

1 **REPORT OF THE STANDING JUDICIAL COMMISSION**
2 **TO THE FORTY-EIGHTH GENERAL ASSEMBLY**
3 **OF THE PRESBYTERIAN CHURCH IN AMERICA**

4
5 **I. INTRODUCTION**

6
7 Since its report to the 47th General Assembly in 2019, the Standing Judicial Commission
8 has held two, in-person Stated Meetings - October 17-18, 2019, and February 6, 2020.

9
10 **Class of 2020**

11 TE Paul Bankson *Central Georgia* RE Steve Dowling *SE Alabama*
12 TE David Coffin, Jr. *Potomac* RE Frederick Neikirk *Ascension*
13 TE Paul Kooistra *Warrior* RE R. Jackson Wilson *GA Foothills*

14
15 **Class of 2021**

16 TE Ray Cannata *Southern Louisiana* RE John Bise *Providence*
17 TE Fred Greco *Houston Metro* RE EJ Nusbaum *Rocky Mountain*
18 TE Guy Waters *Mississippi Valley* RE John Pickering *Evangel*

19
20 **Class of 2022**

21 TE Bryan Chapell *Northern Illinois* RE Daniel Carrell *James River*
22 TE Carl Ellis, Jr. *Tennessee Valley* RE Bruce Terrell *Metro New York*
23 TE Charles McGowan *Nashville* RE John B. White, Jr. *Metro Atlanta*

24
25 **Class of 2023**

26 TE Hoochan Paul Lee *Korean NE* RE Howie Donahoe *Pacific NW*
27 TE Sean Lucas *Covenant* RE Melton Duncan *Calvary*
28 TE Mike Ross *Columbus Metro* RE Samuel Duncan *Grace*

29
30 **II. JUDICIAL CASES**

31
32 There were 17 Cases filed this term, as listed below, and the SJC is reporting Decisions for
33 the seven cases shown in bold. Four were decided on October 18, 2019 (2018-01, 2019-01,
34 2019-02 & 2019-03) and three were decided on February 6, 2020 (2019-06, 2019-07 &
35 2019-08). The other ten cases are in process.

36
37 **2018-01** RE Glen Mapes v. Metropolitan New York (Appeal)
38 **2019-01** TE Rhett Dodson, et al., v. Ohio (Complaint)
39 **2019-02** TE Daniel Schrock, et al., v. Philadelphia (Complaint)
40 **2019-03** Mr. Dan and Angelia Crouse v. Northwest Georgia (Complaint)
41 2019-04 TE F. Todd Williams v. Chesapeake (Complaint)
42 2019-05 Mr. James Goggan v. Missouri (Appeal)
43 **2019-06** PCA v. Mississippi Valley (*BCO* 40-5 Matter)
44 **2019-07** Mr. Chandler Fozard v. North Texas (Complaint)
45 **2019-08** TE Neal Ganzel v. Central Florida (Appeal)

- 1 2019-09 RE William Mueller v. South Florida (Complaint)
- 2 2019-10 TE John F. Evans v. Arizona (Complaint)
- 3 2019-11 Mr. Dan and Angelia Crouse v. Northwest Georgia (Complaint)
- 4 2019-12 RE Alan Pitts, et al., v. Arizona (Complaint)
- 5 2019-13 Ms. Colleen Gendy v. Central Florida (Complaint)
- 6 2019-04 RE Jeawhan Yoo, et al., v. Korean SW Orange County (Complaint)
- 7 2020-01 Mr. Peter Benyola v. Central Florida
- 8 2020-02 BCO 34-1 Requests from Central GA & Savannah River v. Missouri

10
11 **III. REPORT OF THE CASES**

12
13 **CASE 2018-01**
14 ***APPEAL OF RE GLEN MAPES***

15 **vs.**

16 ***METROPOLITAN NEW YORK PRESBYTERY***

17
18 **DECISION IN APPEAL**
19 **October 18, 2019**

20
21 **I. CASE SUMMARY**

22
23 This case came before the SJC on the Appeal of Glen Mapes, who has been a Ruling Elder at
24 New Hope Christian Church (“NHCC”) in Monsey, New York, within the Metropolitan New
25 York Presbytery (“MNYP”). The Appeal arose from the conviction of Mr. Mapes on multiple
26 charges tried in January 2018. The case was a companion to Case 2018-04 concerning the
27 Complaint lodged by Mapes and 13 others against the Temporary Session of NHCC. Both
28 cases were heard telephonically by a Panel of the SJC on January 22, 2019. In order to
29 understand either case, it is necessary to understand their factual context and the relationship
30 of one to the other.

31
32 The Appellant, Glen Mapes, participated in the Panel hearing on behalf of himself RE
33 Randall Prescott (of Short Hills, New Jersey, a member of Covenant Presbyterian Church but
34 not serving as a Ruling Elder there, having been ordained and having served elsewhere)
35 participated on behalf of the Respondent Presbytery.

36
37 The Record of the Case (sometimes referred to as the “ROC”) reveals that MNYP, at its
38 meeting on September 20, 2016, and upon a recommendation of its Shepherding Team,
39 approved the formation of a temporary session for NHCC. No basis for that formation was
40 then identified. Although the Moderator of the Temporary Session later stated (in a November
41 21, 2017, letter) that the “status of New Hope Christian Church was recognized as changed
42 from ‘Particular’ status to ‘Mission’ status at the 96th Stated Meeting of the Metropolitan New
43 York Presbytery on September 20, 2016” no reference to that change appears in the minutes
44 of that meeting. Further, no evidence has been presented that MNYP ever sought the approval
45 of the NHCC congregation to have a temporary session act as its ruling body, although such

1 approval arguably was implicit in a later action of the congregation. Actions of the Temporary
2 Session are what gave rise to both the Complaint and the disciplinary proceeding against
3 Mapes, culminating in his conviction, censures, and Appeal.

4
5 Both cases were presented to the SJC at its meeting on February 7, 2019. The Complaint
6 centered on the initial failure of the Temporary Session to call a congregational meeting to
7 vote on whether to leave the PCA. Because such a vote later took place and led to the dismissal
8 of NHCC from the PCA, the SJC determined the Complaint to be judicially out of order,
9 having been rendered moot.

10
11 With respect to the Appeal, however, the SJC concluded that more information was needed,
12 and therefore referred the case back to the Panel. The Panel has since obtained additional
13 information and documents and is satisfied that nothing material to the matter remains to be
14 obtained.

15
16 The Record reveals that the Temporary Session brought charges on November 21, 2017,
17 against Mapes and three others for disrupting a meeting of the Session earlier that month. This
18 led to a trial that concluded with a conviction of Mapes and the censures of indefinite
19 suspension from the sacraments and deposition from the office of Ruling Elder (along with
20 removal from the office of Trustee).

21
22 Although the Panel questioned the formation and conduct of the Temporary Session as well
23 as the possible lack of a quorum for the trial, the SJC recognizes that these questions were not
24 raised in Mapes's specifications of error. Therefore, for the purpose of deciding this case the
25 SJC assumes the validity of the Temporary Session and the existence of a quorum at trial.
26 Nevertheless, the SJC has determined that portions of the judgment below were in error,
27 including that the censures inflicted were excessive. It therefore affirms the judgment in part,
28 but also reverses in part.

29 **II. SUMMARY OF THE FACTS**

30
31
32 2007 New Hope Christian Church ("NHCC"), with roots established in 1824 and a
33 recent 50-year history within the Christian Reformed Church, affiliated with the
34 PCA after a period of search.

35
36 7/25/16 TE Phillip Dennis, pastor of NHCC, filed charges against REs Henry Bakker and
37 Glen Mapes, the only Ruling Elders then on the NHCC Session. Those charges
38 were referred to MNYP.

39
40 8/22/16 MNYP Shepherding Team (TEs Reinmuth, Friederichsen, Ridgeway, Chen, and
41 RE Taylor) recommended that MNYP:

- 42 a) "appoint the Shepherding Team as a judicial commission for the
43 purposes of trying" the two cases;
44 b) "suspend all official functions of RE Mapes and RE Bakker (not by
45 way of censure) pending the outcome of their trials;"

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- 1 c) "accept TE Phillip Dennis' resignation and dissolve the pastoral
- 2 relationship" with NHCC;
- 3 d) "appoint a commission to function as temporary Session for NHCC
- 4 effective immediately;" and
- 5 e) "appoint TE Phillip Dennis as Stated Supply to NHCC for up [to]
- 6 six months, as agreeable to the temporary Session."

7
8 9/20/16 MNYP adopted the recommendations of the Shepherding Team. Though later
9 characterizations indicate MNYP had determined NHCC to be a mission church,
10 no mention of that was made in any of its minutes at the time.

11
12 3/28/17 MNYP adopted later recommendations of the Shepherding Team (serving as a
13 judicial commission) convicting RE Bakker and suspending him from office, but
14 noting that the judicial commission had concluded there was inadequate cause to
15 bring an indictment against RE Mapes.

16
17 5/21/17 A called congregational meeting of NHCC was held to consider and act upon the
18 recommendation of the Temporary Session to relocate, replant, and re-
19 particularize the church. The motion passed 11-6.

20
21 8/23/17 The Temporary Session determined that Bakker had shown insufficient
22 repentance, and therefore permanently deposed him from office and suspended
23 him from the table. Further, the Session, as part of continued process, required
24 that he worship at another church.

25
26 11/2/17 The Temporary Session met with former RE Bakker to consider evidence of
27 repentance. RE Mapes and several others attempted to attend the meeting despite
28 having been told it would be closed. The Session excommunicated Bakker and
29 barred him from the church property unless invited back by the Session. The
30 Session also interacted with RE Mapes and Mrs. Bakker, and TE Dennis requested
31 that Mapes attend church elsewhere.

32
33 11/12/17 Following the morning worship service, RE John Gregory, Clerk of the Temporary
34 Session and on its behalf, addressed the congregation, announcing there would no
35 longer be worship services at NHCC.

36
37 11/12/17 Fourteen members of NHCC petitioned the Temporary Session, requesting a
38 congregational meeting to consider dissolution of ties to the PCA and retention of
39 all assets.

40
41 11/21/17 The Temporary Session denied the petition, stating in a letter from TE
42 Friederichsen to the petitioners that although the petition first appeared to be "in
43 good order," because NHCC was no longer a particular church the decision on
44 whether to withdraw was not in the hands of the mission church members. In other
45 words, in the view of the Session, only members of a "particular" church could

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- 1 present such a petition. The Session also approved charges against Mr. and Mrs.
2 Mapes, Mrs. Bakker, and one other. Those charges generally were for disruption
3 of the meeting on November 2, failure to be subject to church governance, and (in
4 Mapes' case) dereliction of duty as an elder.
5
- 6 12/14/17 Signers of the November 12 petition wrote the Temporary Session to complain,
7 relaying church history and asserting that members did have the ability and right
8 to petition, to meet, and to take actions that may be authorized at any meeting.
9 Their letter constituted their Complaint.
10
- 11 1/11/18 The Temporary Session met to conduct trials of the four members. Present were
12 TE Phillip Dennis*, TE Brandon Farquhar, TE Donny Friederichsen*, RE John
13 Gregory*, TE Sung Ho Lee, and TE Harry Skeelee. (Individuals marked with *,
14 by prior agreement, did not vote in the trials.) All those charged were convicted.
15 Mapes was indefinitely suspended from the sacraments and deposed from office,
16 the outcome of a trial that had not begun until 1:01 a.m.
17
- 18 1/24/18 Mapes appealed his conviction to MNYP.
19
- 20 1/29/18 The Temporary Session denied the Complaint for the reasons it had presented by
21 the November 21, 2017, letter from TE Friederichsen.
22
- 23 2/3/18 Mapes brought the Complaint to MNYP.
24
- 25 2/12/18 The MNYP Judicial Commission ("JC") denied the Complaint on the basis that
26 Mapes was "not a member in good standing" due to a charge pending at the time
27 the Complaint was first filed.
28
- 29 2/25/18 Mapes contacted the JC Clerk, RE Prescott, contending he was "in good standing
30 at the time of the submission of the complaint dated Dec. 14, 2017," and that the
31 Complaint was "on behalf of 14 members of New Hope Christian Church, not only
32 myself."
33
- 34 2/27/18 MNYP JC reconsidered the Complaint and scheduled hearings on it and on Mapes'
35 appeal of his conviction by the Temporary Session.
36
- 37 3/3/18 The MNYP JC ruled the Complaint out of order, issuing a judgment that the
38 conviction of Bakker "instantly devolved NHCC into the status of a mission
39 church," and therefore the Complainants had no standing to present their petition
40 because they were not then members of a "particular" church. The JC also denied
41 Mapes' Appeal.
42
- 43 3/13/18 MNYP accepted the JC decisions on both the Complaint and the Appeal.
44
- 45 3/19/18 Mapes appealed his conviction to the General Assembly.

- 1 3/28/18 Mapes and Co-Complainants filed their Complaint with the General Assembly.
2
- 3 10/30/18 MNYP held a special meeting to consider the question of dissolving NHCC. In
4 executive session at that meeting, Presbytery adopted a motion “to dismiss New
5 Hope Christian Church from the PCA pending the congregation’s consent.”
6
- 7 12/9/18 At a called meeting of the congregation, it voted 7-0 to consent to MNYP’s
8 dismissal of the church from the PCA. Neither Mapes nor others who had earlier
9 petitioned the Temporary Session were notified of the meeting, their names having
10 apparently been removed from the membership roll of the church.
11
- 12 1/8/19 MNYP voted to “dismiss the commission from New Hope Church Monsey with
13 gratitude.”
14
- 15 1/22/19 A Panel of the SJC heard the Appeal electronically (by GoToMeeting). Serving
16 on the Panel were RE Dan Carrell, Chairman; RE John Bise, Secretary; TE Ray
17 Cannata; and RE John White (alternate). The other alternate, TE Carl Ellis, was
18 unable to participate due to a ministerial teaching obligation outside the U.S.
19
- 20 2/7/19 The SJC took the Appeal under advisement by referring the matter back to the
21 Panel and expanding it to include the two alternates as voting members.
22

23 **III. STATEMENT OF THE ISSUE**

24
25 Did MNYP err when it upheld the judgment of the Temporary Session convicting RE
26 Mapes and inflicting the censures of indefinite suspension from the sacraments and
27 deposition from office?
28

29 **IV. JUDGMENT**

30
31 Yes. Although the judgment is affirmed in part to the extent it rests on Mapes’s failure to
32 submit to the government and discipline of the Church, it is otherwise reversed. In
33 particular, the inflicted censures, being excessive for the misconduct found, are reversed
34 and replaced by the censure of Admonition.
35

36 **V. REASONING and OPINION**

37
38 RE Mapes was first charged on July 25, 2016, which matter was referred to MNYP. On
39 August 22, 2016 MNYP, on the recommendation of its Shepherding Team, voted to, among
40 other things, suspend all of RE Mapes' official functions (not by way of censure) pending the
41 outcome of his trial.
42

43 On March 28, 2017 MNYP adopted a recommendation of its Shepherding Team (serving as
44 a judicial commission) that there was inadequate cause to bring an indictment against RE
45 Mapes. Therefore, it appears Mapes’ official functions should have been restored, thereby

1 triggering the application of *BCO* 12-1, which states that where there is no pastor and only
2 one ruling elder, “he does not constitute a Session, but he should take spiritual oversight of
3 the church, should represent it at Presbytery, should grant letters of dismissal, and should
4 report to the Presbytery any matter needing the action of a Church court.” Thus, Mapes, as
5 the sole Ruling Elder, would in effect have become the liaison between NHCC and MNYP,
6 regardless of whether a temporary session remained in place. Given this, his appearance at
7 the meeting in question should have been allowed.

8
9 On January 11, 2018, the expanded Temporary Session conducted the trial of RE Mapes and
10 three others on the charges leading to this appeal. RE Mapes’ trial, beginning at 1:01 a.m.
11 (over the objection of RE Mapes) and resulting in conviction and infliction of the censures of
12 suspension and deposition, was unduly harsh. Consider the circumstances: Mapes and several
13 others appeared at a meeting of the Temporary Session on November 2, 2017, called to address
14 the question of whether there had been sufficient evidence of repentance displayed by Mr.
15 Bakker. The Mapes group knew in advance that the meeting was closed. Yet they appeared,
16 nevertheless. Mapes said they were in the room for a total of 5 minutes and 37 seconds. Other
17 witnesses were less precise, but viewed the amount of time as between 5 and 10 minutes. TE
18 Dennis, one of the prosecution’s witnesses, singled out one member of the group as having
19 shouted and another as having raised her voice, neither of whom was Mapes. Although the
20 group did not leave promptly, upon repeated requests to do so, they eventually did, and they
21 returned later to meet with Temporary Session and reaffirm their membership vows. Not one
22 word in the minutes of that meeting referred to any disruption. Moreover, RE Mapes asserts
23 that when he met with the Session he apologized for his earlier conduct, an assertion that the
24 Appellee did not challenge.

25
26 Yet, at its meeting on November 21, 2017, the Temporary Session charged the group members
27 with offenses. Specifically Mapes was charged with “dereliction of duty as a ruling elder,
28 disturbing the peace of the church, sedition against the government of the church, and
29 participation in a riot,” as well as failing to “submit himself to the government and discipline
30 of the Church and to study its purity and peace . . . and . . . ‘to strive for the purity, peace,
31 unity and edification of the Church’” Two specifications followed: the first regarding
32 notice of the closed nature of the meeting; the second that “Mapes had stormed into the
33 Session’s meeting place,” had “refused to obey promptly when he was instructed to leave,”
34 and had “refused to instruct his wife and others present to submit to the Session and leave.”

35
36 The trial concluded with the finding of guilty of the offenses charged, with the censures of
37 temporary suspension from the sacraments (until satisfactory evidence of repentance is given)
38 and deposition from office. Mapes then appealed, thereby suspending the judgment of the
39 lower court under *BCO* 42-6.

40
41 In his appeal, Mapes listed six specifications of error. Those were:

- 42
43 1. “At the meeting of Nov. 2, 2017, TE Friederichsen stated that 'we just caught
44 Hank in a lie' and then on Nov. 6, 2017 he sent an email inappropriately
45 apologizing for this statement.

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- 1 2. My citation to appear at trial was sent to the former worship team leader at New
- 2 Hope Christian Church, Phillip Nevill, who had nothing to do with this case.
- 3 3. Numerous unreasonable requests during the time leading up to the trial and at the
- 4 trial.
- 5 4. I made a request to delay the trial until after the holidays at the Dec. 4, 2017
- 6 meeting. I did not receive an official answer until Dec. 21, 2017: seventeen days
- 7 later.
- 8 5. I was declared guilty of rioting, sedition, and storming without any evidence
- 9 presented at the trial.
- 10 6. I believe my censure was extremely excessive.”

11
12 The first four specifications appear immaterial to his case or of insufficient consequence. But
13 the remaining two have merit.

14
15 The SJC recognizes that a higher court “should ordinarily exhibit great deference to a lower
16 court regarding those factual matters which the lower court is more competent to determine”
17 and to “those matters of discretion and judgment which can only be addressed by a court with
18 familiar acquaintance of the events and parties.” (*BCO* 39-3.2,3) Thus, the SJC’s standard of
19 review requires it to deny the appeal “unless there is clear error on the part of the lower court.”

20
21 The SJC takes no issue with the determination that, by appearing at a meeting when he knew
22 in advance that it was closed to guests, Mapes, by his apology, acknowledged he was guilty
23 of failure to submit to the government and discipline of the church. But the trial testimony
24 cannot be viewed as evidencing a pattern of “dereliction of duty,” or “seditious or riotous
25 behavior” by Mapes, particularly when the relevant contemporaneous record, the minutes of
26 the meeting that night, fails even to mention the disruption itself, not to mention the lack of
27 any reference to disruption when Mapes met with the Session later that same evening.

28
29 Thus, the SJC finds that there was clear error by the lower court in inflicting the censures as
30 it did. In light of all the relevant circumstances, the SJC affirms the judgment of the Presbytery
31 upholding the conviction of failing to submit to the government and discipline of the Church;
32 but the SJC otherwise sustains the Appeal and therefore reverses the balance of the judgment.

33
34 The appropriate censure of RE Mapes was Admonition. The SJC substitutes the censure of
35 Admonition for RE Mapes’ sin. (*BCO* 42-9)

36
37 As a result of this decision, the original censures, having been suspended, are now declared
38 void. RE Mapes is restored to the sacraments and to the office of ruling elder, albeit he has
39 no affiliation with any particular Session. This practically means that he is free to receive the
40 Lord’s Supper and to pursue membership in any branch of the Visible Church without any
41 open censure of a court of the Presbyterian Church in America.

42
43 The Panel's Summary of Facts was drafted by RE Bise and the Panel's Reasoning was
44 drafted by RE Carrell. The Panel made additional revisions prior to the SJC discussing

1 the Case. After adopting amendments to the Judgment and Reasoning, the SJC approved
2 the Decision by a vote of 20-0, with three absent and one disqualified.

3
4 Bankson *Concur* Duncan, M. *Concur* Neikirk *Concur*
5 Bise *Concur* Duncan, S. *Concur* Nusbaum *Concur*
6 Cannata *Concur* Ellis *Absent* Pickering *Concur*
7 Carrell *Concur* Greco *Concur* Ross *Concur*
8 Chapell *Absent* Kooistra *Absent* Terrell *Disqualified*
9 Coffin *Concur* Lee *Concur* Waters *Concur*
10 Donahoe *Concur* Lucas *Concur* White *Concur*
11 Dowling *Concur* McGowan *Concur* Wilson *Concur*

12
13 RE Terrell was disqualified because he is a member of a church in the bounds of the
14 Presbytery that was a party to the case. (*OMSJC* 2.10.d.(3).iii)

15 16 **Concurring Opinion**

17 ***Case 2018-01: Appeal of RE Glen Mapes v. Metro New York Presbytery***
18 **RE Howie Donahoe, joined by TE Mike Ross and RE Dan Carrell**

19
20 This Concurring Opinion highlights two actions of the Temporary Session which warrant
21 more attention.

22
23 **Indictment** - Based on the facts in the Record, it's reasonable to question whether it was
24 prudent for this matter to have been addressed by a judicial indictment. This questioning
25 doesn't suggest the Appellant was faultless or suggest any assessment of his character as an
26 elder. *BCO* 39-3 rightly observes most members of the lower court have more personal
27 knowledge of an appellant than do the judges in the higher court.

28
29 Nonetheless, the SJC Decision reports the man met with the Temporary Session later on the
30 evening of the November 2 Session meeting (the meeting at which the behavior occurred that
31 eventually precipitated the indictment) and, he asserts in his Appeal, he apologized for his
32 earlier conduct - an assertion the Appellee has not challenged. In other words, it seems the
33 man offered an apology - of some sort - three weeks *prior to* the November 21 indictment.

34
35 There will be times when men speak or behave at a Session meeting in a way they regret soon
36 thereafter. I've done it; more than once. And at some point - hopefully soon thereafter - they
37 apologize. But even if some conflict results from it, a formal *BCO* 31-4 judicial indictment
38 will rarely be the most prudent remedy in such a scenario, or the best stewardship of the Lord's
39 time. The Temporary Session's choice to pursue a formal judicial path has probably now
40 consumed over 100 man-hours of attention from Presbytery members, well over 200 man-
41 hours of attention from SJC members, and has undoubtedly caused a great amount of stress
42 among brothers and sisters who were involved in that church at the time (not to mention the
43 Appellant).

44
45 Our *BCO* recommends sessions and presbyteries should often consider a non-trial path.

1 *BCO 31-7* When the prosecution is instituted by the court, the previous steps
2 required by our Lord in the case of personal offenses are not necessary. There
3 are *many* cases, however, in which it will *promote the interests of religion* to
4 send a committee to converse in a private manner with the offender, and
5 endeavor to bring him to a sense of his guilt, before instituting actual process.
6 (Emphasis added.)

7
8 The Record does not indicate that was done, or even seriously considered.

9
10 **Appellant's Request at Trial** - One of the grounds for appeal in *BCO 42-3* is the "refusal of
11 reasonable indulgence to a party on trial." The trial before the expanded Temporary Session
12 started after midnight - *at 1:00 am* - despite the Appellant's objection at that time. The Record
13 indicates there were earlier trials of others that same evening. But the Record doesn't indicate
14 time was of the essence for his trial, nor any other compelling reason why his request for a
15 continuance was denied. That denial *alone* is sufficient to sustain this Appeal. The trial court's
16 refusal of his very reasonable request was a clear error in a matter of discretion.

17
18 Finally, though not directly related, *BCO 42-12* stipulates: "*If an appellant manifests a*
19 *litigious or otherwise un-Christian spirit in the prosecution of his appeal, he shall receive a*
20 *suitable rebuke by the appellate court.*" Unfortunately, there isn't a parallel provision whereby
21 the SJC can rebuke a lower court for unfair procedures, or gross errors of judgment, or harmful
22 constitutional misinterpretations. When the SJC reverses or corrects a lower court's decision,
23 or rules an action is errant, the lower court usually suffers little consequence, especially when
24 compared to the appellant or complainant who, even though he may prevail in the ultimate
25 Decision, has often endured many months of hardship and, sometimes, even financial
26 consequences.¹

27
28 /s/ RE Howie Donahoe
29

¹ While it doesn't directly apply in this Case, *BCO 40-5* ("General Review & Control") gives a higher court the authority to "censure the delinquent court" when it finds the court is culpable of "an important delinquency or a grossly unconstitutional error." It's unfortunate *BCO 42-9* (Appeals) & *43-10* (Complaints) don't likewise give our higher courts that explicit authority. (The word "censure" in *BCO 40-5* is used in a broader sense than the four censures listed and described in *BCO 30* - "Church Censures.")

CASE 2019-01
COMPLAINT OF TE RHETT DODSON, ET AL.

vs.

OHIO PRESBYTERY

DECISION ON COMPLAINT

October 18, 2019

I. SUMMARY OF THE FACTS

Pre-2010 Mr. Travis Dougherty shared his writing on the Trinity with Pastor Kreg Bryan and a ruling elder from Grace PCA, in Hudson, Ohio. According to Mr. Dougherty neither raised concerns about his views, and both offered words of encouragement.

2010 TE Rhett Dodson was given a copy of Travis Dougherty’s self-published book *The Holy Trinity*. Mr. Dougherty, who was a member of the church before TE Dodson arrived, pointed out that the book contained certain things on which they would likely disagree. TE Dodson read the book and did disagree with what he called “a grave error, if not outright heresy.” However, TE Dodson chose not to pursue the issue, both because he could “detect no indication that he [Mr. Dougherty] was attempting to spread his error or recruit people to his position,” and because he hoped that he could minister to Mr. Dougherty and lead him to “revise or reform his position.”

2010 From 2010-2016, Mr. Dougherty was a member in good standing of Grace PCA. He was allowed to teach in the adult Sunday School program, including a class on the Trinity. Apparently, there were some “friendly conversations” between Mr. Dougherty and one or two ruling elders regarding the former’s views.

2015 Mr. Dougherty was nominated as a candidate for the office of Deacon.

08/16 Near the end of the period of officer training Mr. Dougherty submitted a 17-page paper outlining his exceptions to the Westminster Standards. One of his exceptions stated in part,

“In my view, God is the Father, Son, and Spirit, considered collectively. The Father is not the whole essence or God, but rather the essence is the Father, Son, and Spirit considered as a unity in light of generation and procession. God is one in the sense that Father, Son, and Spirit are united by way of eternal generation and procession, but manifold in the sense that God is Trinity, since there are 3 distinct Persons.” He went on to say “this implies that the Father, Son, and Spirit are ‘parts’ of the essence, since each one is assumed to not be the entire essence or Yahweh. My view would be akin to saying that a car engine can be 100% car, without being 100% of the car.”

