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3 **PRESBYTERIAN CHURCH IN AMERICA**  
4 **STANDING JUDICIAL COMMISSION**

5  
6 **CASE 2020-07**  
7 **TE RANKIN WILBOURNE**  
8 **V.**  
9 **PACIFIC PRESBYTERY**  
10

11  
12 **CASE 2020-08**  
13 **TE SHAWN GENDALL, TE RUSSELL HIGHTOWER AND TE TIMOTHY LIEN**  
14 **V.**  
15 **PACIFIC PRESBYTERY**  
16

17 **CASE 2020-09**  
18 **RE SEAN OZBALT AND RE ERIN BARR**  
19 **V.**  
20 **PACIFIC PRESBYTERY**  
21

22  
23  
24 **DECISION ON COMPLAINT**  
25 July 13, 2021  
26

27 **SUMMARY OF THE CASE**  
28

29 A letter with accusations against TE Rankin Wilbourne was sent to Pacific Presbytery's  
30 Shepherding Committee. Most, if not all, of the 36 signers were reported to be past staff or past  
31 members of Pacific Crossroads Church. The following day, Presbytery formed an investigative  
32 commission (called the Judicial Commission) "to investigate the allegations submitted to the  
33 Shepherding Committee, and to determine whether a strong presumption of guilt can be  
34 corroborated, per *BCO* 31-2, and to bring charges if necessary." Soon thereafter, the Commission  
35 informed TE Wilbourne that accusations were made concerning his "dealings with the officers,  
36 staff and employees of PCC," but neither the specific allegations nor the names of the accusers  
37 were provided to the minister. The accused was not invited to meet with the investigative  
38 Commission until its 28<sup>th</sup> meeting. After three months of investigating, and 34 meetings, the  
39 Commission was intending to "bring charges," when the accused minister requested the matter be  
40 handled as a *BCO* 38-1 case without process. Two weeks later, the Commission and the minister  
41 reached an agreement on a "full statement of the facts" and it was to be presented at a called  
42 Presbytery meeting. At the meeting, the Commission distributed and read aloud a six-page report  
43 prior to the minister reading his Statement of Facts and Confession of Guilt. The minister was  
44 dismissed for the next part of the meeting, lengthy discussion ensued, Presbytery adopted a motion  
45 that *BCO* 34-7 applied, and the minister was deposed from the ministry. All three Complaints  
46 alleged several errors, especially that the reading of the negative Commission report, which was

1 not part of the agreed-upon Statement, violated *BCO* 38-1. The SJC eventually sustained the  
2 Complaints, annulled the censure of deposition, recommended Presbytery treat his censure (in  
3 effect for seventeen (17) months as of the date of this decision) as definite suspension from office  
4 (*BCO* 36-4) and as being a sufficient censure for the offenses confessed in the minister’s Statement,  
5 and recommended Presbytery consider the matter closed.

6  
7 **I. SUMMARY OF THE FACTS**  
8

9 10/02/19 The day before Presbytery’s Fall Stated Meeting, Pacific’s Shepherding Committee  
10 received a communication with allegations against TE Rankin Wilbourne. The  
11 Committee indicated it was signed by 36 people, but the letter is not in the Record.

12  
13 10/03/19 Presbytery’s Fall Stated Meeting. The Shepherding Committee recommended that  
14 Presbytery “establish a judicial commission to investigate the allegations submitted to  
15 the Shepherding Committee, and to determine whether a strong presumption of guilt  
16 can be corroborated, per *BCO* 31-2, and to bring charges if necessary.” A motion<sup>1</sup> to  
17 amend failed, which sought to make it a committee. The Shepherding Committee  
18 recommendation was adopted. Presbytery then adopted a motion to appoint the  
19 following to the Judicial Commission (“JC”): TEs Ron Svendsen, TE Jason Park, TE  
20 Jeff Tell, RE Bob Nisbet, RE Rod DenOuden, and RE Randy Berg.

21  
22 10/07/19 First JC meeting. Record indicates there were 39 other JC meetings in the four  
23 months between October 17, 2019 and February 6, 2021.

