EPISCOPAL CHURCH, USA
THIRD PROVINCE
COURT OF REVIEW

In Re: DANE C. BRAGG,
Respondent/Appellant

Ecclesiastical Trial Court
Diocese of Bethlehem
File No.: 2002-01

BRIEF OF RESPONDENT/APPELLANT

PROCEDURAL HISTORY

In proceedings before the Ecclesiastical Trial Court of the Diocese of Bethlehem, at its Docket No. 2002-01, the Trial Court entered a Judgment on August 22, 2002, as amended October 25, 2002, that the Respondent had committed the offenses of Immorality and Conduct Unbecoming a Member of the Clergy. Thereafter, on December 2, 2002, the Trial Court conducted proceedings to determine the sentence, after which the Trial Court adjudged a sentence of deposition as to both Counts I [Immorality] and II [Conduct Unbecoming a Member of the Clergy] of the Presentment.

Thereafter a Notice dated December 3, 2002, was sent to Respondent by the Right Reverend Paul V. Marshall, Bishop of the Diocese of Bethlehem, advising Respondent of the above , and further advising that the said Bishop intends to pronounce the sentence adjudicated by the Trial Court. That Notice was received by the Respondent on or about December 6, 2002, and the time for the filing of this appeal therefore expires on or about January 5, 2003.

Thereafter, Respondent received a Notice of Adjudication and Imposition of Sentence, dated December 12, 2002 and mailed December 13, 2002, from John E.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

Feather, Esq., Presiding Judge of the Trial Court.

The appeal to the Court of Review by Respondent is from the Judgment finding commission of the offenses as well as the Adjudication of Sentence.

RELEVANT FACTS

Appellant, Dane C. Bragg, is an Episcopal Priest, whose pastoral responsibilities consisted, at the times relevant to these proceedings, primarily of the youth ministry for the Diocese of Bethlehem. It is alleged that, in the course of the performance of these duties, he developed an inappropriate relationship with two young adults then aged approximately 17 and 18, consisting of personal and occasionally intimate discourse; apparent affection and favoritism for these youths; extensive telephone and e-mail contact with the youths; an alleged confession of a sexual attraction for one of the youths; and a threat to reveal personal information if the youths revealed details of his relationship with them.[1]

ISSUES PRESENTED

1. **Denial of Fair Trial and Due Process, and Violation of Title IV, Canon 14, Section 9.**

Respondent was denied a fair trial and due process, and the provisions of Title IV, Canon 14, Section 9 were violated in the following particulars:

A. The Right Reverend Paul V. Marshall, Bishop of the Diocese of Bethlehem [hereinafter "Bishop Marshall"], communicated *ex parte* with the members of the Trial Court, before the commencement of proceedings before that court, essentially directing how the proceedings should be conducted, and that they should be open to the public.

B. Members of Bishop Marshall's diocesan staff, not listed or called

[1] Where appropriate, specific references to testimony or exhibits will be made in the argument section of this Brief.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

as witnesses in the trial proceedings, attended the proceedings each day. These staff members were readily visible to the Trial Court, which conducted proceedings in a room with limited seating for observers, and the staff members were known to some or all of the Trial Court members, four [4] of whom are clergy members under the jurisdiction of Bishop Marshall, and therefore knowledgeable as the composition of his staff.

C. Despite the apparent canonical presumption of non-commission of the alleged offenses, Bishop Marshall issued an immediate Temporary Inhibition removing Respondent from his office, thereby potentially influencing the Trial Court. Further, Bishop Marshall issued a Temporary Inhibition that went far beyond the canonical limitation of preventing harm to individuals and the church, further communicating to the Trial Court Bishop Marshall's opinion as to the severity of the alleged offenses.

D. Without apparent authority, the Standing Committee extended the Temporary Inhibition on January 17, 2002, and made the Inhibition even more punitive on April 15, 2002. Further, Respondent's request for a hearing concerning the addition to the Inhibition, pursuant to Title IV, Canon 1, Section 2(d), was ignored, and the action by the Standing Committee, which doubles as the Review Committee in this Diocese, denied Respondent canonical due process.

E. Respondent was required to proceed to trial without receipt of discovery materials, including prior statements by witnesses, despite reasonable and timely requests for same. In fact, Respondent did not receive a response to this request.

F. During the trial, the Church Attorney was consulted by, and consulted with, the Archdeacon, apparently acting on behalf of Bishop Marshall. Further, during the trial the Church Attorney referred to the Bishop and/or his office as "my client" before the Trial Court, once again conveying to the Trial Court the impression of input by the Bishop.

G. The Trial Court has stated that it consulted with a neighboring Diocese regarding the findings of fact, without advising Respondent as to the specifics of those contacts, information requested and received, thereby inserting a potential and unknown extra-judicial influence into the proceedings.

H. As a result of the actions of Bishop Marshall, Respondent himself filed a complaint alleging misconduct by Bishop Marshall with the Presiding Bishop, in which complaint he alleges that his trial proceedings had been, and were being, unfairly and improperly influenced by Bishop Marshall. Respondent requested a continuance of the proceedings before the Trial Court until disposition of his complaint to the Presiding Bishop, which request was denied. The decision to proceed, particularly when the nature of the complaint was known to the Trial Court, was improper and gives at least the appearance of bias or partiality.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

I. Each of the foregoing indicates some likely effect upon Respondent's due process and fair trial rights, and suggests noncompliance with Title IV, Canon 14, Section 9. Taken as a whole, they deprived Respondent of these rights, and should result in a new trial or further relief by this Court.

2. **Improper Trial Rulings.**

The Trial Court further erred in the following particulars:

A. The Trial Court improperly admitted and considered, in its decision as to whether the Respondent had committed certain alleged acts of immorality, evidence of statements of Respondent admitting said wrongdoing without independent evidence of the commission of same, thereby violating the principles of the *corpus delicti* rule, a rule of evidence with both precedential and logical application in this case.

