

Appendix III

PERMANENT JUDICIAL COMMISSION SYNOD OF THE NORTHEAST

Appeal Case 00-1

Reference B-2
November 17, 2000
Presbytery of Southern New England

MAIRI HARR and JAMES MCCALLUM,
Appellants/Complainants

v.

DECISION

SESSION of the FIRST PRESBYTERIAN CHURCH,
STAMFORD, CONNECTICUT,
Appellee/Respondent

This is an appeal of a decision of the Permanent Judicial Commission (PJC) of the Presbytery of Southern New England (PSNE) dated April 13, 2000, involving claims of irregularities by the PJC of the Presbytery of Southern New England.

- On August 2, 2000, the Executive Committee (moderator and clerk pro-tem) of the PJC of the Synod of the Northeast determined that
- this PJC had jurisdiction;
 - the appellant had standing to file the appeal;
 - the appeal papers were properly and timely filed; and
 - the appeal states the grounds for appeal set forth in D-8-0105a, e, f and g.

At its meeting on November 2, 2000, in Newark, New Jersey, the PJC of the Synod of the Northeast affirmed that decision of its Executive Committee.

Oral argument was heard by this PJC on November 2, 2000.

HISTORY

Wayne Osborne is a member of First Presbyterian Church (FPC) and an ordained elder. He previously served one term commencing in June, 1994 on the FPC Session. At the time of his ordination as an elder, Osborne had made no public disclosure of his sexual orientation. Between the time of that service and the events underlying this complaint, Osborne publicly declared his homosexual orientation at a regular meeting of the PSNE.

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In the Spring 1997, the FPC Session declared a "scruple" taking exception to Book of Order Section G-6.0106b, commonly known as "Amendment B." In the early months of 1998, the FPC Nominating Committee began its work of nominating a new slate of elders and deacons. In February 1998, it received Osborne's name in nomination as an elder. The Nominating Committee subsequently placed Osborne's name on its list of nominees for elders to begin service in the Spring of 1998.

Between the May 1997 "Declaration of a Scruple" and the final Session meeting in Spring 1998 in which Osborne was examined and approved, the congregation of FPC conducted a variety of educational events regarding homosexuality.

The entire slate of nominees was elected by the congregation in April 1998. The Session next examined the elders and deacons on May 27, 1998. The Session approved all the nominees, and the ordination/installation service was scheduled. A Stay of Enforcement and the complaint followed before PJC of the PSNE.

After trial and deliberation on February 26-27, 1999, the PSNE-PJC issued its opinion. The PJC opinion upheld the Session on Count One [to determine that Section's examination of Osborne was irregular] and declined to adjudicate Counts Two [to determine the approval of an elder who is living in a same sex relationship, contrary to Section G-6.0106b of the Book of Order] and Three [to conduct all other investigations and process that is appropriate].

On March 5, 1999 the Complainants appealed the PJC Opinion to the Permanent Judicial Commission of the Synod of the Northeast (Synod PJC). The appeal of the PSNE-PJC's Opinion identified the following three specifications of error:

- The PSNE-PJC erred in failing to rule that the Session acted irregularly by approving Osborne for installation as an active elder when the Session's official minutes record that the Session was knowingly acting in violation of Amendment B.
- The PSNE-PJC erred in failing to rule that the Session acted irregularly by approving Osborne for installation as an active elder notwithstanding his disqualification under Amendment B.
- The PSNE-PJC erred in failing to rule that the Session acted irregularly by proceeding to approve Osborne's installation when it should have declared the examination incomplete and inconclusive, thus precluding his approval for installation.

After oral argument on October 7, 1999, the Synod PJC issued its decision on October 9, 1999. The Decision overruled the first specification of error, sustained in part the second specification of error, and sustained the third specification of error. The decision also directed the PSNE-PJC to remand the case to the Session with instructions to re-open and complete Osborne's examination. Further, the Synod PJC ordered the PSNE-PJC "to complete their consideration of compliance with the requirements of G-6.0108b with the information received [by Session] from the reexamination of Osborne."

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An appeal of the decision of the Synod PJC to the General Assembly PJC was dismissed on May 22, 2000, on joint motion by both sides.

The PSNE-PJC met and discussed the Decision and then conveyed, via certified letter dated December 7, 1999, the directive of the Synod PJC to the Session

On January 18, 2000 the Session reexamined Osborne. The pertinent details of this reexamination are discussed fully below.

On February 10, 2000 the Session filed with the PSNE-PJC its report regarding its further actions, including the text of its reexamination of Osborne, along with the background materials and an account of the procedures taken by the Session in response to the Decision.

