

WHEN JUSTICE FAILED IN CHURCH AND STATE

An Explanation of the Division in the Free Church of Scotland

by

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and

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MANY ACROSS THE WORLD MOURNED when the Free Church of Scotland divided in 2000. The cause of the division has to be one of the most serious in Scottish and evangelical church history; yet there is no agreement on what that cause actually was. According to the Rev Donald Macleod, now Principal of the Free Church College, Edinburgh, it was all about the evil intent of ministers and women who conspired to ruin him by false allegations -allegations for which a criminal court cleared him in 1996. Because these same parties would not abide by the ruling of the Church (which also regarded him as innocent) the denomination seemed left with no alternative but to silence them. The case has prompted wide publicity in the national press, and other media, where the 'trouble-makers' have been described as 'hardline traditionalists'.

But why thirty-five Free Church ministers, and numbers of people, should choose to separate from brethren rather than accept this verdict has never been explained.

THE AUTHORS:

MURDOCH MURCHISON, born in Aultbea, Ross-shire, studied medicine at the University of Edinburgh and, after qualifying, worked in Edinburgh, Peru and London. In 1964 he was appointed Medical Officer of Health for Inverness County and Burgh, subsequently District Medical Officer for Highland Health Board and later Chief Administrative Medical Officer for Grampian Health Board. In 1995 he retired to the family home in Strathpeffer. He has been a member of the Free Church of Scotland for some fifty years.

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The two men, both married and both with five children, have long been friends, although they became involved in the controversy in quite different ways.

FOREWORD

The material in these pages has been made up in the following way.

Chapter One contains an address given at the Annual General Meeting of Concern for Justice in Edinburgh on 1 June 2000. It looks at the trial of Professor Donald Macleod and the defence which he offered.

Chapter Two is a reprint of a booklet, Professor Donald Macleod and His 'Opponents', which was published for semi-private circulation in October 1996. It was not intended for extensive circulation and as far as we know, no copies were supplied to the press. As it is no longer available separately, and is so closely related to the two chapters which follow, it is here reprinted.

We no longer have the reservations on limiting the circulation of the information here given which we formerly had. That such issues should be so aired in the public domain is obviously a very regrettable thing. But the fact is that a very different version has long been widely and persistently publicized. Professor Donald Macleod himself, from as early as 1994, has encouraged the promotion of that version in the national press and on television.

When the material now in chapter two was first printed in 1996, it was intended, as stated, chiefly for 'ministers and office-bearers'. Given its content it might be considered to have required official review by the Free Church of Scotland and the fact that it did not receive such review became part of the controversy which was eventually to split the denomination.

The content of that pamphlet is reprinted unaltered. We are not aware that its accuracy has been challenged at any point. The criticism was heard that it was 'selective'. Certainly that is true; we did not give the whole of the crucial letters and documents from which we quoted. But the reason was not to distort the evidence; on the booklet itself it was promised, 'The documents quoted could, if necessary, be seen by responsible parties.' No one responded to that invitation.

More information is now given in these pages. From some the response is likely to be, not a review of the message, but an attack on the messengers. And at the centre of attack will be the complaint that, in certain places, this publication breaches the confidentiality of denominational meetings and documents. Whether that breach is justified the reader himself will be able to conclude. The belief that confidentiality must take precedence over everything else and in all circumstances, over the slander of the innocent, the silencing of ministers and the misleading of a Church - such an idea is not one we are ashamed to reject. The cry should not be 'Breach of confidentiality!' It should be, 'Why were these things hidden from those who needed to know them?' An issue which has to depend on the suppression of truth is not in harmony with the openness of apostolic Christianity.

Professor Macleod has persistently objected that this controversy has been chiefly the work of 'outsiders'. Suffice it to say, one of us has been an elder in the Free Church of Scotland for some thirty years. The other, brought up in England, first preached in the Free Church of Scotland in 1958 and it was a re-connection with the Church of his father and grandfather. Together we treasure its past history. As W. G. Blaikie, a former leader, could once say, 'We got a great

character over the Christian world, and great things were always expected of us.' That former spiritual influence is in great need of revival today.

But it also needs to be said that that trouble which has so sadly damaged this historic denomination was never a purely internal matter. It did not begin in Scotland. It began in Australia, where one of us was drawn into a situation that we would have been happier never to have known.

These pages are presented in good conscience as an honest appraisal of events. Nevertheless, if any detail can be shown to be inaccurate the authors would welcome it being drawn to their attention.

Spurgeon says in one place, 'It is a grievous fault when Christian men harbour resentments; it is always a sad sign when a man confesses, "I could not pray for So-and-so." I would not like to live an hour at enmity with any man living, be he who he may.' We believe that this spirit is true of many on both sides of the present division. Together we pray for recovery and look for the land where sin will be no more.

MURDOCH MURCHISON
IAIN H. MURRAY

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CHAPTER 1

'SOME CONSPIRACY!' ¹

Mrs MacKenzie, Ladies and Gentlemen, it is my task as well as my privilege this evening to address you on the subject of 'Some Conspiracy!' with particular reference to the Sheriff Court trial of Professor Donald Macleod in 1996. A conspiracy by definition involves a number of people planning or plotting together, usually for a treacherous or criminal purpose, and I have called this 'Some Conspiracy!' because the conspiracy in question must be one of the most preposterous ever alleged in a court of law.

Last year we had the benefit of an excellent review by Mrs MacKenzie from the lawyer's perspective. I for my part am speaking as a doctor with considerable experience of investigating assaults, including sexual assaults, having been Police Surgeon in Inverness for over twenty years. I also speak as an elder and former Vice-Convener of the Training of the Ministry Committee² of the Free Church of Scotland before the split earlier this year.

There may be some present who feel, 'Why do we have to rake over past events? Why can we not forget everything and have peace?' Or alternatively, 'We know there is something wrong but we don't want to get involved.' As a professing Christian I am indeed called upon to desire peace, but this can never, and must never, be at the expense of truth and justice. Brian Edwards, in his excellent book *The Ten Commandments for Today*, writes, under the heading 'You shall not give false testimony', about the silent lie and comments, 'When someone is falsely accused or a slur is made that could easily be corrected and we remain silent and offer no evidence we are guilty of sin.' The comment in the Shorter Catechism is very similar: we are not only to 'speak the truth at all times', we are 'to stand up for it when it is assailed' and we are 'to seek to advance it by all means in our power'. We are also 'forbidden to do anything which might make others believe what is not true' and this is expressly so where a person's character is concerned.

Madam Chairman, the events of 1996 are still having their repercussions for many of us today and it is precisely for that reason that I present this paper this evening.

I will divide my address into three sections as follows: 'SOME CONSPIRACY!', SOME CONTRADICTIONS, SOME CONSEQUENCES.

I should state that my observations will be based on my personal knowledge of events, firsthand reports from some who attended the trial, including the useful transcript produced by Mr John MacPherson and finally responsible press reporting of events.

1. 'SOME CONSPIRACY!'

In April 1996 Professor Donald Macleod eventually appeared in the Edinburgh Sheriff Court to answer six charges of indecent assault against five women. The assaults were alleged to have taken place between 1985 and 1992. Subsequently, under aggressive questioning, one of the women became confused over her dates and the Sheriff immediately ruled that one of the charges should be withdrawn. It is surprising that the Sheriff should have struck out the charge with such alacrity, particularly as it is reported that he himself made a similar temporary slip up over a date

at a later stage in the proceedings.³

It should be noted that all five women had earlier brought their complaints to the Free Church of Scotland. The complaints had been received, but by a majority of one vote the Training of the Ministry Committee (TOM) had decided to do nothing about them. This was against the advice of three of the non-voting Special Advisors to the Committee who had been appointed specifically by the General Assembly to give advice to the Committee on the matter. A fourth advisor was ill during the enquiry. The General Assembly subsequently endorsed this decision though none of the members of the Assembly (apart from those present at the TOM meeting) had seen any of the evidence and therefore could not have known what was being alleged.

It appears that one of the women in question subsequently went to the police who carried out their own investigations. The Free Church authorities were approached by the police but refused to co-operate in the release of information to them. One should note that at a later stage Macleod's defence team took out a Court of Session order which required the Church to produce all papers relating to him; these were used by his team selectively to create a false impression. If the prosecution had reviewed all of these papers they would have found plenty of evidence to contradict what was presented in court. This Court of Session order effectively broke the confidentiality which had previously related to these papers.

Despite the lack of Church co-operation, the police gathered their own information and in due course a report relating to all the five women was submitted to the Procurator Fiscal. The Procurator Fiscal, after considerable delay, and after consultation with the Crown Office, took a different decision from the Free Church. He decided there was a case to answer and initiated criminal proceedings.

When the case was first called in court at the end of 1995 it was presented on behalf of the Crown first by a Depute-Fiscal, a Miss Pam Watson, and then by a more experienced fiscal, a Mr Michael Bell, who I understand had prepared the Prosecution case and had personally interviewed each of the women involved. Meanwhile Professor Macleod had assembled what he himself described as an extremely able and well qualified legal team consisting of Mr Eric Scott, court solicitor of Campbell Smith WS, Dr Raj Jandoo, a highly qualified and high profile legal counsel and Mr Andrew Hardie QC, Dean of the Faculty of Advocates, soon to be Lord Advocate for Scotland and later Lord Hardie, the High Court Judge.

The case was heard initially by Sheriff James Farrell, then Sheriff Roger Craik, then Sheriff Charles Stoddart, then Sheriff Iain MacPhail. Sheriff Iain MacPhail is a recognised expert on the Moorov Doctrine⁴ and it might have been anticipated that he would have continued with the case, particularly as Mr Hardie had sought to have all charges dismissed as 'oppressive' and Sheriff MacPhail had already ruled that there was a 'clear case to answer'. Some months later when it came to the actual hearing it was found that for some reason Sheriff MacPhail had been replaced by yet another sheriff, Sheriff John Horsburgh. It is not unusual for different sheriffs to deal with the early procedural stages but this must surely be some sort of record and calls into question the way in which sheriffs' duties are allocated. Of considerably more concern to the women was the fact that Mr Bell, the experienced fiscal who had prepared the case was replaced at very short notice by a Depute-Fiscal, a Miss Margaret Graham. Professor Macleod retained his full team

throughout at a cost finally estimated at £90,000 (The Herald, 11 July 1996).

The court case was prolonged from mid-April until late June, largely on account of the fact that it was interrupted while the Sheriff dealt with another engagement. The Sheriff, in his summary, conceded that it had been a very long trial and that the gap in the trial had been 'unfortunate'. It would appear to have been more unfortunate for the women than for the Defence as the good impression given by the women on the witness stand was largely lost with the delays, and at the end the floor was in effect left to the Defence team.

It is not my purpose this evening to comment on the precise nature of the alleged assaults presented by the Prosecution. I should, however, note that the women had been assured that they would not be named in court. In the event not only were they named but I understand one had her father publicly identified in court by the Dean, Andrew Hardie. From reports it would appear that the women were subjected to intimidation and browbeating tactics by the Dean during which the Sheriff failed to afford them the normal degree of protection. In addition the Dean, as befitted his status, rode roughshod over the Depute-Fiscal and even on occasion the Sheriff.⁵

When it came to the actual Defence it is interesting to note that Professor Macleod, who is very experienced in appearing on television, gave his main evidence on video camera, for which the Sheriff later complimented him. It was claimed by the Defence that during the course of the trial the legal team had suddenly stumbled upon the possibility of a 'conspiracy'. In fact, it is well known that Dr Jandoo had given his opinion to this effect before there was any question of a court case and had even named a list of potential conspirators. This had been circulated anonymously with the threat of legal action to certain Commissioners to the Free Church Assembly of 1995 in order to intimidate them into taking no action when certain complaints were due to be considered by the General Assembly. The solicitor, Mr Eric Scott, who had obtained the Counsel's opinion denied any involvement in the circulation but did concede that two copies had been made available, one to Professor Macleod and one to Professor John L Mackay, the Principal Clerk to the Assembly.⁶ Professor Macleod was questioned in court as to whether he had distributed the Counsel's opinion and is recorded as replying on oath, 'I can't remember'.

Be that as it may, the conspiracy theory was now further developed and it was claimed that Professor Macleod was an entirely innocent party who had in effect been 'set up' by an evil group of hardline churchmen both within and outwith the Free Church of Scotland, primarily on theological grounds, because they disapproved of his 'liberal' and 'progressive' outlook, but also because they were jealous of his standing, his gifts and his popularity. The focus of this antipathy, it was claimed, had been a review by Professor Macleod in the Monthly Record of the Free Church of a biography of the late Dr Martyn Lloyd-Jones by the Rev. Iain Murray. This review, it was claimed, had been highly critical, so critical in fact that those associated with the Banner of Truth had reacted by cutting off all ties with Macleod, and some had even gone so far as to invent an adulterous affair for him in Australia with a view to forcing him out of the Christian ministry. When this did not succeed, under the leadership of the Rev. Iain Murray and with the help of the Rev. J. J. Murray of Edinburgh, they devised a further strategy and persuaded at first two women and then, just to meet the requirements of the Moorov Doctrine fully, a further three to come forward with more false claims of indecent assault.

The list of those named in court as somehow involved in this conspiracy was certainly impressive. Apart from the five women it included Sir Fred Catherwood, former Leader of the Conservative MEPs and Chairman of the Evangelical Alliance, his wife Elizabeth, Lady Catherwood (a daughter of the late Dr Lloyd-Jones), the Rev. Erroll Hulse of Leeds, the Rev. John Marshall of Hemel Hempstead, Dr Roy Clements of Cambridge, and the Rev. Paul Cook of Hull. From Australia those named as involved were Principal Allan Harman of Melbourne, then Moderator of the Australian Presbyterian Church, Principal John Davies of Sydney, and the Rev. John McCallum of the Presbyterian Church of Eastern Australia (PCEA), Sydney. In the Free Church of Scotland there were Professor Hugh Cartwright of the Free Church College, the Rev. Angus Smith of Ness, the Rev. John MacLeod of Tarbat (Clerk to TOM), the Rev. Gordon Mair of Fort William (Convener of TOM), the Rev. J. J. Murray (Edinburgh), Mr James Fraser (Secretary to Paisley University and past Convener of TOM), his wife Mrs Sheila Fraser (a lawyer and friend of one of the witnesses), and myself (Vice-Convener of TOM).

In the witness box on behalf of Professor Macleod appeared the following:

Ex-Principal Clement Graham of the Free Church College, who confirmed that he knew about the Australian allegations some time before but could not recall who had told him, and who also confirmed that he knew Harman, who had been a Professor in the Free Church College.

Dr Eric Mackay, a Free Church elder, who claimed that there was a vendetta against Professor MacLeod and that he had seen the Convener of the TOM rub his hands with glee and say, 'We have him now'. He said that the girls 'were persuaded to appear and members of the TOM were producing them like white rabbits out of a hat'.

The Rev. Alex J. MacDonald, Edinburgh, who testified that the Rev. A. Smith had brought to TOM a complaint which he had typed up and which was unsigned and who testified to the effect that the Convener (the Rev. Gordon Mair), the Vice-Convener (myself) and the Clerk to TOM (the Rev. John MacLeod), had engaged in a campaign against Professor MacLeod; whereas certain others who wished to dismiss the complaints were named and described as 'open-minded'.

Detective Inspector MacRae of the Lothian and Borders CID who testified that his former minister, the Rev. J. J. Murray was 'dishonest and untrustworthy', and that it all boiled down to a campaign against Professor Macleod born of jealousy. Inspector MacRae's wife also testified that she knew one of the young women very well, that this woman normally told everything to her, and that, as she had been told nothing on this occasion, what was being alleged by her must be false.

Miss C. MacIver, a secretary in the Free Church College, who testified that one woman who claimed to have been molested in the Professor's room had not been shown in by her and so could not have been there at all.

This list is not comprehensive and I mention these only to give a flavour of the witnesses who came forward to add some credibility to the conspiracy notion. A considerable number of alleged 'conspirators', including myself, had also been cited to appear and were contacted from time to time by the Defence with new dates and times for our appearance. In the event none were called, apart from Mr John Heenan, and he was questioned only in relation to the Dorcas Fund.⁷ This strategy of citing witnesses who were not called not only prevented any of these men from

attending court to hear what was being said about them, but it also outwitted the Prosecution who clearly had relied on the fact that the alleged conspirators had been cited and had anticipated their being questioned by the Prosecution as well as by the Defence.

The Sheriff in his summing up confirmed the following:

This was 'no ordinary case'. It had attracted a lot of public attention. There was no dispute, the issue was one of credibility. If 'Moorov' applied, then the conviction would be on all charges. Plainly one side or the other was not telling the truth. Why four women should be lying was not easy to understand at first glance.

But then he changed his tack completely. He focussed on the fact that the Banner of Truth had taken exception to Professor Macleod's critical review of the biography of Dr Martyn Lloyd-Jones and proceeded to agree with everything that the Dean had said. He commended Dr Eric Mackay as a 'most important witness'. He was not surprised that Mackay had concluded that TOM had conducted a 'vendetta' against the Professor and he considered the actions and reactions of TOM 'very damning', despite the fact that the Committee as such had, over the years, refused to take any action regarding the complaints against Professor Macleod.

He accepted the Rev. Alex MacDonald's statements that the Convener of TOM had 'fixed' his election as Convener and also that the Convener, Vice-Convener and Clerk had engaged in a campaign against the Professor. He also commented on the fact that the Rev. Angus Smith had accompanied his niece to the Committee and had typed up her complaint. He said he had not been impressed with Mr Heenan, who had set up the 'Dorcas Fund': 'He was slippery and furthermore was a friend of the Rev. J. J. Murray'. He regarded the 'Dorcas Fund' as 'an interference with the process of Law'. It was very different from the 'Agatha Fund' (Agape Fund⁸) which he described as an 'honourable fighting fund', thereby correcting an earlier comment when he had described it rather indiscreetly as 'The Dean's Fund'.

He stated that the Rev. J. J. Murray was openly hostile to Professor Macleod and that he agreed with a statement said to have been made by the late Professor Douglas MacMillan that the Rev. J. J. Murray was a 'dangerous man'. He then proceeded to demolish each of the women even more aggressively than the Dean had done.

Witness No. 1, Professor Macleod's niece, was telling lies. She displayed hostility to Professor Macleod. Why did she not immediately speak to her aunt or her mother after the alleged incident?

Witness No. 2 was attracted to men of powerful intellect. She was put out because Professor Macleod had neglected her. He did not believe she was not involved in the campaign. Cross-examination had destroyed her evidence.

Witness No. 3, from Australia, had given her evidence with considerable assurance. He had been most impressed. Nevertheless she was cagey about the fare and the Dorcas Fund. He did not accept her evidence. She was a supporter of the Rev. J. J. Murray.

Witness No. 4 had given a coherent account of evidence in chief but had suffered in cross-examination. She was unnecessarily cautious in discussing matters with her father. Why did she not tell the MacRaes? She knew of other complaints and also of the Australian incident. He would accept Miss C. MacIver's evidence which contradicted that of the witness.

The Sheriff went on to say: 'I have come to the conclusion that there was a campaign against him.'

Whether the opposition was based on jealousy or differing theological standpoints or resentment over his ability or standing or allegations concerning moral improprieties is irrelevant. It may seem surprising that people who regard themselves as Christians should act in this way but when you look at history it is possible to see that that sort of thing may happen. The Jesuits justified the Inquisition on the basis that it was good for the church. In essence their argument ran that it may be a bit messy but it is a great way of sorting out these heretics.'

He concluded that 'there was sufficient nexus'⁹ between the women and those supporting the campaign against Professor Macleod. They did make false complaints. They were prepared to tell lies about him. Telling lies must be easier if the charges are uncomplicated. It did not involve embarrassing details, it involved only a modest degree of lying on their part. He concluded that Miss Graham, the Depute-Fiscal, had presented her case dispassionately and in the best traditions of the Crown. He also commended Defence Counsel for having taken enormous care in the preparation and presentation of the case .

The Press had a field day. I mention a small sample of their comments. The Daily Telegraph: 'Wee Free preacher cleared of sex assault. Witnesses believed they would rid the church of a troublesome figure.'

The Sunday Times: "'The church plotters made my life hell." Enemies led by the Rev. Iain Murray brought into being a sophisticated conspiracy.'

The Mail: 'For years leaders of the Free Church and their cohorts plotted behind closed doors to bring down one of the more outspoken members of their flock.'
The Herald (report by the Professor's son, John Macleod): 'The vendetta in pursuit of my father . . . A system of lies that is prepared to ignore the truth. It should be manifest to any fair-minded reader that the Free Church is run by idiots.' I would not wish to comment on that, apart from saying that those who consider Donald Macleod had a case to answer have never been in the position of running the Free Church.

The West Highland Free Press (front -page editorial by Brian Wilson, MP): 'Sheriff Horsburgh's summing up must rank among the most damning indictments of witnesses ever delivered from the Scottish Bench. No array of reprobates clumsily perjuring themselves to protect gangsters from prison cell could have been more scornfully dismissed for their mendacity.'

Since then the matter has not been allowed to lie down, with Professor. Macleod from time to time entering the fray either in his regular column in the West Highland Free Press or in some Sunday exclusive. One of the more recent articles in a Sunday newspaper which gives an account of an interview with him concludes with the statement, 'The Sheriff presiding over the case didn't so much smell a rat as a sewerful' (Scotland on Sunday, 14 March 1999).

So much for the conspiracy as presented by the Defence and fully endorsed by the Sheriff.

2. SOME CONTRADICTIONS

There are indeed many contradictions, but I will highlight only some of the more serious. The case for the Defence was riddled with them, some

obvious to the casual observer, others apparent only to those with a detailed background knowledge of what had been presented as evidence and with some knowledge or experience of the personalities involved.

The most fundamental contradiction lay in the area of basic justice and human rights, namely, that Sheriff John Horsburgh publicly branded as

liars and evil conspirators, not only the women who appeared before him in court, and whom he seems to have regarded as pawns and dupes, but also the people whom he pronounced as behind the evil conspiracy. It is surely a gross contravention of a Sheriff's code of conduct for him to brand as criminals people whom he has never seen in court and whom he cannot be sure for himself even exist. As recently reported in the Scotsman, Lord Hardie (as the chief of Macleod's defence team now is), fulminated in

relation to another case that 'It is a breach of natural justice for a judge to abuse his position by criticising people without giving them the chance to put their side of the case.' Regrettably he failed to appreciate this important point of principle when he was party to the same process. Even more

regrettably, Sheriff Horsburgh seems to have been oblivious to this basic concept of justice altogether, when, to use Lord Hardie's phrase, he abused his position by not just criticising but savagely condemning those he had never seen.

Despite what the Sheriff said about the case having been conducted in the best traditions of the Prosecution Service, there was a basic contradiction of balance in the whole conduct of the case. On the one hand, in a summary criminal case, there were ranged an experienced court solicitor, a highly qualified legal counsel and no less than the Dean of the Faculty of Advocates; on the other hand, there was a solitary Depute-Fiscal, who had to take over a complex case at short notice and who, I am told, had to work up the details of the case on her day off. Reports indicate that the result of this unequal contest was the ability of the Dean to ride roughshod over the Depute-Fiscal, and even the Sheriff was occasionally put 'in his place' by his superior on the Faculty. In boxing terms, it was a complete mismatch, between a trained, well prepared heavyweight and a novice lightweight who had been drafted in as a substitute at the last moment for a home town fight.

