

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT  
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In the Matter of the Proceeding :  
Pursuant to Section 44, subdivision 4,  
of the Judiciary Law in Relation to :

ORAL ARGUMENT

BRYAN R. HEDGES, :  
:  
a Judge of the Family Court, :  
Onondaga County. :

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Commission Office  
61 Broadway, Suite 1200  
New York, New York 10006  
August 8, 2012  
2:08 P.M.

B e f o r e:

Hon. Thomas A. Klonick, Chair  
Hon. Terry Jane Ruderman, Vice Chair  
Hon. Rolando T. Acosta  
Joseph W. Belluck, Esq.  
Joel Cohen, Esq.  
Richard D. Emery, Esq.  
Paul B. Harding, Esq.  
Hon. Karen K. Peters  
Richard A. Stoloff, Esq.

Commission Members

Jean M. Savanyu, Esq.

Clerk of the Commission

P r e s e n t:

For the Commission

Robert H. Tembeckjian, Esq.  
John J. Postel, Esq.

For the Respondent

Robert F. Julian, Esq.  
Honorable Bryan R. Hedges

Also Present:

Richard Keating, Principal LAN Administrator

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MS. SAVANYU: Judge Klonick and members of the Commission, this is oral argument in the matter of Bryan Hedges, a judge of the Family Court. Mr. Julian is appearing on behalf of Judge Hedges. Mr. Tembeckjian is appearing for the Commission.

JUDGE KLONICK: Thank you, Ms. Savanyu. In the *Matter of Bryan R. Hedges*, this is the oral argument with respect to the referee's report, a determination of whether misconduct has occurred and if so, what an appropriate sanction shall be. Counsel will each have 30 minutes for their argument. Counsel for the Commission may reserve a portion of his time for rebuttal. After the initial presentations, the judge may if he wishes make a presentation to the Commission, not to exceed ten minutes. Counsel for the respondent may reserve time to speak after the respondent, but prior to the rebuttal. The judge and counsel are subject to questioning by the Commission at any time during their presentation. Counsel is advised that argument should be confined to the record; any statements outside the record will be disregarded by the Commission. For counsels' benefit, there are lights on the bench to indicate your time. Green light

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means you may speak; blinking green light means two minutes are left; a yellow light means one minute is left, and a red light means stop. I must advise counsel that those lights when used recently are not always functioning exactly as they should, and I will keep track of time and advise you accordingly.

As everyone is aware, in addition to the six Commissioners here, there are three Commissioners are participating by videoconference. If there are technical problems during the argument, I will pause the proceedings and the delay will not be counted against your time. We will deal with any technical issues. I would simply ask anyone to turn off any cell phones, pagers or other electronic devices so they do not interfere with the recording of the proceeding. Are you ready to proceed, Mr. Tembeckjian? If so, you may begin.

MR. TEMBECKJIAN: Thank you, Judge Klonick.

MR. COHEN: If I may -- excuse me, Mr. Tembeckjian. If you could advise counsel who's available by remote, they may not know, you know, who's here.

JUDGE KLONICK: All right, thank you,

1 thank you, Mr. Cohen. By remote in Albany are  
2 Justice Karen Peters, Richard Stoloff. The third  
3 individual you may see on the screen is a staff  
4 member who is handling the technical aspects of  
5 recording and videoing. The other individual is  
6 Commissioner Paul Harding, who is in another  
7 location. Thank you, Mr. Cohen.

8 You may proceed, Mr. Tembeckjian, if you're  
9 ready.

10 MR. TEMBECKJIAN: Thank you, Judge  
11 Klonick, and I would ask to reserve five minutes for  
12 rebuttal.

13 JUDGE KLONICK: So noted.

14 MR. TEMBECKJIAN: The respondent  
15 engaged in a reprehensible act with his five-year-old  
16 deaf and speech-challenged niece, conduct which he  
17 himself has described as abhorrent, both on the tape  
18 and at the hearing before the referee, that he said was  
19 indefensible, that he said was bad and very, very  
20 wrong. Had such conduct come to light before he  
21 was a judge, I submit that he would never have been  
22 a judge because the gravity of the conduct is so  
23 extreme and so egregious that it is disqualifying  
24 from holding judicial office. In fact, we believe that  
25 the respondent, had this behavior come to light

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within the statute of limitations, would have been susceptible to a charge relating to the sexual abuse or endangerment of a child. Had this behavior come to light when he was a judge, there is no question that it should and would have resulted in his removal. In fact, the respondent himself seems to have recognized this by virtue of having resigned almost immediately upon becoming aware that the Commission was investigating this matter, which precluded any further investigation and began the 120-day clock under Judiciary Law 47, under which you can only dismiss or remove the judge.

The fact that he has left office does not preclude a finding that he should be removed. As a matter of fact, I urge that the Commission has a responsibility and an obligation because, as the Court of Appeals has said, a primary responsibility or purpose of judicial discipline is to protect the public. It's not only to send a message to this judge that what he did was terribly wrong, but it is to let anyone know who has this sort of child abuse in his background that he should never aspire to be a judge. It would prevent him from returning to the bench, and a public discipline would make it difficult if not impossible for him to assume any

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other position of public trust, including judicial hearing officer, guardian for the child or attorney for the child, formerly known as law guardian, or other positions of public responsibility. He has been able to keep this act secret for 40 years. The gravity of the act overcomes any argument that too much time has passed for this Commission to render discipline, and, in fact, the Commission has an obligation and a responsibility to protect the public by making this conduct public, and the only way to do that is to render a determination that he be removed, which would by law prevent him from ever being a judge again.

JUDGE KLONICK: Mr. Tembeckjian, there's been a great deal of discussion in the briefs and back and forth about the authority of the Commission under the Constitution and under the Rules. Will you address why you feel these rules apply?

MR. TEMBECKJIAN: Yes, as a matter of fact. You have authority under the Constitution to discipline a judge for conduct on or off the bench prejudicial to the administration of justice. The Court of Appeals and this Commission have held that conduct that occurred prior to the assumption of

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judicial office, if egregious enough, warrants removal. In *Matter of Tamsen*, in the *Matter of Mason*, this Commission removed judges -- *Matter of Embser*, removed from office judges for behavior that occurred before they took office, and in both of those decisions, in *Tamsen* and in *Mason*, the Commission cited the rules, the same ones that we cite against respondent, 100.1, 100.2(A), because those rules go to public confidence in the integrity of the judiciary and that necessarily involves qualifications, fitness, as the Constitution sets out your responsibility. The Judiciary Law repeats those responsibilities, and the Court of Appeals in upholding your removals of *Tamsen* and *Mason* for pre-judge bench behavior cited both the Constitution and Rules 100.1 and 100.2(A), and as a matter of fact in *Matter of Mason* they began their decision by saying that the challenge by Judge Mason to the application of Rules 100.1 and 100.2(A) must fall.

Those have been upheld --

JUDGE KLONICK: -- Mr. Emery.

MR. TEMBECKJIAN: -- by the Court and by you many times.

MR. EMERY: Mr. Tembeckjian, is it your position that, putting aside for a second the hearing

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officer's -- the referee's findings --

MR. TEMBECKJIAN: -- Yes --

MR. EMERY: -- is it your position that Judge Hedges has to be removed post -- under the current circumstances if -- based on his story alone? Based on the facts that he admitted without more?

MR. TEMBECKJIAN: Yes, without question.

MR. EMERY: Okay.

MR. TEMBECKJIAN: Absolutely without question.

MR. EMERY: No mitigation there, no difference in your view?

MR. TEMBECKJIAN: None whatsoever --

MR. EMERY: -- Okay.

MR. TEMBECKJIAN: -- because of the gravity of the act itself and his subsequent behavior. Had there been some evidence in 40 years of remediation, had he made some effort to apologize, to reach out, to seek counseling, to admit the facts of what occurred, perhaps, perhaps were there other options available, the Commission might consider them, but I would urge even under those circumstances that they be rejected because the severity of the conduct itself is unmitigated by the

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passage of time and certain -- by his behavior, and that's his own version, his own version.

MR. EMERY: Does the -- other than the severity of the act itself, does the victim's situation in anyway inform your position?

JUDGE KLONICK: Inform your position?

MR. EMERY: Yes, does it -- are you taking your position because of, in any way, is the evidence related to how the victim responded to these events over the years?

MR. TEMBECKJIAN: No, as a matter of fact, although I would urge that you honor the process that we have been following and that the Judiciary Law sets out and in your own rules for adjudication of these judicial disciplinary cases and accept the credibility findings of the referee. The referee explained in detail the basis on which he credited the testimony of E [REDACTED] over respondent's, but even if you were to say that you accept the referee's report and you accept E [REDACTED] [REDACTED]'s version of the events, the respondent's own version of the events reveal conduct that is so reprehensible and so unredeemable and that I think any discerning member of the public would demand should result in his removal and disqualification

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from ever being a judge. His own words --

MR. EMERY: -- I don't think --

MR. TEMBECKJIAN: -- condemn him.

