

**PART V:**

**POSITION PAPERS**



## **POSITION PAPERS**

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## **CONFLICT OF INTEREST IN THE PRESBYTERIAN CHURCH IN AMERICA**

### **CONFLICT OF INTEREST**

1993, p. 174, 21-64, III, 7. That the 21st General Assembly adopt the Conflict of Interest Policy including the Certificate of Compliance for all the committees and agencies of the General Assembly. *Adopted*

### **CONFLICT OF INTEREST IN THE PRESBYTERIAN CHURCH IN AMERICA**

#### **I. BACKGROUND**

The Presbyterian Church in America continues to minister and to grow in an ethically complex society. Faithful stewardship in the leadership of the church demands high levels of trust in every relationship, and avoidance even of the appearance of wrongdoing. By direction of the General Assembly and through the office of the Committee on Administration, an ad hoc committee of five people was appointed to review the need for the establishment of formal standards for the guidance of all the church's committees, boards, and management personnel.

#### **II. DEFINITIONS AND ABBREVIATIONS**

**Presbyterian Church in America (PCA).** Includes the General Assembly and all formal adjuncts to the General Assembly, its committees (both permanent and temporary) and boards of agencies, the management personnel of those entities, and the presbyteries of the church and their related committees. Included for counsel but not for jurisdiction are the particular churches of the denomination.

**Management Personnel.** For the purposes of this document, the term Management Personnel shall include all members and officers of committees and boards, together with the management level employees of those committees and boards.

#### **III. REASONS FOR A POLICY**

The Presbyterian Church in America, both as a corporation and as an ecclesiastical body initiated and sustained by God, has a mandate to conduct all its affairs decently and in order and in a manner which is above reproach in the sight of both God and man.

Such accountability includes a commitment to avoid all conflicts of interest. Such a duty is underscored by Standard 6 of the Evangelical Council for Financial Accountability, (of which the PCA is a member organization), which says simply: "Every member organization shall conduct its activities with the highest standards of financial integrity."

The PCA as a nonprofit tax-exempt ministry depends on charitable contributions from its members and the Christian public. The maintenance of that tax-exempt status is important for the church's continued financial stability. The Internal Revenue Service and state corporate and tax officials view the operations of the church and its parts as in the nature of a public trust that is subject to scrutiny by and accountability to both governmental authorities and members of the public.

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### IV. PERSONS CONCERNED

Conflict of interest policies of the PCA concern all Management Personnel and their families, as well as any employees who may influence the actions or obligate the PCA.

### V. AREAS IN WHICH CONFLICTS MAY ARISE

Conflicts of interest may arise in a broad area of relationships. Included as examples, but not intended as an exhaustive list:

- 1) Persons or entities supplying goods and services to the PCA.
- 2) Persons or entities from whom the PCA leases property and equipment.
- 3) Persons or entities with whom the PCA deals in connection with the gift, purchase, or sale of real estate, securities, or other properties.
- 4) Persons or entities paying honoraria or royalties for products or services delivered by the PCA or its agents or employees.
- 5) Other ministries or nonprofit organizations.
- 6) Donors and others supporting the PCA.
- 7) Agencies, organizations, or associations which affect the operations of the PCA.
- 8) Family members of PCA Management Personnel or of any of the entities listed here.

### VI. NATURE OF CONFLICTING INTEREST

Conflict of interest exists when any interest, direct or indirect, on the part of any of the parties listed in the preceding section could reasonably be expected to exert influence of any kind on or affect the judgment of Management Personnel of the PCA.

Examples of such conflict of interest include:

- 1) Owning stock, holding debt, holding office, or other proprietary interests in any third party dealing with the PCA.
- 2) Receiving direct or indirect remuneration or benefits for services to the PCA.
- 3) Using the PCA's personnel, equipment, supplies, or good will for other than formally approved activities, programs, and purposes.
- 4) Receiving personal gifts or loans from third parties dealing with the PCA.
- 5) Obtaining interest in real estate, securities, or other property which the PCA might reasonably be expected to consider buying or leasing.
- 6) Expending unreasonable staff time during normal business hours for personal affairs, or for other organizations, to the detriment of work performance for the PCA.

Such examples are provided only for illustration, and are not intended to be considered as an exhaustive list.

### VII. SCOPE OF THE POLICY

The fact that a relationship as described in this document exists does not mean that a conflict of interest necessarily exists, or that a conflict, if it does exist, is of such material importance that it is adverse to the interests of the PCA or its supporting public.

The essence of the policy governing conflict of interest in the PCA is that the existence of any of the interests described in this document shall be disclosed before any transaction is

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consummated. It shall be the continuing responsibility of all Management Personnel of the PCA to scrutinize all transactions for the potential of such conflict of interest, and immediately to make written disclosure concerning that conflict to the chairman of that body, or, if the chairman is involved in the conflict, to the vice chairman or other appropriate officer.

### VIII. A RESOLUTION

The PCA direct for adoption by all its entities the following standards:

- 1) Any possible conflict of interest, either previously existing or potential, on the part of any Management Personnel, affecting activities, property, funds, services, or employees shall be fully and promptly disclosed in writing to the chairman of that body, or, if the chairman is involved in the conflict, to the vice chairman or other appropriate officer.
  - 2) Any Management Personnel having possible conflict of interest on any matter should refrain from deliberating or voting on all actions relating to that matter. Where the by-laws of any body within the PCA require the establishment of a quorum prior to the conducting of business, those bodies should establish their own standing procedures as to whether a member refraining from voting should be counted toward the establishment of a quorum. Minutes of all meetings should reflect related disclosures and reasons for abstaining from particular votes.
  - 3) The governing body of any part of the PCA, having been duly informed of real or potential conflict of interest in any of its dealings, shall determine whether the proposed transaction is just, fair, and reasonable in the light of those disclosures. When action is taken to affirm such transactions, the minutes of that meeting should include notation that the governing body took into account possible conflict of interest ramifications.
  - 4) As a reminder of managerial and fiduciary responsibility, each governing body of any part of the PCA should establish means by which all Management Personnel, both prior to beginning their service and on an annual basis, should sign appropriate documents indicating their understanding of these standards and their eagerness to comply to their letter and spirit. (A brief recommended certificate for such use is an addendum to this report). The minutes of that body should reflect annually that such action was taken.
  - 5) Committees of Commissioners, while reviewing the work and performance of committees and boards under their jurisdiction, should take care to note whether and how these standards concerning conflict of interest have been observed.
8. That in response to the 20th General Assembly instructions that the Administrative Committee study the appropriateness of the committees, boards of agencies, or employees thereof being involved in outside commercial interest promoting or soliciting funds for benefit plans in competition with denominationally authorized plans, that the 21st General Assembly recommend that full consideration and

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application of the principles included in the **Conflict of Interest Report**, Section VI:3, be observed by all committees, boards of agencies and employees thereof.

### CERTIFICATE OF COMPLIANCE

I have carefully read the statement of policy concerning conflict of interest within the Presbyterian Church in America. I have considered both the literal expression of the statement, and its intent.

I hereby certify that, except as hereafter stated, I do not, to the best of my knowledge:

- [1] Have any of the relations with persons or firms as described in this document.
- [2] Have any interests whatever conflicting with the interests of the PCA.

#### EXCEPTIONS:

If any situation should arise in the future which I think may involve me in a conflict of interest, I will promptly and fully disclose it to the chairman of the committee or board involved, either directly or through my immediate superior.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
Print Name



**RESPONSE TO**  
**“EVANGELICALS AND CATHOLICS TOGETHER”**  
**1995, p. 228, 23-49, 5**

5. That **Overture 19** be answered in the affirmative as amended and communicated to the signers of the document *Evangelicals and Catholics Together*. *Adopted as amended*

**OVERTURE 19 From the Presbytery of the Pacific Northwest**  
(as amended)  
Response to " *Evangelicals and Catholics Together*"

- Whereas**, the Presbyterian Church in America is bound by the Word of God as its sole source of faith and life ("*Sola Scriptura*" - 2 Timothy 3:16; *Westminster Confession of Faith* 1.1-10); and,
- Whereas**, this church as part of the Body of Christ has been given the sacred responsibility to proclaim the gospel (Matthew 28:18-20) and has the solemn charge to guard the gospel (2 Timothy 1:8-14), not seeking the pleasure of men but of God (Galatians 1:6-10); and,
- Whereas**, at the very heart of the gospel lies the crucial doctrine of Justification by Faith alone by the imputed righteousness of Jesus Christ ("*Sola Fide*", "*Solo Christo*" - Romans 1:16-17; 3:21-26; 5:1-21; *WCF* 11.1-6); and,
- Whereas**, this church should desire to have no fellowship with those who pervert the gospel but rather expose them (Galatians 1:9; 5:7-12; 2 Corinthians 11:1-16); and,
- Whereas**, the official Roman Catholic doctrine is a perversion of the biblical gospel of justification *sola fide*; and,
- Whereas**, the Presbyterian Church in America recognizes that there have always been in the Roman Catholic Church those who have a living faith in Jesus Christ as Lord and Savior and we have hopes that their number is growing; and,
- Whereas**, the Roman Catholic Church is not today monolithic in its adherence to Tridentine theology, many Catholic authorities having embraced diminished views of the Bible as the Word of God and Christianity as a supernatural Faith, while some have embraced a more biblical theology; and,
- Whereas**, the theological ignorance, confusion, and indifference in Evangelical Protestantism is, in many respects, a reproach to the Lord Jesus Christ; and,
- Whereas**, the doctrine of Justification by Faith is widely misunderstood and misapplied in Evangelical Protestantism as well as in Roman Catholicism; and,
- Whereas**, certain influential leaders in the Evangelical world have recently signed the document *Evangelicals and Catholics Together: The Christian Mission in the Third Millennium* which clearly suggests that Roman Catholics by virtue of being Roman Catholics are to be considered brothers and sisters in Christ, and suggests, therefore, that the dispute between the churches of the Reformation and Roman Catholicism concerning the doctrine of Justification by Faith is immaterial;

**Therefore, the Twenty-Third General Assembly of the Presbyterian Church in America adopts and directs to be sent to the signatories the following statement in response to *Evangelicals and Catholics Together*:**

The Presbyterian Church in America remains fully committed to the Reformed doctrine of Justification by Faith as expressed in the *Westminster Confession of Faith* (Chapter 11) and *Catechisms* (LC 70, 71, 77; SC 33). We reaffirm our intention to proclaim this doctrine to the world and restate our disagreement with any and all doctrinal formulations that fail to uphold the truths of the Protestant Reformation in this most important matter. We further declare that our understanding of justification is not compatible with the teaching of the official Roman Catholic Church. Therefore, we maintain that Biblical unity must be grounded in fidelity to the teaching of Holy Scripture regarding the Person and Work of our Lord Jesus Christ.

The Presbyterian Church in America continues to believe that Holy Scripture specifically and emphatically condemns any form of the idea that human works contribute to a sinner's justification before God, a conviction to which J. Gresham Machen gave timeless expression in his summation of the teaching of the Apostle Paul in the *Epistle to the Galatians*:

"What was it that gave rise to the stupendous polemic of the Epistle to the Galatians? To the modern Church the difference would have seemed to be a mere theological subtlety. About many things the Judaizers were in perfect agreement with Paul. The Judaizers believed that Jesus was the Messiah; there is not a shadow of evidence that they objected to Paul's lofty view of the person of Christ. Without the slightest doubt, they believed that Jesus had really risen from the dead. They believed, moreover, that faith in Christ was necessary to salvation. But the trouble was, they believed that something else was also necessary; they believed that what Christ had done needed to be pieced out by the believer's own effort to keep the Law. From the modern point of view the difference would have seemed to be very slight. Paul as well as the Judaizers believed that the keeping of the law of God, in its deepest import, is inseparably connected with faith. The difference concerned only the logical -- not even, perhaps, the temporal -- order of three steps. Paul said that a man (1) first believes on Christ, (2) then is justified before God, (3) then immediately proceeds to keep God's law. The Judaizers said that a man (1) believes on Christ and (2) keeps the law of God the best he can, and then (3) is justified. The difference would seem to modern "practical" Christians to be a subtle and intangible matter, hardly worthy of consideration at all in view of the large measure of agreement in the practical realm. What a splendid cleaning up of the Gentile cities it would have been if the Judaizers had succeeded in extending to those cities the observance of the Mosaic law, even including the unfortunate ceremonial observances! Surely Paul ought to have made common cause with teachers who were so nearly in agreement with him; surely he ought to have applied to them the great principle of Christian unity.

"As a matter of fact, however, Paul did nothing of the kind; and only because he (and others) did nothing of the kind does the Christian Church exist today. Paul saw very clearly that the difference between the Judaizers and himself was the difference between two entirely distinct types of religion; it was

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the difference between a religion of merit and a religion of grace. If Christ provides only a part of our salvation, leaving us to provide the rest, then we are still hopeless under the load of sin. For no matter how small the gap which must be bridged before salvation can be attained, the awakened conscience sees clearly that our wretched attempt at goodness is insufficient even to bridge that gap. The guilty soul enters again into the hopeless reckoning with God, to determine whether we have really done our part. And thus we groan again under the old bondage of the law. Such an attempt to piece out the work of Christ by our own merit, Paul saw clearly, is the very essence of unbelief; Christ will do everything or nothing, and the only hope is to throw ourselves unreservedly on His mercy and trust Him for all.

"Paul certainly was right. The difference which divided him from the Judaizers was no mere theological subtlety, but concerned the very heart and core of the religion of Christ". (*Christianity and Liberalism*, New York: Macmillan, 1923, p. 23-25.)

The Presbyterian Church in America acknowledges with sadness that the failure rightly to understand and emphatically to proclaim the doctrine of Justification by Faith alone is a sin to be found among Protestants as well as Roman Catholics. We confess, with shame, the complicity of Protestantism in the theological deterioration of Christianity.

The Presbyterian Church in America humbly acknowledges that Justification is not by faith in a doctrinal formulation but by faith alone in Christ the Redeemer and so it has often happened that people who have a living faith in Christ as their Savior have a most imperfect understanding of that faith and of the way in which salvation comes to them through it. With gratitude to God we gladly welcome certain developments in Roman Catholicism, especially those that have made Holy Scripture a more important part of the faith and piety of many Roman Catholics. We acknowledge that God, in his all-wise providence, has been pleased to put his loved ones in many communions whose doctrine we find unbiblical, even heretical, in important ways.

The Presbyterian Church in America commends the Roman Catholic Church for its principled opposition to some of our national sins and believes that it is altogether proper for the members of this church to be co-belligerents with Roman Catholics in these social and political endeavors.

24th General Assembly, 1996, 24-17, p. 65

## **REPORT OF THE AD INTERIM COMMITTEE ON JUDICIAL PROCEDURE TO THE TWENTY-FOURTH GENERAL ASSEMBLY**

**JUNE 1996**

The Presbyterian Church in America, as a young denomination, has sought from its origin in 1973 to perfect its structure in light of the principles of the Word of God and the wisdom gained through practical experience (*WCF* 6.1). One of the more difficult problems facing the PCA has been the question of how judicial cases should be handled by the Assembly. The PCUS had used a permanent judicial commission to handle cases between Assemblies and simply announced the decision at the beginning of the next Assembly. At the founding of the PCA, one of the central concerns was a failure of Church discipline. In the "Message to All Churches" the PCA declared:

When a denomination will not exercise discipline and its courts have become heterodox or disposed to tolerate error, the minority finds itself in the anomalous position of being submissive to a tolerant and erring majority. In order to proclaim the truth and to practice the discipline which they believe obedience to Christ requires, it then becomes necessary for them to separate. This is the exercise of discipline in reverse. It is how we view our separation.

Many of our fathers were concerned that the failure in discipline in the PCUS was in part due to the procedure of hearing cases by a permanent judicial commission. Thus, at the beginning of the PCA a number were persuaded that these were matters more properly handled by the Assembly itself. This had been the practice of the PCUS in its earliest years, when the size of the Assembly was relatively small, and it is the procedure of the Orthodox Presbyterian Church and the Christian Reformed Church today, which have more fully delegated Assemblies, and which are, therefore, small enough to hear and debate cases on the floor of the Assembly.

Nevertheless, because of the large size of the PCA Assembly, it was not deemed practical to have the whole Assembly handle judicial cases. Instead, the Committee of Commissioners on Judicial Business was assigned to review all the cases delivered to it by the Stated Clerk, to determine if they should be heard, and then required to recommend for each approved case an *ad hoc* judicial commission made up of at least 20 commissioners taken from the roll of the Assembly. These commissions were elected on the first evening of the Assembly, and proceeded to hear and adjudicate the cases during the week, reporting their decisions to the floor of the Assembly as soon as they were ready. With that report, no retrial of the case was permitted (no debate or amendment to the report), though questions were allowed. The Assembly, after hearing the report, voted to adopt or deny the commission's judgment.

Over time a number of difficulties with this system became apparent. Many thought that this procedure kept commissioners from the floor of the Assembly too long, causing them to miss important business. Concerns were raised about the impartiality of the system of appointment.

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Given the impossibility of deliberation and amendment, the possibility, and in a few cases the reality, of conflicting decisions adopted by the same Assembly was a liability. The posing of questions that surreptitiously advanced debate became high art, the object of admiration or disgust, depending upon one's view of the decision at hand. Finally, the system was thought to introduce a number of tensions grounded in the fact that these were at best hybrid commissions — since they did not “conclude the business referred to it”, but required Assembly approval, they functioned more like committees — and yet since the Assembly could not hear and debate the cases, its approval was at best perfunctory, and therefore the commissions did, for all practical purposes, finally settle the cases heard.

To reform this system a second approach to handling judicial matters was adopted, the current system of employing a standing judicial commission. This method too has not been entirely satisfactory. In response to growing tensions the Twenty-first General Assembly appointed a representative committee

“to review our current General Assembly judicial procedures, evaluating their comparative strengths and weaknesses. Said study committee shall report to the 22nd General Assembly the results of its findings, complete with recommendations, if any, for further perfection of our judicial procedures.” [M21GA (1993), p.121-22.]

In its report to the Twenty-second General Assembly this Ad Interim Committee on Judicial Procedures (AICJP) proposed a plan for its work that was adopted by the Assembly. That plan included “a thorough study of the matter of judicial procedures” [M22GA (1994), p. 80], and the drafting of such “changes to the *BCO*, *RAO* or *Manual of Standing Judicial Commission (MSJC)* as may appear necessary in light of its study and deliberation” [M22GA (1994), p. 78].

The AICJP brought to the Twenty-third General Assembly a provisional report, part of which found favor in the eyes of the Assembly, the rest of which was recommitted, the Assembly approving a motion “to continue the Ad Interim Committee on Judicial Procedures, and to postpone any action thereon by the 23rd GA, and to postpone the report of the committee, until the 24th GA when the report of the committee is complete.” [M23GA (1995), p. 77]. The AICJP now brings to the Twenty-fourth General Assembly its completed report.

### **Highlights of the Meetings of the AICJP, 1995-96**

Following the Twenty-third Assembly, the AICJP met in Atlanta on September 29-30, 1995. At that meeting each recommendation that had been presented to the previous Assembly was reconsidered by the Committee in light of concerns raised informally by commissioners at the Assembly. Some recommendations were discarded, all were amended in some form or another. Further, at that meeting the Committee came to theoretical agreement on a recommendation to continue the procedure of hearing cases through a standing judicial commission, but in a significantly modified form, the heart of our recommendation for the reform of PCA judicial procedures. The meeting concluded with the appointment of a drafting subcommittee to provide language to embody our agreement.

On January 5-6, 1996 the AICJP considered a number of study papers it had requested from members of the Committee. In light of those studies the Committee reviewed again the recommendations approved at the September meeting, making further adjustments to the language in a number of cases. The drafting subcommittee reported two proposals for the Committee's consideration which, after extensive discussion, the Committee returned to the subcommittee with instructions to prepare a synthesis of the two recommendations.

A meeting on March 29-30, 1996 substantially completed the Committee's work. Language from the subcommittee for a modified Standing Judicial Commission was approved after extended discussion and amendment, and the recommended procedure for Assembly consideration of AICJP recommendations was approved. The previously adopted recommendations were again reviewed and adjusted further before final approval. Finally, a procedural checklist for Constitutional compliance in judicial procedures was developed. The printed form of this report was adopted by telephone conference call on April 11, 1996.

### **Procedures Grounded in Shared Principle and Prudential Compromise**

In bringing this report the AICJP plainly acknowledges that these recommendations are the fruit of compromise. But in this acknowledgment we do not confess sin — rather we profess our hope that the Spirit has been at work among us. As we have faced our task over these past three years, Paul's prayer for the believers at Rome has been very much on our hearts:

“Now may the God who gives perseverance and encouragement grant you to be of the same mind with one another according to Christ Jesus; that with one accord you may with one voice glorify the God and Father of our Lord Jesus Christ.”

(Rom. 15:5-6)

In framing our recommendations we have sought to act in such a fashion that no brother has been called to compromise with respect to principle. Yet with respect to our prudential judgments, each worked with a sense of his own fallibility, the hope of wisdom discovered through a genuine and sympathetic hearing of a brother's concerns, and the duty to find a way, if possible, to accommodate those concerns (Rom. 12:18; Hebr. 12:14). The result is that while no particular view has been entirely satisfied, the Lord has granted us one mind with respect to these proposals as best suited to our current circumstances, and we are persuaded that they represent the wholesome fruit of a many-membered body working toward the one goal of the glory of Christ in the upbuilding of His people (1 Cor. 12:14-25; Eph. 4:1-16). With His blessing we trust that these recommendations will make for both the purity and peace of our branch of His Church.

### **Modified Form of Standing Judicial Commission Recommended**

After a careful review of the Scriptures with respect to ecclesiastical judicial proceedings (cf. papers by Gilchrist, Fowler and Gordon), and seeking the assistance in understanding the Scriptures that could be gained from our American Presbyterian forefathers (cf. paper by Ferguson and annotated bibliography by Coffin), as well as what wisdom might be available in the practical experience of the church, the AICJP has concluded that alleged objections to the use of the Standing Judicial Commission from Presbyterian principles have no force and that there are a number of prudential considerations in its favor. In our judgment the large General Assembly of the PCA cannot justly hear a case on appeal. The committee discussed at length the possibility of a more fully delegated General Assembly, noting both the advantages and disadvantages of such an Assembly. We concluded that it was not prudent for the Committee to make recommendations of such radical changes (radical for the PCA — not by comparison to the American Presbyterian tradition) to the General Assembly structure at this time. Yet even if the PCA were to reduce the size of the Assembly, it is doubtful that real judicial reform would follow. In our studies we discovered that in the 19th Century our Old School forefathers complained that the Assembly as constituted then (200-300) was too unwieldy for this task.

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Further, we concluded that a significant degree of the tension arising from our current procedure resulted from the hybrid form of the SJC — a commission in name — but subject to approval by the Assembly, an Assembly that has not heard and cannot debate the case. It is our judgment that the PCA should return to the historic usage of the PCUS, a procedure adopted not in its declining days, but in a period of its health. Consider the testimony of J. D. Leslie:

“After studying closely fifty judicial cases coming up to the General Assembly, from 1870 to 1909, and having had all judicial cases since then go through my hands as clerk, I do not find a single case in which the Assembly opened for discussion the judgment of a commission to which an appeal or complaint was given. In every case, the judgment of the commission was entered on the minutes as the judgment of the Assembly. In 1889, I was a commissioner to the General Assembly, and saw an effort made by the defense counsel to have the case opened for further discussion after the commission had made its report. The moderator decided against this being done. Rev. G. D. Armstrong, D.D., was chairman of the commission. He had been the chairman of a committee of the Assembly that revised our old Book of Church Order and prepared the articles on Ecclesiastical Commissions. He explained to the Assembly the meaning of these articles, in which he stated very clearly that it was not the intention of the Book of Church Order to indicate that the case would be opened in the court for further consideration after the commission had made its report, but its judgment should be entered upon the records of the court as the judgment of the court itself. In this case, this was done, and the judgment of the commission became the judgment of the Assembly.” [J. D. Leslie, *Presbyterian Law and Procedure in the Presbyterian Church in the United States*. Richmond, VA: Presbyterian Committee of Publication, 1930, pp.119-20.]

We are, therefore, recommending that the PCA adopt essentially this procedure, though with a series of proposals that we believe will help prevent the system from being abused. With respect to such protections, the Assembly should recall that the SJC, in consultation with the AICJP, has already enacted a number of significant improvements in the “Manual for Standing Judicial Commission”. These include:

- the requirement that all Panel members certify that they have read the Record of the Case and all briefs submitted before being permitted to vote;
- the requirement that all Commission members at the meeting of the full Commission to adopt a decision certify that they have read the Judicial Panel’s proposed decision, all briefs, and those portions of the Record of the Case each one believes is necessary to understand the case before being permitted to vote;
- the requirement that judicial cases before the SJC by Reference be heard before the full Commission instead of panels; and
- that action on proposed Panel decisions no longer be handled by mail, but at full Commission meetings, with debate and amendment allowed on each part of a proposed Panel decision (Facts, Issues, Judgment, Reasoning and Opinion) at the time of adoption by the full Commission.

Further, the Assembly should recall the Twenty-third General Assembly’s adoption, on recommendation from the AICJP, of an amendment to RAO 15-3 establishing a pool system for the appointment of Judicial Panels that removes any ground for concern with respect to partiality.

The AICJP brings to the Twenty-fourth General Assembly ten numbered recommendations that have all been unanimously approved by the Committee. As printed, each recommendation includes a statement of the issue, the proposal itself, and some statement as to the Committee's rationale for its adoption, so we will not repeat that material here. Note, however, that in general these recommendations are designed to foster justice in our system, as well as the *perception* that our system is just. If they achieve only the latter, our labor will have been worthwhile, for such a perception is essential to the moral and spiritual force we trust our discipline will have for the good of the church. As the Preliminary Principles of the first American Presbyterian Form of Government remind us:

"Since ecclesiastical discipline must be purely moral or spiritual in its object, and not attended with any civil effects, it can derive no force whatever, but from its own justice, *the approbation of an impartial public*, and the countenance and blessing of the great Head of the Church universal." (emphasis added)

### **Concerning SJC Nomination and Election Procedures**

Many have expressed concern that the current procedures for nomination and election to the SJC are liable to abuse. Having considered the matter at length, the Committee can reach no consensus on a method to effectively improve the process for election of members of the Standing Judicial Commission. The AICJP examined carefully a proposal to limit the right of nomination from the floor to those previously proposed by presbyteries. However, some on the Committee were concerned that such an expedient would violate the important right of an Assembly to appoint whomever it saw fit to serve. Further, some on the Committee feared that such a provision would restrict a liberty that makes for strength (as well as being liable to abuse), the Assembly being able to recognize the ability of a commissioner to serve, even if for some reason his presbytery does not. Additionally, some on the Committee believed that any changes to election procedures should not be limited to the SJC and therefore it would be beyond the purview of this committee to recommend such changes. In the Committee's judgment the best hope for the just appointment of SJC members under the current system is a principled consideration, free of party spirit, by each commissioner at the Assembly as to who will best serve the Church, and a prayerful charity, with a determination to avoid conspiratorial appearances or allegations, exercised by all.

### **Proposal for Reporting to the Twenty-fourth General Assembly**

The AICJP recommends that the Assembly hear the Committee's report for up to one hour under the rules for "informal consideration" (*Robert's Rules of Order Newly Revised*, 1990 ed., pp. 533-34), with the adoption of a rule (2/3 vote required) that under informal consideration no motions with respect to the recommendations or the report are in order. During informal consideration the Committee will review its report, respond to questions, and lead in discussion of the recommendations *seriatim*. The conclusion of informal consideration shall be at the end of the hour, or upon adoption, by a majority vote, of a motion "that the question be considered formally." In the Committee's judgment this procedure will afford commissioners the fullest possible understanding of the various proposals and their ramifications before being asked to vote.

### **Proposed Rule for Consideration of Recommendation 4**

In recommendation number 4 the Committee is proposing that the Assembly adopt a number of amendments to *The Book of Church Order* and the "Rules of Assembly Operation" in one "package." This recommendation is the heart of our response to the assignment given to us by the Twenty-first General Assembly, to wit, "to review our current General Assembly judicial



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procedures, evaluating their comparative strengths and weaknesses [and] report . . . with recommendations, if any, for further perfection of our judicial procedures.”

Recommendation 4 is a carefully framed proposal, the fruit of three years of study, discovery, discussion and principled compromise, and in our judgment each of the parts is integral to the whole. Thus we are recommending that, after extensive opportunity for Assembly discussion and deliberation, the “package” be adopted without amendment, or be recommitted to the Committee for further study and recommendation.

Throughout our study we have sought the counsel of any and all who had insight to aid us in our task, and have benefited much from those who were willing to respond. The Committee does not now suppose that its work is perfect, and our procedural recommendation is not grounded in any such presumption. Since our procedural recommendation, if adopted, will preclude amendment from the floor, we want to give a final opportunity for commissioners to offer advice for the perfection of the Committee’s report.

Therefore, if commissioners discover portions of this “package” that are in need of adjustment or correction, the Committee urges that recommendations be submitted in writing to the chairman of the Committee, either by mail (David F. Coffin, Jr., P.O. Box 580, Fairfax, VA, 22030; e-mail, 102772.1327@compuserve.com), or at the pre-Assembly informational meeting concerning the Committee’s report (Tuesday, June 18, 1996 at 1:30 pm). Immediately after that Seminar, the Committee will meet to consider any proposed corrections, so that the “package” recommendation can reflect the fullest consideration possible, consistent with the need, in the Committee’s judgment, to preserve the essential characteristics of those parts that are integral to the whole.

### RECOMMENDATIONS

#### A. Preliminary Proposals

##### 1. Postpone final action on item 2 (p. 56)

The committee recommends that the 24th Assembly postpone consideration of Item 2, proposed amendment to *BCO* 15, until the 25th General Assembly.

*Adopted*

##### 2. Proposed amendment to *BCO* Preface. II. Preliminary Principles. 8.

**Issue:** Restore the original sense of “Preliminary Principle” number 8.

##### **Proposed Amendment**

###### a. Substitute for the whole of number 8 the following:

“8. Since ecclesiastical discipline must be purely moral or spiritual in its object, and not attended with any civil effects, it can derive no force whatever, but from its own justice, the approbation of an impartial public, and the countenance and blessing of the great Head of the Church.”

###### b. Add the following paragraph as the unnumbered conclusion to the entire section on Preliminary Principles:

“If the preceding scriptural principles be steadfastly adhered to, the vigor and strictness of government and discipline, applied with pastoral prudence and Christian love, will contribute to the glory and well-being of the Church.”

*Adopted and sent down to presbyteries for advice and consent.*

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### Grounds:

At the Second General Assembly of the PCA this paragraph was amended to modernize and clarify the text [*M2GA*, (1974), p. 55]. Inadvertently, a very important element in the original “Preliminary Principles” of 1788 was lost and the paragraph made redundant (cf. #7). The original added to the assertion that church power is moral and spiritual in #7 an assertion concerning how such moral and spiritual power is made effective absent the claim to “civil effects.” The amendment seeks to restore the original sense.

### 3. Procedural Check-list for PCA Rules of Discipline

The Committee recommends that the “Procedural Checklist for PCA Rules of Discipline” (Appendix, II) be made available, upon request, from the Stated Clerk’s office, and that notice of its availability be printed in the Appendix to the *BCO*. *Adopted*

### B. The “Package”

### 4. Proposed amendments “for the further perfection of our judicial procedures”

The Committee recommends that the following amendments (I.-VII.) to *BCO* and *RAO* be adopted —

- (a) without amendment;
- (b) at this Assembly, according to the voting provisions for suspending or amending *Rules of Assembly Operation* (*RAO* 18);
- (c) with the provision that the *RAO* amendments proposed be adopted contingent upon final approval of the proposed *BCO* amendments; and
- (d) when *BCO* 15-1, 4, and 5, are sent down to the Presbyteries, and again voted on at the 25th General Assembly, the normal voting procedures (*BCO* 26-2, -3) be followed. *Adopted*

### I. *BCO* 15-1 and 15-5

**Issue:** Decisions of the Standing Judicial Commission made final, yet with the possibility of a minority report.

#### **Proposed amendments**

- 1. Substitute for current *BCO* 15-1 the following:  
“15-1. A commission differs from an ordinary committee in that while a committee is appointed to examine, consider and report, a commission is authorized to deliberate upon and conclude the business referred to it, except in the case of judicial commissions of a Presbytery appointed under *BCO* 15-3. A commission shall keep a full record of its proceedings, which shall be submitted to the court appointing it. Upon such submission this record shall be entered on the minutes of the court appointing, except in the case of a presbytery commission serving as a session or a judicial commission as set forth in *BCO* 15-3. Every commission of a Presbytery or Session must submit complete minutes and a report of its activities at least once annually to the court which commissioned it.”
- 2. Substitute for current *BCO* 15-5 the following:  
“15-5. a. In the cases committed to it, the Standing Judicial Commission shall have the judicial powers and be governed by the

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judicial procedures of the General Assembly. The decision of the Standing Judicial Commission shall be the final decision of the General Assembly except as set forth below, to which there may be no complaint or appeal. Members of the Standing Judicial Commission may file concurring or dissenting opinions, or a minority report as set forth in (c) below. The General Assembly may direct the Standing Judicial Commission to retry a case if upon the review of its minutes exceptions are taken with respect to that case.

b. In each case the Standing Judicial Commission shall issue a summary of the facts, a statement of the issues, its judgment and its reasoning, together with any concurring or dissenting opinions, all of which shall be entered on the minutes of the General Assembly and shall be reported by the Stated Clerk to the next General Assembly. The judgment shall be effective from the time of its announcement to the parties.

c. (1) If, within twenty-four hours of the time of adjournment of a Standing Judicial Commission meeting at which a final decision was rendered in a case, at least one third (1/3) of the voting members of the Standing Judicial Commission file written notice of their intention to file a minority decision with the Stated Clerk of the General Assembly, and within twenty days from the adjournment do file such a minority decision, such minority decision shall be considered a minority report and shall be referred, with the report of the Standing Judicial Commission, to the General Assembly. In each instance "file" shall be understood as defined by the Manual of the Standing Judicial Commission.

(2) No such reference from the Standing Judicial Commission shall be considered by the General Assembly unless the report of the Standing Judicial Commission and the minority report have been mailed to the clerk of Session of each church at least thirty (30) days prior to the meeting of the General Assembly.

(3) The Assembly shall act upon such a reference from the Standing Judicial Commission, in each case without question, discussion, debate, or amendment, as follows:

- (a) The Standing Judicial Commission shall have 30 minutes to present its decision to the Assembly.
- (b) The minority shall have 30 minutes to present its decision to the Assembly.
- (c) The Standing Judicial Commission shall have 10 minutes to reply to the minority report.
- (d) The decision of the minority shall be proposed and the General Assembly shall, without question, discussion, debate, or amendment approve or disapprove of the minority report.
- (e) If the General Assembly disapproves the minority report, the General Assembly shall take up the decision of the Standing Judicial Commission and without question, discussion, debate, or amendment, approve or disapprove of the decision of the Standing Judicial Commission.

(4) If the General Assembly approves of a proposed decision, it shall be the decision of the General Assembly, and printed in its minutes. There

may be no complaint or appeal from such a final decision of the General Assembly. If the General Assembly finally disapproves of both proposed decisions, it must set the case for hearing before the General Assembly or a special commission appointed by it, and in either instance the case shall be tried on the record as delivered to the stated clerk. Any such special commission shall then proceed to consider the case and shall report its decision, in like manner, to the General Assembly for its approval or disapproval. In any event, the full record of the case, including written testimony of witnesses, all documents, exhibits and papers shall be delivered to the stated clerk for permanent preservation.”

**Grounds:**

In most cases the SJC ought to function as a true commission, in the historic Presbyterian sense of the term, concluding the business referred to it. Prudence, on the other hand, as well as lessons learned from the experience of other denominations, suggests that when the SJC itself is seriously divided, the matter ought to be referred to the broader Assembly for final action. This amendment provides for both.

