

MINUTES OF THE GENERAL ASSEMBLY

The burden is not on Presbytery to prove their discretion was sound. The burden is on the Complainant to demonstrate Presbytery clearly erred in that discretion, and that burden was not met in this case.

/s/ RE Howie Donahoe

**CASE 2008-15 COMPLAINT OF DR. MORTON H. SMITH  
VS.  
WESTERN CAROLINA PRESBYTERY**

**CASES 2008-16, 17, AND 18 COMPLAINTS OF TES JEFF  
HUTCHINSON & CRAIG BULKELEY  
VS.  
WESTERN CAROLINA PRESBYTERY**

**CASE 2009-01 COMPLAINT OF TE MORTON H. SMITH  
VS.  
WESTERN CAROLINA PRESBYTERY**

**CASE 2009-03 COMPLAINT OF RE HENRY LEISSLING  
VS.  
WESTERN CAROLINA PRESBYTERY**

**I. SUMMARY OF FACTS**

In 2007, Friendship Presbyterian Church in Black Mountain, NC had a four-man Session composed of TE Bulkeley and REs Payne, Linton, and Pellom. The 2007 and 2008 PCA Yearbooks both show 80 communing members as of December 31, 2006, and December 31, 2007. Conflict arose primarily between TE Bulkeley and RE Payne regarding Payne's views related to race and some material he had circulated. None of the Session minutes in the Record are signed or authenticated.

Matters in these cases were addressed at four Presbytery meetings in 2008: June 17 called, August 2 stated, August 19 called, and November 7 stated (continued on Nov 18). Presbytery appointed three groups (referenced here by their chairmen): the Inman Commission (appointed June 17), the Sealy Commission (appointed Aug 19), and the Basham Judicial Committee (appointed Nov 7).

2007

Nov 26 E-mail from RE Payne to 19 members and non-members (below).

"How many times do we have to see this same pitiful, African disaster story replayed before we will realize that the story always ends the same way and regardless of all the best wishes in the world it will never go any differently? Here is a telling article commemorating the passing of one of the last great white men in Africa.

PS – IQ is the best and most reliable and most accurate predictor of these results. Only a cock-eyed Liberal believes that you can run headlong into a wall one thousand times and if you just do it one more time, somehow, magically, this time you won't bash your brains out."

After these four sentences was a link to a November 22, 2007, article by Graham Boynton in the opinion section of a digital version of the UK Telegraph. The article is 1½ pages and expresses an opinion on the problems of Rhodesia (renamed Zimbabwe in 1980) over the past half-century, comparing how that country fared under Prime Minister Ian Smith (1964-1979) compared to Robert Mugabe (1980-present). It also bewails various problems in the Congo, Uganda, Zaire, and Malawi. Ian Smith had died two days prior on November 20, which apparently occasioned the article. Boynton grew up in Africa and wrote, *Last Days in Cloud Cuckooland*, a book which deals with the end of colonial rule in Africa.

Dec Several e-mails exchanged between TE Bulkeley and RE Payne related to Nov 26 e-mail.

2008

Feb 14 TE Bulkeley 7-page memo to Session recommending RE Payne resign.

Feb 20 RE Payne 8-page response to Session on Bulkeley memo.

Mar 27 TE Bulkeley 8-page response to Session and Presbytery Shepherding Committee.

May 20 Session called meeting. After being unable to get certain commitments from the pastor, the three REs on Session adopted the following:

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“Whereas, 'A house divided against itself cannot stand' and it being clear from your answers that we cannot labor together and as we are unable as a session to come to an agreement, we are compelled to place this before the congregation and hereby move to call for a congregational meeting to consider the pastoral relationship between TE Craig S. Bulkeley and Friendship Presbyterian Church and all matters pertaining to it to be announced this Sunday, the 25th of May, for the meeting to be held the following Sunday, June 1.”

May 25 Session called meeting (Sunday, prior to worship). RE Linton was absent. Called by the pastor to consider a petition from 20 members asking for a congregational meeting on June 1 to consider a motion to dissolve without censure the relationship with RE Payne (petition included in minutes).

MSC to postpone consideration until a called Session meeting on May 27.

Later that morning, the June 1 meeting was publicly announced (per the Session decision of May 20). May 25 Session minutes indicate “RE Neill Payne stated he would announce the call for a congregational meeting as he remembered the substance of the motion. According to our previous custom in calling a congregational meeting there had never been a requirement that the exact text of the motion be read in making the call.” Apparently, absent RE Linton had record of the text of the motion adopted May 20.

May 27 Session called meeting where decision was made to grant the request of the petitioners and call a congregational meeting to consider a motion to dissolve call of RE Payne. (Minutes indicate the meeting would be announced June 1 and held June 8, but the meeting did not occur June 8 since the matter was considered by the congregation on June 1.)

June 1 Congregational meeting (Sunday). 2 hours 40 minutes.

Moderated by TE Hutchinson. Minutes show 50 communing members attended and record the Moderator asked all communing members to stand and asked all Session members to review them to confirm their membership and right to vote. No objection was made to any voter.

RE Linton spoke on behalf of the three REs and “advised the congregation that the ruling elders and the pastor could not labor together, that their problems could not be resolved, and that in his opinion they would have to labor separately.” After debate, the motion to dissolve the call of pastor TE Bulkeley failed. Minutes then record:

“Motion was made and seconded that in light of RE Neill Payne’s admitted inability to work with Pastor Bulkeley, his relationship as a ruling elder with the church be dissolved. Over objection, the Moderator ruled the motion in order, and upon a challenge to the chair, the Moderator was sustained.”

Eventually, motion to dissolve call of RE Payne without censure was adopted. While a counted vote was not recorded, the votes to dissolve calls of TE Bulkeley & RE Payne were both close.

June 5 Session called meeting (all 4 present).

Session declined to act on congregation’s request of June 1 to dissolve call of RE Payne and instead, adopted and sent the Reference below:

At a Congregational Meeting of the Friendship Presbyterian Church held Sunday, June 1, 2008, action was taken to request the Session to dissolve the official relationship between the church and RE Neill Payne without censure, according to the provision of *BCO* 24-7, paragraph two, wherein it is stipulated that, “The Session, after conference with the ruling elder... and after careful consideration, may use its discretion as to dissolving the official relationship.”

The meeting at which the vote was taken to request the Session to dissolve the official relationship with RE Payne was very contentious, and the motion to request dissolution passed by a very narrow margin. Earlier in the same meeting, a motion to request dissolution of the pastoral relationship with TE Craig Bulkeley and the church failed by an only slightly wider margin. Prior to this congregational meeting, Presbytery’s Shepherding Committee had been involved in trying to help resolve disagreements among members of the Session. Such disagreements as were voiced in the debate surrounding the two votes just mentioned would likely eventuate in complaint and appeal against whatever action the Session might take with respect to the

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request for dissolution of RE Payne's official relationship. In our estimation this matter and the issues related to it are both difficult and delicate, and therefore the appropriate subject for a reference.