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- 1
2 08/16/16 Mr. Dougherty was admonished at a Session meeting for his errors. He was told
3 that his error was serious and that Session wished him to engage in pastoral-
4 theological counseling to correct his errors. Whether this action was a formal
5 admonition under *BCO* 30-2 or a more “informal” admonition is not clear in the
6 Record.
7
8 09/28/16 The Session met with Mr. and Mrs. Dougherty to explain the process of counseling
9 it wished to pursue.
10
11 12/16 Over four-month period, TE Dodson met with Mr. Dougherty three times to
12 discuss the latter’s views and to seek to counsel him.
13
14 05/15/17 The Doughertys decided to begin attending a Reformed Baptist Church, both
15 because they felt awkward at Grace PC and because of a disagreement with
16 Session over how their son’s request for membership was handled.
17
18 07/17 Two ruling elders met with the Doughertys at their home. The meeting was
19 described as cordial, but during the meeting Mr. Dougherty expressed concern
20 about where things were heading.
21
22 08/17/17 Session charged Mr. Dougherty “with the sin of heresy in your denial of the
23 biblical doctrine of the Holy Trinity.” That letter, as contained in the trial transcript
24 (which is the only place it is contained in the Record), continued “We therefore
25 summon you to appear before the Session. And the summons was for October 5,
26 2017 to answer this charge.”
27
28 08/21/17 Mrs. Dougherty sent an e-mail to Session stating “I do not believe that each divine
29 Person is the whole essence (or God). It does not seem reasonable to me. I am
30 convinced the average evangelical Christian doesn’t think of God that way.”
31
32 10/07/17 Mrs. Dougherty, reflecting on a meeting with Session that apparently occurred on
33 10/05/17, responded to a request from TE Dodson that she reconsider the view set
34 forth in her 08/21/17 e-mail by reiterating her position.
35
36 11/02/17 Session admonished Mrs. Dougherty and warned her about the danger of
37 embracing these views. Again, the Record is not clear as to whether this was a
38 “formal” admonition.
39
40 01/20/18 Session conducted the trial of Mr. and Mrs. Dougherty. Included in the trial
41 transcript is the text of a letter to Mrs. Dougherty, which is undated, charging her
42 “with the sin of heresy for making the following statements. I do not believe that
43 each divine person is the whole essence for God. I do not believe that each person
44 by themselves, is the whole God. I agree with my husband in the opinion that an
45 infinite and divine person does not have to be the whole God in order to be wholly

1 God.” [Note: Punctuation and lack of quotation marks reflects the original
2 transcript.] The letter also states, “we therefore summon you to appear before the
3 Session on December 7, 2017.”
4

5 01/20/18 During the trial TE Dodson was the Prosecutor, TE Mark Bell was invited by
6 Session to moderate, the three ruling elder members of Session served as judges,
7 and the Doughertys defended themselves. The Doughertys pled “not guilty.” The
8 Prosecutor presented as evidence the 17-page exception document prepared by Mr.
9 Dougherty and the two e-mails from Mrs. Dougherty. He also called TE Scott
10 Cook (ARP) and TE Deryck Barson (Philadelphia Presbytery), both of whom
11 testified regarding the erroneous doctrinal issues raised in the written exhibits and
12 the implications of those views. The Doughertys called TE Mike Waters, Pastor
13 at Heritage Reformed Baptist Church (the church the Doughertys were attending).
14 TE Waters affirmed the serious problems with the Doughertys’ views, but urged
15 that Session would “judge the Doughertys shy of un-Christianing them... and thus
16 viewing these people or that person as non-Christians, and thus would no longer
17 be welcome in any orthodox church.” TE Waters asked, on behalf of the elders of
18 Heritage Reformed Baptist Church, that the Session of Grace PC “allow [the
19 Doughertys] to become formally here soon [*sic*] under the oversight and care of
20 our assembly.” TE Waters also asserted that the Doughertys had not spread their
21 views or tried to “get a following” (either at Grace PC or Heritage RBC), were
22 willing to be taught, and “understand that they need to be open and pliable and
23 humble in being instructed.” Two of the ruling elders asked TE Waters about Mr.
24 Dougherty having written in his paper that he would “continue to write,” whether
25 Mr. Dougherty would “denounce the book he wrote,” and whether TE Waters’
26 church would allow him to continue to write on the Trinity. TE Waters stated, “I
27 allow our members to have some liberties.” He went on to state that he would
28 certainly caution Mr. Dougherty to study the issue more and “to move away from”
29 his views. He said Mr. Dougherty would have to answer for himself whether he
30 intended to continue to write on the Trinity.
31

32 TE Dodson’s introductory closing argument focused entirely on the Doughertys’
33 doctrinal errors, particularly that “they do not understand the difference between
34 essence and person” and they “have a beef with the doctrine of perichoresis,” and
35 on the implications of those errors.
36

37 Mrs. Dougherty read the closing statement for the defendants. She asserted
38

39 Currently there is no writing of Travis Dougherty that is available for
40 view of public on the record anywhere. There is no book currently
41 published on his view of the Trinity. At present, for the record, his plan
42 is to keep it that way. If he does at some point down the road decide to
43 publish something or write something formally, he would absolutely
44 discuss it with Pastor Mike Waters, or whoever it was that would be
45 shepherding over us at the time. Because he would not take that step

1 without authoritative oversight, of course. So currently, there is no
2 threat right now at this point in our family and in our current situation
3 for a writing to ever be published. Obviously, we all have things we say
4 we'd like to do someday, but whether that be that we'll ever get to those
5 or not, it just depends on the time.

6 So, for the record, his plan right now is to keep things the way that
7 they are. There is nothing published on the Trinity on his position
8 formally, and there is no plan to do so in the current season of our lives.
9 Any decision to do that at that time down the road in the future, he
10 would, obviously, seek the wisdom of the shepherd over oversight of
11 our family.”

12
13 She then went on to say:

14
15 ...we have been willing to discuss and learn over the course of the last
16 year and a half, when this first was brought to the attention of the
17 church. This was the summer of 2016. We continued to stay at this
18 church until May 2017. We were willing to begin upon reeducation
19 with the Session, with Pastor Rhett. It appeared to both my husband
20 and myself that there was an unwillingness to prioritize possible
21 discussion and interactions, and it was sporadic in the scheduling of
22 meetings. There were only a few meetings held between my husband
23 and Pastor Rhett Dodson over the course of nearly 10 months.

24
25 Mrs. Dougherty then summarized the doctrines of the Trinity that she and her
26 husband affirm, and she restated and defended their particular views. She stated,

27
28 In short, it is our view that the biblical material can be more readily
29 explained, both logically and exegetically, apart from the perichoretic
30 doctrine. Accordingly, we believe that God, that is, the essence, exists
31 as the natural, interdependent unity of the three infinite, divine persons.
32 The three persons have a singularity of will and attribute because they
33 are eternally, perpetually, indivisibly united as one God through
34 generation and procession.

35
36 She also asserted that “partialism” does not show up on a Wikipedia list of heresies
37 on the Trinity and stated,

38
39 If partialism is understood to imply that each person is only partly God,
40 then we deny the charge, as we have consistently affirmed that each
41 person is 100% God, fully God. We believe a person can be 100% God
42 without being 100% of God, wholly God without being the whole of
43 God.

1 The remainder of her closing statement was an argument that their view, if
2 incorrect, “is not a serious enough offense to merit excommunication.” This was
3 based on the assertion that their views were reasonable, that they were not
4 contumacious (which they defined as “stubborn resistance to authority”) as
5 demonstrated by their interactions with Session, and that they had “never tried to
6 persuade any member of Grace PCA of their opinion regarding the perichoresis.”
7

8 TE Dodson concluded his closing argument by reiterating that the Doughertys’
9 views are clearly heretical. He stated,

10
11 This is not heresy with a small ‘h.’ It is gross. It is catastrophic error,
12 because it redefines God. A person can go through the steps of the court
13 process, but if they are found guilty of heresy, this court has no other
14 choice but to follow the path of excommunication.
15

16 He went on to say,

17
18 The Doughertys are not only guilty of egregious heresy, but they are, as
19 a result, in violation of their membership vows. With their view of God,
20 they can no longer say that they receive and rest upon Christ as he is
21 offered in the gospel, because the Jesus they espouse is not the Jesus
22 Christ of the New Testament. I want to be extremely clear about that.
23 The Son, if he is not 100% of Yahweh, cannot be the full, divine
24 essence.
25

26 He added,

27
28 Their views are, therefore, injurious to their souls. This cannot be a light
29 matter. It boggles my mind that another Christian church would see
30 someone denying something as clear and absolute as paragraph three of
31 the second London Baptist Confession, which, as has been pointed out,
32 is even clearer than the Westminster Confession. That the three persons
33 are “of one substance, power and eternity, each having the whole divine
34 essence, yet the essence undivided.” With that core doctrine of God
35 being denied, yet they would willingly accept them into membership as
36 Christians. It boggles my mind.
37

38 01/20/18 The Session unanimously found the Doughertys guilty. In their comments all three
39 ruling elders mentioned them being guilty of heresy. One member of Session
40 stated explicitly that he believed them to be guilty of “being incorrigible and
41 contumacy.” Following the vote, the Moderator stated “And the censure that the
42 Session is then putting on for this case, I understand, would be excommunication
43 because of the nature of the guilty plea. Is that correct?” Two of the ruling elders
44 are recorded as saying “Yes.” A motion was then passed to “perform the censure.”

1 The Moderator then imposed the censure using the formula that is bolded in *BCO*
2 36-6.

3
4 02/16/18 The Doughertys filed with Presbytery a “Request for a Special Commission” that
5 includes a letter of appeal. The letter makes clear that the Doughertys were not
6 appealing the guilty verdict, only the censure that was imposed on them.

7
8 04/09/18 The Executive Committee of Presbytery found the Appeal administratively in
9 order and recommended Presbytery establish a commission under *BCO* 42-8.

10
11 05/05/18 Ohio Presbytery approved the formation of the Judicial Commission, with TE
12 Scott Wright as Chairman, and consisting of at least two teaching elders and two
13 ruling elders. TE Wright was appointed by the Moderator to fill the seats on the
14 Commission and report back to Presbytery. Later in the meeting the four other
15 members of the Commission were reported to Presbytery.

16
17 05/23/18 The Judicial Commission held its first meeting.

18
19 06/26/18 The Judicial Commission held its second meeting.

20
21 08/23/18 The Judicial Commission conducted a hearing on the Appeal.

22
23 09/05/18 The Judicial Commission approved its final report. The report contained three
24 judgments relating to the issue “Did Grace Session act properly in
25 excommunicating Travis and Sherylyn Dougherty?”

26
27 **Judgment**

28
29 1. **No.** The commission finds that Grace Session **did not act properly** in
30 excommunicating Travis and Sherylyn Dougherty, so it **does not**
31 **sustain** the censure of excommunication inflicted by Grace Session.

32
33 2. This commission **reverses** the decision of Grace Session to
34 excommunicate the Doughertys.

35
36 3. This commission **instructs** Grace Session to transfer the Doughertys to
37 Heritage Reformed Baptist Church per the request of both the
38 Doughertys themselves and Rev. Mike Waters, pastor of Heritage
39 Reformed Baptist Church. This is the church the Doughertys have
40 attended for the past year. This commission **further instructs** Grace
41 Session to notify the leadership of Heritage Reformed Baptist Church
42 about the Doughertys’ conviction of heresy so that the elders of that
43 church may seek to extend pastoral care and theological education to the
44 Doughertys. [Emphasis original.]

- 1 10/06/18 Presbytery approved the action of Judicial Commission by a vote of 20-4.
2
3 10/10/18 The Clerk of Presbytery delivered the judgment to the parties.
4
5 10/29/18 The Grace PC Session filed a Complaint with the Stated Clerk of Presbytery
6 against Presbytery’s action in reversing the censure of excommunication that
7 had been inflicted on the Doughertys.
8
9 02/02/19 Ohio Presbytery denied Complaint of Grace PC Session by a vote of 12-6.
10
11 02/07/19 The Session carried their Complaint to the General Assembly.
12
13 06/06/19 The Panel of the SJC, consisting of TE David Coffin (chairman), TE Paul
14 Kooistra, RE Frederick Neikirk, and alternates TE Charles McGowan and RE
15 E.J. Nusbaum held a hearing on the Complaint. TE Dominic Aquila and RE
16 Rhett Dodson spoke for the Complainants. TE Scott Wright served as the
17 Respondent's Representative.
18

19 **II. STATEMENT OF THE ISSUES**

- 20
21 1. Did Ohio Presbytery err in its Judgment 1 by incorrectly interpreting and applying
22 *BCO 27-5* and *33-2* when they reversed the censure of excommunication against
23 Travis and Sherylyn Dougherty?
24
25 2. Did Ohio Presbytery err in Judgments 1 and 2 in finding the censure of
26 excommunication to be too severe in this case, and thus in not exhibiting great
27 deference to the actions of Session (*BCO 39-3(3); 42-3*)?
28
29 3. Did Ohio Presbytery err in Judgment 3 by failing to impose another censure or
30 instructing the Grace PC Session to impose another censure, and when it instructed the
31 Grace PC Session to transfer the Doughertys to another church, thus resulting in no
32 censure being imposed on the Doughertys?
33

34 **III. JUDGMENT**

- 35
36 1. Yes, Presbytery erred in concluding that the *Book of Church Order* requires that
37 indefinite suspension must precede excommunication.
38
39 2. No.
40
41 3. Yes, Presbytery erred in overturning the censure of excommunication without either
42 imposing a new censure or remanding the matter to the Session for the imposition of
43 a new censure, and Presbytery erred by exceeding its power when it acted to instruct
44 Session to transfer the Doughertys to another church.

1 **IV. REASONING AND OPINION**

2
3 **Judgment 1**

4
5 Presbytery asserts that *BCO* 27-5(d) and 33-2 require that one must be suspended from the
6 sacraments before they can be excommunicated, particularly in a case of contumacy.
7 Presbytery asserts that the words “must” and “and” in 27-5(d) indicate that the censures must
8 be imposed in the order indicated in that section. In other words, a court must impose
9 suspension prior to imposing excommunication and deposition. Presbytery further argues that
10 33-2, with its cross-reference to 32-6, requires that the censure for contumacy be suspension
11 from the sacraments.

12
13 We find both these arguments to be unpersuasive. If 27-5(d) must be read as requiring that
14 the censures must always be imposed in the order listed, then in every case the first censure
15 that would have to be applied would be admonition. But admonition, by definition, is applied
16 only to one who is deemed to be penitent (see 30-1) and thus admonition could not logically
17 be required to precede either indefinite suspension or excommunication (which are to be
18 applied only to the impenitent). This fact, alone, must lead us to conclude that the list in 27-
19 5(d) is not intended to mandate the order in which the censures are to be applied.

20
21 Even if there were a requirement in 27-5(d) that the censure be imposed in the order given, it
22 seems that the whole of 27-5 has in view primarily “personal offenses” (see *BCO* 29). This
23 is particularly reflected in “step b” which asserts the Biblical mandate that individuals are
24 responsible to “admonish” one another. Clearly this is not admonition in the sense of *BCO*
25 30-2 because, in the flow of 27-5(a-d), no court is involved in “step b.” In other words, what
26 is front and center in *BCO* 27-5 is the flow of process when individuals find themselves
27 aggrieved. This cannot be determinative for cases involving “general offenses.” *BCO* 31-7
28 is explicit that “if the prosecution is instituted by the court, the previous steps required by our
29 Lord in the case of personal offenses are not necessary.” Thus, the requirement of the flow of
30 steps for discipline involving “personal offenses,” including any order in which censures must
31 be imposed, cannot be taken as mandatory for cases involving “general offenses,” such as the
32 heresy charge that is at the heart of 2019-01 (see *BCO* 29-3).

33
34 Finally, the requirement of *BCO* 33-2 that when one is found contumacious “he shall be
35 immediately suspended from the sacraments” contains, as Presbytery notes, a cross-reference
36 to *BCO* 32-6. But 32-6 is dealing with the very specific situation in which one has
37 demonstrated himself to be contumacious by refusing to obey a citation or by refusing to
38 plead. Unless one is going to argue that 32-6 contains the only examples of what it means to
39 be contumacious, a reference to the censure to be imposed in the case of a very particular
40 manifestation of contumacy cannot be taken as determinative for what censure must follow
41 for any contumacious behavior.

42
43 In sum, Presbytery incorrectly interpreted the PCA Constitution when it concluded the Session
44 erred, as a matter of Constitutional Law (*BCO* 39-3(4)), by imposing on the Doughertys the
45 censure of excommunication without first imposing the censure of indefinite suspension.

1 **Judgment 2**

2
3 *BCO* 30-4 states “Excommunication is the excision of an offender from the communion of the
4 Church. This censure is to be inflicted only on account of gross crime or heresy and when the
5 offender shows himself incorrigible and contumacious.”

6
7 Session concluded the Doughertys’ views constituted heresy, and Presbytery acknowledged
8 that assessment. Presbytery did not, however, agree with the assessment that the Record
9 showed that the Doughertys were contumacious, an element that must be present for the
10 censure of excommunication to be appropriate (*BCO* 30-4). We conclude that Presbytery was
11 correct and within its rights in making this assessment.

12
13 The finding of contumacy as a basis for excommunication requires separate evidence in the
14 Record at or before the point at which the decision is made to excommunicate the individual.
15 Such evidence could take the form of a showing of the individual’s unwillingness to
16 participate in the disciplinary process as set forth in *BCO* 32-6. It could take the form of a
17 separate charge, that would have to be voted on separately, filed either with the charge of
18 heresy or at a later date (as, for example, in *BCO* 30-3, paragraph 4). Conceivably, it could
19 even take the form of evidence introduced in the Record during the trial on the heresy charge,
20 so long as it was clear that the point of the particular evidence was to demonstrate a pattern of
21 contumacious behavior.

22
23 None of those elements was present in this case. The Doughertys clearly participated in the
24 process. There was no separate charge of contumacy leveled against them. Most importantly,
25 there is no evidence in the trial record of the Doughertys’ contumacious behavior. The entirety
26 of the Prosecution’s evidence, whether in exhibits, witnesses, or opening and closing
27 statements, focused only on the nature of the heresy. Contrast this with the clear statements
28 of the defense witness that the Doughertys were not and had not been spreading their views,
29 were willing to be taught, and that they “understand that they need to be open and pliable and
30 humble in being instructed,” and with the Doughertys’ repeated statements that they were
31 willing to continue counseling, that they respect the authority of church leaders, and that they
32 did not plan to take any steps to spread their views.

33
34 Now it is certainly possible that the defense statements were not accurate, but that would
35 require a demonstration in the Record. The Prosecution never rebutted or presented evidence
36 against the Defense’s statements. Indeed, the closest thing to a rebuttal was two ruling elders’
37 characterization of what Mr. Dougherty said in his “exception paper,” about “continuing to
38 write” (which characterizations were vague paraphrases that may not accurately convey Mr.
39 Dougherty’s points), questions from those two ruling elders to TE Waters (which are just that
40 - questions, not evidence), and a statement from one member of Session during the 32-15(5)
41 “roll call” phase of the proceedings that “I don’t see that we have other choice but to find them
42 guilty of partialism and heresy. And may I say, being incorrigible and contumacy” (but a
43 statement of a judge is not evidence - it would still require an evidentiary base).

1 In their response to the Doughertys’ appeal Session argued that the Doughertys were
2 contumacious because they “walked away from the counsel of the Church” by going to
3 another church, that they were contumacious in removing themselves to another church and
4 making it clear that they would not return to Grace PC, and by “continuing in their unbelief
5 with no signs of reconsidering or holding open the possibility they could be wrong.” But, the
6 Prosecution did not present any evidence in the trial to support these claims and, as Presbytery
7 notes, the Doughertys were in good standing at the time they began to attend another church,
8 they stated repeatedly during the trial that they were willing to continue to meet with Session
9 (or with the Pastor at Heritage Reformed Baptist Church) for ongoing counseling, and they
10 stated repeatedly that they were open to being persuaded they were wrong.

11
12 Session further argued in their response to the appeal that “since being convicted of this soul-
13 destroying heresy six month ago, the Doughertys have given no indication that we are aware
14 of that they are willing to repent of or even reconsider their position. We believe this is further
15 proof of their incorrigibility.” But what happened in the six months after the trial cannot be a
16 basis for the imposition of the censure of excommunication at the trial.

17
18 We affirm that the Presbytery was obligated to exhibit great deference to the Session with
19 regard to factual matters and even with regard to the appropriate censure to impose after a
20 disciplinary trial. (*BCO* 39-3(2,3)) But “great deference” is not the same as “complete
21 deference.” Indeed, “mistake or injustice in the judgment and censure” is one of the grounds
22 for appeal specified in *BCO* 42-3. In the Panel hearing Complainants affirmed that the higher
23 court must be able to review a finding of contumacy. At the same time, they argued Presbytery
24 should have acceded to the Session’s decision because the members of Session must have
25 been aware of things that demonstrated the Doughertys’ contumacy, and that there were things
26 that had transpired with regard to the Doughertys that were not recorded in the minutes of
27 Session (none of which were in the Record, in any case). But to accept that logic would make
28 it impossible for a higher court ever to review, much less overturn for reasons of injustice, the
29 decision of a lower court regarding a finding of contumacy.

30
31 We further note that Complainant’s view at this point seems fundamentally unfair to
32 defendants. How could one ever defend against a finding of contumacy when not charged
33 with contumacy and when no evidence was presented that the defense could either accept or
34 seek to rebut? How could the cross-examination required by *BCO* 32-13 ever happen?

35
36 Had the Session presented in the Record at trial evidence for the Doughertys’ contumacy
37 Presbytery’s responsibility to defer to the judgment of the lower court would have been much
38 higher. But no such evidence was presented at the trial. The entire focus of the Prosecution
39 was on the nature and implications of the Doughertys’ heretical views. To say that one can
40 be excommunicated even for clearly heretical views on the Trinity without also providing a
41 showing of contumacy is to vitiate the second finding that has been required for
42 excommunication from our Communion since at least 1879, that being that “the offender
43 shows himself incorrigible and contumacious.” (For the history of this requirement see the
44 material on *BCO* 30-4 on the PCA Historical Center’s web site.)

1 Finally, Session’s responsibility to make sure that there is clear evidence of contumacy in the
2 record prior to the imposition of the censure of excommunication should be especially acute
3 given that this action by Session will put the guilty party out of the visible church and will
4 declare that person’s testimony to be incredible. Indeed, without a requirement of an
5 evidentiary base for a finding of contumacy it could fairly be concluded that a Session could
6 excommunicate anyone deemed to have a deficient view of the Trinity and who could not, in
7 whatever time limit Session set, be persuaded to see the asserted error.

8
9 In sum, given the lack of evidence in the trial record to support a finding of contumacy, we
10 conclude Presbytery was within its rights in concluding that the censure of excommunication
11 was too severe in this case, and that, in so doing, Presbytery did not violate its *BCO* 39-3(2,3)
12 responsibility to give great deference to the findings and actions of Session.

13 **Judgment 3**

14
15
16 *BCO* 27-5, 30-1, and 36-1,2 all make it clear that when one is found guilty of an offense (see
17 *BCO* 29-1) a proper censure must be imposed. The Doughertys were found guilty of heresy
18 in holding views contrary to the Word of God and the *Westminster Confession of Faith and*
19 *Catechisms* that are “accepted by the Presbyterian Church in America as standard expositions
20 of the teaching of Scripture in relation to both faith and practice.” (*BCO* 29-1) As such, it was
21 required that they receive some appropriate censure.

22
23 When Presbytery acted to remove the censure of excommunication it left the unrepentant,
24 guilty parties with no censure whatsoever. This is particularly egregious in that the
25 Doughertys did not appeal their conviction, only the censure. As such, once Presbytery
26 determined that the censure of excommunication was too severe it was obligated either to
27 “render the decision that should have been rendered” with regard to the censure to be imposed
28 or to remand the matter back to the Session of Grace PC with instructions that it impose a
29 new, appropriate, censure. (see *BCO* 42-9) In failing to do this Presbytery committed a clear
30 Constitutional error. Indeed, it would seem that the *de facto* effect of Presbytery’s action was
31 either to declare the Doughertys not to be guilty or to find that they were penitent. Neither of
32 these determinations was within the purview of Presbytery, the former because there was no
33 appeal from the guilty verdict and the latter because it would violate *BCO* 39-3(2,3) (*cf.*, 11-
34 4). Further, by eliminating any censure, Presbytery removed the requirement that the
35 Doughertys demonstrate their repentance, if or when they come to that understanding, to the
36 court that censured them. (*BCO* 36-5,6; 37-2,3,4; *cf.*, 11-4)

37
38 In addition, Presbytery erred by “instructing” (mandating) that Session transfer the
39 Doughertys to Heritage Reformed Baptist Church. Nothing in the powers of Presbytery (*BCO*
40 13-9) gives any evidence that Presbytery has any right to mandate that a Session transfer
41 members to any particular church. In fact, *BCO* 46-1, 2, 3 make it clear that the responsibility
42 to issue letters of transfer for members of a particular Congregation rests with the Session of
43 that Church. As such, Presbytery could involve itself in a decision of whether or not a member
44 of a particular church should be transferred only if such a question were clearly raised in a
45 successful appeal or a complaint. That was not the case here.

1 Presbytery argued that its decision was “irregular,” but would best honor Christ and advance
2 the spiritual welfare of the Dougherty family. Presbytery may or may not have been right in
3 this assessment, and we appreciate their concern for the family and the honor of Christ, but
4 their action clearly exceeded their authority and their *BCO* 39-3 responsibility to defer to the
5 lower court, particularly given that the question of transfer was not raised in the appeal. Had
6 Presbytery desired to urge the Session to transfer the Doughertys it had every right to offer
7 that advice. To mandate it, however, was clear error.

8
9 Thus, in failing to ensure that an appropriate censure was imposed on the Doughertys and in
10 exceeding its authority by instructing the Session to transfer the Doughertys the Ohio
11 Presbytery was in error.

12
13 At the Panel hearing the Complainant and Respondent asserted that it was “common
14 knowledge” that the Doughertys were received by the Heritage Reformed Baptist Church “by
15 reaffirmation.” Since the Doughertys have left the PCA and are members of another church,
16 any further proceedings in this matter are moot.

17
18 The Panel's Proposed Decision was drafted by RE Neikirk based on input from all members
19 of the Panel, and it was edited and approved by all members of the Panel. The Reasoning was
20 further revised by the SJC, and then the SJC approved the Decision by a vote of 20-0, with
21 two absent and two disqualified.

23	Bankson	<i>Disqualified</i>	Duncan, M.	<i>Concur</i>	Neikirk	<i>Concur</i>
24	Bise	<i>Concur</i>	Duncan, S.	<i>Concur</i>	Nusbaum	<i>Concur</i>
25	Cannata	<i>Concur</i>	Ellis	<i>Concur</i>	Pickering	<i>Concur</i>
26	Carrell	<i>Concur</i>	Greco	<i>Concur</i>	Ross	<i>Concur</i>
27	Chapell	<i>Absent</i>	Kooistra	<i>Absent</i>	Terrell	<i>Concur</i>
28	Coffin	<i>Concur</i>	Lee	<i>Concur</i>	Waters	<i>Disqualified</i>
29	Donahoe	<i>Concur</i>	Lucas	<i>Concur</i>	White	<i>Concur</i>
30	Dowling	<i>Concur</i>	McGowan	<i>Concur</i>	Wilson	<i>Concur</i>

31
32 TE Bankson disqualified himself, stating he is familiar with the issues and a friend of the
33 Complainant. TE Waters disqualified himself, stating he has an employment-related
34 professional relationship with the Complainant. *OMSJC* 2.10(d).

35
36
37 **Concurring Opinion**

38 ***Case 2019-01: Complaint of TE Rhett Dodson et al. v. Ohio Presbytery***
39 **RE Howie Donahoe**

40
41 I concurred with the Decision in this Case, but believe clarification is needed on two
42 paragraphs in the Reasoning, as well as some comment on the indictment itself.

43
44 [continued on next page]

1 **Personal v. General Offenses**

2
3 [Excerpt from Decision's Reasoning] In other words, what is front and center in
4 *BCO 27-5* is the flow of process when individuals find themselves aggrieved. This
5 cannot be determinative for cases involving “general offenses.” *BCO 31-7* is
6 explicit that “if the prosecution is instituted by the court, the previous steps required
7 by our Lord in the case of personal offenses are not necessary.” Thus, the
8 requirement of the flow of steps for discipline involving “personal offenses,”
9 including any order in which censures must be imposed, *cannot be taken as*
10 *mandatory for cases involving “general offenses,”* such as the heresy charge that
11 is at the heart of 2019-01 (see *BCO 29-3*). [Emphasis added]

12
13 Just to clarify, the list of censures in *BCO 27-5.d* is not a mandatory sequence for *any*
14 offenses - general, *or* personal.

15
16 **Judging Contumacy**

17
18 [Excerpt from Decision's Reasoning] The finding of contumacy as a basis for
19 excommunication requires separate evidence in the Record at or before the point at
20 which the decision is made to excommunicate the individual. Such evidence could
21 take the form of a showing of the individual’s unwillingness to participate in the
22 disciplinary process as set forth in *BCO 32-6*. It could take the form of a separate
23 charge, that would have to be voted on separately, filed either with the charge of
24 heresy or at a later date (as, for example, in *BCO 30-3*, paragraph 4). Conceivably,
25 it could even take the form of evidence introduced in the Record during the trial on
26 the heresy charge, so long as it was clear that the point of the particular evidence
27 was to demonstrate a pattern of contumacious behavior.

28
29 While I agree the *finding* of contumacy is a separate matter from the finding of guilt on the
30 original charge, this paragraph in the Decision seems to assert a finding of contumacy must
31 be reached through judicial process. I don't find the *BCO* supports that assertion. Granted,
32 such a finding requires a separate action, but in some instances, that could simply be in the
33 form of a motion to increase the censure that was imposed after the original conviction, based
34 on conduct that now "manifestly" warrants the increase.

35
36 *BCO 30-3*, §4: Indefinite suspension is administered to the impenitent offender
37 until he exhibits signs of repentance, or until by his conduct, the necessity of the
38 greatest censure be made manifest. ...

39
40 After someone is convicted and censured, the burden shifts to them to *demonstrate* repentance.
41 While the court should be patient for repentance, the court is not required to judicially *prove*
42 lack of repentance in order to increase the censure. Below is an excerpt regarding
43 excommunication (with emphasis added).

44
45 *BCO 36-6*. ... The [moderator] shall then administer the censure in the words following:

1 Whereas, _____, a member of this church has been by sufficient proof
2 convicted of the sin of _____, and after much admonition and prayer,
3 obstinately refuses to hear the Church, and *has manifested no evidence of*
4 *repentance*: Therefore, in the name and by the authority of the Lord Jesus
5 Christ, we, the Session of _____ Church do pronounce him to be excluded
6 from the Sacraments, and cut off from the fellowship of the Church.²

7
8 If a separate charge is always required, then many excommunications would require *two trials*,
9 because a convicted person will likely also plead "not guilty" to a subsequent contumacy
10 charge. And it might be difficult to convict a defendant of contumacy as a separate charge at
11 the original trial because (1) he appeared at the arraignment and the trial, and (2) he has not
12 yet exhausted his appeal rights. In other words, if he appeals, he isn't obliged to "submit" to
13 the verdict or censure of the trial court until the highest court has rendered a decision. Trial
14 court judgments and censures are suspended during the course of an appeal.