**Note:** In the AICJP’s judgment, as *BCO* Chapter 45 is now worded, dissents, protests and objections would not be permitted against an SJC decision by commissioners of the General Assembly to which an SJC decision is announced, but would be permitted if a case is referred to the General Assembly for final action through the minority decision procedure.

**II. *BCO* 15-4**

**Issue:** The proper conception of the Assembly and a commission.

**Proposed Amendment:**

Add the italicized words to the third sentence of *BCO* 15-4, so as to read:

“Each class shall serve a four year term, *and each subsequent Assembly should declare the Standing Judicial Commission as a whole to be its commission.*”

**Grounds:**

A commission is not a body separate from the Assembly, with delegated powers, acting on its behalf. Rather, a commission is the Assembly itself, exercising its own Christ-appointed powers, determining to act for particular purposes, with a more limited number of commissioners. Thus it is appropriate that each successive Assembly approve of those members commissioned to act as the Assembly for Judicial purposes for that year. At the same time, for prudential reasons (*WCF* 6.1), in such a “needful work” (*BCO* 8-4), it is profitable for there to be some presumption in favor of a pre-established continuity in such a commission from year to year. The sentence, as amended, provides for both concerns.

**III. *RAO* 15-1, second sentence**

**Issue:** Vows for members of the Standing Judicial Commission.

**Proposed amendment**

Add a new second sentence as follows:

Upon election, each new member of the Standing Judicial Commission, before entering upon the duties of this office, shall sign a printed copy of the following vows; further, if the newly elected member is present, he shall affirm these vows in the presence of the Assembly electing him:

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I do solemnly vow, by the assistance of the grace of God, in my service as a judge in this branch of the church of our Lord Jesus Christ, that

1. I will act as before God, my Judge and the Searcher of hearts;
2. I will judge without respect to persons, and if so tempted, will recuse myself from judgment;
3. I will judge not according to appearances, but judge righteous judgment;
4. I will judge according to the Constitution of the Presbyterian Church in America, through my best efforts applied to nothing other than the record of the case and other documents properly before me; and
5. If in a given case I find my view on a particular issue to be in conflict with the Constitution of the Presbyterian Church in America, I will recuse myself from such case, if I cannot conscientiously apply the Constitution.

### Grounds:

The proposed vows will help strengthen and direct members of the SJC in their calling as those judging on behalf of the Church (cf. *WCF* 22.6). The question underlying these vows is not whether Scripture or Constitution shall be the final judge of controversies—our answer is without hesitation “the Scripture”. Rather the question is shall controversies be settled by the individual judge’s private view of the Scripture’s teaching, or by an application of the Church’s publicly adopted view of Scripture’s teaching as embodied in her Constitution. As Presbyterians affirming a constitutional form of government our answer should be without hesitation the latter.

## IV. RAO 15-1, third paragraph

**Issue:** Constitutional review of the *procedures* of the SJC.

### Proposed amendment

Add a third paragraph as follows:

The minutes, but not the judicial cases, decisions, or reports, of the Standing Judicial Commission shall be reviewed annually by the Committee on Constitutional Business. The minutes shall be examined for conformity to “Manual for Standing Judicial Commission” and RAO 15, violations of which shall be reported as “exceptions” as defined in RAO 13-14.d.2. With respect to this examination, the Committee on Constitutional Business shall report directly to the General Assembly. If exceptions are taken with respect to a case, the Assembly may find this a ground to direct the Standing Judicial Commission to retry the case.

### Grounds:

For the sake of proper accountability, there is need for a means of constitutional review of Standing Judicial Commission *procedures* by the General Assembly.

## V. RAO 15-5

**Issue:** That provisions in RAO should not duplicate provisions in *BCO*.

### Proposed amendment:

The Committee recommends that RAO 15-5 be removed in its entirety, and the subsequent section be renumbered accordingly.

**Grounds:**

The provisions of the deleted paragraph are found in the proposed amendment to *BCO* 15-5.

**VI. RAO 15-6**

**Issue:** GA authority over the SJC Manual.

**a. Proposed amendment**

Substitute for the current paragraph the following:

15-6. The Standing Judicial Commission shall be governed by the provisions of the Constitution of the Presbyterian Church in America and the Rules of Assembly Operation. Specific directions governing the implementation of these provisions shall be set forth in a “Manual for Standing Judicial Commission”, as adopted by the General Assembly. Amendments to this manual may be proposed to the General Assembly by overture from a presbytery (cf. Article X), or by recommendation from the Standing Judicial Commission. Proposed amendments from either source shall be reported to the Assembly by the Standing Judicial Commission, and shall be adopted upon a two thirds vote of those voting which must also be a majority of the total enrollment of commissioners. This manual shall be printed as an appendix to the Rules of Assembly Operation.

**Grounds:**

Unlike the manuals for the *committees* of the General Assembly, the “Manual for Standing Judicial *Commission*” contains rules and procedures that effect and safeguard substantial due process in the complaint and appeals procedures of the PCA. As this is the case, the Manual should be under the direct authority of the broadest representation of the General Assembly.

**b. Adoption of the “Manual For Standing Judicial Commission”**

The Committee recommends that the current version of “Manual For Standing Judicial Commission” be adopted.

**Grounds:**

In the Committee’s judgment the Manual as it now stands has been accurately framed according to the principles of *The Book of Church Order*, and wisely informed by the needs of practical cases. As this is the case, and believing that it would be imprudent to open the Manual for amendment from the floor at this time — and given the new procedures for amendment as needed — the Committee recommends that it be adopted in its entirety without detailed discussion or amendment.

**VII. RAO 17-5**

**Issue:** Remove former procedures for dealing with SJC reports.

**Proposed amendment**

Strike all of paragraph 17-5, and renumber the following sections.

**Grounds:**

The procedures of this paragraph are replaced by the proposed amendments to *BCO* 15 and *RAO* 15-5.

*Adopted with BCO amendments sent down to presbyteries for advice and consent.*  
The vote was 791 to 17.

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### Standards For Review

**Proposed amendment to BCO 39, *Modes in Which the Proceedings of Lower Courts Come Under the Supervision of Higher Courts.***

**Issue:** There is a need for a common standard of judicial review, clearly reflecting Presbyterian constitutional principles, to guide the higher courts in fulfilling their obligations under this chapter.

#### **Proposed Amendment**

Add new section 39-3 as follows:

39-3. While affirming that the Scripture is “the supreme judge by which all controversies of religion are to be determined” (*WCF* 1.10), and that the Constitution of the Presbyterian Church in America is “subordinate to the Scriptures of the Old and New Testaments, the inerrant Word of God” (*BCO* Preface, III), and while affirming also that this Constitution is fallible (*WCF* 31.3), the Presbyterian Church in America affirms that this subordinate and fallible Constitution has been “adopted by the church” (*BCO* Preface, III) “as standard expositions of the teachings of Scripture in relation to both faith and practice” (*BCO* 29-1) and as setting forth a form of government and discipline “in conformity with the general principles of biblical polity” (*BCO* 21-5.3). To insure that this Constitution is not amended, violated or disregarded in judicial process, any review of the judicial proceedings of a lower court by a higher court shall be guided by the following principles:

1. A higher court, reviewing a lower court, should limit itself to the issues raised by the parties to the case in the original (lower) court. Further, the higher court should resolve such issues by applying the Constitution of the church, as previously established through the constitutional process.
2. A higher court should ordinarily exhibit great deference to a lower court regarding those factual matters which the lower court is more competent to determine, because of its proximity to the events in question, and because of its personal knowledge and observations of the parties and witnesses involved. Therefore, a higher court should not reverse a factual finding of a lower court, unless there is clear error on the part of the lower court.
3. A higher court should ordinarily exhibit great deference to a lower court regarding those matters of discretion and judgment which can only be addressed by a court with familiar acquaintance of the events and parties. Such matters of discretion and judgment would include, but not be limited to: the moral character of candidates for sacred office, the appropriate censure to impose after a disciplinary trial, or judgment about the comparative credibility of conflicting witnesses. Therefore, a higher court should not reverse such a judgment by a lower court, unless there is clear error on the part of the lower court.
4. The higher court does have the power and obligation of judicial review, which cannot be satisfied by always deferring to the findings of a lower court. Therefore, a higher court should not consider itself obliged to exhibit the same deference to a lower court when the issues being reviewed involve the interpretation of the Constitution of the Church. Regarding such issues, the higher court has the duty and authority to interpret and apply the Constitution of the Church according to its best abilities and understanding, regardless of the opinion of the lower court.

*Adopted with BCO amendments sent down to presbyteries for advice and consent.*

**Grounds:**

The Constitution of the PCA — setting forth a summary of biblical doctrine, morals and government, and those prudential regulations necessary for edification, decency and order (*WCF* 1.6) — constitutes the articles of unity of the PCA, and therefore must serve as the standard for judicial review. This proposal will help insure that in judicial review the Constitution actually functions as intended, and is not amended, violated or disregarded in judicial process. Further, clear standards of judicial review will help to preserve the Constitutional gradation of authority while upholding each court's rights and responsibilities.

**D. Recommendations with regard to business referred**

6. The Committee recommends that Overture 3 (1993), from Westminster Presbytery, to amend *BCO* 15-5 to permit discussion and question of its decisions [*M21GA* (1993), pp. 119-20], be answered in the negative. *Adopted*

**OVERTURE 3 (1993) From the Presbytery of Westminster**  
“Amend *BCO* 15-5 to Permit Discussion on Judicial Cases”

**Whereas**, the General Assembly of the Presbyterian Church in America is the highest court of the Church (*BCO* 14-1), and

**Whereas**, a function of a court is the hearing and determination of cases, and

**Whereas**, “It belongeth to synods and councils ministerially. . . to receive complaints in cases of mal-administration, and authoritatively to determine the same.” (*WCF* XXXI, III; cf. *Matt.* 18:18); and

**Whereas**, the General Assembly of the Presbyterian Church in America has such powers as defined in the preceding paragraph, and

**Whereas**, an ecclesiastical commission may be appointed to conclude business appointed to it (*BCO* 15-1), and

**Whereas**, while a presbytery approves or disapproves a judgment of a judicial commission without debate, yet it is not restricted from asking questions or engaging in discussion, (*BCO* 15-3), and

**Whereas**, the Standing Judicial Commission has been given power beyond that lodged with any other commission in that the General Assembly must approve or disapprove of the judgment of the commission without any “question” or “discussion” thus delegating part of its responsibility as the highest court of the church (*BCO* 15-1), and

**Whereas**, such delegation of responsibility may lead to faulty judgment as a result of incomplete or inaccurate information, and

**Whereas**, Acts 15:17, which records the first judicial case of the New Testament, tells us that a decision was reached only after careful discussion by the whole body,

**Therefore, be it resolved** that *BCO* 15-5, third sentence, be amended by deleting “without question” and “or discussion” to read, “The General Assembly shall, without debate, approve or disapprove the judgment or may refer, (a debatable motion), any strictly constitutional issue(s) to a study committee.”

Adopted at the Stated Meeting of Westminster Presbytery on October 10, 1992.

Attested by: /s/ Larry E. Ball, Stated Clerk



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7. The Committee recommends that Overture 8 (1993), from Southwest Florida, to amend *BCO* and *RAO* to require *SJC* to report through a Committee of Commissioners [*M21GA* (1993), pp. 121-22] be answered in the negative.

*Adopted*

### **OVERTURE 8 (1993) Presbytery of Southwest Florida**

"Amend *BCO* and *RAO* to Require *SJC* to Report through Committee of Commissioners"

**Whereas**, the Presbyterian Church in America (PCA) has always desired for the Committee of Commissioners to provide a grassroots "check and balance" for the General Assembly's permanent committees;

**Whereas**, the present practice of excluding the Standing Judicial Commission from the oversight of a Committee of Commissioners is deemed unsatisfactory because the Commission's reports lack details due to the nature of its work;

**Whereas**, the *Book of Church Order* does not allow for discussion on the floor of the General Assembly or for the asking of direct questions pertaining to the case;

**Whereas**, the General Assembly is the highest court, but it appears that we have created, unintentionally, the Standing Judicial Commission as a separate court, in that it has limited accountability to the General Assembly;

**Whereas**, there seems to exist frustrations among the members of the Standing Judicial Commission as was evident during the Twentieth (20th) General Assembly;

**Whereas**, precious Presbyterian principles are involved such as parity of the elders and the duty of mutual oversight;

**Whereas**, the Standing Judicial Commission deals primarily, if not exclusively, with disciplinary matters which is a mark of the true church;

**Therefore be it resolved** that the Presbytery of Southwest Florida overture the Twenty-First (21st) General Assembly to begin the process of amending the *Book of Church Order* and the Rules of Assembly Operations to allow for the oversight of a Committee of Commissioners to oversee the work of the Standing Judicial Commission.

Adopted at the Fall Stated Meeting of the Southwest Florida Presbytery on Saturday, October 10, 1992.

Attested by: /s/ TE A. Carlton Heil, Stated Clerk

8. The Committee recommends that Overture 10 (1993), from Warrior Presbytery, to amend *BCO* and *RAO* to limit the terms of *SJC* members [*M21GA* (1993), pp. 123-4], be answered in the negative.

*Adopted*

### **OVERTURE 10 (1993) From Warrior Presbytery**

"Amend *BCO* 14-1 and *RAO* to Limit the Terms of Standing Judicial Commission"

**Whereas**, the Standing Judicial Commission is a permanent organ of the General Assembly; and

**Whereas**, the General Assembly has for many years maintained a wise and prudent diversity of men on its permanent committees and agencies, thus making the most of many men's gifts; and

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**Whereas**, the General Assembly of the Presbyterian Church in America is composed of a great many gifted and godly elders whose talents should be used to further the purposes of Jesus Christ; and

**Whereas**, the distribution of power in the hands of many men is most wise, given the Scriptural doctrine of total depravity; and

**Whereas**, current procedures which have served so well in delineating the membership of permanent committees and agencies should be applied to Assembly standing commissions;

**Therefore be it resolved** that Warrior Presbytery overtures the Assembly to take the following actions, to be considered *seriatim*:

1. To begin the process of amending *BCO* 14-1 (12) as follows (modification underlined):

Persons who have served a full term, or for at least two years of a partial term, on one off the Assembly's permanent committees, standing commissions, or agencies shall not be eligible for election to an Assembly committee or standing commission until one year has elapsed.

2. To amend *RAO* 4-6 by adding the following underlined material:

No individual shall serve on more than one Assembly committee, standing commission, or agency at one time, except those who serve as permanent committee representatives on the Administrative Committee of General Assembly and those who serve on the Nominating Committee, Committee on Review of Presbytery Records, Ad Interim Committees.

3. To amend *RAO* 13-2 by adding the following underlined material:

Commissioners serving on standing commissions, permanent committees or sub-committees of the Assembly or the staffs thereof are not eligible to serve on any Committee of Commissioners.

Adopted by Warrior Presbytery on October 20, 1992.

Attested by: /s/ R. Dennis Nolen, Jr., Stated Clerk

9. The Committee recommends that Overture 21 (1994), from Western Carolina Presbytery, to amend *BCO* 15-4 to abolish the SJC and establish judicial commissions for each case [*M22GA* (1994), pp. 242-43], be answered in the negative. *Adopted*

### **OVERTURE 21 (1994) From Western Carolina Presbytery** "Amend *BCO* 15-4 Regarding Judicial Procedures"

**Whereas**, the present handling of judicial cases by the General Assembly is conducted by a single Standing Judicial Commission which generally assigns the cases coming before it to panels of three men, which means that unless a case is reheard by the whole commission of 24, three men will have made the decision, that ultimately becomes the action of the General Assembly, which may not ask any questions about the matter, nor discuss it in any way, but must simply vote whether to accept the decision of the Standing Judicial Commission or not, and

**Whereas**, our Constitution has removed the right of the Assembly to handle judicial cases, and placed them in the hands of a single ongoing Standing Judicial Commission, which leads to an elitism that is contrary to the genius of Biblical Presbyterianism (Acts 15:6-21), which teaches the parity of all elders, and

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assigns responsibility of rule and jurisdiction to the courts of the Church, not to an elite group, and

**Whereas**, our present method of election to the Standing Judicial Commission is subject to political manipulation, and

**Whereas**, the Standing Judicial Commission has not used a blind geographical method of selecting the panels, but allows for personal choice of the panels by the officers, which may well erect panels that are not truly objective in their approach to the matters in the case before them,

**Now Be It Resolved**, that the General Assembly amend the *Book of Church Order* as follows:

Replace 19-4 with the following: "The General Assembly as a whole may try a judicial case, or it may of its own motion commit any judicial case to a commission. It shall ordinarily commit to a commission, unless requested otherwise and approved by the Assembly. Such a commission shall ordinarily be appointed from among its members other than the Presbytery from which the case comes up. The Stated Clerk shall gather from each Presbytery a list of at least two teaching elders and two ruling elders, who shall serve as a pool from which Judicial Commissions may be named. These names are to be arranged in two lists, one of teaching elders and one of ruling elders alphabetically by names of individuals. Two months prior to the General Assembly, the requisite number of 20 man commissions shall be designated by the Clerk, selecting each commission from the top of the teaching elder list downward, and from the ruling elder list downward. Any substitutions that must be made shall be taken from the next name on the list. The selection in subsequent years shall begin at the point in each list where the selection stopped. The quorum of the commission shall be at least 15 total composed of at least 7 of each class of elders. Cases shall be assigned in the order they are received by the Stated Clerk's office.

These commissions shall meet two days before the Assembly convenes, or more at the Stated Clerk's discretion, and try the case. The report of each Judicial Commission shall be reviewed by the Constitutional Committee to ensure compliance with the Constitution of the Church. This Committee shall be available for consultation during the adjudication of the cases. If this Committee determines that a Judicial Commission has not adjudicated the case in accord with the Constitution it may remit the case to the Commission. This Committee shall report its opinion regarding the constitutionality of the decision of the Commission to the Assembly.

The Commission shall try the case in the manner presented by the Rules of Discipline and shall submit to the Assembly a full statement of the case and the judgment rendered, along with the minutes of the Commission. The General Assembly may question the Commission regarding its decision, and its supporting statements, but is not to retry the case in such discussion. If the General Assembly approves the judgment, it shall be the action of the General Assembly and printed in its minutes. If the General Assembly disapproves the judgment, it must set the case for hearing before the General Assembly or a Special Commission appointed by it, and in either instance the case shall be tried on the record as delivered to the Stated Clerk. Any such Special Commission shall then proceed and shall report its judgment, in like manner to the General Assembly, after having it reviewed by the Constitutional Committee for approval or disapproval. In any event, the full record of the

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case, including testimony of witnesses, all documents, exhibits, and papers shall be delivered to the Stated Clerk for permanent preservation."

10. The Committee recommends that Overture 5 (1994), from Northeast Presbytery, to require printing of original complaints/appeals and briefs in General Assembly Minutes [M22GA (1994), p. 257], be answered in the negative. *Adopted*

### **OVERTURE 5 (1994)** From Northeast Presbytery

"Include Complaints/Appeals, Minutes of Judicial Commissions, and Briefs in Printed Minutes of General Assembly"

**Whereas**, since 1989 the actual complaints and appeals in all judicial cases to come before the General Assembly have not appeared in the General Assembly minutes; and

**Whereas**, this represents a new situation, in that, prior to that date, the actual complaints and appeals were to be found in the General Assembly minutes; and

**Whereas**, the 1993 General Assembly minutes do not include the briefs submitted by complainants and respondents; and

**Whereas**, it is virtually impossible to determine the actual concerns raised in complaints and appeals without permitting the parties to record their own perception of the concerns and issues;

**Now Therefore Be it Resolved**, that Northeast Presbytery hereby overtures the 22nd General Assembly to instruct the Stated Clerk to:

- 1) include in the minutes, of this and subsequent Assemblies, the complaints and appeals, along with the briefs submitted, and
- 2) correct the 1993 minutes by printing the briefs submitted in all cases.

Adopted by Northeast Presbytery at its January 14-15, 1994 Stated Meeting.

Attested by: /s/ Philip J. Adams, Stated Clerk

The Assembly dismissed the Ad-Interim Committee with thanks with a standing ovation, the singing of "Blest Be the Tie that Binds", and prayer by the moderator.

### **Respectfully Submitted,**

TE David F. Coffin, Jr., chairman  
TE LeRoy H. Ferguson III, secretary  
Dr. Paul B. Fowler  
Dr. Paul R. Gilchrist

RE M. Dale Peacock  
Dr. Morton H. Smith  
RE W. Jack Williamson  
Dr. T. David Gordon, alternate

## **APPENDIX**

### **Introduction**

The AICJP has worked to bring its recommendations to the Assembly grounded in principles taught in Holy Scripture, and informed by the views of a number of the finest representatives of the American Presbyterian tradition. To that end several Committee members prepared study papers for the Committee (included in this Appendix), papers which provided a basis for discussion and which shed light on our final recommendations. The following documents have been read and discussed by the Committee. Each has been revised and edited in response to the insights and comments of other Committee members. Nevertheless, these papers do not necessarily enjoy the unanimous approval of the Committee in every detail or proposition. The

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Committee, therefore, does not propose that any of these papers receive formal endorsement by the Assembly, nor that any of the Committee's recommendations be understood to be necessarily tied to the views expressed therein. Rather, the Committee submits these papers to the Church for its inspection and reflection, in hope that such study will prove to be helpful background for the consideration of the various proposals we are bringing for the improvement of our judicial procedures.

### **I. The Study Papers**

1. "Principles of Judicial Process Derived From the Old Testament Scriptures,"  
by Dr. Paul R. Gilchrist
2. "Principles of Judicial Process From a New Testament Perspective,"  
by Dr. Paul B. Fowler
3. "Church Discipline in Light of the Evidence of the New Testament,"  
by Dr. T. David Gordon
4. "Shepherds as Judges: The Judicial Responsibilities of Elders in the PCA,"  
by Dr. T. David Gordon
5. "The Use of Commissions in the Presbyterian Churches in the United States of America,"  
by Pastor LeRoy H. Ferguson III
6. "Select and Annotated Bibliography on Ecclesiastical Judicial Procedures: Doctrines and Practices of the American Presbyterian Church,"  
by Pastor David F. Coffin, Jr.

### **II. A Procedural Checklist for PCA Rules of Discipline by Dr. T. David Gordon.**

## **PRINCIPLES OF JUDICIAL PROCESS DERIVED FROM THE OLD TESTAMENT SCRIPTURES by Paul R. Gilchrist**

### **I. Preliminary Remarks**

In order to review the PCA's judicial procedures, it seemed good to us to address "the nature of commissions handling judicial procedures focusing on the following areas: 1) Scripture, expressed and implied teaching, 2) Scripture "principles of equity," etc. Specifically this is reflected in *WCF* 1.6 "The whole counsel of God concerning all things necessary...is either expressly set down in Scriptures, or by good and necessary consequence may be deduced from Scripture..." and *WCF* 19.4 "...not obliging any other now, further than the general equity thereof may require." It should be noted that the context of *WCF* 19.4 has to do with the Old Testament laws as they apply to "the body politic," i.e. the civil government, to whom God gave sundry judicial laws. Nevertheless, we may apply some of the principles thereof to ecclesiastical procedures of jurisprudence.

### **II. Hermeneutical Assumptions:**

As we search the Scriptures to find principles of judicial process to apply to our church's procedures, we can agree to several hermeneutic assumptions. First, it is clear that what we call "justice" or "righteousness" derives its content or definition ultimately from the essential nature of God. That is, God, in His righteousness and in His covenant relationship with His people, provides the basis and example of proper judicial process.

Second, we must be concerned about judicial process as it takes place within the context of covenant relations. Justice and righteousness are not abstract principles, but are

applied by God in Old Testament times to His people Israel. God established a covenant of grace in order to redeem a people to Himself. When His people, who inevitably sinned, broke their part of the covenant, God disciplined them according to His righteous character for the purpose of restoring the lost relationship. When we consider judicial process within the Church of Jesus Christ, we are doing so within the context of the covenant community of God for the glory of God and for the restoration of the wayward and for the purity of the covenant community.

Third, there is a continuity of the principles of judicial process from the Old Covenant to the New Covenant. God's character does not change; nor does His approach to His covenant community. We do not have two different Gods, a God of justice in the Old Testament and a God of love in the New. His *modus operandi* in judicial matters differs only in so far as the coming of Christ has affected the form of His covenant people, whereby the "body politic" is differentiated from the "body of Christ." We understand that the principles of the laws of Old Testament Israel may properly be applied in New Testament times to the body of Christ.

Finally, we need a balance in discerning the character of God with its unified emphasis on all the attributes of God as well as their application in the judicial process. On one hand, there are those who so emphasize the love of God that they see no need for discipline. On the other hand, some think that, due to God's holiness, justice is the main aspect of God's character with which we have to deal. Some have even argued that justice is the responsibility of civil government while the church is responsible to exhibit mercy and love. Thus, passing judgment and carrying out retribution are the major roles justice plays and that we must reconcile God's mercy as best we may, the various attributes being in conflict. But Scriptures clearly conceive of the attributes as inseparable, of justice and mercy, truth and lovingkindness, being joined together within the Godhead:

*Righteousness and justice are the foundation of Thy throne;  
Lovingkindness and truth go before Thee.*" (Psalm 89:14)

*"The Lord is righteous in all His ways,  
and kind in all His deeds."* (Psalm 145:17)

*"There is no other God besides Me,  
a righteous God and a Savior."* (Isaiah 45:21)

*"Gracious is the Lord, and righteous;  
Yes, our God is compassionate."* (Psalm 116:5)

### III. Old Testament Considerations

#### A. Old Testament Vocabulary

The "righteous acts of Yahweh" refers to His acts of deliverance. Thus Israel sings of God's judgments (or justice, or righteous acts) in the same breath as His mercies, and proclaims her trust in these. Consequently, justice in the human sphere also promotes mercy. To "do justice" means to "relieve the oppressed, judge the fatherless, and plead for the widow" (cf. Jeremiah 22:15-16).

The primary Hebrew words for the concepts of judgment, justice and righteousness are *mishpat* ("judgment") and *tsedeq/tsedeqah* ("righteousness"). Two additional words are found in the language of jurisprudence, namely, *din* ("to judge") and *rib* ("lawsuit, case"). The concept of justice is essentially one with righteousness. Justice has to do with righteous conduct in relation to others. God is not content to let justice rest on following a set of procedures (e.g., case laws) for determining right from

wrong. Rather, God is intent on *establishing* His righteousness within His covenant community so that His people reflect the righteous character of their God.

This establishment of righteousness applies to social, ethical and religious behavior. It also applies to forensic and legal relations. It is not abstract, but personal, since it is a reflection of a personal, bonded relationship between the covenant God and His people.

The covenant (Hebr. *berith*) or treaty is a bonded relationship imposed by an absolutely sovereign God upon a people whom He has conquered. But the concept of covenant governs not only the relationship between a personal God and His people, but it also governs the relationship between His people in their various social relationships. The most significant word in this relationship is the Hebrew *hesed*, variously translated "mercy, lovingkindness, covenant love, covenant loyalty." With respect to God, it is His "epoxy love" for His people, i.e., He will never break His covenant. With respect to man, it is the kind of behavior expected from people who are in covenant relation with Him.

Another significant word is righteousness (Hebr. *tsedeq, tsedeqah*). In Hebrew thinking, it refers to an actual relationship between two persons implying a behavior which corresponds to the claims arising out of such relationship. With respect to the righteousness of a judge, it would include the question of impartiality with which a standard of justice is applied. But more than that, it is rightly satisfying the claims brought forth as a result of a particular relationship, the fellowship which exists (or should exist) between people. The responsibility of righteousness is to render justice (*mishpat*) and its claims in such a way that the good of all those united in the community would be safeguarded. In some cases this may be in the administration of justice as well as in a judicial sentence. Consequently, the Hebrew expression literally demands "doing justice". (cf. Genesis 18:19, 25, Leviticus 19:15, 33-37, Hosea 2:18-20, Hosea 12:6, Micah 6:8, Jeremiah 22:15-16.)

## B. Old Testament Theology

In the Old Testament, justice can often be viewed merely as a punitive work of God. For we know that God cannot remain indifferent to evil (Habakkuk 1:13), and that He will not pervert justice (Job 8:3). Verses such as "For the Lord your God is a consuming fire" (Deuteronomy 4:24) could be stressed. However, such emphasis would be one-sided and incomplete and therefore a very distorted emphasis. It is quite clear that in the Old Testament, as in the New, God's justice acts in concert with His covenant love (Hebr. *hesed*) and mercy. This is dramatically seen in several Old Testament contexts.

One of the most moving passages which reveals God's justice acting in concert with His covenant love and mercy is Exodus 34. The context is the grievous sin in which Aaron and the people participated in making a molten bull calf of gold during the forty days Moses was on the top of Mt. Sinai receiving the Book of the Covenant. This was a serious breach of both the first and second words (Hebr. *debarim*) of the covenant stipulations. God was ready to exterminate the people of Israel, Abraham's seed, a righteous expression of His justice and wrath. He would start all over with Moses as the father of a new people. But Moses selflessly interceded, confessing the sins of the people, and averting such a cataclysmic judgment. Moses was then ordered to go up the mountain with two new tablets of stone. What is so amazing is God's first words. One would expect the Lord to take this opportunity to lecture Moses and the people about His intense hatred for sin and how His wrath and justice were so central to His character. Instead, God, the Great King of the Covenant, says:

“The LORD, the LORD God, merciful and gracious (Hebr. *hesed*), long-suffering, and abounding in goodness and truth, keeping mercy (Hebr. *hesed*) for thousands [of generations], forgiving iniquity and transgression and sin.” (Exodus 34:6 and 7a)

Note the use of *hesed* twice, the “covenant love, epoxy love” of God, as well as forgiveness for all kinds of sin, including Hebr. *pesha*, “transgression” i.e. “rebellion against the covenant.” Then, and only then, does He reveal Himself as a God who must exercise His justice:

“by no means clearing the guilty, visiting the iniquity of the fathers upon the children and the children’s children to the third and the fourth generation.” (Exodus 34:7b)

This is immediately supported by Moses’ prayer once again for God to “pardon our iniquity and our sin, and take us as Your inheritance.” God’s response was immediate and in keeping with His character; forgiveness and restoration. Acceptance was expressed without delay:

“Behold, I make a covenant. Before all your people I will do marvels such as have not been done. . . For it is an awesome thing that I will do with you.”

The emphasis on this distinctive characteristic of God is reflected in Isaiah 28:21 by way of contrast:

“For the Lord will rise up as at Mount Perazim,  
He will be angry as in the Valley of Gibeon --  
That He may do His work,  
His awesome (NIV “strange”) work,  
And bring to pass His act,  
His unusual (lit. “foreign, alien”) act.”

In short, judgment is something God wants his people to consider as strange and alien to His character, i.e., He does not want this facet of His character to be the primary one that people associate with Him. (Note that in a similar vein, the Lord did not want David to build the temple because David had been a man of war, and God did not want to be identified primarily as a God of war). If anything, God’s revelation of His character in Exodus 34:6 and 7 should take precedence. This theme of God’s lovingkindness is echoed throughout the Old Testament, repeated numerous times in passages dealing with justice (e.g., Jonah 4, Psalm 103). It should be noted that Exodus 34:6-7 does not deny His justice, but places it in perspective. See further where “redemptive judgment” more clearly defines this facet of His character.

The covenant people should reflect in a finite way the character of the infinite God. He is our model, and we would do well to reflect Him who created us in His image and has recreated us for that purpose. In all stages of judicial procedures, we need to model the character and acts of the triune God of the Scriptures.

### C. The Covenant Lawsuit

Another context in which God’s justice acts in concert with His love and mercy is in the “covenant lawsuit” passages. Several Old Testament passages contain what are generally understood as longer or shorter versions of God’s “lawsuit” case (Hebr. *rib*)



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or judicial case against Israel (cf. Deuteronomy 32, Psalm 50, Isaiah 1, Jeremiah 2, Hosea 4, Micah 6). The structure of these cases or lawsuits follows a basic pattern found also in ancient Near Eastern treaties: an invocation of witnesses, a record of rebellion, the resulting judgment, etc.

A significant element is the "call to radical decision." Who can forget Isaiah 1:18, "Come now, and let us reason together," says the Lord, "Though your sins are like scarlet, they shall be as white as snow. . . ." Or how about the pleadings of the Lord in Micah 6:3, "O My people, what have I done to you? And how have I wearied you?" These questions are backed up by the mighty redemptive acts of God on their behalf, such as, "I have. . . brought up children," (Isaiah 1:2c) and "For I brought you up from the land of Egypt, I redeemed you from the house of bondage. . ." (Micah 6:4a)

What is significantly different about Biblical lawsuits from the ancient Near Eastern lawsuits, is that the Biblical lawsuits conclude with the unique feature of "blessings through redemptive judgment." Once again, Isaiah 1:24-31 serves as a magnificent example. Specifically note the phrases "I will. . . purge away your dross," "I will restore your judges," and "afterward you shall be called a city of righteousness." Also consider Micah 7:18-20:

"Who is a God like You, pardoning iniquity and passing over the transgression of the remnant of His heritage? He does not retain His anger forever, because He delights in mercy. He will again have compassion on us, and will subdue our iniquities. You will cast all our sins into the depths of the sea. You will give truth to Jacob and mercy to Abraham, which You have sworn to our fathers from days of old."

Yahweh, the Great King of the Covenant, is not arbitrary or capricious. He intends to fulfill His covenant promises. When His people exhibit recidivism in their rebellion against the covenant relationship, He intends to restore them to Himself. Solomon understood this when he prayed at the dedication of the temple (1 Kings 8). Calvin, Knox and the fathers of Presbyterianism incorporated it into our principles of discipline, which is for the purpose of "keeping and reclaiming of disobedient sinners" (BCO 27-3).

In contrast, the nations of the ancient Near East had no provision for repentance in their treaties. Vassal kings who led their people in rebellion against their suzerain were destroyed, banished or impaled. The Biblical concept of the covenant highlights the contrast of the despotic and capricious nature of the suzerain kings with the graciousness, faithfulness, and justice of the Great King of the Covenant. Note the use of Great King in Psalm 95:3 (and the repeated phrase "the Lord reigns") and His attributes of mercy or lovingkindness (Hebr. *hesed*), justice (Hebr. *mishpat*), and righteousness (Hebr. *tsedeq*), together with the expression, "You were to them GOD-WHO-FORGIVES" in Psalm 99:8.

If the Covenant Lawsuit is the instrument for implementing the Covenant sanctions (i.e. the curses listed in Deuteronomy 28:15-68), it would be well to keep in mind the intensification of the sanctions as the sins of the people get more heinous. What is worthy of note is that it took a long time for the more intense judgment of God to fall on the people of Israel. Specifically, it took over 200 years for the Northern Kingdom to receive the most severe judgment of captivity and almost 350 years for that catastrophe to fall on the Southern Kingdom of Judah. On a personal level, it obviously took time to determine when a rebellious son had become incorrigible (Deuteronomy 21:18-21). The same might be said about how long Hosea took to determine the incorrigible adultery of his wife Gomer before he finally divorced her

(Hosea 2). In a few instances judgment was swift, as in the case of Achan (Joshua 7:10-26).

We may also briefly mention another passage in which the justice and mercy of God act in concert. In Psalm 51, David prays for forgiveness for his crimes against Uriah and Bathsheba. When he implores, "Deliver me from bloodguiltiness, O God, Thou God of my salvation, and my tongue will sing aloud of Thy righteousness (Hebr. *tsedeq*)," he is not seeking vindication. For he has just acknowledged his depravity from birth and his profoundly sinful condition (51:1-5). Rather, David was imploring God for undeserved pardon; in which case, the term "righteousness" should be understood as connoting deliverance; In other words, *tsedeq* has become redemptive. It is the fulfilling of God's gracious promise of salvation apart from the merits of David himself. Similarly, when Isaiah speaks of "a righteous God and a Savior" (45:21), Isaiah is not suggesting that God is just, but somehow also a Savior. Rather, God is *tsedeq*, and therefore a Savior.

