

EVANGELICAL LUTHERAN CHURCH IN AMERICA

In the Matter of the Disciplinary Proceedings
Against the Congregations of

ST. FRANCIS LUTHERAN CHURCH

and

FIRST UNITED LUTHERAN CHURCH

of San Francisco

DECISION OF THE DISCIPLINE
COMMITTEE

Filed July 18, 1990

A public hearing of this matter was held in San Francisco, California, July 7, 8, and 9, 1990.

THE COMMITTEE ON DISCIPLINE

Elected by the Sierra Pacific Synod:

REV. OTTO BREMER, San Leandro, California; REV. LLOYD BURKE, Chico, California; MS. AUDREY FUCLES, Oakland, California; MS. KATHY KELLY, San Francisco, California, co-chair; REV. RUDOLPH RAMSETH, Sacramento, California, co-chair; MR. TONY J. TANKE, San Mateo, California.

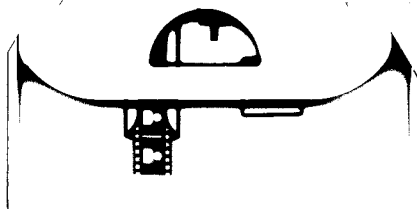
Elected by the Evangelical Lutheran Church in America:

REV. PAULWYN BOLIEK, Augusta, Georgia; MS. JEANNE R. BUSTER, Silver Spring, Maryland (hearing only the matter of St. Francis Lutheran Church); MS. MARY ANN DIEHL, Albert City, Iowa; MR. GERRY GRANT, Baltimore, Maryland; REV. ROGER OLSON, Moorhead, Minnesota (hearing only the matter of First United Lutheran Church); MS. ANN L. SIQUELAND, Seattle, Washington, (hearing only the matter of First United Lutheran Church); REV. STEPHEN YOUNGDAHL, Austin, Texas.

COUNSEL

ROBERT P. BRORBY, Richmond, California, for the accusers.

RICHARD D. WARREN, Landels, Ripley & Diamond, San Francisco, California, for the accused.



Decision

This decision resolves charges filed against St. Francis Lutheran Church and First United Lutheran Church of San Francisco by Bishop Lyle G. Miller and the Synod Council of the Sierra Pacific Synod within the Evangelical Lutheran Church in America ("ELCA"). The charges allege that the congregations willfully disregarded criteria for recognition as ELCA congregations by failing to call pastoral leadership in accordance with church call procedures.

The Discipline Committee has received oral and written testimony from over 100 witnesses in a consolidated hearing of these charges. It has also reviewed documentary evidence including many governing documents of the ELCA, items of correspondence, and other exhibits. Because all parties have acted in a spirit of cooperation, mutual respect, and Christian love, it was possible for the committee to study much of this large body of material in advance of formal proceedings and to complete hearings within three days.

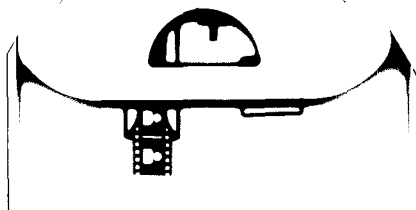
Most of the operative facts are beyond dispute. First United called an openly gay man to serve as a pastor; St. Francis called a lesbian couple to serve as pastors. At the time they were called, none of the three were certified for ordination under ELCA procedures. Because of their opposition to ELCA ordination policy, they did not seek to obtain or retain certification. Under that policy, while homosexual orientation does not bar ordination, practicing homosexual persons are precluded from ordained ministry within the church. The accused congregations joined these three candidates in their opposition to ELCA policy, issued letters of call to them, and accepted them as ordained ministers. They called the three to initiate an outreach ministry in the gay/lesbian community.

The decision of the committee is expressed in three sections of this document. First, there are statements of decision dealing with the charges against each congregation. Second, there is a memorandum summarizing the reasons for the decisions. The foregoing sections represent the views of a majority of the members of the committee as to the matters discussed. Third, the committee has addressed an open letter to all persons affected by or interested in this dispute which offers its thoughts concerning many things needful that go beyond a strict analysis of the charges. The open letter is endorsed by all committee members. Finally, in addition to this document, individual members of the committee who chose to do so have submitted their concurring, dissenting, or other views. These are also included with the decision.

In summary, the committee has sustained the charges against both congregations. Because of certain ambiguities in the development and communication of ELCA policy that may have affected First United, the decision establishes certain conditions which may eventually lead to a dismissal of the charges in its case.

Discipline has been imposed on both congregations. The first element of discipline is a suspension. The consequences of suspension described in a memorandum prepared by the Secretary of the ELCA have been adopted by the committee for purposes of this dispute. During the period of suspension, the congregations as entities will be deprived of certain rights and privileges such as sending voting lay delegates to synod assemblies and petitioning the church. The pastors of the congregations who are now on the clergy roster of the ELCA will continue in that status in all respects, including as voting delegates to synod assemblies. The individual members of the congregations can continue to be participants in the life of the ELCA through service on its councils, boards, and committees and as nonvoting persons at conventions.

The suspension period will expire on December 31, 1995. This five-year period allows time for: (1) study and dialogue within the ELCA with respect to its practices regarding ordination of homosexual



persons; and (2) action at one or more Churchwide Assemblies. If by that date or sooner, the practices of these congregations are in accord with the pastoral leadership criterion of recognition, they will be restored to full membership in the church. If such an accord does not occur by the end of the suspension period, the congregations will be removed from the roll of ELCA congregations.

The discipline imposed is severe, as a majority of the committee believes it must be when a basic criterion of ELCA membership has been and continues to be disregarded. At the same time, the committee's decision affords a much needed opportunity for study, dialogue, reconciliation, and progress toward a more unified understanding within the ELCA with respect to the matters in dispute. In the committee's view, that opportunity is essential if the church is to serve as the body of Christ and as a witness to his saving love and continuing presence with us.

STATEMENT OF DECISION REGARDING ST. FRANCIS LUTHERAN CHURCH OF SAN FRANCISCO

The congregation of St. Francis Lutheran Church of San Francisco ("St. Francis") has been charged by Bishop Lyle G. Miller and the Synod Council of the Sierra Pacific Synod under section 19.16.01.b of the ELCA bylaws (all section references are to the Constitution, Bylaws, and Continuing Resolutions of the ELCA unless otherwise stated) with willfully disregarding or violating section 8.21.d of the Criteria for Recognition for Congregations, which requires that congregations: "agree to call pastoral leadership from the clergy roster of this church in accordance with the call procedures of this church except in special circumstances and with the approval of the synodical bishop."

Upon consideration of the evidence and arguments submitted in support of and in opposition to the charge, the Discipline Committee finds as follows:

DISPOSITION OF THE CHARGE

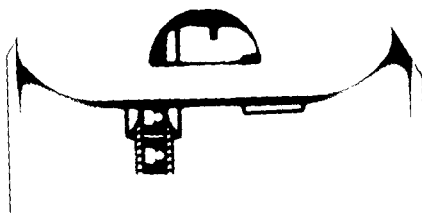
The charge is **SUSTAINED**.

DISCIPLINE

DISCIPLINE SHALL BE IMPOSED on St. Francis as follows:

1. St. Francis shall be **SUSPENDED** from the rights and privileges of a congregation of the ELCA pursuant to section 19.16.02.b for a period extending from the date of this decision until December 31, 1995. If, at that time or sooner, St. Francis is in compliance with the criterion for recognition set forth in section 8.21.d, the suspension shall be lifted and St. Francis shall be restored to the full rights and privileges of a congregation of the ELCA. If as of December 31, 1995 St. Francis is not in compliance with section 8.21.d, it shall be **REMOVED** from the roll of congregations of the ELCA.

2. The consequences of suspension under this statement of decision shall be those described in the Memorandum of the Secretary of the ELCA dated June 29, 1990, and received by the Discipline Committee, including the following: (1) suspension applies only to the congregation as an entity and not to individual members or pastors; (2) the rights and privileges subject to suspension include the sending of lay voting delegates to the Synod Assembly and to meetings of area subdivisions of the synod and the right to petition this church under Bylaw 8.53.07; (3) notwithstanding suspension, lay members of the suspended congregation and ordained ministers under call on the roster of the synod will continue to be eligible to serve on councils, boards, and committees of this church; and (4) the roster status of the congregation's pastors who are now on the roster of ordained ministers of this church is not affected by this suspension. With respect to these consequences of suspension, the Disci-



pline Committee adopts and relies upon the Secretary's memorandum in the rendering of this decision.

3. The Discipline Committee as presently constituted shall retain jurisdiction over this case to provide any necessary interpretation of this statement of decision and to determine the occurrence of any conditions described above.

