III. REPORT OF THE CASES

CASE 2016-06

RE JOHN AVERY
VS.
NASHVILLE PRESBYTERY
DECISION ON COMPLAINT
JUNE 13, 2017

The Standing Judicial Commission declares this Case to have been abandoned. The Commission approved this action without objection.

CASE 2016-10

IN RE KOREAN NORTHWEST PRESBYTERY
JUNE 13, 201

Korean Northwest Presbytery responded to the SJC that it had amended and adopted its response to the exceptions in its meeting of April 24-25, 2017. A motion to accept the amended and corrected responses of KNWP was approved by the following roll call vote:

Bankson, *Absent*	Duncan, *Concur*	Neikirk, *Dissent*
Barker, *Concur*	Evans, *Concur*	Nusbaum, *Concur*
Bise, *Concur*	Fowler, *Concur*	Pickering, *Concur*
Cannata, *Concur*	Greco, *Concur*	Robertson, *Absent*
Carrell, *Absent*	Jones, *Concur*	Terrell, *Concur*
Chapell, *Concur*	Kooistra, *Concur*	White, *Concur*
Coffin, *Concur*	McGowan, *Concur*	Wilson, *Concur*
Donahoe, *Concur*	Meyerhoff, *Concur*	
Dowling, *Abstain*		

CASE 2016-11

TE MICHAEL FRAZIER
VS.
NASHVILLE PRESBYTERY
DECISION ON COMPLAINT
MARCH 1, 2018

SUMMARY OF THE CASE

Rev. Chuck Williams, a minister and chaplain from the PCA's Central Florida Presbytery, filed accusations with Nashville Presbytery

against Rev. Scott Sauls, a minister in Nashville, accusing him of "infidelity to the Gospel" for alleged views and teaching related to homosexuality. Nashville Presbytery's standing Committee on Judicial Business considered the accusations and recommended Presbytery find there was insufficient reason to indict (i.e., no "strong presumption of guilt," *BCO* 31-2). Presbytery adopted the Committee's recommendation. Rev. Frazier, a member of Nashville Presbytery, filed a Complaint against that decision. Presbytery considered his Complaint, denied it, and he carried it to the SJC. On March 1, 2018, the SJC denied the Complaint, by a vote of 20-0-1.

I. SUMMARY OF THE FACTS

06/13/14 Rev. Scott Sauls, pastor of Christ Presbyterian Church, Nashville (the "Church") invited Mr. Stephen Moss to post on Sauls' blog, under the title, *"Meet My Same-Sex-Attracted, Evangelical Christian, Seminary Student Friend."*

06/17/14 Rev. Chuck Williams, a member of the PCA's Central Florida Presbytery, exchanged emails with Rev. Sauls.

06/21/14 Rev. Williams exchanged emails with Mr. Moss.

03/01/15 Nine months after the email exchange, Sauls' book was published, titled: *Jesus Outside the Lines.* Chapter 8 is titled "Chastity or Sexual Freedom?"

03/23/15 Sauls posted an article on the Gospel Coalition website, titled *"Toward a Graciously Historic Sexual Ethic."*

04/12/15 Christ Presbyterian Church sponsored an *"Open Forum on Same Sex Attraction."* Mr. Moss was one of the guest speakers. Rev. Sauls was one of the moderators of the Forum regarding the content of Mr. Moss's post.

Rev. Sauls preached a sermon titled, "Redeeming Sexuality."

04/28/15 Ten months after their first email exchange, Rev. Williams again emailed with Rev. Sauls.

12/09/15 Seven months later, Rev. Williams sent the Clerk of Nashville Presbytery ("Presbytery") a document titled *"A Charge of Offense Regarding Infidelity to the Gospel Against the Church of the Lord Jesus Christ."* In the three-page document, Rev. Williams enumerated five charges against Rev. Sauls related to the April 2015 Forum and other material Rev. Sauls had authored.

As evidence to support his charges, Rev. Williams provided links to various items, including 14 YouTube videos from the April 2015 "Open Forum." Rev. Williams provided no quotes from the videos and or any transcription.

Williams also referenced, but did not attach,

- a Sauls blog post from June 13, 2014, titled *"Meet My Same Sex Attracted Evangelical Christian Seminary Friend"*
- an April 28, 2015, Sauls blog post titled *"Open Letter to a Public Critic"*
- a chapter from Sauls' book, *Jesus Outside the Lines*.

Williams also provided 48 pages of material:

- excerpts from the Westminster Confession of Faith,
- excerpts from Minutes of various General Assemblies,
- 2015 JETS article (D. Burk) titled *"Is Homosexual Orientation Sinful?"*
- excerpts from emails between Rev. Sauls and him on April 28, 2014
- half-page of excerpts from an April 2015 sermon by Rev. Sauls titled *"Redeeming Sexuality"*
- June 21, 2014, email exchange between Williams and the Forum speaker

The matter was referred to Presbytery's standing Committee on Judicial Business ("CJB").

04/12/16 At Presbytery's 87th Stated Meeting, the CJB presented its report and the following recommendation:

> Regarding complaint [accusations] of TE Chuck Williams against the TE, CJB recommended that [Presbytery] find that there is no presumption of guilt (*BCO* 31-2) and therefore find no merit to the complaint against the TE, that the Nashville Presbytery decline to commence process and that the complaint be dismissed. (*BCO* 31-2; 34- 1)

The motion passed.

06/11/16 Rev. Frazier, a member of Nashville Presbytery, filed a two-page Complaint with Presbytery against the April 12 action, contending:

> Presbytery] erred in their determination that there was insufficient evidence to raise a strong presumption of guilt in regards to the Complaint [accusations] brought before them against the teachings of TE Scott Sauls by TE Chuck Williams."

Complainant Frazier enumerated eight specifications of error, and he requested the following "Amends":

1. That Nashville Presbytery acknowledge its error in not finding a strong presumption of guilt in TE Scott Saul's (*sic*) teachings on same-sex attraction.
2. That Nashville Presbytery determine that there is a strong presumption of guilt in TE Scott's (*sic*) teachings on same-sex attraction.