#### **D. "Law" and "Discipline" in the Old Testament**

One final word needs to be mentioned in regard to justice in the Old Testament, namely "law" (Hebr. *torah*). Most often we tend to think of law in the judicial sense. We remember the case laws and the penalties. We assume that law is primarily legislative and judicial, dealing with judgments and regulations. The primary meaning of *torah*, however, is an educational one. It means "instruction, teaching." As B. B. Warfield wrote, it is to be understood as a "divinely revealed, authoritative instruction" rather than as a 'code' of ethics or legislation.<sup>1</sup> This insight alone reminds us of the covenantal use of *torah* in the purpose of God, to establish His righteousness among His people.

The same is true with "discipline" (Hebr. *musar*, Gr. *paideuo*) which emphasizes the notion of education. This also is grounded in the covenant relationship, e.g., both the hunger and the miraculous provision of manna was a means of testing the heart of Israel (Deuteronomy 8:2-5). This discipline gave assurance of sonship (Proverbs 1:7-8).

### **IV. The Practice of Biblical Jurisprudence**

It remains now to summarize how the justice of God was put into practice in the Old Covenant community. In the light of Israel's capricious and sinful character, what basic procedures did God, in His righteousness and mercy, enact for the leaders to follow in judicial process? Four major categories of biblical jurisprudence may be discerned.

#### **A. Judicial Authority**

God delegated to certain men the authority to judge. In Exodus 18:13-27, elders were appointed to judge, and difficult cases were brought to Moses (cf. Numbers 11:16f). Deuteronomy 16:18 through 21:23 is the fullest exposition of governmental and judicial authority for the covenant community. More specifically, Deuteronomy 16:18-17:13 established the duties and righteous requirements for judges. Furthermore, in the following sections, kings and priests were given their respective responsibilities which included making judicial decisions. It should be noted that difficult cases were

<sup>1</sup> B. B. Warfield, *The Inspiration and Authority of the Bible*, Philadelphia Presbyterian and Reformed, 1948, p. 100. See further, P. R. Gilchrist, "Towards a Covenantal Definition of Tora" in *Interpretation and History: Essays in Honor of A. A. MacRae*, 1986, pp. 93 ff.

to be brought to the Levitical priest or supreme judge in the central place of worship. There also appeared to be a plurality of judges in towns (Deuteronomy 16:18-20, 17:8-13). The people were to respect and submit to their judgments (Exodus 20:12, Leviticus 19:3, 32).

Ezekiel 34:1-10 is a prophetic indictment of the shepherds of Israel, i.e. the kings, the nobles, the magistrates as well as the priests. But at Ezekiel 34:10b to the end, the prophecy speaks of the messianic Shepherd, "My Servant David," whose breadth of ministry would include correction and discipline. This is beautifully developed in John 10 where Christ refers to Himself as the "Good Shepherd." One needs to note especially Ezekiel 34:20-21 which states:

"Therefore thus says the Lord GOD to them: "Behold, I Myself will judge between the fat ant the lean sheep. Because you have pushed with side and shoulder, butted all the weak ones with your horns, and scattered them abroad, therefore I will save My flock, and they shall no longer be a prey; and I will judge between sheep and sheep."

#### **B. Divine Purpose and Expected Results**

The primary purpose of judicial process is to bring glory to God as exhibited in the following:

"I am the Lord your God, who has separated you from the peoples. . . Thus you are to be holy to Me, for I the Lord am holy: and I have set you apart from the peoples to be Mine." (Leviticus 20:24-26)

Consequently, purification of God's people and the restoration of the wayward are clear corollaries of the primary purpose:

"I will be sanctified among the sons of Israel: I am the Lord who sanctifies you, who brought you out from the land of Egypt, to be your God: I am the Lord." (Leviticus 22:32-33)

God calls for repentance and restitution. He promises to forgive them:

"You shall be blameless before the Lord your God." (Deuteronomy 18:13)

"He shall confess his sins which he has committed, and he shall make restitution in full for his wrong. . ." (Numbers 5:7)

"If they confess their iniquity. . . in their unfaithfulness which they committed against Me. . . then I will remember My covenant with Jacob. . ." (Leviticus 26:40-42)

"If my people who are called by My name humble themselves and pray and seek my face and turn from their wicked ways, then I will hear from heaven, will forgive their sin, and will heal their land." (2 Chronicles 7:14)

Hosea is a prime example of following the divine paradigm, i.e. of God seeking to restore Israel to Himself (Hosea 2 and 3). This is in keeping with the provision in the covenant for wayward Israel to repent and be restored (Deuteronomy 30:1-3).

The warm embrace of a repentant sinner by God with the approbation and reception by the people of God is exhibited in the ongoing story of Judah and Perez (cf. Genesis 38:27, Ruth 4:18, Matthew 1:3). It is also seen in the case of Rahab, a gentile,

a woman and a harlot (Joshua 2:12, 6:28, Matthew 1:5). Jesus underscored this principle in Luke 15 when the father warmly received his prodigal son.

**C. Retribution for the Nonrepentant Sinner**

There is a further application of the covenant sanctions. God's Word is quite clear, that those who turn away from Him and disobey and worship other gods will surely perish.

"See, I have set before you today life and prosperity, and death and adversity. . . But if your heart turns away and you will not obey, but are drawn away and worship other gods and serve them, I declare to you today that you shall surely perish. . . ." (Deuteronomy 30:15-18; see also 17:12-13, Exodus 21:19, 34).

There may be several steps or stages which Scriptures suggest before the ultimate sentence is finalized. The last human procedure is the expulsion from the covenant community (cf. Numbers 14:11-24; 15:30-31; 16:41-50). But prior to disinheriting His people, there may be a temporary suspension from the fellowship as in the case of Miriam (Numbers 12:1-15). This was a temporary withholding of the blessings and privileges of the covenant. For officers, there may be divestiture (cf. Numbers 20: 22-29).

In summary we could say that judicial procedures in the Old Testament served a positive purpose to glorify God and to set apart a holy people unto the Lord, a redemptive purpose to restore the wayward to Himself, and a punitive purpose to declare judgment on the unrepentant.

**D. Special Care in Jurisprudence**

Knowing the depravity of man and the tendency of judges toward judicial tyranny and partiality, God established safeguards for judicial procedures to protect those involved. Judges could take bribes, show partiality, pervert justice, hear false witnesses, and oppress the weak or poor. Provisions were made to protect against such abuses:

- God gave strong warnings about taking of bribes (including the idea of conflict of interest), bias and partiality (cf. Exodus 23:3, 8; Leviticus 19:15; Deuteronomy 10:17, 16:19; 1 Samuel 8:3; Psalms 15:5; Isaiah 1:23, 5:23).
- The perverting of justice (cf. Deuteronomy 16:19-20; Leviticus 19:15).
- False or malicious witnesses and perjury (cf. Exodus 20:16, 23:1-2; Deuteronomy 16:19).
- Oppression of the weak and poor (cf. Exodus 23:6, 9; Leviticus 19:33f; Deuteronomy 10:18, 24:17f; Psalms 68:5, 146:7, 9; Isaiah 1:23).
- The principle of judicial equity (*lex taliones*) required that the punishment be equal to the crime (Exodus 21:22-25). This countermanded the practice of personal vengeance which often exacted far greater penalties than the sin deserved. In a parallel passage, Leviticus 19:17-18 contrasts the personal revenge with the ethical imperative to "love your neighbor as yourself" (cf. Matthew 19:19).
- A full investigation of charges was required (Deuteronomy 17:2-7). The Scriptures also require the citing of the person charged with a sin, as well as citing witness to appear before the judges (cf. Dathan and Abiram, Numbers 16:12). Solid evidence at the mouth of two or three witnesses was necessary (Deuteronomy 17:6).

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- The need for understanding and wisdom to hear cases was recognized (1 Kings 3:11, 8:59-61). As a matter of fact, provision was made regarding difficult cases (Deuteronomy 17:8-9) as well as appeals to a higher court (Numbers 27:1-11).
- Moreover, cities of refuge were established to protect the innocent (Exodus 21:13, Numbers 35:11, Deuteronomy 19:3, Joshua 20:2).
- Jehoshaphat instructed the judges whom he appointed:  
“Consider what you are doing for you do not judge for man but for the Lord who is with you when you render judgment. Now then let the fear of the Lord be upon you; be very careful what you do, for the Lord our God will have no part in unrighteousness, or partiality, or the taking of a bribe. . . Thus you shall do in the fear of the Lord, faithfully and wholeheartedly.” (2 Chronicles 19:6-9)

### E. The Risk of Love

There is one more practical application of Biblical jurisprudence. The Scriptures are full of examples of irregular actions which are not addressed through judicial process. They reflect the principle of “the preferability of the risk of love versus the preciseness of law.” Some examples may be cited:

- David and his fellow outlaws eating temple bread and sacrifices reserved for only the priests (1 Samuel 21:1-6, Mark 2:25-26).
- The matter of profaning the Sabbath (Numbers 28:9, Matthew 12:5-8).
- Levites involved in sacrifice of animals which was the exclusive task of the priests (2 Chronicles 29:34).
- Men prophesying who had not been ordained with the seventy elders (Numbers 11:24-30).
- Jezebel was not destroyed even though Elijah had the right to demand it after the Mt. Carmel victory (1 Kings 19:11-18).
- The problem of polygamy was not judicially addressed in the Old Testament.
- Participation in the Passover after long absence (and even uncleanness) was permitted without going through judicial process (Numbers 9:6-12).
- Similarly, the irregularity of Naomi leaving the covenant community and worship for years, her sons Mahlon and Chilion marrying outside the fellowship of believers in Moab (Ruth 1:2 and 4). A question might be posed: Were Naomi and her family no longer members of the visible church during their several years sojourn in Moab?
- The Moabitess Ruth was immediately received into the Covenant community seemingly contrary to Deuteronomy 23:3 (cf. Ruth 4:11-12, Isaiah 56:3 and 6, and Matthew 1:5).
- The strict prohibition of eunuchs in the covenant community is further altered by prophetic revelation (cf. Deuteronomy 23 with Isaiah 56:3-5 and Acts 8:27-38).
- Given the strong statements in Scripture regarding capital punishment for more than fifteen sins, the question may be posed: Why so few executions when there were so many occasions for application of capital punishment? Specifically, one must note two celebrated cases:
  1. David and Bathsheba should have been executed. Yet, there was repentance, forgiveness, and restoration.
  2. Gomer should have been executed for her adulterous and unfaithful relations. Hosea knew the law, yet he reflected the character of God in his dealings with his estranged wife.

- The Servant of the Lord is said to “bring forth justice to the Gentiles” yet being careful that “a bruised reed He will not break, and smoking flax He will not quench” (Isaiah 42:1-3, cf. Matthew 12:1-21).

#### IV. CONCLUSION

The Old Testament is replete with examples of justice and mercy intermingling in dealing with the sinfulness of man. Rather than justice and righteousness standing alone, they were bathed with the covenant love and mercy of God. The key question then will be: What will bring greater glory to God in a particular situation? May God grant the PCA wisdom to discern when and how to carry out judicial process.

God is glorified when discipline done in the context of the covenant and the Gospel results in the restoration of the wayward and/or the purification of the church. Sometimes He is glorified when His people patiently bear suffering, loss, or personal injury without pursuing formal disciplinary procedures.

### PRINCIPLES OF JUDICIAL PROCESS FROM A NEW TESTAMENT PERSPECTIVE

Paul B. Fowler, Ph.D.

#### I. Hermeneutic Assumptions

The Old Testament is rich in principles and examples of judicial process for God's people. In contrast, the New Testament has relatively few passages to consider. The details of judicial process are simply lacking. However, there is sufficient evidence to show a thorough continuity with OT principles of judicial procedure.

Our purpose is to reflect on pertinent NT passages in the light of and in concert with the Old Testament study presented elsewhere in this report. The OT study provides a balanced and clear exposition of judicial procedures in the OT, and it is our contention that the same principles that guided OT jurisprudence within the state of Israel are active in the NT church body. We will also refer at some length to Calvin's *Institutes of the Christian Religion*, in which he presents what may be considered one of the ablest expositions of the texts in question.

#### II. New Testament Vocabulary

The term “justice” does not occur in the New Testament. But the judicial principles of justice are clearly present:

- rendering to every man according to his works, and showing no partiality (Rom. 2:6-11);
- the moral standard by which God measures human conduct (Rom. 2:12-13); and
- punishment for moral infraction (Rom. 1:18ff).

In the Authorized version, the adjective “righteous” (*dikaios*) is translated over 30 times by the word “just”, and the terms “judgment” (*krisis*) and “righteousness” (*dikaiosis*) appear often. Remembering that in the Old Testament the concept of justice is essentially one with

righteousness,<sup>1</sup> we note that in the New the same is true. The Law of God is written in our hearts (2 Cor. 3:3), and it is God the Father who carefully considers his children's acts of righteousness (Mt. 6:1, 4, 6, 18; Heb. 12:5-11). Based on Christ's active obedience, His perfect righteousness is imputed to believers. Thus God is at the present time both "just [exactng punishment] and the justifier [reckoning just] of the one who has faith in Jesus" (Rom. 3:21-26). Correspondingly, "If we confess our sins, he is faithful and just [not demanding justice, but faithful in reckoning just] to forgive our sins" (1 John 1:9).

This accent on the spiritual dimension of jurisprudence, thoroughly consistent with the OT emphasis, finds complete expression following the death and resurrection of Christ. It is through faith that God declares a person righteous, and it is through forgiveness of sins that God establishes righteousness. This is the primary task of justice! This also plays a role in how we understand God is working judicially today in the midst of His people.

The concept of God's covenant love (*hesed*), his loyalty and faithfulness to his chosen people, is rendered in the New Testament by *charis* meaning "unmerited favor".<sup>2</sup> The specific notion of mercy as compassion to one in need is rendered by *eleos* (and a few other words). Trench makes the distinction between *charis* as concerned for man as guilty, and *eleos* as concerned for man in his miserable condition.<sup>3</sup> The emphasis in the New Testament seems to be that God is "the Father of mercies" and it is because of His mercy we are saved (Eph. 2:4, Tit. 3:5). Jesus bids us to be merciful as our Father is merciful (Lk. 6:36, Mt. 18:21ff). And according to Paul, Christians are to put on a "heart of compassion" (Col. 3:12) and to "forbear one another in love" (Eph. 4:2).

This does not mean that we are not to become involved in judicial process, for mercy supplants justice. *Me genoito!* ("God forbid!") But rather, as we approach problems, we recognize the personal and spiritual dimensions of God's working in the lives of individuals and resolve to be an asset, not a liability. For as the remainder of this study indicates, mercy is no more opposed to justice in the New Testament than in the Old. There is no question of setting justice over against mercy as being in two separate spheres.

### III. The Relation of Justice and Mercy

In the Old Testament study, we found that justice and mercy are constantly joined together. The same is true in the New Testament.<sup>4</sup> Two major passages exemplify this truth.

#### Matthew 18:15-20

15 "And if your brother sins, go and reprove him in private; if he listens to you, you have won your brother. 16 But if he does not listen to you, take one or two more with you, so that by the mouth of two or three witnesses every fact may be confirmed. 17 And if he refuses to listen to them, tell it to the church; and if he refuses to listen even to the church, let him be to you as a Gentile and a tax-gatherer. 18 Truly I say to you, whatever you shall bind on earth shall have been bound in heaven; and whatever you loose on earth shall have been loosed in heaven. 19 Again I say to you, that if two of you agree on earth about anything that they may ask, it shall be done for them by My Father who is in

<sup>1</sup>Cf. the Old Testament study in this report written by Dr. Paul Gilchrist; also, Norman H. Snaith (*The Distinctive Ideas of the Old Testament*, pp. 161-173), who demonstrates that *tsedeqah* included the idea of 'benevolence' going beyond the strict measure of justice (p. 163).

<sup>2</sup>Cf. Snaith, *Ibid.*, pp. 175-6.

<sup>3</sup>R. C. Trench, *Synonyms of the New Testament*, pp. 166ff.

<sup>4</sup>Full justice without mercy may be seen in the final judgment in such passages as Revelation 16. However, prior to that event, justice is mingled with mercy.

*heaven. 20 For where two or three have gathered together in My name, there I am in their midst.*" (NASV)

Jesus presents four stages to follow when faced with an "offense" by a "brother".<sup>5</sup> These stages are:

**Stage #1.** When an offense occurs, the one who sees it<sup>6</sup> must first go to the offender in private, in the spirit of brotherly love, to show the sinner his fault, for the purpose of restoring him or her to fellowship. This approach is clearly set apart from gossiping and first telling others.

**Stage #2.** If an offender refuses to repent and ask forgiveness, then the seeking brother is not to give up, but is to revisit the offender with one or two more brothers. It is assumed that this visit would also be in private and those enlisted would have the offender's best interests at heart. The purpose of the visit is to confirm the facts of the offense and to restore the brother to fellowship.

**Stage #3.** If an offender is again unresponsive, then the offense is to be communicated to the church. [We will argue below that the "church" should be understood as a plurality of elders.] Again, the purpose of bringing the church into the picture is to restore the person.

**Stage #4.** If an offender refuses to respond to the church, then the church should take steps to remove the offender from fellowship in the body of believers. The purpose of separating the offender from the church is to protect the purity and reputation of the church.

We note that the first two stages are necessary prerequisites for stages 3 and 4. Only the last two properly pertain to judicial process. However, they are quite general. How is a person to "tell it to the church"? What are the steps to be taken for removing the offender from fellowship? There is no outline of a detailed formal process in church courts. Moreover, it is not clear as to what is meant by "offense". Are we talking about personal wrongs, or public and scandalous sins?

John Calvin provides wisdom in understanding these questions. "The first foundation of discipline", he notes, "is to provide for private admonition". If there is a problem, then the offender should allow himself to be admonished.<sup>7</sup> On the other hand, these stages are designed "to hinder charity from being violated under the pretense of fervent zeal."<sup>8</sup>

"As the greater part of men are driven by ambition to publish with excessive eagerness the faults of their brethren, Christ seasonably meets this fault by enjoining us to cover the faults of brethren, as far as lies in our power; for those who take pleasure in the disgrace and infamy of brethren are unquestionably carried away by hatred and malice, since, if they were under the influence of charity, they would endeavour to prevent the shame of their brethren."<sup>9</sup>

Second, Calvin cautions that "we must attend to the distinction that some sins are private, others public or openly manifest."<sup>10</sup>

<sup>5</sup>I am indebted to Dr. David Gordon for the term "stages" instead of "steps". See Dr. Gordon's contribution in this report.

<sup>6</sup>In verse 15, after the words "And if your brother offends", the Textus Receptus inserts the phrase "against you." Some of the best and oldest manuscripts omit it. One may argue that it is implied, citing the parallel passage in Luke 17:3-4 where verse 3 omits it and verse 4 adds it. However, it is best not to concentrate on that issue but rather to assume that the sin referred to was either against you or known by you.

<sup>7</sup>*Institutes*, Book IV.12.2

<sup>8</sup>*Commentary on a Harmony of the Evangelists*, II, p. 352.

<sup>9</sup>*Ibid.*, pp. 352-3.

<sup>10</sup>*Institutes*, Book IV.12.3.



"Of the former, Christ says to every private individual, "*go and tell him his fault between thee and him alone*" (Matthew 18:15). Of open sins Paul says to Timothy, "*Those that sin rebuke before all, that others also may fear*" (1 Tim. 5:20). . . . The legitimate course, therefore, will be to proceed in correcting secret faults by the steps mentioned by Christ, and in open sins, accompanied with public scandal, to proceed at once to solemn correction by the Church."

According to Calvin, public sins are those committed openly before the church, private sins are those known only to a few. The former are addressed publicly such as in 1 Corinthians 5 and Galatians 2:11-14. The latter does not come before the church "unless there is contumacy."<sup>11</sup>

Third, Calvin says "some sins are mere delinquencies, others crimes and flagrant iniquities." In the latter case, it is necessary to employ not only admonition, but excommunication as in I Corinthians 5:1-5, if the person is unrepentant.

"Therefore, when the Church banishes from its fellowship open adulterers, fornicators, thieves, robbers, the seditious, the perjured, false witnesses, and others of that description; likewise the contumacious, who, when duly admonished for lighter faults, hold God and his tribunal in derision, instead of arrogating to itself anything that is unreasonable, it exercises a jurisdiction which it has received from the Lord."<sup>12</sup>

In the case of mere delinquencies:

" . . . there is not so much occasion for severity, but verbal chastisement is sufficient, and that gentle and fatherly, so as not to exasperate or confound the offender, but to bring him back to himself, so that he may rather rejoice than be grieved at the correction."<sup>13</sup>

In all cases, says Calvin, the Church should always act "with a spirit of meekness" and discipline should not "degenerate into destruction." For Paul cautions that the offender should "not be swallowed up with overmuch sorrow" (2 Cor. 2:7).<sup>14</sup>

### Concluding Thoughts on Matthew 18

Following Calvin's lead in understanding Matthew 18, we submit that the first thing one must do when a person commits an offense is to deal with that person privately, personally and sensitively, with a view to their restoration. Other stages are to be applied only if this first step has been faithfully applied.

Second, there is great wisdom in proceeding with stage two. First, by going to the offender privately with other witnesses, the seeker will know if he has just cause for the complaint or whether he is making a mountain out of a mole-hill. Then, if there is just cause, it may be easier for two or three persons to succeed in the task of winning the brother than for one. Finally, and more importantly, he will be following the dictates of Deut. 19:15, "that by the mouth of two or three witnesses every matter may be established." In this way, the witnesses will be able to confirm the matter before the Church.<sup>15</sup>

<sup>11</sup> *Ibid.*, Book IV.12.6.

<sup>12</sup> *Ibid.*, Book IV.12.4.

<sup>13</sup> *Ibid.*, Book IV.12.6.

<sup>14</sup> *Ibid.*, Book IV.12.8-10.

<sup>15</sup> Calvin writes (*Commentary on a Harmony of the Evangelists*, p. 355): "We now perceive for what purpose Christ proposes to call witnesses. It is, to give greater weight and impressiveness to the admonition. . . . Moses forbids sentence to be pronounced on a matter that is unknown, and defines this to be the lawful mode of proving, that it be established by the testimony of two or three witnesses." (Italics his.)

Third, we should not understand “offense” in verse 15 as referring primarily to some flagrant iniquity. The admonition to have a “private” interview with the erring brother favors the assumption that the sin referred to was also of a “private” character. However, it may be that by the person’s “contumacy”, that act has developed into something major by stage four. We will also not leave out the possibility that the offense could be of a major sort. On the other hand, it certainly will not pertain to just any little thing that may offend one’s sensibilities.

Fourth, William Hendriksen well notes that “although Jesus is here speaking about private offenses, the underlying requirement of showing love and the forgiving spirit toward all makes it reasonable to state that whenever the interests of the Church demand or even allow it, the rule of Matthew 18:15 should also be applied to public sins.”<sup>16</sup>

Fifth, the presence of the triune God in the judicial process is captured in Matthew 18:18-20. Verse 18 reveals that “whatever you [plural] shall bind on earth shall have been bound in heaven.” This binding refers to the exercise of discipline, whereas the loosing refers to the declaring of forgiveness.<sup>17</sup> The “you” [plural] would refer to the representatives of the church (v.17). Verse 19 refers to the importance of agreement and prayer in the process. And Verse 20 reminds us that when the church is “gathered together in My name,” Christ is present “in their midst” (cp. 1 Cor. 5:4).

Finally, we urge that the purpose of restoration is not simply in view, but appears to dominate the passage. Verses 15-20 are sandwiched between the parable of the lost sheep, “If any man has a hundred sheep, and one of them has gone astray, does he not leave the ninety-nine on the mountains and go and search for the one that is straying?” and Christ’s teaching on forgiveness, “I do not say to you, up to seven times, but up to seventy times seven.” It should be clear that the purpose of God in all of this is that none “of these little ones perish” (18:1-10), that the straying sheep be returned to the fold (18:12-14) . . . and that the Lord feels compassion and releases us all and forgives us our debts (18:27, cf. 21-35).

### 1 Corinthians 5:1-8

Paul is dealing with a significant moral problem. The issue: a man committing incest with his father’s wife. This is the only place in the New Testament where we have outlined for us a judicial procedure for dealing with public scandal. Paul writes:

<sup>1</sup> *“It is actually reported that there is immorality among you, and immorality of such a kind as does not exist even among the Gentiles, that someone has his father’s wife.”* <sup>2</sup> *And you have become arrogant, and have not mourned instead, in order that the one who had done this deed might be removed from your midst.* <sup>3</sup> *For I, on my part, though absent in body but present in spirit, have already judged him who has so committed this, as though I were present.* <sup>4</sup> *In the name of our Lord Jesus, when you are assembled, and I with you in spirit, with the power of our Lord Jesus,* <sup>5</sup> *I have decided to deliver such a one to Satan for the destruction of his flesh, that his spirit may be saved in the day of*

<sup>16</sup>Matthew, in his New Testament Commentary series, p. 698.

<sup>17</sup>There is some question as to what the binding and loosing precisely refer. John 20:23 refers to forgiving or retaining sins. This surely correlates with Matthew 18:18. See also Matthew 16:19. According to Calvin (*Institutes*, Book IV.12.4), “The Lord has declared that it is nothing else than the promulgation of his own sentence, and that that which they do on earth is ratified in heaven. For they act by the word of the Lord in condemning the perverse, and by the word of the Lord in taking the penitent back into favour.”

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the Lord Jesus. <sup>6</sup> Your boasting is not good. Do you not know that a little leaven leavens the whole lump of dough? <sup>7</sup> Clean out the old leaven, that you may be a new lump, just as you are in fact unleavened. For Christ our Passover also has been sacrificed. <sup>8</sup> Let us therefore celebrate the feast, not with old leaven, nor with the leaven of malice and wickedness, but with the unleavened bread of sincerity and truth."

In the Old Testament, incest was forbidden and the persons involved were removed from Israel by stoning (Lev. 18:8, 20:11). The reason given: "Thus you are to be holy to Me, for I the Lord am holy; and I have set you apart from the peoples to be mine" (Lev. 20:26). These same principles are true for the new covenant community, the Church (I Cor. 5:7-8, 11), with the exception of the method of stoning which was discontinued with the state of Israel. For it is clear that the Church has the power of the Word, whereas only the state has the power of the sword.

That this was a serious offense is also indicated by the mention of its absence among the Gentiles. Paul says they need to be mourning (*pentheo*), a term used for mourning for the dead (5:2).<sup>18</sup> The person involved should be "removed from your midst" (5:2, 13). Thus Paul begins the judicial process in its later stage - stage four of Matthew 18:15-17. Apparently the person had already been approached by some in the church and had shown "arrogance" (5:2). Paul had prior to this time counseled with the Corinthians and written a letter to deal with this problem (5:9).<sup>19</sup> Now, applying Old Testament principles of judicial procedure to the NT church-body, he tells them to gather together in assembly to pronounce the judgment of excommunication so that ultimately restoration may take place.

Verses 3-5 represent one sentence in Greek.<sup>20</sup> At the first reading of the original language, the sentence seems ponderous and suggests the inner tension Paul felt as he wrote it. But Paul's main intent is quite clear as we separate the secondary clauses regarding his absence or presence and their gathering from the essential message which may be thus interpreted: "I have already judged the one who has committed this deed; in the name of our Lord Jesus, deliver such a one to Satan for the destruction of the flesh that the spirit may be saved in the day of the Lord." The verb "have judged" is in the perfect tense indicating a finality and settled conviction on Paul's part. The phrase "in the name of the Lord Jesus" is in an emphatic position preceding the command to deliver.<sup>21</sup> And the word "deliver" being an infinitive in Greek, should be viewed as a command, being controlled by the main verb.

The Lord Jesus would be present presiding over the procedure,<sup>22</sup> and the church would be invested with His power. Their power was not magisterial but ministerial, consisting of the

<sup>18</sup> Leon Morris, *I Corinthians*, in New International Commentary series, p. 87.

<sup>19</sup> This author is coming from the point of view that I Corinthians 5:9-11 refers to a letter Paul wrote prior to I Corinthians, and that that letter sought to deal with the incest problem.

<sup>20</sup> A literal translation of the Greek would be: "For I indeed, although absent in body but present in spirit, already have judged as though I were present, the one who has so done this action, in the name of [our] Lord Jesus, when you are gathered together, and my spirit, with the power of our Lord Jesus, to deliver such a one to Satan for the destruction of the flesh, in order that the spirit may be saved in the day of the Lord."

<sup>21</sup> There is significant debate as to what the phrase "in the name of the Lord Jesus" is connected. For an analysis, cf. Simon Kistemaker, *I Corinthians*, in the New Testament Commentary series, pp. 159-60.

<sup>22</sup> Calvin notes (*Ibid.*, Book IV.12.7), "Throughout the whole procedure, in addition to invocation of the name of God, there should be a gravity bespeaking the presence of Christ, and leaving no room to doubt that he is presiding over his own tribunal."

Word in pronouncing judgment of excommunication so that ultimate restoration may take place. There is a great diversity of opinion regarding what Paul meant when he said, "to deliver such a one to Satan for the destruction of his flesh."<sup>23</sup> For the church, this meant, at the least, that he "be removed from your midst" (v.2), i.e., excommunication.

The motive for excommunicating the unrepentant sexual offender is first stated, "that his spirit may be saved in the day of the Lord" (v.5). Then Paul adds, "Do you not know that a little leaven leavens the whole lump?" (5:6-8) The purity of the church is at stake! He warns the church "not to associate" (a double compound meaning "to mix up yourself with) with any so-called brother if he practices immorality, and concludes with an astonishing list of vices which professing Christians were committing and for which they should be removed: "if he should be an immoral person, or covetous, or an idolater, or a reviler, or a drunkard, or a swindler -- not even to eat with such a one." Some question whether this "eating" refers to the Lord's Supper, or also socially. If socially, how does one reestablish relations? One thing is certain, however, Paul does not hesitate to say they must be removed.

*"That the one who had done this deed might be removed from your midst" (5:2)*

*"Not to associate with immoral people" (5:9)*

*"Not to associate with any so-called brother if he should be an immoral person" (5:11)*

*"Remove the wicked man from among yourselves" (5:13)*

*"Now, we command you, brethren, in the name of our Lord Jesus Christ, that ye keep aloof from every brother who leads an unruly life and not according to the tradition which you received from us" (2 Thess. 3:6)*

But we must be careful to distinguish, as Calvin does, between excommunication and anathema, each of which has its purpose:

"Excommunication differs from anathema in this, that the latter completely excluding pardon, dooms and devotes the individual to eternal destruction, whereas the former rather rebukes and animadverts upon his manners; and although it also punishes, it is to bring him to salvation, by forewarning him of his future doom. If it succeeds, reconciliation and restoration to communion are ready to be given."<sup>24</sup>

Clearly, the intent of Paul's words in this passage is to move the church to act, to gather in assembly to remove this evil from their midst. Paul, in his apostolic position, would be present in spirit, but they would need to meet and carry out the trial and sentencing. Calvin observes:

"Paul, apostle though he is, does not excommunicate by himself, to suit his own pleasure, but takes the church into consultation so that the matter might be dealt with by their joint decision. Indeed he goes ahead and shows the way, but

<sup>23</sup> Commentators find it difficult to interpret the clause, "deliver such a one to Satan for the destruction of the flesh that his spirit may be saved in the day of the Lord Jesus." Perhaps the most satisfactory answer is that by "putting him out of your midst", he was being placed outside the body of Christ and therefore back in "this present age," "the age of this world" where the "prince of the power of the air" remains dominant (Eph. 2:1-2); but Paul saw this as a remedial punishment for the purpose of restoration, that the soul of that person might be saved in the end, and to bring glory to God since the scandal would be no longer present in the body of Christ. This is the view of Calvin and Murray. According to Hodge and Kistemaker, however, something deeper than excommunication is meant, what Hodge refers to as "a miraculous subjection of the person to the power of Satan" (*Ibid.* p. 85). For their cogent arguments, refer to their respective commentaries.

<sup>24</sup> *Institutes*, Book IV.12.10.

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when he associates others with himself, he means quite plainly that the power does not rest with one individual.”<sup>25</sup>

Calvin concludes it is for this reason that matters such as excommunication “must be exercised by the elders consulting together, and with the consent of the people.” This is the remedy, he notes, for the “prevention of tyranny” in the church.<sup>26</sup>

One further truth is exemplified in this passage, that justice is interwoven with mercy in judicial process. For Paul clearly has several purposes in mind as he exhorts the church to act: first, to preserve the purity of the church; second, to seek to restore the wayward person to the Lord; and third, to bring judgment to the unrepentant. We can perceive no tension whatsoever between justice and mercy as they are intricately wedded together to accomplish these purposes of Paul. We should note, furthermore, that in this one judicial case all three purposes for church discipline - the positive, redemptive and punitive - are deliberately being pursued, and all for the glory of God.

Paul concludes by stating that judgments between Christians should be determined within the church, not in secular courts (6:1-8), and that those outside the church need the gospel preached to them (6:9-11) and are judged by God (5:13).

### Therefore, in 1 Corinthians 5 we find:

1. A continuity from the OT to the NT in the matter of judicial process. OT procedure was reapplied to a church-body context.
2. Mercy is found within true justice. Both punitive and redemptive purposes are in view. (Note: if 2 Cor. 2 and 1 Cor. 5 refer to the same person, then the person is indeed restored and Paul in 2 Cor. 2 exhorts the believers to embrace the repentant sinner.)
3. The importance of establishing righteousness in the covenant community. Moral principles taught in God's Law are held tenaciously in the new covenant community.
4. Discipline is to take place within a covenant community context.
5. All the purposes for judicial process are present -- purity, punishment and restoration, and all for the glory of God.

## IV. Issues of Authority

### Role of Elders

In the Old Testament, we witnessed God setting up the judicial process and delegating people the authority to judge. “Elders” were enlisted, and difficult cases were decided by people in special positions.

These ideas are carried over into the New Testament. In Acts 15, a very knotty theological problem arose threatening the validity of the atonement and questioning the value of traditions and prejudices of Jewish believers. The issue was raised by men from Judea who came to Antioch and taught: “Unless you are circumcised according to the custom of Moses, you cannot be saved” (15:1). So the church at Antioch determined to send Paul and Barnabas “to the apostles and elders” in Jerusalem to settle the issue (v.2). After they arrived, “the apostles and the elders came together to look into this matter” (v.6). Following much debate including testimonies from Peter, Barnabas and Paul,<sup>27</sup> James (the brother of our Lord) quotes Amos 9:11-12 and makes the final judgment. That judgment was sent by letter back to Antioch

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<sup>25</sup> *1 Corinthians*, p. 107.

<sup>26</sup> *Ibid.*

<sup>27</sup> Paul's testimony is more fully recorded in his letter to the Galatians.

with the heading, "The apostles and the brethren who are elders, to the brethren in Antioch . . ." (v.23).<sup>28</sup>

There is a preponderance of evidence that local churches were led by a plurality of elders and that they, not the congregations, would have oversight of such matters (Acts 11:30, 14:23, 20:17, 28, Phil. 1:1, 1 Thess. 5:12-13, 1 Tim. 4:14, Titus 1:5, James 5:14, 1 Peter 5:1-3, Hebrews 13:17). Paul mentions different gifts: "he who ruleth..." (Rom. 12:8), and "governments" (1 Cor. 12:28). It is within this overall biblical context that we view the "church" in Matthew 18:17 as referring to a plurality of elders rather than an entire congregation or congregation meeting.

Returning to Acts 15, it would appear that there were at least three separate meetings and that the council possibly met for days to discuss the troubling problem and maintain their unity. First, there was clearly a general meeting in which Paul and Barnabas were received by the church as a whole and they reported what God had done among the Gentiles (15:4-5). Next there was a separate meeting of the apostles and elders together with Paul and Barnabas to decide the issue (15:6-21). Then the full assembly met to give consent to the elders' decision (15:22).<sup>29</sup> All of this suggests that there was a proper forum or court for formal discipline, and that this court consisted basically of a plurality of elders. Christians were not to take their grievances to a civil court (1 Cor. 6:1-8), except in the case of necessity as when Paul appealed to Caesar (Acts 25:11).