15
16 But if there is no appeal of the censure of indefinite suspension on an impenitent offender, the
17 original censuring court can, after a reasonable amount of time, render a non-trial judgment
18 on whether the suspended person has repented, and if he has not, that court can increase the
19 censure by motion and vote.

20 21 **Indictments for Theology of Lay Members**

22
23 I'm not persuaded the Session exhibited sound judgment in indicting and conducting a
24 trial. The Record doesn't indicate the defendants were "industriously spreading" their view.
25 Witness testimony demonstrates otherwise in the trial transcript. Furthermore, there's a
26 significant difference between a court's oversight of the views of a lay person vs. the views of
27 an elder, teacher, or preacher. And even with regard to ministers, *BCO* 34-5 stipulates:

28
29 Heresy and schism may be of such a nature as to warrant deposition; but errors
30 ought to be carefully considered, whether they strike at the vitals of religion and
31 are industriously spread, or whether they arise from the weakness of the human
32 understanding and are not likely to do much injury." [*BCO* Chapter 34: "Special
33 Rules Pertaining to Process Against a Minister"]

34
35 For example, there are often member parents in PCA churches who decline to have their
36 babies baptized. And this is known to many others in the congregation, most notably, the
37 Session.³ Thus, it's not a *private* offense. And yet, even though *WCF* 28:5 teaches: "... it is a
38 *great sin* to contemn or neglect this ordinance" of baptism,⁴ I don't recall ever hearing of a
39 judicial case where a formal judicial indictment was brought against such parents. Those
40 situations are usually best addressed by patient and clear teaching (*BCO* 27.5.a) - especially

² See also *BCO* 16-1, 19-16.c, 37-3, 37-4, 37-5 and 42-12.

³ *BCO* 12-5: "The church Session is charged with maintaining the spiritual government of the church, for which purpose it has power: (a) to see that parents do not neglect to present their children for Baptism;"

⁴ See article by Jonathan D. Moore, (Ph.D., Cambridge) - "*The Westminster Confession of Faith and the Sin of Neglecting Baptism*," *Westminster Theological Journal*, (WTJ 69:1, Spring 2007, pp. 63-86).

1 during public infant baptisms (*BCO* 56-4). Teaching parents and the congregation on this
2 topic will often require book referrals, pastoral counsel, gentle admonition (*BCO* 27-5.b),
3 regular encouragements to consider the promises of the covenant, etc.⁵ All parents should be
4 reminded, as the *BCO* states, that covenant children "are federally holy *before* Baptism, and
5 *therefore* are they baptized." (*BCO* 56-4.h. Emphasis added).⁶

6
7 /s/ RE Howie Donahoe

8
9
10 **CASE 2019-02**
11 ***TE DANIEL SCHROCK, ET AL.***
12 **vs.**
13 ***PHILADELPHIA PRESBYTERY***

14
15 **DECISION ON COMPLAINT**
16 **October 18, 2019**

17
18 **I. SUMMARY OF THE FACTS**

- 19
20 06/24/18 On June 24, 2018, the congregation of New Life Philadelphia (PCA) voted to call
21 TE Larry Smith as senior pastor.
22
23 08/29/18 TE Smith was examined by the Credentials Committee of Philadelphia Presbytery.
24 The Committee voted not to recommend that TE Smith be examined on the floor
25 of Presbytery because it judged that TE Smith's views regarding the continuation
26 of the spiritual gifts of prophecy and tongues beyond the Apostolic era and the
27 closing of the canon amounted to exception of substance to WCF 1.1 which is out
28 of accord with the fundamentals of the system because it is hostile to the system.
29
30 09/05/18 The Presbytery Coordinating Committee requested that Mr. Smith provide a
31 written statement outlining his views of the continuation of the gifts of prophecy
32 and tongues.
33
34 09/15/18 TE Smith was examined on the floor of Presbytery. Members of Presbytery
35 questioned Mr. Smith further on his views on the gifts of tongues and prophecy he
36 presented in his written statement and his oral examination.

⁵ *BCO* 27-4 ... In this it acts the part of a tender mother, correcting her children for their good, that every one of them may be presented faultless in the day of the Lord Jesus.

⁶ I remember Dr. Will Barker relaying a story: "I was always impressed at Covenant Church St. Louis when I was a seminary student. I was in the choir loft behind the pulpit area. And when there would be an infant baptized, professor R. Laird Harris, a former moderator of our Assembly, would sit about the second pew and my line of vision was right across the baptismal font to where Dr. Harris was seated. And I was always interested to see how intently he watched what was happening in that - - that ceremony. And I was realizing Laird Harris believes God is doing something right at that moment with that child. And it struck me."

1 09/15/18 There was a motion that the candidate's views regarding the continuation of the
2 spiritual gifts of prophecy and tongues beyond the Apostolic era and closing of the
3 canon amounted to an exception of substance to WCF 1.1 which is out of accord
4 with the fundamentals of the system because it is hostile to the system. The motion
5 failed 17-22.
6

7 09/15/18 TE Smith's theological exam was approved by a vote of 23-15. TE Smith's
8 examinations were approved in an omnibus by a majority vote. Two exceptions of
9 TE Smith, regarding WCF 4.1 and 21.8 were approved as being more than
10 semantic, but not striking at the vitals of religion. No motion was approved
11 regarding the approval of or categorization of TE Smith's views on the
12 continuation of the gifts of prophecy and tongues.
13

14 11/12/18 TE Daniel Schrock, et al., filed a Complaint against the action of Philadelphia
15 Presbytery "in approving TE Smith's examination, and by failing to determine and
16 record the nature of TE Smith's stated difference as either an allowable or
17 unallowable exception as required by *BCO* 21-4e, f. and *RAO* 16-3.e.5, Presbytery
18 was required to judge "the stated difference(s) to be "out of accord," that is, "hostile
19 to the system" or "strik[ing] at the vitals of religion" (*BCO* 21-4)."
20

21 01/19/19 Philadelphia Presbytery denied the Complaint of November 12, 2018.
22

23 01/24/19 TE Schrock, et al., carried their Complaint to the General Assembly.
24

25 06/04/19 The Panel of the SJC, consisting of RE John Pickering (Chairman), TE Fred Greco
26 (Secretary), RE Bruce Terrell, RE Steve Dowling (alternate), and TE Guy Waters
27 (alternate) held a hearing on the Complaint.
28

29 **II. STATEMENT OF THE ISSUE**

31 Did Philadelphia Presbytery err by failing to judge and record the nature of TE Smith's
32 views on the continuation of the spiritual gifts of prophecy and tongues beyond the
33 Apostolic era, as required by *BCO* 13-6, 21-4e, f. and *RAO* 16-3.e.5
34

35 **III. JUDGMENT**

37 Yes, and this matter is remanded to Philadelphia Presbytery for action consistent with
38 this Decision.
39

40 **IV. REASONING AND OPINION**

41
42 When a minister seeks admission to a PCA Presbytery from another denomination, the *BCO*
43 requires that the Presbytery examine the minister "thoroughly in knowledge and views as
44 required by *BCO* 21-4 and require them to answer in the affirmative the questions put to
45 candidates at their ordination." (*BCO* 13-6). The Presbytery is also to require ministers coming

1 from another denomination to “state the specific instances in which they may differ with the
2 Confession of Faith and Catechisms in any of their statements and/or propositions, which
3 differences the court shall judge in accordance with *BCO* 21-4 (see *BCO* 21-4.e,f).”
4

5 The process by which a Presbytery is to judge any differences that a minister transferring from
6 another denomination has with the Confession of Faith and Catechisms is set forth in the Rules
7 of Assembly Operations (*RAO* 16-3.e.5). Not only is the minister to state the specific instances
8 in which he may differ from the Standards, but the Presbytery minutes are to record the
9 minister’s stated differences in his own words. The Presbytery is then to categorize the nature
10 of the difference as either no difference, merely semantic, more than semantic but not out of
11 accord with any fundamental of our system of doctrine, or out of accord (that is, hostile to the
12 system or striking at the vitals of religion. (*RAO* 16.3.e.5.a-d.) The purpose of the *RAO*
13 provision is more than mere record keeping. The requirement to include the judgment of the
14 Presbytery on these matters in its minutes presupposes that the Presbytery is to take action on
15 any differences a transferring minister has with the Standards.
16

17 In this case, TE Smith was examined by the Candidates Committee of Presbytery in some
18 detail regarding his views on the continuation of prophecy and tongues beyond the Apostolic
19 era. The result of the Committee’s examination was that it did not recommend TE Smith come
20 to the floor of Presbytery for examination because his “views regarding the continuation of
21 the Spiritual gifts of prophecy and tongues beyond the Apostolic era and closing of the canon
22 amounted to exception of substance to WCF 1.1 which is out of accord with the fundamentals
23 of the system because it is hostile to the system.” TE Smith, at the request of the Presbytery
24 Coordinating Committee, provided the Presbytery with a written statement outlining his
25 views. The Presbytery then proceeded to examine TE Smith for transfer into the Presbytery
26 over the lack of recommendation from the Candidates Committee. After Presbytery arrested
27 TE Smith’s theological examination, a motion was made that TE Smith’s views regarding the
28 continuation of the spiritual gifts of prophecy and tongues beyond the Apostolic era be found
29 out of accord with the fundamentals of the system. That motion failed by a vote of 17-22.
30 Subsequently, TE Smith’s theological examination was approved by a vote of 23-15, and his
31 examinations were approved in an omnibus by a “majority vote” (no vote count is recorded
32 in the minutes).
33

34 The Presbytery did not record in its minutes its judgment with respect to TE Smith’s views on
35 the continuation of prophecy and tongues beyond the Apostolic era. No affirmative vote
36 approving TE Smith’s views was taken, and the Presbytery did not categorize his views in
37 accord with *RAO* 16-3.e.5. In fact, the Presbytery did not take action on TE Smith’s views “in
38 his own words” as required by *RAO* 16-3.e.5. Presbytery did have a written statement of TE
39 Smith in hand for the discussion and vote on whether to approve TE Smith’s theological
40 examination, but there was no statement of his stated difference before the Presbytery to
41 approve and categorize.
42

43 This oversight on the part of Presbytery is especially disconcerting considering Presbytery *did*
44 have two specific written statements of TE Smith’s differences with the Standards on the
45 doctrines of creation (WCF 4.1) and the Fourth Commandment (WCF 21.8). While those

1 statements are brief, they are in TE’s Smith’s own words, and the Presbytery took a specific
2 action required by *BCO* 21-4 and *RAO* 16, namely, to judge those stated differences “[w]hile
3 more than semantic Presbytery determined that these exceptions do not striking [sic] at the
4 vitals of the Christian Religion.” (per *RAO* 16-3.e.5.c)

5
6 Presbytery’s error is more than one of record-keeping; Presbytery failed to do its
7 Constitutional duty to judge the nature of TE Smith’s stated difference in his own words. The
8 Record does indicate that a motion was made to judge the stated difference “out of accord
9 with the fundamentals of the system,” but it does not indicate exactly what views were being
10 judged. In other words, it is not clear if presbytery’s vote related to TE Smith’s paper, specific
11 views expressed in committee, or specific views expressed on the floor (if these were
12 different). Thus, the record is not clear on what was the stated difference in the candidate’s
13 own words. Further, the written statement provided by TE Smith does not answer a number
14 of questions regarding his views. It apparently does not answer questions that were raised
15 during TE Smith’s floor examination. The Complaint makes several statements regarding TE
16 Smith’s views, including that “there are two different kinds of prophetic revelation operative
17 in the era of the Apostles” and that there is a “lesser revelation with respect to that special
18 insight [from the Spirit].” But we find nowhere in the record TE Smith’s *own statements*
19 regarding the nature of any continuing prophecy as a lesser form of revelation, which view
20 the Credentials Team and a substantial minority of presbytery viewed as constituting an
21 unacceptable difference. It appears that his view was discussed on the floor, but not reduced
22 to a written statement and subject to judgment and vote by Presbytery.

23
24 As such, we are unable to determine whether Presbytery erred with respect to its judgment
25 about TE Smith’s views – whether they are out of accord with the fundamentals of the system
26 or not. There was no specific action by Presbytery and insufficient documentation of TE
27 Smith’s views to do so. Accordingly, the Complaint is sustained, and the matter remanded to
28 Presbytery for a determination regarding TE Smith’s views on the continuation of prophecy
29 and tongues beyond the Apostolic era. Presbytery is to receive from TE Smith a written
30 statement in his own words of his view (per *RAO* 16.3.e.5) that addresses specifically the
31 revelatory (or not) nature of such prophecy and tongues. Although Presbytery remains
32 responsible for determining the details of how it requests the written statement, here are some
33 specific questions Presbytery might ask TE Smith to address in light of his prior examination
34 on the floor of Presbytery and his previous written statement:

- 35
36 1. Do you believe that there is any category of revelation other than special
37 revelation or general revelation? If so - what do you understand this category of
38 revelation to be? What is its relationship to special revelation? What is your
39 understanding of WCF 1.1, 1.6, and do you hold any differences with,
40 qualifications about, or reservations concerning any of the doctrines, concepts,
41 phrases, wording, or emphases in those paragraphs?
42
43 2. Define these terms that you have used: “modern-day prophecy”; “Spirit-led
44 insight”; “tongues”; “interpretation of tongues”; “modern prophetic words”.

1 3. Do you understand “modern-day prophecy” or “Spirit-led insight” to be
2 revelation in any sense of the term? If so, what is its relationship with Scripture?
3

4 4. Do you understand the “interpretation of tongues” to be revelation in any sense
5 of the term? If so, what is its relationship with Scripture?
6

7 Finally, we understand that sustaining this Complaint has no effect on the transfer of TE Smith
8 into Philadelphia Presbytery. That action has been taken by Presbytery and cannot be undone.
9 If TE Smith’s views are judged by Presbytery upon its further examination to be out of accord
10 with the fundamentals of the system, any further action could only come as a result of a change
11 in TE Smith’s views to bring them into accord, a *BCO* 31-2 investigation, or someone filing
12 charges.
13

14 The Panel's Proposed Decision was written by TE Greco and adopted by the Panel. The
15 Reasoning was further revised by the SJC, and then the SJC approved the Decision by a vote
16 of 14-5-2, with three absent.
17

18	Bankson	<i>Concur</i>	Duncan, M.	<i>Concur</i>	Neikirk	<i>Concur</i>
19	Bise	<i>Concur</i>	Duncan, S.	<i>Concur</i>	Nusbaum	<i>Dissent</i>
20	Cannata	<i>Dissent</i>	Ellis	<i>Absent</i>	Pickering	<i>Concur</i>
21	Carrell	<i>Abstain</i>	Greco	<i>Concur</i>	Ross	<i>Abstain</i>
22	Chapell	<i>Absent</i>	Kooistra	<i>Absent</i>	Terrell	<i>Dissent</i>
23	Coffin	<i>Concur</i>	Lee	<i>Concur</i>	Waters	<i>Concur</i>
24	Donahoe	<i>Dissent</i>	Lucas	<i>Dissent</i>	White	<i>Concur</i>
25	Dowling	<i>Concur</i>	McGowan	<i>Concur</i>	Wilson	<i>Concur</i>

26
27

28 **Dissenting Opinion**

29 ***Case 2019-02: TE Daniel Schrock et. al. v. Philadelphia Presbytery***

30 RE Howie Donahoe, joined by TE Ray Cannata, TE Sean Lucas, RE Bruce Terrell
31

32 This Complaint should have been denied because the Complainants failed to demonstrate clear
33 error in Presbytery's judgment in sustaining the minister's transfer exam. Furthermore, there's
34 no constitutional issue involved because the recording requirements of *RAO* 16-3.e.5 are not
35 part of the Constitution. Finally, the amends are vague, unwarranted, and non-binding.
36

37 TE Schrock and 13 others filed an eight-page Complaint with Presbytery alleging two errors:
38

39 Philadelphia Presbytery erred in approving TE Smith’s examination, and by failing
40 to determine and record the nature of TE Smith's stated difference as either an
41 allowable or unallowable exception as required by *BCO* 21-4e, f. and *RAO* 16-3.e.5.
42 Presbytery was required to judge "the stated difference(s) to be "out of accord," that
43 is, "hostile to the system" or "strik[ing] at the vitals of religion" (*BCO* 21-4)."
44

45 Based on those two allegations, SJC should have adjudicated two issues (rather than one).

- 1 1. Did Presbytery clearly error in judgment by approving TE Smith's exam (i.e., by not
2 judging his view as being "hostile to the system" or "striking at the vitals of
3 religion")?
- 4 2. Did Presbytery violate the constitutional requirements of *BCO* 21-4.f ?

6 **Burden in a Complaint**

7
8 Presbytery judged the minister's view was neither hostile to the Westminster system nor did
9 it strike at the vitals of religion. Thereafter, the burden was on the Complainant to demonstrate
10 otherwise - first to the Presbytery and then to the SJC. That burden was not met.⁷

11
12 When an examining committee declines to recommend a man for a floor exam, and the exam
13 gets docketed nonetheless, it's reasonable to expect the committee to ensure its report contains
14 sufficient evidence for the basis of their concern, and thus, the Presbytery Minutes would then
15 also contain such a record. Five of the Complainants were members of the Credentials
16 Committee and present at the minister's exam before the Committee. Thus, they had
17 opportunity to include, in their Committee's written report to Presbytery, the record of any
18 Committee Q&A they judged as demonstrating the minister's view was hostile to our system.
19 The Committee could have sent questions to the minister in the 17 days between the
20 Committee exam and the Presbytery meeting, asking for written responses. And though more
21 difficult, they could have tried to ensure any problematic Q&A during the floor exam was also
22 recorded.

24 **Constitutional Requirement - *RAO* 16.3.e.5 vs. *BCO* 21-4.f**

25
26 The Complaint didn't devote much space to the allegation about *RAO* 16.3.e.5. In fact, only
27 4 of 259 lines in the Complaint address the *RAO* 16.3 recording requirements (i.e., 2%).

28
29 The *Rules of Assembly Operations* are not part of the PCA Constitution, and thus, compliance
30 with *RAO* 16-3 is not a *constitutional* issue. It's more appropriately a matter for the GA
31 Committee on Review of Presbytery Records, which already addresses presbytery compliance
32 with *RAO* 16-3 annually. Below are excerpts from the RPR section of the *RAO*.

34 *RAO* Article XVI. Review of Presbytery Records

35 16-1. It is the right and duty of the General Assembly to review, at least once a
36 year, the records of the presbyteries of the Presbyterian Church in America (*BCO*
37 40-1 and 2).

38 16-2. General Assembly carries out this review through its Committee on Review
39 of Presbytery Records.

⁷ The Complaint cited two judicial cases, from 1986 and 1998, purportedly as precedent: *Gentry v. Calvary* and *Landrum v. MS Valley*. Though similar in some respects, neither Case had the same set of facts as our present one. For example, neither of those Cases involved an un rebutted examinee assertion that his view was the same as that contained in the JETS article by Dr. Poythress. (See comments later in this Opinion). *Gentry v. Calvary* (Case #1, M14GA, pp. 224-33). *Landrum v. Mississippi Valley* (Case 95-11, M26GA, pp. 222-27)

1 16-3. Guidelines for Keeping Presbytery Minutes

2 e.5. Minutes of presbytery relating to examinations ... Each Presbytery
3 shall also record whether ...

4 e.6. Minutes of presbytery relating to ministerial calls shall record that
5 the specific arrangements (*BCO* 20-1) and the call were found to be
6 in order.
7

8 The *constitutional* issue is whether Presbytery complied with the requirements of *BCO* 21-
9 4.f. The Record indicates Presbytery did.

10
11 *BCO* 21-4.f. Therefore, in examining a candidate for ordination [or a non-PCA
12 minister for transfer; *BCO* 13-6], the Presbytery shall inquire not only into the
13 candidate's knowledge and views in the areas specified above, but also *shall require*
14 *the candidate to state the specific instances in which he may differ* with the
15 Confession of Faith and Catechisms in any of their statements and/or propositions.
16 The court may grant an exception to any difference of doctrine only if in the court's
17 judgment *the candidate's declared difference* is not out of accord with any
18 fundamental of our system of doctrine because the difference is neither hostile to
19 the system nor strikes at the vitals of religion. (Emphasis added.)
20

21 Complying with *BCO* 21-4.f, Philadelphia Presbytery required the examinee to state the
22 specific instances in which he differed from the Westminster Standards, and he stated two.
23 Presbytery judged both as being more than semantic, but not hostile to the system. The Record
24 doesn't indicate the examinee ever included his view on prophecy as an "instance in which he
25 may differ" from the Standards. Regardless, having heard the report of its Credentials
26 Committee, and having conducted a full transfer exam at a stated meeting, Presbytery
27 sustained the theology exam, and the transfer exam as a whole, and thus it didn't judge any of
28 his views to be hostile to the system or as striking at the vitals of religion. Thus, Presbytery
29 complied with *BCO* 21-4.f.
30

31 In addition, because the exam was sustained, Presbytery clearly did not regard the view as
32 "hostile to the system," and thus Presbytery did not regard it as category (d) of *RAO* 16.3.e.5.
33 So, that leaves categories (b) or (c) - "merely semantic" or "more than semantic but not out of
34 accord with any fundamental of our system of doctrine." Failing to choose between category
35 (b) or (c) does not itself justify sustaining a Complaint.
36

37 When GA has cited a presbytery for not categorizing a stated difference, the presbytery has
38 usually not been required to revisit the matter and adopt a specific *RAO* 16-3.e.5 judgment.
39 This is demonstrated below in an excerpt from last year's Report of the Committee on Review
40 of Presbytery Records for two presbyteries. The Dallas GA adopted RPR's *unanimous*
41 recommendation and found each response satisfactory. (Emphasis added below.)
42

43 2018 GA Citation: Feb 14, 2017 and Nov 14, 2017 (*BCO* 21-4, *RAO* 16.3.e.5)
44 – Stated differences not judged with the prescribed
45 categories.

1 Nashville Response: We agree with the exception. Our minutes do not record the
2 prescribed language in approving the exceptions of two
3 transferring TEs and we have *adjusted our practice* to bring
4 it into compliance.

5 2019 RPR: That the [above] response to the 47th GA be found
6 satisfactory.

7 2018 GA Citation: Nov 14, 2017 (*RAO* 16-3.e.5) – Stated differences not
8 judged.

9 S. FL Response: We agree with this exception; *future minutes* will properly
10 reflect the decision of Presbytery.

11 2019 RPR: That the [above] response to the 47th GA be found
12 satisfactory.⁸

13
14 Lack of adherence to the *RAO* is not a constitutional violation. The *BCO* contains many
15 examples of things that are constitutionally required to be recorded in Presbytery Minutes, but
16 *RAO* 16-3.e.5 categorization is not one of them. The *RAO* is not part of the *BCO*. And
17 *RAO* 16 cannot be imported into the constitutional requirements of *BCO* 21-4.

18
19 If *RAO* 16-3.e.5 is so important that it warrants sustaining a Complaint against a Presbytery
20 in an ordination exam, then it should be proposed for inclusion in the *BCO*, seeking the advice
21 and consent of our 88 presbyteries.⁹

⁸ With regard to Philadelphia Presbytery's September 15, 2018 Minutes, the 2019 RPR did not cite any procedural or constitutional problem in how TE Smith's views were judged or categorized. (M47GA pp. 497-98)

⁹ Below are 10 examples of items constitutionally required by the *BCO* to be recorded in Minutes.

- 18-4 In no case may a candidate omit from his course of study any of the subjects prescribed in the Form of Government as tests for ordination without obtaining the consent of Presbytery (see *BCO* 21-4); and where such consent is given the Presbytery shall *record* the fact and the reasons therefore.
- 18-7 In all cases of a removal or withdrawal of a candidate, the sufficient reason for the action shall be *recorded* in the minutes of Presbytery.
- 19-2 No Presbytery shall omit any of these parts of [a licensure] examination except in extraordinary cases; and whenever a Presbytery shall omit any of these parts, it shall always make a *record* of the reasons therefor, and of the trial parts omitted.
- 19-6 The license may be terminated at any time by a simple majority vote of the issuing Presbytery. The Presbytery shall always *record* its reasons for this action in its minutes.
- 19-13 If the intern shall devote himself unnecessarily to such pursuits as interfere with a full trial of his gifts, it shall be the duty of the Presbytery to rescind his intern status, and to *record* its reasons therefor in the Minutes .
- 20-1 If the call comes from another source, the Presbytery shall always make a *record* of the reasons why it considers the work to be a valid Christian ministry.
- 21-4.a Whenever a Presbytery shall omit any of these educational requirements [for ordination], it shall always make a *record* of the reasons for such omission and the parts omitted.
- 21-4.d Whenever a Presbytery shall omit any of these parts [of an ordination exam], it shall always make a *record* of the reasons for such omissions and of the trial parts omitted.
- 32-18 Minutes of the trial shall be kept by the clerk, which shall exhibit the charges, the answer, *record* of the testimony, as defined by *BCO* 35-7, and all such acts, orders, and decisions of the court relating to the case, as either party may desire, and also the judgment.
- 42-6 Notice of appeal shall have the effect of suspending the judgment of the lower court until the case has been finally decided in the higher court. However, the court of original jurisdiction may, for sufficient

1 By reviewing compliance with *RAO* 16-3, this Decision enters the realm of *BCO* Chapter 40.
2 But last year, the SJC ruled the review of *BCO* 40 issues was not in its purview. In *Case*
3 *2018-02: Lewis v. Mississippi Valley*, the SJC ruled:

4
5 The only responsibility the SJC has with respect to [*BCO*] Chapter 40 [*"General*
6 *Review and Control"*] is upon referral of a matter from the General Assembly
7 according to *RAO* 16-10.c. and as administered under Chapter 15 of the *OMSJC*.¹⁰
8

9 *RAO* 16 is clear that the review of presbytery records (including presbytery compliance with
10 *RAO* 16-3) is the purview of the GA Committee on Review of Presbytery Minutes

11
12 *RAO* 16-1. It is the right and duty of the General Assembly to review, at least once
13 a year, the records of the presbyteries of the Presbyterian Church in America (*BCO*
14 40-1 and 2).

15
16 *RAO* 16-2. General Assembly carries out this review through its Committee on
17 Review of Presbytery Records.

18
19 The SJC's procedural ruling in *Lewis* applied to all sections of *BCO* 40, including those below.
20 Thus, per *Lewis*, these are *RPR* authorities and responsibilities, and not the SJC's.¹¹
21

22 *BCO* 40-3. It is ordinarily sufficient for the higher court merely to record in its own
23 minutes and in the records reviewed whether it approves, disapproves or corrects
24 the records in any particular; but should any serious irregularity be discovered the
25 higher court may require its review and correction by the lower. Proceedings in
26 judicial cases, however, shall not be dealt with under review and control when
27 notice of appeal or complaint has been given the lower court; and no judgment of a
28 lower court in a judicial case shall be reversed except by appeal or complaint.

reasons duly *recorded*, prevent the appellant from approaching the Lord's Table, and if an officer,
prevent him from exercising some or all his official functions, until the case is finally decided (cf. *BCO*
31-10; 33-4).

¹⁰ RE Donahoe and five others filed a Dissenting Opinion in *Lewis*, arguing the SJC *did* have legitimate, direct
jurisdiction on some matters arising via *BCO* 40-5, but the SJC disagreed. (M47GA, pp. 563-73)

¹¹ In this present Complaint, the matter was not a "proceeding in a judicial case" (*BCO* 40-3). And thus, it is a
matter for the RPR. Below are several examples of how the *BCO* uses the phrase "judicial case."

12-3 When a church is without a pastor ... In *judicial cases*, the moderator shall be a minister of the Presbytery
to which the church belongs.

15-2 Among the matters that may be properly executed by commissions are the taking of the testimony in
judicial cases, ...

41-3 In making a reference, the lower court may ask for advice only, ... and in particular it may refer a *judicial*
case with request for its *trial* and decision by the higher court.

42-1 An appeal is the transfer to a higher court of a *judicial case* on which judgment has been rendered in a
lower court and is allowable only to the party against whom the decision has been rendered.

43-1 It is the right of any communing member of the Church in good standing to make complaint against
any action of a court to whose jurisdiction he is subject, except that no complaint is allowable in a
judicial case in which an appeal is pending.

1 BCO 40-4. Courts may sometimes entirely neglect to perform their duty, by
2 which neglect heretical opinions or corrupt practices may be allowed to gain
3 ground; or offenders of a very gross character may be suffered to escape; or some
4 circumstances in their proceedings of very great irregularity may not be distinctly
5 recorded by them. In any of these cases their records will by no means exhibit to
6 the higher court a full view of their proceedings. If, therefore, the next higher
7 court be well advised that any such neglect or irregularity has occurred on the part
8 of the lower court, it is incumbent on it to take cognizance of the same, and to
9 examine, deliberate and judge in the whole matter as completely as if it had been
10 recorded, and thus brought up by review of its records.

11
12 **Amends**

13
14 The Decision contains amends that are vague, unwarranted, and non-binding. Below are five
15 sequential sentences from the Decision's concluding paragraph containing amends.

- 16
17 1. As such, we are unable to determine whether Presbytery erred with respect to
18 its judgment about TE Smith's views - whether they are out of accord with the
19 fundamentals of the system or not.

20
21 If a higher court is *unable* to determine if a lower court has erred, a complaint should be
22 denied. A complainant has the burden of demonstrating error; a lower court is not required to
23 prove absence of error. Thus, the major part of this Complaint, which alleges Presbytery erred
24 in *judgment*, should have been denied. The Complainants did not meet their burden.

- 25
26 2. There was no specific action by Presbytery and insufficient documentation of
27 TE Smith's views to do so.

