THE POLITICS OF A SEXUAL HARASSMENT CASE[1]

Ronald R. Stockton

This is a study of a church conflict that got out of control. It is not a pleasant story, but it is one repeated around the country. The underlying facts are familiar: a pastor is accused of power abuse and sexual harassment; inexperienced congregational leaders fail to act; district leaders prove inconsistent and ineffective; members file charges in the church courts; those who raised concerns are seen as the problem and are subject to retaliation; there is a civil lawsuit; the church is wrecked.

The key questions are why this conflict went on for three years, why it went so far awry, and why it led to such destruction. District officials said there was no credible evidence that the minister had done wrong and they supported him in his successful effort to find another church. They concluded that the complaining women and their supporters were at fault. While the church was Presbyterian and the specifics reflect the unique polity of that denomination, what happened seems to illustrate an institutional pattern that goes well beyond one denomination. (See Shupe, 1995, for a comparative analysis of cases).

SOME RESEARCH

A standard work on pastoral abuse and why such problems are mishandled by church leaders is Marie Fortune's 1989 study, *Is Nothing Sacred*?. It involves a minister who was a sexual predator. Local leaders failed to deal with him and district leaders tried to negotiate with him. The minister began a campaign to discredit his accusers and mobilize support. The congregation was severely damaged.

Fortune says that to blame the leadership misreads the problem. She believes organizations go wrong for reasons that have little to do with the merits of those in charge. Most people want to do what is right but use a logic that leads them astray. An institution "acts first on what it perceives to be its self-

[1] Published in *Bad Pastors*, edited by Anson Shupe, William A. Stacey, and Susan E. Darnell, Epilogue by Andrew M Greeley, NYU Press, 2000. This case is presented in the interests of scholarly discourse and for those who might learn from the mistakes of others. It should not be used to harm to any person, nor should there be any attempt to identify any party herein. By way of disclosure, the author was a member of the congregation in which the case occurred. He was a supporter of the minister who joined his detractors and was among those who left the church.

interest. Seldom does it identify its self-interest to be the same as the interests of the people it is supposed to serve" (p. xiv).

Officials confronted with allegations of abuse often make three mistakes, according to Fortune. They shoot the messenger, misname the problem, and blame the victim (p. 120). They redefine the problem as conflict to be mediated and speak of reconciliation or forgiveness. But pastoral abuse is "not a conflict between individuals." One person has "caused harm to others, to the church, and to the profession of the ministry" (p. 66). By engaging in a pattern of evasion, equivocation, misrepresentation, and denial, officials construct a "stone wall" against resolution.

Shupe (1995), who analyzed scores of cases, says church leaders confronted with complaints of clergy malfeasance “act to protect either their own clerical prerogatives or the larger religious group itself” (p. 80). They use three techniques to “neutralize” grievants. Normative techniques involve symbolic or emotive appeals to victims not to press for redress. Remunerative techniques propose some financial settlement in exchange for dropping an appeal. Coercive techniques threaten physical, legal, or moral sanction if the appeal is pursued. “[H]aving abandoned the rhetoric and logic of the first two types of appeals, [coercive appeals] stress fear and reprisals of ecclesiastical discipline.” In other words, “the gamut of tactics ranges from cajoling to strong arming” (p. 87).

Rutter (1989), who has done research on male professionals who abuse females in their care, thinks male-dominated authority structures cover up violations less out of wickedness than to protect system legitimacy. The problem grows from a paternal mind set in which fathers try to control sons. "The effort to maintain authority takes precedence over truth, both emotional and factual. Suppression of truth is seen as necessary to preserving order..." (p. 119).

Rutter says religious organizations "desire to handle their ethical problems far away from the public eye" and may even conceal codes of conduct and discipline procedures (p. 186). They make the investigation process so difficult that women avoid it if possible. Men considering boundary violations are emboldened by the knowledge that "Most women never speak out..." (p. 165).

These findings echo tendencies in the writings of John Calvin, the ancestor of Presbyterian polity. His views on patriarchy and authority are particularly relevant. Calvin noted approvingly that the institutions of society--family, church, state--were all led by men. This was natural because God is called Father and there is "something divine in every father." Fathers are "next to God, most deeply to

be reverenced" (Bouwsma, 1988:77). Paternal authority is religious and political as well as familial. "Every human being looks up at once to God the Father and the spiritual fathers who represent him, to the father of his country or his city fathers, and to the father who sired him. This paternal chain from heaven to earth means that no father is strictly secular, and thus that there can be no ultimate separation of realms" (*ibid*., 77).

Calvin believed that maintaining authority was more important than correcting injustice. Any government, "whatever deformity and corruption it may have, is always better than the absence of princely authority" (Forrester, 1987: 338). Even officials who behave unjustly have been sent by God "to punish our ingratitude." Following Romans 13, Calvin said resisting authority was "resisting God himself" (Calvin, 1960: 4, xx, 23).

A SYNOPSES OF THE CASE

A new minister was hired to lead a large congregation. It soon became obvious that he was ill-prepared for the job by wisdom, experience or emotional strength. He snapped at people, got into disputes, spoke critically of his predecessors, complained about and berated church staff and leaders. He rebuked a grieving family over their request that an Associate Minister do their mother's funeral and refused to baptize a member's baby on the grounds that the member did not attend frequently enough. Elders talked to him privately to try to stabilize the situation but the problems persisted. Members began to leave.