MR. EMERY: -- just to be clear, I don't think I was clear enough in my question to you. My question is, what role in your determination to seek removal does the fact -- does the lifelong situation of the victim play? In other words, the girl --

MR. TEMBECKJIAN: -- Right.

MR. EMERY: -- and her particular situation. Does that play any role in your seeking removal?

MR. TEMBECKJIAN: The effect on her --

MR. EMERY: -- The effect on her, right.

MR. TEMBECKJIAN: -- over these many years aggravates what is already a deeply reprehensible act by the respondent and one that disqualifies him from being a judge. If you could remove him twice, once for what he did and once for the effect that it had on E [REDACTED], I would say go right ahead and do it.

JUDGE ACOSTA: But you didn't charge that.

MR. TEMBECKJIAN: No, of course -- no.

MR. EMERY: If she --

JUDGE ACOSTA: -- You only charged the

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sexual act itself, correct?

MR. TEMBECKJIAN: Correct, and the act is what is disqualifying. The act --

JUDGE ACOSTA: -- So you want us to consider subsequent behavior as aggravating --

MR. TEMBECKJIAN: -- It certainly --

JUDGE ACOSTA: -- and not as a separate charge?

MR. TEMBECKJIAN: It's not a separate charge.

JUDGE ACOSTA: Okay.

MR. TEMBECKJIAN: It does aggravate. I think the referee appropriately set before you all of the facts and circumstances, just as in the same -- just as in the way respondent would offer to you facts in mitigation, as this and other respondents often do about their good character, about their capability as a judge, which had nothing to do specifically with the act for which removal is being sought. In this case, the aggravation, the seriousness of the act itself is so extreme that there is really no mitigation that can reduce the penalty that he deserves.

MR. BELLUCK: Bob --

MR. TEMBECKJIAN: -- Given that he resigned and interrupted the inquiry with his

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resignation and ran the clock, you have no choice but to either dismiss or remove.

JUDGE KLONICK: Mr. Belluck.

MR. BELLUCK: I wanted to follow up on something you touched on, I think, Mr. Emery was asking you about, which is -- well, actually, I have two questions. The first one is, what -- is there anything, assuming there's no factual dispute about what occurred, putting aside the difference in the credibility of the witnesses and the factual issues --

MR. TEMBECKJIAN: -- Right.

MR. BELLUCK: -- assuming the judge's version of the events or the witness' version of the events, is there anything that a judge who had committed this act could do in your eyes that would redeem them and result in them not being subject to misconduct once they've been elected to be a judge?

MR. TEMBECKJIAN: No, absolutely nothing. The redemption that was available that might apply to a case of abuse of a child has to be in another forum than this Commission. He can seek redemption in his religion, he can seek redemption in his community, but in terms of your responsibility to protect the public and to explain to the public that anyone who has engaged in child abuse does not

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belong on the bench and should not contemplate a judicial career.

MR. BELLUCK: And that in your eyes would be regardless of the age at which the person committed this offense or, I mean, if someone were 16 or 12 and committed some type of offense similar to this --

MR. TEMBECKJIAN: -- The respondent was a grown adult. He was 25 years old.

MR. BELLUCK: Well, he was 25, but what I'm trying to understand what parameters you would put on our ability to go back and say, you know -- and my second question, which is somewhat related, is there any evidence that after this incident that this judge did anything similar to this?

MR. TEMBECKJIAN: Well, you can't tell from this record whether there's anything like this besides the incident with E [REDACTED] because shortly after the complaint was made and the Commission authorized its inquiry and he was notified of it, he resigned, so we had no opportunity to explore whether or not this might have happened with anyone else. We don't say that it did; we don't say that it didn't, but you can't say that this is the only time that it's ever happened. It's the only time in

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this record --

MR. BELLUCK: -- And you can't say the opposite.

MR. TEMBECKJIAN: And I don't say the opposite, but what I'm saying is that neither one of us can reach that conclusion because we never had an opportunity to look at anything more than this particular episode because his resignation precluded anything but a 120-day removal. And with respect to the other -- first part of your question, Mr. Belluck, the Constitution gives the Commission the authority to remove someone who lacks qualifications and fitness to be a judge for conduct that's prejudicial to the administration of justice on or off the bench, and there's always going to be some sort of a balancing test judging the severity of the conduct with the passage of time, with whatever else might have occurred subsequent to the commission of the act and perhaps even the judge's age. If he had been a youthful offender when this had happened, we might in a different setting and in a different time have a discussion about whether that would be disqualifying. We don't have to go there here because he did this as a 25-year-old man to a five-year-old girl who had no voice and could not

1 hear, and he kept this a secret for 40 years, 40 years,  
2 which had a deleterious effect on E [REDACTED], 40  
3 years in which when originally confronted with  
4 something having happened, he lied about it in 1982,  
5 and again in 2011, when the family brought it up, he  
6 lied again by saying only, only that E [REDACTED] walked  
7 into the room while he was masturbating. It was  
8 only when confronted with his own words that we  
9 finally have some admission or evidence that she  
10 was participating in the masturbation. This is a  
11 difficult theme --

12 JUDGE RUDERMAN: -- Mr. Tembeckjian --

13 MR. TEMBECKJIAN: -- Yes.

14 JUDGE RUDERMAN: -- and I think is  
15 really a follow-up of Mr. Belluck. Should we give  
16 any weight to the fact that this was 13 years before  
17 Judge Hedges was on the bench --

18 MR. TEMBECKJIAN: -- No.

19 JUDGE RUDERMAN: -- the passage of  
20 time?

21 MR. TEMBECKJIAN: Absolutely not,  
22 because if this conduct had been known when it  
23 happened or at any time before he became a judge, it  
24 would be disqualifying. He would have been subject  
25 to criminal prosecution. He may or may not have

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been acquitted, but he certainly would have been subject to criminal prosecution for what he did. The fact that it didn't happen while he was a judge does not undermine the lack of integrity, confidence that the public can have in him as a judge. It really is irrelevant because the nature of the act itself is so egregious, so extreme, so repugnant in that it doesn't matter that it happened before he was a judge.

JUDGE ACOSTA: So it sounds to me as if you're somehow holding respondent responsible for the Commission's inability to examine rehabilitative and redemptive processes to consider in this case. The fact that he resigned, the fact that he didn't disclose over, you know, a 40-year time period, that prevents us from examining the very things that he may want us to examine.

MR. TEMBECKJIAN: What I'm suggesting, Judge Acosta, is that the respondent has had an opportunity to put before you what he might consider mitigating, what he might ask you to consider in not removing him but closing this matter without public discipline. He's had that opportunity to do so. The fact that he's chosen in his papers before you to re-vilify the victim who came forward and whom the referee found to be credible, I think

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speaks volumes about his current state of --

JUDGE ACOSTA: -- You're referring to the reply brief.

MR. TEMBECKJIAN: The reply and also his original brief to the Commission, which is essentially arguing not remorse, not introspection, not suggesting that there are things that he has done that might compel you not to remove him and to keep this secret. He's not been prevented from doing so, not at all. What I am saying is that whatever he may offer and what he has put before you in this record is not sufficient to overcome the extremely repugnant act that I believe, and I urge you to find, would disqualify him or anyone else from being a judge. This is not to say that there aren't other useful roles in society that he might play, but judicial office is clearly not one of them, and I cannot imagine that this Commission would want to put itself in the position of saying to the public either affirmatively or by its inaction in this case that what he did is not to be condemned, that what he did does not disqualify him from being a judge. I cannot imagine that a responsible body doing its duty to protect the public could do that. And remember, he can come back to the bench. He

1 can assume other positions of public trust if he's  
2 permitted to keep this secret. If you participate in  
3 keeping this 40-year secret from the public, then you  
4 are doing additional aggravation to the act that he  
5 committed against his niece. It's an unusual  
6 circumstance that puts this kind of case in front of  
7 the Commission. In the 35 years that I've been here,  
8 we've never had anything like this.

9 JUDGE KLONICK: Mr. Cohen.

10 MR. COHEN: You're suggesting, Mr.  
11 Tembeckjian, that by letting him walk off into the  
12 sunset we're becoming enablers to his conduct by  
13 helping him to keep that secret. But on the other  
14 hand, it seems to me the day he's confronted with  
15 the accusation, he resigns from the bench  
16 immediately, recognizing that under any version of  
17 the facts that he engaged in reprehensible conduct.  
18 Shouldn't the Commission want to encourage that?  
19 Instead, what you're doing is asking us to reject his  
20 resignation. Shouldn't we want to encourage  
21 resignations by people who recognize they've had a  
22 mirror held up to themselves and recognize they've  
23 done wrong and they should leave?

