

Trial of John O. Kinnaird
11-30-02, Third Day, Second Session (b)
Cross Examination of Mr. Arlyn Wilkening, one of the accusers
Bethany Orthodox Presbyterian Church
Oxford, PA

Winward: Are we O.K. Dick? [Name of man who is recording] O.K. Mr. Tyson?

TT: Mr. Moderator and brother panel members, the defense is prepared to prepare a response to the many allegations and much argumentation made by the accusers last Saturday in their presentation of the prosecution's position with respect to the relevancy of the specifications as supporting the charge. That may be expected to take considerable time. Therefore, the defense makes the following motion in an attempt to move to a speedy and just conclusion of this matter.

We have contended that the charge in its present form is defective. But the court has not upheld that contention. That being the case, we have addressed the question whether the specifications support the charge even in its vague and unspecified form and we believe that we have demonstrated conclusively that they do not. Further, the Moderator has declared that the court's position is that if the defense can show that the statements in the specifications are in conformity with the Standards, then the accusers have no case. We earnestly believe that in the sworn testimonies of Drs Lillback and Gaffin and Elder Kinnaird, we have done just that.

Now the Book of Discipline does not invite us to make this motion a second time, but it does not prohibit it either and so, in light of that, the defense moves that the trial judicatory dismiss the charge on the ground that the specifications do not support it; or, alternately, on the ground that the statements in the specifications are in conformity to our Standards.

Watson: Mr. Tyson, may I ask you ... [rest is inaudible on the tape]

TT: That the trial judicatory dismiss the charge on the ground that the specifications do not support it; or alternately, on the ground that the statements in the specifications are in conformity with our Standards.

Winward: Mr. Tyson, as you have indicated, this judicatory has dealt this with that motion previously and has denied it and I would declare that we deny it again as you brought it up again, unless any member appeals that ruling. (Pause) It is denied.

Wilkening: Mr. Moderator?

Winward: Mr. Wilkening.

AW: Are we going to be able to have a time in which I can make a motion that we have a closing statement ... a closing statement as the defense has rested? Because the court has not ruled upon it ...

Winward: I'm not sure that the defense has rested. Mr. Tyson says there is more that he wants to bring to our attention.

AW: I'm sorry I was under the impression ...

Winward: That's O.K. I'll ask Mr. Tyson, has the defense concluded its case?

TT: No, we have not.

AW: I misunderstood the purpose of your motion.

TT: The purpose of the motion was to see if that's where we would be. If the court were to allow the motion, then that's where we would be. But since it's been denied, the defense is prepared to enter into what might prove to be a lengthy refutation of prosecution's alleged case. We have other witnesses to call and we may be here for a very long time. We will need, in this event, renewal of all citations to cover further days of the trial. We ask, therefore, for continuation of this trial to a later date in order to allow the defense time to hear and consider and prepare to respond to the testimony that was given a week ago and which is on tape and a copy of which tape we have received on Wednesday of this week; and because of the Thanksgiving holiday that followed hard upon Wednesday, bringing us to virtually this day, we are not prepared to do that which we believe we have the right to do. And so we ask the court to continue these proceedings to a future date.

Winward: Mr. Tyson, I understand you are requesting this of the court?

TT: Yes.

Winward: I would ask for a short recess that the court can consider this request.

[Recording breaks off and then starts again]

Watson:.... early on that we are dealing with the specifications as they support the charge. I trust that what you are proposing is aimed with that focus in mind?

TT: Yes, we will bring ... we will bring witnesses onto the stand who will address what was said a week ago in support that the specifications prove the charge.

Watson: Thank you.

[Recording breaks off and then starts again]

TT: Reminded me of something I thought we could take for granted, but maybe we should ask it anyway? If this should be granted, would the court permit us opportunity to know the time, the date that the court would be continued so that we could make a response as to whether we felt we could prepare by that time.

Winward: Certainly.

Winward: The Moderator apologizes for the length of time in deliberating this request. We wrestled with it. And we have determined to grant the request for an extension; but that we would require that you get your questions and whatever you need to have done in such a concise form that you can complete your defense the next time we meet ... in no longer than the next time, and possibly, hopefully, less than the full day and we would also require at this point that you begin to call your witnesses now.

Wilkening: Mr. Moderator?

Winward: Mr. Wilkening.

AW: I have one question. If this trial is going to be prolonged, we had turned down the opportunity to cross-examine Elder Kinnaird. If this is going to be prolonged could we ask for a reconsideration of that where at the beginning of the next trial date if we could have that opportunity?

(Someone on the court): Let's take things one at a time....

Winward: O.K. Hold a minute ... Yes, Mr. Tyson?

TT: Are you finished with this, or is there a ruling or ...?

(Someone on the court): We're waiting ...

TT: You're ruling whether they should be permitted to cross-examine Mr. Kinnaird?

Winward: No, we waiting to see what information you are having about calling witnesses

(Someone on the court): Who are you going to call first?

TT: Well, for one thing, one of the witnesses that was cited I believe he is not here nor last week or is he today. So that kind of creates a void.

Winward: Are there other witnesses that you are prepared to call?

(Pause)

TT: The defense would agree to have Mr. Kinnaird put back on the stand to be prepared for cross-exam by the prosecution, right now.

Winward: Mr. Wilkening, are you prepared to cross-examine at this point?

AW: We are requesting the same time as they are to put it bluntly. We're ready to have the case rest and complete the defense for the court to go into deliberation. The defense is asking for additional time. The same rationale applies that they wanted to have time to get further information from what was testified last week to pursue their defense. We would like to have some time to analyze things that were said today for the cross-examination. I see no inconsistency in those two things.

Winward: Sure.

Mike Obel: Mr. Tyson, is there any reason why you couldn't go ahead and start putting on some of the men you've cited that are in this room now as part of your defense? Is there any reason why that should not go forward?

TT: The men who we would put on the stand were not sworn last week and they were not subject therefore to cross examination at that time.

