

REMEDIAL CASE 205-5

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Merl GALUSHA

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David PRICHARD

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Ray I. LINDQUIST

Kenneth B. HICKEY, Jr.

Monty B. BURNHAM

SESSION, UNITED PRESBYTERIAN STONE CHURCH OF CALDONIA

SESSION, WEBSTER PRESBYTERIAN CHURCH

SESSION, UNION PRESBYTERIAN CHURCH, Scottsville

SESSION, FIRST PRESBYTERIAN CHURCH, Bergen

SESSION, BRIGHTON PRESBYTERIAN CHURCH

SESSION, BARRE CENTER PRESBYTERIAN CHURCH

SESSION, BRICK PRESBYTERIAN CHURCH, Perry

SESSION, PARKMINSTER PRESBYTERIAN CHURCH

SESSION, FIRST PRESBYTERIAN CHURCH, Batavia v.

The Presbytery of GENESEE VALLEY

This is a remedial case which has come before the Permanent Judicial Commission of the General Assembly on an appeal from a decision of the Permanent Judicial Commission of the Synod of The Northeast on consolidated complaints by one elder, fourteen ministers, and the sessions of nine churches, all within the bounds of the Presbytery of Genesee Valley.

This commission finds that it has jurisdiction, that appellants have standing to appeal, that the appeal was properly and timely filed, and that the appeal is in order. (*Book of Order*, D-13.1200a)

History

According to the record in this case, the Downtown United Presbyterian Church of Rochester, New York (hereinafter "Downtown United"), in preparation for beginning the search for an additional co-pastor, included the following statement in its Church Information Form:

[Downtown United] has been a More Light Church since 1979, and was the first church in the Presbytery of Genesee Valley to offer full participation in all aspects of church life to lesbian, gay and bisexual persons. At present openly gay and lesbian elders and deacons serve on [Downtown United] boards.

On Sunday, November 24, 1991, a congregational meeting was held for the purpose of receiving the report of the pastor nominating committee and voting on the committee's recommendation. The congregation elected the committee's nominee, Jane Adams Spahr, as co-

pastor.

In a stated meeting on November 26, 1991, the Presbytery of Genesee Valley voted to adopt the recommendation of its committee on ministry that it approve the call of the Downtown Church to Ms. Spahr.

Two notices of complaint were filed. In accordance with D-6.1300a.(3), a stay of enforcement was granted by members of the synod PJC pending a trial.

A special meeting of the presbytery was held on January 6, 1992, to hear the two complaints against the action of the presbytery, to elect a committee of counsel, and to consider a motion to rescind the action of the presbytery regarding the call of Ms. Spahr. The motion to rescind the presbytery's approval of the call failed.

In a preliminary hearing by the synod PJC on April 29 and May 5, 1992, the parties stipulated "certain facts and related matters," including the following:

* Ms. Spahr was ordained in the United Presbyterian Church (U.S.A.) (UPCUSA) in 1974 and held various positions in the UPCUSA until 1980. In 1980-82, with the permission of her presbytery, she labored outside the bounds of the presbytery at the Metropolitan Community Church of San Francisco ("Metropolitan," not a Presbyterian church) as minister of Pastoral Care.

* From November 1982 to the present, Ms. Spahr has been employed as Executive Director of a work called "Ministry of Light," in San Anselmo, California.

* Ms. Spahr, in the PIF [Personal Information Form] submitted to Downtown United, describes herself as a "lesbian."

* Respondent presbytery admits that "the Rev. Jane Adams Spahr has proclaimed herself an avowed practicing homosexual (lesbian)."

* Ms. Spahr was married December 28, 1964. She and her husband were separated in December 1977 and divorced in 1978. Ms. Spahr developed a friendship with another woman in 1980 and has lived in partnership with that woman since 1985. Although she had been aware of her present sexual orientation for several years, Ms. Spahr publicly acknowledged that orientation after 1978. In 1980 [*sic*--1982] she resigned from her position with Metropolitan. She has not renounced her ordination vows nor has her ordination been set aside and she has been and continues to be a member in good standing of the Redwoods Presbytery in California.

The Permanent Judicial Commission of the Synod of the Northeast conducted a trial on May 19-22, 1992, and rendered its decision on July 29, concluding "that the Presbytery of Genesee Valley acted within constitutional limits in finding in order the call of the Downtown United Presbyterian Church of Rochester, New York, to the Rev. Jane Adams Spahr," and ordered that the complaints "be dismissed on their merits."

The appellants requested and received a stay of enforcement from members of the General Assembly Permanent Judicial Commission.

(1) The Issues in This Case

In its Decision, the synod PJC sets forth its understanding of the issues in this case.

