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

TE McGowan disqualified himself because he is a member of a court that is party to the case. *OMSJC* 2.10(d)(3)(iii). RE Pickering recused himself because of his relationships and familiarity with the parties. *OMSJC 2.10(e).*

CASE 2016-16

COMPLAINT OF TE ARTHUR SARTORIUS
VS.
SIOUXLANDS PRESBYTERY
DECISION ON COMPLAINT
October 19, 2017

I. SUMMARY OF THE FACTS

09/27/02 66th Stated Meeting of the Presbytery of the Siouxlands ("Presbytery"). As a part of his trials for ordination, ministerial candidate Greg Lawrence submitted a paper entitled "Covenant of Works: Toward a more Biblical Understanding of Covenant" to the Presbytery's Candidates and Credentials Committee.

01/25/03 At its 67th Stated Meeting, Presbytery approved his paper and sustained his ordination exam.

04/--/05At its 74th Stated Meeting, Presbytery established a study committee "for the purpose of studying the controversy concerning 'The New Perspective on Paul' (NPP), Norman Shepherd (NS), and Federal Vision Theology (FV) and submit a report to Presbytery."

01/27/07 At its 79th Stated Meeting, Presbytery received the study committee's report, approved a series of affirmations and denials, and adopted the finding that "The proponents of

these views [meaning NPP and FV] are outside the system of doctrine of the Westminster standards and do contradict the Scriptural teaching."

06/14/07 The 35th General Assembly received the report of the Ad Interim Study Committee on Federal Vision, New Perspective, and Auburn Avenue Theology. The 2007 Chattanooga GA adopted five Recommendations, which included Recommendation 3: "That the General Assembly recommend the declarations in this report as a faithful exposition of the Westminster Standards, and further reminds those ruling and teaching elders whose views are out of accord with our Standards of their obligation to make known to their courts any differences in their views." Those nine declarations are below.

1. The view that rejects the bi-covenantal structure of Scripture as represented in the Westminster Standards (i.e., views which do not merely take issue with the terminology, but the essence of the first/second covenant framework) is contrary to those Standards.
2. The view that an individual is "elect" by virtue of his membership in the visible church; and that this "election" includes justification, adoption and sanctification; but that this individual could lose his "election" if he forsakes the visible church, is contrary to the Westminster Standards.
3. The view that Christ does not stand as a representative head whose perfect obedience and satisfaction is imputed to individuals who believe in him is contrary to the Westminster Standards.
4. The view that strikes the language of "merit" from our theological vocabulary so that the claim is made that Christ's merits are not imputed to his people is contrary to the Westminster Standards.
5. The view that "union with Christ" renders imputation redundant because it subsumes all of Christ's benefits (including justification)

under this doctrinal heading is contrary to the Westminster Standards.

6. 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.
7. The view that one can be "united to Christ" and not receive all the benefits of Christ's mediation, including perseverance, in that effectual union is contrary to the Westminster Standards.
8. The view that some can receive saving benefits of Christ's mediation, such as regeneration and justification, and yet not persevere in those benefits is contrary to the Westminster Standards.
9. The view that justification is in any way based on our works, or that the so-called "final verdict of justification" is based on anything other than the perfect obedience and satisfaction of Christ received through faith alone, is contrary to the Westminster Standards. (M35GA, 2007 Chattanooga, Appendix O, pages 68 and 509-567.)

04/25/08 At its 83rd Stated Meeting, ten months after the Chattanooga GA, a motion was made requesting a *BCO* 31-2 investigation of TE Lawrence due to reports alleging he held views akin to "Federal Vision Theology." The motion failed. Two members filed a Complaint with Presbytery.

09/25/08 At a Stated Meeting five months later, Presbytery considered the Complaint and denied it by a vote of 18-12. One of the Complainants took the Complaint to the PCA's Standing Judicial Commission.

02/25/09 An SJC Panel considered the Complaint and filed a proposed decision to the SJC recommending the Complaint be sustained. (Eight months later in October 2009, the SJC adopted the Panel's recommendation and sustained the Complaint – Case 2008-14, *White v. Siouxlands, M38GA,* 2010 Nashville, p. 135.)

04/24/09 Shortly after the Panel's proposed decision was published, but before the SJC ruled, Presbytery formed an Investigative Committee to "conduct a *BCO* 31-2 investigation as to whether or not TE Greg Lawrence holds or is preaching/ teaching views with respect to the Covenant of Works or other doctrines associated with the so-called Federal Vision Theology that are contrary to the doctrinal standards of the PCA."

09/--/09 At Presbytery's 87th Stated Meeting, the Investigative Committee recommended (by a vote of 4-2) that Presbytery find a strong presumption of guilt that TE Lawrence was teaching doctrine "that strikes at the fundamentals of the system and/or the vitals of religion in his doctrine of baptism." However, a substitute motion was approved by a vote of 25-13 that stated: "That Presbytery reject (not adopt) the report of the committee with its motion to find a strong presumption of guilt in the teachings of TE Lawrence on baptism." Then an additional motion was approved by a vote of 20-17, which ruled the Presbytery "finds no strong presumption of guilt in the preaching/teaching views of TE Lawrence with respect to any doctrines associated with the so-called Federal Vision that are contrary to the doctrinal standards of the PCA."

10/20/09 At a Called Meeting, Presbytery heard two Complaints that had been timely filed against Presbytery's action declining to indict TE Lawrence. Presbytery sustained the complaints and appointed a new (2nd) committee to continue the investigation.

01/22/10 At Presbytery's 88th Stated Meeting, the 2nd Investigative Committee recommended by a vote of 6-0 that Presbytery find a strong presumption of guilt with regard to TE Lawrence's "preaching/teaching views…with respect to doctrines associated with the so-called Federal Vision

theology that are contrary to the doctrinal standards of the PCA." However, action on this motion was postponed in response to TE Lawrence's request for instruction. Presbytery then formed an 'Instructional Committee' "to work with and instruct TE Lawrence regarding the substance and formulations of the doctrinal matters contained in the Investigative Committee's report and the nine declarations concerning Federal Vision theology made at the 2007 PCA General Assembly."

04/23/10 At Presbytery's 89th Stated Meeting, the Instructional Committee gave a provisional report on its work with no action taken.

09/24/10 At Presbytery's 90th Stated Meeting, the Instructional Committee gave its report, which was received as information. The postponed strong-presumption-of-guilt motion of the 2nd Investigative Committee was then considered. A substitute motion was made, that read:

A. Having investigated TE Lawrence's views at considerable length, Presbytery at this time finds no strong presumption of guilt that any of the theological views of TE Lawrence strike at the vitals of religion, or are hostile to any fundamental of our system of doctrine.
B. Presbytery recommends to TE Lawrence the exhortations of the Committee to Work with and Instruct TE Lawrence; and further exhorts TE Lawrence to great care in his formulations of doctrine, for the sake of the peace and purity of the Church.
C. That Presbytery dismiss the relevant committees with thanks.