Regarding safeguards in judicial procedure, we read in 1 Timothy 5:19-21, "Do not receive an accusation against an elder except on the basis of two or three witnesses. Those who continue in sin, rebuke in the presence of all, so that the rest also may be fearful of sinning. I solemnly charge you . . . to maintain these principles without bias, doing nothing in the spirit of partiality." Here we find the same safeguards in jurisprudence which were practiced in the OT. These safeguards must be followed in judicial procedure today. We are also reminded of our responsibility to pursue judicial process even if it means having to rebuke a fellow elder.

### Role of Scripture

*"All Scripture is God-breathed and is profitable for teaching, for reproof, for correction, for training in righteousness . . ." (2 Tim. 3:16)*

*Teaching* imparts knowledge; *reproof* warns against error and sin; *correction* directs to the right path, a healing or restoring concept; and *training in righteousness* disciplines for holiness. Examples abound in the New Testament of discipline through these means.<sup>30</sup> All Scripture, Old and New, is *torah* in this sense. It is instruction in the Lord's way.

It is helpful to read the Corinthian letters and to put the issues in chronological order. It took a lot of patience to work through the problems, prejudice and misunderstandings, perhaps a period of three to four years. Paul was appealing to believers from a pedagogical approach through instruction, exhortation, admonition, rebuke, and in only one case, through calling for formal judicial process. Indeed, nothing in the Corinthian correspondence suggests anything

<sup>28</sup>There is a very important nuance of procedure that seems to have been overlooked by many expositors of this passage. On the surface, it would appear that the Judaistic problem had to be taken to Jerusalem simply because that was the supreme assembly. It is the author's contention that a spirit reigned in NT jurisprudence that said, we will send it to Jerusalem because the problem arose from there, and because we trust the brothers in Jerusalem to do what is right. Note that only a few delegates came from Antioch, and perhaps none representing the rest of the Gentile churches.

<sup>29</sup>Some commentators would hold that the third meeting began at verse 12 rather than 22.

<sup>30</sup>In addition to the examples already cited in this study, cf. 2 John 8-11, John 9-11, Jude 17-23, Rev. 2-3.

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like the American adversarial system of justice. Rather, it appears to support more the Scottish investigatory system with its emphasis on full investigation of all sides of an issue before formal adjudication.

The Church has the power of the Word, not the sword. In short, its jurisdiction consists of this statement by Paul:

*"The weapons of our warfare are not carnal, but mighty through God to the pulling down of strongholds; casting down imaginations, and every high thing that exalteth itself against the knowledge of God, and bringing into captivity every thought to the obedience of Christ; and having in a readiness to revenge all disobedience."*  
(2 Corinthians 10:4-6)

And this, as Calvin notes, "requires neither violence nor physical force, but is contented with the might of the word of God."<sup>31</sup> Just as Scripture is the only rule for faith and practice, so judgments and sentences are divine only when in accord with His Word.

### Spirit of Gentleness

Various passages tell us how elders are to be received with appreciation and submission by the church (Heb. 13:17, 1 Th. 5:12-13, 1 Cor. 16:16). Other passages tell us how these elders are to lead:

*"The Lord's bond-servant must not be quarrelsome, but be kind to all . . . patient when wronged, with gentleness correcting those who are in opposition, if perhaps God may grant them repentance leading to the knowledge of the truth . . ."*  
(2 Tim. 2:24-25)

*"Preach the word . . . reprove, rebuke, exhort, with great patience and instruction . . ."*  
(2 Tim. 4:2)

*"Do not sharply rebuke an older man, but rather appeal to him as a father, to the younger men as brothers, the older women as mothers, and the younger women as sisters, in all purity."*  
(1 Timothy 5:1-2)

*"Admonish the unruly, encourage the fainthearted, help the weak, be patient with all men."*  
(1 Thess. 5:14)

*"Shepherd the flock of God among you . . . not as lording it over those allotted to your charge, but proving to be examples to the flock . . ."*

(1 Pet. 5:2-3)

All of these verses seem to be stressing the same thing -- the importance of combining leadership with kindness and patience. There is also a prevenient dimension in several verses, i.e., to prevent souls from going astray.

It reminds us of Jesus and the way He dealt with Peter and Thomas, and with James and John, and even with Judas. There was always that gentleness and patience along with the correction. Jesus said, "I am meek and lowly in heart" (Matt. 11:29). And in a context of church discipline, Paul pleads, "I urge you by the meekness and gentleness of Christ . . ." (2 Cor. 10:1) Do we see this "spirit of gentleness" in today's church?

Or consider Paul's gentle manner with Philemon: "though I might be very bold in Christ to command you . . . yet for love's sake I rather appeal to you . . . [and] without your consent I wanted to do nothing . . ." (vss. 8, 9, 14). Paul could have pulled rank as an apostle, but he resolved to do nothing without Philemon's consent. This approach suggests how the church should address major social problems of today -- not by command or legislation, but by persuasion.

In Galatians 6:1-2, Paul exhorts: "Brethren, even if a man is caught in any trespass, you who are spiritual restore such a one in a spirit of gentleness, looking to yourselves, lest you too

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<sup>31</sup>*Institutes*, Book IV.12.5.

be tempted. Bear one another's burdens, and thus fulfill the law of Christ." The accent here is on the manner of restoration, with "gentleness" undergirded by love. Paul is instructing us not to tolerate, nor to put up with, but to jointly shoulder a person's burdens.

In Philippians 4:2-3, Paul writes: "I urge Euodia and I urge Syntyche to live in harmony in the Lord. Indeed, true comrade, I ask you also to help these women who have shared my struggle in the cause of the gospel. . . ." The name of the "true comrade" is unknown, but Paul is saying to him, "Here are two women who need correction. They shared in the cause of Christ and are to be graciously helped." Verse 5 exhorts, "Let your forbearing spirit be known to all men."

In Matthew 5, Jesus is teaching the law of His kingdom. He is not only teaching that the jot and tittle of God's Law is of utmost importance, but further that our righteousness needs to exceed that of the Pharisees. In this author's opinion, he is also reapplying the principles of general equity of the Old Testament case law to the context of the church body which he is initiating. In the process, Jesus touches on the matter of the *ius talionis* (5:38-42):

*"You have heard that it was said, 'An eye for an eye, and a tooth for a tooth.' But I say to you, do not resist him who is evil; but whoever slaps you on your right cheek, turn to him the other also. And if any one wants to sue you, and take your shirt, let him have your coat . . ."*

In saying this, Jesus was not canceling out the principle of equity. He was not removing the law or replacing it with a form of antinomianism.<sup>32</sup> But he was combating a misconception of the Law of God which grew out of Mishnaic oral tradition, and he was declaring that the OT Law does not cancel out the demand of mercy. The Pharisees focused on carrying out "eye for eye" (and often on a personal level); Jesus focused on responses of love.

Taking all of these passages together and allowing the unity of Scripture to guide our interpretation, we find a strong emphasis on pursuing problems with a gentle and loving spirit. As James, the Lord's brother, reminds us: "the wrath of man does not produce the righteousness of God" (1:20). One is hardpressed to find a place in Scripture where the restorative principle is not present.

## V. In Conclusion

*"O Timothy, guard what has been entrusted to you."* (1 Timothy 6:20)

*"Now I urge you, brethren, keep your eye on those who cause dissensions and hindrances contrary to the teaching which you learned, and turn away from them."* (Romans 16:17)

*"My brethren, if any among you strays from the truth, and one turns him back, let him know that he who turns a sinner from the error of his way will save his soul from death, and will cover a multitude of sins."* (James 5:19-20)

In conclusion, we are faced with the frightful responsibility of guarding what has been entrusted to us by God. We are to keep our eye on "those who cause dissensions and hindrances," and with devotion we are to turn the one who "strays from the truth" back to the Lord.

The church today must deal seriously with sin. It must exhibit an intense hatred of sin and a true desire for righteousness. As it seeks the purity of the church, it must attempt to bring

<sup>32</sup>The *ius talionis* in Mosaic Law was understood to provide the principle of equity. Its primary purpose was to restrain personal vengeance. But its purpose was abused by those who used it in a contrary way to gain vengeance.



offenders to repentance and salvation, or resort to excommunication if the restorative attempts fail.

Yet one is struck in this study by the preponderance of references exhorting to meekness and gentleness when confronting sin, that one must "not allow discipline to degenerate into destruction," as Calvin so well states it. A fusion of mercy with justice is needed, just as has been exemplified by all the accounts in Scripture. As Calvin discerns:

"Christ enjoins his disciples to forgive one another, but to do so in such a manner as to endeavour to correct their faults. . . for nothing is more difficult than to exercise forbearance towards all men, and, at the same time, not to neglect the freedom necessary in reproofing them. Almost all lean to the one side or to the other, either to deceive themselves mutually by deadly flatteries, or to pursue with excessive bitterness those whom they ought to cure. But Christ recommends to his disciples a mutual love, which is widely distant from flattery; only he enjoins them to season her admonitions with moderation, lest, by excessive severity and harshness, they discourage the weak."<sup>33</sup>

For this reason, as the church attempts to deal seriously with sin, it must be careful not to allow a narrow-minded legalism to control our judicial process. This can happen if we allow our minds to focus on the rules and regulations in our traditions to bring about justice, thereby creating an imbalance where justice and mercy do not meet.<sup>34</sup> On the contrary, we must focus our efforts on reflecting the spirit of the whole of Scripture, which is the spirit of Christ. It is a spirit that recognizes the way God has dealt with us -- through totally unmerited grace -- and that desires to deal with others in that same way. To do otherwise would be a denial of the cross where God's justice and mercy kissed each other.<sup>35</sup> In the words of Chrysostom: "If God is so kind, why should his priest wish to appear austere?"<sup>36</sup> Or to quote Cyprian:

"Our patience, facility, and humanity, are ready to all who come. I wish all to be brought back into the Church. . . I forgive all. . . I do not minutely scrutinize all the faults which have been committed against God. I myself often err, by forgiving offenses more than I ought. Those returning in repentance, and those confessing their sins with simple and humble satisfaction, I embrace with prompt and full delight."<sup>37</sup>

<sup>33</sup> *Commentary on a Harmony of the Evangelists*, Vol. II, p. 352. Someone has written, "Justice without mercy is tyranny; mercy without justice is indulgence."

<sup>34</sup> A good example of this is provided by Calvin (*Institutes*, Book IV.12.12). Using the example of the Donatists, who bitterly inveighed against the bishops as traitors to discipline when they failed to discipline faults in the Church more severely, Calvin quotes Augustine's assessment of the Donatists: "Such . . . cover themselves with the shadow of a stern severity: the correction of a brother's fault, which in Scripture is enjoined to be done with moderation, . . . they pervert to sacrilegious schism and purposes of excision. Thus Satan transforms himself into an angel of light (2 Cor. 11:14) when, under pretext of a just severity, he persuades to savage cruelty, desiring nothing more than to violate and burst the bond of unity and peace..." One can also see parallels with Judaism and its penchant to revel in a written code developed in their oral tradition, thereby losing sight of Scripture. We must be careful to remain true to Scripture and not add nuances or slants from our more recent "traditions" which would guide us on a path contrary to the truths and intent of Scripture.

<sup>35</sup> Cf. Psalm 85:10.

<sup>36</sup> Calvin, *Institutes*, Book IV.12.8.

<sup>37</sup> *Ibid.*

A legalistic spirit can also lead us into judging others falsely. In Matthew 7:1, Jesus says "Do not judge lest you be judged yourselves." In 1 Corinthians 5:12, Paul asked "Do you not judge those who are within the church?" And in 1 Corinthians 4:5, Paul exhorts, "Do not go on passing judgment before the time (*kairos*), but wait until the Lord comes who will both bring to light the things hidden in the darkness and disclose the motives of men's hearts; and then each man's praise will come to him from God." These passages are not in conflict. In Matthew 7, Jesus is not forbidding judicious discernment, but a censorious spirit which delights in finding fault with others. He says literally, "Stop judging!"<sup>38</sup> In 1 Cor. 5:12, Paul is instructing the church that they have a responsibility not to allow impurity within the church. And in 1 Cor. 4:5, Paul is exhorting the church not to be arrogant by passing judgment on others, but to remember that there will be a final judgment of God that will bring about true justice.

We may be encouraged, however, by the truth that the Lord is present in judicial proceedings. His promise is, "there I am in their midst" (Matt. 18:20). In both the Old and New Testaments, this promise is generally associated with the imparting of strength, protection, comfort and direction. It is in this favorable sense that Jesus is present to guide our path. And His example is pertinent to all. For Jesus Christ is the perfect shepherd and judge. He is both merciful and just without any conflict within His character. It must be our prayer that, as He is present in the proceedings, His character of mercy and righteousness will guide our judgments.

*"But now, beloved, building yourselves up on your most holy faith; praying in the Holy Spirit; keep yourselves in the love of God, waiting anxiously for the mercy of our Lord Jesus Christ to eternal life. And have mercy on some, who are doubting; save others, snatching them out of the fire; and on some have mercy with fear, hating even the garment polluted by the flesh. Now to Him who is able to keep you from stumbling, and to make you stand in the presence of His glory blameless with great joy, to the only God our Savior, through Jesus Christ our Lord, be glory, majesty, dominion and authority, before all time and now and forever. Amen." (Jude 20-25)*

## **CHURCH DISCIPLINE IN LIGHT OF THE EVIDENCE OF THE NEW TESTAMENT**

T. David Gordon

What follows is an outline of the primary realities associated with ecclesiastical discipline, especially in light of the instruction of the New Testament. It consists of little more than an outline, which outline could usefully be supplemented by prose discussion. Sessions and Presbyteries might find this outline fruitful as a structure for conversation about church discipline.

### **I. Discipline is an aspect of discipleship**

- A. Mt. 28:18-20. The positive dimension; teaching to observe all that Jesus commanded.
- B. Heb. 13:17. The "prevenient" dimension; watching over souls to prevent their going astray. (This dimension is also implicit whenever the officers are referred to as "shepherds".)

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<sup>38</sup>Reference to this same censorious spirit is found in James 4:11-12 and 5:9.

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- C. 1 Cor. 5. The “remedial” dimension; correcting or pronouncing judgment on the wayward.

### II. Discipline is a mark and duty of the church

PCA BCO Preliminary Principle 3: “Our blessed Saviour...has appointed officers not only to preach the Gospel and administer the Sacraments, but also to exercise discipline for the preservation both of truth and duty. It is incumbent upon these officers and upon the whole Church in whose name they act, to censure or cast out the erroneous and scandalous, observing in all cases the rules contained in the Word of God.”

- A. Matthew 18:15-18 -- “binding and loosing”
- B. Matthew 16:18-20 -- “keys of the kingdom,” “binding and loosing”
- C. John 20: 23 -- “If you forgive the sins of any, they are forgiven them; if you retain the sins of any, they are retained.”
- D. Hebrews 13:17 -- “Obey your leaders and submit to them, for they are keeping watch over your souls and will give an account.”
- E. 1 Cor. 5
  - 1. “Remove” the offender, 1-5
  - 2. Beware of the danger to yourselves, 6-8
  - 3. Your concern is for insiders, not outsiders, 11-13: “But now I am writing to you not to associate with anyone who bears the name of brother or sister who is sexually immoral or greedy, or is an idolater, reviler, drunkard, or robber. Do not even eat with such a one. For what have I to do with judging those outside? Is it not those who are inside that you are to judge? God will judge those outside.”

### III. Discipline has several goals

BCO 27-3:

“The exercise of discipline is highly important and necessary. In its proper usage discipline maintains:

- a. the glory of God,
  - b. the purity of His Church,
  - c. the keeping and reclaiming of disobedient sinners.”
- A. Glory of God (and honor of religion). 1Cor. 5:1: “It is actually reported that there is sexual immorality among you, and such sexual immorality as is not even named among the Gentiles -- that a man has his father's wife.”
  - B. Purity of the Church. 1 Cor. 5: 4 “In the name of our Lord Jesus Christ, when you are gathered together, along with my spirit, with the power of our Lord Jesus Christ, 5 deliver such a one to Satan for the destruction of the flesh, that his spirit may be saved in the day of the Lord Jesus. 6 Your glorying is not good. Do you not know that a little leaven leavens the whole lump? 7 Therefore purge out the old leaven, that you may be a new lump, since you truly are unleavened.”
  - C. Reclamation of the wayward. Mat. 18:15-20. Note contextual concern for “one of the least of these” in 18:10-14, and the transition then to 15, *eau da*, with the goal of winning (*ekerdesas*) the brother.
  - D. If “C” were the *only* goal of discipline, then we would never discipline those who appeared to be “lost causes.” Yet the glory of God and the purity of the church are also at stake. In 1 Cor. 5, Paul urges the Corinthians to remove the offender, not only for his sake, but for *their* sake, warning that a little leaven would poison the entire church.

- E. It is thus *never* true that discipline will “do no good.” That a given individual may not immediately respond favorably does not mean that “no good” is done. Often there is no immediate, visible response to preaching, or to the administration of the Lord’s Supper, or to prayer; this does not mean that preaching and the Lord’s Supper and prayer “do no good.” It merely means that God the Holy Spirit *uses* his own ordinances *as* he wishes *when* he wishes.

#### IV. Discipline has several stages.

We refer to “stages” rather than “steps.” At the positive level, we do not instruct merely once (a “step”), but many times. We do not pray merely once, but regularly, repeatedly. Even when the “remedial” aspects begin, there are “stages,” not “steps,” because the effort to win a brother “alone” should not be hastily or perfunctorily done. It is not a “step” one passes quickly by, but a “stage” that may require many visits, as long as there is any reasonable possibility that progress is being made. We are guided, in this patient and painstaking process, by the law of charity: “Love hopes all things.”

- A. Positive. The “positive” stages of discipline include all of those activities that *promote* godliness.
  1. Instruction. All of the church’s preaching, teaching, and private counsel, are means by which saints are disciplined/disciplined. Through the blessing of God, such instruction is the instrument by which the affections and thoughts of God’s people are brought into conformity with his own affections and thoughts.
  2. Godly example and encouragement. Within the professing community, the godly example and patient encouragement of others also has a discipling or disciplining effect.
  3. Prayer. The patient, persisting prayer of other saints is a means by which the God sanctifies and disciplines his people.
  4. Sacraments. Baptism and the Lord’s Supper are means by which, positively, we learn about our duties and privileges as saints, and are increasingly disciplined in the Christian life and graces.
  5. Other? There may be many other, specific ways in which the Christian is disciplined in the Christian life in a positive way.
- B. Prevenient. The “preventive” stages of discipline are similar to the positive stages, but include those various actions that help prevent spiritual decline, and protect against sin.
  1. Catechism. Whether technically, using the actual catechisms, or more generally, using sound instruction, the comprehensive instruction about the Christian faith and life undoubtedly prevents many sins from ever occurring.
  2. Corporate worship; the means of grace (frequent preaching and communion?). Weekly assembling for God’s worship undoubtedly functions preventively, to call us back to communion with God before we go astray.
  3. Visitation by shepherds. Pastoral visitation by pastor and elders undoubtedly prevents many sins from beginning or continuing.
  4. Prayer by shepherds. Surely the patient, persisting prayers of saints and officers is frequently blessed by God to prevent sin from manifesting itself.
  5. Other?

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- C. Remedial. The "remedial" stages of discipline are those stages that are instituted after sin has already occurred (or has been alleged to have occurred).
1. Private stage "go and point out the fault when the two of you are alone." This stage should not be quickly dispensed with, as though it were a mere formality. In the great wisdom of God (who knows our frame, that we are but dust), this is a very important stage, for at least two reasons. First, at this stage there is no public scandal. Disrepute has not yet come upon the Bride of Christ, because at this point, only two people are aware of the incident. For this reason, one should persevere at this stage patiently, for as long as there is any evidence that progress is being made. Second, people tend to be defensive about allegations against them. And, they tend to become more defensive the more public the allegations become. Therefore, it is much more likely that an individual will be humble, meek, or contrite, when dealt with tenderly and privately, than if dealt with publicly.
  2. Arbitration stage "But if you are not listened to, take one or two others along with you." Sometimes, even after a patient, extended season of private discussion, two brothers do not settle the dispute, and others must be brought in to attempt to facilitate resolution. Much wisdom should be exercised at this stage, in selecting arbiters who will be manifestly impartial, patient, and discreet.
  3. Ecclesiastical/formal stage "If the member refuses to listen to them, tell it to the church." 1 Cor. 5:3-4 "For though absent in body, I am present in spirit; and as if present I have already *pronounced judgment* in the name of the Lord Jesus on the man who has done such a thing." Regrettably, there will on some occasions be no resolution to a dispute even after the arbitration stage. On such regrettable moments, there is no alternative other than to bring the matter before the appropriate church-court for resolution.

### V. Discipline faces several difficulties

- A. Personal. It is hard for sinners to discipline sinners. We tend to be either too strict (Mt. 7) or too lax (1 Cor. 5).
- B. Exegetical. "So also our beloved brother Paul wrote to you according to the wisdom given him, speaking of this as he does in all his letters. There are some things in them hard to understand," 2 Pet.3:15-16.
1. What issues does the Bible address? (BCO 29-1)
  2. What does the Bible teach?
- C. Cultural.
1. Individualism. People do not perceive themselves as either responsible for others or accountable to others.
  2. Voluntarism. People believe that church membership is voluntary or unilateral, rather than as covenantal or bipartisan.
  3. Rise of litigation and litigiousness, including litigation against churches. This makes the stakes very high for those who will not follow the constitution.
  4. Sentimentalism. Few people are capable of the kind of dispassionate judgment that discipline requires; they tend to sympathize with a party or against a party.

- D. Denominational. Our *BCO* renders discipline somewhat difficult in practice, for the following reasons. The following are not necessarily intended as criticisms of our communion. Rather, they are intended to assist us in being alert to the particular challenges our communion faces, because of its distinctives.
1. There are clauses in it that are unique in Presbyterian history, thus rendering the opinions and actions of previous Presbyterian bodies somewhat moot in terms of the direction we might glean from them (e.g. the provision for a congregation withdrawing from the denomination unilaterally in *BCO* 25-11; the provision for a non-delegated General Assembly).
  2. Our *BCO* is a "moving target," potentially changing every year, occasionally frustrating the efforts of those who conscientiously attempt to learn it. (Other, earlier Presbyterian bodies had no provision for piecemeal changes. When the Book was considered significantly deficient, a Revision Committee was erected, which worked for years on a wholesale revision, which was then debated as a whole.)
  3. Our Book of Discipline is *conceptually* arranged, not *procedurally* arranged. Thus, it is sometimes difficult to determine what needs to be done first, second, third, etc. (N. B., this committee is working on developing a checklist of judicial procedures, in an effort to ameliorate this effect).

**SHEPHERDS AS JUDGES:  
THE JUDICIAL RESPONSIBILITIES OF ELDERS IN THE PCA**  
T. David Gordon

**Introduction**

Some of the very best *shepherds* I have ever known, in terms of pastoral ability, are simultaneously some of the worst *judges* (in the Church courts). Most of the literature designed to assist elders in fulfilling their duties (what little there is) focuses more on the pastoral than the judicial dimension of the office. What is here written is intended primarily for the benefit of elders and elder-candidates. The references to the constitution are references to the Presbyterian Church in America (and thus the subtitle's reference to "elders in the PCA"). It is hoped that the views here proposed would be of similar usefulness, however, to elders in other Presbyterian and Reformed communions.

**Two hats**

The sometimes-forgotten reality of life as a Presbyterian elder is that the elder wears two hats. Most of the time, the elder is a shepherd, and wears a shepherd's hat. In this role, the elder encourages, instructs, prays for and with the people, looks out for signs of spiritual decay, etc. However, elders are also judges, with the obligation to render a judgment of innocence or guilt. In the first role, compassion and sympathy are among the primary skills for an effective elder. The elder must identify with the people, in all their trials and struggles, in order to shepherd them well. In the second role, however, the elder must establish a certain amount of distance between himself and others, in order to maintain that impartiality which is essential to justice. For most elders, this is profoundly difficult to do; it is counter-intuitive, running

contrary to all that is normally done in the shepherding role. Nonetheless, it is critical to effective judgment.

God, who is the only perfect Judge, is “no respecter of persons.” When the wealthy are wicked, God judges them to be so; when the poor are wicked, he judges them similarly. When the “friends” of God sin, God recognizes them to have sinned; and when the “enemies” of God do right, he recognizes this as well. Because he is holy, God is preeminently concerned with what is righteous and what is not; he is not blinded by issues of personal friendship or loyalty, nor by concerns about who will like him or not if he rules one way or another. Interestingly, God is a perfect Shepherd *and* a perfect Judge; in the perfection of his character, these two roles do not compete at all, but exist in perfect harmony. For us sinful creatures, however, this symmetry is a good deal harder to achieve.

I candidly admit that I enjoy wearing the shepherd’s hat more than I enjoy wearing the judge’s hat. I would rather sit by a hospital bed, holding the hand of a dying saint (or loved-one of a saint) than I would sit in the seat of judgment. I would rather teach and preach about how we ought to follow the law of God than sit in judgment when an allegation has been made that someone has broken the law of God. I suspect most officers in the Church are similar to me in this regard. Nonetheless, although most of us *prefer* to wear the one hat over the other, our ordination vows require us to be willing to wear both, and we must fulfil our vows by wearing either as occasion requires, and by wearing either of them well, and in a God-honoring fashion.

## Judges, not jurors

Every civil lawyer knows that if you have a strong case, you wish to have it heard by a judge; and if you have a weak case, you wish to have it heard by a jury. Why is this so? Because judges know the law and know it well, and they are not likely to be tricked by emotional appeals or special pleading. By contrast, most people who sit on juries do *not* know the law, and are thus more likely to render a judgment based on subjective reasons. In the American system of justice, jurists play a significant, though, in my judgment, largely unproductive, role. The purpose of a system of justice is to penalize the wicked and exonerate the righteous; biblically, the judge is supposed to be a “terror” to wicked conduct. Built into the American system of justice, however, is a softening of this terror, by the intrusion of jurists, unknowledgeable in law, but profoundly susceptible to human feelings of sympathy. We say that we would rather let a hundred guilty people go free than punish a single innocent person, and we have therefore designed a system of justice which functions in such a fashion. God, by contrast, will “by no means clear the guilty,” and his system of justice has a different set or priorities than the American civil system of justice (e.g., Prov. 17:15 – “He who justifies the wicked, and he who condemns the righteous, both of them alike are an abomination to the Lord”).

My purpose here is not to condemn the American system of justice (though aspects of it ought to be condemned; it is, biblically speaking, a very imperfect system); rather, my purpose is to use it as an illustration of what often perverts ecclesiastical justice. Should elders who sit in judgment be judges or jurists? Of course, the answer is plain: “When the trial is about to begin, it shall be the duty of the moderator solemnly . . . to enjoin on the members to recollect and regard their high character as *judges* of a court of Jesus Christ, and the solemn duty in which they are about to engage” (BCO 32-12). A judge is someone who knows the law, and how it applies to particular circumstances. That is, even as God is no “respecter of persons” as the ideal Judge, so also we should be when sitting in judicial proceedings. We should be absolutely impervious to *personal* appeals, and only moved by arguments and evidence that relate to the law of the Church, and potential breaches thereof. We should exercise great diligence not to be influenced by matters of style or personality (“he seems like such a nice person”). We should similarly resist the temptation to judge motives, since only God “knows

the heart” and since it is not a person’s (or court’s) motives which are on trial, but some actual behavior or action.

### The Mandate

The shepherding responsibility of elders is routinely acknowledged, and widely embraced by elders, who know that they must watch over the flock as those who must give an account (Heb. 13:17). Fewer elders seem aware that they have a *biblical* responsibility to serve as judges.

### **Matt. 18:15-20**

In this well-known passage, disputes about sin among Jesus’s disciples are to be resolved, whenever possible, privately (“when the two of you are alone,” v. 15). If such a private meeting fails to produce reconciliation, two or three witnesses should be taken, and if this fails, we are exhorted to “tell it to the Church” (v. 17).

The word translated “Church” here and elsewhere means “assembly,” and could either be a reference to the assembly of the entire covenant community or to the assembly of its rulers. OT examples of its use to describe the assembly of the governors would include 1 Chron. 13:1-2 and 2 Chron. 1:2-3, where the term is used as the description of the “commanders of thousands and of hundreds, with every leader.” In secular Greek, the term was used similarly, in Plato’s, *Republic*, Bk. 3, ch. 11: “For the *assembly* has government of all such things.” This usage is also observed in Acts 19:32,39: “Now some cried one thing, some another; for the *assembly* was in confusion, and most of them did not know why they had come together . . . the courts are open, and there are proconsuls; let them bring charges against one another. But if you seek anything further, it shall be settled in the regular *assembly*.”<sup>39</sup>

Thus, it is the assembly of the governors of the covenant community that is referred to, not the congregation itself, in verse 17.<sup>40</sup> This governing assembly has the responsibility to

<sup>39</sup>Those interested in historic Presbyterian arguments that *ekklesia* in Matthew 18 is such a judicial assembly will wish to consult Samuel Rutherford, *Due Right of Presbyteries*, London, 1644, 310-324; Samuel Miller, *The Ruling Elder*, New York, 1832, 65-66; George Gillespie, *Aaron’s Rod Blossoming*, London, 1646, 160-172; and Calvin’s comments in his commentary on this passage of Matthew. The full range of interpretive options considered by commissioners to the Westminster Assembly is found in William M. Hetherington’s *History of the Westminster Assembly of Divines*, Edinburgh, 1843, rpt., 1991, pp. 200-249.

<sup>40</sup>In Matt. 18:15-18, there are several lines of evidence which suggest that *ekklesia* is a reference to the governors of a judicial assembly.

A. “as a Gentile and tax collector”-This, from an OT perspective, is judicial language. A Gentile does not enjoy the legal protections and privileges in Israel which a Jew does.

B. Binding and loosing-This language of binding and loosing is judicial language. Note for instance, the same language in Mt. 16:19, where it is associated with the “keys of the kingdom.”

C. “the mouth of two or three witnesses”- This is a quotation from Deuteronomy 19:15b, “only on the evidence of two witnesses, or of three witnesses, shall a charge be sustained.” The text is judicial; indeed two verses later we read, “then both parties are to appear before the Lord, before the priests and the judges who are in office in those days; the judges shall inquire diligently . . . .”

D. “agree on earth about anything they ask . . . .” The word translated “thing” in this text, “*pragmatos*”, is often employed in legal/judicial contexts, to indicate a disputed matter, or even a lawsuit, as at 1 Cor. 6:1, “When one of you has a *grievance* against a brother, does he dare go to law before the unrighteous . . . ?”



“bind and loose,” to determine whether the individual in question is to be treated as “a Gentile and a tax collector.” Those elected to govern God’s people are responsible to settle questions of allegations of sin.

**1 Cor. 5-6**

In this passage, Paul expresses his dismay that the Corinthians have tolerated a profound immorality to exist among the saints, even such an immorality as would shame the pagans (5:1). He places upon them the responsibility of removing the individual from their assembly, reminding them that it is their responsibility to judge those “who are inside.” In chapter six, Paul rebukes the Corinthians for finding it necessary to take their grievances before the unbelievers: “Do you not know that the saints will judge the world? And if the world is to be judged by you, are you incompetent to try trivial cases? . . . Can it be that there is no one among you wise enough to decide between one brother and another?”

While Paul does not expressly refer the responsibility of judgment here to the ruling elders, his comments are germane anyway. If it is deplorable for the saints *in general* to be unable to settle such disputes, how much more deplorable is it for those who govern the saints to be unable to settle them? How can elders be an example to the flock, if they are unable to settle such matters? What is undisputed in this passage is that Paul considers it to be an ecclesiastical responsibility to settle matters of morals and disputes in the Church. If the elders have final responsibility for all matters in the life of the Church, then they certainly are responsible for this as well.

**The Skills Necessary**

**Ability to Discern Facts**

Often, a matter for judges to deal with involves disputed or confused facts. Before the law of the Church can be applied to such situations, the facts must be uncovered, as best as one is able. In a case involving a moral or heresy charge, it is the duty of the prosecutor to present to the court sufficient evidence (and, for our purposes, testimony is part of such evidence) of the facts for the court to render a decision that the alleged offender is guilty. Similarly, it is the duty of the accused (or his counsel) to present to the court evidence demonstrating the contrary. In complaints against Church courts, the duty of the complainant is to present evidence of the facts (ordinarily, from the minutes of the meeting at which the alleged error occurs). The presumption of the court should be that the court complained against has acted correctly, and that complainant is obliged to prove the contrary, by providing evidence of delinquency.

The duty of the court, then, is to evaluate *the evidence presented*, part of which evaluation consists of asking questions of the parties for clarification. Ordinarily, no question should be asked of one party without asking the same question of the other party. Knowing that the parties disagree, it is inadequate to attempt to establish a fact by asking only one party to the dispute. It is wise, then, for those sitting on courts to write down the questions they wish to ask, to be sure they remember to direct such questions to both parties.

This duty of evaluating the *evidence presented*, however, is not to be misunderstood. The court is under no obligation to be Sherlock Holmes, nor is it (by any means) obliged to be Sigmund Freud. It is under no duty to attempt to uncover *new* evidence which the parties to the case have not presented, nor is it under a duty to attempt to scrutinize the motivations of the parties, since such motivations are only known truly by God, and since such motivations are not on trial. If evidence is not present in the record of the case, it should not be considered (because

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E. “gathered in my name . . . .” The almost identical expression, in 1 Cor. 5:4, is employed in a context which is evidently *judicial*, involving the handing of an individual over to Satan.

the parties have developed their arguments in terms of such). Similarly, testimony or argumentation should ordinarily be found in the briefs presented by the parties.<sup>41</sup>

### **Knowledge of the Constitution**

The one preeminent ability which qualifies a man to rule well in God's house is his ability to apply the *law* of that house impartially. It should be self-evident, then, that *knowledge* of that law is indispensable to fulfilling the judicial responsibility. Imagine what we would think of a judge in a civil court who had no functional knowledge of the law. How could a person without functional knowledge of the law possibly *judge* whether another had kept or broken the law? So also in ecclesiastical courts, the judge is not to judge what *he* thinks of the parties involved, but what the law of the Church thinks of the parties involved. The issue is not whether the parties have conformed to the *judge's* wishes; but whether they have conformed to the wishes of the *Church*, expressed in the Church's *law*.

### **Knowledge of the Constitution as important (for judges) as knowledge of the Bible**

I mentioned earlier that most of us are more comfortable with the shepherd's hat than the judge's hat. This is one of the clearest places where that reality is manifested. No elder resents studying the Bible or learning about the Bible, but many elders resent being told that they must learn the Constitution (The Westminster Standards and the *Book of Church Order*). In our shepherding role, the Bible is always more authoritative than the Constitution (though sometimes the answers to the catechism questions are profoundly helpful to us in our shepherding duties). In our judicial role, however, functional knowledge of the Constitution is an absolutely indispensable prerequisite, for the following three reasons.

### **The Constitution is our Church's Interpretation of the Bible**

First, there are many interpretations of the Bible. Arminians, for instance, do not believe that God is sovereign in his calling people effectually to salvation. However, if a minister is on trial for allegedly teaching heresy in the Presbyterian Church in America, then it is the *PCA's* interpretation which is to govern the proceedings, not the interpretation of the Free-Will Baptists. When conducting a new members' class once, I was asked by a very perceptive individual what we meant by "to live as becometh the followers of Christ?" Did this mean that one would be potentially disciplined for everything that anyone in the Church did not like or approve? Of course not; the Larger Catechism's exposition of the Ten Commandments is *our Church's* interpretation of what it means to live "as becometh the followers of Christ."

If we officers have exceptions with the standards (I do), we must *function* as though we did not have them when we are sitting as judges. When people vow to submit to our Church courts, they have every right to assume that those who sit on them were telling the truth when they assumed their own ordination vows.