After fifteen months, issues of sexual harassment emerged. Women reported vulgar comments, unwelcome touching, allegations of lesbianism, statements about physical traits, and conversations about sexual topics. One took her concerns to Presbytery and was told she should reconcile. Three departing female employees talked to the congregational Personnel Committee. One seemed to have a legal case. Stories spread. Many members became fearful and angry.

The panicky minister asked for Presbytery intervention. This could be done because a minister is a member of Presbytery and not a member of the congregation.[2] An official from the Presbytery's

[2] Presbyterians have a very structured form of government. Elected *Elders* serve on a *Session* that governs the congregation. Ministers and Elders go to a regional Presbytery assembly to set policy. The *Presbytery* serves as a collective bishop. Its administrative head is an *Executive Presbyter*. A *Stated Clerk* makes procedural rulings. Above Presbyteries are *Synods* and a *General Assembly*, both a mix of Elders and ministers. There are ecclesiastical courts called the *Permanent Judicial Commission* (PJC). Members or ordained congregational officials (Ministers, Elders,

Committee on Ministry met with select Elders. This was not reported to Session. When the stories surfaced, there was a Session clash. Two Elders left and the minister announced he would file formal discipline charges against one in the ecclesiastical courts. Two successive Presbytery-inspired Reconciliation Committees received over two dozen complaints but failed to resolve the problems.

Ten months had passed since the first mention of sexual misconduct. The congregation was in emotional turmoil. Several Elders had resigned. A female Elder now filed a formal complaint of sexual harassment. She said the minister had brushed her breast in a non-accidental accident and had sexualized conversations in a way that, if unchecked, would have erased the boundaries between them and led to unwanted intimacy. The minister was suspended. The Executive Presbyter sent a letter to each member of the congregation announcing the suspension and identifying sexual harassment as the alleged offense. This letter (which seemed to violate the rules of confidentiality surrounding an investigation) caused great distress among the membership. Five more women soon filed. Four were church employees. One spoke of unwelcome physical contact, one described full body hugs and comments about the appeal of a large penis, two spoke of provocative sexual comments, and a sixth described non-sexual verbal abuse.

An Investigating Committee of Presbytery[3] made a formal inquiry and dismissed the accusations as having no merit. Its report, which was made public through the minutes of Presbytery, contained three elements that were to be common in the organizational response: there was no evidence of wrongdoing, the motives of the accusers were unworthy, and there was a conspiracy to cause harm. Specifically, the report said some of the complaints were "frivolous" and that the judicial process was "being abused by persons whose true motivation is to harass the minister." It recommended that Presbytery appoint an Administrative Commission to deal with the problems, especially those involving "tensions within the staff." This last phrase targeted certain persons as the likely accusers in the presumably-confidential investigation and left them exposed to retaliation from angry members.

Deacons) can file accusations against others in these courts. If a conflict becomes serious, Presbytery can appoint an *Administrative Commission* to oversee congregational affairs. The Presbyterian system is very legalistic with hundreds of rules, procedures, and guidelines. There is a lengthy constitution called the *Book of Order*, with extensive legal supplements, commentaries, and binding rulings. The denominational headquarters has a legal office to advise on process.

[3] When a minister is accused, the Presbytery appoints an Investigating Committee. It functions as a grand jury to decide whether the evidence warrants prosecution. If it returns indictments, its role shifts to that of prosecutor. The trial would be heard before the Presbytery's Permanent Judicial Commission.

Meanwhile, there was a second set of accusations and a second Investigating Committee. Three members alleged professional misconduct by the minister and nonfeasance by Presbytery officials. When four women in the first case said their names had been leaked and they were being subject to retaliatory abuse, their complaints were referred to this new committee. Eight months later, this second Investigating Committee made its report. It did not prosecute but said it had found unchristian behavior and said Presbytery leaders had failed to do their duty. It said the first Investigating Committee should itself be investigated because of its inadequate efforts and because of a breach in confidentiality. This recommendation--the only one calling for action--was ruled out of order on the advice of the national legal office.

But before this Investigating Committee completed its work, the minister agreed to resign and the Administrative Commission recommended that six employees be fired, four women who made what they called "false" allegations and two men who had supported them. It also arranged that disciplinary counter-charges be filed against certain Elders. They were accused of failure to reconcile and of taking concerns to Presbytery. This was the third set of legal charges filed in the ecclesiastical courts.

A bitterly divided Session approved the recommendation to fire the employees. Half the members of the congregation petitioned the Session to reverse the vote. It declined. The six terminated employees (and another female whose complaint had been leaked into the congregation) sued the minister, Session, Presbytery, and General Assembly. They alleged negligent supervision and retention (knowing of possible problems but failing to investigate: See Bisbing *et al*., 1995), violation of the state civil rights act (for retaliating against employees who alleged sexual harassment), and defamation of character. (At a congregational meeting, the pastor said a named church employee had told a local television station that the minister was a child molester. The employee emphatically denied any contact with the media). The plaintiffs also alleged a "false light tort," that the minister and Presbytery officials spread discrediting versions of the facts.