The aetiology of this whole conspiracy, it is claimed, was an uncomplimentary and highly critical review by Professor Macleod of the Rev. Iain Murray's biography of Dr Martyn Lloyd-Jones (Volume 1) in 1983. You may well imagine the review must have been extremely derogatory to have produced such a reaction. I have recently been given a copy of the review in question (in the Monthly Record of October 1983) and was surprised to find that, on the contrary, it is generally appreciative. There is indeed a small section in the middle where there is criticism of Dr Lloyd-Jones' view of the doctrine of the Holy Spirit and also of the Anglican Church, and there is a passing reference to the risk of hagiography (that is, making him into a saint), but the general tenor of the review is full of praise of the Doctor and his gifts and could in no way have been the spark which set the whole conspiracy alight. Let me read you the first paragraph:

'It is curious that in a day of small things God gave the church such as Dr Martyn Lloyd-Jones. It was not simply that in an age of pygmies he towered above the others, he would have towered

in any age. Indeed he was arguably the greatest preacher since the Reformation, rivalled only by Whitefield, Spurgeon and Chalmers.'

The rest of the critique is in similar vein and it defies all reason to believe, as claimed in Court, that this review could have precipitated the reaction claimed. Remember also that Professor Macleod had been an associate

editor of the Banner of Truth for some eight years, only giving up when he took over the editorship of the Monthly Record of the Free Church.

Remember also that he remained on friendly terms with the Banner of Truth up until 1987 at which date the Banner, under the guidance of the Rev. Iain Murray, printed a book by Professor Macleod, entitled God with Us. This book, although printed and advertised, was never published.

The reason was not pique or jealousy but, as Murray testifies in his booklet

Professor Donald Macleod and his 'Opponents', because he was told from

reliable sources in Australia about Macleod's improper relationship with a young woman in Sydney.

To attempt to explain the sudden change in terms of Macleod's review of the biography of Dr Lloyd-Jones makes no sense. The chronology is all wrong. The review was in October 1983. The improper relationship may have come to light in 1984 in Australia, but Iain Murray knew nothing about it until 1987 when the Banner took the action it did, and he has clear records to prove this.

By the same token, the Rev. J. J. Murray had also been a close associate of Professor Macleod at the Banner of Truth and had regularly assisted him with his duties as editor of the Monthly Record. In particular he had covered for him during his absences in Australia and had provided the General Assembly Reports for the Monthly Record in 1984, 1985, 1986 and 1987 and was duly thanked for doing so. Once again the

allegation that those associated with the Banner of Truth began a campaign as a result of a critical review in the Monthly Record of 1983 just does not stand up to examination.

I have spelt out these contradictions in some detail as I believe the facts are important and clearly they provide no rational basis for the alleged conspiracy.

Let me briefly touch on some more. Professor Macleod denied in court that his relationship with a particular woman in Australia had been sinful, yet he had previously confessed to a sinful relationship with physical aspects, while the woman herself had gone further and made a very full confession to her brother-in-law, Principal Davies, in 1984 and also to her minister, the Rev. J. McCallum in 1987, though subsequently she expressed her regret for so doing. The signed testimonies of Principal J. Davies and the Rev. J. McCallum are available in confirmation.

Principal Harman and Principal Davies were said to have been motivated by theological differences or jealousy or both but neither showed any evidence of this. They both belong to a Church which at the time would appear to have been less conservative than Professor Macleod's. Professor Harman had arranged for his college to fly Macleod out to Melbourne during his 1984 summer vacation, put him up in accommodation and, on Macleod's own admission, pay him well, while Principal Davies had earlier arranged for him to go to give the Eliza Ferrie lectures in Sydney in 1983. The attitude of both changed only when they were convinced of a highly-improper relationship between him - a middle-aged married theological professor - and

a young woman member of the PCEA church. Principal Harman had already invited Professor Macleod to return to Melbourne in 1985 but felt compelled to withdraw the invitation.

It is relevant to note that, according to reports, Sheriff Horsburgh concluded that the 'Australian episode did not reflect particularly well on him (Macleod)'. It is all the more surprising and also regrettable that the same Sheriff failed to appreciate that there might be ministers, even at the end of the twentieth century, who in good conscience could not turn a blind eye to what was prima facie persistent immoral behaviour on the part of a ministerial colleague, and whose genuine concern was and is to maintain biblical standards in the Christian ministry.

The very modest Dorcas Fund was set up by Mr Heenan at short notice because he had been advised by one of the women who had returned home to Australia that there was doubt as to whether the Crown was prepared to reimburse her fare for the trial. There should have been no such doubt and we wonder why there was such indecision. We now know that Mr Heenan consulted with the Crown Office and when he set up the fund it was with the knowledge and tacit approval of the Fiscal Service. This should have been clearly stated in court. He was nevertheless referred to by the Sheriff as a 'slippery customer' of whom he 'did not have a high opinion'. The fund was declared to be 'an interference with the course of justice' while the Agape Fund was said to be an 'honourable fighting fund'. It should be noted that the Crown belatedly reimbursed the Dorcas Fund in full. In the light of this reimbursement it would be interesting to know if the Sheriff still regards the Dorcas Fund as an interference with the course of justice and if so whether the Crown is now also subject to his judgement on the matter!

The Dean (Macleod's Defence Counsel), in dismissing the evidence of the women, referred to one of the cases where evidence had been stated of *de recenti*¹⁰ corroboration but not actually led in court. 'Where', he challenged, 'is the evidence? If it was available it would have been led.' The fact is that four women did have such corroboration, in three cases very clear-cut, in the fourth not quite so clear because of delay. If this evidence had been led, as it should have been, there would have been corroboration of each incident long before any of the alleged assaults had been reported to either the Church or the police. It could also have been confirmed that in each instance the woman reporting the assault to her friend was very distressed, was also speaking in confidence, and was even reluctant to name the person who had carried out the assaults.

There is a series of contradictions in the factual evidence led. On the evidence of Miss MacIver, one witness was accepted by the Sheriff never to have been in the Professor's room. Yet the Professor, in a sworn written statement to TOM, confirmed that the same woman had indeed been in his room and furthermore that he might have put his arm round her and tried to kiss her. The Professor in evidence stated that his niece, another of the women in question, had never been in his house when he was there, though she could have been when he was absent. But it can be established that she was there on several occasions when he was present. Macleod's son, John, was called to say he could not remember ever seeing his cousin in their home. Yet again there are those who can testify to the contrary.

The Professor had worked in the Free Church College for more than seventeen years but he claimed he did not know his door had a Yale lock until midway through the trial. This detail, relevant to the evidence presented by Witness No. 2, contradicted Macleod's

own earlier evidence to TOM. Additionally he stated that while he was a member of TOM he 'never took part in any matters relating to himself'. This is untrue. There was even one particular occasion when new allegations were received against him by three women and he refused the request of the Convener to leave the room. Dr Eric Mackay stated inter alia that there was clear evidence of a vendetta and that TOM acted like torturers, that women were being produced like white rabbits out of a hat and most importantly, that the chairman rubbed his hands with glee and said, 'We have him now!'. The fact is that Dr Mackay was off ill during most of the investigation and, though in court he managed to convey the impression that he had been present, the TOM minutes confirm that he missed nearly all the relevant meetings. Despite widespread enquiry no one is prepared to corroborate his statement regarding the Convener. He, like the Rev. Alex MacDonald, is said to claim that his statements are 'privileged' and that he cannot be called to answer for them. Even if that may be true in a legal context it is certainly not true in a Christian one.

The Rev. Alex MacDonald testified, with reference to one complaint, that the relevant statement had been typed by the Rev. A. Smith and was

unsigned. Mr Smith, in a signed statement dated 31 July 1996, confirms for the record that he was contacted out of the blue by his niece who asked how she could have her complaint of sexual assault passed to the Church

authorities. She subsequently gave him a signed letter with so many pages that it would have been impractical to photocopy it at the Committee, as is usually done. He therefore took the signed letter along with a typed-out copy to TOM. If Mr Smith's statement is accurate (and as I recollect the meeting it is), then the Rev. A. MacDonald's statement, while not

completely false, is a half-truth which deliberately conveys a false and misleading impression. Mr MacDonald also testified that the Rev. Gordon Mair had engineered his reappointment as Convener of TOM, and that he was phoned by Gordon Mair in this connection. The Sheriff commented on this in his summing up and accepted the implication that Mr Mair had wished to remain Convener so that he could continue to prosecute his campaign against Professor Macleod. Mr Mair denies this entirely. He still has a complete record of all his phone calls, and there was no such call. In any event such manipulation would have been contrary to the procedures of the Free Church and would have been entirely out of order for both parties.

There was a contradiction in the evidence presented by the Lothian and Borders CID. Sergeant Robb of the CID, in the course of his duty, presented evidence of the sexual assaults which had been investigated by the Lothian and Borders CID, while Inspector MacRae of the same Department testified that he believed there were no assaults at all and that it was just a campaign based on jealousy. I am reliably informed that if MacRae had any valid evidence of conspiracy he was duty bound as a police officer to have reported it forthwith to his superiors in the Force. His extraordinary behaviour has been the subject of a formal complaint to the Lothian and Borders Constabulary. In reply it was claimed that the Inspector gave evidence as a private individual, but this was not so. He presented himself as an Inspector of the Lothian and Borders CID with many years experience in the Department, including experience of sexual assaults. It was certainly a most unusual and contradictory situation which reflected

adversely on the effectiveness of the Lothian and Borders CID.

Perhaps the biggest contradiction of all came when the case was over. Brian Wilson, MP¹¹ (The Express, 26 June 1996): 'This is a case based on malice and name blackening which should never have come within a thousand miles of court. I am asking the Crown Office to investigate the possibility that there was indeed a conspiracy to defeat the ends of justice.' John Macleod (The Herald, 27 June 1996) 'Someone high up in the Crown Office wanted this prosecution badly. I await with interest as to whether the Crown in the light of Sheriff Horsburgh's judgement will bring proceedings for perjury. The Express, 5 July 1996: Brian Wilson tabled a question in the House of Commons asking what further moves were planned in the light of the Sheriff's comments and was assured by the Scottish Minister, Lord James Douglas Hamilton, that a full report had been called for and it was being considered. Mr Wilson welcomed this information, as 'he wanted to ensure the whole thing was not swept under the carpet'. The Crown Office moved relatively quickly and on 7 August issued the following considered opinion: 'There were to be no further proceedings in this case and in particular criminal proceedings against the witnesses would not be justified.' The obvious conclusion of Crown Counsel was that there was no evidence to justify the pronouncements made by the Sheriff. If there had been, the Crown would have been obliged to take the witnesses (that is, the young women) labelled perjurers, and for that matter the men labelled evil conspirators, to court for perversion of the course of justice. The effect of this announcement following a review by Crown Counsel of all aspects of the trial was to strip Sheriff Horsburgh's outrageous comments of all credibility. Labour MP Brian Wilson called it an 'unsatisfactory conclusion' and observed that 'the Crown Office were fools to get involved at all'. We would hesitate to pass such a sweeping condemnation of the Crown Office but we would wholeheartedly endorse the view that the conclusion was very unsatisfactory, primarily because it did not give redress to those falsely castigated by the Sheriff. However, at least it went as far as protocol would allow in dissociating the Crown Office from his judgement.

3. SOME CONSEQUENCES.

These can be grouped under four main headings:

- i) The Character Assassination of Individuals.
- ii) The Free Church Split.
- iii) The Effect on Women's Rights.
- iv) Loss of Confidence in the Judicial System in Scotland.

i) The Character Assassination of Individuals. If the women were telling the truth and not lies, and as more facts come to light an increasing number of people believe the former, then the innocent have been punished in a variety of ways while the guilty have not only walked free but can claim to have been completely exonerated, and so may feel they can get away with it again. If the Sheriff got it very wrong, and many believe that he did, then the reputations of innocent women and men have been widely and publicly slandered in a most extreme way.

It would be one thing for the Sheriff to say that he was unsure of the guilt of the defendant; it is an entirely different thing to state categorically that the women concerned were all liars and that the men who were said to be behind the conspiracy were all, to a greater or lesser extent, evil. Under the protection of Sheriff Horsburgh's judgement, the press of all shades has had a field day, none more so than Professor Macleod and his son John, the former comparing his experiences to 'Salem witch hunts in America', while the latter referred to the women as both 'wicked' and 'stupid'. Public denigration is especially grievous if it is completely undeserved and the public loss of reputation has had, in some instances, severe psychological effects. This is particularly so for the women, who were assured of anonymity, but instead were named and subjected to aggressive cross-examination before being finally dismissed by the Sheriff as liars of no consequence.

ii) The Free Church Split. Very soon after Sheriff Horsburgh's judgement Professor Macleod called for those condemned by the Sheriff to be sacked from key church posts and committees and for congregations to be allowed a vote of confidence in their ministers (West Highland Free Press, August 1 1996). Soon after the case, The Herald (5 August 1996) confirmed that 'a hit squad had been set up in the Free Church', that they had 'begun a purge', and that the Macleod 'conspirators' were 'targeted'. The process was continued, and resulted, first of all, in the unconstitutional censure and removal from church committees of three men who were members of TOM. There followed the enforced departure of two alleged 'conspirators' (Rev. A. Smith and Professor H. Cartwright) to another denomination.

Events culminated earlier this year (2000) in twenty-two ministers being suspended from the Free Church and a large split within the Church as a result. Currently some thirty-five ministers have separated from the majority rather than condone what they consider gross injustice. Professor Macleod has publicly stated that while he was 'the occasion for the split, he was not the cause'. This is misleading, since, while he may or may not have been the occasion he was certainly in large measure the initial cause. In this he has been assisted to a great extent by the Sheriff's judgement. It would be wrong as well as naïve to accept the propaganda that this is a simple theological dispute of conservative versus liberal. It is more a matter of truth versus cover-up.

iii) The Effect on Women's Rights. In recent years a great deal of public attention has been focussed on women's rights and the desirability of 'Zero Tolerance' in relation to assaults on women, whether physical or sexual. There is no shadow of doubt but that this particular case has set back women's rights in Scotland by many years. It was very widely reported in the media, and if five professional women of hitherto good repute and good standing can be treated in court in the way these five women were treated by Messrs Hardie and Horsburgh, what hope is there for women who do not have the professional and educational background of those in this case? It is all very well to support campaigns for the CID to improve their facilities, to have user-friendly interview rooms and experienced female police officers to deal with sexual assaults, but women will not

come forward to give evidence if the end-result is that they are to be bullied in court by aggressive defence counsel, offered no protection from the Bench and Finally vilified and publicly humiliated by the Sheriff and the media.

iv) Loss of Confidence in the Justice System of Scotland. Sheriff Horsburgh's extraordinary behaviour in lambasting, not only the women who appeared before him, but also men whom he had never seen, not only calls his competence into question but also raises the need for some redress for those who have suffered at his hands in a patently unjust manner. It may be that the Sheriff was unduly influenced by the Depute-Fiscal's lack of preparedness on the one hand (though we are told that she did all she thought was necessary), and the outstanding brilliance of the Dean and his team on the other, but, given the Dean's position of undoubted influence and patronage within the Faculty of Advocates, one cannot but wonder if this also unduly influenced the outcome. As the Rev. D. Murray very succinctly put it, 'You do not beat the boss at golf.' This advice is particularly relevant when he has a major say in whether one may be promoted from the shrieval [pertaining to a sheriff] to the judicial bench. The Justice Minister of the Scottish Executive - a QC himself - recognises cronyism within the judiciary and is publicly consulting on steps to reduce this.¹² Any steps in this direction are to be welcomed and are long overdue.

There are other areas of concern highlighted in this case. Why did the Crown not prepare fully for this case particularly when well warned in advance that a probable defence would be that of conspiracy? Why was the experienced Mr Bell replaced between hearings and why were there no de recenti witnesses called? Why did the Crown not call witnesses like the Rev. J. J. Murray and Rev. Iain Murray and why was there doubt as to whether the Australian witness would be reimbursed her expenses? Brian Wilson, then a backbench Labour MP but now a Minister of State, claimed in the Express of 27 June 1996 that the Senior Law Officer was overruled when he refused to prosecute. Was this indeed the case and if so was the Prosecution conducted in a less than enthusiastic manner on the instruction of the overruled Senior Law Officer? What exactly was going on in the Fiscal's Office? Why was this case reduced to a non-jury summary trial when normally it would have been a jury case? There is no official record kept in a 'sheriff only' trial, and this is most unsatisfactory for a case of this importance and high public profile. With reference to the existence of records, it is relevant to note that the Free Church had two official observers present to keep notes throughout the trial. Senior members of the Free Church establishment had access to these records. Normally they would have been expected to have taken some action on the very serious allegations made in court about respected ministers and elders. Not only have they not allowed these men to have a sight of the notes from the trial, but have refused to take action either to discipline or clear them. Are they involved in a cover-up because they too know that the allegations are false and cannot bear further scrutiny? It is certainly a fact that Mr James Fraser, former Convener of TOM and later Convener of the Finance, Law and Advisory Committee, had given written testimony as far back as 1993 that what Donald Macleod had stated regarding one of the women was 'wholly untrue' (Letter dated 13 September 1993).

It was publicly alleged by Brian Wilson and others that this prosecution should never have taken place and that it was motivated by political considerations. This was denied by the Crown but nevertheless the public need to be reassured that the Justice System of Scotland is not influenced by political considerations, whether the party in power is Conservative as in 1996 or Labour as it is at the present time. It is a matter for comment and for concern that the handling of the recent Concern for Justice petition¹³ would appear to have been influenced by political considerations with the Executive making it clear that they were ill-disposed even to the receipt of the petition. There would appear to be a need for a greater appreciation by sheriffs (certainly Sheriff Horsburgh demonstrated this need), of the psychological effects of indecent assault and sexual assault on women, particularly young women. For example teenage girls and young women, after having been assaulted, are not always able or willing to go straight to their parents and often choose, as in these cases, to tell one of their contemporaries in the first instance. Sheriffs should also try to provide some degree of protection to those women who have the courage to appear as witnesses in court, otherwise they will, to use Sheriff Horsburgh's words, 'suffer in cross-examination'. Miss Graham, the Depute-Fiscal, in her summing up for the Prosecution, went so far as to describe the Dean's treatment of the witnesses as 'relentless'. There may also be a need for more women Sheriffs on the bench for a variety of reasons, including equality for women in the judicial system and the need to counteract some of the attitudes demonstrated in this case. The Moorov Doctrine had become established in Scottish Law, but after this case what prosecution team will ever risk using it again? All that is needed is the suggestion of a link, however tenuous between the different assaults and the defence can be one of conspiracy. The very factors which previously would have been accepted as establishing the Moorov Doctrine can be turned on their heads to suggest a conspiracy. A conspiracy no longer needs to be proved. A claim, however tenuous will suffice and the 'conspirators' can even be named and condemned in their absence. Bruce McKain, Legal Correspondent of The Herald commented on 26 June 1996: 'The strategy of claiming Professor Macleod had been the victim of a conspiracy presented a huge risk. It is a claim that is frequently heard in criminal trials but hardly ever believed.'

CONCLUSIONS

Certain facts are crystal clear and are not in dispute. To begin with, we can agree that there was indeed a conspiracy. We can even agree with Professor Macleod that it was 'a sophisticated conspiracy'¹⁴. The conspiracy described by the Defence may have been accepted in its entirety by the Sheriff, but on closer scrutiny it collapses completely. The real conspiracy was the construction by the Defence of a smokescreen with the purpose of obscuring the true picture. We can also agree with Sheriff Horsburgh that 'clearly one side or the other was lying' in court, and accordingly guilty of perjury. Perjury in English Courts is a very serious offence as demonstrated by its repercussions for Lord Archer and Jonathan Aitken. Is it a serious offence in Scotland? On the evidence of this case the answer appears to be in the negative, particularly as the degree of perjury in this case would appear to be much more extensive than in either the Archer or the Aitken case.

We can even agree with Brian Wilson (now a Minister of State) that 'the outcome was most

unsatisfactory'. It is unsatisfactory since it demonstrates the complete failure of the Scottish judicial system to deal with serious perjury and a gross perversion of the course of justice. Since the considered opinion of the Prosecution Service is that there is no case against the women and the 'hardline churchmen', the corollary is that there must be a case against those who, prima facie gave false evidence in court and the Prosecution Service should act accordingly.

It is also unsatisfactory in that it maintains the myth that a Sheriff must be regarded as infallible when sitting on the shrieval bench, rather like a Pope speaking ex cathedra. He should be afforded some degree of privilege when he acts responsibly, but surely not when he pronounces judgement based on hearsay on those he has never set eyes upon. This cannot be acceptable in this day and age. If a medical consultant, no matter how pre-eminent in his profession, breaches accepted clinical guidelines, he can be called to account, and rightly so. If a Sheriff breaches the normal code of conduct, as he would appear to have done in this case, why should he also not be accountable? Such protective attitudes are archaic. They are not necessary in a modern justice system and should have no place in the twenty-first century, particularly in the light of the acceptance of the new Human Rights Act 1998. Article Six refers to the criteria for a fair trial. In this instance, to quote from the Act, 'judgement was publicly pronounced' on the 'conspirators' without any trial and as a consequence men have suffered severely in loss of reputation and even office, and we are informed that there can be no redress because the Sheriff has complete privilege. We must regard him as right even when we have firm evidence to the contrary.

One is also concerned about the shortcomings of the Scottish Prosecution Service which we are told on every hand is under severe pressure. In this instance an experienced Fiscal was replaced in mid-case by an inexperienced Depute-Fiscal who had little time to prepare the case and patently failed to marshal all the evidence at her disposal. For example, she failed to ensure any de recenti corroboration, and she failed to ensure the attendance of any of the 'conspirators'. This despite the fact that she had been well warned in advance of the probability that the Defence would be one of conspiracy and had even been given the names of those likely to be targeted. On the other hand, the Defence marshalled the best team that money could buy. In these circumstances there is an increasing risk that, as in the USA, a verdict may be determined not so much by the facts of the case as by the relative strengths of a weak Prosecution Service and an expensively-gathered defence team.

I do not wish, however, to convey the impression that this case was in any way typical of Scottish justice and that the justice system is inherently flawed. Sheriff Horsburgh began his summing up by stating that this was 'no ordinary case', while, after the trial, the usually-reticent Crown Office stated publicly that, 'It was unusual for a sheriff to say that he believed people were lying' (The Herald, 26 June 1996). I agree entirely with both these observations and have endeavoured to highlight some of the more extraordinary and unusual aspects of this particular trial.

In my introduction I referred to the Ninth Commandment regarding false witnesses and made brief mention of the Shorter Catechism. I close with a reference to the Larger Catechism, which is even more specific.

