

TE James W. Truitt, TE Charles E. Turner, TE M. Steve Wallace, RE Charles Watson, TE Loren V. Watson, RE Jimmy Watts, RE Harold E. Whitlock, TE Randy Wilding, RE Steve Wilkins, TE S. Scott Willet, TE Ford Williams, TE John W. Wilson, TE Larry W. Wilson, TE Victor W. Wolf, Jr., TE Joe A. Wolfe, and RE Mike Zimansky.

### **16-98 Commission to Adjudicate Case #2.**

TE John Warren, chairman, led in prayer and presented the report. On motion the Assembly went into executive session. On motion the report was adopted. The Assembly rose from executive session.

#### **Case #2: Mr. Carl Fox vs. Mississippi Valley Presbytery *et al.***

##### **Preface**

The Commission wishes to inform the Assembly of the complexity of this Complaint as submitted. There are, in fact, several hundred pages of documents submitted by the Complainant containing a multitude of "complaints" and "appeals." Therefore, it was most difficult to ascertain how the actual complaints should be stated.

The Commission has concluded that the following Complaints equitably represent the essence of the many complaints contained in this vast amount of documentation.

##### **Complaints**

**Complaint #1:** The Session of Pear Orchard Presbyterian Church in America acted improperly, and without constitutional authority, by accepting Carl Fox's resignation from membership in the Church while under censure.

**Complaint #2:** The Session of Pear Orchard Presbyterian Church in America acted inequitably concerning the marital difficulties of Carl and Cindy Fox.

**Complaint #3:** The Session of Pear Orchard Presbyterian Church in America unconstitutionally refused to restore Carl Fox to membership in the Church.

**Complaint #4:** The Session of Pear Orchard Presbyterian Church in America unconstitutionally denied Carl Fox access to Sessional records dealing with matters pertaining to him.

##### **Notations**

The Commission exhorts all concerned that when complaints are forwarded to the Assembly, they should be submitted in a clear and concise manner.

The Commission reminds the lower courts that they must comply with *BCO* 15-1 regarding the difference between a commission and an ordinary committee.

### **ADJUDICATION OF CASE #2**

#### **I. Statement of the Facts**

On November 8, 1986, Mr. Carl Fox, a member of the Pear Orchard Presbyterian Church, requested the intervention of the Session in the matter of the marital difficulties involving a legal separation initiated by his wife, Cindy Fox (also a member of the Pear Orchard Presbyterian Church). On November 17, 1986, the Session issued instructions specific to both Cindy Fox and Carl Fox. On November 25, 1986, in response to correspondence from Mr. Fox objecting to perceived contradictions in the specific instructions of the Session to both him and to Mrs. Fox, the Session censured Mr. Fox and indefinitely suspended action against Mrs. Fox.

On November 27, 1986, Mr. Fox stated by letter to TE Bill Whitwer, Pastor of the Pear Orchard Presbyterian Church, that he was withdrawing his membership and support from the Church. On January 22, 1987, RE Jack Treloar, Clerk of

Session, informed Mr. Fox by letter that the Session could not withdraw his membership while he was under censure.

Mr. Fox related that on February 17, 1987, he received a phone call from RE Rod Russ, a member of the Session, informing Mr. Fox that he would be dropped from the roll of the Church. That same day, Mr. Fox wrote to the Session asking if censure had been removed. Mr. Fox related that on February 21, 1987, he received another phone call from RE Russ informing him that his censure had not been lifted by the Session.

On June 26, 1987, Mr. Fox requested Mississippi Valley Presbytery for "review and control" of the actions taken by the Session of Pear Orchard Presbyterian Church regarding both him and his wife.

The request was referred to the Presbytery's Advisory Committee which on July 8, 1987, issued the following reply to Mr. Fox via letter: "...it is our opinion that you have no legal ecclesiastical grounds upon which to file a complaint....Our reason for this judgment is due to your having requested the withdrawal of your membership from the Pear Orchard Presbyterian Church." This "judgment" of the Advisory Committee was not made known to the Presbytery; and as a result Mr. Fox's request for "review and control" was never received or acted upon by Mississippi Valley Presbytery.

On July 20, 1987, Mr. Fox wrote to the Clerk of Session, RE Jack Treloar, requesting that he be reinstated as a member since his removal had been based on improper and unconstitutional grounds.

On July 20, 1987, Mr. Fox also wrote to the clerk of Presbytery with a Complaint that the Advisory Committee of Mississippi Valley Presbytery made a determinative action that cut him off from access to the Presbytery as provided by the *Book of Church Order*.

On August 25, 1987, the Session informed Mr. Fox by letter that a committee had been formed to meet with him concerning his request for reinstatement. On August 31, 1987, the Session approved seven conditions to which Mr. Fox would have to concur before he could be considered for membership. Section 6.a. of this action required that Mr. Fox undergo a complete psychiatric and medical examination.

On September 27, 1987, Mr. Fox submitted a lengthy Complaint to the Session. On the same day, he also appealed to the Presbytery as to the Session's handling of the entire matter.

On October 5, 1987, Mr. Fox wrote to RE Jack Treloar, Clerk of Session, requesting all of their formal court records regarding his situation, especially those dealing with his dismissal. Mr. Fox included a check to cover the cost of these records.

There were several additional requests from Mr. Fox to the Session for the records. (The Commission did not have access to any Sessional record, to verify if there were any specific actions taken by the Session in this matter.)

On October 20, 1987, Mr. Fox submitted a Complaint to the Mississippi Valley Presbytery against the Session's refusal to release requested records. The minutes of the Presbytery Meeting of October 20, 1987, stated: "Presbytery was informed that the Session was still dealing with this matter and so the complaint should not be considered until the Session has dealt with the matter and the process of BCO 43-1 has been followed." (The Commission did not have access to Sessional records to confirm if, in fact, the matter was still under consideration.)

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On October 26, 1987, Mr. Fox again requested records from the Clerk of Session via "A Complaint." On November 17, 1987, TE Charles Frost informed Mr. Fox, via letter, that the Session had refused his request for records.

