CASE 2010-04
COMPLAINT OF TE ART SARTORIOUS, ET AL
VS.
SIOUXLANDS PRESBYTERY
DISSENTING OPINION

I respectfully Dissent from the Court's Decision & Reasoning.

I dissented because when the time came to vote on this case, I had reservations and questions about this Court's Reasoning and Opinion affirming the Decision of Siouxlands Presbytery that there was no strong presumption of guilt with respect to "certain reports concerning TE Joshua Moon," and saying, "Process against TE Moon could still be instituted by some person or persons who would undertake to make out a proper charge pursuant to *BCO* 32-2. Upon such a charge being laid before the Presbytery, the Presbytery must follow *BCO* 32-3, subject to BCO 31-8."

Thus the majority has approved two propositions: 1. That there was no clear error in the Presbytery's finding of no strong presumption of guilt in the record statements of TE Moon being heterodox (Federal Visionist); and 2. That the filing of "proper charges," even now, would be appropriate to institute process, and would obviate any investigation and finding of strong presumption of guilt, but would require the Presbytery to proceed with a trial.

Members could have concurred with this Majority Decision if they agreed with either of those propositions. I disagree with both, for the following reasons.

1. This Court says this is one of those cases in which, pursuant to *BCO* 39-3(3), "A Higher Court should ordinarily exhibit great deference to a Lower Court…, unless there is clear error on the part of the Lower Court." This Court implies there is no "clear error" because: TE Moon was merely defending another, TE Gregory Lawrence, and it is a "*non sequitur*" to impute TE Lawrence's allegedly Federal Vision views to TE Moon; it would violate the "judgment of charity" to interpret
   TE Moon's views as heterodox when they could be interpreted as orthodox; and it would be another "*non sequitur*" to impute Federal Vision views to TE Moon merely because his "views imply heterodox doctrines." It seems to me that this analysis does not adequately assess whether there was a SPOG of heterodoxy, for these reasons:
   a. It seems to me that the question is – whether the record clearly shows that TE Moon has himself expressed his own views (as

distinguished from those of another TE he was defending) that are aligned with Federal Vision and thus out of accord with the PCA's Constitution, despite the fact that he may have eloquently argued he has not meant to do so and does not intend to do so. The answer is yes.

b. TE Moon is quoted as saying, "*We* are ones who have held tenaciously to the doctrine of our baptized children being full members of the covenant of grace, without qualification. … Further, we are the ones who speak of 'temporary faith' – not pseudo-faith, but *faith* that is temporary and so, in the end, not effectual for salvation." ROC 90.

c. Rather, it is our standard that baptized children are Members of the Visible Church, but not necessarily Members of the invisible Church, unless and until such time as they come to saving faith in Christ. *WCOF* XXV(II); XXVII(III). Or, as the 6th Declaration of the Ad Interim Committee on Federal Vision of the 35th General Assembly put it, on June 14, 2007, "The view that water baptism effects a 'covenantal union' with Christ through which each baptized person receives the saving benefits of Christ's mediation, including regeneration, justification, and sanctification, thus creating a parallel soteriological system to the decretal system of the *Westminster Standards*, is contrary to the *Westminster Standards*."[2]

d. TE Moon is further quoted as saying, "We are told by the Complainants that you cannot attribute forgiveness of sins to the potential reprobate. But that is clearly wrong. The unmerciful servant, Jesus says, was 'forgiven his debt.' He moved from a state of condemnation to true and real forgiveness. This was no pretended forgiveness. Yet the servant was finally apostate. He failed to live up to the grace shown to him, and so the privilege of that forgiveness was revoked." ROC 93.

e. I fail to see any ambiguity in that statement; and it seems to me more clearly aligned with Federal Vision Theology than the Reformed Faith, particularly "perseverance of the saints," as explained in our *Standards*. It seems clearly at odds with the 8th Declaration of the Ad Interim Committee on Federal Vision, which says, "The view that some can receive saving benefits of Christ's mediation, such as regeneration and justification, and

[2] As cited in the Summary of Facts, Bordwine v. Pacific Northwest Presbytery, SJC #2009-6 (The "Leithart" case).

yet not persevere in those benefits is contrary to the *Westminster Standards*."[3]

f. Despite these two clear statements by TE Moon, he protested, "I do not have any reservations with the statements of the General Assembly's Federal Vision Report…. I agree entirely with those statements and have never stated or held anything to the contrary." ROC 71.

g. The effect of this Court's affirmance of the SLP's vindication of TE Moon, it seems to me, is to validate a negative finding of SPOG, when there are contradictory statements by a Teaching Elder, some clearly orthodox but conclusiory and some clearly heterodox but specific. It seems to me that the SPOG-determination phase of the case is not the proper phase to weight and balance conflicting statements like this, but rather such weighing and balancing should come only after a full trial.

