Bankson, *Concur*
Bise, *Concur*
Cannata, *Absent*
Carrell, *Concur*
Chapell, *Concur*
Coffin, *Concur*
Donahoe, *Concur*
Dowling, *Concur*
Duncan, M., *Concur*
Duncan, S., *Concur*
Ellis, *Absent*
Greco, *Concur*
Kooistra, Concur
Lee, *Concur*
Lucas, *Concur*
McGowan, *Concur*
Neikirk, *Concur*
Nusbaum, *Concur*
Pickering, *Concur*
Ross, *Concur*
Terrell, *Absent*
Waters, *Concur*
White, *Absent*
Wilson, *Concur*
(20-0-0)

CASE 2020-04
COMPLAINT OF TE STEVEN P. MARUSICH
v.
CENTRAL INDIANA PRESBYTERY

DECISION ON COMPLAINT
February 4, 2021

I. SUMMARY OF THE FACTS

7/2/19 Five former members of a PCA Mission Church sent a letter to Central Indiana Presbytery (CIP) accusing a Teaching Elder (TE) of alleged sins.

9/13/19 CIP appointed a non-judicial commission to begin a *BCO* 31-2 investigation. "This commission will include taking counsel from at least two wise Christian women, who will be selected by the Commission itself; the commission will be filled by the chairman of the Steering Team, and will report back to the Presbytery their findings with any recommended actions."

11/21/19 Having met with the accusers of the TE as well as the TE himself over the past two months, CIP's Commission decided to interview more witnesses "to further clarify our understanding of the situation." At this point "the Commission was almost unanimous that the accusations do not rise to the level of chargeable offenses (holding a trial) though this could change based on what we learn from the next set of witnesses."

12/6/19 CIP's Commission met with additional witnesses, some who supported and others who contradicted the earlier testimony offered against the accused TE.

1/2020 CIP's Commission submitted a full report to the CIP Church Planting Team: "The Commission does not believe there is a 'strong presumption of guilt of the party involved' (*BCO* 31-2) with regard to the accusations of sexual harassment, intimidation, and bullying, or that the TE is guilty of an offense as defined in *BCO* 29 (no violation of divine law, heresies, or immoralities)." They then observed, "It is the judgment of the commission that there is enough weight to the allegations that pastoral, corrective measures are in order."

2/2020 One of the female advisory members of the CIP's Commission disagreed with their assessment and urges the CIP Church Planting Team to engage an outside organization, GRACE, to assess the situation.

2/14/20 The initial report of the Commission was presented to CIP. After objections were raised to the Commission's initial report, the Commission met during lunch and decided to withdraw their initial report and present an edited report. This edited Commission report was "received" by CIP. The full report of the Commission was never presented to CIP.

2/27/20 TE Marusich filed a complaint against the actions of CIP. This complaint had four allegations: first, CIP erred in not finding a "strong presumption of guilt" against the accused; second, CIP's Commission erred by exceeding its mandate and taking up business not referred to it; third, CIP's Commission erred by not submitting a full record of its proceedings to the court appointing it; and fourth, CIP's Commission erred in not delivering the full report of their findings to the Presbytery, the accused's court of original jurisdiction.

7/10/20 Because of COVID, the subsequent meeting of CIP was delayed to July. CIP sustained two items in the complaint—dealing with the second and third items—and denied the other two items.

7/20/20 TE Marusich filed his complaint with the SJC regarding CIP's failure to sustain his first and fourth allegations.

9/17/20 SJC Officers found the case administratively in order and assigned the case to a Panel consisting of TE Sean Lucas, TE Michael Ross, RE Bruce Terrell, TE Paul Lee (alternate), and RE John White (alternate).

9/24/20 The Panel held its initial meeting at which TE Lucas was elected chairman and RE Terrell secretary.

10/13/20 The Panel held its constituting meeting, ruled that the case was judicially in order, and set the panel hearing for November 17, 2020, at 2 p.m. EST.

11/17/20 The Panel held its hearing. TE Marusich presented his oral argument as Complainant. TE Ben Reed represented CIP as Respondent.

