PART II:

INTERPRETATIONS

OF

THE

CONSTITUTION

WESTMINSTER CONFESSION OF FAITH

WCF 4-1

(See PART III, JUDICIAL CASE #100) III, p. 99

1995, p. 197, *M23GA*, 23-43, 31.d

d. That the response to the exceptions of the 22nd GA be approved as satisfactory in that it does provide adequate information.

NOTE: The Committee on Review of Presbytery Records recommended: "That this response be not found satisfactory because although the Presbytery's response does clarify the exceptions to the PCA standards taken by the candidate approved for ordination, the Presbytery does not give us a statement that they will not in the future approve for ordination a candidate with exceptions that deny fundamentals of our system of doctrine such as Creation in six days (LC 15, Exodus 20:8-12) and limitation of ordained offices to men (*BCO* 7-2);

That New River Presbytery be directed to re-examine the brother in the area of six day Creation;

e. "Concerning WCF 4-1 (Creation), the TE believes that "It is not scientifically impossible for God to create the universe in six days since He is omnipotent. The point is that the Word of God does not set out such a scientific plan but rather emphasizes the unique power of God to create out of nothing and in accordance with His perfect will."

BOOK OF CHURCH ORDER

3-2

1994 (See Part III, JUDICIAL CASE #101) III, p. 104

5-2

1994 (See PART III, JUDICIAL CASE #101) III, p. 104

6-5

1997, p. 114, 25-17, 2:

Proposed amendments to permit minimum voting age defeated by presbyteries.

11-2 (NOTE: Originally 12-2)

1976, p. 72, 4-71, III, A:

"With respect to a communication from Rev. Donald Dunkerley concerning the oversight of a church without a session but with at least one ruling elder, the Committee would direct attention to Paragraph 12-2 of the *Book of Church Order* beginning with the word "secondly" and continuing through the end of the paragraph which gives church courts latitude to establish rules as needed agreeable with Scripture and doctrines which are not in violation of the Constitution of the Church."

11-4

1994 (See PART III, JUDICIAL CASE #101) III, p. 104

13-9

1994 (See PART III, JUDICIAL CASE #101) III, p. 104

13-10

1994, p. 70, 22-13, 3.1

Question: Part 1 - "Was the action of the 20th GA in approving item IV.4.j. on the report of the Committee on Review of Presbytery Records, specifically that portion which reads as follows: "(financial amounts need not be included)", particularly as it relates to *BCO* 13-10 and RAO 14-10 d.3 constitutional?"

Answer:

"BCO 13-10 requires that presbyteries keep a "full and accurate" record of proceedings and that the record be sent up to General Assembly for review. The same citation continues to elaborate particular information required to be included in that "full and accurate record" of proceedings.

"RAO 14-10 d.3 notes that the Presbytery is required to record "actions", including motions adopted and business transacted by the Presbytery. Beyond that, the authority to include any additional information in the record is specifically granted to the presbyteries. Clear constitutional discretion is granted to the Presbytery to decide what "additional" material may be appropriate for inclusion in the minutes. The report of the committee adopted by the 20th GA indicates that General Assembly considers the report of the action presbyteries take regarding changes in the calls of ministers to be an appropriate requirement of the "full and accurate" record of the presbytery. General Assembly went on to indicate that the detail of including financial amounts is not a requirement of a "full and accurate" record. However, it is the opinion of the CCB that the action taken by the General Assembly indicates that any "additional information" included in the minutes of a presbytery is, by definition, a part of the "full and accurate" record. That is to say, whatever is included in the minutes of a presbytery must be sent up to General Assembly as a part of the "full and accurate" record. The constitutional discretion granted presbyteries is to decide what additional information is important enough to be included, not which part of the "full and accurate" record to submit to the review of the General Assembly. The presbytery is obligated to submit for review whatever is recorded in the minutes of that body. It does not have the constitutional authority to purge, edit, delete, alter or otherwise adulterate its "full and accurate" record approved in the form of the minutes of its proceedings.

"Therefore, it is not unconstitutional for a presbytery to submit its records for review in a form that does not refer to the financial details of a change in a minister's call. It is, however, unconstitutional for any presbytery to change the record for the purposes of submission for review. If the action taken by presbytery included reference to financial details as a part of the motion passed or other formal action of the body, that financial information is part of the "full and accurate" record to be included for review."

13-12

1996, p. 159, 24-23, ref. #1

Does *BCO* 13-12 prohibit a presbytery from having a called meeting, except upon the concurrence of a certain number that an "extreme emergency" exists, and what is the meaning of the word "emergency?"

Response:

It is the advice of the CCB that the answer to the meaning of the word "emergency" be understood by its plain and ordinary definition, as given by Webster's Dictionary. Webster's

defines "emergency" as an "unforeseen combination of circumstances or the resulting state that calls for immediate action."