28
29 But Presbytery *did* take specific action. It sustained the exam, fully aware of the view
30 expressed by the minister in his paper, and aware of his agreement with and reference to
31 Dr. Poythress' article. Presbytery apparently believed it had sufficient information to sustain
32 the exam. The SJC statement above seems to ignore the fact that Presbytery conducted an
33 oral exam and there was Q&A and debate, the specifics of which are unknown to the SJC. A
34 presbytery is not required to include in its minutes a transcript of an oral exam or floor debate.

- 35
36 3. Accordingly, the Complaint is sustained, and the matter remanded to
37 Presbytery for a determination regarding TE Smith's views on the continuation
38 of prophecy and tongues beyond the Apostolic era.

39
40 But Presbytery has already *made* a determination, and it was *the most important* determination
41 - i.e., that the minister's view did not disqualify him for transfer. And if the issue addressed
42 by the SJC is actually *RAO 16*, then Presbytery could now simply adopt a motion and
43 categorize the already-examined view to be either option (b) or (c) from *RAO 16.3.e.5*.

- 1 4. Presbytery is to receive from TE Smith a written statement in his own words
2 of his view (per *RAO* 16.3.e.5) that addresses specifically the revelatory (or
3 not) nature of such prophecy and tongues.
4

5 It is unclear how Presbytery should go about "receiving" an additional written statement. It
6 seems the Decision assumes the minister will voluntarily submit one. But why would he? His
7 ministerial promise to be "subject to his brethren" doesn't obligate him to that. Is the SJC
8 ordering such a submission? What if he declines? The minister is presently in good standing
9 and under no obligation to answer quasi-judicial interrogatory questions about his views from
10 either the SJC or the Presbytery. Declining to provide further statements is a right protected
11 by the principle in *BCO* 35-1 against self-incrimination. This isn't an exam. And it's clear
12 from the final sentence in the Decision that jeopardy could entail: "If TE Smith's views are
13 judged by Presbytery upon its further examination to be out of accord with the fundamentals
14 of the system, any further action could only come as a result of a change in TE Smith's views
15 to bring them into accord, a *BCO* 31-2 investigation, or someone filing charges."¹²
16

- 17 5. Although Presbytery remains responsible for determining the details of how it
18 requests the written statement, here are some specific questions Presbytery
19 might ask TE Smith to address in light of his prior examination on the floor of
20 Presbytery and his previous written statement.
21

22 It seems the SJC is herein functioning as a sort of exam super-committee, or at least drafting
23 what it deems are questions that should be asked in certain exams. If Philadelphia Presbytery
24 has erred, then rule so. It's hard to view these amends as much different than a higher court
25 saying to a lower court that the higher court can't decide from the record if a man's view is
26 hostile to the system (as alleged by a complainant), but it concludes the lower court didn't
27 have enough information to decide (even though the higher court doesn't have a transcript
28 from either a committee or a floor exam), and therefore, the higher court crafts some questions,
29 and, if/when the lower court get answers in writing, the higher can review the lower court's
30 judgment. It's hard to view the amends in this Decision as being much different than a scenario
31 where there's been a hearing before a group of judges where the plaintiff (complainant) was
32 unable to prove his case, but instead of rightfully declaring the claim fails for lack of
33 substantiation, the judges send the matter back to the plaintiff and invite him to see if he can
34 find more evidence. In fact, the judges even suggest where the plaintiff might look.
35

36 Finally, it would have been helpful for the SJC Decision to include the minister's brief
37 statement in its Summary of the Facts. So, it is included below. The minister began his paper
38 by excerpting 1 Cor. 12:1-11 and then continued:
39

40 1 Corinthians 12: 1-11 mentions at least nine gifts of the Spirit which are given to
41 church. Verse 4 emphasizes that though there are a variety of gifts there is one
42 Spirit (the Holy Spirit) who gives these gifts. Verse 5 emphasizes that there is one
43 Lord (Jesus Christ) who enables members of the body to serve one another. Verse 6

¹² While the right against self-incrimination in *BCO* 35-1 wouldn't apply to an exam, TE Smith's exam was sustained and the SJC has not reversed or annulled that exam.

1 emphasizes that there is one God (the Father) who empowers the gifting of
2 everyone in the church.

3
4 The remainder of this chapter (verses 12-24) emphasizes the sovereignty of God in
5 distributing the various gifts as he wishes (vs. 18) in order to form a working body
6 (vs. 19). God distributes spiritual gifts so that "there may be no division in the
7 body, but that the members may have the same care for one another" (vs. 25).
8 Simply spoken, God gives spiritual gifts, among which prophecy and tongues are
9 listed, to strengthen and unify the body of Christ.

10
11 Before going further, I want to reiterate what I wrote in my written response to the
12 credentials committee and what I repeatedly indicated in my oral exam - I do not
13 believe in any ongoing special revelation. Special revelation was sealed with the
14 completion of the canon of Scripture. The 66 books of the Bible are the necessary,
15 authoritative, sufficient and inerrant Word of God. They are the final court of
16 authority for judgment for all councils, confessions, catechisms, beliefs, or words
17 that are spoken with the intent of revealing God's will or purpose, but they were
18 used for the building up of God's church. In his Pentecost sermon Peter indicates
19 that the pouring out of the Holy Spirit on the church was the fulfillment of Joel's
20 prophetic words. "And in the last days it shall be, God declares, that I will pour out
21 my Spirit on all flesh, and your sons and your daughters shall prophesy, and your
22 young men shall see visions, and your old men shall dream dreams; 18 even on my
23 male servants and female servants in those days I will pour out my Spirit, and they
24 shall prophesy" (Acts 2:17-18). Acts 21:9 tells us of the four daughters of Phillip
25 the evangelist "who prophesied." I Corinthians 11:4-5 indicates that men and
26 women prophesied in the church.

27
28 Based on the teaching of Scripture I believe that New Testament prophecy is a gift
29 of the of the Spirit by which a person is given special insight by the Holy Spirit to
30 help edify the body of Christ. Modern day prophecy is Spirit-led insight that is
31 spoken through a fallible and sinful human being and is therefore subject to error.
32 The same would be true of the interpretation of tongues in a worship service. In
33 either case such a word is not to be accepted on par with Scripture but is to be
34 judged by the Scripture. Furthermore, God has clearly laid out for us exactly how
35 this should be done in I Corinthians 14:26-32. [He then excerpts 1 Cor. 14:26-33.]

36
37 I find it odd to think that I Corinthians 14, which was written in about A.D. 55 or
38 56 was given to instruct the church only for a few decades until the last of the New
39 Testament Scriptures was written. Of course, that is possible, but I believe that it is
40 much more likely that this is given as a guide to the Church until the day when
41 Christ comes in all his glory and does away with every "partial" manifestation. I
42 believe that 1 Corinthians 13:8-12 makes a strong argument for the continuation of
43 prophecy and tongues until the second coming of Jesus. [He then excerpts 1
44 Corinthians 13:8-12.]. In these verses, when we see him "face to face" is paralleled

1 with "when the perfect comes." This is the time when there will no longer be any
2 need for partial and flawed spiritual gifts in the body of Christ.

3
4 My position on spiritual gifts, and specifically on prophecy and
5 tongues/interpretation, is in full agreement with Dr. Vern Poythress in his paper,
6 "*Modern Spiritual Gifts as Analogous to Apostolic Gifts: Affirming Extraordinary*
7 *Works of the Spirit Within Cessationist Theology.*"¹³ Dr. Poythress demonstrates
8 that modern preaching is analogous to the written teaching/discursive special
9 revelation of Luke. Similarly, he argues that modern prophecy is analogous to the
10 nondiscursive form of special revelation that the Lord reveals to John recorded in
11 the Revelation. The key word is analogous. Written scripture is the flawless,
12 inerrant and authoritative Word of God. Modern preaching draws on that Word,
13 and if it is good and orthodox, is faithful to the Bible. But we know that even
14 faithful preaching can be mixed with error and opinion that is not directly drawn
15 from the Word or somehow makes a mistaken application of the Word.
16 Nonetheless the church can be edified through such preaching. Similarly, modern
17 prophetic words are not on par with Scriptural revelations and are flawed and
18 subject to error. As such they should always be weighed against the Scripture and
19 judged by church leadership as we see in 1 Corinthians 14. Just as no preacher in
20 his illustrations and applications of the Biblical text should declare "thus saith the
21 Lord," so also no one giving a prophetic word should declare "thus saith the Lord."
22 We can only use these words when we are quoting the Scripture itself.

23
24 Speaking of the heat generated by this argument, Dr. Poythress points out that the
25 flawed assumptions of some cessationists and some noncessationists are the root of
26 the problem. Each side is trying to protect something they believe is critical and so
27 they argue based on false assumptions about the nature of modern prophetic speech.
28 He writes:

29
30 Cessationists feel that they must rule out this type of process completely, in
31 order to protect the sufficiency and exclusivity of biblical authority.
32 Noncessationists, by contrast, feel pressure to submit to such information
33 uncritically, contrary to the fallible character of modern sources. Both sides
34 need to cool down. The crucial error is to confuse the involvement of God
35 with lack of involvement of human creatureliness and human sin, and in
36 addition to confuse involvement of God with full divine authority in the
37 product. God is in a sense "directly" involved in the growth of grass and

¹³ The original Poythress article appeared in the Journal of the Evangelical Theological Society (*JETS* 39/1, March 1996, pp. 71-101). https://www.etsjets.org/files/JETS-PDFs/39/39-1/39-1-pp071-101_JETS.pdf
A slightly revised 2012 version is found [here](https://frame-poythress.org/modern-spiritual-gifts-as-analogous-to-apostolic-gifts-affirming-extraordinary-works-of-the-spirit-within-cessationist-theology/): <https://frame-poythress.org/modern-spiritual-gifts-as-analogous-to-apostolic-gifts-affirming-extraordinary-works-of-the-spirit-within-cessationist-theology/>.
Poythress restates this view in the 2010 P&R booklet *What Are Spiritual Gifts?* (Basics of the Faith, 2010), which is also sold in the PCA Bookstore (<https://www.pcabookstore.com/p-8080-what-are-spiritual-gifts.aspx>). Dr. Poythress has taught at Westminster Seminary for 43 years, currently as professor of New Testament and biblical interpretation. His degrees include BS, Cal Tech; PhD, Harvard; MDiv & ThM, He was editor of the *Westminster Theological Journal* for 14 years (2005–2018) and is a PCA minister.

1 blowing breezes: "he makes grass grow for the cattle" (Ps 104:14). But
2 growing grass is not inspired."
3

4 I find myself in full agreement with Dr. Poythress regarding the nature of
5 modern prophetic speech. I read a quote from Dr. Boice one time that
6 stated, "without the illumination of the Holy Spirit the Bible remains a
7 closed book." I say "Amen" to Dr. Boice as well. The mysterious working
8 of the Holy Spirit, in concert with the Word of God in the hearts of His
9 people, serves to bring great glory to the Lord Jesus Christ. As limited and
10 finite beings we should expect to find a great deal of mystery as we
11 encounter the majesty of the eternal, omnipotent, holy, triune God. As
12 Isaiah has said ... [He excerpts Isaiah 55:8-9.] Glory be the Father who has
13 once and for all revealed Himself to us in His Son and in His Word, and
14 who continues to make Himself known through the ongoing work of the
15 Holy Spirit."
16

17 Granted, there is legitimate debate about how to treat an examinee's assertion that his view is
18 the same as someone else. The examining body can handle this as it deems best. Some
19 Presbyteries ignore or disallow it entirely. But it may sometimes be helpful for an examinee
20 to report that his view is the same as one expressed in a larger article, especially one that has
21 been published for some time, and broadly reviewed and available. This might help the
22 examining court achieve a better understanding of the examinee's view. At the same time, the
23 examinee would still need to be conversant with the doctrine in question, and his professed
24 agreement with the other author shouldn't end the exam (any more than a candidate's assertion
25 that he agrees 100% with the WCF should end his exam). In addition, whether an examinee's
26 view is *actually* the same as a view expressed in an article is a judgment left to the examining
27 court. The examinee might be confused.¹⁴
28

29 Below are some excerpts from Dr. Poythress' 1996 article.¹⁵
30

31 I maintain that modern spiritual gifts are analogous to but not identical with the
32 divinely authoritative gifts exercised by the apostles. Since there is no strict
33 identity, apostolic teaching and the Biblical canon has exclusive divine authority.
34 On the other hand, since there is analogy, modern spiritual gifts are still genuine
35 and useful to the Church. Hence there is a middle way between blanket approval
36 and blanket rejection of modern charismatic gifts. (pp. 71)
37

38 ...Modern gifts are fallible. They are all dependent on Scripture and do not add to
39 the Biblical canon. (p. 77)
40

41 (X. Debate About Cessation of Prophecy) – Now let us look for a moment at a
42 tangled debate. People debate about whether “prophecy” in the New Testament and

¹⁴ According to the Brief from the Presbytery's Representative, TE Smith is a graduate of WTS Philadelphia.

¹⁵ In two footnotes, he attributes many of his ideas to classroom lectures from Ed Clowney (1917-2005), an OPC minister who became a WTS professor in 1952 and served 18 years as WTS president, 1966-84.

1 the early church was divinely inspired and infallible. Did it possess full divine
2 authority? Richard B. Gaffin, Jr.,¹⁶ says that it was inspired. Wayne A. Grudem
3 argues that it was not.¹⁷ Many people believe that the outcome of this debate is
4 crucial for the future of the charismatic movement. But actually, the outcome of
5 the debate makes very little practical difference today.

6 Suppose Gaffin is right. Then “prophecy” ceased with the completion of the
7 apostolic era and the completion of the canon of Scripture. Modern phenomena
8 are fallible and hence are not identical with New Testament prophecy. But modern
9 nondiscursive processes with teaching content is analogous to prophecy, just as
10 modern preaching is analogous to apostolic preaching. Hence the general
11 principles concerning spiritual gifts, as articulated in 1 Cor 12-14 and elsewhere,
12 are still applicable. What charismatics call “prophecy” is not really the “prophecy”
13 mentioned in the New Testament. Rather, it is a fallible analogue. It is really a
14 spiritual gift for speaking fallibly through nondiscursive processes. It contrasts
15 with preaching, which is a spiritual gift for speaking fallibly through discursive
16 processes. Modern nondiscursive processes with circumstantial content are in a
17 sense not really analogous to inspired biblical prophecy. But they can function
18 positively in the service of the Spirit, just as does circumstantial content through
19 discursive processes.

20 On the other hand, suppose that Grudem is right. Then “prophecy” continues.
21 But such “prophecy” is fallible. It is not identical with the inspired prophecy of
22 the Old Testament. It is in fact a spiritual gift for speaking fallibly through
23 nondiscursive processes. If the content is biblical, its authority derives from the
24 Bible. If the content is circumstantial, it is not an addition to the Bible (not divinely
25 authoritative). Hence it is just information and has no special authority. Hence
26 Grudem ends up with substantially the same practical conclusions as does Gaffin.

27 Hence, there is no need for Gaffin and Grudem to disagree about the modern
28 phenomena. They disagree only about the label given to the phenomena (“not-
29 prophecy” versus “prophecy”), and about whether the New Testament phenomena
30 were identical or merely analogous to the modern phenomena. Both Gaffin and
31 Grudem already acknowledge the fallibility of the modern phenomena. Gaffin
32 needs only to take the additional step of integrating the modern phenomena into a
33 theology of spiritual gifts. Given this theological integration, we find that there is
34 an analogical justification for the use of these gifts in the church today.

35 Grudem, on the other hand, needs only to clarify the status of “prophecy.”
36 “Prophecy,” he says, is fallible, but still revelatory. It still derives from God, and
37 still is important for the well-being of the church. Gaffin and many others find
38 this sort of description difficult to grasp or classify. How can something be
39 “revelatory” and still not compete with the sufficiency of Scripture? I explain how
40 partly by distinguishing teaching content from circumstantial content. Teaching
41 content must not add to Scripture but can only rephrase what is already there in
42 Scripture. Circumstantial content has the same status as information received

¹⁶ R.B. Gaffin, Jr., *Perspectives on Pentecost: Studies in New Testament Teaching on the Gifts of the Holy Spirit* (Baker, 1979)

¹⁷ W. A. Grudem, *The Gift of Prophecy in the New Testament and Today* (Crossways, 1988)

1 through a long-distance telephone call - that is, it has no special claim to authority.
2 It is therefore obvious that neither type of content threatens the sufficiency of
3 Scripture.

4 If charismatics and noncharismatics could agree on these points, I think that
5 the debate on modern spiritual gifts would be largely over. But there are practical
6 adjustments. People who value nondiscursive gifts have tended to migrate into
7 charismatic circles, where nondiscursive gifts are prized. People who value
8 discursive gifts have migrated into noncharismatic circles, where discursive gifts
9 are prized. Each group tends to prize only people of its own kind. We all need to
10 learn again from 1 Corinthians 12 the importance of every gift, including those
11 with which we have yet to become comfortable.

12 We cannot dictate beforehand that discursive gifts or nondiscursive
13 gifts must always be dominant, that they must be the outstanding characteristic of
14 every Christian community. For the Lord “gives them [gifts] to each one, just
15 as he determines,” not as we determine (1 Cor. 12:11). On the other hand, we can
16 be confident that the Lord purposes to rule and guide his church through the
17 complete Scripture. He adds no extra divinely authoritative claims. Hence, a
18 natural preeminence belongs to teaching content, whose authority derives from
19 Scripture (cf. Eph. 4:11).... (pp. 93-4).

20
21 These nuanced arguments are supported by some other respected Reformed theologians.¹⁸
22 Below are some excerpts from Dr. Iain Duguid's chapter, "*What Kind of Prophecy Continues?*
23 *Defining the Differences between Continuationism and Cessationism*" in the recent book,
24 "*Redeeming the Life of the Mind: Essays in Honor of Vern Poythress*" (Crossways, 2017).

25
26 Some years ago, [Poythress] wrote an article entitled "Modern Spiritual Gifts..." Its
27 central argument - that so-called spiritual gifts such as prophecy may function at
28 different levels, some of which continue while others cease - is reproduced and
29 developed in his more recent booklet *What Are Spiritual Gifts?* In this short piece, *I*
30 *intend to support Dr. Poythress' conclusion* by setting the cessationist-continuationist
31 debate in a fuller biblical-theological setting and demonstrating that the phenomenon
32 of biblical prophecy is more multifaceted than typically been recognized. (Emphasis
33 added.)¹⁹

34
35 After surveying different uses of the words, "prophet" and "prophecy," in the Old Testament,
36 Professor Duguid observes:

¹⁸ For further insight into *WCF* 1:1, see Garnet H. Milne's excellent book, *Westminster Confession of Faith and the Cessation of Special Revelation: The Majority Puritan Viewpoint on Whether Extra-Biblical Prophecy is Still Possible* (Wipf & Stock, 2007). In a review on The Gospel Coalition website, Dr. Kevin DeYoung wrote: "Undoubtedly, the best book on cessationism in the first century of the Reformed tradition is Garnet Milne's published dissertation...In this work - a model of careful scholarship serving the church - Milne argues the Puritans were overwhelmingly cessationists, but that their cessationism was not without some permeable boundaries (see also Vern Poythress's article on 'Affirming Extraordinary Works of the Spirit Within Cessationist Theology.')."

¹⁹ Dr. Duguid is professor of Old Testament at WTS (MDiv, WTS; PhD in OT, Cambridge). An ordained ARP minister, he is currently pastor of Christ Presbyterian (ARP) in Philadelphia, which he helped plant.

1 To conclude, the definition of "prophecy" in the Old Testament is significantly broader
2 than simply capital-*P* prophecy (the deliverance of unmediated authoritative oracles
3 from God). It also covers a broader range of Spirit-inspired activities, including
4 preaching, teaching, leading in worship, and recording history. In addition,
5 prophesying also functions as a mark of Spirit-possession, identifying certain
6 individuals as being singled out for particular tasks that do not necessarily include
7 speaking with a "Thus says the Lord" authority.

8 ...This more complex portrait of prophecy in the Old Testament prepares us for a
9 more complex understanding of the New Testament picture....In sum, if we allow the
10 New Testament to reflect the diversity of prophetic phenomena present in the Old
11 Testament, then the pressure to try to make all prophecy in the New Testament either
12 capital-*P* prophecy or small-*p* prophecy is lifted, allowing a fairer evaluation of its
13 manifold forms.

14 ...[M]any Reformed churches - including the Orthodox Presbyterian Church... - insist
15 on the continuing direction of the Spirit today in at least one area: that of a "call to
16 ministry." Ministerial candidates are expected to have a definite and substantive sense
17 (though not necessarily a dramatic experience) that God, by his Spirit, is directing
18 them into pastoral work. As with Grudem's lowercase-*p* prophecy, this internal sense
19 of call is subject to important qualifications. A man may exhibit a strong internal sense
20 of call but may lack the gifts or character necessary for church office. Alternatively, a
21 suitable ministry position may not present itself, even though the church affirms that
22 man's call in general terms. But the process of evaluating and testing a man's internal
23 sense of a call to the ministry in the Presbyterian system is broadly similar to Grudem's
24 process of evaluating prophecies. A man whose sense of internal call is not sustained
25 by the church is not disciplined as a false prophet. Rather, he is perceived as having
26 simply misunderstood God's direction for his life (at least for the present).²⁰

27
28 /s/ RE Howie Donahoe
29
30

31 **Dissenting Opinion**
32 ***Case 2019-02: Schrock v. Philadelphia***
33 RE E. J. Nusbaum
34

35 I respectfully dissent with the Standing Judicial Commission concerning its ruling in this Case.

²⁰ OPC Form of Government 20.3. PCA *BCO* contains similar statements; examples below. (Emphasis added.)
16.1 Ordinary vocation to office in the Church is the *calling of God by the Spirit* ...
18-1 Candidate ... is a member of the Church in full communion who, *believing himself to be called*
19-2 The examination for licensure shall be as follows: (1) Give a statement of his Christian experience
and *inward call* to preach the Gospel in written form and/or orally before the Presbytery ...
19-9 Before the applicant begins his period of internship, he shall give to the Presbytery a written and/or
an oral statement (at the discretion of the Presbytery) of *his inward call* to the ministry of the Word.
38-2 A minister of the Gospel against whom there are no charges, if *fully satisfied in his own conscience*
that God has not called him to the ministry, ...

1 In sustaining this Complaint, the SJC has declared that Philadelphia Presbytery “failed to
2 judge and record the nature of TE Smith’s views on the continuation of the spiritual gifts of
3 prophecy and tongues beyond the Apostolic era as required by *BCO* 13-6, 21-4e, f. and *RAO*
4 16-3.e.5.”

5
6 In support of its decision to sustain the complaint, the SJC states in the Reasoning and Opinion
7 that the Presbytery failed in three areas:

- 8
9 1) “The Presbytery did not record in its minutes its judgment with respect to TE Smith’s
10 views on the continuation of prophecy and tongues beyond the Apostolic era.”
11
12 2) “No affirmative vote approving TE Smith’s views was taken.”
13
14 3) “The Presbytery did not categorize his views in accord with *RAO* 16-3.e.5. In fact, the
15 Presbytery did not take action on TE Smith’s views ‘in his own words’ as required by
16 *RAO* 16-3.e.5.”

17
18 It is my opinion that the record of the case demonstrates that the Presbytery did not commit
19 any of these errors.

20
21 First, the record of the case is clear that Philadelphia Presbytery did make and record a
22 judgment concerning the views in question. The minutes recorded that at one point in the
23 discussion of the exam, a motion was made to declare the Minister’s views regarding the
24 continuation of spiritual gifts to be “out of accord with the fundamentals of the system because
25 it is hostile to the system.” That motion failed 17-22. This vote, as recorded in the
26 Philadelphia Presbyteries minutes, demonstrates the Presbytery did record in its minutes its
27 judgment with respect to TE Smith’s views on the continuation of prophecy and tongues
28 beyond the Apostolic era.

29
30 Second, the Presbytery did take an affirmative vote concerning TE Smith’s views. In addition
31 to recording the vote on the failed motion, the Presbytery did take a vote sustaining his
32 examination. This vote, with 23 of the 38 votes cast in favor of sustaining the exam,
33 demonstrates that Presbytery took an affirmative vote approving TE Smith’s views.

34
35 Finally, Philadelphia Presbytery was not required to apply *RAO* 16-3.e.5 to TE Smith’s views
36 on the continuation of the spiritual gifts of prophecy and tongues. In TE Smith’s examination,
37 the record clearly shows that the Presbytery did ask the Minister about his stated differences.
38 He had two and those stated differences were adjudicated by the Presbytery in accordance
39 with *RAO* 16-3.e.5. The record also shows that TE Smith never declared that his views on the
40 continuation of the spiritual gifts were a stated difference. It is true that a significant minority
41 of the Presbytery did not agree with his view. However, a controversial view is not the same
42 as a “stated difference.” The *BCO* and *RAO* are clear and consistent:

43
44 *BCO* 13-6: “...*ministers* coming from other denominations to state the specific
45 instances in which they may differ...” (Emphasis added.)

1 *BCO 21-4: “...shall require the candidate to state the specific instances in which*
2 *he may differ...”* (Emphasis added.)

3
4 *RAO 16-3: “...shall record ministers’ and ministerial candidates’ stated*
5 *differences with our standards in their own words.”* (Emphasis added.)

6
7 The plain reading of these excerpts is that a stated difference is a statement coming from a
8 minister or candidate where he expresses what he feels to be a difference the Standards. Once
9 stated by the candidate or minister, a presbytery is required to take the steps specified in *RAO*
10 *16-3*. However, declaring that Philadelphia Presbytery was required to handle TE Smith’s
11 view on continuation of spiritual gifts in accordance with *RAO 16-3* is to make controversial
12 views the equivalent of “stated differences.”

13
14 To require that controversial views be handled as stated difference has created a vagueness
15 which has the potential to affect all examinations in our presbyteries. Most problematic is
16 that presbyteries do not have clear guidance on a standard to use to make a determination on
17 whether or not a view is to be handled as a “stated difference.” In this case, the SJC determined
18 that because 47% of presbyters felt that TE Smith’s views were out of accord and hostile to
19 our system, the view qualified as a stated difference and therefore, the requirements of *RAO*
20 *16-3* were applicable. But such a ruling gives presbyteries no objective standard to know what
21 the SJC may determine to be a stated difference in future cases. What if only 30% of the
22 presbyters feel the view is out of accord? Or what if only one person? Imagine that an
23 examination is in progress and some number of people, 5, 10, or 15, etc., disagree with the
24 candidate’s views. The only way for a presbytery to be sure it is in compliance with this
25 present Decision would be to pause the exam, give time for the candidate to put his view in
26 writing (or at least record the candidate’s view in his own words) and then categorize the view
27 in accordance with *RAO 16-3*. The vague standard established by the Decision in this case
28 has the potential to allow an undefined minority to delay and disrupt the examination of
29 candidates with which they disagree.

30
31 In summary, this Complaint should not have been sustained. The Philadelphia Presbytery
32 conducted a sound exam that met all the requirements specified in the Constitution of the
33 Church. Most problematic is the erroneous and vague interpretation of the term “stated
34 difference.” This is a serious error that has the potential to create unnecessary confusion and
35 delay in future exams.

36
37 /s/ RE E. J. Nusbaum

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CASE 2019-03
COMPLAINT OF DAN & ANGELIA CROUSE
vs.
NORTHWEST GEORGIA PRESBYTERY

DECISION ON COMPLAINT
October 18, 2019

I. SUMMARY OF THE FACTS

- 06-07/18 The Session of Midway Presbyterian Church provided notice to the congregation for 2018 an election of officers and took nominations from the congregation.
- 7/15/18 The Complainant, then serving as an elected Deacon, was nominated for the office of ruling elder.
- 7/16/18 The Session determined that the Complainant’s nomination would not proceed and that he would not be invited to training or be examined.
- 8/30/18 The Complainant filed a complaint with the Session against the timing of its decision to set aside his nomination. The Complainant alleged that he was qualified, that his prior divorce did not disqualify him from serving as a deacon, and that the provisions of *BCO* 24-1 required instruction and an examination prior to a determination by the Session regarding his nomination.
- 9/17/18 The Session heard and denied the Complaint.
- 10/11/18 The Complainant carried his Complaint to Northwest Georgia Presbytery (NWGP).
- 1/19/19 NWGP appointed a Judicial Commission to hear the Complaint.
- 3/6/19 After a hearing, the Judicial Commission recommended the Complaint be denied.
- 4/2/19 NWGP heard the report of its commission and adopted the judgment recommended by the commission.
- 4/4/19 The Complainant carried his Complaint to the General Assembly
- 7/15/19 The parties amended and finalized the Record of the Case by agreement.
- 8/20/19 The SJC Panel heard oral argument via Go to Meeting. The Panel included RE Jack Wilson (Chairman), TE Bryan Chapell, and TE Charles McGowan, with TE Guy Waters and RE Steve Dowling attending as alternates.

1 **II. STATEMENT OF THE ISSUE**

2
3 Did Presbytery err, in violation of the Constitution, when it adopted the recommended
4 judgment of its judicial commission by ruling the Session had not erred in setting aside
5 the nomination of the Complainant to be a ruling elder prior to training and examination?
6

7 **III. JUDGMENT**

8
9 Yes.

