> ***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. (Emphasis added.)

PMWP had a great deal of familiarity with the facts and persons in the Case. The PMWP Judicial Commission received numerous complaints, requests, and charges against other individuals from the Appellant. The trial was held over several hours, with numerous witnesses (for both the prosecution and the defense) testifying, and the Appellant being given the opportunity to directly and cross-examine examine witnesses.

Although there may have been evidence contrary to the judgment rendered by PWMP, we cannot hold as a matter of law that there is clear error on the part of PWMP in rendering its judgment.

The Appeal is denied.

The Summary of Facts was written by RE Terrell and TE Greco. The Statement of the Issue, Judgment, and Reasoning and Opinion were written by TE Fred Greco.

VIII. STATEMENT OF THE ISSUE FOR CASE 2011-15

Did Philadelphia Metro West Presbytery err on September 17, 2011, in denying the institution of process against Lisa Ridenour, RE Ridenour, and TE Huber?

IX. JUDGMENT FOR CASE 2011-15

No.

X. REASONING AND OPINION FOR CASE 2011-15

Hahn, after more than six months of discussions with, and accusations of, Lisa Ridenour, RE Ridenour, and TE Huber, and after the CTKPC Session formally requested that PMWP bring formal charges against the Complainant for his “bitter spirit and accusations against the session and pastor of Christ the King,” brought formal charges against Lisa Ridenour, RE Ridenour, and TE Huber. PMWP declined to appoint a prosecutor and commence process against Lisa Ridenour, RE Ridenour,

and TE Huber. Hahn filed a complaint on September 30, 2011 with PMWP for its failure to institute process. On October 18, 2011, PMWP denied that complaint, citing as its grounds the Hahn's "attitude and actions throughout the hearing and trial process this year" as manifesting "the character traits described in *BCO* 31-8."

Although in general *BCO* 32-2 requires that a court commence process upon the filing of charges, the court is afforded some discretion according to *BCO* 31-8, which states:

> Great caution ought to be exercised in receiving accusations from any person who is known to indulge a malignant spirit towards the accused; who is not of good character; who is himself under censure or process; who is deeply interested in any respect in the conviction of the accused; or who is known to be litigious, rash or highly imprudent.

In this Case, PWMP specifically found that the language of *BCO* 31-8 applied to the Complainant and his charges. Additionally, PMWP found, after it had "read the entirety of the documents and heard the testimony of the participants" that there was "insufficient evidence to indicate a strong presumption of guilt" on the part of any of Lisa Ridenour, RE Ridenour, and TE Huber. The SJC is required to defer to the lower court in such judgments apart from a showing of clear error (*BCO* 39-3). The Record of the Case provides no such showing.

The Summary of Facts was written by RE Terrell and TE Greco. The Statement of the Issue, Judgment, and Reasoning and Opinion were written by TE Fred Greco.

The Decisions in Cases 2011-11, 2011-12, 2011-15 and 2011-16 were adopted by a vote of 18 Concurring, 0 Dissenting, 0 Recused, 0 Abstaining, 6 Absent.

The three decisions were then adopted as a package as shown below.

Barker Absent	Donahoe *Concur*	McGowan Absent
Bise *Concur*	Duncan *Concur*	Meyerhoff *Concur*
Burkhalter *Concur*	Fowler *Concur*	Neikirk *Concur*
Burnett *Concur*	Greco *Concur*	Nusbaum *Concur*
Cannata *Concur*	Gunn *Concur*	Pickering *Concur*
Carrell *Concur*	Haigler Absent	Terrell *Concur*
Chapell *Concur*	Kooistra *Concur*	White Absent
Coffin *Concur*	Lyle Absent	Wilson Absent

Concurring Opinion
Case 2011-15 - Hahn vs. Philadelphia Metro Presbytery
RE Howard Donahoe

I agree with the Judgment in this case, but a Concurring Opinion is warranted because of one part of the Court's Reasoning (underlined below):

> Although in general *BCO* 32-2 requires that a court commence process upon the filing of charges, the court is afforded some discretion according to *BCO* 31-8, which states . . .