The procedure recommended to Central Georgia Presbytery by the Session of the First Presbyterian Church of Augusta, Georgia to ascertain whether or not there is an emergency is in conflict with *BCO* 13-12. To determine if there is an "emergency" is in effect to determine if presbytery should meet. The procedure, under consideration by Central Georgia Presbytery, to establish that six (6) of eight (8) officers and committee chairs concur that an "extreme emergency" exists before a meeting of presbytery is called, violates the constitutional rights of the moderator, stated clerk, two (2) ruling elders, and two (2) teaching elders from at least three (3) churches to call a special meeting.

The CCB notes that *BCO* 13-12 specifies "any" emergency, not an "extreme" emergency.

15-1

1994, p. 71, 22-13, 4.

Question: "In *BCO* 15-1, the "it" of line 6 seems to be ambiguous. Does it refer to the "full record of its proceedings" of line 4 or to the "concluding actions of the commission" of line 5?"

Answer:

The definition of this word is clarified when compared with the procedure delineated in *BCO* 15-3. Here it is clearly stated that the "judgment of the commission shall be final and shall be entered on the minutes of Presbytery as the action." It is the opinion of the CCB that the "it" of line 6 refers to the "concluding actions of the commission" which are recorded in the minutes of presbytery since they become the action of the presbytery, once approved."

1997, p. 134, 25-22, 2nd Supplemental Report, I, 1:

Can the Standing Judicial Commission adjudicate an issue or matter that was not referred to or laid before it?

Response: It is the opinion of the CCB that the answer is: No.

The CCB reminds the Assembly that it is the duty of the SJC to assemble and frame from the complaint, brief(s), and record of the case, the summary of the facts and the statement of the issues in any case. New issues are never to be initiated by the SJC so as to make it a court of original jurisdiction. It is the responsibility of the Assembly to decide whether the statement of the issues has been framed properly, which will be reflected by what the Assembly votes: shall the judgment be approved, disapproved, or referred to a study committee.

15-5

1997, p. 80, 25-16, 5 (see also Part III Judicial Case #136) III, p. 226
1997, p. 93, 25-16 (see also Part III Judicial Case #138) III, p. 237

15-5c

1998, p. 233, 26-68, re "reference"

The Committee received a reference from the Assembly regarding the report of the Committee of Commissioners on Interchurch Relations, regarding the serving of an alternate member as chairman of a committee and the voting of an alternate member when not necessary to comprise a quorum in the absence of regular members. The Committee's opinion is as follows.

A. **In regard to an alternate member's serving as chairman**, it is the opinion of the Committee that there is nothing in the Constitution which prohibits an alternate member's serving as chairman of a committee. *Robert's Rules of Order,* chapter XV, section 46, states that even someone totally outside the membership of a body may serve as its chairman if the body

so desires. Such an individual could not vote (e.g. to break a tie) if not a voting member, but this does not bear on his serving as chairman.

B. **In regard to an alternate member's voting** when such vote is not needed to fulfill the requirements for a quorum, it is the opinion of the Committee that there is no Constitutional provision which bars a committee's allowing an alternate to fill any vacancy and therefore to be eligible to vote, whenever a principal is absent. Further, the Ninth General Assembly tacitly approved this very procedure when it approved the *Operations Manual for the Committee on Constitutional Business* (adopted by the Ninth General Assembly, 1981, p.123, 9-65, III, G, 4, and revised and adopted in 1991; see section 1.3).

18-2

1996, p. 160, 24-23, ref. #3

In our Presbytery, a minister shepherds a non-PCA church. From time to time men come forward from that congregation desiring to become candidates for the ministry. How may a Presbytery require the fulfillment of the six-month PCA membership and sessional endorsement requirements (*BCO* 18-2) for a man who desires to become a candidate but is a member of a non-PCA church?

Response:

It is the advice of the CCB that the *BCO* 18-2 probably indicates, but does not specify, that a prospective candidate must be a member of a PCA congregation for at least six months before filing his application for candidacy. Some PCA presbyteries, however, have interpreted *BCO* 18-2 to allow them to accept the endorsement of a prospective candidate from a non-PCA congregation, understanding that the candidate must "submit himself to the care and guidance of the Presbytery in his course of study and of practical training to prepare himself for this office" (*BCO* 18-1). Through the General Assembly's review of presbytery minutes, this procedure has been affirmed, in that some presbyteries, in the past, have accepted a candidate's endorsement from non-PCA congregations.

It is the advice of the CCB that an Overture should be submitted clearly specifying that a candidate could be endorsed by the ruling body of a non-PCA church.

19-1

1994 (See PART III, JUDICIAL CASE #100) III, p. 99

19-7

1981, p. 142, 9-65, II, I, 2. Implementation of Internship requirement: "That the General Assembly set as a procedure of implementation of the required year of licensure for ministerial candidates that it be understood that this would apply only to candidates or seminarian not yet in the process. All new candidates would therefore come under this ruling." *Adopted*

21-1

1994, p. 70, 22-13, 2.

