

Constitutional Issues In The Appeal Of The Collinsville Church Of Christ

Part I: The Facts Of The Case

By FLAVIL R. YEAKLEY, JR.

The First Amendment to the Constitution of the United States of America sets forth some of the most important protections of citizens of this nation: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Several of these important constitutional protections will be seriously weakened if the decision is not reversed in the recent case of *Guinn vs. the Collinsville Church of Christ*.

Previous comments by various writers in *Mission* have generally been critical of the actions taken by the elders of the Church of Christ in Collinsville, Oklahoma, that led up to this case. These previous comments in *Mission*, however, have not presented a full account of the facts, nor have they explained the legal arguments that the Collinsville Church of Christ is using in its appeal. The purpose of this article is to provide readers of *Mission* with this information.

The Member Who Sued The Church

When Marian Guinn first came into contact with the Collinsville Church of Christ, she was a recently divorced mother with four children—an unemployed high school drop-out living on welfare. Her sister, a member of the Collinsville Church of Christ, told the elders of the congregation about Marian's situation. They offered to help. Members of the church moved Marian and her children to Collinsville, provided food and clothing for her and her four children, helped her get through school, bought her two cars, and paid her bills.¹ One of the elders taught Marian and baptized her.²

For some time Marian was a faithful member of the Collinsville Church of Christ. During this period, as she later admitted in the trial, she was taught that members of the church have an obligation to admonish a member who sins and urge repentance; she learned that the conduct of a member bears on the reputation and influence of the church in the community; she knew that fornication could harm the reputation of the church; and she learned both by teaching and example that the fellowship of the church is withdrawn from those who sin and refuse to repent.³ She had witnessed a withdrawal of fellowship from a member whose sin, as she later admitted in the trial, would not damage the influence and reputation of the church as much as the sin of fornication.⁴ She knew that the Collinsville Church of Christ, based on its understanding of the Bible, required its members to abstain from all forms of sexual immorality; and she understood that to include any sexual intercourse between people not lawfully married to each other.

The Events

While Marian Guinn was a member of the Collinsville Church of Christ, rumors began to spread through the small town that she was having an affair with Pat Sharp, the owner of the Collinsville drug store and the town's former mayor. During a good portion of 1980 and 1981 Pat Sharp's car was often seen at Marian Guinn's house. Marian was often seen visiting Pat Sharp at his drug store. During the trial Marian admitted that the affair was rumored around town.⁵

Pat Sharp had divorced his wife in August of 1979. One of the rumors in Collinsville was that Marian Guinn had broken up the Sharps' marriage. Pat Sharp's former wife accused Marian of being the cause of the divorce. She testified that she overheard on an extension telephone a conversation in which Pat and Marian said that they loved each other—and

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this was before the divorce.⁶

In 1980 the Collinsville City Clerk, who was a member of the Church of Christ, called one of the elders and reported the rumor. The elders decided that they needed to talk to Marian privately about the charges. When they went to her house, they found that she had gone to a laundromat. When they found her at the laundromat, they asked her to leave the younger children in the care of her teenagers so that she could go with them to the church office to discuss some things in private.⁷ *In the trial Marian admitted that every time the elders visited her, they treated her with kindness.*⁸ In this meeting at the church office the elders told Marian about the rumors. She denied that they were true. The elders accepted her denial, but suggested that under the circumstances it would be better for her to stop seeing Pat Sharp. As it turned out, however, she did not.

In the late summer of 1981 Pat Sharp and Marian Guinn had a fight and broke up. Pat started dating someone else over the objections of Marian. Pat then called one of the elders of the Collinsville Church of Christ asking him to keep Marian from bothering him and his new girlfriend. In that conversation, Pat Sharp admitted that he and Marian had frequently engaged in sexual intercourse before their relationship turned sour.⁹

The next morning the elders met privately with Marian and told her what Pat Sharp had said. Faced with this evidence, she admitted that she had been guilty of fornication. She said, however, that she was going to come back to church and not see Pat Sharp again. The elders told her that if they saw her with Pat Sharp again, they would have to assume that the relationship was continuing.¹⁰ Shortly after this meeting, however, Pat and Marian started seeing each other again.

On 16 September 1981 one of Marian's children was attending the Wednesday evening services at the Collinsville Church of Christ. When asked where his mother was, the child said that Pat Sharp had taken her to Tulsa. When the elders learned about this, they went to see Marian a third time. They told her that her sin had become so much a matter of public knowledge that it had hurt the influence and reputation of the church. They said that such a sin against the church as a whole demanded a public confession. They told her that if she did not repent, confess her sins, and ask for the prayers of the congregation, they would have to tell the members to withdraw their fellowship from her. Marian told the elders to leave and they left.¹¹

On 21 September 1981 the elders wrote a letter to Marian again urging her to repent. In this letter they told her that if she did not repent by the following

Sunday, the fellowship of the congregation would be withdrawn from her.