Imagine, as an illustration, someone driving on a clear day on dry pavement at 55 mph, to be pulled over by a police officer for speeding. The motorist explains that the conditions are excellent, and the posted speed limit is 55. Would it be just for the officer to say, "I know that, but I've always thought the speed limit on this road *should* be 35, so I'm fining you for going

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<sup>41</sup>It is a curious and unfortunate reality in the PCA (as of Spring, 1993, anyway), that the *Manual of the Standing Judicial Commission* requires judges to have read the record of the case, but does *not* require them to have read the briefs of the parties. Both should be required. If a matter is complicated, or if it involves a subtle point of theology or ecclesiology, such a matter should not be considered by the judges for the first time at the trial. Such constitutional issues should be researched ahead of time, and this can only be done if the briefs of the parties are read with sufficient advance notice to alert the judges of the issues which they need to consider.

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twenty mph too fast.” The police officer has every right, as a citizen, to petition the county to change the posted speed limit. Until they change the posted limit, however, it is his duty, *as an officer of the court*, to enforce the *existing* law, whatever his personal opinions of that law may be. Similarly, in the ecclesiastical arena, elders are called to enforce a law with which they may not entirely agree. I, for instance, disagree with our BCO 25-12 (which permits congregations to withdraw from the PCA at any time, unilaterally, for *any* reason they deem sufficient). It is unique in the history of Presbyterianism, and, in my estimation, inconsistent with the Presbyterian principle of connectionalism. Nevertheless, it is my duty, whenever that provision of our Constitution is germane to a given circumstance, to enforce that particular law of our Church, even though I personally believe it is an erroneous law.

The Constitution, then, while not inspired, is the *Church's* interpretation of the Bible. When sitting as judges, then, representing the Church, it is the duty of elders to rule consistently with the Constitution of the Church, even if they respectfully disagree with it. The Constitution is the law which governs the Church in all its relations one to another, and it is the public standard which establishes our rightful expectations of one another. A judge has no right to ask an individual to defend the law; his duty is limited to asking the individual to defend his behavior as *consistent* with the law.<sup>42</sup>

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<sup>42</sup>This reality is grounded in the foundational presbyterian belief in the distinction between the “several” powers and “joint” powers of the officers of the church. The first chapter of the Scottish Second Book of Discipline discussed this distinction, and the distinction (with updates for contemporary language) has been retained in Presbyterian constitutions since. It is found in the third chapter of the PCA *Book of Church Order*: “Ecclesiastical power, which is wholly spiritual, is twofold. The officers exercise it sometimes severally, as in preaching the Gospel, administering the Sacraments, reproving the erring, visiting the sick, and comforting the afflicted, which is the power of order; and they exercise it sometimes jointly in church courts, after the form of judgment, which is the power of jurisdiction” (BCO 3-2, emphases mine). Sometimes officers in the church are “severed” from one another, acting individually; this is “several” power. On other occasions, they act jointly, together; this is the power of jurisdiction. Note that, in episcopal government, this distinction would be impossible, since that form of government permits governmental/jurisdictional authority to be exercised by single individuals. In our form of government, however, we distinguish between that power which can be exercised singly (preaching, visiting, praying, teaching, etc.) and that power which can only be exercised jointly (governing and exercising judgment). Thus, an individual, severed from others, is entitled to hold in his own conscience his own views. When acting jointly, however, he is acting on behalf of the church, as its representative, with others. In that joint role, his private judgment must be submitted to that of the Church. To illustrate, if a given elder believes that the consumption of beverage alcohol is sinful, he is entitled to both hold and promote that viewpoint when acting as an individual, provided that he do so in a peaceful and respectful manner. If, however, he is a member of a church which has issued a deliverance indicating that beverage alcohol may be lawfully consumed, what must such an elder do if called to sit in judgment on a case involving this very matter? The answer is plain. He must either absent himself from sitting as judge, or abstain from voting, or vote to exonerate an individual charged with sinning by consuming beverage alcohol. He may not lawfully find a person guilty of violating the church’s law if the individual is *not* violating the church’s law. He is entitled to express his opinion that both the individual and the church are *wrong*; he is not entitled, when sitting jointly as a judge of the church’s law, to find a person guilty of violating the church’s law if the person is *not* guilty of such. The time for the elder to *change* the law is during the discussion of constitutional amendments, or during the discussion of an Assembly position paper. Once the church has declared its law, however, the elder is required to enforce that law, even while attempting, in other appropriate settings, to alter the law.

## PCA DIGEST

### The Constitution Speaks in Areas where the Bible is Silent

A second reason why it is so essential to have a functional knowledge of the Constitution of the Church is that the Constitution often speaks where the Bible is silent. For instance, the various procedural rules of the *Book of Church Order*, while “conformable” to Biblical polity, are not expressly stated in the Bible itself. For example, the *BCO* permits 30 days for an individual to file a complaint (43-1). The Bible does not address this matter at all. Fairness dictates that any party be granted the same amount of time, but only the Constitution informs the parties of how much time they may expect.

### The Constitution is the Standard by which civil courts will judge us if called to do so

Functional knowledge of the Constitution is an indispensable prerequisite in our judicial role for a third reason. In our increasingly-litigious society, it becomes increasingly likely that Churches will have their proceedings reviewed by civil courts. The civil courts view the Constitution of a Church as a contract, and they view Church membership as an agreement to function within the bounds of that contract. Thus, when the Church’s courts function within the bounds of the Constitution, they can reasonably expect to be exonerated by the civil courts, if called upon to give a defense. By contrast, if a Church court violates its own constitution, it can be assured that it will be found guilty in a civil court.

### **Knowledge of the Constitution need only be functional knowledge**

Lest anyone be overwhelmed by the responsibility of knowing the Constitution, or lest any elder believe he is not up to the task, I would remind him that officers need have only a *functional* knowledge of the Constitution. That is, they need to know how to *find* what the Constitution says; they do not necessarily need to know it “backwards and forwards.” Elders need not know the history of Presbyterian law in America; they need not be familiar with the various debates which led to the formation of the present Constitution; they need not be familiar with the commentaries on earlier Presbyterian Constitutions (e. g., Ramsay, Leslie, J. Aspinwall Hodge), nor even with the commentaries on our own constitution (such as the one published by Dr. Morton H. Smith). They need to know how to find the Book of Discipline within the *Book of Church Order*, and they need to know how to read the index. It might also be useful to the courts if there were a few individuals who knew how to use the indices to the *Minutes of General Assembly*, in order to research whether the General Assembly has ever rendered an opinion on any given matter of constitutional interpretation. A *functional* knowledge of the Constitution merely requires an ability to use an index.

Further, lest any elder think he must be a “lawyer” in order to be a sound elder, it should be recognized that the fundamental ability to interpret the Constitution well is the same ability necessary to interpret the Bible well. One must be able to read, and to make defensible *contextual interpretations*. If an elder cannot make a reasonable interpretation of the *Book of Church Order*, written in his own language and in his own generation (portions of it were indeed written several generations earlier), how can he be expected to make a reasonable interpretation of the Bible, written in foreign languages in ancient cultures? That is, when elders say they don’t mind interpreting the Bible, but they don’t feel “qualified” to interpret the *BCO*, we should respectfully remind them that the *BCO* is much *easier* to interpret than the Bible. The index is to the *BCO* what the concordance is to the Bible. Any man with the ability to use one should have the ability to use the other. Judges *must* interpret laws, and they must *apply* those laws to particular cases.

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### The Importance of Procedural Justice

#### General

One of the most commonly-heard complaints elders register when functioning as judges is the objection that some people seem so insistent on following all of the “jots and tittles” of the *Book of Church Order* (or of *Robert’s Rules*, for that matter). All of us sympathize with this complaint, to a degree. It is often frustrating to find that our progress toward a decision is slowed down by being sure that we have satisfied all of the demands of the Constitution. However, justice demands that we do this. The Constitution of the Church is a body of laws which the Church has adopted to govern itself. Submission to the Church (vowed at ordination) requires a practical willingness to govern ourselves by the Church’s expressed law. Further, fairness requires that these rules be followed, even when we do not see the wisdom in the particular rules in question. To illustrate this, suppose someone challenged the wisdom of getting \$200 for passing “Go” when playing Monopoly. A case could probably be made for getting \$100 or \$300, but it would not be fair for that rule-change to be made in the middle of the game, when an individual was about to pass “Go.” Fairness requires that everyone play by the same rules, even if the game might be more entertaining if played by different rules. Whether you do or do not purchase “Boardwalk” is contingent on your assumption about how much money you are going to receive when you pass “Go.” If you make that decision on the basis of the rules, and if the rules are then changed, you have been penalized and placed at a disadvantage. People have a right to expect that the rules will be followed until the end of the game.

The Presbyterian Church in America has procedures in place which permit us to alter our Constitution, if we deem it wise (*BCO* 26-2 and 26-3). However, these procedures do not include altering the Constitution “on the fly,” as it were, in the middle of a judicial case. A case which begins under a particular set of rules should continue under those rules until the case is concluded. It is entirely irrelevant and improper to debate the *merits* of the Constitution in the midst of a trial. No party to a case should be required to *defend* or *justify* the Constitution; a party merely has the responsibility of demonstrating that his or her behavior has complied with the Constitution.

#### Procedural impartiality

Does this mean that the procedures of the Constitution can never be waived, under any circumstance? Not necessarily. If *both* parties to a case are willing to waive a particular procedural requirement, each agreeing that the waiver does not effect them in any prejudicial way, then this waiver can be entered into the record, and the case can proceed. On the other hand, if either party is unwilling to waive the procedure, then the procedure cannot be waived. Further, no party should be required to give a *reason* for why the waiver is refused. Each party is entitled to proceed under the direction of the Constitution, and no party should be required to offer any ground for insisting on their right to a Constitutional process.

Similarly, if a matter comes up which is not addressed by the Constitution at all (one of the parties makes a request not addressed anywhere in the Constitution), then again, fairness dictates that the other party be asked whether they will accede to the request. If the second party accedes, then both parties have indicated their willingness to proceed in this fashion. Otherwise, the request may not properly be granted. Nor may the second party be asked to give a reason for why he refuses to accede; each party has a right to *assume* that the case will proceed constitutionally. Each party’s approach to preparation for the trial is based on this assumption, and therefore any violation or alteration of the procedure *may* prejudice the outcome in some unforeseen way. For this reason, the court must follow the Constitution in every way, unless both parties accede to waiving a requirement.

## Relation of the Courts

### General

BCO 11-3 says: "All Church courts are one in nature, constituted of the same elements, possessed inherently of the same kinds of rights and powers, and differing only as the Constitution may provide. When, however, according to Scriptural example, and needful to the purity and harmony of the whole Church, disputed matters of doctrine and order arising in the lower courts are referred to the higher courts for decision, such referral shall not be so exercised as to impinge upon the authority of the lower court." Note that there are not different powers given to different courts. Their powers are the same. Even the language of "higher" and "lower" courts is less than ideal, since it conveys to some people the idea that the respective powers of the courts is higher or lower. In fact, the courts are geographically broader and narrower, and their powers are the same. Thus, the "higher" (geographically broader) courts are not to act in a way that impinges upon the authority or power of the "lower" (geographically narrower) courts.

"Lower" courts are not to be perceived as bureaucracies or functionaries of the "higher" courts. They are courts themselves, with power to "resolve" matters brought before them (BCO 11-4). Something settled in the lower court is settled. It is regarded as settled and should be thought of as settled until and unless it is reversed by the "higher" court.<sup>43</sup> When a matter arises from a lower court to a higher court, then, the presumption is always in favor of the lower court. The burden of proof rests upon the individual complaining or appealing the action of the lower court.

### Review, not retry

Closely related to this, then, is the recognition that the "higher" courts may very well review the actions of "lower" courts, but they do not ordinarily "retry" the same matters themselves. When a matter resolved at the Sessional level comes before Presbytery (or GA) by complaint or appeal, for instance, Presbytery does not simply re-hear the case from scratch, as though it had never been heard. Rather, Presbytery reviews the actions of the lower court to see if there is any manifest injustice therein. It must never assume that it is more competent than the lower court to decide the issue, since the members of the lower court are much more familiar with the events and persons involved than the members of the higher court could ever hope to be.

To illustrate this, suppose a Church-member has been found guilty of "lewd and lascivious" dancing by the Session of First Presbyterian Church. Presumably, the elders of that Church either witnessed the event, or were informed by witnesses thereof; presumably they knew well the moral character of those witnesses; presumably they knew the establishment wherein the alleged offense took place, and the reputation of what occurred there. None of these things could be known by Presbytery. Presbytery's review, therefore, should be fairly cautious and restricted, and should be limited to evidence of a serious breach of justice. If such serious breach of justice cannot be proven, Presbytery is obliged to sustain the judgment of the Session.

The burden of proof is thus always upon the individual who complains against or appeals the actions of a court of the Church. The higher court must assume, *prima facie*, that

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<sup>43</sup>The only exception to this rule is the provision regarding appeal of judicial decisions. If an individual is found guilty by a lower court, and if the individual appeals that ruling to a higher court, the lower court's decision is suspended (not over-ruled) until the hearing of the higher court: "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" (BCO 42-6).

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the members of the lower court, being officers of the Church, are men reputed for their wisdom, pastoral compassion, and good judgment. After all, they have been elected by their Churches, and this itself indicates that the people of God attest to their character and capacity. It is not enough for a complainant or appellant to say, "I don't like their decision;" it is necessary for a complainant or appellant to provide clear, convincing evidence of injustice on the part of the court. It is not the lower court which is on trial in such circumstances; it is the *claim* of the complainant/appellant that the lower court erred which is on trial. The point being made is not that the members of the lower court are to be presumed infallible, but that they are to be presumed to be better acquainted with the facts, circumstances, and personalities involved than the members of the higher court possibly can be; and they are to be presumed to be of high character and good judgment, since the Churches they serve have elected them to office. Thus, unless a complainant or appellant can produce compelling evidence of an injustice, it is the duty of the higher court to approve the actions of a lower court.

Sadly, those who sit on the "higher" courts often become confused about their role, and misperceive their responsibility as though it consisted of re-trying the case from scratch. Nor is this sad misunderstanding new. Thomas E. Peck noticed the same tendency more than a century ago, and warned of its danger, which we believe is real in our day as well:

They are the real enemies of the Assembly's authority who would make its power absolute. If the Assembly assumes the powers of the sessions, then one of two things will almost certainly occur: either the sessions will rebel, in defence of their constitutional powers; or, they will consent to become ciphers, and their work will not be done at all. It is as certain as anything can be that the Assembly cannot discharge the judicial functions of the session. Why, then, attempt them?<sup>44</sup>

### The Issue is the Law, not the Parties

I suppose it should be evident to the reader that judges are responsible to rule and decide in terms of the law of the Church, not in terms of their perception of who are the "good guys" and/or the "bad guys." Sadly, experience teaches that again, shepherds are fairly astute at identifying the deceitfulness of the human heart, but they are less astute at judging matters of law. Regrettably, those who sit in judgment often expect or even encourage arguments related to the moral character of the parties in question. Such comments are almost never proper or germane (and a judicious moderator of a trial will rule them out of order, and not permit them).

If the issue involved is an individual's moral character, then, of course, some comments about moral character are germane. But even here, they are only germane in a relatively narrow arena. If an elder is on trial for adultery, it is irrelevant to ask whether he pays his taxes, gives money to the Church, etc. He is not on trial for these other matters; he is on trial for adultery. Similarly, if an individual complains against an action of one of the courts, the moral character of the complainant or of the court in question is irrelevant. The only relevant question is whether the court erred in the specific way that it has been alleged to have erred. Neither party should be obliged to prove its moral standing in any complaint. Since no one is permitted to complain who is not a member in good standing of the Church (BCO 43-1), it must be assumed that the person filing the complaint is already deemed by the court to be in good standing. And, since the court itself is constituted by those who have been deemed wise and exemplary, its moral character similarly is not at issue. If good people break some specific law of the Church,

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<sup>44</sup>"The Action of the Assembly of 1879 on Worldly Amusements, or the Powers of Our Several Church Courts," *Southern Presbyterian Review*, 1880, reprinted in *The Miscellanies of Thomas E. Peck*, ed. Thomas Cary Johnson, Richmond, 1895, vol. 2, pp. 331-60.

the Church's courts must render a judgment of guilt; if bad people keep some specific law of the Church, the Church's courts must render a judgment of innocence.

This is what the Bible teaches when God is spoken of as no "respector of *persons*" (a wonderful translation of the more-contemporary "is not partial"). The point in these passages is that God's justice cannot be perverted by *personal* considerations. God is, in this sense, not a juror, but a judge. The issue for him is always whether his own inflexible, faultless *standard* has been violated or not; the issue is never whether other *personal* considerations can cause the demands of justice to be perverted. "For the LORD your God is God of gods and Lord of lords, the great God, mighty and awesome, who is not partial and takes no bribe, who executes justice for the orphan and the widow, and who loves the strangers, providing them food and clothing" (Deut. 10:17-18). Thus, when we exercise justice impartially, we are imitating God. "You shall not render an unjust judgment; you shall not be partial to the poor or defer to the great: with justice you shall judge your neighbor" (Lev. 19:15). "You must not be partial in judging: hear out the small and the great alike; you shall not be intimidated by anyone, for the judgment is God's." (Deut. 1:17). Biblically, justice is administered only when there is an entire disregard for the *persons* involved; whether they be small or great, rich or poor, strangers or friends.

Ironically, then, what is often the *shepherd's* greatest strength (an ability to "size people up" in terms of their moral or spiritual condition) is the *judge's* greatest weakness. To be genuinely useful as an elder, one must wear two hats, and develop two sets of skills. To be a good shepherd of souls, one must develop good instincts, and one must cultivate empathy and sympathy; in short, one must be a "people person." To be an administrator of justice, one must develop a capacity to put personal considerations aside, for the purposes of administering law impartially. Although this challenge may appear beyond the capacity of mere mortals, we must remember that though we are indeed mere creatures, we are creatures made in the image of our God, Who is Himself *both* a compassionate Shepherd *and* an impartial Judge.

## THE USE OF COMMISSIONS IN THE PRESBYTERIAN CHURCHES IN THE UNITED STATES OF AMERICA

by LeRoy H. Ferguson III

### Introduction

As the General Assembly of the Presbyterian Church in America considers the manner in which it handles judicial cases, it is helpful for her to consider how the Presbyterian communions that preceded her viewed the use of commissions as part of their polity. We know that the Bible is the only infallible rule of faith and practice. We also know that "[a]ll synods or councils, since the Apostles' times, . . . may err; and many have erred," and that the decisions of Presbyterian leaders and bodies in the past may be in error. It is important, however, to learn from the history of Christ's Church. In this case the history of the Presbyterian Church in the United States in relationship to its views and practice on judicial commissions will be helpful to the Presbyterian Church in America as she evaluates the Standing Judicial Commission. Although the use of commissions by the Presbyterian Church in this country was more than likely discussed prior to 1846, this paper begins with a discussion that arose in the Presbyterian Church in the United States of America in that year. In 1847 the General Assembly heard a report from a committee on the validity of the use of commissions to hear and adjudicate



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judicial cases. The Committee was established at the 1846 Assembly and reported to the 1847 Assembly.

### The Right of Church Courts

This study committee arose out of controversy that developed over the approving of the records of the Synod of Virginia. The records of the Synod of Virginia noted that the presbyteries of Winchester and Lexington had appointed commissions to handle a judicial case. At the same time the Assembly also approved a resolution stating that in approving of the records, the Assembly "express[ed] no opinion on the question decided by the synod, in reference to the authority of the presbyteries . . . to appoint commissions in the case alluded to in the records of the synod."<sup>45</sup> This apparently resulted in a discussion in the Assembly, with the following resolution being presented to the Assembly: "*Resolved*, That in the judgment of this Assembly, it is contrary to the constitution and uniform practice of the Presbyterian Church in the United States for any ecclesiastical judicatory to appoint a Commission to determine, judicially, any case whatever."<sup>46</sup> Rather than approve the resolution the Assembly referred it to a study committee composed of five members including Dr. Charles Hodge. The study committee saw that they had been presented with two questions to be answered, one a question of principle and the other a question of fact. First, is it contrary to the constitution of the Church to appoint commissions to handle judicial cases? Second, is the appointment of such commissions contrary to the historic practice of the Presbyterian Church. The report of this study committee will be particularly helpful to the Presbyterian Church in America since these two questions are ones that have been raised by elders in the PCA concerning the Standing Judicial Commission. Though the decision of the committee and the Assembly of 1847 is in no way binding on the Presbyterian Church in America in 1995, the reasoning may prove helpful in the evaluation of the current practice of the Church relating to the SJC.

### Are Judicial Commissions Unconstitutional?

The committee, to the satisfaction of the Assembly, answered both questions. They answered the first question by stating that it was not contrary to the constitution. In answering they cited two reasons: "1st. Because the power in question is one of the inherent original powers of all primary Church courts. 2d. Because there is nothing in our constitution which forbids the exercise of that right."<sup>47</sup> The committee demonstrated that the powers of the courts of the Church are not granted to them by the constitution, but rather the constitution serves to limit the exercise of the inherent powers of the various courts. The various courts agree to this limitation when they adopt the constitution. There are two types of powers in the various Church courts, according to the committee: inherent powers and delegated powers. "The powers inherent in the people, they may exercise themselves, or delegate to those whom they choose to act in their stead."<sup>48</sup> The committee further noted that Presbyterians, in every country where they have established churches, have "acted on the assumption that they possessed the right of acting by commissions."<sup>49</sup> The committee further argued that since the use of commissions is an inherent right of Courts and since there is no particular prohibition against entrusting commissions with judicial procedures in the constitution then it is plainly constitutional to do so.

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<sup>45</sup>Hodge, Charles, *Church Polity*, (New York: Charles Scribner's Sons), 1878, p. 353.

<sup>46</sup>*Ibid.* p. 354.

<sup>47</sup>*Ibid.* p. 354.

<sup>48</sup>*Ibid.* p. 355.

<sup>49</sup>*Ibid.* p. 355.

### Are Judicial Commissions Contrary to Presbyterian Practice?

As to the second question of whether the use of commissions in such a way is contrary to the uniform practice of the Presbyterian Church in the United States, the committee offered ample proof that the Church had since its inception used commissions in such a way. Space does not allow the reproduction of all their citations but a few will be helpful. The committee cites an example from 1720 when a committee was appointed by a Synod to visit a church for the purpose of investigating a situation existing between the pastor and the church. The committee was given the full power of the Synod to "act in their name and by their authority."<sup>50</sup> Several examples are cited when committees were empowered to remove censures from ministers if the examination of the committee indicated that it was proper. A standard practice in Presbyterian polity has been that only the court that inflicts a censure or a higher one can remove it. These examples give clear indications of a committee being empowered by a Synod or Presbytery (therefore a commission in our terminology) to act judicially. In 1766 an appeal filed by the Presbytery of Suffolk was referred to a committee empowered "to try and issue the whole affair."<sup>51</sup>

The committee cites many other examples showing clearly that the practice of the Presbyterian Church in the United States had always been to allow Courts to entrust judicial matters to commissions. Even though the Assembly did not eventually adopt the report of the committee it did express its agreement with the findings of the report by failing to adopt the recommendation that had resulted in the formation of the study committee. Hodge comments on this action by the Assembly by saying, "[t]he rejection of that resolution, or its indefinite postponement, was a refusal on the part of the Assembly to deny this right to our primary courts."<sup>52</sup>

### Dr. Thornwell's Agreement

It is interesting to note that Dr. James Henley Thornwell agreed with the findings of the committee and commented on it in a review of the 1847 Assembly.<sup>53</sup> Dr. Thornwell states that Dr. Hodge and the committee were correct in their findings and that the report of the committee "furnished conclusive proof that the appointment of such Commissions is contrary neither to the Constitution nor the uniform practice of the Church."<sup>54</sup> This agreement between Hodge and Thornwell is significant because of their disagreement on the propriety of boards and agencies in carrying on the work of the church. It is important, therefore, to understand Thornwell's reasoning in supporting the position of the committee that the use of commissions to handle judicial cases is both constitutionally acceptable and historically in step with Presbyterian polity.

Thornwell did not believe that the use of commissions in judicial cases represented a situation of a court delegating its responsibility to another body. Rather Thornwell argues that the commission is nothing more than "the court itself, resolving to be constituted *as such*, with less than a majority of its members."<sup>55</sup> Thornwell is quite emphatic in denying that the commission represents a delegation of powers. "It is quite a mistake to suppose, as some in the Assembly seem to apprehend, that the right to appoint a Commission is founded upon the right to *delegate power*. According to this view, there would be no necessity that the members of the

<sup>50</sup>*Ibid.* p. 357.

<sup>51</sup>*Ibid.* p. 358.

<sup>52</sup>*Ibid.* p. 359

<sup>53</sup>Thornwell, J.H. "The General Assembly of 1847." *Southern Presbyterian Review*. XIII; reprint, *Collected Writings of James Henley Thornwell*, IV, p. 486-88.

<sup>54</sup>*Ibid.* p. 486.

<sup>55</sup>*Ibid.* p. 487.

Commission should be members of the court."<sup>56</sup> It is interesting to note that Thornwell argues that if one is to condemn the use of Commissions in judicial cases (or other matters it could be argued) then the same argument could be used against allowing a Court to establish a quorum for itself that was less than a majority of its members. This is the heart of Thornwell's argument. A commission appointed by a Church court can only contain members that are members of the court itself. That is why it is not delegation. Delegation of power means transference of power from those who have the power to those who do not ordinarily have it. There are some interesting implications of Thornwell's views that the PCA may want to consider at some time. He argues that because the commission is simply the court with a smaller quorum than normal, all members of the court are "*de jure* members of the Commission".<sup>57</sup> He also points out that since they are *de jure* members, they have a right to attend the meetings of the commission. "The appointment of certain persons by name precludes none others from attending; all members of the court are *de jure* members of the Commission; the only purpose of the appointment is to render it certain that *some* shall attend, by making it their duty to do so."<sup>58</sup>

Though Thornwell and Hodge disagreed about the propriety of Church boards and agencies, it is clear that they agreed on the appropriateness of Commissions being used to handle judicial cases. This truth is helpful to the PCA as she examines her own Standing Judicial Commission at this point in time. It is clear from the report to the 1847 Assembly and Thornwell's article that this was not a Northern Presbyterian or Southern Presbyterian issue. The leaders of both sections of the church agreed as to the propriety of commissions being used to decide judicial cases. The same argument hold true today. It is not contrary to our constitution to appoint commissions to hear judicial cases. This has been the case from the foundation of the denomination. There have been, however, those who have argued that the use of commissions in this fashion is not in keeping with Presbyterian polity. According to this view, the Presbyterian practice should be that the entire court must hear and decide all judicial cases that come before it. Both Thornwell and Hodge argue effectively against this position. For those who argue for this position, the point made by Dr. Thornwell in 1847 is just as telling today: "[I]f Commissions are to be condemned, we are at a loss to determine upon what principle the provision of our government making the quorum of a court consist in many cases of a very small fraction of its members, can be defended."<sup>59</sup>

### The Rights of the Parties

In addition to the rights of the courts to hear appeals and complaints by commissions, the Presbyterian Church also believed that the parties in these cases also had rights in the matter. The most important of these in relationship to the proper use of commissions is that trial by commission was subject to approval by the parties involved. This is not clear from the Committee report and Thornwell's article but it is clearly demonstrated by J. Aspinwall Hodge in his book *What Is Presbyterian Law As Defined By The Church Courts?* After commenting on the refusal of the 1847 Old School Assembly to deny the right of a Court to try a case by commission (the resolution that had lead to the establishment of the study committee), he speaks of the right of the parties to be heard by the whole court. "The O.S. [Old School] and N.S. [New School] Assemblies occasionally appointed judicial commissions to try appeals and complaints, with consent of parties. If these objected, their right to be heard by the whole court

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<sup>56</sup>*Ibid.* p. 487.

<sup>57</sup>*Ibid.* p. 487.

<sup>58</sup>*Ibid.* p. 487.

<sup>59</sup>*Ibid.* p. 487.

was not denied".<sup>60</sup> It is interesting to note that Hodge says that this was true of both the Old School and New School. Even though there were fundamental theological differences between the two Assemblies, they were agreed in the point of polity: parties in process had the right to demand a hearing by the entire court that had authority in their case. This right continued after the reunion of the two Assemblies. In the Presbyterian Church in the United States of America (Northern Church) following the Old School/New School reunion, the Assembly became so large that it became difficult to hear complaints and appeals at the Assembly, so the practice of hearing them by commission became the general practice; soon the Synods and Presbyteries did the same, "guarding, however, the right of parties to be heard by the whole court if they so desire."<sup>61</sup> The Assembly in 1880 officially recognized the legality of trial by commission when it ruled that a complaint against a trial by commission was to be denied because both parties had consented to the trial.<sup>62</sup>

In the Presbyterian Church in the United States (Southern Church) similar provisions existed. The provisions for trial by commission are set out in the *Book of Church Order* (1879 edition): "The Synod and the General Assembly may, with consent of parties, commit any case of trial coming before them on appeal to the judgment of a commission. . . ." <sup>63</sup> This was not the original wording of the Southern Church's *Book of Church Order*. In 1866, a committee established to revise the *BCO* (the committee consisted of John Adger, Robert Dabney, Thomas Peck, B. M. Smith and E. T. Baird), published their first draft of proposed revisions to the *BCO*. In this same section dealing with the use of commissions in the trying of cases the reference to the consent of the parties is lacking. This reference is also not found in the 1869 edition of the *BCO*. Ten years later, however, the requirement that the parties consent to cases, being heard by commissions is part of the *BCO*. It is not clear whether this change was made to provide a change in polity or to make specific a right of the parties that the entire church had always accepted and now needed to have clearly spelled out. From J. A. Hodge's comment it would appear that the latter was the case. In 1898, when F.P. Ramsay wrote his *Exposition of the Form of Church Government*, the provision requiring the consent of the parties was still in the *Book of Church Order*. It occasioned the following comment by Ramsay "Where parties bring a cause to a court for trial, even if it be an appeal, the court, even the General Assembly, may not try it by commission without consent of parties. The principle is here recognized, that the parties have a right to a trial by a full court. May a complaint be tried by commission? Yes, with consent of parties; for if an appeal, much more a complaint. May a Presbytery or a Session try a cause by commission? Yes, with consent of the parties . . ." <sup>64</sup> Two things of note are seen in Ramsay's comment: 1) His apparent agreement with Thornwell that a commission is the court itself with a smaller quorum since he speaks of trial by the Assembly, Synod, Presbytery or Session as "a trial by a full court" and 2) His understanding that this is a right of the parties, not merely something offered to them out of kind consideration.

<sup>60</sup>Hodge, J. Aspinwall, *What Is Presbyterian Law As Defined By The Church Courts?*, Philadelphia: Presbyterian Board of Publication, 1882, p. p. 218-19, original *Presbyterian Digest*, William E. Moore, 1873, pp. 564, 565.

<sup>61</sup>*Ibid.* p. 219.

<sup>62</sup>*Minutes of the General Assembly, 1880*, p. 65, cited in Hodge, *What Is . . .*, p. 219.

<sup>63</sup>*Book of Church Order* (1879), Presbyterian Church in the United States, ch. v., sect. vii., sub-sect. iii, cited in Hodge, *What Is . . .*, p. 241.

<sup>64</sup>Ramsay, F. P., *An Exposition of the Form of Government and the Rules of Discipline of The Presbyterian Church in the United States*, Richmond: Presbyterian Committee of Publication, 1898, pp. 119-120.

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Not too many years later, however, this right disappeared from the Form of Government of the Southern Church. In 1913 the *BCO* was again amended to allow Synods and General Assemblies to commit cases to trial "at their discretion." Following the revision of 1913, chapter V, section VII, sub-section III, then read: "The Synod and the General Assembly may, at their own discretion, commit any case of trial coming before them on appeal, to the judgment of a commission . . . ."<sup>65</sup> Now it is no longer the parties that have the right by the court itself; it is "at their own discretion." Research did not uncover the reason for this change. Perhaps the Assembly and Synods had become so large as to make such trials difficult. Perhaps the number of cases coming to these courts and the insistence of many parties to have a trial by the whole court made it impossible to hear all the cases by the full court. Whatever the reason, something seen as a right from the earliest days of the Presbyterian Church on these shores disappeared from the Form of Government in the Southern Church with these amendments.

### **The PCA and the Standing Judicial Commission**

This brief historical survey is helpful in evaluating some of the questions that some ruling and teaching elders have been asking about the proper use of the Standing Judicial Commission in the PCA today. There are other questions about the current structure of the Standing Judicial Commission that are not directly answered by the survey. The establishment of a "permanent" commission is not discussed. It would seem clear that if the arguments are made for allowing commissions in general, they also hold for a permanent commission. It is interesting to note, however, that between 1908 and 1912 an attempt to establish a Standing Judicial Commission in the PCUS failed to gain the needed support in the presbyteries and between 1916 and 1918 failed at the General Assembly level.<sup>66</sup> The appropriate size and proper representation on the Standing Judicial Commission is an area that perhaps should be discussed. Should there be more members? Should they be elected by Presbyteries rather than the Assembly? Considering Thornwell's position that all members of the court have a right to attend commission meetings the PCA may wish to discuss the possibility and practicality of allowing members of the General Assembly to attend these meetings. All meetings of the SJC are currently open to all visitors (except when they are in executive session), but if large numbers of General Assembly commissioners wished to attend, meeting places and times might need to change.

The question of the rights of the parties to a hearing by the full court is a question that should be considered because of the importance of this right as seen by men like J. A. Hodge and Ramsay. It would appear that the same logistical problems facing the PCUS in 1913 face the PCA today, and perhaps even more. With an undelegated Assembly and the great expense of meeting for long periods of time, it is difficult (if not impossible) to provide a trial at the General Assembly level for all appeals and complaints. This is especially true when there are as many as twelve cases coming before the SJC during some years. The Assembly may wish to consider trial by the whole court when a certain number of members of the SJC request it or when a certain number of petitioning commissioners to the General Assembly request it.

### **Conclusion**

Even with these questions about the SJC (and others not mentioned), it is clear that allowing the General Assembly to entrust their judicial business to a commission is neither unconstitutional nor contrary to historic, Presbyterian practice. Commissions have historically been used in the Presbyterian churches of the United States to try complaints and appeals, so the PCA's use of commissions in this way is not new. It is interesting to note, however, that the

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<sup>65</sup>*Alexander's Digest*, p. 1101.

<sup>66</sup>*Ibid.* pp. 1100.

same concern that some of today's elders have has been shared by Presbyterian elders throughout the church's history in this country.

**SELECT AND ANNOTATED BIBLIOGRAPHY ON  
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DOCTRINES AND PRACTICES OF THE  
AMERICAN PRESBYTERIAN CHURCH  
By David F. Coffin, Jr.**

**On Judicial Procedures, in General**

Baird, Samuel J. *A Collection of the Acts, Deliverances, and Testimonies of the Supreme Judicatory of the Presbyterian Church, From Its Origin in America to the Present Time: With Notes and Documents Explanatory and Historical: Constituting a Complete Illustration of Her Polity, Faith, and History.* Philadelphia: Presbyterian Board of Publication, 1855; 2nd edition, revised, 1859.

Standard collection for the ante-bellum church.

Hays, Geo.[rge] P. [Price]. *Presbyterians. A Popular Narrative of Their Origin, Progress, Doctrines, and Achievements.* Introductions by Rev. John Hall, D.D., LL.D., and Rev. William E. Moore, D.D., LL.D. New York: J.A. Hill & Co., Publishers, 1892.

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———. *The Constitutional History of the Presbyterian Church in the United States of America.* Philadelphia: Presbyterian Board of Publication, 1851.

Discussion of judicial procedures throughout.

Hodge, J. Aspinwall. *What is Presbyterian Law as Defined by the Church Courts?* Philadelphia: Presbyterian Board of Publication, 1882.

Most comprehensive summary of Presbyterian of church law, procedure and cases, covering both Northern & Southern Churches, Old School & New School.

Leslie, J.D. *Presbyterian Law and Procedure in the Presbyterian Church in the United States.* Richmond, VA: Presbyterian Committee of Publication, 1930.