Question: "According to *BCO* 21-1, does a presbytery place a call in a man's hands before he is examined?"

Answer: It is the advice of the CCB that there is ambiguity in the *BCO* regarding the sequence of events relative to the placing of a call in a candidates hands and the examination of that

candidate. There is, however, no ambiguity in terms of the requirements for a call and the examination process. These requirements include the extension of a call by a calling body, the approval of that call by the presbytery and the examination of the candidate by the presbytery. Assuming all requirements are met, the current practice is that each presbytery determines the sequence of these events relative to approval of a call and the examination. Until such time that the GA acts to resolve these ambiguities, the current practice should prevail."

21-4

1997, p. 128, 25-22, II, 1:

1. Is a candidate for ordination required to declare a formal exception to the standards if he does not hold to a literal six 24-hour day period of creation?
2. Is an officer who has been previously ordained required by the second ordination vow to inform his Presbytery or Session of being out of accord with the standards if he does not hold to a literal six 24-hour day period of creation?

Response:

It is the advice of the CCB that GA take no action on the New River resolution [*BCO* 41-5, RAO 7-2(2)].

Although there is some question whether the resolution from New River Presbytery, adopted at its 69th Meeting, is a proper reference, since there apparently is no associated matter pending before the Presbytery (*BCO* 41-1), the CCB received the resolution. To answer the resolution would *ipso facto* make the CCB responsible for determining previously-unspecified exceptions to the Constitution. Should a presbytery wish to establish its own view of what is an exception to the constitutional standards as normative for the rest of the Church, then the proper procedure would be to overture the GA to adopt the presbytery's view as the view of the Church and to enter the same into the constitutional standards of the PCA.

23-1

1995, p. 56, 23-15, II, Reference No. 1.

Does *BCO* 23-1 mean that if a pastor resigns his call, without another call, then is the congregation required to vote on his financial severance package?

Response:

It is the advice of the CCB that the answer to Reference No. 1 from Central Georgia Presbytery is: yes.

1998, p. 231, 26-68, 1st Supplemental Report, III:

Advice to Korean Capital Presbytery. On a request from the Korean Capital Presbytery for a "ruling" on a non-judicial matter, which had been forwarded to the Committee by the stated clerk, the Committee on motion voted to concur with the advice which the stated clerk had already previously given in response to an inquiry from the Presbytery.

June 22, 1998

TO: Korean Capital Presbytery
% Rev. Andy Chul-Soon Lee

FIRST CLASS
and FAX 301-424-4964

FROM: Paul R. Gilchrist, Stated Clerk of General Assembly

SUBJECT: ADVICE RE. *BCO* 23-1 FOR GLORIA KOREAN PRESBYTERIAN CHURCH

In response to your request for a ruling on the distribution of a pastoral relationship, I render hereby my considered opinion.

Gloria Korean Presbyterian Church has a bylaw requiring a 2/3 vote of the congregation to call a pastor. And *BCO* 23-1 calls for the action on the dissolution of a pastor to be ". . . .in the same manner as the call of the pastor."

The context makes clear that "a meeting of the congregation called and conducted in the same manner as the call of the pastor."

It is my considered opinion that *BCO* 23-1 refers back to *BCO* 20 both for the calling of a congregational meeting as well as for its conduct – i.e., the methods of voting, etc.

If the congregation decides to require a 2/3 vote for calling a pastor, that is their prerogative. In this case they have made it clear by adopting a specific statement in their Bylaws.

If the congregation wishes to adopt a 2/3 vote for the dissolution of a pastoral relation, they should also approve such a percentage if they so desire. *BCO* 20-4 only requires a majority vote. In any case, the Bylaws of Gloria Korean Presbyterian Church do not explicitly say that for the dissolution it also must be 2/3 vote. They would have to vote on this matter to make it explicit.

Let me urge the presbytery and the congregation to be cautious about changing a vote to dissolve the pastoral relation from a simple majority to a 2/3 vote. The reason is simple: What if the congregation votes only 60% to dissolve, and 40% to oppose? This would be short of the 66.7% required. It seems to me foolhardy for the presbytery to retain the pastor in that pulpit when only 40% really support him. (Surely, it would be contrary to a simple majority the *BCO* requires for a minimum vote for a call.) Why would presbytery seek to retain him with only 40% approval? This seems to contradict the principle of *BCO* 3-1 that to the congregation belongs the power in "the choice of those officers whom He has appointed in His Church." This principle is also spelled out in the Preface to *BCO* II-6 "the power to elect persons to the exercise of authority in any particular society resides in the society."

Quite frankly, a 2/3 vote would also put a pastor in a serious personal dilemma if he were to defeat a motion for dissolution by 40% or 35% voting in favor of reconfirming him. Could he really continue to minister to the whole congregation when he does not have at least a majority of the congregation behind him?