The PSNE-PJC then reviewed the Session Report to determine whether Session had complied with the Decision and the Letter of Instructions. The PSNE-PJC had two meetings to discuss and evaluate the Session actions on March 10 and 22, 2000. Two meetings were needed to provide additional study time to new members of the PSNE-PJC who had not participated in the original Opinion.

At its meeting on March 22, 2000, the PSNE-PJC upheld the actions of the Session. A Stay of Enforcement was entered on April 14, 2000. A Notice of Appeal was received on May 2, 2000.

COMPLETION OF EXAMINATION

As ordered, the PSNE-PJC directed the FPC Session to re-open and complete the examination of Mr. Osborne as set forth in Specification 3 of the Synod PJC's October 9, 1999, decision.

First, the FPC session failed to explore with Osborne what he meant by his expression "chaste in God's eyes." Lacking an explanation of Osborne's intended meaning by this characterization means that the session failed to complete their examination.

Osborne's indication that "...there are many 'sins' mentioned in the confessions that I believe are outdated or out of step with current beliefs and teachings" opens an area of further question that session cannot let stand without further information to enable the session to make an informed decision regarding the candidate's qualification to be installed as an elder in active service.

Finally, Osborne's response "I decline to answer this question" when asked, "Is this a sexually active partnership?" leaves the issue in limbo. Session at this point had an obligation to ask Osborne to explain his response, as pertinent to the issue of eligibility in light of Osborne's earlier comment as well as the express standard in G-6-0106b, second sentence.

On January 18, 2000, the Session of First Presbyterian Church of Stamford convened in regular session. During this meeting the session continued the examination of elder-elect Wayne Osborne. Official minutes of the January 18 meeting report:

Continued examination of elder-elect Wayne Osborne
Moderator Mary Theris opened this part of the meeting with a review of the history of actions taken by our congregation and session and a review of the judicial history of the subject case before the Presbytery and Synod PJC's. She then discussed the meaning of disbarment as regards the Session's responsibility and task before them. The Session spent an extended period of silence in meditation, with spontaneous prayers offered by Session members, closing with the Lord's Prayer.

...[Clerk's Note: Session had previously been informed of Complainant's counsel's offer to pay for 50% of the cost of a stenographer to prepare a verbatim transcript of the examination, which offer had also been communicated to the Presbytery PJC by letter dated 12/13/99.]...

EXAMINATION OF WAYNE OSBORNE

Wayne responded to the Session's inquiries using and referring to his Bible and the Book of Confessions, but did not read from any prepared text and did not refer to any prepared notes.

QUESTION: What did you mean when you described yourself as "chaste in God's eyes"?

Wayne explained that when he responded to the examination question on 5/27/98, he was thinking of chaste as meaning purity/holiness/highness imputed to him out of pure grace by Christ's holiness and sacrifice. Citing the Heidelberg Catechism and Hebrews, he said he believes that Christ the High Priest has done the work of salvation so that we sinful humans can stand boldly in the presence of God. In that sense Wayne believes that he is chaste - i.e. holy and pure - in the merciful eyes of God.

QUESTION: Have you looked at how "chaste" is used in the scriptures?

Yes. Wayne read Heidelberg Catechism question & answer 108, which states that God condemns all unchastity and that we should detest it, living chaste lives in wedlock or in single life. He found that chastity as used in the scriptures did not exclusively mean sexual abstinence; it has a much broader use consistent with what he had said. He cited 2 Corinthians 7:11 which references presenting oneself as a "chaste virgin" to Christ, showing "chaste" has a scriptural meaning beyond sexual abstinence.

QUESTION: Please explain further your statement that "there are sins mentioned in the Confessions that I believe are outdated or out of step with current beliefs and teachings."
Wayne amended his original answer by saying that it was not simply his own view that he was representing, but the view taught him by his church. Citing a number of examples from the Scots Confession #22 which states that Roman Catholic ministers are not true ministers of Christ and that the Holy Ghost will not permit women to preach or to baptize. He cited the Confessions' prohibition against picturing God or Christ in any way. He pointed to the Second Helvetic Confession 5.238 which requires that we pour out our blood for the local magistrate and which, by

his language, clearly prohibits pacifism in Christian conscience. He also cited strict Sabbath day observance (prohibiting working or even thinking about working on Sundays). The Westminster Larger Catechism (Q & A 139) condemns the "undue delay of marriage," and dancing and attending stage plays as sins. He concluded by stating that when he responded on 5/27/98 he was not referencing anything in the Confessions regarding sexual orientation or practice.

