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COURT OF APPEALS  
STATE OF NEW YORK

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MATTER OF BRYAN R. HEDGES,  
  
Petitioner.

No. 64

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20 Eagle Street  
Albany, New York 12207  
March 19, 2013

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE VICTORIA A. GRAFFEO  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE ROBERT S. SMITH  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA

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1  
2 CHIEF JUDGE LIPPMAN: Number 64, Matter of  
3 Hedges. Counselor. Would you like any rebuttal  
4 time, counselor?

5 MR. JULIAN: I would not, thank you, Your  
6 Honor.

7 CHIEF JUDGE LIPPMAN: Okay. Go ahead,  
8 counsel.

9 MR. JULIAN: May it please the Court, I'm  
10 joined at counsel table by Evan Rossi, a recent  
11 admittee to the bar. And Judge Hedges is present in  
12 the room.

13 Judge Bryan Hedges had a distinguished  
14 public service record. He served with distinction as  
15 a County Attorney, Assistant District Attorney, and  
16 law clerk. He served his country with honor in  
17 Vietnam. He was a hardworking, productive, and fair  
18 family court judge.

19 The proof in this case does not support a  
20 finding that Bryan Hedges engaged in an act of moral  
21 turpitude - - -

22 CHIEF JUDGE LIPPMAN: Counsel, what  
23 practical relief do you want from us in terms of the  
24 posture of this case now? The judge is no longer on  
25 the bench.

1 MR. JULIAN: That's correct.

2 CHIEF JUDGE LIPPMAN: So what is it that  
3 you want us to do?

4 MR. JULIAN: The practical relief, Judge,  
5 would be to lift the finding, the determination of  
6 the Commission on Judicial Conduct. It's a  
7 reputational issue.

8 JUDGE SMITH: Not - - -

9 CHIEF JUDGE LIPPMAN: Okay.

10 JUDGE SMITH: - - - you ask us not just to  
11 alter the sanction, but to reverse the factual  
12 determination?

13 MR. JULIAN: Yes.

14 JUDGE SMITH: So you would go - - - you  
15 would go farther than the dissent went in the  
16 Commission?

17 MR. JULIAN: Yes. We'll take the - - -  
18 we'll take the lesser, though, if offered, Your  
19 Honor.

20 CHIEF JUDGE LIPPMAN: But can - - - but  
21 it's basically to clear the reputation of the judge's  
22 name?

23 MR. JULIAN: That is correct.

24 CHIEF JUDGE LIPPMAN: Okay.

25 JUDGE GRAFFEO: Would that - - - would that

1 clear the way for him to run for judicial office in  
2 the future?

3 MR. JULIAN: We have agreed, we would  
4 stipulate - - - we told the Commission on Judicial  
5 Conduct, that we would stipulate not to so serve, and  
6 we would sign any document or writing that would be  
7 required.

8 JUDGE PIGOTT: What in your view, then,  
9 brings this case here? If you - - - if you're  
10 agreeing not to run for office again - - - and it's  
11 my understanding they're saying, this is so he won't  
12 run for office again, why are we here?

13 MR. JULIAN: Well, Judge, our position is  
14 that this is not a fair result. It is something that  
15 happened in his pre-judicial career. And it was the  
16 determination of the Commission - - - and I think  
17 your cor - - - your question really should be  
18 directed at counsel for the - - -

19 JUDGE PIGOTT: I was leading that way - - -

20 MR. JULIAN: Yes.

21 CHIEF JUDGE LIPPMAN: Counsel, what's the -  
22 - - what's the - - - the passage of time here - - -

23 MR. JULIAN: Yes.

24 CHIEF JUDGE LIPPMAN: - - - which is  
25 obviously great, what significance does that have in

1 terms of your argument that it's, you know, so many  
2 years since the event and the event was so many years  
3 before the judge became a judge - - - what's the  
4 significance of all - - - how does that play into  
5 this?

6 MR. JULIAN: Well, it - - - from a  
7 philosophical perspective, it's inconsistent with  
8 both the criminal and civil law of the state, which  
9 have statutes of limitation. But your question is  
10 more directed, obviously, to what is the practical  
11 problem. And I can give you one example.