MO: Well, if we swear them now and so on ... in other words, is there any reason why you can not begin to put on your defense now? (Pause)

TT: The defense will argue, Mr. Moderator ...

Winward: Yes, Mr. Tyson.

TT: ... that Mr. Kinnaird alone, in comparison with prosecution witnesses, who were not sworn in, *was* sworn in and therefore he is prepared to submit to cross-examination at this time. The defense is not prepared, alternatively, to venture into an examination of witnesses, unfriendly witnesses, today without having had opportunity to hear, reflect

upon, and react to the tape of the proceedings last week. So we are asking that you ... if you want to continue the trial today, you continue it via that route - putting Mr. Kinnaird back on the stand and let him be cross-examined and we'll go from there.

(Pause) [Inaudible discussion of panel members.]

Winward: The Moderator indicated that we wrestled over this request and this is what we came up with. and if you would like the trial to continue, then you put, you put a witness in front of us.

TT: We will accede, Mr. Moderator, to the ruling of the court, of course, but we just want to know what your ruling is on the request of the prosecution that they in any future time imaginable may be granted the right to cross-examine Mr. Kinnaird.

(Pause) [Inaudible discussion of panel members.]

Winward: I think we can take up that question later.

(Pause)

TT: That being the case, Mr. Moderator ...

Winward: Mr. Tyson

TT: The defense recalls Mr. Kinnaird.

Mr. Kinnaird, when you were previously questioned, you indicated that it was in the interest of seeking to proceed with all due haste to a consideration of judgement in this matter, that you truncated your presentation of the answer to the question that I gave you.

Now that it appears as though we must continue with our defense, I'd like to ask you what it was that you would have said before, that you didn't say, in interest of time, but now that you have it, you would like to add, in answer to the question:

Is your position, as evidenced by the quotations in the specifications, in accord with Scripture and the Westminster Standards, or is it, as charged, contrary thereto, and what leads you to answer as you do?

Kinnaird: The ...The first statement in ...

Mike Obel: Excuse me. Pardon me for interrupting. Mr. Moderator, could I get clarification from Mr. Tyson as to whether we are getting from Mr. Kinnaird more reasons for an answer that he has a). Already provided today and b). Already supported today? Is this additional support?

TT: Yes

MO: Then I want to raise a point of order that this is duplicative, repetitive, and unnecessary and I ask that you rule this line of questioning out of order, Mr. Moderator.

Winward: Moderator would rule it out of order. Is there an appeal?

TT: We object, Mr. Moderator

Winward: Objection is noted.

TT: May I give a reason in case it might convince you to change your ruling? May I confer? [Inaudible discussion with Mr. Kinnaird]

Winward: You may.

TT: Mr. Moderator?

Winward: Mr. Tyson

TT: The defense would call the panel's attention, or the Moderator's attention, to page 111 in the Book of Discipline, The Book of Church Order, B.d.4.1.c.

No person shall be deprived of the right to set forth, plead, or offer in evidence in any judicatory of the church the provisions of the Word of God or of the subordinate standards.

Mr. Kinnaird is not going to say over again what he said earlier when he was on the stand. He is going to say *more*.

Winward: Mr. Tyson, you called Mr. Kinnaird as a witness to the stand and I asked you if you were through with the witness. You indicated you were. I see no reason at this point to call him back to the witness stand. I'm not going to change my ruling unless there is an appeal. (Pause) I hear no appeal.

Kinnaird: [whispers]ask if you are the only one who has the right to put me on the witness stand.

TT: Mr. Moderator?

Winward: Mr. Tyson.

TT: Is it so that this witness can only be cross-examined when he is on the stand?

Winward: Yes

TT: Is it true that I am the only one who is authorized to put him on the stand?

Winward: I would judge that the judicatory can call him to the stand.

TT: Are you saying then, Mr. Moderator, that in some future time you are allowing for the possibility that you might call him to the stand in order to be cross-examined by the prosecution?

Winward: Perhaps to answer questions by the judicatory.

TT: No, that wasn't my question. I have no objection to that. But what about to submit to cross-examination by the prosecution?

Kinnaird: [whispers] Tom, you want to use the microphone, so it's on the tape.

TT: [calls to the recorder] Did you get that on the tape? [to panel] There is some question about, Mr. Moderator, as whether they got that. (Pause)

[Recorder says something in the background]

TT: Mr. Moderator, could I say it again in case it didn't make it?

Winward: Sure, go ahead.

TT: The question that I had was, May the witness be cross-examined when he is not on the stand, or only when he is on the stand? And you said, yes. And I said who may put him on the stand and is it not I only? And you said, no. The judicatory may put him on the stand. And I agreed for purposes of questions by the panel. But then my question was for purpose of submitting to cross-examination by the prosecution. May the court put Mr. Kinnaird on the stand? And at that point, we await your answer.

Winward: Mr. Tyson, let me be perfectly honest, I'm concerned about where this is going and what might happen. My fear is if I answer one way and Mr. Wilkening wants to cross-examine Mr. Kinnaird, you will not put him on the stand.

Kinnaird: I'm here.

Winward: You're here now.

TT: He is prepared to submit to cross-examination...

Winward: He's prepared to submit Mr. Wilkening was ... gave up at that point a desire to cross-examine and now Mr. Wilkening indicated that he is ... does not want to pursue that at this time. So it kind of throws us into ... throws the judicatory into a dilemma. Again, to be perfectly honest, the Moderator feels you are stalling for time and we would like to see this thing moving ahead and that's been our intent and that's why we've wanted to get witnesses to the stand.

TT: I assure you, sir, that we are not seeking to stall for time, we seeking to do this correctly.

Winward: I understand that and that's our position, too. We are trying to do the right thing that's why we extended the request. Let me ask, Mr. Wilkening, you were prepared to cross-examine Mr. Kinnaird a little while ago? You determined not to. Are you ... would you be willing to cross-examine him at this point?

Wilkening: No, I don't believe we would at this time.

Winward: No?

[Pause with members of panel discussing among themselves.]