The underlined also appears in a previous SJC decision (*Lyons v. Western Carolina*) and this wording could easily be misunderstood. Here's how *BCO* 32-2 reads:

> Process against an offender shall not be commenced
> unless some person or persons undertake to make out the charge; or
> unless the court finds it necessary, for the honor of religion, itself to take the step provided for in *BCO* 31-2.

To "commence process" means to order an indictment and appoint a prosecutor to prepare the indictment and prepare for the arraignment and possible trial (i.e., the second part of *BCO* 31-2). But it would be wrong to imply a court is required - even in general - to do this simply because an individual "files charges." Other factors need to be evaluated before a court commences process (including the three factors mentioned in the *Lyons* Case).

While this *Hahn* Case was narrowly (and rightly) decided on *BCO* 31-8, the underlined statement raises the question: "What prerogative *does* a court have when allegations are presented to it?" I contend a court has greater prerogative than what might be implied by the underlined statement. A court must consider several factors. And it always has the right and the responsibility to exercise its discretion and judgment in deciding whether to order an indictment, appoint a prosecutor, and begin proceeding to a trial. Granted, this discretion and judgment is always subject to review later by the higher court via, for example, *BCO* 43 (Complaints), *BCO* 40-5 (allegation of an important delinquency or grossly unconstitutional proceeding of the lower court), and perhaps *BCO* 33-1 & 34-1 (assumption of original jurisdiction for "refusing to act" in doctrinal case or case of public scandal).

In one sense, this freedom reflects the same principle observed by the civil magistrate. Not all accusations presented by an individual to a police officer, or by a police detective to a district attorney, or even by a grand jury to a DA, will automatically result in a criminal indictment.

Alleging an Offense vs. Filing Charges

The *BCO* doesn't explain how a person "undertakes to make out the charge" (*BCO* 32-2). Is there a substantial difference between someone who alleges an offense and someone who files charges? I don't think so. Sometimes an allegation is made with supporting evidence, but sometimes not. But regardless, an allegation from an individual is simply that – an allegation. It doesn't matter much if he says he's "filing charges." The court is the only entity that officially files charges, in the sense of an issuing an indictment. (*BCO* Appendix G is a sample form for a court's indictment. There's no sample form for an individual "filing charges.")

An offended brother has a right to "tell it to the Church" per Matthew 18:17 (after complying with vss. 15-16). But telling and demanding prosecution are not the same things. The Church is required to listen to the telling, and inquire, but it doesn't have to indict. In the PCA, an indictment is always and *only* in the name of and on behalf of the Church – *not* the individual. The person making the allegation is not even a party in the case – even if he's the offended person:

> *BCO* 31-3. The original and only parties in a case of process are the accuser and the accused.
> The accuser is always the PCA, whose honor and purity are to be maintained.
>
> *BCO* 31-4. Every indictment shall begin: "In the name of the PCA," and shall conclude, "against the peace, unity and purity of the Church, and the honor and majesty of the Lord Jesus Christ, as the King and Head thereof." In every case the Church is the injured and accusing party, against the accused.

Judicial History

There's a mixed judicial history in the PCA on a court's prerogative when it receives "charges." It was answered one way 20 years ago (rightly) in two

cases where the SJC judgments were unanimous and were adopted by the 21st General Assembly in Columbia, SC (a procedure in place in 1993).

> Case 91-06: *Sandra Lovelace v. Northeast Presbytery,* M21GA, 1993 pp. 185-193.
> Case 92-07: *William Conrad, et al v. Central Carolina Presbytery*, M21GA, 1993 pp. 218-193.

In *Lovelace*, Presbytery upheld the dismissal of charges against two ruling elders, and the SJC and the General Assembly adopted a Judgment rightly declaring:

> Yes, a court has the prerogative of not adjudicating a case once charges have been placed before it. A court has the duty to investigate the allegations to determine if a trial is necessary (*BCO* 31-2).

