

**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

**Determination**

WILLIAM E. ABBOTT,

a Justice of the Palmyra Town  
Court, Wayne County.

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THE COMMISSION:

Mrs. Gene Robb, Chairwoman  
Honorable Myriam J. Altman  
Henry T. Berger, Esq.  
John J. Bower, Esq.  
Honorable Carmen Beauchamp Ciparick  
E. Garrett Cleary, Esq.  
Dolores Del Bello  
Victor A. Kovner, Esq.  
Honorable William J. Ostrowski\*  
Honorable Isaac Rubin  
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the  
Commission

David Lee Foster for Respondent

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\* Judge Ostrowski's term expired on March 31, 1989. The vote in this matter was on January 19, 1989. The Honorable Eugene W. Salisbury was appointed to the Commission for a term commencing April 1, 1989.

The respondent, William E. Abbott, a justice of the Palmyra Town Court, Wayne County, was served with a Formal Written Complaint dated April 28, 1988, alleging that he solicited an affidavit from a witness in a case pending in another court on behalf of the defendant's counsel, who is a friend of respondent. Respondent filed an answer dated May 16, 1988.

By order dated May 25, 1988, the Commission designated Jacob D. Hyman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 8, 1988, and the referee filed his report with the Commission on October 29, 1988.

By motion dated November 18, 1988, the administrator of the Commission moved to confirm the referee's report, to adopt additional findings and conclusions and for a finding that respondent be censured. Respondent opposed the motion on December 14, 1988. The administrator filed a reply on January 9, 1989.

On January 19, 1989, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Palmyra Town Court for approximately ten years. Previously, he was a justice

of the Palmyra Village Court for approximately seven years.  
Respondent is not a lawyer.

2. Respondent has known Ronald C. Valentine, the Wayne County public defender, as an attorney and friend for approximately 20 years.

3. In July 1987, Mr. Valentine approached respondent after court and asked him to sign an affidavit on behalf of Gerald M. Van Hout, a client of Mr. Valentine who had been charged before another court with the armed robbery of a grocery store. Mr. Valentine hoped to use the affidavit in support of a motion to dismiss the indictment against Mr. Van Hout.

4. Respondent refused to sign an affidavit because of his judicial position.

5. Mr. Valentine then asked respondent whether he knew Tammi L. Tice, the grocery store cashier who was allegedly robbed at gunpoint by Mr. Van Hout. Respondent replied that his daughter, Terri, and her friend, Carl Sergeant, knew Ms. Tice. Mr. Valentine appealed to respondent to have his daughter contact Ms. Tice and ask her to sign an affidavit.

6. Respondent asked Mr. Valentine whether it would be proper for him, as a judge, to do so. Mr. Valentine assured him that it would.

7. Mr. Valentine subsequently made two telephone calls to respondent to determine whether Ms. Tice had been contacted.

8. Respondent understood that the affidavit would be used by Mr. Valentine in an effort to avoid a state prison sentence for his client. Mr. Valentine told respondent that Mr. Van Hout had psychological problems and delivered psychological reports on Mr. Van Hout to respondent's home. He also delivered affidavits signed by others in support of the motion, including Ms. Tice's boss at the grocery store. Respondent reviewed the documents.

9. Respondent asked Mr. Sergeant to speak with Ms. Tice about the affidavit. She told Mr. Sergeant that she would be willing to speak to respondent about the matter.

10. On August 2, 1987, Mr. Sergeant called Ms. Tice by telephone and told her that respondent would call her later that evening.

11. At about 10:00 P.M., respondent called Ms. Tice and asked her to come to his home. Ms. Tice, who was then 17 years old, stated that she wished to bring her mother, Donna Rae Powers.

12. Ms. Tice and Ms. Powers arrived at respondent's home about five minutes later. Respondent initially introduced himself as Mr. Abbott or Bill Abbott. He then either referred to himself as a judge or acknowledged that he was a judge in response to a remark by Ms. Powers. At the time, both Ms. Tice and Ms. Powers knew that respondent was a judge.