The sins forbidden in the ninth commandment are all prejudicing the truth and the good name

of our neighbours as well as our own, especially in public judicature, giving false evidence, suborning false witnesses, wittingly appearing and pleading for an evil cause, outfacing and overbearing the truth, passing unjust sentence, calling evil good and good evil, rewarding the wicked according to the work of the righteous and the righteous according to the work of the wicked, forgery, concealing the truth, undue silence in a just cause and holding our peace when iniquity calleth either for reproof from ourselves or complaint to others.

There is more, but suffice it to say that some, and probably most, of those considerations are relevant to this case.

In the light of the above, I am happy to have had the opportunity to address the General Meeting of Concern for Justice and I wish you well as you seek redress for the victims of injustice, and also try to ensure that such a gross miscarriage of justice does not happen again.

– end of chapter one –

Footnotes to Chapter 1

¹ Given by Dr Murdoch Murchison at the General Meeting of Concern for Justice in the Apex Hotel, Grassmarket, Edinburgh on 1 June 2000. Concern for Justice is a pressure group set up in the aftermath of the trial of Professor Donald Macleod to seek to clear the names of the women concerned, and to vindicate the men who were condemned unheard for conspiring to pervert the course of justice. For further information, consult the website, www.concernforjustice.com, or write to P. O. Box 17024, Edinburgh EH12 8ZF.

² The Training of the Ministry Committee (TOM) is an Assembly Committee which, inter alia, has responsibility for determining whether complaints of heresy or immorality against a Professor should be processed through the Church courts.

³ This particular witness had clear-cut de recenti corroboration of the alleged assault (see footnote 10). It is of interest to note that in recent days even the three eminent judges at the Lockerbie Trial got their dates badly wrong in the first sentence of their written judgement. But in contrast this error will have no legal consequences in the event of an appeal (The Herald, 2 Feb 2001). It is also of interest to note that Professor Macleod, in his evidence, is recorded as stating he was 'not good on dates'.

⁴ This is named after Samuel Moorov who was tried in May 1930 at the High Court in Glasgow on a series of charges of alleged indecent assault against several women. As is usually the case, there were no witnesses to the actual assaults. He was nevertheless found guilty on the combined testimonies of the different women. Since then it has been established in Scottish Law that 'where an accused is charged with two or more crimes and only one witness implicates him in each, they afford mutual corroboration if the crimes are so interrelated by character, circumstances and time as to justify an inference that they are parts of a course of criminal conduct systematically

pursued by the accused.'

⁵ It was reported that the Dean, by means of aggressive questioning, not only intimidated certain witnesses into agreeing with an erroneous time scale of events but even offered to enlighten the Sheriff on some of the finer points of law. It is also reported that the Sheriff accepted most of the objections made by the Dean but very few made by the Depute-Fiscal.

⁶ There were in fact two separate opinions obtained from the counsel, Dr Jandoo, prior to the trial. The first was dated 7 March 1995 and it is understood that this was sent by Professor Macleod to the Convener and Clerk to TOM on a personal basis with the threat of legal action if they permitted complaints against him to be considered by TOM. The second, dated 16 May 1995, also named a number of people, including Mr Alex Morrison, a former Chief Constable and Chief Inspector of Constabulary for Scotland, who were considered to be conspirators. This is the document which was sent anonymously to certain Commissioners, including myself, just prior to the General Assembly again with the threat of legal action.

^{7, 8} The Dorcas Fund was set up by Mr J. Heenan after consultation with the Crown Office to enable one of the witnesses who had gone home to Australia to return in order to give evidence. The sum for travel and subsistence was estimated at between £1000 and £1500 and there was apparently doubt on the part of the Crown Office as to whether they were prepared to either advance or reimburse the fare. The Agape Fund (referred to in court as the Agatha Fund), was set up by Mr R. Cunningham to meet Professor Macleod's expenses in engaging and retaining a high-powered legal team headed by Mr A. Hardie, Dean of the Faculty of Advocates. The initial appeal was for £25,000, later increased to £60,000 and later still to £90,000.

⁹ 'Nexus' can be defined as linking or bonding. It is of interest to note that Sheriff I. MacPhail also used the word with reference to the Moorov Doctrine in his paper 'Evidence' published in 1987 under the auspices of the Law Society of Scotland. In this he stated, inter alia, 'The doctrine cannot be applied unless there is some nexus linking the offences, some underlying unity which makes them part of one course of conduct.' Paradoxically Sheriff Horsburgh failed to see an obvious nexus linking offences and instead accepted a hypothetical, uncorroborated and even fanciful nexus which purported to link the various alleged conspirators.

¹⁰ De recenti corroboration may be accepted as relevant in cases on indecent assault. Typically the victim is seen shortly after the assault in a distressed condition and recounts to a third party the explanation for her distress and the identity of or description of her attacker. The third party can then be cited to court at a later date to confirm on oath what he or she had seen and heard and so provide what is referred to as de recenti corroboration.

¹¹ Brian Wilson is a long-term journalistic and political friend and colleague of Professor Macleod, both in the West Highland Free Press and in the Labour Party. It was alleged by Professor Macleod's supporters that the decision to proceed with the case was taken on political grounds by 'someone high up in the Crown Office' at that time headed by a Conservative Lord

Advocate.

¹² Advancement within the judiciary in Scotland is largely controlled by a small number of influential senior members of the legal profession. In this context the Lord Advocate determines whether a Sheriff is worthy of advancement to the position of Judge and he does this after consultation with the Lord President of the Court of Session and the Dean of the Faculty of Advocates. Mr Hardie was Dean of the Faculty of Advocates and later Lord Advocate, before nominating himself a High Court judge. Mr James Wallace, the Scottish Executive Justice Minister, stated in May 2000 that the present system for the appointment of judges and sheriffs is archaic and that he is carrying out consultation on the setting up of an independent judicial appointments board which will be less open to 'cronyism' on the part of the legal establishment. His proposals are still awaited.

¹³ A petition was submitted to the Scottish Parliament drawing attention to the inequity of a sheriff passing judgement on those whom he had not seen. This came before the Justice and Home Affairs Committee on 2 May 2000 and was dismissed without consideration of the real point at issue.

¹⁴ Professor Macleod is recorded as stating that 'his enemies led by the Rev. Iain Murray brought into being a sophisticated conspiracy intended to bring about his resignation.' He is also recorded as claiming this was because he, Macleod, 'disapproved of the "separatism" of many Free Church members and "wanted to introduce the egalitarianism of his socialist beliefs"' (The Sunday Times, 30 June 1996).

When Justice Failed in Church and State

CHAPTER 2

PROFESSOR DONALD MACLEOD AND HIS 'OPPONENTS'¹

In the court case at Edinburgh, concluded on June 25, 1996, Donald Macleod was adjudged innocent on five charges of sexual assault, four women were held to be lying, while a wide circle of ministers in Scotland and beyond were implicated as participants in a conspiracy.

Following the acquittal of Professor Donald Macleod at his trial, The Times (June 26, 1996) led the announcement of the verdict with the heading, 'Church conspiracy led to sex charges against theologian'.

The Herald (June 26), on the same theme, began its front-page account with the words:

'In a damning judgment, the sheriff concluded the women had all lied in the witness box to further the end of Professor Macleod's enemies in the Free Church of Scotland.'

Sheriff John Horsburgh, Q.C., in his summing up at the trial, preferred the word 'campaign' to 'conspiracy' but, according to press reports, he did not doubt that individuals seeking Macleod's 'downfall' were behind the prosecution and the complaints of indecent assault by the four women witnesses. These witnesses, he believed, supposed that 'a modest degree of dishonesty on their part could be justified by the perceived resultant advantage of blackening the name of Professor Macleod and supporting his opponents.' 'They were prepared to make false complaints against him and did make false complaints.'

The sheriff thus proceeded to his 'not guilty' verdict by this process of reasoning:

1. A campaign against Professor Macleod existed.
2. The women had links with one or more of those involved in this campaign, therefore
3. The women's evidence was 'tainted' and untrustworthy.

Let us take the first two points above in turn:

'A CAMPAIGN EXISTED'

If the word 'campaign' is taken to mean concerted discussion between a few individuals then it may be accepted, but the issue is, why did it exist and for what purpose? That question was answered in very definite terms by the defence. A campaign - interchanging the word with 'conspiracy' - existed, they alleged, because of the hostility of ministers to Macleod, an hostility arising out of jealousy, perhaps, but chiefly out of theological differences. Those against him were adjudged to be strict conservatives, intent to stop any 'modernising' of the Free Church.

The chief aim of the defence was clear - to demonstrate the ill-will of these 'conspirators' - and most of the witnesses called by the defence spoke to that effect. But an entirely different explanation of the 'campaign' would have been advanced if those capable of doing so had been

heard at the trial. Defence counsel sought to head off any significance being attached to the fact that none of the 'conspirators' was heard by referring to what these conspirators might have raised, namely, 'rumours' of misconduct by Macleod while he was on visits to Australia. These rumours were then speedily dismissed and the readiness of certain people to believe them was attributed to an underlying enmity to Macleod. Of course, 'rumours' of the behaviour of the accused in Australia were not before the court, and, in any case, misconduct with the opposite sex is not a matter for the jurisdiction in criminal courts; yet, supposing more than rumour was involved, then a very different explanation could emerge why a number of ministers were ready to question Professor Macleod's continuing suitability for the Christian ministry.

We believe it can be shown that what was referred to in Australia was indeed more than rumour and that none of the following statements can be challenged with respect to their accuracy:

1. In 1984, Professor Macleod, while in Australia, was approached by the Rev. John Davies (Principal of the Presbyterian Theological Centre in NSW) concerning his relationship with a young woman² 'contrary to biblical standards' and the unfaithfulness to his wife which this relationship involved. After Mr Davies, with another witness present, had presented Macleod in Sydney (beginning of September 1984) with the evidence which they possessed, the latter refused any further discussion. Professor Macleod had been in Sydney at the invitation of Davies in 1983 and, prior to September 1984, he had been teaching for a number of weeks at the college of the same denomination in Melbourne where Dr Harman is principal. Harman was responsible for the 1984 invitation to Macleod and had re-invited him for 1985. But learning of what had happened in Sydney he wrote to Macleod on December 12, 1984, urging that he confess his behaviour to God and to his wife, and pointing out 'implications for your own position as a minister and professor of the Free Church of Scotland'. The two men had been friends for some years and Harman spoke of his grief and of his being 'prepared to help in whatever way possible for me'. To this Professor Macleod replied (December 28, 1984), 'It is best to hold my peace and say nothing' and he quietly accepted the cancellation of his invitation for the comparable period in 1985.

2. In 1987 the Banner of Truth Trust had printed a major volume by Macleod entitled, *God With Us*. This book was advertised and was close to its publication date when I, then living in Sydney, was informed of the charge that had arisen against the author in 1984 and of which I had previously known nothing. The information directly concerned me, for as the Trust's editorial director I had been principally responsible for our acceptance and publication of the title. In a personal record on the day I first heard the allegation (July 11, 1987) I noted:

Conscious of the wrongness of condemning a man unheard, I believe some reservation in judgment is called for - though his innocence would involve deliberate lying on the part of two Christians. However, enough persons (though only a few) know of the grave charges to require Donald to do his utmost - in confidence at least - to clear his name. His complete failure to give any comment, any denial, etc., to brethren who approached him privately, and who approached him as friends, is to me an indication that, while any final judgment or opinion should be suspended, it is impossible to ignore the matter.³

My next step was to consult Allan Harman and then the Rev. John McCallum (minister of the church - St George's, Sydney - to which the woman concerned belonged). Mr McCallum, after conversation both with the woman and with Macleod himself (by phone), came to the same conclusion as Davies and Harman had done in 1984. As McCallum and I, together with Harman, were personal friends of Macleod's, this was the occasion of no small degree of distress among us, as surviving correspondence shows.

3. After these enquiries I wrote Donald Macleod on the subject on July 30, 1987, expressing sorrow and regret over what had been disclosed to the Banner of Truth Trust, and saying that Macleod's book in the hands of the Trust could not now go forward. I ended the letter:

Our heartfelt prayers are for you and if there are any ways at all in which you judge we can help please let us know. As I write I have Luke 15:20-24 open beside me. Lest you should feel that brethren are suddenly your enemies let me say that I am sure there is no one here of that description.

Macleod replied (26 August, 1987):

Please believe the sincerity of my repentance . . . Your letter drew my attention to the Prodigal Son. I believe I 'came to myself'. I believe there was joy in heaven over my repentance. Can I believe you rejoice with me? Please believe, too, that the relationship was never lustful but we did get indefensibly close and emotionally dependent. We continued to write until quite recently but I wasn't very careful about destroying the letters and Mary found one inside a book. That was the end of the correspondence . . . Obviously it has often been difficult to carry on my work because I have faced grave questions as to the propriety of my continuing . . . It seemed to me the dilemma I faced was either to end the relationship or give up my position.

He concluded by pleading for the non-circulation of information, 'Cover my sins . . . I beg my brethren who say they love me to be merciful.'

Concerning the same relationship, Macleod wrote to John McCallum (August 19, 1987), 'I am very conscious of the terrible state I was in and have seriously wondered whether I was converted at all. The truth is that I was really backslidden.'

4. Following this, far from spreading the information widely, the ministers concerned in Australia took considerable care that it was known only to trustees and senior staff of the Banner of Truth Trust (who confirmed the decision not to publish Macleod's book) and to a small circle of ministers who were Macleod's friends as well as their own. One of these was the Rev. John J. Murray, assistant editor of the Banner of Truth magazine, and then also helping Macleod with the production of the Monthly Record (the magazine of the Free Church which Macleod edited). Two other friends involved were the Rev. Professor Douglas MacMillan and the Rev. Maurice Roberts, who, together, spoke with Macleod in Edinburgh and thereafter MacMillan wrote to Iain Murray (10 February 1988):

DM maintains that the association (which he admits developed into a wrong, physical, touching one, etc., (as he told Maurice and me in Sept.) began because he started to try to put the girl together again.

MacMillan confirmed the same information to John McCallum (17 February 1988): 'DM did talk to Maurice and I . . . of "a wrong physical relationship" and explained, again when M. asked him what he meant, this as "touching, holding, petting etc.".'

With regard to what should be done in the light of this information, MacMillan, with John Murray, Maurice Roberts and John D. Nicholls, proposed to the Australian brethren that Macleod should be 'formally rebuked at a meeting of the four' (MacMillan to McCallum, 10 February):

This would amount to pastoral censure for the sinful offence he does admit (i.e., for allowing the relationship to develop in sinful directions; the physical aspects of sexual touching; the continuance of it; upset to family; strain for G herself etc.) and for which he professes great sorrow and repentance, as well as the upset to brethren and alarm caused to many of us . . . a copy of this written rebuke and DM's apology would then be made available to each of you; and we would request then that the matter then would be rested for good.

This proposal, MacMillan went on to say, he, with Roberts and John Murray, put to Macleod on the previous day (9 February) with this result:

In a strange way he seemed almost relieved; he thanked us for our frank dealing with him; our courtesy and fairness; apologised for all the trouble he had caused us; expressed regret and repentance for his behaviour and sin; but reaffirmed that he had not had sexual intercourse . . . I have no doubt he deeply repents his folly and repents of it (MacMillan to McCallum, 10 February 1988).

The justification for this procedure rested on the hope that Macleod had confessed all and that he was truly repentant. But, because of what was known to them, the Australian ministers were unitedly unable to go along with the proposal and one reason for their view will be seen below.

* * *

These four points may well throw light on why the defence at Macleod's trial never called any of the alleged conspirators to appear in court. When one of Macleod's advocates, Dr Raj Jandoo, prepared an Opinion by Counsel on Macleod's behalf (March 7, 1995) he was insistent that, should the case ever come to trial, Macleod's defence would involve calling certain witnesses, including Iain Murray, John J. Murray and John McCallum ('who should be cited regardless of his residence in Australia'), whose allegations, if repeated in court, would render them 'liable to subsequent charges of perjury.'

A year after this Opinion, Dr Jandoo conducted Macleod's defence with Andrew Hardie, Q.C.,

in the trial concluded on June 25, 1996.

Why then, it should be asked, did he not act on his previous conclusion and call these alleged conspirators to the court for questioning? They were ready to appear, indeed some of those named as chiefs in the conspiracy had been formally cited by the defence and were at hand expecting to appear. Why were they never called? Mr Hardie, in his concluding speech for the defence, anticipated the force of the question and part of his answer was that the defence did not want to be in the position of encouraging these men to commit perjury in court - in other words they would only have lied had they been called! (So while, in the course of the trial, Mr Hardie blackened their reputations as Christian ministers, intent on ruining an innocent man, he was too considerate to want to add perjury to their crime!)

But a very different explanation why Iain Murray, John J. Murray and others did not appear in the witness box is available. Something happened between the time that Dr Jandoo gave his Opinion on calling these men in March 1995 and the date of the Macleod trial, more than a year later - something which may well have encouraged him to believe that neither the Murrays, McCallum nor any other so-called conspirators should be called to speak in court. In the intervening period Macleod's defence had obtained, by an order of court in January 1996, all the Free Church papers which related to allegations concerning Macleod. Those papers contain the facts about the Australian case which I have stated above, and they demonstrate that over several years Macleod had maintained a relationship of a kind which had to be kept hidden from his wife, and of a nature unworthy of a Christian minister. So these papers would reveal evidence for a very different reason why ministers in Australia and Scotland could consider it a duty to have Macleod's whole position examined. The reason was not personal hostility nor theological disagreement; it was rather a concern for truth and biblical standards of behaviour. To attribute the source of a 'campaign' to such a reason would have been directly contrary to the impression which the defence wished to create. So it was no accident that no minister connected with the allegations which first arose in Australia was called to speak at the trial.

Further, had such witnesses been called, their evidence would have been in direct contradiction to what Macleod affirmed under oath in court.

1. Macleod claimed that the Banner of Truth Trust and myself turned against him when, in October 1983, he published a review of my book, D. Martyn Lloyd-Jones: The First Forty Years. This is wrong on two counts:

(i) Macleod represented his review as being so unfavourable that Sheriff Horsburgh could note in his summing up that Macleod 'regarded the book as a whitewash'- more hagiography than biography. But if anyone refers to this review itself, 'The Lloyd-Jones Legacy', in the Monthly Record for October 1983, they will find that no such criticism of the volume is expressed. What Macleod did was to give a good summary of the book, with his own praise of Dr Lloyd Jones - 'In an age of pygmies he towered above the others' - then make some general observations unrelated to the book itself. His reference to the review as an explanation of the 'opposition' he later incurred does not stand up.

(ii) That there was no offence to myself or the publishers given by the review is proved by what followed. Our relationship remained friendly until after the events of the late summer of 1987. The main proof of that lies in the fact that in 1987, as already stated, we had initiated and were in the process of publishing Macleod's volume, *God With Us*, as well as a booklet by him on the fourth commandment - four years after the events to which he attributed the Trust's alleged hostility.

2. Macleod asserted in court that his relationship with the woman in Australia, was non-physical and 'like brother and sister'. 'I deny,' he said on June 17, 1996, 'as I have always denied that there was a sinful relationship, although I have never denied there was a close emotional bond.'⁴ As the previous pages make clear, he had not 'always denied'. After the interview with Macleod which Roberts and MacMillan had in September 1987, the latter wrote that Donald acknowledged 'there had been "sinful" behaviour which he did not want to defend in Church Courts. He clearly recognizes the gravity of his wrong actions' (to Harman, 2 September 1987). Referring to Iain Murray's letter to him of July 30, 1987, Macleod is further reported to have said in court: 'He accused me of having had an affair in Australia. I had heard the rumour before. He had heard it too. He had believed it instantly and given it worldwide circulation.'

But the correspondence already quoted above, and the confession made by Macleod in September 1987 and again in February 1988 as recorded above, in the presence of witnesses, shows that this was not true: 'He admits it [the relationship] was a wrong, physical, touching one'. His admission was even more explicit in his phone call to John McCallum on August 29, 1987. It was no 'rumour' which stopped the publication of his book in 1987.

3. To explain how one-time good friends could readily accept such a 'rumour', Macleod asserted that the campaign against him arose out of hostility to his theological beliefs.

The facts directly contradict this. Allan Harman and John Davies asked him to make the long and expensive journeys to teach in Melbourne and Sydney because they valued his ministry. The Banner of Truth Trust was to be his publisher in 1987 for exactly the same reason. The evidence against him concerning his Australian relationship all came from friends who had high regard for him and his ministry, but, when the information above came to their attention they did not think that protecting him was their first duty as Christian ministers.

4. In court Macleod dated the trouble he experienced in Australia to the time when 'rumours' were spread, i.e., 1984 or 1987, but in his letter to me of August 26, 1987, he wrote, 'The last five years, as you will well understand, have been traumatic.' Five years goes back two years before the nature of the relationship was discovered, and can only refer to the situation in which the relationship had placed him when it became serious, 'making it difficult to carry on my work because I have faced grave questions as to the propriety of my continuing' (letter to IHM of 26 August, 1987). Contrary to his initial admissions, he has subsequently blamed 'opponents' for all his trauma. But there was no one who could possibly be described by that term in Australia in the years 1982-3 when his relationship there secretly began.⁵ He had been a welcome visiting preacher in my congregation in Sydney at that time.

In his summing up at the trial, Sheriff Horsburgh is reported to have said that the reasons for a 'campaign' against Macleod were 'irrelevant' to the case before him, even supposing they involved 'allegations about moral improprieties'. That improprieties may have been involved the Sheriff seems to have suspected for in his summing up he was reported to have said, 'The Australian situation did not reflect particularly well on him' (i.e., Macleod). But it was with criminality not morality that the court was concerned. Yet we do not altogether follow the Sheriff's reasoning at this point. If 'moral improprieties' in Australia had been examined at the trial would it not have shown the concerns of Macleod's alleged 'opponents' in a very different light? And if the case for 'moral improprieties' had been heard in court, it could surely have led to a very different answer to the question which Sheriff Horsburgh regarded as the issue upon which the whole case turned, namely, Which side is lying?

'THE FOUR WOMEN COMPLAINANTS HAD LINKS WITH THE CAMPAIGN AGAINST MACLEOD'

This was the second line of reasoning upon which Sheriff Horsburgh appears to have put much weight in his summing up and verdict.

Men were known to be critical of Macleod and with five women⁶ ready to go to the police about the same time over the professor, how is that to be explained if not in terms of an arrangement by opponents?

The answer is that there is another and very natural explanation, but I will first put down some facts concerning the four women witnesses who appeared in court:

'Woman 1'. This woman, after student days in Scotland moved to Cambridge, where in 1989 she made complaint about Professor Macleod both to her minister (Dr Roy Clements, pastor of Eden Chapel) and to the Convener of the Free Church of Scotland's Training of the Ministry Committee (TOM). Apart from writing himself to the Convener, Clements had no contacts with any Free Church ministers and knew nothing of the internal life of that denomination.

