

1 **OVERTURE 12** from Philadelphia Metro West Presbytery (to CCB, OC)  
2 “Amend *BCO* 31-2; 32-2 to Clarify that Investigation Shall Precede Process”  
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4 We propose the following changes to *BCO* 31-2 and *BCO* 32-2, with additions underlined:  
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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.  
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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.  
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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.<sup>1</sup> 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.  
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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:  
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<sup>1</sup> See Howard Donahoe’s “Concurring Opinion” at: [pcahistory.org/pca/ga/42nd\\_pcaga\\_2014](http://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.<sup>2</sup>

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:

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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.

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<sup>2</sup> 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?<sup>3</sup>

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.

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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.

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<sup>3</sup> 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...

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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>  
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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:

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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).  
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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.”<sup>4</sup>

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<sup>4</sup> 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.<sup>5</sup>

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*

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