As the lawsuit progressed, so did the ecclesiastical counter-suit against the Elders. When the civil suit began, all the accused but one were dropped from the church suit, but the Investigating Committee indicted the remaining Elder. He had reported stories of personal and sexual misconduct to Presbytery officials and was to be a witness in the civil suit. He resigned from the church rather than go to trial.

The lawsuit was settled with a significant cash payment. The church was devastated. Forty percent of the members left. After three ecclesiastical investigations, a civil suit, three years of tension, a small fortune in expenses, and a loss of community, nothing had been resolved. It was a model of what not to do.

SEVEN KEY PROBLEMS

PROBLEM I: DEFINING AND DEALING WITH SEXUAL MISCONDUCT: Non-standard definitions and process can malfunction and leave the institution legally exposed.

Many church leaders are ill-prepared to deal with sexual misconduct issues and often handle them badly. Many deny the problem exists even though the Presbyterian Church estimates that up to 23% of clergy engage in "inappropriate sexual behavior or inappropriate sexual contact" (PCUSA, 1993b:1).

Civil law recognizes two types of offense. *Quid pro quo* harassment occurs when sexual activity is a condition of employment or a factor in an employment decision. Hostile environment harassment is associated with offensive comments or actions (*EEOC Guidelines*, 1980 and *Harris v Forklift Systems*, 1993). The courts established the "reasonable woman" test to measure "conduct which a reasonable woman would consider sufficiently severe or pervasive" to create a hostile environment (*Ellison v Brady*, 1991). The justices in the *Ellison* case concluded that men may lack "a full appreciation of the...underlying threat of violence that a woman may perceive" so that "conduct that many men consider unobjectionable may offend many women." Conduct can be unlawful "even when harassers do not realize" its impact.

Denominational guidelines for sexual misconduct policy focus upon "sexual misconduct by persons in positions of religious leadership" but they emphasize that "those who are innocent" should be protected from "flimsy or false" claims (PCUSA, 1993b: 1,3). The guidelines reflect the tension between the right to accuse and the right to be protected from false accusations. Their suggested solution lies in due process, careful counseling, and alternatives to formal action.

The local Presbytery sexual misconduct policy document, in contrast, had four serious flaws that seemed almost to encourage escalation and continuing litigation. First, it twice mentioned counter-charges. Before an investigation begins, the Stated Clerk must "counsel those contemplating filing allegations that false or unwarranted allegations are punishable by church law and may be grounds for civil suit." Afterwards, "persons shown to have filed false accusations are subject to disciplinary action."

Second, it listed "steps" an accuser should follow before filing. These included saying no at the time, keeping a journal, telling an abuser to stop, and sending an abuser a list of "specific things which were offensive." And these were not just useful tips. Before initiating its investigation, an Investigating Committee was obligated to determine whether the steps had been followed. In an arena where confusion, indecision, and self-doubt are common, this assumed an unrealistic level of decisive self-confidence and implied wrong-doing by a woman not in compliance.

Third, the policy imposed a gag order so that "only the responsible parties" could be told of the incident. This rule, which specifically applied to accusers, meant an abused woman could not even talk to her friends. The intent was unequivocal: "If confidentiality is breached, to preserve the peace and unity of the Church, the governing body may take disciplinary action."

Finally, the policy called for compulsory administrative leave in the event of an allegation against a minister. The denomination's General Assembly had advised against such a provision, which it considered 'unwise" (PCUSA, 1993a, D-7.0200). Because the Presbytery policy listed a range of sexual offenses from "merely offensive" to severe, the suspension policy established a very low threshold for what would be a very severe response. Thus a minister accused of rape and another minister accused of telling a vulgar joke would both be suspended from the pulpit. Treating all cases the same was a high-risk policy that guaranteed a major escalation of any problem.[4]

The Policy in Practice

When the women tried to raise their concerns, they encountered roadblocks. Even getting a copy of the Presbytery's sexual misconduct policy was difficult. When they asked at the church office,

[4] Defining thresholds is central to sexual harassment law. In *Jones v Clinton* (1998), the most famous of all such lawsuits, the case hinged on what constitutes a violation where there is no "persistent" pattern of abuse or "severe" incident or evidence of career damage. The judge ruled that a single incident of rude, boorish or offensive behavior was not sufficient to warrant a financial award. Jones said her goal was to extract an apology from Clinton. Clearly, that was less a legal issue than an ethical one.

they were told they had to sign it out. When they asked at the Presbytery office, they were told they had to talk personally to the Executive Presbyter. They began to feel under surveillance.

The women discovered that by coming forward they had left themselves open to retaliation. Their names were leaked, often with lightning speed. One woman's registered accusation letter arrived in the Presbytery office in the afternoon. By the end of the day the Interim Minister had three telephone calls from members telling him of the filing. A damaging whisper campaign left the women shunned and subject to harassing calls. Members sympathetic to them got similar treatment. Several received anonymous hate mail. One employee had a letter secretly placed in her personnel file stating that she sat during services with someone "known to be critical of the minister." Unauthorized compassion became an offense.