The synod PJC raised five issues. This commission finds only the following issues necessary for a determination in this case: the meaning of the definitive guidance regarding homosexual conduct and ordination, and the responsibilities of a presbytery in finding a call in order.

Note: In 1976 the General Assembly of the United Presbyterian Church in the United States of America responded to overtures asking the Assembly to give "definitive guidance" relative to the eligibility for ordination to the professional ministry of persons who openly acknowledge homosexual orientation any practice." A similar

request was made to the General Assembly of the Presbyterian Church in the United States. In 1978 the UPCUSA received a report "The Church and Homosexuality" and adopted the "policy statement and Recommendations" which it contained. In 1979 the PCUS adopted "Homosexuality and the Church: A Position Paper." The two documents are essentially identical in content.

These documents, commonly referred to as "definitive guidance," are cited by the General Assembly PJC as policy statement and Position Paper.

(2) What is the Meaning of the Policy Statement Regarding Homosexual Conduct and Orientation?

In its Opinion, the synod PJC states that

In the present case, respondent violated no explicit constitutional provisions. The only constitutional provision which is involved is G-6.0106, but the General Assembly has interpreted this provision with respect to ordination, a different question.

At the time that the policy statement was adopted by the General Assembly in 1978, several possibilities for initiating an amendment to the Constitution were suggested, generally by changes in the *Book of Order*. The assembly chose instead to adopt a policy statement providing "definitive guidance" which essentially affirms the previous Constitutional stance regarding homosexuality. Later assemblies declined to amend the Constitution and affirmed the policy statement.

In an earlier case, the General Assembly Permanent Judicial Commission declared the policy statement and the position paper to be "in fact and in substance, authoritative interpretations of the Constitutions as they were then and as the Constitution presently exists." (*Union Presbyterian Church of Blasdell v. Presbytery of Western New York, 197th General Assembly, Minutes, 1985, Part I, p. 121*).

We believe that the synod PJC views the policy statement too narrowly when it limits its understanding of the document solely to the subject of the ordination of homosexuals. The conclusions enunciated in the policy statement must be taken in their context which addresses the entire subject of homosexuality.

We determine that no one's ordination is an issue in this case. What is at issue is whether a church may disregard an affirmation of homosexual practice when it is seeking a person to serve in a position for which ordination is a prerequisite. The "definitive guidance" provided by the Position Paper in this case is "That unrepentant homosexual practice does not accord with the requirements for ordination set forth in Form of Government." Therefore, this commission holds that a self-affirmed practicing homosexual may not be invited to serve in a Presbyterian Church (U.S.A.) position that presumes ordination. However, this commission recognizes that a call may be approved for a person who is no longer engaged in a homosexual way of life.

(3) What are the Responsibilities of a Presbytery in Finding a Call in Order?

"The radical principles of Presbyterian church government and discipline," which were articulated by the 1797 General Assembly, have ever since been one of the hallmarks of Presbyterianism. They are:

That the several different congregations of believers, taken collectively, constitute one Church of Christ,

called emphatically the Church; that a larger part of the Church, or a representation of it, should govern a smaller or determine matters of controversy which arise therein; that, in like manner, a representation of the whole should govern and determine in regard to every part, and to all the parts united: that is, that a majority shall govern; and consequently that appeals may be carried from lower to higher governing bodies, till they be finally decided by the collected wisdom and united voice of the whole Church. For these principles and this procedure, the example of the apostles and the practice of the primitive Church are considered as authority. (*Book of Order*, G-1.0400)

Under the radical principles, a presbytery (or any governing body) is not free to exercise its own judgment contrary to our constitutional standards or the lawful injunctions of higher governing bodies without jeopardizing the entire fabric of our Presbyterian system.

The responsibilities of a presbytery in the calling process go beyond ensuring that prescribed steps are taken in the proper order. When finding the call of a congregation in order, it is the responsibility of a presbytery, through its committee on ministry, to offer counsel regarding the standards which represent the "voice of the whole Church."

Downtown United should have been advised by presbytery's representatives that it should not consider extending a call to anyone of affirmed homosexual practice. Had the congregation received such advice and, disregarding that advice, persisted in prosecuting the call, it would have been the responsibility of the presbytery not to approve the call. Had the presbytery acted appropriately, this call would not have been approved. The questions regarding the examination and enrollment of a self-affirmed practicing homosexual would never have been raised, and this commission determines them to be outside the scope of this case.

Specifications of Error

(1) The synod PJC erred in failing to rule that the PC(USA), in light of the official policy of the church adopted in General Assembly under authority of Scripture, precludes formal official action affirming in the ministry of Word and Sacrament one who is an unrepentant, self-acknowledged practicing homosexual.