STATEMENT OF DECISION REGARDING FIRST UNITED LUTHERAN CHURCH OF SAN FRANCISCO

The congregation of First United Lutheran Church of San Francisco ("First United") has been charged by Bishop Lyle G. Miller and the Synod Council of the Sierra Pacific Synod under section 19.16.01.b of the ELCA Constitution (all section references are to the Constitution) with willfully disregarding or violating section 8.21.d of the Criteria for Recognition for Congregations which requires that congregations: "agree to call pastoral leadership from the clergy roster of this church in accordance with the call procedures of this church except in special circumstances and with the approval of the synodical bishop."

Upon consideration of the evidence and arguments submitted in support of and in opposition to the charge, the Discipline Committee finds as follows:

DISPOSITION OF THE CHARGE

1. The charge is **SUSTAINED** unless, within 30 days from the date this decision becomes final, Jeff R. Johnson applies to the appropriate candidacy certification committee for renewal of his approval for ordination in accordance with the procedures set forth in the Candidacy Manual of the Division for Ministry. (Exhibit AR 20, p. 100.)

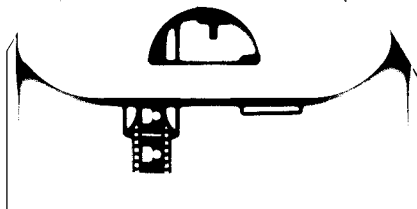
2. If Jeff R. Johnson: (a) makes application as provided in paragraph 1; (b) pursues his application diligently through the candidacy certification process and other required procedures set forth in the Candidacy Manual (Exhibit AR 21, p. 6.); and (c) obtains renewal of approval as a result of this process, the charge shall be **DISMISSED**. Any such dismissal shall be effective on the date of a final decision renewing approval.

3. If as a result of any application and process described in paragraph 2 a final decision is made to deny renewal, First United shall have 30 days from the date it receives written notice of that decision in which to withdraw its call to Jeff R. Johnson. In the event the call is withdrawn, the charge shall be **DISMISSED**. Any such dismissal shall be effective on the date the call is withdrawn. In the event the call is not withdrawn, the charge shall be **SUSTAINED**.

DISCIPLINE

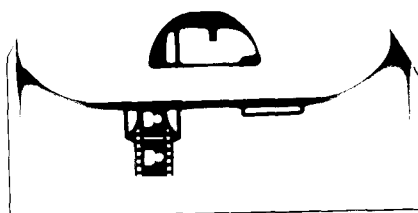
In the event the charge is sustained in accordance with provisions set forth in paragraphs 1-3 above, **DISCIPLINE SHALL BE IMPOSED** on First United as follows:

1. First United shall be **SUSPENDED** from the rights and privileges of a congregation of the ELCA pursuant to section 19.16.02.b for a period extending from the date the charges are sustained until December 31, 1995. If, at that time or sooner, First United is in compliance with the criterion for recognition set forth in section 8.21.d, the suspension shall be lifted and First United shall be restored to the full rights and privileges of a congregation of the ELCA. If as of December 31, 1995 First United is not in compliance with section 8.21.d, it shall be **REMOVED** from the roll of congregations of the ELCA.



2. The consequences of suspension under this statement of decision shall be those described in the Memorandum of the Secretary of the ELCA dated June 29, 1990, and received by the Discipline Committee, including the following: (1) suspension applies only to the congregation as an entity and not to individual members or pastors; (2) the rights and privileges subject to suspension include the sending of lay voting delegates to the Synod Assembly and to meetings of area subdivisions of the synod and the right to petition this church under bylaw 8.53.07; (3) notwithstanding suspension, lay members of the suspended congregation and ordained ministers under call on the roster of the synod will continue to be eligible to serve on councils, boards, and committees of this church; and (4) the roster status of the congregation's pastors who are now on the roster of ordained ministers of this church is not affected by this suspension. With respect to these consequences of suspension, the Discipline Committee adopts and relies upon the Secretary's memorandum in the rendering of this decision.

3. The Discipline Committee as presently constituted shall retain jurisdiction over this case to provide any necessary interpretation of this statement of decision and to determine the occurrence of any conditions described above.



Memorandum of Reasons in Support of Decision

The Discipline Committee adopts the following summary of reasons in support of its Statements of Decision:

I. DISPOSITION OF THE CHARGES

A. The Validity of ELCA Policy Precluding Practicing Homosexual Persons from the Ordained Ministry of this Church

Like all church bodies, the Discipline Committee is directed and empowered by the ELCA Constitution to act in accordance with the Confession of Faith and the Statement of Purpose (section 5.01.a; all chapter and section references are to the constitution unless otherwise stated). The congregations have asked the committee to dismiss the charges against them based on a determination that ELCA policy precluding the ordained ministry of practicing homosexual persons is contrary to the Confession and Statement.

Based on the record before us, we decline to make such a determination. ELCA policy regarding ordained ministry of homosexual persons involves complex and profound issues of an exegetical, ethical, and historical character. ELCA policy is supported by tenable theological argument. Discussion and debate continues among scholars and laypersons of ability and integrity within the ELCA and other denominations. Especially in view of the 45-day time limit imposed for Discipline Committee hearings, deliberation, and decision, the majority of the committee concludes that those who adopted the ELCA Constitution did not intend the committee to review church policy in this context. That function is more properly accorded to legislative, executive, and administrative bodies within this church as described in the ELCA Constitution.

B. The Charges Against St. Francis Lutheran Church

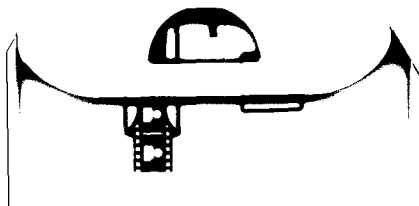
At a congregational meeting held on October 29, 1989, St. Francis Lutheran Church of San Francisco ("St. Francis") voted to extend letters of call to Ruth Frost and Phyllis Zillhart, neither of whom was an approved candidate for ordained ministry in the ELCA or on the clergy roster. (Stipulated Facts, paras. F and G.) Both Ruth Frost and Phyllis Zillhart had removed themselves from candidacy for the ordained ministry because of the policies in the predecessor church bodies precluding ordination of practicing homosexuals.

By letter dated November 9, 1989, Bishop Lyle G. Miller of the Sierra Pacific Synod advised St. Francis that its letters of call were in violation of section 8.21.d of the ELCA Constitution and that further action pursuant to the letters would subject St. Francis to disciplinary action. (Stipulated Facts, para. H; AR 101.) Following receipt of Bishop Miller's letter and with actual knowledge that it was violating a criterion for recognition of congregations of the ELCA, St. Francis acted to accept Ruth Frost and Phyllis Zillhart as ordained ministers within its congregation.

Based on the undisputed facts set forth above, the committee finds that St. Francis willfully disregarded a criterion for recognition of congregations of this church by calling as pastoral leadership two persons who were neither on the clergy roster of this church nor approved by the synodical bishop. (Section 19.16.01.b.) The charge as to St. Francis is therefore SUSTAINED.

C. The Charges Against First United Lutheran Church

Jeff R. Johnson was certified for call upon his graduation from seminary. He discussed his homosexuality and its implications with his bishop and the Commission on Professional Preparation for the



Pacific Southwest Synod of the Lutheran Church in America. His certification by the Commission was accepted by the ELCA upon its formation, along with that of other persons awaiting call who had been approved by the merging church bodies.

In the early part of 1988, Jeff Johnson and two other openly gay seminarians made press statements about their sexual orientation and certification. In March of 1988, Bishop Miller and other ELCA representatives interviewed Jeff Johnson and the other seminarians because they wanted to be assured these individuals were committed to living within the ELCA's policy prohibiting homosexual erotic activity by clergy. On the basis of this interview, Bishop Miller determined Jeff Johnson's intentions were acceptable (AD 113).

Bishop Miller requested a further interview with Jeff Johnson in June of 1988. Following this interview, Bishop Miller determined that Jeff Johnson had not made sufficient commitment to remain adherent to the ELCA's policy against practicing homosexuality by clergy. Bishop Miller explained that he was "postponing" recommendation of Jeff Johnson to any congregation for call (AD 102). It was understood that without a call, Jeff Johnson would not be ordained.

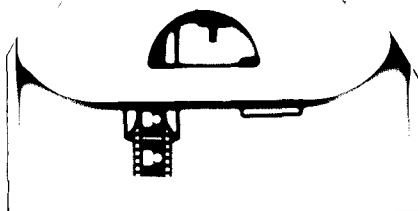
The effect of this action by the synod bishop is not addressed directly in the founding documents of the ELCA. The ELCA Constitution states that synods certify candidates for ordained ministry through committees (9.21.a(1)). It also provides that synod bishops shall "exercise this church's power to ordain (or provide for the ordination of) all accepted candidates for the office of ordained ministry" (9.31.a(9)). There is no constitutional passage directly stating that a candidate may not receive a first call without the affirmative recommendation of the synod bishop approving the call. Additionally, while it is apparent that lengthy church manuals and other documents address matters pertaining to call, none were offered into evidence on this point.