On October 29, 1987, Mr. Fox filed a Complaint against Mississippi Valley Presbytery *et al.* to the General Assembly through the Office of the Stated Clerk, Dr. Morton Smith.

**II. Statement of the Issues**

1. Did the Session improperly and unconstitutionally remove Mr. Fox from membership in the Pear Orchard Presbyterian Church?
2. Did the Session inequitably administer discipline in its actions regarding Carl Fox and Cindy Fox?
3. Was Mr. Fox unconstitutionally denied restoration to membership in the Pear Orchard Presbyterian Church by the Session?
4. Was Mr. Fox unconstitutionally denied access to Sessional records dealing with matters pertaining to him?

**III. Judgment of the Case**

**RE: Complaint #1**

The specification of error is sustained in that the Session of Pear Orchard Presbyterian Church improperly and unconstitutionally accepted the resignation of Carl Fox from membership in the Church (*BCO* 27-5, 32-2 through 32-20, and 46-5).

This Complaint is remanded back to the Mississippi Valley Presbytery with instructions that this matter be rectified in consultation with the Session of the Pear Orchard Presbyterian Church.

**RE: Complaint #2**

The specification of error is neither sustained nor denied in that while there may be merit to the complaint of uneven discipline, there is insufficient evidence for the Commission to sustain this specification of error. This matter is remanded to the Mississippi Valley Presbytery for investigation and necessary action.

**RE: Complaint #3**

The specification of error is sustained, in that having been improperly removed (see Complaint #1 above), Carl Fox has not been restored to membership.

Relief in relation to this error should be provided under the actions in relation to Complaint #1 above.

**RE: Complaint #4**

The specification of error is sustained as Carl Fox was, at all material times, a member of the Pear Orchard Presbyterian Church and is entitled to all records relevant to him and actions taken in relation to him (*BCO* 10-4).

This Complaint is remanded back to the Mississippi Valley Presbytery with instructions that this matter be rectified in consultation with the Session of the Pear Orchard Presbyterian Church.

Submitted this 9th day of June, 1988.

**Commissioners Present;**

Presbytery  
Calvary  
Delmarva  
Eastern Carolina  
Eastern Carolina  
Gulf Coast

**Commissioner**  
TE J. Gaynor Phillips  
RE Philip Hufnall  
RE Richard Alexander  
TE John Warren  
RE William Harris IV

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Louisiana	RE Maloy Stott
North Georgia	RE Guy Beckman
Southeast Alabama	TE L. Milton Cutchin
Western Carolina	RE Michael Everhart
Western Carolina	TE Charles Wingard
Westminster	TE Stephen Baker

**MINUTES OF THE JUDICIAL COMMISSION CASE #2**

The Commission was called to order by Convener TE John Warren at 10:10 a.m., Tuesday, June 7, 1988. TE Warren opened with prayer. It was determined that RE John Lane (New Jersey) and TE Harold Whitlock (Delmarva) were ineligible to serve according to Rules of General Assembly. The Commission proceeded to organize itself with the unanimous elections of TE John Warren as Chairman and RE Michael Everhart as Clerk. The Chairman called the role.

Those present were:

Presbytery	<b>Commissioner</b>
Ascension	TE David Karlberg
Calvary	TE J. Gaynor Phillips
Delmarva	RE Philip Hufnell (in place of Robert Bishop, S Tx.)
Eastern Carolina	RE James Weaver (in place of T. Carlton, Calvary)
Eastern Carolina	RE Richard Alexander (in place of John Canfield, S FL)
Eastern Carolina	TE John Warren, Chairman
Gulf Coast	RE William Harris IV
Louisiana	RE Maloy Stott (in place of Wendell Jones, Tn. Valley)
North Georgia	RE Guy Beckman
Southeast Alabama	TE L. Milton Cutchin
Western Carolina	RE Michael Everhart, Clerk
Western Carolina	TE Charles Wingard
Westminster	TE Stephen Baker

Those absent were:

Presbytery	<b>Commissioner</b>
Central Georgia	TE James Shipley
Pacific	RE Robert Taylor
Gulf Coast	TE Seak Jae

The Chairman certified the presence of a quorum and exhorted the Commission as to the solemn duty that was to be undertaken. (BCO 32-12)

The parties to the Complaint were introduced, namely: Complainant Carl Fox and his representative TE Vaughn Hathaway (Grace Presbytery), a member of the Court; and, Respondents TE John Reeves, Recording Clerk of Mississippi Valley Presbytery and TE B.I. Anderson, Stated Clerk of Mississippi Valley Presbytery, both members of the Court.

The Commission then undertook to organize the large volume of material submitted by the Complainant. At 12:00 p.m. the Commission recessed for lunch with instructions to reconvene at 1:00 p.m.

At 1:00 p.m. the Commission reconvened and again reviewed the documents in its possession. The Commission requested that TE Anderson provide all appropriate minutes from the Presbytery that might be germane to the case. TE Anderson complied with the request. The excerpts of the Presbytery's minutes of October 20, 1987, were received and added to the record.

The Commission recessed with prayer by the Chairman to reconvene at 7:00 p.m. Commission member RE James Weaver (Eastern Carolina) was excused from the continued proceedings of the Commission for reasons satisfactory to the Chairman.

The Commission reconvened at 7:10 p.m. with prayer by RE Michael Everhart. It was brought to the attention of the Chairman that TE L. Milton Cutchin was unavailable due to an unplanned meeting with his son. The Commission proceeded to its assigned task with a quorum still present.

The clerk read those sections of the record not exempted by mutual agreement of all parties. The Commission granted Mr. Fox the privilege of the floor. Both parties agreed that the record before the

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Commission was complete as submitted, with the exception that there were no Sessional records available that were pertinent to specific complaints (as noted by the Complainant).

The Clerk questioned the propriety of TE Hathaway, a member of the Permanent Committee on Judicial Business, representing a party in the proceeding. It was noted that in the minutes of the Permanent Committee TE Hathaway was excused from all debate and action pertaining to this case.

