

1 **OVERTURE 12** from Philadelphia Metro West Presbytery
2 “Amend *BCO* 31-2; 32-2”

(to CCB, OC)

3
4 We propose the following changes to *BCO* 31-2 and *BCO* 32-2, with additions underlined:

5
6 *BCO* 31-2. It is the duty of all church Sessions and Presbyteries to exercise
7 care over those subject to their authority. They shall initiate an investigation
8 and with due diligence and great discretion demand from such persons
9 satisfactory explanations concerning reports affecting their Christian
10 character. This duty is more imperative when those who deem themselves
11 aggrieved by injurious reports shall ask an investigation.

12 If such investigation, however originating, should result in raising a
13 strong presumption of the guilt of the party involved, the court shall institute
14 process, and shall appoint a prosecutor to prepare the indictment and to
15 conduct the case. This prosecutor shall be a member of the court, except that
16 in a case before the Session, he may be any communing member of the same
17 congregation with the accused.

18
19 *BCO* 32-2: Process against an offender shall not be commenced unless, after
20 a careful investigation (*BCO* 31-2) by the court and its finding of a strong
21 presumption of guilt, some person or persons undertake to make out the
22 charge; or unless the court finds it necessary, for the honor of religion, itself
23 to take the step provided for in *BCO* 31-2.

24
25 **Rationale:**

26 It is important to clarify that when allegations are brought before a court, as in *BCO* 31-2 and
27 32-2, they are necessary but are not sufficient to indict and appoint a prosecutor.¹ You cannot
28 indict and possibly go to trial unless you have allegations, but the court must first take certain
29 investigation steps to look into the allegations before deciding whether they warrant instituting
30 such process. One clear example of the need for investigation is found in *BCO* 34-2, which
31 says: “As no minister ought, on account of his office, to be screened in his sin, or slightly
32 censured, so scandalous charges ought not to be received against him on slight grounds.”
33 Thus, this passage, in the case of a minister, requires investigation before process to see if
34 solid evidence or probable grounds exist for the charges that are brought to the court. *BCO*
35 31-2 likewise calls for finding a strong presumption of guilt before instituting process.

36
37 Howard Donahoe, in his Concurring Opinion in the SJC’s Case 2011-15, makes excellent
38 points about the necessity of conducting an investigation before process and provides
39 numerous *BCO* passages required to guide the steps of an investigation. We quote him at
40 length:

41

¹ See Howard Donahoe’s “Concurring Opinion” at: pcahistory.org/pca/ga/42nd_pcaga_2014 pp. 517-528 for a strong defense of this position.

1 -- The *BCO* doesn't explain how a person "undertakes to make out the charge"
2 (*BCO* 32-2). Is there a substantial difference between someone who alleges
3 an offense and someone who filed charges? I don't think so. Sometimes an
4 allegation is made with supporting evidence, but sometimes not. But
5 regardless, an allegation from an individual is simply that – an allegation. It
6 doesn't matter much if he says he's "filing charges." The court is the only
7 entity that officially files charges, in the sense of an issuing an indictment
8 (*BCO* Appendix G is a sample form for a court's indictment. There's no
9 sample form for an individual "filing charges.")

10 An offended brother has a right to "tell it to the Church" per Matthew
11 18:17 (after complying with vss. 15-16). But telling and demanding
12 prosecution are not the same things. The Church is required to listen to the
13 telling, and inquire, but it doesn't have to indict. In the PCA, an indictment
14 is always and only in the name and on behalf of the Church – not the
15 individual" and quote of *BCO* 31-3,4.²

16
17 -- In the interpretation and application of *BCO* 32-2, there may be confusion
18 between what's a sufficient condition and what's a necessary one. *BCO* 32-2
19 is best understood as stipulating a charge is a necessary condition, that is, the
20 accused must know what he is being accused of. Even the SJC's Reasoning
21 in Lee and Lyons seems to agree that a charge filed by an individual is not a
22 sufficient condition because the SJC stipulates four *BCO* requirements that
23 must also be met before commencing process:

24
25 *BCO* 29-1. Nothing, therefore, ought to be considered by any court as
26 an offense, or admitted as a matter of accusation, which cannot be
27 proved to be such from Scripture.

28
29 *BCO* 31-8. Great caution ought to be exercised in receiving
30 accusations from any person who is known to indulge a malignant
31 spirit towards the accused; who is not of good character; who is
32 himself under censure or process; who is deeply interested in any
33 respect in the conviction of the accused; or who is known to be
34 litigious, rash or highly imprudent.

35
36 *BCO* 32-20. Process in the case of scandal, shall commence within the
37 space of one year after the offense was committed, unless it has
38 recently become flagrant.

39
40 *BCO* 34-2. As no minister ought, on account of his office, to be
41 screened in his sin, or slightly censured, so scandalous charges ought
42 not to be received against him on slight grounds.

² op. cit., p. 518

1 Let's call them the SAYS standards – Scripture, Accuser, Year, and Slight
2 [grounds]. The reasoning in Lee (and perhaps less directly in Hahn) seems to
3 imply any charge from an individual must be prosecuted if the four SAYS
4 standards are met. But there are additional factors. For example, a court
5 should consider whether *BCO* 31-5 has been followed: “An injured party
6 shall not become a prosecutor of personal offenses without having tried the
7 means of reconciliation and or reclaiming the offender, required by Christ.”
8 (Matt 18: 15-16)

9
10 And every court has the freedom to seek informal and private interaction with
11 an alleged offender ‘before instituting actual process.’ *BCO* 31-7 seems to
12 encourage this:

13
14 When the prosecution is instituted by the court, the previous steps
15 required by our Lord in the case of personal offenses are not
16 necessary. There are many cases, however, in which it will promote
17 the interests of religion to send a committee to converse in a private
18 manner with the offender, and endeavor to bring him to a sense of his
19 guilt, before instituting actual process.