Therefore, according to the provisions of *BCO* 41, the Session of Friendship PCA hereby makes reference to Western Carolina Presbytery for either advice or action, or both, regarding the request to dissolve the official relationship between RE Neill Payne and our congregation and all matters pertaining thereto. We welcome Presbytery's final disposition of any and all of the matters involved, and would similarly welcome advice regarding any matters with respect to which Presbytery refrained from taking action.

In making this reference, we specifically ask Presbytery to exercise the responsibilities described in *BCO* 31-2 regarding all relevant persons both within the membership of our congregation and the Presbytery, namely "with due diligence and great discretion demand from such persons satisfactory explanations concerning reports affecting their Christian character," especially as there are many among us who "deem themselves aggrieved by injurious reports." If necessary and as appropriate, should such investigation result in a strong presumption of guilt of any of the parties involved, we ask Presbytery to institute process and appoint one or more prosecutors from among the membership of Presbytery to prepare the indictment and conduct the case.

We are herewith including such pertinent documentation as we judge necessary for proper understanding of the issues involved with this reference, in order that Presbytery may be able to fully consider and handle these matters with as little difficulty as possible.

June 7 3 TEs and 3 REs ask for a called Presbytery meeting "to handle all matters related to and arising out of a Reference from the Session of Friendship Presbyterian Church."

June 17 Presbytery called meeting (1 hour 23 minutes).

Present were 34 TEs and 23 REs. Session Reference was titled Attachment A. Presbytery accepted the Reference and appointed a non-judicial Commission of six men: TEs Inman (chair), Hicks, Williams & REs Maney, Andrews, Carter – (hereafter called the Inman Commission). Presbytery empowered the Inman Commission to "fully consider and handle all the matters therein referred; specifically to:

1. Deliberate and act upon the congregational request for dissolution of the relationship between RE Neill Payne and the Friendship Session under the provisions of *BCO* 24-7, paragraph 2;
2. Conduct whatever investigation is required under the provisions of *BCO* 31-2, inclusive of determining whether there is a strong presumption of guilt warranting judicial process, but exclusive of actually instituting such judicial process;
3. Act in whatever way necessary to address any urgent issues that may arise out of their deliberation and investigation that warrant immediate attention, but refraining from taking any action that could await deliberation and action by Presbytery as a whole;
4. Present a report of its proceedings along with any additional recommendations to Presbytery at its August 2, 2008 Stated Meeting for any further action or advice arising out of its work.”

Subsequently, the Inman Commission met six times: June 17, 24, and July 1, 8, 15, & 29.

They published a partial report on July 16 after their fifth meeting.

June 25 Session stated meeting.

July 15 Inman Commission acts on first two of its four assignments  
(Publishes these actions on July 16)

Granted FPC request and dissolved call of RE Payne without censure.  
Did not find strong presumption of guilt of RE Linton or TE Neville.  
Found strong presumption of guilt of TE Bulkeley (*BCO* 21-5.7) & RE Payne (24-6.4).

Commission adopted the following opinion regarding RE Payne (emphasis added):

MSC that the Commission note for the record RE Neill Payne’s belief that relative average intelligence quotient can be correlated to race on a continuum, with “Oriental” as superior, followed by “White” then “Brown” (Hispanic) then “Black in descending order. He explicitly affirms that all human beings are of equal standing before God irrespective of race, and that such a correlation between IQ and race could be attributed to more than one factor, including genetic differences and environmental circumstances, all under God’s providence. As summarized, such views are not in themselves explicitly out of accord with the Constitution of the church.

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However, such views may have an understandable opprobrium and odium attached to them because of their association with other reprehensible views and conduct.

Rationale - At the center of the current distress at Friendship PCA have been the views of RE Neill Payne related to race. It seems incumbent on Presbytery to at least take notice of Mr. Payne's views, and to give some account for how those views have come to be the focus of such controversy as they have. At the same time, Mr. Payne's views on race are quite developed, and in his estimation are easily misunderstood, especially when summarized by and for those who do not share those views. For the record, then, we have included a brief summary of the specific, explicit and direct statements Mr. Payne has made regarding race in the material presented to the Commission, as well as statements made in our conference with Mr. Payne, per the provisions of *BCO* 24-7. His views as summarized can be understood as falling within our constitutional provision for Christian liberty wherein "God alone is the lord of the conscience, and hath left it free from the doctrines and commandments of men which are in anything contrary to his word, or beside it, in matters of faith or worship" (*WCF* 20.2).

However, with respect to the exercise of this liberty, our Constitution cautions against "such erroneous opinions or practices, as either in their own nature, or in the manner of publishing or maintaining them, are destructive to the external peace and order which Christ hath established in the church" (*WCF* 20.4). Further, even truthful views can be spoken unseasonably (*WLC* 145), which unseasonable speech does not in any way diminish the truthfulness of the views thus spoken.

There may be some disagreements as to whether RE Payne's views or practices are erroneous, or how his views or practices, or his manner of publishing or maintaining them, may have informed the current controversy at Friendship. The truth can be spoken unseasonably, whether in promoting or maintaining particular views or related practices, or in opposing them. Those who do not share these views with RE Payne may understand his views to be erroneous, destructive in themselves or in his manner of publishing or maintaining them. Nevertheless, shy of demonstration to the contrary, the Commission does not find RE Payne's views as summarized above in themselves to be explicitly out of accord with the Constitution of the church.

Views not unlike those summarized above have been associated with ideas and actions that are absolutely reprehensible and sinful. While it is perhaps possible to hold similar views in a way that successfully disassociates them from such abominable notions and practices, clearly RE Payne has not been able to do so recently. Irrespective of what may have contributed to RE Payne's views being associated with sinful ideologies and practices, and irrespective of whatever efforts he has made to rise above such criticism, such associations do in fact exist and contribute to the current controversy. Such associations do not make RE Payne's views inherently wrong, but neither are such associations irrelevant to understanding and resolving the conflict underlying the congregational action requesting dissolution of his official relationship with the Session.

MSC that the Commission determines that there is a strong presumption of guilt on the part of RE Neill Payne in that he has failed to adorn the profession of the Gospel in his life, and to set a worthy example before the church of which God has made him an officer, contrary to his ordination engagements (*BCO* 24-6.4).

Rationale – Without in any way infringing upon the liberty of conscience RE Payne has to hold such views as he does concerning race, it is the opinion of the Commission that he has failed to do so in a way that dissociates his views from the opprobrium and odium that attach to such views in other contexts. Despite his history of association with more than one racist organization, which history continues to haunt the flock he helps tend, and in the face of open disagreement from his pastor, all the while knowing his racial views to be unusual and disturbing to many, RE Payne has continued to press his views, both in Internet correspondence and in conference with this Commission. In so doing he has favored his own Christian liberty and made his own interests a higher priority than the well-being of his flock and the reputation of Christ's church (*Philippians* 2:3-4). He has thus failed to avoid such things as procure an ill name for himself and others (*WLC* 145). An elder must be above reproach (1 *Timothy* 3:2; *WLC* 129), which qualification RE Payne has not been able to maintain with respect to his views on race.