12 CHIEF JUDGE LIPPMAN: Sure, go ahead.

13 MR. JULIAN: A - - - Judge Hedges was  
14 criticized at the hearing and by the Commission on  
15 Judicial Conduct for failing to tell, in 1982, the  
16 parents of the child that during the act that he was  
17 engaging in that the child touched his hand. The  
18 testimony in two places from the father of this young  
19 woman is that it was his best recollection - - - as  
20 best he could remember, he didn't tell them. Judge  
21 Hedges said the same thing, as best he could  
22 remember.

23 Well, in point of fact, it's a conversation  
24 that occurred thirty years ago and it would be  
25 unbelievable or unreasonable to expect an exact

1           verbatim recollection - - -

2                       CHIEF JUDGE LIPPMAN:  So is part of your -  
3           - - is part of the thrust of what you're saying that  
4           memories have faded, and that's what makes this, in  
5           your mind, unjust?

6                       MR. JULIAN:  No one could say it better  
7           than that.  Memories have faded.

8                       JUDGE SMITH:  But you - - - you began by  
9           saying that there's no act of moral turpitude here.  
10          Your view of the record is this was essentially an  
11          act of neg - - - of negligence?

12                      MR. JULIAN:  My view of the record is,  
13          Judge Smith, it was a private act.  He was engaged -  
14          - -

15                      JUDGE SMITH:  Well, you can - - - private  
16          acts can have plenty of moral turpitude.

17                      MR. JULIAN:  Yes, but I don't think this  
18          act, as he was engaging in it, does.

19                      JUDGE SMITH:  I don't - - - we're all  
20          obviously uncomfortable - - -

21                      MR. JULIAN:  Yes.

22                      JUDGE SMITH:  - - - describing the facts in  
23          any great detail, and I don't want to.  But there are  
24          obviously two interpretations of what went on.  And  
25          couldn't - - - isn't there certainly evidence in the

1 record - - - I realize we have our own fact-finding  
2 power. But surely there is evidence that this was a  
3 deliberate exploitation of a young child.

4 MR. JULIAN: There is a question of fact.  
5 There is a dispute in the record.

6 JUDGE SMITH: Okay. I guess what I'm  
7 saying is, suppose - - - I understand that there's a  
8 ques - - - a dispute of fact. Suppose we were to  
9 resolve that dispute of fact against you. Suppose we  
10 find that there was an act, admittedly a long time  
11 ago, before he was a judge, but a real act of moral  
12 turpitude. What then?

13 MR. JULIAN: Well, if you find that, again,  
14 I think the next step following on Judge Lippman's  
15 question, can you reliably, in terms of the facts,  
16 given the lapse of time, determine the exact details  
17 of what happened.

18 JUDGE SMITH: Well, okay. But I understand  
19 that you can argue the facts and you can say the  
20 evidence isn't sufficient to prove anything. But  
21 suppose, just hypothetically, if we are satisfied as  
22 a matter of fact, that some act of real moral  
23 turpitude was committed, should we then confirm the  
24 determination?

25 MR. JULIAN: Sure. Yes.

1 CHIEF JUDGE LIPPMAN: And let me just  
2 follow up on that question. There is no statute of  
3 limitations - - - you're not saying that - - -  
4 regardless of the answer to Judge Smith's questions,  
5 you're not saying that the lapse of time, in and of  
6 itself, should preclude the Commission?

7 MR. JULIAN: No. What we're saying is the  
8 lapse of time creates - - -

9 CHIEF JUDGE LIPPMAN: Makes it unfair to.

10 MR. JULIAN: - - - very serious  
11 jurisprudential problems. And it's our position that  
12 the - - - and we respect and admire the work that is  
13 done by the Commission on Judicial Conduct - - - but  
14 their rules and the pleading requirements, the lack  
15 of discovery, make attempting to litigate a case of  
16 this type - - -

17 CHIEF JUDGE LIPPMAN: Where do you draw - -  
18 -

19 MR. JULIAN: - - - very difficult.

20 CHIEF JUDGE LIPPMAN: - - - where do you  
21 draw the line? We can come back to that issue, if  
22 you want. But where do you draw the line on the  
23 time? In other words, assuming you're right that at  
24 some point the time itself, the fading memory, or  
25 whatever it might be, creates great problems. What

1           would the rule be - - - how do we know when it's of  
2           such a period that it becomes impossible to deal  
3           with, and when is it okay?