His Complaint was referred to the standing CJB.

08/09/16 At Presbytery's 88th Stated Meeting, the CJB presented its report on the Frazier Complaint and recommended it be denied. Presbytery Minutes record the following: "CJB recommended dismissal of the complaint from TE Mike Frazier (attached). The motion passed."

09/05/16 Rev. Frazier took his complaint to the General Assembly.

01/18/18 A 147-page Record of the Case was finalized.

03/01/18 The full SJC heard the Complaint.

II. STATEMENT OF THE ISSUE

Did NP err at its 87th Stated Meeting on April 12, 2016, in its determination that there was insufficient evidence to raise a strong presumption of guilt with respect to the reports brought before it against the teachings of TE Scott Sauls?

III. JUDGMENT

No. The Complaint is denied.

IV. REASONING AND OPINION

The record of the case provides sufficient evidence that NP fulfilled its investigatory duties under *BCO* 31-2 in the particular circumstances presented in this case. Further, the 147 page record did not demonstrate that NP erred in its exercise of judgment when it declined to proceed to charges against the Teaching Elder.

This decision was drafted by the SJC after the full Commission heard the case and adopted on the following roll call vote:

Bankson, *Concur*	Duncan, *Absent*	Neikirk, *Concur*
Bise, *Concur*	Evans, *Concur*	Nusbaum, *Concur*
Cannata, *Concur*	Fowler, *Abstain*	Pickering, *Concur*
Carrell, *Concur*	Greco, *Concur*	Terrell, *Concur*
Chapell, *Concur*	Jones, *Concur*	Waters, *Concur*
Coffin, *Concur*	Kooistra, *Concur*	White, *Concur*
Donahoe, *Concur*	McGowan, *Not Qual.*	Wilson, *Concur*
Dowling, *Concur*	Meyerhoff, *Concur*	

TE McGowan disqualified himself because he is a member of the court that is party to the case. *OMSJC* 2.10(d)(3)(iii)

CONCURRING OPINION

ON CASE 2016-11

TE Fred Greco, joined by RE Steve Dowling, TE Paul Fowler, RE John Bise, TE Bryan Chapell, TE Brad Evans, TE Guy Waters, and RE Dan Carrell.

We did not dissent from the decision of the SJC in Case 2016-11 because the Court's Judgment is consistent with its Statement of the Issue and subsequent reasoning. We similarly agree with some of the argumentation contained in adjacent Concurring Opinions, whether they articulate deficiencies in the Complaint or highlight exegetical and other concerns. We are not repeating here what is written elsewhere because there is no need for redundancy.

There is a need, however, to express a reservation about the Nashville Presbytery's Committee on Judicial Business (the "CJB") in its conduct of this case.

While it is clear from the Complaint that TE Frazier's primary concerns are the theological issues first raised by TE Williams, he also complained that two members of the CJB were elders at Christ Presbyterian Church, which

hosted the "Open Forum on Same-Sex Attraction" event and which is pastored by TE Sauls. Though the *BCO* imposes no requirement for these men to have recused themselves on that basis, he argued that they should have done so because their close association with TE Sauls meant there was an appearance of impropriety that would have been obviated through recusal.

The Presbytery responded to this by saying that, in addition to the lack of a *BCO* mandate, their own rules don't require such a recusal, that the CJB is a standing committee and not an ad hoc committee, that the work of the CJB was thorough, that the two men closely associated with TE Sauls constituted only a two-fifths minority of the CJB, and that there is nothing in the ROC that indicates that the composition of the CJB was questioned during the initial discussion before Presbytery. These counter-arguments are objectively true.

What is also objectively true is that the TE and the RE on the CJB who are also on the Session at Christ Presbyterian Church were investigating themselves, since the original accusations arising from TE Williams also explicitly accused the Session of wrongdoing along with TE Sauls. This necessarily means that when the CJB received the formal communication from TE Williams, the two members from Christ Church either overlooked the fact that the Session as a whole (and they themselves) were subjects of the accusation, or they perceived it and decided to continue in their capacity as CJB members anyway, presumably with the concurrence of the other three members of the CJB. The first action might reasonably undermine confidence that due diligence was applied to the accusations and the second might reasonably undermine confidence in the objectivity of the CJB, irrespective of the competence of any investigation or the wisdom of its recommendation.

We find the makeup of the CJB to be a matter of great concern in the circumstances of the case, especially in light of the fact that the original correspondence from TE Williams (which started the entire chain of litigation) referenced the action of "the Session of [Christ Presbyterian Church]…knowingly invit[ing] a self-proclaimed and unrepentant homosexually attracted individual who claims a right standing with Christ while unrepentantly accommodating homosexual thoughts, desires and attractions to speak over a dozen times before the general congregation and youth at CPC." Because the other four of the five "charges" brought by TE Williams did not reference the Session, the matter of the Session's involvement in the "preaching, teaching, and actions" was not raised by the Complainant. In fact, Nashville Presbytery itself did not rule on the Session's

involvement, instead passing a motion "that there is no 'presumption of guilt' *(BCO* 31-2) and therefore no merit **to the complaint against TE Scott Sauls,** that the Nashville Presbytery decline to commence process, and that the complaint be dismissed (*BCO* 31-2; 34-1)" (emphasis added). It was the passage of this motion that Complainant challenged. He did not raise the issue of Nashville Presbytery's failure to address the involvement of the Session: "Nashville Presbytery erred in their determination that there was insufficient evidence to raise a strong presumption of guilt in the regards to the Complaint brought before them **against the teachings of TE Scott Sauls** by TE Chuck Williams" (emphasis added). If Complainant had raised the issue of the Session's involvement, or of Nashville Presbytery's failure to address the issue of the Session's involvement, we believe that it would have been of sufficient import to affect the ruling on the Complaint. The fact is, however, that the Complainant did not raise that issue in his Complaint, and therefore it was not before the SJC. (*BCO* 39-3.1)

The OMSJC has rules that address recusal and the appearance of impropriety for the SJC itself in order to "maintain the highest standards of integrity, independence, impartiality, and competence" (*OMSJC* 2.1), but those rules are not binding on other courts of the church. Even so, *BCO* Preliminary Principle II.8 says that "…ecclesiastical discipline… can derive no force whatever, but from its own justice, the approbation of an impartial public, and the countenance and blessing of the great Head of the Church." Thus, we believe Nashville Presbytery should have insisted that the two elders from Christ Church recuse themselves from the CJB's review of this matter. Its failure to have done so is a significant concern and should not be duplicated in the future by that Presbytery or any other. Even had the Session itself not been mentioned by TE Williams, the appearance of impropriety would have remained in light of the relevant circumstances. Sensitivity to such appearances would help assure that rulings by presbyteries receive the approbation of an impartial public.