B. The evidence was insufficient to sustain many of the charges on which the Trial Court judged that Respondent had committed same.

C. The sentence imposed by the Trial Court was unduly harsh, given the Respondent's record of service, and in light of the nature of the charges for which substantial evidence was presented.

D. The severity of the discipline is unduly harsh, given the extent of discipline imposed in similar cases, including that imposed in the case of Bishop C.I. Jones, a Bishop in Montana found to have had an extra-marital affair with a church member, for which a suspension was found to have been the appropriate sanction.

E. The request for a sentence of deposition, after the Bishop had offered to Respondent a Submission to Discipline, based upon an admission of all of the charges against Respondent, with significantly lesser penalty, amounted to the imposition of a punishment to Respondent for exercising his canonical right to a trial on these charges.

F. Respondent believes that a review of this sentence, compared to sentences in other similar cases, will result in a conclusion that the sentence imposed was unnecessarily harsh.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

ARGUMENT

1. Denial of Fair Trial and Due Process, and Violation of Title IV, Canon 14, Section 9.

These issues, as detailed above, suggest that the proceedings before the Trial Court were, or may have been, the subject of interference by actions of the Bishop of the Diocese of Bethlehem to the extent that a fair trial, and due process, were denied the appellant.

Use of Secular Law
Concept of Due Process

In the absence of reported decisions in which this type of issue has been litigated by church bodies, Appellant has referred to the secular analog of "due process". In so doing, Appellant is mindful of the well-established refusal of secular courts, primarily based upon First Amendment considerations, to interfere in, or apply otherwise applicable legal principles to, church decisions of the type here in issue:

> "The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.

Watson v. Jones, 13 Wall 679, 20 L.Ed. 666 (1872).

With specific reference to the issues in this matter, it has been uniformly held that courts lack subject matter jurisdiction to consider challenges to church disciplinary decisions absent a showing of egregious action by hierarchical authorities of the church. See, for example, Bell v. Presbyterian Church (U.S.A.), 126 F.3d 328 (4th Cir. 1997);

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

Hutchison v Thomas, 789 F2d 392 (1986, CA6 Ohio), cert den 479 US 885, 93 L Ed 2d 253, 107 S Ct 277; Flax v. Reconstructionist Rabbinical College, 44 Pa. D. & C.3d 435 (C.P. 1987), judgment aff'd without opinion, 374 Pa. Super. 653, 538 A.2d 947 (1987), appeal denied, 518 Pa. 640, 542 A.2d 1369 (1988).

Defining Concepts of
Due Process and Fair Trial

In a long line of cases that includes Powell v. Alabama, 287 U.S. 45 (1932), Johnson v. Zerbst, 304 U.S. 458 (1938), and Gideon v. Wainwright, 372 U.S. 335 (1963), the Supreme Court recognized that the Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial. The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, [including the Counsel Clause]:

> " In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

Thus, a fair trial is one in which evidence subject to adversarial testing is presented to an *impartial tribunal* for resolution of issues defined in advance of the proceeding. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The Supreme Court has insisted that no one be punished for a crime without "a charge fairly made and fairly tried in a public *tribunal free of prejudice, passion, excitement, and tyrannical power*." Chambers v. Florida, 309 U.S. 227, 236-237 (1940) [emphasis added]. The undeviating rule of the Supreme Court was

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

expressed by Mr. Justice Holmes nearly a century ago in Patterson v. Colorado, 205 U.S. 454, 462 (1907):

> "The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print."

Necessity of Proof of Prejudice

In Turner v. Louisiana, 379 U.S. 466 (1965), two key witnesses were deputy sheriffs who doubled as jury shepherds during the trial. The deputies swore that they had not talked to the jurors about the case, but the Court nonetheless held that, "even if it could be assumed that the deputies never did discuss the case directly with any members of the jury, it would be blinking reality not to recognize the extreme prejudice inherent in this continual association . . . ." 379 U.S. at 473.

Similarly, in Estes v. Texas, 381 U.S. 532 (1965), the Supreme Court set aside a conviction despite the absence of any showing of prejudice, and stated: "It is true that in most cases involving claims of due process deprivations we require a showing of identifiable prejudice to the accused. Nevertheless, at times a procedure employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process." 381 U.S. at 542-543. See also Sheppard v. Maxwell, 384 U.S. 333, 86 S. Ct. 1507, 16 L. Ed. 2d 600 (1966).

In summary, the highest secular court of the land has consistently concluded, as stated by Mr. Justice Black for the Court in In re Murchison, 349 U.S. 133, 136 (1955), that "our system of law has always endeavored to prevent even the probability of unfairness."

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

Application of Canon Law

While the foregoing represent only fundamental principles of all jurisprudence, there is specific application of those principles in Canon Law. Rule 1 of Appendix A to Title IV of the Canons permits rule-making by Trial Courts, "provided the same shall not cause material and substantial injustice to be done or seriously prejudice the rights of the parties." Title IV, Canon 4, Section 10 provides that the Trial Court shall be governed by the Federal Rules of Evidence in the conduct of the trial, and Rule 102 of the Federal Rules provides:

> "These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Further, Canon 14 of Title IV, which provides general principles applicable to all proceedings under Title IV, specifically addresses Appellant's concerns in Section 9:

> "**Influencing Proceedings.** No person subject to the authority of this Church may attempt to coerce or by any other means improperly influence, directly or indirectly, the actions of . . . an Ecclesiastical Trial Court . . . or any member thereof or any person involved in such proceedings in reaching . . . the findings, Judgment or Sentence of any Trial Court or any review thereof. . . "