4                       MR. JULIAN:   Well, Judge, in this case, you  
5           have a life well led.   You have a man who has  
6           conducted himself with integrity on the bench.   You  
7           have a man who served his country admirably in  
8           Vietnam.   You have a man who has a lifetime of public  
9           service and a public record.   So distant acts in the  
10          mists of time, I think, are overcome by a life well  
11          led.   I mean, this is perhaps a poor analogy, and if  
12          it offends anyone, I apologize.   But the - - - Pope  
13          Benedict had been a member of the Hitler Youth Corps,  
14          at least some of history says.   I don't think anyone  
15          would argue that in the period of time going forward,  
16          his was a life well led and he served as a major  
17          religious leader.

18                      JUDGE RIVERA:   Can ask the question, then,  
19          a different way?

20                      MR. JULIAN:   Sure, yes.

21                      JUDGE RIVERA:   Because I think the answer  
22          is addressing something else.   In terms of the  
23          fairness about the lapse of time, don't we in part -  
24          - - or don't you in part have to take into  
25          consideration the nature of the conduct that's

1           alleged and the impact on the complainant?  
2           Obviously, in this kind of a case, you're talking  
3           about a young child, a minor, with particular  
4           challenges. Takes a long time, perhaps, to talk  
5           about this kind of conduct. Doesn't that affect this  
6           lapse of time issue?

7                       MR. JULIAN: I would - - - I would agree  
8           with that, Judge. But you have a lot to do with the  
9           kind of procedures that are followed by the  
10          Commission on Judicial Conduct. And I have to say,  
11          if you look at those procedures, if you're going to  
12          litigate that issue and determine who did it and how  
13          it was done, discovery and pleading requirements that  
14          are set forth are simply inadequate.

15                      CHIEF JUDGE LIPPMAN: Counsel, let me ask  
16          you one more question. I know that your light is on.  
17          Apropos this whole conversation that we've had about  
18          time and a morally reprehensible act, do you accept  
19          the fact from the arguments you're making that you  
20          could have - - - even if it is one of - - - even if  
21          it is a just considerable period of time, as this is,  
22          that there could be an act that's so singular that it  
23          doesn't matter? You know, if you ever identify - - -  
24          and you used the example of the Pope - - - but is - -  
25          - are there some acts that it doesn't matter what the

1 time is? I guess that would be the question I'd ask  
2 you.

3 MR. JULIAN: This is not a place to bring  
4 religion into the discussion, or perhaps it is. I'm  
5 taught that everyone's entitled to redemption. And  
6 I'm taught that we are all human. And I'm taught  
7 that the savior that I worship found comfort in  
8 people who had committed crimes and who had done  
9 wrong, and that we should live in a forgiving world.  
10 And I think sometimes judges who have a history that  
11 is not simply an Ivy League history make the best  
12 judges.

13 CHIEF JUDGE LIPPMAN: Thank you, counselor.  
14 Appreciate it.

15 Counsel?

16 MR. TEMBECKJIAN: Thank you, Your Honor.  
17 Robert Tembeckjian for the Commission, and with me is  
18 John Postel.

19 It is rare, and it would require  
20 exceptional circumstances to remove a judge for  
21 conduct that took place long before he or she took  
22 the bench. This is that exceptional case.

23 CHIEF JUDGE LIPPMAN: Why - - - counsel,  
24 let's stay on that for a second. Without necessarily  
25 being graphic about it, why is this one of those - -

1 - in light of the question that I just asked your  
2 adversary, why is this such a singular event? As you  
3 say, the whole thing is a rare case, so much before  
4 he became a judge. Then this proceeding is so much -  
5 - - is after, really, a life career in the courts.  
6 What makes this unique that would warrant the  
7 sanction and the findings, despite the fact that  
8 obviously, we all understand that memories do fade  
9 and that it's hard - - - at the very least, hard,  
10 after all these years to try and make findings that  
11 resonate? What is uniquely - - - or what is unique  
12 about this case?

13 MR. TEMBECKJIAN: It is, Judge Lippman, the  
14 nature of the act, which the petitioner himself  
15 called abhorrent. It violates one of the most sacred  
16 trusts of our society to - - - for an adult to engage  
17 in sexual behavior with a child, aggravated in this  
18 circumstance by the fact that the child is deaf,  
19 could not speak, had not even learned how to  
20 communicate with sign language yet.