CONCURRING OPINION

ON CASE 2016-11

RE Frederick Neikirk and TE Guy Waters, joined by RE John Bise, RE Dan Carrell, RE Steve Dowling, TE Fred Greco, and TE Paul Fowler (as a statement of the basis of his abstention).

While we concur with the decision of the Standing Judicial Commission in case 2016-11, we feel compelled to offer the following additional comments, both by way of explanation and of concern.

This matter first came to the full SJC in March of 2017, when a panel recommended that the Complaint not be sustained. That panel recommendation was not adopted by the full Commission. The Commission voted instead to sustain the Complaint, and, at a subsequent called meeting, voted to approve reasoning consistent with the vote to sustain the Complaint. The SJC then declined, on a tie vote, to approve the decision as a whole. The matter was then set over for a hearing by the full Commission. It was the view of those of the undersigned who were then on the SJC, on the basis of the Record before the Commission at the time of the original decision, that Nashville Presbytery (NP) had failed to do a sufficient investigation under *BCO* 31-2. We, therefore, voted to sustain the Complaint. Had that Record been unchanged at this hearing, we likely would have repeated our votes to sustain the Complaint.

Prior to the hearing by the full SJC the parties agreed to add several excerpts from publications wherein TE Sauls spelled out his views on the issues raised in the Complaint. These documents were added with both sides agreeing that the documents had been considered by the Committee tasked by NP with bringing a recommendation on the matter. With that additional information before the Commission we, and clearly the overwhelming majority of the SJC, concluded that there was not sufficient evidence that NP had erred "in its determination that there was insufficient evidence to raise a strong presumption of guilt with respect to the reports brought before it against the teachings of TE Scott Sauls." Our support of this decision does not mean, however, that we do not continue to have concerns about how this matter was handled. Indeed, we have concerns about both the process followed by NP and, of greater significance for the Church at-large, some of the exegesis of Scripture that was used in this matter.

When NP received the "report" on TE Sauls under *BCO* 31-2, it assigned the matter to its Committee on Judicial Business (CJB), tasking it to bring a recommendation to NP. Similarly, when the Complaint was presented that alleged that NP had erred in not finding a strong presumption of guilt, the matter was assigned to CJB. This is apparently a standard procedure for NP in dealing with any complaint, appeal, etc., and, in our judgment, it is entirely appropriate for a presbytery to task a committee with reviewing the facts and bringing a recommendation to presbytery. Our concern, however, is that there is no direct evidence in the Record that NP, as a whole, ever saw the original document that brought the *BCO* 31-2 report and there is, at best, ambiguous evidence as to whether NP, as a whole, ever saw TE Frazier's Complaint. To us, these are serious omissions. While it is perfectly appropriate for a presbytery to have a committee to do any investigating and

to bring a recommendation, it is the presbytery, as a court, that is charged with determining if there is a strong presumption of guilt (*BCO* 31-2) or if a complaint should be sustained (*BCO* 43-5,9). We do not believe a presbytery can responsibly make determinations such as these without seeing those originating documents. Respondent was able to point to places in the Record that could, possibly, be read as NP having seen the documents. Nonetheless, the Record should have been crystal clear as to whether the documents were seen by NP as a whole. If they were, then it is much easier to conclude that NP carried out its responsibilities. If they were not, then it likely would have been clear to us that NP had failed in its responsibilities.

All this points out the need for clerks to be diligent in making sure that minutes contain all relevant information. More importantly, it is a reminder that it is ultimately the presbytery, not its clerk, that is responsible for the content of its minutes. Hence, this experience should be a reminder to presbyteries to be vigilant to see that their minutes are complete. Finally, Respondent seemed to suggest at one point that the fault for this lack of clarity lay with Complainant for not asking for additional information to be added to the Record. While granting that this right exists under *OMSJC* 7.4, the fact remains that it is the duty of the clerk of the presbytery to ensure that "any papers bearing on the complaint" are included in the Record (*BCO* 43-6). Had this provision been complied with fully in this case the job of the SJC would have been much easier, and this matter likely could have been settled after the original panel hearing.

We also share some of the exegetical concerns raised by Complainant regarding the use of Matthew 19:12 (Christ's example of three types of "eunuchs") and John 9:13-23 (Christ's healing of the man who was born blind) to support the positions being put forth by TE Sauls. The Record suggests that some troubling claims were advanced in relation to these passages, namely, that a person with same sex attraction (SSA) is analogous to the eunuchs of Matthew 19:12 and the blind man of John 9. But the conditions of which Jesus speaks in Matthew 19 and John 9 are categorically different from SSA. In John 9, the blind man suffers from a congenital physical disability. In Matthew 19, Jesus mentions three types of eunuchs. The first is congenitally disabled, the second has undergone physical castration, the third has pursued the particular calling of being single. Placing SSA in the same category as the impairments and circumstances described in Matthew 19 and John 9 invites the unbiblical conclusion that SSA is a matter of moral indifference, a circumstance for which one is not morally responsible. Given the pertinence of these passages to NP's proceedings with respect to TE Sauls, one might have expected the Record to

show considerable interaction with these texts. But the Record does not reveal that either CJB or NP itself devoted careful exegetical and theological attention to these passages.

