

Presbyterian Church (U.S.A.)	)	
Appellee	)	
	)	
v.	)	Disciplinary Case 203-5
	)	
Wilbur Lewis	)	
Defendant, Appellant	)	

This disciplinary case came for hearing before the Permanent Judicial Commission of the General Assembly on May 10, 1991, upon appeal filed by Wilbur Lewis from a decision rendered by the Permanent Judicial Commission of the Synod of Mid-America.

This Commission finds it has jurisdiction, the Appellant has standing to appeal, the appeal was timely and properly filed, and that the appeal is in order.

Appellant was tried before the Permanent Judicial Commission of the Presbytery of Northern Kansas upon six charges filed by a special disciplinary committee of Presbytery. Charge No. I was dismissed by the Presbytery PJC as merged with Charge No. II. The Presbytery PJC found Lewis guilty of charges II through VI.

Appellant appealed the decision of the Presbytery PJC to the PJC of the Synod of Mid-America. The Synod PJC reinstated charge number I, which had been dismissed by Presbytery, affirmed a finding of guilt on that charge and on Charge No. II. It did not sustain the remaining four charges. The two charges which the Synod PJC did sustain were:

**Charge I.** That Ruling Elder Wilbur Lewis, on or about August 6, 1987, caused a privately secured surveillance report to be circulated and distributed to other persons, the report of which impugned his pastor's reputation without providing the pastor due process safeguards required by the Constitution of the Church.

**Charge II.** That Ruling Elder Wilbur Lewis in (sic) intentionally and without concern for the consequences, made public the surveillance report referred to in Charge I, knowing that the report was inflammatory and would impune (sic) his pastor's reputation with no provision for due process safeguards to the pastor and his family.

#### History

In 1986 Wilbur Lewis was an elder and member of the Session in the Osage City Presbyterian Church, Osage City, Kansas, a community some 30 miles south of Topeka, Kansas. In November of 1986, Mr. Lewis met privately with the minister of the church, the Reverend Jerry Dean, to express concerns about the manner in which Mr. Dean was ministering to the church.

Mr. Lewis had two principal concerns. He felt that Mr. Dean was not spending enough time visiting in the parish, and spending too much time patronizing bars in Topeka featuring topless dancers, which Mr. Dean characterized as a "bar ministry."

In December 1986, Mr. Lewis met with the Reverend Richard Todd, of the Presbytery Committee on Ministry. Mr. Todd recommended that Mr. Lewis take the matter to the Session. On February 9, 1987 Mr. Lewis raised the problem with the Session, and the Session divided evenly on a motion to ask intervention by the Committee on Ministry. The Session also asked Mr. Dean to supply a monthly list to the Session of the persons visited.

In March of 1987, two members of the Committee on Ministry visited the Osage City church. At that time, and in May of 1987, the two members of the Committee on Ministry assured Mr. Lewis that the "bar ministry" was ended and that they believed the minister's problems had been addressed.

Mr. Lewis was of the opinion that the minister was falsifying his visitation lists, and continuing to patronize the strip joints of Topeka. In June of 1987, Mr. Lewis hired a private investigator to check on Mr. Dean and received a report indicating that Mr. Dean was indeed continuing to frequent the bars of Topeka.

After presenting this information to the two representatives of the Committee on Ministry, Mr. Lewis was advised to take the problem to the Session. On August 6, 1987, a meeting of the Session was held with the representatives of the Committee on Ministry present. Mr. Lewis passed the

investigator's report to members of Session prior to the meeting. Mr. Dean moderated the Session meeting, and upon being presented with a motion requesting resignation of the minister, ruled the motion out of order.

Mr. Lewis next tried to get the issues before Presbytery in September of 1987. Prior to Mr. Lewis's addressing the Presbytery, an administrative commission was appointed on request of the Committee on Ministry, charged with the duty to assume original jurisdiction of the church, to promote reconciliation and harmony, and to train a new session. The administrative commission met in Osage City on October 25, 1987 and November 1, 1987.

