

Trial of John O. Kinnaird
11-23-02, Second Day, First Session
Ruling on the Defense Objections
Bethany Orthodox Presbyterian Church
Oxford, PA

Winward: Thank you, Mr. Tyson. Thank you also for providing this statement in a written form that can be included in the proceedings, record of the proceedings. It would be my determination, if the rest of the panel agrees, to proceed with the opening statement of the accusers and then break to consider your request.

Arlyn Wilkening, one of the accusers: What do you mean by opening statement? I'm sorry ... in response to this, you mean?

Winward: No. The opening statement you were prepared to present.

AW: That would be prior to the determination of the validity of this request? That is what you are saying?

Winward: Yes.

AW: That's different Isn't that different than the format we were given ... I'm sorry. I'm a little confused. I understood the format you communicated, that the introduction would be after all the ...any particular objectionsany particular impediments to the trial proceeding were already determined and the accused has already pled either innocent or guilty at that point. That's where I understood the opening statements were for and that's where they're appropriate for ... appropriately addressed to.

Winward: Mr. Tyson has indicated that his opening statement included the objections that they were going to present. In terms of the time procedure we submitted to each side, that constitutes the opening statement on their side.

AW: So they were ... O.K. I'm sorry, Mr. Moderator, again I'm a little bit confused because from the communication I received, I understood that we would be giving the opening statement first and that would be after any objections were ruled upon and set aside and the trial was determined to begin. So, what I'm saying is that the opening statement that we have is not addressed to any of the objections that they would raise because we were not even aware of what those objections would have been. My understanding from the timing ... from the communication was that ... number one, if I remember the letter ... the opening introductory statement ... that would have been after the ... these would have been ruled upon.

Winward: Would you rather us act on the request at this point?

AW: That's fine or you can ...would you give us a couple minutes to confer with each other on this matter? I do not mean to ...

Winward: On the matter of the request or the opening statement?

AW: Just on the matter of the request. It will only take us a couple minutes. We are supposed to have fifteen minutes, it will only take us two minutes ...

Winward: That's agreeable to the panel with the stipulation that the opening statement presented by Mr. Tyson was *the* opening statement and would not have opportunity for *another* opening statement.

TT: I agree.

Winward: Understood.

AW: O.K. That was a different format than I understood to be communicated in the communication to us.

TT: Mr. Moderator?

Winward: Mr. Tyson

TT: The accused wants to have a moment to confer with me about whether he agrees with what I just said.

Winward: O.K. That's agreeable.

(Pause. There is informal discussion by the panel.)

TT: Mr. Moderator?

Winward: Mr. Tyson

TT: Could I amend my remarks, if that's agreeable, by saying that it is not agreeable. And would the panel allow that if we're all done with ruling on the objections and if we do go forward with the trial, would you permit then an opening statement, at that point? Since although we called our remarks opening statement, they were addressing the objections.

Winward: I think we should rule on the objections first and then entertain your request.

Rev. Arthur Kuschke, assisting the accusers: Mr. Moderator?

AK: Mr. Moderator?

Winward: Mr. Kuschke.

AK: I'm Rev. Kuschke and I have been requested by Mr. Wilkening to assist him and he has asked me to make a brief reply to these objections. If I may do so?

Winward: That's not the point at issue right now. We're dealing with the request. The request has been made, are you willing to alter the charge in a manner similar to one or the other.

AK: No.

AW: The answer is no.

Winward: The answer is no. And if you are not willing to do that, the request is that the panel be asked to do that. Is that correct, Mr. Tyson?

TT: [inaudible]

Winward: At this point, I think we need to take a brief recess to consider that.

AK: Mr. Moderator?

Winward: Mr. Kuschke.

AK: Is it not proper that the prosecution be allowed the opportunity to respond briefly to the objections in respect to the charge before the panel begins to determine in that question?

Winward: That sounds reasonable. About how ...

AK: Should I go ahead then, Mr. Moderator?

Winward: Yes. You said briefly. Do you have an idea of time?

AK: No, sir, I don't, but I'll be brief.

Winward: O.K.

AK: The problem of ...

Mike Obel, one of panel members: Please be careful, Mr. Kuschke, to speak into the mike.

