

## **Session's Preliminary Response to Mr. Jason R. Appeal**

### **An overview:**

#### **Burden of proof:**

During a trial the burden of proof lies on the prosecution, whether the prosecution is the judicatory itself or another party. Once the judicatory has rendered a verdict, however, that verdict stands unless it is overturned on appeal. The Book of Discipline of the Orthodox Presbyterian Church requires that an appeal contain specifications of error. If those specifications of error are not sustained, the judgment of the lower judicatory is affirmed. At the level of an appeal, the burden of proof is on the appellant to demonstrate error by the trial judicatory.

#### **Appeal is illustrative of the issues which led to the trial:**

During the trial of the case on appeal, it became evident that the defendant tended to focus on technical details. Testimony was heard that he was not responsive to earlier efforts by his session to work through character and shepherding concerns with him. This appeal is consistent with the approach by the defendant that became evident during the trial itself: concerns about larger issues were responded to with a focus on detail. This appeal is eight pages long, with single spaced text. It contains 14 specifications of error, each with subpoints (2 to 13 subpoints under each specification) and at several places, sub-subpoints. While the session firmly defends the right of an appellant to present what he considers relevant to his appeal, the appeal document itself leaves one wondering if the appellant grasps the heart of the matter.

#### **The nature of this response:**

Given the lengthy, wide-ranging nature of the appeal, these thoughts do not attempt to respond in detail to each specification of error, which might lead to an even larger document than the appeal itself. Rather, what is provided below are brief reasons for not sustaining the various specifications of error.

#### **Specifications of error:**

##### **Specification of error 1**

Charge 2, the one referenced here, is "violating the command to keep the unity and peace of the church (Ephesians 4:3), a sin aggravated by being a violation of his ordination vow to 'seek the peace, the purity, and the unity of the church.'" Violating the peace and unity of the church by its nature can't be a private offense. Some of the specifications reference session meetings because those involved genuine efforts to engage the defendant on the issues which ultimately led to the judicial case.

##### **Specification of error 2**

Charge 3 involves "failing to protect the flock of God." Specification 3 references an action in December 2019, well within the statute of limitations. Document 13 was introduced to show the defendant's prior knowledge of certain posts, not to allege his writing a post included in that document.

##### **Specification of error 3**

The alleged "irregularities" in trial procedure reflect simply the defendant's assumptions about what is permitted, including, apparently, the view that the silence of the Book of Discipline involves prohibitions against the judicatory having counsel and making opening and closing statements.

**Specification of error 4**

The judicatory believed that its opening and closing statements were within the bounds of propriety and the principles of the Book of Discipline. The opening statement looked ahead to where it anticipated the evidence to be presented would lead. The closing statement outlined conclusions from that. The defendant was given the last word in his closing statement, which was the final part of the trial before the judicatory retired to consider its verdict. As to testimony being allowed about Genevan Commons, the charges included a failure to protect the good name of others, including that of Mrs. Aimee B. One of the specific areas from which attacks had come was from members and administrators of the Genevan Commons Facebook group.

**Specification of error 5**

The judgment of the judicatory was that the offenses described in the charges and specifications did rise to a level which justified a trial.

**Specification of error 6**

The charges and specifications referenced did not charge the defendant with the words of others. Rather, the charge and specifications refer to the defendant sharing or sending a document to OPC officers outside the session of New Hope and the resultant further breaking of the peace and unity of the church.

**Specifications of error 7 & 8**

The judicatory, after hearing testimony, concluded that the related charges and specifications were supported by the evidence. The appellant's equivocal use of words, i.e., lack of plain speech, is evident in the appeal. For example, he claims (footnote on Specification of error #3 and in charge 14, point e) he was not provided the official transcript of the trial soon enough, when the session gave him, within a week of his notice, a 160 page draft transcript of the trial!

**Specification of error 9**

Contrary to the assertion of the appellant that he was convicted of "being physically absent from worship," Charge 2 focused on failing to keep the unity and peace of the church, and the related Specification 6 on the defendant's statement that he could not sit under Mr. Francis VanD's preaching, nor take communion from him.

**Specifications of error 10 & 11**

The conviction on Charge 3 was based on evidence, which the session found convincing, that the defendant had been aware of attacks on a member of the flock and had failed to protect the flock. The conviction on Charge 2, as it relates to Specification 1, was based on testimony regarding the session's efforts, which proved to be unproductive, to work with the defendant, who, at that time, was an active member of the session, on his character and shepherding issues.

**Specification of error 12**

This specification of error is essentially a continuation or summary of argumentation presented by the defense during the trial, asserting that the defendant's sending the letter was justified. The judicatory was not persuaded by those arguments.

**Specification of error 13**

Given the nature of the offenses of which the defendant was found guilty, and the unsuccessful efforts to deal with issues through lesser means, the session, having heard all the evidence, and having failed to see evidence of repentance, concluded that these censures were appropriate to this situation.

**Specification of error 14**

The judicatory believes that its minutes, together with the 168 page, 10-point font, transcript of the audio recording of the trial, constitute an adequate and fair record of the trial, and have approved them as such. Admittedly, one could spend considerable time in continuing to edit the transcript, but the judicatory judged that unnecessary. Should any appellant judicatory wish to listen to the hours of audio, the trial judicatory can provide a copy.

The Session of New Hope OPC, March 27, 2021