Winward: The Moderator would rule then that having declined the opportunity to cross-examine Mr. Kinnaird, you have no further right to cross-examine Mr. Kinnaird.

Mr. Tyson?

TT: The witness ... You have ruled ...

Winward: We have ruled that we do not want this line of questioning to continue. We have heard from him. Now we ask you, is there a witness that you wish to call?

(Pause)

TT: Mr. Moderator, the defense calls Mr. Wilkening. (Pause) Do you want to sit here?

Wilkening: No, I'm fine standing.¹ My foot is better. [There is further discussion on getting him positioned properly.]

Winward: Mr. Wilkening, I am required to ask you to make the following affirmation. I solemnly swear by the grace of GodI will speak the truth, the whole truth, and nothing but the truth concerning the matters on which I am called to testify.....Thank you.

[Mr. Wilkening repeats the phrases after Mr. Winward.]

¹ During the intervening days of the trial, Mr. Wilkening had crushed his heel during a injury at work which necessitated surgery. At this point in the proceedings he was wearing a brace and on crutches.

Mr. Tyson.

TT: Mr. Moderator, since it's manifest that this witness is an unfriendly witness to the defense, I judge that you will permit leading questions? (Pause) Or shall we just wait and see?

Winward : I am looking at leading questions shall only be permitted under cross-examination. I am wondering where that fits.

TT : In a way you might say this is cross-examination of the testimony that the brother gave last week, though not under oath.

(Pause)

Winward : You may ask leading questions.

TT : Thank you Mr. Moderator. Would you state your name and position please.

AW : My name is Arlyn Wilkening, I am a member of Bethany Orthodox Presbyterian Church. I assume that's what you mean by position.

TT : Yes, your office, you have no office in the church.

AW : I am a member.

TT : General office of believer.

AW : I guess that ... I never thought of it that way. I'm a member.

TT : I took it ... the defense took it, Mr. Wilkening, that last week what really was happening - although it didn't occur to me until I reflected upon it after the fact - that what really was happening last week was that you were putting yourself on the stand and asking yourself the question, "Do the specifications support the charge?" And then you were answering that question in the affirmative. Would you say that is a fair statement of what happened last week?

AW : I don't know how the court would want to rule ... would want to view or rule on that. I mean I was ... probably ... I was called to present the evidence as to why it is ... Actually, I don't view myself as a witness. I view the documents as the witness. And to me, I was prosecuting the documents. Because the documents, because really in this case there aren't physical witnesses so much as the documents are the witnesses. And that I think is an important ... the important thing that so many words have been said here, but overall, what really needs to speak out loud and clear are the documents themselves.

TT : Thank you. With reference to one of the documents, Mr. Kinnaird's Theological Statements

AW: O.K.

TT: Where did you get that document?

AW : That document was given to me by Bill Freeman.

TT : Are you aware of the fact that that document was a document possessed by the session of Bethany church while in executive session?

AW : I have never heard of it being as termed as being in executive session. I've not heard anything to that degree, to that effect, no.

TT : Mr. Moderator would I be permitted to put on the stand a member of the session of Bethany church who could testify as to this matter without relinquishing this witness - so we can get to the truth of it?

Winward : Has such a witness been cited?

TT : Yes.

AW : Mr. Moderator, I don't know my role right now as a witness on this matter but to me it seems as though the defense counsel is going to the relevancy of documents. And that issue has been ... was resolved long ago. So, why ... you know, is the whole line of questioning going to be allowed regarding the relevancy of the documents? Because that, any objection to that should have been lodged prior to a declaration of guilty or not guilty according to the Book of Discipline.

TT : All right. Mr. Moderator, I'd like to proceed without following that line further. I would like to proceed.

Winward: Very well proceed.

TT : Another document Are you familiar with the document that has as it's title, "Is Mr. Kinnaird's position as ev...."[stops in mid-sentence]. Excuse me, Mr. Moderator. (Pause) Mr. Wilkening, did you refer last Saturday to a document entitled, "Do these Specifications, which are true support the charge? See BOD3.7.b.5"?

AW : Yes I did.

TT : Are you aware that that item was a confidential document belonging to the session having been introduced while in executive session?

AW : It seems to me that document came to us as a response out of the session for the turning down of our charge. If I remember right. I don't ... I don't recall exactly where that document came from but there was an amount of ... there were majority/minority reports that came out of the session meeting that turned down the charge. And my understanding is that document as well was a part of that proceedings.

Mike Obel : Mr. Moderator, may I ask a question of Mr. Tyson?

Winward: Yes [very faint]

MO : Would you mind just helping me so that I can follow Mr. Tyson? If we could verify that, or determine that, Mr. Wilkening inappropriately or illegally or something like that acquired all these documents, how does that fit in with the defense? It seems that maybe a basis for charging him with theft or something, but how does determining that ... I'm just trying to understand the big picture.

TT : We're not going to pursue that further. If you want me to answer the question, I will; but I'm willing to drop the question - not proceed with any further questioning on that line.

MO: Thank you.

TT: I'd like to address some questions now to Mr. Wilkening based on my notes. This is the difficulty that we face. We had hoped to be able, Mr. Moderator, to study by audio the tape of the proceedings but we aren't able to do that, so I'm just going to go by my notes and wing it.

Mr. Wilkening, I believe you said in words to this effect in your introductory remarks last week, that the charge has nothing to do with judgment day, but how one becomes justified, presumably not on the day of judgment. My question to you is Y.

AW : I am sorry, would you repeat your quotation of me once again?

TT : It is not a quotation. These are *my* notes.

AW : O.K.

TT : I'm asking ... averring that you, in words to this effect, said that the charge has nothing to do with judgment day, presumably when the charge charges Mr. Kinnaird with teaching a doctrine of justification. That that has nothing to do with the judgment day but how one becomes justified, presumably prior to or outside of that judgment day.

AW : Ah ...

TT : That is not a question yet, the question is coming.

AW : OK, OK, but it is based on an erroneous quote.