QUESTION: What is your interpretation of Question & Answer 87 of the Heidelberg Catechism which quotes Paul (1 Corinthians 6: 9-10) saying that those unrepentant of "homosexual perversion" cannot be saved?
Wayne noted that the English translation of the Heidelberg Catechism adopted by the Presbyterian Church includes this reference to "homosexual perversion" which is absent in the original German text, but acknowledged that this translation is what's in our Book of Confessions. Speaking of the quotation from 1 Corinthians 6: 9-10, Wayne said he agreed with Paul that such behaviors as male prostitution are evil. He drew a distinction, however, between Paul's understanding of homosexuality and his own experience of sexual orientation. He concluded that he does not believe that he is condemned as sinful by Paul's text.

QUESTION: Do you wish to amend your answer to the question asked in May 1998 as to whether you are engaged in a sexually active relationship?
Wayne said he did not.

QUESTION: On what grounds do you understand your answer to be acceptable under the Constitution of the PC(USA)?
Wayne said he felt that asking such a question or demanding an answer was intimidating not only to him, but would be intimidating to anyone. Such questions create an atmosphere of intimidation and fear. He felt the question was directed to him on a discriminatory basis — because he had declared his homosexual orientation. Wayne stated that G-6-0106b and case law require "self-acknowledgement" of a practice, which allowed him to choose how to answer. By declining to answer the question, he was not implying a "yes" or "no" answer. Wayne went on to say that he was deeply offended by the Complainers' Counsels' repeated allegation that his conscience is not held captive to the Word of God. He said his conscience is held captive to the Word of God. He has read the scriptures almost all his life. He submits to the Word of God in the Bible, and as interpreted in the Book of Order and the Book of Confessions, and as taught by the church today.

QUESTION: Being familiar with G-6-0106a, G-6-0108b and other pertinent Constitutional provisions, is there any reason you are not eligible or qualified to be installed as an elder?
Wayne answered "No."

ACTION: The Session voted to arrest the examination at this point.

The examination took approximately 45 minutes. Throughout the course of the examination the Moderator repeatedly asked if any Session members had any more questions. After the exam, Wayne left the room and the session discussed his responses.

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SESSION DELIBERATIONS

Session spent at least 30 minutes discussing Wayne's responses and consulting their Committee of Counsel, considering, among other things, the Synod PJC's decision, pertinent Constitutional provisions, the church's understanding of the meaning of chastity, self-acknowledgment & essentials of the Reformed faith, the absence of any evidence barring Wayne's installation under G-6-0106 or G-6-0108, and their continuing sense of Wayne's call to this office. Pastor Blair Moffett led the Session in prayer expressing gratitude and petitioning God's presence as we discerned His will in the matter at hand.

ACTION: The Session voted unanimously, by secret written ballot to approve Wayne Osborne for installation as an elder (Vote: 21:0). The Session also acted unanimously in making the following findings:

During the further examination of elder-elect Wayne Osborne on January 18, 2000, all session members were given the opportunity to ask any questions they wished of the candidate.

The Session understands the phrase "refusing to repent of any self-acknowledged practices" (ref: G-6-0106b) to mean that a candidate retains a right to refrain from self-disclosure without prejudice. The language of "self-acknowledgment" has been used by the General Assembly repeatedly in regard to homosexual persons, expressly proscribing the requirement to respond to invasive probing beyond the bounds chosen by the candidate. The Session understands its responsibility to inquire and its freedom to use evidence independently obtained in making its decision.

In consideration of Wayne Osborne's examination responses of 5/27/98 and 1/18/2000, and upon all our knowledge of Wayne Osborne, we find:

Wayne's comportment and humility commended him for installation as an Elder of First Presbyterian Church of Stamford, CT, and that his answers to direct inquiry are in accord with G-6-0108b, G-6-0106b and our entire Constitution.
Wayne Osborne has explained to our satisfaction what he meant by his expressions "chaste in God's eyes" and his statement "there are many sins in the confessions that I believe are outdated or out of step with current beliefs and teachings"; he has also adequately explained his 5/27/98 response "I decline to answer this question," all as regards his eligibility or qualification to be installed as an elder.
Wayne Osborne leads a life in obedience to Scripture and in conformity to the historic confessional statements of the church and that he adheres to the essentials of the Reformed faith and polity as expressed in the Book of Confessions and the Form of Government, as required by our Constitution. (ref: G-6-0106b; G-6-0108b)
We find that he does not "seriously reject the faith expressed in the confessions." (ref: G-2.0200)
We find no evidence contrary to the P.S.N.E. PJC's finding of fact: "Osborne has not made any public acknowledgment of personal homosexual practice(s) or any sexual

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CERTIFICATE

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of the Synod of the Northeast of the Presbyterian Church (U.S.A.) in Appeal Case 00-1, *Mairi Hair and James McCallum v. Presbytery of Southern New England*, made in session on November 4, 2000.