In short, to change the vote ratio for dissolution of the pastoral relationship from a simple majority is (1) to go contrary to the Biblical and Church Order principle that by a majority vote or better a congregation has a right to "elect persons" to office – and that this right is inalienable; (2) to court disaster for the congregation, and (3) to put the pastor in an untenable position.

There are my considered opinions and as always, subject to being overruled by my brethren in the General Assembly.

<u>24-1</u>

196, p. 160, 24-23, ref. #2

"Does such a nominee, who has previously served in the office to which he is currently nominated in a particular church, need to be re-examined by the Session in any (or all) of the areas listed in *BCO* 24-1, and could such a man, in the light of *BCO* 24-6, be found deficient in any area (e.g., Christian experience.) and consequently disapproved?"

Response:

It is the advice of the CCB that the answer to the first part of Reference No. 2 from Southeast Alabama Presbytery is yes. All nominees for ruling elder or deacon should be examined by the Session in accord with *BCO* 24-1, including the re-examination of someone who has previously served in that same office in that particular church.

It is noted, however, that the Session determines the length or brevity of each examination, depending in part on the Session's knowledge of the individual, his life, and views. In addition, the principle involved in a similar situation should be considered - that is, the re-examination of a PCA teaching elder by a PCA presbytery in which he is examined in terms of his views, but not his knowledge (*BCO* 13-6; also refer to *BCO* 21-4 [2-5]).

It is the advice of the CCB that the answer to the second part of Reference No. 2 from Southeast Alabama Presbytery is yes. The right of examination always includes the right to find a nominee deficient in certain areas and consequently to disapprove the nominee.

1997, p. 136, 25-22, ref. #2

At the Eighty-eighth Stated Meeting of Grace Presbytery, held on the 13th of May, 1997, the Presbytery, in attempting to adjudicate a complaint against the action of the session of one of our churches, entered into a debate as to the meaning of *BCO* 24-1, which states that "Public notice (of a congregational meeting to elect church officers) shall be given of the time, place, and purpose of this meeting at least one month prior to the appointed time, during which time the congregation is asked to submit names to the Session . . ." & etc. The adjudication of the complaint and the resolution of the matter hinges upon the understanding of this passage, to wit: whether a session may require that nominations for church officers be tendered by a deadline which is less than the one month required before the meeting to act on these nominations are to be acted upon, or whether the nomination period must be left open for the entire one month period.

Pursuant to the provisions of *BCO* 41-1 & 2, the Presbytery voted to make a reference to the General Assembly on this matter in the hope that some clarification might obviate the need for this matter to be addressed judicially beyond the Presbytery level. In making this reference, the Presbytery is asking only for advice (*BCO* 41-3) in order that it may adjudicate the complaint. We are not asking for a final disposition of the case. Presbytery asserts its desire to discharge its responsibility in this matter (*BCO* 41-5), but is almost evenly divided on the meaning of the language of *BCO* 24-1, and prays the assistance of the Assembly in clarifying this language.

Response:

It is the advice of the CCB that the following is the proper understanding of *BCO* 24-1:

BCO 24-1 imposes several requirements preparatory to the election of officers:

1) public notice of the time, place, and purpose of a meeting to elect officers must be given;
2) such notice must be given at least one month before the meeting;
3) the congregation must be allowed to make nominations;
4) nominees must receive instruction;
5) nominees must be examined; and
6) the session must report the names of those eligible for election prior to election day.

It logically follows that this whole process may be held in as little as one month. It also follows that requirements 4, 5, and 6 above must be held after the period of nominations is closed, if the above order is followed step by step.

Conceivably the period of nominations could be as little as one day and still conform to *BCO* 24-1. Practically, a longer time is preferable. In any case requirements 4, 5, and 6 must be completed prior to election day. Naturally, this order of procedure prohibits keeping the nomination period open right up to election day, as well as prohibiting nominations from the floor.

However, *BCO* 24-1 does not require that the above order be followed, only that each element be included without fail. A session could establish a period of instruction for all male members interested in being considered for nomination and election. On completion of the instruction, the session could examine all those who complete the course and certify any or all of them as eligible for nomination. The session could then set the date, time, and place for election (at least one month in advance) and call for nominations from the congregation, listing as potential nominees those men who were examined and certified. This period of nomination could extend right up to just prior to election day, when the session would then make its final report. Other rearrangements of the required six elements could also be adopted.

The CCB therefore advises specifically that

1) a session may require that nominations for church officers be tendered by a deadline short of the minimum one-month period of time between the announcement of a meeting to elect officers and the occurrence of that meeting; and
2) it would seem that, ordinarily, a session would wish to set a significantly longer period of time than the minimum time allowed, in order to accomplish the instruction, examination, and reporting explicitly called for in *BCO* 24-1.

25-11

1994 (See PART III, JUDICIAL CASE #105) III, p. 125

31-2

1995 (see Part III, Judicial Case #113) III, p. 160

1998, p. 228, 26-68, reference #R-1

"Must Presbytery Proceed to Trial Without Thorough Investigation?"

