



The Legal Presbyterian Life

by the Revs. Mary Holder Naegeli, Mark Stryker, and Margaret Gelini

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In order to demystify the judicial process, we, the Complainants (now Appellees) in the *Naegeli et al v. San Francisco Presbytery* case, are reflecting on a process that has been an exercise in patience. In these posts, our first point was that raising an issue through the PCUSA remedial case process is our duty as ordained officers and, in this case, essential to the integrity of the PCUSA's witness in the world. Our second point was that the judicial process is long, complicated, and expensive, and—while we persevere to the end in this present case—a thorough study of the system is needed to determine if reform could clarify, streamline, and accelerate the process.

To review how this situation unfolded in the last three years:

Recent actions by the denomination's General Assembly—the adoption of the recommendations of the Task Force on Peace, Unity, and Purity (PUP) in 2006 and more recently the Knox Overture of 2008—raised the issue of whether it is *ever* acceptable for an ordaining body to overlook a candidate's refusal to abide by a mandatory church-wide ordination standard.

The PUP recommendations require ordaining bodies to consider whether any departure by an ordination candidate from scriptural or constitutional standards “constitutes a failure to adhere to the essentials of Reformed faith and polity under G-6.0108 of the Book of Order, thus barring the candidate from ordination....” PUP does not specify when this determination must be made (e.g. at the time the candidate's statement of faith is examined), only that a stated departure must be evaluated by the ordaining body for its adherence to Reformed faith and polity and the resulting (dis)qualification of the candidate.

In the winter of 2008, the GA-PJC decided in *Bush v. Pittsburgh Presbytery (218-10)* that “the fidelity and chastity provision of G-6.0106b is a mandatory standard that cannot be waived.” So didn't that resolve the question? Well, apparently not.

The Knox Overture, adopted as an authoritative interpretation by the 2008 General Assembly, mandated that “the requirements of G-6.0108 (Freedom of Conscience) apply equally to all ordination standards.” Its proponents claimed that the Knox AI gave leeway for presbyteries to decide in each specific case which ordination standards will apply. At the same assembly, another measure that nullified all definitive guidance (policy statements) about sexuality was also adopted, effectively erasing the PCUSA's corporate memory of its teaching on sexual ethics.

From this sequence of decisions, members of San Francisco Presbytery believed that the door had opened to allow consideration of Lisa Larges' candidacy. Ms. Larges, a self-identified lesbian woman, was under care of the presbytery for over ten years. She had been transferred from Twin Cities Area, where her candidacy had reached a dead-end, stating at the time of her 1996 transfer interview the same “departure” (i.e. a refusal to abide by G-6.0106b) as she declared in 2007 when her ordination came up again for consideration in San Francisco. In the all those years under care and counsel of the CPM of San Francisco Presbytery, Ms. Larges' mind and commitments in this area had not changed, and it was this same departure she declared to the Presbytery on January 15, 2008. By a close majority, the Presbytery voted to carry on with her full examination, rejecting the notion that her departure disqualified her from ordination.

We sought judicial review of this action because it is our conviction that it is *never* acceptable to grant such a waiver; that adherence to church-wide ordination requirements, such as G-6.0106b, is not subject to local discretion. If they can be overlooked, then they are not *church-wide*, nor can they be considered *standards*.

After a trial in March 2009, the Synod Permanent Judicial Commission (PJC) ruled that the process followed by the presbytery—which neither of the parties had contested—was flawed and had to be done over.

Because it focused on the process, the SPJC did not provide clarity to the church regarding local option on church-wide ordination standards. The SPJC did admonish the presbytery to take care to “adhere to church-wide standards” but did not specify that G-6.0106b is one of them.

On the face of it, this ruling was in our favor: we sought to have the Presbytery’s vote overturned, and it was. But we wanted the court to overturn the vote *because the Presbytery reached an unconstitutional result*, not because it was procedurally flawed.

In considering whether to appeal, we took into account the time and expense consumed by further legal action and whether its outcome would be helpful to the church. A synod PJC decision applies only to the one presbytery; to establish a binding precedent nation-wide requires a ruling by the GAPJC. Because the synod decision lacked specificity on the matter of G-6.0106b as a “mandatory, church-wide standard”—the basic issue that needs resolution—we decided to ask for clarity by filing notice of an appeal.

We realize there are three possible results of an appeal: (1) prevailing; (2) losing what was granted by the synod decision, and (3) getting a confusing answer. The third possibility troubled us the most, and we wondered if perhaps a future case might yield a better set of circumstances for consideration. However, after prayerful deliberation and the counsel of close advisors in this presbytery and others, we realized there is little likelihood the next case will be any “cleaner.” Life is messy and rarely yields “clean” facts. If a PJC wants to dodge an issue, it finds a way, regardless of how clean the case before it.

In *Naegeli*, neither party had objected to the process San Francisco had established for itself and then followed. No evidence was presented to support the argument the process was flawed. Indeed, there was no procedural defect. The *Naegeli* SPJC had created the “procedural wrinkle” out of whole cloth. We decided the *Naegeli* case provided as clear a presentation of the issues as life can yield, and that the synod’s process and decision needed a review by the GAPJC.

Evaluating the worst-case scenario (an unclear ruling), we also realized we can take a clear lesson from a muddled response. It is the purpose of judicial commissions to cut through messy facts and provide clarity to issues before the church, not to dodge them. If the judicial process yields a muddled answer—a decision based not on the merits, but on procedural technicality—the judicial commission will have failed its duty. The lesson, then, from a muddled judicial answer would be that the judicial process is either rigged or stymied; either way, it is broken and unable to perform its function for the church. If that is what happens, a hallmark of the Normal Presbyterian Life—church discipline—has collapsed and the church has redefined itself apart from its Reformed heritage and our ordination vows.

The appeal before the GAPJC is scheduled tentatively for November 6. Our brief will be submitted in late August, the Presbytery’s response 30 days later. The briefs, accompanied by the full record of the March 20 trial, will be read and reviewed by the commissioners, and then they will hear oral arguments in November. Our hope is that the GAPJC will take this matter seriously; and will take equally seriously the need of the denomination for a clear answer to the significant questions presented, and will provide that clarity. Up or down, the church needs to know.

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