For the Southern Church (PCUS); quotes extensively from T.E. Peck.

Maddex, Jack. "Presbyterians in the South, Centralization, and the Book of Church Order, 1861-1879." *American Presbyterians* 68:1 (Spring 1990): 24-45.

Comprehensive and insightful discussion of the application the principles of Old School Presbyterian Polity in, and the historical influences upon, a complete revision of the BCO of the PCUS, led first by Thornwell, and then by Adger, which provided the foundation for the BCO of the PCA.

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Monfort, F.C. [Francis Cassatte]. *Ecclesiastical Discipline: Its Necessity, Purpose and Methods as Shown in the Presbyterian Book of Discipline*. Cincinnati, OH: [F.C. Monfort?], 1900.

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Nicolassen, G.F. In *A Digest of the Acts and Proceedings of the General Assembly of the Presbyterian Church in the United States, Revised Down to and Including Acts of the General Assembly of 1922*. Richmond: Presbyterian Committee of Publication, 1923.

Collection of past decisions and deliverances from the Southern Church.

Presbyterian Church in the U.S.A. Committee on the Revision of the Book of Discipline. *The Report of the Committee on the Revision of the Book of Discipline to the General Assembly*. Ordered to be transmitted to the ministers and sessions of the church for consideration. New York: S.W. Green's Son, Printer and Binder, 1882.

Ramsay, F.P. *An Exposition of the Form of Government and the Rules of Discipline of the Presbyterian Church in the United States*. Richmond: Presbyterian Committee of Publication, 1898, pp. 117-21.

Commentary on the PCUS FOG as of 1898 (first adopted in 1879); many of the procedures of the PCA BCO are discussed here.

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Standard summary for the Northern Church.

Smith, Morton H. *Commentary on the Book of Church Order*. Second edition. Greenville, SC: Greenville Seminary Press, 1994.

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### 19th Century Debate Concerning the Revised Book of Discipline (chronologically arranged)

Hodge, Charles. "The General Assembly. Judicial Cases." *Princeton Review* (1856): 582 ff; reprint, "§1. Revision of the Book. a. Need of Revision." In *The Church and Its Polity*. Edited by William Durant and A.A. Hodge. London: Thomas Nelson and Sons, 1879, pp. 456-459. [Hereafter *Church and Polity*, pp.]

Call by Hodge for a revision to the Book of Discipline, characterized by him as "unintelligible, inconsistent, and in some of its parts unreasonable." A committee of revision was appointed the next year, chaired by Thornwell and in addition composed of Drs. Hodge, Hoge, Breckinridge, Swift and McGill, and Judges Sharswood, Allen and Leavitt.

———. *Princeton Review* (October 1858): 692-721.

Hodge, as one of the members of the Committee of Revision appointed in 1857, defends in a chapter by chapter review the Committee's proposed amendments to the Rules of Discipline.

Dabney, Robert L. "The Revised Book of Discipline: A Discussion of Some of the Changes Proposed by the Committee of the General Assembly." *Southern Presbyterian Review*. XII:1 (April 1859): 36-82; reprint, *Discussions by Robert L. Dabney, D.D., LL.D.* 4 volumes.

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Detailed and critical response to Hodge's defense, *Princeton Review* (October 1858).

Hodge, Charles. "The General Assembly. Revised Book of Discipline." *Princeton Review* (July 1859): 594-607; reprinted in part, "Infant Members Subjects of Discipline." In *Church and Polity*, pp. 215-217.

Summary of, and remarks in defense of, Thornwell's speech in support of the Revised Book of Discipline given at the time it was presented to the Assembly, as well as an account of the Assembly's disposition of the matter.

Thornwell, James Henley. "The Revised Book of Discipline." *Southern Presbyterian Review*. XII:III (1859): 373-406; reprint, *The Collected Writings of James Henley Thornwell, D.D., LL.D.* Volume IV—*Ecclesiastical*, pp. 299-335. Richmond, VA: Presbyterian Committee of Publication, 1871-75; reprint, Edinburgh: Banner of Truth Trust, 1974. [Hereafter, *Collected Writings*, IV:pp.]

Defense of the Committee's proposals for revision against a variety of criticisms, including RLD, *supra*.

Dabney, Robert L. "The Revised Book of Discipline." *Presbyterian* (Dec. 1859-Jan. 1860); reprint, *Discussions*, II:392.

Detailed and vigorous response to Thornwell's defense.

Thornwell, James Henley. "A Few More Words on the Revised Book of Discipline." *Southern Presbyterian Review*. XIII:I (April 1860): 1-38; reprinted as "The Revised Book Vindicated." *Collected Writings*, IV:336-375.

Further defense of the revision proposals, responding to RLD's second critique.

Hodge, Charles. "The General Assembly. Revised Book of Discipline." *Princeton Review* (1864): 513 ff; reprint, "§1. Revision of the Book. b. Effective Methods For Revision." In *Church and Polity*, pp. 459-461.

Adger, J.B. "The General Assembly of 1872. Revision of the Book of Discipline." *Southern Presbyterian Review* XXIII/4 (October 1872): 495-518.

Adger, Chairman for the continued committee of revision in the Southern Church, gives an account of the vigorous debate on the Revised Book, as well as outlining the history of the work on the project.

Presbyterian Church in the United States of America. Committee on the Revision of the Book of Discipline. *The Report of the Committee on the Revision of the Book of Discipline to the General Assembly. Ordered to be transmitted to the ministers and sessions of the church for consideration.* New York: S.W. Green's Son, Printer and Binder, 1882.

Presbyterian Church in the United States of America. General Assembly. *The Revised Book of Discipline, as Unanimously Adopted and Overtured to the Presbyteries by the General Assembly of the Presbyterian Church in the United States of America, in Session at Saratoga Springs, N.Y., May 29, 1883. Edited with and index by the Rev. William H. Roberts, D.D., Permanent Clerk.* Philadelphia: Presbyterian Board of Publication, 1883.

### On Judicial Commissions

Baird, Samuel J. "Book IV. The Church Courts. Chapter II.—Of Ecclesiastical Commissions." *A Collection of the Acts, Deliverances, and Testimonies of the Supreme Judicatory of the*



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*Presbyterian Church, From Its Origin in America to the Present Time: With Notes and Documents Explanatory and Historical: Constituting a Complete Illustration of Her Polity, Faith, and History.* Philadelphia: Presbyterian Board of Publication, 1855; 2nd edition, revised, 1859, pp. 233-246.

Includes discussion and citations on the nature of commissions (arguing views contrary to the views of Hodge and Thornwell, *infra*), Scottish background, commissions of the General Synod and commissions under the "present" Constitution, including the first proposals to create a Judicial Commission of the General Assembly (1849).

Hays, Geo.[rge] P. [Price]. *Presbyterians. A Popular Narrative of Their Origin, Progress, Doctrines, and Achievements.* Introductions by Rev. John Hall, D.D., LL.D., and Rev. William E. Moore, D.D., LL.D. New York: J.A. Hill & Co., Publishers, 1892, pp. 196, 239, 241-43.

"The question of the wisdom of leaving judicial cases to be decided by such changeable bodies as Synods and Assemblies has long been a mooted one. In 1849 a committee was appointed on the subject, and it worked out an elaborate plan for a Permanent Judicial Commission. Presbyteries, Synods and General Assemblies are very changeable bodies, because the elders are usually appointed to attend but a single meeting. Even the ministers, however able and scholarly they may be in general, are not specially trained and habituated to the work of analyzing testimony and excluding irrelevant matter. With a view, therefore, to securing picked men to decide these intricate cases, it was proposed that there should be in each Synod and for the General Assembly a commission of appeals, composed of four ministers and four elders, elected two each year. The plan, however, was almost unanimously rejected. The discussion developed widespread feeling, first that the time of the General Assembly and the subordinate judicatories should not be occupied with many judicial cases to the exclusion of or interference with church mission work; and second, that some method should be devised for a more careful consideration of each case by selection persons qualified to decide its vital points on their real merits. . . ."

"One great burden long felt by the General Assembly was the careful and sufficient trial of judicial cases. Sometimes methods of relief have been adopted that could scarcely be defended in accordance with the strict construction of the Form of Government. A somewhat inexperienced member of the Judicial Committee of a certain General Assembly asked the chairman of his committee what the duties of the committee were. The chairman replied, with more regard to facts than to the constitution: 'The business of our committee is to find some way to save the General Assembly from wasting time on judicial cases.' This need of relieving the General Assembly from the burden of judicial business was one strong reason which led the church, about 1880, to amend the Form of Government, so that the decisions of Synods should be final in all cases not involving doctrine or government. . . ."

"From the earliest history of Presbyterianism it has been recognized as the right of the General Assembly or a Synod to appoint a Commission clothed with the power of Synod to discharge certain duties. . . . The early Synod appointed an annual Commission, and theoretically clothed that Commission with the whole power of the Synod. This made the Commission somewhat like the Synod sitting the whole year, and adjourning from time to time as business might require. It was not therefore a new suggestion that 'Judicial Commissions' might be appointed. It was simply an adaptation of a principle of church government always previously recognized, that it might now be applied to a more careful trying of judicial cases. In 1879, therefore, an overture was sent down from the General Assembly to the Presbyteries for such an amendment to the Constitution as would authorize the appointment of a special Judicial Commission for each case. The decision of such a Commission is to be reported to the body that appointed it. This has been found to be a

good solution of the question of time. It is a good solution also, as to the question of securing suitable persons to try appeal cases. Many a minister or prudent elder may be an excellent speaker and a very pious man without being at the same time an ecclesiastical judge, and a persons competent to sift evidence and measure its weight. These Judicial Commissions are appointed for the purpose of having the most suitable men to try each case. Most commonly these Judicial Commissions are in fact Commissions of Arbitration, as their members are agreed upon by the parties to the case. The decision of the Commission is reported to the appointing body, and entered on its records. The proposition for a permanent Judicial Commission has been presented to, discussed and dismissed without action in the Old School Assemblies of 1849, 1854 and 1855. It was up again in 1866, and this time an overture on the subject was sent down to the Presbyteries and defeated in them. These discussions prepared the Church for this step of special Judicial Commission as a good mode of procedure for the higher Church Judicatories in appeal cases."

Hodge, Charles. "The General Assembly. Commissions of Presbyteries and Synods." *Princeton Review* (1847): 400 ff; reprint, "§11. Commissions of Presbyteries and Synods." In *Church and Polity*. pp. 353-363.

Extensive report of 1847 GA Committee, chaired by H. concerning a resolution, "Resolved, That in the judgment of this Assembly, it is contrary to the Constitution, and uniform practice of the Presbyterian Church in the United States, for any ecclesiastical judicatory to appoint a Commission, to determine judicially any case whatever." The Report opposed the resolution, arguing that the practice is contrary to neither and concluded, "In view therefore, of the original rights of our judicatories, of the long-continued practice of the Church, and of the great value of the right, on due occasions, of acting by Commissions, the hope is respectfully expressed, that the Assembly may do nothing, which may have the effect of calling that right in question." The final disposition was the indefinite postponement of the whole subject, which H. saw as a victory and Thomwell as ambiguous. cf. Thomwell's discussion of the matter, *infra*.

———. "The General Assembly." *Princeton Review* (1853): 527 ff; reprint, "d. In Favor of a Commission to try Appeals and Complaints." In *Church and Polity*. pp. 498-499.

Concerning judicial proceedings at GA H. describes "great inconveniences" wherein "the whole Church is liable to be harassed and occupied by causes of no general importance." Listing the problems H. argues that "the General Assembly is, from its size [300 or so!], an incompetent tribunal." He concludes, "We think we shall have to adopt the . . . method of commissions . . . a body consisting of not less than a quorum of the court appointing it, and in which every member of the court who chooses to attend, has the right to a seat, clothed with full power of the court itself."

———. "The General Assembly. Commissions." *Princeton Review* (1855): 502 ff; reprint, "§ 3. Power to Act by Commission." In *Church and Polity*. pp. 374-377.

In response to discussion at the 1854 GA concerning judicial commissions, H. provides an insightful discussion of the fundamental nature of Presbyterian courts, their powers, and their relation to the constitution of the Church. With respect to commissions H. takes a view similar to Thomwell, *infra*, and contrary to Baird, *supra*. Concludes by briefly answering objections to judicial commissions.

———. "The General Assembly. Judicial Cases." *Princeton Review* (1856): 582 ff; reprint, "§1. Revision of the Book. a. Need of Revision." In *Church and Its Polity*, pp. 456-459.

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"This is another lesson [portions of six days of an Assembly spent on one case] teaching what the Church seems slow to learn; that a body consisting of upwards of two hundred members is not a very suitable court of appeal. . . . We believe the necessity for the appointment of a commission is forcing itself more and more on the conviction of the leading minds of our Church."

———. *The Constitutional History of the Presbyterian Church in the United States of America*. Philadelphia: Presbyterian Board of Publication, 1851, pp. 112-13, 350-60.

Review of the use of commissions (including judicial) after the Scottish model in the American Church from the time of the original Synod to the adoption of the Constitution in 1788-89. H. concludes, "Our judicatories are sometimes so oppressed with judicial business, that it might be well, on some occasions, to resort to this old usage of our church. . . . Most men would be as willing to have a cause in which they were interested, decided by ten good men as by a hundred. Much time would thus be saved, and many details of evidence kept from coming before a large Assembly." (360)

Hodge, J. Aspinwall. *What is Presbyterian Law as Defined by the Church Courts?* Philadelphia: Presbyterian Board of Publication, 1882, pp. 196-97, 226-27, 253-54, 269-70.

Brief statement of the law of commissions in judicial cases, describing their nature and justification, the history of their use, and their employment at Presbytery, Synod, and GA. The last cited section provides the language of the 1894 "Book of Discipline" in full, wherein a distinction is made between matters of law, constitution and doctrine, and the rest of the decision—the former being liable to review by the appointing body and the latter not.

Leslie, J.D. *Presbyterian Law and Procedure in the Presbyterian Church in the United States*. Richmond, VA: Presbyterian Committee of Publication, 1930, pp. 119-20.

"After studying closely fifty judicial cases coming up to the General Assembly, from 1870 to 1909, and having had all judicial cases since then go through my hands as clerk, I do not find a single case in which the Assembly opened for discussion the judgment of a commission to which an appeal or complaint was given. In very case, the judgment of the commission was entered on the minutes as the judgment of the Assembly. In 1889, I was a commissioner to the General Assembly, and saw an effort made by the defense counsel to have the case opened for further discussion after the commission had made its report. The moderator decided against this being done. Rev. G.D. Armstrong, D.D., was chairman of the commission. He had been the chairman of a committee of the Assembly that revised our old Book of Church Order and prepared the articles on Ecclesiastical Commissions. He explained to the Assembly the meaning of these articles, in which he stated very clearly that it was not the intention of the Book of Church Order to indicate that the case would be opened in the court for further consideration after the commission had made its report, but its judgment should be entered upon the records of the court as the judgment of the court itself. In this case, this was done, and the judgment of the commission became the judgment of the Assembly."

Monfort, F.C. [Francis Cassatte]. *Ecclesiastical Discipline: Its Necessity, Purpose and Methods as Shown in the Presbyterian Book of Discipline*. Cincinnati, OH: [F.C. Monfort?], 1900, pp. 44-53.

Discussion of Judicial Commissions, particularly concerning the distinction between deciding a point of fact and a point of law.

Nicolassen, G.F. "Book VIII. Judicial Cases." In *A Digest of the Acts and Proceedings of the General Assembly of the Presbyterian Church in the United States, Revised Down to and*

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*Including Acts of the General Assembly of 1922.* Richmond: Presbyterian Committee of Publication, 1923, pp. 1100-01.

Cites attempts by the PCUS to create a Standing Judicial Commission.

Ramsay, F.P. *An Exposition of the Form of Government and the Rules of Discipline of the Presbyterian Church in the United States.* Richmond: The Presbyterian Committee of Publication, 1898, pp. 117-21.

Commentary on the chapter in the PCUS FOG on Ecclesiastical Commissions as of 1898 (first adopted in 1879).

Robinson, Stuart. "The General Assembly of 1855." *The Presbyterian Critic and Monthly Review* 1/8 (August 1855): 347-350.

Vigorous criticism of dealing with judicial cases on appeal by a hearing of the entire GA, and thoughtful discussion of judicial commissions, with some interesting comments by the way, from one the chief theoreticians of church polity among Old School Theologians. "[O]ne thing is perfectly obvious, namely, that as discipline is now administered in our superior church Courts . . . it amounts either to a denial or a perversion of justice. . . . And this state of things is getting worse and worse—until the whole thing is becoming a scoffing to the wicked, and a deadly heartsore to good men. . . . We would undertake to screen any offender before the General Assembly more certainly than before any jury of twelve upright men. . . . We confess ourselves to be averse even to the appearance of stripping the church courts of the exercise of any power vested in any of them by the Lord. . . . We therefore greatly prefer to reduce the church courts, all of them, to denominations [numbers of delegates] in which they will be masters of their time and business, and every member feel his proper responsibility; rather than keep them at an unwieldy size,<sup>67</sup> and appoint commissions to do any part of their work. . . . We say we prefer this method of dealing with the subject—by far to any other, and think we could show abundant reason for that preference. \*\*\* As to the power of the church courts, however, to appoint *commissions*, that power is just as clear as their power to appoint *committees*; and it has been as invariably exercised. . . . [A]nd with all due respect. . . . it is simply ridiculous to deny the existence of the power in the Assembly. . . . [W]hat utter folly is it, to pretend that it has no power, and ought not to have any, to appoint a similar body to ascertain and determine, whether a certain Minister got drunk, or a certain Elder is dishonest. . . . [W]e violate all laws human and divine, by pretending to try them before two or three hundred Presbyters, when in fact, by that pretence, they are prevented from being tried at all. . . . sending them before tribunals which . . . are utterly indisposed, and hopelessly incompetent to administer justice. \*\*\* [O]f all parts of the duty of the General Assembly, the one to which the use of a commission is most peculiarly appropriate, [is to try cases of discipline]. . . . [N]o sane man, who had a just cause, but would prefer that any ten, of three hundred respectable gentlemen, should *try* his cause—rather than let the whole three hundred try it. . . . The sole object of the existence of that General Assembly is to do God's work in the world; one of the most thoroughly important portions of which is the righteous administration of discipline. This part of its work the Assembly grossly neglects, and is no longer competent to perform aright, by reasons of its enormous bulk, the vast accumulation of its business, and the necessary shortness of its sessions. The conclusion is irresistible. And they who oppose and defeat some adequate reform, are to be held justly to a rigorous account for all the evils that may follow." (pp. 348-50)

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<sup>67</sup>Robinson thought there should be no more than 100 commissioners.

## POSITION PAPERS

Smith, Morton H. *Commentary on the Book of Church Order*. Greenville, SC: Greenville Seminary Press, 1990, § 15.

Commentary on the PCA BCO chapter 15 on Commissions, including in its discussion of the Standing Judicial Commission both the applicable RAO provisions and the SJC Manual.

Thornwell, J.H. "The General Assembly of 1847." *Southern Presbyterian Review* I:II (Sept. 1847): 78-104; reprint, *Collected Writings*, IV:486-88.

JHT's discussion of issues before the 1847 Assembly, of which he was Moderator, meeting in Richmond, VA, May 20 through the 31st. T. notes with approval C. Hodge's report, *supra*, asserting that the report "furnished conclusive proof that the appointment of such Commissions is contrary neither to the Constitution nor the uniform practice of the Church." (p. 486) T. concludes that a commission is "the court itself, resolving to be constituted as such, with less than a majority of its members." (p. 487)

### On Courts of Final Appeal

Anon [E.R. Craven?]. *The Constitution of Courts of Appeal in the Presbyterian Church*. By a Pastor. n.p., n.d.

Full defense of the proposal to establish courts of final appeal, with answers to objections.

H.K.C. *The Book of Discipline and the Next Assembly*. Detroit, May 8, 1865.

Urges that the Assembly as a whole cannot properly deal with judicial cases, and that a court of final appeal should be set up to handle such cases.

Hodge, J. Aspinwall. *What is Presbyterian Law as Defined by the Church Courts?* Philadelphia: Presbyterian Board of Publication, 1882, pp. 268-69.

Brief account of the history of the consideration of courts of final appeal in the Northern church.

Presbyterian Church in the United States of America (Old School). *Committee on Courts of Appeal. Report of the Committee on Appellate Courts Presented to the General Assembly of the Presbyterian Church in the United States of America, May 1865*. New York: Edward O. Jenkins, Printer, 1865.

Committee chaired by E.R. Craven reports advocating a court of final appeal to handle appeals & complaints at the Assembly urging that: "A Change Allowable", "A Change Desirable", "A Change Practicable", and setting forth "Amendments Proposed".

Presbyterian Church in the United States of America. *Minutes of the General Assembly, June 1874*, pp. 162-64.

Language proposed for a "Court of Final Appeals" and the objections of the Presbytery of Buffalo.

### On the Powers of the Assembly in Judicial Cases and the Doctrine of *Stare Decisis*

Adger, John B. "Deliverances of Church Courts." *Southern Presbyterian Review* XXXI (July 1880): 535-603.

Hodge, J. Aspinwall. *What is Presbyterian Law as Defined by the Church Courts?* Philadelphia: Presbyterian Board of Publication, 1884, p. 271.

Can the Assembly answer questions in “*thesi*”? It does not appear that the constitution ever designed that the General Assembly should ever take up abstract cases and decide on them, especially when the object appears to be to bring these decisions to bear on particular individuals no judicially before the Assembly.” [citing *Presbyterian Digest*, p. 279.] What authority have the decisions of the Assembly? Even its recommendations are of authority, coming as they do from a body representing the whole Church. Its recommendations concerning the Boards are obligatory. Its replies to overtures are authoritative interpretations of the constitution. Its testimony on doctrine and morality is the Church’s declaration of the meaning of the “Confession of Faith,” and its application. And its judicial decisions are final and obligatory in all similar cases.<sup>68</sup> No later Assembly can reverse its judicial acts or revise its proceedings. A manifest error may be corrected. [citing *Presbyterian Digest*, p. 689.]

Leslie, J.D. *Presbyterian Law and Procedure in the Presbyterian Church in the United States*. Richmond, VA: Presbyterian Committee of Publication, 1930, pp. 182-185, 188.

Deliverances and General Assembly decisions. Two forms of decisions: 1. The General Assembly sits as a deliberative body which is legislative. 2. The General Assembly frequently sits as a court, in the trial of judicial cases. . . . 1. The deliverance that is of the highest authority is that of a decision in a judicial case,<sup>69</sup> the case having come up by appeal or complaint from the lower court. The General Assembly sits as the supreme court of Jesus Christ, and its decision is final. It determines and concludes a particular case. (see also paragraph 418.) The Assembly in 1879 made a deliverance stating that the deliverances of 1865, 1869 and 1877 on the subject of worldly amusements are not to be accepted and enforced as law by judicial process upon the following grounds: (1) That these deliverances do not require judicial prosecution expressly, and could not require it without violating the spirit of our law. (2) that none of these deliverances were made by the Assembly in a strictly judicial capacity, but were all deliverances in thesi, and therefore can be considered as only didactic, advisory and monitory.<sup>70</sup> [p. 183] “(3) That the Assembly has no power to issue orders to institute process except according to the provisions of the Rules of Discipline found in the Book of Church Order (revised 1925).” (A.D. 1910; M.G.A. 1879, p. 23). . . . Force of *in thesi* deliverance. A judicial sentence cannot be set aside by an *in thesi* deliverance. While it is competent for one General Assembly, under the rules provided by the constitution, to grant a new hearing to a case which has been judicially decided by a previous Assembly, a deliverance by the Assembly could not modify or set aside the judicial sentence. (A.D. 1922, p. 166, 167; M.G.A. 1879, p. 57.) (Also see par. 416.) [p. 185]. . . . Original jurisdiction in judicial cases. The General Assembly has no original jurisdiction in matters of discipline; but when a judicial case comes before the Assembly, by appeal or complaint, it has the power to declare the law in this particular case. This judicial interpretation of the law is the interpretation in connection with a given case. This decision becomes the law of the Church in cases similar to this given case. Decisions of this kind are not to be construed as in thesi deliverances, but are of biding authority.<sup>71</sup> These decisions have been made after the matter has been discussed in two or more courts and after everything connected with it has been discussed freely, not only in the lower court but also in the Assembly. [p. 188]

<sup>68</sup> Emphasis added.

<sup>69</sup> Emphasis added.

<sup>70</sup> Emphasis added. Note that this phrase, “didactic, advisory and monitory” applies only to *in thesi* statements, not judicial decisions.

<sup>71</sup> Emphasis added.

## POSITION PAPERS

Patton, Francis L. *The Revision of the Confession of Faith*, read before the Presbyterian Social Union, New York, December 2, 1889, p. 6 [reprinted from *The Independent*].

There is no doubt that there is an area of tolerated divergence from the Confession of Faith. How large that area is will depend upon the degree of readiness there may be in the Church to move the ecclesiastical courts, and upon the decisions reached in the court of last resort. Historical students may tell us what the Church has thought upon the subject, and dogmatic theologians may tell us what the Church ought to think; but it is only as the General Assembly decides concrete cases in appellate jurisdiction, and the principle of *stare decisis* may be supposed to govern subsequent deliverances, that the area of tolerated divergence can be defined.<sup>72</sup>

Peck, Thomas E. "The Action of the Assembly of 1879 on Worldly Amusements, or the Powers of Our Several Church Courts." *Southern Presbyterian Review* (April 1880): 218-244; reprint in *Miscellanies of Rev. Thomas E. Peck*. Edited by T.C. Johnson. Richmond, VA: The Presbyterian Committee of Publication, 1895, II:331-360.

Review of the action of the Assembly in 1879, cited by Leslie *supra*, provides the occasion for a masterful discussion of the nature and authority of Assembly *in thesi* statements, as contrasted with the authority of Assembly judicial decisions, the constitution, and the lower courts, by one of the main theorists and chief authorities on Presbyterian polity and procedure for the Southern Church. Argues Peck:

"[T]he principle here involved is one of immense importance. It lies at the root of all the struggles between the advocates of a constitutional government and the advocates of an 'absolutism.' The forms of constitutional government and of absolutism, both in church and in state, have varied indefinitely; but the essence of the struggle has always been the same. Abstracted from its accidental forms, the question has always been, whether the power of the whole is over every part, or only over the power of the part. . . ." [335-336.]

"[W]e must repeat the 'state of the question' once more: Does the same force belong to the deliverances *in thesi* of the higher courts as to their judicial decisions? Do the two classes of decisions regulate and determine the administration of discipline in the same way and to the same extent? Or, to express the same thing in other words, does the interpretation of a law by an appellate court—the interpretation being given *in thesi*—bind a court of original jurisdiction in such a sense as to deprive it of its power of judgment as to the meaning of said law, and compel it to accept and act upon the interpretation of the appellate court as the law of the Church? . . . The General Assembly of 1879 answers it clearly and *unanimously in the negative*; and, we think, truly and righteously. . . ." [pp. 337-338.]

"We confess to a great astonishment that brethren should insist that deliverances *in thesi* have the same force and judicial decisions. The two classes of acts are reached by processes wholly different. A deliverance *in thesi* may concern a subject which has never been before the church or any of its courts; may be 'sprung' upon the Assembly by some ardent and eloquent member, and be carried by his personal influence and eloquence. A judicial decision by that court necessarily implies discussion in a least two of the lower courts—in a cause originating in the session it is implied that the matter has been discussed in *three*—before it is called to decide. The cause is represented on both sides by counsel, who are fully heard; and the members of the court next below are heard, etc., etc.; all circumstances which give assurance that the matter has been fully discussed by those most competent to do it. Further, the deliverance *in thesi* is apt to be sweeping and general. The

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<sup>72</sup>Emphasis added.

judicial decision is upon a case, is interpreted by it, and is applicable only to similar cases.<sup>73</sup> The responsibility in delivering a judgment in a judicial case will be more sensibly felt by the members of the court, because they are not only interpreting the law, but are judging a brother, and are determining his ecclesiastical status. . . .” [pp. 344-345.]

“[I]f the idea of the unity of the church is to be realized on any larger scale than that of a single *coetus fidelium*, there must be appellate jurisdiction, and a power given to some higher court to ‘decide’ all controversies. This is the reason why a ‘judicial decision’ of the General Assembly becomes law and continues to be law until a contrary decision is rendered by the same court—law, in the sense of a regulator of the exercise of discipline in the courts below. . . . [T]he courts of original jurisdiction have the right to interpret the law for themselves, until a judicial decision of the highest court shall *decide the matter*. ”<sup>74</sup> [p. 346, 348.]

Presbyterian Church, United States of America. “The Plan of Union, Synods of New York and Philadelphia.” *Minutes of the Synod of New York and Philadelphia*. 1758, p. 3; reprinted in *Minutes of the Presbyterian Church in America 1706-1788*. Edited by Guy S. Klett. Philadelphia, PA: Presbyterian Historical Society, 1976, p. 341.

II. That when any Matter is determined by a Major Vote, every Mem[ber] Shall either actively concur with, or passively Submit to Such Deter[mination]; or, if his Conscience permit him to do neither, he Shall, [after] Sufficient Liberty modestly to reason and remonstrate, peaceab[ly with]draw from our Communion, without attempting to make any Sc[hism:] provided always, that this Shall be understood to extend only to [Such] Determinations, as the Body Shall Judge indispensable in Doct[rine] or Presbyterian Gover[n]ment.

III. That any member, or Members, for the Exoneration of his, or t[heir] Conscience before God, have a Right to protest against any A[ct, or] Procedure of our highest Judicature, because there is no [fur]ther [App]eal to another for Redress, and to require that Such Prote[st]ation [be] recorded in their Minutes. . . . And it is agreed, that Protestations ar[e only to be entered] against the publick Acts, Judgments, or Determina[tions] of the Judica[t]ure, with which the Protester’s Conscience is offe[n]ded.]

Ramsay, F.P. *An Exposition of the Form of Government and the Rules of Discipline of the Presbyterian Church in the United States*. Richmond: Presbyterian Committee of Publication, 1898, pp. 112-113.

This is a power peculiar to the Assembly; for, while the other courts decide in the sense of rendering a judgment, that judgment, if controverted, is not the DECISION of the controversy; but the Assembly’s judgment is the judgment of the Church, and is, therefore, the end of the controversy. When, then, the Assembly has decided, is that a prohibition of further discussion? By no means. But the Assembly’s decision in a controversy respecting doctrine is thenceforth the doctrine of the Church,<sup>75</sup> and further opposition to this doctrine is opposition to the doctrine of the Church, and is permissible only within the limitations within which opposition to the doctrine of the Church is permissible. And the decision of the Assembly in a controversy respecting discipline fixes the status of the parties affected, and they are to be treated accordingly in their ecclesiastical relations by all who prefer to remain in this Church and free from its censure.<sup>76</sup>

<sup>73</sup>Emphasis added.

<sup>74</sup>Emphasis added.

<sup>75</sup>Emphasis added.

<sup>76</sup>Emphasis added.