24  
25 10/08/19 The JC informed TE Wilbourne and the Session of Pacific Crossroads Church  
26 (“PCC”) of its investigation. The JC informed TE Wilbourne that allegations were  
27 made against him concerning his “dealings with the officers, staff and employees of  
28 PCC” but that it was “not ready to go into details about specific allegations nor ... to  
29 disclose names of those involved.” The JC requested the Session to provide it with  
30 every email and written document from its Session and staff for the past seven years,  
31 with no scope limitations or details regarding the allegations.

32  
33 01/11/20 Three months after it informed TE Wilbourne of the investigation, the JC met with  
34 him for the first time. That was the JC’s 28<sup>th</sup> meeting. Prior to the meeting, he had  
35 requested permission to bring someone with him to the meeting, and the JC denied  
36 that request, as it continued to do with the same request for other meetings. TE  
37 Wilbourne was not informed of the specific accusations against him, nor were his  
38 accusers identified. He contends he was never informed of the names of the accusers.  
39 However, he was aware of tensions that had arisen in prior years between himself and  
40 former PCC staff. The Session was aware of these sins and failures, and TE

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<sup>1</sup> It is not clear from the record as to whether this commission was to be a *BCO* 15-1 commission that would conclude the business referred to it, keeping a record of its proceedings to be submitted to the appointing court, or a *BCO* 15-3 judicial commission, which would require the appointing court to, without debate, to approve or disapprove its judgment. Although not fatal, the appointment of a committee, rather than a commission of any sort, at this point would have been a wiser and more prudent procedural vehicle to conduct the *BCO* 31-2 investigation. Ordinarily, a *BCO* 15-3 judicial commission should not be appointed until after a strong presumption of guilt is found and a trial is in order.

1 Wilbourne committed to intensive Christian counseling, which led to a “plan of  
2 repentance.” He presented the JC with the plan of repentance he had been following,  
3 as well as a list of 40 witnesses whom he believed could provide the JC additional  
4 firsthand testimony about incidents he believed the JC might be investigating.  
5 However, the JC indicated it would not consult those witnesses.  
6

7 01/23/20 Two days before Presbytery’s Stated Meeting, TE Wilbourne informed the JC by  
8 email that he wished to confess to matters related to the investigation and proceed as  
9 a *BCO* 38-1 case without process. The next day, the JC provided him a document  
10 titled “Working Draft of Potential Charges” and informed him that the JC had been  
11 intending to “bring charges” the following day at the Presbytery meeting. The JC  
12 informed Wilbourne it would give him two weeks to draft the *BCO* 38-1 “full  
13 statement of the facts” and that it would ask for a called meeting to be held two weeks  
14 after the Stated Meeting.  
15

16 01/25/20 Presbytery Stated Meeting. JC reported it had concluded there was a strong  
17 presumption of guilt, and was prepared to recommend indictment, but recommended  
18 Presbytery postpone action until a called meeting on Feb. 8. The JC reported:  
19

20 The Commission decided that if TE Wilbourne does, in fact, come as his  
21 own accuser that we would refrain from filing our charges. If he fails to  
22 come as his own accuser, we will proceed to file charges.  
23

24 Over the next two weeks, Wilbourne and the JC met three times and agreed on a  
25 seven-page “Statement of Facts and Confession of Guilt.” He also prepared an  
26 additional statement (called the “Voluntary Statement,” which included a four-page  
27 “Statement of Repentance” and a four-page “Commitment to Repentance”), and the  
28 JC agreed it could also be presented to Presbytery at the February 8 meeting.  
29

30 02/08/20 Presbytery Called Meeting. The Moderator announced the order of business would  
31 be: “to hear the Judicial Commission’s report, to hear from TE Rankin Wilbourne,  
32 and then to move to consideration of the appropriate censure.” This was the first time  
33 Wilbourne was made aware the JC intended to read a detailed report. The JC’s six-  
34 page report was distributed and read aloud. On motion, Presbytery voted to “receive  
35 the report.” The JC then reported the following to Presbytery.  
36