The Complainant, represented by TE Hathaway, presented his opening arguments.

Respondent TE Anderson presented his opening arguments.

The Commission then proceeded to question both parties at length.

Motion by RE Everhart that TE Charles Frost and TE Ron Lively (both of Mississippi Valley Presbytery) be called as witnesses. Complainant requested that TE Rod Mays (Mississippi Valley) be called as witness. Respondents requested that TE Douglas Murphy (Evangel Presbytery) be called as witness. The Commission approved the motion to call these four as witnesses. The Commission recessed for five minutes while the witnesses were called from the Assembly floor.

The Commission reconvened and questioning of the parties continued. TE Lively joined the deliberations and testified on behalf of the Complainant.

M/S/C That the Commission go into closed session. It was agreed that the period of questioning of witnesses had been sufficient and that the proceedings should continue with closing arguments. By common consent the Commission returned to opened session.

Respondent TE Reeves gave his closing arguments.

Complainant Mr. Fox gave his closing arguments, followed by additional closing arguments by TE Hathaway on behalf of the Complainant.

M/S/C That the Commission recess for five minutes and then reconvene in closed session.

The Commission reconvened and each member of the Commission was given the opportunity to express his opinion as to the merits of the Complaint.

The Commission proceeded to vote on each specific of the Complaint, following prayer by RE William Harris IV.

**Complaint #1**

That Complainant was dismissed from Pear Orchard Presbyterian Church without process.

"Shall this specification of error be sustained?"

11-0-0

**Complaint #2**

That the discipline in the relationship between Carl Fox and Cindy Fox was not equitably administered by the

Session of Pear Orchard Presbyterian Church.

"Shall this specification of error be sustained?"

5-6-0

**Complaint #3**

That the Complainant was unconstitutionally denied restoration to membership in the Pear Orchard Presbyterian Church.

"Shall this specification of error be sustained?"

9-1-1

**Complaint #4**

That the Complainant was unconstitutionally denied access to Sessional records that were relevant to his Complaint.

"Shall this specification of error be sustained?"

11-0-0

M/S/C That the Commission briefly state its explanation re: vote on sustaining specification of error in Complaint #1 as follows: "The specification of error is sustained in that the Session of Pear Orchard Presbyterian Church improperly and unconstitutionally accepted the resignation of Carl Fox from membership in the Church (BCO 27-5, 32-2 through 32-20, and 46-5)." 11-0-0

M/S/C That the Commission remand Complaint #1 back to the Mississippi Valley Presbytery with instructions that this matter be rectified in consultation with the Session of the Pear Orchard Presbyterian Church. 11-0-0

M/S/C (in accordance with Roberts Rules) That the Commission reconsider its previous action regarding Complaint #2.

M/S/C That the answer to Complaint #2 be: This specification of error is neither sustained nor denied. 10-1-0

M/S/C That the Commission briefly state its explanation re: vote on sustaining specification of error in Complaint #2 as follows: "The specification of error is neither sustained nor denied in that while there may be merit to the complaint of uneven discipline, there is insufficient evidence for the Commission to sustain this specification of error." 10-1-0

M/S/C That the Commission remand Complaint #2 back to the Mississippi Valley Presbytery for investigation and necessary action. 10-1-0

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M/S/C That the Commission briefly state its explanation re: vote on sustaining specification of error in Complaint #3 as follows: "The specification of error is sustained, in that having been improperly removed (see Complaint #1 above), Carl Fox has not been restored to membership." 9-1-1

M/S/C That the Commission believes relief in relation to this error re: Complaint #3 should be provided under the action in relation to Complaint #1 above. 9-1-1

M/S/C That the Commission briefly state its explanation re: vote on sustaining specification of error in Complaint #4 as follows: "The specification of error is sustained as Carl Fox was, at all material times, a member of the Church and is entitled to all records relevant to him and actions taken in relation to him (BCO 10-4)." 11-0-0

M/S/C That the Commission remand Complaint #4 back to the Mississippi Valley Presbytery with instructions that this matter be rectified in consultation with the Session of the Pear Orchard Presbyterian Church. 11-0-0

The Commission then directed the Clerk and Chairman to draft the report to the Assembly in accord with the Rules of Assembly (p.16).

The Commission recessed until such time as the Chairman and Clerk draft the report. RE Alexander closed with prayer at 1:00 a.m.

The Commission reconvened at 4:00 pm, Wednesday, June 8, 1988.

RE Hufnall opened with prayer. The Commission received the rough draft of the Report to the Assembly and the Minutes of the Commission to date. The Commission then directed the Clerk and Chairman to prepare the final Report to the Assembly.

The Commission recessed until such time as the Chairman and Clerk draft the Report. RE Beckman closed with prayer at 12:00 am.

The Commission reconvened at 3:05 pm, Thursday, June 9, 1988. RE Alexander opened with prayer.

The Commission read and approved the Final Report to the Assembly. 11-0-0

The Minutes were read and approved. 11-0-0

The Commission adjourned with prayer by RE Everhart at 3:20 pm, June 9, 1988.

Respectfully Submitted,  
TE John Warren, Chairman  
RE Michael Everhart, Clerk

#### **16-99 Committee of Commissioners on Administration.**

RE George Nottingham, chairman, led in prayer and continued the report. Recommendations 17, 37, 39-45 were handled at this time (See 16-91, p. 000, for the text of the report).

#### **16-100 Recess.**

The order of the day having arrived, the Assembly recessed for lunch at 12:00 p.m. with prayer by the Moderator.

### **MINUTES--FRIDAY AFTERNOON**

**June 10, 1988**

#### **Twelfth Session**

#### **16-101 Assembly Reconvened.**

The Assembly reconvened at 1:30 p.m. with the singing of "How Great Thou Art" and prayer by the Moderator.

#### **16-102 Protest of TE Palmer Robertson and Assembly Response.**

TE Palmer Robertson was granted permission to read a protest against the Church/State Paper which was found in temperate language and ordered spread upon the Minutes. (See 16-91, III, 3, p. 204, for the text.)