At the hearing, Lowell G. Almen, Secretary of the ELCA, testified that the synod bishop's responsibility for oversight of the synod connotes the power and duty to act as Bishop Miller did. All witnesses who addressed the topic agreed, however, that a synod bishop may not "decertify" a candidate who has received committee approval. The distinction between decertifying and announcing that Jeff Johnson's certification could not be used as support for any call was not explored.

Moreover, for purposes of the dispute, prospective interpretations of the Constitution by the Secretary are of limited help. The question at hand concerns what First United should have known at the time, not what other congregations might be told for the future. The ELCA Constitution assures accused parties that they will be "treated with fundamental procedural fairness." (19.13). In all settings, this includes assuring that an accused had reasonable basis for understanding all expectations imposed.

In September of 1988, the church council of First United discussed Jeff Johnson. They believed that he had not been dealt with fairly and unanimously resolved to inquire about his interest in being called as assistant pastor. (AD 22). Johnson said yes; the church council voted unanimously in October to begin a call process. First United created opportunities for him to preach and otherwise participate in the life of the congregation as they considered whether to extend a call.

The congregation knew that, pursuant to the policy of the Division for Ministry, candidates for ordained ministry are approved for a period of one year. At the conclusion of this year, the candidate has the responsibility to request renewal of the approval. Jeff Johnson's approval was expected to lapse in May of 1989. The congregation desired to call him and celebrate his ordination on Pentecost of 1989, before his approval lapsed. They were in conversation with Bishop Miller, however, and he urged them to wait (AD 22, para. 22). Among other things, guidelines clarifying the ELCA policy con-



cerning ordination of practicing homosexuals were expected in the fall of 1989. First United postponed call within Jeff Johnson's certification period.

The Definitions and Guidelines for Discipline approved by the Church Council and issued in November of 1989 maintain that: "Practicing homosexual persons are precluded from the ordained ministry of this church" (AD 87). Jeff Johnson did not apply for renewal of his certification at any time during 1989. He testified that he made a conscious decision not to do so because, in view of the increasing strictness of the Guidelines, he felt an application would be a futile act. Without any change in circumstances, the congregation of First United voted to call Jeff Johnson as assistant pastor on November 12, 1989 (AD 22, para. 25).

By letter dated November 14, 1989, Bishop Miller advised First United that its call to Jeff Johnson was in violation of section 8.21.d of the ELCA Constitution and that if the congregation proceeded with acceptance of the call, ordination, and installation, it would be subject to disciplinary action (Stipulated Facts, para. T; AR 1). Following Bishop Miller's letter, First United acted to accept Jeff Johnson as an ordained minister within the congregation.

Based on these facts, which were largely undisputed at the hearing, the Discipline Committee finds that First United disregarded a criterion of recognition of congregations of the ELCA by calling a pastor who was neither on the clergy roster of this church nor approved by the synod bishop at the time of call, as required by ELCA Constitution section 8.21.d.

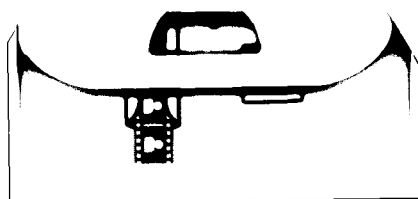
In considering whether this disregard was "willful" the committee has taken into account several factors. First United desired to call Jeff Johnson during the first part of 1989 while his candidacy approval was effective. This reveals a desire to operate within the call procedures of the ELCA. Although the congregation knew of Bishop Miller's disapproval of Johnson, the governing documents of this church fail to inform congregations adequately regarding the appropriate role of the synod bishop in regard to first calls of approved seminary graduates.

The committee is also aware of evidence that First United, like St. Francis, desired to protest ELCA policy precluding the ordination of practicing homosexuals and acted to call Johnson in furtherance of that desire. But, because First United's present claim of confusion based on ambiguity of church documents and communications with Bishop Miller finds substantial support in the record, the committee has established conditions under which First United may obtain dismissal of the charges against it either based on: (1) a renewal of Jeff Johnson's certification; (2) or withdrawal of his call if renewal is sought and denied. In this way, any past confusion will be rectified and Johnson will be treated as all other candidates in his position, i.e., he will have an opportunity to satisfy the appropriate certification committee with respect to his fulfillment of the standards for ordained ministry in this church. At the same time, if Jeff Johnson chooses not to pursue or is denied renewal of candidacy based on the proper application of ELCA policies and procedures, it will be clear that First United has knowingly participated in a violation of the criteria for recognition. Discipline will then be imposed.

II. REASONS FOR DISCIPLINE

A. The Consequences of Disciplinary Action

According to ELCA Bylaw 19.16.02, the disciplinary actions that may be imposed on congregations include: "(a) censure and admonition by the bishop of the synod; (b) suspension from the rights and privileges of a congregation of this church for a designated period; or (c) removal from the roll of congregations of this church." The consequences of these actions are discussed in a Memorandum from



Lowell G. Almen, Secretary of the ELCA, to Synod Legal Counsel dated June 29, 1990, and supplied to the Committee. Pastor Almen also offered additional testimony at the hearing concerning the interpretation of other parts of the ELCA Constitution at issue in this case.

The Committee has adopted and relied upon Pastor Almen's memorandum in considering the discipline to be imposed in this case. The memorandum indicates that the disciplinary action of censure, the most modest response, consists of a stern admonition or reproof directed to the congregations by the synodical bishop. Suspension for a designated period deprives the congregation of the rights and privileges of: (1) sending lay voting members to the Synod Assembly and to meetings of area subdivisions of the synod (+S13.02); and (2) the right to petition this church (8.53.07). It does not, however, preclude lay members of a suspended congregation or its ordained ministers from serving on church councils, boards, or committees. Nor does it affect the clergy roster status of that congregation's pastor. Although the memorandum does not expressly so state, the Committee also notes that suspension does not preclude the congregation's pastors from serving as voting delegates to the Synod Assembly nor does it preclude lay members from serving as non-voting delegates.

The most severe disciplinary action, removal from the roster of congregations, results in: (1) deletion of the name of the congregation from the roll of congregations (although the congregation's property would remain under its ownership and control in accordance with 8.71.c); (2) placement of ordained pastors on the clergy roster "on leave from call" under ELCA Bylaw 10.23.16, a status which allows the pastor to be retained on the roster for up to three years upon annual approval by the synod council and bishop; and (3) disqualification of congregational members from serving on synodical or churchwide councils, boards, and committees.

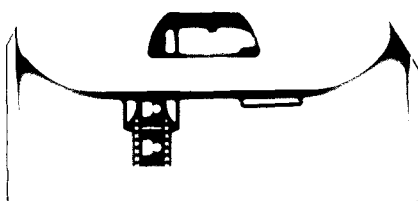
Pastor Almen also testified that a "suspension for a designated period" might include conditions or stipulations, provided the time of suspension was fixed by dates that were established or readily ascertainable.

B. The Committee's Selection of a Disciplinary Action

The members of the committee were divided in their views as to the discipline to be imposed on the accused congregations. A simple majority favored the action specified in the Statement of Decision, i.e., a five-year suspension followed by reinstatement if the congregations were then in compliance with section 8.21.d and removal if they were not. This view gives consideration to substantial minority positions within the committee favoring greater and lesser discipline. The majority view was based on two primary factors.

1. The Congregations Are Engaged in A Continuing Violation of a Criterion for Their Recognition as ELCA Congregations.

By its very nature, the calling of a pastor not approved for ordination is a willful and persistent violation of a fundamental *criterion for recognition* of congregations in this church. Section 8.21.d provides that this church "*shall recognize those congregations which by their practice as well as their governing documents . . . agree to call pastoral leadership from the clergy roster of this church in accordance with the call procedures of this church except in special circumstances and with the approval of the synodical bishop.*" (Emphasis supplied.) A scant few years ago, St. Francis and First United, through the actions of predecessor church bodies, consented to abide by this and other express conditions of ELCA membership. By their voluntary action, St. Francis and First United have now placed themselves in direct opposition to this express condition of their membership in the ELCA. If ultimately unresolved, the situation created by their actions can have no rational consequence other than



removal from the roll of congregations. To conclude otherwise would deprive the ELCA and all of its congregations of the most fundamental right of any organization—the right to determine its own membership based on criteria of association agreed to by all.

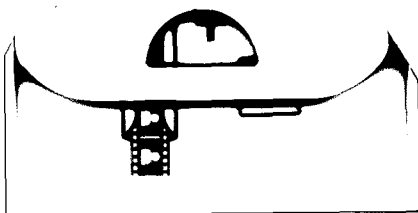
Several members of the committee suggested that the accused congregations receive lesser discipline in the form of an admonition or a suspension of one or two years followed by unconditional reinstatement. These members maintained, among other things, that: (1) the congregations' offenses involved only singular acts of calling persons who would have been approved by the ELCA but for the challenged policy; and (2) those offenses were a conscientious attempt to protest a policy perceived to be unjust. With due respect to these views, the majority cannot subscribe to them.