The motion to substitute carried and was considered seriatim. Part A of the motion *failed* and the moderator announced that the effect of the defeat of the motion was to find a strong presumption of guilt in regard to the theological views of TE Lawrence. Parts B and C of the motion passed by acclamation. Presbytery then established a Judicial Commission per *BCO* 15-3 to

adjudicate the case and report its non-debatable recommendation to Presbytery.

02/20/11 Charges and Specifications were filed with the Presbytery Stated Clerk. (These are identical to the Charges in the subsequent September 2016 trial.) The Charges were as follows:

Charge 1 – That TE Lawrence holds, defends, and teaches a view of covenant theology that is contrary to the covenant works and covenant of grace distinction as set forth in the Westminster Standards (*WCF* 7:2-3; WLC 20-22, 30-34; WSC 12, 20; Jer. 31:31-34; Rom. 7:9, 10:5-10; Gal. 3:10-12; Phil. 3:8-9).

Charge 2 – That TE Lawrence holds, defends, and teaches a view of baptism in which the elect receive saving benefits such as union with Christ and new life by means of their water baptism contrary to the West-minster Standards (*WCF* 27.1; 28.1; WSC 91, 92, 94; WLC 165, 168; Matt. 3:11; Acts 2:41, 10:44-48, 16:31-34; Rom. 4:11; 1 Pet. 3:21).

Charge 3 – That TE Lawrence holds, defends, and teaches that the reprobate receive at baptism union with Christ, new life, and forgiveness of sins in some sense thus creating a parallel soteriological system contrary to the Westminster Standards (*WCF* 27.1; 28.1; WSC 91, 92, 94; WLC 165; Matt. 3:11; Acts 2:41, 10:44-48, 16:31-34; Rom. 4:11; 1 Pet. 3:21).

Charge 4 – That TE Lawrence holds, defends, and teaches the view that some can receive saving benefits and then lose them thereby overturning the doctrine of the perseverance of the saints contrary to the Westminster Standards (*WCF* 3.6, 3.8, 11:5, 17.1; WLC 64-66, 68, 79; Isa. 54:7-8; John 5:24-25, 10:25-30; 1 Cor. 1:8-9; Phil. 1:6).

> Charge 5 – That TE Lawrence holds, defends, and teaches the view that assurance is grounded primarily in baptism, contrary to the Westminster Standards, thus minimizing or denying the subjective grounds of assurance and the possibility of an infallible assurance (*WCF* 3.8, 18:1-3; WLC 80; Rom. 8:16; 2 Cor. 13:5; 2 Pet. 1:10; 1 John 2:3, 3:14, 4:13, 5:13).

05/26/11 The JC convened via conference call and read the charges to TE Lawrence. He pled "Not Guilty" to each of the five charges. He also submitted a four-page written statement regarding his plea, entitled "Defendant's Plea."

09/14/11 Trial 1 was held September 12-14 and concluded with a unanimous (6-0) verdict of "Not Guilty" on all five charges. TE Lawrence chose not to testify at this trial (*BCO* 35-5). He submitted a 45-page document titled "Defense Exhibit 1" which contained excerpts from six documents - four letters he had previously sent to Presbytery between Sep. 2009 and Sep. 2010, one letter he had sent to the 2nd Investigating Committee in Dec. 2009, and a motion to dismiss charges that he presented to Presbytery in April 2011. Defense Exhibit 1 also included the originals of the six documents.

09/22/11 At Presbytery's 93rd Stated Meeting, the JC recommended "Not Guilty" verdicts on all charges, and Presbytery adopted the recommended judgments by a vote of 24-6.

10/14/11 A Complaint was filed alleging Presbytery erred in finding TE Lawrence "Not Guilty" of the five charges. It alleged, 1) that Presbytery erred in failing to condemn erroneous views of TE Lawrence that are contrary to the Standards, and 2) that Presbytery erred in the process taken by the JC to reach its verdict.

01/28/12 At Presbytery's 94th Stated Meeting, it received the Complaint and referred it to a Complaint Review Committee to recommend a response at the next Stated Meeting.

04/--/12 The Complaint Review Committee published its recommendation. It considered three errors alleged in the

complaint: (1) that Presbytery failed to "condemn erroneous opinions" per *BCO* 13-9.f; (2) that Presbytery erred in admitting evidence that could not be cross-examined in the trial of TE Lawrence; and (3) that Presbytery erred in weighing too heavily one part of evidence over against another. Their judgment was that Presbytery did not violate the Constitution in arriving at the "Not Guilty" verdicts, and that the trial was held in good order. The Committee recommended denying the Complaint.

04/26/12 At its 95th Stated Meeting, Presbytery approved the Complaint Review Committee's recommendation and the Complaint was denied.

05/22/12 The Complaint was taken to the SJC by four Ministers and three Ruling Elders.

03/06/14 The full SJC heard the Complaint (instead of an SJC Panel). Case 2012-08: *Sartorius, et al., v. Siouxlands*, *M43GA*, 2015 Chattanooga, p. 528)

06/17/14 SJC rendered a Decision in Case 2012-08, excerpted below:

> Issue: Did the Presbytery of the Siouxlands err on September 22, 2011, in approving their Judicial Commission's recommended judgments?
>
> Judgment: Yes. Presbytery of the Siouxlands erred because its Judicial Commission made serious procedural errors that undermined the legitimacy of the Judgments proposed. The disposition to be made of this Complaint is that SP is instructed to undertake a new trial of TE Lawrence according to the instructions that follow (*BCO* 43-9, -10).
>
> Reasoning (two excerpts regarding instructions):
>
> > 1. Presbytery shall conduct a new trial of TE Lawrence on the same Indictment that was filed on February 20, 2011.
> > 3. ...The defendant shall again have the right to testify or not as he so desires. However, no exculpatory written expression

of the defendant's views, prepared after February 20, 2011, shall be admissible unless the defendant testifies at trial.

09/25/14 At its 102nd Stated Meeting, Presbytery referred the matter to a committee to draft a motion for Presbytery to consider in response to the SJC ruling.

01/23/15 At its 103rd Stated Meeting, Presbytery decided to conduct the retrial as a whole, and to include the Record of Trial 1, after removing the defense material as instructed by the SJC. The Prosecutor and Defendant were notified they could offer additional evidence at Trial 2. Presbytery appointed three presbyters as a Judicial Committee to consider such matters such as, but not limited to, establishing deadlines for providing lists of additional witnesses and lists of documentary evidence; establishing procedures and time limits for opening and closing statements; and other matters related to the orderly conduct of the trial as permitted by *BCO* 32-11. The Presbytery Clerk was named a member of the Judicial Committee and he was directed to make the corrected Record of Trial 1 available to the presbyters. Presbytery appointed TE Arthur Sartorius to serve as Prosecutor at the trial, which was scheduled for Presbytery's 105th Stated Meeting.