William E. Chapman, Moderator
Permanent Judicial Commission

Synod of the Northeast

Complainants have specified that the PSNE-PJC erred in upholding the FPC examination of Mr. Osborne because the examination has left "unsettled (still in 'limbo')" the issues stated in this Commission's October 9, 1999 decision. We do not sustain this specific point, but note that the FPC session's examination has been regularly found by the PSNE-PJC to have responded to the issues set forth in 1999 as specifications of error requiring attention (that the PSNE-PJC had not ruled on the implications of G-6-0108b, and that Mr. Osborne's examination required completion).

In this Commission's Order both of these "unsettled" issues were directed to be addressed by the PSNE-PJC in specific ways, and they were, although we acknowledge that Complainants' judgment differs from that of the PSNE-PJC and with that of the Synod through this PJC.

ORDER

It is therefore ordered that

1. The Clerk of Session of FPC report this decision to the Session of the church at their first meeting and that an excerpt from the minutes showing entry of the decision be sent to the Stated Clerk of the Synod of the Northeast; and
2. The Clerk of PSNE report this decision to the Presbytery at their first meeting, and that an excerpt from the minutes showing entry of the decision be sent to the Stated Clerk of the Synod of the Northeast.

ABSENCES AND NON-PARTICIPATION

Commission member Stewart A. Pollock, a member of the Presbytery of Southern New England, took no part in the deciding of this matter on the basis of D-5-0205. Commission member Craig C. Kerewich was not present for any part of this hearing.



Dissent for Specification of Error 1 -Stamford

We respectfully dissent as to Specification of Error 1 in that Mr. Osborne should have been ruled to be ineligible for installation for active service under G-6.0108b and G-6.0106b.

1) G-6.0108b

Mr. Osborne's freedom of conscience (his choice not to amend his earlier response to the question regarding whether or not his affirmed homosexual relationship is sexually active) exists within certain bounds." Such boundaries include "the Word of God as interpreted in the standards of the church."

The manifest witness of Book of Confessions (one of our standards) rejects as sinful someone who lives in an unrepentant homosexual relationship. Just as a heterosexual relationship is not narrowly defined by a sexual act, neither should a homosexual relationship be thus defined. By Mr. Osborne's own self-disclosure, he is actively involved in a very intimate homosexual relationship. The question of sexual practice as a "titmus test" for determining "homosexual practice" is foreign to the Confessions of the Church.

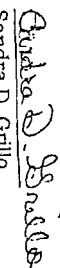
2. G-6.0106b

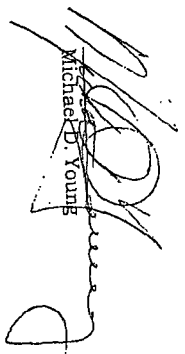
Mr. Osborne's definition of "chastity" as imputed is alien to the context of G-6.0106b. All persons, married or single who know Christ have an imputed "chastity", but the context in this provision is sexual purity. In marriage sexual purity requires fidelity (not having sex with someone who is not your spouse) and in singleness it requires chastity (celibacy). Mr. Osborne's definition of chastity avoids the obvious issue of sexual celibacy.

Mr. Osborne's previous "self acknowledgment" as to living in a loving, long term homosexual relationship" is a self-acknowledgment of "something the Confessions call sin." Nothing in the second examination retracts this self-disclosed acknowledgement and therefore Mr. Osborne continues to remain ineligible for installation.

Respectfully Submitted,


Rev. Dr. D. Dean Weaver


Sandra D. Grillo


Michael D. Young

Dissent on Specifications of Error 2

The PSNE-PJC erred when it failed to rule the examination of Mr. Osborne remained incomplete and inconclusive under G-6.0108b and G-6.0106b, thus precluding his approval for installation.

This specification should have been sustained.

We find the Session's examination once again incomplete and inconclusive when Mr. Osborne was asked:

"Do you wish to amend your answer to the question asked in May 1998 as to whether you are engaged in a sexually active relationship?"

This is not a "casual question" to quote the Kenyon case. Mr. Osborne's response that he did not wish to amend his answer leaves the original question still unanswered and "in limbo." A response regarding a sexually active relationship was an area of inquiry where The Synod PJC required a response under the third Specification of Error and under the Order.

"Session at this point had an obligation to ask Osborne to explain his response..."