II. STATEMENT OF THE ISSUES

1. Did Central Indiana Presbytery err at its February 14, 2020, Stated Meeting in "receiving" the report of its non-judicial Commission finding "no strong presumption of guilt of the party involved" and that "the accusations [do not] rise to the level of a chargeable offense"?

2. Did Central Indiana Presbytery err at its February 14, 2020, Stated Meeting when its non-judicial commission failed to provide minutes or a full report of the Commission's actions?

II. JUDGMENT, REASONING AND OPINION

The SJC disposes of the complaint (*BCO* 43-9) by sending the matter back to the lower court with instructions to take it up again (*BCO* 43-10). To that end, CIP should appoint a *committee* to investigate reports concerning the TE according to *BCO* 31-2. Such committee may refer to or adopt any papers contained in the Record of the Case in Judicial Case 2020-04, as well as pursue whatever other lines of investigation may be prudent. The committee's report to Presbytery shall include a narrative of the evidence gathered in the committee's investigation, and a recommendation with respect to a finding a strong presumption of the

guilt of the party in question. Presbytery shall consider the report under regular orders (i.e., the report may be discussed, but not amended; the recommendation shall be subject to the ordinary rules governing a main motion) at the next stated meeting of the court, or at a special meeting called beforehand for that purpose.

This Decision applies to the specifics of this Case and does not establish a principle for how every *BCO* 31-2 investigation must be conducted.

The Panel's decision was drafted by TE Sean Lucas along with inputs and editorial work from the rest of the panel. It was approved unanimously by the Panel. The full SJC amended the Panel Decision and adopted the final Decision on the following roll call vote:

Bankson, *Concur*	Duncan, M., *Concur*	Neikirk, *Concur*
Bise, *Concur*	Duncan, S., *Concur*	Nusbaum, *Dissent*
Cannata, *Dissent*	Ellis, *Concur*	Pickering, *Concur*
Carrell, *Dissent*	Greco, *Concur*	Ross, *Absent*
Chapell, *Disqualified*	Kooistra, *Concur*	Terrell, *Concur*
Coffin, *Concur*	Lee, *Concur*	Waters, *Concur*
Donahoe, *Dissent*	Lucas, *Concur*	White, *Absent*
Dowling, *Concur*	McGowan, *Disqualified*	Wilson, *Concur*
(17-4-0)		

CASE 2020-04
COMPLAINT OF TE STEVEN P. MARUSICH
v.
CENTRAL INDIANA PRESBYTERY

DISSENTING OPINION
February 16, 2021

RE Howie Donahoe,
joined by TE Cannata, RE Carrell, and RE Nusbaum

This Dissent does not express any opinion on the merits of the allegations that were investigated. We dissented because the Decision does not afford the requisite deference to the lower court in a "matter of discretion and judgment" (*BCO* 39-3.3) and because it orders an investigative procedure that the *BCO* does not require. The SJC should have decided as follows:

Issue:	Did Presbytery's investigative commission clearly err in January 2020 when it decided to decline to institute process (i.e., declined to order an indictment)?
Judgment:	No.
Reasoning:	The SJC does not find "clear error" in the decision of Presbytery's non-judicial commission and thus, per the standard of review stipulated in *BCO* 39-3.3, the SJC must give "great" deference to the Presbytery in that exercise of discretion and judgment.

This Dissent addresses standards of review, as well as investigative bodies, reports and records.

Standard of Review & Great Deference

The Decision does not stipulate whether it remands the matter to the Presbytery because of an error in *judgment*, or an error in *procedure*, or both. It does not identify the standard of review used. It does not provide a "Yes" or "No" answer to either of its statement-of-issue questions. It does not even say whether the Complaint is sustained. This is unusual. For example, there is no SJC Decision in the last 23 years in which an Issue question was posed without a corresponding Judgment answer.[16] Ordinarily, a higher court must find *some* error before setting aside the decision of a lower court, and presumably the court would specify it. Instead, this Decision proceeds immediately to amends. Without knowing the error, or the reasons for the (inferred) annulment, one can only make assumptions from the amends.

