capture were separate and distinct from [Byrne’s] role as CEO of Overstock.”

On June 17 of this year the judge ordered that Overstock remain a co-defendant (PDF).

When The Daily Beast asked Byrne about the suit, he replied by email that the case against Deep Capture had “disintegrated.”

Meanwhile, Overstock CEO Jonathan Johnson told The Daily Beast that the lawsuit was “spurious” and claimed that Overstock was barely a part of it. “Overstock has not been involved or been deposed,” he said. He later added: “Deep Capture is not an Overstock company. It’s not controlled by its board of directors. It’s something that Patrick does.”

Yet during the Nazerali lawsuit, according to *Stockwatch*, the defendant’s lawyer claimed that Byrne used his Overstock email while contacting Mitchell and while posting about Nazerali online; that email exchange between Mitchell and Overstock employees indicated that Mitchell did not have to organize or finance the trips he took for Deep Capture reporting; and that Overstock had described Deep Capture as a “related company” in board meetings. (A lawyer for Overstock contested all these points during the trial.)

What’s more, when registering the site DeepCapture.com with GoDaddy.com back in 2006, Byrne used Overstock email and initially Deep Capture’s blog ran on three Overstock servers.

“[Deep Capture] remained an Overstock-hosted blog for a couple-few months until we decided to move it to some other entity in the Midwest so that no one could possibly confuse the two,” Byrne wrote to me in a separate email.

Byrne also wrote in the email that “Deepcapture.com was one of the many hundreds or thousands of Overstock-hosted blogs the public created on our site.”

Byrne denied that Overstock or its board approved any money to underwrite Deep Capture. “That is false,” Byrne wrote in a statement to The Daily Beast. “I would love to see some citation where I said that. I have bent over backward to keep the two separate.”

But during the Nazerali trial, Byrne had apparently stated that Overstock regularly approved payments to Deep Capture, according to *Stockwatch*.

Meanwhile, Mitchell said in a phone interview with The Daily Beast that Patrick Byrne has been the sole supporter of Deep Capture. “Why would Overstock have a website that writes about criminals and the financial crisis,” he said.

Johnson also denies Overstock and Deep Capture are linked in any way. “It had servers that were sold by Overstock or contributed by Overstock,” he said, referring to the 2006 registration. “But to call them Overstock servers makes it feel like they are ours today and they certainly are not.”

Bizarrely, the Nazerali lawsuit seems to bother the Overstock brass the most out of all the legal action taken against the company—just days before publishing this article, Deep Capture uploaded a screed claiming Nazerali had hoodwinked The Daily Beast and that this site is “serv[ing] the dark side” by trying to tie Johnson to the Canadian lawsuit. (As noted above, Overstock is indeed legally tied to the case.)

Nevertheless, in an interview with The Daily Beast, Johnson made it clear he backs Byrne’s crusade against alleged market manipulators. “Frankly I think what Patrick does to fight against crooks and to weed out regulators is a good thing for society,” he said. “Does he use the tactics that I would always use? No.

“You should know as the general counsel and later as the person over legal that anytime anybody has done things that we think are inappropriate actions are taken against him,” Johnson said. “That includes having HR taken against Patrick. It’s not that anyone at the company is above sanction.”

But, Johnson said, “by and large I think what he’s doing is a service to society.”



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