"Direct the session of FPC to re-open and complete the examination as set forth in Specification of Error 3."

(SNE-PJC Decision dated October 9, 1999 at page 6)

The question, "Are you engaged in a sexually active relationship?" to a reasonable person requires a "yes" or "no" answer. Any other response is clever wordsmithing or semantics. Such a conscious disregard for the decision of the SNE-PJC constitutes reversible irregularity and therefore the second specification of error should have been sustained.

We find nothing in the PSNE's brief that would dissuade us from following the reasoning of LeTourneau v. Twin Cities:

"Sexual orientation and practice is relevant to a candidate's qualifications for ordination and must be investigated...when.. the candidate has taken the initiative in declaring his or her sexual orientation."

Nor do we ignore the guidance to examining bodies provided by Polity Reflections Note 19, Q.&A, numbers 4,7,10 and 13 regarding interpretation and application of G-6.0106b.

The Synod PJC is not unmindful of the "scruple" (reservation) taking exception to applying G-6.0106b issued by the FPC Session and Pastor Advisor Reverend Blair Moffett's admonition to the Nominating Committee that Mr. Osborne's "installation" would be in conflict with the Book of Order (April 1998 letter).

pg. 2 / Stamford Dissent

There could not have been a less "intrusive, intimidating..." forum for responding to the Synod's PJC directive than was present at the FPC Session meeting. The way had already been prepared by "scripture" and instruction to provide Mr. Osborne with the least threatening surroundings in which to respond honestly and forthrightly to the examination. Mr. Osborne and the FPC Session chose intentionally to seek other recourse.

The Session of FPC voted unanimously to approve Mr. Osborne and in its findings stated:

"The Session understands the phrase "refusing to repent of any self-acknowledged practice (ref G-6-01066) to mean that a candidate retains a right to refrain from disclosure without prejudice."

The PSNE's PJC erred in not ruling such a rationale inconsistent with case law and constitution of the Presbyterian Church (USA) (LeTourneau v. Twin Cities) and as such risks setting an erroneous precedent by allowing candidates for ordination and installation to substitute unresponsiveness for a direct answer to a valid area of inquiry.

An examiner's "discretion" does not extend to a careless disregard for determining the truth. Such disregard is negligence which cannot stand as a valid examination. In the Hardwick case this point was raised as follows:

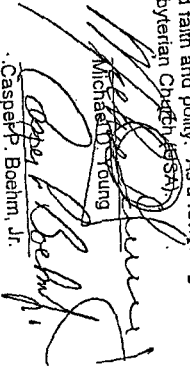
"Judgments of a lower court on factual issues are favored with a presumption of correctness and are not to be disturbed unless plainly or palpably wrong, without supporting evidence, or manifestly unjust."

We find the action of the FPC Session plainly and palpably wrong; without supporting evidence and manifestly unjust. The FPC Session chose to consciously disregard the constitutional requirements for the examination of their candidate. Neither do we find Rankin v. The Presbytery of National Capital Union controlling since such an irregular examination in fact constitutes the "extraordinary grounds" Rankin would find applicable.

Since the FPC Session chose to so act they have accepted the risk that a reviewing body would disagree with their examination and overturn their decision. Against such a background it is understandable that the stage was being set to facilitate Mr. Osborne's election to office regardless of his responses to questions regarding sexual practice. Such an examination does not test the bounds of freedom of conscience as much as it tests the boundaries of the essentials of the Reformed faith and polity. As a reviewing body we choose to uphold the Constitution of the Presbyterian Church (USA)

Rev. Dr. D. Dean Weaver


Sandra D. Gillo


Casper P. Boehm, Jr.

I certify that I did transmit a certified copy of the foregoing to the following persons by certified mail, return receipt requested, depositing it in the United States Mail at Burlington, Massachusetts, on November 6, 2000:

The Rev. Stewart Pollock, Stated Clerk, Presbytery of Southern New England

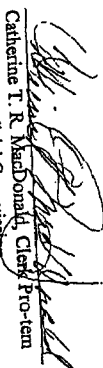
Mr. Samuel Hamilton, Moderator, Permanent Judicial Commission, Presbytery of Southern New England

The Rev. Barbara Hager, Clerk, Permanent Judicial Commission, Presbytery of Southern New England

Ms. Joyce Mitchell, Clerk of Session, First Presbyterian Church, Stamford, Connecticut

Mr. Walter Baker, Counsel for Appellants/Complainants

Mr. John Harter, Counsel for Appellees/Respondents


Catherine T. R. MacDonald, Clerk Pro-tem
Permanent Judicial Commission
Synod of the Northeast