24 MR. TEMBECKJIAN: Sometimes the  
25 behavior is such that the Commission has to remove

1 even though the judge has resigned. It's why the  
2 Legislature gives you that responsibility. As you  
3 yourself wrote in your concurring opinion in *Feeder*,  
4 there are certain acts which require not only message  
5 to the actor, in this case respondent, but that serve as  
6 a deterrent to others. You've got to educate the rest  
7 of the would-be judiciary that if they have this kind  
8 of behavior in their past, they shouldn't aspire to be  
9 a judge, not that they can make it go away by  
10 resigning before you make it public, and you would  
11 not be protecting the public whatsoever if you let  
12 him go off into the sunset without public criticism  
13 for what he did because he can come back to the  
14 bench, he can come back to other positions of public  
15 trust.

16 MR. COHEN: Do you think that's realistic  
17 that he's going to come back to the bench?

18 MR. TEMBECKJIAN: I don't know. It is  
19 possible. It is absolutely possible.

20 MR. COHEN: If he does that, you'll come  
21 after him again, won't you?

22 MR. TEMBECKJIAN: And would you, at  
23 that point, be explaining to the public that when you  
24 had the opportunity to insure that he not come back  
25 to the bench, you let it go because you'd get him

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again? This conduct is so reprehensible that you can't give him another chance to come back to the bench, and I would point out to you that in his post-hearing brief to the referee, he concluded by saying that he didn't believe his behavior was disqualifying of him to be a judge.

JUDGE KLONICK: Mr. Stoloff.

MR. TEMBECKJIAN: That's his own position.

JUDGE KLONICK: In Albany, Mr. Stoloff.

MR. STOLOFF: Judge Peters wanted to ask a question first. You didn't recognize her.

JUDGE KLONICK: I apologize. Go ahead, Judge Peters.

JUDGE PETERS: Thank you. Mr. Tembeckjian, do you agree that there are factual inconsistencies between the victim's position as to the occurrence and the judge's position and that those inconsistencies, which I understand include whether he motioned her into the room and whether he had her masturbate him, are critically important in determining this issue?

MR. TEMBECKJIAN: They are not critically important at all. Let me point out to you that --

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JUDGE PETERS: -- Well, if you are certain they are not critically important then you need to help me understand. Because according to the judge, he said that he thought his experience with this victim made him more sympathetic to victims. So if that's the case and the factual inconsistencies don't matter, then I'm confused as to why he left the bench at all.

MR. TEMBECKJIAN: First of all, whether or not she had her hand on his penis or she had her hand on his hand as it was stroking his penis, either version is reprehensible. It shouldn't have happened and he should be removed from office because of it. The fact that he claims that he was more sympathetic to victims certainly has not been demonstrated by his behavior to what E [REDACTED] and her family in the course of this saga because in 1982 the supposedly sympathetic person to the victims of sex abuse lied to his family about what happened, and in 2011, after 27 years on the bench, he lied again. He told an incomplete story. He never made any effort to help her get counseling. He never remediated his misbehavior. He never sought counseling for himself. He didn't do anything in this case to demonstrate that you can rely on his belated now

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assertion that he was more sympathetic to victims because this had happened to him. His behavior doesn't justify that statement. It just doesn't bear it out whatsoever.

JUDGE KLONICK: Mr. Stoloff.

MR. STOLOFF: Yes, what I think what we were both asking is this: to what extent do you view the issue of whether or not he waved her into the room as a factor which would be important to understand in connection with the conduct? Because there's an inconsistency whether he waved her into the room or he didn't wave her into the room. I want you to assume that he didn't wave her into the room --

MR. TEMBECKJIAN: -- Mr. Stoloff --

MR. STOLOFF: -- take that out of -- take that out of the picture for a moment --

MR. TEMBECKJIAN: -- Right --

MR. STOLOFF: -- and then go on and provide the basis.

MR. TEMBECKJIAN: He knew she was in the room. The testimony and the referee's findings is that he waved her onto the bed, he motioned her to the bed. He was aware that she was in the room. In the exhibit of the taped conversation he

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acknowledges that he was aware that she was there. The only factual dispute between E [REDACTED] and the judge on whether or not there was a waving was whether or not he motioned her onto the bed. The referee indicated to you why he believed her version of the events, in part because as a deaf and speech impaired individual, she was especially attuned to verbal and to physical cues, and moreover, his own reaction to discovering that it was his niece and not his wife was completely, if you believe his version, unbelievable. What sane grown adult who thinks it's his wife on the bed with her hand on his while he's masturbating and opens his eyes and realizes it's his five-year old niece doesn't jump and startle in shock but continues for three or four more strokes of masturbation, which is his own version, before registering some dismay? Under those circumstances, the referee was absolutely right to conclude that E [REDACTED] told the more accurate version of events, and as to all of the other factual issues, including where he was on the bed, where the room was situated in the house and so on, he and she have no factual discrepancy whatsoever. As to whether she motioned -- he motioned her onto the bed, there is a dispute and the referee has explained in exquisite detail why he credited her. As

1 to whether her hand was on his penis or on his hand  
2 stroking his penis, the referee indicated why in  
3 exquisite detail he believed her, but even if you were  
4 to conclude only on the basis of what he said, you  
5 would have to conclude that this was such an act of  
6 moral turpitude to permit a five-year-old girl to keep  
7 her hand on his while he's masturbating for four or  
8 five long strokes or seconds, and then his reaction  
9 afterward to go down to breakfast as if nothing had  
10 happened, to not reveal to the family that she had  
11 seen something that she might seek some help on or  
12 that might need to be explained to her, to have lied  
13 about it ten years later and then 39 years later  
14 suggests again, as the referee indicated, that her  
15 version is the one to be credited. I ask you not, not  
16 to heap on E [REDACTED] the additional indignity of finding  
17 against your referee who saw the witnesses, unlike  
18 you, and who credited her with telling the truth, not  
19 to reject that testimony.

20 JUDGE KLONICK: Mr. Belluck, you have  
21 one last question?

22 MR. BELLUCK: I do. Assuming we all  
23 agree that the Commission has the authority to go  
24 back and look at conduct before the judge took the  
25 bench, would you agree with me that we would still

1 have to make a determination that the conduct, at the  
2 time that it occurred, violated the rules that you're  
3 charging? In other words, you charged 100.1, which  
4 was that the conduct impacts the integrity and the  
5 independence of the judiciary. We would still have  
6 to make a finding that someone who did this 20-plus  
7 years ago, that that conduct would in fact violate that  
8 rule?

9 MR. TEMBECKJIAN: First of all, Mr.  
10 Belluck --

11 MR. BELLUCK: -- Do you understand what  
12 I'm asking?

13 MR. TEMBECKJIAN: I do, I do. On your  
14 first point, the Court of Appeals has already said in  
15 several cases that you have authority to remove a  
16 person for acts that occurred before they became a  
17 judge. That's clear in *Tamsen*, in *Mason* and other  
18 cases, that's absolutely clear. You don't have to  
19 revisit that. As to whether the behavior at the time  
20 was disqualifying, we start with the Constitution. We  
21 charged the constitutional provision against the  
22 judge first, which is conduct reflecting on his  
23 qualifications and fitness to hold office and conduct  
24 prejudicial to the administration of justice. That's in  
25 your constitutional grant of authority. There is no

1 question that a person 25 years of age who engages  
2 in an act of sexual misbehavior with a five-year-old  
3 girl, whether you take his factual version or what the  
4 referee found, has committed conduct which renders  
5 him unfit for judicial office and it's conduct  
6 prejudicial to the administration of justice. That was  
7 true in 1972 and it's true in 2012, without question.

8 JUDGE ACOSTA: So there has to be a  
9 nexus between the prior conduct and present fitness?

10 MR. TEMBECKJIAN: Absolutely. I mean,  
11 if we're talking about a parking violation or a  
12 speeding ticket, we wouldn't be here. That's not  
13 conduct prejudicial to the administration of justice.  
14 It's not conduct that reflects adversely on his fitness  
15 to hold judicial office. That's your constitutional  
16 standard. The rules amplify and give more life to  
17 that constitutional standard, and the Court of  
18 Appeals had said the two that we charged against  
19 him, 100.1 and 100.2, which go to public confidence  
20 in the integrity of the judiciary, apply to pre-bench  
21 behavior and there's no question --

22 MR. BELLUCK: --- What I'm saying --

23 MR. TEMBECKJIAN: -- that if the public  
24 knew that he had done this --

25 MR. BELLUCK: -- is that at the time that

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he --

MR. TEMBECKJIAN: -- they would have no confidence in him as a judge.

MR. BELLUCK: -- at the time that the act was committed --

MR. TEMBECKJIAN: -- Yes.

MR. BELLUCK: -- there's no way that any of this would have applied because he wasn't a member of the judiciary. In other words, he wasn't undermining --

MR. TEMBECKJIAN: -- Well, you couldn't have removed him then because he wasn't a judge.

MR. BELLUCK: Right. So what I'm asking you, is it your position that even -- we're looking at the violation of the rule now, not at the time that the conduct was committed?