It was alleged by Macleod in court that this woman 'became the tool of some people - she was used by Iain Murray and Roy Clements.' Accordingly the Daily Mail (26 June, 1996) in its coverage of the trial, alleged the woman concerned 'reported the incidents to the Church committee in 1990, after corresponding with Iain Murray.' These statements are untrue. Roy Clements acted entirely independently and as any minister might be expected to act in the light of the offences which were alleged.

'Woman 2'. This related to the first alleged offence in point of time, occurring in July 1985 when the complainant was seventeen. She reported it to a friend at the time and to her aunt - a lawyer, Mrs Agnes MacKenzie the following year.⁷ For understandable reasons, probably including the fact that she was a niece of Macleod, she took no action in the way of approaching any Church authority until she contacted her uncle, the Rev. Angus Smith, in 1994. Mr Smith was subsequently accused of playing the same part in bringing her forward as I was accused in the case of Woman¹. Upon this Mr Smith has written: 'I had no recollection of having ever contacted M.

for any purpose whatsoever. However, she phoned me out of the blue and asked if I could tell her how an account of a sexual assault made on her by Macleod could be passed to Church authorities . . . I never contacted M. She contacted me.'

'Woman 3'. A member of Free St Columba's congregation, Edinburgh, this young woman came to her minister (Rev. John J. Murray) in December 1992, distressed over an incident she alleged to have occurred in Professor Macleod's study at the Free Church College in the November of the previous year. She had spoken to a friend at the time but had been reluctant to inform her minister. In the light of our previous involvement together over the issue in Australia, Mr Murray and I conferred. We knew nothing of either Woman 1 or 2 but we recalled a rumour in Free Church circles of a letter from Dr Clements concerning another complaint against Macleod. Before taking Woman 3's testimony any further it seemed prudent, therefore, to enquire from him whether his information was relevant. This first contact with Clements led to my receiving from Woman 1 (January 1993) a copy of the allegation which she had made over three years earlier.

'Women 4' made a similar complaint as the third. It allegedly occurred while she was attending Free St Columba's and she had subsequently returned to her home in Tasmania. This was reported to John J. Murray in 1994.

The defence case before the court was that all four women had been conjured up to obtain a verdict against Macleod. 'I guess all four women are being orchestrated by certain men', Macleod said in court.

But the real explanation is very different. Woman 1 was alone in her complaint to the Free Church in 1989. Woman 3 knew nothing of either Woman 1 or 2 when she went to her minister at the end of 1992. Her complaint was formally put to the Free Church, supported by a renewed presentation of the complaint of Woman 1 (which had met with no response from the Church). In a denomination as small as the Free Church it was inevitable that news of this development should spread and the result was that other women, who had been unprepared to stand alone, were now prepared to support those who had suffered experiences similar to their own. This was how Women 2, 4 and 5 came forward.

The suggestion that the same women were later organised to go to the police is equally false. Woman 1 went to the police alone and, I believe, without the knowledge of any Free Church minister. I knew nothing of it until it was public knowledge. Mrs Agnes MacKenzie has explained how Woman 2, her niece, came to be in court. When the Fiscal (for the Crown Prosecution) had begun an investigation, he contacted Woman 2 and invited her to an interview. This took place in the presence of Mrs MacKenzie who has recorded: 'When he asked her if she would be prepared to witness, she was not overkeen. He explained that the women involved, whom she did not know, would be witnesses one for the other under the Moorov Principle. That was the Fiscal's decision, not the women's. Under the Moorov Principle no other witnesses for the alleged offences would be required' (letter of Agnes MacKenzie dated 22 August, 1996).

The testimony of Woman 3 was that she went to the police primarily because she felt threatened by statements of Macleod's appearing in the press. She had no consultations with any ministers

on the subject, nor with Women 1 and 2.

Mrs MacKenzie's reference to the Moorov Principle in Scottish law is all-important for it was on this principle that the Crown rested its prosecution. In certain cases, such as sexual assault or harassment, for which there are rarely witnesses, Moorov enables several complainants to go forward together and they corroborate one another's evidence. In the Macleod case it was the prosecution, not a hidden group of conspirators, who brought the women together in court following police investigations.

In the attempt to prove 'conspiracy' the defence ranged far and wide, including allegations concerning ministers in Australia and England. From the latter country, Dr Clements has already been mentioned but other names were also raised, ministers who Macleod said were 'once my friends' but who now were allegedly working against him. The Rev. John Marshall, a Banner of Truth Trustee, for instance, was so characterised. Marshall's more direct involvement, however, arose out of the fact that a ministers' fraternal was to meet in his home in Hemel Hempstead in March 1993 with Macleod as the speaker. As with other ministers in England, he had a practical reason for being concerned in an investigation of allegations. Macleod has made the same public criticism of Erroll Hulse. But Hulse writes:

I have always affirmed that DM has been a most appreciated speaker at the Carey Conference for ministers which I organise with an ad hoc committee. DM has also been a most appreciated writer in Reformation Today which journal I edit. There is absolutely no reason why I or the associates with whom I work would want to bring down DM. DM last participated at the 1991 Carey Conference for ministers. That was in spite of rumblings from Australia and I now confess that I would not have invited him had I been more thorough in questioning the Australians themselves.⁸

To suppose that senior Christian ministers in England had no legitimate business to be involved is to ignore how much Macleod had been both active and appreciated south of the border. A number of his friends there who became involved in this case, regarded the breach of fellowship with him as a tragedy. They prized the reputation of the Free Church and, while they made representations to her, they did nothing to give press publicity to what they knew.⁹ I should also add, as in the sight of God, that it is painful to us to reveal, as I have done in these pages, information which was first disclosed in private. But the preservation of privacy at the expense of the toleration of falsehood is not a Christian duty. There is 'a time to keep silence, and a time to speak' (Eccles. 3:7).

The defence case thus depended on the supposition that certain ministers sought women to be used as pawns to condemn Macleod by giving of false witness. In the absence of any evidence for such a scenario the defence laboured to prove there was a sufficient motive to explain such a course of action, namely, hostility to Macleod's supposed theological views. But this is contradicted by facts. Dr Clements, far from being critical, was a leading board member of Evangelicals Now, a monthly to which Macleod himself contributed regularly until January 1993. Neither Clements, Hulse, nor Marshall, had any criticism of Macleod's beliefs. As with the

ministers in Australia (who had all been glad to have Macleod in their midst), questions of belief were not involved. The same could be shown to be true with respect to the Rev. John Murray, supposedly one of Macleod's chief opponents'. He had taken a main part in preparing Macleod's book, *God With Us*, for publication in 1987.

What could be shown in court was that, from 1993, some ministers in the Free Church and beyond were in discussion with one another on this whole subject and took steps to encourage further investigation. The date when this happened is very relevant to the truth or falsity of my argument. It was 1993, a fact supported by Macleod's complaint in court, 'I have suffered cancellation of meetings since 1994.' But the testimonies of Women 1, 2 and 3 respectively, concerned incidents alleged to have occurred in July 1985, the summer of 1986 and November 1991, long before. To this it may be replied, 'If all their stories were untrue, it is of no significance what dates were alleged.' The answer is that in all these three cases there were witnesses ready to testify that they were told of the alleged incidents at the time and not long after. So for the defence's argument to be true, it would mean that women gave false testimony to friends in order to prepare for a 'campaign' of which they could know nothing for it was not to occur until several years later! All the defence could begin to show was that there was some combined discussion among ministers in 1993, that is to say, long after complaints of incidents had already been made. That ministers planted stories on the women who appeared in court is contradicted by the whole sequence of events.

To prove some kind of campaign is a very different thing from proving conspiracy for, as Depute-Fiscal Margaret Graham said: 'A conspiracy would have to relate to malice and untruths. If people have campaigned to bring out the truth then there would not be the requisite malice for a conspiracy.'

Further, what motive could the women have had to devise and then supply false evidence? To suppose that five women, independently of one another, of good reputation and engaged in professional careers, would have been willing to perjure themselves in court to support a theological campaign against Macleod of which they had no knowledge or interest is incomprehensible. As Agnes MacKenzie writes:

It does not make sense to suggest that five intelligent young women, two of them from outside the Free Church, would go into a criminal court, tell lies about being sexually assaulted, subject themselves and their families to all the attendant publicity, etc., all just to please a group of men who did not approve of Donald Macleod and wished to be rid of him. The women would have nothing to gain by it and everything to lose.

It is no wonder that the defence were nervous in their use of 'conspiracy' at the trial and that they therefore switched back and forward between the words 'conspiracy' and 'campaign'. Macleod, replying to Miss Graham in court on June 17, as reported in the *Scotsman*, 'said he did not think there was a conspiracy against him. "I do not like the word . . . It implies overtness and covertness.'" Yet the existence of a campaign was not enough to establish the point which the defence was concerned to make and therefore both Macleod (despite his disclaimer on June 17) and his defence counsel, Mr Hardie, used both words 'conspiracy' and 'campaign' depending on

which best suited the purpose of the moment. It was of 'conspiracy' that Macleod spoke in his taped evidence to the police which was played back in court. It was not misreporting therefore when the press announced the sheriff's verdict in terms of a failed conspiracy. And Macleod himself, as soon as the trial was over, returned to the word which he had so recently disclaimed on oath in answer to Miss Graham's question. Interviewed by Jean West in the Sunday Times (June 30, 1996), 'he said, his enemies, led by the Rev. Iain Murray, brought into being a sophisticated conspiracy intended to bring about his resignation. . . "The evidence of conspiracy was colossal," Macleod said.'

A DIFFERENT CAMPAIGN

We turn to another factor which was very relevant by 1993. If the action of some men at that time began to assume the aspect of a campaign, it is no less true that another campaign was already operating on behalf of Macleod, and this was a campaign within the Free Church to have all allegations against him dismissed.

From the time when the Australian allegation was first officially reported to TOM from Australia in July 1988 there were influences at work within the Free Church to prevent full investigation. Unknown to those writing to TOM from Australia, the convener of that committee (acting upon advice) did not bring the information he had received before his committee. It was only when the convener changed, and another (Mr James Fraser) was appointed, that relevant materials came before TOM in the summer of 1989 and even then, apparently, the committee did not have all the facts which I have quoted above. In part this was because none of those directly concerned in Australia were interviewed (although both Harman and McCallum had been in Scotland during this period, and John Davies had submitted the nine-page testimony of December 8, 1987, which was a statement drawn up in consultation with his solicitor). On December 13, 1990, TOM reported that the enquiry was terminated as 'insufficient evidence was found to support the allegations' (letter to Iain Murray and others).

It also seems that the allegations of Woman 1, reported to the convener of TOM at this time, were not at that time considered by TOM. It was only when larger numbers of ministers came to hear of her in 1993, after Woman 3 had come to light, that her allegations were given detailed consideration by the committee.

By 1993-94 the personnel on TOM had largely changed and that there were now two parties became clear. Perhaps it was to alleviate that difficulty that the General Assembly of the Free Church in 1993 appointed four additional 'advisers' to the committee. The issue between the two sides, it should be understood, was not whether the committee should clear or condemn Professor Macleod. The committee had no power to do either. It had responsibility only to decide whether or not there was a case against Macleod of sufficient seriousness to require trial in a court of the Church. One party believed that there was such a case, the other, whose 'campaign' began before 1993, held that there was not and did its utmost to prevent the case passing to the presbytery. This pro-Macleod campaign had its centre in the Presbytery of Edinburgh and, more particularly, in the congregation of Buccleuch and Greyfriars. Thus, when the session of St George's, Sydney (the congregation over which John McCallum was minister), petitioned the Edinburgh Presbytery

with respect to the Australian case, the letter was deemed 'inadmissible'. On the other hand, a resolution of Edinburgh Presbytery to admonish one of its members, John J. Murray, for allegedly spreading criticism of Macleod, was only prevented from passing by an appeal to the Southern Synod which rejected it.

In 1994 it was impossible for TOM to reach any consensus. A sub-committee appointed to examine all the evidence reached the conclusion that a formal trial was necessary, only to have their judgment overturned at a meeting of the whole committee (of which many had not sighted the evidence reviewed by the sub-committee). In October 1994 three other women complainants approached the committee, including Woman 2 and Woman 4, who were eventually to be witnesses at Macleod's trial. Ultimately, at a meeting of TOM on October 26, 1994, it was decided by one vote that no action should be taken. If the advisers appointed by the Assembly, and present at that meeting, had possessed the right to vote on the decision it would have gone the other way, for three out of the four advisers supported the minority. The dissent of the minority went to the General Assembly of May 1995. By that date a section of the Scottish press, in which one of Macleod's sons was influential, had joined the campaign on behalf of the accused. The argument upon which his defence would ultimately rest was now well launched. Under the heading 'Vendetta of Wee Free's Leader' the Sunday Mail (October 30, 1994) announced that 'Scotland's top Free Kirk minister says he has been the victim of a 10-year smear campaign'.¹⁰ On the eve of the 1995 Assembly the Scotsman ran columns supportive of Macleod over five days, with prominence given to the theme, 'Sex-smear "campaign" against minister'.

Simultaneously, the circulation (by anonymous parties) of Raj Jandoo's Opinion was also well-timed for the meetings of the Free Church General Assembly. Through a journalist, Macleod also warned the Assembly that 'it may be time for him to leave and take his supporters with him' (Robert Wright on 'Fundamental feud' in the Scotsman, May 24, 1995). Similar warnings attributed to Macleod appeared in other papers.

Beyond question, there was a campaign for Macleod. In itself that fact proves nothing, but it does show that any assessment of where the truth lies cannot be decided simply by the existence of a connection between men who were of a common mind either for or against Macleod.

But the information just given throws important light on the case presented by the defence that the professor had been repeatedly 'cleared' by 'the Church'.¹¹ This was asserted in order to illustrate the depth of animosity displayed by those who would not accept the Church's decisions. When Macleod's case had been repeatedly examined and determined by due process, what other explanation could account for the attitude of this minority? Such a representation of how the Free Church supposedly handled the allegations is very misleading. The only party in the Church which examined evidence was TOM, a body which, as already said, had no authority either to acquit or to find guilty. The sole function of TOM was to determine whether or not there was a case to answer.¹²

At the trial Mr Hardie wanted failure to accept the procedure of the committee to be seen as perversity, as though its findings were not accorded proper respect. Yet, paradoxically, he also wanted the court to believe that TOM's investigations of allegations 'of improper conduct by Professor Macleod was not only a farce but a perversion of justice' (Herald, June 25). So all three

of the committee's officers, the Rev. Gordon Mair (Convener), Dr Murdoch Murchison (Vice-Convener) and the Rev. John MacLeod (Clerk), were represented in one way or another as acting improperly. That allegations of such a serious kind should have been allowed in court without evidence is strange but our present point is simply to note the inconsistency of claiming that 'the Church' had dealt with the Macleod allegations while condemning the very body which alone had access to full information!

The statements of a string of pro-Macleod campaigners, called by the defence at the trial, had a direct bearing on the outcome. One by one supporters and participants in the pro-Macleod campaign spoke in the witness box, with allegations for which, repeatedly, there was no evidence or corroboration. One defence witness, for instance, Dr Eric Mackay, alleged that the convener of TOM was so determined to have Macleod condemned that when further women made complaints to the committee, 'he rubbed his hands together and said, "I think we have got him now".' Defence counsel made much of this allegation in their summing up. Mr Hardie thought this was 'astonishing' evidence, 'For any committee or any chairman to behave in the way described beggars belief. What better evidence of a conspiracy?' The Sheriff in his summing up likewise thought that what Dr Mackay had said was 'really very damning'. But Mackay's words were entirely uncorroborated hearsay evidence. Of all the other committee members who could have been called to confirm or deny whether or not such words were ever spoken not one was called. Both Vice-Convener and Clerk have subsequently affirmed that they never heard the words attributed to the Convener and do not believe them. The fact is that Dr Mackay appears to have been as deeply involved in a campaign as any 'conspirator'. His words warranted no more credence than would the words of an 'opponent' of Macleod's unsupported by another witness. Perhaps hearsay evidence is warranted in court proceedings if it is necessary for the interest of the accused, and presumably Sheriff Horsburgh judged that it was necessary, but the effect of such testimony was to condemn those who were not in court and who had no opportunity to reply. Another striking example of the same thing occurred with reference to the oft-repeated words attributed to the late Professor Douglas MacMillan, namely, that the Rev. John J. Murray was 'a dangerous man'. Mr Hardie, summing up for the defence, regarded the words as 'prophetic'; John Murray 'would continue to agitate whether there was any truth in it or not', and, reflecting on these words, Hardie noted, 'This evidence was not challenged'. But the truth is that in any real sense the words were no evidence at all for they came only by hearsay report from the accused himself and who was there to challenge them? Macleod alleged MacMillan had said them in 1990. Written evidence from MacMillan relating to Macleod's conduct, and supported by the presence of another witness, was not heard in court while the unsupported words attributed to him were allowed such weight. 'I think the late Rev. Professor MacMillan was justified in regarding Rev. John Murray as a dangerous man,' concluded Sheriff Horsburgh.

Mr Hardie, for the defence, regretted that Professor MacMillan, who died in 1991, could not be in court. But the great question, as already mentioned, is, why were men who could well have been there not called? Sheriff Horsburgh noted at one point, 'We have not heard from Mr Fraser' (TOM convener in 1989-90). Why he and others were not summoned to court we do not know. The only witness called for cross-questioning as a participant in 'conspiracy' was one of the Rev.

John J. Murray's former elders in Oban, Mr John Heenan, whom no one has ever named as a 'chief conspirator'. Mr Heenan's supposed involvement was that, after consulting the Fiscal's office, he had arranged for support to be raised to enable one of the complainants (now living in Tasmania) to be present to give evidence at the trial. Every kind of device was used to make this look other than it was. Meanwhile John J. Murray and myself, cited by the defence to appear, were never called into court. We had no opportunity to show that we and others were acting out of a concern for truth and justice and that any connection with the four complainants was entirely consistent with that concern.

It may indeed be asked why, if additional evidence was necessary in this trial, it was not brought by the Crown Prosecution. If the defence did not want to call the alleged conspirators, why did the Prosecution not call them? I think the answer to that is straightforward: the Prosecution considered that the testimony of the women was of sufficient weight and character to stand on its own merit. As Depute-Fiscal Margaret Graham said at the beginning of her summing up for the prosecution, 'This is a simple issue made complex; these women are alleged to be pawns in a world-wide conspiracy led by John J. Murray who has not appeared here.' The prosecution evidently considered the attempt to discredit the women by linking them with a conspiracy scenario to be so fatuous that they made no attempt to have those who were to be designated conspirators interviewed beforehand, still less called as witnesses. By the time it was clear that the defence intended to rest the whole strength of their case on the red-herring of 'conspiracy' it was too late.

WHY DID THE MACLEOD CASE COME INTO THE PUBLIC DOMAIN?

For many Christians, quite apart from the rights or wrongs of the Macleod case, the question why this matter ever went into the public arena, into the criminal courts, and into the media - to be heard and read all over Britain and beyond - has been a deeply troubling one. What but harm to the cause of Christ can be done when the church parades her troubles and her divisions before the world? Is it not 'before the saints' that Christians should settle their differences (1 Cor. 6:1)? Some have gone further than asking the question and have simply assumed that those whom the newspapers described as 'conspirators' were responsible for organising the women to go to the police and to the criminal courts. But the present writer, alleged to be one of the chief conspirators, can say that he knew nothing of any approach by any women to the police until it became general public knowledge. Apparently when one of the women learned that TOM had decided not to advise that Macleod be formally tried (by the one vote, on October 26, 1994), she took her own action and this led to wider police investigations. While I can understand the exasperation, and the legitimacy of believing in an appeal to the law of the land (for it is not contrary to biblical principles for alleged crimes to be reported to the magistrate), I deeply regret that matters came to that point.

Instead, however, of blaming any of the women or the 'conspirators' for its occurrence, the responsibility lies chiefly with those who, by their concern to defend Macleod at all costs, created in others the conviction that justice could not be had in the courts of the Church. If it had not been

for the pro-Macleod campaign he would certainly have been tried by the Church, and the women all heard, as they ought to have been. On all sides it has to be agreed that it was a sad day when the case went instead to the criminal courts, with all the resultant publicity.

When the police became involved they asked for access to the files which TOM held on the case. This was refused - a fact which may again suggest that there was a campaign in being for Macleod. Macleod's defence counsel subsequently also asked for access and the Church parties responsible, having refused the information to one side, could hardly give it to the other. Thus, as already stated, the defence obtained the files by a court order (January 1996) whereas the prosecution remained without them and only had sight of such documents as the defence chose to use at the trial. This meant, for instance, that although there was a very significant difference between Macleod's evidence on 'Woman 3' as given to TOM and as given in court, the prosecution had no means of knowing the discrepancy.

My particular concern here, however, is to ask, if there were two campaigns operating all along, which side has constantly turned to the media and the general public? And the answer is unmistakable to anyone who reads the Scottish press. As already mentioned, as early as October 1994, supporters of Macleod were using the Sunday Mail to defend him. The following May a media campaign was in full swing, fed by quotations from Macleod himself. Similarly even while his trial was in progress Macleod used the media to orchestrate public sympathy by criticising the ministry of the Free Church. The ministry of the denomination has not been without attacks in the press before but never like this from one of its own members. 'The best brains in the church,' Macleod wrote in the West Highland Free Press on May 3, 1996, 'are in the pews, not in the pulpits . . . those who fill the pews and provide the finances are coming to realise that they, too, are part of the church; and they are no longer prepared to stand by while the clergy destroy it, the few by their bigoted fury, the many by their sheer indifference . . . Concern is expressed that the clergy are behaving like Ayatollahs; and the clergy respond by behaving like Ayatollahs!' Other papers speedily took up the cry, 'Free Kirk's Ayatollahs: Bigotry claim from sex trial clergyman' (Daily Express, May 3, 1996).

On the same lines, a few weeks later, Macleod expressed this view of his Free Church colleagues to multitudes who already had, as they thought, reasons enough for not hearing them: 'The young ministers, of whom I once expected much, have no stomach to fight. They probably think that Jesus should have ignored the Pharisees and St Paul the Galatians. Our older men, especially our managers, confuse silence with wisdom' (West Highland Free Press, May 24, 1996).

Far from withdrawing from unnecessary publicity once the trial was over Macleod was at the centre of a welter of newspaper interviews. These included criticism of others which went everywhere amongst the now attentive public in Scotland. He told reporters, 'I tend to see a similarity between my experiences in the last decade and the Salem witch trials' (Daily Express, June 26). The Daily Record, of the same date, led with 'Sex Liars Tried to Crucify Me', and told its readers that Macleod, seated in the Presbytery Hall of the Free Church headquarters, said: 'People in this Church have persecuted me like something from Salem witches. I have lost faith in the formal theology of the free church, of its high Calvinistic teaching and neo-Puritanism' (the words left uncorrected indicate how little reporters were used to receiving such information).

Along with such sentiments, he expressed forgiveness towards his persecutors and some 'anger towards the neutrals who allowed this to happen'.