BCO 39-3 obligates a higher court to ordinarily exhibit *great* deference to *all* lower court decisions except "when the issues being reviewed involve the interpretation of the Constitution of the Church." Because the higher court can only apply a *de novo* standard of review in that specific instance, that standard does not apply in this Case. Instead, *BCO* 39-3.3 stipulates that when a lower court decision involves a "matter of discretion and judgment," a higher court should not annul it without finding *clear error*. While the phrase "clearly erroneous" is itself subjective and a matter of judgment, it surely must mean something demonstrably greater than "erroneous." [17]

[16] PCA Digest 1999-2018 (Part III, pp. 175-341), and 15 pertinent SJC Decisions since the Digest (2019-Feb. 2021).
The SJC frames the Statement of the Issues, not the Complainant. (OMSJC 17.1.b.)

[17] The SJC demonstrated this "great" deference 10 years ago in another *BCO* 31-2 case. The final sentence of its Reasoning stated: "One may suspect that [the minister] is guilty; one

An investigating body will often need to make judgments, for example, on "the comparative credibility of conflicting witnesses." (*BCO* 39-3.3) The *BCO's* clear error standard sets a high bar for a reviewing court to annul a lower court conclusion about comparative credibility.

Central Indiana's investigative commission ("IC") interviewed several accusers, the accused, and witnesses for the accused (some more than once). It received written statements from many, including a 17-page response from the accused and a three-page letter from his wife contesting the allegations. Because the IC's record of its proceedings ("ROP") was submitted in executive session at a Presbytery meeting, we don't believe we have liberty to quote from it, even though it was in the Record of the Case. But we can note the ROP indicated part of the IC's decision was related to its judgment about the comparative credibility of witnesses.

Neither the Complainant nor the SJC reviewed a videotape or transcript of those interviews. But without such reviewing, it's hard to imagine standing in front of members of that Presbytery commission and saying, "You *clearly* erred in the conclusion you reached after evaluating all that testimony. And even though I didn't hear any of it, or observe any of the people you interviewed, and I don't know the accused man as you do, I annul your decision that no indictment was warranted, and instruct you to investigate again."

Many allegations in this Case relate to the motive and intent of the accused. To overrule a lower court's judgment on that would seem to require extensive and compelling evidence.[18] Again, the question of whether an indictment

may even be privately persuaded that he is guilty; but apart from a showing of clear error on the part of [the Presbytery] in the Record, this Court must defer to the Judgment of Presbytery. (Case 2010-04, *Sartorius v. Siouxlands*, M39GA, 2011, p. 578; quote from p. 582).

Note: The GA's SJC Manual requires the *BCO* 39-3 standards of review to be read aloud at every Panel Hearing.

[18] Here are two examples. In *Anderson v. Bessemer City*, 470 U.S. 564 (1985), the US Supreme Court held that "when a trial judge's finding is based on his decision to credit the testimony of one of 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." *In United States v. Yellow Cab Co.,* 338 U.S 338 (1949), the Court held "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous. *(See also Inwood Laboratories, Inc. v. Ives Laboratories, Inc.,* 456 U.S. 844 (1982))

should be ordered is a matter of discretion and judgment.[19] So, the Decision's order for a new investigation raises a second question: Did this Presbytery commit a reversible procedural error related to *BCO* 31-2?

Investigative Bodies

As noted in previous SJC Decisions, *BCO* 31-2 does not stipulate how an investigation must be done, who must do it, or how the conclusions must be reported. It simply says courts "shall with due diligence and great discretion demand from such persons satisfactory explanations concerning reports affecting their Christian character."[20]

Contrary to what the Decision implies, presbyteries *can* appoint an investigative commission with authority to render the final decision on whether an indictment is ordered. But if a commission is required to propose a recommendation, then it's effectively just a committee.[21]