In *Conrad*, the SJC and GA adopted a similar Judgment after the Presbytery declined to indict on allegations made against a minister. The Decision also declared a court may refuse to allow the person who brought the original accusation to demand being a voluntary prosecutor.

But more recently, the SJC has reasoned somewhat differently in two cases involving charges against ministers.

In *Lee v. Korean Eastern Presbytery* (Case 2010-26), TE Lee filed charges against two other ministers in the Presbytery, but Presbytery declined to indict. The SJC sustained Lee's Complaint and wrote the following as the conclusion to its Reasoning:

> In sum, once a Presbytery receives, from one who had the right to file charges, properly drawn charges against one or more teaching elder members of Presbytery, the Presbytery must proceed to accept and adjudicate those charges under the provisions of *BCO* chapter 32 unless it can show that one or more of the situations spelled out in *BCO* 29-1, 32-20, 34-2 and 31-8 applies. But if a Presbytery determines to dismiss charges on the basis of the above provisions, the burden of proof is clearly on the Presbytery. It may constitutionally dismiss such charges only with reasoning that is documented in the record and subject to review by the

higher court (see *BCO* 40-2 and 43-1).

In *Lyons v. Western Carolina* (Case 2010-16), a man "filed charges" against a minister, but Presbytery declined to indict. The issue in this case was somewhat more complicated than in *Lee*. While the SJC did not find Presbytery erred in declining to indict, it did rule Presbytery erred in ruling Lyons' subsequent Complaint administratively out of order. SJC wrote the following in its Reasoning (the first line of which was repeated in the present *Hahn* Case):

> Although in general *BCO* 32-2 requires that a court commence process upon the filing of charges, the Court has some discretion with respect to three categories. First, according to *BCO* 31-8, the Court may decline because the accuser "is known to indulge a malignant spirit towards the accused; who is not of good character; who is himself under Censure or Process; who is deeply interested in any respect in the conviction of the accused; or who is known to be litigious, rash or highly imprudent." (See Case 2010-04 *Sartorius, et al vs. Siouxlands Presbytery* and Case 2009-22 *McNeil vs. Chesapeake Presbytery*) Second, *BCO* 34-2 instructs that "charges ought not to be received" against a Minister on "slight grounds." Finally, *BCO* 32-20 establishes a limitation on the filing of charges outside of a space of one year.
>
> [SJC's Reasoning in *Lyons* did not refer to *BCO* 29-1, as it had in the *Lee*, which says an offense must be something that can be "proved to be such from Scripture." Perhaps it was assumed.]

A Charge: Sufficient vs. Necessary Condition

In the interpretation and application of *BCO* 32-2, there may be confusion between what's a *sufficient* condition and a what's a *necessary* one. *BCO* 32-2 is best understood as stipulating a charge is a necessary condition, that is, the accused must know what he is being accused of. Even the SJC's Reasoning in *Lee* and *Lyons* seems to agree that a charge filed by an individual is <u>not</u> a sufficient condition because the SJC stipulates four *BCO* requirements that must also be met before commencing process:

BCO 29-1 Nothing, therefore, ought to be considered by any court as an offense, or admitted as a matter of accusation, which cannot be proved to be such from Scripture.

BCO 31-8 Great caution ought to be exercised in receiving accusations from any person who is known to indulge a malignant spirit towards the accused; who is not of good character; who is himself under censure or process; who is deeply interested in any respect in the conviction of the accused; or who is known to be litigious, rash or highly imprudent.

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

BCO 34-2 As no minister ought, on account of his office, to be screened in his sin, or slightly censured, so scandalous charges ought not to be received against him on slight grounds.