Even more troubling was how little indication the Record offers of interaction with James 1:13-15. There is arguably a passing reference to this passage in an e-mail by TE Sauls, and there is a brief statement by CJB. CJB's own reading of James 1:13-15 raises more questions than it answers. In response to its own question, "Do the Scriptures or Presbyterian Church in America (PCA) doctrinal standards identify homosexual attractions (same sex attractions) as sin along with homosexual immorality and homosexuality?" CJB answered: "No. The Scriptures speak clearly condemning homosexual immorality, homosexual behavior and homosexual lust. The Scriptures do not condemn temptations as sin. James 1:13-15 speaks of the relationship between temptation, desire, sin and death. Lustful desires of any sort are sin. Attractions and propensities are temptations and not sin." CJB appears to understand James 1:14 to separate temptation from desire and sin. But James 1:14 states just the opposite. Temptation flows from desire in this verse. We are bound, therefore, to understand the temptation of which James speaks here to be sinful. One would like to know how CJB arrived at its reading of James 1:13-15. But the Record offers no exegetical argument for CJB's claims regarding James 1:13-15. All that we have is CJB's assertion about this text.

In fairness, it was not always clear from the Record which of these uses of the passages in question were TE Sauls', which were from a speaker he invited, which were those of his supporters, and which were implications being drawn by the one bringing the *BCO* 31-2 report. Thus, while we believe there is fair reason to be concerned about how these passages were being used, we do not believe there was clear evidence in the Record that TE Sauls was responsible for the most concerning examples (and demonstrating that would have to fall on Complainant). With that said, we do not understand the Standing Judicial Commission's decision in this case to affirm that NP brought satisfactory resolution to the exegetical and theological concerns underlying its *BCO* 31 and *BCO* 43 actions. At a minimum, it is our hope and prayer that this case will lead the individuals involved, and the Church at large, to more clearly and carefully consider, within our system of doctrine and the full context of Scripture, the implications of these, and other, passages for questions relating to those struggling with same sex attractions and how the Church should minister to such individuals.

These procedural and exegetical concerns are not minor ones. But in dealing with a case that comes before us as members of the Standing Judicial Commission we are to judge only on the basis of "the issues raised by the parties to the case in the original (lower) court" (*BCO* 39-3.1), and to exhibit "great deference" to the lower court in matters of discretion and judgment (*BCO* 39-3.3). This case ultimately comes down to whether NP "with due diligence and great discretion demand[ed]...satisfactory explanations concerning reports...," and to whether, on the basis of the information it developed in that investigation, it erred in not finding "a strong presumption of guilt" (*BCO* 31-2). While we remain troubled by the concerns raised above, we do not believe they are sufficient, when taken in the context of the entire Record, to lead us to conclude that NP erred in exercising its responsibilities. For this reason we concurred in the decision.

CONCURRING OPINION

ON CASE 2016-11

RE Howie Donahoe, joined by TE Ray Cannata and RE Terry Jones.

I concurred with the Judgment in this Case, but I think it is prudent to explain why the brief Reasoning is sound (at least as I understand it). After two introductory remarks, this Concurrence will address three areas:

1. Applicable Standards of Review
2. *BCO* 39-3.3 Presbytery's Judgment
3. *BCO* 39-3.4 Constitutional Interpretation of "due diligence and great discretion"

First, let me suggest that in most SJC decisions, the Judgment is the most important part. After all, we're judges, not law professors. But *BCO* 15-5b requires the SJC to also "issue…its reasoning" with a judicial decision. The SJC gladly complies. But adopting *consensus* Reasoning may sometimes result, understandably, in a text that is shorter than what might be needed for the "approbation of an impartial public" (*BCO* Preliminary Principle 8). I believe concurring opinions can sometimes help procure that approbation.

Second, as I understand it, this Decision does not address the doctrinal question of what differences, if any, exist between thoughts, dispositions, inclinations, desires, attractions, temptations, and lusts - or the nature of sin in each. It does not address the pastoral question of how a Christian ought to deal with attractions if the things desired aren't things that please God.

Much is written on those topics, with more added regularly. At the same time, as this present matter might touch these topics, the Complainant was unable to demonstrate, from the minister's statements *in the Record*, that the Presbytery clearly erred in declining to indict. Presbytery's Representative reported the following in his Brief:

> In our judgment, TE Sauls has not taught that desires are morally neutral, nor has [the accuser or the Complainant] presented evidence leading to a strong presumption of guilt regarding this charge.
> ...TE Sauls does not believe that human desires are neutral as our Presbytery rightly judged."[1]

Nonetheless, in the future, if credible evidence is presented of any teaching on this topic that could be proven to be contrary to Scripture (*BCO* 29-1) and which "strikes at the vitals of religion" and is "industriously spread" (*BCO* 34-5), I do not regard anything in this Decision as precluding Nashville or any other presbytery from investigating or indicting. However, any accuser should note this stern warning in our *Book of Church Order*:

> *BCO* 31-9. Every voluntary prosecutor shall be previously warned, that if he fail to show probable cause of the charges, he may himself be censured as a slanderer of the brethren.[2]

1. Standards of Review – While the Decision does not explicitly cite a standard of review, the standards in *BCO* 39-3.3 and 39-3.4 both apply.

BCO 39-3.3 – A presbytery's decision on whether an explanation is "satisfactory" is a matter of discretion and judgment. So, "great deference" should be afforded to such a decision, unless clear error can 39-3.3 A higher court should ordinarily exhibit great deference to a lower court regarding those matters of discretion and judgment which can only be addressed by a court with familiar acquaintance of the events and

[1] *SJC Manual* 19.3.b: "The briefs (see *OMSJC* 8.1, 8.2, 8.3, 8.4) shall be made available by electronic means or by inclusion in the Commissioner Handbook for the next following General Assembly."

[2] Our *BCO* originally said such an accuser "*must* be censured." This stronger wording was in place since 1789. Here is how the provision read in the Minutes of our 1st Assembly: **"**Every voluntary prosecutor shall be previously warned, that if he fail to show probable cause of the charges, he *must* himself be censured as a slanderer of the brethren, in proportion to the malignity or rashness manifested in the prosecution." (*M1GA*, p. 147. Emphasis added.) It is not clear from GA Minutes how the wording was changed, but it seems to have been done at the 2nd GA.

parties....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.

