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COURT OF APPEALS
STATE OF NEW YORK

MATTER OF BRYAN R. HEDGES,

Petitioner.

No. 64

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

Appearances:

ROBERT F. JULIAN, ESQ.
EVAN ROSSI, ESQ.
ROBERT F. JULIAN, P.C.
Attorney for Petitioner
2037 Genesee Street
Utica, NY 13501

ROBERT H. TEMBECKJIAN, ESQ.
JOHN POSTEL, ESQ.
COMMISSION ON JUDICIAL CONDUCT
Attorneys for Respondent
Corning Tower, 23rd Floor
Empire State Plaza
Albany, NY 12223

Penina Wolicki
Official Court Transcriber

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.

Penina Wolicki

Signature: _____

Agency Name: eScribers

Address of Agency: 700 West 192nd Street
Suite # 607
New York, NY 10040

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