09/25/15 At Presbytery's 105th Stated Meeting, a new trial was conducted before the full Presbytery with 16 judges (8 TEs & 8 REs), each affirming he had "met the conditions and qualifications for sitting on this court for the trial which are outlined in the Judicial Policy Committee's guidelines."

TE Lawrence acted as his own defense counsel, took the stand, and submitted additional documentary evidence (including the same 45-page Defense Exhibit 1 he sought to submit as evidence in Trial 1). He also presented one other witness, a man who attended Christ Church, Mankato, MN, during a portion of the time TE Lawrence was pastor there.

The Prosecutor submitted, as additional evidence, a transcript of a sermon on Romans 6 preached by TE Lawrence in early 2009. The audio recording was received into evidence at Trial 1, but was subsequently lost. At Trial 2 the court

accepted the transcription as a prosecution exhibit, even though the Defendant initially objected to its admissibility because he could not authenticate the transcription. The Defendant eventually acceded to this addition. The transcription contained redactions made by the Defendant's counsel at Trial 1 after comparing an earlier transcription with an audio recording.

Following the presentation of the evidence and the closing arguments at Trial 2, the 16 qualified presbyters deliberated and the court rendered 'not guilty' verdicts on each of the five charges.

11/22/15 TE Sartorius filed Complaint against the acquittals.

01--/16 At its 106th Stated Meeting, Presbytery directed its Clerk to complete the record of Trial 2 and distribute it to sessions and TEs for final action on the Complaint.

04/--/16 At its 107th Stated Meeting, Presbytery postponed answering the Complaint until the 108th Stated Meeting because members had only had transcripts of Trial 2 for one day.

09/22/16 At its 108th Stated Meeting, Presbytery denied the Complaint, and TE Sartorius carried it to the SJC. TE Ethan Sayler co-signed the Complaint, but only in regards to the verdict on Charge 3.

06/13/17 An SJC Panel heard the Complaint in Greensboro, NC. Panel included RE Steve Dowling (chairman), TE Paul Fowler, and RE Howie Donahoe, with TE Steve Meyerhoff and RE John Pickering attending as alternates. The transcription of Trial 2 was prepared from the trial audio by Presbytery Clerk TE Morgan.

07/24/17 The SJC Panel filed its Proposed Decision recommending denial of the Complaint.

II. STATEMENT OF THE ISSUE

Has Complainant shown that Siouxlands Presbytery failed in its duty to condemn erroneous opinions in this case by finding TE Lawrence not guilty at trial?[18]

III. JUDGMENT

No. The Complaint is denied.

IV. REASONING AND OPINION

A Complaint, with respect to the verdict in a judicial case, clearly cannot provoke a retrial of the case at the level of the superior court. Such would egregiously violate the rights of due process for the accused, and the superior court has no power under *BCO* 43 to reverse the decision,[19] but only to annul it, or to send the matter back to the lower court for a new hearing.

The Complainant has the burden to show, from the Record of the Case, how Presbytery has erred in its proceedings or verdict (cf. *BCO* 43-2, "Written notice of complaint, with supporting reasons …"). That burden has not been met in this case.

The Record of the Case includes repeated assertions from the Defendant in his testimony (including statements recanting or clarifying some of his previous formulations about which concerns had been raised), and in Defense Exhibit 1, and in testimony from witnesses that constitute sufficient evidence and adequate reason for the appellate court to refrain from contradicting the trial court's decision. In this Decision, the SJC has not commented on what may be the Defendant's *actual* views in relation to the Constitution itself. The Court has simply ruled that the Complainant did not demonstrate error on the part of the trial court.

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[18] Note that *BCO* 43-9, has the superior court consider the "*merits* of the complaint." Emphasis added. The Complainant asserted that "Presbytery erred because it has the duty to 'condemn erroneous opinions' (*BCO* 13-9.f.), but in declaring TE Lawrence 'not guilty,' the Presbytery has failed to condemn erroneous opinions."

[19] "[In a complaint] The superior court does not confirm the decision complained of, the notice of complaint not bringing that decision into suspense. Nor may the superior court reverse the decision (in the sense in which reverse means more than annul)…[I]f the complaint is against a decision of not guilty in a judicial case, the superior court could not reverse the decision on complaint; it could only annul the finding, leaving the Church silent on the issue." F.P. Ramsay, *An Exposition of the Form of Government and the Rules of Discipline of the Presbyterian Church in the United States* (Richmond: The Presbyterian Committee of Publication, 1898), p. 253.

The Commission revised the panel recommended decision and approved the amended decision on the following roll call vote:

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

CONCURRING OPINION ON CASE 2016-16

RE Howard Donahoe

I heartily concur with the SJC Judgment, but believe some additional material could help the Decision achieve the "approbation of an impartial public" (*Book of Church Order Preface*, Preliminary Principle 8). It is unlikely many PCA members will have read the 563-page Record. And the PCA has already experienced the challenges of achieving the aforementioned approbation in a case five years ago where the SJC also denied an acquittal complaint after a trial on allegations of theological error. So I hope this Concurring Opinion will help.

This is not intended as a defense of the acquitted minister's specific views or a defense of the Presbytery's verdict. It simply shows it would be unreasonable for a higher court to find reversible error in the lower court's verdict, given the material below. It includes a summarized history of the case, a discussion of the appropriate degree of deference and standard of review, some of the minister's statements from the Record, and finally, serious concerns about an acquitted person's rights in acquittal complaints.

Summary of the Case

The SJC (and thus the PCA) has had this matter before it, in some form, for over nine years in three Cases out of the Presbytery of the Siouxlands ("Presbytery"). This summary is provided because the seven-page Summary of the Facts in the SJC Decision might not be the optimum format for an overview.

Fifteen years ago in January 2003, Presbytery sustained candidate Greg Lawrence's ordination exam. Ten years ago in April 2008, two presbyters

motioned for Presbytery to conduct a *BCO* 31-2 investigation of his views, alleging he held views akin to "Federal Vision Theology." Their motion failed, and they filed a Complaint with Presbytery, which denied it in September 2008, and eventually one of the ministers took it to the SJC. In October 2009, by a vote of 22-1, the SJC sustained the Complaint and "sent back to Presbytery of Siouxlands with instructions to conduct the *BCO* 31-2 investigation." (Case 2008-14: *Wes White v. Siouxlands,* M38GA, 2010, pp. 135-144)

Two years later, in September 2011, Rev. Lawrence was tried on five charges alleging he "holds, defends, and teaches" non-confessional views related to the covenant of works, the benefits of baptism for the elect, the benefits of baptism for the non-elect, assurance, and perseverance. A Presbytery Judicial Commission conducted the trial. As permitted by *BCO* 35-1, Rev. Lawrence declined to take the stand. The Commission unanimously recommended Not Guilty verdicts on all charges and Presbytery adopted those recommended judgments on September 22, 2011.