But the charity was tempered two days later in an interview with Kevin Mansi and which appeared under the heading:

'Exclusive: Professor Tells of Persecution by Free Kirk "Conspirators"
Sack ministers now and save my church'

The quotations from Macleod which followed were not quite as sensational as the heading suggested. To save his Church's reputation he thought the following action should be taken against his opponents:

Many of these men hold important administrative positions in the church, and I think they should cease to hold those positions. That won't affect their status, but I think they have shown themselves unworthy and unfit to hold those posts. I don't see any merit in suspending ministers, but I think congregations should be consulted on whether they want a change of minister' (Daily Express, June 26, 1996).

The next week Macleod, on BBC Gaelic Radio, as reported in the Scotsman (July 3), turned to criticism of the present students at the Free Church College, 'many' of whom 'have sided with my detractors'. The report continued, 'He went on to say how he had been surprised and saddened at how many of today's Free Church students held strong traditional Calvinistic beliefs from which they would not waver . . . The Church's views were too narrow too often, he thought . . . He used the radio interview to declare that in the past he had held such principles very dear himself.'

Two days later Macleod widened his public attack on almost all sections of the Free Church ministry. This time the actions of his opponents were not the fruit of Free Church ideology, they were rather 'the actions of men who are Free Church in name only . . . I have no doubt that the course of action pursued by these men reflected their religion, but I repudiate entirely the view that that religion has any real connection with Calvin or Chalmers, to say nothing of Jesus . . . God sacrificed His Son for me. The Free Church was prepared to sacrifice me for itself, busying itself the meanwhile with the inanities of Rabbinism.'

There were those, he went on, who as members of TOM, simply found the leisure and position 'to make mischief'. To them had fallen the so solemn responsibility of saving the purity of the church.' Then 'there were others "learned in the arts of equivocation and pretence" who were prepared to be "silent witnesses of evil deeds" . . . It wasn't a minority who used last December's Commission of Assembly to put the knife into my very soul¹³

. . . Besides, the minority, if minority it is, contains all the most influential figures in the Church. The Assistant Clerk of the General Assembly, Professor Cartwright, opposed me at every point. Last week in his statement to the press, the Moderator of the General Assembly could scarce conceal his disappointment over my acquittal.'

My present point is not whether these statements are true (I do not believe they are), but to note how, in the secular press, such sweeping criticism is levelled at practically the whole Church -

Moderator, Assistant Assembly Clerk, Commission of Assembly, TOM and its Convener, right down to students presently preparing for the ministry.

Let this policy of rallying support in the public press which has gone on over this length of time be compared with the policy of Professor Macleod's supposed opponents. Far from there being any attempt to air allegations in the press, Christian or secular, or to respond to those made by Macleod, there has been virtually unbroken silence. In so far as there were any concerted efforts these were for a full investigation within the Church herself.

The most singular example of restraint is to be seen in the Rev. John J. Murray, the minister of St Columba's, Edinburgh, once a closer friend of Macleod than any of the men named above. As assistant editor of the Banner of Truth, John J. Murray was inevitably involved, as already said, in the information which came from Australia in 1987 when he was still minister in Oban, Argyll. In 1993-94, his failure to invite Macleod to his pulpit became the occasion for a minority of his St Columba's elders to stir up disaffection in the congregation with misrepresentations later to be repeated in court. This disaffection at St Columba's was taken up by the pro-Macleod campaigners and again the press was used to further its ends with the Evening News (October 20, 1995) announcing that Free St Columba's had lost 'around 150 members'. The figure was perhaps three times larger than the true one but it was a painful fact that some of the good people who left undoubtedly did so because they did not know that their minister was suffering for the sake of biblical principle. The simplest thing, both for the preservation of the congregation and for his own reputation, would have been for John Murray to have made the facts of the situation known to his people. Instead he patiently remained silent and went on steadily in an increasingly appreciated ministry. This was the man dubbed in court, solely by the accused, on the alleged testimony of a deceased person, 'a dangerous man'.

THE PRESENT FREE CHURCH POSITION

'The Free Church,' wrote Macleod after his trial, 'is going to have to think about how it deals with the aftermath of this case, and how it rejuvenates its image' (Daily Express, June 28). He went on to give the advice, already quoted, about removing certain men from positions of influence. It does not seem to be advice which the Church's Finance, Law and Advisory Committee took up when they met on July 11, 1996. According to the Scotsman (July 12), this committee requested 'all ministers and members of the church to desist from public comment' (its own opinion apparently being the exception). 'It is also hoped that if reconciliation was successful there would be no discipline in church courts of those criticised by Sheriff John Horsburgh for campaigning to rid the church of Prof. Macleod.' In other words, if the past is now put behind everyone, a new and happier chapter can begin.

How church courts will deal with this advice is not yet known but to our mind it is asking for the impossible and the wrong. For two reasons:

1. Here are Free Church ministers and office bearers condemned so recently in court as engaged in diabolical behaviour - inducing women to perjure themselves in order to condemn an innocent man! The four complainers of sexual harassments were said to be pawns in their hands to ruin

Macleod. A conspiracy could scarcely be of a more criminal kind. The West Highland Free Press (June 28) called Sheriff Horsburgh's finding 'among the most damning indictments of witnesses ever delivered from a Scottish bench. No array of reprobates, clumsily perjuring themselves to protect gangsters from the prison cell, could have been more scornfully dismissed for their mendacity.'¹⁴

Yet Macleod tells us that he does not want these men put out of the Christian ministry! To side-line them would be quite enough - a strange revelation of what he regards as the standards necessary for Christian ministers. Scripture requires that even the wives of deacons should not be 'slanderers' yet here is a sin, on the part of ministers, which would be worse than slander if it were true! And as it is not true, it is the duty of the ministers involved, for the sake of their office and for the integrity of the Church itself, to do what the Rev. Angus Smith (one of the 'conspirators') has already done and to require to be heard in a church court. It was just such a hearing which was denied when, along with others, he was defamed at the Macleod trial. But instead of this, the Finance, Law and Advisory Committee is asking these ministers to accept quietly the infamy attributed to them and to expect their congregations to do the same! The committee (no doubt we should say its majority), seems blind to the fact that their stated alternative to silence, namely, 'discipline in church courts', is the very thing which these defamed men need to clear their names. To recommend a policy which gives men, condemned in court without a hearing, no opportunity to defend themselves is near incomprehensible. The avoidance of discipline in church courts is surely the very thing which has led to this prolonged and serious crisis.

2. There is another reason why this would be a strange time to draw a line under all that is past. We do not yet know, as Professor Macleod keeps telling the public at large, whether or not he means to stay in the Free Church of Scotland. Over a year ago the press was passing on his doubts when it reported: 'Prof. Macleod has repeatedly warned the Church he might leave if the allegations were not laid to rest for good' (Scotsman, May 26, 1995). He continued to profess the same uncertainty even after his trial: 'I can see myself staying with the church. I can see myself going. It does depend to a huge extent on what options are available' (Herald, June 26, 1996). The ministry of the Church of Scotland, he said, 'is still an option', adding, 'There is a level at which I would be glad to be quit of churches.' 'The professor had considered leaving the Free Church many times over the last few years, but he spoke of his "reluctance to leave it to the forces of another religion"' (Scotsman, June 26).

One thing is clear: if he does not stay the world at large has already been informed of the reasons which he will give. He is against 'rigid traditionalists' with their 'narrowness' and 'bigotry'. He wants the denomination's requirements for ministers changed at certain points. He thinks 'love more important than theological propositions' (as if truth and love were antithetical), and he has near contempt for much of the present ministry and the 'Ayatollahs' of the Free Church. Some within the Church appear to think that if the price for keeping Macleod within the denomination is to agree with him and accept all these strictures meekly then it is worth paying.

'My future', Macleod warns them through the press, 'depends on what the Church says' (Stornoway Gazette, July 11, 1996). Supposing that such 'meekness', or a measure of it, is adopted and Macleod stays, is peace going to be possible? Not if Macleod believes his own

propaganda. Since October 1995 he has been repeating that 'he and his opponents represented two different religions' (Herald, October 17, 1995). 'These men', he told the Sunday Times (June 30, 1996), 'were driven by their religion, not Christianity - the same as Islamic fundamentalism, but in the name of Christ.' What kind of peace can there be in a Church where such language stands unretracted?

Or, take the other very possible alternative, that Professor Macleod leaves the Free Church. If he does that, with his present assertions unanswered by the Church, then a caricature of the Free Church will have been allowed to stand unchallenged which will go down to generations to come.

POSTSCRIPT [October 1996]

Since the above was written at the beginning of August 1996 there have been several further developments. On 8 August a statement of Crown Counsel in Edinburgh said that, after consideration of a report by the Procurator Fiscal, proceedings 'would not be justified . . . for perjury against any of the witnesses who gave evidence at the trial or for conspiracy to pervert the course of justice.' If Crown Counsel believed that there was any evidence of conspiracy it is very difficult to see how this conclusion could have been reached.

On 2 October the Commission of the General Assembly of the Free Church met to attempt 'reconciliation' and an accommodation between Professor Macleod and his alleged opponents. Part of this accommodation concerned the carrying out of Macleod's requirement that three senior ministers who had 'opposed' him should be removed from administrative posts. This proposal was dismissed by the Commission. A motion of thanks to God for Macleod's acquittal was passed but another successful motion repudiated 'that ministers and others have been involved in a conspiracy to pervert the course of justice'. Further, while a committee was appointed to meet with the three senior ministers 'who may have lost the confidence of many in the Church', it was also ruled that Macleod must meet with TOM to discuss statements and comments by him in the media 'which appear to be at variance with the Free Church's Confessional position'.

This attempt at even-handedness brought a furore from Macleod and his supporters in the national press and media. 'He said', reported the Daily Telegraph (4 October), 'that the church had put him "back in the dock", and had treated Sheriff Horsburgh as a "nincompoop".' In The Times (5 October) and the West Highland Free Press (11 October) Macleod told the world that 'The lunatics have taken over the asylum and brought Christianity into utter disrepute . . . I shall never allow myself to be re-investigated by a Free Church committee.'¹⁵ His son, John Macleod, in an extraordinary article in the Herald (8 October) which damned the Free Church as 'run by idiots' and 'possessed by evil', seized on the inconsistency of holding both his father's innocence and ruling there was no conspiracy. 'Is the Professor innocent, or is he not, and was there a conspiracy, or was there not?'

After a private meeting at Perth of people in support of Macleod, which called for the Commission to be reconvened, the professor, through the national press, gave his denomination a final ultimatum - 'the last possible remedy'. The Church must (1) withdraw its dismissal of conspiracy and (2) abandon any thought of examining him as a 'heretic'.

I will first comment on the second demand. At the heart of the press attack on the Free Church,

following the Commission, was the cry that Macleod was now to be condemned as a 'heretic'. The same men who had failed to ruin him in court were now set on another strategy to bring him down. How else could it be explained that a man found innocent in court should so suddenly be confronted with a new charge? So the press pilloried the Free Church and its decision of 2 October. 'Exile faces "heretic" Macleod' was the heading in the Herald (4 October), while one of its editorials of the same date began, 'Another inquisition: Free Church continues to harry man of God.'

This is a parody of the truth. It is Macleod himself who has invented what has been proclaimed as fact. No one has accused him of heresy. What the Commission asked TOM to investigate were statements 'which appear at variance with the Free Church's Confessional position'. The Free Church, as with many denominations, has a basis of faith required to be held by ministers (in her case the Westminster Confession). Not to accept that basis does not make a man a 'heretic' but it does preclude from office. Macleod having himself (for propaganda purposes) invented the cry of 'heresy', proceeded to further caricature the decision of the Church by describing his 'heresies' as including such weighty things as visiting the Sydney Opera House and believing in the occasional singing of a hymn instead of a psalm (Daily Telegraph, 4 October). 'I do not mind being martyred for some issue of principle, but being martyred for nonsense is a different point altogether' (Herald, 4 October). For raising such things the Free Church was becoming seen as a 'zany, loony cult'.

As opposed to this caricature, both at his trial and following, Macleod gave the impression of distancing himself from the confessional position of the Free Church. He attacked the Rev. Angus Smith for believing a statement in the Westminster Confession (chapter 25:vi) to which he was himself equally committed by his ordination vows. Such was the alleged narrowness and theological malice of his opponents that he professed, 'I have lost faith in the formal theology of the Free Church.' If the press was misquoting him, in that and similar printed statements, he has had many opportunities to correct the record. Instead, as his interview with the Rev. Ian M. Mackenzie (BBC Radio Scotland, 30 June 1996) made clear, he was now unsure of his formal relation to orthodoxy:

I have now to come to terms with the fact that a lot of folk who are not orthodox are good people, and I'm not quite sure how I am going to fit that into my intellectual over-view because that, in fact, has raised an intellectual challenge. And you may know that John Hick, for example, in his emphasis on pluralism raises the spectre for us and did this for me at a very important point in my life, two or three years ago, when he argues that the Christian faith cannot be the only way to God because it does not produce more saints per capita than any other religion.

Far from being a new ploy by persecutors, it is Macleod himself, by such words, who has raised inevitable questions on his present confessional position.¹⁶ For the Commission to have ignored this would have been tantamount to ignoring the reason for the denomination's continued existence. The Macleod trial was about conduct, not belief, but it was his defence that sought to make 'theology' a vital part of the conspiracy theory. This brings us back to the first point in

Macleod's final ultimatum: 'If. . . the impetuous assertion of the innocence of alleged conspirators is not withdrawn, I shall be left with no option but to sever my connections with the church' (Express, 10 October).

This insistence is fundamentally related to all we have discussed. As we noted above, Macleod in court 'said that he did not think there was a conspiracy against him'. Yet thereafter he has constantly thought it necessary to affirm 'conspiracy' and now he will leave the Church if she does not withdraw her repudiation of it. The reason for this insistence and alarm is not hard to see. As has been apparent to all, conspiracy was so central to the Macleod defence that, if it should be set aside, the whole process by which the verdict was reached comes into question. And if the allegations upon which 'conspiracy' rested were false, how much more was false?

Contrary to what some may say, these pages are made available with sorrow and reluctance - four months after the trial and two years after misrepresentation of the case first appeared in the public press. So much that is false has now been given national publicity that those in the churches most directly involved were left with no means of distinguishing the truth without further information. Long ago, Dr Thomas Brown, when Moderator of the Free Church, said, 'Strive, pray, sacrifice all but principle to keep united'. It is principle, not personalities, which is fundamental to the present tragic contention. Lying, for Christians, is a matter of utmost seriousness. Professor Macleod has called his opponents 'liars' but we do not know of a single instance of proof. These pages have brought forward evidence that he has himself wilfully failed in this fundamental obligation and that in doing so he has condemned the innocent.

– end of Chapter 2 –

Footnotes to Chapter 2

¹ This chapter is here reprinted as first published in 1996

² Miss G.

³ When I wrote the above I did not know the details of the interview which John Davies and Elizabeth McPherson had with Macleod at the beginning of September 1984. These were subsequently recorded in Davies' nine-page testimony dated December 8, 1987. It has since been asserted that those of us first involved in this case made no personal approaches to Professor Macleod. But we all did so. Following two letters, I had a lengthy conversation with him on October 1, 1987, in Edinburgh.

⁴ Macleod's line of defence at his trial unhappily proves that the Australian brethren were right in regarding his 'apology', as agreed at the meeting of 9 February 1988, as inadequate and insincere.

⁵ That it did begin in 1982 is confirmed by the testimony of John Davies (December 8, 1987) but

there was no evidence as to the nature of the relationship until 1984.

⁶ In these pages I will leave aside the fifth woman whose testimony was also to be presented by the prosecution but which was dismissed, according to the press, because of a mistake she made in giving a date. On this point, as well as on others, the fact that there was no official transcript of proceedings has not added to a clear understanding of the case. Even the sheriff, at one point, made a temporary slip over a date, as did the lawyers for the Prince and Princess of Wales in their divorce proceedings.

⁷ Macleod denied that his niece was in his house (where the alleged offence occurred) in July 1985. After Mr Hardie, Q.C., had pressurised her to place the alleged incident in the last week of July, he produced evidence to show that Macleod was then in Stornoway. But Macleod did not leave Edinburgh till about 23 July and Mrs MacKenzie, with whom the complainant was staying, remembers the occasion of her visit to the Macleod home in the week of 15-19 July.

⁸ Personal statement by Hulse on 'the conspiracy theory', May 15, 1996.

⁹ Macleod represents his former friends in England to the world as men 'hell-bent on purity, and determined to reform the church (other people's church) even if it meant blowing it to smithereens . . . Henceforth I shall be happier to walk with the heresy that loves than with the orthodoxy that hates' (West Highland Free Press, July 5, 1996).

¹⁰ Note again the discrepancy between the date here given by Macleod for the start of the alleged 'campaign' - 1984-5 - and the time frame in his letter, quoted above, where he says the trauma arising from the relationship in which he was 'overtaken in a fault' began five years before 1987. The year 1984 was the year when concern over the discovery of that relationship began, as surviving correspondence between Allan Harman and John Davies shows.

¹¹ This was repeatedly claimed: 'Macleod was cleared five times by Church "trials" - including a private hearing at the Kirk's General Assembly in Edinburgh last May' (Daily Express, June 26, 1996). But that Assembly had no charges and no evidence before it. It had only to determine whether or not it would uphold the one-man majority of TOM at its meeting of the previous October in its finding of 'no evidence of censurable conduct'. When the Assembly took that decision twenty-seven commissioners recorded their dissent on the grounds that church courts had been given no opportunity to examine evidence. The Assembly itself had not directly considered the information available to the committee and was not informed that criminal charges were involved.

¹² Any discipline of ministers has to be carried out by presbyteries or higher courts of the Church. TOM, having the supervision of the College professors, can initiate the process of an authoritative examination of charges against a professor at presbytery level. A book by a former Clerk of the

Free Church General Assembly, written to warn the Church against delegating to committees what belongs to presbyteries, is very relevant to the present case: 'A Committee has no authority of its own . . . If adherence to Constitutional law is not to be strictly observed, the Church may as well scrap her whole Constitution, and be committee ridden.' See J. K. Cameron, *The Clerkship of the General Assembly of the Free Church of Scotland* (Northern Chronicle: Inverness, 1938), pp. 87-92.

¹³ The Commission had followed the usual procedure for anyone awaiting trial on such charges and had 'strongly advised' Macleod to stand down from his duties until the trial, which advice he ignored. To a Herald reporter he said of the Commission's statement, 'This calls into question my whole relationship with the Church and leaves me asking: Is this Christianity?' (stated subsequently in Herald, June 26, 1996).

¹⁴ But let it be remembered that the 'conspirators' condemned by implication at the trial were never 'witnesses' at all. The verdict was passed on them in absentia and without them ever being heard.

¹⁵ On BBC Scotland, 'Benchmark, 6 October 1996, Macleod based his refusal to meet TOM on the allegation that the committee contained 'a large number who have been branded as conspirators and liars'. But the branding was his own work!

¹⁶ It is noteworthy that the paper most scathing of the Free Church, the West Highland Free Press should publish an article, 'Tensions inherent in the principles of the Free Church' (11 October) which argues that it is confessional principles which explain present controversy. This is directly contrary to Macleod's claim that he is 'being martyred for nonsense'.

When Justice Failed in Church and State

CHAPTER 3

THE DIVISION OF THE FREE CHURCH 1996-2000

The decisions of the Commission of Assembly which met on October 2, 1996 had sought to implement the desire for peace in the Free Church by seeking to be even handed with both sides. On the one hand it had directed the Church 'to respect the finding of the criminal court regarding the innocence of Professor Donald Macleod,' and on the other it believed it right to 'repudiate the idea' that there had been a conspiracy against him. How the Commission missed the contradictory nature of these two conclusions is hard to see, for his defence and subsequent acquittal had depended upon the truth of the alleged conspiracy. As already noted, Macleod instantly saw the implication of 'no conspiracy' and further resented the fact that the Commission had appointed a committee to examine his beliefs. In the pages of the West Highland Free Press (11 October 1996) he treated the Church's decision (and her unwillingness to provide any spokesman to defend it) as ludicrous:

The men whom the Sheriff had pronounced guilty of conspiring to secure his downfall were sent home full of honour and power. Afterwards no church official could be found to speak to the press: 'We don't mind liars and conspirators, but we're having nothing to do with these evil reporters.'

At the same time Macleod was asserting that he would leave the denomination if the parts of the ruling of October 2 to which he objected were not rescinded. The threat was widely reported in the Scottish press.¹ It followed what he said on a Grampian Television programme the previous month when he spoke of no longer feeling part of the Free Church: 'I only have to say the word and it will founder. That may sound vain, but I feel as if I am expected to save the church single-handed.'²

Support for Professor Macleod's demand was immediately organised. In the private meeting of October 7, 1996, at Perth, to which we have already referred, some forty-five ministers and seventy men met under the chairmanship of the Rev. Alex J. MacDonald (minister of Buccleuch and Greyfriars congregation, Edinburgh). They believed that the future of the Free Church lay in ending the criticism of Macleod and that it was imperative that the Commission's ruling which had so offended him be overturned. At that Perth meeting Macleod repeated his complaint that the Sheriff had called the conspirators liars and yet the Church had defended them. He warned the gathering that if another meeting of the Commission went against those supporting him, 'You have to be prepared to leave the Church . . . If you are forced out take as many people with you as possible.'

The Perth meeting drew up plans to do everything possible to avert the step Macleod was going to take unless a change in ruling was secured. An organisation named 'Free Concern' was set up; a Memorial on Macleod's behalf was circulated for widespread signature throughout the Church; and pressure was exerted to have another Commission of Assembly called so that its previous decision could be overturned. Some, including the Moderator who had chaired the October 2 meeting, questioned the legality of reconvening the Commission for such a purpose, but (with a different man in the Chair) a second Commission met on October 31. At this meeting

Principal-Emeritus C. Graham delivered the report of the Finance, Law, and Advisory Committee which claimed that the presence of forty-six ministers and forty-two elders at the private Perth meeting, 'called to voice opposition to the finding of the Commission,' was evidence of 'an unprecedented sense of grief, dismay and outrage throughout the Church.'¹³ The text continued: 'If the Commission ignore this strength of feeling in the Church and adhere to their decision, they will provoke a major crisis where so many of the ministers of the Church are prepared to mount a campaign to have this decision rescinded by next General Assembly and in the meantime will not accept a decision that they regard as ultra vires.' Graham urged that the offending rulings be rescinded without any such delay and, referring to those who wanted further questioning of Macleod, pleaded, 'For pity's sake, for God's sake, call off the hounds of death.' The Commission proceeded to overturn the offending words of the previous Commission by a vote of forty-two to thirty-two.