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[19] Case 2009-03, *Payne v. Western Carolina.* SJC Reasoning concluded: "Therefore, since there is no Constitutional error, we give great deference to Presbytery in accordance with *BCO* 39-3 since this involves a factual matter which the lower court is more competent to determine, because of its proximity to the events in question and because of its knowledge and observation of the parties and witnesses involved (39-3.2). It is also a matter of discretion and judgment that is best addressed by the court most acquainted with the events and parties (39-3.3)." M38GA, p. 197.
Not every "strong presumption of guilt" needs to be, or should be, prosecuted. Here are three examples:
(1) 17-year-old Johnny hits his 15-year old brother Billy in anger, and it's witnessed by two Session members, but Johnny claims it wasn't sinful. The incident warrants pastoral instruction and probably informal admonition, but it would not likely warrant judicial process, even though it's an "offense," contrary to the Word of God (*BCO* 29-1).
(2) An investigative committee might hear important testimony from witnesses, but they're unwilling to take the stand at trial, and cannot be compelled to do so (like people not under PCA jurisdiction or a spouse who declines).
(3) An investigative committee could find compelling evidence indicating strong presumption of guilt, but that evidence, for some legitimate reason, would not be admissible at trial (like evidence obtained by violating HIPAA.)

[20] See Case 2009-05 *Payne v. Western Carolina*. Excerpt from SJC Reasoning: "BCO 31-2 ... does not stipulate a timeline, composition of the investigating body, interview requirements, etc. ... In different situations, prudence and wisdom may dictate different procedures." (M38GA, 2010, p. 205)

[21] F.P. Ramsay, *Exposition of the Book of Order* on V-7-1, final sentence. (1898, p. 117-118). Some presbyteries use commissions because they mistakenly think the *BCO* gives subpoena power to an investigative commission that a committee doesn't have. But neither has that power. The *BCO* 35-1 right for the accused to decline testifying at trial also applies during investigations - "The accused party may be allowed, but shall not be compelled to testify." When *BCO* 31-2 says the court shall "*demand* from such persons satisfactory explanations concerning reports affecting their Christian character," the demand doesn't refer to

Authorizing a commission to render the final decision on indictment, or at least a decision declining to indict, will often be prudent. Debating an investigative team's non-indictment conclusion, or its indictment recommendation, on the floor of a presbytery meeting will likely be unwise because the presbyters will never know as much about the witnesses and the evidence as the investigators do. So it is sensible—and more important to this Case—it is permissible for presbyteries to appoint commissions with authority to render the final decision on whether an indictment is ordered, as Central Indiana Presbytery did.

Here is a summary of the procedures Central Indiana followed in this matter.

1. It appointed a *BCO* 15-1 investigative commission (IC) with authority to decide whether to order an indictment. The IC could make recommendations, but was not required to.
2. The IC (including two female advisors) reviewed documents and interviewed accusers, the accused, and others. Members consulted with a national organization that advises churches, and with an attorney. Per *BCO* 15-1, it submitted the "record of its proceedings" (ROP).
3. In executive session, IC informed Presbytery it decided no indictment was warranted (i.e., "the commission does not believe the accusations rise to the level of a chargeable offense.")
4. Presbytery adopted a motion to "receive the [IC] report" (presumably meaning the ROP.) Even if the ROP could legitimately be regarded as a "report," reports are automatically *received* when *presented*, and the motion was thereby be unnecessary and inconsequential (*RONR* (12th ed.) 51:9, 51:15). More importantly, it was unnecessary because no motion is needed for the "record of the proceedings" of a commission to be entered into Presbytery records. (For example, SJC Decisions are automatically recorded in GA Minutes.)
5. Substitute motions were made to commence process (to indict), but they failed. Robert's Rules: "If the investigative committee

subpoena authority. It simply references *the court's* strong obligation to seek satisfactory explanations. Robert's Rules stipulates: "An investigative committee appointed as described above has no power to require the accused, or any other person, to appear before it, but it should quietly conduct a complete investigation, making an effort to learn all relevant facts. Information obtained in strict confidence may help the committee to 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." (*RONR* (12th ed.) 63:12)

> 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* (12th ed.) 63:13n8)

The summary reveals there was no constitutional error. Some presbyteries will even give a commission authority for the entire process—to investigate and, if warranted, order an indictment, appoint a prosecutor and conduct a trial itself, without needing to make any recommendation to the presbytery except a final proposed judgment.[22] So the following excerpt from the Decision's order is surprising.