Initially, a call to service as a pastor addressed to a person who is not authorized to hold that position is not a singular act or discrete offense that can simply be admonished, forgiven, and forgotten. Although a call is embodied in an action by an organizational unit of the church, it also: “expresses a relationship between this church and the person called involving mutual service, support, accountability, supervision, and discipline.” (Section 10.23.A87.1 & 3.; emphasis supplied.) This ongoing relationship is not simply between the congregation and the pastor, but between the whole church and the pastor. (*Id.*) The ELCA Constitution is replete with provisions that involve the synod and the churchwide organization, as well as congregations, in the support and conduct of congregational pastoral ministry. (E.g., 7.10; 9.21; all of Chapter 10; 16.51.30.) Thus, the calls extended by these congregations create continuing relationships that have not been consented to by the synod and the ELCA, who are vital parties to those relationships. As such, the calls would continue to violate that consent even after an admonition were given or a suspension lifted. If the two congregations persist in maintaining these relationships, their conduct cannot, absent a change in ELCA constitutional provisions or policies, be greeted with anything less than removal.

Some members of the committee have suggested that these congregations have transgressed only a principle of order within the church as opposed to a command of the Gospel and have characterized the imposition of serious discipline as legalism. Again, the majority has decided otherwise. The actions of these congregations are a breach of one of the fundamental covenants that are the foundation of the community of the ELCA. As a Discipline Committee, we represent the integrity of the whole church. With all respect to the rights of the accused congregations, they are not the only congregations in the ELCA. In forming the ELCA, predecessor church bodies representing thousands of congregations joined together, consenting to a union based on the mutual promise that each would adhere to the Criteria for Recognition of Congregations set forth in Chapter 8. If the Discipline Committee responded with lesser discipline to actions which represent a willful and continuing violation of those criteria, it would break faith with all of those who made the promise. It would become, not a Discipline Committee interpreting and applying the ELCA Constitution as written and agreed to, but a self-appointed Council of Revision. A majority of the committee rejects such a role and believes that, if fundamental constitutional provisions are to be altered or disregarded, that action must come from the church body authorized to amend the Constitution and Bylaws, i.e., the Churchwide Assembly. (Sections 21.10; 21.11; 21.20; 21.21.)

2. There is a Need for Dialogue and Reconciliation Within this Church In the Face of Ambiguity and Conflict on the Issue of Ordination of Practicing Homosexual Persons.

As our decision reflects, we do not regard this case as a simple one. We are not a secular court making a legal decision. We are part of the Church—“a people created by God in Christ, empowered by the Holy Spirit, called and sent to bear witness to God’s creative, redeeming, and sanctifying activity



in the world.” (Section 4.01.) In the ELCA, all expressions of the church are directed and empowered to act in accordance with the Confession of Faith and the Statement of Purpose. (Section 5.01.a.) The Discipline Committee is not excepted from that charge. We have, therefore, endeavored to find a measure of God’s grace in our decision for all of his people in the ELCA and beyond.

We have been moved by the testimony of the members of these congregations and their pastors as they have described their ministry to AIDS victims and members of both the homosexual and heterosexual communities. Like us, these are God’s people doing his work. We can all learn from each other.

This church has made solemn and vital commitments in its Statement of Purpose to “advocate dignity and justice for all people” and to “stand with the poor and powerless.” (Section 4.02.c.) To fulfill these commitments, it has promised, among other things, to: “Study social issues and trends, work to discover the causes of oppression and injustice, and develop programs of ministry and advocacy to further human dignity, freedom, justice, and peace in the world” (section 4.03.1.) and to: “provide structures and decision-making processes for this church that foster mutuality and interdependence and that involve people in making decisions that affect them” (section 4.03.o).

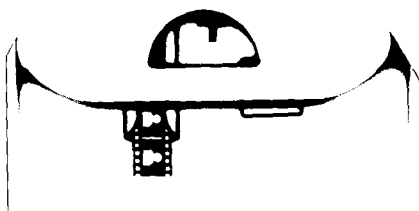
Despite its official statements, the church has in some instances ignored homosexual people and their story of faith. The ELCA is by no means unique in this reaction. The committee was disappointed to learn that, contrary to the expectations of many including even the synodical bishop who brought the charges against these congregations, neither the study being done by the ELCA Task Force on Sexuality within the Commission for Church and Society nor the intensive six-year study of the Task Force on Ministry (commissioned by a continuing resolution of the church under Section 10.11. A87) will deal with the issue of ordination of gay and lesbian persons.

As the Lutheran church, we cannot remain true to our own purpose and confession as an open, teaching, and inclusive church unless we are willing to participate in genuine dialogue with gay and lesbian persons. And genuine dialogue cannot continue if they are ignored in our studies and deliberations or removed from our community.

With these considerations in mind, we have imposed on the accused congregations a five-year suspension. During the suspension period, they will not have lay voting membership in church conventions, but they will continue to have voice and vote at those assemblies through their pastors. Their members will be eligible to participate in church committees and commissions. We hope and pray that they will continue to be a voice and witness within the church during this time.

We also earnestly hope and pray that the church will now face the issue of ordination of homosexuals faithfully and in dialogue with all of its members. The length of the suspension period we imposed was chosen to allow for just such careful study and deliberation. Although we are not empowered to make binding recommendations on how this might be done, we would suggest that avenues exist with the ELCA for doing this. These might include: (1) addition of this question to the agendas of the Task Force on Sexuality and the Task Force on Ministry; (2) appointment of a specific task force to study this issue; and (3) other forms of study involving congregations, seminaries, and other institutions of the church.

We have no power to dictate the outcome of this suspension period, if any, on the policies of the ELCA. We can only ask that the Churchwide Assembly faithfully examine those policies *after* appropriate study and communication. We call for unity during this time of study, dialogue, and prayer to the end that our mutual decision, whatever it might be, is the product of God’s spirit acting in our life as a church.



ATTESTATION

We attest that the foregoing statements of decision and memorandum of reasons were adopted by a proper majority vote of the Discipline Committee.

Dated: July 18, 1990

Reverend Rudolph Ramseth
Co-Chair of the Discipline Committee

Kathy Kelly
Co-Chair of the Discipline Committee

An Open Letter From The Discipline Committee

To Our Brothers and Sisters in Christ in the Evangelical Lutheran Church in America and Throughout the World:

As we complete our work, we wish to share with our brothers and sisters some of what this experience has meant to us and what we hope it will come to mean to those who are now receiving our decision. In the beginning, many of us were humbled by and wary of our task. We now thank you for providing us with the opportunity to serve the church in this way. The depth of faith shown by all participants to this dispute has inspired us, and our role has enabled us to find new appreciation for the whole work of the church.

We came to our task from different places and backgrounds. Half of us are ordained ministers; half of us are laypersons. We are different from one another as to gender, race, age and occupation. We live and work in virtually all parts of this country.

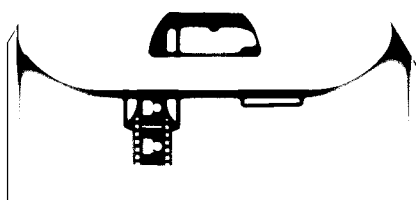
At times during our deliberations, our different life experiences made forging shared perspectives challenging. Having finished the present task, however, we know that these differences and challenges enabled us all to grow as we struggled with the complex and difficult issues posed by the charges before us. We pray that those to whom this letter is addressed will join with us now in taking up this struggle by affirming all persons who are a part of it.

To All Members of the Evangelical Lutheran Church in America:

We know that many of you have watched this process carefully because you believe it will determine whether or not this church lives up to your expectations. We have good news for you. Throughout our process, every participant has displayed through word and deed a paramount commitment to the Gospel and complete respect for others who struggle to give that commitment expression in daily life. Our church is healthy. We are convinced that the fellowship of this church will enable its members to faithfully worship and work toward lives that comport with God's plan.

Our brothers and sisters within the congregations of St. Francis and First United have brought grave concerns to us. We do not find that those concerns are matters we can act upon in the limited context of this process. We feel, however, they must be summarized and commended to you.