Equally important was what happened judicially. In the eyes of the church, the women had brought "false" accusations. When they refused to drop the matter, they became guilty of "failure to reconcile." And when they complained that their confidentiality had been violated and that the Investigating Committee had not conducted a serious investigation, they were accused of polity violations, of disrupting the church, and of persisting in a dispute that had been "dealt with." (The women said the Investigating Committee had not pursued rumors of problems in previous churches, had not interviewed others subjected to unprofessional behavior, and had not interviewed Elders or two previous chairs of the Personnel Committee regarding complaints they had received). Even though the second Investigating Committee recommended a formal inquiry into the flaws of the first, the women were seen by some as in the wrong for pursuing the matter. Their "failure to reconcile" was to become the basis of legal retaliation.

PROBLEM II: PRESBYTERIAN POLITY: Presbyterian polity has multiple levels of authority, none with clear responsibility.

If a good decision process is one in which, when things go wrong, you know whom to blame, then Presbyterian polity with its divided government is not a good process. Concerned members could not figure out how the system worked or how to get it to respond. Part of the problem was the ambiguous boundary between Session and Presbytery. The Session governs the congregation but the

Presbytery has oversight and can step in to offer "advice" or take control if things do not go as they wish. If an allegation becomes formal, the Session is pushed aside and the matter is investigated by Presbytery. When a minister is *not* under formal investigation, the boundary is particularly ambiguous. Then, the Session has responsibility but not authority. The policy of having a minister be a member of Presbytery, not the congregation, is designed to protect pastors from abusive congregations, but it means a Session cannot remove its minister without Presbytery approval.[5]

A second trap is the absence of a designated official responsible for pastoral behavior. The Executive Presbyter has neither responsibility nor authority, being little more than a chief of administration who manages the budget, coordinates committees, and oversees process (*Book of Order*, 1998:G-9.0701). The Committee on Ministry is charged with supervising ministers but it may have two dozen members. Its sensitive activities may be conducted by two or three persons who give the committee only a general outline of a problem. The integrity of the whole polity may depend on the judgment of a few individuals making tightly-held decisions in the name of the organization.

Officials also operate under rules that seen to encourage non-responsiveness. The *Book of Order* (G-11.0502.j) says the Committee on Ministry "shall exercise wise discretion in determining when to take cognizance of information concerning difficulties within a church..." Regarding complaints, the committee "shall be open to communication at all times with the ministers, elders who are members of sessions, and sessions of the Presbytery" (G-11.0503). There is no obligation even to acknowledge letters from members.

As soon as the congregational Personnel Committee learned of the concerns of the women, the minister appealed to the Committee on Ministry. From that point on, the Presbytery supervised the activities of Session, giving them instructions and telling them what to do and what not to do. For example, when the Session asked its Personnel Committee to investigate allegations of wrongdoing, that Committee was not allowed to meet without the minister present unless they told him in advance of their plans and gave reasons. This severely restricted their operations.

When members contacted Presbytery to complain, to appeal against local decisions, or even to ask that Presbytery investigate possible wrongdoing, they were accused of bypasing Session. Letters of

[5]Goetz (1996) found that 23% of pastors had been forced out of their previous positions and many churches were "repeat offenders." The Presbyterian system is designed to limit such abuse.

concern to the Executive Presbyter and Committee on Ministry were often unanswered. One female Elder who filed a formal complaint received no response. People who wrote about what they considered unfair procedures were never acknowledged. Some members received written rebukes and official threats of ecclesiastical prosecution for even taking issues to Presbytery. Presbyterian legal specialists who have read this manuscript say these threats were not in order, but members assumed they represented realistic dangers since they were made by church officials.

The Presbyterian governance system has much to commend it but its rules are so complex that they can entangle members in technicalities and procedures so that nothing gets done. There is a good case for having an individual at the top with both authority and responsibility. The lack of such a person is a severe impediment to effective decision making, to the guarantee of due process, and to administrative responsibility. There also is no mechanism for removing a minister without prejudice. The Church of Scotland, the Presbyterian mother church, has a provision for "congregations in an unsatisfactory state" because of "defects or errors personal to the minister." A Scots Presbytery can remove such a minister without a finding of wrongdoing (United Free Church, 1952: 59-60).

PROBLEM III: THE CONCEPT OF DISCIPLINE: In conflict situations, the legal concept of discipline is ultimately non-pastoral. Its application in ecclesiastical courts escalates conflict and impedes the resolution of problems.

The *Book of Order* (D-1.000) says the purpose of discipline is to "nurture" members, provide "constructive criticism," "restrain wrongdoing," and remove "causes of discord and division." It is "for building up the body of Christ, not for destroying it, for redeeming, not for punishing." It should be exercised as "a dispensation of mercy and not of wrath."

But John Calvin, founder of the Presbyterian system, had a different concern. To him, the organized Church was simultaneously holy and profane. The profane (organized) dimension included "hypocrites...who have nothing of Jesus Christ but the title and the appearance..." (Calvin, 1960: IV,1,7).

Calvin believed that monitoring, regulating, and disciplining members was essential: "the body of Christ...cannot be contaminated by dissolute members without a part of the shame being cast upon its

Head" (*ibid*.: 12, 5). While private sinners or minor offenders could receive private admonition in "friendliness" so as "to do them no harm," those who persist or cause serious offense must be considered "despisers of God" and be given strong and public discipline (Dillenberger, 1971: 241-42).

