

History

Davis was the Designated Pastor of the Broadmoor Presbyterian Church from July, 2004 until January, 2006. Shortly after Davis moved to another state, a seminary intern working at the church discovered pornography on the church computer used by Davis. Two system administrators for the Broadmoor Church were promptly notified and also viewed the images, and sought to determine the source of the images. The administrators reported to the session of the Broadmoor Church (Session).

There was conclusive evidence that, over at least a nine-month period, Davis frequently visited hundreds of pornographic internet sites while using a church-owned computer in the pastor's office on church premises. Davis would often visit these sites while working on church business. A forensic computer specialist documented the extensive use of the church computer to visit sites that contained hardcore pornography, including scenes of sexual subordination and mistreatment of women, violence, and numerous degrading and dehumanizing acts involving men, women, and adults who appeared like children.

The Session referred the matter to the Presbytery. Disciplinary charges were filed by the Presbytery against Davis in March, 2007 alleging:

- (1) Between the approximate dates of May 19, 2005, and January 17, 2006, you, Rev. Dr. Richard Louis Davis, did violate the Seventh Commandment as defined by paragraph 7.249 of *The Book of Confessions* (©1999), of *The Constitution of the Presbyterian Church (U.S.A.)*. You used Broadmoor Presbyterian Church's computer to "go online and look at sexual sites...once or twice a week...the sites (you) visited would likely be considered in the category of 'erotica'...in that some of them may have been sexual (sic) stimulating, they in the least could be offensive to others and devaluing to (your) marriage."
- (2) Between the approximate dates of May 19, 2005 and January 17, 2006, you, Rev. Dr. Richard Louis Davis, did violate your ordination vows in that you failed to be instructed, led and guided by the confessions of our church as defined by paragraphs G-14.0405 b. (3) and (4) of the *Book of Order 2005-2007* (©2005), of *The Constitution of the Presbyterian Church (U.S.A.)*. You used Broadmoor Presbyterian Church's computer to "go online and look at sexual sites."
- (3) On or about January 31, 2006, you, Rev. Dr. Richard Louis Davis, did violate your ordination vows in that you failed to further the peace, unity and purity of the church as defined by paragraph G-14.0405 b. (7) of the *Book of Order 2005-2007*(©2005), of *The Constitution of the Presbyterian Church (U.S.A.)* when James Kosko discovered "six images most people would consider inappropriate in the workplace and pornographic in nature." Mr. Kosko showed the images to Bob Fishtrom and asked him to clean the computer of the images. Both men said they were horrified and shocked by what had been left on the computer. Mr. Fishtrom was greatly disturbed

when it was discovered that someone looked “at pornographic material...in the church, on a church-owned computer.”

The Presbytery Permanent Judicial Commission (PPJC) found Davis not guilty on charge 1, and guilty on charges 2 and 3. Following a censure hearing, on July 9, 2007, the PPJC imposed rebuke with supervised rehabilitation. The censure invited Davis to make voluntary restitution to the Broadmoor Church to replace the computer hard drive and express remorse to the Session of the Broadmoor Church. Davis was also required to enter a therapy program.

Both Davis and the Presbytery appealed the PPJC decision to the SPJC. By a vote of 4 to 3, and without receiving any evidence or hearing any testimony, the SPJC reversed the judgment of the PPJC on charge 1 and found Davis guilty. The SPJC upheld the PPJC judgment of guilt on charges 2 and 3, also by a vote of 4 to 3. The SPJC affirmed the censure, but made the restitution and expression of remorse mandatory.

On October 23, 2008, Davis filed a Notice of Appeal with the Stated Clerk of the General Assembly alleging ten specifications of error. Davis and the Presbytery presented oral argument to this Commission on August 7, 2009.

Specifications of Error

Specification of Error No. 1. The SPJC did not have a two-thirds vote of its members when it found Davis guilty of charge 1. This was contrary to D-11.0403b and was, therefore, an error in constitutional interpretation, an irregularity in the proceedings, and an injustice in the process or decision.

This Specification of Error is sustained.

Specification of Error No. 2. The SPJC found Davis guilty of something with which he was not charged. This was contrary to D-11.0403a and D-13.0404 and was, therefore, an error in constitutional interpretation, an irregularity in the proceedings, and an injustice in the process of the decision.

This Specification of Error is not sustained.

Specification of Error No. 3. The SPJC made factual determinations that should not have been made by an appellate body since factual determinations made by a trier of fact are presumed correct. This was contrary to D-13.0102 and was, therefore, an irregularity in the proceedings and injustice in the process or decision.