The accused congregations express concern that, in their experience, people do not choose to be homosexual; that perhaps as many as 10 percent of any typical population find they are attracted to per-



sons of the same gender, and cannot alter this orientation; that homosexuals have long felt rejected and condemned by institutional religion; that the Guideline prohibiting practicing homosexuals from the ordained ministry communicates a judgment that all homosexual expression is immoral; that this treats exploitive, brief encounters the same as loving, committed relationships; that suggesting all homosexual expression is immoral communicates to gays and lesbians that an immutable part of their being is evil and cannot be expressed in any way possessing sanctity; that requiring a homosexual pastor to remain celibate and exclude even the prospect of a loving, committed relationship diminishes the effectiveness of that pastor's ministry in the gay/lesbian community; that in this instance, the pastor's unhappy adherence to the Guideline serves to remind other homosexuals that the church sees any expression of their given sexual orientation as a bad thing; that this impedes homosexuals from hearing the Good News of grace and reconciliation; that there is an urgent need to enable that message in the face of a crisis causing untimely death for frightening numbers of young people; and, that if homosexual pastors were able to pursue monogamous commitments, they could serve as models for responsible relationships in the gay/lesbian community.

These concerns raise profound Biblical questions. To achieve a unified understanding within our church will require careful study and open discussion with hearts receptive to the guidance of the Holy Spirit. To facilitate such open discussion, we must stress to our members that the church is a safe place to share experiences, hopes and perspectives. We implore all congregations to be safe havens for frank discussion. Encourage all to put aside assumptions and listen to competing views without harsh judgment.

We thank you for the prayers you have offered during our deliberations. They have comforted and strengthened us. We will offer our continuing prayer that God's will might be done as the church-at-large continues to reflect upon the important issues raised up before us.

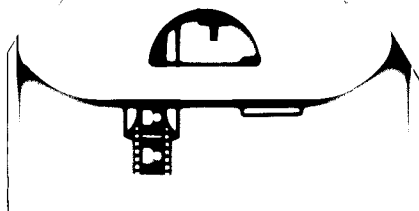
To Bishop Lyle G. Miller, his Staff, and the Synod Council of the Sierra Pacific Synod:

We recognize and affirm the decision of the bishop and synod council to bring these charges before us. We know that you acted responsibly in faith and in conscience to safeguard the unity of this church.

We hope that the decision we announce will not only preserve order, but also provide an environment for intensifying our unity of purpose as the people of God for the future. The suspensions imposed enable the members and pastors of the accused congregations to function actively in the life of this synod through councils, boards and commissions. We know that you will welcome their participation as brothers and sisters in Christ. Reach out to them and invite their participation, as a means to accomplish healing and growth. Make certain that the individuals within these congregations continue to receive care from the bishop and his staff as do all other members of the Sierra Pacific Synod.

Bishop Miller, we can see and feel the agony you have endured as you have struggled to keep order while striving to act with love and compassion toward all. We know that much work lies ahead of you relevant to the differences dealt with in this process. Some will be outraged that this Committee was too lenient. Others will be outraged that it was too harsh. You will need to minister to both groups. We pray fervently for your renewal. May God grant you a special measure of rest and strength for the work that remains to be done.

We extend a special expression of Christian love and appreciation to all members of the bishop's staff and the synod council. Your calling has been a challenging one in these times. You each have close relationships with congregations and people espousing conviction on the issues, and we know that sometimes it must be difficult to balance loyalties among all whom you serve. We affirm the need



of the Sierra Pacific Synod for your service and your calling to provide it. We pray that you too will be strengthened for the considerable work ahead.

To the Members and Pastors of St. Francis and First United:

We are humbled and moved by the expressions of God's love we find in your ministry. You have reached out to all persons, homosexual or heterosexual, who struggle for wholeness and meaning in their lives. You have extended special comfort and acceptance to those who face the pain and death of AIDS, and those who seek recognition of their dignity as persons created in God's image and saved by God's grace. You have suffered for their sake and have accepted the duties of continuing as their servants with great costs and risks.

As you have shown compassion to so many, we ask you to reach out with the full measure of your gifts to all of God's people within the ELCA, including those whose vision differs from your own. They too have been created in God's image and are the recipients of God's grace. As you meet them in the councils of this church, extend to them the patience and understanding you have shown to so many others.

You have cried out for the whole church to help you respond better to the human needs you face in your communities. You have asked to be heard rather than disciplined. We wish to impart that you can take important steps to help others hear your voice.

During the hearing, there was testimony about two tracks for accomplishing change—(1) Thinking ourselves into a new way of acting, and (2) Acting ourselves into a new way of thinking. We were urged not to respond harshly to your actions because they may create experiences which will inform the church and assist it to "act itself into a new way of thinking."

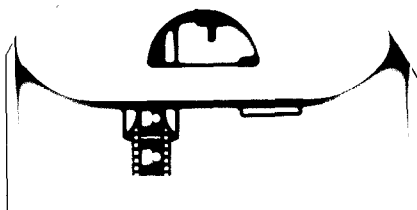
To the extent this has been your goal, rest assured you have everyone's attention. Be reminded, however, that there comes a point when further action does not advance thinking. In fact, action which is too confrontational can impede thinking. We implore you to strive for congregational life and practice which will enable you to be a continuing part of this church body. You are a valued voice within it, and we believe our principles of organization make us a church committed to opportunities for expression of that voice. Use those opportunities. Direct your efforts in compliance with the rules you ascribed to when you became a part of the ELCA. This will enable many to hear you more clearly than is possible when anger over disorder distracts from your essential message. Be with us as we strive to "gather the hopes and dreams of all" for the ability of this church to proclaim God's grace.

We pray that you will receive our decision as an invitation to make your voice more effective in the life of this church. We pray that God will bless your ministry, and we hope that you will join with us in prayer for the guidance of the Holy Spirit in the councils of this church.

To the Churchwide Organization of the ELCA, including the Conference of Bishops:

We are grateful for your tireless and faithful stewardship of the ELCA. In founding and sustaining the largest body of Lutherans in this country, you have blended diverse and sometimes strident voices into a new song of praise for God and service to others.

We look to you now for leadership that will allow God's church to challenge and inform the spirit of these times. It is no longer enough to work on stating with precision how the predecessor church bodies dealt with issues concerning ordination of practicing homosexuals. We need to struggle anew with the questions and try to forge an understanding that can be embraced by the diverse voices of this new church as their own. We implore you to initiate steps that will involve all expressions of the



church in study, discussion and prayer. Assist us to be in ecumenical dialogue with the many others in God's Church who confront these same issues. Lead us to find united guidance, and refrain from hasty pronouncements that divide.

We pray that all within this church might have special appreciation for the difficulty of your tasks. We pray for an atmosphere of patience and tolerance that will enable us all to work together despite our human frailties. We know that you join us in prayer for God's continuing guidance that all we do might serve the Lord.

Separate Statement

Endorsed by Otto Bremer, Gerry Grant, Audrey Fucles, Kathy Kelly and Ann Siqueland

In this statement, we choose to address only one point of difference with the majority result. That concerns what should happen at the conclusion of the suspensions imposed.

The majority are resolved that it would be inconceivable to retain the accused congregations in the ELCA if, at the conclusion of the five years, there is no accord between the parties on the matters in dispute. We do not think this basic supposition will help us form a constructive identity in the young life of this church.

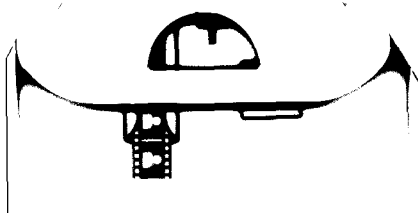
We are joined together as a church because of the common faith we affirm. That basic reason for our existence is not threatened by any conduct of the accused congregations. The pastors they have called accept this church's Confession of Faith, and no one challenges their preparation to preach the Word truly and with conviction. The controversy swirls solely around an issue of conduct that is not explicitly addressed in any of our founding documents.

The question raised by St. Francis and First United is: For a gay or lesbian pastor, is a homosexual relationship which is both loving and committed consistent with a "life . . . beyond reproach" (ELCA Constitution 10.22)? The conditions stated within this question are important. Neither congregation has endorsed any practicing homosexuality by clergy that does not take place in the context of a loving, committed relationship. There is no support for conduct that is exploitive, oppressive, or otherwise quite at odds with the Gospel.

We do not think it is sensible or constructive to suppose that the unity of this church is lost unless every congregation within it answers this particular question identically at all times. Whether conduct engenders "reproach" is greatly affected by culture or context, and the simple fact of the matter is that this country does not have a single culture. There are regional variations and differences according to age group and ethnic group. Allowing some flexibility in how we respond to the question stated above may actually help congregations convey a more effective message in the community and context where they find themselves.

Even if we are unwilling to embrace diversity on this question of conduct as a permanent part of our church's life, we should at least be prepared to accept such differences as an essential part of our early years together, trusting study, counsel and dialogue as the channels for forging unity, rather than a resolve to remove nonconformists. Indeed, we have displayed such patience in regard to topics other than ordination of practicing homosexuals.