Let's call them the *SAYS* standards – Scripture, Accuser, Year, and Slight [grounds]. The Reasoning in *Lee* (and perhaps less directly in *Hahn*) seems to imply any charge from an individual must be prosecuted if the four *SAYS* standards are met. But there are additional factors. For example, a court should consider whether *BCO* 31-5 has been followed:

> An injured party shall not become a prosecutor of personal offenses without having tried the means of reconciliation and of reclaiming the offender, required by Christ. (Matt 18:15-16)

And every court has the freedom to seek informal and private interaction with an alleged offender "before instituting actual process." *BCO* 31-7 seems to encourage this:

> When the prosecution is instituted by the court, the previous steps required by our Lord in the case of personal offenses are not necessary. There are many cases, however, in which it will promote the interests of religion to send a committee to converse in a private manner with the offender, and endeavor to bring him to a sense of his guilt, before

instituting actual process.

But in addition to *SAYS*, and *BCO* 31-5 and 31-7, there other matters a court should consider before it proceeds to formal indictment and prosecution at trial. Below are just a few examples we'll call the *WEEP* standards.

- Is a trial really warranted?
- Will the ends of discipline be promoted in a trial?
- Is there enough preliminary evidence to support an indictment?
- Is it likely the allegation will be provable at trial?

1. The court might not believe the alleged offense warrants a formal trial. This is a subjective judgment and a matter of discretion. For example, say a 14-year-old communing member alleges his 16-year-old brother violated Scripture by hitting him. The older brother is not willing to confess to the alleged offense, but there's a strong presumption of guilt because two Session members observed the incident. The younger brother "files charges," cites the *Lee* Case, accurately claims he meets the *SAYS* standards, and contends the Session is obligated to institute formal judicial process against his older brother. The Session reports to the younger accuser that while there clearly appears to be a strong presumption of guilt, the alleged offense simply does not warrant a formal indictment and full trial. The Session appropriately confronts the unrepentant older brother, but it sees insufficient warrant for a formal indictment and trial.

   Additionally, it may be reasonable to consider things like a Session's size when deciding whether to proceed to formal process. If a Session only has one TE and one RE, formal process will be challenging and could monopolize the Session's time and energy. And with a two-man Session, if one needs to be the prosecutor, a Session trial is probably not possible (though a Reference to Presbytery would be).

2 When considering an indictment, it's fair for a Session or Presbytery to ask: Will the ends of discipline be promoted by a formal indictment and trial in this particular instance? It's possible the several "ends" in *BCO* 27-3 could be more easily and/or more sufficiently achieved without going to a formal trial.

> 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.
>
> Discipline is for the purpose of godliness (1 Tim 4:7); therefore, it demands a self-examination under Scripture. Its ends, so far as it involves judicial action, are
>
> the rebuke of offenses,
> the removal of scandal,
> the vindication of the honor of Christ,
> the promotion of the purity and general edification of the Church,
> and the spiritual good of offenders themselves.

3. The court might consider the preliminary evidence insufficient to support the accusation/charge. It would not be prudent to order an indictment until and unless it believes otherwise. While additional evidence might later change the court's mind, absent that, the court is within its rights to decline to prosecute.

   It seems this understanding was approvingly mentioned by the SJC in the present *Hahn* Case. In its Reasoning, the SJC states:

   > "Additionally, [the Presbytery] found, after it had "read the entirety of the documents and heard the testimony of the participants" that there was "insufficient evidence to indicate a strong presumption of guilt" on the part of any of [the 3 persons accused by Mr. Hahn]."

   And this understanding is reflected in SJC Manual, Chapter 16: Procedures for Assuming Original Jurisdiction over a Minister (*BCO* 34-1). Even if two *Presbyteries* file charges against a minister in another Presbytery, *and* the SJC determines it's a doctrinal case or case of public scandal, *and* the SJC determines the original Presbytery "refused to act," the SJC *still* must determine there is a strong presumption of guilt before commencing process.

   > *OMSJC* 16.1b. If the case is determined to be in order, the [SJC] panel shall conduct an investigation of

allegations against the minister under the provisions of *BCO* 31-2.

OMSJC 16.4 If the SJC's final judgment is that the above investigation does not raise "a strong presumption of the guilt of the party involved," (*BCO* 31-2) the SJC shall dismiss the case and advise the parties to the case.