37 According to *BCO* 38-1 it is necessary to prepare a "statement of facts" which  
38 is to be approved by both accused and the court. The Commission gave TE  
39 Wilbourne two weeks to write his confession, and it worked with him to produce  
40 a statement of facts which we could mutually approve, and which TE Wilbourne  
41 would present at a called meeting of Pacific Presbytery on February 8, 2020.  
42 [ROC 19]  
43

44 Wilbourne then read an eight-page “Statement of Facts and Confession of Guilt,” as  
45 well as the first four pages of an eight-page “Voluntary Statement” regarding  
46 repentance. Presbytery voted to receive each. Below is a summary.  
47

- 1 1. "Statement of Facts and Confession of Guilt" -  
2 Confessed to sins in two areas:  
3 a) 6<sup>th</sup> Commandment - "I have lorded my authority over our staff in a  
4 domineering manner and have engaged in unrighteous anger," listing  
5 nine examples;  
6 b) 9<sup>th</sup> Commandment - "I have engaged in lying, deceitful speech, and  
7 manipulative behavior," listing eight examples.  
8 c) "Voluntary Confession of Guilt" - One-page, with six bullet points,  
9 each beginning with, "I confess that I ..."  
10  
11 2. "Voluntary Statement in Addition to My Confession"  
12 a) "Statement of Repentance" - Four pages.  
13 b) "Commitment to Repentance" - Four pages, which included 13  
14 paragraphs, like "Weekly Counseling" and "Training in Conflict  
15 Management." (Not read aloud, but "received" and included in  
16 Minutes.)  
17

18 The Minutes record the following excerpts:  
19

20 "Moderator Bjerkaas then prayed for TE Wilbourne, after which TE Wilbourne was  
21 dismissed from the meeting."  
22

23 "Lengthy debate then ensued as to whether TE Wilbourne's sins confessed in the  
24 Statement of Fact rise to the level of "base and flagitious." [BCO 34-7]  
25

26 "[JC member] TE Jason Park then brought the following motion: That the presbytery  
27 rule that the sins TE Wilbourne has confessed do rise to the level of base and  
28 flagitious. The motion was seconded by TE Jerrard Heard."  
29

30 "As ballots were being distributed, Moderator Bjerkaas reminded the court of the  
31 motion before them is to rule that the sins confessed by TE Wilbourne be found to  
32 rise to the level of base and flagitious. Upon voting, the motion passed, with 21 for,  
33 11 against, and 1 abstention."  
34

35 "At 11:00 am, TE Jason Park brought the following motion: That TE Rankin  
36 Wilbourne be deposed from the ministry. The motion was seconded by [JC member]  
37 TE Jeff Tell. Following lengthy, passionate, and often times emotional debate,  
38 various points of clarification and points of order, and some statements not directly  
39 pertaining to the Statement of Facts being ruled out of order by the Moderator, TE  
40 Jason Park called the question. Upon voting, the calling of the question was  
41 sustained. TE Kyle Wells requested prayer, which Moderator Bjerkaas led.  
42 Moderator Bjerkaas reminded the court of the motion before them: That TE Rankin  
43 Wilbourne be deposed from the ministry. Upon voting, the motion passed, with 21  
44 votes for, 10 against, and no abstentions."  
45

46 04/05/20 Wilbourne filed Complaint with Presbytery, alleging four "primary constitutional  
47 violations" (1-4) and three "secondary violations," (5-7) followed by fuller  
48 explanations of each. Emphasis below was original.  
49

1. At the called meeting of Presbytery on February 8, 2020, the Judicial Commission was allowed to read a detailed report, prior to my 38-1 confession, that was not agreed upon. The reading of this report was improper and inconsistent with *BCO* 38-1, allowing for injustice in the judgment and censure of the complainant.
2. The Presbytery ruled that my confessed sins were "base and flagitious," (*BCO* 34-7) when they are not rightly categorized as such.
3. The court neglected to consider the question of my repentance as they were obligated to do.
4. The Commission and Presbytery ignored *BCO* 32-20, namely that the court should limit its focus to offenses in the space of the last year, unless they have 'recently become flagrant'. They had not recently become flagrant, nor did my confession show that they had, nor did the Commission make the case that they had. Constitutionally, offenses from several years ago should only be admissible if the court can prove the pattern persists and had recently become flagrant.
5. During the Judicial Commission's investigation, I was repeatedly denied reasonable opportunities to defend myself.
6. The Judicial Commission prejudiced the Presbytery by claiming they had spoken to people on "both sides" as well as claiming they had spoken to everyone "in the room" at particular incidents. This is not true.
7. Throughout this process, Matthew 18 has not been followed, "as required by Christ" (*BCO* 31-5).