Rev. Sartorius and five others filed a complaint with Presbytery against the acquittals. After Presbytery denied the complaint, he filed it with the SJC and it became Case 2012-08: *Sartorius, et al. v. Siouxlands.* (*M43GA*, 2015, pp. 528-538) In June 2014 the SJC sustained the Complaint in part, by an 18-1 vote, finding Presbytery erred procedurally when its Judicial Commission "erred by receiving what was essentially testimony from the defendant while at the same time allowing the defendant to decline to testify. In so doing, the [Presbytery Commission] admitted testimony contrary to *BCO* 35-5: "Witnesses shall be examined first by the party introducing them; then cross-examined by the opposite party; after which any member of the court, or either party, may put additional interrogatories." (The 21 pages of material in question had been written or compiled after Presbytery voted to indict, and was admitted into evidence over the objection of the Prosecutor.) The SJC remanded the matter to Presbytery for a new trial, with instructions. (Three Concurring Opinions were signed by several SJC judges.)

On September 25, 2015, four years after the first trial and in compliance with the SJC's instructions, Rev. Lawrence was tried again on the same five charges. During this trial he took the stand, testified, submitted defense documents, and was cross-examined. This second trial was conducted by Presbytery as a whole, and it acquitted the Defendant on each charge. Rev. Sartorius served as Prosecutor and later filed a Complaint with the Presbytery alleging error in all five verdicts. After Presbytery denied that Complaint, he

took his 18-page Complaint to the SJC alleging error in four of the verdicts. A three-judge SJC Panel heard arguments in the Case on June 12, 2017, in Greensboro, NC, and filed its Proposed Decision on July 22, 2017, recommending denial of the Complaint. On October 19, 2017, the SJC denied Rev. Sartorius' Complaint by a vote of 22-1.

Standards of Review and Deference to Lower Courts [20]

In the PCA, the degree of deference afforded lower courts, and the standards of higher court review, are stipulated in *BCO* 39-3. It is important to note that *BCO* 39-3 has no counterpart in the *BCOs* of the PCUSA, CRC, EPC, RPCNA, ARP or OPC. Apparently, it is uniquely important to the PCA (and wisely so).

A proper understanding of *BCO* 39-3 is vital in our PCA courts. The SJC Manual requires that this important – and lengthy – section be read aloud before every SJC Hearing. (SJC Manual 10.8) When this *BCO* paragraph was proposed 20 years ago by the Assembly's Ad Interim Committee on Judicial Procedures, the following was part of the Committee's rationale: "Further, clear standards of judicial review will help to preserve the Constitutional gradation of authority while upholding each court's rights and responsibilities." (*M24GA*, 1996, p. 80)

In the SJC's remand for retrial in the previous *Siouxlands* Case, it included the following among its instructions:

> (6) Should the trial court finally render not guilty judgments on the charges, the Complainants in this case (or anyone else with standing) shall have the right to file a Complaint following procedures of *BCO* 43. In the event such a Complaint is filed to, and denied by, the Presbytery, the Complainants shall have the right to file with the SJC.
> (7) Any Complaint should include [answers to] the following:
>
> Regarding *BCO* 39-3.2: On what factual matters, if any, is there a dispute between the Complainants and the trial court?
> Regarding *BCO* 39-3.3: On what matters of judgment or discretion, if any, is there a dispute between the Complainants and the trial court?

[20] The author of this present concurring opinion was the lone dissenting vote eight years ago in the first Siouxlands Case 2008-14: *White v. Siouxlands* (*M38GA*, pp. 137-144). His dissenting opinion in that case also dealt with proper deference and standard of review. (Pages 146-156; http://pcahistory.org/ga/38th_pcaga_2010.pdf)

> Regarding *BCO* 39-3.4: On what specific section of the Constitution, if any, are there disputes with respect to the interpretation of the Constitution, between the Complainants and the trial court? (M43GA, pp. 536-537)

Because this Case involved higher court review of a lower court's determination in a factual matter, the appropriate degree of deference is located in *BCO* 39-3.2.

> A higher court should ordinarily exhibit great deference to a lower court regarding those factual matters which the lower court is more competent to determine, because of its proximity to the events in question, and because of its personal knowledge and observations of the parties and witnesses involved. Therefore, a higher court should not reverse a factual finding of a lower court, unless there is clear error on the part of the lower court. (Emphasis added.)

It is important to address each of the three underlined parts.

Great Deference - The adjective "great" is used sparingly in the *BCO*, modifying just five nouns (other than the Great Shepherd and the Great Commission). The infrequent use highlights its importance.

great principles Preliminary Principles

great discretion 31-2 investigations

great caution 31-8 accusations from certain people & 37-8 restoring a censured officer

great wickedness 37-4 excommunication

great deference 39-3 higher court review of a factual finding or in matter of judgment or discretion

And *BCO* 39-3.4 indicates the higher court is *"obliged"* to afford this great deference to a lower court's factual finding or its decision in a matter of discretion or judgment.

Factual Finding - When Siouxlands acted as a trial court, it was first responsible to make a *factual* finding, i.e., Does this defendant "hold, defend, and teach" the views as specifically described in the five charges? There was a dispute at trial between the Prosecutor and the Defendant on the question of what were the Defendant's *actual* views. And Presbytery, as the trier of fact, made a "factual finding" that the Defendant did not hold, defend or teach the views as characterized in the specific charges. By acquitting on all charges, the trial court judged that the prosecution did not prove (as fact) that the

accused held, defended, and taught the alleged views.

The Complainant's misunderstanding about what was disputed is highlighted by an exchange between an SJC Panel member and the Complainant (Prosecutor) at the Hearing.

> Panel member: "Would the Defendant agree 100% with your assertions regarding what he does or doesn't believe? ... Or would he say, 'No, the Prosecutor still misunderstands my views'?"
>
> Complainant: "It would surprise me if he said I misunderstood his views."

But the Record supports a different conclusion, i.e., it is unlikely the Defendant would agree with the Complainant's answer about understanding his views. The fact of what he believed was clearly in dispute.

Clear Error - In this Case the SJC was to judge whether there was a *clear* error in a factual finding sufficient to warrant annulling the acquittal. The Complainant had the burden to demonstrate that error, but the burden was not met. It would be a mistake for any complainant to assume a higher court will hunt, on its own, for a lower court error in the record delivered to it. On the contrary, a complainant is constitutionally required to provide "supporting reasons" (*BCO* 43-2). The complainant must "present" his complaint to the higher court (*BCO* 43-5). A higher court, reviewing a lower court, "should limit itself to the issues raised by the parties to the case in the original (lower) court." (*BCO* 39-3.1) And the court can even rule the complainant has "abandoned his complaint if he fails to appear before the higher court, in person or by counsel" (*BCO* 43-7 and *OMSJC* 18.7). Simply put, every complainant has a burden to clearly substantiate the error he alleges.

And even if the matter under review were a lower court's exercise of judgment and discretion, the great deference / clear error standard would still apply. (*BCO* 39-3.3)

Below are two definitions of "clear error," followed by some excerpts from a U.S. Supreme Court case.