The Presbyterian political system recognizes two kinds of corrective discipline: pastoral guidance and punishment for offense. For those found guilty by a judicial tribunal, there are four levels of punishment: a rebuke; temporary exclusion from membership or ordained office (Minister, Elder, Deacon) for up to two years; supervised exclusion from office; and permanent removal from ordained office or membership (*Book of Order*, D-12.0100).

But the two parts of discipline are often confused, with a prosecutorial mindset driving out the pastoral dimension. In the late nineteenth century the General Assembly expressed concern at this tendency and the "great harm" growing from reliance on "discipline in its sterner and more terrifying forms" (Peck, 1980:586-88).

The existence of ecclesiastical courts compounds the problem. These courts are independent of the governing process and, once engaged, cannot be stopped unless the accuser withdraws the accusation. Put another way, judicial authority overrides political authority. Presbyterians only wrote mediation into their discipline process in 1997 and then only as a recommended option once an Investigating Committee has found probable cause and is prepared to take the case to trial (*Book of Order*, D-10.0202). This is in contrast to other Calvinist churches such as the Church of Scotland (United Free Church, 1952) and the Cumberland Presbyterians (1984) which have traditionally required attempts at mediation as a first step.

If the primary purpose of discipline is to guide believers into a gentle spirit, then in the case under analysis the Presbyterian courts subverted that objective. Everyone emerged feeling defiant and wronged. Many people involved in these legal processes left the church. Others saw friends targeted in ecclesiastical and administrative counter-strikes against those raising concerns and felt the message was for them as well. One couple noted in their resignation letter that they knew the accused in the counter-suit against the Elders and were probably guilty of whatever the others had done.

It is worth positing an operational thesis: except in cases of grievous offense where public justice may be required for healing, ecclesiastical courts inhibit solutions.[6] The very existence of courts where members accuse one another serves not to guarantee justice or promote unity but to impede their achievement. Even those not convicted in a trial may leave the church.[7] Why, after all, would anyone stay in a faith community where people sue each other and the leadership does nothing to stop the action?

PROBLEM IV: THE HELPFUL NEUTRALITY OF INSTITUTIONAL OFFICIALS :Accusations of pastoral wrongdoing can generate a defensive-aggressive reaction among the leadership that affects system neutrality and system performance.

The Fortune thesis that leaders instinctively act to protect the institution is not unrecognized. In 1990, the Presbyterian General Assembly (*Journal* Part I: 139) warned that officials "inappropriately become adversaries of those seeking to use the system, viewing them as troublesome intermeddlers or surfacers of embarrassment."

This would not surprise the Ormerods (1995:77-78), who say officials carry reticence to extremes. "They fail to respond to letters or phone calls...insulate themselves from [concerned women] by refusing them interviews and label them as vindictive, as interested only in compensation, as 'disturbed' or as 'feminists.'"

One example of compromised neutrality in the current case involved the Stated Clerk, who had been named for non-feasance before the second Investigating Committee. The normal principle of law is that a party to a case cannot be neutral in another case involving the same issues or the same personalities. Nevertheless, the Stated Clerk continued to serve as liaison between the Presbytery and the national legal office and relayed the judgement of the national office that the recommendation for

[6] In a recent year (with 122 of 172 Presbyteries reporting), there were 58 judicial cases nationally, of which 47 were sexual in nature. Sixty-six other problems were handled short of the judicial process. Of 51 formal investigations completed during that particular year, 20 had no charges filed and nine persons left the church prior to the completion of the process. Thirteen convictions led to temporary exclusion from office, 6 to removal from office, 3 to removal from membership. None involved the minimal rebuke. (Personal Communication, Zane Buxton, Office of Judicial Process, 1996).

[7] Miyakawa (1964) reproduced a nineteenth century case in which a member was accused by "common fame," i.e., public rumor, of unethical business deals. When the alleged victims testified on behalf of the accused the member was officially vindicated. Nevertheless, at the next Session meeting, he asked that his name be removed from the roll.

further investigation of the case was not in order. She also continued to preside over the third (retaliatory) Investigating Committee even though the issues and some of the parties in that case were also involved in the second Investigation, to which she was a party.

The Clerk of the Permanent Judicial Commission presented another example of compromised neutrality. As Clerk, he advised an Elder who had heard through gossip that she was accused. He also advised several Elders who petitioned the PJC for a "stay" of implementation on the firings. (Such a stay is allowed when a Session vote is split. See *Book of Order*, D-6.0103). Petitioners in the "stay" case became concerned when telephone messages to the Clerk were unanswered and only after 89 days did he offer them a date for a hearing. This was just short of the 90-day limit when the case would be remedial and could be appealed to the Synod PJC.

Unbeknownst to members, the Clerk had become the minister's attorney at a time when it appeared the minister might himself file a civil suit. (The minister had told a congregational meeting that he was considering a lawsuit against one or more members). The Clerk soon left the PJC to become defense attorney in the civil lawsuit against the minister, then left the lawsuit to become Stated Clerk of Presbytery. In this latter position, he managed the ecclesiastical counter-suit which accused Elders of abusing his client. This shift from judge to advocate to presumably-neutral Stated Clerk in the same controversy seemed to violate the American Bar Association's Code of Conduct regarding potential conflicts of interest (Dzienkowski, 1991: 207-319). But whether or not such a violation occurred, the shifting role of the Clerk seriously undermined the confidence of members in the neutrality of the Presbytery leadership and the fairness of its legal proceedings. It was not a result that Fortune, Shupe, the Ormerods, or the Presbyterian General Assembly would have found surprising.