July 23 Session called meeting. MSC to elect RE Linton as new clerk. Remaining two REs Linton and Pellom approve Payne to continue as church Treasurer and adopt motion to direct TE Bulkeley to surrender the roll of the church to the Clerk.

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July 24 REs Linton & Pellom ask moderator TE Bulkeley to call a Session meeting for Sunday July 27 for purpose of considering call for congregational meeting “to discuss and address the financial concerns of FPC.” Moderator declines to call Session meeting. Subsequent emails between pastor and REs discuss the meaning of the phrase “address the financial concerns.” On July 28, two REs remind Moderator of *BCO* 12-6 and he calls Session meeting for July 29.

July 29 Session called meeting. Over objection of Moderator, two REs vote to call congregational meeting for Thursday, Aug 7 “to discuss and take action as needed concerning the financial problems of the church and all matters pertaining thereto.”

TE Bulkeley then presents Session with four petitions from congregation. One has 24 names requesting dissolution of call with RE Linton. The others had 17 names asking (a) to call TE Neville (HR) as associate pastor and (b) to remove Mr. Payne as church Treasurer.

July 29 Final meeting of Inman Commission. Per *BCO* 15-1, the Commission thus “concluded the business referred to it.”

1. (July 15) Previously granted FPC request and dissolved call of RE Payne without censure and noted for the record their opinion on Payne’s views and their distribution
2. (July 15) Previously did not find strong presumption of guilt of RE Linton or TE Neville. Found strong presumption of guilt of RE Payne & TE Bulkeley
3. Assigned two members to converse with Payne and two with Bulkeley (*BCO* 31-7)
4. Reported 6 miscellaneous conclusions, (paraphrased below):  
Any who hold views similar to Payne should observe great caution;  
Any who followed examples of Payne and Bulkeley in the way they carried their disagreement should reconsider their choices;  
Questioned the advisability of TE Bulkeley continuing at FPC because of the slender margin of congregation’s vote to retain him as pastor, on analogy with *BCO* 20-5 (without questioning his abilities as a pastor);  
Sessions should keep accurate minutes and current membership rolls;  
Presbytery should acknowledge these problems occurred on its watch . . . ;  
Problems at FPC continue to be extensive and severe.

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July 30 Wed night church prayer meeting. RE Linton announces congregational meeting for 8 days hence, on Aug 7. (Also announced on Sunday morning, Aug 3.)

Aug 2 Presbytery Stated Meeting. Per *BCO* 15-1, the report of the Inman Commission is entered on the minutes.

RE Payne confession - full statement of facts per *BCO* 38-1 as Case without Process

“Attachment E” shown below.

I, Neill Payne, intend to confess my guilt, and I approve this confession of guilt to be a full statement of the facts on the basis of which I intend to permit Presbytery to render judgment without process, per the provisions of *BCO* 38-1.

I hereby confess that I have failed to adorn the profession of the Gospel in my life, and to set a worthy example before the church of which God has made me an officer, contrary to my ordination engagements.

I have failed to hold my views concerning race in a way that dissociates them from the opprobrium and odium that attach to such views in other contexts. Despite my history of association with more than one racist organization, which history has continued to haunt the flock I was called to help tend, and in the face of open disagreement with my pastor, all the while knowing my racial views to be unusual and disturbing to many, I continued to press my views, both in Internet correspondence and in conference with Presbytery’s Commission.

In so doing I have favored my own Christian liberty and made my own interests a higher priority than the well-being of the flock and the reputation of Christ’s church. I have thus failed to avoid such things as procure an ill name for myself and others. An elder must be above reproach, which qualification I have not been able to maintain with respect to my views on race.

Presbytery imposed censure of indefinite suspension from office and instructed him to “do all he can, upon counsel of the Shepherding

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Committee, to be part of the reconciliation process at Friendship and the repair of the public reputation of the church, and that he be strongly encouraged to read his confession of guilt to the congregation of Friendship.” (His call was previously dissolved July 15 by Inman Commission at congregation’s request.)

TE Bulkeley’s confession per 38-1 (“Attachment F” in Presbytery’s docket, but not in Record). Presbytery, “satisfied with his repentance,” voted to impose the censure of admonition.

- Aug 5 REs Linton and Pellom notify TE Bulkeley they want to cancel Aug 7 called congregational meeting, alleging concerns with official verification of roll.
- Aug 6 Session called meeting (Wednesday, the evening before congregational meeting). Votes 2-1 to adopt the following:

“In light of the fact that questions have been raised to the accuracy of the list of those qualified to vote in the previous congregational meeting, resolved that the coming congregational meeting and all other meetings be postponed until such time as the records may be verified.”

Minutes record TE Bulkeley “admonished the ruling elders that he would file a complaint and hold the meeting regardless.”

- Aug 7 Congregational meeting (1 hour 20 minutes)

Minutes show 28 members present (56% of the 50 present on June 1). All 28 had been present at the June 1 meeting. None of the REs or their family members was recorded as present. Minutes do not indicate name of Moderator (presumably TE Bulkeley).

Moderator stated the call of the meeting was to “discuss and address the financial condition of the church, with ‘address’ to include any action to alleviate the church’s present financial condition.”

Congregation adopted the following:

To call TE Neville as associate pastor (from HR) on the ground that “he would help Friendship get new members, which would increase the giving.”

To dissolve the RE relationship of RE Linton without censure

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To dissolve the RE relationship of RE Pellom without censure.

In both votes to dissolve, the minutes record the mover reported he/she was “uncomfortable supporting the church while the RE served on the Session and believed people would give more to ease the church’s financial burden if he were off the session.”

To substitute John Manchester for Mr. Payne as Treasurer

To ask Presbytery “to take original jurisdiction to conduct the review of ruling elder dissolution provided under *BCO* 24-7 given the Session’s inability to exercise its authority in the matter (*BCO* Ch. 13-9)”

Aug 8 4 TEs and 4 REs from Presbytery request called meeting for three purposes:

1. To vote on FPC call to TE Neville as Associate
2. Per *BCO* 40, to review FPC Session and Congregational records from Aug 2 to Aug 19
3. To consider FPC request to dissolve calls of REs Linton and Pellom and to take original jurisdiction of the question of their relationship per *BCO* 13-9.

Aug 18 REs Linton and Pellom letter objecting to validity of the Aug 19 called Presbytery meeting on the ground that the Congregation’s meeting on August 7 was illegal.

Aug 19 Presbytery called meeting (3 hours 16 min) Present: 35 TEs & 25 REs

Motion to declare meeting out of order failed. Motion to find call in order, passed 30-20. Presbytery took the following actions:

The actions of the Session at its called meeting on Aug 6 (regarding canceling the congregational meeting the next day) were deemed “to not be wise, equitable, suited to promote the welfare of the church or in accordance with the Constitution.”