10
11 **IV. REASONING AND OPINION**

12
13 The Complainant was previously elected to the office of Deacon and served in that office at
14 the time he was nominated by members of the congregation to be a Ruling Elder. The
15 Complainant contends that the Session erred when it determined, without any examination or
16 hearing, that his nomination would not be permitted to proceed. The Session reviewed the
17 nominations submitted by the congregation. Prior to training or examining nominees, the
18 Session, consistent with its standing practice, screened or “vetted” the congregation’s nominees
19 before proceeding through the instruction and examination process outlined in *BCO* 24-1.
20

21 The *BCO* reserves the determination of the qualifications of candidates for office to the sound
22 discretion of the Session. *BCO* 24-1. Absent clear error or unconstitutional action, the
23 decision of a Session regarding an individual’s qualifications should not be disturbed. *BCO*
24 39-3(3) and (4).
25

26 This case presents questions regarding the application and timing of the process described in
27 *BCO* 24-1, which provides in relevant part:
28

29 Every church shall elect persons to the offices of ruling elder and deacon in the
30 following manner: At such times as determined by the Session, communicant
31 members of the congregation may submit names to the Session keeping in mind
32 that each prospective officer should be an active male member who meets the
33 qualifications set forth in 1 Timothy 3 and Titus 1. After the close of the nomination
34 period nominees for the office of ruling elder and/or deacon shall receive
35 instruction in the qualifications and work of the office. Each nominee shall then be
36 examined in:
37

- 38 a. his Christian experience, especially his personal character and family
39 management (based on the qualifications set out in 1 Timothy 3:1-7 and
40 Titus 1:6-9),
- 41 b. his knowledge of Bible content,
- 42 c. his knowledge of the system of doctrine, government, discipline contained
43 in the Constitution of the Presbyterian Church in America (*BCO* Preface III,
44 The Constitution Defined),
- 45 d. the duties of the office to which he has been nominated, and

1 e. his willingness to give assent to the questions required for ordination. (*BCO*
2 24-6)
3

4 If there are candidates eligible for the election, the Session shall report to the
5 congregation those eligible, giving at least thirty (30) days prior notice of the time
6 and place of a congregational meeting for elections.
7

8 This section establishes a sequence of events to occur through the nomination and election
9 process. That process begins with nominations from the congregation, and continues through
10 instruction, examination and election. This section outlines the various rights and
11 responsibilities of the congregation to submit the names of nominees; of the nominees to
12 participate in instruction and examination; and of the Session to instruct, train, examine, and
13 determine each nominee’s eligibility to become a candidate for election. Nothing in this
14 section forecloses the Session’s prerogative, at any time, to counsel or advise nominees
15 regarding their suitability or qualifications for office.
16

17 In this case, the Session’s practice of “vetting” or “prescreening” the congregation’s
18 nominees, by acting to eliminate one from the process of instruction and examination, is not
19 described in *BCO* 24-1. In adding a peremptory review process without providing the
20 Complainant, an elected Deacon, the benefit of any examination, the Session erred. The
21 Record does not show that Session made any affirmative finding that the Complainant was
22 not “an active male member who meets the qualifications set forth in 1 Timothy 3 and Titus
23 1” (*BCO* 24-1). By virtue of his election and continuing service a Deacon, it appears the
24 Complainant met these Biblical qualifications. In such circumstances, the ordinary course of
25 nominations and elections should follow the sequence outlined in *BCO* 24-1. The language
26 of *BCO* 24-1 is mandatory. (“Every church *shall* elect persons to the offices...in the
27 following manner...;” “nominees...*shall* receive instruction;” and “Each nominee *shall* then
28 be examined...”(emphasis supplied)). This imperative language controls our decision. While
29 the Session’s determination of eligibility vests in its sound discretion (*BCO* 39-3(3)), that
30 discretion must be exercised in accordance with the provisions of the Constitution. In adding
31 a step at odds with the Constitution and “vetting,” by mandating the removal of men from the
32 process before examination, the Session erred. The Presbytery erred in approving this
33 preliminary review process.
34

35 The examination described in *BCO* 24-1 serves several vital purposes. It affords the Session
36 the opportunity to ask questions of a nominee, to ensure his qualifications meet the Biblical
37 standards and the subject matters outlined in *BCO* 24-1. The examination also provides a
38 nominee an opportunity to be heard and to articulate his knowledge, sense of calling,
39 qualifications, understanding and views. In this case, the premature arrest of the nomination
40 of one duly elected and serving in office, without the benefit of an examination violates the
41 mandatory provisions of *BCO* 24-1. While the pastoral communication of concern to a
42 questionable candidate may be proper for a Session, a preemptive removal of a congregational
43 nominee is not.

Standing Judicial Commission – Report to 48th General Assembly

1 At the hearing, neither party could identify any portion of the record in which the reason for
2 the setting aside of the Complainant’s nomination were articulated. Further, the nominee
3 contended (and the Presbytery did not refute the claim) that the Session did not communicate
4 any rationale to the Complainant for setting aside his nomination at the time it did so. While
5 *BCO 24-1* does not specifically prescribe a process for such communication, fairness and
6 equity suggest a Session should communicate the rationale for its action to remove a man from
7 further consideration promptly and directly to the man.

8
9 This decision is limited to the narrow question of the application the process required by *BCO*
10 *24-1* to the facts of this case. We do not address or express any opinion regarding the
11 Complainant’s qualifications for the office of Ruling Elder or the right and duty of the Session
12 to exercise its discretion, at the proper time, to determine his qualifications for that office and
13 his eligibility to be a candidate. This decision also should not be construed to address
14 “frivolous” nominations or submission of names of those who are clearly disqualified.
15 Barring clearly or grievously disqualified nominees, the procedures for instruction and
16 examining nominees outlined in *BCO 24-1* should be followed. That process requires
17 instruction and examination to precede a session’s determination of a nominee’s qualifications
18 and eligibility. The case is remanded for adjudication consistent with this decision.

19
20 The SJC reminds the church that according to *BCO 14-7*, General Assembly judicial decisions
21 “shall be *binding and conclusive on the parties who are directly involved in the matter being*
22 *adjudicated*, and may be appealed to in subsequent similar cases as to any principle which
23 may have been decided.” (Emphasis added.) Should anyone suppose that there should be
24 greater flexibility in the process of *BCO 24-1*, proposed amendment to the *BCO* would be in
25 order.

26
27 The Panel's Proposed Decision was drafted by RE Wilson and revised and approved by the
28 Panel. The Reasoning was further revised by the SJC, and then the SJC approved the Decision
29 by a vote of 19-3, with two absent.

30
31 Bankson *Concur* Duncan, M. *Concur* Neikirk *Concur*
32 Bise *Concur* Duncan, S. *Concur* Nusbaum *Concur*
33 Cannata *Dissent* Ellis *Concur* Pickering *Concur*
34 Carrell *Concur* Greco *Concur* Ross *Concur*
35 Chapell *Absent* Kooistra *Absent* Terrell *Dissent*
36 Coffin *Concur* Lee *Concur* Waters *Concur*
37 Donahoe *Concur* Lucas *Dissent* White *Concur*
38 Dowling *Concur* McGowan *Concur* Wilson *Concur*

Concurring Opinion

Case 2019-03: Crouse vs. NW Georgia Presbytery

RE Howie Donahoe

1
2
3
4
5 I was a bit ambivalent about my vote in this Decision. I personally think a Session should
6 have more flexibility, but it seems *BCO* 24-1 contains mandatory language and a mandatory
7 sequence. The main issue is the flexibility (or rigidity) of the phrase "shall *then* be examined
8 ..." So, the PCA may want to consider an overture revising *BCO* 24-1 to explicitly provide
9 more flexibility.

10
11 Regarding flexibility, most would agree a Session has the freedom and flexibility to determine
12 what the *BCO* 24-1 "instruction" looks like. There are different practices in the PCA. And it
13 could even vary for individuals. If a 45-year-old military officer resigns from service on his
14 Session due to an upcoming three-year overseas assignment, and then returns to the same
15 church after the assignment, his *BCO* 24-1 training could look different from what's offered
16 to a 28-year-old man in the same church who's never been an elder. Likewise, if one of my
17 fellow ruling elders on the SJC moved to our church near Seattle, I doubt many would construe
18 *BCO* 24-1 as requiring us to put him through, or requiring him to attend, the same elder
19 training program we provide rookies.

20
21 There's a legitimate debate on how flexibly we can construe the word "shall" in the *BCO*. For
22 example, there seems to be broadly-recognized flexibility regarding another mandatory-
23 sounding *BCO* provision (at least in practice).

24
25 58-5. ...Here the bread is to be distributed. After having given the bread, he shall
26 take the cup, and say:

27
28 The word "shall," appears 1,634 times in the *BCO*, *RAO* and SJC Manual. Many times in the
29 *BCO* it refers to a mandatory action. For example:

30
31 32-13. In order that the trial may be fair and impartial, the witnesses *shall* be
32 examined in the presence of the accused, or at least after he shall have received due
33 citation to attend.

34
35 But sometimes it is used merely descriptively. For example:

36
37 37-7. When a person under censure *shall* reside at such a distance from the court
38 by which he was sentenced... [See also *BCO* 38-1, 38-2, 41-4.]

39
40 In many *BCO* paragraphs, it is used descriptively and prescriptively in the same paragraph:

41
42 19-2. ... No Presbytery *shall* omit any of these parts of [licensure] examination
43 except in extraordinary cases; and whenever a Presbytery *shall* omit any of these
44 parts, it *shall* always make a record of the reasons therefor, and of the trial parts

1 omitted. [See also *BCO* 19-13, 21.4.b, 21-4.d, 23-1, 38-3.a, 40-5, 42-7, 46-1, 46-
2 2, 46-6, 46-8.]

3
4 /s/ RE Howie Donahoe
5

6
7 **Dissenting Opinion**

8 ***Case 2019-03: Crouse vs. NW Georgia Presbytery***

9 TE Sean M. Lucas, joined by RE Terrell and TE Cannata
10

11 There were two issues that led to our dissent from the SJC decision in 2019-03 *Crouse v. NW*
12 *Georgia Presbytery*. First, the decision provided a constitutional solution to what was actually
13 a pastoral issue. In the record of the case, it appeared that the Complainant’s Session was
14 wrestling with the requirements of 1 Timothy 3:2 and how to apply its developing
15 understanding to those who were already officers in that church. Of course, it is the prerogative
16 of that Session to determine and “to declare...the qualifications of its ministers and members”
17 (*BCO*, Preliminary Principle, 2); such determination subject to its “sound discretion” (*BCO*
18 24-1) and “should not be distributed” (*BCO* 39-3[3] and [4]). The pastoral problem that
19 emerged was two-fold: the inconsistent way the Session wrestled with this issue and the failure
20 to communicate to the Complainant what was happening and how this all affected his
21 nomination to serve as a Ruling Elder.
22

23 To be sure, the Complainant sought the constitutional solution when he complained against
24 the action of the Session and pursued that Complaint through the procedures provided by the
25 *BCO*. That surely was his right. However, while the SJC decision provided constitutional
26 relief for the Complainant, it will not actually provide what is required—pastoral care that
27 will lead to further ministry within that particular congregation. It is hard to imagine how the
28 *BCO* process in which the Complainant engaged will actually provide the relief sought—
29 which is a place on his local church’s Session. Surely, that could only come through pastoral
30 care and communication, not through the constitutional solution offered by the SJC.
31

32 Second, and more significant in terms of the reach of this decision, the SJC decision creates a
33 precedent that goes beyond the required relief in the case. While the SJC’s reason and
34 judgment suggested that this is a “narrow decision,” it actually is a broad one: it is a decision
35 that has the potential of affecting hundreds of churches and their officer training programs and
36 could open the door to litigation for disgruntled nominees who were rightly prevented from
37 standing for election to church office.
38

39 The broad nature of the decision is seen in two ways. First, in the repeated use of “mandatory”
40 in connection with the sequence in *BCO* 24-1. After laying out the sequence of events to occur
41 through the nomination and election process, the SJC declared, “The language of *BCO* 24-1
42 is mandatory.” And the relief offered to the Complainant was the result of a supposed violation
43 of “the mandatory provisions of *BCO* 24-1.” However, the alleged violation was for a practice
44 that is “not described in *BCO* 24-1,” that of “prescreening” nominees. While not denying that
45 the positive commands of *BCO* 24-1 are mandatory (as represented in the repeated “shall”

1 statements), it strikes me as odd that such “shall” statements are taken to rule out anything
2 else that may happen in-between those “shalls.” The SJC has not demonstrated in its judgment
3 why the Constitution prevents Sessions from “certifying” the nominees prior to their
4 beginning the training process; such certification is not prohibited. Such certification would
5 happen between “the close of the nomination period” and nominees for office “shall receive
6 instruction.” This, in fact, could be what was occurring in the Complainant’s Session as they
7 “vetted” their nominees, wrestling with the qualifications of 1 Timothy 3:2 and how they
8 apply. The SJC’s reading of *BCO* 24-1 treats that section in a rigid fashion that does not allow
9 for the appropriate flexibility that is contained already in the Constitution.

10
11 Second, in the final paragraph of the reason and judgment, the SJC doubled down on their
12 decision by suggesting that if a Session desires “greater flexibility” in the requirements found
13 in *BCO* 24-1, it should pursue a change to the Constitution. Such language suggests that the
14 SJC declared the “mandatory” sequence in *BCO* 24-1 to have the weight of constitutional law.
15 The net effect of this declaration suggests that the SJC holds that the only place where a
16 nominee can be removed from the officer process is at the very end after training and
17 examination.

18
19 While such a strict reading of *BCO* 24-1 may be defended, it is pastorally disastrous and
20 practically unrealistic. It is pastorally disastrous because it leaves individuals in the training
21 and examination process who may be unfit for office and yet cannot be removed until the
22 examination occurs at the end. The individual goes through all the training, thinking that he is
23 going to be a deacon or ruling elder; meanwhile, the Session has significant concerns about
24 his fitness to serve. Yet, the individual goes to the very end, only to be rejected. How is he
25 going to feel? Would he believe that it would have been better pastorally to have been told
26 this at the very beginning, rather than believing that he will make it through the process and
27 stand for election?

28
29 Not only this, but this reading is practically unrealistic. What is much more likely is that such
30 individuals who have gone all the way through the training and examination process will be
31 allowed to stand for office, even while elders have concerns about their fitness for office.
32 While we would like to believe that elders would have the courage not to let such men find a
33 place on the ballot, it is much more likely that they would have sympathy on such men who
34 have engaged with the formative discipline of the training and examination process and allow
35 them to proceed. Meanwhile, the church may end up with a Diatrophes (3 John 9), all because
36 such a man was not vetted out of the process at the very beginning.

37
38 The SJC decision appears to be uncomfortable with the constitutional overreading provided
39 here as evidenced in its mitigating language: “Nothing in this section forecloses the Session’s
40 prerogative, at any time, to counsel or advise nominees regarding their suitability or
41 qualification for office.” Yet how should such counsel occur? Does counsel rise to the level
42 of a ruling? If the Session’s counsel is that someone is not suited for office and then they
43 proceed to training and examination anyway, does such represent a violation of their
44 membership vows? Can only one member of the Session give this counsel (i.e., the pastor) or

1 does the Session need to give such counsel jointly under its power of jurisdiction (*BCO* 3-2)?
2 How does this not open the door to further litigation?

3
4 Likewise, the SJC offers as mitigating relief to this decision the ability to deal with “clearly
5 or grievously disqualified nominees.” Such can be removed—but how and when? At the
6 beginning of the process in a “prescreening” process? The Complainant’s Session tried to do
7 this as it wrestled with 1 Timothy 3:2, determined that he was disqualified, and removed his
8 nomination; yet, the SJC has ruled that such could only be done at the end of the “mandatory
9 sequence” of *BCO* 24-1. The result is that “clearly or grievously disqualified” nominees can
10 only be removed at the end of the process after examination. And so, the apparent mitigating
11 relief is no true relief at all. What is actually here is an overreading of the constitutional
12 requirements in *BCO* 24-1 by not allowing for the appropriate flexible, pastoral application of
13 its mandatory aspects.

14
15 For these reasons, this dissent argues that the SJC should have answered its statement of the
16 issue in the negative and supported the lower court’s ruling that the Complainant’s Session
17 had not erred in their handling of the case. This dissent also warns concerning the potentially
18 wide-ranging, negative effects of the SJC decision both pastorally and practically as Sessions
19 seek to qualify men for office.

20
21 /s/ TE Sean M. Lucas

22
23
24 **CASE 2019-06**
25 ***THE PRESBYTERIAN CHURCH IN AMERICA***
26 **vs.**
27 ***THE PRESBYTERY OF THE MISSISSIPPI VALLEY***

28
29 **DECISION ON *BCO* 40-5 REFERRAL**
30 **February 6, 2020**

31
32 **SUMMARY OF THE CASE**

33
34 This Case arose from a July 18, 2016 arraignment at which a member (hereinafter referred to
35 as the “Petitioner”) of Pear Orchard PCA Church in Ridgeland, MS, pled “not guilty” to the
36 charge of “failing to submit to the government and discipline of the church.” She had filed
37 for divorce, even though the Session had previously communicated to her its conclusion that
38 she did not have biblical grounds for divorce.

39
40 A trial was never scheduled. One month after the arraignment, in August 2016, the Session
41 met and approved the following motion: “For [two named elders] to draft and send a final
42 letter to [the Petitioner], warning that if she continues to make it known that she has no
43 intention of fulfilling her vows to submit to the authority of the Session, and she does not
44 repent of that, per *BCO* 38-4, her name will be erased from the church roll.”

1 Shortly thereafter, the Session, through the two Session members, sent the Petitioner a letter
2 stating the Session was "ceasing formal judicial process against" her because it understood
3 some of her comments at the July 18 arraignment to mean she did not recognize the Session's
4 authority, and that she would not fulfill her membership vows. The Petitioner contended that
5 her comments were not intended to indicate an intention not to submit. The minutes of the
6 September 16, 2016 meeting indicate that the Session rescinded its indictment and formally
7 erased the Petitioner's name from its membership roll under *BCO* 38-4. The Record does not
8 indicate when or if this final erasure was communicated to the Petitioner.

9
10 Twelve months later, in September 2017, the Petitioner filed a *BCO* 40-5 report with the
11 Presbytery of the Mississippi Valley (PMV), alleging the Session acted in a grossly
12 unconstitutional manner when it erased her name from the membership roll without process.
13 The Session filed a response to Presbytery in January 2018, and a Presbytery Commission met
14 with Session representatives. At its February 2018 meeting, Presbytery adopted the
15 recommendation of its Commission and ruled the Session had not acted unconstitutionally
16 when it removed the Petitioner from membership via *BCO* 38-4. She then filed her *BCO* 40-5
17 letter with the General Assembly. The SJC began to consider it as Case 2018-02, but the SJC
18 eventually ruled it administratively out of order and referred the matter to the General
19 Assembly's Committee on Review of Presbytery Records. RPR recommended to the 47th GA
20 in Dallas that the GA judge her report was credible and cite the Presbytery to appear before
21 the SJC and "show what the lower court has done or failed to do in the case in question."
22 (*BCO* 40-5)

23
24 Eventually, the SJC determined the following to be the Statement of the Issue: "Did Presbytery
25 err in its response to the Petitioner's *BCO* 40-5 letter?" The SJC's Judgment is "Yes. The
26 errors are addressed in the following Reasoning (*OMSJC* 15.6.a)."

27 28 **I. SUMMARY OF THE FACTS**

- 29
30 03/16 The Session of Pear Orchard Presbyterian Church (POPC) counseled with the
31 "Petitioner" and her husband regarding their marriage. Both were members of
32 POPC.
33
34 04/18/16 The Petitioner's husband confessed to specific sins related to the marriage and his
35 interaction with his wife. The Session received his confession, admonished him,
36 and counseled the parties to remain married and to continue to seek counseling and
37 assistance regarding their marriage.
38
39 05/10/16 The Petitioner informed the Session that she disagreed with its counsel and that
40 she had filed for divorce.
41
42 05/24/16 The Session sent the Petitioner a citation, along with an indictment, to appear
43 before the Session on June 27, 2016, to hear and receive a charge and specifications
44 proffered against her and to enter a plea to the Charge. The charged offense was

1 “failing to submit to the government and discipline of the church....” The
2 Specification read:

3
4 That on the 19th day of April, 2016, a letter from the session of Pear
5 Orchard Presbyterian Church was mailed to [the Petitioner] that
6 specifically advised [her] not to pursue a divorce but rather continue to
7 attend counseling both individually and with her husband, [name
8 omitted], and exhorted both [the husband and wife] to keep their
9 marriage vows before the Lord, to love and forgive one another, and to
10 work toward reconciliation. The letter further reminded [her] that she
11 took a vow to be a loving and faithful spouse in sickness and in health,
12 in plenty and in want, in joy and in sorrow, and as long as she shall live;
13 that [she] entered into a lifelong covenant with [her husband] and that
14 covenant is still in effect. [The Petitioner] was therefore urged and
15 implored to strive by the Holy Spirit's power to live with her husband in
16 love, peace, faithfulness, and devotion to the Lord and to her husband.
17 [She] was finally charged to leave her father and mother and cleave unto
18 [her husband], to submit to him as the church submits to Christ, to
19 respect him, to forgive him, to cease pursuit of a divorce, and to commit
20 herself to reconciliation.

21
22 That despite and in direct repudiation of the foregoing counsel, on or
23 about May 10, 2016, [the Petitioner] did file a petition for divorce and
24 serve the same upon her husband, [name omitted].

25
26 06/30/16 After she did not appear at the June 27 arraignment, the Session cited her a second
27 time to appear before the Session on July 18, 2016, to hear and receive a charge
28 and specifications preferred against her for "... failing to submit to the government
29 and discipline of the church;" and to enter a plea to the charge.

30
31 07/18/16 The Petitioner appeared before the Session and pled not guilty to the charge. The
32 minutes of the called Session meeting indicate the Petitioner informed the Session
33 that she had the right to plead not guilty and that she believed the Session was
34 wrong in its conclusion that she did not have biblical grounds for divorce.

35
36 08/15/16 One month after the arraignment, the Session met and approved the following
37 motion: "For [two named elders] to draft and send a final letter to [the Petitioner],
38 warning that if she continues to make it known that she has no intention of fulfilling
39 her vows to submit to the authority of the Session, and she does not repent of that,
40 per *BCO* 38-4, her name will be erased from the church roll."

41
42 08/17/16 The Session sent the Petitioner a letter stating that the Session was dropping the
43 charge against her "[cease formal judicial process against you]," because it
44 understood her comments at the July 18 arraignment to mean she did not recognize
45 the Session's authority, and that she would not fulfill her membership vows.

Standing Judicial Commission – Report to 48th General Assembly

- 1 09/16/16 Two months after the arraignment, the Session rescinded its citation and formally
2 erased the Petitioner’s name from its membership roll under *BCO* 38-4. The
3 Record of the Case does not indicate when or how this action was communicated
4 to the Petitioner. At oral argument, the party representatives confirmed that the
5 Record does not indicate when or how the decision to erase was finally
6 communicated.
7
- 8 09/06/17 Fourteen months after the arraignment, the Petitioner filed a *BCO* 40-5 report with
9 the Presbytery of the Mississippi Valley (PMV), alleging the Session acted in a
10 grossly unconstitutional manner when it erased her name from the membership
11 roll without process.
12
- 13 11/07/17 PMV appointed a Judicial Commission to hear Petitioner’s *BCO* 40-5 report.
14
- 15 01/30/18 The Judicial Commission conducted a hearing with POPC Session representatives
16 to adjudicate the matter. The Petitioner was not present.
17
- 18 02/06/18 PMV received and approved the report of its Judicial Commission and adopted the
19 following judgment recommended by the Commission.
20
- 21 "The judgment...is that the Pear Orchard Presbyterian Church
22 Session acted constitutionally when it removed [the Petitioner] from
23 the rolls of Pear Orchard Presbyterian Church per *BCO* 38-4."
24
- 25 05/03/18 Petitioner filed a *BCO* 40-5 report with the PCA Standing Judicial Commission:
26 "I request that the PCA GA, as the court having appellate jurisdiction over PMV,
27 accept and review my credible report and reverse or redress the action arising out
28 of an alleged grossly unconstitutional proceeding." The SJC Officers found the
29 case administratively in order and referred it to a Panel as Case 2018-02.
30
- 31 07/20/18 The 48-page Record of the Case was finalized on July 20, 2018. TE Roger Collins
32 served as the Presbytery’s representative. The Petitioner was represented by
33 TE Dominic Aquila.
34
- 35 09/10/18 An SJC Panel heard oral argument via GoToMeeting videoconference. Panel
36 included RE Jack Wilson (chairman), TE Bryan Chapell, and TE Charles McGowan,
37 with TE Paul Bankson and RE Sam Duncan attending as alternates.
38
- 39 09/17/18 The SJC Panel filed its Proposed Decision in Case 2018-02, recommending the
40 following as the Statement of the Issue and the Judgment:
41
- 42 Did Presbytery err on February 6, 2018 when it adopted the
43 recommended judgment from its judicial commission , thus ruling the
44 Session had not erred?
45
- 46 Yes

1 02/17/19 At its Stated Meeting five months later, the SJC adopted a substitute for the Panel's
2 Proposed Decision, adopting the following Decision by a vote of 17-6. There were
3 one Concurring and two Dissenting Opinions.
4

5 The *BCO* 40-5 filing with the SJC is out of order. The only
6 responsibility the SJC has with respect to Chapter 40 is upon referral of
7 a matter from the General Assembly according to *RAO* 16-10.c. and as
8 administered under Chapter 15 of the *OMSJC*.
9

10 The SJC notes the Record does not contain evidence that the Session
11 provided [the Petitioner] with notice of its action erasing her name from
12 the roll (*BCO* 38-4). If this notice was not properly given, [the
13 Petitioner] remains a member in good standing of the church in
14 question, unless she has joined another church. (M47GA, p. 562).
15

16 02/22/19 The PCA Stated Clerk forwarded the Petitioner 's *BCO* 40-5 letter and the Record
17 of the Case to the GA Committee on Review of Presbytery Records ("RPR").
18

19 05/30/19 One month before the 47th General Assembly, RPR voted 50-0-6 to adopt the
20 motion below.
21

22 Therefore, the CRPR recommends the 47th GA rule the allegation
23 of [the Petitioner] is a "credible report" involving "an important
24 delinquency or grossly unconstitutional [proceeding]," and thus, per
25 *BCO* 40-5, the 47th GA cites the Presbytery of the Mississippi
26 Valley to appear before the PCA's Standing Judicial Commission,
27 which the 47th GA constitutes its commission to adjudicate this
28 matter, by representative or in writing, at the SJC's fall stated
29 meeting, to "show what the lower court has done or failed to do in
30 the case in question," following SJC Manual 15, the 47th GA directs
31 the SJC Officers to appoint an SJC member to be the representative
32 of the report. Specifically, the GA requests the Presbytery to at least
33 answer these questions initially:
34

- 35 1. Where in the Session's or Presbytery's official record
36 ("Record"), or elsewhere, is there record of a clear
37 demonstration that [the Petitioner] "made it known she had
38 no intention of fulfilling the church vows?" (*BCO* 38-4)
39
- 40 2. If a church member declines to follow advice or counsel
41 from a Session, is that automatically evidence of failing to
42 submit to the government and discipline of the church? (i.e.,
43 the offense for which the Session indicted her).

- 1 3. Where in the Record, or elsewhere, is there record of the
2 Session fulfilling the "pastoral discipline/reminding"
3 responsibility of *BCO* 38-4, which occurs after a member's
4 expression of "no intention" but before the action of removal?
5
- 6 4. Where in the Record, or elsewhere, is there record of the
7 Session providing [the Petitioner] formal and official
8 notification of her *BCO* 38-4 removal after the Session took
9 the action?" (RPR Recommendation 44.e, M47GA, pp. 485-
10 486).

11

12 06/27/19 At the 47th GA in Dallas, a substitute for RPR's recommendation was moved from
13 the floor proposing the Assembly dismiss the whole matter, but it failed by a vote
14 of 323-802 (29-71%) An amendment to RPR's recommendation was adopted to
15 allow the parties to add written documentation to the Record. GA adopted RPR's
16 recommendation, as amended, by a voice vote. (M47GA, pp. 26-27).

17

18 10/02/19 Presbytery's Representative (and Clerk) TE Roger Collins submitted a four-page
19 Brief, with a one-page attachment. Three additional pages were added to what had
20 been the 48-page Record of Case 2018-02 (i.e., the Session's January 2018 letter
21 to the Presbytery Judicial Commission).

22

23 10/14/19 The Assembly's Representative, RE Sam Duncan, filed his report with the SJC.
24 (He was been appointed to that role by the SJC officers, per GA instructions.)

25

26 10/17/19 The full SJC heard the *BCO* 40-5 Report in accordance with the General
27 Assembly's direction. The representatives for Presbytery and the GA presented
28 oral arguments and answered questions. After the post-Hearing discussion, the
29 SJC adopted a motion instructing the SJC Chairman to appoint a drafting
30 committee to present a recommended Decision to the SJC prior to the SJC's
31 February Stated Meeting.

32

33 01/21/20 Drafting Committee of REs Dowling (chair), Donahoe, Neikirk and Wilson filed
34 its report, along with a proposed decision.

35

36 02/07/20 SJC discussed the Committee's proposed decision and adopted a Decision.

37

38 **II. STATEMENT OF THE ISSUE**

39

40 Did Presbytery err in its response to the Petitioner's *BCO* 40-5 letter?

41

42 **III. JUDGMENT**

43

44 Yes. The errors are addressed in the following Reasoning. (*OMSJC* 15.6.a)

1 **IV. REASONING**

2
3 The Record, and the Presbytery's Response to the questions posed by the 47th General
4 Assembly, present several concerns summarized as follows:

5
6 A. *Indictment* - The Session alleged it was automatically sinful for the Petitioner to
7 fail to heed its conclusion about her pending divorce. And the Session contended
8 this was the equivalent to "failing to submit to the government and discipline of
9 the church" which was the offense charged in the May 2016 Indictment. And
10 Presbytery agrees.