04/05/20 Session of PCC filed a six-page Complaint with Presbytery alleging five “Failures in Interpretation of the Constitution of the Church,” shown below.

1. Submission of a Judicial Commission Report that inappropriately charged the Confessor and influenced the judgment of Presbytery.
2. In both its written report and during deliberations, the Judicial Commission made inaccurate statements that influenced Presbytery’s judgment.
3. The Presbytery incorrectly ruled that TE Wilbourne’s confessed sins were “Base and Flagitious.”
4. The Sins were not recent.
5. Other Concerns.

04/07/20 TEs Gendall, Hightower and Lien filed a 10-page Complaint with Presbytery alleging six “Constitutional Concerns and Violations,” shown below. Emphasis was original, and indicated the sections alleged to be violated.

1. *BCO* 40-4: Courts may sometimes entirely neglect to perform their duty ... In any of these cases their records will by no means exhibit to the higher court a full view of their proceedings. If therefore, the next higher court be well advised that any such neglect or irregularity has occurred on the part of the lower court, it is incumbent on it to take cognizance of the same, and to examine, deliberate and judge in the whole matter as completely as if it had been recorded, and thus brought up by review of its records.
2. *BCO* 38-1. When any person shall come forward and make his offense known to the court, a full statement of the facts shall be recorded and judgment rendered without process. In handling a confession of guilt, it is essential that the person intends to confess and permit the court to render judgment without process.

1 Statements made by him in the presence of the court must not be taken as a basis  
2 of a judgment without process except by his consent. In the event a confession is  
3 intended, a full statement of the facts should be approved by the accused, and by  
4 the court, before the court proceeds to a judgment. The accused has the right of  
5 complaint against the judgment.

- 6 3. *BCO* 34-7: the court erred procedurally and factually in its declaration of "base &  
7 flagitious."
- 8 4. *BCO* 32-20: The court failed to properly consider *BCO* 32-20, especially that  
9 process ... shall commence within the space of one year after the offense was  
10 committed, unless it has recently become flagrant.
- 11 5. *BCO* 27-5 & 31-5: According to *BCO* 27-5, steps A-D of the proper disciplinary  
12 principles set forth in Scripture must be followed - whether the sins be general or  
13 specific, public or private. That did not happen.
- 14 6. *BCO* 31-8: Great caution should be exercised in receiving accusations from any  
15 person who is known to indulge a malignant spirit toward the accused... [or] who  
16 is deeply interested in any respect in the conviction of the accused.

- 17
- 18 07/18/20 Presbytery Called Meeting. Presbytery debated and denied the three Complaints by  
19 the following votes: Wilbourne (15-19-1), PCC Session (14-21), and Gendall,  
20 Hightower & Lien (13-21).
- 21
- 22 08/04/20 TEs Gendall, Hightower, and Lien carried their Complaint to the SJC.
- 23
- 24 08/05/20 Wilbourne carried his seven-page Complaint to the SJC, with 70 pages of  
25 attachments.
- 26
- 27 08/13/20 PCC Session carried its Complaint to the SJC.
- 28
- 29 09/16/20 SJC Officers rule Case administratively in order and randomly drew the Panel, which  
30 included TE Greco, TE Cannata and RE S. Duncan, with alternates TE Ellis and RE  
31 Donahoe.
- 32
- 33 09/17/20 Panel members were notified of their appointment and received the ROC for three  
34 related Complaints against the decision of Pacific Presbytery: Cases 2020-07  
35 *Wilbourne* (ROC 300 pages), 2020-08 *TEs Gendall, Hightower & Lien* ( ROC 252  
36 pages), and 2020-09 *Session of Pacific Crossroads* (ROC 228 pages).
- 37
- 38 10/06/20 Panel Constituting Meeting. TE Greco was elected as chairman and RE S. Duncan as  
39 secretary. Panel decided to send the Parties copies of the SJC's July 2020 Decision in  
40 Case 2019-10 *Evans v. Arizona*, and its August 2020 Decision in Case 2020-04  
41 *Williams v. Chesapeake*, since they were just recently decided, and both involved  
42 *BCO* 38-1.
- 43
- 44 10/29/20 Presbytery Representatives filed a motion asking the Panel to rule all the Cases out-  
45 of-order. They alleged Cases 2020-08 and 2020-09 were out of order because those  
46 Complainants lacked standing because the final sentence of *BCO* 38-1 purportedly  
47 restricts such a complaint to the accused: "*The accused* has the right of complaint  
48 against the judgment." They also contended Case 2020-07 was out of order, for the