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*Jud. Case  
Carl Fox*  
**D 17-88 Commission for Mississippi Valley Presbytery Question.**

TE Mark Cushman, chairman, led in prayer and presented the Commission's report:

**I. STATEMENT OF THE FACTS OF THE CASE:**

Whereas, Mississippi Valley Presbytery has worked tirelessly with the Session of the Pear Orchard Presbyterian Church and with Mr. Carl Fox in attempting to resolve the differences between them;

Whereas, Mississippi Valley Presbytery did not report specifically the action of said Presbytery to the 17th General Assembly by separate letter detailing the action they took in addressing the directives of the 16th General Assembly, although their actions are set out in the minutes of said Presbytery which came to this 17th General Assembly;

Whereas, Mississippi Valley Presbytery has now put in the hands of this Commission such a letter of transmittal, which has been forwarded to the Stated Clerk of the General Assembly;

Whereas, Mississippi Valley Presbytery has expressed its apology to this Commission regarding this oversight;

Whereas, Mississippi Valley Presbytery found it pastorally imprudent to comply under the circumstances with the directives of the 16th General Assembly;

Whereas, Mississippi Valley Presbytery failed to follow the proper procedure for disagreeing with the General Assembly's directives;

Whereas, Mississippi Valley Presbytery has not acted contumaciously nor with a spirit of rebelliousness as exhibited by their demeanor before this Commission;

Whereas, Mississippi Valley Presbytery believes that in this specific matter it has done what is biblically consistent and pastorally sensitive given the circumstances;

**II. THEREFORE THE COMMISSION RECOMMENDS THE FOLLOWING:**

1. That Mississippi Valley Presbytery be commended for its consistent, persistent, and godly counsel over an extensive period of time to the Session of the Pear Orchard Presbyterian Church and to Mr. Carl Fox. *Adopted*
2. That Mississippi Valley Presbytery's apology for a late response be accepted. *Adopted*
3. That Mississippi Valley Presbytery be reminded that when it believes that "General Assembly has erred" (Minutes of the Mississippi Valley Presbytery, page 114), the proper procedure is outlined in the Minutes of the 12th General Assembly, page 140, in response to Constitutional Inquiry #8, namely, "a lower court by memorial or overtury, may seek a correction of the alleged error, if reversible", and specifically, "If the alleged error is in reference to a judicial decision the decision cannot be reversed, but a judgment *can* be set aside and a new trial ordered *if* there is 'highly important new evidence' or 'such palpable error as would manifestly tend to interfere with the substantial administration of justice.' (*Baird's Digest of the Assembly Actions*, p. 111)" cf. *BCO* chapter 45. *Adopted*
4. That Mississippi Valley Presbytery be instructed to be more watchful in the future to follow the *Book of Church Order* (especially the Rules of Discipline), as well as the directives of the General Assembly which is the fruit of our love for Christ and for His Church, which He purchased with His own blood. *Adopted*

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5. That although the 16th General Assembly found that the Session of the Pear Orchard Presbyterian Church did not complete the proper discipline for one of its members and that the Mississippi Valley Presbytery did not rectify its own actions by advising the Session to do so as the General Assembly directed, the pastoral complexity of the case and the passage of time warrants all further proceedings in this case be stayed. cf. *BCO* 40-5. *Adopted*  
 6. That this Commission be dismissed with thanks. *Adopted*

Commissioners Present:

Presbytery	Commissioner
Ascension	TE Charles Winkler
Central Carolina	RE Bill Haynes
Central Florida	TE Anthony Dallison
Central Georgia	TE Terry Johnson
Delmarva	RE Bill Beck
James River	RE John Boulden
Missouri	RE George Middendorf
New Jersey	TE Don Starn
New River	TE Lonnie Barnes -- Clerk
N. Illinois	RE Sid Peters
North Georgia	TE Henry Thigpen
North Texas	RE Ray Sanders
Palmetto	RE Charles Martin, Jr.
Pacific	RE Earl Bengel
Pacific NW	TE Andrew Krasowski
SE Alabama	RE Chandler Gardner
Susquehanna Valley	RE Peter Davis
Tennessee Valley	TE Mark Cushman -- Chairman

**17-89 Committee of Commissioners on Judicial Business.**

RE David Coffin, chairman, led in prayer and completed the Committee's report continued (see 17-82, p. 149). Recommendations 3, 8, 10, 11, 14, 15, 19, 23, 26 and 37 were handled at this time.

**17-90 Protest on Drama in Sunday's Assembly Worship.**

The following protest was judged to be in temperate language and respectful to the court, and it was ordered recorded.

**A PROTEST**

Inasmuch as the so-called service of "worship" presented under the auspices of this Assembly this past Lord's Day morning utilized the elements of "drama" or "stage-play"; and

Inasmuch as our Confession states in chapter XXI, sec. 1, the following, "...The acceptable way of worshiping the true God is instituted by Himself, and so limited by His own revealed will, that He may not be worshiped according to the imaginations and devices of men, or the suggestions of Satan, under any visible representation, or any other way not prescribed in Holy Scripture."; and

Inasmuch as "drama" or "stage-play" is not an element of worship prescribed (nor even recognized) by the Holy Scripture;

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OVERTURE 28 From Central Carolina Presbytery "Ask <i>Messenger</i> Not to Publish Anonymous Letters"	(to CE) (see 18-34, p. 100)
OVERTURE 29 From Central Carolina Presbytery "Ask <i>Messenger</i> to Support PCA Positions"	(to CE) (see 18-34, p. 100)
OVERTURE 30 From Southwest Presbytery "Change Name of Denomination"	(to B&O) (see 18-55, p. 126)
OVERTURE 31 From Heritage Presbytery "Concerning Funding the Nominating Committee"	(to AC) (see 18-40, p. 113)