Motion was defeated that sought to cite Session to appear and answer questions per *BCO* 40-2 regarding a “credible report of disorder.” Motion was also defeated that sought to have the moderator appoint a committee to review the church’s records.

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Took original jurisdiction under *BCO* 13-9 to act on FPC request to dissolve the relationship of REs Linton and Pellom. Appointed a non-judicial commission per *BCO* 15-1 & 2 to “deliberate and act upon the congregation’s request for the dissolution between REs Linton and Pellom under the provisions of *BCO* 24-7, paragraph 2.” Six men were appointed: TEs Sealy, Bancroft, Osborne, REs Griffith, Leissing, and Maney (hereafter called the Sealy Commission).

Postponed consideration of congregation’s call to TE Neville as Associate until after the Sealy Commission reports.

TE Bulkeley gave a “speech to Presbytery.” It is not clear from minutes how this was delivered. He asked Presbytery to find the Session’s actions on August 6 [seeking to cancel the congregational meeting of Aug 7] to be “not wise, equitable, or suited to promote the welfare of the Church, or in accordance with the Constitution.” He also asks Presbytery to find that the congregational meeting of August 7 was in order.

Aug 29 TE Bulkeley filed Complaint against the July 30 final report of the Inman Commission, alleging the Presbytery, through its Commission, violated *BCO* 13-9c by “failing to condemn erroneous opinions which injure the peace and purity of the Church,” specifically:

- racial views of RE Payne expressed in a November 26 e-mail to 18 people, and
- Payne’s view that relative average intelligence quotient can be correlated by race on a continuum, with Oriental as superior, followed by White, then Brown, then Black in descending order.

Denied on Nov 18 and filed with the SJC as 2008-18.

Aug 29 TE Hutchinson files Complaint against Presbytery’s Aug 2 action of not also suspending RE Payne from Lord’s Supper (in addition to indefinitely suspending him from office.) Denied on Nov 18 and filed with SJC as 2008-17

Aug 30 TE Smith files Complaint, alleging several errors:

- Alleged Presbytery erred by acting on the Reference from the Session, because by so doing it allegedly took over the governance of the congregation without the consent of the congregation

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- Alleged Presbytery erred by holding its Aug 19 called meeting to consider congregation's petition since the congregational meeting of Aug 7 was illegal, having been officially canceled by the Session the day before.
- Alleged Presbytery erred on Aug 19 when it declared the Session's Aug 6 decision to cancel the Aug 7 congregational meeting, as not being "wise, equitable or suited to promote the welfare of the church or in accordance with the Constitution."
- Alleged Presbytery erred on Aug 19 by declining to adopt the motion to cite the Session to appear and answer per *BCO* 40-5
- Alleged Presbytery erred on Aug 19 by establishing the Sealy Commission and alleged it thereby appointed it to "govern the local congregation, without the consent of the congregation."

Denied on Nov 18 and filed with SJC as 2008-15

Sept 1 TE Hutchinson files Complaint against Presbytery's Aug 2 handling of Payne's confession (alleging it was not a "full" statement of facts per 38-1). Denied on Nov 18 and filed with SJC as 2008-16

Oct 30 Sealy Commission reports that Presbytery declines to grant the congregation's request to dissolve the calls of REs Linton and Pellom.

Nov 5 24 members of the congregation file a letter complaining against the Oct 30 decision of the Sealy Commission (declining to dissolve the calls of REs Linton and Pellom)

Nov 7 Presbytery stated meeting (later adjourned and reconvened Nov 18).

Sealy Commission report entered in minutes

Moderator appointed a Standing Judicial Committee of 3+3 to report recommendations later in the meeting on six complaints and the request for an investigation of TE Bulkeley. TE Basham is convener.

Complaint from members of FPC was read & considered. It complained against the Sealy Commission's Oct 30 decision declining to grant congregation's request to dissolve calls of REs Linton and Pellom. Motion to also refer it to the Basham Committee failed 17-28. Complaint was then sustained 36-19 and REs Linton and Pellom were removed from office.

Later, in the meeting the Basham Committee recommended:

Deny Hutchinson Aug 14 Complaint 1 regarding RE Linton

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Deny Hutchinson Aug 28 Complaint 2 on Inman Commission's opinion of Payne's views  
Sustain Hutchinson/Bulkeley Aug 29 Complaint 3  
Sustain Hutchinson Aug 29 Complaint 4  
Sustain Hutchinson Sep 1 Complaint 5  
Deny Smith Aug 30 Complaint (containing multiple specifications)  
Deny the request from FPC members to investigate further TE Bulkeley Action was postponed as the stated meeting was adjourned and reconvened on Nov 18.

Nov 18 Reconvened stated Presbytery meeting. TE Silman brings recommendations from the Basham Committee.

Complaint 1 Committee recommendation to deny passed.  
Complaint 2 Committee recommendation to deny failed 22-30.  
Complaint sustained 27-22.  
Complaint 3 Committee recommendation to sustain failed.  
Complaint then denied 24-13.  
Complaint 4 Committee recommendation to sustain failed.  
Complaint then denied.  
Complaint 5 Committee recommendation to sustain failed.  
Complaint then denied.  
Smith Committee recommendation to deny passed.  
FPC Committee recommendation to deny passed.

Presbytery approved FPC call to TE Neville as Associate Pastor (vote 22-17).

Authorized Moderator to appoint commission to serve as FPC Interim Session with one TE and 3 REs in addition to FPC TEs Bulkeley and Neville, if it is acceptable to FPC congregation.

With respect to the Records of the Cases in 2008-15, -16, -17, 18 and 2009-1 and -3, all matters contained in each Record were, with the consent of the Panel and parties, allowed to constitute the whole of the Record.

### **2008-15 COMPLAINT OF SMITH VS. WESTERN CAROLINA PRESBYTERY**

#### **II. STATEMENT OF ISSUES AND JUDGMENTS**

1. Did Presbytery err at its called meeting on June 17 when it appointed the Inman Commission to consider and handle the Reference from the Session? No

2. Did Presbytery err at its called meeting on August 19 when it considered requests from the congregation arising from a congregational meeting on August 7? Yes
3. Did Presbytery err at its called meeting August 19 when it approved a motion to declare in its Minutes that the August 6 Session action canceling the August 7 congregational meeting was not “wise, equitable or suited to promote the welfare of the church....”? No
4. Did Presbytery err at its called meeting August 19 when it declined to adopt a motion to cite the Session to appear and answer per *BCO* 40-5? No
5. Did Presbytery err at its called meeting August 19 when it appointed the Sealy Commission? Yes

### **III. REASONING, OPINION, AND AMENDS**

Issue 1 Did Presbytery err when it acted on the Reference from the Session, without first receiving consent from the congregation on the composition of the non-judicial Commission? No