MR. TEMBECKJIAN: Well, that the -- no -- yes, I understand what you're saying. The violation doesn't have to occur at the time you're imposing the discipline or at the time he's a judge. The whole concept of qualifications and fitness go to the requisites for holding judicial office in the first place. If you are convicted of a felony, you cannot be a judge, period, even if it was before, and if you're convicted of a misdemeanor of moral

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turpitude, it's removable conduct, and I would argue, therefore, that if that act of moral turpitude occurred before you were a judge, it disqualified you from being a judge. He never should have been a judge because of what he did, and the fact that we didn't learn about it until 40 years later does not absolve us of the responsibility to take the appropriate action and to let the public know that this kind of behavior will not be tolerated in anyone who aspires to be a judge.

JUDGE KLONICK: Thank you, Mr. Tembeckjian.

MR. TEMBECKJIAN: Thank you, Mr. Klonick.

JUDGE KLONICK: Mr. Julian. Mr. Julian, so we understand, will the respondent be addressing us?

MR. JULIAN: Oh yes, thank you for asking. Yes, he will.

JUDGE KLONICK: Do you wish to reserve any time after he speaks?

MR. JULIAN: I do not. Thank you for asking.

JUDGE KLONICK: Thank you. Go ahead, whenever you're ready, Mr. Julian.

1 MR. JULIAN: Sure. May it please the  
2 Commission, Judge Hedges and I first of all want to  
3 thank you for your public service. We understand  
4 that the role that you have to play is an important  
5 role and we appreciate your willingness to  
6 participate in the important task of monitoring and  
7 policing, if you will, the judiciary.

8 I think I would like to begin by talking about  
9 several things that Mr. Tembeckjian said that I just  
10 don't think were totally accurate. First of all, as to  
11 the question of whether or not Judge Hedges knew  
12 E [REDACTED] was there in the room, let's recognize that  
13 there are two sets of factual representations here.  
14 Judge Hedges' testimony is that he was in his  
15 mother-in-law's house with his wife in a bedroom  
16 that was assigned to him in the morning  
17 contemplating having sex with his wife. It's on the  
18 third floor in the most -- in what is conceded and  
19 acknowledged to be a distant part of the house.  
20 E [REDACTED] comes into the room. She was not as the  
21 Commission originally charged an overnight guest.  
22 She came into the room because she arrived that  
23 morning with her parents. Bryan Hedges didn't  
24 know she was there until she burst into the room.  
25 She leaves with Bryan's wife. Bryan commences

1 the act of masturbation. Now, she returns to the  
2 room and the question is when did Bryan Hedges  
3 know she was there? And I would refer the  
4 Commission to page 366 of his testimony under a  
5 blistering cross by Mr. Postel in which he said, Mr.  
6 Postel -- answer -- the question at line 24 -- "That's  
7 correct, you took no action to discourage her."

8 Answer: "I took no action to. I didn't even know  
9 she was there. I couldn't take any action."

10 MR. EMERY: Mr. Julian, what about his  
11 recorded statement?

12 MR. JULIAN: What about it?

13 MR. EMERY: He says, "At some point she  
14 came in or I was aware of her --"

15 MR. JULIAN: -- Right.

16 MR. EMERY: -- "and I didn't stop and cover  
17 up, I just kept going, and she came over, was  
18 curious, and wanted to put her hands also on my  
19 penis and this whole thing was maybe, it was less  
20 than a minute I am sure. At any rate, very briefly,  
21 we, I was stroking, and she was, too, on top of my  
22 hands, and I suddenly realized, and was very mad at  
23 myself, and I rolled over and covered up." So he  
24 was aware of her while he was masturbating and she  
25 was participating in it, according to his own recorded

1 statement, and did not stop for more than a minute. I  
2 mean, if we stop here and we're silent for a minute,  
3 it would be an ungodly long time, as you well know.

4 MR. JULIAN: Mr. Emery, I do not think if  
5 you look at the totality of the tape that that's what he  
6 was saying. What he was saying is that he  
7 commenced the act of masturbation; it went on for  
8 about a minute. E [REDACTED] came into the room, she goes  
9 onto to the bed, he's aware of her presence, and he  
10 responds within three to four seconds.

11 MR. EMERY: But he doesn't say that  
12 though. He says, "At some point she came in or I  
13 was aware of her and I didn't stop and cover up."

14 MR. JULIAN: Yes.

15 MR. EMERY: "I was aware of her and I  
16 didn't stop and cover up. I just kept going."

17 MR. JULIAN: Yes. And that's consistent  
18 with what he said in his testimony before the  
19 Commission both by deposition and at the hearing,  
20 that -- in other words, the act of her interrupting him,  
21 that's when he went on, that's the three to four  
22 seconds, that's the time that he didn't stop.

23 JUDGE ACOSTA: I'm not getting -- maybe  
24 the difference is very subtle. I -- the testimony --

25 MR. JULIAN: -- Yes --

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JUDGE ACOSTA: -- he said he's aware of her presence --

MR. JULIAN: -- Yes --

JUDGE ACOSTA: -- while he's masturbating, opens his eyes and saw E [REDACTED] coming in and touching the back of his hands --

MR. JULIAN: -- Right --

JUDGE ACOSTA: -- and wrist, right?

MR. JULIAN: Right.

JUDGE ACOSTA: He continued --

MR. JULIAN: -- For three --

JUDGE ACOSTA: -- "I continued," he says--

MR. JULIAN: -- For three to four seconds, your Honor.

JUDGE ACOSTA: Right.

MR. JULIAN: That's the issue in this case.

JUDGE ACOSTA: So you don't think that that's a sexual act?

MR. JULIAN: Your honor, it's not what I think, but I would certainly argue that he does not have *mens rea* intent, that three to four seconds does not, in and of itself, make a sexual act.

JUDGE KLONICK: And this is all, in the judge's world, this is all ignoring all of the testimony of the victim in this matter --

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MR. JULIAN: -- Sure

JUDGE KLONICK: -- who was five years old, a deaf, for all intents and purposes a mute, could not report to anyone what happened like one of our own five-year-old children, and he made no effort, even taking his version of those facts, taking his brother-in-law aside, the child's mother aside and say, "Look, you should know something. Something just happened, I have to bring to your attention," in 1972. He made no effort to do anything like that ever. Isn't that true?

MR. JULIAN: He did not report it on that day --

JUDGE KLONICK: -- He didn't report --

MR. JULIAN: -- May I finish?

JUDGE KLONICK: Go ahead.

MR. JULIAN: He did not report it on that day, we concede that, and we have conceded that that was a mistake.

JUDGE KLONICK: And he didn't --

MR. JULIAN: -- Can I just go one step further?

JUDGE KLONICK: Go ahead.

MR. JULIAN: He also did not report it for ten years, and we concede that.

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JUDGE KLONICK: But he didn't even report it in 1982, that there was any touching of any kind, in 1982. Isn't that true?

MR. JULIAN: Well, page 378 of his testimony and I think this is where we get into the fact that this was 40 years ago. He said in response to -- again questioning -- Question: "You didn't tell R█ that she had touched your hand while you were masturbating, did you?" Answer: "I did tell him that she reached toward me." Question: "You didn't tell him that she touched your hand?" Answer: "I think that's correct. I probably did not, sir."

JUDGE KLONICK: And even worse, he didn't think it was even relevant to tell his brother-in-law in 1982 that she participated in this.

MR. JULIAN: Well, I think the context of that statement, Judge Klonick, is that it was his hope that it would not be a problem for E█. It was his anticipation that it would not be a problem, and I don't think he fully appreciated the significance of that three to four second event.

JUDGE KLONICK: In 1982 he was an assistant district attorney --

MR. JULIAN: -- Yes.

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JUDGE KLONICK: -- was he not?

MR. JULIAN: Yes, he was.

JUDGE KLONICK: Okay. And I assume he was prosecuting cases for Onondaga County, I believe?

MR. JULIAN: I have every reasonable expectation that he would be doing that.

JUDGE KLONICK: And so he dealt with victims, didn't he?

MR. JULIAN: I would assume that he did, sure.

JUDGE KLONICK: Well, I guess my point is, is that even taking your version of the facts --

MR. JULIAN: -- Yes --

JUDGE KLONICK: -- at any time, did he ever try to shed light on this all the way up until this past year? Did he really ever put a full spotlight on this?

MR. JULIAN: Judge Klonick, I fully understand the tone and the tenor of your questions. Let me address it another way and if it's not responsive, I'll go back and do better. If Bryan Hedges were evil, immoral, disingenuous, all the implications to be drawn, why would he have admitted in 1982 that the event occurred? Why

1 wouldn't he have said to his brother-in-law, who  
2 called him up out of the blue, where it's strictly his  
3 word against hers, and say, "I don't even know what  
4 you're talking about, R [REDACTED]"?