This section imposes a specific prohibition against any person improperly influencing the proceedings of the Trial Court. Appellant contends that, by design or otherwise, the following actions of the Bishop and his staff, by design or otherwise, could only have seriously impacted upon the fairness of the tribunal:

A. Bishop Marshall, communicated *ex parte* with the members of the Trial Court, before the commencement of proceedings before that court, essentially directing how the proceedings should be conducted, and that they should be open to the public. See Trial Notes of Testimony [hereafter "N.T."] at

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

Page 9 missing from original document

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

See correspondence from then counsel for Appellant to the President of the Standing Committee, dated April 22, 2002, requesting a hearing and stating the reasons for same. [Although the original of this letter may be part of the record in this matter, it was not among the documents submitted to appellant for reproduction pursuant to Title IV, Canon 4, Section 40, nor were any of the exhibits identified and admitted in proceedings before the Trial Court. Accordingly, the letter is attached hereto as Exhibit A]

E. Respondent was required to proceed to trial without receipt of discovery materials, including prior statements by witnesses, despite reasonable and timely requests for same. In fact, Respondent did not receive a response to this request, and first received the statements during trial. [N.T. 68 *et seq.*]

F. During the trial, the Church Attorney was consulted by, and consulted with, the Archdeacon, apparently acting on behalf of Bishop Marshall. Further, during the trial the Church Attorney referred to the Bishop and/or his office as "my client" before the Trial Court, once again conveying to the Trial Court the impression of input by the Bishop.

G. The Trial Court has stated that it consulted with a neighboring Diocese regarding the findings of fact, without advising Respondent as to the specifics of those contacts, information requested and received, thereby inserting a potential and unknown extra-judicial influence into the proceedings.

H. As a result of the actions of Bishop Marshall, Respondent himself filed a complaint alleging misconduct by Bishop Marshall with the Presiding Bishop, in which complaint he alleges that his trial proceedings had been, and

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

were being, unfairly and improperly influenced by Bishop Marshall. Respondent requested a continuance of the proceedings before the Trial Court until disposition of his complaint to the Presiding Bishop, which request was denied. The decision to proceed, particularly when the nature of the complaint was known to the Trial Court, was improper and gives at least the appearance of bias or partiality.[3]

Each of the foregoing indicates some likely effect upon Respondent's due process and fair trial rights, and suggests noncompliance with Title IV, Canon 14, Section 9. Taken as a whole, they deprived Respondent of these rights, and should result in a new trial or further relief by this Court. One is reminded of the admonitions of Mr. Justice Black that "our system of law has always endeavored to prevent even the probability of unfairness,"[4] and Mr. Justice Holmes observation that the "theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print."[5]

While there can be no showing of actual prejudice to the Appellant, he deserves, and the fair adjudication of such a sensitive issue requires, a fair and impartial hearing. The actions of the Bishop and his staff, whether intended or not, inserted the Bishop's expectations into the proceedings, in a way that may have been of some influence, even subtly, upon the Trial Court. Under these circumstances, it ought not to be the province of the appellant to prove the prejudice, but the obligation of the Church to prove that it did not occur.

---

[3] See discussion at N.T. 13, *et seq.*, and references to Appellant's letter of Complaint, which was markes as Exhibit 2 [N.T. 33]. A copy of Exhibit 2 is attached hereto as Exhibit B.
[4] In re Murchison, *supra.*, p. 7 *infra.*
[5] Patterson v. Colorado, *supra.*, p. 6 *infra.*.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

Appellant should be granted a new trial.

2. Improper Trial Rulings.

These issues deal with various rulings by the Trial Court, which are alleged to have been improperly made.

A. The Trial Court improperly admitted and considered, in its decision as to whether the Respondent had committed certain alleged acts of immorality, evidence of statements of Respondent admitting said wrongdoing without independent evidence of the commission of same, thereby violating the principles of the *corpus delicti* rule, a rule of evidence with both precedential and logical application in this case.

Historically, the *corpus delicti* doctrine incorporated the "almost-universal American rule" that in order to convict a defendant of a crime based upon an extrajudicial confession or admission, the defendant's statement must be corroborated by some evidence of the *corpus delicti*. W. LaFave & A. Scott, Criminal Law § 1.4 (2d ed. 1986). The major purpose of the rule is to prevent "errors in conviction based upon untrue confessions alone." Warszower v. United States, 312 U.S. 342, 347, 85 L. Ed. 876, 61 S. Ct. 603 (1941); see also Comments, Corroborating Confessions: An Empirical Analysis of Legal Safeguards Against False Confessions, 1984 Wis. L. Rev. 1121, 1155 (concluding that "physically uncoerced false confessions occur with sufficient regularity to justify prophylactic measures").[6]

In Opper v. United States, 348 U.S. 84, 99 L. Ed. 101, 75 S. Ct. 158 (1954), the

---

[6] Corroboration is also a factor to be considered in weighing the sufficiency of evidence. Therefore, if this Court determines that the admission is not clearly erroneous, it must also decide whether a rational trier of fact could have found the defendant responsible for the alleged misconduct based on the confession and the corroborating evidence. See, e.g., United States ex rel. Hayward v. Johnson, 508 F.2d 322, 330 (3d Cir.) (noting the court's need to decide two separate questions: the admissibility of the confession based upon the extent of corroboration and the general sufficiency of the evidence to support a jury's inference that the confession was truthful), cert. denied, 422 U.S. 1011, 95 S. Ct. 2637, 45 L. Ed. 2d 675 (1975).

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

Supreme Court applied the corroboration rule to both confessions and admissions, emphasizing that both had the same possibility for error. Id. at 92. In Opper, the Court rejected the original corpus delicti doctrine, holding instead that confessions, admissions, and exculpatory statements must be corroborated by "substantial independent evidence which would tend to establish the trustworthiness of the statement." 348 U.S. at 93.