> An *unquestionably* erroneous judgment by a trial court that is apparent to the appellate court. http://thelawdictionary.org /clear-error/ (Emphasis added.)
>
> Generally, the appellate court [in a civil lawsuit] will not reverse a judgment as against the weight of the evidence if

> there is *any believable evidence* in the case that supports the trial court's judgment. The appellate court has the duty to weigh the evidence and determine whether the findings of the trial court were so against the weight of the evidence as to require a reversal and a retrial. The reviewing court can reverse the judgment when the verdict is so *clearly unreasonable*, given the evidence, that it is unjust. http://research.lawyers.com/standards-of-review-on-appeal.html (Emphasis added.)

Below are five excerpts from the book, *Federal Courts - Standards of Review* regarding the clear error standard. [21]

> The clearly erroneous standard is codified in Federal Rule of Civil Procedure 52, which provides:
>
> > Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.
>
> In a *unanimous* decision in 1982, the U.S. Supreme Court explained:
>
> > The trial judge's major role is the determination of fact, and with experience in fulfilling that role comes expertise. Duplication of a trial judge's efforts in the court of appeals would very likely contribute only negligibly to the accuracy of fact determination at a huge cost in diversion of judicial resources. In addition, the parties to a case on appeal have already been forced to concentrate their energies and resources on persuading the trial judge that their account of the facts is the correct one; requiring them to persuade three more judges at the appellate level is requiring too much. As the Court has stated

[21] *Federal Courts - Standards of Review: Appellate Court Review of District Court Decisions and Agency Actions*, Harry Edwards and Linda Elliott (Thomson/West Publishing, 2007; 2nd ed. 2013). For 37 years, Justice Edwards has been on the U.S. Court of Appeals for the D.C. Circuit (since 1980), serving as chief justice for seven years, between 1994-2001. After law school, he practiced law in Chicago and later served as tenured law professor at the Univ. of Michigan and Harvard Law Schools. Linda Elliott is Adjunct Professor of Law at NYU Law School.

> in a different context, the trial on the merits should be the "main event"…rather than a "tryout on the road." *Anderson v. Bessemer City*, 470 U.S. 574-575 (1982)
>
> The reviewing court oversteps the bounds of its duty [Rule 52(a)(6)] if it undertakes to duplicate the role of the lower court." Consequently, "[w]here there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Id.* at 574
>
> [A]s the Court describes it, the standard of review "does not change" regardless of whether a trial was long and complex or short and straightforward, "but the likelihood that the appellate court will rely on the presumption [of lower court correctness in a factual finding] tends to increase when trial judges have lived with the controversy for weeks or months instead of just a few hours." *Id.* at 500
>
> "[O]nly the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of, and belief in, what is said." Consequently, if "a trial judge's finding is based on his decision to credit the testimony of one or two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error." *Id.* at 575 [*Federal Courts - Standards of Review*, pages 19-21]

<u>"Interpretation" of the Constitution</u> – The Complainant mistakenly asserted that the SJC should apply the less-deferential standard of review found in the final paragraph of *BCO* 39-3. (Emphasis added.)

> *BCO* 39-3.4. The higher court does have the power and obligation of judicial review, which cannot be satisfied by always deferring to the findings of a lower court. Therefore, a higher court should not consider itself obliged to exhibit the same deference to a lower court when the issues being reviewed involve <u>the *interpretation* of the Constitution</u> of the

> Church. Regarding such issues, the higher court has the duty and authority to interpret and apply the Constitution of the Church according to its best abilities and understanding, regardless of the opinion of the lower court.

The Complainant's Brief mistakenly asserted, "every determination of every charge involves an interpretation of the Constitution." Granted, trials with heresy charges will often involve doctrines touching Constitutional statements or propositions. But they will not *necessarily* involve a dispute regarding Constitutional *interpretation*. For example, the Indictment cited 20 Constitutional sections in Charges 2, 3, 4 and 5:

- 9 sections of the Westminster Confession: 3:6, 3:8, 11:5, 17:1, 18:1-3, 27:1, 28:1.
- 8 Larger Catechism Questions: 64, 65, 66, 68, 79, 80, 165, 168
- 3 Shorter Catechism Questions: 91, 92, 94

But the Record does not indicate that there was any dispute between the Complainant and Presbytery on the *interpretation* of any of those Constitutional paragraphs, so there was nothing for the SJC to adjudicate in that regard. In short, the trial was not primarily about judging whether View X differed from Constitutional paragraph Y. It was about whether this particular Defendant actually held View X.[22]

Further confusion about the applicable standard of review is seen in this excerpt from the Complaint:

> If the Presbytery does not correct its action finding TE Lawrence 'not guilty' of the charges specified below, the Presbytery will have failed in its duty to condemn erroneous opinions, and instead will have assisted in advancing them. (Emphasis added.)

But Presbytery could not be culpable for advancing the specific views alleged in the Charges unless it judged that the Defendant (1) actually held the alleged view(s), *and* (2) Presbytery judged it was permissible to do so. But Presbytery never ruled that way. The acquittal meant Presbytery, as the trier of fact, did not find that the Defendant, on September 25, 2015, "held, defended and taught" the views as specifically characterized in the Charges. Thus, Presbytery has not "advanced" anything (nor has the SJC).

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[22] In Case 2012-05: *Hedman v. Pacific NW*, the SJC also applied *BCO* 39-3.2 & 3.3, but not 3.4. (*M41GA*, p. 587)

In the introductory part of *BCO* 39-3, the following is given as the reason for our standards of appellate review:

> To insure that this Constitution is not amended, violated or disregarded in judicial process, any review of the judicial proceedings of a lower court by a higher court shall be guided by the following principles...

But in this Case there is no reasonable chance our Constitution would be "amended, violated or disregarded" because there is no dispute between the Complainant and the Presbytery on the *interpretation* of any paragraph of the Confession, or the Catechisms, or the *BCO*. Another way of understanding the interpretive issue is to ask:

> Will the lower court maintain an erroneous view of a Constitutional paragraph if the Complaint is not sustained? Will the higher court advance an erroneous view of a Constitutional paragraph if the Complaint is not sustained? And in this Case, the answer to both is clearly, "No."

Defendant Statements in the Record

Regardless of the deference and standard of review deemed applicable, there are ample grounds to defer to Presbytery's decision and thus deny the Complaint. Included in the Record were the following 200 pages.

-- 80 pages of defense witness testimony from the 178-page transcript of Trial 1 [23]
  30 pages of defense testimony from Dr. Will Barker [24]
  17 pages of defense testimony from Dr. Max Rogland [25]
  33 pages of defense testimony from Rev. Bart Moseman [26]

[23] The transcript of Trial 1 was included as part of the Record to be considered at Trial 2, per SJC instructions in the first *Sartorius v. Siouxlands* case (Case 2012-08).

[24] Dr. Barker served as president of Covenant Seminary, the Academic Dean and professor of Church History at Covenant and Westminster Seminaries, and Moderator of the 22nd PCA General Assembly in 1994. His holds a Ph.D. from Vanderbilt University and is a highly regarded expert on the Westminster Assembly.