TT : Did you ...did you say? I'll change it then. Did you say in words to this effect last week that the charge, which uses the word justification in it, has nothing to do with judgment day but rather with how one becomes justified at another time presumably prior to the judgment day?

AW : O.K. Here is the more complete quote. I presume... that I am assuming I am finding, what you're talking about. The first statement *Elder Kinnaird* makes is, "the charge, that is justification by faith and works, has nothing to do, neither with declaring what God's plan ... what is God's plan for the ages, nor with events on judgment day. The charge has to do with how one becomes justified before God." So while I said the words, it was a quotation of what Elder Kinnaird wrote.

TT : All right. Let me put it this way then, Mr. Wilkening. Do you believe that, or do you contend that, when in the charge we read the word "justification," that we are speaking of something that does *not* occur on the judgment day at all?

AW : I'm sorry. Would you repeat the question? When you speak of the word "justification," please repeat the question?

TT : When you ... You're the charger.

AW : Yeah, I know that.

TT : When you write the charge charging Mr. Kinnaird with teaching a doctrine of justification, I'll stop right there.

AW : O.K.

TT : Because that is the focus of my question not whatever else follows. Whatever else follows, that that word "justification" has no reference to what occurs on judgment day.

AW : Justification has everything to do with what happens on judgment day. What happens on judgment day is simply God acknowledging what he has done to the elect in his justification. So, of course, justification has everything to do in the final playing out of what happens on judgment day.

TT : All right then, Mr. Wilkening.

[Tape three, side 2 ends.]

[Tape four, side 1 begins in mid-sentence.]

TT: ... on the last great judgment day. You would not object to his using that term with reference to that.

AW : No, the Confession and the Catechisms speak in terms of an acquittal taking place wherein God recognizes, makes openly, openly acknowledges, is another way it says it, openly acknowledges those whom he has justified - those who are the elect and those who are the reprobate.

TT : Are you not willing then, Mr. Wilkening, to allow for the possibility that when Mr. Kinnaird uses the word justification in the same sentence with good works that he might in fact be referring to that same event as described in Westminster Confession chapter 33, and Larger Catechism question 9 where it says that the righteous will be acknowledged and acquitted? Are you unwilling to allow that possibility that that's what he's talking about?

AW : On the basis of works?

TT : No I didn't say that.

AW : On the basis of, well that's what youY

TT : No.

AW : Well, what did you say then?

TT : I said in the same sentence.

AW : O.K. I lost your question then.

TT : We heard testimony last week from Dr. Lillback that Martin Luther was unwilling to allow anyone to use the phrase "good works" in the same paragraph as justification. Do you recall that?

AW : I don't recall that but I know Calvin said the same thing. You know, Calvin cites, Calvin always says that when you speak of justification and when you speak of good works, you need to keep them apart from each other.

TT : So you don't recall Mr. Lillback's testimony to that effect?

AW : I don't remember that exact quotation, no.

TT : Well let me, let me remind you that that's what he said. He said that that's what Luther said. And I'm asking whether you would agree with Mr. Luther and deny Mr. Kinnaird the right to use the word, the phrase "good works, " in the same paragraph with justification.

AW : It depends on ... it depends certainly upon the context of that paragraph. And that precisely is the matter before this court. It's how these, how phrases have been used within the context of good works and justification. For example, in specification three when Elder Kinnaird says that our the guilt of our sin is taken care of by God in justification and that we need further ...I would need to read the exact quotation. Let me just turn to that so I get it right. He says, AGod has provided not only justification for the guilt of sin. He has provided for those begotten from above by the seed of the God, provided that holiness without which no one will see the Lord. Heb. 12:14. These good works are a required condition.@

TT : Excuse me, I don't find that in the specifications.

AW : The sentence before is, the sentence that precedes the specification and is in the supplementary evidence. It's in the whole supplementary document. It's that ... the sentence "these good works" follow on from the sentence previous, which I just quoted. So obviously in the context there. And so the matter before this court is whether having, speaking of good works in this regard, in relation to the last judgment, if that is acceptable or not. I believe that the way Dr. Gaffin - speaking in terms of only fruits and evidences of faith - not as providing holiness that that would be acceptable. But it's up to this court to determine the way that this is structured, if it is acceptable or not.

TT : Would you provide for this court evidence that Mr. Kinnaird teaches that that holiness which God provides he provides on the basis of observable good works having been performed by the believer.

AW : Well, I already provided that.

TT : Please do so again because I missed it.

AW : It's in the documents.

TT : Please read them.

AW : That's the quotation I just read.

TT : Please read it again.

AW : A God has provided not only justification from the guilt of sin. He has also for those begotten from above by the seed of the God, provided that holiness without which no one will see the Lord. These good works are a required condition. @

TT : My question was: where does Mr. Kinnaird teach that that holiness is based upon those good works, and as a result of those good works having been performed?

AW : Well, that is the issue before this court, is it not? I see it in the specification, in the quotation and you do not. And that's the reason we have this court proceeding.

TT : All right.

AW : You know, it's going to be up to the judicatory to determine between the two of us. O.K.?

TT : I'll ask the questions, thank you. You addressed the question in your testimony last week of what is the meaning of the charge phrase, justification *by* faith and works. And I believe you defined "by" the quotation from the American Heritage Dictionary **Y**

AW : Yes, that's correct.

TT : edition four - "how, by means of, because of, on the grounds of." I do not dispute that that is a correct rendering of what you read in the dictionary.

AW : Could I correct the quotation? Cause that's ...

TT : Sure.

AW : O.K. Those were not actually ... those first words were not my words, were not the words from the dictionary, those were the words from Elder Kinnaird. He..

TT : What words were from the dictionary?

AW : Well, I'll get to that. He writes, "Wilkening's charge say I teach a doctrine of justification by faith and works. The operative word in the charge is the word 'by.' It reaches to the concept of how, or the means of, or because of, or on the grounds of." That's the end of the quotation.

TT : O.K. I stand corrected.

AW : O.K. The American Heritage Dictionary 4th edition also lists one of the definitions of the preposition "by" as "according to."