13. Respondent indicated that he was doing a "favor" for his friend, Mr. Valentine, who was seeking to avoid a mandatory prison sentence for Mr. Van Hout. Respondent said that Mr. Van Hout "didn't mean" to rob the store and was sorry for what he had done. He indicated that Mr. Van Hout was a "nice guy" who had emotional problems. Respondent showed Ms. Tice the affidavit signed by her employer.

14. Respondent told Ms. Tice that Mr. Van Hout would be "worse off" if he were sentenced to Attica, which respondent described as "90 percent black, 5 percent Puerto Rican and 5 percent white."

15. Ms. Tice refused to sign the affidavit. Respondent did not discuss the matter further. The women then left his home.

16. On August 4, 1987, Mr. Valentine submitted an omnibus motion in the case, asking, among other things, that the indictment against Mr. Van Hout be dismissed in the interest of justice.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a) and 100.2(c) of the Rules Governing Judicial Conduct and Canons 1, 2A and 2B of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained insofar

as it is consistent with the findings herein, and respondent's misconduct is established.

Respondent used the prestige of his judicial office to try to obtain a favor for his friend, Mr. Valentine. In doing so, he conveyed the impression to Ms. Tice and her mother that Mr. Valentine was in a special position to influence him.

That he did so outside of court and only mentioned in passing that he was a judge does not diminish the wrong. A judge "...although off the bench remain[s] cloaked figuratively with his black robe of office devolving upon him standards of conduct more stringent than those acceptable for others."

Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465, 469 (1980).

Respondent argued strenuously for Mr. Valentine's cause, repeating several arguments that the lawyer had given him in favor of his client. Ms. Tice was only 17 years old at the time and knew that respondent was a local judge. "...[A]ny communication from a Judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office." Matter of Lonschein v. State Commission on Judicial Conduct, 50 NY2d 569, 572 (1980).

In addition, respondent's comment concerning the racial makeup of the prison population was racist. See Matter

of Evens, 1986 Annual Report 103 (Com. on Jud. Conduct, Sept. 18, 1985).

There are several mitigating factors which convince us that respondent's removal is not warranted. He has had a long and heretofore unblemished record on the bench. See Matter of Edwards v. State Commission on Judicial Conduct, 67 NY2d 153, 155 (1986). Although it in no way excuses his misconduct, we take into account in considering sanction that respondent, a layman, was acting under the advice, albeit misguided, of Mr. Valentine, a trusted friend and a member of the bar. See Matter of Reyome, 1988 Annual Report 207, 209 (Com. on Jud. Conduct, Dec. 24, 1987). We also note that once Ms. Tice indicated that she would not sign the affidavit, respondent did not discuss the subject further.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Judge Altman, Mr. Berger, Judge Ciparick, Mrs. Del Bello, Mr. Kovner and Judge Ostrowski concur.

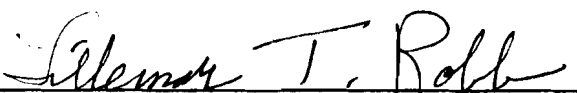
Mrs. Robb, Mr. Bower and Judge Rubin dissent as to sanction only and vote that respondent be removed from office.

Mr. Cleary and Mr. Sheehy were not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: April 5, 1989

  
Lillemor T. Robb, Chairwoman  
New York State  
Commission on Judicial Conduct



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DISSENTING OPINION  
BY MR. BOWER

I dissent from the sanction of censure and vote that respondent be removed from office. There are virtually no factual disputes concerning the underlying events. It is thus established that while Tammi Tice, age 17, was working as a cashier at a supermarket in Palmyra, one Gerald Van Hout entered, pointed a gun at her and demanded the money from her register. During this robbery attempt, one shot was fired. Luckily, it missed Ms. Tice. Shortly after the robbery, Ms. Tice testified before the Grand Jury, which then indicted Gerald Van Hout on two counts of Robbery, First Degree, Criminal Use of A Firearm, First Degree, both felony offenses, Criminal Possession Of A Weapon, Third Degree and Grand Larceny, Fourth Degree. His defense was then assumed by one Ronald Valentine, the Wayne County Public Defender and a long-time friend of respondent.