> CIP should appoint a *committee* to investigate reports concerning the TE according to *BCO* 31-2.

Italicizing *committee* implies the Presbytery violated the *BCO* by authorizing a non-judicial commission to render a decision regarding indictment. Otherwise, it's unclear how the Decision can order something that is not constitutionally required. If the PCA, with 88 presbyteries, 2,000 churches, and 5,000 ministers, can authorize a 24-man commission to render a final decision in all cases, a presbytery can authorize a commission to render a final decision on whether an indictment is warranted. Charles Hodge once said he would just as soon delegate an important decision to 10 good men as to 100. Thornwell wrote that "the commission is simply the court with a smaller quorum than normal," and that "if commissions are to be condemned, we are at a loss to determine upon what principle the provision of our government making the quorum of a court consist in many cases of a very small fraction of its members can be defended." [23]

Investigative Reporting

More concerning are implications raised in the Decision's order regarding what the investigative committee *must report*, and how it must report, as shown below.

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[22] See the SJC's Aug. 2020 Decision in *Case 2019-04*. (SJC's 2021 Report to the 48th GA) While not an issue in the Case, Chesapeake Presbytery had authorized its standing judicial commission to conduct an investigation, render a decision on indictment, and commence and complete judicial process if warranted, without needing to bring any recommendation to the floor except a final judgment. Even though the SJC sustained the Complaint on other grounds, it did not critique Chesapeake for giving such broad authority to a commission.

[23] Thornwell, J.H., "The General Assembly of 1847." *Southern Presbyterian Review*. XIII. reprinted in *Collected Writings of James Henley Thornwell*, IV, p. 487.

> The committee's report to Presbytery shall include a narrative of the evidence gathered in the committee's investigation, *and a recommendation with respect to a finding on* a strong presumption of guilt of the party in question." (Emphasis added.)

Before critiquing that order, we note there will be times when reporting such a recommendation would be a fitting and prudent course, i.e., with regard to certain kinds of "reports."

> *BCO* 31-2. ... They shall with due diligence and great discretion demand from such persons satisfactory explanations concerning *reports* affecting their Christian character.

In American Presbyterianism history, the word "reports" in the paragraphs on investigation has usually been understood to refer to accusations broadly known in the public, sometimes called allegations of "common fame." The word has not historically been interpreted to refer to each and every accusation presented to a Session or a Presbytery. When allegations are widely known to the public (i.e., "notorious," *BCO* 29-4) it might behoove a presbytery to do more than just *hear* (i.e., "receive") the investigative team's conclusion that there is insufficient reason to indict. For the good of the Church and the name of Christ, a presbytery should at least consider the wisdom of adopting a statement publicly exonerating the accused and giving a brief summary of reasons why the public reports were not found credible. These would be instances where the "approbation of an impartial public" would be particularly important (*BCO Preliminary Principle 8*). But in most cases with allegations of personal and private offenses, it would be unnecessary and often imprudent to issue any public-exoneration statements because that would remove the privacy, publicize the existence of unsubstantiated private allegations, and perhaps even reveal the names of the innocent accused and the uncorroborated accuser. [24]

Many presbyteries (perhaps most) have a provision in their rules making Robert's Rules their parliamentary authority, so the excerpts below on investigative reports are instructive (and for those presbyteries, perhaps even controlling in the absence of contrary stipulations in the *BCO*).

[24] Even if such a public statement is issued, no investigative body or court is required to *prove* innocence in matters it declines to indict. On the wisdom of adopting a statement vs. an entire report, see RONR (12th ed.) 51:13.