[25] Dr. Rogland received his M.Div. from Covenant Seminary in 1996 and Ph.D. in Hebrew from Univ. of Leiden in 2001 and was previously a member of Siouxlands Presbytery. At the time of Trial 1, he was Professor of Old Testament at Erskine Seminary and a member of Palmetto Presbytery. In 2013 he became Sr. Pastor of Rose Hill PCA in Columbia, SC, but continues to teach at Erskine and serve as the Associate Dean of the Columbia campus.

[26] Rev. Moseman had served as chairman of the Siouxlands Instructional Committee that spent 22 hours in discussion with Rev. Lawrence. Rev. Moseman was previously chairman of Platte River Presbytery Credentials Committee, and is currently pastor of City Life PCA Church in St. Paul, MN.

-- 42-page Transcript of Trial 2, including 22 pages of Defendant testimony and cross-examination
-- 45-page Defense Exhibit 1, including five letters Defendant sent to Presbytery before Sep. 2010 (the date it voted to indict), and one sent between the date the indictment was served and the trial
-- 33-page article on baptism from the Spring 2012 issue of Covenant Seminary's *Presbyterion* Journal, which the defense submitted as evidence at Trial 2.

The last half of this Concurring Opinion will highlight some of the testimony from the Defendant that I assume contributes to the following conclusion expressed by the SJC:

> The Record of the Case includes repeated assertions from the Defendant in his testimony (including statements recanting or clarifying some of his previous formulations about which concerns had been raised), and in Defense Exhibit 1, and in testimony from witnesses, that constitute sufficient evidence and adequate reason for the appellate court to refrain from contradicting the trial court's decision.

Defendant Testimony

At Trial 2, Rev. Lawrence testified and was then cross-examined by Prosecutor Sartorius and by several judges. Below are some excerpts from the Defendant's testimony. Presumably, these are some of the clarifications mentioned in the quote above from the SJC Decision. (The transcript of Trial 2 was not professionally prepared. Excerpts are quoted as they appeared in the Record.)

> Rev. Lawrence: I do want to focus on what I believe, as such; I don't want to defend how things were said.
>
> At best I'm fallible in terms of what I said before in the context in which I said it, but I do hope to spend some time in responding to the charges as they stand and stating unequivocally that I am committed to the system of doctrine elucidated in our standards. Now, I have some confessions.
>
> First of all, at some point I was sloppy in the way I spoke; there is no way of escaping this - I was sloppy. In my zeal to defend what I feel to be biblical language, I did not carefully listen to my brothers' concerns. ... I think this is particularly the case in my interaction with the first committee.

I was clueless. You read through that and in many ways I was like a deer in headlights. And I still didn't get it afterwards I think, and I allowed the combative atmosphere to affect my responses…Similarly, I did not carefully make distinctions and I did not communicate clearly. Finally in terms of sloppy speaking, some of my sermons used language that was too flippant;...

Second, I have been recalcitrant to hear the concerns of my accusers. I already alluded to this, but by way of testimony, one of the great delights of this ordeal has been the reconciliation and befriending of Wes White.

There were points at which my stubbornness caused me to harden in my position rather than listen carefully to the concerns of my accusers. While I still believe that my good-faith subscription has never been in question, I do think my own unwillingness to interact, temper my language and charitably chat has been extremely problematic.

Finally, at some points I do need to, I think - in at least one or two occasions recant of some things I wrote or said. I want to do that specifically in my paper, I had about three or four things that I said or wrote that I want to recant of...

Next, this is from my sermon on Hebrews 6. This is what I said…So I confess that this rhetoric was greatly overstated. I do not believe self-examination is fruitless, in fact, I confess that Scripture calls us to "examine yourselves to see whether you are in the faith" 2 Corinthians 13:5; Peter exhorts, "be all the more diligent to make certain about His calling and choosing you."

I think this is the last one and this is again from the Hebrews 6 sermon: "Can you lose your salvation? I was like a fish out of water. I had no idea, I'm still not sure that I know." My response right now: "I repent of this rhetorical flair as unhelpful, misguided and not a true expression of my beliefs. Rather, I would affirm that they whom God has accepted in His Beloved, effectually called and sanctified by His Spirit, can neither totally nor finally fall away from the state of grace, but shall certainly persevere therein till the end and be eternally saved. Furthermore, I repent and rescind the statement of explanation in this sermon that gives the

> impression of rejecting an understanding of this passage as "Something less than full salvation, something less than full regeneration." In fact I think what precedes and follows in the sermon, read charitably, undermines this statement; specifically, "We acknowledge that there is a difference between those who persevere to the end and the grace they receive and those who for a while taste, are illumined, and walk with God." What I would readily affirm is Calvin's exposition of the passage. ...I think Calvin faithfully expresses [in his commentary on Hebrews 6] what I would try to express and I would readily affirm that.

Defense Exhibit 1

The 45-page Defense Exhibit contained six letters the minister sent to Presbytery between September 2009 and September 2011, including 17 pages of excerpts from the letters arranged according to the charges. It was previously submitted as evidence Trial 1 in September 2011, but parts were ruled inadmissible by the SJC because the Defendant declined to take the stand at Trial 1 and be cross-examined. But when resubmitted at Trial 2, the Prosecutor barely addressed it, even though he had had all the material for at least four years prior to Trial 2.

Space does not permit reprinting the Exhibit, so below are the excerpts related only to Charge 3 and the "benefits" the non-elect might receive in baptism. At the SJC Panel Hearing, the Prosecutor/Complainant contended this was the clearest and most important of the charges. It was the only part of the Complaint joined by Rev. Sayler (i.e., he did not complain against the acquittals on charges 2, 4 or 5). And Presbytery's vote on this charge was the closest of the votes on the five charges. Thus, it is fitting to highlight this one. Here again is the allegation:

> Charge 3 – That TE Lawrence holds, defends, and teaches that the reprobate receive at baptism union with Christ, new life, and forgiveness of sins in some sense thus creating a parallel soteriological system contrary to the Westminster Standards. (*WCF* 27.1; 28.1; WSC 91, 92, 94; WLC 165; Matt. 3:11; Acts 2:41, 10:44-48, 16:31-34; Rom. 4:11; 1 Pet. 3:21).

From Lawrence Letter to Presbytery, Sept. 2010

(1) I affirm that baptism, rightly administered, is for the solemn admission of the party baptized into the visible church, the

house and family of God, outside of which there is no ordinary possibility of salvation.

(2 I affirm that baptism exhibits Christ and confers, as a means of grace, the promise and seal of saving benefits to all who receive that promise by faith.

(3) I affirm that it is the duty of all to improve their baptism, responding to the promise of baptism in faith and looking to the benefits sealed to them in and through their baptism.

(4) I affirm that baptism of the non-elect, rightly administered, may bring various temporary benefits. I deny that these benefits are sufficient for salvation, apart from faith in the one baptized.