This Specification of Error is not sustained.

Specification of Error No. 4. The SPJC did not interpret the Seventh Commandment correctly. This is an error in constitutional interpretation (D-2.0203b) and injustice in the process or decision.

This Specification of Error is not sustained.

Specification of Error No. 5. The SPJC erred when it affirmed the decision of the PPJC with regard to Charge 2. This was error in constitutional interpretation of G-14.0405b (3) and (4) and an injustice in the process or decision.

This Specification of Error is not sustained.

Specification of Error No. 6. The SPJC erred when it affirmed the decision of the PPJC with regard to Charge 3. This was error in constitutional interpretation of G-14.0405b(7) and an injustice in the process or decision.

This Specification of Error is not sustained.

Specification of Error No. 7. The SPJC and the PPJC did not interpret D-2.0203b correctly. This was an error in constitutional interpretation and injustice in the process or decision.

This Specification of Error is not sustained.

Specification of Error No. 8. The SPJC and the PPJC erred when they found no fault with having a (former) sex addict as Chair of the Investigating/Prosecuting Committee. This was an error in constitutional interpretation of D-1.0101 and D-10.0204 and an injustice in the process and decision.

This Specification of Error is not sustained.

Specification of Error No. 9. The SPJC and the PPJC erred when they did not recognize a biblical scholar as an expert witness. This was an error in constitutional interpretation of D-14.0301.

This Specification of Error is not sustained.

Specification of Error No. 10. The SPJC erred when it changed the terms of censure imposed by the PPJC which had conducted a censure hearing under D-11.0403e. This was an error of constitutional interpretation and an irregularity in the proceedings.

This Specification of Error is sustained.

Decision

Reversal of the Not Guilty Judgment (Errors Related to Charge 1)

Specification of Error No. 1 is sustained because the SPJC erred by reversing a judgment of “not guilty” to “guilty” by a vote of 4 to 3. In 2004, the Rules of Discipline were amended to

permit a governing body to appeal a judgment of “not guilty” (D-13.0102). D-11.0403b provides that “No judgment of guilt may be found on a charge unless at least two-thirds of the members of the session or permanent judicial commission eligible to vote agree on the judgment.” The amendment to the Rules of Discipline to allow appeals by either party created the potential for an appellate body to re-examine the issue of guilt. In making that re-examination, if it determines that a guilty judgment is the correct result, the appellate body would become the first court to make that judgment. Davis correctly observed that D-13.0102 is a contradiction of all previous ecclesiastical and secular law. Further, the revision stands alone, and other related provisions of the *Book of Order* have not been revised. Thus, prosecuting bodies have a right to appeal, but there are no corresponding procedures to guide how such appeals should be handled and what this appellate right means in terms of the authority of a permanent judicial commission acting as an appellate court to reverse a judgment of not guilty to guilty. This Commission finds no basis in the *Book of Order* to permit an appellate body to determine guilt by a simple majority vote. It would be grossly unfair to require a two-thirds majority vote by the trier of fact and then permit a simple majority to reverse that judgment based solely on an appellate record and oral argument. Therefore, this Commission finds that any judgment of guilt requires a two-thirds majority vote.

The logical implication of permitting a prosecuting committee to appeal a judgment of not guilty is the prospect that the determination of not guilty will be reversed. D-13.0102 grants a right of appeal, but says nothing about whether there shall be a second trial (which raises concerns about double jeopardy) or where and how such a trial would be held. It is inconceivable that D-13.0102 was intended to permit an appellate body to determine guilt without hearing any evidence, judging the credibility of the witnesses, and deciding whether the burden of proof has been met beyond a reasonable doubt. None of these due process safeguards was provided to Davis, and therefore this Commission sustains Error 1.

Accordingly, Specification of Error No. 1 is sustained and the PPJC’s judgment of “not guilty” on charge 1 is reinstated. Because Davis is not guilty of charge 1, this Commission need not reach the issues raised by Specifications of Error Nos. 2, 3, and 4.

Violations of Ordination Vows (Errors Related to Charge 2)

The SPJC affirmed the PPJC judgment of guilt with regard to Charge 2, stating that charges 1 and 2 were inextricably linked and the judgments had to be consistent. This Commission does not agree that the two charges are so linked. This Commission sustains the SPJC’s decision, but for other reasons.

Ordination questions 3 and 4 (W-4.4003 c and d) read as follows:

- c. Do you sincerely receive and adopt the essential tenets of the Reformed faith as expressed in the confessions of our church as authentic and reliable expositions of what Scripture leads us to believe and do, and will you be instructed and led by those confessions as you lead the people of God?