11 B. *Conflation* - The Session erred in considering the not guilty plea and continuing
12 with the divorce as sufficient proof that the Petitioner had no intention to fulfill
13 her membership vows.

14 C. *BCO 38-4 Another Branch* - Even if the Petitioner unequivocally reported she had
15 no intention of fulfilling membership vows, the Session erred by failing to
16 determine whether the Petitioner would fulfill the duties of membership in
17 another branch of the visible church. (Presbytery's response to Question 1 from
18 the 47th GA indicates the pastor of POPC apparently knew she had been
19 worshipping at a local Baptist church.)

20 D. *BCO 38-4 Notification* - The Session erred in failing to notify the Petitioner when
21 her name had been removed from the roll.

22 E. *Case Without Process* - The Session erred by, in effect, proceeding to a "case
23 without process" after dropping the initial charges.

24
25 A. *Indictment*

26
27 GA Question 2 to Presbytery - If a church member declines to follow advice or
28 counsel from a Session, is that automatically evidence of failing to submit to the
29 government and discipline of the church? (i.e., the offense for which the Session
30 indicted her).

31
32 Presbytery Response - No. Not automatically. The action of the session was to
33 "rule" that [the Petitioner] did not have a Biblical basis for divorce (ROC 13 l.
34 15ff.). That "rule" was communicated to remove any ambiguity as to what the
35 session deemed obedient action for both [the husband and wife]. Knowing her
36 expressed conclusions (ROC 12, l. 11) a clear scriptural decision and
37 communication was approved by the session for [the Petitioner]. That was intended
38 for her benefit.

39
40 Presbytery's answer concludes with the assertion below, which indicates that Presbytery,
41 and perhaps the Session, believe the Petitioner only had two options: "obey" and stop the
42 divorce, or file a Complaint.

43
44 The proper course of action for [the Petitioner], if her conscience would not
45 allow her to obey, would have been to file a complaint against their ruling. The

1 fifth vow of membership precludes summarily disregarding the session's
2 communication." (ROC and ruling (*BCO 57-5.5*; ROC 12, 1.11)."

3
4 But there is at least one other option: to consider, but respectfully disagree with, the
5 Session's conclusion. That would not, in itself, be a violation of membership vow 5 or *de*
6 *facto* evidence of "failing to submit to the government and discipline of the church."
7 Granted, in a situation like that, a Session might allege the person is divorcing without
8 biblical grounds, and indict on those grounds, but that was not the Indictment against the
9 Petitioner.

10
11 In addition, it is unclear what Presbytery means when it asserts the Petitioner "summarily"
12 disregarded the Session's communication. That assertion is not demonstrated from the
13 Record. Presbytery cites ROC 12, line 11, but that line simply reads: "[The Petitioner]
14 considers [her husband's] behavior to be emotional abandonment, and in her mind,
15 grounds for divorce." And the Record contains this statement from the Session: "Yes, [her
16 husband] has sinned against her grievously (by his own admission)." The husband's
17 confession was formally treated as a *BCO 38-1 Case Without Process* and the Session
18 officially imposed the censure of Admonition.

19
20 The following sequence is important. A month after the Session adopted a resolution that
21 she "does not have grounds for divorce and ought not to pursue divorce," she notified the
22 Session she had filed for divorce. A week later, the Session adopted the following motion:

23
24 That the Session, in light of the strong presumption of [her] guilt of failing to
25 submit to the government and discipline of the church (*BCO 57-5*, membership
26 question #5; *WCF 24.6*; Hebrews 13:17; 1 Peter 5:5), proceed to institute
27 process, appoint a prosecutor to prepare the indictment and to conduct the case
28 (*BCO 31-2, 32-3*, Appendix G.1), and cite her to appear and be heard at another
29 Session meeting (date TBD), not sooner than ten (10) days after the citation
30 (*BCO 32-3*, Appendix G. 2).

31
32 It is important to note she was not being indicted for the sin of unbiblical divorce, but
33 rather, for the alleged sin of "failing to submit to the government and discipline of the
34 church." The concluding paragraph of the Session letter accompanying the indictment
35 began with:

36
37 [Petitioner], it appears to us that you are guilty of failing to submit to the
38 government and discipline of the church."

39
40 The indictment began:

41
42 In the name of the Presbyterian Church in America, the Session of Pear
43 Orchard Presbyterian Church charges [Petitioner] with failing to submit to the
44 government and discipline of the church, against the peace, unity, and purity

1 of the Church, and the honor and majesty of the Lord Jesus Christ, as the King
2 and the Head thereof.

3
4 In addition to citing *WCF* 24.6 on divorce, the indictment excerpted *BCO* 57-5, *WCF*
5 30.1, Hebrews 13:17, and 1 Peter 5:5, as shown below.

6
7 *BCO* 57-5, membership question #5 - "Do you submit yourselves to the
8 government and discipline of the Church, and promise to study its purity and
9 peace?"

10
11 *Westminster Confession of Faith* 30.1 - "The Lord Jesus, as King and Head of
12 his church, hath therein appointed a government, in the hands of church
13 officers, distinct from the civil magistrate."

14
15 Hebrews 13:17 - "Obey your leaders and submit to them, for they keep watch
16 over your souls as those who will give an account. Let them do this with joy
17 and not with grief, for this would be unprofitable for you."

18
19 1 Peter 5:5 - "You younger men [and by good and necessary consequence,
20 women], likewise, be subject to your elders ... "

21
22 The Specification section ended with this sentence:

23
24 That despite and in direct repudiation of the [Session's] foregoing counsel, on
25 or about May 10, 2016, said [Petitioner] did file a petition for divorce and serve
26 the same upon her husband, [name omitted].

27
28 The Record also contains an email from the Session Clerk seeking advice from a PCA
29 official:

30
31 It is looking like we will likely have a trial before our Session here at Pear
32 Orchard - a wife who filed for divorce after the Session determined that she
33 did not have biblical grounds; she is probably going to be pleading not guilty
34 this evening of the charge against her (failing to submit to the government and
35 discipline of the church).

36
37 ... In some ways this case seems simple - we said she didn't have grounds, she
38 filed anyway, we're charging her with not submitting to the government of the
39 church. But she's going to want to say that we were wrong in our determination
40 that we didn't have grounds. That seems more along the lines of a complaint,
41 and she didn't file a complaint with us before filing for divorce in the civil
42 courts. So, should the moderator allow questions along the lines of "The
43 Session made an erroneous determination on whether I had grounds for
44 divorce"? It does seem germane in one sense (if we had decided differently,
45 her actions wouldn't be construed as disobedient), but irrelevant from another

1 standpoint (our decision was made, and she flagrantly disregarded it
2 anyway).²¹
3

4 The above demonstrates that the Session's charge of "failing to submit to the
5 government and discipline of the church" was based on her continuing to pursue divorce
6 despite the Session's counsel. The Session was wrong to equate the two, and Presbytery
7 should have noted this.
8

9 Furthermore, whenever a Session offers such or similar counsel, a member is not
10 required to file a *BCO* 43 Complaint if the member declines to follow it (*contra*
11 Presbytery's response to GA Question 2). A member's responsibility is to seriously and
12 respectfully consider the counsel. But there may be many instances where a Session
13 advises it regards something as sinful, without the member sinning by not following
14 the advice. (The person's underlying action may indeed be sinful, but his *response to*
15 *the advice* is not, in and of itself, sinful). This might include Session advice on: how
16 the Lord's Day should be observed, whether parents should use books with depictions
17 of Jesus, whether parents should baptize their infants (WCF 28:5), whether tithing is
18 morally obligated, the permissible use of tobacco or alcohol, appropriate clothing
19 standards, "undue delay of marriage" (WLC 139), "avoiding unnecessary lawsuits"
20 (WLC 141), what constitutes "prejudicing the good name of our neighbor" (WLC 145).
21 And if a Session believed an indictment was warranted in any such situation, the
22 indictment should allege the underlying sin, not the person's decision declining to
23 follow Session counsel.
24

25 B. *Conflation of not guilty plea with no intent to submit*
26

27 The Session erred in conflating the "not guilty" plea with a statement definitively
28 indicating that the Petitioner had no intention to fulfill her vows. If, prior to the May 2016
29 Indictment, the Petitioner expressed she had no intention of fulfilling her membership
30 vows, the Record does not indicate how or when she did. The arraignment was in July,
31 but the indictment was issued two months earlier, in May, thus no statements made at the
32 July arraignment could have been the basis for the May indictment.
33

34 The Petitioner's recollection of what she said at the July 2016 arraignment (as expressed
35 in her September 2017 letter to Presbytery), is quite different than the Session's
36 recollection (as expressed in its January 2018 Response to Presbytery, four months after
37 her letter to Presbytery). Though it wasn't constitutionally required, the Presbytery
38 Commission might have clarified the discrepancy by inviting her to appear at its January
39 hearing.

²¹ A response from the PCA Clerk's office, included the following: "The accused may, however, use as a defense [at] her trial an argument that the Session's decision was erroneous."

Standing Judicial Commission – Report to 48th General Assembly

1 Below are three excerpts from Session's January 2018 filing to Presbytery's Judicial
2 Commission.

3
4 She stated plainly that she did not recognize our authority over her, and that she
5 had no intention of dropping her pursuit of divorce from her husband, or of
6 keeping her church vows, no matter what the Session said or did.

7
8 [Petitioner] had made it plainly known to our Session that she had no intention
9 of fulfilling her church vows ...

10
11 We believe that our actions with regard to [the Petitioner] ... were fitting for her
12 disregard for the authority of the elders of the Church of the Lord Jesus Christ
13 (cf. Hebrews 13:17).

14
15 But four months earlier the Petitioner contended differently. (Presumably, the Session had
16 a copy of her letter before they filed their response to Presbytery's Judicial Commission.).
17 Below are three excerpts from her September 2017 letter to Presbytery.

18
19 [At the arraignment] there were some questions and discussion regarding
20 whether I would submit to the Session's authority ... It was during this
21 discussion that the Session misinterpreted some of my remarks that are reflected
22 in the Session's August 17, 2016 letter. I contend that the Session erred when
23 it inferred from my comments that I was pleading guilty.

24
25 The Session ... inaccurately interpreted my responses during our discussion to
26 mean that I would not submit to the authority of the Session as an admission of
27 guilt (even though I had already said I was "not guilty."

28
29 I maintain that I did respect church authority and took my membership vows
30 seriously. I appeared before the Session to enter a not guilty plea with the
31 intention of defending myself at trial. I was following the *BCO* as much as I
32 understood it; I did not attempt to escape jurisdiction.

33
34 The above discrepancy is likely why the 47th GA posed the following question to
35 Presbytery.

36
37 GA Question 1 - Where in the Session's or Presbytery's official record
38 ("Record"), or elsewhere, is there record of a clear demonstration that Ms.
39 [name omitted] "made it known she had no intention of fulfilling the church
40 vows?" (*BCO* 38-4)

41
42 Presbytery's October 2019 Response - The testimony of the Ruling and
43 Teaching Elders of the Pear Orchard Presbyterian Church (POPC) Session is
44 unequivocal in the Record of the Case (ROC 44, ll. 11-30; 3840 46-47). PMV's
45 commission questioned them further and heard their representatives testify that

1 the letter (ROC 44-45) sent to the PMV Judicial Commission as well as the
2 entire ROC that they submitted was attested unanimously by the entire session
3 of Pear Orchard. That ROC clearly asserts that all the session members present
4 on July 18, 2016 heard [the Petitioner] make it known that she had no intention
5 of fulfilling her church vows.

6 *I have also confirmed that [the Petitioner] has not attended POPC since*
7 *May of 2016 according to Sr. Pastor TE Carl Kalbercamp. In addition, POPC*
8 *received notification in a letter dated March 27, 2019 that [the Petitioner]*
9 *joined Broadmoor Baptist Church in Madison Mississippi. A copy of that letter*
10 *is attached. (Italics original.)*

11
12 Both the Petitioner and the Session representatives were trying to recall what was or wasn't
13 said at a meeting 14-18 months prior. If a Session is going to pursue erasure via *BCO* 38-
14 4, it should be scrupulous to record the basis, perhaps in writing from the member. (Note:
15 Referencing the italics above in Presbytery's response, there's nothing in the Record
16 indicating the Petitioner stopped attending POPC in May 2016. Thus, based on the
17 Record, it would be inaccurate for anyone to assert the Session based any part of its May
18 2016 indictment or its July 18, 2016 erasure decision on two-months of non-attendance.)
19

20 The Session misinterpreted her report of continuing to pursue the divorce despite Session
21 counsel as, per se, a "making it known [she] has no intention of fulfilling the church vows."
22 (*BCO* 38-4). Or worse, the Session regarded her ignoring its counsel to be the equivalent
23 of renouncing membership vow 5: "*Do you submit yourselves to the government and*
24 *discipline of the Church, and promise to study its purity and peace?*"
25

- 26 C. *BCO* 38-4 *Another Branch* - The Session erred by failing to determine whether the
27 Petitioner could fulfill the duties of membership in another branch of the visible church.
28

29 *BCO* 38-4 requires a session to render a judgment on whether the member will fulfill
30 membership obligations in *any* branch of the Church. The Record is silent as to whether
31 the POPC Session evaluated this component of *BCO* 38-4 or made any such determination.
32 This component of review wisely affords a session the opportunity to evaluate a member's
33 actions and statements thoroughly, to determine, among other things, whether the
34 member's actions are applicable only in one local PCA church, or more broadly, to any
35 branch of the Church. In this case, evaluation of this component could have helped the
36 Session understand more about the nature of the Petitioner's dispute. The Session and
37 Presbytery have confirmed that in the time since she made the *BCO* 40-5 report, the
38 Petitioner has joined another branch of the visible Church, indicating at least some
39 willingness to fulfill membership obligations in that branch. Our churches should conform
40 to the provision of *BCO* 38-4 and examine whether a member will fulfill membership
41 obligations in another church prior to carrying out the erasure.
42

- 43 D. *BCO* 38-4 *Notification* - The Session erred in failing to notify the Petitioner that her name
44 had been removed from the roll.

1 *BCO* 38-4 requires that a member whose name is erased from the roll be notified, if
2 possible. In this case, the Session and Presbytery admit that no such notice appears in the
3 Record. The notice of erasure is a key component of the process outlined in *BCO* 38-4.
4 In addition to affording a person a final opportunity to repent and return to fellowship, it
5 also provides a time benchmark by which further action can be measured. In this case, the
6 Petitioner claimed that since she was not notified after the Session’s September 16, 2016
7 official erasure action, she had no avenue for a timely appeal or complaint. Her only
8 recourse was the presentation of a *BCO* 40-5 report. A proper following of *BCO* 38-4
9 would have at least afforded the Petitioner an opportunity for appeal or complaint. And
10 having to go through a *BCO* 40-5 process, with its referral to the GA Committee on
11 Review of Presbytery Records, has resulted in a 12-month delay in adjudication of this
12 matter.

- 13
14 E. *Case Without Process* - The Session erred by dropping the initial charges and summarily
15 proceeding without process.

16
17 The core of the original dispute was the Petitioner’s contention that she believed she had
18 Biblical grounds for divorce while the Session concluded she did not. The Session
19 charged the Petitioner with “failing to submit to the government and discipline of the
20 church.” [ROC 19, 23]. The Petitioner insisted her grounds were proper, and she pled not
21 guilty to the charge of failing to submit. The Petitioner maintains the Session
22 “misinterpreted” her remarks when she entered her not guilty plea. The Session noted,
23 “The reason we did not schedule a trial that evening was because we were unclear how to
24 proceed given her clear acknowledgement of guilt coupled at the same time with a
25 disavowal of guilt.” The Session apparently treated the Petitioner’s insistence of her
26 innocence, and argument that her grounds for divorce were proper, as a failure to submit.
27 The Session reached this conclusion prematurely, and with no record of the Petitioner’s
28 rejection of the Session’s authority.

29
30 The trial process and the protections secured by it help to ensure fairness in judicial
31 proceedings. In ecclesiastical courts, it is particularly incumbent on elders, sitting as
32 judges, to afford full constitutional protection to accused and aggrieved parties. We
33 recognize a trial is often neither a convenient nor efficient method for resolving a dispute.
34 We recognize the proper conduct of an ecclesiastical trial may be especially burdensome,
35 creating taxing demands on limited resources, and sometimes even leading to
36 congregational disruption. A properly conducted trial, however, provides for, and is a fair
37 and reasonable method for, determining the truth in a disputed case when an accused party
38 pleads not guilty.

39
40 When a church member pleads not guilty, and in so doing, asserts disagreement with a
41 Session’s counsel or indictment and declines to follow such advice, that announcement is
42 not the equivalent of refusing to submit to the church’s government and discipline. The
43 Petitioner’s willingness to answer the charge and participate in the trial process
44 demonstrates some degree of willingness "to submit to the government and discipline of
45 the church." The Session erred when it concluded that the mere fact of the Petitioner’s

1 decision to continue pursuing the divorce indicated that she had no intention of fulfilling
2 her church vows. The Session’s preliminary determination regarding the Petitioner’s
3 actions and the reasons for her behavior may have been entirely accurate, but in making
4 that determination final, without affording the Petitioner a trial, the Session’s
5 determination was premature. A trial might have proved the Session’s initial assessment
6 to be correct regarding the lack of biblical grounds for divorce (if that had been the
7 indictment.) Under the facts presented here, having brought formal charges (and then
8 dismissed them), the Session should have afforded the Petitioner her constitutional
9 privileges and processes described in *BCO 38-4* before deciding to remove her name from
10 the roll.

11
12 If a trial court could summarily convert a formal charge to a case without process when a
13 defendant pled not guilty or strongly disputed the charge, many cases would never proceed
14 to trial. Upon issuing formal charges, it is incumbent on a trial court to see the matter
15 through to a proper conclusion, either by dismissal, confession, or formal adjudication.

16
17 The removal of a member from the roll of a church is a significant action requiring
18 scrupulous conformity to the Constitution. Our churches are encouraged to follow the
19 procedures outlined in *BCO 38-4* carefully in dealing with our members.

20
21 The February 2019 Decision in SJC Case 2018-02 [*Petitioner v. PMV*] stated that “if this
22 notice was not properly given, [Petitioner] remains a member in good standing of the
23 church in question.” Because notice was not properly given, the Pear Orchard Presbyterian
24 Church Session should note that in its Minutes. And now, because Presbytery's October
25 2019 response indicated the Petitioner joined a Baptist Church, with written notification
26 dated March 27, 2019, the Session should remove her from the POPC roll pursuant to
27 *BCO 38-3(a)*.

28
29 The Committee's proposed decision was drafted with input from all Committee members, and
30 the Committee approved it by a vote of 4-0 on January 21, 2020. After adopting amendments,
31 the SJC approved the above Decision by a vote of 16-0-0, with three absent and five
32 disqualified.

33
34 Bankson *Concur* Duncan, M. *Disqualified* Neikirk *Concur*
35 Bise *Disqualified* Duncan, S. *Disqualified* Nusbaum *Absent*
36 Cannata *Concur* Ellis *Concur* Pickering *Concur*
37 Carrell *Absent* Greco *Concur* Ross *Disqualified*
38 Chapell *Concur* Kooistra *Concur* Terrell *Concur*
39 Coffin *Concur* Lee *Concur* Waters *Disqualified*
40 Donahoe *Concur* Lucas *Concur* White *Absent*
41 Dowling *Concur* McGowan *Concur* Wilson *Concur*

42
43 RE Bise disqualified himself, per *OMSJC 2.10.d.3.iii*: "A member shall disqualify himself
44 in any proceeding in which ... a person within the third degree of relationship to [the SJC
45 member], ... (iii) ... is a member of a congregation in the bounds of a presbytery party to a

1 case." RE M. Duncan disqualified himself, per *OMSJC* 2.10.d.3.iii: "A member shall
2 disqualify himself in any proceeding in which ... a person within the third degree of
3 relationship to [the SJC member], ... (iii) is a member of a court which is party to the case."
4 RE S. Duncan disqualified himself because he was appointed as, and served as, the
5 Representative of the Report. TE Ross disqualified himself because he is familiar with the
6 original reporting party and members of the Session. TE Waters was disqualified because
7 he is a member of the Presbytery that was party to the Case (*OMSJC* 2.10.d.(3).iii).

8
9
10 **CASE 2019-07**
11 ***MR. CHANDLER FOZARD***
12 **vs.**
13 ***NORTH TEXAS PRESBYTERY***
14
15 **DECISION ON COMPLAINT**
16 **February 6, 2020**

17
18 **I. SUMMARY OF THE FACTS**

- 19
20 03/16/09 The Session of Fort Worth Presbyterian Church (FWPC) adopted a policy titled
21 "General Policy-Integration of Special Case Felons." The policy prescribed how
22 persons that have been incarcerated for committing exceptionally violent crimes
23 or sexual offenses were to be integrated into FWPC.
24
25 10/29/18 Mr. Chandler Fozard, a member of FWPC, sent an email to the leader of Reformed
26 Prison Ministry (RPM) at FWPC. The email included a request to make changes
27 to the policy. All of the members of the Session of FWPC were copied on the
28 email.
29
30 01/08/19 The FWPC Session sent the RPM Chair, Session members TE Darwin Jordan,
31 RE Steve Fults, RE John Weiser, and one other person, to meet with Mr. Fozard.
32 One topic of discussion was to be Mr. Fozard's concern with the FWPC policy
33 concerning special case felons.
34
35 01/11/19 The meeting took place. Mr. Fozard's four concerns and four recommended changes
36 were discussed; however, no changes were made to the policy. One key point of
37 discussion at the meeting was that the FWPC Session had concurred with the RPM
38 Committee's recommendation to limit the number of Special Offenders (SOs) that
39 could attend FWPC
40
41 01/18/19 Six members of FWPC, including Mr. Fozard, filed a Complaint with FWPC.
42
43 03/05/19 FWPC denied the Complaint. The Complainants received a letter with the FWPC
44 Session's answer and reasoning for denying the Complaint.

1 The Complainants filed a Complaint with North Texas Presbytery (NTP). The
2 exact date of the filing is unknown because the ROC does not contain a copy of
3 the Complaint.
4

5 05/03/19 NTP designated the Complaint as NTP 2019-01 and declared the Complaint to be
6 “timely filed and in administrative order.” The NTP directed its Administrative
7 Committee to make the necessary arrangements to hear the Case.
8

9 08/03/19 NTP met to conduct the hearing. Attendees received copies of briefs written by the
10 parties and a copy of FWPC’s policy for the Integration of Special Case Felons
11 (SCFs). The hearing was recorded and transcribed. The NTP denied the
12 Complaint.
13

14 08/23/19 Mr. Chandler Fozard brought his Complaint to the General Assembly.
15

16 12/13/19 SJC Panel conducted the hearing.
17

18 **II. STATEMENT OF THE ISSUE**

19

20 Did North Texas Presbytery error when they denied the complaint against the Session of
21 Fort Worth Presbyterian Church?
22

23 **III. JUDGMENT**

24

25 No
26

27 **IV. REASONING AND OPINION**

28

29 In the Case before us, the Complainant raised a number of concerns about FWPC’s policy for
30 the integration of persons known as Special Case Felons (SCFs) into the life of the
31 congregation. SCFs are persons that have been released from prison and include those that
32 have been convicted of crimes that are sexual in nature. Specifically, the Complainant argued
33 that the restrictions placed on these persons by FWPC’s policy were violations of Scripture.
34

35 The Constitution of the Church is very clear in outlining the jurisdiction and authority afforded
36 to courts of the church and the relationship between the higher and lower courts.
37

38 *BCO 11-2* states in part, “they [Church courts] have power to establish rules for the
39 government, discipline, worship, and extension of the Church, which must be agreeable to the
40 doctrines relating thereto contained in the Scriptures, the circumstantial details only of these
41 matters being left to the Christian prudence and wisdom of Church officers and courts.”
42

43 *BCO 39-3.3* states in part “A higher court should ordinarily exhibit great deference to a lower
44 court regarding those matters of discretion and judgment which can only be addressed by a
45 court with familiar acquaintance of the events and parties. ... Therefore, a higher court should

1 not reverse such a judgment by a lower court, unless there is clear error on the part of the
2 lower court.”

3
4 In the Record of the Case and in oral arguments, it was clear that the parties differed on the
5 interpretation and application of Scripture. While both parties agreed that there was an
6 obligation to minister to SCFs and to make reasonable provision for the protection of the
7 children and the vulnerable at FWPC, the parties did not agree on what those reasonable
8 provisions should be. However, in the judgment of this court, the Complainant did not
9 demonstrate that the Session at FWPC had violated Scripture or the *Constitution of the Church*
10 in their formulation and application of the SCF policy. The Record of the Case contains some
11 arguments by the Respondents of the lower courts that do not properly interpret or apply the
12 *BCO*'s 1st and 2nd Preliminary Principles in the Respondents' defense of what is otherwise
13 acknowledged as a legitimate right of a session to set policy within the parameters of our
14 *Constitution*. This Decision should not be read or interpreted as an endorsement or affirmation
15 of those arguments.

16
17 Without a violation of Scripture or the *Constitution*, the higher court is obligated to defer to
18 the lower court and deny the Complaint.

19
20 We do commend both parties for their desire to minister to, and restore, those that have been
21 convicted of crimes, with the good news contained in the Gospel. This Case serves to remind
22 us all that care and discipline of all members of the Church is to be administered with the
23 compassion of the Lord Jesus Christ. We would encourage both parties to continue to talk,
24 study, and work on solutions on how to best minister to SCFs.

25
26 The proposed opinion was drafted and approved by Panel members RE E. J. Nusbaum, TE H.
27 Paul Lee and TE Paul Kooistra, and Panel alternate TE Charles McGowan. After adopting
28 amendments, the SJC approved the above Decision by a vote of 20-1, with three absent.

29
30 Bankson *Concur* Duncan, M. *Concur* Neikirk *Dissent*
31 Bise *Concur* Duncan, S. *Concur* Nusbaum *Absent*
32 Cannata *Concur* Ellis *Concur* Pickering *Concur*
33 Carrell *Absent* Greco *Concur* Ross *Concur*
34 Chapell *Concur* Kooistra *Concur* Terrell *Concur*
35 Coffin *Concur* Lee *Concur* Waters *Concur*
36 Donahoe *Concur* Lucas *Concur* White *Absent*
37 Dowling *Concur* McGowan *Concur* Wilson *Concur*

Concurring Opinion

Case 2019-07: Mr. Chandler Fozard v. North Texas Presbytery

TE David F. Coffin, Jr., joined by TE Paul Bankson, RE Steve Dowling

I concurred with the proposed decision of the Standing Judicial Commission (SJC) in this case, to deny the Complaint, but I want to highlight the fact that my concurrence was grounded narrowly on the specific wording of the decision: “in the judgment of this court, the Complainant *did not demonstrate* that the Session at FWPC had violated Scripture or the Constitution of the Church in their formulation and application of the SCF policy.” (Emphasis added). My concurrence should not be understood to imply my approval of the Session’s policy, about which policy I have grave concerns; concerns, however, that were not raised by the Complaint, or were not raised in a way that demonstrated that Session erred.

Further, I want to draw attention to the disclaimer included in the SJC’s decision:

The Record of the Case contains some arguments by the Respondents of the lower courts that do not properly interpret or apply the *BCO*’s 1st and 2nd Preliminary Principles in the Respondents’ defense of what otherwise is acknowledged is a legitimate right of a session to set policy within the parameters of our Constitution. This Decision should not be read or interpreted as an endorsement or affirmation of those arguments.

In my judgment, in this concurring opinion, it may be profitable to offer some elaboration with respect my view of the improper interpretations and applications before the Court.

First, in answer to the Complainant’s charge that the Session’s policy violated the rights of conscience set forth in the First Preliminary Principle, Respondents argued that for the higher courts to overturn the Session’s policy would be to violate the Session’s rights of conscience. In view is the language of the First Preliminary Principle:

1. God alone is Lord of the conscience and has left it free from any doctrines or commandments of men (a) which are in any respect contrary to the Word of God, or (b) which, in regard to matters of faith and worship, are not governed by the Word of God. Therefore, the rights of private judgment in all matters that respect religion are universal and inalienable. . . .

However, Respondents’ claim, though well-intended, is without merit. Church courts, as such, have no right of conscience, because church courts have no conscience, and that because they have no soul created in the image of God. Further, contrary to Respondents’ claim, the right of conscience in the First Principle is not applied to the Church, as such, in the Second Principle. On the contrary, it is applied to the people who are forming a denomination. In setting up their own government, according to their best lights, they violate the rights of no other person, because no one is forced to be a member. It is a voluntary association (cf. Morton Smith’s *Commentary* on the *BCO*, as cited by Respondents, “*if a number of individuals agree*

1 in their private judgment as to religious matters, they certainly have the right and privilege to
2 associate themselves and to draw the terms for membership in that body.” Emphasis added).

3
4 The Respondents’ serious misunderstanding of the above has led them into a labyrinth that
5 will confound their participation in sound Presbyterian government. According to our polity,
6 church courts, having no conscience, cannot sin, they can only err; and when they err, they
7 can be corrected by the higher courts without any violation of the rights of the court corrected.
8 Note further, that erring courts cannot have the censures of the Rules of Discipline brought
9 against them, nor can they be required to repent upon a finding of error (cf. *BCO* 11-3, 11-4;
10 42-9; 43-10; 30-1).