One law dictionary defines "clear error" this way:

> Clear and unmistakable error is a very specific and rare kind of error. It is the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error. (https://www.law.cornell.edu/cfr/text/38/20.1403 See also footnote.[3])

BCO 39-3.4 – Higher court review of a *constitutional interpretation* does not require the "great deference" of *BCO* 39-3.3. So, in this Case, the 39-3.4 standard also applies because there was a dispute on the interpretation of two parts of *BCO* 31-2 (which is addressed later in more detail). In such a dispute, the higher court can annul a lower court judgment if it is based on a misinterpretation of the Constitution, without affording "great deference." Rev. Frazier's Complaint contained at least an implied dispute between him and Presbytery on the concepts of "due diligence" and "great discretion" in *BCO* 31-2. In his Brief and at the Hearing, he made that dispute explicit.

2. Presbytery's *Judgment*

Seven of the Complainant's eight alleged errors relate, in one degree or another, to his contention that members of Presbytery had insufficient evidence on which to base their decision declining to indict (i.e., their *BCO* 31-2 "satisfaction").

In the *BCO*, "satisfaction" is a subjectively determined judgment, usually based on many factors. What is deemed to be a "satisfactory" explanation in a *BCO* 31-2 investigation is circumstance-specific. And it is possible, given a particular set of facts, that one presbytery might be satisfied, while another might not be. But absent clear error, they would both be entitled to their different judgments. In this Case, the

[3]"Clear error is an unquestionably erroneous judgment by a trial court that is apparent to the appellate court." http://thelawdictionary/clear-error

"Clear error refers to a trial court's judgment or action that appears unquestionably erroneous to the reviewing/appellate court." https://definitions.uslegal.com/c/clear-error/

Complainant did not demonstrate from the Record why the SJC should rule it was clear error for Presbytery to be "satisfied" with the explanation it received.[4]

Presbytery had seen and heard the report from its standing Judicial Business Committee, which did not find a "strong presumption of guilt." And Nashville's Representative reported the following in the Preliminary Brief.

> Most of us are well aware of Scott' s positions having read his books and even attended or watched the forum that led to this whole case....TE Sauls' views are not hidden or difficult to determine. As TE Williams [the accuser] concedes, his teaching is public and easily accessible. In addition, two former Moderators of our General Assembly attend Christ Presbyterian, as well as numerous other TEs, including the chair of our Leadership Development (Credentials) Committee who has previously served as chair of the GA Theological Examining Committee. We would submit that TE Sauls' teaching is examined by good men on a regular basis.

Below is an excerpt from the Record of the Case, which comes from Chapter 8 in TE

Sauls' book, *Jesus Outside the Lines* (Tyndale, March 2015). Chapter 8 is titled "Chastity or Sexual Freedom?"

> If I am going to have anything meaningful to contribute to this discussion, it must begin with a recognition that temporary celibacy [i.e., pre-marriage] pales in comparison with what many same-sex-attracted people feel is a lifelong prison sentence of suppressing libido and romantic feelings. For those who are not same-sex attracted, this conversation needs to begin with compassion and maintain compassion as its foundation. We must never presume to understand what it is like to walk in shoes we will never wear.
>
> Yet the Scriptures remain, and the truth remains. All children of God, Jesus says, must deny themselves daily, take up their crosses, and follow him. Some people's crosses are much weightier than others', but all must bear a

[4] Satisfaction, satisfactory, satisfies – *BCO* 13-2, 18-3, 19-1, 19-4, 19-16, 21-2, 21-4a, 26-6, 30-1, 30-3, 31-2, 32-17, 33-2, 34-4a, 34-7, 36-5, 36-7, 37-3, 37-4, 38-2, 42-11, 43-7, 46-1 & 57-3.

> cross. In my world, the lesser crosses include my inclination to worry and my anxiety-based insomnia, both of which contradicts God's promise to fulfill my every need. And there is my craving for people's approval (even as I write this, I am fearful of how my gay and gay-affirming friends will receive it), which contradicts the favor that God has freely given me in Christ.
>
> But God did not create me to live this way. He did not create me to accept the invitation that these confusing and broken impulses, instincts, and desires extend to me. Rather, he extends to me a different invitation: to surrender all my impulses, instincts, and desires to his lordship. Rather than entertain the idea that God created me to be fearful, greedy and emotionally needy, he invites me to the higher ground of trusting him – trusting that his thoughts are higher than my thoughts, that his ways are higher than my ways, and that his wisdom is higher than my desires and longings. He invites me to trust that it will someday all makes sense, this surrendering business, when Jesus returns to make all things new and to redeem all things confusing and broken – including my confusing and broken desires.
>
> None of my struggles compares in weight to that of a gay man or woman surrendering all romantic longings to Jesus. I have known several gay men and women to make that surrender. I also know several same-sex-attracted people who are faithfully married to members of the opposite sex, and for whom such faithfulness is a regular but noble struggle. I am currently pastor to several of these men and women. For many of them, the surrender is heartbreaking. But it is a surrender that each of them has considered worthwhile, not because Jesus is a roadblock to love but because Jesus is love itself.

The Record of the Case contained nine items that were written or spoken by Rev. Sauls. These included three blog posts, a chapter from his book, excerpts from a sermon, comments and answers in two sets of e-mail exchanges with Rev. Williams (the accuser), and two sets of e-mail exchanges with Presbytery's investigating committee. Assuming an average printed page has about 500 words, the material equates to about 27 pages. At the Hearing before the full SJC, a judge asked the Complainant to identify in the Record the statement he believed most

clearly warranted indictment for sinful teaching. Despite being asked twice, Complainant Frazier declined to specify any, and his representative, Rev. Aquila, simply referenced the Complainant's Brief in general. But if a complainant alleges a minister should be put on trial for sinful teaching, one would assume he could readily point to a specific statement in the record that most clearly demonstrates the heresy and would value the opportunity to do so in front of the 21 judges hearing his case.