Federal Rule of Evidence 801(d)(2) would appear to render such a statement admissible, despite the above, because it was allegedly made by the Appellant, a party to the proceeding, and it was offered by the party's opponent. However, in cases after the adoption of the Rules, the requirement for substantial evidence of trustworthiness remains. As noted by the Third Circuit, "Federal courts, and a number of state courts, have adopted the 'trustworthiness' doctrine that emphasizes the reliability of the defendant's confession over the independent evidence of the corpus-delicti." Government of the Virgin Islands v. Harris, 938 F.2d 401, 409 (3d Cir. 1991). Indeed, as the Third Circuit noted in Harris, the Supreme Court adopted the Trustworthiness Doctrine as the "best rule" in Opper v. United States, supra, and Smith v. United States, 348 U.S. 147, 99 L. Ed. 192, 75 S. Ct. 194 (1954) See also Jordan v. Warden, 1998 U.S. Dist. LEXIS 13475 (USDC, MDPA 1998).

The statement to which reference is made was made during the testimony of H[redacted] and consisted of an admission by Appellant that he had slept next to A[redacted] had stroked his head, and had masturbated [NT 235-236], and the further statement that he had made observations of Mr. [redacted] genitals while in a shower [N.T. 241]. While these statements may have been admissible for the *fact* that

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

appellant made such statements to a youth parishioner, they were urged upon the Trial Court as proof of the occurrences, which in turn were alleged to have been the evidence [virtually the *only* evidence] of immorality. For the reasons indicated above, they should not have been admitted or considered for this purpose.[7]

B. The evidence was insufficient to sustain many of the charges on which the Trial Court judged that Respondent had committed same.

While a thorough and exhaustive review of the evidence presented against Appellant is not within the scope of this Brief, it is fair to state that, taken as a whole, and without the improper conclusions referred to in the prior section of the Brief, the evidence presented against Appellant, if believed, established that, in the course of the performance of his duties, he developed an inappropriate relationship with two young adults then aged approximately 17 and 18, consisting of personal and occasionally intimate discourse; apparent affection and favoritism for these youths; extensive telephone and e-mail contact with the youths; and a threat to reveal personal information if the youths revealed details of his relationship with them.

Definition of Immorality

Although not defined in Canons, immorality has been defined in the context of education by the courts as "a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate." Horosko v. Mt. Pleasant Township School District, 335 Pa. 369, 6 A.2d 866 (Pa. 1939); Dohanic v. Commonwealth of Pennsylvania, Dept. of Education, 111 Pa.

[7] Counsel is aware that the statements were received without objection; their admissibility cannot therefore be challenged. However, their status as proof of the occurrences is open to serious question, given the absence of any corroborating evidence.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

Commw. 192, 533 A.2d 812 (Pa. Cmwlth. 1987). To demonstrate immorality, it must be established that the conduct claimed to constitute immorality actually occurred, that such conduct offends the morals of the community, and that the conduct is a bad example to the youth whose ideals the teacher is supposed to foster and elevate. Kinniry v. Abington School District, 673 A.2d 429 (Pa. Cmwlth. 1996). See also Zelno v. Lincoln Intermediate Unit, 786 A.2d 1022 (Pa.Super. 2001).

Conduct Unbecoming a Member of the Clergy

Such conduct is defined in Title IV, Canon 15, as follows:

> "**Conduct Unbecoming a Member of the Clergy** shall mean any disorder or neglect that prejudices the reputation, good order and discipline of the church, or any conduct of a nature to bring material discredit upon the Church or the Holy Orders conferred by the Church."

Application of Legal Standards

No members of the community under the jurisdiction of the Appellant testified that his conduct offended the morals of their community and set a bad example for youth. Further, no one stated that the reputation, good order or discipline of the Church was affected, or the good name of the Church impugned, by the conduct of the Appellant.

It is submitted, therefore, that the evidence is insufficient, with or without such testimony, to meet the standards applicable to these determinations, and the proceedings should have been dismissed. Stated otherwise, the evidence was insufficient, and the matter should now be dismissed.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

C. The sentence imposed by the Trial Court was unduly harsh, given the Respondent's record of service, and in light of the nature of the charges for which substantial evidence was presented.

Respondent's Position on Offenses

While Father Bragg has contested the accuracy of the charges presented to the Court for its consideration, and continues to deny many of the particulars of the Presentment, he understands and agrees that the nature and extent of the relationship between himself and the alleged victims, and some of the subjects about which he and they confided, were inappropriate, and deserve discipline. The depiction by the Church Attorney at sentencing of Father Bragg as a defiant, unrepentant respondent is both unfair and unjustified by his actions, and positions, taken in response to the Presentment.

Father Bragg noted at sentencing his regret for the decision to challenge so seriously the particulars of the allegations against him, without expressing the concurrent and genuine belief that the sense of many of the charges *was* accurate. The proceedings were, as they are intended to be, adversarial in nature, and Father Bragg and his counsel found no opportunity in that context to present these opinions without appearing to acquiesce in the conclusion that he had somehow acted immorally, a conclusion he continues to deny. Answers to specific allegations were made, and the specifics of the testimony were refuted where appropriate. What was not accomplished was an expression of Father Bragg's concern and sorrow over the ways in which his conduct, and the nature and extent of his relationships, had brought apparent harm to others. The particulars of the charges remain in dispute; the fact that his conduct was inappropriate was never in dispute.

This Court is not, therefore, involved in reviewing a sentence of an unrepentant or

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

irredeemable Priest, but rather a dedicated Priest, proud of his position and work, who wishes fervently to be permitted to make amends, repair his personality and methods, and resume his life's work.