11
12 Second, Respondents argued that the Second Preliminary Principle assures that every
13 individual PCA church has the inalienable right to form its terms of admission and its system
14 of internal government. In view is the language of the Second Preliminary Principle:

15
16 2. In perfect consistency with the above principle, every Christian Church, or union
17 or association of particular churches, is entitled to declare the terms of admission
18 into its communion and the qualifications of its ministers and members, as well as
19 the whole system of its internal government which Christ has appointed. In the
20 exercise of this right it may, notwithstanding, err in making the terms of
21 communion either too lax or too narrow; yet even in this case, it does not infringe
22 upon the liberty or the rights of others, but only makes an improper use of its own.

23
24 But this language cannot be understood to apply to anything other than a denomination or
25 independent church body being formed. The member churches and the courts of the
26 denomination are voluntarily a part of a body that has already exercised the rights of the
27 Second Principle on their behalf in the adoption of a form of government, rules for discipline
28 and a directory for worship. The Respondents’ construction of this principle would undermine
29 the very existence of a Presbyterian denomination and lead to chaos.

30
31 Respondents’ illustrations of the variety in the practical administration of different
32 congregations and courts belonging to the same denomination are nothing to the point (e.g.,
33 whether to have a new members class; what should be taught in that class; length and depth
34 of officer training; whether to have a separate women’s or men’s ministry; the particulars of
35 its ministry to youth and children; what staff positions it will have, etc.). Our Confession of
36 Faith teaches us that such matters are typically not questions of conscience before God, but
37 rather are to be understood under the rubric of “there are some circumstances concerning the
38 worship of God, and government of the church, common to human actions and societies,
39 which are to be ordered by the light of nature, and Christian prudence, according to the general
40 rules of the Word, which are always to be observed.” (CF 1.6) Yet all of this wholesome
41 variety, rooted in practical wisdom applied to differing circumstances, must be within the
42 parameters of the Constitution of the Church, previously established. No appeal to the Second
43 Preliminary Principle can relieve that constitutional obligation. This point is summed up
44 nicely in J.A. Hodge’s commentary on the Second Principle:

1 This principle is essential to all organizations. Men are at liberty to refuse to be
2 connected with a society, but if they voluntarily enter, they must submit to its terms
3 of admission and to its laws. So if any man's conscience will not permit him to
4 concur with, or passively submit to, the standards of the Church, he “shall, after
5 sufficient liberty modestly to reason and remonstrate, peaceably withdraw from our
6 communion, without attempting to make any schism.” Provided that which he
7 cannot accept shall be judged by the Church to be indispensable to Presbyterian
8 doctrine or polity. (*What Is Presbyterian Law?* Philadelphia, 1882, pp. 23-24).
9

10 Note, however, that upon peaceable withdrawal, a body of like-minded folk would have the
11 right to set up for themselves a new government, and in that circumstance the Second Principle
12 would be fully applicable to their endeavors.
13

14 Over all, Respondents’ arguments from the Preliminary Principles fail to grasp that these
15 Principles, articulated in 1788, set forth the foundation for how Presbyterians would form and
16 guide their branch of the church, in relation to other denominations, now in the novel
17 circumstances created by the disestablishment of the church in post-Revolutionary America.
18 These principles have an abiding significance, both to remind us of our foundations, and to be
19 applied anew when in God’s providence believers are convicted that they must depart from a
20 denomination that has abandoned the Gospel, in order to continue afresh what has been
21 abandoned, as we have seen in the commentary of J.A. Hodge above. However, these
22 Principles were never articulated as belonging to the various church structures that made up
23 such denominations. The use of these Principles in such a manner, as fully applicable to
24 Sessions and Presbyteries within a denomination, is a modern novelty, an expedient that grew
25 out of the sad controversies that wreaked havoc in the Northern and Southern Presbyterian
26 Churches in the late 20th century. In sum, to modify an ancient maxim to our purpose: Hard
27 circumstances made for bad interpretation of law.
28

29 /s/ TE David F. Coffin, Jr.
30
31

32 **Dissenting Opinion**

33 ***Case 2019-07: Mr. Chandler Fozard v. North Texas Presbytery***

34 RE Frederick R. Neikirk
35

36 As the lone dissenting vote in SJC 2019-07, Fozard vs. North Texas Presbytery, it seems
37 particularly incumbent on me to explain that vote.
38

39 At the outset I want to stress that I recognize, and take seriously, the difficult legal and
40 shepherding issues that confront the Session of Fort Worth Presbyterian Church (FWPC) as
41 they seek to be faithful in their responsibility to reach out to ones who have been incarcerated
42 for committing exceptionally violent crimes or sexual offenses. I applaud the efforts of the
43 Session and Congregation, and of Complainant, to minister to ones who have been convicted
44 of these crimes, whether those individuals remain incarcerated or have been released. I further
45 affirm that many of the actions taken by Session are fully within their rights.

1 Having said that, I do believe that Session and Presbytery erred at key points, and thus that
2 the Standing Judicial Commission erred in failing to uphold the Complaint. It is my view that
3 Session and Presbytery erred in their application of Preliminary Principles 1 and 2, that they
4 erred in allowing, indeed mandating, what amounts to a second type of church membership,
5 and that they erred in limiting, by a blanket policy, the number who can come to hear the
6 Gospel during corporate worship services. These issues clearly involve the interpretation of
7 Scripture and the Constitution of the PCA, and thus, contrary to the argument of the SJC, are
8 ripe for consideration under the standard of *BCO* 39-3(4).
9

10 As a point of general concern, and in agreement with at least some other members of the
11 Standing Judicial Commission, I believe Session and Presbytery erred in the breadth they
12 concluded that Preliminary Principles 1 and 2 give to lower courts to determine “terms of
13 admission.” This argument was at the core of Session’s “Biblical” response to the reasoning
14 Complainants offered from Scripture. If all Session’s Representative meant in his argument
15 before Presbytery is the “narrow point” that individual sessions have the right to determine
16 whether or not they will have new members classes, or what specific procedures they will use
17 for interviewing prospective members, or what questions they will ask on *BCO* mandated
18 examinations for prospective officers then I agree fully. But I don’t believe that right comes
19 from Preliminary Principles 1 and 2. I believe it comes from the powers given to sessions and
20 presbyteries in *BCO* chapters 12, 13, and 57. If, however, Session’s Representative meant
21 that Preliminary Principles 1 and 2 give sessions and presbyteries the “broader” right to set
22 their own standards for membership then I believe they have misread the historic meaning of
23 those principles. I grant that Session’s Representative seemed at times to be taking the
24 “narrower” view and at times the “broader” view, and I believe we need to be careful to read
25 his remarks in context. But, especially given my concerns below, I am less sanguine than
26 were, apparently, other members of the Commission that lack of clarity on Preliminary
27 Principles 1 and 2 did not constitute a fatal flaw in Respondent’s argument.
28

29 This concern about how Preliminary Principles 1 and 2 were applied is particularly
30 troublesome because, in my judgment, Complainant did demonstrate before Session and
31 Presbytery at least two valid Biblical and Constitutional concerns with regard to the policy in
32 question (FWPC’s “General Policy - Integration of Special Case Felons”).
33

34 The first point on which I agree with Complainant focuses on what Complainant referred to
35 as the lack of an “exit strategy” from the conditions of the policy. Complainant noted that
36 some of the men covered by the policy had been received by Session as communicant
37 members and yet they were told they would continue to be monitored, could not move about
38 various parts of the building(s) without a chaperone, could not approach children under 18,
39 etc., and, at least so far, there is no stated mechanism by which those members can escape that
40 special status and fully participate in the life of the church. With Complainant, I believe this
41 situation creates what is de facto a second class of communicant members. In agreeing with
42 Complainant on this particular point I am not questioning whether Session was within their
43 rights to receive these men as communicant members, whether they were within their rights
44 to receive them with these conditions imposed originally, or whether Session may impose
45 such conditions in consideration of individual person’s criminal sentences or conditions of

1 probation. My concern is with a blanket policy that mandates these restrictions for everyone
2 who has ever been convicted of one of these felonies (and perhaps other felonies, given how
3 the Record indicates the policy is now being applied), and with the lack of any stated
4 mechanism that will allow the member to demonstrate their repentance over some period of
5 time so that they can, at some point, fully participate in the life of the church. Such a
6 requirement, with no formally stated “exit strategy” seems to establish a requirement for
7 communicant membership that goes beyond the Biblical requirements summarized in *BCO*
8 *57-5*, and, as argued by Complainant, it calls into question Scripture’s teachings on grace and
9 repentance (e.g., I Cor 6:9-11; II Cor 2:5-11; 5:17; Eph 2:1-10, etc.).

10
11 I also agree that Complainant demonstrated a second key problem with the policy - that being
12 Session’s decision to limit the number of “special case felons” who can be present in worship
13 at any one time, even if those individuals have fulfilled their sentences and are no longer on
14 probation. Complainant argued, successfully in my view, that this policy violates the
15 evangelistic imperative of the church. Again, I understand, and sympathize with, the need to
16 provide appropriate safeguards for those who are vulnerable, and I certainly believe Session
17 has the right to put in place many safeguards. I am not convinced, however, that a church has
18 the right under Scripture to limit, especially by category, who can come to worship. I do
19 affirm the right of a Session to limit who can be present in worship on the basis of formal
20 discipline or as a response to a proper requirement of the civil magistrate with regard to an
21 individual (e.g., a condition of a sentence or probation that mandates that one have no contact
22 with minors; a no trespass order, etc.). With Complainant, however, I believe that a blanket
23 restriction on the number of offenders who can be present in worship is inconsistent with the
24 evangelistic imperatives of passages such as Mt 28:19-20 and Lk 14:23. Further, with due
25 respect to the argument of my brothers on the Session of FWPC what is in view here is a very
26 different matter than limiting the number of infants who can be in the nursery. What is at
27 stake in attendance at worship is the means of grace, the care of men’s souls, and even their
28 salvation (see WLC 154-155).

29
30 I join the Standing Judicial Commission in commending “both parties for their desire to
31 minister to and restore those that have been convicted of crimes with the good news of the
32 Gospel.” Further, I again affirm the right and responsibility of the Session of FWPC to put in
33 place many of their policies in an effort to protect the vulnerable. Nonetheless, I agree with
34 Complainant that the pieces of the policy noted above are inconsistent with Scripture and the
35 Constitution of the PCA. As such, I respectfully dissent from the decision of the SJC to deny
36 all portions of the Complaint and thus to uphold the actions of the lower courts.

37
38 /s/ RE Frederick R. Neikirk

CASE 2019-08
TE NEAL GANZEL

vs.

CENTRAL FLORIDA PRESBYTERY

DECISION IN APPEAL
February 6, 2020

I. SUMMARY OF THE FACTS

11 Jan. 2009 A group of 21 members of Coquina Presbyterian Church (CPC), Ormond Beach,
12 FL, sent a letter to the Session raising concerns about pastoral and sessional
13 leadership, and suggesting a number of structural changes. Two members of
14 Session were among the signers of the letter. The group’s concerns were also
15 shared orally at the January meeting of the CPC Session.

17 02/23/09 The Session of CPC responded to the above letter. Session expressed its
18 disagreement both with the concerns raised by the members and their suggested
19 changes. Session encouraged the concerned members to live out their
20 membership vows. The two elders who had signed the letter of concern did not
21 participate in Session’s deliberations, nor did they sign Session’s letter. One of
22 those elders soon moved out of state.

24 Summer '09 Session raised questions about the Christian character of the second elder who
25 had signed the letter of concern. This man, a founding member of CPC, resigned
26 from the Session and renounced his membership in CPC.

28 July '09 An anonymous e-mail was circulated among members of CPC raising questions
29 about TE Ganzel’s compensation and leadership, and about how decisions were
30 made at CPC.

32 10/10/09 Mike and Pat Vesta sent a letter to the Session expressing concerns about the
33 preaching and leadership at CPC. They indicated the concerns had been ongoing
34 and that they were also representing the views of others.

36 Oct. '09 The Minister and His Work Committee (MHWC) of Central Florida Presbytery
37 (CFP) received a “packet of information from a group of discontented people.”
38 According to the Chairman of the Committee, TE Robert Barnes, one of the
39 individuals leading the group was the elder who had renounced his membership
40 in CPC. Another was Mr. Vesta. TE Barnes spoke to some of the leaders of the
41 group. According to him, “They accused [TE Ganzel] of leadership problems;
42 the fundamental issue was he would not let them do what wanted in the church.
43 And that made him a bad leader and ogriish.” TE Barnes went on the say “[The
44 packet] had no actual misbehavior, no actual charges, no evidence. It was just
45 their letters to Neal and his responses with lots of highlighting when he disagreed

1 with them. I told them they didn't have a case against Neal and that they should
2 work to resolve their differences." There is no evidence in the Record as to what,
3 if any, formal action MHWC took with regard to this matter.
4

5 03/17/10 The two men who led the group who sent the materials to MHWC sent a letter
6 to the Session of CPC noting it had been a year since they stopped attending CPC
7 and that they have been attending St. Andrew's Church. They stated they dealt
8 with their issues in accordance with Scripture and the *BCO*. They said they met
9 with Session several times, but did not take the next step of taking the matter to
10 the Church because they wanted to preserve the peace of the church. They went
11 on to say, "However, after 4 pastors advised us to do so, we did send a letter to
12 the Minister and [H]is Work [C]ommittee of the Central Florida Presbytery. We
13 did not send it because we expected them to do anything, but so that we would
14 have taken every step prescribed to deal with these issues."
15

16 01/13/18 MHWC received a letter from Daniel and Laura Yang, former members of CPC,
17 alleging "un-Christlike behavior" on the part of TE Ganzel and attributing a
18 decline in the church's membership to problems with TE Ganzel. They stated,
19 "The reason for the church's decline is sadly well known to many of us who were
20 members between 2007 and 2013." The Yangs were apparently not among those
21 who signed the Jan. 2009 letter of concern. Mrs. Yang's parents continued to be
22 members of CPC.
23

24 01/15/18 TE Dan Thompson, Chairman of the MHWC, exchanged a series of e-mails with
25 Mr. Yang between Jan. 15 and Feb 2. to get further perspective and to inform
26 Mr. Yang that the Committee would follow up on the concerns.
27

28 02/05/18 TE Thompson and TE Chuck Holliday, also a member of MHWC, met with TE
29 Ganzel to discuss the concerns raised by the Yangs' letter.
30

31 02/06/18 TE Thompson e-mailed TE Robert Barnes to confirm MHWC had previously
32 received materials regarding TE Ganzel. TE Barnes confirmed these had been
33 received in Oct 2009 and had been deemed insufficient to warrant action by CFP.
34 TE Thompson also conferred with a previous pastor of CPC about the situation
35 at CPC.
36

37 04/25/18 TEs Thompson and Holliday met with a group of "12-14 former members" of
38 CPC at the Yangs' home. TEs Thompson and Holliday concluded there was a
39 strong presumption of guilt regarding TE Ganzel.
40

41 05/08/18 MHWC met, considered summaries of the 02/05 and 04/25 meetings, and
42 concluded representatives from the Committee should meet with TE Ganzel to
43 discuss the allegations and to "discuss the options available to him under the
44 *BCO*."

- 1 05/12/18 TEs Thompson and Holliday met with TE Ganzel. They urged him to “confess
2 the sins identified by the former members,” telling him that if he did so the
3 Presbytery would take up the matter as a case without process, and if he denied
4 the charges, the matter would become a case with process and go to trial. They
5 also offered another option on behalf of the Committee. They stated that if TE
6 Ganzel would announce his retirement no later than December 2018 they were
7 convinced that those who had raised the concerns would not pursue the matter to
8 trial. TE Ganzel refused to plead guilty and stated he was unwilling to retire,
9 believing “he may have another ten to fifteen years for ministry and [he] believes
10 the church is doing well at this point.”
11
- 12 07/25/18 A packet of materials was produced. This packet included a summary of the
13 findings of the MHWC; proposed charges; communications (some of them
14 lengthy) from former members of CPC; summaries of the various meetings held
15 by TEs Thompson and Holliday; and interactions between various members of
16 CPC and the Session from the years of 2008-2010. The packet was listed as being
17 from TE Thompson and was styled an “Amicus Brief transmitting documents to
18 the second commission.” This cannot be correct in that the Second Commission
19 was not established until 01/22/19. It appears the materials were originally
20 provided by MHWC to CFP and/or the First Commission that was being
21 recommended by the Committee (see below) and that they were later restyled for
22 submission to the Second Commission.
23
- 24 08/14/18 MHWC reported to Presbytery in executive session. The minutes of CFP contain
25 the following note: “Inasmuch as no minutes for the Executive Session during
26 the 169th meeting can be located the following is set forth.” That material was
27 developed from notes written by the Stated Clerk elected at the 171st meeting,
28 who was authorized by the 172nd meeting to “address inadequacies of some
29 previous records of the Presbytery.”
30
- 31 The recreated minutes of the executive session state, “Those filing charges, being
32 willing to pursue their case, have asked that this case be set before Presbytery
33 for trial.” Note that the Record does not contain an indication of if, when, or how
34 the Yangs or any other former member filed charges or converted their letter(s)
35 of concern to charges, nor is a list of formal charges from those former members
36 included in the Record.
37
- 38 The recreated minutes further state the MHWC voted unanimously to “ask CFP
39 to appoint a prosecutor (*BCO* 31-2) to draw up charges and to establish a judicial
40 committee to try this case. Written accusations, evidence and findings to this
41 point will be provided to the judicial committee by the MHW committee.”
42 Finally, MHWC stated they would recommend a slate of men to serve on the
43 “judicial committee/commission, none of which would be members of the MHW
44 committee.”

1 CFP established a Judicial Commission of three teaching elders and three ruling
2 elders to “address charges with a strong presumption of guilt against TE Neil
3 [*sic*] Ganzel.” Minutes of the Judicial Commission list one of these TEs as an
4 alternate and list a fourth RE as an alternate.

5
6 09/20/18 The Judicial Commission met by videoconference. They considered the charges
7 proposed by MHWC and adopted “recommended charges of M&HW
8 Committee against TE Ganzel as follows:

- 9
10 1. Abuse of spiritual authority as a pastor.
11 2. Dishonesty and failure to honor his word.
12 3. Failure to pursue reconciliation.
13 4. Violation of his ordination vows, particularly failing to uphold the
14 peace, purity, and unity of the church and failing to adorn the
15 profession of the Gospel in his manner of life and example to the
16 flock.”

17
18 The Commission also appointed a prosecutor and acted to “Call TE Ganzel to
19 appear at a second meeting of the court to answer indictment [*sic*]....”

20
21 11/12/18 The Judicial Commission met again by videoconference. TE Frank Cavalli (a
22 member of the Commission and the Prosecutor) and TE Richard Burguet (a
23 member of the Commission) provided reports and recommendations.

24
25 TE Cavalli reported “on his interaction with the list of proposed witnesses
26 provided by the Yangs.” He stated that some former members of CPC were
27 willing to testify, but “no members presently worshiping at Coquina were willing
28 to testify against TE Ganzel which suggested that the complaints alleged by
29 others in the past were not apparent or current patterns members observed.” He
30 further reported that he had found himself unable to “follow through on the duties
31 of prosecutor” so an indictment was never prepared. This fact had been
32 communicated to all members of the Commission.

33
34 TEs Burguet and Cavalli reported on a meeting with TE Ganzel and his wife on
35 November 2. At that meeting the Ganzels shared a perspective on these matters
36 that they believed TEs Thompson and Holliday had not heard or were unwilling
37 to hear.

38
39 The Commission voted to have TE Burguet make the following report at the next
40 meeting of CFP:

41
42 The commission has reviewed the documentation provided by the
43 Minister and His Work Committee and spoken to the relevant parties
44 involved. Upon further examination we have concluded that there
45 are no chargeable offenses against TE Ganzel to act on. There are

1 no current members of Coquina willing to testify in a trial and we
2 believe the charges of former disgruntled members stem primarily
3 from a decision made by the church leadership apart from TE Ganzel
4 which certain people have chosen not to put behind them. There is
5 an issue the Commission addressed with TE Ganzel that we believe
6 warrants an explanation to Presbytery which our brother will speak
7 to in a moment. Otherwise, the commission moves to absolve TE
8 Ganzel from any presumption of guilt and to close the matter.
9

10 11/13/18 CFP meets and adopts the recommendation of the Judicial Commission. The
11 minutes state:

12
13 TE Richard Burguet reported that after a thorough investigation, the
14 Commission concluded there were no chargeable offenses and that
15 it absolves Neal of any presumption of guilt and closes the matter.
16 Neal addressed the Presbytery to express his repentance over
17 matters related to his responsibilities to Presbytery and to asked [*sic*]
18 Presbytery for forgiveness. M/S/C that the Commission’s actions be
19 approved, that the Commission express Presbytery’s acceptance of
20 Neal’s repentance and express on its behalf our forgiveness and that
21 the Commission be dismissed with thanks.
22

23 Although the actual text of the Commission’s report is not included in the
24 minutes of CFP, TE Cavalli later affirmed he read the recommendation to CFP
25 in exactly the form it was approved by the Judicial Commission.
26

27 11/15/18 TE Cavalli sent e-mails to TEs Ganzel and Burguet. They stated TE Cavalli
28 spoke to TE Thompson and the latter said he had communicated to the Yangs he
29 had heard from TE Burguet that “no one was willing to testify in a trial.”
30 Apparently the Yangs were very upset about the decision and the
31 characterization that no one was willing to testify when they and other former
32 members had said they were willing. TE Cavalli also e-mailed Mr. Yang to tell
33 him that what the Commission had said was that no current members of CPC,
34 including Mr. Yang’s in-laws, were willing to testify and that no current
35 members “communicated to me that they thought Neal should go.”
36

37 11/19/18 TE Cavalli sent a lengthy document to TEs Ganzel and Burguet. He stated he did
38 not remember whether the Commission had determined how the former
39 members would be informed of the decision, but that he had assumed he and TE
40 Burguet would take the lead in that. He noted the Yangs were upset about the
41 decision, and this was heightened by the statement that no one was willing to
42 testify. He believed the Yangs would file a complaint against the decision. TE
43 Cavalli explained the process by which he had contacted potential witnesses and
44 why those individuals had expected that a trial would be conducted.

1 He wrote, “Here’s the difference between the committee and the commission.
2 The committee believes there is a strong presumption of guilt in your case. They
3 believe you definitely sinned against these people. The commission on the other
4 hand recognizes that you could have conducted yourself more sensitively at
5 times, but we do not believe there are chargeable offenses against you that could
6 potentially warrant your dismissal. The fact that there are no ‘chargeable
7 offenses’ in our opinion does not mean that there wasn’t offense taken
8 particularly in relationship to [two women].”
9

10 TE Cavalli advised TE Ganzel that “the only way to ensure this case is not taken
11 up again is if you are willing to do the hard but necessary thing and speak face
12 to face with those who have presented written testimony against you.” The
13 individuals in question were five former members of CPC and their “testimony”
14 was their written statements to MHWC. TE Cavalli concluded, “Here is the
15 reality Neal. If you are not willing to have a face to face with the people
16 mentioned above under set conditions, it is possible or even likely the case will
17 be taken up by a different commission who will bring it to trial and may rule
18 against you, forcing you out of the church.”
19

20 01/07/19 MHWC filed a Complaint against CFP’s action of 11/13/19 stating, “We believe
21 this decision has left the Central Florida Presbytery open to an appeal to the
22 General Assembly by those who brought the charges in this case.” While styling
23 their submission as a complaint and quoting *BCO* 43, they cite *BCO* 42-3 as their
24 grounds and report, “The irregularity in this case is that those who actually
25 brought charges against TE Ganzel were not given opportunity to present their
26 case to the Judicial Commission. In this, receiving proper evidence for the
27 charges was denied and a decision was made in this case before all the testimony
28 was taken, which seems to manifest prejudice in the case.” MHWC advised it
29 would be better to have CFP take up the matter again rather “than having those
30 who brought charges take this to the General Assembly.”
31

32 01/22/19 CFP took up the Complaint. The executive session minutes record that TEs
33 Burguet and Cavalli (via e-mail) agreed with the Complainant. CFP acted on the
34 Complaint as follows:
35

36 MSC that the previous findings of the commission (that TE Ganzel
37 was not guilty of allegations) be ruled out of order and a new
38 commission formed to investigate the allegations. The members of
39 the previous commission were tasked to turn over all relevant notes
40 and correspondence in this case to the convener of the new
41 commission.
42

43 A new commission, consisting of three TEs and four REs was then appointed.

- 1 Spring '19 TE Thompson sent an “AMICUS BRIEF transmitting documents to the Second
2 Commission.” This packet included a summary of the actions of MHWC and
3 CFP to this point, summaries of the meetings with TE Ganzel and with former
4 members, written statements from four former members of CPC, and various
5 communications between disaffected members and Session from 2008-2009. In
6 this “Brief,” TE Thompson also argued the allegations of the former members
7 were consistent with what CFP experienced when TE Ganzel was their Stated
8 Clerk. The report stated the group of former members was willing to “go through
9 the difficulty of a trial because they are convinced justice requires it, the
10 reputation of Christ requires it, and the future welfare of Coquina PCA requires
11 the removal of a pastor they believe has harmed the church and will continue to
12 harm it by misusing the authority invested in a pastor.” The report concluded by
13 stating MHWC believes the Session of CPC should resign, the Church should
14 seek to return to mission status, and the Church should be placed under the
15 guidance of CFP’s MNA Committee for guidance in re-starting the church.
16 [Note: The materials contained in this packet are the same as those in the packet
17 referenced at 07/25/18.]
18
- 19 05/24/19 The Second Judicial Commission issued an indictment to TE Ganzel. The
20 indictment summarized the history of the matter and then laid out the same four
21 basic charges as had been recommended by MHWC and adopted by the First
22 Commission (see 09/20/18). The charges set forth by the Second Commission
23 differed from those of the First Commission in that the new charges included
24 Scripture references to support the first three charges, a listing of six
25 “subcharges” under the first charge, and the specification in charge 4 that vows
26 6 and 7 were specifically in view. The Commission cited TE Ganzel to appear
27 on June 29 to answer the charges.
28
- 29 06/20/19 TE Ganzel wrote to the Second Judicial Commission. He made two requests.
30 First, that the date for his plea be postponed on the grounds that the indictment
31 was improperly drawn in that it lacked specifics “as to time, place, circumstances
32 and witnesses.” TE Ganzel argued this lack of specificity meant he could not
33 enter a plea. His second request was that the charges be dismissed on the grounds
34 they violated *BCO 32-20* because the offenses alleged had occurred well over
35 one year prior to the commencement of process. Indeed, TE Ganzel noted none
36 of those supporting the charges had been involved in CPC for over three years.
37 He cited SJC 2016-05 (*TE Thomas Troxell v. The Presbytery of the Southwest*)
38 in support of his request.
39
- 40 06/22/19 TE Chuck Debardeleben, the Moderator of the Second Commission, responded
41 to TE Ganzel, presumably at the direction of the Commission. He denied the
42 request for postponement. He responded to TE Ganzel’s *BCO 32-20* concern by
43 stating: a) “this case has not been characterized as a case of scandal;” and b) that
44 the one year limitation has not been violated because the “complaints” made by
45 the former members were given to MHWC in January of 2018 and that body

1 immediately began an investigation. He stated that TE Ganzel had pled not guilty
2 in a 06/10/19 e-mail to TE Debardeleben. [Note: this e-mail is not in the Record.]
3 Finally, he asserted: “It is only reasonable that the charges fit the nature of the
4 offense. In this case, the charges result from alleged behavior over an extended
5 period of time. However, in the spirit of trying to be as specific as possible we
6 have added at least one specification to each of the four major charges.” There
7 followed a list of witnesses to the charges, a request for a list of defense
8 witnesses, and an “ADDENDUM TO THE INDICTMENT OF MAY 24, 2019.”
9 This addendum listed years or portions of years within which offenses were
10 alleged to have occurred, noted the nature of the offenses, and listed witnesses
11 who would testify to each alleged offense. Almost all of the alleged offenses
12 were listed as having occurred sometime between 2001 and 2014. The
13 exceptions were two specifications under “Failure to pursue reconciliation.” One
14 dealt with how TE Ganzel dealt with members “he has hurt.” That specification
15 was listed as “Summer 2006-ongoing.” The other was tied to TE Ganzel’s failure
16 to heed the Fall 2018 advice of the First Judicial Commission that he pursue
17 reconciliation with certain families. Note that, for some reason, the Addendum
18 does not include the 6th subcharge under Specification 1.
19

20 06/24/19 TE Ganzel sent a second request for dismissal, which e-mail was not received
21 until 07/01/19. TE Ganzel reiterated his contention that the charges were barred
22 under *BCO* 32-20, quoting Ramsey in support of his contention. He argued the
23 witnesses waited over three years after they left CPC before they contacted
24 MHWC and that, having left CPC, they are not able to report on current
25 conditions there. He also contended the revised indictment was still not
26 sufficiently precise.
27

28 07/01/19 TE DeBardeleben responded on behalf of the Commission. He repeated that the
29 charges were timely since this was a continuation of events following the
30 communication from January 2018. He stated “the charges are not based on a
31 single event of scandal. They flow from *BCO* 32-1 [*sic*].” He then quoted *BCO*
32 31-2 and stated, “As you are aware, it was on that basis that the Commission
33 indicted you. It is based on your Christian character.” He again denied TE Ganzel’s
34 requests that he be allowed to withdraw his not guilty plea and that the charges
35 be dismissed, stating the trial would take place on July 6.
36

37 07/02/19 TE Ganzel responded, renewing his objections that the charges were out of order
38 because they violated the one-year limitation of *BCO* 32-20 and that the
39 indictment lacked required specificity.
40

41 07/06/19 The trial was held, lasting from 9:07 a.m. to 6:55 p.m. The indictment was read.
42 TE Ganzel pled not guilty. He requested that his objections, as summarized
43 above, be included in the Record. Nine witnesses testified for the prosecution,
44 one of whom left CPC in 2006, two in 2009, five in 2014, and one in 2015. Eight
45 witnesses testified for the defense, including TE Ganzel’s wife, one former and

1 three current members of CPC’s Session, the church secretary, and two other
2 current members of CPC.
3

4 The Commission deliberated and found TE Ganzel guilty of five of the six
5 subcharges under Specification 1, not guilty of Specification 2, and guilty of
6 Specifications 3 and 4. The Commission concluded, “We hereby admonish you
7 to pursue reconciliation in the presence of the Minister and His Work Committee
8 of Central Florida Presbytery by the January meeting of Presbytery 2020 or
9 sooner, specifically: [there followed the names of nine individuals, eight of
10 whom had been witnesses for the prosecution].” When announcing its decision
11 to TE Ganzel the Commission used language that seems to suggest they actually
12 administered the censure (“We hereby admonish you to pursue
13 reconciliation....”)
14

15 07/10/19 The Second Commission met by conference call “to discuss the previously
16 administered censure of admonition after being informed our censure could be
17 changed at any time prior to the action of Presbytery.” “It was M/S/C to change
18 the censure of TE Ganzel to Definite Suspension of Office for Six Months, in
19 accordance with *BCO* 36-4.”
20

21 07/13/19 The Second Commission met by conference call with TE Ganzel to inform him
22 of the change in censure. TE Ganzel stated he had attempted one reconciliation
23 meeting but had been rebuffed. It was noted he had not included a member of
24 MHWC as instructed.
25

26 08/13/19 The Second Commission reported to CFP. They summarized the proceedings in
27 Presbytery and the actions of the Commission, including the change in the
28 censure. Note that the judgment portion of the report is not in exactly the same
29 form as what was acted on by the Commission after the trial. [Compare the
30 minutes of the trial, the transcript of the trial, and the Commission’s report.
31 Beyond changes in order and wording, the names of the members with whom
32 TE Ganzel was to seek reconciliation were omitted and the date by which this
33 was to be accomplished was changed to January 2021.] Their report further
34 stated that TE Ganzel “knew the original censure had been out of order, but did
35 not say anything.” The Commission reported their reasons for the more stringent
36 censure were: the length of time over which the offenses occurred; TE Ganzel’s
37 “persistent refusal to humble himself, repent, and seek reconciliation;” their
38 belief that without an “admonition plus censure” TE Ganzel would continue to
39 refuse to be reconciled; a concern that reconciliation efforts could appear
40 insincere; a belief that the new censure was proportionate to the offenses; and a
41 recognition of the seriousness of the offenses while also recognizing the impact
42 on a “struggling congregation.” The Commission reported it was unanimous in
43 its findings.