The second topic addressed in this church's Principles of Organization is inclusivity. Despite the fact that the ELCA holds up this "conduct" principle as essential for "faithfulness to the Gospel"



(ELCA Constitution 5.01.b), we know that the behavior of all ELCA members and congregations is not in conformity. A document entitled, "Guidelines and Policy: The Affirmative Call," which was adopted by the Sierra Pacific Synod at its most recent assembly, calls out attention to the fact that congregational call committees have expressed disinclination to consider pastoral candidates because of age, marital status, gender or race. These Guidelines state:

"Statements such as, 'we're not ready for a woman' or 'our congregation wouldn't accept a person of color' will be regarded as honest expressions of feelings. . . . Where strong sentiments are felt by members in a congregation, this should be shared openly with the synod staff person. Every effort will be made to provide educational resources to assist persons in gaining understanding of the ELCA's beliefs and practices relating to ordained and lay ministry." (AD 89).

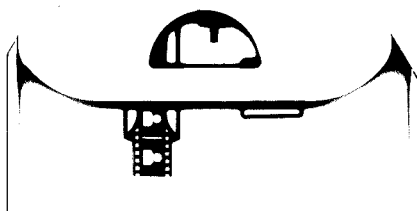
The church would not dream of using harsh disciplinary penalties as a means of assuring recognition of inclusivity principles by all congregations. Those who drafted and adopted these Guidelines placed their trust in education, counsel and dialogue as the most desirable means to strive for unity of perspective. We should place our complete confidence in the same methods in regard to the matters at issue here.

Many will say that the two situations are not completely the same. True. These Guidelines speak of persons who would exclude candidates approved by the church while St. Francis and First United seek to include those who were not approved. But, excluding those whose call to service has been affirmed by the church must be considered as a very grave matter, particularly when it is out of step with a principle of organization held up as essential to the identity of this church. If we can have patience and forbearance for those who are out of step in this grave way, we should have similar patience and forbearance for St. Francis and First United.

We should learn from our history. In the early Christian Church, many issues of conduct were also debated. As we know, a primary focus of controversy concerned whether or not Christians must adhere to Jewish law as to circumcision, diet and other matters in order to live God-pleasing lives. The Epistles caution against harsh judgment between the factions (Colossians 2:16). The recurring theme is:

"For in Christ Jesus neither circumcision nor uncircumcision is of any avail, but faith working through love." (Galatians 5:6).

Our identity as a church of "faith working through love" is not aided by resolving now that St. Francis and First United must be removed from our rolls if they and the ELCA are not in accord as to the conduct question presented here after five years.



Statement of Otto Bremer

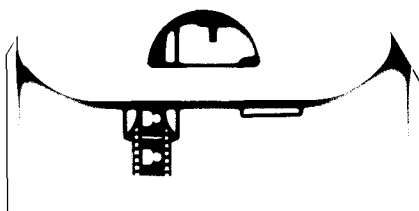
I join in the minority opinion in this case, but wish to add some additional comments. The struggle within most of us on the committee was between the obvious legal violations of constitutional provisions and the commitment of the congregations (particularly St. Francis) to the Gospel driven ministry to all people. The struggle takes an increased importance as our new Evangelical Lutheran Church in America sets precedents for our life together.

I was impressed by the testimonies of members of the congregations who had been hurt, rejected and condemned in prior church experiences and who found love, acceptance and the Gospel in the accused congregations. To respond with "suspension" is not the affirmation of the Gospel needed at this time.

The actual penalties involved in suspension are very small and allow for the pastors and members of the congregations to participate in the needed dialogue. My concern is the perception by the churches of this area and by persons in the communities served that these congregations have been removed from the ELCA. They will continue their ministries, I am sure, but as separated from the structures of the church. The ELCA needs St. Francis and its ministry more than the ministry needs the ELCA. I pray that the congregations will be able to accept the penalties imposed and continue to contribute to the future of the inclusive ministry of the ELCA. I wish the majority opinion had given them more encouragement.

I would have preferred to have our new church say quite clearly that we are not yet ready for this precedent setting decision. There is need for more study and dialogue—as both the majority and minority decisions call for. The commitment to inclusiveness needs "both/and" perspective. We are in danger of structuring an "either/or" mentality into some new church organization.

July 17, 1990



Statement of Tony J. Tanke

INTRODUCTION

I concur in all respects in the decision of the Discipline Committee and in the supporting documents filed as a part of it.

We were not able to reach consensus on the complex and rending issues presented by these cases. There were no clear winners or losers. With all of our brothers and sisters in the ELCA, we now face the question: Where do we go from here? I write separately to share some personal views.

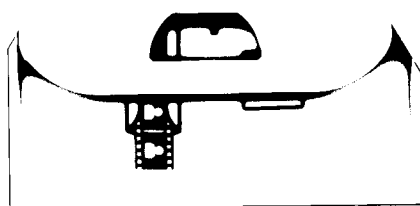
Although these cases have been difficult and painful, I am grateful for having shared in their hearing and disposition. Beyond any other experience I have enjoyed in the church, this process has made me thankful for the ELCA. We have participated in an unusual event: A major church body, the largest of its denomination in our nation, has allowed its internal policies and decisions dealing with one of the most difficult and divisive issues in the church to be publicly examined by an ad hoc group of clergy and laypersons who represent a spectrum of ages, races, occupations, geographical locations, and philosophies. Despite differences within our committee on the questions raised, we were able to come together in openness and faith, revealing our thoughts and feelings, affirming each other as persons committed to the Gospel of Jesus Christ, and resolving to grow together into new life. Whatever the ultimate outcome of our work, we have shared in a spiritual community that has in some way transformed each of us.

As the first Discipline Committee to preside in this new church, we have encountered significant questions of church authority and interrelationship, including the scope of our own function as a disciplinary body. With deep respect for the work of the founders and leaders of the ELCA who have brought us together in this body, I would like to offer my thoughts with respect to three areas of constitutional interpretation confronted by the committee in these cases: (1) the role of the synodical bishop in the call and ordination of ministers in this church; (2) the development and application of standards governing the personal conduct of ministers; and (3) the role of disciplinary tribunal in a church that affirms grace over law. Because of its importance in light of our decision, I will also offer suggestions as to a fourth issue: how do we now confront in the community of the ELCA the questions of sexual orientation and practice and their relationship to the ordained ministry of this church?

1. The Authority of the Bishop in the Call and Ordination Procedures of this Church

As shown by its decision, the committee had great difficulty with the case of First United Lutheran Church. Our decision to provide a possible avenue for dismissal of the charges against First United (a kind of "conditional acquittal" that is unfamiliar to secular law) was the product of a general feeling that the congregation may have been affected by unnecessary ambiguity in church policy and procedure.

When we first began to learn the complex facts surrounded Jeff Johnson's candidacy, I expected the committee's decision would be a straightforward one. The synodical bishop had declined to approve Jeff Johnson for call and ordination based on what the bishop perceived to be an insufficient commitment on his part to adhere to standards expected of pastoral candidates. Surely, in such a situation, one would expect to find at least one of two things that would resolve his case: (1) a clear expression in the governing documents of the ELCA of the ultimate authority of the bishop to intervene, in his discretion, to prevent a call or ordination; or (2) clear evidence that Jeff Johnson was not in compli-



ance with ELCA policy, regardless of who might have the power to determine his status. Neither I nor a majority of the committee was able to locate either of these things in the record before us.

By its use of mandatory language, the ELCA Constitution obligates the synodical bishop to ordain all accepted candidates for the ordained ministry. Section 9.31.9 provides: "As the synod's pastor, *the synodical bishop shall . . . Exercise this church's power to ordain (or provide for the ordination of) all accepted candidates for the office of ordained ministry . . .*" (Emphasis supplied.) The only source for a definition of "accepted candidates" within the ELCA Constitution is Chapter 10, which specifies standards for "acceptance and continuance in the ordained ministry" (sections 10.23; 10.23.10; 10.23.11) and describes a procedure whereby candidates are "examined and approved by the appropriate committee according to procedures established by the Division for Ministry, after consultation with the seminaries of the church." (Section 10.23.12.f.) No essential action or authority on the part of the bishop is mentioned.

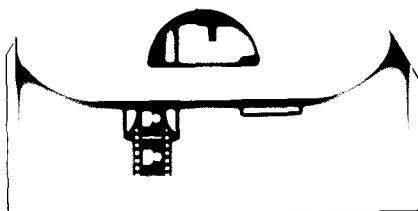
The Division for Ministry has a Candidacy Manual that contains over 200 pages of procedures describing the candidacy certification process. Yet, our attention was not directed to any portion of the manual that authorizes the bishop to prevent the ordination of a certified candidate or to intervene in the ordination process. Although several witnesses claimed that ELCA policy included broad episcopal authority over the ordination process, none was able to point to any governing document directly supporting his position. And the general references cited were not persuasive. The bishop's authority to "oversee and administer the work of the synod" (section 9.31.a.1.) does not express or imply the extraordinary authority to prevent calls and ordinations of persons properly certified in accordance with Chapter 10. Similarly, the reference to *synod* authority over certification (9.21.a.1) does not imply that the synod *bishop* retains that authority as opposed to "the appropriate committee" specifically referred to in 10.23.12.f.