## POSITION PAPERS

### **PROCEDURAL CHECKLIST FOR PCA BCO RULES OF DISCIPLINE**

by T. David Gordon

*"The following checklist is, to the best of our knowledge, complete and accurate as of March, 1996. Since the Book of Church Order is subject to revision at each meeting of the General Assembly, the checklist may not be accurate beyond the next meeting of the Assembly. Updated checklists are available, upon request, from the Stated Clerk's Office in Atlanta."*

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## PCA DIGEST

### Procedural Checklist for PCA BCO Rules of Discipline

#### **Prior to First Meeting of Court**

Line Nbr	Date or N/A	Initials	Item	BCO #
1.			Process entered before Session of church to which alleged offender belongs (unless offender is a minister, or process is an appeal)	33-1
2.			Injured party has tried means of <b>reconciliation</b>	31-5
3.			<b>Instruction</b> has been given to offender	31-5.7
4.			Consider <b>character</b> of person bringing accusations	31-8
5.			Give warning to voluntary prosecutor regarding slander	31-9
6.			<i>Suspend official functions of church court members while under process (at discretion of court)</i>	31-10
7.			<i>In case of scandal, process shall commence within one year after offense committed</i>	32-20
			<b><u>Cases without process:</u></b>	
8.			<i>If any person comes forward and makes his offense known to the court, a full statement of the facts shall be recorded and judgment rendered without process.</i>	38-1
9.			<i>If a minister believes God has not called him to the ministry, see BCO 38-2 and 46-8</i>	38-2; 46-8
10.			<i>If a member or officer joins another evangelical church, see BCO 38-3</i>	38-3

#### **First Meeting of Court**

Line Nbr	Date or N/A	Initials	Item	BCO #
1.			Gal 6:1 reiterated	32-1
2.			Charge made out	32-2
3.			Charge reduced to writing	32-3
4.			<b>Prosecutor</b> appointed by court	31-2; 32-3.1
5.			<b>Indictment</b> prepared	31-2,4; 32-3.2

## POSITION PAPERS

6.			Times, places, circumstances particularly stated	32-5
7.			All parties and witnesses cited to appear and be heard	32-3.3
8.			Attention called to Rules of Discipline ( <i>BCO 27-46</i> )	32-3
9.			At least 10 days elapse between citation and next meeting	32-3.3 32-7
10.			Citation issued and signed by moderator or clerk by order and in name of the court.	32-4

### Second Meeting of Court

1.			<b>Charges read to the accused</b>	32-3
2.			<i>Counsel assigned to accused if necessarily absent</i>	32-3
3.			<b>Accused responds with "guilty" or "not guilty"</b>	32-3
4.			If "guilty" then court may deal with discretion	32-3
5.			If "not guilty" then trial shall proceed	32-3
6.			<i>If accused refuses to obey citation, cite a second time</i>	32-6
7.			<i>Include warning against contumacy</i>	32-6
8.			<i>If accused still refuses to appear or to plead, court enters this in records</i>	33-2
9.			<i>Accused suspended from sealing ordinances for contumacy</i>	33-2
10.			<i>Censure made public if Session deems expedient</i>	33-2
11.			<i>If charge is of gross crime or heresy, court may proceed to inflict highest censure</i>	33-3
12.			If impracticable immediately to commence process. Session may fence the Table from the accused until examination.	33-4
			<i>If offense took place at a distance</i>	
13.			Court may appoint a commission of its body or request coordinate court where facts occurred to take testimony	32-8
14.			<i>If offense not likely to become known to court of jurisdiction, Court of location sends notice to court of jurisdiction which shall proceed against accused; or whole case may be remitted to court of location.</i>	32-9

# PCA DIGEST

## The Trial

Line Nbr	Date or N/A	Initials	Item	BCO #
			Prior to trial:	
1.			Court ascertains that citations duly served	32-10
2.			<i>Judicial Committee appointed if expedient</i>	32-11
3.			<i>Challenge for cause by either party on the right of any member to sit in trial. Other members of court decide the question</i>	32-16
4.			<i>Disqualification of any member considered</i>	32-17
			In trial:	
5.			1. Moderator <b>charges</b> the court	32-12, -15.1
6.			2. <b>Indictment</b> read, <b>Answer</b> of accused heard	32-15.2
7.			3. <b>Witnesses examined</b> in presence of the accused	32-13
			<u>Witnesses for Prosecutor</u>	32-15.3
8.			Oath of 35-6 administered by Moderator	35-6
9.			Witnesses examined by Prosecutor party	35-5
10.			Witnesses cross-examined by Accused party	35-5
11.			Additional interrogatories by parties or court members	35-5
12.			More than one witness necessary to establish charge, unless corroborative evidence is produced in addition to one witness.	35-3
			<u>Witnesses for Accused (not compelled to testify—35-1)</u>	32-15.3
13.			Oath of 35-6 administered by Moderator	35-6
14.			Witnesses examined by Accused party	35-5
15.			Witnesses cross-examined by Prosecutor party	35-5
16.			Additional interrogatories by parties or court members	35-5
			<u>Pertaining to All Witnesses:</u>	
17.			Witnesses are of proper age and intelligence, and believe in the existence of God, or a future state of rewards and punishments.	35-1
18.			Either party has the right to challenge a witness whom he believes to be incompetent; to be decided by court.	35-1
19.			Husband or wife not compelled to bear testimony against one another	35-2
20.			<i>No witness afterwards to be examined, unless a member of the court, shall be present during the examination of another witness on the same case, if either party object.</i>	35-4

## POSITION PAPERS

21.			Permission granted by Moderator for all questions before being put or answered, subject to appeal to the court.	35-5
22.			<i>If required by the court or either party, every question and answer shall be written and recorded, and testimony of witness read to him for his approbation and subscription.</i>	35-7
23.			Testimony may be taken by commission or coordinate court if necessary due to distance, per BCO 35-10.	35-10
24.			Professional counsel prohibited to appear	32-19
25.			<b>4. Parties heard</b>	32-15.4
26.			Prosecutor first	
27.			Accused next	
28.			Prosecutor closes	
29.			<b>5. Role is called—members may express opinion in the case</b>	32-15.5
30.			<b>6. Vote is taken</b>	32-15.6
31.			Verdict announced	
32.			Judgment entered on records	
33.			Minutes of trial kept by clerk	32-18; 35-7
34.			Record of the Case assembled by clerk	32-18

### **If Accused is a Minister**

Line Nbr	Date or N/A	Initials	Item	BCO #
1.			Scandalous charges not received on slight grounds.	34-2
2.			Minister warned in private if guilty of private offense	34-3
3.			<i>If refuses to appear before Presbytery after two citations:</i>	34-4
4.			Immediately suspended	34-4
5.			<i>If refuses to appear after another citation:</i>	34-4
6.			Deposed as contumacious	34-4
7.			Suspended or excommunicated from the Church	34-4
8.			Record of charges and judgment made	34-4
9.			Sentence made public	34-4
10.			Errors carefully considered for heresy and schism	34-5
11.			Measures taken to remove scandal if appropriate	34-6
12.			Definite suspension or deposition imposed if minister makes confession pending trial	34-7
13.			Pastoral relation dissolved in case of deposition	34-9
14.			Assessment of dissolution in case of suspension from office	34-9
15.			For failure to discharge official functions, see 34-10	34-10

# PCA DIGEST

## Infliction of Church Censures

Line Nbr	Date or N/A	Initials	Item	BCO #
1.			Court proceeds with tenderness (Gal 6:1)	36-1
2.			<u>Censure of Admonition</u>	36-3
3.			Administered in private if offense is private	
4.			Administered in presence of court if offense is public	
5.			Announced in public if court deems expedient	
6.			<u>Definite Suspension from Office</u>	36-4
7.			Administered in presence of court alone or in open session of court, as court deems best	
8.			Public announcement made at court's discretion	
9.			<u>Indefinite Suspension from Office or Sacraments</u>	36-5
10.			Administered in presence of court alone or in open session of court, as court deems best	
11.			Public announcement made at court's discretion	
12.			Administered with added solemnity	
13.			Administered under blessing of God for repentance	
14.			Address offending brother per BCO 36-5	
15.			<u>Excommunication</u>	36-6
16.			Administered in presence of court alone or in open session of court, as court deems best	
17.			Public announcement made at court's discretion	
18.			Moderator reiterates steps of discipline taken	
19.			Explain authority of Church to excommunicate from Matt 18:15-18, and 1Cor 5:1-5	
20.			Administer censure in words of BCO 36-6	
21.			<u>Deposition</u>	36-7
22.			Administered by Moderator in words of BCO 36-7	
23.			If deposed without excommunication, Presbytery assigns him to membership in some particular church, subject to the approval of the Session of that church	46-8
24.			If includes suspension or excommunication, add appropriate words from BCO 36-7	36-7

## POSITION PAPERS

### Removal of Church Censures

Line Nbr	Date or N/A	Initials	Item	BCO #
1.			<u>Definite Suspension from Office</u>	37-1
2.			Declare words of BCO 37-1	
3.			<u>Indefinite Suspension from Sacraments</u>	37-2,3
4.			Rulers of church frequently converse with him and pray for God to grant repentance	
5.			Court satisfied with reality of repentance	37-3
6.			Offender admitted to profess repentance	
7.			Restoration declared by words in BCO 37-3	
8.			<u>Excommunication</u>	37-4
9.			Session obtained sufficient evidence of sincere repentance	
10.			Questions of BCO 37-4 posed to excommunicated person, with affirmative response given	
11.			Exhortation of encouragement and comfort given	
12.			Sentence of restoration pronounced (from BCO 37-4)	
13.			<u>Deposition from Office</u>	37-5,6
14.			Public confession made	
15.			Restoration announced by words of BCO 37-5	
16.			Absolved ruling elder or deacon re-elected by people before resumption of office	37-6
17.			<u>Restoration of Minister</u>	
18.			Minister exhibits for a considerable time such an eminently exemplary, humble and edifying life and testimony as shall heal the wound made by his scandal.	34-8
19.			General sentiment of the church is strongly in minister's favor and demands his restoration	34-8
20.			Presbytery proceeds with great caution	37-8
21.			Admitted to Sacraments	37-8
22.			Granted privilege to preach on probation for a time	37-8
23.			See BCO 37-9 for jurisdiction in removal of censures	37-9
24.			Restoration pronounced	37-8,9

## PCA DIGEST

### General Review and Control

Line Nbr	Date or N/A	Initials	Item	BCO #
1.			<u>Areas Reviewed:</u>	40-2
2.			Proceedings correctly recorded	40-2.1
3.			Proceedings regular and in accordance with Constitution	40-2.2
4.			Proceedings wise, equitable, suited to promote welfare of Church	40-2.3
5.			Lawful injunctions of higher court obeyed	40-2.4
6.			Higher court records approval or disapproval, and corrections of lower court records	40-3
7.			Requirement communicated for review and correction of serious irregularities	40-3
8.			<i>If appeal or complaint is in process, judicial case proceedings not dealt with under review and control</i>	40-3
9.			Gross negligence of lower court examined, deliberated and judged by higher court.	40-4
10.			<i>In case of delinquency or unconstitutional proceedings:</i>	40-5
11.			Offending court cited to appear	
12.			Offending court show what it has done or failed to do	
13.			Court issuing citation may:	
14.			Reverse or redress lower court's proceedings	
15.			Censure delinquent court	
16.			Remit whole matter with injunction to delinquent court	
17.			Stay all further proceedings in the case	
18.			Process against lower court conducted according to rules for process against individuals	40-6

### References

1.			Reference deemed <b>necessary</b> by lower court	41-5
2.			All testimony and other documents duly prepared	41-6
3.			Reference presented to higher court, accompanied by necessary records	41-4



## POSITION PAPERS

### Appeals

Line Nbr	Date or N/A	Initials	Item	BCO #
1.			Appeal made only to next higher court	42-1
2.			Regular trial has taken place	42-2
3.			Legitimate grounds of appeal established	42-3
4.			Notice of Appeal given	42-4
5.			Filed by appellant with clerk of lower court and clerk of higher court, within 30 days following meeting of court	
6.			No attempts made to circularize courts	
7.			Clerk of lower court file Record of the Case with clerk of higher court, not more than 30 days after receipt of notice of appeal	42-5
8.			<u>Record of the Case Includes:</u>	
9.			Notice of appeal and reasons therefor	
10.			Copy of all proceedings in connection with case	
11.			Response of lower court	
12.			Evidence	
13.			Any papers bearing on the case	
14.			<i>If Record not filed, Rebuke given by higher court</i>	42-7
15.			No information other than Record of the Case taken into consideration by higher court	42-5: 32-18; but see 35-14
16.			Judgment of lower court suspended pending higher court's decision	42-6
17.			<i>Suspension, excommunication or deposition may be put into effect for sufficient reasons until final decision</i>	42-6
18.			Higher court decision whether appeal is in order	42-7
19.			Higher court hears the case	42-8
20.			Record of the Case is read	
21.			Each side allotted × 30 minutes for oral argument	
22.			Appellant given right to open and close argument	
23.			<i>Suitable rebuke given by appellate court if appellant manifests litigious or unChristian spirit</i>	42-12
24.			Court or commission enters closed session	
25.			Court or commission discuss merits of the case	
26.			Vote taken, without further debate, on each specification:	
27.			<b>Shall this specification of error be sustained?</b>	
28.			Minute explanatory of court's action written, and entered into Record of the Case	

## PCA DIGEST

29.			Decision of higher court made:	42-9
30.			Affirm in whole or in part	
31.			Reverse in whole or in part	
32.			Render decision that should have been rendered	
33.			Remand the case to lower court for new trial	
34.			Written opinion prepared	
35.			Copy of opinion and judgment delivered personally or mailed to the lower court, with written receipt required.	
36.			Copy of opinion and judgment delivered personally or mailed to the appellant, with written receipt required.	
37.			<i>An appellant shall be considered to have abandoned his appeal if he fails to appear before the higher court, in person or by counsel, for a hearing thereof, after he has been properly notified; but an appellant may waive, in writing, his right to appear with permission of the court and not be considered to have abandoned his case. In case of such failure to appear, the judgment of the lower court will stand unless the appellant gives to the court a prompt and satisfactory explanation.</i>	42-11

### Complaints

Line Nbr	Date or N/A	Initials	Item	BCO #
1.			Written notice of complaint, with supporting reasons, filed with clerk of court × 30 days following meeting of the court	43-2
2.			Court consider complaint at next meeting	
3.			No attempt made to circularize the court	
4.			<i>Complainant may take complaint to next higher court if:</i>	43-3
5.			Court alleged to be delinquent denies complaint	
6.			Court fails to consider complaint by next stated meeting	
7.			<i>Complainant files written notice of complaint together with supporting reasons, with both the clerk of the lower court and the clerk of the higher court within 30 days following the meeting of the lower court.</i>	
8.			Action against which the complaint made not suspended, unless 1/3 of the members vote for suspension, until final decision in the higher court.	43-4
9.			Representative(s) appointed to defend action of lower court	43-5
10.			Clerk of lower court files following documents with clerk of higher court, × 30 days after receiving notice of complaint	43-6
11.			Copy of all proceedings in connection with the complaint	
12.			Notice of complaint and supporting reasons	
13.			Response of the lower court, if any	

## POSITION PAPERS

14.			Any papers bearing on the complaint.	
15.			<i>Rebuke from higher court in case of failure to thus file</i>	
16.			<i>Complainant waives right to appear with permission of court</i>	43-7
17.			<i>Complainant has abandoned complaint if fails to appear without waiving right or giving satisfactory explanation</i>	43-7
18.			Higher court hears complaint <i>if considers complaint in order</i>	43-8
19.			Higher court may appoint commission to hear complaint	43-8; 15-2,3
20.			Court notifies complainant and respondent in writing of the date set for the hearing	43-8
			<u>At the Hearing:</u>	43-9
21.			All papers bearing on complaint are read	
22.			Complainant given opportunity to present argument	
23.			Respondent given opportunity to present argument	
24.			Complainant given right of opening and closing the argument	
25.			Court or commission enters closed session	
26.			Discusses and considers merits of the complaint.	
27.			Vote taken as to what disposition should be made of the complaint	
28.			Complainant notified of the court's decision	
29.			Respondent notified of the court's decision	
30.			<i>Court may annul whole or any part of lower court's action</i>	43-10
31.			<i>Court may send matter back to lower court for new hearing</i>	43-10

### **Dissents, Protests, and Objections**

Line Nbr	Date or N/A	Initials	Item	BCO #
1.			(For definitions of D, P, & O, see BCO 45-2,3,4)	45-2,3,4
2.			D/P filed by one who had right to vote in the case	45-1
3.			O filed by one who did <i>not</i> have right to vote	
4.			D/P/O filed with clerk of lower court ×30 days following meeting of lower court, or with clerk of the General Assembly before its adjournment.	
5.			D/P/O filed with reasons ( <i>general but not necessary</i> )	45-2,3,4
6.			D/P/O in temperate language, respectful to court	45-5
7.			D/P/O recorded by court	45-5
8.			Court records answer to D/P/O <i>if deemed necessary</i>	45-5

# PCA DIGEST

## Jurisdiction

Line Nbr	Date or N/A	Initials	Item	BCO #
1.			<u>When church member removes his residence beyond bounds:</u>	46-1
2.			Certificate of dismission obtained from old Session	
3.			Certificate of dismission presented to new church	
4.			<i>If Certificate of dismission not possible:</i>	
5.			Received by the Session upon other testimonials	
6.			Old church duly notified	
7.			Elders of old church continue oversight until transfer	46-2
8.			Elders of old church inform on duty to transfer	
9.			Old church notify session of church in new bounds	
10.			<i>If transfer neglected for 1 year, name removed from roll, unless special permission granted</i>	
11.			Regular connection with new church formed	46-3
12.			<u>Associate Members:</u>	46-4
13.			All rights and privileges afforded	
14.			Barred from voting in congregational or corporate mtgs.	
15.			Barred from holding office	
16.			<u>Member who has willfully neglected church for 1 year, or has made known he/she has no intention of fulfilling vows:</u>	46-5
17.			Session follows Scriptural procedures (Matt 18)	
18.			Session deletes name from church roll	
19.			Session notifies person whose name was deleted	
20.			<u>Minister/Licentiate/Candidate dismissed from Presbytery:</u>	46-6
21.			Name of Presbytery to which dismissed, in certificate	
22.			Remains under jurisdiction until received by other Presbytery	
23.			Certificate of Dismission valid for only 1 year	46-7
24.			<u>Minister divested of his office without censure, or deposed him without excommunication:</u>	46-8
25.			Presbytery assigns him membership in some particular church, subject to approval of Session of that church	

**REPORT OF THE AD INTERIM COMMITTEE  
ON OPTIONS FOR MEDICAL INSURANCE  
TO THE 25th GENERAL ASSEMBLY OF THE  
PRESBYTERIAN CHURCH IN AMERICA  
JUNE 1997**

The 24th General Assembly adopted the following recommendations:

1. That IAR be instructed to implement a pilot Health Maintenance Organization program in at least one area of the country. IAR would test this plan or plans for that specific area and evaluate its effectiveness and feasibility for reduced costs and its ability to provide coverage for all PCA pastors and lay workers in the selected area including those considered uninsurable. Potential for expansion to other geographical areas would be included in the evaluation.
2. That IAR investigate the availability and costs of a high deductible insurance plan which would stand on its own merits or be adapted for use with Medical Savings Accounts if and when enacted by the Congress.  
(The goal of both of these recommendations is to see a significant reduction in premium costs.)
3. That the Committee be continued for one year in order to review the results of recommendations 1 and 2, report these results to the 25th General Assembly, and that it be authorized to spend up to the balance of the unused portion of its original funding mandate (approximately \$7,000).

IAR was instructed by the General Assembly to implement an HMO pilot program. A plan was implemented in Atlanta on August 1, 1996 using Blue Cross/Blue Shield of Georgia. The Committee received a report that indicated that there were a number of service issues with respect to the implementation of this pilot program which were difficult to resolve. There have also been continued minor service issues due to lack of timely responses from BC/BS of Georgia. In anticipation of August renewals, specifications have been prepared to solicit competitive alternatives.

IAR has been exploring another possibility with our present carrier, Pacific Mutual. Pacific Mutual has been in the process of developing Point of Service (POS) plans throughout the United States. POS plans look and act similarly to HMOs. During 1997 Pacific Mutual will be adding 70 POS locations, primarily in large metropolitan areas. The hope is that by January 1, 1998, the PCA plan will be able to offer a POS plan to participants in these 70 markets. The expectation is that Pacific Mutual will be aggressive on the rating structure for their POS plan. The hope is that this will serve to reduce rates for PCA participants next year.

If this should come to pass, then IAR can solicit our churches in those 70 markets and encourage them to continue or return to our program. A solid dual or triple option POS plan will be highly competitive with local or regional carriers from both a benefit and rating structure standpoint.

## PCA DIGEST

IAR also investigated the availability and costs of a group high deductible insurance plan that could stand on its own merits or be adapted for use with Medical Savings Accounts (MSA). It was determined that the cost for this type of policy would not have reduced premium costs significantly. Congress did enact legislation regarding MSAs, however, this legislation had a number of provisions that would make it unfavorable for the PCA to implement such a program as a part of its group plan. The Committee believes the MSA concept has merit and may be pursued by individuals where available.

The purpose of the Committee was to study the matter of the cost of medical insurance and determine options, if any, for the same. We wrote in our first report to General Assembly with regard to our recommendations: "The goal of both of these recommendations is to see a significant reduction in premium costs." While the cost reduction has not been significant, the exploration of options has widened. Also, since a number of circumstances have changed in the medical insurance area since the Committee's appointment, we can report to General Assembly that we have fulfilled our assignment and recommend that IAR continue to pursue options for medical insurance and report regularly to the General Assembly on its progress. As reported above, We believe that IAR is, in fact, continually investigating options in order to keep the PCA's medical insurance affordable and is seeking to secure the best coverage for the least cost.

### RECOMMENDATIONS

1. That IAR continue to pursue options for medical insurance and report regularly to the General Assembly on its progress. *Adopted*
2. That the Committee be dissolved. *Adopted*

Respectfully submitted,

/s/ TE Dominic Aquila, Chairman

/s/ TE Brent Bradley

/s/ RE Hal Shepherd

/s/ RE John White, Jr

/s/ TE Robert Ferguson

/s/ RE Ralph Paden

/s/ RE Thomas Stein

/s/ RE Will Thompson

**9<sup>th</sup> General Assembly, 1981, Appendix K, p.272**

## **THEOLOGY OF STEWARDSHIP**

A theology of stewardship is a vehicle which seeks consistently to relate the Word of God to all that is understood to be stewardship and stewardship activities.

A Biblical basis for stewardship must begin with the affirmation that God is sovereign and that we recognize Him as exercising divine ownership over all that there is (Ex. 19:5, Ps. 24:1, Ps. 50:10, Hag. 2:8).

Stewardship is exercised personally and corporately by the Church. In this paper we will seek to affirm our belief in the personal and corporate aspects of stewardship and then explore the implications these beliefs have for the stewardship programs and activities of the Presbyterian Church in America.

### **PERSONAL STEWARDSHIP**

Stewardship is first and foremost a personal matter. Each believer has a ministry (Mt. 24:14-30) in the pursuit of which he arranges his life in conformity with God's declared will, responding to His covenant call of grace.

As was his Lord, the Christian is a servant (Isa. 53, Phil. 2:4-11). The Pauline command, "Let this mind be in you, which was also in Christ Jesus," obligates us to follow closely the words of our Lord, and we discover that those words leave no room for arrogance, jealousy, prejudice or covetousness. They do not leave us the luxury of approaching life on the intellectual level in contradistinction from the commitment level. Rather, by His indwelling Spirit, Christ enables us to follow Him in being servant to all (Mark 10:43-45).

Our servanthood must be seen as sonship, for, like the father of the prodigal son, God is more interested in having sons than slaves (Rom. 8:12-17). Yet, if we are servants, we must see the nobility of our servant roll, originating as it does, not with man's duty, but with God's love, making us bondservants of the most high God, and preparing us to offer the highest service to God and men (Ac. 16:17). The enslavement to anyone or anything else will pull an individual increasingly farther from the service of God (Luke 14:26, Mat. 6:24).

When our priorities are right our servanthood is a joyful expression of faith and not a burden. God does not ask us to neglect our families but to readjust our relationship and put Him first. Likewise, He does not tell us to abandon our wealth but to use it for the purpose He has given it.

As Jesus Christ served our deepest needs, so our stewardship is to serve the deepest needs of others. Neighbor-love is paramount in the stewardship picture. Christ, in the parable of the good samaritan, showed not only that all men are our neighbors, but also that love of them will result in service to them (Luke 10:25-37). Related to this is the death of self as a part of the servant-life (John 12:24-26; Mt. 8:31-38; Rom. 12:1). Like an Old Testament sacrifice to be consumed, the believer himself is upon the altar. The more we sacrifice of ourselves, the more alive we become, and the stronger for service. Thus, our faith must direct all our decisions and affect our habits and indulgences. A man who is being sacrificed will sacrifice many false and fleeting fashions of this world. He has died to the world and self. The Lord Jesus set the example in the things he denied Himself: carnal satisfaction, popular acclaim, prestige and honor, showing His love by denying Himself while freely serving others.

A servant need not suffer unduly, or be impoverished or mediocre. What is implied by our servant-position is discipline. God gives some much and others little, but love will give insights into the way goods and gifts should be used (1 Cor. 13:3). Paul's insistence upon discipline (1 Tim. 4:7ff; 1 Cor. 9:26, 27) cues each christian to his own commitment. As servants we ask, what can we do? What can we do without? What can we do with and for others?

Each Christian has talents and abilities. These are God-appointed and give us opportunities for service. Jesus spoke of such opportunities (Mt. 25:15; Mark.. 13:34, as did Paul (Rom. 12:3-8; Eph. 4:4-16). Christians are responsible to test their capacity, rather than go on haphazardly trying to fill needs as they arise, or attempting too much for their abilities and doing work others ought to be handling. Neither approach ministers according to God's plan. Continuously, we must look to the local church and help everyone in searching out the gifts God has given him. This variety of gifts involves the use of our material resources, cars, money, homes, clothes, food, and all of worth in creation. It involves our natural and mental aptitudes, our physical strength and abilities. Each Christian should ask himself, what are my abilities? Do I have any unused ones? Do I have any undeveloped abilities?

Women have special ministries. Even since Eve, they have been endowed with a capacity for sensitivity to others, for tender love, for self-giving, and for understanding. God put human lives into women's hands in special ways through childbirth and homemaking. Also, a woman's creativity expresses itself through her relationship to the outside world and she can refresh the world through her spiritual insight and service (Prov. 31:16-31; Tit. 2:3-5).

Not only our gifts but also our possessions must be managed to fulfill responsible stewardship. Here neither covetousness nor materialism may be allowed to block the proper use of our possessions and income. Paul warns, "The love of money is the root of all kinds of evil" (1 Tim. 6:10). Paul was referring not to an occasional evil but to something that becomes an actual way of living, and which is a universal disease, having its roots in the ground of not believing God.

Basic problems in giving are the result of a lack of knowledge, faith, and love. A false sense of values and covetousness are also hindrances to Biblical giving.

Scripture very plainly sets forth principles to be observed in giving. We need to understand and know the meaning of money which is received in exchange for use of time and abilities. We should give as a part of worship (Ps. 96:8). Our giving is to be an expression of love (1 Cor. 8:8). Our giving is to be without ostentation (Mt. 6:31). We are to give freely and with simplicity (Mt. 10:8; Rom. 12:8). We should be cheerful givers (2 Cor. 9:7), and understand that generous giving is a grace or gift from God (2 Cor. 8:1,2). To "seek the Lord first" (Mt. 6:33) is the goal of life and of Christian giving (Deut. 6:17; 1 Cor. 6:2; 2 Cor. 8:12).

Christians may pose to themselves the following questions to consider seriously with respect to the expression of their faith through Christian giving: Does all my spending show a Christian sense of values? Do my offerings represent the first fruits of my income? Are spiritual causes given the priority? Are my offerings a generous portion or percentage of my income? Am I willing to live without some of the luxuries of our American life in order to share a larger portion of my goods with the Master? Am I willing now to increase my offerings by 3 or 4 percent or more if I am giving less than 10 percent, knowing that if tithing is required by God any percentage less is sin?

Is tithing to be a part of personal stewardship? There is little doubt that tithing has been a great blessing to many, but we need to re-evaluate this institution on the basis of Biblical theology. Old Testament believers brought 10 percent plus thank offerings and they were blessed. Early Christians in many cases gave more than 10 percent although God did not specifically demand more. The Old Testament shows many examples that believers should tithe and the Apostle Paul seems to imply the tithe or at least proportionate giving in 1 Cor. 16:2



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when he uses the words "...let everyone of you lay by him in store, as God hath prospered him..." Giving according to the degree of prosperity certainly has the tithe in view when you consider the Jewish viewpoint of stewardship. Yet Christian stewardship recognizes not only a tenth but all as belonging to God and man acts as the trustee of all. New Testament giving is not a hard and cold fact of decimals and arithmetic, but is the practice of love (John 14:15; 2 Cor. 8:24).

"Christ Himself has placed His approval and set His imprimatur upon the tithe, as the proper old covenant observance, "Woe unto you, scribes and Pharisees, hypocrites! For ye pay tithe of mint and anise and cummin, and have omitted the weightier matter of the law, judgment, mercy and faith: these ought ye to have done, and not to leave the other undone" (Mt. 23:23). In that verse Christ is rebuking the scribes and Pharisees because of their hypocrisy. They had been very strict and punctilious in tithing the herbs, but on the other hand they had neglected the weightier matters such as judgment, or justice, and mercy. But while Christ acknowledged that the observance of justice and mercy is more important than tithing – it is a 'weightier matter' – while, He says, these they ought to have done, nevertheless He says, these other yet ought not to have been left undone. He does not set aside the tithe, as he might easily have done here. He places justice and mercy as being more weighty, but he places His authority upon the practice of tithing by saying, "These ought ye to have done, and not to leave the other undone." It is well for us if we by the grace of God have not omitted justice and mercy and faith: It is well if by the grace of God those things have found a place in our midst, but the tithing ought not to have been left undone, and Christ Himself says so."<sup>1</sup>

Actually, the tithe is not man's real problem. His real problem is in putting God first and giving generously. God's grace is sufficient to lift us even after the 10% is passed and enable us to go beyond that standard. Many people have real spiritual problems and attitudes to conquer first before they can consider tithing. God's Word challenges us that to withhold a tithe is to rob God.

### CORPORATE STEWARDSHIP

It is evident from Scripture that as God's people, we are not only to be stewards of life, time and treasure, but also stewards of the Gospel of Christ. The apostle Paul states in 1 Thes. 2:4, "But as we were allowed of God to be put in trust with the Gospel, even so we speak; not as pleasing men but God which trieth our hearts." The concept of the stewardship of the Gospel is implied throughout the Pauline epistles in such verses as Gal. 2:7; Col. 1:25; 1 Tim. 1:11; Titus 1:3.

The primary responsibilities of the church are the worship of God, the evangelization of the world and the edification of the church through the proclamation of God's Word (Mt. 28:19-20, "Go ye therefore, and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost: teaching them to observe all things whatsoever I have commanded you: and lo, I am with you always, even unto the end of the world")

On the basis that the church is entrusted with the Gospel of Christ, we can define corporate stewardship as "the orderly practice of mobilizing the total dedicated potential of the whole church, based on the conviction that this is a trust from God and fully implementing His will in the building of His kingdom at home and in all the world."<sup>2</sup>

It is important that a theology of stewardship be bound inextricably to the purposes and goals of the church as a whole. H. G. Colner has written: "That God has elected His people to be His agents of reconciliation is a claim made not by the church but on the church by its Lord.

<sup>1</sup> Arthur W. Pink, *Tithing* (Swengel, PA), p. 12

<sup>2</sup> Waldo J. Werning, *The Stewardship Call*, (St. Louis, 1970), p. 154

This claim is to be accepted humbly and fearfully by the Christian church...The nature of the church as the reconciled community is inseparable from the function of the church as the agent, or minister, of reconciliation."<sup>3</sup>

The Biblical basis for a corporate effort in stewardship is based upon the interdependency of believers. The church as the body of Christ has many members, but these members are to function together. Both 1 Cor. 12 and Rom. 12 focus on the mutual dependence of the members of the body.

Specifically, Scripture gives us examples of how a group ministry of stewardship functions. In the Old Testament, corporate stewardship was exercised in the collection of gifts for the building of the Tabernacle, Ex. 35:22 "And they came and both men and women, as many as were willing hearted, and brought bracelets, and earrings, and rings and tablets all jewels of gold: and every man that offered, offered an offering of gold unto the Lord."

Corporate giving was also demonstrated in the collection taken for the repairs needed for God's House. Second Chronicles 24:10 states "And all the princes and all the people rejoiced, and brought in and cast into the chest, until they had made an end."

The New Testament provides further examples of group stewardship. The early church was engaged in meeting the needs of its poorer members. Acts 4:34 and 35 relates, "Neither was there any among them that lacked: for as many as were possessors of lands or houses sold them, and brought the prices of the things that were sold, and laid them down at the apostles' feet: and distribution was made unto every man according as he had need." It should be an objective of each church to provide support for its needy members. This responsibility should not be given to the state.

The early church exercised corporate stewardship in the supporting of the Apostle Paul as he proclaimed the Gospel of Christ: "For even in Thessalonica ye sent once and again unto my necessity." (Phil. 4:16).

The primary concern of group stewardship is not in the raising of money but in corporately reaching the world for Christ through the equipping of the saints and the proclamation of the Gospel (Eph. 4:7ff). Corporately the church must seek not just to raise money but to raise men.....for I seek not yours but you.: (1 Cor. 12:14).

Responsibility in stewardship is both corporate and personal. Along with our responsibility we must also acknowledge our accountability. Scripture tells us that God's people are to be held accountable for their stewardship. In Luke 12:48 we are told, "...For unto whomsoever much is given, of him shall be much required: and to whom men have committed much, of him they will ask the more."

It may be further stated that we are accountable to God for choosing certain areas within the church in the exercise of our stewardship. As stewards we must submit ourselves to God who "alone is the Lord of the conscience."

There is a tremendous responsibility placed upon a man, who for example, chooses where he will place the greater portion of his contribution to Christ's Church. His decision must be based upon a prayerful, studied inquiry into the Word of God. A. A. Hodge in his commentary on the Westminster Confession of Faith states, "All christians promiscuously are commanded to search the scripture and to resist the authority even of legitimate church rulers when it is opposed to that of the Lord of the conscience." This certainly does not excuse giving to the work of the church, if fact it amplifies the responsibility of the steward to make his giving a thoughtful, deliberate, prayerful act, knowing he must give an account to God for his decision.

As stewards who are to be held accountable we must prayerfully seek to exercise our stewardship in a manner that is consistent with and obedient to God's Word.

<sup>3</sup> Harry G. Colner, "The Secret of God's Plan," *Concordia Theological Monthly*, XXXIV, No. 5 (May 1963), 274

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Corporately, the members of the Presbyterian Church in America exercise their stewardship through the denomination as it operates on four principles of stewardship adopted by the General Assembly: (1) The church is responsible for carrying out the Great Commission. (2) The work of the church as set forth in the Great Commission is one work, being implemented on the General Assembly level through our equally essential committees. (3) It is the responsibility of all member congregations to support the whole work of the denomination as they be led in their conscience held captive to the Word of God. (4) It is the responsibility of the General Assembly to evaluate needs and resources, and to act on priorities for the most effective fulfillment of the Great Commission. We believe that this paper affirms the validity of these four principles as being a scripturally sound and worthy basis for corporate stewardship.

### IMPLICATIONS

The question to be raised is, To what extend do the present methods of raising funds for the work of the church conform to the underlying principles of stewardship as found in God's Word?

The present practice within the PCA is that each of the four major committees has the responsibility of raising its own budget.

It is not possible to prove from scripture whether this principle of operation for the General Assembly is Biblical or not. However, we can take the Biblical basis for stewardship that we have already discussed and apply the principles for giving to the practices of these four committees in their fund raising activities.

It is evident that tensions can exist in the implementation of two of the principles under which the General Assembly operates. Those principles are: (1) the work of the church as set forth in the Great Commission is one work being implemented on the General Assembly level through our equally essential committees, and (2) it is the responsibility of every member and every member congregation to support the whole work of the denomination as they are led in their conscience held captive to the Word of God. The tension which can exist between these two principles is a result of the question that if the work of the church is truly one work why should a congregation or individual express discrimination in his giving to individual committees? The fact is that both of these principles are valid. The work of the church is one work and a Christian does have the prerogative to designate his giving according to the dictates of his conscience as he is led by the Lord. Tension between these two principles occurs only when there is a lack of trust between members of the body of Christ within the denomination.

We have already stated that the Biblical basis for corporate effort in stewardship is based upon the interdependency and unity of believers as members of the Presbyterian Church in America we must act in good faith and with mutual trust for one another, believing that our system of government provides the checks and balances that will keep us from being led astray. Such mutual trust is fitting in the church of the Lord Jesus, who prayed that they all might be one, (John 17:21). It was characteristic of the early church to manifest this oneness and mutual trust through having all things common (Acts 2:44,45). Betrayal of this trust had serious repercussions, which were lost on the church at large (Acts 5:5, 11). The very proof that we are possessors of eternal life is said to be our love of the brethren (1John 3:14). This love of brethren is of the essence of the Christian message (1 John 3:11), is an imperative because of God's love for us (1 John 4:11), evidences the maturing of God's love within us (1 John 4:12), and is the test of our love for God Himself (1 John 4:20). In such an atmosphere of love, there is no room for mistrust (1 John 4:18).

We need to practice the Biblical principle of 1 Corinthians 10:24 which states, "Let no man seek his own good, but the good of his neighbor." Waldo J. Werning has written "There

can be no individualism that allows any member to go his own way and ignore his responsibility to the group or deny the group's responsibility to him... True stewardship can hardly be exercised if there is little or no edification and ministry to one another by individual Christians."<sup>4</sup>

The trust that we exercise towards one another should affect our stewardship in two ways. First, we should trust God that He will direct the consciences of our members to give to the work of the church through its four committees. Secondly, as we exercise our stewardship in giving to the work of the church, we should trust our committees to faithfully carry out the work of the church and not withhold our gifts because of lack of trust.

The recent history of many denominations reflects a familiar pattern: Liberalism, having crept in by stealth and subterfuge to take control of the ecclesiastical machinery, changes its tactics, once power, lording it over God's heritage in such key areas as disposition of funds, Christian education and ministerial preferment. By alternating strategies of sweet reasonableness when in the minority and of iron-fisted tyranny when in the majority, the liberals have exposed themselves and exhausted whatever reservoir of goodwill and trust they had with conservatives. The Presbyterian Church in America, owing much of its beginning impetus to the reaction against such things, has quite a different (though brief) history.

It is possible for these two principles (the work of the church is one work and Christians may give as they are led by God) to be effective in the stewardship ministry of the church provided that they exist in a framework of Biblical trust and unity.

Raising funds for the ongoing work of the church by the General Assembly's committees is a necessary part of stewardship, provided that the methods and messages employed are biblically based. The Apostle Paul did not hesitate to mention the need for giving to his "necessity" in his letter to the Phillippians. Also, as believers, we are to "provoke one another unto love and good works" (Phil. 4; Heb. 10:24).

In his book, "The Stewardship Call," Waldo Werning, in discussing methods and motivation in stewardship programs, states: "God motivates as we serve one another by proclaiming His covenant Word of Grace. Faithfulness to the call is always the product of the Gospel. Stewardship can have no other foundation than the gospel of forgiveness. God's absolving and strengthening grace is the theological thread in His plan that keeps all stewardship messages and activities in proper perspective."<sup>5</sup> Our goal in stewardship education should be to present the message of God's grace in such a way that those who receive it can respond with proper decisions as to the stewardship of all of life.

Again we must remind ourselves of the trust and unity that we must exercise in our efforts to raise funds. Not only do we expect the members of the institutional church to trust us, but the committees involved must also exercise that same trust and unity among and toward each other. "The institutional church needs to remember the diversity that exists in the unity of the body through the priesthood of believers and to encourage the expression of diversity instead of demanding blind conformity. The church will do well to idealize instead of demanding blind conformity. The church will do well to idealize this diversity and speak of the great number of stewardship possibilities under grace. Church government and forms are something members need, but not at the expense of diversity. The church must not be a party to a divisive and inadequate loyalty."<sup>6</sup> As the Assembly's committees plan, seek funds and carry on the work of the church, they must also function in such a way as to practice daily the Biblical principle "in honor preferring one another."

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<sup>4</sup> Waldo J. Werning, p. 97

<sup>5</sup> Ibid. p. 55

<sup>6</sup> Ibid. p. 139

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### IMPLEMENTATION

The practice of Biblical stewardship throughout The Presbyterian Church in America is enhanced and aided by the work of the Subcommittee for Stewardship Ministries. It is important that the role of this Subcommittee be clearly defined and understood by the members of the denomination. Acting under the direction of the Committee on Administration, the Subcommittee for Stewardship ministries provides an adequate base for cooperation. The way the Subcommittee is constructed by having two members from each of the four permanent committees and the four coordinators as advisory members, leads itself to a place where cooperation can take place. The Subcommittee does not function as an executive board, but it can adequately serve as a place where ideas can be heard and long-range plans can be discussed.