(5) I affirm that baptism of the non-elect may be accompanied by common operations of the Spirit. I deny that baptism of the non-elect is ever accompanied by the saving operations of the Spirit, namely justification, sanctification, and glorification.

(6) I affirm that the Spirit performs either saving or common works according to his own good pleasure. I deny that the saving operations of the Spirit come by virtue of the baptismal rite *ex opere operato*, or that any power is granted to the water itself at all.

(7) I affirm that the children of believers are to be baptized on the ground of the covenant promise that the Lord is God of believers and their children.

(8) I deny baptism of itself brings one into the enjoyment of all the benefits of the union with Christ possessed by the elect (effectual calling, justification, adoption, sanctification, glorification), or that all who are baptized experience the saving operations of the Spirit which alone bring enjoyment of all these benefits. Such saving operations are reserved for the elect alone. (Cf. "FV Report," declaration # 6)

From Lawrence Letter to Presbytery, Sept. 2009

– I affirm that those that are baptized are made members of the visible church (by virtue of the promise of God that He signs and seals in baptism) and are made part of the covenant people of God (WLC 166). I deny that all those who are

baptized are automatically (by virtue of their baptism) made members of the invisible church. ...

- I deem pernicious any presumption upon God's grace conferred at baptism, rather God's children must continually trust their Father's promises and rest in His goodness while making their calling and election sure. As the WLC (167) exhorts, we have a duty of "improving our baptism."...
- The reprobate who respond to the call of the Gospel temporarily and/or hypocritically and thus receive the sign of baptism share in common operations of the Spirit [WLC 68], but lacking "saving faith" [*WCF* 14] are not effectually called and thus do not receive the thing signified. ...
- I continue to deny that "the order of salvation, as defined by the Confession" is applied to the reprobate in the visible Church. I do not "refuse to elaborate," but admit my limits in elaborating this most difficult matter. ...
- I deny that all the baptized receive what the Confession identifies as "effectual calling." I deny that the reprobate receive nothing at baptism, rather, they receive "common operations of the Spirit."...
- I heartily affirm the Standards at this point [WLC 75] and have duly noted that there is a difference between the elect and the reprobate regarding the benefits received through the work of the Holy Spirit. ...
- For instance "salvation" in the Confession (effectual call, justification, adoption, regeneration, etc.) is reserved for the elect, those who are predestined to the heavenly abode. That is, the saving benefits of Christ, as elucidated in the Confession, are reserved for those who are numbered from all eternity to everlasting life.

From Lawrence Letter to 2nd Committee, Dec. 2009

- I affirm the category of union with Christ in the Standards: the elect and only the elect are granted a salvific union with Christ, with all of its benefits. ...
- No, I do not believe that "each baptized person receives the saving benefits of Christ's mediation, including regeneration, justification, and sanctification."...
- In regard to the "potentially dangerous statement" referenced, *"In baptism we are united to Christ and as such the benefits*

- *that He has wrought have been applied to us"* (italics in report), I concur that the imprecision leaves an opening for an infelicitous interpretation. I do not and never have believed that baptism is sufficient for anyone to be saved. ...
- I affirm that the baptized non-elect only receive social or common benefits and do not in any case receive any saving benefits, including union with Christ, adoption, justification, sanctification, regeneration, or glorification. ...
- I further note that the attributing of the saving benefits to all the baptized without discrimination (baptized non-elect) is a serious and systemic error.
- I heartily receive the committee's exhortation and concur that faith alone is the instrument of our justification and apart from faith baptism will prove futile or even furthering judgment for scorning the grace of God offered.

From Lawrence Letter to Presbytery, Sept. 2010

> I have tried repeatedly to distance myself from the accusations that baptism brings saving benefits to the non-elect. It is an enigma to me why I am not believed about the confession of my own beliefs. I do not, and have never, thought that baptism brings about saving benefits towards the non-elect. I have stated and believe it to be Confessional to assert that baptism brings "common" and not "saving" benefits to the non-elect. Baptism admits one into the visible church (*WCF* 28:1) and as *WCF* 25.2 state the visible church is the "kingdom" and "family" of God. Baptism brings them into union with Christ in the sense of becoming part of the body of Christ on earth, but not into that union with Christ reserved for the elect alone. It brings them into the status of being part of the family of God, but not into that adoption known and enjoyed by the elect alone. Baptism may sanctify the non-elect in the sense of marking them as separate from the world for God's purposes, but that is not the sanctification reserved for the elect alone. Baptism is a sign and seal of the covenant of grace, and remains that even if repudiated by some in unbelief.
>
> So I want to state, again, that I do not in any form believe that the non-elect ever accrue salvation or the benefits of salvation. They do not receive the saving operations of the Spirit, nor (using the terms as the Confession does) do they ever receive justification,

> sanctification, union with Christ, adoption, effectual calling, or any of the things reserved and applied to the elect alone by the Spirit, in God's appointed time.
>
> In short, I do not believe that the reprobate receives at baptism (or at any other time) these benefits of Christ's mediation. I have never believed that, and if some of my language is taken to mean that, then it is a misinterpretation of my language.

Covenant Seminary *Presbyterion* Journal article

In addition to those statements from Defense Exhibit 1 related to Charge 3, the Defendant testified at Trial 2 that his view of the "benefits" of baptism is accurately reflected in a 33-page article, *"What Does Baptism Do for Anyone, Part 1,"* by professor Dr. C. John Collins in the Spring 2012 issue of Covenant Theological Seminary's *Presbyterion* Journal. At trial, the Defendant stated: "My purpose for passing the document out is to present to the court that Dr. (Jack) Collins' paper is a faithful exposition of my beliefs." [27]

Below are six quoted excerpts from testimony at Trial 2 regarding the *Presbyterion* article (all related to Charge 3):

1. Lawrence: [to a defense witness previously a member of Rev. Lawrence's church for 6 years] My question to you is when you read Collins paper did you hear the paradigm on which I was operating; did you hear language similar to the way my ministry operated?
   Siver: Yes, simply put, I recognized what I thought was the same basic thing.
2. Sartorius: I assume I don't know what the ruling on that would be if you're saying [Collins' article] is a faithful representation of what you believe I have no problem with it coming in.
   Lawrence: Yes that's exactly right.

[27] https://www.academia.edu/5292949/_What_does_baptism_do_for_anyone_Part_1_ Dr. Collins is Professor of Old Testament and has been on the faculty of Covenant Theological Seminary for 24 years. He holds an M.S. in computer science and systems engineering from M.I.T, an M.Div., and a Ph.D. from the University of Liverpool. He served as the OT chair on the translation committee for the English Standard Version of the Bible and the OT Editor for the ESV Study Bible. He has written extensively on biblical languages and interpretation. https://www.covenantseminary.edu/wpcontent/uploads/2012/ 02/CV-Dr-Jack-Collins.pdf

Sartorius: All right, and I also have no problem with you wanting to testify about that any further but once I start my questioning if I don't go there if I don't go into questioning on that you might lose that right and so I just wanted to make sure that if you want to say anything more before I go on to questioning; I want to make sure you have that option.

