

**PC(USA) v. In-Kyu Park,  
Disciplinary Case 201-4,**

**THE PRESBYTERIAN CHURCH (U.S.A.),  
Complainant/Appellee  
v.  
IN-KYU PARK,  
Respondent/Appellant**

This is an appeal of the decision of the Synod of Lakes and Prairies upon its hearing of an appeal filed by In-Kyu Park, Appellant herein, of a disciplinary case originally tried by the permanent judicial commission of the presbytery of the Missouri River Valley and wherein the Appellant, In-Kyu Park, was found guilty of [Specification No. 1, that: "at various and numerous occasions between June 1985, and April 1986, the said In-Kyu Park did commit adultery with Mrs. Joanne Oh"] the offense of conduct unacceptable for a Presbyterian minister and contrary to Holy Scripture and the Constitution of said church.

Pursuant to D-13.1200a, *Book of Order*, this Commission finds it has jurisdiction, the Appellant has standing to appeal, the appeal papers were properly and timely filed, and the appeal is in order.

It appears from the record that upon complaint alleging acts of misconduct by In-Kyu Park, a Presbyterian minister who was a member of the Presbytery of Missouri River Valley, a disciplinary committee, selected to inquire into such charges, filed charges, and specifications of misconduct and proceeded to prosecute those charges and specifications before the permanent judicial commission of the Presbytery of Missouri River Valley. The record shows that a trial was held on the dates of April 30, 1987, May 1, 1987, and May 7, 1987, which resulted in a verdict that Mr. Park was guilty of conduct unacceptable for a Presbyterian minister as set out in the decision dated May 19, 1987.

In considering the specifications of error enumerated by the Appellant as to the action of the Synod of Lakes and Prairies, we find as follows:

1. (a) Examining the decision of the synod, it is seen that, contrary to the first specification, the synod reviewed all of the Appellant's allegations of error directed to the judgment of the permanent judicial commission of the Presbytery of Missouri River Valley.

(b) Having examined each of the exhibits mentioned in Appellant's second specification, we find that not one of them is of sufficient gravity or novelty as to qualify as "new evidence," and that the synod's commission did not err in refusing to consider such evidence.

(c) In his final specification, Appellant maintains that the synod commission erred "In failing to reverse, modify, or remand the trial commission's decision due to violations of the Constitution, the *Book of Order*, and the Bible." Examining the entire record, along with the brief of the Appellant, and considering the argument before this Commission, we will address this third specification as relying principally upon: inadequacy of advice as to the right of counsel, and insufficiency of the evidence to support the conviction of adultery. These are

considered separately.

i. The Commission finds that the Appellant was advised adequately of his right to counsel, as required by D-7.1600c(2). This finding is based upon the expressed recitation of the presbytery judicial commission at the preliminary hearing held January 13, 1987, as follows: "Informed the accused of his right to be represented by counsel"; and further advice at the beginning of the trial on April 30, 1987. Further, the Commission finds that the presbytery judicial commission did not err in failing to grant a continuance, inasmuch as there is no record that any such request was ever presented by Appellant to the commission itself.

ii. The Commission finds that, notwithstanding Appellant's contentions relative to biblical principles as to number of witnesses, the evidence before the presbytery judicial commission was adequate to enable a rational trier of fact to find the guilt of the Appellant beyond a reasonable doubt.

2. Addressing the specifications of error addressed by the Appellant to the decision of the synod judicial commission, the Commission resolves as follows:

(a) Specification 1 is not sustained.

(b) Specification 2 is not sustained.

(c) As to Specification 3:

(i) Appellant's contention as to right to counsel is not sustained.

(ii) Appellant's contention as to sufficiency of the evidence is not sustained.

Accordingly, the majority of the Commission having voted against sustaining any single substantive enumeration of error as advanced by the Appellant, the decision of the synod judicial commission is affirmed, as required by *Book of Order* D-13.1300b.

The Reverend Margaret Thomas, the Reverend Milton Carothers, and Joel Secrist were not present and took no part in the proceedings.

Signed and dated this 7th day of May, 1989.

## Dissenting Opinion

At two points in a judicial proceeding the Rules of Discipline provide for the accused to choose to be represented by counsel:

1. At the preliminary hearing conducted by a permanent judicial commission, "The moderator shall (2) inform the accused of the right to counsel" (D-7.1600c); and

2. At a trial, "Each of the parties in a remedial or disciplinary case shall be entitled to appear and be represented by counsel" (D-8.1000a). "If the accused in a disciplinary case is unable to employ counsel, the session or permanent judicial commission shall, at that person's request, appoint counsel for the accused. Reasonable legal fees and other expenses thereby incurred shall be borne by the governing body in which the case originated" (D-8.1000b).

It is the judgement of the undersigned that the cursory mention of Mr. Park's right to counsel by the presbytery permanent judicial commission at the preliminary hearing, or not at all at the trial, did not adequately inform Mr. Park of his right to counsel. Cultural and linguistic background made it especially incumbent upon the commission to be diligent in explaining his right to counsel. It is not apparent from the record that the commission's presumption that counsel had been waived was based on his full knowledge and understanding of his right that counsel would be appointed for him were he financially unable to himself employ counsel, especially since he requested counsel from the permanent judicial commission moderator and clerk during the first recess of the trial.

For this failure to insure the right of the accused, it is the opinion of the undersigned that Specification 3 should be sustained and the judgement against Mr. Park be set aside.

William W. Black

Ervin Rymes

Sharon Davison

David Snellgrove

John M. Purcell

Charles Weltner

### **Dissenting Opinion**

Specification 1, of which the Reverend Mr. Park was found guilty, alleges adultery, a violation of Deuteronomy 5:18. The proof of guilt of this offense does not conform to Deuteronomy 19:15. The evidence is sufficient to support a finding of guilt of a lesser included offense and of the charge of conduct unacceptable for a Presbyterian minister and contrary to Holy Scripture and the Constitution of the church and of the censure imposed by the presbytery permanent judicial commission.

William F. Fratcher