20
21 But in addition to SAYS, and *BCO* 31-5 and 31-7, there are other matters a
22 court should consider before it proceeds to formal indictment and prosecution
23 at trial. Below are just a few examples we’ll call the WEEP standards.

- 24 -- Is a trial really warranted?
25 -- Will the ends of discipline be promoted in a trial?
26 -- Is there enough preliminary evidence to support an indictment?
27 -- Is it likely the allegation will be provable at trial?³

28
29 The Court might consider the preliminary evidence insufficient to support the
30 accusation/charge. It would not be prudent to order an indictment until and
31 unless it believes otherwise. While additional evidence might later change
32 the court’s mind, absent that, the court is within its rights to decline to
33 prosecute...And this understanding is reflected in SJC Manual, Chapter 16:
34 Procedures for Assuming Original Jurisdiction over a Minister (*BCO* 34-1)
35 Even if two Presbyteries file charges against a minister in another Presbytery,
36 and the SJC determines it’s a doctrinal case or case of public scandal, and the
37 SJC determines the original Presbytery ‘refused to act,’ the SJC still must
38 determine there is a strong presumption of guilt before commencing process.

39
40 *OMSJC* 16.1b If the case is determined to be in order, the [SJC] panel
41 shall conduct an investigation of allegations against the minister under
42 the provisions of *BCO* 31-2.

³ op. cit., pp. 520-523

1 *OMSJC* 16.4 If the SJC’s final judgment is that the above
2 investigation does not raise “a strong presumption of the guilt of the
3 party involved,” (*BCO* 31-2) the SJC shall dismiss the case and advise
4 the parties to the case...

5
6 -- This freedom to exercise discretion and judgment echoes that expressed
7 over a century ago by F.P. Ramsay in his *Exposition of the Book of Church*
8 *Order* (1898, p. 193-4, on VI-2). <http://pcahistory.org/bco/rod/32/02.html>
9

10 Ramsay is broadly regarded as one of the most eminent exegetes of
11 Presbyterian polity. Below are his comments on the same paragraph as our
12 *BCO* 32-2:

13
14 173-II. ‘Process against an offender shall not be commenced unless
15 some person or persons undertake to make out the charge; or unless
16 the court finds it necessary, for the honor of religion, itself to take the
17 step provided for in Chapter V., section II.

18
19 Ramsay: Since an offence is anything in principle or practice contrary to the
20 Word of God, who of us is not an offender? Were it the duty to prosecute
21 every offender, the Church would have no time or strength for anything else.
22 Process shall not commence unless one of two conditions is fulfilled. The
23 one of these conditions is, that some person or persons volunteer to prosecute
24 in spite of the warning in 169 and after complying (if an injured party or one
25 privy to a private offence) with 165; and even then the court may decline to
26 allow process to commence, either from objection to the voluntary prosecutor
27 (168), or because the thing charged is not an offence, or the evidence proposed
28 is seen to be inadequate, or because the ends of discipline will not be
29 promoted in the circumstances. The other of these conditions is that the court
30 shall find it necessary, for the honor of religion, to take the step provided for
31 in 162. (Emphasis added).
32

33 Here’s an excerpt from Morton Smith’s commentary on *BCO* 32-2 (echoing
34 Ramsay):

35
36 ...Even [if someone files charges], the Court may decline to
37 prosecute, and any one of the following reasons:

- 38 1. objection to the voluntary prosecutor and his motivations
39 *BCO* 31-8;
- 40 2. the thing charged is not an offense;
- 41 3. the evidence proposed is inadequate;
- 42 4. the ends of discipline will not be promoted in these
43 circumstances.”⁴

⁴ op. cit., pp. 524-525

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L. Roy Taylor, current PCA Clerk, in his paper “Chargeable Offenses” – *BCO* 29, argues that process should not proceed when charges are made if there is not a *chargeable* offense [quoting from Charles Hodge, on Chapter I, paragraph 2 of “The Revised Book of Discipline” (1858), pp. 694-697]. He says that “Errors of judgment and relational failures may or may not rise to the level of a chargeable offense”. He also references *BCO* 31-5; 31-9 as factors to consider and 34:5-6.⁵

James Thornwell, Chairman of the Committee on the Revision of the Book of Discipline in the Presbyterian Church of the United States, was a vigorous champion of the need of an investigation prior to process. His Committee, which included Charles Hodge, proposed the current wording of *BCO* 31-2 and 32-2 in draft form in the late 1850s and early 1860s. They were later approved and adopted by the southern Presbyterian Church of the United States in 1879 and subsequently by the PCA in 1973. [See James H. Thornwell, *The Collected Writings*, Vol. 4, 1873, pp. 304ff.] Thornwell commends the value of an investigation before initiating process in the following passage: “It is not an inquisitional, vexatious, star chamber power. It is to be exercised in the spirit of love, for the glory of God, and for the honor and good repute of the Church. Every man whose good name has suffered unjustly ought to rejoice in the exercising of it, as it gives him the opportunity of vindicating his character without subjecting him to the shame of being arraigned for a crime. The guilty ought to rejoice in it, as it is a means of bringing them to a sense of their sin, and of leading their minds to repentance.” [Ibid. p. 305]

Adopted by Philadelphia Metro West Presbytery at its stated meeting of February 22, 2020
Attested by /s/ RE Paul A. Rich, stated clerk

⁵ pcahistory.org under Articles by Dr. L. Roy Taylor, pp. 1-2