21 JUDGE PIGOTT: When - - - there's a point  
22 in time when the judge resigned.

23 MR. TEMBECKJIAN: Yes.

24 JUDGE PIGOTT: And I'm, as you know, from  
25 Western New York. And everyone was surprised that he

1           resigned, and no one knew much else. Then this  
2           happened. Why didn't this thing get resolved back  
3           then? Is there - - - you don't have to - - - you  
4           know, I don't want to know chapter and verse what was  
5           going on. But it seemed to me, Mr. Julian is arguing  
6           a certain amount of professional integrity here, and  
7           the fact that this judge was an exemplary judge for a  
8           long time, and a well-respected member of the  
9           community.

10                        So he had resigned, and it was, as far as I  
11           would think most people knew, over. And now this  
12           petition starts, and this hearing is held, and this  
13           determination's made, and now you're here, all of  
14           which it seemed to me, is extraneous to the point  
15           that he was off the bench. And if he had ever chosen  
16           to run again, I would expect that your Commission  
17           would have been there in spades, very early.

18                        MR. TEMBECKJIAN: Actually, Judge Pigott,  
19           had he chosen to run again, we would not have any  
20           authority to make public what had transpired to that  
21           point. All of our proceedings are protected by  
22           confidentiality.

23                        JUDGE PIGOTT: Well, the district attorney  
24           would have, I guess. And I'm not suggesting you have  
25           to rely on somebody else. But you get my - - -

1 MR. TEMBECKJIAN: Right.

2 JUDGE PIGOTT: - - - my - - -

3 MR. TEMBECKJIAN: I do. I do. And the - -

4 -

5 JUDGE PIGOTT: What - - -

6 MR. TEMBECKJIAN: - - - record shows this  
7 judge resigned on the very day - - - he submitted his  
8 resignation on the very day that he was notified that  
9 the Commission was inquiring into this matter.

10 JUDGE PIGOTT: Right. So you have a judge  
11 in one of the smaller towns out there who had a  
12 rolling crap game when he was in college, and now is  
13 worried that he may lose his office because the  
14 Judicial Conduct Commission may be coming to see him,  
15 because one of the people who lost a lot of money  
16 when he was a sophomore is pretty upset.

17 MR. TEMBECKJIAN: I would - - - I would  
18 never urge the Commission to undertake an inquiry  
19 about a rolling crap game back in college, because  
20 the nature of that act, the nature of that  
21 wrongdoing, really doesn't reflect on judicial office  
22 many years later.

23 JUDGE SMITH: But doesn't - - - doesn't the  
24 - - - doesn't the abhorrent nature of the act cut two  
25 ways? I mean, it certainly is abhorrent, and it

1 certainly is the sort of thing that gets everyone's  
2 emotions stirred. Is there an argument that for that  
3 very reason it's difficult for the fact-finder to be  
4 objective? I mean, we have the problem with juries  
5 all the time - - -

6 MR. TEMBECKJIAN: I don't think so - - -

7 JUDGE SMITH: - - - that where the crime is  
8 hideous enough, they may lose sight of the issue of  
9 whether the defendant did it. And now, if you're - -  
10 - you essentially held a trial on what happened forty  
11 years ago.

12 MR. TEMBECKJIAN: Well, it's clearly not  
13 the case that the memories had faded. Both witnesses  
14 testified with exquisite detail as to what occurred.

15 JUDGE SMITH: Yeah, that - - - I - - -

16 MR. TEMBECKJIAN: There were only - - -

17 JUDGE SMITH: - - - I'm not sure that's not  
18 a non sequitur. Yes, both witnesses testified with  
19 exquisite detail.