Finally, it is ordinarily the accuser's burden to persuade a presbytery why it *should* indict – largely through evidence the accuser provides. And a presbytery ordinarily has no burden to adopt reasons why it declines to indict. A complainant has the burden to demonstrate to the higher court, from the Record, why it should rule a presbytery clearly erred in its judgment. Nashville Presbytery did not find that the accuser or the complainant met those burdens, and the SJC did not find clear error in Presbytery's judgments.

3. **Constitutional Interpretations:** due diligence & great discretion in *BCO* 31-2:

> 31-2. It is the duty of all church Sessions and Presbyteries to exercise care over those subject to their authority. They shall with due diligence and great discretion demand from such persons satisfactory explanations concerning reports affecting their Christian character.

Five of the Complainant's eight allegations of error generally claimed there was, in various regards, an inadequate investigation. Items 2, 3 and 4 asserted failure in *"addressing"* the charges. Item 5 asserted failure *"to address the theological implications of the charges."* And Item 6 asserted error in *"not answering"* a particular question the Complainant believed should have been answered.

But the *BCO* does not stipulate what steps or procedures an investigation must follow. It does not specify a timeline, the composition of the investigating body, which witnesses must be interviewed, how much material must be reviewed by the investigators, what questions they must ask or answer, or the format of their report. The *BCO* does not mandate investigative procedures, and thus those procedures are entirely a matter of judgment and discretion, involving many factors.

Due Diligence - In his Brief, the Complainant alleged four times that Presbytery erred by not doing its "due diligence" in this matter.[5] Let's consider five aspects of "due diligence."

a) The words "due diligence" appear only once in the *BCO*, in *BCO* 31-2. So, it is not possible to compare how the *BCO* uses the phrase elsewhere. But here are two generally-accepted definitions of "due diligence," at least as used in a non-financial/non-fiduciary sense.

> Due diligence in a broad sense refers to the level of judgement, care, prudence, determination, and activity that a person would reasonably be expected to do under particular circumstances. (https://definitions.uslegal.com/d/due-diligence)
>
> Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case. https://thelawdictionary.org/due-diligence/

Note the references to "particular circumstances." Presumably, in any investigation of a minister's teaching, these circumstances would include many things, like the nature of the accusations, the evidence provided, the character of the accuser, the minister's previously stated views on the question, presbytery's knowledge of his character, etc. So, the particular circumstances will dictate what's a reasonable amount of inquiry and a reasonable report of findings. In other words, "due diligence" is circumstance-dependent.

b) Somewhat related to "due diligence" was the Complainant's contention about the composition of the investigating committee. He claimed it was a "serious" error for two of the five members of the investigating committee to have also been members of the same church as the accused. But the men were already members of Presbytery's *standing* Committee on Judicial Business, not an ad hoc committee freshly appointed for the task. And the *BCO* does not mandate the size of an investigative committee or which presbyters

[5] The phrase "due diligence" did not appear anywhere in his Complaint or in the 147-page Record. This can sometimes occur when there are different authors for the Complaint and the Brief (though nothing prohibits a complainant from seeking the assistance of another to draft either a Complaint or a Brief.).

may serve on it. The only *BCO* restriction on composition is in *BCO* 15-3, which precludes presbyters from serving on a Presbytery *commission* trying a judicial case if it comes up from their church. The Record did not contain evidence of any misconduct or actual prejudicial bias. However, as mentioned in the beginning of this Concurrence, the "approbation of an impartial public" is an important goal, and the composition of any investigating committee could affect that approbation. But absent evidence of collusion or improprieties that can be demonstrated to have substantively led to Presbytery's decision, the composition of Nashville's committee did not constitute an error warranting the annulment of Presbytery's judgment.

c) Now to the matter of diligence and providing reasons. Complainant's Specifications 1 and 7 seemed to assume Presbytery was required to justify its decision declining to indict (mistakenly flipping the evidentiary burden from accuser to court). Item 1 asserted Presbytery erred by adopting a recommendation from the committee that allegedly "*provided little evidences for the members of Nashville Presbytery to evaluate the basis for their conclusions, nor the concurrent approval for their judgments, recommendation, and reasoning."* Item 7 asserted Presbytery should have provided its own *"biblical analysis through original sourced references."*

These assertions lack constitutional basis. Except in a few instances, a presbytery is not constitutionally required to justify or explain its decisions. There are only nine instances where the *BCO* requires a presbytery to adopt reasons, and these are related to candidates, licentiates, out-of-bounds calls, ordination exams, and keeping a convicted appellant from the Lord's Supper (*BCO* 18-4, 18-7, 19-2, 19-6, 19-13, 20-1, 21-4a, 21-4d, and 42-6). In general, when a motion is adopted at a presbytery meeting, there could be various reasons held by the different men who vote on the prevailing side. And there could even be instances where there is majority agreement on a judgment, but not majority agreement on the adoption of a particular reason.

Furthermore, in his cover letter to the SJC in the Record, it seems the Complainant thinks a *BCO* 43-1 complaint has some sort of privileged status in the original court. But "consideration" of a complaint doesn't require every document attached to the complaint

to be distributed to every presbyter. Nor is there a requirement for each presbyter to affirm he has read the entire package, or even the complaint itself, in order to be qualified to vote on the complaint.[6] This is contrasted with the procedures in *BCO* 43-8 and 43-9 that the next *higher* court must follow when a complaint is taken to it. Indeed, when a complaint is presented to the original court, it's much like a motion to "rescind" or "amend something previously adopted," as described in *Robert's Rules*.[7] The original court is not required to afford a particular amount of time or attention to a *BCO* 43-1 complaint. In fact, at the meeting where the complaint is considered, someone could "move the previous question" immediately after the matter is on the floor, and if that gets the requisite 2/3 majority, the matter could be put to a vote without any discussion. And like most other motions, the body isn't required to adopt reasons for declining to sustain the complaint, and according to *Robert's Rules* and *RAO* 16-3-f.2, motions that fail are customarily not even recorded in the minutes.

d) In addition, the Complainant seemed to misunderstand a parliamentary matter (and Presbytery may have contributed to the misunderstanding). If an investigating committee finds insufficient reason to recommend an indictment, and reports that finding, the presbytery is not required to adopt, or even to consider, a motion to *decline* to indict. (At the Hearing, the Complainant's Representative said he believed a presbytery was required to do so). When a committee finds there is not a strong presumption of guilt, it is the finding *of the committee*. It doesn't need to be adopted, and probably shouldn't even be proposed.

