

FREEDOM FROM RELIGION *foundation*

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October 3, 2019

State Commission on Judicial Conduct
PO Box 12265
Austin TX 78711

Re: Judge Tammy Kemp, Judge of the Texas 204th Judicial District, proselytizing in her official capacity

Dear Commissioners:

We are writing on behalf of the Freedom From Religion Foundation to raise possible violations of the Code of Judicial Conduct by Judge Tammy Kemp of the 204th Judicial District. FFRF is a national nonprofit organization with more than 30,000 members across the country, including more than 1,300 members in Texas and an active state chapter. We protect the constitutional principle of separation between state and church.

Judge Kemp tried Former Dallas Police Officer Amber Guyger in her courtroom from Sept. 23–Oct. 2, 2019, for the murder of Botham Jean. We write to raise your awareness of Judge Kemp’s actions at the close of the trial — during which she gifted a Christian bible, instructing the convicted criminal on how to read the bible and which passages to pay attention to, and witnessing to that convicted murderer. These proselytizing actions overstepped judicial authority, were inappropriate and were unconstitutional.

Courtroom video shows that after the sentencing and the victim impact statement, Judge Kemp left the courtroom, then returned holding her personal bible. She walked over to Amber Guyger at the defense table and proceeded to preach:

You can have [my Bible]. I have three or four more at home. This is the one I use every day. [inaudible] This is your job for the next month. You read right here: John 3:16. And this is where you start, ‘For God so loved the world that he gave his one and only Son, that whosoever...’ You stop at ‘whosoever’ and say, ‘Amber, [inaudible] You start with the Gospels. Then [inaudible]. You read this whole book of John. [inaudible] [inaudible, but likely where judge said: This will strengthen you. You just need a tiny mustard seed of faith. You start with this.] This has been put in front of you for a reason. [inaudible] ***He has a purpose for you.*** There is no reason why [inaudible]¹

¹ Law & Crime Network video of the event, Oct. 2, 2019. Available at youtu.be/h7FkaL5GCZY. WFAA video of the courtroom, Oct. 2, 2019. Available at youtu.be/9bPo2Dq7iK8. Other sections of this quote were pieced

Judge Kemp then hugged Guyger and said to her, “It’s not because I’m good. It’s because I believe in Christ. I’m not so good. You haven’t done as much as you think you have, and you can be forgiven. You did something bad in one moment in time. What you do now matters.”²

The exchange was four minutes long. Much of this exchange appears, as of now, to be inaudible, and the sound cut out more than 30 seconds before the hug, but what is audible is sufficient to show an ethics violation. We do not yet know whether it was transcribed (that itself is problematic).

We understand that it was an emotional moment, particularly when the victim’s brother, Brandt Jean, publicly forgave and hugged Guyger. It is perfectly acceptable for private citizens to express their religious beliefs in court, but the rules are different for those acting in a governmental role. We, too, believe our criminal justice system needs more compassion from judges and prosecutors. But here, compassion crossed the line into coercion. And there can be few relationships more coercive than a sentencing judge in a criminal trial and a citizen accused and convicted of a crime.

It appears from the exchange that Guyger may not have identified as Christian, but Guyger’s religion does not change the constitutional or ethical analysis. Even were Guyger an avowed devout Christian,³ the gesture would still have been inappropriate and unconstitutional because Judge Kemp was acting in her official governmental capacity.

The U.S. Supreme Court has said time and again that the First Amendment “mandates governmental neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15-16 (1947). The government must remain neutral toward religion because “the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000).

In their personal capacity, citizens may freely worship and exercise their religious beliefs in any way they see fit. In their official capacity as government officials, they are bound by the Establishment Clause.

together by first-hand reporting from Jason Trahan, “You start with this’: Judge Tammy Kemp gives Amber Guyger a Bible after sentencing,” WFAA, Oct. 2, 2019. Available at bit.ly/2IhTn9c

² *Id.* specifically, Trahan.

³ In fact, Judge Kemp read from the New International Version of the bible, a translation by evangelicals for evangelicals (as admitted in its preface). So if Guyger is a Catholic or Baptist, this would still be coercive in another respect.

Judge Kemp is free to attend church as a private citizen. She may even proselytize in her private life or teach Sunday school, and so forth. However, it violates a vital constitutional principle for a sitting judge to promote personal religious beliefs while acting in her official capacity. She was in a government courtroom, dressed in a judicial robe, with all of the imprimatur of the state, including armed law enforcement officers, preaching to someone who was quite literally a captive audience, and even instructing her on which bible verses to read! The judicial office, title, trappings, and power belong to “We the People,” not to the office’s temporary occupant. Delivering bibles and personally witnessing as a judge is an egregious abuse of power.

Judge Kemp transmitted her personal religious beliefs as a state official in an official proceeding of the gravest nature, a setting that imposed on everyone in the courtroom: attorneys, staff, family members and the convicted.

This was a widely publicized trial that every attorney in Judge Kemp’s district watched, along with much of the rest of the nation. Judge Kemp effectively signaled to everyone watching—defendants and attorneys alike—that she is partial to Christian reform and Christian notions of forgiveness.

Judge Kemp otherwise appears to have handled a difficult trial with grace and aplomb, but that cannot excuse her inappropriate and unconstitutional actions, which are a serious abrogation of the freedom of conscience protected by our First Amendment and by Article I, Section 6 of the Texas Bill of Rights.

We respectfully ask that you investigate these actions for violations of the Code of Judicial Conduct, especially canons 1, 2, 3, and 4C, and that you take all appropriate steps to ensure no future misconduct. Thank you for your time and attention to this matter.

Very truly,



Dan Barker and Annie Laurie Gaylor
Co-Presidents
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