When a Presbytery appoints a Commission to handle a Reference, the congregation does not need to consent to the specific men on that Commission. Contrary to the Complainant’s assertion, Presbytery did not “take over governance of the congregation.” Its role was far more limited and clearly permissible. Presbytery merely accepted the Session’s Reference to (1) fulfill the Session’s duty of *BCO* 24-7 and consider the congregation’s request to dissolve the call of RE Payne and (2) fulfill the Session’s duty to conduct a *BCO* 31-2 investigation regarding certain members of Friendship Church. A Session is free to ask Presbytery to fulfill these limited and specific duties, and a Presbytery is free to grant such request. These duties do not constitute taking over governance of the congregation. When a congregation elects a Session, they implicitly grant them permission to Reference matters to the higher courts when their Session deems it warranted. Chapter 41 on References says nothing about congregational consent and nothing in the *BCO* precludes a Session from delegating its duties of *BCO* 24-7 or 31-2 to the Presbytery. And when a Session is seriously divided, as in this case, a Reference is actually prudent. The Complainant’s zeal for guarding the local congregation’s right to choose their own officers is commendable (*BCO* 3-1; 16-2), but the Session’s decision to make this Reference to the higher court did not compromise or jeopardize this fundamental right of the local congregation.

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Issue 2 Did Presbytery err at its called meeting on August 19 when it considered requests from the congregation arising from a congregational meeting on August 7? Yes

Because the Session had voted 2-1 on August 6 to cancel the congregational meeting of August 7, the meeting was not legitimate. The Session had a right to cancel the meeting at any time prior to its convening. (The wisdom of doing so, however, is addressed in Issue 3.) The pastor acted improperly by convening the meeting. A Session minority must respect and be in subjection to the decisions of the majority, even if they consider them unwise (RE vow 5 in *BCO* 24-6 and TE vow 4 in *BCO* 21-5), so long as they can do this without sinning themselves. There are constitutional avenues for minorities to follow when they believe the majority has seriously erred.

Further, the Presbytery erred at its August 19 meeting in that it "took original jurisdiction under *BCO* 13-9 to act on Friendship Presbyterian Church's request to dissolve the relationship of RE James Linton and John Pellom and conduct the review of *BCO* 24-7." *BCO* 24-7 (para 2) requires that when a congregation desires to dissolve the official relationship between the church and an officer it shall request the session (emp added) to dissolve the relationship. If a session refuses to act or declines to dissolve the relationship a member may complain to presbytery under *BCO* 43. There is no evidence that presbytery ascertained whether or not session had acted, nor is there any evidence that a complaint was received per *BCO* 43.

Therefore, all actions taken by the congregation on August 7, 2008 are invalid. This means:

- a) RE Linton's call is not dissolved
- b) RE Pellom's call is not dissolved
- c) TE Neville has not been called by the congregation.
- d) Subsequent Presbytery actions related to these 3 votes at the Aug 7 congregational meeting are voided.
- e) Unless the congregation has taken subsequent action, the FPC Session is now as it was on August 6, 2008: TE Bulkeley, RE Linton and RE Pellom.

Issue 3 Did Presbytery err at its called meeting August 19 when it approved a motion to declare in its Minutes that the August 6 Session action canceling the August 7 congregational meeting was not "wise, equitable or suited to promote the welfare of the church...."? No

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While the action of the Session to cancel the August 7, 2008 congregational meeting was constitutional (see Issue & Judgment 2), we do not find that Presbytery erred in its declaration that the Session's action was not wise or suited to promote the welfare of the congregation. A higher court can consider the action of a lower court as being unwise and not suited to promote the welfare of the Church, even if those actions may be constitutional. Presbytery was incorrect if they believed the cancellation was not in accordance with the Constitution, but this error was addressed in Issue 2.

Issue 4 Did Presbytery err at its called meeting August 19 when it declined to adopt a motion to cite the Session to appear and answer per *BCO* 40-5? No

We do not find Presbytery violated the Constitution when it declined to adopt the motion to formally follow *BCO* 40-5, and therefore this specification of error is not sustained. No evidence is provided in the record to demonstrate the nature of the "credible reports" that the complainants argue should have triggered *BCO* 40-5. A motion asserting "credible reports" is in itself not sufficient to allow the SJC to overcome the "great deference" that should be accorded to presbytery since they have "a more familiar acquaintance of the events and parties." (*BCO* 39-3.3).

Issue 5 Did Presbytery err at its called meeting August 19 when it appointed the Sealy Commission? Yes

See Judgment 2. Since the August 7 congregational meeting was illegitimate, there was no valid dissolution request for Presbytery or its Sealy Commission to consider. So the October 23 decision of the Commission declining to dissolve the calls of REs Linton and Pellom is voided, as are all other Presbytery actions and any Complaints related to it. For example, the congregation's Complaint against the decision of the Sealy Commission, which was sustained on November 7, is voided since there never was a valid congregational request to dissolve the calls in the first place.

## **2008-16 – COMPLAINT OF HUTCHINSON & BULKELEY VS. WCP**

### **II. STATEMENT OF ISSUE AND JUDGMENT**

1. Did Presbytery err at its stated meeting August 2 in how it handled RE Payne's confession? No

### **III. REASONING, OPINION AND AMENDS**

A Presbytery Commission conducted a *BCO* 31-2 investigation, found a strong presumption of guilt, and assisted the accused in preparing his confession per *BCO* 38-1 Case Without Process (shown at August 2 in Summary of Facts). Presbytery then censured him with indefinite suspension from office.

In their brief, Complainants ask the SJC to direct Presbytery to amend its August 2 decision and not consider this a “full” statement of the facts. In addition, they ask SJC to determine that “a strong presumption of guilt has indeed been raised with regard to other sins beyond Neill Payne’s statement to Presbytery,” and to direct Presbytery to “institute process, appointing a prosecutor to prepare the indictment and to conduct the case.”

These amends, asking SJC to rule that a strong presumption of guilt exists on sins not yet confessed, is akin to asking SJC to assume original jurisdiction. But *BCO* 33-1 and 34-1 stipulate the procedures to follow whenever someone believes a court “refuses to act in doctrinal cases or cases of public scandal.” A Complaint cannot circumnavigate those procedures.

If there are sins additional to what Mr. Payne confessed, the Complainants can present formal charges against him to his Session. That court could then investigate and, if warranted, prosecute those charges, or Reference the investigation and/or trial to the higher court. Presbytery even grants this possibility in its brief:

“That there might well be serious sin beyond that which could be established with relative certainty by the commission or Presbytery as a whole is beyond doubt, but Presbytery was wise to limit its actions to those failures that were acknowledged by all. Further, none of the actions of Presbytery prohibited further process before RE Payne’s court of original jurisdiction if anyone more familiar with the situation were of a mind to pursue charges against him.”