Response:

It is the advice of the Committee that *BCO* 31-2 permits the Presbytery, through an investigation, to determine before adjudication that there is a "strong presumption of guilt" with respect to reports or charges against an accused. The Presbytery having received reports or charges against one of its members should investigate to determine whether the evidence warrants proceeding with a trial (34-2). Because of differences of opinion within the Presbytery and among the CCB, we recommend that the Presbytery propose amendments to *BCO* 31, 32, and 34 to clarify this issue.

32-20

1994 (See PART III, JUDICIAL CASE #108) III, p. 138

33-1

1994 (See PART III, JUDICIAL CASE #106) III, p. 132

38-3 **(See also under 45-6)**

1997, p. 129, 25-22, IV, 1:

Assignment No. 1 - Removing Members from the Roll

The 24th General Assembly referred **Overture 26** from Potomac Presbytery and **Overture 6** from Northeast Presbytery to the CCB to perfect the language of the proposed amendments to *BCO* 38-3 and report back to the 25th General Assembly.

The CCB will forward its work to Potomac Presbytery for consultation and recommends the following language: [NOTE: See First Supplemental Report, II, pp 132 for amended proposal.)

"a) When a member or officer of a particular church or presbytery renounces communion with this branch of the visible church by joining some other branch of the Church of Jesus Christ and is in good standing therewith, the irregularity shall be recorded and his name removed from the roll. In the event formal, written charges are pending against that person at that time, then the court of jurisdiction shall, at its discretion:

1) retain that person's name on the roll, conclude the process in accord with *BCO* 31-2, and conduct the case; or

2) remove that person's name from the roll, without further process, which removal may, at the court's discretion, be excommunication; or

3) remove that person's name from the roll and communicate the pending charges to that branch of the church which the person has joined.

b) When a member or officer of a particular church or presbytery renounces communion with that branch of the visible church by joining a group judged by the court with jurisdiction as failing to maintain the Word and Sacraments in their fundamental integrity (*BCO* 2-2), said court shall warn the person of his danger and remove his name from the roll. In the event formal, written charges are pending against that person at that time, then the court shall follow the procedures set forth in paragraph (a).

c) When an officer so renounces communion, he shall be deemed to have resigned from active service in his office."

The CCB notes that as Protestants, we should distinguish our view of the church from the historic Roman Catholic definition of the church. Protestants begin with the basic definition that the church is invisible in essence, while the historic Roman Catholic view starts with the essence of the church vested in its visibility. Thus the historic Roman Catholic view confuses the particular church with the universal visible church, hence, no one outside the Roman Catholic church (or any of its congregations) can be saved.

The WCF clearly begins with the definition of membership of the invisible church:

> "[t]he catholic or universal Church, which is invisible, **consists of the whole number of the elect**, that have been, are, or shall be gathered into one, under Christ the Head thereof . . . ." (WCF 25-1)

then the universal visible church:

> "[t]he visible Church, which is also catholic or universal under the Gospel (not confined to one nation, as before under the law), **consists of all those throughout the world that profess the true religion; and their children** . . . ." (WCF 25-2)

and finally a particular visible church:

> "[t]his catholic Church hath been sometimes more, sometimes less visible. And **particular Churches, which are members thereof**, are more or less pure, according as the doctrine of the Gospel is taught and embraced, . . ." (WCF 25-4)

and *BCO* 6-2 further defines the communing members of a particular church:

> **"[c]ommuning members are those who have made a profession of faith in Christ, have been baptized, and have been admitted by the Session to the Lord's Table."**

It is clear that there have been members of the invisible church and the universal visible church who were not received into a particular church, e.g. the thief on the cross, men on the battlefield led to faith in Christ without benefit of baptism, reception into a particular church, and those attending Christian churches without traditional rolls.

Therefore, caution needs to be exercised to not define removal from the roll of a particular church as equivalent to excommunication from the universal visible church. Let it be recognized that there are irregularities.

40-5

1990, p. 79, Definition of Memorial

I. MEMORIAL DEFINED

To my knowledge, the only place where "memorial" as a special communication is used in the *Book of Church Order* is in *BCO* 40-5: "When any court having appellate jurisdiction shall be advised, either by the records of the court next below or by memorial, either with or without protest...."

In *Digest of Acts and Proceedings of the PCUS, 1861-1965,* on page 230, it refers to a 1913 decision to the effect that the rights of appeal, complaint and memorial estopped by approval of minutes of a lower court by the higher court.

In *Constitution of PCUSA, 1930,* p. 414, gives a definition as follows:

"139. Any judicatory deeming itself aggrieved by the action of any other judicatory of the same rank, may present a memorial to the judicatory immediately superior to the judicatory charged with the greivance and to which the latter judicatory is subject, after the manner prescribed in the sub-chapter on complaints, save only that with regard to the limitation of time, notice of said memorial shall be lodged with the stated clerks, both of the judicatory charged with the grievance and of its next superior judicatory, within one year from the commission of the said alleged grievance.