h. In a similar case involving the Federal Vision views of then TE Stephen Wilkins, Pastor of Auburn Avenue Presbyterian Church, then in the PCA, SJC #2007-14, Presbyterian Church in America v. Louisiana Presbytery, the SJC's Decision was to censure the Presbytery for similarly failing to find a substantial presumption of guilt in the Federal Vision views of Pastor Wilkins, in these words:

> [W]e admonish Louisiana Presbytery to take care that it be diligent to "condemn erroneous opinions which injure the purity and peace of the Church" (*BCO* 13-9(f) and that it be careful that heretical opinions not be allowed to gain ground (*BCO* 40-4). These are critical duties of Presbytery that cannot be satisfied by deferring to a Lower Court or to the views of a Teaching Elder. (See *BCO* 39-3(4).) The faithful performance of these duties by Presbyteries is a critical component of our corporate responsibility to live out, in love, the truth of Ephesians 4:11-16

i. It has not been shown in this Court's Decision or in the Record of this Case that this Case is distinguishable from the Case against

[3] Ibid. "Declaration 8."

Mr. Wilkins, or even the Case of Dr. Peter Leithart.[4] Why does not the duty of consistency require this Court to follow the same course in the instant case? There were similar defenses in the Wilkins matter, to the effect that he did not intend to be heterodox, did not intend to depart from the Constitution, etc. But his statements, objectively interpreted, were found out of accord. In my view, some of TE Moon's views are likewise shown by this Record, as quoted above, to be out of accord.

j. This Court, in this Case regarding Dr. Moon, in my view, should have done as it did in the Case of Dr. Peter Leithart,[5] citing the Wilkins Case as precedent, that is, hold that there could be no "declaration that these teachings are out of accord with our system of doctrine. … without the completion of judicial process." This Court remanded the Leithart matter to the Presbytery with these instructions:

(1) Pursuant to *BCO* 3 1-7, PNW may counsel TE Leithart that the views set forth above constitute error that is injurious to peace and purity of the Church and offer him pastoral advice on how he might recant and make reparations for those views or, if he is unwilling or unable in conscience to do so, that he is free to take timely steps toward affiliation with some other branch of the visible Church that is consistent with his views;

(2) If said pastoral advice is not pursued or fails to result in TE Leithart' s recanting or affiliating with some other branch of the visible Church before the Fall Stated Meeting of PNW, then PNW shall take steps to comply with its obligations under *BCO* 31-2.

I believe the SLP should have been instructed in a similar manner in the instant Case of Dr. Moon.

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[4] whom even Wikipedia recognizes is "an advocate of Federal Vision Theology. http://en.wikipedia.org/ wiki/Peter_Leithart. My critics say I should not cite Wikipedia as authority. I don't cite it as authority. I cite it merely to show that in popular culture, the question of Dr. Leithart being Federal Visionist was not even in dispute. Wikipedia does not cite Dr. Jeffrey Moon as a Federal Visionist, or indeed, cite him at all. The possible implication being, the Case of Dr. Moon might be more difficult than the Case of Dr. Leithart; but in my view, the SJC should not shy away from the more difficult Cases, or refuse to deal with the merits of them by deciding them on procedural preferences, which I fear the Court has done in this instant Case.

[5] SJC #2009-6, Bordwine, et al, v. Pacific Northwest Presbytery.

k. We as a Court of the Lord Jesus Christ should not ignore plain heterodoxy under the rubric of deferring to the Lower Court – with due respect to this Court's Decision. This is not a matter of the Presbytery making findings on the credibility of TE Moon, to which deference would be owed -- because no trial was held. It was not a matter of hearing witness X and witness Y and believing one, while disbelieving the other. Rather, it was a matter of two conflicting sets of statements by TE Moon, and the plain meaning of each to be properly interpreted. Nor is this a matter of ambiguity in his views, which this Court's Decision argues should be "interpreted in an orthodox fashion" because of the "judgment of charity." Rather, it is a fundamental principle of law that when statements are unambiguous, which in my view TE Moon's are, a Court of this Church is not free to do creative interpretations of them.

l. To countenance TE Moon's protestations that he is within the *Standards* or traditions, given his objective statements to the contrary, would in my view be entirely analogous to Louisiana Presbytery's countenancing Rev. Wilkins' protestations for years that he did not intend to be heterodox or outside the *Standards* – which Louisiana Presbytery eventually pled guilty to and was properly admonished for in Case 2007-14.