4. The court might legitimately doubt the charge can actually be proven at trial. This doubt could result from various reasons: inadequate or unavailable evidence, insufficient or questionable witnesses, etc. For example, if someone charges a man with an offense related to his marriage, and his wife is not willing to testify, and the court does not believe the offense could be proven at trial without her testimony, it would probably not be prudent to conduct a trial.

These examples simply illustrate a court can and should exercise discretion and judgment in areas additional to the *SAYS* standards when deciding whether and when to commence formal process.

Historical & Contemporary Views

This freedom to exercise discretion and judgment echoes that expressed over a century ago by F.P. Ramsay in his *Exposition of the Book of Church Order* (1898, p. 193-194, on VI-2). http://pcahistory.org/bco/rod/32/02.html

Ramsay is broadly regarded as one of the most eminent exegetes of Presbyterian polity. Below are his comments on the same paragraph as our *BCO* 32-2:

173 - II. Process against an offender shall not be commenced unless some person or persons undertake to make out the charge; or unless the court finds it necessary, for the honour of religion, itself to take the step provided for in Chapter V., section II.

Ramsay: Since an offence is anything in principle or practice contrary to the Word of God, who of us is not an offender? Were it a duty to prosecute every offender, the Church would have no time or strength for anything else. Process shall not commence unless one of two conditions

> is fulfilled. The one of these conditions is, that some person or persons volunteer to prosecute in spite of the warning in 169 and after complying (if an injured party or one privy to a private offence) with 165; and even then the court may decline to allow process to commence, either from objection to the voluntary prosecutor (168), or because the thing charged is not an offence, or the evidence proposed is seen to be inadequate, or because the ends of discipline will not be promoted in the circumstances. The other of these conditions is that the court shall find it necessary, for the honor of religion, to take the step provided for in 162. (Emphasis added).

Here's an excerpt from Morton Smith's commentary on *BCO* 32-2 (echoing Ramsay):

> . . . Even [if someone files charges], the Court may decline to prosecute, for any one of the following reasons:
>
> 1. objection to the voluntary prosecutor and his motivations 31-8;
> 2. the thing charged is not an offense;
> 3. the evidence proposed is inadequate;
> 4. the ends of discipline will not be promoted in these circumstances.

Other Denominations

This understanding of a court's freedom is also reflected in the rules of other Presbyterian denominations, perhaps more clearly than in ours. Granted, these don't govern the PCA, but it would be odd if an important aspect of our disciplinary procedures were fundamentally different than theirs. Take the OPC for example (underlining added):

> OPC Book of Discipline, Chapter 3 – Steps in Judicial Process
> http://opc.org/*BCO*/BD.html#Chapter_III
>
> 7a. If a charge in the form prescribed in this chapter, Section 3, is presented to the judicatory of jurisdiction by an individual or individuals, the judicatory shall proceed to conduct a preliminary investigation to determine whether judicial process shall be instituted. A committee may be appointed for this purpose, but its findings shall always be reviewed by the judicatory.

7b. The judicatory, or the committee, shall consider
(1) the form of the charge;
(2) the form and relevancy of the specifications;
(3) the competency of the witnesses named in the specifications;
(4) the apparent authenticity, admissibility, and relevancy of any documents, records, and recordings adduced in support of the charge and specifications;
(5) whether the specifications, if true, would support the charge; and
(6) also, whether the charge, if proved true, would constitute an offense serious enough to warrant a trial.

An offense which is serious enough to warrant a trial is:
(1) an offense in the area of conduct and practice which seriously disturbs the peace, purity, and/or unity of the church, or
(2) an offense in the area of doctrine for the non-ordained member which would constitute a denial of a credible profession of faith as reflected in his membership vows, or
(3) an offense in the area of doctrine for the ordained officer which would constitute a violation of the system of doctrine contained in the Holy Scriptures as that system of doctrine is set forth in our Confession of Faith and Catechisms.