AK: Near the bottom of the first page of that opening statement concerning the charge. There is an interpretation of the words, Acharge ruling elder John O. Kinnaird with teaching a doctrine of justification by faith and works -comma- contrary to the Word of God and the Westminster Standards.@ Let me defend that formulation. A doctrine of justification by faith and works does

not mean *any* doctrine of justification by faith and works. It means the doctrine of justification by faith and works *taught by Mr. Kinnaird in the documents specified*. And certainly I think that is a reasonable understanding of the meaning of that sentence and the comma and so forth. In other words, we do not say that any doctrine of justification by faith and works is our business at all. Only that doctrine of justification by faith and works which the prosecution finds illustrated in the documents specified and written by Mr. Kinnaird.

Likewise, to go on, of course, it means that if James were to be accused of teaching a doctrine of faith and works that would not be relevant to this charge. James is not being charged. It's the particular doctrine expressed by Elder Kinnaird in certain particular statements of his that is entirely the focus of our concern. The prosecution certainly wishes that we were all at one in this matter. It is true, however, that we do find particular statements by Elder Kinnaird that we consider to be out of harmony with the Word of God and our Standards and also in conflict with the clear teaching of the Word of God and our Standards on justification. We do not object to the good things he says - and he says many good things. It is only those particular things which we single out, which we call into question, and which we feel need to be attended to.

In other words, much of the rest of this matter about the charge is irrelevant because it takes a different point of view all together on these matters. And I could point out particular sentences in this document which would illustrate that. And so I will speak thus far to the charge and perhaps Mr. Wilkening has more to say on this subject?

Winward: Thank you, Mr. Kuschke.

Dr. Clinton Foraker, pastor of Bethany OPC, assisting Mr. Wilkening: May I make additional comments?

Winward: Dr. Foraker.

CF: Mr. Moderator, we would not agree that James and Paul are using the term justification in exactly the same way. We believe that Paul is speaking of justification before God, and is opposing the error of legalism. Whereas James is speaking of justification before men, and is opposing the error of antinomianism. James is very closely related to some of the writings of our Lord Jesus because of his family relationship. And our Lord Jesus in Matthew 5 says, your righteousness must exceed that of the Scribes and Pharisees. Now he was saying that to people who had professed faith in the Lord Jesus Christ. And he is saying, it's one thing to profess faith. It's another thing to demonstrate the validity of that faith. And that is what James is referring to when he says what he does. He is not speaking as Paul is of saving faith in the same manner and that is crucial to our understanding.

Winward: Thank you, Dr. Foraker.

AW: That's all.

Winward: O.K. We will be recessed to consider the objections.

[End of Tape 1, side one]

[Start of Tape 1, side two]

[Tape has quite a few minutes of crowd talking before the meeting is called to order again.]

Winward: (Gravels.) Let's come back to order. (Pause). Before we actually begin some have expressed a desire to know, to put names to faces up here. So let me introduce myself. I'm Doug Winward and I'm pastor of Faith OPC in Fawn Grove and acting as moderator of the interim session. We'll start over here.

Joel Kershner: I'm Joel Kershner, pastor of Grace Fellowship Orthodox Presbyterian Church in Mansfield, PA.

Doug Watson: I'm Doug Watson, and I'm a minister in the Orthodox Presbyterian Church. I'm presently working for the Committee on Coordination as the staff accountant.

Mike Obel: I'm Mike Obel and I'm the associate pastor of Gwynedd Valley Presbyterian Church.

Gary Bryant: Gary Bryant, an elder at Emmanuel Orthodox Presbyterian in Wilmington, Delaware.

Winward: The judicatory has considered the objections and we have denied them. Mr. Watson will give a little bit of the reasoning.

Watson: This is not so much intended to argue our position it is as to clarify our position and to have everyone understand where we are in this matter. The emphasis and the objection is upon the comma. Our emphasis might be upon the fact that it's *a doctrine* and the question indeed is .. regards what has Mr. Kinnaird taught. What is the doctrine regarding faith and works that Mr. Kinnaird teaches? In the considering that then the specifications, as has been readily acknowledged, are indeed quotes that Mr. Kinnaird has made and the question is: that while they might appear even as the writings of James appear, to say something that we would find contrary to the Scriptures or to the Confessional Statements, is indeed what Mr. Kinnaird said, rightly understood, that which teaches a doctrine which is contrary to the Scriptures or Confessional statements. And I hope that that is helpful to all parties.

Winward: It is our determination that the trial should proceed. At this point we would ask that a plea be entered.

(Pause)

TT: Mr. Moderator?

Winward: Mr. Tyson.

TT: The defense will answer the question and tell the court in a moment. However, we respectfully request that you help us to understand where we are in respect to the objection that the specifications support the charge. That has not been addressed so far, as I understand. We did have a request that the charge be reformulated, that had to do with the first objection.