## COMMUNICATIONS

COMMUNICATION 1 From Southwest Presbytery "Westward Expansion"	(to MNA) (see 18-56, p. 133)
COMMUNICATION 2 Memorial from John M. Warren "Clarification of Effect of 17th GA decision re. Mississippi Valley Presbytery relative to Carl Fox"	(to SJB) (see 18-21, p. 73)
COMMUNICATION 3 From Warrior Presbytery "Support Transfer of Conecuh County, Alabama to Southeast Alabama Presbytery."	(to MNA) (see 18-56, p. 132)
COMMUNICATION 4 From Grace Presbytery "A Testimonial to Dr. W. J. Stanway"	(FYI) (see p. 82)
COMMUNICATION 5 From Grace Presbytery "Memorializing Teaching Elder Charles Campbell Cox, Jr."	(FYI) (see p. 82)
COMMUNICATION 6 Personal Resolution from TE Wallace E. Shelbon, Jr. "Hold GA in Third or Fourth Week of June"	(to AC) (see p. 83)

Communication #2, a memorial from TE John M. Warren, Jr., was received and referred to the Standing Judicial Commission.

**COMMUNICATION 2** from TE John M. Warren, Jr. (to SJC)  
"Clarification of Effect of 17th GA Decision re. Mississippi Valley Presbytery  
Relative to Carl Fox"

MEMORIAL FROM TE JOHN MCKNIGHT WARREN, JR.  
Chairman of Sixteenth General Assembly Judicial Commission  
Adjudicating Case #2 -- Complaint  
Carl Fox Vs. Mississippi Valley Presbytery

Pastor of Calvary Presbyterian Church in America  
Raleigh, North Carolina

## MINUTES OF THE GENERAL ASSEMBLY

[Memorial revised and epilogue added on March 15, 1990]

### STATEMENT OF PURPOSE OF THIS MEMORIAL

The purpose of this memorial is to seek to establish clarification of the actual effects of the actions of the Seventeenth General Assembly both on the part of the Commission for Mississippi Valley Presbytery Question and the action of the General Assembly as a whole adopting such action as it directly affects the final and decisive actions of the Sixteenth General Assembly both on the part of the Judicial Commission adjudicating Case #2 (Complaint - Carl Fox vs Mississippi Valley Presbytery) and the action of the General Assembly as a whole adopting such action.

### STATEMENT OF CONCERNS AND REASONS FOR MEMORIAL REQUESTING CLARIFICATION

1. Primary concern is for the honor and glory of The Head of the Presbyterian Church in America, our Lord and Savior Jesus Christ; and,
2. Concern for the Christ-honoring image presented to the public throughout all sections of this country and throughout the world of the Presbyterian Church in America denomination; and,
3. Concern for the spirit of unity among the brethren within the Presbyterian Church in America at the local church level and amidst brethren representing local churches at all court levels; and,
4. Concern for a brother in Christ and PCA Ordained Deacon Mr. Carl Fox of Ridgeland, Mississippi, who upon coming before the Session of the Pear Orchard Presbyterian Church in America seeking spiritual counsel and guidance concerning his two estranged children (both attending the Pear Orchard Church and under the spiritual guidance of the Pear Orchard Session) was both refused such counsel and guidance and upon refusing to leave the church building was formally charged with criminal trespass by the Session of the Pear Orchard Presbyterian Church in America of Ridgeland, Mississippi and placed in jail -- which charges were upheld by both magistrate and jury (upon appeal) in the courts of the State of Mississippi (and which action is still being appealed to the higher courts of the land); and, at a later date, formally charging him a second time with criminal trespass when he came to church on a Sunday with the sole intent of attending the Morning Worship Service of the Pear Orchard Church; and, thereby, relegating Mr. Fox a criminal in the State of Mississippi and before his children and members of the Pear Orchard Presbyterian Church in America; and,
5. Concern that the Seventeenth General Assembly's action staying "all further proceedings in this case (Sixteenth General Assembly, Case #2 - Carl Fox vs. Mississippi Valley Presbytery)," both on the part of the Commission for Mississippi Valley Presbytery Question and the Assembly's adoption of such action did not, in fact, resolve matters relating to Mr. Carl Fox and his "due process" complaints against Mississippi Valley Presbytery and the Pear Orchard Presbyterian Church in America Session due to the fact that the Sixteenth General Assembly Judicial Commission for Case #2 in its JUDGMENTS OF COMPLAINTS #1, #3 and #4, but especially #4 [The specification of error is sustained as Carl Fox was, at all material times, a member of the Pear Orchard Presbyterian Church and is entitled to all records relevant to him and actions taken in relation to him (BCO 10-4). . . complaint is remanded back to the Mississippi

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Valley Presbytery with instructions that this matter be rectified in consultation with the Session of the Pear Orchard Presbyterian Church] for all practical purposes annulled and overturned the action of the Pear Orchard Session in removing Mr. Carl Fox's name from the roll of the local church -- thereby, the Seventeenth General Assembly's action of staying "all further proceedings in this case" actually "stays" the action of the Sixteenth General Assembly's action of overturning the Pear Orchard Session's action of removing Mr. Carl Fox from the roll of the church --