Personal and Psychiatric History

Father Bragg has been involved in youth ministry for over twenty years. He realized a lifelong dream upon his ordination seven years ago. All who have known him knew of his wish to participate in this ministry from his boyhood onward. He believes that, with the exception of the events charged in the presentment, he has functioned tirelessly and well in this endeavor. While the harm found by the Court must be considered in fashioning an appropriate sentence, the years of good and productive work must not be ignored in this process.

In the year leading up to the events charged in the Presentment, Father Bragg suffered a number of personal difficulties, including the death of his father-in-law, and the loss of an unborn child. In addition his father died shortly after the Presentment, a loss made all the more difficult by the nature of their relationship, and the fact that a number of issues between them remained unresolved. Father Bragg struggled with depression, essentially unaware of the nature of his condition or the effect it was having on all aspects of his life, obviously including his ministry. Not long before these events occurred, he began consulting with a psychiatrist, but the treatment afforded consisted only of medications, and it eventually became apparent that much more was needed.

After the filing of these charges, Father Bragg essentially collapsed, and spent several months in the intensive outpatient psychiatric program at Muhlenberg Hospital Center, where he underwent regular and frequent individual and group psychotherapy.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

After his discharge from that program, he has continued under the care of a psychiatrist and psychotherapist to the present. In that process he has gained substantial insight into the existence and control of the issues which appear to have played some part in the occurrences alleged in the Presentment.

Father Bragg does not contend that the existence of a psychological component in his actions makes him blameless. It is suggested, however, that, in determining the correct punishment in this matter, his condition at the time these events occurred should have been considered.

Social Context of these Proceedings

It is appropriate, in reviewing the propriety of the sentence, to guard against any bias resulting from the recent very public difficulties experienced by the Roman Catholic Church. To the extent that the Trial Court's findings are affirmed, punishment is appropriate and expected. Concern over how the sentencing decision will be perceived is justified, and this should be considered. Harm to the Church and its reputation is among the factors which must be considered. However, it would be offensive to the Canons for this to become an overriding concern in this process.

Appropriate Sentence

It is suggested that the appropriate sentence should have been in the form of a Suspension with appropriate conditions. Given the conduct found by the Court to have occurred, an Admonition would appear to be an insufficient response. On the other hand, Deposition would likewise appear to be far too overwhelming a punishment under the circumstances.

Father Bragg has a significant positive history within the Church and his Diocese.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

He acknowledges wrongdoing, and is anxious to correct those things that made it occur. He has acted responsibly, if belatedly, in treating his depression. He is a devout and ardent follower of the precepts of his faith. His offenses, while deserving of punishment, are not so heinous as to require Deposition. He was, and will be again, an asset to this Church and its ministry. He has paid a substantial financial and personal penalty to date. A sentence of Suspension is appropriate.

Given the conduct found by the Court, and if those findings are sustained by this Court, it is proposed by Appellant that his sentence be modified to a Suspension of not more than two years, beginning with the date of his Temporary Inhibition, with appropriate conditions. "Appropriate conditions" should include continuing psychotherapy, and some appropriate level of reporting by the Respondent and his therapists to the Standing Committee at the conclusion of the period of Suspension, recognizing that any such reporting must be consistent with the confidentiality requirements of the counseling profession.

D. The severity of the discipline is unduly harsh, given the extent of discipline imposed in similar cases, including that imposed in the case of Bishop Charles I. Jones, a Bishop in Montana found to have had an extra-marital affair with a church member, for which a suspension was found to have been the appropriate sanction.

While there is no codified requirement of proportionality, there is also no reason not to consider how other Ecclesiastical Courts of the Episcopal Church have decided issues of appropriate punishment. Although Appellant has limited information as to the details of the Montana proceeding, it has been reported by the Episcopal News Service, and is reported to have involved an affair by the Bishop with a parishioner, for which the

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

Bishop was originally deposed.[8] Eventually, the Court of Review concluded that suspension was the appropriate sanction, and directed that his sentence be modified accordingly.

It is suggested that, given the absence of any disciplinary history for the appellant, and his record of commitment and service, as well as the absence of proof of any actual sexual misconduct, the sanction should be revisited and revised.

E. The request for a sentence of deposition, after the Bishop had offered to Respondent a Submission to Discipline, based upon an admission of all of the charges against Respondent, with significantly lesser penalty, amounted to the imposition of a punishment to Respondent for exercising his canonical right to a trial on these charges.

The Supreme Court has held that "while an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right." United States v. Goodwin, 457 U.S. 368, 372, 102 S. Ct. 2485, 2488, 73 L. Ed. 2d 74 (1982). It is also well settled that to "punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort." Bordenkircher v. Hayes, 434 U.S. 357, 363, 98 S. Ct. 663, 668, 54 L. Ed. 2d 604 (1978), quoted in Goodwin, 457 U.S. at 372, 102 S. Ct. at 2488. Thus, it is an elementary violation of due process for a prosecutor to engage in conduct detrimental to a criminal defendant for the purpose of penalizing the defendant for exercising his constitutional right to a trial. United States v. Meyer, 258 U.S. App. D.C. 263, 810 F.2d 1242, 1246-47 (D.C. Cir.), vacated, 816 F.2d 695 (D.C. Cir.), and reinstated sub nom. Bartlett on Behalf of Neuman v. Bowen, 263 U.S. App. D.C. 260,

[8] Although no other documentation is available to Appellant, he has secured copies of the articles from the Episcopal News Service, which are attached hereto as Exhibit C.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

824 F.2d 1240 (D.C. Cir. 1987), cert. denied, 485 U.S. 940, 108 S. Ct. 1121 (1988); see Goodwin, 457 U.S. at 372, 102 S. Ct. at 2488; Bordenkircher, 434 U.S. at 363, 98 S. Ct. at 668.