Winward: Correct.

TT: What about the second?

Winward: We thought we had answered that. It is our contention that the specifications do support the charge.

(Pause)

TT: Mr. Moderator?

Winward: Mr. Tyson.

TT: We would like to address each specification seriatim to argue why they do not support the charge.

Winward: You will have opportunity to do that as each specification is addressed.

TT: In other words ...

Winward: In the course of the trial ...

TT: If I may respond?

Winward: Yes, Mr. Tyson.

TT: You mean to say even though the objection has been denied, we will be allowed to continue to raise it? For when we argue, we will not be arguing that Mr. Kinnaird does not teach what the specifications say, but we will be arguing that the specification itself does not support the charge as currently formulated.

Winward: It seems to us that that's part of the trial proceedings, to establish ... The question is not whether or not Mr. Kinnaird said these things. And we appreciate your willingness to indicate that he owns what he says. The question is whether or not what he says is in accord with the Standards of the Church and the Scriptures.

TT: So at the time when we proceed with ... If I may respond?

Winward: Yes.

TT: You will permit us to argue continually that the specification does not support the charge?

Winward: It is our understanding that as we proceed with the trial Mr. Wilkening will have an opening statement, and in answer to another request you made, you may also respond with an opening statement. We took it to understand that what you have labeled opening statement was essentially your objections.

TT: Yes.

Winward: So that you will have an opening statement. And then according to that time table each side will have up to thirty minutes to respond to the specifications.

TT: Mr. Moderator?

Winward: Mr. Tyson.

TT: Would this be the time to object to *that* procedure? Because we do so object to any time limitations being placed upon the trial proper. We find, Mr. Moderator, if we may respectfully say, nothing whatsoever in the Book of Discipline that allows for such restriction.

Winward: Did I understand you to say at the beginning that you agreed with that procedure we have proposed?

TT: With the stipulation that, if you recall, I said we agree with the time table with respect to the objections that we raised. That's what I said.

Winward: And you have raised those objections?

TT: Right. We agreed to the amount of time that was given for that purpose.

Winward: O.K. I thought you were agreeing to the whole process that we had suggested.

TT: No, we were not.

Winward: You may object to the time frame at that point.

TT: You mean if we are set down as in exceeding the time or before we begin?

Winward: You may object before we begin.

TT: All right.

Winward: And that objection will be noted.

TT: The accused would like to address the panel on this question.

Winward: Which question? We are asking for a plea.

TT: On our objection to theHe wants to address the question of your ruling on our objection that the specifications do not support the charge.

Winward: We have ruled on that ... that they do support the charge.

TT: All right.

Winward: We will note your objections.

TT: Thank you. The accused will himself answer the question regarding his plea.

Winward: O.K. Mr. Kinnaird.

Elder John O. Kinnaird, the accused: Mr. Moderator.

Winward: Mr. Kinnaird.

JK: I am going to understand and interpret the charge ...

Winward: Mr. Kinnaird, this is not a speech. We are asking for your plea.

JK: You are asking me to pled guilty or not guilty to the charge. I need to tell you the sense in which I plead guilt or not guilty.

Winward: O.K.

JK: I understand the charge that I teach a doctrine that I teach a doctrine of justification by faith and works to be referring ... to that justification ... which God pronounces upon the sinner ... on the sole basis of the imputation of the active and passive obedience of Christ ... at the time that the individual is converted to Christ ... that that takes the sinner from a state of being under condemnation ... both for his sins and the imputed sin of Adamand for the guilt of his own sinful nature ...and moves him from that state of being under condemnation unto a state of being declared righteous ... an eternal state of being declared righteous from which he can never depart because an act of God irreversible has made him thus justified.

I do not teach that one becomes justified by faith or by works, I teach that one becomes justified by grace through faith. The Bible does not teach, the Westminster Standards do not teach, I do not believe nor teach, in a justification in which any man contributes any part to their justification. And I have so informed the accusers. I have so informed Dr. Foraker. I am not guilty.

Winward: That plea will be entered and the trial will proceed. Mr. Wilkening, your opening statement.

AW: The opening statement for our side will be given jointly by Carl Hayes and by Elder, I mean, Rev. Arthur. Kuchke. It is my understanding that this should be forty-five minutes for that period?

Winward: Yes.

AW: Is that correct?

Winward: Yes. Mr. Hayes.

*** [Please see Mr. Hayes' and Mr. Kuschke's opening statements at the links provided.] ***