

The Trial of Elder John O. Kinnaird

1. 11-23-02, Second Day, Second Session

Procedural Discussion

Bethany Orthodox Presbyterian Church

Oxford, PA

[Picking up after the lunch break, the tape starts in mid-sentence.]

**Tyson:** .... for each specification, which we are about ready to begin.

**Winward:** Right

**Tyson:** But ... we say to the court we cannot be restricted now to the judicatory's schedule that we deal in the rest of this trial only with the specifications one, two and three, and preceding immediately to judgment. Because the accusers spokespersons have in their opening remarks raised many, many other issues. Our Book of Discipline does not authorize time limits, as you know, Mr. Moderator. And we're now making this objection, or motion, whatever it is, on a principle of substance rather than procedure. The defense requests, therefore, adequate time for Mr. Kinnaird, after we have completed this time schedule of dealing with the three specifications to respond to the two documents, point by point, in the opening remarks of Mr. Hayes and Mr. Kuschke. But before we get to that we have an expert witness who can only be here today, Mr. Lillback, who we will put on the witness stand to address specification one, two and three. After that we are requesting that Mr. Kinnaird be allowed to answer for himself to those further charges, further issues, that have been raised in the opening remarks. And furthermore, we must ask for time to question other witnesses, if we so desire. In other words, we are abiding by the thirty minute time limits to deal with the three specifications, but we are asking the court to certainly not proceed, at that point, to judgment, but to allow us to continue our defense.

**Winward:** It would be the opinion of the Moderator as you see a need to request as we go along to make the request at that point and then we can see about how long you may need and if we want to grant you that. Is that reasonable? I mean, if we hear thirty minutes, up to thirty minutes presentation, by the side of the accusers and then you respond with your thirty minutes, if you want to include testimony on all three specifications at that point, ask for it.

**Tyson:** Mr. Kinnaird wants to be able to address matters that are not found directly in the specifications. Namely, matters that were raised in the opening remarks, papers.

**Winward:** And can that be done in the time allotted for summary statements at the end of the presentation of the three specifications?

**Tyson:** Will there be time limits given on that?

**Winward:** I believe we had suggested them. But we're flexible.

**Tyson:** No, certainly not.

**Winward:** If there was an extension of time?

**Tyson:** Mr. Kinnaird wants freedom to address, not to filibuster, but in a cogent manner all of the new issues that have been raised in the papers.

**Winward:** And he wanted to do that at this point? Is that what you are saying?

**Tyson:** No. After we deal with the specifications.

**Winward:** That's what I just suggested.

**Tyson:** After we do all three specifications?

**Winward:** Right. That's what I had just said. No what I had suggested at the end of the three specifications at the summarizing types of things, if it could be done then.

**Kinnaird:** No, the defense. I'm entitled to a defense.

**Doug Watson:** I don't understand what you are asking for.

**Mike Obel:** May I jump in here. I think what the Moderator is saying: In principle, we're agreeable as such a time that we can get there. Then we would like you to give us a specific time that we can agree to and then you may proceed. Is that about right?

**Winward:** Yeah.

**MO:** We're in principle agreeing with you.

**Winward:** Mr. Kinnaird

**JK:** Mr. Moderator. There is no authorization whatsoever in the Book of Discipline for a trial judicatory to set time limits on how much time may be available for either the prosecution or the defense. Before this second session of the trial began we notified the trial judicatory in writing that we were going to take objection to the specifications as the relevancy for supporting the charge. The trial judicatory came back with a schedule that looked very much that they were providing time for that purpose because it spoke only of addressing specifications one, specifications two and specifications three. However, there is a whole body of evidence has been put forward by the prosecution. The evidence is just not those three specifications. It's everything they entered into the record as evidence. Furthermore, this morning in our opening statements, they've given us two written documents which set forward a whole lot of other concerns they have. What we are pleading with this trial judicatory to do. We're willing to go ahead and have this next phase of the debate to center only around specification one, thirty minutes each side, specification two, thirty minutes each side, specification three, thirty minutes each side. But we must ask that we been given whatever time is necessary. Not some negotiated or agreed upon time, but whatever time is necessary to defense ourselves against the charge. Including all the various statements made in the two opening statement documents provided by the prosecution. This court just simply does not have authority to say that a man is not allowed to defense himself.

**Winward:** Mr. Kinnaird ... It's the view of the Moderator and I think perhaps the view of the panel that our intention was that the accusers would have time to present their evidence for the first specification, and that the accused with have thirty minutes then to defend themselves, with respect to that specification. That the defense would be involved in that response. So that because we believe the specifications, if proven true, would support the charge, then the defense is bound to deal with the specifications - which the prosecution is going to present. Following that if you want to make some remarks, then I'm suggesting you ask for it at that time.