20 MR. TEMBECKJIAN: Yes, and - - -

21 JUDGE SMITH: Can we not be a little  
22 skeptical about both of their memories at this  
23 distance?

24 MR. TEMBECKJIAN: Well, the Commission  
25 based its determination on Judge Hedges' own version

1 of what occurred. And - - -

2 CHIEF JUDGE LIPPMAN: What occurred forty  
3 years ago - - -

4 MR. TEMBECKJIAN: Yes - - -

5 CHIEF JUDGE LIPPMAN: - - - or whatever it  
6 is.

7 MR. TEMBECKJIAN: - - - well, I would  
8 submit, Your Honor, that an act of sexual behavior  
9 with a five-year-old child is such a unique and  
10 extraordinary event that the memories don't fade.  
11 And - - -

12 CHIEF JUDGE LIPPMAN: Well, you're talking  
13 about a five-year-old child and a man - - -

14 MR. TEMBECKJIAN: And a then twenty - - -  
15 and a then twenty-five-year-old man, both of whom  
16 described - - -

17 CHIEF JUDGE LIPPMAN: No, no, no. But I'm  
18 saying a man, now, who is how many years later.  
19 Wouldn't just common sense tell us that memories are  
20 not quite as sharp, even in a traumatic event? Or  
21 you really disagree?

22 MR. TEMBECKJIAN: The record in this case  
23 doesn't support the view that the memories were  
24 unclear or that the event was so remote in time - - -

25 CHIEF JUDGE LIPPMAN: Let me ask you - - -

1 MR. TEMBECKJIAN: - - - that the parties  
2 couldn't remember it.

3 CHIEF JUDGE LIPPMAN: - - - let me ask you  
4 another question sort of related. And I know it  
5 doesn't exist, but I'm asking you from a policy  
6 perspective - - -

7 MR. TEMBECKJIAN: Yes.

8 CHIEF JUDGE LIPPMAN: - - - do you think  
9 there should be a statute of limitations for the  
10 Commission in terms of, you know, what you do?

11 MR. TEMBECKJIAN: No, I do not. For a  
12 couple of reasons. First, the legislature has - - -

13 CHIEF JUDGE LIPPMAN: There's never a  
14 statute of limitations?

15 MR. TEMBECKJIAN: No, there should not be a  
16 statute of limitations.

17 CHIEF JUDGE LIPPMAN: Why not?

18 MR. TEMBECKJIAN: And - - -

19 CHIEF JUDGE LIPPMAN: Why not, from a  
20 policy perspective?

21 MR. TEMBECKJIAN: Because the Constitution  
22 gives the Commission and this Court the authority to  
23 discipline and remove judges from office for conduct  
24 on and off the bench that reflects on their fitness  
25 to be a judge which per - - - which, perforce,

1 requires an evaluation of pre-judge behavior - - -  
2 and conduct on or off the bench that's prejudicial to  
3 the administration of justice.

4 It is impossible, I think, to construct a  
5 statute of limitations that might set an outer limit  
6 on conduct which, in this case, is so bad - - -

7 JUDGE PIGOTT: Yes, but - - -

8 MR. TEMBECKJIAN: - - - and so singular  
9 that - - -

10 JUDGE PIGOTT: - - - let me interrupt - - -

11 MR. TEMBECKJIAN: - - - it shouldn't - - -  
12 it shouldn't be limited by time.

13 JUDGE PIGOTT: If you get off this - - - if  
14 you - - - let's assume you got an alcoholic who's  
15 recovered, all right, and he had a terrible thing  
16 with alcohol and things like that, cleans his act up,  
17 does exactly what this judge did, you know; becomes  
18 an upstanding member of the community, runs for  
19 office and holds it. You can't - - - you can throw  
20 him off the bench for the fact that he was an  
21 alcoholic back in 1975, right?

22 MR. TEMBECKJIAN: Your Honor, I would - - -  
23 I would argue that that would be an inappropriate use  
24 of the Commission's - - -

25 JUDGE PIGOTT: But that's - - - but there's

1 no limit - - -

2 MR. TEMBECKJIAN: - - - power and this  
3 Court's power.

4 JUDGE PIGOTT: - - - on it. What you're  
5 arguing, and I'm not disagreeing with your analysis,  
6 you're saying we have no time limit and it's our sole  
7 discretion. If we decide that this judge, when we  
8 found out that when he was drunk he did some really  
9 nasty things - - - he was driving a car at outrageous  
10 speeds, you know, with kids in the car, whatever - -  
11 - we think that that amounts to conduct off the  
12 bench, even though he was never on - - - it didn't  
13 happen while he was on the bench - - - off the bench  
14 - - -