"140. When any judicatory deems itself aggrieved by another judicatory and determines to present a memorial as provided for in the preceeding section, it shall appoint a committee to conduct the case in all its stages, in whatever judicatory, until the final issue be reached.

"141. The judicatory with which the memorial is lodged, if it sustain the same, may reverse in whole or in part the matter of grievance, and shall direct the lower judicatory how to dispose of the case, and may enforce its orders. Either party may appeal to the next higher judicatory, except as limited by Chapter XI...of the Form of Government."

The *Book of Discipline* of the Reformed Presbyterian Church, Evangelical Synod had the following two sections in Chapter XII:

"3. Every member of the church has the right of access to any church court by petition or memorial. He has direct access to the session of the congregation to which he belongs,

but a petition or memorial to a higher court must, in the first place, be presented to the session, with a request for its transmission.

"4. A lower court shall transmit a petition or memorial with or without approval or concurrence, as it see fit. Before transmitting, the court shall see that the petition or memorial is in proper form and expressed in respectful language. If transmission is refused, the petitioner or memorialist shall have the right of appeal. These provisions shall apply alike to a petition or memorial from an individual, from any number of persons, from a congregation, or from a lower court."

In 1994, the 12th General Assembly of the PCA (12-53, II, 58, p. 139) answered a constitutional inquiry regarding the "proper recourse of a presbytery when in its perception the General Assembly may have erred in a matter" as follows:

"1. In the course of the meeting of the General Assembly (or any court), when an error is alleged to have been committed, the parties convinced that an error has been made could have recourse through the provisions of *BCO* 45.

"2. Subsequent to the meeting of the court at which an error has been alleged to have been committed, a lower court by memorial, or overture, may seek a correction of the alleged error, if reversible.

"a. Properly speaking, no action of previous General Assembly may be amended, rescinded, or annulled. A subsequent General Assembly may take a contrary position and condemn the action of a previous Assembly but the action of the previous Assembly remains its own.

"b. If the alleged error is in reference to a judicial decision the decision cannot be reversed, but a judgment can be set aside and a new trial ordered if there is 'highly important new evidence' or 'such palpable error as would manifestly tend to interfere with the substantial administration of justice' (*Baird's Digest of the Assembly Actions*, p. 111).

"c. If the alleged error is related to a part of the constitutional documents which may also be alleged to be in error, a memorial should seek to amend the constitutional documents.

"d. In the meanwhile, the lower courts of the church should submit to the decision of the higher court even if it is alleged to have been in error, unless for sake of conscience the lower court should believe itself duty bound to renounce the jurisdiction of the higher court."

II. ON RE-OPENING A CASE ALREADY ADJUDICATED

The *Digest of the Acts and Proceedings of PCUS, 1861-1965*, p. 113, addresses the matter that the "Assembly will not re-open a case already adjudicated by it, except to correct a manifest error in its own proceedings."

With reference to a case in 1891 it says: "...where a concrete case is brought judically before a higher court...is disposed of by final judgment entered therein and sent down, that is an end of the constitutional authority of the higher court to deal with that particular case, unless it again regularly brought before the higher court for adjudication in one of the recognized modes provided for by our *Book of Church Order*."

It further adds regarding a case in 1920, "It is a principle of law, held in the highest courts of the States, and by the Supreme Court of the United States, that public policy requires that there shall be an end of litigation, and this is as true in the government of the Church as in the government of the Sate and Nation."

In Hodge's *What is Presbyterian Law*, p. 271, the authority of Assembly decisions with reference to judical decisions is defined:

"And its judicial decisions are final and obligatory in all similar cases. No later Assembly can reverse its judicial acts or revise its proceedings. A manifest error may be corrected."

The *Digest of the Acts and Proccedings of the PCUS, 1861-1965*, p. 71, reports on an 1880 case whereby a Synod overtured the Assembly "respectfully praying that it will consider and repeal, or at least seriously modify, so much of the deliverance of the last Assembly, in relation to worldly amusements...which are not made by them in a strictly judicial capacity, but are deliverances *in thesi*, can by considered as only didactic, advisory and monitory."

"The Assembly, in virtue of its powers to give authoritative interpretations of the Word, declares:

1. Nothing is law, to be enforced by judicial prosecution, but that which is contained in the Word as interpreted in our Standards.

2. The *judicial* decisions of our courts differ frin *in thesi* deliverances, in that the former *determine*, and when proceeding from our highest courts, *conclude* a particular case; but both these kinds of decisions are alike interpretations of trhe Word by a church court, and both not only deserve high consideration, but both must be submitted to, unless contrary to the Constitution and the Word, as to which there is a right of private judgment belonging to every church court, and also to every individual church member."