1 following reason: “[T]he relief being sought in the complaint goes beyond the  
2 specific issue that can be raised under *BCO* 38-1. The only issue the accused can  
3 complain against is the judgment: “The accused has the right of complaint *against the*  
4 *judgment.*” ” (Emphasis original.)

5  
6 11/03/20 Chairman notifies the Presbytery Representative that the motions will be considered  
7 after the Record of the Case has been finalized.

8  
9 01/15/21 Panel notified the Parties of its decision on the ROC objections, sent a Revised ROC  
10 dated January 15, and notified the Parties the Hearing would be via GoToMeeting on  
11 February 22. Panel notified the Parties it denied Respondent’s October 29 motions to  
12 dismiss the three Complaints, providing rationale.

13  
14 01/28/21 Panel received the Complainant’s 10-page Preliminary Brief.

15  
16 02/10/21 Panel received the Presbytery Representative’s 10-page Preliminary Brief.

17  
18 02/22/21 Complaint Hearing via GoToMeeting. Present were Panel members TE Greco, TE  
19 Cannata, and RE S. Duncan, along with alternates TE Ellis and RE Donahoe.  
20 Complainants present included Mr. Wilbourne, RE Ozbolt, TE Gendall, TE Lien and  
21 TE Hightower. The Complainants’ Representative was TE Larry Hoop. Presbytery’s  
22 Representatives were TE Tell and TE Park.

23  
24 04/01/21 Panel filed Decision with SJC.

25  
26 **II. STATEMENT OF THE ISSUE**

27  
28 Did Presbytery clearly err on February 8, 2020 in how it handled a *BCO* 38-1 Case Without  
29 Process, and previously in how a *BCO* 31-2 investigation was conducted?

30  
31 **III. JUDGMENT**

32  
33 Yes. Therefore, the Complaint is sustained, and the censure of deposition is annulled.

34  
35 **IV. REASONING**

36  
37 Our Book of Church Order calls on higher courts ordinarily to show great deference lower  
38 courts in factual matters (*BCO* 39-3(2)) and in matters of discretion and judgment, including the  
39 administration of censures (*BCO* 39-3(3)), unless there is clear error on the part of the lower  
40 court. In this case, the lower court clearly erred in its actions arising from a *BCO* 38-1  
41 confession. Those errors were prejudicial to the accused and require that the Complaint in Case  
42 No. 2020-07 be sustained.

43  
44 The six-page Judicial Commission report was more than just a “record of its proceedings ...  
45 submitted to the court appointing it.” (*BCO* 15-1) It contained significant assertions against and  
46 opinions regarding TE Wilbourne. Because the JC presented this new and prejudicial material in  
47 addition to the agreed-upon *Statement of the Facts and Confession*, the process violated the

1 provisions of *BCO* 38-1. If the JC and Presbytery had followed the provisions of *BCO* 38-1, the  
2 presbyters would have seen and heard only the seven-page *Statement of Facts and Confession*  
3 that was agreed to by the minister and the JC. Presbytery could then have properly proceeded to  
4 decide which of the censures of *BCO* 30 was warranted.