- A. The fact that Mississippi Valley Presbytery did not follow the "final and decisive actions" of the Sixteenth General Assembly instructing them to rectify the matter in consultation with the Session of the Pear Orchard Church, for whatever reasons (including reasons of "conscience"), is irrelevant -- i.e., the Sixteenth General Assembly in its Judgments of Complaints #1, #3, and #4, but especially #4, actually placed, by its decision, Mr. Carl Fox back on the roll of the Pear Orchard Presbyterian Church in America as of the date of those final Judgments regarding Complaints #1, #3 and #4, but especially #4; and, as a result of the action of the Seventeenth General Assembly staying "all further proceedings in this case," the Seventeenth General Assembly actually confirmed and corroborated that Mr. Carl Fox is, in fact, and has been on the roll of the Pear Orchard Presbyterian Church in America since the Judgments and "final and decisive" actions of the Sixteenth General Assembly's Judicial Commission were made; and,
- B. The intent of the Sixteenth General Assembly Commission adjudicating Case #2, in its judgment of Complaint #4 in stating that "Carl Fox was at all material times a member of Pear Orchard Presbyterian Church," was, in fact, to assure that Mr. Carl Fox would have access without question to all Sessional and Presbytery records concerning him so that he would be able to adequately defend and/or seek resolve in matters reflected in his Complaint to the Sixteenth General Assembly against Mississippi Valley Presbytery and, indirectly, the Pear Orchard PCA Session (*BCO* 10-4 and 32-18); and,
- C. According to PCA *Book of Church Order*, Chapter 43 - Section 4, Mr. Carl Fox was removed from the roll of the Pear Orchard Presbyterian Church in America of Ridgeland, Mississippi, in the proximity of February of 1987, as a result of the action of the Session of the Pear Orchard PCA. Mr. Fox remained off the roll of the Pear Orchard Church from that date through the date of the "final and decisive" action of the Sixteenth General Assembly Judicial Commission adjudicating Mr. Fox's complaint. The effect of the adjudication was to find that Mr. Fox was indeed a member of the Pear Orchard Presbyterian Church "at all material times" -- i.e., the Sixteenth General Assembly overturned the action of the Pear Orchard Session; thereby, establishing that Mr. Fox was never lawfully removed from the roll of the Pear Orchard PCA. In summary, then, Mr. Fox was, and still is, a member of the Pear Orchard Presbyterian Church in America from the date he was originally received as a member of that local church; and,
- D. According to the PCA *Book of Church Order*, Chapter 43 - Section 4, and due to the fact that the Seventeenth General Assembly did not overturn the action of the Sixteenth General Assembly (but, rather, only stayed any further proceedings in the case), as summarized above, the Seventeenth General Assembly confirmed and corroborated that Mr. Carl Fox is, in fact, and has

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been on the roll of the Pear Orchard Presbyterian Church in America since the Judgments and "final and decisive" actions of the Sixteenth General Assembly's Judicial Commission were made. In summary, then, Mr. Carl Fox was, and still is, a member of the Pear Orchard Presbyterian Church in America from the date he was originally received as a member of that local church; and,

6. Concern that unless this understanding is clarified by the PCA (i.e., that Mr. Carl Fox is on the membership roll of the Pear Orchard Presbyterian Church in America by action of the Sixteenth General Assembly and as confirmed and corroborated by the action of the Seventeenth General Assembly), that there will continue to be confusion and misunderstanding which will very likely result in the following:
  - A. The dishonor and disrepute of The Head of the Presbyterian Church in America, our Lord and Savior Jesus Christ; and,
  - B. The dishonor and disrepute of the local churches and courts of the Presbyterian Church in America and its members and representatives throughout the United States and the world; and,
  - C. The continuing breakdown of the spirit of trust and unity among the brethren within the Presbyterian Church in America at the local church level and amidst brethren representing local churches at all court levels; and,
  - D. The continued lack of "due process" for a member of the Presbyterian Church in America (as adjudged by the actions of the Sixteenth General Assembly); and,
  - E. The continued and unconscionable action of relegating a duly ordained Officer in the Presbyterian Church in America to the status of "Deacon without a local church;" and,
  - F. The continued and tragic actions of a Presbyterian Church in America Session who has turned to the courts of the land to prosecute a brother in Christ and Officer in the Presbyterian Church in America; and,
  - G. The continued and tragic actions of a Presbyterian Church in America Presbytery who has raised itself above the "final and decisive" action of the highest court of the Presbyterian Church in America -- the General Assembly (as so cited by the Seventeenth General Assembly); and,
  - H. The continued criminal court appeals and legal proceedings that are using both the personal and church resources of finances, skills and time of Christian Brethren to accomplish what can be accomplished through the courts of the Presbyterian Church in America and its Constitutional Documents; and,
  - I. The continued and tragic misconception on the part of some brethren within the Presbyterian Church in America that due to the "pastoral complexity" of certain cases and "the passage of time" that that, in fact, warrants permanent cessation of actions that would contribute to either the resolution or admission of adjudged wrongs or errors -- i.e., declaring that the Church of the Lord Jesus Christ is impotent in its ability to judge and resolve that which has been found to be error either in the world or within the midst of its own members due to "pastoral complexity" and "the passage of time;" and,
  - J. The continued misconception and interpretation on the part of some brethren within the Presbyterian Church in America that the actions of a Commission appointed by a General Assembly to deal with the matter of a Presbytery

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- being cited for not following the "final and decisive" instructions of a previous General Assembly have the effect of "closing" a case of "due process," without ever having given all the parties involved in the case a right to speak to the issues being resolved that, in fact, affects all parties to a greater or lesser degree; and,
- K. The continued misconception and interpretation on the part of some brethren within the Presbyterian Church in America that the phrase "all further proceedings in this case be stayed" means that the adoption of that phrase has the effect of overturning the action of a previous General Assembly; and,
- L. The continued misbelief and interpretation on the part of some brethren within the Presbyterian Church in America that unless lower courts (Sessions and Presbyteries) carry out the "final and decisive" judgments of a General Assembly that the action of that General Assembly is not effectual on the part of all parties involved in a specific case; and,
- M. The continued frustration on the part of brethren within the local churches and the various courts of the Presbyterian Church in America, as follows:
1. The tragedy of a brother in the Lord Jesus Christ who is also a member and Officer of a local church whose time, business, family relations, energies and finances are slowly being dissipated in the pursuit of both seeking for constitutionally guaranteed "due process" in the Presbyterian Church in America and in defending himself of criminal charges; and,
  2. The tragedy of brethren in the Lord Jesus Christ, acting as a Session, whose time, businesses, family relations, energies, and personal and church finances have been used seeking to rid themselves of a brother in Christ through the courts of the land, instead of carrying out this purpose, for whatever reasons, as provided for in the Constitutional Documents of the Presbyterian Church in America; and,
  3. The tragedy of brethren in the Lord Jesus Christ within Presbyteries or across the General Assembly finding themselves having to take sides in issues in which their knowledge of proceedings and actions have been curtailed and/or prejudiced by misconceptions and misinterpretations passed on by other brethren in the church -- regardless of intentions; and, too, the time, energy and resources expended as a result of having to take sides based on such misconceptions and misinterpretations; and,
  4. The tragedy of consequences forced upon brethren in the Lord (whether those actually a party to discipline in the church, or those privy by virtue of personal interest or member of council) when "due process" is not afforded an individual or persons guaranteed that right by virtue of Constitutional Documents of the Presbyterian Church in America.