TT : O.K. Thank you. I accept that, I accept that correction. I'm struggling here to know in my notes who said what, but I accept that. Thank you, Mr. Wilkening.

AW : OK

TT : So you're saying that the "by" here means "according to."

AW : I'm saying it's, I'm saying that "according to" means "by".

TT : And vice versa

AW : And vice versa. That they are interchangeable.

TT : Now would you say that justification is acquittal from guilt and consideration as righteous?

AW : I would prefer to quote Shorter Catechism 33.

TT : Is it at least this?

AW : That it's acquittal from guilt?

TT : and consideration as righteous.

AW : Yes, it is at least that.

TT : Now would you agree that to say that that acquittal from guilt or consideration as righteous is "by" anything. That which follows could be the ground, or it could be the instrumentality. What kind of "by" is in view when we say justification by faith?

AW : It's an instrumentality.

TT : O.K. What kind of "by" is the charge accusing Mr. Kinnaird of holding when he allegedly teaches a doctrine of justification *by faith and works*, particularly the "and works part?"

AW : Well, it would also have "works" having an instrumental cause. Because any time you change ... properly understood ... Faith is the instrument that apprehends what Christ has done, and that only. The minute you change any grounds off of that, you immediately change the instrumentality.

TT : So are you saying that the meaning of "by" in the phrase by faith and works is the same, both with reference to the first noun faith and the second noun works?

AW : What I ... what we've said in the section that, in the presentation that we gave to the court last week ...that we're charging that he additionally joins faith, or excuse me, joins works to faith.

TT : That's not, that's obvious from the word "and" says as much. We know it joins.

AW : O.K.

TT : We want to know the operation of the preposition "by." Does it hold the same meaning with respect to the first item that is joined to the second item - faith and works? Does the "by" apply in the same manner to each?

AW : By faith and by works? Is that what you are saying?

TT : Yes

AW : I'm saying that they are, it's a dual instrumentality.

TT : All right. So you are not charging Mr. Kinnaird with teaching that justification is on the grounds of works.

AW : The minute you ... the minute you have a different instrumentality, of course. you can have a different grounds. The minute you have ... when you understood faith apprehends what Christ has done. Works, as another instrumentality, is based on another grounds. It is certainly not works according to what Christ has done. Works does not apprehend what Christ has done. Works apprehends what works have done. So it almost functions as ... as, in a certain sense, even though it is a statement of instrumentality, it's bespeaks of a changed ground.

TT : Do you believe that faith is a ground of justification?

AW : Of course not.

TT : Well then how can you accuse Mr. Kinnaird of teaching a doctrine of justification by faith and works, where the word "by" functions in different ... in a different fashion with respect to the two nouns that follow?

AW : Because both can be understood, properly speaking, as speaking of instrumentality. And having ... having joining works to faith as a complex instrumentality, or as a secondary instrumentality, is no more correct than having works as a ground of justification.

TT : All right, assuming for the moment that you are right. Have you found any evidence - which I am not, but stipulating that for the moment purposes of argument - let's say you are right and that works as an instrument of justification will imply that there is another ground than the, presumably the active and passive obedience of Christ. Which is, of course, the ground of the justification which faith becomes the conduit for.

Have you found in Mr. Kinnaird's writings direct statements that allege that implication? Namely that works *are* in fact the ground of justification? Please stick strictly to that question. Don't tell me that he teaches that it is an instrument. I underline ground.

AW : As a ground?

TT : Yes

AW : I would need to ... I would need to go ... I would need to look at what I have written. I believe that the ... what I have written in my presentation of the evidence does, does say that. I would need to find .. time to find a citation of it.

TT : Take your time.

AW : OK. (Pause) OK. The statement that Elder Kinnaird apologized somewhat for last week reads, "On the great day of judgment I will hear God declare me to be righteous. As to the reason for that it is not because of the works even though it will be in accord with the works. The reason will be first, *because* it will be true *because* God will have changed me so that I am really and personally righteous. After all we will be crowned with righteousness. This is the work of the Holy Spirit in my sanctification in this life." I maintain that that is positing a ... the renovative work of Christ, the renewal work of

Christ, as a grounds for God declaring us righteous. Which is the definition in Shorter Catechism 33 of justification.

TT : Did you hear Mr. Kinnaird testify today that he denies that works are a ground of justification in accord with Romans 3:28?

AW : Yeah, I heard him say that.

TT : Do you believe him?

AW : I can only look at, look at contradictory statements and I have to draw my own conclusions. And that, as I remind you again, that is the proceeding that is before this court, is to reconcile contradictory statements.

TT : Do you believe that Mr. Kinnaird that teaches that works are also an *instrument* of justification?

AW : When works become the ground of our justification, partially or in whole, what becomes the instrument? Works, of course. I know of no other ... the shorter ... you know the standards do not tell us what the properly understood instrument of works righteousness is. But my understanding from Scripture would be that the works of the believer themselves is the instrument that apprehends their own works instead of apprehending the righteousness of Christ.

TT : Would you please identify the words of Mr. Kinnaird that make that statement, or words to that effect.

AW : As I've said before ... as I've said repeatedly when you change the ground ... when you change the ground of your justification, you by nature change the instrument. You can't have one without the other. So it is, if anything it's maybe more by implication than it is by direct statement.

TT : So Mr. Kinnaird ... you're condemning Mr. Kinnaird or you are accusing Mr. Kinnaird based upon your logic?

AW : No I'm accusing Mr. Kinnaird based on his writing.

TT : Well, then I'm asking you to read it again. Repeat the words.

AW : I did just repeat the words.

TT : Please read them again.

AW : O.K. If you want me to read the statements I'll keep reading them. "On the day of judgment ..."

TT : Would you give me the place where I can find it so that I can see it. I was still looking for it.

AW : It in the OPC listing of January 6th.

TT : Oh, I was looking in his Theological Statements. Is this in Y.

AW : It's in one of his internet postings on January 6th. It's on number, posting number 8014. This probably is in the supplementary evidence. I believe, if I remember right, this is a posting to Jim Shank, an email interchange with Jim Shank. I believe it is the 6th of January.