This specification of error is sustained.

The language of this specification is overbroad. Our interpretation of the intent of this specification of error brings us to finding that the synod PJC erred when it did not rule that the policy statement and/or position paper precluded the presbytery from approving Ms. Spahr as co-pastor for Downtown United.

(2) The synod PJC erred in declaring for church leaders "a double standard--one rule for those who are already ordained and another one for those who [as of 1978] were unordained" with respect to conduct declared by the whole church, in General Assembly, under authority of Scripture, to be "sin" and "incompatible with Christian faith and life."

This specification of error is sustained.

Ordination itself, for those ordained prior to 1978, does not make them immune from the application of the broad principles of the policy statement after the date of its adoption. Recommendation fourteen of that policy statement provides protection from the removal of ordination for homosexual practices that occurred prior to its adoption. Recommendation

fourteen provides amnesty for past acts but not license for present or future acts. (*Minutes*, UPCUSA, 1978, Part I, p. 266).

(3) The synod PJC erred in its conclusion that the "Presbytery of Genesee Valley acted within constitutional limits in finding in order the call of the Downtown United Presbyterian Church of Rochester, New York, to the Rev. Jane Adams Spahr"; that a "congregation may elect and extend a call to a self-affirming, practicing homosexual minister who was ordained prior to the enactment of the Definitive Guidance; and that a "presbytery may sustain the examination for membership of a self-affirming, practicing homosexual minister who was ordained prior to the enactment of the Definitive Guidance."

This specification of error is sustained.

Finding

The action of the Presbytery of Genesee Valley approving the call of Jane Adams Spahr as co-pastor of the Downtown United is irregular because it is contrary to the standards of the Presbyterian Church (U.S.A.).

Order

It is therefore ordered that:

(1) The call of the Downtown United Presbyterian Church of Rochester, New York, to Jane Adams Spahr is set aside.

(2) The Presbytery of Genesee Valley shall inform Downtown United that the call to Ms. Spahr has been set aside.

(3) The Presbytery of Genesee Valley shall instruct its churches, when completing Church Information Forms, to refrain from implying or stating that persons are eligible for office who do not meet the requirements for ordination in the Presbyterian Church (U.S.A.).

(4) The Presbytery of Genesee Valley shall instruct its committee on ministry that calls to ministers of Word and Sacrament by churches in the presbytery shall be approved only for those who meet the requirements for ordination to the office of minister of Word and Sacrament.

The stay of enforcement issued by this commission in this case is terminated.

Milton Carothers and Marcos Feliciano were not present and took no part in the proceedings. James MacKellar, a member of the commission, was present for argument on the appeal but did not vote on the decision.

Concurring Opinion of Joel Secrist

I concur in the decision and feel it necessary to expand on my reasons, regarding Remedial Case 205-5, *Sallade, et al., v Presbytery of Genesee Valley*.

A primary rule in interpreting a written document is to determine, not alone from a single word or phrase, but from the document as a whole, the true intent of the developers of that document, and to interpret the meaning of the subject matter and the relation to all parts or provisions. We cannot isolate and give construction independently of the purpose as evidenced by the entire document. The standard requiring the document to be construed as a whole is applied frequently and often.

If we find that alternative interpretations are possible, one of which would give meaning and effect contrary to the document as a whole, and would render meaningless and ineffective the intent of the document, we should be inclined to use the interpretations which would give effect to the document as a whole. Any interpretation rendering ineffectiveness should be avoided because of the general presumption that the parties do not carefully write a solemnly prepared document intended to have meaningless effect.

Words and phrases may be "implied" into a document with as much force and effect as if expressed, if from a consideration of the document as a whole, such inclusion is called for. Thus, we can decide that the restrictions expressed implied a broad application of the decision.

When one interpretation of an ambiguous document would lead to absurd, non-sensical results, while an alternative interpretation, equally consistent, would lead to reasonable results, the latter must be used.

Experience teaches that parties to a document are not always absolutely precise, nor can they be expected to be, in the formulation of a document. But we have no business negotiating an advantage for one group in their quest to expand their platform for political gain within our institution. Let them take it to the General Assembly and lobby their position there. That is where it belongs; it is not our authority to expand the terms of the agreed upon intent.

Should the church foster the creation of a new situation in the church, in which practicing homosexual persons would be free to affirm their lifestyle publicly and to obtain the church's blessing through ordination? The General Assembly said no. It was clear and concise.

Remedy is one of the most controversial and complex subjects. It must be remembered that the use of remedy power is situational.