PROBLEM V: ISSUES OF DUE PROCESS: There were serious flaws regarding due process.

To members in this dispute, no corpus of universally applied procedures ever filtered down. In a body that prides itself on conducting its business in a way that is decent and "in order" (I Corinthians 14:40), what emerged was something quite different. Procedures prohibited elsewhere were tolerated here, and rights guaranteed outside the church were ignored inside of it.

One problem was that procedural rights fall into three categories: things required, things prohibited, and things allowed but not required. This last category contained rights granted or not at the discretion of those in charge. A Stated Clerk who decided to be generous--or to play hard ball--could produce very different results in different cases. The *Book of Order*'s judicial preamble (D-1.000) that "members are to be accorded procedural safeguards and due process..." does not specify equal safeguards. Nor does it say those rights apply at the investigation stage.

Since none of the three ecclesiastical cases went to trial, there is no way to know what robed judges would have decided was proper and what was not. But the law is not just what is practiced in a quiet chamber. It is what we encounter at the grass roots. The law described herein is that which was applied and explained by officials in the various cases.[8]

Discretionary Rights in a Two-Stage Process

A discipline case has two stages, investigation and prosecution, with different rights at different stages. When an accused Elder wrote to complain about how she was being treated and to ask about her rights, the Clerk of the PJC explained the concept: an Investigating Committee "investigates and then decides whether to press charges." Due process is obligatory only at the second or trial stage "if the committee brings charges." To another concerned member the official wrote that "There are variations in procedures. As long as the guidelines and requirements of the Form of Government are met, an Investigating Committee is acting correctly." At the investigation stage, even the right to raise concerns is proscribed: "It is not the position of the accused to evaluate the rules by which Investigating Committees operate."

This two-stage rule meant that during an investigation due process rights were guaranteed only if the Stated Clerk guaranteed them. The way the accused were treated under the three formal investigations showed exceptional variation. When the minister was first accused, he was informed immediately and was given spiritual and legal counsel. In the second investigation, also against the minister, a two-page letter emphasized the commitment to provide "procedural safeguards and due process to the accused." It specified all guarantees in the Bill of Rights including the right to "be informed

[8] Two Presbyterian legal specialists who read this manuscript said there were several irregularities in how the case was handled. These are discussed at length in the author's book *Decent and In Order: Conflict, Christianity, and Polity in a Presbyterian Congregation* (Praeger Press, 2000).

of the nature and cause of the accusation" and to have a signed copy of those accusations. In the counter-suit against the Elders, the accused were never contacted by the Stated Clerk and some were not even told they had been accused. Their rights were those two specified in the *Book of Order* (D-7.0900): the right to remain silent and the right to have legal counsel. The two-stage rule created a gray zone that gave investigators exceptional latitude and led to considerable variation in the rights of the accused.

The Right to Information

The accused in an investigation have limited rights to information. There was no requirement that they even be told of the investigation unless they were taken to trial. When one Elder heard from gossip that she had been named and asked why she had not been told, the Stated Clerk ruled that while "ordinarily" the Investigating Committee would inform the accused, "they are not required to do so." While the right to be informed of an accusation at the beginning of the investigation process was later added to the *Book of Order* (D-10.0202), at least two accused persons were never informed of the accusations against them, even to this day. This was true in spite of the fact that many members knew or had heard that they were under investigation. The unfairness of a secret accusation is obvious.

Likewise, identifying accusers was discretionary. The rules said their names could be withheld to protect "the accused and the accuser" or to prevent "further harassment," a phrase that implied a presumption of guilt. The minister was told the names of his accusers in both of the ecclesiastical investigations that named him. The Elders were not told their accusers (although they were widely known) and the accusers were assured that their names would be kept secret. The Stated Clerk wrote that if the case went to trial, those accusers *called as witnesses* would be identified.

Withholding the identity of accusers might be good in the criminal justice realm when the accused is a drug kingpin with a penchant for murder but in a congregation where people know each other and the alleged goal is to restore community, it is a formula for disaster. In the counter-suit, rumors abounded as to the identity of the accusers, and innocent people were suspected. Secrecy also led to a generalized fear that more people were to be accused. This made members suspicious of each other and damaged the quality of interaction in the already-wounded congregation.

Finally, because an Investigating Committee functions as a grand jury, none of the parties has a right to its report and some of the women were never told they had been accused in the written record of Presbytery of colluding to abuse the minister. Nor did they have the guaranteed right to copies of the Presbytery minutes containing the report, even though those minutes go to hundreds of people. As the Stated Clerk wrote, "I am required to provide copies of minutes when requested by a governing body. Otherwise I am not. I am providing you a copy. It would not be out of order to refuse."