TT : Could I see what it looks like maybe I can Y

AW : I don't have it here. Yeah it would be, I think it would be attached to AVindication Accomplished,@ in that paper.

TT : It is not with the documents that are with the charge, not in the specifications.

AW : It's not in those three documents. No, it's part of the supplementary evidence that was submitted on the first day of the trial. Yes, it would be attached to the back, it would be one of the postings attached to the back of that.

TT : Could you [rest inaudible]

AW : No it is in **Vindication Accomplished**@I am sure.

TT : I beg the court's indulgence, if I could just have it. It may be that a panel member could **Y**.

AW : It would be within that ... it would be within that ... Yeah I can find it. I just can't get there due to my foot. [continued chatter re: finding the document] I might have mis-cited it in my paper here. O.K. (Pause) Yes, it is 8036 starting down in here. O.K.

TT : Thank you. Proceed please.

AW : O.K. "On the day of judgment I will hear God declare me to be righteous. As to the reason for that it is not because of the works even though it will be in accord with the works. The reason will be first, because it will be true because God will have changed me so that I am really and personally righteous. After all we will be crowned with righteousness. This is the result of the work of the Holy Spirit in my sanctification in this life." That was what you wanted to hear?

TT : Yeah, but I don't hear anything about works as the ground for justification. I'm sorry. Show me, please.

AW : Sanctification. Sanctification is that which is wrought in us by God. Confession chapter 11 verse or section 1 says, "not by anything wrought in us, not by anything done by them." And that is the basis upon which justification proceeds. It is solely on the merits of Christ. And here ... God is ... Elder Kinnaird is quoted as saying that God will declare him righteous as a result of his sanctification - that which is wrought in you - that which is done by you. Which is in direct contradiction to Westminster Confession 11:1.

TT : But do you note, Mr. Wilkening, that Mr. Kinnaird wrote, "as to the reason for that it is not *because* of the works even though it will be in accord with the works?"

AW : That's true and I cited that. I gave the complete ... I gave the complete quotation. I'm not hiding from the fact that he said that. I'm saying ... what I'm saying is that, he holds within this statement a contradictory position. I cannot be responsible to have a purely consistent statement of doctrinal error.

TT : No. But ought you not to believe that when a person says that it is not *because* of the works that he means it is not on the *ground* of the works?

AW : That is what he said.

TT : OK.

Watson : Mr. Wilkening, I'm trying to grasp the point which you're making because it is probably a significant one and I have that quote in front of me and the last sentence as you quoted it in your presentation last week says, "This is the result of the work of the

Holy Spirit in my sanctification in this life." And that statement seems to me to speak of the fact that the sanctification is the work of the Holy Spirit. But then you go on to make the emphasis that I think you are making now, that God declares him righteous because he is sanctified, not because he was purchased by the blood of Christ and then if I can follow what's after that then you're moving from that to the fact that then it's according to works?

AW : Yes, that's a, that's the progression. The reason I'm saying ... the reason I am saying ... equating it with being according to works ... is that I'm ... is that it is the ground of our acceptance, the ground of our declaration of being righteous has changed. It is no longer the purchase by the blood of Christ and the perfect righteousness imputed, Christ's perfect righteousness imputed to us. Rather it is grounded, it is based on, it is the result of the work of sanctification, which I've tried to make clear here today is that which I believe the writers of the Westminster Confession already anticipated in chapter 11, section 1. as saying it is not, our justification or our acceptance by God is not based on anything wrought in us. It is not based on anything done by us. And so, that's why I am moving toward saying the ground of our justification or our acceptance at that point has changed.

Watson : O.K. Mr. Tyson, you may proceed.

TT : Thank you. Mr. Wilkening, I think that it behooves us to remain at this point somewhat because you are absolutely right. This goes to the heart of the issue, the charge and certainly at least one of the specifications if not all three. Do I understand you correctly then that you are saying Mr. Kinnaird does in truth say that we will be justified on the day of judgment *not* because of works? You are willing to stipulate that he *says* as much?

AW : That is one half of that quotation, yes.

TT : At least that. But then he goes on to say "comma, even though it will be in accord with the works." Is it your view then that, that *those* are the egregious words? Those are the damning words if you will. Even though it will be in accord with the works. There Mr. Kinnaird gives away his belief that justification on the last day will be on the basis or on the ground of works. Is that where it happens in your view?

AW : It is already as I explained ... that he further says that the grounding or the basis of this declaration of righteousness is because God has changed me. Because God has renovated me. It is that which is wrought in me.

TT : Mr. Wilkening, did you not change his words? The words that I have are "the reason will be," not the ground.

AW : I submit to you it's the same thing.

TT : All right. Mr. Wilkening, I am going to read for you two verses from the Bible and ask you to tell me what you think they teach with respect to *this* very point. We are still at this point. 2 Corinthians 5:10, **A**For we must all appear before the judgment seat of Christ so that each one may receive what is due for what he has done in the body, whether

good or evil.@ And then from Revelation 20:13, **A**And the sea gave up its dead who were in it. Death and Hades gave up the dead who were in them. And they were judged, each one of them, according to what they had done.@

Putting those two verses together, what do they teach you relative ... respecting this question of the final judgment and the place, if any, that works have in that ... in the verdict pronounced on that day?

AW : In my view, works will be a fruit of our justification. Certainly that. And at the judgment ... well, first of all, let me begin with the reprobate. The reprobate will be judged according to what they have done i.e. their sins. That's they will be judged according to what they have done which is their sins. The elect will be judged and because they are in Christ, their union is with Christ, what they have done will be rewarded according to God's good pleasure.

TT : What do you mean by "will be rewarded?"

AW : Whatever the ... what do you mean?

TT : What do you mean by that? What content do you put in that? What do you understand, what do you want us to understand?