- d. Will you fulfill your office in obedience to Jesus Christ, under the authority of Scripture, and be continually guided by our confessions?

The charge that Davis violated these ordination vows should not be determined in a legalistic way. For good reason, the church has been reluctant to list “essentials” of the Reformed faith or to create a legal code. This does not mean, however, that the church has no standards by which to judge alleged violations of ordination vows.

The *Book of Order* states at G-6.0108a that church officers’ “manner of life should be a demonstration of the Christian gospel in the church and in the world.” G-6.0106b states, “Those who are called to office in the church are to lead a life in obedience to Scripture and in conformity to the historic confessional standards of the church.”

The *Book of Order* and the *Book of Confessions* make it clear that church officers are to conduct themselves within certain limits. While there are few specific church-wide standards of proscribed conduct, (e.g., G-6.0106b), there are many aspirational statements in the church constitution for how church officers should behave. Notwithstanding the church’s preference to avoid a code of forbidden conduct, the church expects that the life and character of its officers be marked by adherence to Biblical and confessional principles.

Biblical principles include the understanding that God created male and female equally in God’s own image (Gen. 1:27), and that God covenants with God’s people and they with one another. The story of the Fall reminds the Church that when humans disobey God, they are alienated from God (Gen. 3). Scripture contains admonitions against sexual exploitation and violence against one another (e.g., Ex. 20, 2 Sam. 11-12). Exploitation and violence transgress God’s intention that the human community live in health, wholeness, unity and peace. See *Pornography: Far from the Song of Songs*, 200th GA, 1988, pg. 7. Jesus’ ministry was one of love, inclusion, compassion, and hospitality, welcoming both women and men as followers. He condemned exploitation and oppression.

Confessional principles relevant to this case can be found throughout the *Book of Confessions*. Specifically, the most recent confessional statement, *The Brief Statement of Faith*, states that among humanity’s acts of rebellion against God are that “we violate the image of God in others and ourselves . . . and exploit neighbor and nature. . .” (*Book of Confessions* 10.3). *The Confession of 1967* speaks of “anarchy” and “moral confusion” in sexual relationships as symptoms of human alienation from God, neighbor and self. Human confusion about “the meaning of sex has been aggravated in our day” by several factors associated with modern life (*Book of Confessions* 9.47).

The 200th General Assembly study paper on pornography states “pornography is a powerful symptom of injustice and alienation in human society. Through words and images, pornography debases God’s intended gifts of love and dignity in human sexuality. Although humankind was created male and female, equally in the image of God, the history of humanity reveals a fundamental pattern of dominance and subjugation. . .” (*Pornography: Far from the Song of Songs*, 200th GA, 1988, pp. 6-8). Pornography is a striking sign of human brokenness

and alienation from God and from one another. The paper calls the church to give serious attention to this issue.

This Commission finds that a session or presbytery may determine whether one of its members acted or failed to act in a particular manner that “is contrary to the Scriptures or the Constitution of the Presbyterian Church (U.S.A.)” (D-2.0203b). Pornography does not build up the body of Christ, nor demonstrate a Christly manner of life to the world. The question before this Commission is this: “Was Davis’ use of pornography on a church computer a *constitutional* offense?” The governing body of membership first determines whether a church officer has departed from biblical and constitutional standards (G-6.0108b) and whether to impose a censure (G-11.0103n and r). The PPJC did make such determinations about Davis’ use of pornography. The SPJC affirmed that decision and this Commission concurs.

Furthering the Peace, Unity, and Purity of the Church (Errors Related to Charge 3)

The PPJC found Davis guilty of Charge 3. The SPJC sustained this decision. There is overwhelming evidence showing Davis’ use of a church computer to view pornographic internet sites even on church premises during customary business hours. Davis used the church computer in his church office numerous times to view internet sites showing degrading and dehumanizing scenes of a most heinous kind. After Davis moved to another state, some of these graphic pornographic images remained on the church computer and were inadvertently viewed by Davis’ successor, a seminary intern. The intern promptly sought help from, and showed the images to, other church personnel. As the session and an increasing number of church members learned of this situation, waves of shock and distress rocked the church.

Charge 3 alleged that Davis’ use of the church computer to view pornography did not further the peace, unity, and purity of the Broadmoor Church in violation of his ordination vow. Davis’ actions had other ripple effects beyond those who saw the images on the church computer. Davis did not further the peace, unity, and purity of the Broadmoor Church or the larger church by using a church computer to view pornography regularly and frequently and by leaving some of those images on the church computer. This was a breach of Davis’ ordination vows (W-4.4003g) and scriptural and constitutional principles for acceptable conduct of church officers. The PPJC’s judgment of guilt on Charge 3 was properly sustained by the SPJC.