Like other members of the committee, I wondered at the omission of a clear and straightforward grant of episcopal authority over the call and ordination process in the ELCA's governing documents. Why does our Constitution not simply say: "The synodical bishop shall retain the final authority, in his or her sole discretion, to approve or disapprove the ordination or call of any pastor or candidate to congregational ministry within his or her synod."? Some of our committee members who had been present at the Constituting Convention suggested that serious questions about the bishop's authority were intentionally left unresolved. There appear to be differing views within the ELCA, growing out of differences in the predecessors bodies, as to whether the bishop is primarily a "pastor to the pastors" whose function is incompatible with the exercise of such broad discretionary authority over pastors and candidates.

I suggest further study and discussion of this issue. If the ELCA expects its synodical bishops to be responsible for carrying out policy as Bishop Miller was attempting to do here, it should consider giving them clear and express authority commensurate with their responsibility. If, on the other hand, it does not desire to give them such authority, it should not expect them to absorb the kind of criticism Bishop Miller has endured. In short, as in any sound organizational structure, responsibility and authority should reside at the same level.

2. Standards of Conduct for Ordained Ministers and Candidates and Their Fair and Uniform Application.

First United's case would also have been a simple one if Jeff Johnson had been in clear violation of ELCA standards or policy governing the conduct of ordained ministers. Although late in coming, the Definitions and Guidelines for Discipline appear to be an accurate reflection of policies in the pre-



decessor church bodies (see (AR 11) and are clear enough in this regard: "Practicing homosexual persons are precluded from the ordained ministry of this church;" (*Id.* at section (b)(4).)

The constitutional validity of section (b)(4) can reasonably be questioned. It might be construed, at least in part, as an attempt to establish a standard for ordained ministry without a bylaw amendment duly adopted by the Churchwide Assembly (sections 10.23; 13.21.h; and 21.21). It also appears to conflict with the authority given the Discipline Committee to choose the mode of discipline for a pastor who has engaged in conduct unbecoming a minister (section 19.15.02). Regardless of its status, it did not assist us in resolving this case. The Discipline Committee received no evidence that Jeff Johnson is or ever has been a practicing homosexual person. We heard only that the bishop was not satisfied with his statement of commitment to remain celibate. That commitment is referred to in Division of Ministry policy, which appears to give candidacy certification committees, not bishops, discretion in evaluating candidates' answers to the question: "Is it your intention to live a life consistent with the expectations expressed in [the] statement ["Expectations Concerning Sexual Conduct of Candidates"]? (AR 19.) Thus, the Discipline Committee was unable to find in this case that a candidacy committee would necessarily have agreed with Bishop Miller's assessment of Jeff Johnson's answers.

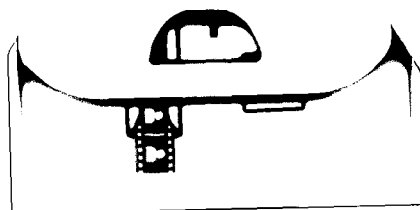
In my view, the church has a right to establish standards of conduct and commitment for its clergy and should stop apologizing for doing so. The problem in this case is not that the church asked Jeff Johnson to commit himself to its standards. It is that it developed a new enforcement mechanism (i.e., a mandatory commitment as to a candidate's future intentions) and then applied it retroactively only to the intended sexual behavior of three gay candidates. In so acting, it pleased no one. As Dean Timothy Lull has written: "Some sort of policy was no doubt necessary in the midst of great anger and confusion in this newly formed church body. But the particular strategy adopted galvanized the sexual left to action without particularly placating the sexual right. It also had the odd effect of asking about sexual conduct in such a way that it was an even more crucial criterion for being a candidate for ordination in the ELCA than confessional subscription (which continued often not even to be mentioned until final approval interviews at the end of seminary)." (Lull, "Public and Private, Strong and Weak" 10 *Word & World* 140, 142, fn. 3 [hereafter referred to as "Lull"]).

The church should consider requiring a document of commitment from candidates stating their intentions to abide by its doctrines and teachings as well as its standards of conduct for ordained ministers. As the Definition and Guidelines for Discipline show, these standards are not limited to homosexuals or to sexual conduct in general. Requiring a commitment is neither unfair nor discriminatory. The application of such a requirement by candidacy committees throughout the church would provide advance notice to candidates of what the church expected and promote fair and evenhanded enforcement of church policy.

3. The Role of the Discipline Committee

As the first Discipline Committee to convene in the new church, we were confronted with a highly charged and unusual dispute. The accusing side sought to limit our function, arguing that we should defer to testimony from the Secretary of the ELCA on matters of constitutional interpretation. The accused, on the other hand, sought to expand it, arguing that we were empowered to declare ELCA policy on the ordination of practicing homosexual persons invalid as in conflict with both Scripture and the Lutheran Confessions. With this ominous beginning, I feared that what Justice Holmes had once said in a secular decision would be true here as well: "Great cases, like hard cases, make bad law."

Despite Holmes' prediction, we may have avoided bad law. We have attempted to set the disciplinary process in the ELCA on a course that will provide a sound foundation for our future life as a



Christian community. In examining our own function, we have perceived two vital tasks for the Discipline Committee: (1) adjudication—the process of deciding the validity of the charges and imposing discipline based on the provisions of the ELCA Constitution; and (2) admonition and affirmation—the process of providing friendly and earnest advice and counsel to parties to the proceedings so that we continue to act together to build up the body of Christ.

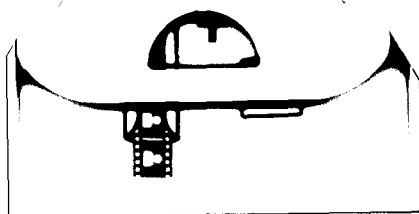
In the area of adjudication, we have declined to adopt the views of our function pressed upon us by the parties. Although we have not passed on the merits of church policy prohibiting the ordination of practicing homosexuals, I believe we would have the power to review the validity of church decisions and policies. This much is implicit in section 5.01.a which requires synods and the churchwide organization to “act in accordance with the Confession of Faith . . . and the Statement of Purpose.” The Discipline Committee is a hybrid: it is part of the synod to the extent that it is convened by the synod and its membership contains the Synod Discipline Committee; it is part of the churchwide organization to the extent that it is established under the ELCA Constitution; enforces national church rules; and obtains one-half its members in each case from the national church. (Sections 19.11; 19.15.05; 12.26.) Like other parts of the church, it is bound to follow Scripture, Lutheran confessional principles, and the other declarations in the Confession and the Statement.

For example, if a church official discriminated against someone based on race or sex, I believe that the Discipline Committee could refuse to recognize that action as valid under the Confession and the Statement. The distinction between that case and this one lies in the level of knowledge and feeling within the body on a particular issue. As both parties in this case recognized, eminent theologians and committed pastors and laypersons are deeply divided on the issue of ordination of homosexual persons. Thus, there is a substantial body of professional and lay opinion in support of the ELCA policy. At this stage of the debate, the policy cannot be deemed indisputably contrary to the Gospel as viewed in a Lutheran confessional tradition. The same could not be said of the race or sex discrimination case. Thus, I think, the two cases mark the limits of the Discipline Committee’s power of review.

Similarly, I cannot accept the argument made by the accusers that the Secretary of the ELCA can deliver binding interpretations of the ELCA Constitution in the course of disciplinary proceedings. The argument rests on Bylaw 14.31.12 which directs the Secretary to prepare interpretations “as necessary” of the constitution, bylaws, and continuing resolutions and allows a “board, standing committee, advisory committee, or synod” to appeal the secretary’s interpretation to the Church Council. Two basic considerations lead me to conclude that the interpretative procedure provided in this bylaw is not applicable to actions of the Discipline Committee.

First, complete deference to the secretary’s interpretation of constitutional language during the course of disciplinary proceedings could result in a violation of the constitutional due process rights of the accused, which include: “the right to be given notice of the charges” and “the right to be treated with fundamental procedural fairness.” (Section 19.13.) These rights cannot be respected if the Secretary is permitted to interpret the meaning of constitutional language pertinent to the charges *after* the allegedly offending conduct has occurred. They can only be respected if the charges, and the constitutional provisions they embody, are interpreted by the Discipline Committee in the way a reasonable person in the position of the accused would have viewed them at the time of the alleged offense. In fundamental legal terms, *ex post facto* laws are inherently repugnant to the right of any person or organization to conform its conduct to the law by a reasonable interpretation of its provisions. In simpler terms, the rules cannot fairly be made after the game is played.