AW : First of all, the greatest reward is that we will be given, we will be ushered into the presence of God. What greater reward will there ever be than that? Beyond that, I'll have to say that I don't know what those rewards will all entail. I was reading a wonderful devotional that I won't bother you with right now but it was basically saying that this writer believed that it would be ... that we are going to be rewarded with our capacity to apprehend God, or understand God. And it is going to be glorious, but...

TT : Well, let's leave aside the garnishes and the relishes around the edges and the raw carrots and let's talk about the meat and potatoes. You said the greatest thing of all that will result will be that we will be in glory with the SaviorY

AW : Of course

TT : or words to that effect. Will that be according to works according to these verses? Will that verdict be pronounced according to works?

AW : It will not be grounded upon them.

TT : I did not ask that.

AW : Well then, I don't know what the question is then.

TT : The question is what does the Bible mean when it says it will be according to their works?

AW : The righteous will be *acquitted* at the last judgment. It does not ... and their works will bear ... will be fruits and evidences of their faith but they certainly will not bear any grounds or any ... they will not certainly be the *reason*

TT : Mr. Moderator, would you instruct the witness to not answer questions that I did not ask him? I did not ask him whether the works will be the ground. I asked him whether they will be ... the judgments will be and the verdicts that last day will be pronounced in accordance with the works. May I respectfully ask you to instruct the witness to answer specifically the questions that I specifically ask him?

Winward : The Moderator believes that Mr. Wilkening is seeking to answer those questions.

TT : Thank you Mr. Moderator. Let me put it another way. Do you believe that it is possible that these verses from Holy Scripture *could* mean that the judgment, or the verdict pronounced on the last day of judgment, while not on the basis of or the ground of works, is nevertheless in some way in accordance with the works that is not grounding or foundational? Do you believe that the verses could be interpreted in that way? Rightly.

AW : The judgment that will take place at the last judgment will be according to what the mediatorial work of Christ in the believer writing his name in the Book of Life.

TT : Mr. Moderator, I have to read the verses again because I don't think the witness is being responsive. 2 Corinthians 5:10 says, **A**For we must all appear before the judgment seat of Christ so that each one may receive what is due for what he is done in the body, whether for good or evil.@ And the Revelation passage says, **A** ... and they were judged, each one of them, according to what they had done.@

I am not asking you, Mr. witness, whether the ground of their justification, or even their acquittal on the final day of judgment is according to the active and passive obedience of Christ, or comes from their union with Christ which is received by faith alone. I am not asking you that. I'm asking you what are these verses teach when they tell us that that verdict will be according to what these people have done?

AW : I have answered that the righteous, the elect, will be rewarded from ... you know will be rewarded on that day and you haven't accepted that answer. So, I don't know further what I need to answer to you.

TT : On the contrary, I do accept your answer in so far as you said that the chief reward will be entrance to eternal glory. That's what I believe. I.. that's another question whether there are further rewards but at least that. And I ask you whether that reward will be according to works?

AW : It will be according to what Christ has done for us.

TT : No, I didn't ask you whether it was according to what Christ has done. I asked you whether it will be done according to their works?

AW : Would you define "according to" for me? You have asked me not to use it in the terms of grounds, so I need to ask for your definition.

TT : Consonant with

AW : In other words, whatever the law says ... in moving it over into that realm, whatever the law says then righteousness is the same?

TT : No, I am using consonant with ... I'm answering my own question trying to understand what those verses teach. Consonant with - that is, there will be no verdict on that last day - Right? That will be in the absence of their good works. At least it means that, doesn't it? According to?

AW : In the absence of their good works?

TT : Yes

AW : All believers will have .. all believers who have true faith will have good works, so I don't know what absent from would mean in that context.

Winward : Mr. Tyson it seems that Mr. Wilkening has answered the question to the best that he can and I would just encourage you to move on.

TT : I will do so, Mr. Moderator. You also said in your introduction ... introductory remarks last week that sanctification and good works are always the fruit but they are never the ground of justification. The defense has contended and sought to show that that is also Mr. Kinnaird's teaching. Would you please cite Mr. Kinnaird's words by which he teaches that sanctification and good works are the ground of justification, since he denies that such is so?

AW : Again, I go back to the same quotation I've read to you three times and you ... I know not further how to explain the matter that apparently to your satisfaction.

TT : Would you read it then one more time?

AW : Sure, I need to turn to it

TT : Do I need to repeat the question or is that O.K. You remembered it?

AW : No, I'll read the quotation.

TT : Is that the one in the posting?

AW : Yup, it's the same one I have been reading all day. "On the day of judgment I will hear God declare me to be righteous ..." Let me just interject that the declarat

TT : [inaudible]

AW : No, no, no, it's the one I just gave to you a few minutes ago. You know, it's this one from I just have it mis-cited in the paper. "On the day of judgment I will hear God declare me to be righteous. As to the reason for that it is not because of the works even though it will be in accord with the works. The reason will be first, because it will be true because God will have changed me so that I am really and personally righteous. After all we will be crowned with righteousness. This is the result of the work of the Holy Spirit in my sanctification in this life." O.K.?

TT : Now you have in your specifications complained that Mr. Kinnaird ... that the following view of Mr. Kinnaird's is unbiblical and out of accord with the Standards because that's the charge. Namely that imputation of Christ's righteousness is not sufficient for a true and personal righteousness. You have denied that that could be true because in your view

AW : I have denied what is true?

TT : that imputation is not sufficient for a true ... no, you have affirmed, I should say that imputation *is* sufficient for a true and personal righteousness. Am I correct?

AW : I believe that there's no more perfect righteousness than the righteousness of Christ imputed to us.

TT : Agreed. However, you, in contrast to Mr. Kinnaird - who holds that imputation of Christ's righteousness is not sufficient for a true and personal righteousness on the part of the believer - for that holiness without which no man shall see the Lord. You have alleged that that is, that is false teaching.

AW : I have alleged that .. that ... I've charged that the imputation of the righteousness of Christ *is* sufficient for us to gain entry into the Kingdom of Heaven and enjoy with Christ in the presence of God the Father ... and so forth ... how that reads.

TT : That's your view ...