While this is not a criminal proceeding, we are dealing with a proceeding with profound personal and professional consequences for the Appellant and others. The fact that the same authority which offered Appellant a submission to discipline including a suspension [with conditions] later demands deposition after a trial certainly hints strongly at punishment being imposed for selecting a method of disposition permitted and protected by the Canons.

F. Respondent believes that a review of this sentence, compared to sentences in other similar cases, will result in a conclusion that the sentence imposed was unnecessarily harsh.

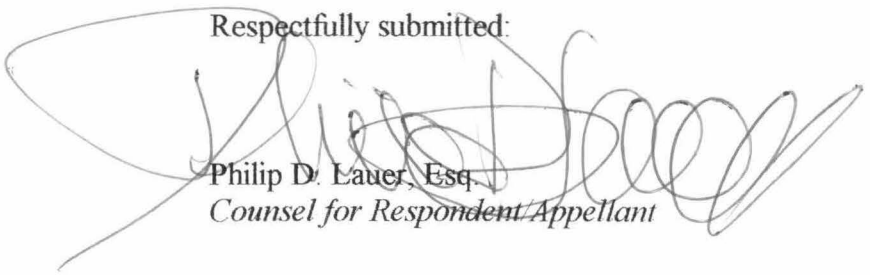
Appellant has no authority to cite in this regard, but is hopeful, and confident, that an examination of other similar proceedings, where same can be found, will demonstrate that the selection of the most severe penalty, for conduct significantly less egregious than that often publicly reported, is inappropriate both with regard to the need to fit the punishment to the offense, and because the integrity of a progressive system of discipline is compromised by the selection of the most severe sanction in this case.

CONCLUSION

For the reasons indicated, Appellant requests this Court's careful review of whether the evidence makes out the offenses charged. If so, the punishment should be reviewed, and revised to provide for a reasonable period of suspension.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

Respectfully submitted:



Philip D. Lauer, Esq.
Counsel for Respondent/Appellant

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

EXHIBIT A

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

LAW OFFICES
COSLETT & COSLETT

E. CHARLES COSLETT
(1920 - 1988)
CHARLES R. COSLETT

April 22, 2002

The Rev. Henry J. Pease
President
The Standing Committee of
the Diocese of Bethlehem
333 Wyandotte St.
Bethlehem, PA 18015

Re: Extension of Temporary Inhibition
against the Rev. Dane C. Bragg

Dear Rev. Pease:

I have received and reviewed the extended inhibition dated April 15, 2002. The addition to the inhibition, whereby my client is prohibited from publicly referring to himself as a priest is so inherently contradictory and canonically unenforceable as to almost not justify a response.

However, pursuant to Title IV, Canon 1, Section 2(d), demand is hereby made for a hearing concerning this addition to the inhibition. Further, since the Standing Committee is the issuing authority in this case, canonical due process would require that this hearing be held before a body other than the Diocesan Review Committee, which in the Diocese of Bethlehem happens to be the Standing Committee. Accordingly, on behalf of my client I waive the fourteen (14) day time limit within which to hold the hearing, so that the Standing Committee can determine the appropriate composition of a review committee which can review this objectionable addition to the inhibition.

To order that my client may not publicly refer to himself as a priest would suggest that the extended inhibition "Issued against the Reverend Dane C. Bragg" is void ab initio, unless you are referring to another priest, since Canon 1, Section 2(a) allows an inhibition **only against a priest** or deacon. Further, if my client may not refer to himself as a priest, then how can the presentment have issued? Canon 1, Section 1 of Title IV only makes **bishops, priests, and deacons** liable to presentment. Further, the addition to the temporary inhibition violates the spirit, if not the letter of Canon 1, Section 7, which acknowledges the extraordinary nature of a

Tel.: (570) 714-0001 THE COSLETT BUILDING 312 Wyoming Avenue Kingston, PA 18704-3504 Fax: (570) 714-0002

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

temporary inhibition, to be used sparingly and limited to preventing immediate and irreparable harm to individuals or the good order of the Church.

Given the presumption of non-commission of the offense (Canon 14, Sec. 14) and the standard of proof necessary to support the establishment of the offense (Canon 14, Sec. 15), the aforementioned addition to the inhibition, without articulation as to the reasons therefor, cf. Canon 1, Section 2(b), suggests that the Canons cited in this paragraph are nonexistent in the Diocese of Bethlehem.

The argument made herein is but some of the reasons why a hearing is demanded. Further canonical argument will follow at the hearing. The failure to set forth all additional reasons should, therefore, not be construed as a waiver of any further issues to be articulated before the review committee.

Please note that I am not available for hearing until on or after May 7, 2002, but would expect that the hearing be scheduled as soon thereafter as possible.

Very truly yours,

COSLETT & COSLETT

CHARLES R. COSLETT

pc: James A. Bartholomew, Esquire

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

EXHIBIT B

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

Dane & Donna Bragg
2902 Hodle Avenue
Easton, PA 18045
August 1, 2002

The Most Rev. Frank T. Griswold, III
815 Second Avenue
New York, NY 10017
Fax: 212-490-3298

Dear Bishop Griswold,

It is with a great deal of personal frustration that I send you this complaint against the Right Reverend Paul V. Marshall, bishop of the Diocese of Bethlehem. Complaints were made against me last October. Bishop Marshall believing the complaint was with merit turned it over to the standing committee (there is no diocesan review committee in the diocese). The Standing Committee hired a church attorney to investigate (one had never previously been appointed) and, once a presentment was issued, prosecute the case. A trial date has been set for August 19. Bishop Marshall has continued during this entire time to meddle in the proceedings, even during his 6 month sabbatical. Listed below are the complaints:

Violation of Title IV Canon 14.11 – By directing the Rev. Dane C. Bragg to make a statement in response to charges against Fr. Bragg and not informing him of his right to council and his right to remain silent.