On 24 September 1981 Marian took that letter to a lawyer. On his advice she wrote a letter on 25 September 1981, resigning her membership in the Collinsville Church of Christ and telling the elders not to say anything about her. That letter was sent just two days prior to the time when she was to be disfellowshipped.

After considering the matter, the elders decided that Marian's resignation did not change what they had to do. Those elders share with most other members of the Church of Christ the belief that 1 Corinthians 5:9-13 requires Christians to withdraw their fellowship from a Christian who is guilty of sexual immorality and refuses to repent. This passage is generally understood in Churches of Christ to make a clear distinction between a Christian and a non-Christian fornicator. Paul says that Christians are not to withdraw their fellowship from non-Christian fornicators, since that would require "going out of the world"; but Christians must withdraw their fellowship from any Christian fornicator who refuses to repent. In the view of these

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elders Marian Guinn did not cease being a Christian when she resigned her membership in the Collinsville Church of Christ. They regarded her as being in error, but they still regarded her as being a sister in the family of God. Thus they believed that 1 Corinthians 5:9-13, Matthew 18:15-17, and other passages required them to instruct the members of their congregation to have no further association with Marian Guinn because of her refusal to repent of the sin of fornication.

In spite of Marian Guinn's resignation from the Collinsville Church of Christ, the elders went ahead with their message to the congregation instructing the members to have no further association with Marian. In this Sunday morning message the elders identified the Bible passages violated and those that required the members to withdraw their fellowship from Marian Guinn. At the trial Marian stated that she was unaware of anyone outside the church who heard from anyone in the Collinsville Church of Christ about the withdrawal of fellowship or the reasons for the action.¹²

In the media coverage that later surrounded the

trial the elders of the Collinsville Church of Christ were pictured as harassing Marian Guinn and being very harsh and unkind in their treatment of her. The facts revealed in the trial, however, make it clear that the elders went to Marian privately to discuss this matter on only three occasions. She admitted that they treated her with kindness on all three occasions. After these efforts had failed, they wrote one letter to her and finally announced to the members that they must have no further association with Marian Guinn; and with the Bible references they gave it was clear that the withdrawal of fellowship was because of her fornication.

Previous comments in *Mission* have focused on the question of a member's right to withdraw membership from a congregation. Statements made by the Collinsville elders during the trial were unfortunate in that they confused the issues of membership in the family of God with membership in a local congregation. But regardless of what those elders said, what they actually did in no way denied Marian Guinn's right to resign her membership. What they did was simply to affirm their right and their duty to explain to the members of the congregation why they must have no further association with Marian Guinn.

Regardless of how the Collinsville elders explained their action, what they actually did was directed totally at those who remained as members of the Collinsville Church of Christ and not at Marian

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Guinn. In order to protect the members of their congregation from the corrupting influence of such a person as Marian Guinn and in order to protect the reputation and influence of the church in their community, they had to instruct their members to have no further association with Marian Guinn. At that point, such action could not have been a punishment of Marian Guinn—but only a protection of the members and of the congregation's influence in the community. *Marian Guinn told the elders that she wanted to be left alone. That is exactly what the elders told the members to do.* What was withdrawn here was not fellowship at church services because Marian had stopped attending and had resigned her membership in the congregation. What was withdrawn was personal and social contact. Marian still had friends and relatives in the congregation.

The elders felt that they had to tell these Christians, for their own protection and for the sake of the congregation's influence in the community, to stop associating with Marian Guinn. The message was not addressed to Marian Guinn. It was addressed totally to the members of the congregation and simply explained what they were to do in this matter.

The Trial

Marian Guinn sued the Collinsville Church of Christ for defamation. She later amended her petition by dropping the defamation claim since the facts stated by the elders were true and thus there was no defamation. She then claimed actual and punitive damages for invasion of privacy and intentional infliction of emotional distress.

The Collinsville Church of Christ challenged the court's jurisdiction on First Amendment grounds. The trial court, however, exercised jurisdiction in spite of this objection. In so doing, the court ruled that it had jurisdiction to determine the propriety of forms of religious belief and discipline—the First Amendment notwithstanding.