Confidentiality Redefined

Confidentiality meant different things to different people. We are not talking here about loose lips, which appear to be a universal problem. All key parties were concerned about discretion, and persons at all levels felt their conversations had been reported to others in ways that caused harm. But some officials saw confidentiality in a way that bordered on secrecy. For example, when the congregational annual report said that only one woman had filed misconduct accusations, a member asked that the report be corrected since Presbytery minutes mentioned several accusers. She received a written rebuke from Session saying Presbytery minutes were confidential and she was subject to disciplinary action for the violation. Clearly "confidentiality" was not the issue.

A ruling that confidentiality "is binding upon the governing body" did not prohibit sharing information within the organization. Those who spoke to the Reconciliation Committee and Administrative Commission understood (and in the case of the Reconciliation Committee were specifically promised) that their communications would be confidential. What happened was not what they expected.

The six fired employees had complied with the Administrative Commission request that they put their concerns in writing. Later those statements were cited to support a recommendation that they be terminated. The Session was told that the statements revealed a "failure to reconcile" but that to explain further would violate confidentiality. Similarly, a letter to the Reconciliation Committee by one Elder was turned over to the third Investigating Committee and was the basis of an indictment against him that he violated Matthew 18:15-17 by taking concerns to a committee rather than directly to the minister.

A chief accuser in the counter-suit was also the head of the Stephen Ministry. That organization was described to the congregation as "a Christian caring ministry in which clergy and laity work together

to provide care to persons in need. It extends the pastoral care of our ordained staff by providing empathy and support to members in crisis or distress." The Stephen Ministry head had approached two Elders out of what she wrote was "care and concern for you." One Elder met her, another did not. Both were punished for their actions, the first for declining to "reconcile," the second for declining to meet. The pledge of the Stephen Ministry to confidentiality did not deter its head from filing accusations. Nor did the Investigating Committee exclude her testimony even though the *Book of Order* (D-9.0300d) prohibits persons with counseling duties from being witnesses before such bodies without the permission of the affected person.

Most churched people assume that if they discuss a problem "in confidence" with a church official that conversation will not be shared unless they agree. They also assume that the information will not be used against them. As when they speak to a doctor, they assume that what they say will be used to help them. But doctors perform only one duty: they look after their patients. Presbyterian polity in contrast has a dual function, pastoral and disciplinary. Officials are part of a legal system that controls the behavior of members and has the right (even duty) to discipline or punish them for what they say or do. Presbyterian officials are obligated to maintain the system against those seen as challenging or disrupting it. Their two functions overlap in ways not always obvious. Sadly, in times of crisis, the obligation to protect the organization may take precedence over the pastoral obligation.

PROBLEM VI: THE CONCEPT OF RECONCILIATION: As a legal principle, reconciliation is ambiguous and subject to manipulation. It can become a weapon to retaliate against persons who embarrass the institution by refusing to drop their concerns.

To most Christians, reconciliation is a central goal of the faith, implying the removal of all sources of tension and the restoration of full, healthy relationships. But those who think this way are thinking pastorally, not legally. As a legal concept, reconciliation is something far different. It is dangerous and potentially damaging, not to mention potentially illegal.

The Christian concept of reconciliation has its roots in the Gospels. Luke (17:4) advises those in disputes to deal with their adversaries directly: "If your brother wrongs you, rebuke him; and if he repents, forgive him." Matthew (5:23-24) suggests that when making an offering, "leave your gift where

it is before the altar. First go and make your peace with your brother..." Disputants should try time and again to solve problems.

Unfortunately, secular versions of reconciliation affect our understanding of the word: competing bills in Congress are reconciled behind closed doors by removing controversial elements; a carpenter reconciles a joint by cutting away uneven parts to make the surface smooth; and a wife reconciles herself to the belief that she may have to endure a beating from time to time to save her marriage.

When reconciliation is seen in a case of alleged abuse as a conflict resolution process, it can go awry. A conflict resolution paradigm assumes both sides are wrong and should meet in the middle with mutual regrets. It also assumes a level playing field with all parties equal. This cannot be true when one party is a pastor.

Fortune (1995) believes a flawed understanding of reconciliation is endemic to Christian thinking. Religious people often overlook the fact that accountability precedes forgiveness. They "get uncomfortable when we talk about accountability. They want to begin with forgiveness, mercy, and grace. But this is bad theology and worse exegesis...There is a whole lot that precedes forgiveness here, for the offender's sake and for ours" (p. 47).

Shupe (1995) goes a step further. He sees reconciliation as part of a strategy of neutralization: "Religious elites want nothing better than an end to bad feelings and hostilities with victims, and the 'God-talk' of forgiveness, reconciliation, mediating, restoration, repentance, renewed covenants, prayerful reconsideration, and so forth are rhetorical tools used to defuse victim anger and restore trusted authority." He found that calls for reconciliation were often nothing more than "subtle, indirect 'blame-the-victim' schemes." Reconciliation thus becomes less a corrective than a "pseudo-balm to assuage victims without fundamentally altering power inequities or opportunity structures that further such abuse. Reconciliation is cheap short-run justice--to the advantage of ecclesiastical elites" (pp. 90-91).

During the time when the minister was temporarily suspended, the Session adopted a reconciliation policy proposed by the Interim minister. The Interim explained that "the church is not a social club" and its procedures are "not negotiable." The "protection of the church is paramount" including protection from "insurrection, mutiny, divisiveness, gossip, rumor mongering, and undisciplined

complaint." Following Matthew 18, anyone with a concern must meet the other party three times, first alone, then with a member, finally with an Elder.