> A committee whose members are selected for known integrity and good judgment conducts a confidential investigation (including a reasonable attempt to interview the accused) to determine *whether* to recommend that further action, including the preferring of charges if necessary, is warranted. (*RONR* (12th ed.) 63:8. Emphasis added.)
>
> If, after investigation, the committee's opinion is favorable to the accused, or if it finds that the matter can be resolved satisfactorily without trial, *it reports that fact*. But if the committee from its investigation finds substance to the allegations and cannot resolve the matter satisfactorily in any other way, it makes a report in writing—which is signed by every committee member who agrees—outlining the course of its investigation and *recommending* in the report the *adoption of charges*, arranging for a trial, and, if desired, suspending the rights of the accused ...." (*RONR* (12th ed.) 63:13. Emphasis added.)[25]

So, when presbytery appoints an investigative team—committee or commission—the team is responsible to answer this question: "Do we think an indictment is warranted in this matter?" If the team concludes none is warranted, it simply reports that conclusion and the matter is ended, unless someone moves to "prefer charges." The risk of misunderstanding this was demonstrated five years ago in another SJC Case. An investigative committee recommended a presbytery "*find* no strong presumption of guilt." The motion failed, and Presbytery's moderator (incorrectly) "announced that the effect of the defeat of the motion was to find a strong presumption of guilt" and the matter went to trial.[26]

The present SJC Decision seems to order Presbytery to use a committee-only procedure akin to what the Federal Government must do with alleged felonies, where a prosecutor must persuade a grand jury to order an indictment. Without a grand jury indictment, the prosecutor must persuade the trial judge that he has enough evidence to indict (which seldom happens).

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[25] Robert's Rules doesn't prohibit a commission from doing investigations. While it doesn't use that word, our commissions would closely be akin to what Robert's refers to as *Boards*. (*RONR* (12th ed.) §49 and 1:22-23)

[26] Case 2012-08, *Sartorius v. Siouxlands* (M43GA, 2015, p. 531). Contrary to *RONR* (12th ed.) 10:12: "It should be noted that voting down a motion or resolution that would express a particular opinion is not the same as adopting a motion expressing the opposite opinion, since—if the motion is voted down—neither opinion has been expressed.

However, with a grand jury indictment, the prosecutor can proceed directly to trial.

But the *BCO* does not require grand jury procedures. Final indictment decisions *can* be rendered by commissions appointed with that authority. Besides, a U.S. Attorney never needs persuade a grand jury to agree with a *non-indictment* decision.

Investigative Record

The Complainant asserted Presbytery's IC failed to submit a "full record of its proceedings," purportedly in violation of *BCO* 15-1. He asserted the IC was required to provide a transcript of the recorded testimony of witnesses and to submit all the evidence it considered. He asserted it was required to submit any advice it received from the attorney it consulted. This demonstrates a misunderstanding of the nature of commissions and a misunderstanding of the word "full."

BCO 15-1 says: "A commission shall keep a *full* record of its proceedings, which shall be submitted to the court appointing it. Upon such submission this record shall be entered on the minutes of the court appointing ...." The adjective *full* is subjective, and it's reasonable to understand it to mean a *sufficient* record. For example, *BCO* 13-11 says: "The Presbytery shall keep a *full* and accurate record of its proceedings ...." (See also *BCO* 19-3, 38-1, 38-2, 38-3.b.) Every commission record could always be "fuller," just like every set of presbytery minutes could be. So the pertinent question is: "How much of its work does a commission need to show in its record, especially if it's not proposing any recommendation?" *BCO* 15-1 says a committee *reports* to presbytery. But a commission does not. A commission simply *submits* (files) a record of its proceedings for the presbytery record (not for its consideration), because, unlike a committee, the commission *was the presbytery* on the matter.

For example, presbytery minutes don't need to include a record of all questions asked and answered in an ordination exam. It simply needs to record that the ordination requirements were met, record any examinee's confessional differences in his own words and how it judged them, and record "that the specific arrangements [of the call] were found to be in order." Minutes don't even need to record the financials. (*RAO* 16-3.e.5-6) And that constitutes a *full* (sufficient) record of that presbytery proceeding. An installation commission is not required to include the Order of Worship used

in the installation service in the "full record of its proceedings." It records the commission members who were present, when and where the installation occurred, and that the pertinent constitutional questions were asked and affirmed. Contrary to the Complainant's assertion in this Case, it would be unreasonable to interpret *BCO* 15-1 as requiring a commission's record to include a transcript of, or even a summary of, the content of investigative interviews. Presbytery did the interviews when the commission did them.