AW: Yes.

TT: That's your view. I was seeking to put words in your mouth and ask you if I'm doing you justice. Then I would say that you contend that Mr. Kinnaird in saying that the imputation of Christ's righteousness to the believer is not sufficient for the believer's true and personal righteousness...

AW : Yes

TT : All right. Let me read to you question 35 of the Shorter Catechism. **AW**What is sanctification? Answer. Sanctification is the work of God's free grace whereby we are renewed in the whole man after the image of God and enabled more and more to die unto sin and live unto righteousness.@ And I would ask you, Mr. Wilkening, doesn't sanctification, according to this answer of the Shorter Catechism result in righteousness?

AW : It results in partial righteousness in this life.

TT : All right. At least righteousness in this life, partial, as you define it.

AW : Incomplete, whatever

TT : Is that righteousness imputed or possessed?

AW : It is wrought by the Holy Spirit.

TT : I agree. But is it imputed, would youY

AW: No it's wrought.

TT : It's wrought. It's not imputed.

AW : It's wrought

TT : It's wrought. So it is not the imputed righteousness of Christ.

AW : That's correct.

TT : Can't you find it possible to take Mr. Kinnaird at his word when he says the imputed righteousness of Christ is not sufficient for a true and personal righteousness that he is referring to precisely the same thing as the Shorter Catechism namely sanctification and it's results?

AW : It's been argued all day long here today that this section is referring to glorification.

[End of tape four, side 1]

[Start of tape four, side 2 - beginning in mid-sentence]

AW : ... and my response to that is that we can no more be glorified ... we cannot be glorified due to our sanctification. It is only the imputed righteousness of Christ that then God makes up for us. It says what benefits do believers have at their death? Their

righteousness is made full, paraphrasing one of the Larger Catechism questions. And so it has been alleged all day long that this writing is not talking about sanctification. It's talking about glorification. So, how is sanctification sufficient to bring us into proper righteousness - real and personal - that we can then be glorified?

TT : I don't know.

Winward : (Gravels) Just to let you know we are three minutes away ...

TT: All right.

Winward: from the five o'clock recess time and we will need to take some time to decide on a date.

TT : Then I will cease and desist for the moment. We will continue where we are next time. Thank you, Mr. Wilkening.

(Pause)

TT: Excuse me. The accused wants to know where these words are that we've just been talking about.

[Various people talk all at once.]

AW: No, he does not have that document. I'll find it. Here ...

TT: Isn't it this?

[Further discussion between Mr. Tyson and Mr. Wilkening]

Winward: Mr. Tyson, Mr. Wilkening. The judicatory proposes the date of January 25th as the next meeting.

AW: January 25th! Mr. Moderator?

Winward: Mr. Wilkening.

AW: I must admit I am a little bit frustrated by that proposal. I understand the pressures on everyone else ... I have to say the reason why I am a little bit frustrated is because at the first trial of the judicatory ... the first day of this trial ... two dates were set. They were two months off into the future, which I thought was excessive at that point. And the reason that two dates were set is that we were assured by Elder Kinnaird at that time that two days would be all that was needed. That no further dates needed to be set. And so ... I don't mean to overstep my position here, surely this session has in view the effect that this whole matter is having on this church. We have already lost a hundred members in far as regular attendance. I cannot imagine that prolonging this matter is going to help any more.

Winward: Mr. Wilkening, we can note your objection. It is not our intension to prolong these matters. It's that getting five people together during a Christmas season is difficult.

This is the only date all five of us can be together. It is the last possible date to conclude matters because this session's work is supposedly finished the following Sunday.²

AW: Maybe if I'm expressing frustration, is that we were assured that two days would be more than adequate to wrap this matter up and now ... we came here assuming that it would be and now find that it needs to be prolonged.

Watson: I don't believe, Mr. Wilkening, you are correct when you say that Mr. Kinnaird said it would only take two days.

AW: Yes, he did.

Watson: No

AW: ... he only wanted to take ... to set two days because that was all he deemed necessary to prosecute the defense.

Watson: I believe that I was one of the ones who thought that we ought to be done in two days and I feel I should take the blame, if anyone in this and not Mr. Kinnaird. I don't believe he said that.

Winward: Mr. Kinnaird

JK: As a matter of fact, I requested four days [rest inaudible]

Winward: That is my recollection ...

AW: O.K. I stand corrected.

Winward: That is my recollection that Mr. Kinnaird requested four days. We scheduled two. (Pause) We are proposing the 25th at nine a.m. That is a Saturday. With all good hopes that you will be able to conclude your defense in less than that day.

TT: Mr. Moderator?

Winward: Mr. Tyson.

TT: May the defense request a transcript of the proceedings of last Saturday? There is an audio tape, a copy of which we have, but it is very difficult to work with that. If we could have a transcription of that? I would base that request on what you might consider to be something of an oblique remark in the Book of Discipline ... but it does say that the accused ... This is on page BOD 113, IV.3.c. ¶The accused shall be allowed one copy of the minutes at the expense of the judicatory.@ When this was written there were no tape recordings. And the principle it was seeking to apply was that the defense would be given a copy of what happened at the trial judicatory whenever those minutes are produced. We are not asking for that. We're just asking for a transcript of last week's proceedings at the expense of the judicatory, if the court is willing to supply that since we will have time now to do that and use it effectively.

² On July 8, 2002 the Philadelphia Presbytery voted to put the whole Bethany session on suspension for six months and appointed an interim session (which was later approved by the congregation) to rule the church for that period. At the February 1st POP meeting the Presbytery was to consider the 'final solution' for Bethany Church.

Winward: I would defer to the clerk to see if he can do that. He says he will do what he can.

TT: Thank you, Mr. Moderator.

Winward: Mr. Kinnaird?

Kinnaird: May I ask how long we can expect that to take?

Watson: We'll keep you advised.

[Some further discussion but too soft to transcribe.]

Winward: Do keep in mind that until the judiciary certifies any transcript, they are an unofficial record. (Pause). We are recessed. Let us close with prayer.