The Subcommittee for Stewardship also provides an adequate forum for discussion of ideas and plans. We must recognize that there will be times when plans for activities will overlap. The Subcommittee on Stewardship is one place where discussion of these overlapping plans could take place. Frank discussion in this area should be made in a spirit of love, trust and unity. It should be clearly understood that in our system of Presbyterian polity no decision of a committee where discussion of these ideas takes place would be binding. However, such frank discussion is helpful and could act as one more deterrent to divisiveness and so-called "competition" among committees and at the same time could promote the atmosphere of love, trust and unity that is needed for the proper functioning of a stewardship ministry.

The Subcommittee on Stewardship Ministries should also provide an adequate base for the implementation of stewardship programs. According to the *General Assembly Minutes*, the Subcommittee for Stewardship is to be itself a servant to the Presbyteries and the membership of each local church within the denomination. The Subcommittee seeks to inspire and inform the people in both the theology and practice of Biblical stewardship, with a goal of enlisting each member of each local congregation in a revived personal commitment of time, talent, and treasure to Christ.<sup>7</sup> The Subcommittee, in consultation with the four major committees, should continue to initiate general stewardship programs within the church. The Subcommittee also seeks to aid in informing the members of the denomination of the stewardship needs. The implementation of such programs as the Vision 79 conferences and the recent surveys of the denominations are examples of how the Subcommittee for Stewardship Ministries provides a basis for the implementation of the stewardship program of the whole church. The Subcommittee For Stewardship Ministries should continue to act as a servant of the four major operating committees of the denomination who in turn act as servants to the members of the Presbyterian Church in America. "The quality of Christian life in the world and in the church is derived from the member's Head, and that quality is servant in nature."<sup>8</sup>

It is incumbent upon all of God's people to exercise stewardship in every area of their lives. Our motivation for stewardship must be based upon a love for God and a desire to be obedient to His Word. "He that hath my commandments and keepeth them, he it is that loveth me: and he that loveth me, shall be loved of my Father, and I will love him and will manifest myself to him." (John 14:21). Thus motivated, the church through its members, officers and courts must continue to teach and exhort one another in the area of stewardship. Stewardship efforts exercised within the church and implemented through committees, programs and literature are an important part of the total ministry of the church as it seeks to reach into all the world through evangelism and edification.

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"Report of the Subcommittee on Stewardship," *Commissioners Handbook* for the Third General Assembly (Sept. 1975), p. 50

<sup>8</sup> Waldo J. Werning, p. 65

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### BIBLICAL REFERENCES

- Page 472** Ex. 19:5; Ps. 24:1; Ps. 50:10, Hag. 2:8; Mt. 24:14-30, Is. 53, Phil. 2:4-11; Mark 10:43-45; Rom. 8:12-17; Acts 16:17; Luke 14:26; Mt. 6:24; Luke 10:25-37; John 12:24-26; Mark 8:31-38; Rom. 12:1
- Page 473** 1 Tim. 4:7; 1 Cor. 13:3; 1 Cor. 9:26-27; Mt. 25:15; Mark 13:34; Rom. 12:3-8; Eph. 4:4-16; Prov. 31:16-31, Titus 2:3-5; 1 Tim. 6:10; Ps. 96:8; 2 Cor. 8:8; Mt. 6:31; Mt. 10:8; Rom. 12:8; 2 Cor. 9:7; 2 Cor. 8:1, 2; Mt. 6:33; Deut. 6:17; 1 Cor. 6:2; 2 Cor. 8:12; 1 Cor. 16:2
- Page 474** John 14:15; 2 Cor. 8:24; Mt. 23:23; 1 Thes. 2:4; Gal. 2:7; Col. 1:25; 1 Tim. 1:11; Titus 1:3; Mt. 28:19-20
- Page 475** Ex. 35:22; 2 Chron. 24:10; Acts 4:34, 35; Phil. 4:16; Eph. 4:7; 1 Cor. 12:14; Luke 12:48
- Page 476** John 17:21; Acts 2:44, 45, Acts 5:5, 11; 1 John 3:14; 1 John 3:11; 1 John 4:11; 1 John 4:12; 1 John 4:20; 1 John 4:18; 1 Cor. 10:24
- Page 477** Phil. 4; Heb. 10:24
- Page 478** John 14:21

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**22nd General Assembly, 22-70, p. 258.**

3. That the General Assembly adopt the position paper, "The Relationship of Agencies to the General Assembly, Presbyterian Church in America," as amended *Adopted*

### **THE RELATIONSHIP OF AGENCIES TO THE GENERAL ASSEMBLY PRESBYTERIAN CHURCH IN AMERICA**

Adopted as Amended June 10, 1994

From time to time questions arise regarding the relationship of committees and agencies of the General Assembly to the General Assembly of the Presbyterian Church in America. The issue may be rephrased differently: Does the General Assembly have authority over the committees and agencies which it erects for the ongoing conduct of the business of the General Assembly? Is a committee or agency accountable to the General Assembly? And may the General Assembly require a legal audit of its organizations, including its committees and agencies?

The answer to all of these questions is a decided yes.

#### **I. THE AUTHORITY OF THE GENERAL ASSEMBLY**

When the PCA was organized in 1973 it took a very clear position regarding the authority of the General Assembly in writing the *Book of Church Order*. The General Assembly constitutes the denomination, both spiritually and civilly when it is in session. The *BCO* spells out how the General Assembly will perform the various duties it desires to perform. Some of these duties will be done through action of the General Assembly itself, some will be done through its duly elected officers, some will be done through committees, some will be done through committees of commissioners, and some will be done through separate corporations.

The *BCO* is part of the Constitution of the PCA (*BCO*, Preface III). The following quotations gives a very clear picture of the authority of the General Assembly over its committees and agencies.

*BCO* 14 on "The General Assembly" says:

"The work of the Church as set forth in the Great Commission is one work, being implemented at the General Assembly level through equally essential committees" [*BCO* 14-1 (3) emphasis added].

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"The Assembly's Committees are to serve and not to direct any Church judicatories. They are not to establish policy, but rather execute policy established by the General Assembly." [BCO 14-1 (7) Emphasis added.]

Furthermore, BCO 14-6 specifies that the General Assembly has certain powers: including (f) which states "to institute and superintend the agencies necessary in the general work of evangelization." And then again, BCO 14-6 (i) clearly states "to superintend the affairs of the whole Church". (Emphasis added.)

The corporate documents specify the civil authority of the General Assembly. The corporate Bylaws state in Article II, section 1:

"The members of the corporation shall be those duly ordained Teaching Elders (Ministers) enrolled in a Presbytery affiliated with the Presbyterian Church in America, and those Ruling Elders representing local congregations, which congregations are affiliated with Presbyteries affiliated with the Presbyterian Church in America who have been designated or commissioned to attend the next General Assembly of the Presbyterian Church in America. ... Such individuals shall be members of the corporation until the next meeting of the General Assembly..."

The "Certificate of Incorporation" (also known as the Charter of Incorporation) states in article Sixth:

"The directors need not be members of the corporation unless so required by the Bylaws. The board of directors shall be elected by the members at the annual meeting of the corporation to be held on such date as the Bylaws may provide, and shall hold office until their successors are respectively elected and qualified. ... The board of directors may, by resolution or resolutions, passed by a majority of the whole board, designate one or more committees, which to the extent provided in said resolution or resolutions or in the Bylaws of the corporation shall have and may exercise all the powers of the board of directors in the management of the activities and affairs of the corporation and may have power to authorize the seal of the corporation to be affixed to all papers which may require it..."

Clearly the BCO and the corporate documents reflect the concept that committees and agencies are fully responsible and accountable to the General Assembly while doing the work of the General Assembly.

## II. HISTORICAL BACKGROUND

In order to appreciate the PCA position, a brief historical background of the various options will prove helpful.

In the 19th century, James Henley Thornwell of the Southern Presbyterian Church and Charles A. Hodge of Princeton Theological Seminary carried on an extensive discussion in correspondence and theological journals on the question of the relationship of "boards" and "committees" to the General Assembly. There was also considerable debate on the floor of the General Assembly of the Presbyterian Church in 1860. Dr. Morton H. Smith summarizes Thornwell's views and the actions of the 1861 General Assembly of the PCUS as follows:



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"The question was whether the Church should appoint Boards to carry on its work or not. Thornwell maintained that such Boards were, in effect, new Church courts, and had no Scriptural authority. It was his proposal that the Church must itself carry on its work, using committees of a temporary nature, but not permanent Boards, which acted independently of the Church Courts, and without being responsible to the Courts. Though Princeton thought prevailed in 1860, Thornwell's view was adopted by the Southern Presbyterian Church in 1861, when the Assembly appointed Committees on Foreign Missions, and Home Missions, etc."<sup>77</sup>

The distinction is further elucidated by J. A. Hodge, in *What is Presbyterian Law*. He gave the following answer to the question "What is the difference between a Standing or Permanent Committee and a Board?":

"A committee, standing or permanent, is "bound in all cases to act according to the instructions of the Assembly, and is under the necessity of receiving its sanction to all the measures which it may propose." A Board has "full powers to transact all the business of the missionary cause, only requiring the Board to report annually to the General Assembly." It can carry on its work with vigor and unity of design, and enjoy the benefit of the advice and counsel of the Assembly."<sup>78</sup>

Several examples will suffice to illustrate the differences: In the early 20th century, the Board of Foreign Missions of the PCUSA (the Northern Presbyterian Church) was sending liberal missionaries who knew nothing of the evangelical gospel of Jesus Christ. Repeated efforts had been made by the vast majority of evangelical ministers in the PCUSA to have these missionaries recalled but to no avail. The General Assembly was either unwilling or unable to overrule the Board of Foreign Missions.

By 1934, J. Grescham Machen established the Independent Board for Presbyterian Foreign Missions both in protest as well as to insure that the gospel of Jesus Christ with all of its purity and authority from the Word would be proclaimed. In accordance with its name, it was independent of any ecclesiastical oversight, controlled by a self-perpetuating board. The General Assembly turned on the men who were on the IBPFM requiring them to cease and desist their operations. When they refused, they were brought to trial and ousted from the PCUSA in 1936. This resulted in the formation of the Presbyterian Church of America (later changing its name to Orthodox Presbyterian Church).

In 1937 the OPC established committees completely under the control of the General Assembly, rather than boards for carrying out the various tasks of missions and Christian education.

Likewise, the Southern Presbyterian Church by the mid 20th century had moved away from Thornwell's position by establishing Boards for carrying out the task of the Church.

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<sup>77</sup> Morton H. Smith, *Studies in Southern Presbyterian Theology*, page 174, Presbyterian Reformed Publishing Company, 1987)

<sup>78</sup> J. Aspinwall Hodge, *What Is Presbyterian Law*, 5th Edition, 1884, Presbyterian Board of Publishers

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Thus, the Board of Christian Education (PCUS) took a leading role in rewriting the "Covenant Life Curriculum" for Sunday School classes. This curriculum was saturated with unbiblical neoorthodox theology. This kind of problem in the Southern Presbyterian Church culminated eventually in the formation of the National Presbyterian Church in 1973 (later Presbyterian Church in America).

In 1982, the PCA received the Reformed Presbyterian Church, Evangelical Synod through the process of joining and receiving. The RPCES had as one of its roots, the Bible Presbyterian Church (which broke away from the Orthodox Presbyterian Church in 1937) as well as the Reformed Presbyterian Church (which had its roots in Scotland as far back as 1774). Early on, the Bible Presbyterian Church supported the Independent Board for Presbyterian Foreign Missions and also became a strong advocate of independent boards not under the control of the General Synod. This went to the extreme of total independency.

However, after two or three decades of independency, by the time the RPCES was formed in 1965, it had begun to have boards, erected by the General Synod, thus bringing a tangible degree of oversight and control into play. They had a measure of freedom, nevertheless the General Synod elected members of the boards of agencies, required accountability from them, reviewed their minutes, received reports, and gave instructions for actions or policies.

The PCA has recognized the legitimate place of independent agencies. For example, there are many highly respected institutions with no corporate links to the denomination. Some of these are: Reformed Theological Seminary, Westminster Theological Seminary, the Presbyterian Evangelistic Fellowship, Quarryville Presbyterian Home, to name a few.

As a matter of fact, as late as 1989, the General Assembly took a strong position that some institutions should probably be totally independent. The following recommendation was adopted:

"That the 17th General Assembly encourage churches and presbyteries considering the development of specialized ministries, such as retirement homes and conference centers, to obtain competent legal counsel in order to organize and operate a corporation separate from the church.

GROUNDWORK: (1) A specialized ministry, such as a retirement home or a conference center, involves many additional areas of exposure to liability that it warrants a separate corporation. Although such an institution may legitimately be a part of the church's ministry, the many risks involved could needlessly place the church's assets at risk if the retirement home were included in the church's corporation. Suits for such matters as personal injury and financial improprieties would place the church's assets in jeopardy.

(2) A separate corporation with a separate Board of Directors would not only mean more legal protection for the church, a separate corporate structure would also mean that the retirement home would have more effective oversight and preservation of its own assets than if it were lumped in with all of the church's other ministries." (M17GA, p.132).

By contrast, the committees and agencies of the PCA General Assembly are not independent. The PCA has taken a very strong position in many respects similar to Thornwell's

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position that "the Church must itself carry on its work using committees of a temporary nature but not permanent boards which acted independently of the church courts and without being responsible to the courts".

### III. CONSTITUTIONAL AND CORPORATE DOCUMENTS

#### A. BOOK OF CHURCH ORDER

Earlier, the *Book of Church Order* which is a part of the constitution of the Presbyterian Church in America according to *BCO* Preface III was quoted. For the sake of ease, it will be well to repeat the relevant portions of the *BCO* specifically from *BCO* 14 regarding "The General Assembly".

"14-1. The General Assembly is the highest court of this Church, and represents in one body all the churches thereof. It bears the title of The General Assembly of the Presbyterian Church in America, and constitutes the bond of union, peace and correspondence among all its congregations and courts.

"Principles for the Organization of the Assembly

"3. The work of the Church as set forth in the Great Commission is one work, being implemented at the General Assembly level through equally essential committees.

"7. The Assembly's committees are to serve and not to direct any Church judicatories. They are not to establish policy, but rather execute policy established by the General Assembly."

#### 1) The Administrative Committee:

"12. The Administrative Committee of General Assembly shall consist of twenty (20) members:

a. Eleven members in classes elected through the standard nomination and election procedure,

b. One member each from the following program committees or agencies:" (The list abbreviated includes: CE&P, Cov. Col., CTS, IAR, IFBD, MNA, MTW, PCAF, RH)

It should be noted that the Corporate Bylaws III, Section 2 stipulates that the Administrative Committee serves also as the Board of Directors of the Corporation. See comments about the composition under Board of Directors in the Bylaws below.

#### 2) The Power of the General Assembly:

*BCO* 14-6. "The General Assembly shall have power: ...

"f. To institute and superintend the agencies necessary in the general work of evangelization; to appoint ministers of such labors as fall under its jurisdiction; ...

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"g. To suppress schismatical contentions and disputations, according to the rules provided therefor; ...

"i. To superintend the affairs of the whole Church;"  
(Emphasis added.)

It is clear from the above, that the committees and agencies that are erected by the General Assembly are under its supervision and control. The committees and agencies that are thus erected are under its control and thus are responsible and accountable to the General Assembly for the work that has been entrusted to them.

### **B. RULES OF ASSEMBLY OPERATION**

The position stated above is further supported by the Rules of Assembly Operation (RAO) and the Corporate Bylaws. By having these two separate documents, the PCA recognized a development in the civil legal system since the turn of the century, namely, the development of non-profit legal corporations. To a certain degree, distinctions of the past between "boards" and "committees" were largely semantic. The use of a non-profit corporation raised the possibility of legal distinctions.

The Rules of Assembly Operation set out rules to govern the ecclesiastical operations of the General Assembly. Significant for our purpose are the following rules:

#### "RAO IV. Committees and Agencies

"4-1. The affairs and programs of the General Assembly shall be conducted primarily through its Permanent Committees and Agencies.

"4-2. The Permanent Committees are those specifically created by the *Book of Church Order*:

Administrative Committee (AC)  
Christian Education and Publications (CE&P)  
Mission to the World (MTW)  
Mission to North America (MNA)

"The Administrative Committee shall function as a service committee to the General Assembly and the denomination. The Committees on Christian Education, Mission to North America and Mission to the World shall be known as Program Committees.

"4-3. The agencies are:  
Covenant Theological Seminary  
Covenant College  
Ridge Haven Conference Center  
Insurance, Annuities and Relief  
Investors Fund for Building and Development  
PCA Foundation

"The relationship of the Agencies to the Assembly remains as a committee although they may be incorporated separately for civil purposes.

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The composition and responsibilities of the Agencies are set forth in the Bylaws." (Emphasis added.)

"13-1. All business shall ordinarily come to the floor of the Assembly for final action through Committee of Commissioners....."

The oversight that General Assembly has over the committees is also expressed in RAO 13, "Committee of Commissioners", which identifies both the committees and the agencies which report to the General Assembly through committee of commissioners. The committees of commissioners are responsible to the General Assembly for reviewing (actions, minutes, budgets, reports, etc.), evaluating, auditing the committees and agencies, and for reporting to the General Assembly. In doing these tasks they serve the General Assembly, by asking "Is their ministry and work that which has been approved by the General Assembly?" This can be put positively, "Is this committee or agency doing what has been assigned to them by the General Assembly?" and negatively, "Is this committee or agency doing something that has not been assigned?" All of this points to the full responsibility and accountability of the agencies as well as the committees under the authority of the General Assembly.

### C. THE CORPORATE BYLAWS

The Corporate Bylaws specifies the members of the Presbyterian Church in America (A corporation) in Article II, Section 1:

"The members of the corporation shall be those duly ordained Teaching Elders (Ministers) enrolled in a Presbytery affiliated with the Presbyterian Church in America, and those Ruling Elders representing local congregations, which congregations are affiliated with Presbyteries affiliated with the Presbyterian Church in America who have been designated or commissioned to attend the next General Assembly of the Presbyterian Church in America."

**The Board of Directors:** The Corporate Bylaws further identifies the Board of Directors in Article III, Section 2:

"The Board of Directors shall consist of the members of the Administrative Committee of General Assembly."

As noted above, the Administrative Committee currently is composed of twenty members, eleven members elected at large from the General Assembly and one member from each of the program committees and agencies (see BCO 14-1,(12) and note above).

It would be well to note that originally there were only three program committees and no agencies. Hence, the Board of Directors/Committee on Administration (as it was known) included six members not elected by General Assembly directly, two each from the three program committees. This was changed by the General Assembly in 1990 in the RAO and included in the BCO in 1991 after the Ad Interim Committee on General Assembly Structure realized that none of the agencies had representation on the Board of Directors. In making these amendments, the Ad Interim Committee and the General Assembly recognized that there was a vital connection of all the committees and agencies and the General Assembly with its Board of Directors.

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**Permanent Committees:** Article V speaks of The Particular Permanent Committees:

"A. The Administrative Committee of General Assembly.

"The business affairs of the Corporation as distinguished from the ecclesiastical matters, and those not specifically assigned to one of the other permanent committees by these Bylaws or an act of the General Assembly, shall be managed by the Administrative Committee, which serves as the Board of Directors provided in the Charter of Incorporation, subject to such rules and regulations as may be prescribed by the General Assembly, including all applicable provisions of the *Book of Church Order*.

"E. Other Committees

"The Assembly may elect or appoint other committees of either a permanent or temporary character to handle particular matters of business as designated by the Assembly. The business handled by such committees shall be limited to those matters assigned by the Assembly.

**Boards of Agencies:** Article V also speaks to the erection of agencies and their relationship to the General Assembly.

"F. Boards of Agencies

"When it is necessary for the handling of civil matters, the General Assembly may authorize one of its committees or agencies to incorporate and to form a board. The relationship of the board to the Assembly remains as a committee, and the provisions of the corporation charter and bylaws shall be in conformity with the constitution of the Church."

Article VI, Other Boards and Agencies states:

"The Assembly has authority to make exceptions to the above guidelines for some boards, agencies and committees not specifically covered by the BCO, by making amendments to these bylaws spelling out the specific exceptions, as well as approving corporation bylaws in conformity with these exceptions." (Emphasis added.)

Again, it is explicit that the relationship of the agencies to the Assembly remains as responsible and accountable as any committee of the General Assembly. Only when the General Assembly approved bylaws spell out specific exceptions, may those agencies act in a different manner from what has already been spelled out either in the RAO or in the Bylaws.

Finally, Article VIII, Ecclesiastical Matters states:

"Section 1. The ecclesiastical Constitution of the Church is defined in the *Book of Church Order*, Preface III. The provisions of the Constitution shall control over any provisions of these Bylaws that may be in conflict therewith." (Emphasis added.)

### D. THE CERTIFICATE OF INCORPORATION

The Certificate of Incorporation (sometimes referred to as the Charter of the Corporation) designates the Board of Directors of the Corporation to manage the affairs of the corporation as follows:

**"SIXTH. —** The civil activities and affairs of the corporation shall be managed by a board of directors. The number of directors which shall constitute the whole board shall be such as from time to time shall be fixed by, or in the manner provided in, the

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By-Laws, but in no case shall the number be less than three. ... The board of directors may, by resolution or resolutions, passed by a majority of the whole board, designate one or more committees, which to the extent provided in said resolution or resolutions or in the Bylaws of the corporation shall have and may exercise all the powers of the board of directors in the management of the activities and affairs of the corporation and may have power to authorize the seal of the corporation to be affixed to all papers which may require it; ..."

In summary, the relationship of the four permanent committees to the General Assembly is directly tied to the Presbyterian Church in America (A Corporation), and the Board of Directors of the Presbyterian Church in America (A Corporation) has authority to manage the civil affairs of the Corporation between meetings of the General Assembly. (See also Bylaws, III.1 and V.A.)

The relationship of the boards of agencies to the Presbyterian Church in America (A Corporation) and to the General Assembly is also "as a committee", under the authority of and responsible to the General Assembly. The General Assembly has created the agencies, allowing them to incorporate so that they may have the benefit of being a civil entity, but they remain as an affiliate of the Presbyterian Church in America (A Corporation). The agencies which were received by the Joining and Receiving of the RPCES have the same relationship to the General Assembly. It should be clear that the General Assembly has "power" to erect separate corporations or agencies which are to be treated as though they are committees of the General Assembly. This constitutes an "agreement" or "understanding" between the General Assembly and the separate non-profit corporations that they can be called to account to the General Assembly.

Thus, the relationship of agencies to the General Assembly as described above is evident by the following facts which includes but is not limited to them: (1) The General Assembly acting in its civil capacity has power to establish corporations and to elect the members of the boards of the corporations. (2) As committees they are responsible to General Assembly and are required to report to the General Assembly every year. (3) The budgets of each agency must be adopted by the General Assembly. (4) The General Assembly must approve the financial auditors. (5) The General Assembly reviews the minutes of the agencies as it does those of the committees. (6) General Assembly has power to grant or to revoke specific tasks for the agencies as it does for the committees.

#### **IV. CONTRAST WITH RELATION OF PRESBYTERIES AND SESSIONS TO GENERAL ASSEMBLY**

Some have mistakenly tried to apply the principle of the separate civil relationship between General Assembly and the other courts of the church, i.e. presbyteries and sessions, to the relationship of the General Assembly to its committees and agencies.

As a matter of fact, the committees of the General Assembly are not separate entities but are separate representatives of the General Assembly that have been authorized to take certain action for and on behalf of the General Assembly. At the same time, while the separate corporations are separate legal entities, insofar as their relationship with the General Assembly is concerned they are not to be treated as separate corporations but as committees. Accordingly the committees and agencies (separate corporations) are completely subject to the General Assembly from both the spiritual as well as the civil standpoint. They have such duties, powers

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and authority as is vested in them by the General Assembly and, since they are acting for and on behalf of the General Assembly (even though some may be separately incorporated and may take certain action with third parties that are binding upon the parties even though the action is not specifically authorized by the General Assembly) they are, as between the parties, subject to the orders and instructions given them by the General Assembly.

This relationship is to be contrasted with the relationship between the General Assembly, on the one hand, and the presbyteries or local congregations, on the other hand. The presbyteries and local congregations are organized as separate legal entities by virtue of the action of their members and not by any action of the General Assembly. They constitute separate and distinct legal entities from the General Assembly. However, by virtue of these separate legal entities being accepted as part of the denomination they then recognize their subjection to the spiritual oversight of the General Assembly. All of this is set forth in the *BCO*.

In June 1986, the 14th General Assembly clarified this position by adopting a paper entitled "The Philosophical and Theological Basis for Our PCA Structure". The relationship of the General Assembly with regard to the courts of the church is stated succinctly in the following paragraph:

"The courts of the PCA have a spiritual/moral relationship with one another with regard to their separate responsibilities, authority, and accountability, but they have *no civil* authority, responsibility, or accountability toward one another even though each of them does have a civil relationship with the state with regard to their property, charters of incorporation, and other state and/or federal laws. The higher courts may not proceed in such a way that would constitute civil action on behalf of the congregation without a formal vote of the congregation. In order to be effective, any such civil action must be with the consent or approval of the congregation, which consent or approval is given in accordance with the civil laws under which the congregation is organized."<sup>3</sup>

Thus, it would be a mistake to equate the relationship of the General Assembly to other church courts with the relationship of the Assembly with its own committees and agencies.

### V. SUMMARY

The position of the PCA regarding the authority of the General Assembly over its committees and agencies and the relationship of those committees and agencies to the General Assembly may be summarized as follows.

1. The General Assembly of the Presbyterian Church in America composed of its commissioners are the corporation which legally is identified as Presbyterian Church in America, (A Corporation). The General Assembly at times acts in an ecclesiastical capacity, at times it acts in its civil corporate capacity.

2. At times the General Assembly acts through its board of directors. The civil affairs of the corporation are managed, as authorized by the General Assembly, by the board of

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<sup>3</sup> *Minutes of the 14th General Assembly*, PCA, page 104, See Attachment 1, "Defining the Philosophical and Theological Basis for our PCA Structure" (*MI4GA*, pp. 427-437).



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directors which have powers and duties as set forth in the Charter of the Corporation and the Bylaws.

3. General Assembly has the authority to erect committees or agencies (separate corporations) which are authorized to handle particular matters of business as designated by the General Assembly. Furthermore, when it is necessary for a committee to have the benefit of a civil entity, the General Assembly may authorize one of its committees to incorporate which is then designated an agency. Nevertheless, the relationship of the board of such agency to the Assembly remains as a committee. The provisions of each corporation, charter and bylaws must be in conformity with the constitution of the church.

4. The General Assembly has authority and the responsibility as an ecclesiastical and as a civil entity to require accountability from its committees and agencies. This is evident from the power to review the actions and activities of the committees and agencies through Committee of Commissioners. This includes a review of their minutes, the approval of budgets, the appointing of financial auditors, the granting or revoking of specific tasks for the committees or agencies, the power to elect committee or board members, etc.

5. The relationship of the committees and agencies to the General Assembly is that they are under the control and authority of the General Assembly in contrast to the relationship of the General Assembly to the courts of the church (presbyteries and sessions) which clearly distinguishes the civil responsibilities of presbyteries and sessions in contradistinction to the ecclesiastical connectionalism of the courts of the church (cf. *M14GA*, pp. 427-437).

### BIBLIOGRAPHY

- "Exhibit A: Defining the Philosophical and Theological Basis for our PCA Structure," *M14GA*, pp. 427-437, 1986.
- "Attachment K: Plan for General Assembly Reorganization," *M11GA*, pp. 106-110, 1983.

**STATEMENT OF CONSCIENCE**  
of the National Association of Evangelicals concerning  
**Worldwide Religious Persecution**  
January 23, 1996  
**1996, 24-37, III, 7, p. 207**

**Foreword**

This Statement of Conscience of the National Association of Evangelicals reflects our deep concern for the religious freedom of fellow believers, as well as people of every faith. We invite others to join us to work tirelessly to bring about action by our government to curb worldwide religious persecution.

**Facts**

The persecution of religious believers has become an increasingly tragic fact in today's world. In many countries, moreover, Evangelical Protestants and Catholics have become special targets of reigns of terror initiated by authorities who feel threatened by Christian faith and worship. Such authorities, often motivated by anti-Western, anti-democratic ideologies, also persecute Christians as a means of threatening the freedom of all persons subject to their authority.

Incidents of religious persecution are legion:

- In many Islamic countries, where militant and xenophobic Islamist movements seek to capture the soul of a historically tolerant Islamic faith, and where the demonization of Christians also serves to intimidate Muslims seeking freedom from repressive regimes.
- In China, Cuba, Laos, North Korea and Vietnam, where remnant Communist regimes feel threatened by persons whose Christian faith places them under an authority transcending governments, and where the persecution of Christians also serves to intimidate non-Christian dissenters.
- In other parts of the world, where persons of evil intent rightly understand that the survival of churches undermines their aims, because these churches affirm the human dignity of all persons created in God's image and acknowledge their ultimate accountability to a transcendent God.
- In countries and regions where the demonization of powerless Christian scapegoats often serves to vent, foment, and popularize hatred of the West and the United States.
- Imprisonment and torture of persons for simply attending Christian worship services or Bible studies.
- Establishment of government-controlled "religious associations" and criminal prosecution and torture of members of "unlicensed" Christian churches.
- Refusal to permit Vatican appointments of Catholic bishops and refusal to allow nonapproved bishops to appoint local priests.
- Encouragement and appeasement of unpunished mob violence against Christians conducting burial and other religious services.

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- Encouragement and appeasement of unpunished looting and burning of businesses and homes of practicing Christians.
- Church burnings and systematic official refusals to allow the building of new churches or church repairs.
- Encouragement and appeasement of systematic beatings of children who attend Christian schools.
- Literal sale into slavery of Christian children abducted by government forces.
- Refusal to distribute food to Christians in famine-stricken areas unless they agree to renounce their faith.
- Wide dissemination, often with government support, of scurrilously hateful, deliberately provocative, anti-Christian tapes, books and tracts.
- Imprisonment of Christians for the mere possession of Bibles.
- Prosecution, torture and even murder of practicing Christians under infamous and broadly construed "blasphemy" laws.
- Prosecution, torture and even murder of Christian converts and the children and grandchildren of such converts, under equally infamous and broadly construed "apostasy" laws.

### Principles

If people are to fulfill the obligations of conscience, history teaches the urgent need to foster respect and protection for the right of all persons to practice their faith.

If people are to fulfill the obligations of conscience, history cries out for an end to today's wrongful silence, by Christians as well as others, in the face of mounting persecution of Christian believers.

If governments are to be worthy of the name, or responsive to their national interests and the interest of their people, lessons of history mandate uncompromising hostility to religious persecution.

If, though it is true, the United States government cannot end all evil throughout the world, it can nonetheless adopt policies that would limit religious persecution and ensure greater fulfillment of inalienable and internationally recognized rights to freedom of religious belief and practice.

### Call to Action

It is lamentable that persecution of religious believers is pervasive around the world.

We are dismayed that the United States government has been indifferent to its obligation to speak out against reigns of terror now being plotted and waged against Christians. At the same time, we confess our own culpability in failing to do all within our power to alleviate the suffering of those persecuted for their religious beliefs.

We know that the United States government has within its power and discretion the capacity to adopt policies that would be dramatically effective in curbing such reigns of terror and protecting the rights of all religious dissidents. As a matter of conscience, therefore, we respectfully call for the following actions to be taken by the government of the United States:

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- I. Public acknowledgment of today's widespread and mounting anti-Christian persecution and the adoption of policies condemning religious persecution whether it results from official policy or from unchecked terrorist activity.

To that end, we respectfully recommend that the following steps be taken:

- A major policy address by the President initiating a new *public* diplomacy commitment to openly condemn anti-Christian persecution wherever it occurs and further announcing a lesser reliance on today's private diplomacy and case-by-case appeals to curb such persecution.
- Issuance of instructions to all Ambassadors or surrogates to meet regularly with willing church leaders and dissidents in countries where religious persecution occurs.
- Appointment of a knowledgeable, experienced, and compassionate Special Advisor to the President for Religious Liberty charged with preparing a report indicating needed changes in policies dealing with religious persecution, and recommending remedial action.
- Issuance of instructions to the United States delegate to the United Nations Commission on Human Rights to regularly and forcefully raise the issue of anti-Christian and other religious persecution at all appropriate Commission sessions.
- Issuance of instructions to consular officials acknowledging the mounting evidence of religious persecution and instructing them to provide diligent assistance when the victims of religious persecution seek refugee status.
- Issuance of instructions to senior officials engaged in trade or other international negotiations, when dealing with officials of countries that engage in religious persecution, to vigorously object to such religious persecution and to link negotiations with the need for constructive change.

- II. Issuance by the State Department's Human Rights Bureau and related government agencies of more carefully researched, more fully documented and less politically edited reports of the facts and circumstances of anti-Christian and other religious persecution.

To that end, we respectfully recommend that the following steps be taken:

- Issuance of instructions to human rights officers to distinguish between the treatment of different Christian groups within countries and no longer to assume that all such groups are similarly dealt with.
- Issuance of instructions that Human Rights Bureau annual reports are to make explicit findings of whether anti-Christian or other religious persecutions occur, thereby eliminating from such reports any "option of silence" regarding such persecutions.
- Clarifying and upgrading the role of embassy human rights officers in countries where anti-Christian or other religious persecution is ongoing and pervasive, and ensuring that such officers carefully monitor religious liberty violations on an ongoing and prioritized basis.

- III. Cessation of the indifferent and occasionally hostile manner in which the Immigration and Naturalization Service often treats the petitions of escapees from anti-Christian persecution.

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To that end, we respectfully recommend that the following steps be taken:

- Issuance of an Attorney General's Bulletin to INS hearing officers acknowledging mounting anti-Christian persecutions in many parts of the world, and directing such officers to process the claims of escapees from such persecution with priority and diligence.
- Issuance of instructions by the Attorney General and the Secretary of State directing preparation of annual INS reports describing its processing of religious refugee and asylum claims.
- Issuance of regulations requiring access to written opinions from INS hearing officers clearly stating the grounds for any denial of religious refugee and asylum claims.
- Establishment of INS listening posts in countries to which refugees from anti-Christian persecution frequently flee.
- Cessation of INS and State Department delegation of complete responsibility for refugee processing functions to international and United Nations agencies.
- Development and issuance of training guidelines for INS personnel on issues specifically related to religious persecution.

- IV Termination of non-humanitarian foreign assistance to governments of countries that fail to take vigorous action to end anti-Christian or other religious persecution, with resumption of assistance to be permitted only after a written finding is made by the President that the countries have taken all reasonable steps to end such persecution, and arrangements are made to ensure that religious persecution is not resumed.

### Conclusion

Religious liberty is not a privilege to be granted or denied by an all-powerful State, but a God-given human right. Indeed, religious liberty is the bedrock principle that animates our republic and defines us as a people. We must share our love of religious liberty with other peoples, who in the eyes of God are our neighbors. Hence, it is our responsibility, and that of the government that represents us, to do everything we can to secure the blessings of religious liberty to all those suffering from religious persecution.

We appeal not only to our own government, but to the governments of every nation that would be free, to treasure religious freedom. A people cannot be truly free where the elemental justice of religious freedom is abridged or denied. If justice is to "roll on like a river," religious persecution around the world must cease.

Therefore, before God, and because we *are* our brother's keeper, we solemnly pledge:

To end our own silence in the face of the suffering of all those persecuted for their religious faith.

To address religious persecution carried out by our Christian brothers and sisters whenever this occurs around the world.

To withhold assistance by our member denominations to those countries that fail to take action to end religious persecution.

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To do what is within our power to the end that the government of the United States will take appropriate action to combat the intolerable religious persecution now victimizing fellow believers and those of other faiths.