   Furthermore, speaking generally, a presbytery does not ordinarily vote to "receive" the report of a committee, or even its findings. It just records it in the minutes as the report or findings of the

[6] Note this excerpt from the SJC Reasoning denying a complaint in Case 1998-02: *St. Paul Session v. C. Florida*: "A major issue pertained to [Central Florida] not distributing letters from the complainants to the presbyters....The rationale of CFP was that distributing the letters would be circularizing the court....CFP was within its right not to allow the court to be circularized." (*M27GA*, Louisville 1999. The SJC vote on that Decision was 19-1. In 1998-99, the SJC included four current SJC members: TE Fowler, TE Kooistra, RE Donahoe, and RE White, as well as Complainant Frazier's Representative in this present Case.)

[7] *Robert's Rules of Order,* Section 35, "Rescind; Amend Something Previously Adopted,*"* in Chapter IX, "Motions that Bring a Question Again Before the Assembly*"* (*RONR*, 11th ed., pp. 305-310)

committee. A body acts when it votes on *recommendations* from the committee. For a recent example, note the 80-page Report of the GA's Ad Interim Committee on Women Serving in the Ministry of the Church presented in 2017. (*M45GA*, pp. 565-644. Its nine recommendations are on pp. 638-644.)

This parliamentary misunderstanding may have contributed to the Complainant mistakenly asserting Presbytery needed to defend a non-indictment decision. Below are three excerpts from *Robert's Rules* (which many Presbyteries have adopted as their parliamentary authority).

> A motion whose only effect is to propose that the assembly refrain from doing something should not be offered if the same result can be accomplished by offering no motion at all. (*RONR*, 11th ed., p. 104 ll. 32 ff.)
>
> When the assembly *hears* the report thus read or orally rendered, it *receives* the report. The terms *presentation* and *reception* accordingly describe one and the same event from respective viewpoints of the reporting member and the assembly. (*RONR*, 11th ed., p. 507, ll. 24-28)
>
> If after investigation, the committee's opinion is favorable to the accused, or if it finds that the matter can be resolved satisfactorily without a trial, it reports that fact. [*RONR* footnote: If the investigating committee submits a report that does not recommend preferral of charges, it is within the power of the assembly nevertheless to adopt a resolution that does prefer charges.] (*RONR*, 11th ed., p. 658, ll. 27-30)

e) Also related to "due diligence" is a proper understanding of the nature of committee work. The Complainant seemed generally troubled by an investigating committee having more information than the Presbytery, and this applied to both the Committee's work on the investigation and the Committee work on his Complaint. Regarding the latter, in transmitting his Complaint to the PCA Stated Clerk's office, the Complainant asserted Nashville Presbytery *"failed to furnish the members of the Presbytery a copy of [his] Complain ...or the rational for which it was submitted to the Court."* That material included his three-page letter and 62-pages of other documents.

> The Record does not indicate what, if any, of this material was on the "meeting materials" part of Presbytery's website, but regardless, the *BCO* doesn't require a particular level of material distribution. Documents like these are routinely and understandably assigned to committees, and the *BCO* doesn't require presbyters to have read all the materials a committee has read in order to vote on a committee's recommendation. That's the basic nature of committees. And because a complaint essentially asks the original court to reconsider a previous decision, a complaint isn't proposing something that hasn't already been addressed by the body, and thus, it deals with something with which the body is already somewhat familiar.[8]

Great Discretion – In this Case, the interpretation of the phrase "great discretion" was less important than the interpretation of "due diligence," but a short discussion would be helpful nonetheless. The word "discretion" is used 31 times in the *BCO* and every occurrence outside of *BCO* 31-2 refers to discretion *in making choices*. Some might contend "discretion" in *BCO* 31-2 means "being discreet." Granted, it is certainly important for a presbytery to be discreet (inconspicuous, quiet, private) when investigating allegations against a minister.[9] But I do not think it is likely that the *BCO* uses it that way in 31-2.[10]

The present wording of *BCO* 31-2 is the same as found in the 1879 PCUS Book (from almost 140 years ago). It is instructive to note how, in 1898, F.P. Ramsay described the "great discretion" a court has in such inquiries. In the excerpts below, Ramsay describes a level of discretion that is much higher than the level Complainant Frazier afforded to Nashville Presbytery. (All emphasis added. Note the final sentence in particular.)

---

[8] The Record indicates the Complainant was present at the meeting where his Complaint was considered, but nothing in the Minutes indicate he or any other member of Presbytery asked for additional time of any sort to read or discuss material related to this matter.

[9] *Robert's Rules*: "An investigating committee appointed as described above has no power to require the accused, or any other person, to appear before it, but should quietly conduct a complete investigation, making every effort to learn all the relevant facts. Information obtained in strict confidence may help the committee form an opinion, but it may not be reported to the society or used in a trial – except as may be possible without bringing out the confidential particulars. Before any action is taken, fairness demands that the committee or some of its members make a reasonable attempt to meet with the accused for frank discussion and to hear his side of the story. (*RONR*, 11th ed., p. 658, ll. 11-21)

[10] Granted, a *hapax legomenon* in the *BCO* is not evaluated the same as one appearing in a document written by a single author.