Violation of Title IV Canon 14.10 – By advising the Rev. Dane C. Bragg he did not need legal council until and if a presentment was issued.

Violation of Title IV Canon 1.7 – By issuing a punitive temporary inhibition against the Rev. Dane C. Bragg which included restrictions not necessary for "preventing immediate and irreparable harm to individuals or to the good order of the Church."

Violation of Title IV Canon 3.5 – By firing the Rev. Dane C. Bragg from his diocesan staff position for alleged charges against him there by making a judgment as to the validity of the allegations against Fr. Bragg.

Conduct unbecoming a member of the clergy – Telling the Rev. Dane C. Bragg that he should know better than to try to "play hard-ball" with Bp. Marshall.

Conduct unbecoming a member of the clergy – Without cause telling Donna L. Bragg that he would have her physically removed from the premises if she showed up for diocesan youth events that she had committed to help lead after previously telling her she was welcome to continue in that ministry.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

Violation of Title IV and Conduct unbecoming a member of the clergy/Abuse of power – By proposing a non-canonical response to charges against the Rev. Dane C. Bragg and therefore forcing Fr. Bragg to obtain legal council to get the diocese to follow canonical procedures.

Violation of Title IV Canon 14.9 – Attempting to influence the case against the Rev. Dane C. Bragg by falsely stating publicly that the Fr. Bragg confessed to being guilt of the charges against him.

Conduct unbecoming a member of the clergy/Abuse of power and Violation of Title IV Canon 14.9 – By tampering with the temporary inhibition issued by the standing committee in the Bishop Marshall's absence by having the punitive, non-canonical and theologically unjustifiable addition to the original temporary inhibition "the ACTS PROHIBITED set forth in the original NOTICE OF TEMPORARY INHIBITION, it shall be prohibited for him to publicly refer to himself as a priest." This addition was without provocation and not actually approved by the Standing Committee at their meeting. When Chancellor Beers was contacted, the Bishop returned from sabbatical and reissued the temporary inhibition with this line still included. Bishop Marshall's tampering with the work of the Standing Committee functionally eliminated my canonical recourse to challenge the inhibition by appealing it to this committee.

Violation of Title IV Canon 14.9 – Influencing the actions of the Review Committee/Standing Committee and the Church Attorney (whose client is the Standing Committee, not the bishop) by controlling plea negotiations between the Church Attorney and the attorney for the Rev. Dane C. Bragg. On this charge my attorney, Charles Cosslett (570-714-0001), has all the evidence and is ready to join us as a co-complainant.

Bishop Marshall's addition to my temporary inhibition is virtually impossible to follow and therefore setting me up for more canonical charges. His proposed submission to discipline gives him full and unchallengeable authority over when and if I am ever readmitted to active ordained ministry. It is clearly an attempt to bypass the canonical suspension which he would not have control over in a case where a deposition would be unjustifiable. Bishop Marshall is clearly "playing hard ball" with no desire to discover justice or the truth in this case. As a result of his actions I no longer believe I can obtain a fair trail nor do I believe the evidence and testimony of witnesses against me is uncontaminated by the bishop's actions.

It would be my greatest desire to be able to submit to discipline for those things that I am responsible, having the additional charges dismissed and have a reasonable disciplinary action imposed. However, what Bishop Marshall has proposed is that I plead guilty to all charges and the discipline he has proposed is for stricter than would normally be imposed if I were guilty of all charges. Shy of a reasonable opportunity to submit to discipline, I am looking to get a fair and unbiased trial. I do not feel that I can get that as long as Bishop Marshall is allowed to influence and control the standing committee, church attorney and the ecclesiastical court.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

As many in and out of the Diocese of Bethlehem have commented, something is just not right in this diocese. I believe Bishop Marshall's handling of my case is just another symptom of that. In investigating my charges I would encourages you to discuss with Betsy Boyd and Bishop Robert Rowley their concerns about the diocese. Also, if you deem it appropriate, I ask that you inhibit Bishop Marshall from having any contact, direct or indirect, with Church Attorney James A. Bartholomew, and from discussing me or the charges against me with anyone until the completion of trial. As bishop, he has completed all is duties under Canon IV until and only if I am found guilty and the court recommends a sentence.

I look forward to your swift reply.

Yours in Christ,

(The Rev.) Dane C. Bragg

Donna L. Bragg

CC: Charles R. Cosslett

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

EXHIBIT C

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

2001-120

Former Montana bishop appeals sentence of deposition

by Jan Nunley

(ENS) Former Montana bishop Charles I. "Ci" Jones filed an appeal May 11 to the Court of Review of the Trial of a Bishop, challenging the final judgment of the Court for the Trial of a Bishop deposing him, on multiple grounds of "reversible error."

The case concerns sexual misconduct with a woman parishioner and employee of a parish in Russellville, Kentucky, where Jones was rector prior to his election as bishop of Montana in 1986. The misconduct took place from 1981-83. Jones submitted his resignation to the diocesan council effective Ash Wednesday, February 28, following a February 14 decision by the Court for the Trial of a Bishop deposing him for sexual misconduct.

Jones' 17-count appeal disputes virtually all the actions of the trial court in the case, including denials of multiple motions made by Jones' attorneys to dismiss it entirely based on a plea of "former jeopardy." Jones maintains that he had already been disciplined by former Presiding Bishop Edmond Browning for his misconduct, and that filing of the case in the wake of revisions to Title IV of the canons is the ecclesiastical equivalent of a second accusation and trial on identical charges.