5 JUDGE KLONICK: Are you talking about  
6 1982?

7 MR. JULIAN: Yes, sir.

8 JUDGE KLONICK: That rhetorical  
9 question?

10 MR. JULIAN: Yes, sir.

11 JUDGE KLONICK: My personal feeling?  
12 He admitted some of it but he didn't admit all of it.

13 MR. JULIAN: Well --

14 JUDGE KLONICK: -- It was his way  
15 perhaps of making himself feel better.

16 MR. JULIAN: I don't know. I'm simply  
17 pointing out that this was not as represented a  
18 circumstance that was hidden.

19 MR. EMERY: See, my problem here is that  
20 it feels like we're arguing about something that in a  
21 different context would be argued about very  
22 differently but in this context the stakes are quite  
23 different, and I think the stakes are very important  
24 here, Mr. Julian, and I think to some degree you  
25 have to address yourself to that. Because my

1 problem is is that being a judge is privilege. And he  
2 availed himself of that privilege when it's pretty  
3 clear to me that Mr. Tembeckjian is right, that if  
4 anybody had known about this, he would have never  
5 become a judge at the time. It would be one thing if  
6 this were a criminal case and we had the right to  
7 punish him or something. I think the argument  
8 would be very different. But we're arguing about  
9 whether he can be allowed to have benefitted from  
10 this privilege which -- he's now resigned but  
11 nevertheless -- which we have some still control  
12 over, under our jurisdiction, apparently to withdraw.  
13 And so I think that the stakes are very important here  
14 to determine why we shouldn't withdraw that  
15 privilege based on this information, whereas maybe  
16 in a criminal context we would -- it would be *ex post*  
17 *facto* or it would be a retroactive imposition of  
18 penalty. This is not a penalty, this not a penalty  
19 we're talking about here. We're just talking about  
20 withdrawing [RINGING] -- that's not me -- we're  
21 just withdrawing a privilege.

22 JUDGE RUDERMAN: We lost the call.

23 MR. COHEN: I think Mr. Harding is --

24 MR. EMERY: We lost somebody. I guess  
25 you should think about that while we're waiting to

1 get him back.

2 (OFF THE RECORD)

3 JUDGE KLONICK: Okay, let the record  
4 reflect we're back on with all participating members  
5 and the Clerk of the Commission is present. Go  
6 ahead, Mr. Emery.

7 MR. EMERY: So, my question is given that  
8 this is not about punishment *per se*, this is about our  
9 mission to protect the public and to protect the  
10 judiciary and its independence and the stakes are  
11 very different. I am, you know, yes, it's devastating  
12 to him in a career sense, but he's not going to jail  
13 and he's not losing his freedom in any way or his  
14 property. So I'm not sure why this -- given that he  
15 concedes it was a very, it was a matter of moral  
16 turpitude in the end, maybe a mistake, but it had  
17 severe consequences and he acted in a way that he  
18 wish he hadn't and he views himself as  
19 reprehensible -- why there's really any argument  
20 about why he should not be removed as a judge as a  
21 consequence of this? I mean, I almost think he  
22 would embrace it as a way to deal with this episode  
23 in his life after 40 years. But that's just my view.

24 MR. JULIAN: That was probably two  
25 questions and I'm going to try to answer --

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MR. EMERY: -- Well, whatever your response -- it was also a stream of consciousness, I'm sorry.

MR. JULIAN: Well, it's -- I understand it and I appreciate it. Two things in response. Number one, he has offered to stipulate that he will not serve in the future.

MR. COHEN: Has he offered to stipulate to waive confidentiality of these proceedings in the event he were to ever serve in any of those capacities that Mr. Tembeckjian is rightly concerned about?

MR. JULIAN: Not as artfully as you just phrased it, but I believe he would offer that.

MR. COHEN: Well, prepare him for that answer because I'm going to ask him that directly, when he gets an opportunity.

MR. JULIAN: Okay. Thank you. The second point is a little more difficult to respond to, Mr. Emery, because in terms of the factual dispute in this case, I think we need to be clear as to what Judge Hedges was talking about when he said he had engaged in, and I'm going to use some of the words he used, "multiple screw-ups, did a bad, bad thing, stupid behavior, a big mistake, a very big, bad thing, very, very, very bad behavior," and more. And he

1 said this in his testimony, and I think it's consistent  
2 with the morals of the times, 1972 -- I mean, we are  
3 -- this is before eight years in the 1970s, the entire  
4 Reagan administration, the Clinton administration,  
5 which may have changed the whole sexual view of  
6 America. He said that masturbating in a third floor  
7 bedroom, with the door open rather than closed, with  
8 E [REDACTED] in the house, not responding for three or four  
9 seconds when E [REDACTED] reached onto the bed and not  
10 telling E [REDACTED]'s parents immediately was the conduct.

11 JUDGE PETERS: Excuse me, excuse me --

12 MR. JULIAN: -- Yes, judge.

13 JUDGE PETERS: I'm confused. Are you  
14 suggesting that at the time the conduct took place  
15 morals were such that it was inappropriate but it's  
16 not inappropriate now?

17 MR. JULIAN: No, oh no. I wasn't  
18 suggesting --

19 JUDGE PETERS: -- Oh, good.

20 MR. JULIAN: -- No, no, no.

21 JUDGE PETERS: I'm so glad to hear that.

22 MR. COHEN: That's what it sounded like to  
23 me, too. What were you saying?

24 MR. JULIAN: I'm not very articulate, so you  
25 have to excuse me.

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MR. COHEN: That's fine, but say what you were saying.

JUDGE PETERS: Maybe you need to explain what you mean.

MR. COHEN: Thank you.

MR. JULIAN: Okay. All I meant was in 1972, the act of masturbation may -- this is not long after the Kinsey, not long after the world had engaged in rather intensive studies, not long after the 60s, the act of masturbation was viewed perhaps differently than it is today.

JUDGE PETERS: But counsel, the masturbation isn't the problem. It's allowing a child to participate in it that's the problem.

MR. JULIAN: Well, judge, I appreciate that, and the question I believe for the panel is whether if you believe Judge Hedges' version, the three to four second period of time demonstrated intent, *mens rea*. Thank you for those questions. I'm not sure if I --

JUDGE KLONICK: -- You haven't used all your time, Mr. Julian.

MR. EMERY: So, are you -- just to be clear about in response to Commissioner Cohen's --

MR. JULIAN: -- Sure.

MR. EMERY: -- question to you about -- are

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you essentially arguing that he would stipulate --  
we'll confirm this with him, but just so I understand  
it -- that he would stipulate to not -- never serving in  
any of these public capacities that he might be  
qualified for as an ex-judge --

MR. JULIAN: -- Right.

MR. EMERY: -- ever again, in return for,  
essentially, confidentiality?

MR. JULIAN: Yes.

MR. EMERY: Right.

MR. JULIAN: Well, and if I could just be  
heard on that. The --

MR. EMERY: -- Hasn't this been publicized  
in --

MR. JULIAN: -- No.

MR. EMERY: This has never been  
publicized in any way?

MR. JULIAN: No.

JUDGE KLONICK: Why does he want to  
keep this under wraps, so to speak, if our morals  
have changed and masturbation is less --

MR. JULIAN: -- No, that's not what I said,  
judge.

JUDGE KLONICK: I'm trying to understand  
the previous point.

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MR. JULIAN: No, don't use against my client something I said, please, I'm asking you.

MR. EMERY: Your whole effort here is to protect him from opprobrium in his community. Isn't that really what's going on? I mean --

MR. JULIAN: Well --

MR. EMERY: -- I'm trying to understand what the stakes are. That's --

MR. JULIAN: -- Sure, Mr. Emery, I think the stakes are his reputation and there's probably no nice way to say this, so I'll just say it. This was not a criminal trial; this was not a civil trial. We were not accorded any of the rights and privileges that you would be accorded in either of those forums. This is not a good place to adjudicate something that had happened 40 years ago. And I'm going to tell you something as someone who has spent his life in jurisprudence, I'll vouch for a moment. I am very concerned about the due process issues associated with this proceeding, given this factual setting. And that's what I was trying to refer to in terms of 1972. Let me say to this panel, there is good reason why the Legislature of the State adopted statutes of limitations. And Bryan Hedges is being held to memory on things that happened 30 and 40 years

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ago and --

JUDGE ACOSTA: -- But there's no -- why do you think that there has been -- there is no statute of limitations with respect to misconduct?

MR. JULIAN: No question.

JUDGE ACOSTA: There is in the criminal context and the civil context.

MR. JULIAN: No question.

MR. EMERY: No, but he's talking about memory and quite frankly, I proceed -- me, personally, I don't know if others on this Commission do -- but I proceed solely on the basis of what he has told us.

MR. JULIAN: Sure.