In connection with the above statement regarding the right of private pudgment, in 1881 the General Assembly stated:

"The Form of Government...declares that 'church courts can make no laws binding the conscience, but may frame symbols of faith,' etc. It follows that church courts are not infallible, but on the contraty, 'all may err, and many have erred; therefore they are not to be made the rule of faith or practice, but to be used as help in both.' (WCF, XXIII-3). Thus the right of private judgment is asserted; this right, however, is not opposed to lawful authority, but to the assumption of power to bind the conscience."

III. RECOMMENDATION

That Communication 2, "A Memorial from John M. Warren, Jr." asking for clarification of the 17th General Assembly decision re. Mississippi Valley Presbytery relative to the Carl Fox case of the 16th General Assembly be referred to the Standing Judicial Commission together with all other matters relating to the issue. *Adopted*

43-1

1994 (See PART III, JUDICIAL CASE #108) III, p. 138

45-5

1994 (See PART III, JUDICIAL CASE #101) III, p. 104

46-5

1991, p. 233, 4 E. From North Texas – The Proper Interpretation of *BCO* 46-5. It was M/S/P that in the opinion of the Committee the answer to the question, "Does 46-5 allow sessions the option of removing members' names from the roll without formal process leading to excommunication?" is that the intention of the 16th General Assembly in amending 46-5 was to allow for the non-judicial removal of members and the language adopted by the 18th General Assembly might be so interpreted. (*M16GA*, 16-77, III, 13.)

The following minority report was submitted:

Minority Report for Item E – North Texas Presbytery

This minority report to the advice given by the majority is respectfully submitted. The grounds for this report are as follows:

1. The answer avoids a definitive answer to the question posed.
2. Clearly, *BCO* 46-5 does allow Sessions the option to remove members from the local church roll without formal process leading to excommunication. This clarity is based on:
   a. Excommunication is a censure "to be inflicted only on account of gross crime or heresy and when the offender shows himself incorrigible and contumacious." (*BCO* 30-4)
   b. As a censure, excommunication can be imposed only by judicial process, which requires a charge, an indictment, citation, trial, witnesses, a roll call vote, a verdict and judgment. (*BCO* 31 and 32)
   c. Such process is NOT contemplated by 46-5 language authorizing "deleting such name from the church roll."
   d. The current 46-5 language is a result of a directive by the 16th General Assembly to the CJB "to consider amendments to the BCO to provide for non-judicial removal from membership" (*M16GA*, 16-77, III, 13, p. 173), the CJB recommendation of the current language, its adoption by the 17th GA and, after approval by 35 of 43 Presbyteries, the 18th GA.
   e. The principal change in 46-5 so adopted was to eliminate the necessity of complying with 27-5 in favor of following "scriptural procedures (Matthew 18)."
   f. 27-5 requires that "the Church must act through her court unto admonition, suspension, excommunication and deposition." Matthew 18 makes no such requirement.
   g. To carry out the 16th GA's direction to provide for non-judicial removal, it was necessary to eliminate the 27-5 requirement that "the Church must" take one of the judicial actions of admonition, suspension, excommunication or deposition.
   h. The new 46-5 language included the addition "The Session shall always notify the person whose name has been deleted." Such notice after the fact of deletion would not comply with the requirements of the judicial process of excommunication.
3. To equate a deletion from the church rolls because a member has "willfully neglected the church for a period of one year or has made it know that he or she has no intention of fulfilling the church vow" with the "gross crime or heresy" and incorrigible and contumacious conduct essential for excommunication would necessitate an unreasonable interpretation of the words used.

The answer to the question should be clearly stated as: "Yes. The word "delete" as used in *BCO* 46-5 does not mean "excommunication" as used in the *BCO*.

To accept another interpretation would do violence to the entire Presbyterian system of Due Process. (Incidentally, it would also result in the possibility of excommunicating a member "whose residence has been unknown for one year" (paragraph 4 of 46-2).

Although the majority's deliberately ambiguous answer does allow Sessions the option to come to the same conclusions as the minority answer, the majority's inability to state a clear "yes" appears to be based on a sincere question as to the validity of a non-judicial removal from the roll. The minority view is that non-judicial removal was clearly endorsed by the actions of the 16th, 17th and 18th General Assembly's and 35 of the 43 Presbyteries, and to condemn non-

judicial removal, such as by restoring the prior 46-5 language, would require a similar change of the *BCO*.

Respectfully submitted in Christ's Service,
/s/ TE Granville Dutton

1994 (See PART III, JUDICIAL CASE #103) III, p. 114

1995, p. 56, 23-15, II, Reference No. 2.

Whether, on what grounds, and under what circumstances *BCO* 46-5 allows a session to pursue judicial process against a member once that member has "willfully neglected the church vows for a period of one year, or has made it known that he or she has no intention of fulfilling the church vows, or has requested that his or her name be dropped from the church roll," and further, how Judicial Case 93-3 fits into this interpretation?