See also:

ARP Book of Discipline, V. Part A, paragraphs 4 & 5
http://www.arpsynod.org/downloads/Book%20of%20discipline.pdf

RPCNA Book of Discipline, Chapter 2: Instituting Judicial Process (esp. paragraphs 2.1 and 2.2) http://reformedpresbyterian.org/downloads/constitution2010.pdf

EPC Book of Discipline, Chapter 6 (esp. 6-1.B)
http://www.epc.org/resources/download-epc-documents/

RCA *BCO*, Chapter 2, Part 1, Article 4, Section 4 – Procedure for Bringing a Charge http://images.rca.org/docs/bco/2011BCO-Discipline.pdf

PCUSA Book of Discipline, Chapter 10, paragraphs D-10.0103 and 10.0201 http://index.pcusa.org/NXT/gateway.dll?f=templates&fn=default.htm&vid=pcdocs:10.1048/Enu

Relative Value of Formal Process

Perhaps this also raises the question of how a Session may communicate its opinion/ judgment when it believes a member has sinned or is sinning. While a Session cannot impose the formal censures of Admonition, Suspension, or Excommunication apart from a confession or formal process, it's always free to tell a member if it believes he has sinned. In certain instances and with appropriate discretion, a Session could adopt and deliver a letter to a member officially communicating its judgment about that person's behavior. It doesn't need a trial to call something a sin, even formally. A Session might use this approach, for instance, when officially expressing its opinion on the relative culpabilities in a marriage demise, in circumstances where formal judicial process might not be prudent or might not be the best way to achieve the ends of *BCO* 27-3.

Some people seem to think a formal trial is usually a helpful and productive approach and a great way to resolve disputes and allegations. I wonder. Trials are difficult. They cost money. They take time. They sometimes drain the energy out of a Session and its minister. And to be done well it requires a good prosecutor - and it's rare for a TE to have that skill, and even rarer for him to have that experience, and almost unknown for him to have the time. Granted, a large church might have an RE attorney on Session, but it's less likely with a smaller Session. A trial often means a failure of shepherding, a failure of mediation, a failure of informal discipline, and a failure of communication. And in the end, a trial often fails to resolve the matter and often leaves broken relationships in its wake. I'm not saying trials are bad, only that they're rarely the wonderfully-effective, peace-restoring, truth-vindicating things many seem to imagine them to be.

Conclusion

We should recognize and appreciate courts have the freedom and responsibility to exercise discretion and judgment in deciding whether and when to commence formal process. This exercise is subject to appellate

review, of course, but it shouldn't be restricted - even in general - without compelling reasons or explicit constitutional directive.

CASE 2011-14
COMPLAINT OF RE DUDLEY REESE AND TE NIEL BECH
VS.
PHILADELPHIA PRESBYTERY

I. SUMMARY OF THE FACTS

04/16/09 The SJC ruled in Cases 2008-1 and 2008-10 that Philadelphia Presbytery did not err when it licensed and later ordained TE Jason Hsu who, during the course of his examinations, stated that he believes the office of Deacon can also be held by women. TE Hsu also affirmed, among other things, that he would not ordain women to the office of Deacon; that he would feel more comfortable with a "Mercy Team" comprised of men and women who are not ordained; but that if the Session of the Church that calls him desires to ordain men as Deacons, he would submit to that. (*M37GA176, 178*)

In denying these Complaints the SJC stated the following: "We are required to give great deference to the judgment of Presbytery on matters of discretion and judgment best addressed by the court with familiar acquaintance with the events and parties (*BCO* 39-3.3). In the absence of clear evidence that the candidate intends to ordain women to the office of deacon, or that he does not intend to encourage his congregation to nominate qualified men to the office, or that he will refuse to ordain qualified men to the office of deacon when women may not also be ordained, we are required to defer to Presbytery's judgment on this area of inquiry." (*M37GA185*)

Earlier in its opinion the SJC stated: "[I]f a member of a Presbytery, who during his examination for ordination promised to follow the *BCO* in spite of a personal reservation, subsequently acts in contradiction to the