The court's decision countered that the presiding bishop does not have the canonical authority to discipline a sitting diocesan bishop, and therefore any "pastoral" arrangement Jones made with Browning would not affect the possibility of future action against him.

Filing of civil suit denied

The appeal also alleges "improper influence" on the court by Presiding Bishop Frank Griswold, in calling for a sentence of deposition.

But reports that Jones has filed a civil suit against Griswold or the national offices of the Episcopal Church are untrue, said Jones.

"No, a civil suit has not been filed," Jones explained in an email to ENS. "Normally, one has to exhaust all administrative remedies prior to bringing a cause of action before a civil court." When he resigned in February, Jones agreed as part of his settlement not to sue the Diocese of Montana, its members or other groups and individuals associated with it.

"My hope remains that somehow the truth will become public, but there are very strong forces working against that," he said, but did not specify any individuals or groups.

As for the possibility of future service in the Episcopal Church, Jones was doubtful. "I think this is such a remote possibility that we haven't even considered it...I think in all

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

seriousness that I have probably been pretty much black-balled from any consideration for another position in the church--even as a lay person," he wrote. "We'll just have to see what God does with all of this."

Staying in Montana

Despite the appeals and other legal procedures that are still in progress, Jones said that he is not planning big changes in his life. "Ashby and I have decided, with the help of our therapists and our four sons, that we will not make any major decisions for one year," he said. "We have been under so much stress for so long (fifteen years without a sabbatical or real vacation) that we really do not know what it is like not to have the tremendous workload of a diocese with this geography and personality."

Jones denied rumors that he and his wife plan to move from Montana, or even leave the United States. "We plan to appeal the court's decision and continue living in Montana, the state we have grown to love," he wrote. "We will ride our Harley-Davidsons and ski a lot... we plan to enjoy our freedom and lives with our family."

In exchange for Jones' resignation in February, the diocesan Standing Committee and Diocesan Council had agreed to give him a $170,000 settlement which included forgiving his home mortgage with the diocese.

--The Rev. Jan Nunley is deputy director of the Episcopal News Service.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

2002-114

Appeals court affirms guilt, reduces sentence in Montana sexual misconduct case

by Jan Nunley

(ENS) The Court of Review for the Trial of a Bishop on May 1 reaffirmed that former Montana bishop Charles I. "Ci" Jones is guilty of immorality and conduct unbecoming a member of the clergy because of a sexual relationship with a parishioner which ended prior to his election as bishop. But the appellate court reduced Jones' sentence from deposition to a five-year suspension.

The action means that Jones remains a bishop of the Episcopal Church, but without seat in the House of Bishops. Jones resigned his position as bishop of Montana in February 2001, and appealed the lower court's sentence that May.

The decision marks the first time that such a Court of Review has been convened in the history of the Episcopal Church in the U.S.

Boundary violations not all sexual

The appeals court ruled that affidavits, submitted during the sentencing phase, which sharply criticized Jones' "leadership or management performance" as a bishop were "inadmissible" because they were irrelevant to the issue of his sexual misconduct as a priest. The lower court "seems to have assumed that one form of abuse is equivalent to another form of abuse," the appeals court said. "While all sexual exploitation may be a boundary violation, all boundary violations are not sexual exploitation.

"This Court notes (with some relief) that being an ineffective bishop or having difficulties as a bishop in management and leadership is not, in and of itself, a violation of the Canons; nor is it a violation to have a group of people in a diocese upset with the diocesan," the court said. The court added that none of the affidavits alleged any other sexual misconduct by Jones, or indicated that he was at any future risk of such misconduct.

The appeals court specifically denied Jones' assertions that either Presiding Bishops Browning and Griswold or their staffs exerted "undue influence" on the lower court's decision.

Conditions set for suspension

In reducing the sentence, the court set a series of conditions which Jones must meet. If he fails to comply, the original sentence of deposition will be automatically reinstated.

Within 90 days, Jones must undergo a multi-disciplinary examination by a health care provider selected by the presiding bishop and paid for through his office. Jones will have

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.

to pay for any therapy required as a result of this examination. That therapist must be selected by Bishop Clay Matthews, executive director of the Episcopal Church's Office of Pastoral Development, and by the original examiner.

Jones and Matthews will also agree on a reimbursement of the cost of the complainant's therapy. If they can't come to an agreement, they will ask the court to determine the amount and payment schedule.

After the five years are up, Jones must have a medical and psychological exam determining that he is fit for service before his suspension can be terminated. He has to request the exam and it must be performed by an examiner appointed by the presiding bishop and paid through his office.

Pronouncement by Griswold

According to the order by the court, the presiding bishop will pronounce Jones' sentence by May 31 at a location Griswold determines. Jones can choose whether or not to attend. Griswold then directs the clerk of the appeals court to show the date and time sentence is pronounced on the documents. Griswold then notifies the appropriate parties that the sentence has been pronounced.

In a cover letter to Griswold, presiding judge O'Kelley Whitaker expressed thanks for the "beautifully collegial fashion" in which the review court worked and remarked that "in many ways it has been a painful task, yet we have all experienced God's grace throughout."

The review court consisted of bishops Clifton Daniel III (East Carolina); Dorsey F. Henderson (Upper South Carolina); John B. Lipscomb (Southwest Florida); D. Bruce MacPherson (Dallas); Larry E. Maze (Arkansas); Richard L. Shimpfky (El Camino Real); Chester L. Talton (Los Angeles); Franklin D. Turner (Pennsylvania); and presiding judge O'Kelley Whitaker (Central New York).

--The Rev. Jan Nunley is deputy director of Episcopal News Service.

I did a search on "misconduct" and could not find any other cases they covered.

Copyright 2019. Domestic and Foreign Missionary Society. Permission required for reuse and publication.