Investigating Committee Bias (Error No. 8)

The Chair of the Investigating Committee and the Prosecuting Committee was an admitted sex addict in recovery. He raised this issue with Presbytery officials and was advised he need not recuse himself. Davis learned of this at the trial. Because the Chair’s personal background was not disclosed to Davis during the investigative process, Davis was unable to raise his concerns as provided for in D-10.0204 (Petition to Review Procedures). This Commission finds that any error in this regard was not prejudicial to Davis. There is no evidence of bias by any member of the PPJC or the SPJC.

Expert Witnesses (Error No. 9)

At oral argument, both parties addressed the lack of standards for admission of testimony by an expert witness. Chapter XIV of the Rules of Discipline addresses “Evidence in Remedial or Disciplinary Cases,” and at D-14.0301 contemplates the use of expert witnesses. D-14.0201 allows any party to challenge the “competence” of any witness. D-14.0205 defines “Credibility” as “the degree of belief that may be given to the testimony of a witness.” Both of these provisions presumably apply to all witnesses in judicial process, including expert witnesses. D-14.0205 further provides “The session or permanent judicial commission may consider, in determining the credibility of a witness, any matter that bears on the accuracy or truthfulness of the testimony of the witnesses.” In the case of expert witnesses, this would presumably include information about the qualifications of the expert and matters pertaining to the relevance of the expert’s proposed testimony.

D-14.0201 and D-14.0205 are the only guidance on expert testimony within the *Book of Order* available to assist sessions, permanent judicial commissions and parties to judicial process. In this case, the PPJC allowed an expert on ancient Hebrew law to testify, but did not admit the curriculum vitae of the expert. The expert was not allowed to remain in the hearing room during the testimony of other witnesses contrary to D-14.0301, which permits an expert witness to be present throughout the hearing. In this case, this Commission does not sustain Specification of Error No. 9 because the treatment of Davis’ expert was not prejudicial to Davis.

Monetary Censure (Error No. 10)

The SPJC erred when it imposed a monetary censure that required Davis to pay for a new hard drive for the church computer. See *Hennigan v. Presbytery of Charlotte, Minutes, 2001, 12.10004*.

Order

IT IS THEREFORE ORDERED that the Decision of the Synod of the Pacific is hereby reversed in part and affirmed in part.

IT IS FURTHER ORDERED that the judgment of the Synod of the Pacific finding Davis guilty on charge 1 is reversed, and the Presbytery of San Francisco’s judgment of not guilty on charge 1 is reinstated.

IT IS FURTHER ORDERED that the Synod of the Pacific’s affirmation of the Presbytery of San Francisco’s judgment of guilt on charges 2 and 3 is affirmed for the reasons stated in this Decision and Order.

IT IS FURTHER ORDERED that the additional censure imposed by the Synod of the Pacific is removed, and the original censure imposed by the Presbytery of San Francisco is reinstated.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of San Francisco report this decision to the Presbytery of San Francisco at its first meeting after receipt, that the Presbytery of San Francisco enter the full decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Pacific report this decision to the Synod of the Pacific at its first meeting after receipt, that the Synod of the Pacific enter the full decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly.

Absences and Non-participants

Commissioner Angel Casaus-Urrutia was absent. Commissioners Bradley Copeland and Clifford Looney did not participate in this case.

Concurring Opinion

We concur with the majority in an affirmation of Davis' guilt on Charge 2, with additional reflections on the contemporary interpretation of the Confessions.

A central element in the trial and appellate record of this case is the issue of the appropriate understanding of the Confessions in the life and experience of the Church. This record illustrates a significant misunderstanding about the nature and authority of the Confessions, especially regarding catechetical texts, e.g., the Westminster Larger and Shorter Catechisms and the Heidelberg Catechism, as statutory norms.

The interpretive process regarding the Confessions requires historical analysis of context and meaning in its own time and a judgment about the contemporary understanding of similar or related behavior, involving a dual interpretive process across divergent ages and extensive linguistic development. This is an arduous and complex process, especially in a non-catechetical culture. "Duties" and "sins," for example, shift widely in meaning as the age and culture change. What constitutes "immodest apparel," a "wanton look," or "lascivious" display four centuries ago and how such a standard is understood now can vary greatly between cultures and within a particular culture. One could go through catechetical lists and, except for a few items that have obvious statutory relevance today, realize easily that these are texts that scream for interpretive exercise. To raise such confessional-catechetical lists to equality with the imperative nature of the Decalogue is hermeneutically untenable and legally inappropriate. In our tradition, a catechism is not intended to function as a legally precise rule book and it is perilous to treat it as such. To open up the Confessions in general as a statutory reservoir for judicial judgment would be an interpretive circus and invite legal anarchy.