> The phrase, "with due diligence and great discretion," qualifies the imperative "shall demand" to this extent, that the court may, for satisfactory reasons, omit such demand in some cases when there are injurious reports; ...
>
> But it is the court itself, and not any individual, that determines, in every instance, whether there shall be an investigation. ...
>
> The sum of the matter is, that the court has unlimited discretion (subject, as in all matters, to the review of higher courts), only that it has not discretion to raise, by investigation, a strong presumption of guilt and then not institute process. [11]

As the long-standing Ramsay interpretation shows, the manner in which a session or presbytery conducts an investigation, and presumably even the records it keeps in doing so, is a matter of discretion and judgment toward which any higher court is to "exhibit great deference" (*BCO* 39-3.3). The original accuser, Rev. Chuck Williams, was a member of a distant presbytery (Central Florida). His allegations were against a minister with whom Nashville Presbytery was apparently very familiar, and the allegations pertained to a theological question about which the accused minister's opinion was broadly known. Presbytery had great discretion in how, and perhaps even whether, it investigated.

This understanding of "due diligence and great discretion" was reflected in two previous SJC Decisions. In the previously cited 1999 Decision in *St. Paul Session*, the SJC included the following in its Reasoning:

> How such an investigation should proceed is not prescribed in the *BCO*, and presbytery has the right to determine its own procedure for the investigation." (Emphasis added.) [12]

---

[11] The Rev. Dr. Franklin Pierce Ramsay (1856-1926) wrote a commentary on the Southern Presbyterian *BCO*, published in 1898 - *Exposition of the Book of Church Order*. He was educated at Davidson College, Johns Hopkins University, the University of Chicago (Ph.D.) and Columbia Theological Seminary. And Dr. Morton Smith approvingly cites Ramsay's excerpt in Smith's 1998 *Commentary on the BCO.*

[12] Also in the SJC Reasoning in *St. Paul Session*: "The complainants charged that all 45 of the allegations were serious and were not sufficiently explored, that the Commission met only twice to consider 20 pages of charges and 175 pages of the ROC, and that none of the 45 specific charges had ever been tried, ruled upon, or otherwise resolved. The respondents replied that all 45 of the examples were considered and addressed by the commission at some point. They simply did not see the need to deal extensively with every one of the 45, but rather chose to focus on four of the most serious ones."

In another Decision eight years ago having similar facts, the SJC, by a vote of 21-0, denied a Complaint alleging an inadequate investigation (2009-05: *Payne v. Western Carolina*). In that Case, 19 church members signed and sent a four-page letter to Presbytery alleging sins about their pastor and asking for a *BCO* 31-2 investigation. The accused minister sent a response to the Presbytery Clerk. Eventually, the Moderator appointed a six-man committee to investigate. The committee had two meetings, with four committee members attending. The committee did not interview any of the accusers. Committee minutes simply recorded, "… all the documents pertaining to this matter, as forwarded by the clerk of Presbytery, had been reviewed by the committee members prior to the meeting." The committee eventually reported at a stated meeting and Presbytery voted to accept the committee's finding that there was not a strong presumption of guilt with regard to the allegations. And the committee report was not in Record.

Below is an excerpt from the SJC's Reasoning in *Payne.*

> *BCO* 31-2, however, does not specify any particular procedures for a court to follow for investigations. It enjoins them to use "due diligence" but also affords them "great discretion." It does not stipulate a timeline, composition of the investigating body, interview requirements, etc....In different situations, prudence and wisdom may dictate different procedures. It is up to the investigating court to determine those procedures, subject to review by a higher court." [13]

All that said, this present Case did not rest on the interpretation of "great discretion" in *BCO* 31-2. We can say both things are prudent - all investigations should be discreet, and courts have great freedom in how they're conducted.

Now, to conclude. Let me propose an idea, formed after 31 years as an elder. Before anyone publicly accuses a minister of sinful teaching, and especially if the accuser is from another Presbytery, he should seek to ensure that he clearly understands the minister's view and can express it in a way the

[13] The writer of this Concurrence was on the three-judge SJC Panel in the *Payne* Case – as was TE Frazier's Representative from our present Case. Case 2009-05 *Payne v. W. Carolina*, M38GA, 2010 Nashville, p. 197-207. Quote is from p. 205. This Decision also applied to four other WC Cases - 2009-05 *Payne*, 2009-08 *Linton*, 2009-09 *Lyons*, and 2009-10 *Woodward.* http://pcahistory.org/ga/38th_pcaga_2010.pdf

minister regards as fairly representing his view. This should certainly involve phone conversations, and perhaps even a dinner conversation or two (or at least attempts at such). And it might be prudent to recruit a mediator, or at least a conversation-facilitator. This would be good stewardship of the Lord's time, because the alternative could consume hundreds of man-hours. The Record of this Case did not indicate this course was followed, and I'm not convinced this process can reasonably be fulfilled via e-mail. [14]For the several reasons outlined above, I concurred with the Judgment to deny this Complaint.

/s/ RE Howard Donahoe, et al

CASE 2016-13

RE SCOTT DANIELS, et al.
VS.
NASHVILLE PRESBYTERY
DECISION ON COMPLAINT
August 30, 2017

The Standing Judicial Commission finds that circumstances have rendered the Complaint moot.

The foregoing decision was approved on the following roll call vote

Bankson, *Concur*	Duncan, *Concur*	Neikirk, *Dissent*
Bise, *Dissent*	Evans, *Concur*	Nusbaum, *Concur*
Cannata, *Concur*	Fowler, *Dissent*	Pickering, *Concur*
Carrell, *Dissent*	Greco, *Absent*	Terrell, *Concur*
Chapell, *Concur*	Jones, *Concur*	Waters, *Dissent*
Coffin, *Concur*	Kooistra, *Absent*	White, *Concur*
Donahoe, *Concur*	McGowan, *Disqual.*	Wilson, *Concur*
Dowling, *Dissentr*	Meyerhoff, *Concur*	

TE McGowan disqualified himself as he is a member of the Presbytery, which is a party to the case. *OMSJC* 2.10(d)(3)(iii).

[14] The Evangelical Presbyterian Church's *BCO* has a lengthy section suggesting such mediation and providing helpful steps. (Book of Discipline 3-2: "Mediation") http://epcoga.wpengine.com/wp-content/uploads/Files/4-Resources/5-Downloadable-EPC-Resources/A-Constitution-Doctrine/BookOfOrder2016-17.pdf