MR. EMERY: I'm not -- whatever I'm voting for on this Commission is going to be, you know -- I credit the referee and I respect the referee. The referee did a good job here in my view. But I think because it's 40 years ago and because I can't imagine what people remember from 40 years ago, referring to my own memory and the like, that I don't think anybody actually knows really what happened in that room exactly, but I do -- so I'm willing to give him the benefit of the doubt and accept his version of events. Even on that version of

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events, though, it's a problem.

MR. JULIAN: Sure, but respectfully, Mr. Emery, he could have lied. I mean, now maybe that's not -- that's not what he did.

MR. EMERY: Well, he's obviously feeling a great deal of guilt.

MR. JULIAN: Well --

MR. EMERY: -- So he wouldn't, you know, that's part of this, too.

MR. JULIAN: I certainly think he is accurate when he said he showed poor judgment at age 25 to engage in the act of masturbation in his mother-in-law's house, knowing the child or children --

MR. EMERY: -- He should just stop there, right there --

MR. JULIAN: -- Yes.

MR. EMERY: -- at mother-in-law.

JUDGE ACOSTA: Mr. Julian, are you -- I want to explore this issue of the Commission's ability to go back --

MR. JULIAN: -- Yes.

JUDGE ACOSTA: -- as far back as we are going in this case. Should it relate to the nature of the conduct itself?

MR. JULIAN: Well, judge --

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JUDGE ACOSTA: -- I mean, clearly the Court of Appeals has said we can go back.

MR. JULIAN: Yes, yes. Judge, I guess this is almost an opinion question, isn't it? So I understand why and Judge Hedges understands why because we've had this discussion. You should have the right to go back to birth theoretically in terms of vetting people need to be judges. I think the problem in this case is the long duration and the difficulty reconciling the differences, which are massive, between the parties. And you are offered the remedy that you should be seeking. We have offered to not serve again, and I think to therefore to roll out a factual finding that decimates this man's life based on jurisprudence that -- and I respect the referee also, and I think he's a marvelous individual, but this is not a civil litigation. I didn't get to take a deposition, I didn't get bills of particulars. We're talking about the effect on this woman and her life. I just want to tell you one thing because this is something that just drove me up the wall. As a civil litigator, I would have been entitled to her medical records. She was in a halfway house, accused her husband of spousal abuse. We weren't even allowed to question her about it, much less get her records.

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JUDGE KLONICK: Excuse me, excuse me.  
Is that part of the record?

MR. JULIAN: Yes.

JUDGE RUDERMAN: Mr. Julian --

JUDGE KLONICK: -- It is?

MR. JULIAN: Oh sure.

JUDGE KLONICK: That she --

JUDGE ACOSTA: -- But those were not  
charged, right? That's why the referee upheld --

MR. JULIAN: -- Right.

JUDGE ACOSTA: -- the staff's objection to  
the introduction of that.

JUDGE RUDERMAN: Mr. Julian --

MR. JULIAN: -- She allowed -- who do I  
talk to first?

JUDGE KLONICK: Answer Judge Acosta's  
question.

JUDGE RUDERMAN: Answer his question.

MR. JULIAN: My recollection of the record  
is he allowed me to ask, "Did you tell the people at  
the halfway house about Judge Hedges' abuse?"  
And she said no. Now I asked the question, it was  
objected to, I was not allowed to go into that. I think  
that's prejudicial because you're weighing what  
happened --

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JUDGE ACOSTA: -- Do you think that that's related to the nature of the act itself --

MR. JULIAN: -- No --

JUDGE ACOSTA: -- whether she actually disclosed it at that time?

MR. JULIAN: -- No, no, no. I think it's related to the great weight of prejudice, if you read the briefs, talking about the terrible impact this has had on E [REDACTED]. And I'm not disputing that. I don't know. I never saw her records. Would I -- but in the law, if she is mentally impacted, if she has some emotional condition because of it, that needs to be connected. That's incompetent testimony.

JUDGE ACOSTA: You have been placed at issue --

MR. JULIAN: -- Yes.

JUDGE ACOSTA: -- so you're allowed to explore.

MR. JULIAN: Well, it was in proceeding, it was never connected by medical testimony. We don't know that she has emotional problems secondary to this event.

JUDGE KLONICK: But even if -- go --

JUDGE RUDERMAN: -- I'm sorry. Mr. Julian --

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JUDGE PETERS: -- I'm sorry.

JUDGE RUDERMAN: -- All right. Let's really narrow --

MR. JULIAN: -- Sure.

JUDGE RUDERMAN: -- narrow the issue. Mr. Tembeckjian said removal is justified on the judge's story alone.

MR. JULIAN: Sure.

JUDGE RUDERMAN: Let's, you know, giving it your best shot, we're just going to take what he said, not what she said or not considering her credibility. Why not remove him on that? And is it your position that just because it's three or four seconds and there's no intent? And is that why it's not removable?

MR. JULIAN: Yes.

JUDGE RUDERMAN: I mean, you -- I don't want to put words in your mouth.

MR. JULIAN: You said it far more directly than I could say. Yes, I don't think -- it's a three or four second event. He's in the bedroom that he's been assigned. It's not like he's trolling the hallway. I mean, with all due respect, I just think it is a very brief period, and in his factual setting he didn't intend for her to be there. He didn't know she was

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there. He figured out she was there as she reached in and touched him. And so it's a three or four second delay.

JUDGE KLONICK: Judge Peters, you had a question.

JUDGE PETERS: I guess, counsel, I was only concerned about whether you think that the extent of the emotional trauma to the victim is so very relevant to the question before us. I mean, if she went to a halfway house because of some purported spousal abuse, I don't know why she needs to disclose this abuse or this situation at all.

MR. JULIAN: I -- Judge Peters, I'm very sorry, I think I know what you're asking, but could I respectfully ask you to rephrase it because I don't want to go down the wrong road?

JUDGE PETERS: Of course, and I'm sorry if I didn't ask it more --

MR. JULIAN: -- I'm sure you did fine.

JUDGE PETERS: My concern when you were discussing the fact that you didn't have access to her medical records --

MR. JULIAN: -- Right.

JUDGE PETERS: -- you led me to believe that what you felt was that you were being prevented

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from acquiring information concerning the extent of her emotional trauma, if any. And my question is, if she did enter a halfway house for purported abuse by her spouse --

MR. JULIAN: -- Right.

JUDGE PETERS: -- why would it be relevant for her to disclose an event that occurred historically with another person?

MR. JULIAN: Thank you, judge. It would not be, except she and Commission staff put her condition in issue.

JUDGE ACOSTA: By charging that respondent had engaged in a sexual act?

MR. JULIAN: No, no. By in the testimony, her testifying -- and if you look at the briefs, and there's a lot of paper and I don't mean it the way I'm saying it --

JUDGE ACOSTA: -- Sounds like in opening the door --

MR. JULIAN: -- there's an argument in the briefs that you should consider the effect of this on her.

JUDGE KLONICK: Right. But there's nothing in the complaint about her medical condition or --

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MR. JULIAN: -- Correct.

JUDGE KLONICK: Okay, all right.

MR. JULIAN: Thank you, judge.

JUDGE KLONICK: Okay.

MR. BELLUCK: Could I just ask you about the question of redemption that we were talking about earlier? Because, you know, you said that you thought that we should have or we have the authority to go back to day zero basically --

MR. JULIAN: -- I think you do.

MR. BELLUCK: -- and the thing that I'm struggling with is, you know, how do you look at a person's life and make a judgment as to at what point they've been able to redeem themselves from conduct? You know, people make mistakes, people do things that they shouldn't do. We all have. I say this to everybody that, you know, if you go through anybody's tax returns, if you go through anybody's employment history, you'll find one thing that they did that they probably shouldn't have done. They claimed a deduction they shouldn't have; they didn't report a domestic labor person that they were employing. And, you know, there's nobody who walks this earth who is completely free of a bad act. So, my question, you know, we asked Mr.

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Tembeckjian about it, could you just talk about your view of how -- what weight we should give to someone's redemption or what they've done after the act in judging what we should do?

MR. JULIAN: My analysis, Mr. Belluck, is fairly simple and that is Judge Hedges served this country honorably in Vietnam. He was shortly back from Vietnam when this event occurred. Maybe it affected his response, maybe it didn't. I don't know. We don't have any proof as to that. He served as an assistant district attorney, served as a public defender. There's -- ran for office, I think, six times with no claim or allegation of any form of misconduct or impropriety in his life. Should he have been one sentence more candid with his brother-in-law in 1982 and say her hand touched mine? Sure. Should he have -- frankly, I'm not sure if he should be in touch with E [REDACTED] to talk about this event or not. You have to remember, he had all kinds of contact with E [REDACTED]. E [REDACTED] stayed at his house, stayed at his house with him and her daughter alone just shortly before this event. Whether it's appropriate -- if you look at his testimony and his brother-in-law's testimony, E [REDACTED]'s father, the exchange was, and they both agree, Bryan left it in

1 1982, "Tell me what you want me to do. Tell me  
2 what I need to do. I'm happy to do anything you  
3 think is appropriate," and at that time E [REDACTED] was 15  
4 years old. And I am not a medical ethicist or a  
5 psychologist, I have trouble being a lawyer, but I'm  
6 not sure that the appropriate step or act would be for  
7 him to raise the issue with her after that. So I think  
8 in that context if you look at the totality of his life  
9 that this was a very short event, accepting, as Judge  
10 Ruderman said first, his facts for the purpose of this  
11 answer, I think this is not the kind of act that should  
12 motivate what will be a sensational decimation of his  
13 good name.