### SUMMARY STATEMENT AND DISCLAIMER

By virtue of the aforestated concerns and reasons for this Memorial requesting clarification, and for the honor and glory of Jesus Christ, the Head of the Presbyterian Church in America, I respectfully request that this Memorial be given careful consideration by The Presbyterian Church in America. As attested to by my vows to submit to my brethren in the Presbyterian Church in America as unto the Lord, I have sought to temper this Memorial so as not to cause disunity or mistrust among the brethren within the Presbyterian Church in America; but, rather, to further submit

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before by Lord to the vow I have taken to seek the peace and purity of the church. I, further, have not sought to indicate the inability of any court within the Presbyterian Church in America to handle any specific cases brought to its attention; but, rather, have sought to limit my Memorial to the specific facts and/or related comments and interpretations of cases referred to in this Memorial. Let me take this opportunity to apologize in advance to anyone who may interpret my intentions as judgmental or offensive -- that is not my intention; but, rather, is due to my inability to express myself in a way that would adequately represent my true intentions. May Christ be praised!

### ATTEST

I, John McKnight Warren, Jr., attest by my signature below to my submission of this Memorial on this Fifteenth day of February, in the year of our Lord, Nineteen Hundred Ninety, and as revised on the Fifteenth day of March, in the year of our Lord, Nineteen Hundred Ninety, and to my good and conscientious purpose in doing so.

/s/ John McKnight Warren, Jr.

### EPILOGUE

To further enhance the need for clarification by the Presbyterian Church in America of the issues spoken to in this aforesaid Memorial, I have been advised that Mississippi Valley Presbytery at its Winter Stated Meeting on February 20, 1990, took action to suspend any further consideration of matters relating to Mr. Carl Fox -- i.e., closing the file, once and for all, to the unresolved matters to which Mr. Fox has so diligently and courageously sought resolve since November 25, 1986, when, "in response to correspondence from Mr. Fox objecting to perceived contradictions in the specific instructions of the Session to both him and to Mrs. Fox, the Session censured Mr. Fox and indefinitely suspended action against Mrs. Fox" (cf. Complaint #2 - Case #2: Mr. Carl Fox vs. Mississippi Valley Presbytery et.al.). *M16GA*, p. 220. Finally, all of the issues arising before the various courts of the Presbyterian Church in America since November 25, 1986, and to which Mr. Fox still seeks resolve emanate from the action of the Session on that date which came across to Mr. Fox as inequitable discipline. If, indeed, Mississippi Valley Presbytery closed the case, once and for all, in matters pertaining to Mr. Fox's original complaint (such action reportedly occurring on February 20, 1990), then they have admitted that Mississippi Valley Presbytery and the Pear Orchard PCA Session are incapable of adjudicating these matters to a Christ-honoring resolve which Mr. Fox so desperately seeks. I believe that the highest court of the Presbyterian Church in America should step in and seek to resolve matters in regard to Mr. Fox that the two lower courts have found impossible to resolve and too pastorally complex to handle. The fact that Christian brothers are seeking to resolve these matters in the civil courts of the land should be impetus enough for the highest court to spare no effort of any kind in seeking to resolve the unresolved issues at hand -- (1) Did the Session of the Pear Orchard Church inequitably administer discipline in its actions regarding Carl Fox and Cindy Fox? (2) Did the Session of the Pear Orchard Church either directly or indirectly influence and/or encourage the divorce proceedings [unbiblical?] of Cindy Fox against her husband, Carl Fox? (3) Is the Session amiss in its response to the action [unbiblical?] taken by Cindy Fox in not allowing via court order any opportunity for Carl Fox to seek reconciliation with his estranged wife from which he is now legally divorced? (4) Is the Session amiss in its counsel and discipline of Carl Fox's children and/or lack of such counsel and discipline regarding the honor

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due to their father, in spite of the divorce proceedings between their parents? (5) What is the status of Carl Fox's ordination as a Deacon in the Presbyterian Church in America? (6) Is the Session amiss in not wanting to allow Carl Fox to attend the Pear Orchard Church where he is a member and wishes to attend both for purposes of worship and to be close to his children who also attend and need their father's example and counsel? (7) Is the Session amiss in pursuing criminal trespassing charges against Carl Fox and not dropping same [physical/civil force vs. spiritual oversight?] in light of Biblical command regarding settling differences among Christian brothers? [Note: While there may be more unresolved issues in these matters, I believe these are the basic issues at hand that the highest court of the Presbyterian Church in America is perfectly capable of adjudicating for the glory and honor of our Lord Jesus Christ and His Church here on earth.]

**NOTE:** I am available to clarify or explainany questions or concerns that may arise from the contents of the Memorial or Epilogue.

### STATED CLERK'S NOTES AND RECOMMENDATION:

#### I. MEMORIAL DEFINED

To my knowledge, the only place where "memorial" as a special communication is used in the *Book of Church Order* is in *BCO* 40-5: "When any court having appellate jurisdiction shall be advised, either by the records of the court next below or by memorial, either with or without protest..."

In *Digest of Acts and Proceedings of the PCUS, 1861-1965*, on page 230, it refers to a 1913 decision to the effect that the rights of appeal, complaint and memorial estopped by approval of minutes of a lower court by the higher court.

In *Constitution of PCUSA, 1930*, p. 414, gives a definition as follows:

"139. Any judicatory deeming itself aggrieved by the action of any other judicatory of the same rank, may present a memorial to the judicatory immediately superior to the judicatory charged with the grievance and to which the latter judicatory is subject, after the manner prescribed in the sub-chapter on complaints, save only that with regard to the limitation of time, notice of said memorial shall be lodged with the stated clerks, both of the judicatory charged with the grievance and of its next superior judicatory, within one year from the commission of the said alleged grievance.