Second, the language of the Bylaw strongly suggests that it was designed to allow specified executive and legislative entities within the church to obtain from the secretary interpretations of constitutional



language that pertain to their day-to-day functioning and to challenge those interpretations before the Church Council. Parties subject to discipline, including pastors and congregations, are not given appeal rights under the bylaw. Nor is the Discipline Committee listed among those bodies that may appeal from the Secretary's interpretation. Even if the Bylaw could somehow be viewed as allowing an appeal by the Discipline Committee, the short-fuse timing of the disciplinary process (which must be completed 45 days from the date the committee is constituted under bylaw 19.05.c) effectively precludes appeal. In view of the serious consequences of disciplinary action, I cannot conclude that the framers of the ELCA Constitution desired to impose the Secretary's interpretation on the parties to disciplinary proceedings with no recourse, while allowing other entities far less drastically affected a right to challenge his interpretation. I am satisfied that section 14.31.12 was not intended to apply to the judicial process of discipline contemplated in Chapter 19.

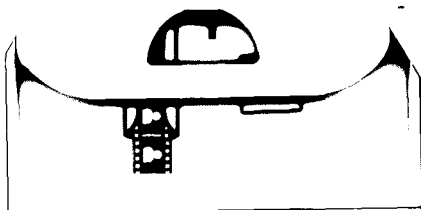
Once a violation is established, the proper discipline to be imposed is left to the discretion of the committee under section 19.15.02. In imposing discipline in this case, the committee considered several factors. Above all, we endeavored to find a place that grace and the Gospel could work in this process. The first step is a recognition that we, as groups as well as individuals, are equal in our status as sinners in need of his grace as well as saints justified by it. As a result, any disciplinary process among us should emphasize *mutual responsibility and admonition*. As we discipline others, so we submit to their discipline. In the ELCA Constitution, we recognize that congregations, synods, and the churchwide organization are interdependent partners in the mission of this church (section 5.01.c). In any good partnership, partners complement, support, and admonish each other in an ongoing relationship. They make up for each other's weaknesses and correct each other's excesses. In its imposition of discipline, this committee has a duty to promote the working of the interdependent partnership that is the ELCA.

The mutuality of discipline in the church in a context of grace is the subject of a familiar passage in Matthew's Gospel:

"If your brother sins against you, go to him and show him his fault. But do it privately, just between yourselves. If he listens to you, you have won your brother back. But if he will not listen to you, take one or two other persons with you, so that every accusation may be upheld by the testimony of two or three witnesses, as the scripture says. But if he will not listen to them, then tell the whole thing to the church. And then, if he will not listen to the church, treat him as though he were a foreigner or a tax collector. And so I tell all of you: what you prohibit on earth will be prohibited in heaven; what you permit on earth will be permitted in heaven. And I tell you more: whenever two of you on earth agree about anything you pray for, it will be done for you by my Father in heaven. For where two or three come together in my name, I am there with them." (Matthew 18:15-20; TEV.)

This passage echoes the themes we have tried to follow in this case: integrity of the community, listening, forgiveness, reconciliation. (R. Smith, Augsburg Commentary on the Gospel of Matthew (1989) pp. 221-223.) As Professor Smith comments: "Matthew recognizes the need for safeguarding the righteousness or integrity of the community . . . but carefully embeds this passage in a context of graciousness. Before the passage Jesus speaks of the one lost sheep . . . and after it of the unmerciful servant . . . Matthew has incorporated a tradition of his community but modified it by giving it this fresh context." (p. 221.) In Smith's exposition, the procedure of discipline outlined by Matthew "undercuts precipitous action" on the part of leaders and has as its goal the reconciled life of the community: a life that takes on new power. (pp. 222-223; see also John 3:3.)

We have endeavored to protect the integrity of the ELCA by disciplinary action that recognizes the seriousness and continuing nature of the violations committed. If these violations remain at the end of the suspension period, the congregations will be removed from the ELCA. At the same time, we



hope and pray for forgiveness and reconciliation for all of us as the ELCA undertakes serious study and dialogue on the issue of homosexuality and ordination. By imposing a five-year suspension, we have attempted to "create space" in which those in the church on all sides of this issue can actively listen to one another. (Lull, p. 146.)

Along with other members of the committee, I was deeply moved by those who came before us. For me, the presence and testimony of Bishop Lyle Miller embodied the struggle of the whole church on this issue. He described with deep emotion his experience with the call process of Jeff Johnson, whom he had known since Jeff's childhood, and patiently endured the pointed questioning of legal counsel and committee members (myself included) dealing with his decisions. As a gracious and loving pastor, he has borne the burdens of those who have opposed and reviled him. His strength and compassion served as an example to all of us in this process. I honor him as my bishop and pastor.

I was also particularly moved by the testimony of Pastors DeLange, Lokken, and Frykman and their stories of faith. Many of us (again including myself) often prefer not to think or talk about the emotional or physical pain of gay and lesbian people in San Francisco. These pastors live that pain every day of their ministries. As they spoke, I could not help but believe that if Christ were with us now in body as well as spirit, we would find him seated at their table. I regard myself as fortunate to be part of a church that counts them as pastors.

Based on what this committee has heard and seen, we affirm our solidarity with all of those within the ELCA who strive together for unity on this issue. But, in my affirmation, I must also express grave concerns for the future. Words of warning were sounded by President David Tiede when he wrote: "Beware of the challenge which merely intends to produce change, not crediting the moral and theological seriousness of the community. And beware of the church where dissent is silenced." (D.L. Tiede, *Will Idolaters, Sodomizers, or the Greedy Inherit the Kingdom of God?* 10 *Word & World* 147, 153.)

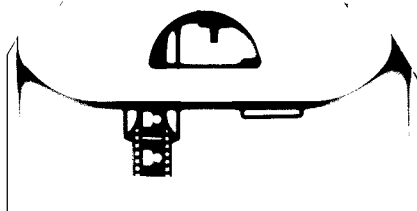
Thus, to the congregations and those who side with them in this matter, I would say: You have been called into a vital ministry not just to gays and lesbians and not just to the City and County of San Francisco, but to all of God's church inside and outside the ELCA. All things are lawful for you, but not all things are helpful. (1 Corinthians 6:12.) In order to minister to those who ignore and vilify you, you must put persuasion before protest and dialogue before pressure. Let your faith speak in soft but earnest tones. Turn away anger by the power of your example, not the power of your rhetoric. Respect all of your brothers and sisters in Christ.

By the same token, I would say to the accusing parties and the churchwide organization of ELCA: By God's grace, your faith and vision have created a new church. Have the faith now to listen to all of your people and to pray and study with them. Give this issue the best of your minds and hearts in the seminaries, in the councils, in the conventions, and in the parishes. Challenge this generation and the spirit of these times with Word and Sacrament.

4. Studying the Issue

If anything coming from the work of this committee can be called a moral imperative, it is that we begin together and now to work together as the Lutheran Church on the issue of ordination of gay and lesbian persons.

I suggest we begin by improving our study of God's Word pertaining to this subject. Although some groundwork has been laid in the work of Boswell, Scroggs, Countryman, and others, I perceive from a lay perspective certain inadequacies in the foundation. First, the approaches are often individually



creative, but not well integrated with one another or clearly communicated. We need a major book-length treatment of the exegetical issues from a Lutheran biblical scholar or scholars. Such project would bring together and analyze the arguments and positions taken in previous studies. This treatment needs to be in a form that is thorough and scholarly, but understandable to educated lay persons who teach and lead in the church. It should confront the arguments directly and criticize them thoroughly. Until we have such a resource, I fear we will be "flying blind" in this area.

Second, existing scholarly approaches concentrate on particular difficult passages thought to refer to homosexuality but often make no attempt to grapple with central themes and messages of the Gospel. We need to relate sexuality and ministry to our lives in this society at this time, but through the perspective of Gospel themes like faith, new life, family, service to one another, confrontation with evil, and others. We need to inquire into individual and group manifestations of sin and evil, i.e., the things that separate us from our God and ourselves. (See T. Lull, *Homosexuality and the Church: Exploring the Issues*, Paper Given at Luther Northwestern Seminary Theological Conference, March 17, 1990, p. 7.)

Finally, we need to renew the search for integrity in our theology and ethics in a secular society that sacrifices community for ever escalating assertions of individual right and expression. As President Tiede has observed of the ordination of women: "The church knew that we could not be compelled to change just because a new feminism was alive in the world, even if we were eager to see it come." (Tiede at p. 149.) How do we act as the Church of God as opposed to an unwitting ally of contemporary political and social movements?

Conclusion

I am thankful for the opportunity to have participated in this process. I am grateful to all parties for the dignity and decorum of the proceedings and to their exceptionally fine lawyers for an excellent presentation of the law and facts of these cases. At a time when I had become discouraged by developments in the ELCA, I have met new friends and renewed old friendships on this committee. Their independence and fair-mindedness, their skills and perspectives, and their tolerance and kindness have inspired me to go forward into new life. The Discipline Committee's task is finished. In the Lutheran tradition, we have sinned boldly. We rest secure in the assurance that grace will abound.

Dated: July 18, 1990

Tony J. Tanke
Member of the Discipline Committee