By this point in time it was becoming clear that the charges against both sides in the Macleod case were so serious that there could never be peace until one side or the other was finally dealt with. At the 1997 General Assembly the issue of Donald Macleod (with fresh allegations) was again brought forward in a Minority report of the Training of the Ministry Committee (TOM), signed by Professor Hugh Cartwright (Assistant Assembly Clerk and Professor of Church History in the Free Church College), the Rev. Angus Smith (minister of Ness), and Dr Murdoch Murchison (Vice-Convener of TOM). This Minority report asked that a Special Committee be set up to examine complaints made against Professor Macleod since the Assembly ruling of 1995 which had declared the issue closed. It was countered by a Supplementary Report of TOM, presented by the Rev. Alex MacDonald, which asked that the Assembly find the signatories of the Minority Report 'in contempt' of the finding of the 1995 Assembly and that it should proceed to censure them. A censure by the General Assembly is no small matter and it was probably under the strain of what was being threatened that Professor Cartwright's health disabled him from being present either to present the Minority Report or to defend himself. Instead Dr Murchison read a rough draft of a speech which his colleague had prepared to be given in support of the Minority Report. It included the words:

I am not here as a member of an anti-Macleod faction stirred up by persons outwith the Free Church. If my conscience would allow me it would be much easier for my health of soul and mind and body to pass this matter by on the other side as some want to do. But I am here as a duly appointed member of a responsible, official body to which complaints were made and which is obliged to take cognizance of these complaints . . . There is no contempt of the General Assembly or their Commission in bringing matters before the General Assembly for their adjudication as this Minority Report seeks to do.

MacDonald, in pressing for censure, had a great advantage. The Assembly of 1995 had put an embargo on any further discussion on Macleod with respect to matters already examined. But as all Macleod matters had only been considered within the privacy of TOM, neither the Assembly of 1995 nor that of 1997 had any idea what the matters examined included. It was therefore impossible for them to determine whether the complaints which the Minority Report wanted examined were new or not. When one minister, the Rev. John Macleod of the Duthil-Dores congregations, offered to provide evidence relating to Macleod's conduct which he was certain was new, he was instantly interrupted and warned to be silent by the Moderator (Dr D. MacDonald, brother of Alex MacDonald). Any decision by the Assembly on what was old and what was new would have to be taken in the dark. Given Cartwright's knowledge of church law, he reminded the Assembly (in the words read by Murchison), that there was a correct

constitutional form for charges of censure to be laid against any parties, and that peremptory censure, without due process, would 'expose the Assembly to the charge of being an instrument of tyranny rather than a guardian of well-grounded principles.' This point received the agreement of Principal Graham, yet MacDonald continued to urge censure. He believed: 'This is about a Christian Church mercilessly pursuing Professor Macleod . . . We are asking that you censure, rebuke, criticise them: this means that they be removed from the Committee [i.e., TOM].'

Eventually, after a debate spread over three days, the contempt and censure motion against Cartwright, Smith and Murchison was carried by fifty-four votes to twenty-eight.⁴

But it did not end there. Aware that the censure motion had been carried out contrary to correct process, the Principal Clerk, Professor John L. Mackay, went on to move that in the action just taken 'the word censure is used in the general sense of expressing strong displeasure and is not used in the technical sense of a disciplinary censure.'

At several points in this censure debate the booklet Professor Donald Macleod and his 'Opponents' was raised. Some could scarcely find language strong enough to reprobate its contents, but the Rev. Hugh Ferrier asked:

If the Church holds the booklet to be contemptible and untrue, then I ask, even for the sake of Professor Macleod, why has it not been challenged and answered? I wrote to the FLA committee to express my own concern at Murray's revelations but the answer received from them in no way set my mind at rest and nowhere in their answer did they deny the truthfulness of the facts presented by Murray. I was left to conclude that what Murray had written about Professor Macleod was true and as I see it the 1995 General Assembly legislation is based upon a false premise.

The consequence of this 1997 Assembly was not simply that senior ministers were removed from committees (as Macleod had earlier demanded) but, to the sorrow of many, Professor Cartwright and, later, the Rev. Angus Smith resigned from the denomination which they had both served so long. Their decision, as stated by Cartwright, was based on the conviction that the Church had abandoned biblical discipline and thus rendered impossible the obedience to Church courts required by ordination vows. Their names were never cleared of the conspiracy charge which Macleod had made against them. A Petition they presented, but which was not accepted by the 1997 Assembly, said:

The Church courts have left us with the situation where there are members, elders and ministers against whom serious accusations have been made by fellow ministers, elders and members of the Church, and the Church has taken no action to either vindicate these persons, subject them to the proper disciplinary procedures or censure their accusers for making unsubstantiated allegations.⁵

FREE CHURCH DEFENCE ASSOCIATION

Shortly before the 1997 Assembly there had been another development that was to play a major part in the on-going controversy. A group of Free Church members in the Island of Lewis formed the 'Free Church Defence Association' (FCDA), reviving a title which had been used over a hundred years earlier. Following the censure action in the 1997 Assembly, the number of FCDA supporters grew rapidly and July 1997 saw the publication of the first issue of its magazine, *Free Church Foundations*. The editor was the Rev. William Macleod of Portree, and the chairman of its national committee the Rev. Maurice Roberts of Inverness. The first editorial stated:

The ultimate aim of the Defence Association is to identify dangers facing our Church, to prevent further demolition, and to rebuild as a Church on our original Biblical constitution and foundation. We would like to emphasise that the issues at stake are far greater than Free Church distinctives, important though they are. At stake are the very foundations of Christianity: the Bible, truth, honesty, fairness, justice, morality and the Gospel.

In an article reviewing the three-day censure debate of the 1997 Assembly, Free Church Foundations noted: 'While no discussion of any charges made against Professor Macleod has been allowed in any court of the Free Church (Presbytery, Synod or General Assembly), neither in private nor in open sittings, this 1997 General Assembly debate, with its object of censuring church officers who were not present, was carried on openly so the "conclusion" could be publicly carried to the whole of Scotland.'

Four issues of Free Church Foundations had appeared before the 1998 General Assembly met. At that Assembly an overture from the Edinburgh Presbytery (with the presentation again led by the Rev. Alex MacDonald) called upon the Assembly to order the FCDA to disband, and to cite William Macleod and Maurice Roberts 'to appear before the Assembly to answer questions regarding authorship concerning attacks made on the General Assembly'. The magazine, MacDonald alleged, 'had set itself against the Church, spreading its disinformation far and wide.' A counter-motion expressed the view that the FCDA was doing nothing more than Free Concern had done and asked the Assembly to 'pass from' (lay aside) the Edinburgh Presbytery Overture. This counter-motion carried. This 1998 Assembly was perhaps to be unique in recent years for the manner in which the wishes of the Presbytery of Edinburgh (with its leadership belonging chiefly to the congregation of Alex MacDonald) was repeatedly outvoted.⁶

At the same Assembly a TOM proposal that a special committee be appointed to re-examine questions on public worship was not carried (although backed by Macleod supporters), while a Petition presented by Maurice Roberts was. The latter asked that the censures imposed on Cartwright, Smith and Murchison by the previous Assembly, 'in breach of fundamental principles of equity and justice,' be rescinded. This 1998 Assembly raised hope that there might yet be some resolution of the underlying crisis and in furtherance of that hope the Assembly unanimously accepted a motion moved by Mr J. MacKenzie of Assynt that a Special Commission be appointed to forward reconciliation and peace within the denomination by prayer, discussion and conference 'with all parties whom they deem it wise to consult.'

The October 1998 edition of Free Church Foundations expressed the desire 'that the machinery set in motion by last Assembly will succeed in bringing our Church back to unity on the Scriptures.' It was not to be. Before the Assembly of the following year there were a number of indications of a forthcoming crisis. One had to do with developments among Free Church people in Stornoway. The minister of the town's large central church, the Rev. Kenneth Stewart, invited Professor Macleod to preach during his congregation's communion season in February 1999. On hearing of this some of the members presented a petition to the Session asking that the invitation be withdrawn. When this petition failed, some of those who signed it, who were unwilling to hear the professor, began to meet separately 'on an interim basis'.

This group soon received a warning from Mr Stewart that action would have to be taken against them if they remained separate. They responded that they continued to be faithful members of the Free Church, and were not committed to a permanent separation from the Stornoway Church. But they were 'deeply perplexed and saddened' that action should be proposed against them while the cause of their concern remained unresolved, namely, the serious allegations concerning Professor Macleod, and that 'allegations made by him against Free Church ministers and office bearers have not yet been withdrawn, substantiated or resolved.'⁷ This group, who took the name 'The

Stornoway Reformed Fellowship,' affirmed their commitment to the constitution of the Free Church and their case was due to come before the General Assembly of 1999.

Further, the findings of the Special Commission on restoring peace in the Church were also to be before the 1999 Assembly and, given the nature of the problem, trouble seemed inevitable. In addition, for the first time the fundamental issue dividing the Church was to be formally addressed in the form of three 'libels' against Professor Macleod. At two previous Assemblies, the Principal Clerk had insisted that the only way the Professor's conduct or beliefs could be discussed in the Assembly would be by formal charges being made in writing against him (the procedure known as 'libel'). A libel is normally prepared by a presbytery but it may also be initiated by a private individual. This is what was now done in their own names by three ministers, William Macleod, Maurice Roberts and David Murray.

To lessen the danger of party interests prevailing in the Church, there had been a proposal at the 1998 General Assembly that there should be a special plenary General Assembly later that year 'to effect an honourable reconciliation between the estranged sections of our Church': this would ensure the presence of all ministers and an equal number of elders - a larger representation than the one normally selected to attend by presbyteries. William Macleod, editor of Free Church Foundations, sympathised with this proposal but, lacking the necessary support of presbyteries, it was not implemented. Instead opponents of the FCDA worked to ensure a representation which would see that the Edinburgh Presbytery could not be out-voted again.

THE 1999 GENERAL ASSEMBLY AND THE SUSPENSION OF MAURICE ROBERTS

When the 1999 Assembly convened in May it was soon apparent that the representation was indeed different from that of the previous year. Arguably the most important matter before the Assembly was the report of the Special 'Peace' Commission; but this was put so far down the order of business that, in the event, it was not to be considered at all at the May Assembly. Considering some of the contents of the Report it is hard to believe that its lower place in the order of business was without any significance. All three libels against Macleod were disallowed on purely technical grounds, with no discussion and no opportunity given by the parties to rectify the supposed technical faults.⁸ Instead the Macleod issue was dismissed: 'The General Assembly ordain that this matter be now terminated.'

An appeal from Mr John A. MacPherson, a member and former elder in St Columba's, Edinburgh, was similarly dealt with. Mr MacPherson's daughter, a church member, had been one of the five women making complaint against Macleod in court in 1996 and judged by the Sheriff to have given false evidence. Mr MacPherson, convinced this was a miscarriage of justice, wanted his daughter's position to be formally examined by the Church and, after repeated efforts on his part, the 1998 Assembly had given him leave to bring the matter forward. Now at the 1999 Assembly he believed that the opportunity had at last arrived. Yet although it was known to all that he was acting on behalf of his daughter, his petition was dismissed on the grounds that he had no letter to prove his daughter wished him to act for her! In fact, evidence of permission was within the documentation provided. The Monthly Record tersely noted that the Assembly 'did not allow Mr MacPherson to proceed with this any further.'⁹

In the same 1999 Assembly Professor Donald Macleod was appointed Principal of the Free Church College.¹⁰ On the final day of its meetings, May 14, the question of the action to be taken over the Stornoway Reformed Fellowship came before the Assembly. The outcome was understandable enough. Those continuing to hold separate services, and yet calling themselves Free Church members, were to have their names removed from the roll if, after consultation with the session of Mr Stewart's church, they did not return within a week.

At this point two things raised the temperature of the proceedings. First, the language used by the Rev. Iain D. Campbell in speaking for the Presbytery of Lewis against the Reformed Fellowship.

The Fellowship was known to contain men and women long eminent for their commitment to the cause of Christ and the church, yet Mr Campbell, insisted the issue was not about Donald Macleod; it was about separation from the means of grace, a 'gross scandal,' akin to 'incest, adultery, trilapses in fornication, murder, atheism, idolatry, witchcraft.' Second, the very fact that action was required so urgently and publicly against these conscientious Christians, on grounds of church order, contrasted markedly with the manner in which the organisers of the Assembly refused to face the moral issue which was the real cause of the division.

The real crisis of the Assembly, however, came out of the blue on the same final Friday morning. Introducing his words as a point of order on a matter not before the Assembly - a procedure of questionable legality - the Rev. David Robertson asked for clarification of an alleged statement on Gaelic radio that the FCDA contemplated taking legal action against the Free Church. As chairman of the Association, Maurice Roberts was called upon to confirm or deny this report. He responded that 'there were no such plans'. He was then asked to promise that such action would not be taken in the future, to which he replied it could depend on what steps might be taken against them. Mr Robertson alleged that such words were a threat from a Free Church officer 'who had pledged not to follow divisive courses'. To this Mr Roberts, as recorded by Shorthand Writer Janet MacKenzie, replied that 'in the Assembly he had been faced with a situation of gross and irremediable wickedness'. These words brought the intervention of the Moderator, the Rev. Kenneth MacLeod (Barvas), who warned Roberts that an office bearer has to submit himself willingly to the judgment of the court on any particular matter. At this the following exchange took place. The words need to be noted carefully for they were to bring Mr Roberts' Free Church ministry to an end:¹¹

MJR: 'My response Moderator, is that I have been an office bearer in the Free Church of Scotland for the past thirty years and a minister for nearly twenty, and I have always submitted myself to the jurisdiction of this Church. But . . . if we're facing . . . gross and irremediable wickedness then we have certain reasons for objecting to it.'

Moderator: 'A point of Order. For this Assembly to hear of "wickedness" is totally unacceptable and I think you ought to withdraw that statement.'

MJR: 'How can I withdraw what I believe in my heart? I have witnessed today in these courts . . . I have witnessed hypocrisy and evil.'

David Robertson, the originator of the episode, called this 'breathtaking' and went on to move a motion that as Roberts had 'alleged that the proceedings of the General Assembly were characterized by gross and irremediable wickedness' he should be rebuked; he should also be called to withdraw the words and, in the event of his failure to do so, be served with a libel. After a short adjournment, this motion became the subject of debate, the Moderator assuring the Assembly 'there was nothing in this motion that any office bearer would not be happy to agree with.' In fact, there was indeed something seriously wrong in the motion. The crucial exchange between Roberts and the Moderator, quoted above, is taken verbatim from the record of it later placed by David Robertson on the Free Church website. It agrees with the account taken down by Janet MacKenzie. But if the words of the exchange are compared with those quoted in Robertson's motion, it will be seen that Roberts made no general statement about the proceedings of the General Assembly. What he had said was that 'in the Assembly' he had witnessed 'gross and irremediable wickedness.'

In the debate that followed no one seemed to notice the influence of the generalization introduced into the motion. A counter-motion that the words were not contumacious was disallowed.

Roberts was finally called forward and asked to withdraw the words attributed to him and to express profound regret that he had spoken them. At this point the short-hand writer's account reads:

Rev. M. Roberts asked the Moderator if, in so complex a matter, he would be permitted to read a statement.

Principal Clerk [Professor John L. Mackay] intervened to say 'the time for statements is over.'

Rev. M. Roberts then said 'In my heart of hearts, I believe what I said is the truth. I implicate no one in that but myself'

Thereupon a committee was instructed to prepare a libel against him which would be prosecuted at the June 1999 Commission of Assembly.

Only when that Commission (composed of the same members as the May Assembly with the addition of Professor John Mackay, Assembly Clerk) met on 23 June did the discrepancy between Roberts' words and those attributed to him come clearly to light. When the Moderator asked if there were any questions to Mr Roberts the following took place:

Assembly Clerk: 'Mr Roberts, the statement in the minutes says that you alleged the proceedings of this General Assembly which you had witnessed were characterised by gross and irremediable wickedness, and by hypocrisy. Are you now limiting that statement, in fact partially withdrawing it, by saying it only referred to certain aspects of the Assembly?'

Roberts: 'Moderator, it was never my intention to characterise the whole Assembly, and every person and every action, as partaking of hypocrisy and wickedness. I was referring to some of those actions, and I believe, Sir, that the words which were reported, of what I said, will bear out that I never at any time said that the General Assembly is wicked or evil in itself. I referred to certain actions which I believe I had seen taking place. I hope that's a fair answer.'

Assembly Clerk: 'Yes, it is. But can I then ask you a second question, Sir. Why, when you were present, and this minute was agreed, did you not challenge this, and why, when this was put to you at the Assembly, did you not, even at the earlier stage, correct it? It seems to me that you have already in part complied with what the General Assembly asked you to do. You have at least in part withdrawn the statement that is in the print as having been made by you. In the print it says: "The proceedings of this General Assembly. . ." My question is: Why did you let that stand, and now wish to modify it?'

Roberts: 'I think the honest answer to that, Moderator, is that in the urgency of the moment I did not notice the distinction between the two.'

Mr Roberts' assertion that he had not said what was attributed to him was to make no difference at all, and that because the libel framed against him was framed not on what he had said or not said, rather it 'was purely based on the fact that Mr Roberts had not complied with the Assembly's instruction [i.e., to withdraw].' It was no accident that the libel was so framed, for it meant that a request from Roberts to call twenty-seven witnesses in support of what he had said could be

treated as irrelevant. The only issue was that he had declined to withdraw, and, as all present were witnesses of the 'defiance', what purpose could be served by calling anyone else? His whole defence, namely that he had spoken the truth, was thus taken away and he was not allowed to present it. Tried in this manner the outcome was inevitable. By a majority the charge against him was held to be proved and he was summarily dismissed in a manner that had happened to no other Free Church minister in the twentieth century: 'Mr Roberts was suspended from the ministry of the Free Church of Scotland and is to be paid three months' stipend.' Notwithstanding that what Mr Roberts had said at the May Assembly was not made part of the charge against him, and regardless of his rebuttal of the generalization attributed to him, his supposed words were later to be repeatedly used against him. Donald Macleod, now Principal Macleod, alleged in the September 1999 Monthly Record:

The Church awoke from her stupor only when one minister finally went beyond all reason. He didn't simply criticise a particular decision of the General Assembly. He criticised the court itself; and he criticised it root-and-branch. He didn't content himself with saying that the Assembly was unwise or incompetent. He said it was irredeemably wicked.¹²

Macleod repeated the same falsification of Roberts' words in the public press, telling the readers of the Sunday Observer, 'Maurice Roberts repudiated the authority of the Free Church General Assembly and called it "irredeemably [sic] wicked"'.¹³

The silencing of Roberts overshadowed the June 1999 Commission but other business was conducted which was relevant to the developing crisis: the Special Commission's Report was accepted but with the decision that it must be abridged, and an overture of the Edinburgh Presbytery was carried. These two actions were as closely related to the Macleod case as was the suspension of Roberts. All revolved round the one issue. Roberts was not allowed to defend his words because such an allowance would have brought Macleod's conduct (and indirectly that of his supporters) before the Assembly. The Special Commission Report was not allowed to stand in full because it included statements on Macleod which the controlling party were determined to suppress. The original Report stated the view of a number of its members in these words:

The Special Commission would be failing in its duty to the Church if it did not take cognisance of the fact that there are still statements being made and publicly repeated regarding Professor Macleod's conduct in Australia, accompanied by allegations that the Church's investigation into these matters has been deficient in that there exist primary witnesses whose evidence has never been sought or heard by a Church Court. In the light of this the Special Commission would ask the General Assembly to recall the decision of the 1995 General Assembly as being procedurally unsafe and contributing to the present unrest in the Church.¹⁴

Instead of accepting this as a statement of opinion, the Assembly voted for the removal of all reference to Macleod in the Report.

The Edinburgh Presbytery Overture turned on exactly the same issue. It asked that:

all church officers and members were not to pursue the Macleod matter 'now or henceforth in any form whatsoever';

all papers in the Church's hands respecting discussion on Macleod in TOM be destroyed;

if the FCDA, or any others in the membership of the Church continued to raise the issue, church courts should proceed against them for 'contumacy'.

So if the issue dividing the Church was not already insoluble, as Roberts had said in May, the majority in the Commission of June 1999 intended to make it so. But the procedure adopted to secure this end brought at least one minister over to the other side. The Rev. Iain Smith, minister of the Crow Road congregation, Glasgow, was puzzled at first why no discussion of whether Roberts' words were true or false had been allowed. As he walked down the High Street afterwards he discussed the point with one of the commissioners who had been active in the debate. His companion 'admitted in response to my questions, that to grant Maurice Roberts the right to call witnesses would be to put someone else on trial. In other words, crucify one man in order to protect someone else.'¹⁵

THE CRISIS - THE SILENCE ORDER DISOBEYED

This was the Rubicon. Free Church Foundations must be silent or face the same kind of discipline as already suffered by the minister of Greyfriars. There was no hesitation. The FCDA journal now spoke out in far clearer terms than it had done before. In the August 1999 issue it answered the Edinburgh Presbytery Overture and in fifteen points gave reasons why a statement that there had been an 'exhaustive investigation' of the allegation against Macleod in Australia, with the verdict 'no basis for bringing a case', was 'seriously defective'. The journal brought into the open the fact that the ruling of the 1995 Assembly - now treated by the majority as something which could never be reviewed - was reached

without many of the commissioners hearing or having sight of the necessary information regarding the charges; the finding was formulated as to charges and investigations undefined and even unknown to many of the commissioners, a third of whom registered dissent.

Contrary to the Assembly's demand for silence, the FCDA magazine again asked that the 1995 decision be recalled and that the *prima facie* inconsistency between Professor Macleod's evidence in court and his admission in 1987 to two ministers of the Free Church of conduct unbecoming his profession be examined.

The answer to this came at the next meeting of the Commission of Assembly on October 6-7, 1999. The decision was taken to libel the two ministers who were editors of Free Church Foundations, William Macleod and David Murray. Their trial was fixed for December 8. As with Roberts, the charge against them was 'contumacy'. In their case it was for the statement that 'The General Assembly should recall the decision of the 95 Assembly as being procedurally unsafe.' Reporting what happened, the two editors wrote:

We were allowed no defence. 'Did you edit this magazine?' 'Yes.' 'Will you withdraw what you have written?' 'No, I believe it is the truth.' 'Then you are contumacious and must be disciplined.'¹⁶

Two peace proposals were made at the October 1999 Commission to avoid a final crisis. Both involved the use of independent arbiters from sister Churches. Both were summarily dismissed. The argument was that it was the FCDA which was splitting the Church, and that was the issue which demanded action. The Rev. William Macleod answered:

It is one man that is dividing the Free Church and he is doing it to protect himself.

Principal Macleod has ruthlessly stirred up the divisions that have always existed in the Free Church between those who are more conservative and those who are more liberal. He has tried to make out that the present controversy is over modernism rather than his own private life and the failure of the Free Church to apply its disciplinary procedures . . . They did not want peace. They want rid of us and they are willing to split the Church if it is necessary to protect Principal Macleod.¹⁷

Such words only increased the guilt of William Macleod in the eyes of the majority. The October Commission further ordered that any Free Church office bearer who remained an office bearer in the FCDA after 30 November 1999 would also be disciplined.