5  
6 Instead of trying to re-do that procedure, and because TE Wilbourne’s confession still exists, the  
7 SJC recommends the censure be regarded as definite suspension from office (*BCO* 30-3). In  
8 other words, this Decision restores him to the status of a minister in good standing in Pacific  
9 Presbytery, without call, having made a *BCO* 38-1 confession and having practically served a 17-  
10 month suspension from office. Alternatively, Presbytery is not prohibited from considering TE  
11 Wilbourne’s *BCO* 38-1 confession, as the sole basis for imposing a *BCO* 30 censure.  
12 Additionally, TE Wilbourne is not prohibited from withdrawing his *BCO* 38-1 confession, at  
13 which point Presbytery would need to decide whether to take no further action or determine  
14 whether a strong presumption of guilt exists warranting the appointment of a prosecutor, an  
15 indictment, and trial.

16  
17 Rather than have TE Wilbourne consider another *BCO* 38-1 confession and statement of facts  
18 and have the Presbytery consider again the censure it would impose, we believe the cause of  
19 justice will be served by a *de facto* 17-month definite suspension from office. Therefore, if  
20 Presbytery believes a new or greater censure is warranted than the past 17-month suspension, it  
21 should find a strong presumption of guilt, bring an indictment against TE Wilbourne, and  
22 proceed to a trial. The SJC is not recommending any further censure or an indictment and trial.  
23 The SJC recommends Presbytery consider the matter closed.

24  
25 The SJC is not annulling Presbytery’s dissolution of the minister’s call.

26  
27 Finally, there were also several other irregularities alleged in the three Complaints, and they are  
28 briefly addressed below.

- 29  
30 1. There seemed to be a misunderstanding about what a commission delivers to a presbytery.  
31 *BCO* 15-1 stipulates: “A commission shall keep a full record of its proceedings, which shall  
32 be submitted to the court appointing it. Upon such submission this record shall be entered on  
33 the minutes of the court appointing ...” Thus, a *BCO* 15-1 commission does not typically  
34 present a report to presbytery, *because it acts as the presbytery* on the matter assigned to it.  
35 It simply submits (files) a record of its proceedings for the records of presbytery. Ordinarily,  
36 a presbytery doesn’t “consider” a report from a commission, unless it’s a *BCO* 15-3  
37 commission that tried a judicial case and is presenting a non-debatable recommendation on  
38 the judgment. In other words, the *BCO* did not require Pacific Presbytery to hear the JC’s  
39 six-page “report.” No motion is needed for the “record of the proceedings” of a commission  
40 to be entered into Presbytery records. The JC’s record of its proceedings should simply have  
41 been filed with the Presbytery Clerk after the meeting, or at least after the decision on  
42 censure. In addition, the motion adopted by Presbytery to “receive the Judicial Commission’s  
43 report as presented” was out of order. Even if the JC’s presentation could legitimately be  
44 regarded as a “report,” reports are automatically *received* when *presented*, and the motion  
45 was thereby unnecessary and probably confusing. (RONR (12<sup>th</sup> ed.) 51:9, 51:15)



- 1 2. Early in the process, the SJC Panel ensured Presbytery’s Representative received a copy of  
2 the SJC’s July 2020 Decision in Case 2019-10: *TE Evans v. Arizona*, another Case involving  
3 *BCO 38-1* decided three months earlier. The Presbytery Representatives should have  
4 regarded the SJC Decision in *Evans* as “establishing a principle” that “may be appealed to in  
5 subsequent similar cases.” (*BCO 14-7*) A major procedural issue in both Cases was clearly  
6 similar, but the Presbytery’s Representatives disagreed. They claimed the facts of the Cases  
7 were substantially different and contended Arizona’s commission reporting was faulty  
8 because it came after the confession was read, but Pacific’s came *before*. We do not agree  
9 with Respondent’s attempt to distinguish this case from *Evans*. *BCO 38-1* does not address  
10 the time at which additional adverse information might be presented; it prohibits the  
11 introduction of any information adverse to the accused to the court beyond the agreed upon  
12 statement of facts at any point prior to the decision on censure. Hearing a negative report  
13 before hearing a man’s confession is *more* prejudicial than after, given the importance of first  
14 impressions.<sup>2</sup> In addition, Presbytery’s Representative contended the minister was free to  
15 change his mind after hearing the negative JC report, and ask for a trial instead. While that  
16 would have been constitutionally permissible for him to do, we find Presbytery’s contention  
17 implausible and at odds with the procedure outlined in *BCO 38-1*.  
18
- 19 3. In its deliberations on censure, Presbytery spent much time on *BCO 34-7* discussing whether  
20 the confessed offenses rose to the level of being “base and flagitious.”