And sometimes, a commission might choose to only provide very brief reasons for its decision. For example, the Standing Judicial Commission's judgment and reasoning in this present Case is recorded in six sentences.

The record of the proceedings of Central Indiana's commission indicates it included two women as advisors, spent two days interviewing witnesses (some more than once) who were for and against the allegations (including the accused), reviewed written documents and correspondence (including a lengthy response from the accused), consulted with an attorney familiar with Presbytery, and met four other times to discuss the matter. Thus, it is not reasonable to contend there was a constitutional error in the sufficiency (fullness) of the record it submitted.

The SJC's Decision orders that Presbytery be provided a "narrative of the evidence gathered in the [new] committee's investigation." But the Presbytery's IC already provided that in the "record of its proceedings" delivered in executive session during Presbytery's February 2020 meeting. Because the Decision does not indicate how or why that was deficient, it's unclear what is meant by the phrase "a *narrative* of the evidence gathered."

Fortunately, the SJC Decision concludes with the important caveat below, effectively saying no principle has been decided that can be appealed to in subsequent similar cases. (*BCO* 14-7)

> This Decision applies to the specifics of this Case and *does not establish a principle* for how every *BCO* 31-2 investigation must be conducted. (Emphasis added.)

But if *BCO* 31-2 does not *require* what the Decision orders Central Indiana to do, how can it be ordered? If the SJC found clear error in the Commission's judgment declining to indict, it could annul Presbytery's denial of the Complaint (providing rationale), and then remand to Presbytery for a "new hearing" on the Complaint. (*BCO* 43-10) But unless our Constitution requires *the type* of investigative procedure and reporting ordered by the Decision, it's difficult to see how the higher court has authority to order it.

In conclusion, if any minister or Session thinks *BCO* 31-2 should require more than it does, they have the right to draft an overture proposing an amendment and request their presbytery file it with the Assembly. In the meantime, strict adherence to the standards of review in *BCO* 39.3 is crucial "to ensure that this Constitution is not amended, violated or disregarded in judicial process." Concerns about the proper application of our standards of review and *BCO* 31-2, like ones raised in this Dissent, have also been raised in other recent SJC Decisions.[27] [28]

/s/ RE Howie Donahoe

CASE 2020-11
COMPLAINT OF TE DAVID MCWILLIAMS
VS.
SOUTHWEST FLORIDA PRESBYTERY

DECISION ON COMPLAINT
March 25, 2021

The Complainant requested to withdraw and abandon his Complaint, which was approved with the following unanimous roll call vote:

Bankson, *Concur*	Duncan, M., *Concur*	Neikirk, *Concur*
Bise, *Concur*	Duncan, S., *Concur*	Nusbaum, *Concur*
Cannata, *Concur*	Ellis, *Concur*	Pickering, *Concur*
Carrell, *Concur*	Greco, *Concur*	Ross, *Concur*
Chapell, *Concur*	Kooistra, Concur	Terrell, *Absent*
Coffin, *Concur*	Lee, *Concur*	Waters, *Concur*
Donahoe, *Concur*	Lucas, *Concur*	White, *Concur*
Dowling, *Concur*	McGowan, *Concur*	Wilson, *Concur*
(24-0-0)		

[27] See the Concurring Opinion in Case 2016-11 *Frasier v. Nashville* regarding *BCO* 31-2 (M46GA, 2018, pp. 510-23). See also two Dissenting Opinions in 2019-02 *Schrock v. Philadelphia* (SJC 2020 Report, pp. 29-41).

[28] We note that it would be extraordinary in the world of jurisprudence for someone to petition an appellate court to order a criminal indictment when a DA, a grand jury, or a judge decided it wasn't warranted - especially someone who isn't the prosecutor, and isn't even a directly offended party. There's no real parallel in civil jurisprudence.