The case for Marian Guinn attacked religious doctrines and practices of the Collinsville Church of Christ in several significant ways. The charge of intentional infliction of emotional distress related to the statement the elders made when they told Marian that if she did not repent, they would have to explain to the members why they must have no further association with her. Marian's attorney called that "emotional blackmail." He said that no church should be permitted to make such a statement to its members. The case against the Collinsville Church of Christ also charged invasion of privacy by intrusion upon seclusion and by publication of private facts. The charge of intrusion upon seclusion related to the three times that the elders went to see Marian privately to ask her about the rumors, to confront her with the evidence, and to admonish her to repent. Mrs. Guinn's attorney claimed that those elders had no right to talk to Marian about her private sex life—or to talk to any other member about such a personal matter. The case presented against the Collinsville Church of Christ would allow church leaders to engage in passive counseling, i.e., talking to members about personal problems if the members come to the elders and ask for their advice. Active counseling, however, would be ruled out by the argument presented against the Collinsville elders. According to this argument, church leaders do not have the right to go to a member who has violated the congregation's moral code to urge that member to repent. Marian's attorney also attacked the strict moral code of the Col-

linsville Church of Christ that defined sexual intercourse between single people as being immoral. He said, "Those two people were single and this is America." He urged that in America today sexual intercourse between single people is not regarded as being immoral. Thus he objected to the moral code of the Church of Christ, to its doctrine concerning the active counseling role of its elders, and to its doctrine requiring a withdrawal of fellowship from a member who sins and refuses to repent.

The charge of invasion of privacy by publication of private facts was the only charge that had anything at all to do with any action taken by the elders after Marian wrote a letter resigning her membership in the congregation. This charge related to the statement the elders made when they explained to the congregation why they must have no further association with Marian Guinn. The attorney for the Collinsville Church of Christ argued that there was no publication of private facts. He urged that the facts concerning the fornication were made public by the actions of Marian Guinn and Pat Sharp, by the statement Pat Sharp made to one of the elders, and then by the lawsuit initiated by Marian Guinn—not by the statement the elders made to the congregation. He further argued that a statement from the elders to the members of the congregation on this matter came under the heading of "qualified privilege" as defined in the related laws on libel and slander. The judge, however, refused to include in his instructions to the jury anything pertaining to qualified privilege.

Marian Guinn's attorney attacked the beliefs of the Collinsville Church of Christ on one remaining point: the issue of whether the church should regard a member who resigns membership in the congregation as being a former member and still a Christian or a non-member to be treated like a non-Christian.

One of the principal issues in the trial was the conduct of the elders of the Collinsville Church of Christ after Marian Guinn withdrew her membership from the congregation. The record shows, however, that after Marian withdrew her membership from the congregation, the elders never went to see her again. They wrote her one letter, but they did not talk to her again. They simply explained to the congregation why they must have no further association with her.

The instructions the judge gave to the jury left little doubt as to the outcome. He allowed the jury to

consider all the issues raised in Marian Guinn's case, including: (1) the objections to the strict moral code of the Church of Christ that regards sexual intercourse between single people as being immoral; (2) the objection to the doctrine of the Church of Christ concerning the active counseling role of its elders; (3) the discipline practiced by Churches of Christ in withdrawing fellowship from a member who sins and refuses to repent; and, (4) the doctrine of the Church of Christ that regards a person who withdraws membership from a congregation as being a member in rebellion and thus still a child in the family of God rather than as being a non-member.

Marian Guinn sued for \$1,300,000 in actual and punitive damages. The jury awarded her both actual and punitive damages on all charges. The judge had told the jury, however, that only the largest of the awards would be granted. The largest of the awards by the jury for actual and punitive damages was for \$390,000. The decision of the jury against the Collinsville Church of Christ was unanimous. The jury actually had little choice, based on the instructions given to them by the judge.

The Collinsville Church of Christ and its elders have appealed the decision by the trial court in Tulsa. The appeal should be considered by the Oklahoma Supreme Court—perhaps some time in 1986. The appeal is based on several constitutional issues that will be discussed in Part 2 and Part 3, in subsequent issues of *Mission*.

NOTES

Citations to the trial transcript are given in these notes as T. page/line and are as they appear in the appeal, No. 62,154, in the Supreme Court of the State of Oklahoma, *The Church of Christ of Collinsville, Oklahoma, a non-profit corporation; Allan Cash, Ted Moody, and Ron Whitten, Appellants, vs. Marian Guinn, Appellee*, an appeal from the District Court of Tulsa County, Oklahoma, Honorable Tony Graham, Judge, with the Collinsville Church of Christ and its elders represented by Deryl L. Gotcher, Roy C. Breedlove, and Graydon Dean Luthey, Jr.

¹T. 237/20; 58/22; 59/17; 59/21; 238/12; 107/17; 110/13; 110/20; 239/2-25; 238/12; 113/11; 115/18-20; 238/12-240/15; 272/1; 114/22. ²T. 272/6; 65/12; 271/14. ³T. 21/12; 126/4; 124/25; 138/6. ⁴T. 165/7. ⁵T. 147/15; 147/11; 167/24; 168/15; 168/25-169/13; 147/22-24. ⁶T. 227/4. ⁷T. 137/5-11. ⁸T. 173/6. ⁹T. 287/8-24. ¹⁰T. 291/2-3; 292/1-4. ¹¹T. 344/25; 346/8; 345/3; 294/5-295/24. ¹²T. 171/4-172/24.

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