### **2008-17 – COMPLAINT OF HUTCHINSON & BULKELEY VS. WCP**

#### **II. STATEMENT OF ISSUE AND JUDGMENT**

1. Did Presbytery err at its stated meeting August 2 by not also suspending RE Payne from the Sacraments, in addition to indefinitely suspending him from office? No

### III. REASONING, OPINION AND AMENDS

Complainants allege Presbytery is “knowingly allowing an unrepentant sinner to be admitted to the Sacraments” by not also suspending RE Payne from the Sacraments. They also assert an unrepentant man cannot be said to be “in good standing” and therefore, should be barred from the Lord’s Supper per *BCO* 58-4. Furthermore, they cite *BCO* 58-2 and WLC Q173 which teach that the “ignorant and scandalous are not to be admitted to the Lord’s Supper.” Apparently, Presbytery did not deem Mr. Payne to be in either of those categories after his confession, and believed indefinite suspension from office to be the appropriate censure. We do not find they erred in constitutional interpretation, and therefore give “great deference” to them in this decision involving “discretion and judgment” (*BCO* 39-3.3).

Presbytery cites *BCO* 30-3 to support their contention they were constitutionally permitted to indefinitely suspend RE Payne from office without also suspending from the Sacraments:

30-3. Suspension from Sacraments is the temporary exclusion from those ordinances, and is indefinite as to its duration. There is no definite suspension from the Sacraments.

Suspension from office is the exclusion of a church officer from his office. This may be definite or indefinite as to its duration. With respect to church officers, suspension from Sacraments shall always be accompanied by suspension from office. But suspension from office is not always necessarily accompanied with suspension from Sacraments.

Definite suspension from office is administered when the credit of religion, the honor of Christ, and the good of the delinquent demand it, even though the delinquent has given satisfaction to the court.

Indefinite suspension is administered to the impenitent offender until he exhibits signs of repentance, or until by his conduct, the necessity of the greatest censure be made manifest. In the case of indefinite suspension from office imposed due to scandalous conduct, the procedure outlined in *BCO* 34-8 shall be followed.

Presbytery contends the underlined sentence is explicit permission to decline to impose suspension from Sacraments. They contend the *BCO* nowhere stipulates indefinite suspension from office shall always be

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accompanied by suspension from Sacraments (as opposed to vice versa, which is explicitly stipulated by *BCO* 30-3). But Complainants contend the underlined sentence is best understood in the context of the two succeeding paragraphs, which, they contend, explain why suspension from office is “not necessarily” accompanied by suspension from Sacraments (i.e., because you would not do so in cases of definite suspension from office.)

Presbytery also argues *BCO* 37-3, a paragraph about removing censure, anticipates a court declining to impose suspension from Sacraments on a man they have indefinitely suspended from office, who still needs to demonstrate satisfactory evidence of repentance. They emphasize the importance of the conjunction “or” used four times below (emphasis added).

37-3. When the court shall be satisfied as to the reality of the repentance of an indefinitely suspended offender, he shall be admitted to profess his repentance, either in the presence of the court alone or publicly. At this time the offender shall be restored to the Sacraments of the Church, and/or to his office, if such shall be the judgment of the court. The restoration shall be declared to the penitent in the words of the following import:

Whereas, you, \_\_\_\_\_, have been debarred from the Sacraments of the Church (and/or from the office of teaching elder, or ruling elder, or deacon), but have now manifested such repentance as satisfies the church, we, the \_\_\_\_\_ Church Session (or Presbytery), do hereby, in the name and by the authority of the Lord Jesus Christ, absolve you from the said sentence of suspension from the Sacraments (and/or your office) and do restore you to the full communion of the Church (and/or the exercise of your said office, and all the functions thereof).

The conjunction “or” indicates 37-3 could be read to a man who is being restored after indefinite suspension from office, after manifesting satisfactory repentance, but who was not previously suspended from the Sacraments. There is no explicit statement in the *BCO* requiring suspension from the Sacraments for every person indefinitely suspended from office. Apart from such a constitutional provision, this is a matter

on which the SJC should exhibit great deference to the Presbytery, since it involves “a matter of discretion and judgment” (i.e., the appropriateness of a censure).

39-3(3) A higher court should ordinarily exhibit great deference to a lower court regarding those matters of discretion and judgment which can only be addressed by a court with familiar acquaintance of the events and parties. Such matters of discretion and judgment would include, but not be limited to: the moral character of candidates for sacred office, the appropriate censure to impose after a disciplinary trial, or judgment about the comparative credibility of conflicting witnesses. Therefore, a higher court should not reverse such a judgment by a lower court, unless there is clear error on the part of the lower court.

There could likely be several instances in which a court chooses to indefinitely suspend a man from office, but not from the Sacraments. For example, suppose a minister betrays covenant with his wife, but self-confesses his sin through a *BCO* 38-1 case without process. Definite suspension might not seem prudent since Presbytery would probably not yet know how much time it was going to take for the marriage to be restored to the place it would need to be for him to minister again. So, indefinite suspension from office would seem prudent because Presbytery would need time to observe “satisfactory evidence of repentance” (*BCO* 36-5). But in this scenario, it is easy to understand why Presbytery might decline to impose the censure of suspension from the Sacraments, even though they are technically waiting for him to “manifest such repentance as satisfies the church” (*BCO* 37-3).

In addition, the Complainants did not seem to allow any distinction in degrees of impenitence or repentance. For example, a man convicted at trial who still refuses to admit his guilt is a high-handed type of impenitence different perhaps from that of a man who has self-confessed his sin, but who the court is not yet persuaded has demonstrated evidence of repentance sufficient to restore to office.

Original jurisdiction over Mr. Payne has now returned to his Session. The previous 31-2 investigation and subsequent handling of the 38-1 case without process was delegated to Presbytery by Session Reference. Presbytery acceded to the Reference, fulfilled those duties, and imposed the censure. But the decision on when to remove the censure, or increase the censure if warranted, now returns to his Session.

**2008-18 – COMPLAINT OF HUTCHINSON & BULKELEY VS. WCP**

**II. STATEMENT OF ISSUE & JUDGMENT**

1. Did Presbytery err in its Commission's opinion regarding the views of Mr. Payne, specifically, those expressed in his November 26, 2007 e-mail? No

**III. REASONING, OPINION AND AMENDS**

Complainants allege Presbytery erred when its Commission failed to condemn the “views” of RE Payne specifically expressed in a November 26, 2007 e-mail circulated to 19 members and non-members (hereafter called the “Africa e-mail.”) However, the SJC does not find the decision of Presbytery is errant and therefore, this specification of error is not sustained.

Although Presbytery has the duty to condemn “erroneous opinions which injure the peace and purity of the Church,” when those opinions are held by a church officer, Presbytery may not condemn apart from due process.” It would be highly unusual for the SJC to overrule a Presbytery and render a judgment on four sentences in an e-mail and the approving reference it makes to a short article in a British newspaper. Before a higher court (or any court) can responsibly render a judgment on the Biblical character of a man’s views, those views presumably would be expressed in a far more complete and reviewable form.