15 MR. TEMBECKJIAN: I understand. I  
16 understand.

17 JUDGE PIGOTT: - - - that we can remove  
18 him?

19 MR. TEMBECKJIAN: And those very same  
20 questions could be asked if the event had been four  
21 weeks ago, four months ago, four years ago - - -

22 JUDGE PIGOTT: Well, if you got the robe on  
23 - - -

24 MR. TEMBECKJIAN: - - - or forty years ago.

25 JUDGE PIGOTT: - - - if you've got the robe

1 on, it seems to me, it makes a difference. If you're  
2 - - - if you're a judge now and were a judge ten  
3 years ago, and ten years ago, when you were a judge,  
4 and you did this off the bench, that on and off the  
5 bench, that makes sense. But when you're in college?  
6 When you're in - - -

7 MR. TEMBECKJIAN: I would - - -

8 JUDGE PIGOTT: - - - law school?

9 MR. TEMBECKJIAN: - - - I would still  
10 submit, whether you were on the bench or off the  
11 bench, you have to evaluate the nature of the  
12 misbehavior against the integrity of the judicial  
13 office.

14 CHIEF JUDGE LIPPMAN: Counselor, but let me  
15 give you a little more extreme example of Judge  
16 Pigott's hypothetical. What if you had - - - and  
17 this is an issue that I know about. We have someone  
18 who was a drug addict, sold drugs, you know, had a  
19 criminal history and then cleaned up their act and  
20 got on the bench. Is that the same kind of - - - or  
21 let's do a totally different thing. All in the age  
22 period that Judge Pigott is talking about - - -  
23 burned your draft card, burned the American flag, all  
24 of those things, and then becomes a judge. Is there  
25 a dividing line?

1                   I guess it goes back to the question I  
2                   asked you, or maybe I asked your adversary, is it - -  
3                   - how do you draw the line? What's so singular that  
4                   it's a proper exercise of what you do, as opposed to  
5                   something that really, as you say, would be  
6                   inappropriate to exercise your - - -

7                   MR. TEMBECKJIAN: I don't believe, and I  
8                   would urge this Court not to look for other  
9                   hypothetical examples that are not in this record and  
10                  that are not before you to determine whether or not  
11                  the discipline in this case - - -

12                  CHIEF JUDGE LIPPMAN: But how do you know -  
13                  - -

14                  MR. TEMBECKJIAN: - - - was appropriate.

15                  CHIEF JUDGE LIPPMAN: - - - I guess my  
16                  point to you is, it is - - - you would agree it's a  
17                  very unusual case.

18                  MR. TEMBECKJIAN: It is. And it - - -

19                  CHIEF JUDGE LIPPMAN: Have you ever seen a  
20                  case like this before?

21                  MR. TEMBECKJIAN: No, never. And it is  
22                  rare that this Court has removed a judge for conduct  
23                  that took place before they were. But it has  
24                  happened.

25                  CHIEF JUDGE LIPPMAN: But I'm saying - - -

1 MR. TEMBECKJIAN: Twice in 2002.

2 CHIEF JUDGE LIPPMAN: - - - to you, how do  
3 you distinguish the situation here from all the  
4 countless things and some of the hypotheticals?  
5 You're getting terrible, terrible conduct, or even  
6 the hypothetical that your adversary gave. How do we  
7 distin - - - you're saying we just don't have to?

8 MR. TEMBECKJIAN: You do what we do in  
9 every case and what this Court does in every case.  
10 You look at the record and the facts that are before  
11 you. And what is before you is a case of sexual  
12 misconduct of a five-year-old before the judge took  
13 the bench. Weighing that behavior against the  
14 passage of time, as you would do in any hypothetical.  
15 But the one that's before you is perhaps the most  
16 fundamental breach of trust in our society.

17 JUDGE GRAFFEO: Why though, when a judge  
18 agrees to resign, and if he or she offers a  
19 commitment that they won't run again for judicial  
20 office, what do you see - - - what's the purpose,  
21 then of the - - -

22 MR. TEMBECKJIAN: Twice in the - - -

23 JUDGE GRAFFEO: - - - hearing and a  
24 recommendation sanction?

25 MR. TEMBECKJIAN: Twice in the last five

1 years, in cases that ended up before you - - - Matter  
2 of Feeder, Matter of Jung - - - the Commission  
3 entered into stipulations with judges that they would  
4 leave the bench and never come back. Both judges  
5 abrogated those agreements and were subsequently  
6 tried on misconduct charges, and both of them came  
7 before this Court.