The FCDA, conscious of a policy against them which would pick off their men one by one,¹⁸ responded by appointing many more ministers as office bearers and over thirty ministers, all now FCDA 'office bearers', signed a letter stating that the FCDA did not intend to disband. At this, the December Commission warned all the signatories to the letter that they would all face libel on January 19, 2000 if they did not obey the order to disband. Under this pressure only one minister withdrew; others, through age or other reasons, could not be present at the January Commission. On that date the trial proceeded of the twenty-two FCDA ministers who were present. As usual, the libel was taken in two parts. In the first part the 'relevancy' of the charge has to be proved, in other words, whether the offence was truly a matter for church discipline. If 'relevancy' is proved then the libel proceeds to the second part in which it has to be shown that the accused is guilty of the offence in question.

As in the earlier case of Maurice Roberts the offence in the libel was narrowed down to one point. The sin was not that of belonging to the FCDA. That would indeed have been hard to demonstrate, given that the Association's purpose was so harmonious with the constitution of the Free Church. The sin alleged was simply disobedience ('contumacy') in the face of the October order that no church officer could belong to the FCDA after November 30. The men's defence was that the only obedience promised in ordination vows is obedience to the courts of the Church as long as such obedience was in accordance with Scripture and the constitution of the Church. It was no part of Presbyterianism to believe that a General Assembly is infallible or that a majority is always right. The Westminster Confession itself states, 'All Synods . . . may err, and many have erred'. All the defendants asked was that the 1995 ruling be reviewed, and reviewed because they believed its finding was contrary both to Scripture and the constitution of the Church. They rejected the charge of 'contumacy'. They believed that the charge was being put in that way only to avoid a direct dealing with the real issue - 'As everyone knows,' William Macleod said, 'the FCDA is especially concerned about the continuing and increasing allegations against a certain professor. It is particularly because of this that there is such bitter hostility to us.'

Any defence along these lines at the January 2000 trial was to no avail. The result was a foregone conclusion. At the second stage of the trial it had to be shown that the twenty-two were guilty of the sin alleged against them. But a second stage was obviously needless for, given the way their 'sin' had been defined, there could be no possible defence. They were already seen to be disobeying the Assembly and no discussion of whether they were right to disobey was to be allowed. They were held to have so incriminated themselves that no further proof of guilt was necessary.

Yet instead of following normal procedure and moving to the second stage of the libel, the Commission proceeded to suspend the ministers at once, while saying that the final stage of the libel would be heard four months later before the General Assembly in May 2000. In the meantime ministerial duties of every kind were to be laid aside by those suspended; they were to be 'gagged' with the warning that any failure to comply would be dealt with severely.

This postponement of final sentence was to be represented as an act of moderation on the part of the Commission. After all, the ministers suspended were to continue to receive full pay, and the intervening months might offer opportunity for negotiation before a breach became permanent. The suspended men saw the delay very differently. They knew that the other side were nervous of the breach of civil law and church law likely to be incurred by the Assembly in a hasty suspension procedure. Once again, as in the Roberts suspension, the Assembly was acting as prosecutor and judge, with no provision for appeal as is normal in Presbyterianism. They also knew that however many months intervened, their sentence was certain: they would never get back in their pulpits again; indeed this conclusion was written in the official organ of the Free Church, the Monthly Record, before the libel trial even began.²⁰ More important still, the suspended ministers knew that a preliminary suspension would cause havoc in their congregations, where interim-moderators supporting the suspension would be put in control. Given the conscientiousness of the stand of the twenty-two, there was only one course left. Although constantly interrupted by the stamping of feet and with his microphone hurriedly switched off by the Principal Clerk, the Rev. J. A. Gillies (a former Moderator) read a Protest which began:

We, the undersigned, protest against this Commission having reached a finding of relevancy in regard to Libels which are based on matters not condemned by the Word of God or the standards of this Church; and we further protest that, by this action, the Commission have disqualified themselves from being a duly constituted commission of the General Assembly of this Church.'

With some difficulty, and in spite of the physical manhandling of Mr Gillies by the Assembly Clerk, all twenty-two ministers, and six elders who were also commissioners, signed this document and later that same evening met in the Magdalen Chapel in the Cowgate, Edinburgh, to continue the sitting of the Commission 'in a constitutional manner.'

In practice there were now two bodies claiming to be the Free Church of Scotland - the people owning the decision of the Commission which had suspended the ministers and the people who did not. In due course, the suspended ministers were to be joined by fourteen more ministers and by about a fifth of the membership of the denomination; they took the name the Free Church of Scotland (Continuing).

It should be added, however, that to speak only of a two fold division is misleading. The differences are more complex. There are those who have no apparent sorrow to see former colleagues gone: among these is Macleod himself with his press statement, 'Our Church is stronger for the rift.' In that article he asked: 'Do I feel responsible for the split? That is like asking a man whether he feels guilty that the youth who mugged him is in prison.'²¹ There were, however, others in the Church who viewed the outcome in terms of tragedy, and many who are utterly confused and ignorant of the meaning of what has happened.

– end of Chapter 3 –

Footnotes to Chapter 3

¹ 'Macleod: Free Church forced to think again,' Express 10 Oct. 1996 ('If the public statement issued, particularly its reference to my writings and its impetuous assertion of the innocence of alleged conspirators is not withdrawn, I shall be left with no option but to sever my connections

with the church'). Daily Telegraph, The Times, 4 Oct.1996; Scotsman, 10 Oct. 1996, etc.

² 'I could split the Free Church', Press and Journal, 7 Sept. 1996.

³ Reports to the General Assembly of the Free Church of Scotland, p. 85.

⁴ In a letter to 'many dear friends in the Free Church' (March 31, 1999), Mr Smith noted that he had been found guilty by the supreme court of the Church without trial, 'being totally ignorant that he was on trial as he was absent.'

⁵ The inaction of which they complained was contrary to what is laid down in The Practice of the Free Church of Scotland which requires that 'The prevalence of a widespread rumour (fama clamosa) . . . lays Presbytery under an obligation to take action for its own vindication.'

⁶ Donald Macleod's published comments on the 1998 General Assembly were ominous. He regarded that Assembly as supine. They had refused 'to call to account the leaders of the Free Church Defence Association,' guilty of 'vicious personal attacks on individual ministers,' and this failure he contrasted with the action of a former Free Church Assembly which deposed the Rev. J. R. Anderson on the grounds that 'he had held up the ministry of certain of his brethren to public contempt'. West Highland Free Press, 29 May 1998. This has to be one of the most extraordinary examples in church history of 'the pot calling the kettle black'. No one used the public press to attack other ministers in the manner that Macleod had repeatedly done. For examples, see above, pp. 42-4, 47-8.

⁷ Mr John Gillies, replying to Kenneth Stewart, 10 March 1999.

⁸ Donald Maclean, a former Principal of the Free Church College, has noted how the expedient of 'technicalities' was used effectively by Moderates in the eighteenth century to subvert church discipline. 'Unscrupulous men, who knew that no case would be carried against them in the Assembly, however convincing it might be, unless it was technically complete, were indirectly encouraged in their course of questionable living.' Aspects of Scottish Church History (Edinburgh: T. & T. Clark, 1927), p. 80.

⁹ Monthly Record, June/July 1999, p. 155.

¹⁰ In his letter to me in which he speaks of 'my repentance' (of 26 August 1987) Macleod had said: 'It is exceedingly difficult to resign without causing a sensation. I really have sought (and am still seeking) a quiet way of doing it. But that is not easy. Already doors have closed (Banner, Evangelical Press). But others (College Principalship, Moderator) I long ago resolved to close upon myself. But I do try to do other (obscure) things as best I can.'

¹¹ I quote from the account recorded in shorthand by Janet MacKenzie, an experienced Shorthand Writer, whose record has been notarised. The Monthly Record represented him as saying 'the General Assembly had been characterised by "gross and irremediable wickedness", whereas he had only spoken the words in reference to certain proceedings of the Assembly. This may have been a misunderstanding here but there is no question that those hostile to Roberts were out to present his supposed words in the worst possible light.

¹² Monthly Record, p.179.

¹³ 'Our Church is stronger for the rift,' *Observer*, 23 Jan. 2000.

¹⁴ The proceedings of Special Commission showed the same inability to deal with the fundamental problem as was seen elsewhere. The Report of the Commission stated that 'No interviews had been held, largely because of a lack of unanimity as to how these ought to be carried out.' Further, the Commission had not examined the allegation of conspiracy against Macleod because, they said, evidence was not available to them for such examination. But far more evidence would have been available to them, had they conducted interviews, than that upon which Sheriff Horsburgh based his finding in 1996.

¹⁵ Smith, Statement to his congregation on 'The Commission of Assembly and Maurice Roberts.' It was, he believed, 'the crudest form of procedure to proceed to discipline a man for disobeying an instruction without even considering if he was right in what he did or said in the first place.' He noted that a majority of 58 to 20 found Roberts guilty.

¹⁶ Free Church Foundations, October 1999, p. 2.

¹⁷ *Ibid.*, p. 1.

¹⁸ This ploy was similar to policy advocated by some of the Episcopal party in power in Scotland in 1662. Instead of having numbers of Presbyterian ministers turned out all at once, they thought it wiser to proceed slowly 'and single out some that were more factious upon particular provocations.' Bishop Burnet's *History of His Own Time*, vol.1 (London: Evans, 1809), p. 214.

¹⁹ The Rev. Hugh Ferrier, a senior minister and former Moderator, protested: 'It now appears to be a condition of being a minister of the Free Church that you must not be a member of the FCDA . . . I can belong to the Masonic Movement, take part in ecumenical dialogue with those unsympathetic to the Reformed Faith, or arrange and join in worldly activities, but one thing I am forbidden to do is be a member of FCDA.' Assembly speech, reported in *Free Church Foundations*, Feb.2000, p.14.

²⁰ The Rev. Angus MacRae, the Commission's Press Officer, reported in the January 2000 Monthly Record: 'The Commission began a process of discipline against these ministers, requiring each to appear before the Commission of Assembly on 19th January 2000. If at that meeting they confirm they are still in agreement with the FCDA letter and they refuse to move their position the Commission will have no option but to suspend them for their continuing contumacy.' The FCDA men complained that this was to prejudge their trial and that such comment should not have been made on an issue sub judice. In the October 1999 Monthly Record the Rev. I. D. Campbell had written, 'It is time to cast out the bondwoman and her son. The Commission of Assembly will fail the Church unless it disciplines them all.'

²¹ *Observer*, 23 Jan. 2000. The future of the Free Church was now so much brighter: 'We are quit of impediments, and sporting a new generation of talented leaders.' In contrast it is good to note the words in the Monthly Record (March 2000, p. 56): 'There are men amongst those who seceded who have served the Free Church and the cause of Christ for many years. We continue to hold them in the highest esteem. We view the secession with deep regret and sorrow.'

When Justice Failed in Church and State

Chapter 4

REVIEW - HOW THE POSITION CHANGED AND HARDENED

It is clearly the duty of professing Christians to believe the best of the motives of others with whom they are in disagreement. 'Love thinks no evil.' It is the opinion of the present writer that some of those who came to the defence of Donald Macleod after allegations first reached Edinburgh in 1987 did so in the hope that their action was in the best interests of the Church. They thought, perhaps correctly, that the alleged adultery¹ could not be proved, and that, in the absence of definite evidence, an inconclusive trial would only harm the cause as well as injure the reputation of the professor. Only gradually did the amount of evidence of conduct unworthy of a minister of the gospel come to their knowledge. By that time these friends had already reached the conclusion that, however unwise or foolish he may have been, it did not justify a judicial investigation and his probable loss to the Free Church. We can understand such thinking, and in a measure respect it, although it appeared to overlook that the Practice of the Free Church requires an examination of witnesses before it is determined that a charge cannot be proven. No such examination was carried out. But the whole position took a more serious turn when Macleod's defence against the allegations of five women in Scotland rested on a 'conspiracy' set up against him and originating in Australia. By that time some, at least, of his close supporters, had to know that report of what had happened in Australia was not groundless - a mere 'rumour' in Macleod's word. If they had thought the Australian allegation groundless the obvious course would have been to agree to have the matter examined in a church court where the outcome would have been the shame of those who were responsible for the falsehood. Instead they became committed to the course of preventing any such examination and thus were party to vilification of fellow ministers who had been condemned unheard as 'conspirators'. This vilification, led by Macleod, was widespread in the national press. Typical was the comment in the *New Statesman* (January 2000):

A group of anti-progressive ministers, who called themselves the Free Church Defence Association, had persuaded the women to make false accusations because they wanted to discredit somebody who was attempting to drag the church into the 19th century [sic]. It was an extraordinary affair where a group of allegedly religious men concocted a story and coerced five women into lying in court having taken an oath on the bible.

Faced with this situation, all that the FCDA and the minority of TOM asked of the Church was that there should be a judicial examination which would necessarily involve both Macleod and his alleged enemies. It was repeatedly said by Macleod's supporters that the other side could settle this by using the resort of private libels (i.e., not libels brought by the authority of a Church court).² As already noted, this was said by the Assembly Clerk in the Assemblies of 1997 and 1998. It was reiterated in another form by the Rev. David Robertson in Scotland on Sunday (14 March 1999): 'Any individual can personally challenge a church member if they wish, they don't have to wait for the church as an institution to act, although they can be disciplined for spreading scandal if they lose. So far no one has been brave enough to take the risk.' Yet the fact is that when the minority of TOM asked the Assembly of 1995 for the use of the documents they had handled, in order to prepare a libel against Macleod, they were refused. Finally, as we have seen,

when three ministers did come forward in 1999 with libels, supported by documents and witnesses, they were not allowed to proceed. The members of Assembly were not even to see the documentation of evidence in those libels.³

On what grounds were men thus prepared to resist investigation and put down all who thought otherwise, even if it meant splitting the Free Church? Various explanations have been given. It was said that the Church had suffered enough distraction from Macleod's critics, nothing would satisfy them, and therefore a line had to be drawn. No doubt for some this was a genuine explanation. But there were those close to Macleod with enough knowledge of the evidence to be persuaded that a formal investigation would go against him. Hence their concern to block the libels. Hence also the move to have all the material reviewed and recorded in the TOM committee relating to him destroyed. Had that material substantiated a conspiracy against him, why the concern for its destruction?

I do not attempt to conjecture how many constituted this inner circle who were committed to preserve Macleod at all cost. They were probably comparatively few but they were influential enough to mislead the larger number. Another factor affecting the judgment of the larger number was their awareness that Macleod would leave the Church rather than submit to formal examination, and, given the scale of support for him, they

believed that to allow libels thus to force his departure would destroy the Church. If they had to make a choice, the loss of a FCDA minority was preferable. Others in the Assembly, apart from FCDA men, fitted neither of these categories but their voice and number was too weak to affect any decisions.

Just how opinion could change when an individual came to understand the real reason for the opposition to Macleod is illustrated by the testimony of John MacKenzie who was appointed one of the Assembly's special

advisers to TOM in 1993. At that date, Mr MacKenzie writes, when he first became personally involved with the Macleod issue, he saw himself as 'a natural ally' of Professor Macleod. He had, in previous Assemblies, 'sought to defend him against what I considered to be unjustifiable attacks by some of his colleagues.' On joining the committee, he continued:

In view of the sensitivity of the material to come before them, the TOM wisely decided to appoint a small precognitions sub-committee to which were added all of the special advisers. Having a fairly clear picture of earlier proceedings of TOM, I am of the view that it was only the appointment of the precognitions sub-committee that brought some degree of impartial judgment to the issues before us. The work was done methodically and professionally, with Rev. Ronald Christie acting as clerk and at the end of the process it was unanimously agreed amongst the members of the sub-committee that there was an undoubted case to answer. Reasons for serving a libel were carefully framed and a report drawn up for the main committee . . . This unanimous decision of the precognitions sub-committee was brought to a meeting of the main TOM Committee, held on 13 Dec. 1993 and generated immediate outrage and antagonism on the part of a small majority, excluding the special advisers who had no voting power . . . On that occasion, as subsequently, I acknowledged that it was competent for the Committee to reject the advice of their precognitions sub-committee but they could only logically do this if they themselves took the evidence under review. This they steadfastly refused to do.⁴

This was a turning point in Mr MacKenzie's whole understanding of the situation. It was the inner circle of Macleod supporters that dominated the proceedings of the 1999

Assembly. Added to their number was the Moderator himself, the Rev. Kenneth Macleod, who, as I shall show below, had been a party to suppressing any enquiry on Donald Macleod in Australia in 1984, long before it ever became a Free Church issue. As already said, in the General Assembly of 1999 (as in 1995) the majority probably voted for the closure of discussion with little idea of the weight of evidence against Macleod. It had never been put before them in any court of the Church and for years they had been told that the Macleod opponents were all 'hard-liners', 'anti-modern' men, committed to a programme which would consign the Free Church to permanent irrelevance.⁵

The basis of Maurice Roberts' charge of 'wickedness and hypocrisy' was the actions of this group in subverting the proper procedures of the Church. His charge was not made against the Assembly per se, it had to do with 'the proceedings' of the party determined to silence any continued questioning. While unprepared to do anything with regard to Macleod, they were willing to have ordinary Christian people such as the Reformed Fellowship in Stornoway caricatured, to use technicalities and other devices to silence legitimate concerns, and even to have men censured and put out of the ministry who challenged them. Those who are judges, say the Scriptures, 'shall justify the righteous and condemn the wicked' (Deut. 25:1). The reverse was practised, and the innocent condemned for speaking honestly. As William Macleod wrote: 'Today, discipline is used to protect those against whom there is evidence of guilt and to cast out as contumacious those who rock the boat.'⁶

Hypocrisy was also in evidence. The great issue from 1996 to 1999 was the embargo on any further discussion of Macleod, passed by the 1995 Assembly. That decision could not be reviewed, Macleod's supporters insisted. But why not? The decision of 1995 had only been a procedural and not a judicial finding. The Macleod party were in fact forbidding the very thing they had themselves done in having the ruling of the Commission of 2 October 1996 on 'no conspiracy', overturned as already described.⁷ Yet in the case urged by the FCDA men, no review was said to be possible and instead it was ordered that the matter must never be raised again. It was that order and its finality, as far as Assembly procedures were concerned, which led Roberts to believe the issue was insoluble; it was 'irremediable wickedness'.

THE MACLEOD DEFENCE - FALSEHOOD

When the Australian allegation first came before TOM it was recorded that one thing was clear, one side or the other were lying: 'It is undeniable that some person or persons have made false statements.'⁸ The conclusion reached by Mr James Fraser (Convener of TOM) in December 1990 was that they could not tell which side was guilty in this respect, and so they reached the decision 'there was insufficient evidence to warrant taking the allegations any further.' We do not understand how such a decision could be reached.

Lying is a flagrant breach of Christian duty and should never have been left unresolved. Witnesses (including those from whom the allegation came) could have been formally called and examined. As already said, TOM is not itself a disciplinary body; its responsibility in the case of College professors was to decide whether there was a case to be formally answered and when it became apparent that one party or the other was guilty of lying, then one or the other needed to be disciplined or cleared by a presbytery.

The evidence that Macleod was lying was already to hand. The allegations from Australia, it must be remembered, did not come from the woman concerned, Miss G., of whom I have already written above. She was a friend and remained so, on Professor Macleod's own admission; at no stage was she a complainant.⁹ But she did admit to adultery with Macleod to two ministers (as alleged by them), the Rev. John Davies in 1984 and the Rev. John McCallum (the minister of the congregation in which she was a member) in 1987. When faced with her admission by James M.

Fraser, the Convener of TOM, on September 9, 1989 (in an interview at the Free Church College), Macleod replied that Miss G. 'had indicated to him that she was intimidated into making such a confession.' This he elaborated in various forms: 'she had been harassed into making the confession;' it 'resulted from coercion' and 'malice'.¹⁰

Contrary to Macleod's statement to Fraser, it would appear that the intimidation explanation originated with Macleod himself not with Miss G. When, in 1984, Davies first spoke to her of her relationship with Macleod (when she admitted 'a long-term sexual relationship'), he noted, 'G. thanked me for the way I had spoken to her.' But when he faced Macleod with her admission, he responded, 'She must have been emotionally manipulated into making a false admission.'¹¹ Three years later, after hearing the same confession, McCallum reported, 'She seemed almost relieved to get it off her mind.'¹² Far from coercing her, McCallum states that he heard more than he wished to hear: 'She went into some details I did not ask for, even to the extent of avoiding pregnancy.'¹³

When Macleod was questioned by the same Convener a year later, on 22 November 1990,¹⁴ the matter of Miss G.'s confession was again raised. To the previous Convener of TOM, the Rev. Murdo Alex MacLeod, she had written (under pressure?) on 26 October 1988, to say she was not prepared to sign a statement, adding, 'I very much regret saying anything implicating Donald Macleod in a charge of immorality and unreservedly withdraw any such suggestion.' James Fraser now asked what she had withdrawn if it was not an allegation of some sexual impropriety. Macleod was prepared for the question and the minute of the interview records: 'Professor Macleod produced a letter from - [Miss G.] in which she stated that she had made no confession of adultery to her brother-in-law or to Rev. John McCallum.'¹⁵

I am not now concerned with the contradictory elements in Miss G.'s statements. My point is rather that if what she now said was true, namely, that there had never been a confession of adultery, then Macleod knew that what he had said on the intimidation and coercion supposedly employed by Davies and McCallum to achieve that confession was a falsehood. Coercion and 'no confession' were not both true. TOM documents noted, 'The balance of probability is that she made such a confession.'¹⁶

One way or another, here was proof that falsehood was being used in Macleod's defence. Further proof of Macleod's readiness to lie occurs also in the case of one of the women whose complaint against him was heard at his criminal trial in 1996. In 1993 a young woman, Miss MacPherson (described above as 'Woman 3') came before TOM to allege that Macleod put his hands on her in his room at the College in a manner which left her feeling distressed and 'dirty'. The Professor was twice interviewed on the subject, the second time under oath (13 and 23 April 1993). To the question, 'Did he remember her being in his room?' He replied:

Yes . . . Obviously I must have touched her - but was that an encouraging hand on her shoulder? Or an accidental touch? She never said anything to me to suggest that I did anything improper . . . I think it's possible I might have kissed her on the cheek as she went out the door. Someone put it to me, 'Maybe she wanted to be kissed.'

When this admission was put before the Church's legal advisers in 1994 their spokesman replied that the incident, 'standing alone would not, in my opinion, warrant judicial investigation. Private admonition would surely be sufficient.'^{17A}

The nature of Macleod's conduct towards Miss MacPherson, however, is not my point. It is rather that two years after the interviews, when the same woman's allegation was heard in court, his defence was altogether different. Knowing that the prosecution did not have access to the information on the interviews in the TOM papers, he treated her entire evidence as a fabrication

and called a witness from College staff to support the case that the complainant had not been in his room at all! Patently, his words in 1993 and in 1996 were not both true. Yet it was Mr MacPherson's daughter, with the other women, who, the sheriff concluded, was 'prepared to tell lies about him'.

Another example of Macleod misleading the court at his trial in 1996 concerned whether or not he remained present as a member of TOM in committee meetings when his case was under consideration. Conscious his presence on such occasions would be a breach of good procedure, Macleod assured the Sheriff that he 'never took part in any matter concerning himself.' This assurance the sheriff accepted, even interrupting the prosecution's summing up to say, 'But he left [the committee] if dealing with him.' The TOM documents show this was not the case. The testimony of the Convener, the Rev. Gordon Mair, is that when the complaints of three of the women, later to be in court, came before TOM on 4 October 1994, Macleod refused to leave when he was asked to do so. He was present throughout and spoke at length.