**Tyson:** And, Mr. Moderator? What if we want to put further witnesses on the stand? Either friendly or unfriendly to develop further defense, would that be permitted?

**Winward:** I think the request would be entertained at that time and if necessary the panel would ... render ...

**Tyson:** If it is denied, we will object at that time.

**Winward:** Yes.

**Tyson:** Alright.

**Doug Watson:** I'm a bit puzzled as to what you're trying to accomplish. I would agree, so we're clear with each other, that our imposing time limits is something that we have presumed to do and we have not made them hard and fast. We are simply proposing those time limits as a means of having things focused and not going on and on and on type of thing. The charge does not stand by itself and it is not to be proved in this trial by any means other than the specifications that have been given to support it. Any additional - if you will - specification that may occur are not an issue here. The question is: Does these three specifications, do they prove the charge? If the three specifications do not, the charge fails for lack of support. Anything that is raised that is not in those specifications is not of concern to us in this particular trial and ... you know ... I don't see that our proposal of the accusers presenting their position on specification one, and then your defending on that particular specification, and doing the same on the second and third, that it does seem that in the Book of Discipline after all the evidence has been presented, the accused may make his final argument, with respect to the evidence, and the law of the church, and such as that.

We are not intending upon denying you that opportunity. We can't - to put it that way.

**John Kinnaird:** In light of the speech of the member of the judicatory, are we to understand that during the next phase of this trial for which time has been allotted for each side, up to thirty minutes for specification one, up to thirty minutes for specification two, up to thirty minutes for specification three, that the discussion will be limited to whether that particular specification proves the charge?

**Winward:** That is correct.

**JK:** Very well. We are prepared to proceed with that in order. Even though we do note for the record that this judicatory has no authority to limit time, even for that matter. But we are prepared to go along with that provided it does not have the affect of preventing us from

providing a full defense at the end of that time. I would point out that you have already allowed remarks in the opening statements that were not to the point of whether specification one, two, and three, proved the charge. There were far many other issues, which I am entitled to have the right to defend myself against in due course.

**Winward:** Thank you. We will note the objections and we will proceed.

**Arlyn Wilkning:** Mr. Moderator?

**Winward:** Mr. Wilkening?

**AW:** Prior to proceeding I would like to have a clarification of the last discussion for the record. Is it the understanding of the defense that this next phase of thirty minutes per charge is to discuss ...the... what they raised in their objections, do these specifications match the charge? Or is it to defend against the charge? I hear them saying two different things. And they speak of using the thirty minutes for speaking to the charge and then they speak, as well, a defense against the charge later. My understanding is that the thirty minutes is for their defense against the charge. I would like to have clarity from the court, which is it?

**Winward:** My understanding is, and I thought I made that clear, their response - up to thirty minutes the accused have, is to make defense against the specifications.

**AW:** So it is not to debate ... so it is not anymore to debate the validity of the charge in its .... excuse me, the validity of the specifications, other than if they are provable or not?

**Winward:** The judicatory has noted those objections. It is my understanding they use that time to defend against the specification. Is it true or not?

**AW:** Thank you. I just needed clarity on that, which point we are discussing.

Winward: Mr. Kinnaird

**JK:** We will not be debating whether the specification is true or not, in the sense of whether I said it or not, or wrote it or not. We=ll be discussing, rather whether it is true that the specification supports and proves the charge.

**Winward:** We appreciate the fact that these words are yours. The questions before this judicatory is: Admitting they are your words, do they or do they not conform to the Standards and Scripture. The prosecution is going to attempt to prove they are Aout of accord@ and we understand you will try to show, that, as a matter of fact, they are Ain accord.@ That=s the way we envision this division of time working.

**JK:** I trust we will show they are Ain accord@ with the Scriptures and the Standards, but we will also show they do not support the charge.

**Winward:** If you can demonstrate they are Ain accord@ then the charge disappears. The charge is based on proving those specifications. If they cannot be proved as being Ain accord,@ then the charge is not there.

**TT:** Mr. Moderator?

**Winward:** Mr. Tyson.

**TT:** Alright then. You will not rule out of order any questions on the question, whether the specification - whichever one it is - supports the charge, that relates to the wording of the charge?

Will you? You can't separate the two.

**Winward:** You will have those up to thirty minutes to ...

**TT:** Thank you.

**Winward:** We will proceed. Mr. Wilkening.

[See Mr. Wilkening's presentation under The Prosecution's Presentation of Evidence.]