21  
22 *BCO 34-7*. When a minister, pending a trial, shall make confession, if the matter  
23 be base and flagitious, such as drunkenness, uncleanness, or crimes of a greater  
24 nature, however penitent he may appear to the satisfaction of all, the court shall  
25 without delay impose definite suspension or depose him from the ministry.  
26

27 It should be noted that this was not time well spent. It is clear that consideration of *BCO 34-7*  
28 was not applicable to any censure consideration because there was no trial pending.  
29

30 Nevertheless, Presbytery’s Representative reported that a *BCO 38-1* document in the online  
31 Presbytery Clerk’s Handbook defines *base* as “vile, contemptible” and defines *flagitious* as  
32 “heinous, extraordinarily wicked, flagrantly wicked.” However, the disclaimer in that  
33 document is relevant:  
34

35 “Interpretations of *The Book of Church Order* ... by the Stated Clerk ... or staff members  
36 of the Office of the Stated Clerk are for information only, however, and are not  
37 authoritative rulings that may only be made by courts of the Church. ... Parties to  
38 potential cases or cases in process are responsible for their own constitutional and  
39 procedural knowledge and understanding.”  
40

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<sup>2</sup> In his paper titled, *Avoiding Procedural Errors in Judicial Cases*, Stated Clerk Emeritus Dr. Roy Taylor includes this statement: “It is unwise for a Shepherding Committee to report prior to a *BCO 38-1* procedure, because that would violate the *BCO 38-1* rights of the self-accused person that only the statement of facts that he has approved and the sins to which he confesses may be used by the court to decide on a censure.” However, it is more than just unwise. It will often constitute reversible error, as it did in this Case.

1 When interpreting a word in a constitution or a law, it is important to try to understand the  
2 meaning the word had at the time the document was written.<sup>3</sup> Because the words *base* and  
3 *flagitious* date back to the 1879 PCUS Book of Order, it would be more accurate to use a  
4 resource like the Oxford English Dictionary, which shows usage at various times in history,  
5 rather than something like the Merriam-Webster 2021 dictionary.<sup>4</sup>  
6

7 More importantly, context is critical. Regardless of how the two words are defined, it is  
8 unusual for the *BCO* to say repentance is immaterial when deciding censure. For example,  
9 we would not ordinarily say repentance is immaterial in cases of drunkenness or uncleanness.  
10 However, if those sins resulted in public scandal, we might say that. Thus, it seems the main  
11 purpose of *BCO* 34-7 is the removal of public scandal achieved by definite suspension or  
12 deposition. If the offenses of drunkenness or uncleanness do not create a public scandal, then  
13 the *BCO* would allow the court to consider repentance and all degrees of censures. This  
14 might also explain why indefinite suspension is not mentioned as an option in *BCO* 34-7,  
15 even though one might argue it's often a harsher censure than definite suspension, because  
16 the duration is unknown. Further, *BCO* 34-7 explicitly applies only to ministers, presumably  
17 because their sins will be more likely to create a public scandal than those of elders and other  
18 church members. This does not mean the censure of deposition was unwarranted for the  
19 offense confessed. It just means Presbytery's misreading of *BCO* 34-7 resulted in an error in  
20 ignoring any consideration of repentance when deciding censure.  
21