14 JUDGE KLONICK: Thank you, Mr. Julian.

15 MR. JULIAN: Thank you, your honor.

16 JUDGE KLONICK: Judge Hedges, you wish  
17 to address us?

18 THE RESPONDENT: Yes, your honor.

19 Thank you. I want to begin my statement to you  
20 with five unequivocal points. Number one, contrary  
21 to the Commission's staff representation, I did not  
22 intend in any matter to have a sexual event with my  
23 niece or to have her participate in a sexual act. She  
24 entered my bedroom announced and unsolicited.  
25 When I opened my eyes and realized who was

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touching my hand, within two to four seconds I rolled over and took her out of the bedroom.

MR. EMERY: Why did you say less than a minute in your recorded statement?

THE RESPONDENT: That is the overall, sir. If you will look at my testimony in another -- and I don't think you had the testimony that was, the deposition that I gave in front of Judge Klonick in Rochester. Maybe I explained it better than --

JUDGE KLONICK: -- You're referring to the initial investigatory appearance.

THE RESPONDENT: Yes, sir, right. I'm sorry, what was the question?

MR. EMERY: Why less than a minute?

THE RESPONDENT: Oh, I was explaining that this whole thing, the whole overall from when she and Liz, my wife, left the bedroom and I started masturbating in the bed, half asleep, not realizing what was going on with my eyes closed. It was about half -- it was less than a minute later I estimate that I opened my eyes as she was reaching in and touching me and touching the back of my hand and I recognized at that point that it was her and I -- immediately, immediately it was two, three, four seconds, I was shocked. I just -- I should have

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responded more quickly as I rolled over, and then took her out of the room and we went down to breakfast.

JUDGE KLONICK: Why didn't you mention anything to E [redacted]'s mother or father at that time?

THE RESPONDENT: I admit I didn't report the event that day. You know, the funny thing is -- and it is not funny, it's sad. I did at one point that day, down in the kitchen M [redacted] was there next to the sink, and E [redacted] came in and I was about to say something to her and then my mother-in-law came in from the pantry, the other door. And I did not dare say a thing.

MR. EMERY: As long as we're talking --

THE RESPONDENT: -- I was newly married, I should have done it. In retrospect I was wrong.

MR. EMERY: And what about this statement that you make in the recorded -- because I view the recorded statements as being very, very probative, "You know, I mean, I was totally wrong. At some point, she came in or I was aware of her and I didn't stop and cover up."

THE RESPONDENT: I was aware of her as she was reaching in, I did not stop and that was the

1 question that I was concerned about. I went two,  
2 three, four seconds with, I think the testimony was  
3 three motions up and down, maybe didn't finish the  
4 third. The -- I was upset at that slowness on my part  
5 to react, I was -- I just don't know. And as a matter  
6 of fact, I did refer -- Judge Klonick was there, I  
7 think, about a discussion later with the Veterans  
8 Administration about this event as part of a routine  
9 follow-up for a PTSD evaluation after I had gotten  
10 back from Vietnam. My concern at that point and  
11 this is like in 1982, after E [REDACTED] had said something,  
12 that when I was startled by E [REDACTED]'s sudden  
13 appearance next to me, my reaction was slow, and I  
14 was concerned not because of the sexual  
15 implications but rather as to whether it bespoke a  
16 blunting of my reactions, of my sensitivity as a result  
17 of combat fatigue or something of that nature that  
18 was related.

19 JUDGE KLONICK: But you never sought  
20 any treatment for any of this?

21 THE RESPONDENT: I never sought  
22 treatment, sir, for this act, as the way it was phrased  
23 by the referee, I did not abuse this woman; I did not  
24 seek any treatment for that. Yes, I had sought an  
25 evaluation when I came home from Vietnam. And

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yes, I --

MR. EMERY: -- Were you ever diagnosed --

THE RESPONDENT: -- Yes, I'm getting  
treatment now for --

MR. EMERY: -- Were you --

THE RESPONDENT: -- as a result of the  
Commission bringing this, sir.

MR. EMERY: After you came home from  
Vietnam were you ever diagnosed with PTSD or any  
other war related --

THE RESPONDENT: -- Yes, sir.

MR. EMERY: -- psychological disease --  
affliction?

THE RESPONDENT: Yes, sir.

MR. EMERY: What was your diagnosis?

THE RESPONDENT: PTSD.

MR. EMERY: When was that diagnosis?

THE RESPONDENT: Apparently, and I had  
not seen it in writing, and I think I talked about it in  
probably not in the testimony --

JUDGE RUDERMAN: -- Is this in the  
record?

THE RESPONDENT: It was -- yes, I was in  
front of Mr. -- in Rochester I think.

JUDGE KLONICK: It was not in the record

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in Rochester that I recall, judge.

THE RESPONDENT: -- I did --

JUDGE KLONICK: -- In fact, you were asked the question I believe, and your answer was that you were not diagnosed that.

THE RESPONDENT: I don't -- I'm sorry, sir, I don't recollect that. No, I was, remember I was talking with you about seeking --

JUDGE KLONICK: -- You went to a counselor.

THE RESPONDENT: I went to a -- yes --

JUDGE KLONICK: -- A VA counselor.

THE RESPONDENT: I went to a VA counselor to put in a claim, this was like in the 90s for the colon cancer -- the cancers that I had. And he told me, no, we didn't get anything from the VA, I just figured I'll put on in for it. And he says, "But you have PTSD, you could put in a claim for some result from that." Well --

MR. EMERY: -- And you don't know when that diagnosis --

THE RESPONDENT: -- and of course, I didn't want to.

MR. EMERY: -- you don't know when that diagnosis was made?

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THE RESPONDENT: I believe it would have had to have been made in 1972, '71, '72, '73. It was in that time when I came back from Vietnam in '71, I then as part of a full, comprehensive evaluation which we were urged to have went in and saw them. I talked to two psychiatrists, Dr. Dugan -- Dr. Duggan and Dr. Danahy, Francis. Francis Dugan or Durgan, Durgan it was and John Danahy.

JUDGE KLONICK: Judge --

THE RESPONDENT: -- That's my understanding.

JUDGE KLONICK: -- is it your testimony -- we've been talking a lot about two versions of what went on here. We've talked about the version of E [REDACTED]'s and the taking the version of what you have made a record on. Whether it is the testimony at the hearing or whether it was your recorded words, is it your position that E [REDACTED]'s testimony before the referee is all fiction?

THE RESPONDENT: Most of it, a good portion of it, sir.

JUDGE KLONICK: And what is her motivation for doing that?

THE RESPONDENT: I think that that was explored in the hearing. I cannot guess other than

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money.

JUDGE KLONICK: She's asked you for money?

THE RESPONDENT: Yes.

JUDGE KLONICK: She asked you for money for her son's soccer team apparently.

THE RESPONDENT: Yes, she did.

JUDGE KLONICK: Okay.

THE RESPONDENT: And in the emails with her mother -- this was in the record.

JUDGE KLONICK: Right, those are in the record, but she never directly asked you for any money, did she --

THE RESPONDENT: -- She --

JUDGE KLONICK: -- related to these allegations?

THE RESPONDENT: Not at this point, no.

JUDGE KLONICK: Not at this point. Go ahead, Mr. Cohen.

MR. COHEN: There's some controversy, Judge Hedges, about, Mr. Tembeckjian has alluded to it, as to your attorney saying that you would still be equipped, I don't know if he used that word, but equipped to still be on the bench. But yet you resigned, I think you said retired, but you resigned.

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Why did you resign or retire?

THE RESPONDENT: Yes, it's a complicated thing. I turned 65 in March, I had 38 years' experience. The other thing --

MR. COHEN: -- Is it just coincidental that they notified you of the investigation --

THE RESPONDENT: -- No, no, sir.

MR. COHEN: Well, that's what I'd like to know.

THE RESPONDENT: They laid an investigation letter on to me that included too many charges, one of which I'd been dealing with for five years now, it's a federal lawsuit in federal court in Utica that was settled last year with the disgruntled chief clerk of Family Court, and E [REDACTED]'s allegations. I had just had it. The budget cuts, I mean, it just -- it was incredible. I spent 27 and a quarter years as a Family Court judge and it was time to move on, and I knew it would decimate the court, it would cause all kinds of problems. So I just got out of the way. It was time for me to leave.