No apparent action resulting from the administrative commission's appointment, in January of 1988, Mr. Lewis made a mailing to many of the ministers of Northern Kansas. In April of 1988, Mr. Lewis wrote to the Reverend John Williams, Synod Executive, and again on May 3 and May 18, 1988 seeking action from the church in regard to the ministry of Mr. Dean.

On September 19, 1988, Mr. Lewis finally got action from Presbytery. A special disciplinary committee was appointed by presbytery and charges were brought against Mr. Lewis, resulting in the legal procedures outlined in the introduction to this opinion.

Prior to outlining and discussing the specifications of error charged by appellant, it is necessary to resolve a preliminary question of jurisdiction.

Since this is an appeal from appellate decision of Synod's PJC, it is necessary to consider the provisions of D-5.0100a providing in part:

...Decisions of the synod shall be final in all cases except those affecting the doctrine of the Church or the interpretation of the Constitution of the Church...

There also appears to be a second problem with jurisdiction. In the case of a church member, jurisdiction in a disciplinary case is with the session of the church in which the person is a member. D-5.0100b. While

this jurisdiction may be referred by the session to a higher governing body, D-7.1400d, the record in the case does not reflect that such a referral took place.

This case presents a question of Constitutional interpretation. In order to decide the case we must determine the meaning of the due process clause of the Preamble to the Rules of Discipline.

The Synod PJC by its own action, revived post-hearing the complaint identified as No. I. This complaint was dismissed by Presbytery PJC. That decision by Presbytery was not appealed. The appellant was effectively denied the opportunity to confront and litigate one of the two charges on which he was ultimately convicted. This was a denial of a due process.

#### **Specifications of Error**

**Specification No. 1:** A substituted member of the Permanent Judicial Commission was allowed to testify on Jerry Dean's behalf outside the hearing.

**This specification is sustained. (15-0-0)**

**Specification No. 2:** Evidence was allowed outside the trial in regard to the validity of Jerry Dean's "bar ministry."

**This specification is sustained. (15-0-0)**

Both of these specifications were sustained by the Synod PJC, but were not used as a basis to overturn the decision of the Presbytery PJC. It is assumed that the Synod PJC regarded them as harmless error. While we take a more severe view of their nature, the errors are immaterial in the light of our decision in the case.

**Specification No. 3:** Synod PJC erred in reinstatement of one of the charges against Lewis.

**This specification is sustained. (15-0-0)**

**Specification No. 4:** Synod PJC erred in finding Lewis guilty in complaints I and II.

**This specification is sustained. (13-2-0)**

It is the opinion of this Commission that the evidence in this case does not support a verdict of guilt upon Complaints I or II.

For an elder in the Presbyterian Church to hire a private investigator to check on his pastor is an extraordinary measure. It is shocking on its face. The justification for such extreme measure can only be extreme and outrageous circumstances. Ordinarily, and hopefully in almost all circumstances, a Presbyterian with a church problem should be pointed toward the process of the Church. Unfortunately the process of the Church did not aid Mr. Lewis, nor did it aid a minister who appeared to have troubles of his own. Mr. Lewis went to the minister privately; he took his problem to the Session; he called on the Committee on Ministry; sought aid from Presbytery; and sought out the Synod Executive for help.

His frustration is understandable. The Synod PJC rebuked Presbytery for lack of timeliness in responding to Mr. Lewis's complaints, and for its apparent disregard of proper procedures to be followed in a disciplinary case. The rebuke was warranted.

Because of the prolongation of this case there is a need to set the case at rest.

**IT IS, THEREFORE, ORDERED THAT** (13-2-0) the findings of guilt made by Synod PJC are reversed, and

**IT IS FURTHER ORDERED THAT** (13-2-0) Mr. Wilbur Lewis be discharged from all charges in this case.

Mr. Marcos Feliciano, Esq., the Honorable David Prager and the Honorable Charles L. Weltner were not present and did not participate in the case.