m. *BCO* 39-3(3) does not require great deference absent clear error, because the issue of TE Moon's clear heterodoxy does not involve any the types of questions that *BCO* 39-3(3) invokes – his moral character, appropriate censures, or credibility of conflicting witnesses. The question is simply one of interpreting his unambiguous statements of his own beliefs, the two of which quoted above are clearly at odds with two of the 9 declarations of the Ad Interim Committee on Federal Vision cited.

n. Some of my critics have said I should have brought up all of these objections at the SJC conference, and not saved them for public criticism. Brethren, I apologize for not having all these points written up in advance, for perhaps not thinking fast enough in conference, and for any other flaws that may appear in this Dissent. The only mitigating factor I might offer, although I respect the fact that a Court's conferences are traditionally confidential, is that I sent out to all my Brethren a "Concurring Opinion," this past July, concurring with the then-majority panel Proposed Decision, explaining why I did not agree with the then-dissent, which has now with amendments become the Majority

Opinion, and would repeat now what I trust most of my Brethren may recall my having essentially said before: the question of evidentiary sufficiency on a summary proceeding is not determined by a preponderance, or let's say over 50% of the evidence, because by definition a summary proceeding does not allow all the evidence to be presented. A *BCO* 31-2 investigation and determination of strong presumption of guilt is by its very nature a "summary proceeding." That is to say, even if TE Moon's unambiguous statements of belief offended only one of the Ad Interim Committee's 9 points summarized above, it would require a finding of strong presumption of guilt.

2. The Court says, "process against TE Moon could still be instituted by some person or persons who would undertake to make out a proper charge pursuant to *BCO* 32-2. Upon such a charge being laid before the Presbytery, the Presbytery must follow *BCO* 32-3, subject to *BCO* 31-8." My questions, concerns and disagreements about that are as follows:

    a. Why subject to *BCO* 31-8, only, and not the entire chapter 31? It is apparently the view of some that when a "proper charge" is made under *BCO* 32-2, the requirement is obviated to find a "substantial presumption of guilt" (SPOG) under *BCO* 31-2, but rather that the Presbytery must proceed immediately with process.[6]
    b. Under this view, "process" is commenced *either* by the making of the charge *or* an investigation and finding of SPOG, pursuant to *BCO* 32-2. I.e., the Court (Presbytery or Session) cannot consider SPOG if a "charge" is made by someone other than the Court itself.
    c. I question whether this view is the plain meaning of *BCO* 32-2. The plain meaning, it seems to me, of *BCO* 32-2 is to place a

[6] Some may find this analysis confusing, or even think I am confused. I may be, or I may be trying to explain something that is itself confusing. I have had it explained to me that the language of *BCO* 32-2 is old, archaic language, but, to the effect, "trust me, however it's actually worded, it really means that the determination of SPOG does not apply when someone brings charges." I respectfully submit, brethren, that some of our translations of the *Bible* itself contain old, archaic language too, but under the Grammatical-Historical Method of Hermeneutics, we apply the plain meaning of the words, unless the context requires otherwise. Terry, Milton (1974). *Biblical Hermeneutics: a treatise on the interpretation of the Old and New Testaments*. Grand Rapids Mich.: Zondervan Pub. House. page 205.

gatekeeper before instituting unwarranted process against a brother. That gatekeeper is the necessity of the Court finding a SPOG.

d. Why would a finding of SPOG be necessary when the Court makes its own investigation under *BCO* 31-2, but not when someone other than the Court itself "mak[es] out the charge"? It seems to me that if a gatekeeper against unwarranted process against a brother is necessary when the Court itself investigates and formulates the charge, it would be all the more necessary when someone other than the Court itself formulates the charge.

e. The view advanced by this Dissent, that a determination of SPOG is essential in all Cases prior to the institution of process, regardless of how originated, is supported by the fact that, e.g., pursuant to SJCM 16, when a Case against a Minister under *BCO* 34-1 comes to the SJC, the SJC is specifically directed to make a determination of SPOG under SJCM 16.4 & 16.5, even though *BCO* 34-4 assumes that "charges" against the Minister have already been made.[7]

f. Perhaps it is the view of some that the warnings of *BCO* 31-8 are an equivalent gatekeeper against unwarranted charges. But, I submit, that is not the case, because *BCO* 31-8 says nothing about the validity of the charges. An accuser other than the Court itself might not be barred by any of the cautions of *BCO* 31-8, and yet still present unwarranted charges.