Two of the charges pending against Van Hout, Robbery, First Degree and Criminal Use Of A Weapon, Third Degree, were violent felony offenses and if convicted, a state prison sentence

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would have been mandatory. Concerned about his client, Mr. Valentine prepared a motion to dismiss these two violent felony charges and contacted numerous members of the community, including the victims of the attempted robbery, to support such motion.

In his attempts to garner support for the motion, Mr. Valentine asked respondent to sign an affidavit on behalf of Van Hout. Respondent, a judge for over 15 years, properly refused, but he did agree to intercede with the victim, Tammi Tice, who had attended school with respondent's daughter, to persuade her to sign such an affidavit.

Respondent knew, or should have known, that Ms. Tice testified under oath before the Grand Jury and that if the motion to dismiss were denied, she would be one of the main witnesses at the trial against Van Hout. Nonetheless, he asked Ms. Tice to sign an affidavit which recited that Van Hout "attempted to steal money" from the store and that "at no time while he was in the store, was there an attempt on his part to physically harm anyone and no one was hurt." Respondent knew or should have known that if Ms. Tice signed such an affidavit, her value as a prosecution witness would be severely undermined; not to mention the fact that respondent knew that Van Hout had a gun, pointed it at Ms. Tice and demanded the money in her cash register. Undeterred by such knowledge, he attempted to get her to sign the affidavit, knowing that the facts were otherwise. He told Ms. Tice that Van Hout (whom he called Gerry) had not meant to rob the supermarket, that the robbery was not Van Hout's fault and that Van Hout was sorry that it happened.

He also told her that according to psychological reports, Van Hout would be better off in the local jail than if he were sent to Attica where the population was "90 percent black, 5 percent Puerto Rican and 5 percent white." There is no question but that respondent's knowledge of Van Hout, his motives and feelings were based solely on what his friend, the defense counsel, told him, and that his mentioning of the racial makeup at Attica was an obvious attempt to play on presumed prejudices that Ms. Tice might have.

Ms. Tice refused to sign the affidavit, showing a greater sense of responsibility and civic pride than respondent.

It is not an overstatement to say that respondent's attempt to help his friend's client in a case not yet tried, would have compromised Ms. Tice's credibility, would have hindered the prosecution of the case and would have deprived the victim of exercising her right to be heard about the offense in the victim-impact statement (Section 390.30[3][b] of the Criminal Procedure Law). His attempts to describe Van Hout's state of mind, his concern with Van Hout's punishment and his description of Attica (a place respondent had never visited), clearly are contrary to his sworn duty to uphold the law, to be truthful and honest. Matter of Myers v. State Commission on Judicial Conduct, 67 NY2d 550, 554 (1986).

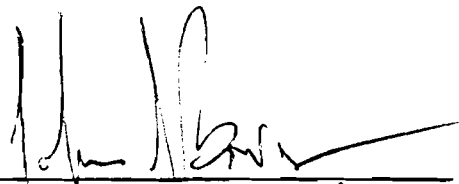
Keeping in mind that judicial sanction is not punishment but is tailored to an assessment of whether respondent's retention on the bench is in the public interest (Matter of Vonder Heide v. State Commission on Judicial Conduct, 72 NY2d 658 [1988];

Matter of Reeves v. State Commission on Judicial Conduct, 63 NY2d 105, 111 [1984]), it is hard to see how public confidence in respondent's integrity can exist. He effectively destroyed any semblance of his integrity by these acts.

It is irrelevant under these egregious circumstances that respondent relied on Mr. Valentine's legal advice, or that he was not motivated by venality.

This saga is not of bad judgment or even very bad judgment. It is a tale of irresponsibility and intellectual dishonesty. Respondent's retention on the bench is a luxury that we cannot afford.

Dated: April 5, 1989

  
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John J. Bower, Esq., Member  
New York State  
Commission on Judicial Conduct