"140. When any judicatory deems itself aggrieved by another judicatory and determines to present a memorial as provided for in the preceding section, it shall appoint a committee to conduct the case in all its stages, in whatever judicatory, until the final issue be reached.

"141. The judicatory with which the memorial is lodged, if it sustain the same, may reverse in whole or in part the matter of grievance, and shall direct the lower judicatory how to dispose of the case, and may enforce its orders. Either party may appeal to the next higher judicatory, except as limited by Chapter XI...of the Form of Government."

The *Book of Discipline* of the Reformed Presbyterian Church, Evangelical Synod had the following two sections in Chapter XII:

"3. Every member of the church has the right of access to any church court by petition or memorial. He has direct access to the session of the congregation to which

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he belongs, but a petition or memorial to a higher court must, in the first place, be presented to the session, with a request for its transmission.

"4. A lower court shall transmit a petition or memorial with or without approval or concurrence, as it sees fit. Before transmitting, the court should see that the petition or memorial is in proper form and expressed in respectful language. If transmission is refused, the petitioner or memorialist shall have the right of appeal. These provisions shall apply alike to a petition or memorial from an individual, from any number of persons, from a congregation, or from a lower court."

In 1984, the 12th General Assembly of the PCA (12-53, II, 58, p. 139) answered a constitutional inquiry regarding the "proper recourse of a presbytery when in its perception the General Assembly may have erred in a matter" as follows:

"1. In the course of the meeting of the General Assembly (or any court), when an error is alleged to have been committed, the parties convinced that an error has been made could have recourse through the provisions of BCO 45.

"2. Subsequent to the meeting of the court at which an error has been alleged to have been committed, a lower court by memorial, or overture, may seek a correction of the alleged error, if reversible.

- "a. Properly speaking, no action of previous General Assembly may be amended, rescinded, or annulled. A subsequent General Assembly may take a contrary position and condemn the action of a previous Assembly but the action of the previous Assembly remains its own.
- "b. If the alleged error is in reference to a judicial decision the decision cannot be reversed, but a judgment can be set aside and a new trial ordered if there is "highly important new evidence" or "such palpable error as would manifestly tend to interfere with the substantial administration of justice" (*Baird's Digest of the Assembly Actions*, p. 111).
- "c. If the alleged error is related to a part of the constitutional documents which may also be alleged to be in error, a memorial should seek to amend the constitutional documents.
- "d. In the meanwhile, the lower courts of the church should submit to the decision of the higher court even if it is alleged to have been in error, unless for sake of conscience the lower court should believe itself duty bound to renounce the jurisdiction of the higher court."

## II. ON RE-OPENING A CASE ALREADY ADJUDICATED

The *Digest of the Acts and Proceedings of PCUS, 1861-1965*, p. 113, addresses the matter that the "Assembly will not re-open a case already adjudicated by it, except to correct a manifest error in its own proceedings."

With reference to a case in 1891 it says: "...where a concrete case is brought judicially before a higher court ... is disposed of by final judgment entered therein and sent down, that is an end of the constitutional authority of the higher court to deal with that particular case, unless it be again regularly brought before the higher court for adjudication in one of the recognized modes provided for by our Book of Church Order."

It further adds regarding a case in 1920, "It is a principle of law, held in the highest courts of the States, and by the Supreme Court of the United States, that public

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policy requires that there shall be an end of litigation, and this is as true in the government of the Church as in the government of the State and Nation."

In Hodge's *What is Presbyterian Law*, p. 271, the authority of Assembly decisions with reference to judicial decisions is defined:

"And its judicial decisions are final and obligatory in all similar cases. No later Assembly can reverse its judicial acts or revise its proceedings. A manifest error may be corrected."

The *Digest of the Acts and Proceedings of the PCUS, 1861-1965*, p. 71, reports on an 1880 case whereby a Synod overruled the Assembly "respectfully praying that it will consider and repeal, or at least seriously modify, so much of the deliverance of the last Assembly, in relation to worldly amusements ... which are not made by them in a strictly judicial capacity, but are deliverances *in thesi*, can be considered as only didactic, advisory and monitory."

"The Assembly, in virtue of its power to give authoritative interpretations of the Word, declares:

1. Nothing is law, to be enforced by judicial prosecution, but that which is contained in the Word as interpreted in our Standards.

2. The *judicial* decisions of our courts differ from *in thesi* deliverances, in that the former *determine*, and when proceeding from our highest court, *conclude* a particular case; but both these kinds of decisions are alike interpretations of the Word by a church court, and both not only deserve high consideration, but both must be submitted to, unless contrary to the Constitution and the Word, as to which there is a right of private judgment belonging to every church court, and also to every individual church member."

In connection with the above statement regarding the right of private judgment, in 1881 the General Assembly stated:

"The Form of Government...declares that "church courts can make no laws binding the conscience, but may frame symbols of faith," etc. It follows that church courts are not infallible, but on the contrary, "all may err, and many have erred; therefore they are not to be made the rule of faith or practice, but to be used as help in both." (WCF, XXIII-3) Thus the right of private judgment is asserted; this right, however, is not opposed to lawful authority, but to the assumption of power to bind the conscience."

### III. RECOMMENDATION

That Communication 2, "A Memorial from John M. Warren, Jr." asking for clarification of the 17th General Assembly decision re. Mississippi Valley Presbytery relative to the Carl Fox case of the 16th General Assembly be referred to the Standing Judicial Commission together with all other matters related to the issue. *Adopted*

Communication #4, a testimonial from Grace Presbytery regarding TE William J. Stanway, was received and spread in these minutes as follows:

#### COMMUNICATION 4 From Grace Presbytery "A Testimonial to Dr. W. J. Stanway"

(FYI)

Whereas, Dr. William J. Stanway retired as of May 8, 1990, and

Whereas, Dr. Stanway has ably served pastorates in Georgia, Mississippi, and Florida, and