[7] I realize that it may be argued in response to the foregoing point in this sub-paragraph (e) -- but that's the way we've always understood it -- but I would suggest that, if that is the way we want it, it would be easier just to amend the *BCO* to clarify the issue. Those who say *BCO* 32-2 says what, in my view, it clearly does not say could easily propose an Overture saying something like "Process against an offender shall not be commenced unless some person or persons undertake to make out the charge (*in which case an investigation and a determination of SPOG is not necessary)*; or unless the Court finds it necessary, for the honor of religion, itself to take the step provided for in *BCO* 31-2" (with the suggested change indicated in italics within the parentheses above. Our Baptist brethren say "baptized" always means immersion, and can be applied only to believers, but also say 1 Cor. 10:2 is a mystery – "all were baptized into Moses in the cloud and in the sea," because they refuse to deal with the plain meaning of the words and context -- that the "baptized" believers walked dry through the parted sea, and it was only the unbelieving Egyptians who got immersed when the sea resumed un-parted, in that situation with Moses and the cloud and the sea. Ex. 14:19-29. Likewise, the majority has not dealt with the plain meaning of *BCO* 32-2 in this Decision.

g. The plain meaning of *BCO* 32-2 is not that a determination of SPOG is obviated when someone other than the Court itself "mak[es] out the charge." Rather, the subject of *BCO* 32-2 is when process "shall *not* be commenced." It is not the subject of *BCO* 32-2 to dictate when process *must* be commenced. It seems a strained reading of *BCO* 32-2 to exclude a determination of SPOG under this paragraph, when the very paragraph incorporates by reference the very section of the *BCO*, 31-2, where the requirement for a determination of SPOG is mentioned.

h. There is no support for *the notion* that reducing the charges to writing obviates the need to investigate and make the SPOG determination. The *notion* creates two classes of offenses, one that we know about because we've investigated it, but it's still unwritten (*BCO* 31-2); and the other being, we may or may not know that much about it, but somebody has written it down and given the writing to us (*BCO* 32-2 & -3). This, to me, sounds like what our Courts in this country call "exalting form over substance," and which all our Courts reject.[8] I concede that the Government Courts, which I have spent 37 years laboring in, have no binding effect on this Church Court, but to me the logic is compelling that we should not exalt form over substance. We should, rather, deal with similar alleged offenses in a clear, consistent way, giving different results, when the facts of the alleged offenses are different, rather than different results based on the often-obscure details of the procedures by which offenses are handled.

i. This Court's mandate that, "upon such a charge …, the Presbytery must follow *BCO* 32-3," may suggest a roadmap to those who might want another chance to pursue TE Moon in this case. However, it seems to me, that suggestion would be more of a dead-end street than a roadmap, because a Presbytery that refused to find SPOG on a matter would be highly unlikely to find guilt after a full trial on the same matter. Especially is this true where, as here, the Complainants have taken the position that they really did present written charges and the SLP refused to prosecute them (Findings #11 &14 of the Summary of the Facts in this Court's instant Decision). Another problem with such a "roadmap" is that, by the time a case such as this reaches a Decision in the SJC, more than a year has transpired since the alleged offenses, and the one-year bar of *BCO* 32-20 would normally apply.

[8] E.g., ***Gregory v. Helvering***, 293 U.S. 465 (1935).

j. What about the present Concurring Opinion? The Court's final Majority Decision devoted 2/3rds of its reasoning (by line count) to justifying the Presbytery's denial of a finding of strong presumption of guilt, and 1/3rd to this alternate remedy of someone "filing charges." The pending Concurring Opinion, which as of this writing had six co-signers and counting, devoted 13% of its reasoning (by line count) to justifying the negative finding on strong presumption of guilt, and 87% to the "roadmap" of someone "filing charges." This, notwithstanding the Majority Opinion, which passed by a vote of 19 to 1, said the question of the proper procedure was not even before this Court – "However, the Complainants did not object to Presbytery's method of proceeding before Presbytery or in this Complaint, so that question is not properly before us." Page 3, lines 20-22. I respectfully but strongly disagree with this Court failing to deal firmly with the substance of the real issue in the Case – whether there is strong presumption of guilt in the unambiguously-heterodox views of TE Moon – and instead chiding the Complainants for allegedly failing to follow the proper procedure. They followed a *BCO*-acceptable procedure, a majority of 19 to 1 initially said the question of procedure was not even before us, and now, with this Dissent, more and more of my Brethren on the Court are joining the Concurring Opinion saying the Complainants should follow another procedure, which as I have explained above, I consider a dead-end street. I hope to God I am wrong on this procedural point, because the real issue in the Case begs for another hearing and a different result.

k. Brethren, please forgive me if there is any remaining confusion in this Dissent.

/s/ Dave Haigler, RE

CASE 2010-16
COMPLAINT OF KIRK LYONS
VS.
WESTERN CAROLINA

I. SUMMARY OF THE FACTS

On November 9, 2009, Kirk David Lyons filed "Charges & Specifications against Teaching Elder Craig Smith Bulkeley" with the Western Carolina Presbytery (WCP).