Response:

It is the advice of the CCB that this request for clarification of *BCO* 46-5 is not a proper reference to the GA. There is no evidence that Ascension Presbytery is seeking advice on a matter pending before that body. Certainly, GA Judicial Case 93-3 (Chen v. Ascension Presbytery) is not properly before the presbytery.

However, the CCB points out that GA Judicial Case 93-3 does not preclude the full and formal discipline of any member who tenders a "letter of resignation" from his church. The SJC merely concluded, and the GA approved, that such process was not warranted in this case. *BCO* 14-7 states that "[j]udicial decisions shall be binding and conclusive on the parties who are directly involved in the matter being adjudicated and may be appealed to in subsequent similar cases as to any principle which may have been decided." This is further substantiated by *PCA Digest* (1973-1993), page 79 concerning the binding character of various interpretations of the Constitution, which states "judicial cases, when adjudicated by the Assembly, are binding [on the parties] regarding the matters thus settled."

It is not within the purview of the CCB's responsibilities to "develop constitutional law" via hypothetical interpretations of the *BCO*. This could only be done, constitutionally, through the *BCO*'s amendment or judicial processes.

The CCB advises the Bills and Overtures Committee to return this Reference to Ascension Presbytery with a suggestion that the presbytery seek clarification by drafting precise language for a proposed amendment to the *BCO* 46-5. Additionally, it may be helpful to refer to the business of Overtures 7 and 8.

1997, p. 131, 25-22, V: When a person "resigns" from membership in a church or presbytery, is this not tantamount to renouncing the jurisdiction of the body and is there a constitutional bar to a court accepting this "resignation?"

Response:

It is the advice of the CCB that there is no constitutional bar that would prevent a court from accepting the "resignation" and removing the person's name from the roll.

[**NOTE**: In 1998, the General Assembly vacated 46-5 and substituted a new 38-4 – see also under 38-3]

RULES OF ASSEMBLY OPERATIONS

17-3

1994, p. 72, 22-13, 5. "Clarification of the procedure for adopting and/or amending the report as a whole." *Adopted*

Answer:

It is the opinion of the CCB that this Constitutional Inquiry is actually a question concerning parliamentary procedure. Our response to the Inquiry is as follows:

1. The *WCF* and the *BCO* do not touch on this area of "adopting a committee's report as a whole."
2. RAO 17-3 requires that our committees submit each resolution of its report for separate adoption. This requirement supersedes the standard procedures of Robert's Rules of Order for committee report.
3. The effect of this RAO 17-3 stipulation is to create a confusion surrounding how to complete a committee report. The normal thrust of Robert's Rules (see Section 28 "Consideration by Paragraph or Seriatim pp. 272-276) is to suggest that recommendation in a report be amended separately but not adopted separately. It further suggests that there be one and only one motion at the end to adopt the whole report. With this motion, further amendment of the separate recommendations would still be possible. However, this normal procedure of *Robert's Rules* is not permissible for one General Assembly to use because RAO 17-3 requires a separate motion to adopt each separate recommendation."
4. In the discussion of a "Series of Resolutions Offered by a Single Motion", (page 107-108) there is provision for the resolutions to be separated by the motion for "Division of the Question." It is the opinion of the CCB that the effect of the stipulation of RAO 17-3 is to effectively "Divide the Question" of the committee's report. Consequently, each recommendation stands on its own and is to be treated as such.
5. The effect of the RAO 17-3 stipulation is that it is not appropriate to entertain a motion to adopt the report as a whole. The whole has been divided. When all the recommendations are adopted, the matter is finished. Consequently, the current practice of the General Assembly in entertaining a motion to adopt the "report as a whole", allowing for further debate and amendment to the separate recommendations, is erroneous, confusing, misleading, and should be discontinued.
6. RAO 17-3-d does refer to a parliamentary exception whereby the General Assembly may choose to adopt the report as a whole pending the completion of certain items, e.g. the budget approval of a committee.

It is certain, however, that this exception provision may not be used as a forum for amending or continuing the debate on any paragraph, section, or resolution which has already been adopted. These motions are adopted and may not be debated or amended further unless the Assembly votes to reconsider the previously adopted motions. The motion to reconsider normally requires only a majority vote, although there are some unique characteristics which could require a higher vote approval. (See *Robert's Rules of Order, Newly Revised*, 1990 Edition, Edited by Henry M. Robert, III and William J. Evans, Scott Foresmann and Company)

Also, it is certain that this exception clause may not be used as a forum for introducing new motions to be included in the "report as a whole". Such motions from the floor are inappropriate in that they introduce new business that has not been considered and brought to the

floor of the General Assembly by the committee. The proper forum for these types of motions are in "Personal Resolutions" which may be referred to the committee for consideration. RAO 12-2 stipulates that all "Personal Resolutions" introducing new business must be presented to the General Assembly before the close of the second day of business.