8 CHIEF JUDGE LIPPMAN: But is your - - -

9 MR. TEMBECKJIAN: It's really an  
10 unenforceable - - -

11 CHIEF JUDGE LIPPMAN: But is - - -

12 MR. TEMBECKJIAN: - - - mechanism.

13 CHIEF JUDGE LIPPMAN: - - - but is that  
14 really the - - - is the reason that, or is the reason  
15 more that you feel that it's an issue of confidence  
16 in the judiciary - - - you know what I mean? Which  
17 is the actual - - -

18 MR. TEMBECKJIAN: Yeah, there are - - -

19 CHIEF JUDGE LIPPMAN: - - - that someone  
20 would run again, or is that by not doing something,  
21 what - - -

22 MR. TEMBECKJIAN: - - - there are - - -

23 CHIEF JUDGE LIPPMAN: - - - you know?

24 MR. TEMBECKJIAN: - - - there are three  
25 reasons. The only way, constitutionally,

1           statutorily, to ensure that this individual never  
2           becomes a judge, is for this Court to remove him from  
3           office. Secondly, the integrity of the institution  
4           of the judiciary and our courts requires a statement  
5           that when an individual engages in an act of sexual  
6           misbehavior with a five-year-old child, there is no  
7           place for that person on the bench. And third, it is  
8           a message to anyone who aspires to be a judge, that  
9           if you have this sort of moral turpitude in your  
10          background, you should not expect to be a judge.  
11          There is no place for you on the bench. And if it is  
12          discovered, whenever the point of time that may be,  
13          you will be removed for it and it will be public.

14                    It's the only way that I can argue to this  
15          Court to protect the integrity of the courts and the  
16          judiciary, is in removing this individual, to make  
17          those three statements. And that really compels  
18          affirming the Commission's decision that he should be  
19          removed.

20                    JUDGE PIGOTT: When you made this decision  
21          to proceed with this - - -

22                    MR. TEMBECKJIAN: Yes.

23                    JUDGE PIGOTT: - - - do you take into  
24          consideration what Mr. Julian was pointing out, the  
25          person's history in terms as a lawyer, as a judge, as

1 a community leader, as he mentioned, as a - - - had  
2 served with distinction in the military, before you  
3 decide to bring it, or do you simply say, this is an  
4 issue of moral turpitude; none of that is going to  
5 deter us from bringing this?

6 MR. TEMBECKJIAN: All of the issues that  
7 we've discussed here today were discussed at the  
8 Commission before the decision was made to go  
9 forward. And we always - - - in this case, as in any  
10 case - - - will accept into the record evidence of a  
11 judge's good works, evidence of reputation for truth  
12 and veracity. They often enter into the record  
13 evidence of how good a judge they were.

14 Always, the test for the Commission - - -  
15 and I would submit to this Court - - - has to be to  
16 weigh the behavior against those additional factors.  
17 I don't believe in this record, there is any evidence  
18 of redeeming behavior from the time of that event to  
19 the present day. He concealed what had occurred. He  
20 never apologized to the individual. Never sought  
21 counseling for his - - -

22 JUDGE SMITH: That's a little different  
23 from what you were saying a minute ago. You were  
24 saying you wanted to send the message that if you've  
25 done this once, you're never going to be a judge;

1 forget about it. Now you're saying, if there were  
2 some redeeming behavior, maybe it would be different?

3 MR. TEMBECKJIAN: No, what I'm - - - what  
4 I'm saying is we take all of those things into  
5 consideration. And then we made a decision that this  
6 behavior, weighed against the passage of time and  
7 weighed against any other potential mitigation,  
8 compels a statement that this sort of behavior cannot  
9 be tolerated, whether it was four years ago or forty  
10 years ago. That's the Commission's position, and I  
11 would urge that that be the Court's position as well.

12 CHIEF JUDGE LIPPMAN: Okay. Thank you  
13 counsel. Thank you both. Appreciate it.

14 (Court is adjourned)

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Bryan R. Hedges, No. 64 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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