MR. COHEN: Now, I raised something earlier with your attorney and I told him that I would ask you directly. Mr. Tembeckjian would like you removed, your attorney would like us basically to

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close the file and end this matter.

THE RESPONDENT: Yes, sir.

MR. COHEN: And my question to him and I ask it to you and I want to get an unequivocal answer on this: in the event that you were ever to be appointed or elected as a judge, or appointed as a JHO or a law guardian and Mr. Tembeckjian will fill in any others that I have left out, that you here now, unequivocally, *in futuro*, waive the confidentiality of these proceedings in the event that you were to seek or obtain any of those positions?

THE RESPONDENT: And if you allowed this to be dismissed --

MR. COHEN: Correct.

THE RESPONDENT: -- with no comment by the Commission?

MR. COHEN: Correct. But we would be free -- I don't know if we have the authority, but we would be free --

THE RESPONDENT: -- I don't know that you do.

MR. COHEN: -- to make it public.

THE RESPONDENT: Yes, this is something that we've been made available through Mr. Postel right along. And yes, the answer is unequivocally I

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would accept that.

MR. COHEN: And you --

THE RESPONDENT: -- I've had it with judging.

MR. COHEN: --accept it now *in futuro* assuming that we had the power to do it?

THE RESPONDENT: Yes, sir.

MR. COHEN: Okay.

THE RESPONDENT: Yes.

JUDGE KLONICK: So --

MR. COHEN: -- Perhaps one of my colleagues wants to add to that because --

JUDGE KLONICK: -- Yes, I would because --

THE RESPONDENT: -- This has killed the family, it really has. It's torn us all apart.

MR. COHEN: I'm just speaking for myself in that question.

MR. EMERY: Well, isn't E [REDACTED] going to reveal this? If we don't, if we go along as Mr. Cohen is suggesting might be one resolution here, isn't E [REDACTED] just going to go to the newspapers and say the Commission has abdicated its responsibility and tell the whole story anyway?

THE RESPONDENT: They might well do

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that.

MR. EMERY: Right.

THE RESPONDENT: It's quite possible.

JUDGE KLONICK: Judge --

THE RESPONDENT: -- I, however, would hate to have the Commission held hostage in its obligations --

MR. EMERY: -- Well, I understand that, but--

THE RESPONDENT: -- to anyone with any kind of -- anything to say about 40 years ago.

MR. EMERY: I totally agree with that point, and the decision won't be made on that basis.

THE RESPONDENT: I'm sure it won't, right.

MR. EMERY: I'm just trying to spin out what the likely consequences of this is going to be, which is I'm afraid your reputation may be ruined either way.

JUDGE KLONICK: Judge, the problem I have with Mr. Cohen's idea, and I respect Mr. Cohen very much and I have discussed this with him at great length.

MR. COHEN: I think he's going to disagree with me right now.

JUDGE KLONICK: But this has been in the

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dim recesses for 40 years. It was in the dim recesses when it happened, ten years after that, and until recently it's been, it hasn't been shown the light of day, and by your own words this is reprehensible conduct. Isn't it time to seek redemption?

THE RESPONDENT: With all due respect, sir, I did not intentionally have any contact with her sexually or otherwise to gratify myself or anything. I apologized for the slow reaction that I had. I tried to tell you all about it. I've tried to have been honest and straightforward and forthright. I even to my detriment I went out to talk to M [REDACTED] because she asked for an earnest, heartfelt apology, which I went to do, and I was willing to do that with E [REDACTED], and E [REDACTED] will not meet with me, will not talk with me and this is as of December. And this is the result. I am sorry. I have tried the best that I could. I got to tell you, folks, I put 38 years in public service. It has been good; it's been hard. I've worked hard. I've been diligent in all of my efforts, and I can't think of a better proof that this thing did not happen, that this allegation that E [REDACTED] has that now you want to take it and characterize it as an unfitness for office. I would say that 27 and a quarter years as a Family Court judge plus the other public service -- I've handled

1 probably over 100,000 petitions. I worked very hard  
2 within the system to try to improve the Family Court  
3 and I've tried to improve the judiciary through the  
4 Family Court and I've done that and the Law  
5 Guardian Advisory Committee 15 years for the  
6 Fourth Department, I was chair under Judge Mike  
7 Dillon and later under Dolores Denman. I've  
8 worked a Family Violence Task Force for better than  
9 ten years, Judge Kaye's Commission. I've also  
10 worked as co-chair, statewide co-chair of the judicial  
11 summer seminars, developing curriculum for family  
12 and matrimonial. I've tried to make this effort. I've  
13 run five times for public office and no one has ever  
14 said anything bad about me, you know, of this  
15 nature. I don't know what else I can do to disprove  
16 what E [REDACTED] now says about what happened 40 years  
17 ago.

18 JUDGE KLONICK: Okay. Mr. Belluck.

19 MR. BELLUCK: I have one question for  
20 you, judge.

21 THE RESPONDENT: Yes, sir.

22 MR. BELLUCK: And first of all I just  
23 wanted to acknowledge that this is obviously an  
24 unfortunate situation for everyone involved,  
25 yourself, E [REDACTED] and everyone. And I appreciate that

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you came here and talked to us about things that are not comfortable to talk about publicly. And --

THE RESPONDENT: -- It's reprehensible conduct. I should not have been there, I shouldn't have done it. Yes, sir.

MR. BELLUCK: But my question for you is given what you said to Mr. Cohen about not holding these other offices and the fact that the people in your family obviously know about what transpired, can you just tell us why you don't want this to become public? What else do you think would happen if this became public? Because it sounds to me like you've ruled out the possibility of these -- holding these public positions and your family's all obviously aware of it in a very personal way.

THE RESPONDENT: Sure, they all know about it, yes. And your question is why would I not want it to become public? Because I have a decent reputation, my Family Court has a decent reputation. I would hate to see that decimated. I am absolutely devastated by these allegations. I am. And I have no question in today's environment -- this is not a Penn State type of situation. There was no cover up here. This is not a Catholic Church or Bernie Fine Syracuse University kind of thing. This is an

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unfortunate incident that occurred 40 years ago. I certainly took what steps which should have been more, probably 30 years ago. I talked with the family about it. Forty years now have passed since this incident and new allegations arise.

JUDGE KLONICK: And you still feel you're fit to hold public office?

THE WITNESS: Sir, I have no desire to hold public office anymore.

JUDGE KLONICK: That's not what I asked.

THE WITNESS: I would say that my 38 years of experience and -- are proof. I would submit to you it's proof that I have been fit and I continue to be fit to hold public office.

JUDGE KLONICK: Thank you. Any further questions?

THE RESPONDENT: I don't envy you your job here.

JUDGE KLONICK: Thank you, judge.

THE RESPONDENT: Thank you.

JUDGE KLONICK: Mr. Tembeckjian, you have five minutes.

MR. TEMBECKJIAN: If I may. Twice in the last two years the Commission has accepted stipulations from judges who said they would leave

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and never return. *Matter of Feeder*, he came back. *Matter of Lafayette Young*, he came back. An oral representation under the coercive circumstances of pleading for his reputation is not something that I think the Commission ought to engage in, nor do I think is it reliable. Moreover in *Matter of Backal*, in removing a judge who had already resigned, the Court of Appeals said that the race to resign, the race to resign and the judge's promise not to return is not to be credited, that the institutional interest in the integrity of the judiciary is what is paramount. Your responsibility here is not to negotiate a trade of secrecy for his pledge that is unenforceable not to assume some other position of public trust. As the Court of Appeals made absolutely clear in *Backal*, removing a judge who under similar circumstances had already left the bench and roundly rejecting the notion that this kind of bargain can be a substitute for the Commission doing its responsible duty to protect the public and to protect the institution and the integrity of the judiciary makes this kind of bargain unacceptable, and I would urge, urge that that not be a basis on which you've determined not to reveal this behavior. He's been able for whatever reason to keep it secret for 40 years. The

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Commission ought not to be put in the position of negotiating a further secrecy of what he did and lose the opportunity to protect the institutional integrity of the judiciary and to send the message to anyone else that this kind of behavior is not to be tolerated and that a person who has done this is not fit to be a judge. He may be fit to be other things but not to be a judge. It's a bargain that I would urge is a devil's bargain that you cannot and should not make.

JUDGE KLONICK: Thank you, Mr. Tembeckjian. Thank you, counsel. We are in recess. Albany and Mr. Harding, we'll be with you in just a moment when we transfer to our room.

(Whereupon the oral argument was concluded at 3:36 P.M.)

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CERTIFICATION

I, LINDA O. DUMAS, an Assistant Administrative Officer of the State Commission on Judicial Conduct, do hereby certify that the foregoing is a true and accurate transcript of the audio recording of the proceedings transcribed by me, to the best of my knowledge and belief, in the matter held on August 8, 2012.

Dated: August 14, 2012

  
LINDA O. DUMAS