There are two perspectives from which to examine remedy power. One is based on "legal" authority to formulate a specific remedy. The other is based on a policy foundation, i.e., what will be the likely effect or impact, of a specific remedy on an institution. In analyzing remedial power under the policy concept, it is essential to understand that the focus is not on whether the remedial measure is permissible, but instead, on how the measure might affect the institution. It should not be assumed that legal authority and policy concepts are independent. They are often interdependent and when taken in combination affect the formulation and application of our decisions.

What I believe we must achieve is a method of resolving disputes over these matters. We can do that by drawing a sharp distinction between construing the intent of the General Assembly and the adjudication of the controversies subject to resolution under a general application of the interpretation of the General Assembly.

Whichever view we endorse, we must ask ourselves the traditional question: "What shall be the remedy?"

Our decision is in its nature irrevocable. Therefore, there is a growing concern about how our decision affects our church. The General Assembly decision was not an ordinary contract for the purchase of goods and services. Its purpose and policy was to openly encourage fundamental conformance with Scripture and the continued work of our church in the world.

The General Assembly decision was a developed set of standards for ministers of Word and Sacrament in the PC(USA). Therefore, I believe that the General Assembly intended to apply clear and concise standards regarding homosexual acts committed by ministers of Word and Sacrament, whether they be in preparation for, or of long-standing.

It is our duty and responsibility to uphold the dignity and integrity of our church, and endeavor to provide effective ministry to all children of God. Nothing less.

Concurring Opinion of Nancy Harper, Robert Hotchkiss, C. Montee Kennedy, and Judith L. Rehak

We concur specially in the order of the majority.

There is much in our brother's dissent which we support and embrace whole-heartedly. We believe that there are multiple and severe flaws in the policy statement, which weaken its status as "definitive guidance" or "authoritative interpretation" of the *Constitution*. We believe that in several respects the policy statement detrimentally and perhaps unconstitutionally, limits or restricts other provisions of the *Constitution*, including, but not limited to qualifications for membership and the church's commitment to openness and inclusiveness. Many of these issues were raised and determined otherwise by the commission and by the General Assembly. We empathize with those who feel the pain of having their God-given call to ministry thwarted by the processes of the church. Nevertheless, we conclude that while the "law" is destructive of the peace, unity, and purity of the church, it is the law. As commissioners of the General Assembly Permanent Judicial Commission, we believe we are obligated to apply it.

Dissenting Opinion of W. Clark Chamberlain

I dissent.

The problems with the definitive guidance issued by the General Assembly in 1978 are numerous:

(1) It is superseded by the provision of the *Book of Order*, effective since 1983, that "[a]n active member is entitled to all the rights and privileges of the church, including the right to . . . hold office." (G-5.0202).

(2) The definitive guidance replaces careful investigation into the gifts bestowed by God upon "individuals" (G-6.0106) with a blanket prohibition of a "category" of persons. We thus are in danger of ignoring God by acting upon our own prejudice.

(3) The definitive guidance lacks internal logical consistency. Under the *Book of Order* "[a]n offense is any act or omission by a member or officer of the church that is contrary to the Scriptures or the *Constitution of the Presbyterian Church (U.S.A.)*" (D-1.0800). The definitive guidance holds unrepentant homosexual conduct out of such accord, but then holds that it shall not affect those ordained prior to 1978.

(4) The definitive guidance is at variance with our knowledge of the world as God made it, and hence is bad exegesis, bad theology, bad psychology, bad science. Sexual orientation is not chosen; it is given by God. Facets of personality not chosen cannot be sin,

because no culpable mental state or act of will is present.

In truth, the church's problem is with overt behavior. The true sin here for Presbyterians is “embarrassment.” All of the parties before this commission affirmed the proposition that homosexual orientation is no bar to ordination in this church. Nonetheless, the majority of this commission has somewhat receded from that position.

Our Lord ate with sinners and tax collectors, allowed himself to be physically touched by a prostitute, and dispensed with mercy and grace the capital punishment statute against adultery. We, in contrast, make an idol of gentility, of niceness. Since the principal figure in this case offends niceness, the majority, while acknowledging her present good standing, her ministerial gifts, and her acceptability both to her calling congregation and presbytery, finds that her call cannot be fulfilled.

The position of the majority is not consistent. If Jane Adams Spahr is a sinner, why is she not to be disciplined? If she is in good standing, why can her call not be fulfilled? If some ministers in good standing cannot do what other ministers in good standing may do, how can this be anything other than a double standard?

The position of the majority relies on the definitive guidance. The definitive guidance cannot stand. So this commissioner would sustain the judgment of the Synod of the Northeast.