The Presbytery, through its Inman Commission, expressed its opinion in adopting two motions with rationale (pp. 38-39 of ROC 2008-15 and at July 15 in the Summary of Facts). The Commission adopted these opinions on July 15 and reported to the Presbytery’s August 2 stated meeting. However, the Commission’s written report does not expressly reference the Africa e-mail. It specifically mentions Payne’s statement on race and IQ correlation and seems to consider that a “summary” of his views on race. But the Africa e-mail seems to express the additional view that the fate of African countries is most reliably and accurately predicted by IQ. Combined with his view on race and IQ correlation, this presumably means he believes African countries will automatically fare better if ruled by one race than by another.

Granted, we certainly do not believe the Bible teaches the “fate” of a nation depends primarily on the intelligence of its people or their race, or that God’s blessings are based on those criteria either (Second Chronicles 7:14, Psalm 9, Psalm 33:12, Psalm 74; etc). But we do not have before us

a “statement of views” sufficiently presented for SJC to render a judgment and therefore, we defer to Presbytery’s evaluation of the matter. It would be an unwieldy situation if the SJC began to review single e-mails or blog-posts.

The Complainants can consider presenting this e-mail as a piece of evidence if they choose to deliver formal charges against Mr. Payne to his Session. In addition, the Session could query him about this e-mail as they consider whether and when to lift his indefinite suspension from office.

While perhaps not directly addressing views like those sketchily expressed by RE Payne in the Africa e-mail, the 30th PCA General Assembly did adopt a statement in 2002 that the SJC commends to the parties in this case. The GA answered Personal Resolution 2 in the affirmative, as follows:

Now Therefore, this 30th General Assembly of the Presbyterian Church in America calls up all those under its care to search their hearts before the Triune God, who is "no respecter of persons" (Acts 10:34), and to repent of and renounce any racism and/or class consciousness, and

Further, this Assembly encourages its local churches to make known that the doors to its worship and the arms of its fellowship are open to warmly welcome all persons without regard to race, class or national origin, and that it welcomes into its membership all who, according to Book of Church Order Chapter 57 (and any general provisions including those regarding discipline) come with a credible profession of their faith in the Great King and Head of the Church and Savior of the body, the Lord Jesus Christ.

## **2009-01 – COMPLAINT OF TE SMITH VS. WCP**

### **II. STATEMENT OF ISSUE**

1. Did Presbytery err at its stated meeting on February 28, 2009 when it ruled this Complaint out of order as being filed too late?

### **IV. JUDGMENT**

This Complaint is answered by reference to the SJC decision in Case 2008-15.

## 2009-03 – COMPLAINT OF RE LEISSING VS. WCP

### II. STATEMENT OF ISSUE

1. Did Presbytery err at its stated meeting on November 7, 2008 when voted to reverse the October 23 decision of its Sealy Commission, thereby granting the congregation's August 7 request and dissolving the calls of REs Linton and Pellom?

### III. JUDGMENT

This Complaint is answered by reference to the SJC decision in issue 5 in Case 2008-15, when it ruled Presbytery erred when it appointed the Sealy Commission.

This Decision was drafted by the Panel (Dominic Aquila, Howard Donahoe, and Grover Gunn) and amended by the full Standing Judicial Commission.

Roll call vote in 2008-15:

TE Dominic A. Aquila, Concur  
TE Howell A. Burkhalter, Concur  
RE E.C. Burnett III, Disqualified  
TE David F. Coffin Jr., Concur  
RE Marvin C. Culbertson, Concur  
RE J. Howard Donahoe, Concur  
RE Samuel J. Duncan, Concur  
TE Fred Greco, Concur  
TE Grover E. Gunn III, Concur  
TE William W. Harrell Jr., Concur  
RE Terry L. Jones, Concur  
RE Thomas F. Leopard, Disqualified

21 Concur, 2disqualified, 1 absent

Roll call vote on 2008-16, 17, and 18:

TE Dominic A. Aquila, Concur  
TE Howell A. Burkhalter, Concur  
RE E.C. Burnett III, Disqualified  
TE David F. Coffin Jr., Concur  
RE Marvin C. Culbertson, Concur  
RE J. Howard Donahoe, Concur  
RE Samuel J. Duncan, Concur  
TE Fred Greco, Concur  
TE Grover E. Gunn III, Concur

TE William R. Lyle, Concur  
RE J. Grant McCabe, Concur  
TE Charles E. McGowan, Concur  
TE D. Steven Meyerhoff, Concur  
TE Timothy G. Muse, Concur  
RE Frederick J. Neikirk, Concur  
RE Steven T. O'Ban, Absent  
RE Jeffrey Owen, Concur  
RE Calvin Poole, Concur  
TE G. Dewey Roberts, Concur  
TE Danny Shuffield, Concur  
RE John B. White Jr., Concur

TE William R. Lyle, Concur  
RE J. Grant McCabe, Concur  
TE Charles E. McGowan, Concur  
TE D. Steven Meyerhoff, Concur  
TE Timothy G. Muse, Concur  
RE Frederick J. Neikirk, Concur  
RE Steven T. O'Ban, Absent  
RE Jeffrey Owen, Concur  
RE Calvin Poole, Concur

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TE William W. Harrell Jr., Concur  
RE Terry L. Jones, Concur  
RE Thomas F. Leopard, Disqualified

21 Concur, 2disqualified, 1 absent

Roll call vote in 2009-1:

TE Dominic A. Aquila, Concur  
TE Howell A. Burkhalter, Concur  
RE E.C. Burnett III, Disqualified  
TE David F. Coffin Jr., Concur  
RE Marvin C. Culbertson, Concur  
RE J. Howard Donahoe, Concur  
RE Samuel J. Duncan, Concur  
TE Fred Greco, Concur  
TE Grover E. Gunn III, Concur  
TE William W. Harrell Jr., Concur  
RE Terry L. Jones, Concur  
RE Thomas F. Leopard, Disqualified

21 Concur, 2disqualified, 1 absent

Roll call vote in 2009-3:

TE Dominic A. Aquila, Concur  
TE Howell A. Burkhalter, Concur  
RE E.C. Burnett III, Disqualified  
TE David F. Coffin Jr., Concur  
RE Marvin C. Culbertson, Concur  
RE J. Howard Donahoe, Concur  
RE Samuel J. Duncan, Concur  
TE Fred Greco, Concur  
TE Grover E. Gunn III, Concur  
TE William W. Harrell Jr., Concur  
RE Terry L. Jones, Concur  
RE Thomas F. Leopard, Disqualified

21 Concur, 2disqualified, 1 absent

TE G. Dewey Roberts, Concur  
TE Danny Shuffield, Concur  
RE John B. White Jr., Concur

