

Protest
Presbyterian Church in America
Standing Judicial Commission
Answer to Overtures 20, 21 and 22
November 4, 2013

My concern is that the SJC's negative response to Overtures 20, 21 and 22 may have created a harmful loophole in our system of polity through its interpretation of BCO 34-1. This loophole could result in the loss of the doctrinal consensus that binds together our presbyteries. Even though the phrase "to act" in BCO 34-1 is unqualified, most would acknowledge that a presbytery can in theory take an action relative to an alleged doctrinal case that does not satisfy this implied requirement to act. Once this is acknowledged, the question goes beyond whether a presbytery has taken some action to whether that action satisfies the requirement to act implied by BCO 34-1. The SJC's answer to Overtures 20, 21 and 22 establishes the principle that in such cases a presbytery has completely fulfilled this requirement to act if it has conducted a trial that fulfills all the technical details required by the BCO. With this understanding of BCO 34-1, should a presbytery become unwilling to convict one of its members who is teaching heresy and should that presbytery have no member willing to complain when the presbytery expresses through an official action its unwillingness to convict, then that presbytery would be able to isolate itself doctrinally from the other presbyteries by conducting a technically correct trial. The criteria for satisfying the failure to act clause of BCO 34-1 should involve more than the conducting of a technically correct trial. To limit the criteria in this way is to elevate our commitment to our rules of order as expressed in our third ordination vow over our commitment to Scripture and our doctrinal standards as expressed in our first and second ordination vows. Our rules of order should instead be interpreted in the light of and as servants of our doctrinal standards. The General Assembly should give greater deference to the presbyteries in determining whether a presbytery has acted satisfactorily in dealing with an alleged doctrinal case, especially when the alleged error is being promoted beyond the bounds of one presbytery and is disturbing the peace and purity of the church at large. When a presbytery has conducted a trial, the other presbyteries should be allowed to include in their criteria for the satisfaction of the failure to act clause of BCO 34-1 issues such as the apparent objectivity of the prosecutor, the adequate inclusion of documented publicly available evidence in the Record of the Case or in the judgment's reasoning if the Record is not publicly available, and the faithful application of our doctrinal standards in the judgment. After giving the presbyteries such deference, the General Assembly would still have the last word through its assumption of original jurisdiction as provided for by BCO 34-1.

Our rules of order do not address the subjects of mistrial, retrial and double jeopardy. The civil laws regarding mistrial and retrial are based on the general principle of common justice that a trial is not an infallible procedure that is beyond challenge as the final word in a case. This same principle underlies the limitation of the concept of double jeopardy such that it cannot preclude a second trial when a civil authority has properly declared a mistrial or the need for a retrial. As a church, we too should give attention to implicit general principles of common justice, but we should apply them only in ways consistent with our explicit ecclesiastical commitments and standards. The General

Assembly of the PCA, a denomination committed to a grassroots form of Presbyterianism, should interpret BCO 34-1 in a way that entrusts the presbyteries with ecclesiastical authority that is broadly analogous to the authority under civil law to declare a mistrial or the need for a retrial. We should not, however, cite the specific details of civil applications of these implicit general principles of common justice as a means of precluding our ecclesiastical application of these same principles in a way that is consistent with our own explicit ecclesiastical standards and commitments.

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November 6, 2013