Lawrence: I think I've said that it is a faithful exposition of what I have said over the years, stated more clearly.

3. Sartorius: Mr. Lawrence I want to move on to a little bit about matters relating to baptism and just affirm that you indicated previously that the paper that had been distributed earlier and written by Dr. Collins was a statement of your that you would adopt that statement as your view of baptism is that a correct statement?

Lawrence: Yes.

Sartorius: Are there any areas that you would express any particular differences?

Lawrence: There are no substantial differences; there might be some quibbles… in essence, he presents my view.

4. Sartorius: And you would standing by that, then, that for all in the visible church in baptism that they would have a new life as this would be described in Titus 3:5, is that correct?

Lawrence: No sir, I would describe it in terms of the administrative status which they have as Dr. Collins listed.

5. Sartorius: Your letter to the Presbytery September 2010, the fifth affirmation, “I affirm that baptism of the non-elect may be accompanied by common operations of the Spirit; I deny that baptism of the non-elect is ever accompanied by a the saving operations of the Spirit, namely, justification, sanctification and glorification.” Can you explain to me how that statement

could be understood with your prior statement? That in baptism, one in that administrative status sense is given a cleansing or how they are given new life, and how things like justification, sanctification, and things related. Can you explain to me how those two operate together?

Lawrence: This is where I really believe that Dr. Collins' paper distinguishes between the two.

6. Sartorius: When you're describing - I'm referring to the ROC page number 266 - when you're describing the union with Christ that exists in the invisible church and your distinguishing visible unregenerate by saying these words: they were married, they were united to some degree however their union doesn't stand, the state was mostly temporary. Is that a statement you would again affirm today?

Lawrence: If we speak of union in the sense that it is presented in Dr. Collins paper not union as it is spoken of in our standards.

Sartorius: One of the things that was asked of you at the first investigative committee when dealing with the sign and the thing signified in Romans 6, was the question that was asked at line 45 on page 267 in the Record of the Case, "So you would be happy saying that some who eventually fall away can be united to Christ's death and resurrection?" and the answer which is on the next page 266 is "yes." So are you still happy to be able to say that someone can fall away after being united to Christ death and resurrection?

Lawrence: Not in the sense that our standards relate union with Christ; but under the paradigm of Dr. Collins' paper, yes.

In his closing remarks at Trial 2, the Prosecutor seemed to accept the Defendant's assertion that his view of the benefits of baptism was akin to that expressed in the *Presbyterion* article:

Sartorius: "... Now before I get to this let me say that there is

> a lot related about the Collins' article, Dr. Jack Collins' article, and how teaching elder Lawrence has said his view is basically expressed by Collins there what I see here having read the article last night he's saying things very nearly identical with what Dr. Collins is said that doesn't make it confessional or right it makes them in line with one man teaching elder who is a professor at our denominational seminary has said but let me reiterate what was said there..." [sic] [Emphasis added.]

Due Process Rights of an Acquitted Person

There is no *BCO* protection against "double jeopardy." So, unfortunately, an acquitted person has no particular rights, and no voice, before the original court when it hears an acquittal complaint or before the higher/appellate court(s) when they review the lower court's acquittal. An acquitted person is unable to respond to anything a complainant says in his complaint document, or object to the completeness of the Record that goes to the higher court, or respond to anything the complainant includes in his brief or oral arguments before the higher court. In the present Case, in the Complaint document, the Complainant's Brief, and oral arguments at the Panel Hearing, the Complainant repeatedly characterized statements the Defendant made or wrote without the (acquitted) Defendant able to respond to the assertions, or clarify his statements, or dispute the Complainant's characterizations. [28]

The PCA should consider whether it is prudent and fair to allow acquittal complaints – especially since our *BCO* presently allows *anyone* with standing to file an acquittal complaint, even if that person had no role in the trial and did not review the evidence or read the trial transcript. Perhaps we should consider amending the *BCO* to disallow complaints against the *merits* of an acquittal. Perhaps our *BCO* should only allow an acquittal complaint if it clearly alleges an error of constitutional interpretation by the lower court.

[28] The prohibition against "double-jeopardy" is enshrined in centuries of jurisprudence and is contrary to the U.S. Constitution's Fifth Amendment. In *Benton v. Maryland* 1969, the U.S. Supreme Court held, "the fundamental nature of the guarantee against double jeopardy can hardly be doubted. Its origins can be traced to Greek and Roman times, and it became established in the common law of England long before this Nation's independence." In *Fong Foo v. United States* 1962 the Court held that double jeopardy is prohibited even where "the acquittal was based upon an egregiously erroneous foundation." The U.S. Supreme Court has frequently held that an acquittal "absolutely" (*Tibbs v. Florida* 1982) or "unequivocally" (*U.S. v. DiFrancesco* 1980; *Arizona v. Washington* 1975) shields an individual from a second trial for the same offense. (See also *Ashe v. Swenson* 1970, *Burks v. U.S.* 1978, and *U.S. v. Jorn* 1971.) Perhaps the burden of persuasion should be on those in the PCA who think we should continue to ignore this universal principle.

Or, more broadly, perhaps also allow an acquittal complaint if it clearly alleges things like judicial misconduct, manifestly inadmissible evidence, gross procedural negligence, etc., and which appear to have substantively led to the acquittal. Absent such exceptional circumstances, perhaps our *BCO* should require courts to rule acquittal complaints out-of-order.

In the meantime, this SJC Decision (and its Decision five years ago in Case 2012-05) should alert prospective complainants that if they hope to prevail in an acquittal complaint, they would need to have a very substantial case.[29]

CASE 2016-17

RE MORRIS WEBSTER & RE WAYNE FOWLER VS. HERITAGE PRESBYTERY

DECISION ON COMPLAINT August 30, 2017

I. SUMMARY OF THE FACTS

05/10/2016 Heritage Presbytery (HP) appointed an Ad Interim Committee "to address the continuing discord at New Covenant Church (NCPC) in Lewes, DE.

08/23/2016 The Ad Interim Committee approves the "Concluding Report to Presbytery."

08/28/2016 RE Robert Almond, Clerk of HP, emailed TE Robert Dekker, pastor of NCPC, about a report that had been received by RE Almond concerning "the potential qualification criteria for men to be considered for office in a PCA church. In particular I have heard you advised that men who do not subscribe to infant baptism may be considered qualified if they agree not to teach their view." RE Almond included a reference to SJC Case Bowen vs. East Carolina Presbytery and concluded his email with "If you have not made any such statements regarding qualifications, please accept my apologies."

[29] By a 15-2 vote, the SJC also denied an acquittal complaint in Case 2012-05: *RE Gerald Hedman v. Pacific NW.* (M41GA, pages 583-589) http://pcahistory.org/ga/41st_pcaga_2013.pdf