1 08/13/19 CFP approved the report of the Judicial Commission. There is, however, no
2 requirement in the censure that TE Ganzel meet with offended individuals. It is
3 not clear whether that requirement was dropped when the Commission changed
4 its recommended censure, or it was not acted on by CFP, or it was omitted from
5 its minutes. There is also nothing in the minutes showing the censure was
6 actually administered per *BCO* 36-4.

7
8 08/22/19 TE Ganzel appealed his conviction and censure to the General Assembly.
9

10 Oct-Nov '19 The parties agreed to an expedited schedule for the submission of briefs and the
11 hearing. Both parties filed briefs. Appellee asked that if the SJC denies TE Ganzel's
12 Appeal it follow *BCO* 42-9 and "render the decision that should have been
13 rendered" by indefinitely suspending TE Ganzel from office.
14

15 11/21/19 The hearing is held via GoToMeeting before a panel consisting of RE Neikirk
16 (Chairman), TE Lucas (Secretary), TE Ross, TE Bankson (alt), and RE Terrell
17 (alt.) TE Ganzel was represented by TE Dominic Aquila. CFP was represented
18 by TE Dan Thompson, who had with him RE Bud Leonard (a member of the
19 Second Commission and the Prosecutor) and TE Don Mountan (Clerk of CFP).
20

21 **II. STATEMENT OF THE ISSUES**

22

- 23 1. Shall this specification of error be sustained: That CFP erred in prosecuting the alleged
24 offense by failing to acknowledge that it was debarred under *BCO* 32-20 from
25 prosecuting the case since the statute of limitations for instituting judicial process in
26 this instance had expired?
27
- 28 2. Shall this specification of error be sustained: That CFP erred in prosecuting this case
29 by failing to follow required constitutional steps for conducting judicial process?
30

31 **III. JUDGMENT**

32

- 33 1. Yes, with regard to Specifications 1, 2, and 4 of the indictment.
34 No, with regard to Specification 3.
35
- 36 2. Yes.
37

38 **IV. REASONING AND OPINION**

39

40 **Judgment 1**

41

42 Appellant asserts that *BCO* 32-20 ("Process, in the case of scandal, shall commence within
43 the space of one year after the offense was committed, unless it has recently become flagrant.")
44 bars a court from instituting process against alleged offenses that occurred more than one year
45 prior to the instituting of process. In support of this claim he cites F.P. Ramsey, "if the Church

1 neglects to commence process against scandal (which is any flagrant public offence of [sic]
2 practice bringing disgrace on the Church) within a year, she is debarred from thereafter doing
3 it. This is not to shield the offender, but to incite to the prompt prosecution of such offences....”
4 Appellant further points to SJC Case 2016-05 (*TE Thomas Troxell vs. The Presbytery of the*
5 *Southwest*) wherein the SJC upheld the Complaint on the grounds that, “Although each of
6 these reports contains findings regarding the conduct of the TE, there is nothing in the record
7 of the case that would indicate that any of the findings could be considered to have ‘recently
8 become flagrant’ in the twelve (12) months preceding the September 2015 institution of
9 process.” In fact, in the *Troxell* case the most recent report was for an offense that occurred
10 fifteen (15) months prior to the initiation of process.

11
12 Appellee argues that the requirement of *BCO* 32-20 was met in this case. He argues, first, that
13 the language “the recent discovery of the church membership of the individual shall be
14 considered as equivalent to the offense itself recently having become flagrant” suggests that
15 a court can deal with allegations dating back several years if they have recently come to the
16 court as “new information.” He asserts this principle fits the facts of this case in that
17 allegations of older offenses first came to CFP’s attention via a letter to MHWC in January of
18 2018. Appellee argues that these matters did not previously come to the attention of CFP
19 because the 2009 letter was apparently seen only by the Chairman of MHWC. Thus, the
20 Presbytery was not aware of the allegations and, it, therefore, did not take any action regarding
21 them. He further asserts that the allegations received in 2018 were similar to, but also
22 additional to, the earlier allegations, and that it was in the communications between the
23 “concerned former members” and MHWC that the offenses actually became flagrant. He
24 argues that “become flagrant” can mean “has become more egregious,” but that it can also
25 mean “that an unknown pattern of offense has suddenly become known to those who are
26 responsible to deal with the alleged offender.” Finally, Appellee contends that *Troxell* does
27 not fit this case. In *Troxell* the Presbytery was made aware of the allegations and made a
28 formal decision to delay instituting process. Here, the Presbytery took no such action, and,
29 indeed, the Presbytery, as a court, was not even aware of the allegations.

30
31 We agree that in the normal pattern *BCO* 32-20 bars a court from prosecuting an alleged
32 offense that occurred more than one year previously. The honor of Christ, the protection of
33 His Church, the cause of justice, and the concern that memories could fade and testimony
34 become unreliable, all support that conclusion. At the same time, we do recognize that there
35 may be situations in which a court could not reasonably have known about an alleged offense
36 until long after it occurred (*e.g.*, cases of child abuse or embezzlement). In such cases we
37 would have sympathy for Appellee’s broader reading of *BCO* 32-20 and would conclude that
38 the *Troxell* precedent would not apply. Given, however, the clear language and logic of *BCO*
39 32-20, any effort by a court to avail itself of a broader reading of the time limits must, of
40 necessity, be accompanied by a clear showing as to why the court could not have known of
41 the alleged offense(s).

42
43 In the current case, virtually all of the alleged offenses occurred prior to 2015. None of the
44 witnesses who testified for the prosecution were members of CPC after 2015, and most left
45 before that. The events about which they testified occurred well over a year before the Yangs’

1 January 2018 letter to MHWC. Further, it is significant that no current members of CPC were
2 willing to testify for the prosecution and those who testified for the defense were unanimous
3 in their assertions that the behaviors alleged by the prosecution did not fit the patterns they
4 saw in TE Ganzel. Except as noted below, there is no allegation of any sinful behavior on the
5 part of TE Ganzel in the twelve (12) months prior to the January 2018 letter. Thus, absent
6 some extraordinary finding that the Presbytery could not reasonably have known about these
7 older offenses, the time limit set forth in *BCO* 32-20 for instituting process must control.

8
9 Nothing in the Record or arguments of the parties shows that there were extraordinary
10 circumstances such that that Presbytery could not have known about the alleged offenses.
11 Indeed, there is evidence in the Record that indicates that members of Presbytery and MHWC
12 were aware of allegations against TE Ganzel long before January 2018. For example, in 2009
13 the MHWC received materials from members of CPC containing allegations against TE Ganzel.
14 The Chairman of MHWC followed up by speaking with at least two leaders of that group.
15 The Chairman then told the members “they didn’t have a case against Neal.” Appellee
16 characterizes this as one man’s actions as opposed to an action of Presbytery. While we agree
17 this is not Presbytery acting, we do not agree this meant that the matter had not been brought
18 to the attention of Presbytery by way of one of its officials. The then Chairman of the MHWC
19 asserts the Committee received the materials. The Record is not clear as to how the Committee
20 handled those materials, but it is clear the Chairman followed up with the concerned
21 individuals.

22
23 There is further evidence that these concerns cannot be characterized as being unknown to
24 members of CFP. First, in their March 17, 2010 letter to Session, the two men who were
25 leaders of the group who sent the materials to MHWC in October 2009, and who were both
26 ruling elders, although not currently serving on the CPC Session, stated that they had made a
27 determination not to take their concerns “to the whole church” so as to try to preserve the
28 peace of the church. They then go on to say that they sent their letter to MHWC after having
29 been advised to do so by four pastors. This certainly qualifies as making what might have
30 been private concerns more broadly known, and it certainly indicates that other members of
31 Presbytery were aware of the situation in 2009, at least from conversations with these two
32 men. In addition, Appellee, himself, argued that Presbytery had some awareness of the alleged
33 pattern of behavior when he stated in his “Amicus Brief:”

34
35 As to whether or not the accusations seem out of character for what we in Central
36 Florida Presbytery have experienced with Neal, I suggest we have evidence to
37 substantiate the claim that Neal does not admit to doing wrong or seek forgiveness.
38 In his role as Stated Clerk of Central Florida Presbytery, Neal failed to honor his
39 commitment and failed to be completely honest with Presbytery.

40
41 If this is the same “pattern of behavior” as was developed in the indictment, then CFP was
42 certainly well aware of the alleged behavior prior to January of 2018.

43
44 We also note that MHWC ‘s own actions suggest that the Committee understood that it could
45 handle such allegations without necessarily requiring an action by Presbytery. At its May 8

1 meeting the Committee determined to offer TE Ganzel three choices: 1) confess so that
2 Presbytery could deal with the matter as a case without process; 2) deny the charges, at which
3 point there would be a trial; or 3) announce his retirement no later than December 2018, in
4 which case those raising the allegations would likely not pursue them to trial. Note that had
5 TE Ganzel accepted the third option it is not clear that Presbytery would have ever known
6 about the allegations, and there certainly would not have been the same level of effort to
7 persuade TE Ganzel of his guilt and his need to reconcile with those offended. Would that
8 have meant that if TE Ganzel had accepted “option 3” someone could come eight years later
9 with the same concerns and allege that they were properly before Presbytery because
10 Presbytery had not acted on the allegations previously?

11
12 In sum, *BCO 32-20* exists to protect the honor of Christ, the cause of His Church, and those
13 alleged to be offenders by mandating that prosecution of matters of scandal not be delayed
14 beyond one year. In this case, almost all of the alleged offenses occurred well over a year prior
15 to the institution of process against TE Ganzel. The delay in instituting process came a) from
16 those offended deciding not to pursue the matter to “the whole church;” b) a chairman (and
17 maybe a committee) of Presbytery receiving and investigating the allegations and acting, so
18 far as can be seen from the Record, to conclude there were not chargeable offenses; and c)
19 members of Presbytery who were aware of the concerns from conversations with concerned
20 members or observations of TE Ganzel’s work as Stated Clerk not pursuing process. Thus,
21 except as noted below, CFP was in violation of *BCO 32-20* when it instituted process against
22 TE Ganzel in 2018. This error was aggravated when the prosecution relied entirely on
23 witnesses who could not comment on TE Ganzel’s current patterns of behavior as pastor and
24 leader of CPC, and when, as is asserted in the Record, no current member of CPC was willing
25 to bring charges or testify.

26
27 There is one exception to the above conclusion. The charge of “Failure to pursue reconciliation
28 with those you knew had been wounded by decisions you led, in violation of Matthew 5:23-24”
29 was characterized as an on-going sin which continues. This particular charge, therefore, did
30 not violate the limitations of *BCO 32-20*. As such, CFP had the right to pursue this charge.
31 Thus, following the principle of *BCO 39-3.2* we would, absent the concerns raised under Issue
32 2 below, be obliged to defer to CFP’s findings on that charge.

33
34 For these reasons, this specification of error is sustained as it applies to Specifications 1, 2,
35 and 4 of the Indictment. It is not sustained as it applies to Specification 3.

36 **Judgment 2**

37
38
39 There were a number of missteps in conducting disciplinary process in the various
40 investigatory committees and Judicial Commissions appointed by CFP.

41
42 Mistake #1: Once MHWC investigated and concluded there was a strong presumption of
43 guilt, “the court shall institute process” (*BCO 31-2*). According to the Record of the Case,
44 CFP did so, establishing a Judicial Commission to try the Case. The Judicial Commission then
45 met and adopted the recommended charges and appointed a prosecutor.

1 However, the Judicial Commission did not actually write the indictment or cite the accused to
2 appear (per *BCO* 32-3). The prosecutor began interviewing witnesses, but never drew up the
3 indictment; he then withdrew and no one else on the commission would take up the prosecutor
4 role. In the meantime, the prosecutor (with another member of the commission) interviewed
5 the Appellant and concluded there was not in fact “anything that would warrant a chargeable
6 offense,” even though the commission had already adopted the charges of the investigating
7 committee as their own and even though CFP had instituted process by appointing the Judicial
8 Commission.

9
10 And so, the Judicial Commission reversed field, and without trying the case or even interviewing
11 all of the witnesses (though they claimed to have done a “thorough investigation”), voted to
12 “absolve TE Ganzel from any presumption of guilt and to close the matter.” This statement
13 was read at the November 13, 2018 CFP meeting, and CFP voted to approve the Commission’s
14 actions, making their actions final (*BCO* 15-3).

15
16 In this process, the Judicial Commission’s mistakes included not writing the indictment for
17 the charges already approved and not citing the accused to appear to plead one way or another
18 (*BCO* 32-3), as well as not interviewing all of the witnesses before concluding they did not
19 want to try the case (while claiming to have done a thorough investigation) (*BCO* 40-3). If the
20 Judicial Commission believed that charges should not have been brought, its only recourse at
21 that point would have been to return to CFP and to ask for relief from either prosecuting the
22 charges or carrying out the case.

23
24 Mistake #2: In the Complaint against the actions of CFP, the members of MHWC noted an
25 irregularity in the proceedings of the Presbytery, citing *BCO* 42-3. However, *BCO* 42 deals
26 with appeals; and *BCO* 42-1 notes that “an appeal cannot be made to any other court other
27 than the next higher, except with its consent.” Hence, the basis upon which the Presbytery
28 took up the Complaint was the wrong basis. Further, no provision in the *BCO* allows a
29 committee, as a committee, to file a complaint.

30
31 That said, the members of the MHWC, as individuals, had the right to complain against the
32 action of Presbytery (*BCO* 43-2) and had the right to cite the irregularities of the Judicial
33 Commission’s proceedings as a basis (*BCO* 40-3). The irregularity should have been the
34 failure to draw up the indictment and cite the accused to appear once CFP determined there
35 was a strong presumption of guilt (*BCO* 31-2; 32-3). Unfortunately, the basis upon which
36 Presbytery sustained the Complaint—*BCO* 42-3—was incorrect, and CFP should have denied
37 the Complaint on that basis.

38
39 By sustaining the Complaint on faulty bases, CFP exposed the Appellant to fundamental
40 unfairness in the use of process.

41
42 Mistake #3: In this instance, CFP sustained the Complaint (with the support of the two key
43 members of the First Judicial Commission, at least one of whom agreed by email). And so,
44 CFP established a Second Judicial Commission. But was it within CFP’s power to undo its
45 absolution and closing of the Case when those decisions were made in response to a Judicial

1 Commission acting on charges (*BCO* 15-1, 3)? Essentially what CFP had decided to do with
2 its first commission was to determine that “the matter complained of amounts to no more than
3 such acts of infirmity as may be amended, so that that little or nothing remains to hinder the
4 minister’s usefulness” (*BCO* 34-6). Granting the fact that this finding did not actually come
5 as a result of a trial, that was what CFP concluded when it “absolved” TE Ganzel and closed
6 the matter. How then can that court undo that finding on complaint? Does that subject the
7 accused to a kind of double-jeopardy?

8
9 Mistake #4: While the initial indictment was not improperly drawn in terms of charges, the
10 form of the first indictment was not a properly drawn indictment because it did not include
11 “times, places, and circumstances” or witnesses and evidence (*BCO* 32-5). Once the Judicial
12 Commission prepared the “addendum to the indictment,” they actually produced a properly
13 drawn indictment. At that point, the time requirements in the Rules of Discipline should have
14 started (*BCO* 32-3, 7). By not following the time requirements at that point, the Judicial
15 Commission failed to allow the Appellant to prepare his defense after “reasonable notice”
16 (*BCO* 32-7, 8).

17
18 Mistake #5: The Judicial Commission voted to sustain the majority of the charges against the
19 accused. They then “administered” the censure of admonition and gave further instructions to
20 the accused to be reconciled to his former church members (*BCO* 36-3). The Commission’s
21 action of “administering” the sentence violates *BCO* 15-3, in that, until Presbytery acts to
22 approve the Judgment of the Commission, there is no basis to impose a censure. Once they
23 were informed that such instruction was not allowed under the “previously administered
24 censure of admonition,” they changed their censure to definite suspension from office for six
25 months (*BCO* 36-4). However, definite suspension is to be used when “the delinquent has
26 given satisfaction to the court,” that is, he has demonstrated repentance (*BCO* 30-3). The
27 Commission was convinced that the accused was not repentant; hence, it applied the wrong
28 censure twice. Yet it would not be appropriate for the SJC to render, as CFP asks, a harsher
29 sentence than CFP twice tried to render to the accused (*BCO* 42-9).

30
31 Mistake #6: Throughout the process leading up to the trial, CFP and its representatives were
32 unclear as to whether they were dealing with charges filed by the former members or with a
33 request for a *BCO* 31-2 investigation. CFP’s records go back and forth in this regard. Each of
34 those paths requires a different process. If the matter involved charges that were presented,
35 then there must be a formal charge under *BCO* 32-2. We do not find that in the Record, but
36 Presbytery and its agents often refer to such charges. If the letter(s) from former members
37 constituted a request for a *BCO* 31-2 investigation, then Presbytery has broad latitude as to
38 how to conduct that investigation which could, conceivably be satisfied without calling all the
39 former members to testify. Presbytery’s failure to be clear as to which path it was following
40 confused the process, allowing Presbytery to pursue broad allegations as might be appropriate
41 in a *BCO* 31-2 investigation, while also asserting that those bringing the allegations had a right
42 to testify as would be true only if those individuals had filed formal charges. That confusion
43 certainly prejudiced the outcome of the Case.

1 As a statement about the entirety of the process, the SJC notes that CFP’s record-keeping—
2 in its two Judicial Commissions as well as in its own minutes—contributed to the faulty
3 process because it inevitably made it difficult for the accused to defend himself adequately.
4 Examples of this included lack of clarity as to whether the first Judicial Commission was
5 established as a committee or commission (see 8/14/18); lack of clarity as to who was to
6 communicate with the former members (see 11/15/18; 11/19/18); differences in the way the
7 judgments of the commissions were recorded at various places the minutes (see 8/13/19);
8 allowing a commission to rescind a non-rescindable motion, in that the effect of the motion
9 had already been accomplished (see 8/13/19); and ruling a commission out of order, contrary
10 to proper order (see 1/22/19).

11
12 All of these constitutional missteps reflect a disciplinary process that was significantly flawed
13 and prejudicial against the Appellant. Hence, we conclude that CFP erred in its prosecution
14 of the Case, and the SJC sustains this specification of error. We further reverse the whole of
15 the censure against the Appellant and thus conclude the matter.

16
17 The Summary of the Facts and the Reasoning for Judgment 1 were written by RE Neikirk.
18 The Reasoning for Judgment 2 was written by TE Lucas. All Panel members provided input
19 before any of these sections were written, and all contributed to revisions of those sections.

20
21 After adopting amendments, the SJC approved the above Decision by a vote of 21-0, with
22 three absent.

23

24	Bankson	<i>Concur</i>	Duncan, M.	<i>Concur</i>	Neikirk	<i>Concur</i>
25	Bise	<i>Concur</i>	Duncan, S.	<i>Concur</i>	Nusbaum	<i>Absent</i>
26	Cannata	<i>Concur</i>	Ellis	<i>Concur</i>	Pickering	<i>Concur</i>
27	Carrell	<i>Absent</i>	Greco	<i>Concur</i>	Ross	<i>Concur</i>
28	Chapell	<i>Concur</i>	Kooistra	<i>Concur</i>	Terrell	<i>Concur</i>
29	Coffin	<i>Concur</i>	Lee	<i>Concur</i>	Waters	<i>Concur</i>
30	Donahoe	<i>Concur</i>	Lucas	<i>Concur</i>	White	<i>Absent</i>
31	Dowling	<i>Concur</i>	McGowan	<i>Concur</i>	Wilson	<i>Concur</i>

32
33

34 **Concurring Opinion**

35 ***Case 2019-08: Appeal of TE Neal Ganzel v. Central Florida Presbytery***

36 RE Howie Donahoe

37
38 I agree this Appeal should be sustained, because I agree with the SJC's conclusion that it
39 involved "a disciplinary process that was significantly flawed and prejudicial against the
40 Appellant." But I do not support the Appellant's specification of error regarding the first
41 sentence of *BCO 32-20*, nor some of the Decision's Reasoning pertaining to this sentence.

42
43 *BCO 32-20*. Process, in case of scandal, shall commence within the space of one
44 year after the offense was committed, unless it has recently become flagrant.

1 According to that sentence, the date of an alleged offense is not material *unless* the offense is
2 a "case of scandal." If it's not a case of scandal, the first sentence of *BCO 32-20* doesn't apply.
3 So, what constitutes a case of scandal?

4
5 The wording of *BCO 32-20* is 140 years old, dating back to the PCUS Book of 1879. In his
6 1898 *Exposition of the Book of Church Order*, F.P Ramsay wrote:

7
8 The principle is that, if the Church neglects to commence process against scandal
9 (which is any flagrant public offence or practice bringing disgrace on the Church)
10 within a year, she is debarred from thereafter doing it. This is not to shield the
11 offender, but to incite to the prompt prosecution of such offences. Offences not so
12 serious or scandalous the Church may bear with the longer while seeking to prevent
13 scandal; but for no consideration is the Church to tolerate such offences as are
14 scandalous. (<http://pcahistory.org/bco/rod/32/20.html>)

15
16 Properly understood, the first sentence of *BCO 32-20* does not shelter an offender *in any*
17 *way*, but rather, it is simply meant to *spur the court* to prosecute a *particular* offense -
18 something that's *actually* bringing public disgrace on the Church (i.e., "a case of scandal").
19 For an offense to be a "case of scandal" it would need to be an offense that is known to the
20 broader public and, unless adjudicated promptly, would bring public disgrace on the Church.
21 And thanks to technology, an offense could become a case of broad, public scandal *much*
22 more quickly in 2020 than in 1879.

23
24 Thus, I think the following excerpts from the SJC's Reasoning are overstated. (Emphasis
25 added below.)

26
27 We agree that *in the normal pattern BCO 32-20* bars a court from prosecuting an
28 alleged offense that occurred more than one year previously.

29
30 ...Given, however, the clear language and logic of *BCO 32-20*, any effort by a court
31 to avail itself of a broader reading of the time limits must, of necessity, be
32 accompanied by a *clear showing as to why the court could not have known* of the
33 alleged offense(s)....

34
35 ...Thus, absent some *extraordinary finding* that the Presbytery could not reasonably
36 have known about these older offenses, the time limit set forth in *BCO 32-20* for
37 instituting process *must control*.

38
39 But the first sentence of *BCO 32-20* does not require any "extraordinary finding." For
40 example, if a person alleges a PCA member abused them two years ago, but it was not a case
41 of public scandal (i.e., not broadly known to the public), the first sentence of *BCO 32-20*
42 would not apply and the alleged offender could be prosecuted - without any "extraordinary
43 finding." Unless the matter was a case of public scandal, the first sentence of *BCO 32-20*
44 wouldn't pertain - even if the offense occurred a dozen years ago, and regardless of when the
45 court became aware of the allegations.

1 For several reasons, it would be helpful for the PCA to consider revising *BCO* 32-20. First, as
2 a friend recently observed, if the cause of Christ is made scandalous by the Church's neglect
3 of timely discipline in a case of scandal, how would disallowing prosecution on day 366 repair
4 the matter? The scandal continues, unabated. Second, it would be difficult to codify a time-
5 requirement based on when a court "learns" of an alleged offense. Granted, in a case of
6 scandal, the Church learns of it when the broader public learns of it (if not earlier). But it
7 would be difficult to determine when a presbytery, *as a body*, becomes aware of a private
8 offense, unless the matter is raised at a meeting or to a commission. Third, (referencing the
9 SJC's Reasoning), it is unclear how a prosecuting court would make a "clear showing as to
10 why the court *could not* have known of the alleged offense." It would be relatively easy for a
11 defendant or appellant to argue several ways for how the court theoretically could have known
12 of an offense (better pastoral care, more thorough work by a presbytery committee, etc.).
13 Fourth, if my reasoning is correct, it means there is no "statute of limitations" whatsoever in
14 the *BCO*.

15
16 /s/ RE Howie Donahoe
17
18

19 **IV. ELECTION OF OFFICERS**

20
21 The SJC Officers elected for 2020-2021 are as follows:
22

23 Chairman: TE Fred Greco
24 Vice Chairman: RE John Bise
25 Secretary: RE Sam Duncan
26 Assistant Secretary: RE Jack Wilson
27
28

29 **V. PROPOSED CHANGES TO THE *OPERATING MANUAL OF THE SJC***

30
31 **Item 1.** That *OMSJC 4.1* be amended as follows:
32

33 *OMSJC 4.1* - The stated meetings of the Commission shall begin on the first
34 Thursday of ~~February~~ March and on the third Thursday of October in each year.
35

36 *Rationale:* The proposed change allows for additional time for panels to complete their work
37 prior to the Winter (March) stated meeting while still providing adequate time for processing
38 concurring and dissenting opinions from a March meeting prior to the deadline for preparing
39 the Commissioners' Handbook for General Assembly.
40

41 The Commission reviewed the proposed amendment to *OMSJC 4.1* and approved.

1 **Item 2.** *MSC* that *OMSJC* 2.10.d.(3) be amended as shown below. RE Mel Duncan
2 abstained from the vote and asked that his abstention be recorded.

3
4 *OMSJC* 2.10.d. A member shall disqualify himself in any proceeding in which
5 the member’s impartiality might reasonably (see Section 2.5.b) be questioned,
6 including but not limited to the following circumstances:...

- 7
8 (3) The member, ~~the member’s spouse, or a person within the third degree~~
9 ~~of relationship to either of them, or the spouse of such a person or a~~
10 family member (i.e. sibling, parent, child, or spouse, and the spouse of
11 any sibling, parent, or child):
12
13 i. served as a representative in the matter in controversy;
14 ii. was a witness concerning the matter; or
15 iii. is a member of a court which is party to the case ~~or is a member of a~~
16 ~~congregation in the bounds of a presbytery party to a case.~~ or was a
17 commissioner to a court which is a party to the case during the time of
18 the proceedings in question.
19

20 *Rationale:* Current wording of *OMSJC* 2.10.d.(3) is vague, and (iii) is overly and
21 unnecessarily restrictive. Current wording in Chapter 2 was imported from judicial
22 conduct procedures of the South Carolina Supreme Court when *OMSJC* 2 was drafted.
23 But they are overly restrictive in a PCA court system. For example, current language
24 would require an SJC member to disqualify himself if he has a granddaughter who is a
25 member of a PCA church within a Presbytery against which a complaint has been filed,
26 even though neither she nor her church is involved in the matter in any way.

27 Automatic disqualification on the basis of family relationships extending to the
28 third degree of relationship is overly restrictive absent other bases, particularly as that
29 would relate to relatives who are members of a congregation in the bounds of a presbytery
30 party to a case, but have no involvement in the case. Even with the proposed revisions,
31 the controlling broad language of *OMSJC* 2.10.d, “*A member shall disqualify himself in*
32 *any proceeding in which the member’s impartiality might reasonably ... be questioned....*”
33 affords ample protection for justice through the application of the member’s judgment.