This policy turned Biblical advice into binding rules so that a woman who took a problem to an Elder or to the Presbytery or even to a Reconciliation Committee was definitionally an offender. Someone "who makes a complaint to any official or member" without following these steps "shall be identified as disturbing the unity and tranquility of the church." The Session will then proceed "until reconciliation or excommunication is achieved."

There is a strong distinction between Christian Reconciliation--rooted in justice and protection of the weak--and what we might call polity-driven Reconciliation, or the forced ending of a dispute. As a legal concept, reconciliation follows the second definition rather than the first. Absent the Christian dimension, it can lend itself to abuse by those who hope to push problems aside or declare them "dealt with." Far from being a guide to peace, it can become a weapon to punish those who refuse to be silent. To tell a woman who says she was touched or verbally abused that she must "reconcile" with a pastor who denies everything is not a satisfactory solution nor a Christian one. And to accuse her of "failure to reconcile" and punish her when she refuses to abandon her complaint is both morally wrong and a violation of civil law.

PROBLEM VII: THE CONCEPT OF SPIRITUAL WARFARE: When the leadership comes to see members as evil or to see a conflict in terms of spiritual warfare, resolution ceases to be likely.

As Kuhn (1962) points out, the right to explain is ultimately a political struggle since whoever explains a problem is allowed to offer a solution. One paradigm promoted among leaders in this case was Rediger's "clergy killer" or "CK" model. Because Rediger's book (1996) was published by the Presbyterian press and because the circulation of his article (1993) was cited in the civil lawsuit as evidence of official abuse, it deserves fuller discussion.

Rediger identifies three types of conflict: normal conflict, conflict from psychological distress, and clergy killer conflict. His article says that clergy killers "insist on inflicting pain" and are driven by "intentional destructiveness." Their "statements and negotiations are not trustworthy" and "do not yield to

patience and love, or honor human decency." Those dealing with them get "an intuitive feeling that evil, pain, and destruction" are their goals.

With clergy killers, "conflict management methods alone will not restore health" since such conflict grows from "evil" perpetrated by "demonic and cunning pseudo-believers." Leaders must remember that the church "was born in the universal struggle between good and evil, and that this struggle is incarnated in our midst, whether we recognize it or not." Moreover, "evil is real and powerful, and it is not expressed nor managed in purely rational ways." It may be necessary to "excise the cancer," remove the "clergy killer infection," and "cut off" CKs from membership.

The lawsuit alleged that the circulation of the Rediger article constituted a "false light tort." This meant that the women were cast in such a negative and distorted way that they suffered harm. It became impossible for their concerns to be treated as legitimate, made them appear demonical, and made it virtually impossible for them to remain in the church. They considered the clergy killer model to be defamatory, discrediting, and non-falsifiable.

An alternate approach is that of Leas (Beatie, 1992). He writes of five levels of conflict and how to handle them. Level I is called Problem to Solve: members disagree over a policy or budget. Such conflict is normal and uneventful. Level II is Disagreement. Tensions escalate. There is distrust, withholding of information, focus on personality. If everyone takes a deep breath, tension may dissipate without further harm. Level III is Contest. People become the enemy. Emotions are held back and personal attacks increase. "There is a tendency to attribute evil, ulterior motives to the other side." A mediator is needed. Level IV is Fight/Flight. Parties focus "on getting rid of the others." Level V is Intractable. "The conflict is out of control. There is an effort to destroy the enemy who is seen as harmful to the church..." At this point, outside management is required.

In the Leas model, outsiders should step in when the parties start seeing others as "evil" or "harmful to the church" or someone to expel. And yet this was the point reached by several officials including the spokesman for the Administrative Commission, who told a congregational meeting that there was a “cancer” in the body that had to be removed. Alas, no one has answered the question asked by the Romans, "Who will guard the guards?"

SOME FINAL THOUGHTS

There were serious spiritual, political, and judicial failures in this case. How to correct them is unclear. Since it is not possible to write pastoral compassion into a constitution, any change will have to come on the political and judicial sides. We have already discussed the need for early mediation and for clear lines of administrative responsibility. In the judicial realm, two things are obvious: there has to be an understanding of civil law, lest it be violated, and there has to be some mechanism to bypass local malfunction. A good place to start would be to guarantee accurate, neutral, common information to all parties in a dispute, accuser, accused, Investigating Committee. Appointing an informed advocate for each party at the very beginning of a legal dispute might be another good first step. It would also help to incorporate into the judicial process the fail-safe mechanisms of civil law. One thinks of dismissal or mistrial in cases where officials fail to do their duty or do not guarantee due process. Presbyterians do not permit summary dismissals in spite of frequent requests. Nor do they allow appeals against procedural irregularities prior to trial.

We must also return to the tension between institutional and pastoral impulses. The pastoral dimension was noticeably scarce in this case. The women received no counseling before, during, or after the investigation. On the last Sunday before the terminations went into effect, scores of faithful members walked out along with the women. Many never went back and few were ever contacted. Clearly the organizational mentality had triumphed. In their hour of greatest need, members found the pastoral wing of the church eclipsed.