- 22 4. *BCO* 38-1 envisions a single document. It does not envision what we had in this Case, which  
23 included a seven-page Statement of Facts and Confession of Guilt and an eight-page  
24 Voluntary Statement (four-page Statement of Repentance and four-page Commitment to  
25 Repentance). Whatever single document is agreed to by the confessor and the court should  
26 include all the material necessary for the court to render a decision on censure. That way, the  
27 presbyters simply need to read the single document to be ready to vote.<sup>5</sup>  
28
- 29 5. Accused persons are permitted counsel or assistance at any point in the investigative process,  
30 not just at trial. The accused minister repeatedly requested to bring someone with him to the  
31 interviews with the investigative Commission, but the Commission incorrectly ruled that  
32 *BCO* 32-19 only allows counsel during a trial. Absent some compelling reason, it is  
33 unreasonable to prohibit an accused person from bringing his counsel with him to an

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<sup>3</sup> “The theory of originalism treats a constitution like a statute, giving the constitution the meaning that its words were understood to bear at the time they were promulgated. ... If you don't take the words of the Constitution and what they were originally understood to mean, what is the standard? The answer is, there isn't any standard. ... [T]he only sensible way to construe a constitution is the way you construe statutes. What did its words mean when they were adopted?” Justice Antonin Scalia, “*Judicial Adherence to the Text of our Basic Law: A Theory of Constitutional Interpretation.*” Speech at the Catholic University of America, October 18, 1996.

<sup>4</sup> <https://www.oed.com/> In the *Institutes*, Calvin uses the word *flagitious* to refer to the “incestuous Corinthian,” David's sin with Bathsheba, murder, the public “worship of images,” and “the sin against the Holy Ghost.”

<sup>5</sup> The 2021 Presbytery Clerk's Handbook prepared by the PCA Clerk's office recommends the use of an additional, separate document, which it calls the *Voluntary Statement in Addition to the Required Statement of Facts and Confession of Guilt*. (See pages 226 and 228 at <https://www.pcaac.org/wp-content/uploads/2020/12/2021-Presbytery-Clerks-Handbook.pdf>). However it would seem prudent for such a repentance statement to be included in the mutually agreed-upon *single* document.

1 investigative interview. Besides, experienced counsel can often help a commission or court  
2 avoid procedural mistakes.<sup>6</sup>  
3

- 4 6. A fundamental goal of any *BCO* 31-2 investigation is to determine whether the accused has  
5 “satisfactory explanations concerning reports affecting their Christian character.” But in this  
6 Case, Presbytery’s investigative Commission did not interview the accused until its 28<sup>th</sup>  
7 meeting - three months after they informed him there were accusations. That was neither  
8 wise nor just. Had the Commission interviewed the accused sooner, given him specifics  
9 about the allegations, and allowed his Session and PCC staff leadership to also speak as they  
10 requested, the following proceedings might have been avoided.

11  
12 The Complaint in Case No. 2020-07 is sustained, and the censure outlined in that case is  
13 annulled. The Complaints in Case Nos. 2020-08 and 2020-09 are sustained and answered by  
14 reference to this decision.  
15

16 This Panel Decision was drafted by RE Howie Donahoe, amended and unanimously approved by  
17 the Panel, with amendments by the full SJC. The SJC approved the decision on the following  
18 roll call vote:  
19

20	Bankson <i>Concur</i>	M. Duncan <i>Concur</i>	Neikirk <i>Concur</i>
21	Bise <i>Concur</i>	S. Duncan <i>Concur</i>	Nusbaum <i>Absent</i>
22	Cannata <i>Concur</i>	Ellis <i>Absent</i>	Pickering <i>Concur</i>
23	Carrell <i>Concur</i>	Greco <i>Concur</i>	Ross <i>Concur</i>
24	Chapell <i>Concur</i>	Kooistra <i>Absent</i>	Terrell <i>Disqualified</i>
25	Coffin <i>Concur</i>	Lee <i>Concur</i>	Waters <i>Concur</i>
26	Donahoe <i>Concur</i>	Lucas <i>Absent</i>	White <i>Concur</i>
27	Dowling <i>Concur</i>	McGowan <i>Concur</i>	Wilson <i>Concur</i>
28	(19-0-0)		

29  
30 RE Terrell disqualified himself because of his personal relationship to the Appellant and  
31 Appellant’s father-in-law. OMSJC 2.10(d).  
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<sup>6</sup> 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)