It is not necessary, however, to enter this arena, since the consistent policy of the General Assembly on the nature of the Confessions is clear. The wisdom of our ordination vows and the

wider policy of the church understand the Confessions in terms of guidance rather than rule. This decision reaffirms such a normative view of the nature and authority of the Confessions.

Dated this the 10th day of August, 2009.

Michael B. Lukens
Yun J. Kim
Judy L. Woods

Dissenting Opinion

While I agree with the rationale expressed in the concurring opinion of Commissioners Lukens, Yun, and Wood, I respectfully dissent from the majority's decision on Charges 2 and 3.

Both the Presbytery PJC and the Synod PJC committed errors in constitutional interpretation and injustice in process or decision. That is D-1.0101 ("In all respects, all participants are to be accorded procedural safeguards and due process...") and D-10.0204 (During the course of the investigation, the person against whom an allegation has been made may petition the commission to review procedures of the investigating committee.) The procedural injustice occurred when a self-acknowledging sexual addict to hard-core pornography in recovery served on and chaired the investigating committee.

The individual testified before the Presbytery PJC that he believed it was "ironic" that he was asked to serve on this particular investigative committee since he had just finished "up a 26 week course on sexual addiction recovery" after wrestling with sexual addiction for 35 years . He testified that he waged "an ongoing, daily choice, a daily battle" against pornography. While the Chair twice inquired of Presbytery officials whether he should recuse himself from the investigative committee, he received the advice, which in my opinion was incorrect, that he need not do so. The Chair shared his personal struggles of his addiction to hard-core pornography with the other three members of the investigative committee so "they were all aware of who I was and who I am." However, no one informed either Davis or his counsel. They only found out when the Chair testified at trial. One other member of the investigative committee testified that he and another committee member believed that a charge of a violation of the Seventh Commandment "was a little bit more harsh than we needed to do." Nevertheless, such a charge was filed. It appears from the testimony before the Presbytery PJC that had the Chair not served as Chair of this four person investigative committee, the decision of the investigative committee to bring the particular charges filed would have been different.

Because the Chair brought to his service on the investigative committee his biased feelings regarding hard core pornography and those who regularly view it, the Chair should have recused himself from the committee or been excused from his service on the committee. The failure to do so constituted a violation of due process and fundamental fairness. In addition, the failure to inform Davis and his counsel of the bias of the Chair during the investigative process was a

violation of due process and fundamental fairness. Since I believe any charges presented by the investigative committee were tainted by the bias of the Chair, the Presbytery PJC should have dismissed the committee's charges and sent the matter back to be examined by a new investigative committee. Contrary to the view of the majority of the GAPJC, I do not believe the subsequent judicial process after the charges were filed could serve to cure these inherent violations of due process and fundamental fairness.

Dated this the 10th Day of August, 2009

A. Bates Butler III

Certificate

We certify that the foregoing is a true and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 219-09 Richard L. Davis, Appellant (Complainant) v. Presbyterian Church (U.S.A.) through the Presbytery of San Francisco, Appellee (Respondent), on August 10, 2009.

Dated this 10th day of August, 2009.

Fred L. Denson, Moderator
Permanent Judicial Commission of the General Assembly

Gregory A. Goodwiller, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I did transmit a certified copy of the foregoing to the following persons by UPS Next Day Air, directing C. Laurie Griffith to deposit it in the mail at Louisville, Kentucky, on August 10, 2009.

Lynne Reade, Counsel for Appellant
Kurt Franklin, Counsel for Appellee
Stated Clerk of the Synod of the Pacific
Stated Clerk Presbytery of San Francisco
General Assembly Permanent Judicial Commission (regular mail)

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to C. Laurie Griffith, on August 10, 2009.

Gregory A. Goodwiller, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly, Louisville, Kentucky, on August 10, 2009, in Remedial Case 219-09, Richard L. Davis, Complainant/Appellant v. Presbyterian Church (U.S.A.) through the Presbytery of San Francisco, Respondent/Appellee, and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Louisville, Kentucky, on August 10, 2009.

C. Laurie Griffith
Manager of Judicial Process and Social Witness