O what a tangled web we weave,
When first we practise to deceive!

In response to the evidence I have just cited from TOM documents, Macleod's supporters will by-pass the question of their accuracy and protest that the quotations are entirely improper, being a breach of the confidentiality required of TOM members. We do not deny that there are good reasons why confidentiality should normally be upheld; without discussion remaining confidential, allegations can be circulated which are subsequently proved groundless or, if not groundless, their public knowledge could inhibit a fair trial. For such reasons, as well as others, those who sought that Macleod should be formally examined took care not to make any information public until after his court trial in 1996 (by which date he had for two years been defending himself by attacking others in national newspapers). But upholding confidentiality does not take precedence over the duty to challenge falsehood when injustice is practised and the reputation of the innocent wronged. Confidentiality does not have precedence over the ninth commandment of the moral law.

RESISTANCE TO INVESTIGATION

Instead of acting as a man concerned to clear his name, Professor Macleod has repeatedly through this whole controversy resisted attempts to clarify the case. This was his manner when faced by Dr John Davies and Elizabeth McPherson in 1984, and, again, in declining to answer Principal Allan Harman in 1984.^{17B} When the matter finally came before TOM in 1989-90 and its Convener, James M. Fraser, approached Professor Macleod, the latter responded on 6 September 1989 with words akin to a threat:

I have no interest in asserting any right I may have not to speak to you. But I do question your right to take this to the Training of the Ministry Committee in any shape or form. The advice I have received is that the Australian dossier (the contents of which I only know by hearsay) are highly defamatory and that any one circulating it (or disseminating its contents) would be guilty of defamation . . . If it comes to the point where this affair threatens my wife and family I shall have no hesitation about placing it in the hands of my solicitor.¹¹⁸

After the unsatisfactory conclusion of that First TOM investigation, Mr Fraser noted:

Throughout the affair it has been difficult to deal with Professor Macleod. He displayed resistance to the Committee's efforts to advance the enquiry that

bordered on the contumacious and indeed was only persuaded to meet the delegation when threatened with reference to Presbytery.¹⁹

When the Rev. Gordon Mair, the next Convener of TOM was appointed in 1993 he encountered the same difficulty.²⁰ Macleod wrote to him on 16 June 1994: 'I want to make it categorically clear that I will not submit to any further interrogation, investigation or enquiry on this matter by any court of the church.' When new complaints from three additional women were received, as already mentioned, by TOM on 4 October 1994, the committee agreed that the women be invited to meet a sub-committee. They duly appeared on October 11 and 13, but a letter to Macleod inviting him to make a composite response to their allegations on October 19 was answered by a solicitor's letter. It informed the sub-committee that the professor declined to meet them, or to have any further dealing with the Committee on the matter. In defence of this non-attendance by Macleod, Alex MacDonald was later to justify it on the grounds that 'these complaints lacked credibility and evidenced the existence of a campaign against Professor Macleod.' How the committee were supposed to know this, without due examination, MacDonald does not explain. He evidently believed (as Macleod would himself later claim) that TOM leadership was itself part of the 'campaign'. MacDonald writes: 'He had every reason to decline . . . because of the shameful way he had been treated by the leadership of the TOM . . . Is it any wonder that a man so consistently ill-treated by representatives of the Church should have declined to submit to any further interrogation'?'²¹

MacDonald simply assumes the innocence of Macleod and recognizes only one possible explanation for the problems of TOM in concluding the drawn-out investigations: it had to lie in a persistent hostility on the part of the professor's enemies. On the contrary, Gordon Mair has replied, he was in an agonizing position as Convener in 1994, faced as they were with continuing uncertainty and persistent allegations. It is on record that Mair tried to bring everything to a satisfactory conclusion along the lines of a comment made to him on 20 June 1994 by the Assembly Clerk. Professor John Mackay had that day reminded him that the libel procedure does not assume guilt, and that the libel procedure is a means of protection for the innocent who are falsely accused. In a libel all evidence ought to be judicially assessed and then publicly made known. In view of the advantage of that procedure, Mair writes:

I spoke to Prof Macleod that afternoon, asking him if he was now requesting that a formal libel be drawn up. He indicated that he had no intention of pressing for a libel.

On this response of Macleod's, Mair comments: 'If the evidence was as others on the TOM adjudged it to be, why then was this opportunity to lay to rest all the talk, and expose all the alleged misdeeds [of those allegedly campaigning against him] not taken up?'²²

The fact is that both Conveners of TOM who attempted impartial enquiry into the complaints against Macleod were hindered by his objections to enquiries. The police met a similar kind of obstacle in their preparation for prosecution in the civil courts in 1996. In court the investigating CID Officer, Detective Sergeant Robb, stated, 'For reasons best known to themselves, the Free Church refused to co-operate with his investigations.' Whose influence lay behind that decision is not known. As we have seen, resistance to enquiry was again evident in October 1996 when Macleod declared he would leave the Church before he would have his beliefs examined by any Free Church committee.²³

Macleod's defenders have consistently argued as though the case against him depended solely on the unreliable words of Miss G. Once she 'withdrew' her words there was said to be no case. They also had the assurance, apparently, that she had written the Clerk of the General Assembly in

1994 to say that she would never appear before a Church court. But as the preceding pages show, independently of anything from Miss G., the evidence is there that Professor Macleod is guilty of conduct seriously inconsistent with his office and with a Christian profession.

THE AUSTRALIAN CASE AND THE REV. KENNETH MACLEOD, MODERATOR IN 1999-2000

The case of Miss G. of Sydney requires an added note. Her confession of adultery to her brother-in-law, Dr John Davies, in 1984, was reported (with her permission) on 6 August of that year by Davies to the Rev. Ken MacLeod for his pastoral help. The latter was then the minister of Maclean, NSW, in the same denomination as the woman - the Presbyterian Church of Eastern Australia (PCEA) - whose own congregation (St George's, Sydney) was then without a minister. Ken MacLeod thereafter saw G. and, to the surprise of John Davies, informed him that she had assured him there was nothing improper in her relationship with Donald Macleod. Davies, with Elizabeth McPherson, then spoke further to Miss G. who confirmed her original confession: 'She denied having said to Ken there was never anything improper about her relationship with Donald, and this denial I believe to be true.'²⁴ Accordingly, after this confirmation, Davies made further contact with Ken MacLeod on 11 October 1984. Speaking on behalf of Elizabeth McPherson and himself, he wrote to him on that date:

She told us she had not meant to convey the impression to you that there was nothing improper about the relationship (which was the understanding you said you had gained from G.) . . . What I have endeavoured to do with both G. and Donald is to emphasise the real hope of restoration upon genuine repentance and resolve to live in obedience . . . I share your concern that there be no public scandal However, as I'm sure you also agree, there are other concerns - the honour of Christ's Name, the integrity of the Church, Donald's marriage and (on our part at least) G.'s well-being.

To this letter, asking for further discussion, Davies had no reply. Davies has commented in his Affidavit: 'He [Ken MacLeod] did not want to discuss the matter any further or to become involved in any way.' John McCallum, who had first heard Miss G.'s confession in 1987, encountered the same attitude from his colleague at Maclean, 'I phoned Ken and he wanted it left alone basically.'²⁵ Yet the fact is that Mr Kenneth MacLeod was not leaving the matter alone. It is known that he was in contact with Donald Macleod, and when Douglas MacMillan was in Australia in July 1988 he told MacMillan, 'D. denied the worst to him.' MacMillan, who recorded this, went on, 'He seems to feel that objective evidence here is very scarce,' and that it rested largely on words of Elizabeth [MacPherson] and on 'G.'s version of the affair, and that D. could come back very strongly on them for spreading the fama.'²⁶ These words are confirmation that Ken MacLeod knew that 'G.'s version' was the same as that heard by Davies and McCallum. G. had confessed to adultery.

The PCEA is a sister Church of the Free Church of Scotland and many of its ministers trained in Edinburgh. The Rev. Ken MacLeod was linked with the group in Edinburgh who wanted the whole issue suppressed. His influence contributed to a later decision of the PCEA to block investigation. Thus when, in March 1990, James Fraser (for TOM) sought, by letter through the PCEA, to put questions to Miss G., the denomination refused to put them to her.²⁷ The questions were: 'Did you have a sexual relationship with Professor Macleod? If the answer is no, Why did you make this allegation to Rev. John Davies and Rev. John McCallum?' These key questions were never answered.

By the time the controversy had surfaced publicly in Scotland, Ken MacLeod had left Australia

and was minister of the Free Church in Barvas, Lewis. When the Free Church was facing its crisis year, 1999-2000, it was not without significance that he should have been appointed Moderator. He was therefore in the chair at the June 1999 Commission of Assembly in Edinburgh which put Maurice Roberts out of the Free Church ministry. At one point during that Commission a crucial point was raised by the Rev. James Gracie. He asked, 'Is it the case that there is evidence which the Free Church . . . has sought but never heard from the woman who made the allegation in Australia?' At this, the Rev. Ken MacLeod, as Moderator, instantly intervened to say:

A point of information. I want to state clearly here that there is no woman in Australia who made allegations.

A similar question came up at a public meeting arranged by the Western Synod of the Free Church in North Uist on 14 December 1999 when Ken MacLeod was again the chairman. At that meeting, designed to ease the mounting tension in the Free Church, the Rev. Kenneth Stewart was asked how the Australian matter could be regarded as closed 'if the principal witness has never been interviewed by the Church?' Again the Moderator, the only person present with personal knowledge of Australia, indicated that he wished to answer the question. He had, he said, heard of the allegation of adultery in connection with the pamphlet published that year by the Rev. James Frew.²⁸ On learning of it, he told the meeting, he had 'phoned the woman and she had said, "These are sheer lies. I never made such an allegation."

These statements by a minister presiding over church gatherings are indeed extraordinary. The reported words in Edinburgh are directly contrary to known truth, unless, that is, when he said no woman 'made allegations' he was employing a distinction between allegations and confessions which would be lost on his hearers. His later statement in North Uist implied that he had heard nothing of adultery until he read it in Frew's pamphlet in 1999. Further, the fact that an authorized enquirer from TOM, as Mr Fraser was, could get no reply to his questions in 1990, while Ken MacLeod could pick up a phone and have immediate contact with Miss G., is indicative enough of where he stood on this whole issue of defending his namesake. That Ken MacLeod should have presided as Moderator at the Assembly and Commissions which silenced over twenty ministers is bad enough: but that he should have supported this injustice by the suppression of truth, and with the demand that Maurice Roberts withdraw words on hypocrisy and wickedness or be silenced, is stunning.

When I was myself living in Australia I discussed Donald MacLeod's position with Ken MacLeod in 1988. Until that time we had been friends. He suggested to me that I was forgetting or not believing the message of Psalm 51. He and I knew perfectly well the sin which occasioned that Psalm, but I reminded him that David's forgiveness came after acknowledgement and repentance. It was a strange Scripture for a man to urge who professed to believe in Professor MacLeod's innocence.

CONCLUSION

There are those who will say, 'Supposing Donald MacLeod is at fault what kind of Christianity is it which leaves no place for forgiveness?' Certainly, Christianity is all about forgiveness, we all stand in need of it. But to put the question in the context of this discussion is to underline the seriousness of the disagreement. How does forgiveness come to us? Does the Scripture teach that God can privately forgive the sin of one who, far from confessing it and repenting of it, would cover it by slandering others? If that is so our whole understanding of the gospel needs to be revised.

What of the argument, 'Leave the matter to God'? There are times, we agree, when such a verdict

may be a Christian duty, especially when differences are of a private character and do not directly affect the honour of Christ or the name of the church. But it has never been considered conviction of those who hold to Scripture that issues affecting the public reputation of gospel ministers can be placed in that category. One of the most respected documents of Presbyterian history, the Form of Process of 1707, says in its section 'Concerning Processes against Ministers':

The credit and success of the gospel (in the way of an ordinary mean) much depending on the entire credit and reputation of ministers, their doctrine, and holy conversation, no stain ought lightly to be received, nor when it comes before a judicature ought it to be negligently inquired into, or when found evident, ought it be slightly censured.

To concede that silence is appropriate in the present instance is to lay aside the New Testament. If ministers themselves are not to be subject to discipline, then anything else that is done to uphold the purity of the church of God soon descends into hypocrisy. That a serious moral evil is involved in the present controversy is accepted by both sides. The disagreement is over where it lies, whether in Professor Macleod or in men and women who have allegedly 'sought to destroy him'. Either way, the sin of lying is patently involved, and it has been the decision to leave that sin untouched which has brought on the conflagration: 'Behold, how great a matter a little fire kindleth!' (James 3:5).

Action as well as sorrow is a patent Christian duty in the face of patent sin. The kind of religious pacifism that advises, 'See no evil, Hear no evil,' is not Christianity. Certainly personal injuries may be quietly suffered by Christians but in other cases they are called to 'resist evil'. It has been the failure to do this which has destroyed peace and unity in Scottish families and churches, seen a denomination broken in two, and injured evangelical witness at large.

It was reported in the Monthly Record (January 2000) that 'Professor Mackay, in a powerful address, asked how much good would have been done over the past six years if the time and energy which had been put into this conflict had been invested into the work of the gospel.' But the fact is that there were too many men who in all conscience knew that the Scripture allowed them no such choice. The gospel and the purity of the church are not separable things. Truth in church courts is not separable from truth in the pulpit. The honour of Christ - who has 'loved righteousness and hated iniquity' - is bound up with the church which He has redeemed with His precious blood. May He intervene to help all His people in this hour of need!

-- end of Chapter 4 --

Footnotes to Chapter 4

¹ I am distinguishing here between adultery as such and the proven existence of an improper clandestine relationship. Those in Australia who first brought the affair to the attention of the Free Church understood this and what puzzled them from the outset was the attitude of certain Macleod defenders who spoke as though nothing else demanded investigation if adultery could not be proved. I made no reference to adultery in Professor Macleod and His 'Opponents' (Chapter 2 above).

² Principal Graham, replying to an enquiry on Macleod by Erroll Hulse, wrote, 'None has been ready to take the responsibility of "framing a libel" against the person they accuse, though some

may have been challenged to do so' (6 July, 1993).

³ Procedures to suppress truth and enquiry were multiplied in 1999. At the June Commission of Assembly the Rev. John MacLeod (Clerk of TOM) was not allowed to complete a statement of dissent. The October Commission would not receive a Petition brought by the Rev. Innes Macrae and others, nor an Overture from the Presbytery of Lochcarron, both of which questioned the procedure adopted to suspend Maurice Roberts.

⁴ Letter of John Mackenzie to J. M. Fraser, 28 June 1999. He added: 'The special advisers were regrettably denied a vote on the Committee's deliberations, in hindsight, a major error of judgement.'

⁵ For a characteristic example of this kind of treatment of the FCDA, see Donald Macleod, 'The Threat to the Church,' *Monthly Record*, September 1999.

⁶ *Free Church Foundations*, Jan. 2000, p. 2.

² What is more, the Memorial they drew up to pressurise the Church rejected a ruling of the Commission on October 2, 1996, and 'supported Professor Donald Macleod in his intention not to submit to this investigation by the Training of the Ministry and Admissions Committee'.

⁸ TOM documents, 'Report of an Enquiry by TOM into Allegations of Immorality Against Professor Donald MacLeod'(1990), 4.1.

⁹ When asked by the TOM convener how, if Miss G's confession of adultery was false, he could remain on friendly terms with her, he replied that 'the problem it posed tended to throw them together for advice.' TOM record of interview 9 Sept.1989, Q.19.

¹⁰ Ibid., Q.20. 'On being pressed to state John Davies' and John McCallum's motives for malice he said that he did not think that they were the instigators but that Iain Murray was.' But the present writer knew nothing of the woman who made the confession, has never met her, or had any contact with her. After Professor J. Douglas MacMillan, on a visit from Edinburgh, interviewed us all in Sydney (unofficially) about the issue, he wrote to Maurice Roberts (28 June 1988): 'None of the men here, I feel sure, is doing anything out of malice to D. - rather, in them all there is a great concern for himself, his future, his family, and the good of the Church at large.' In the same letter he wrote: 'G. made sure that she was not able to meet me (I think).'

¹¹ Davies, Affidavit, pp. 5, 7.

¹² McCallum to Donald Macleod, 31 July 1987.

¹³ McCallum to Douglas MacMillan, 27 August 1987.

¹⁴ Again at the Free Church College, and on this occasion in the presence of Rev. J. Morrison (member of TOM) and Principal Clement Graham.

¹⁵ The words 'produced a letter' in the minute, signed by Mr James Fraser on 24 November 1990, are unclear in their meaning. Presumably they only signify that Macleod had in his hand a letter

which he claimed contained the disclaimer, because in a letter of 9 June 1994 Fraser wrote: 'This alleged letter was never submitted to the interview panel . . . The letter was simply referred to by Professor Macleod and I have no independent way of knowing whether the letter ever existed and, if it did, what was in it.' Mr R. J. MacLeod, a lawyer for Donald Macleod, has affirmed in a letter of 6 May 1994, that the letter in question was dated October 19, 1990, 'and that Miss . . . [G.] states categorically that she did not confess to any illicit sexual relationship with DM or anyone else and that there was nothing in her relationship with Donald Macleod of which she was ashamed.' Why the letter was not seen by the Convener in 1990 remains unexplained. The only consistency in Miss G.'s contacts with TOM officers was her concern to protect her friend.

¹⁶ TOM Documents: Report of an Enquiry (1990), 3.6 (i). In 1993 Mr Fraser, who had ceased by that time to be Convener of TOM, was certain that Macleod was prepared to lie. In a TOM interview under a new Convener, Macleod attacked the character of the woman whom I number '1' above) and attributed words with which he smeared her to James Fraser. When this was reported to Fraser the former Convener vigorously denied it in a letter to the Clerk of TOM, the Rev. John Macleod: Macleod's statement, Fraser asserted, was 'wholly untrue'. He further wrote: 'This statement has all the hallmarks of another attempt by Donald Macleod to smear those people who are making allegations against him. In this respect I am joining the growing list of people, who, if Donald Macleod is telling the truth, must be telling lies. I know that the contents of this letter are true and I leave you to draw your own conclusions as to who is misleading you!' (13 Sept. 1993). In his Report of Enquiry for TOM in 1990 Fraser had noted, 'The sheer number of conflicts between Professor Macleod's statements about events and those of other people' (3.3, vi). Presumably what this meant was clearer to him in 1993.

^{17A} 'Opinion' of J. K. Miller for Church's Law Agents, 29 July 1994. When, shortly after, other women came forward it was clear that Miss MacPherson's evidence did not stand alone. In each case Macleod's procedure was to attack the complainants. In the two questionings of Macleod conducted by TOM there is a marked difference in his words on Miss MacPherson. On the first occasion he said: 'MacPherson is a very nice girl. I'd hate her to think evil of me.' In the second: 'She has tried to destroy my wife and my home. That gives me the right to say something about her.'

^{17B} 'We went to see him shortly before he left Sydney, I think in early September 1984. He did not receive us at all well, almost not admitting us to the unit . . . He was quite belligerent and abusive at times, quite manipulative at others' (Affidavit of Davies, 8 Dec. 1987). To a letter of Harman, underlining the seriousness of his conduct, Macleod made no response (see above, p. 25).

¹⁸ The so-called 'dossier' was made up of letters and the John Davies Affidavit, sent by ministers at various times from Sydney.

¹⁹ TOM Documents, Report of an Enquiry, 4.2.

²⁰ For this statement and what follows I am quoting from the lengthy exchange between Gordon Mair and Alex MacDonald on the Free Church website, 11 November - 15 December 1999. MacDonald had earlier alleged that the FCDA's representation of the Macleod case was 'full of misrepresentations, half-truths and outright falsehoods', and had claimed that Macleod 'was never asked to appear for interview'. This drew the Convener of the committee into a website discussion, in the course of which he pointed out that MacDonald was so committed to the idea of conspiracy against Macleod that he saw no need for the fresh allegations of October

1994 to be taken seriously.

²¹ Macleod knew, as Principal Graham told him, that he had the right to decline answering questions put by TOM. Writing on this point to James Fraser (as Convener of TOM) on 2 November 1990, Graham said: 'The person concerned in all this told me a few days ago of his determination to refuse all further meetings on the issue and to demand that a libel be served or the enquiry abandoned. That of course would be his right, but I think I have persuaded him that it would not be the best course of action.' Why Principal Graham thought this is not stated. I have to regard as bluff any expression of willingness on Macleod's part to face a libel. He preferred the disruption of the Church.

²² Similar to this is what happened when the Rev. Paul Cook wrote to all Free Church ministers in pastoral charges on 21 March 1994 repeating the allegations concerning Macleod. He received a letter from Macleod's lawyer warning him of impending legal action unless he retracted his words. Cook replied: 'You have threatened to bring a libel against me. I suggest that you do just that; so that what at present is concealed may be brought to light.' Nothing more was heard.

²³ Further, when three of the women involved in the court later asked for access to the Church papers relating to their cases this was denied them.

²⁴ Davies, Affidavit statement, p.5.

²⁵ McCallum to Douglas MacMillan, 27 August 1987. On 12 Feb. 1988 MacMillan wrote to Davies: 'I am sorry that he [Ken Macleod], for whatever reason, let the matter drop and ceased to communicate with you about it.'

²⁶ MacMillan to M. J. Roberts, 2 July 1988, written after speaking with Ken Macleod the previous day.

²⁷ The PCEA, as the Free Church, was divided over how the Macleod issue should be handled. James Fraser wrote to the Central Presbytery of the PCEA (March 26, 1990): 'I believe that some malicious person has suggested that I was acting on my own authority without the approval of the committee. This is an idle tale with no substance in fact and I can only speculate as to the probable motivation for its appearance.' Much has been made by Macleod supporters of the fact that the Session of John McCallum's church gave a disjunction certificate to Miss G. in February 1989 (implying she was a member in good standing). Mr McCallum would himself have answered for this had he been called as a witness to any proceedings against Macleod. The whole issue is still by no means settled in the PCEA. A letter of the denomination to the Free Church General Assembly (18 May 2000) expressed sorrow for the division but concern that 'our Retiring Moderator, the Rev. John McCallum. St Georges, Sydney, had been branded as a "conspirator" by some;' and 'that the FCS General Assembly in 1999 appointed the Rev. Professor Donald Macleod to the position of Principal of the Free Church College. We understand that no charge has been proven against Mr Macleod, but given the existence of widespread rumours and reports (fama), we wonder why you proceeded to this appointment?'

²⁸ An Account of Some of the Proceedings of the Free Presbytery of Ross, Monday, December 14, 1998, James Frew. 'The Rev. John McCallum of St George's, Sydney, told me he is happy to stand by everything he has ever written in relation to Prof. D. Macleod's alleged adultery' (p. 2). *FC Foundations*, August, 1999, p.33.