TE William R. Lyle, Concur  
RE J. Grant McCabe, Concur  
TE Charles E. McGowan, Concur  
TE D. Steven Meyerhoff, Concur  
TE Timothy G. Muse, Concur  
RE Frederick J. Neikirk, Concur  
RE Steven T. O'Ban, Absent  
RE Jeffrey Owen, Concur  
RE Calvin Poole, Concur  
TE G. Dewey Roberts, Concur  
TE Danny Shuffield, Concur  
RE John B. White Jr., Concur

TE William R. Lyle, Concur  
RE J. Grant McCabe, Concur  
TE Charles E. McGowan, Concur  
TE D. Steven Meyerhoff, Concur  
TE Timothy G. Muse, Concur  
RE Frederick J. Neikirk, Concur  
RE Steven T. O'Ban, Absent  
RE Jeffrey Owen, Concur  
RE Calvin Poole, Concur  
TE G. Dewey Roberts, Concur  
TE Danny Shuffield, Concur  
RE John B. White Jr., Concur

**CASE 2009-2 COMPLAINT OF DR. MORTON H. SMITH  
VS.  
WESTERN CAROLINA PRESBYTERY**

**I. SUMMARY OF FACTS**

This case involves Presbytery's *BCO* 31-2 finding regarding certain views held by a ruling elder. Presbytery initially found there was not a strong presumption of guilt regarding those views, but subsequently reversed that finding. The Complaint is against that reversal and the subsequent ruling of Presbytery on those views.

In 2008, Friendship Presbyterian Church in Black Mountain, NC had a four-man Session composed of TE Bulkeley and REs Payne, Linton and Pellom. Conflict arose primarily between TE Bulkeley and RE Payne regarding Payne's views related to race and IQ and some material Payne had circulated. Eventually, there was a congregational meeting on June 1, 2008 where a motion was adopted to dissolve RE Payne's official elder relationship with the church (*BCO* 24-7). The four-man Session referred this and other matters to Presbytery per *BCO* 41, which Presbytery accepted on June 17 and formed a Commission to fulfill the Session's duties of *BCO* 24-10 and 31-2. The Commission was empowered to determine whether or not there was a strong presumption of guilt but not empowered to institute process.

On July 15 the Commission made three decisions related to RE Payne:

1. It granted congregation's request and dissolved the official relationship between RE Payne and the church.
2. It found a strong presumption of guilt regarding the behavior of RE Payne "in that he has failed to adorn the profession of the Gospel in his life, and to set a worthy example before the church of which God has made him an officer, contrary to his ordination engagements (*BCO* 24-6.4)."
3. It did not find a strong presumption of guilt regarding the views of RE Payne.

At its stated meeting on August 2, 2008, Presbytery entered into its minutes several decisions made by the Commission, including the three related to RE Payne. However, before Presbytery instituted process based on the Commission's finding of a strong presumption of guilt on behavior, RE Payne came forward via *BCO* 38-1 with a confession regarding behavior. Presbytery handled it as a case without process, censuring with indefinite suspension from office.

On August 29, TEs Hutchinson & Bulkeley complained against Presbytery's finding (per the Commission's finding) arguing Presbytery should have also found a strong presumption of guilt regarding RE Payne's views and asked Presbytery to adopt a statement finding those views out of accord with the Constitution and a violation of Christian liberty. On November 18, 2008 their complaint was sustained. TE Smith then complained against Presbytery's sustaining the Hutchinson/Bulkeley complaint, and his complaint was denied on February 28, 2009.

### Chronology of Events

#### 2007

Nov 26 E-mail from RE Payne to 19 people (members of FPC and non-members) shown below:

"How many times do we have to see this same pitiful, African disaster story replayed before we will realize that the story always ends the same way and regardless of all the best wishes in the world it will never go any differently? Here is a telling article commemorating the passing of one of the last great white men in Africa.

PS – IQ is the best and most reliable and most accurate predictor of these results. Only a cock-eyed Liberal believes that you can run headlong into a wall one thousand times and if you just do it one more time, somehow, magically, this time you won't bash your brains out."

After these four sentences was a link to a November 22, 2007 article by Graham Boynton in the opinion section of a digital version the UK Telegraph. The article is 1½ pages and expresses an opinion on the problems of Rhodesia (renamed Zimbabwe in 1980) over the past half-century, comparing how that country fared under Prime Minister Ian Smith (1964-1979) compared to Robert Mugabe (1980-present). It also bewails various problems in the Congo, Uganda, Zaire and Malawi. Ian Smith had died two days prior on November 20, which apparently occasioned the article. Boynton grew up in Africa and wrote, *Last Days in Cloud Cuckooland*, a book which deals with the end of colonial rule in Africa.

Dec      Several e-mails exchanged between TE Bulkeley and RE Payne related to the Nov 26 e-mail.

MINUTES OF THE GENERAL ASSEMBLY

2008

May 27 Session called meeting where decision was made to grant the request of 20 petitioners and call a congregational meeting to consider a motion to dissolve call of RE Payne. (Minutes indicate the meeting would be announced June 1 and held June 8, but the meeting did not occur June 8 since the matter was considered by the congregation on June 1.)

June 1 Congregational meeting (Sunday). 2 hours 40 minutes. Among other business, a motion was adopted to dissolve the call of RE Payne without censure.

June 5 Session called meeting (all present – TE and 3 REs). Session declined to act on congregation's request of June 1 to dissolve call of RE Payne and instead, adopted and sent the Reference below:

At a Congregational Meeting of the Friendship Presbyterian Church held Sunday, June 1, 2008, action was taken to request the Session to dissolve the official relationship between the church and RE Neill Payne without censure . . . In our estimation this matter and the issues related to it are both difficult and delicate, and therefore the appropriate subject for a reference.

Therefore, according to the provisions of *BCO* 41, the Session of Friendship PCA hereby makes reference to Western Carolina Presbytery for either advice or action, or both, regarding the request to dissolve the official relationship between RE Neill Payne and our congregation and all matters pertaining thereto. We welcome Presbytery's final disposition of any and all of the matters involved, and would similarly welcome advice regarding any matters with respect to which Presbytery refrained from taking action.

In making this reference, we specifically ask Presbytery to exercise the responsibilities described in *BCO* 31-2 regarding all relevant persons both within the membership of our congregation and the Presbytery, namely "with due diligence and great discretion demand from such persons satisfactory explanations concerning reports affecting their Christian character," especially as there are many among

us who “deem themselves aggrieved by injurious reports.” If necessary and as appropriate, should such investigation result in a strong presumption of guilt of any of the parties involved, we ask Presbytery to institute process and appoint one or more prosecutors from among the membership of Presbytery to prepare the indictment and conduct the case.

We are herewith including such pertinent documentation as we judge necessary for proper understanding of the issues involved with this reference, in order that Presbytery may be able to fully consider and handle these matters with as little difficulty as possible.

June 7 3 TEs and 3 REs ask for a called Presbytery meeting “to handle all matters related to and arising out of a Reference from the Session of Friendship Presbyterian Church.”

June 17 Presbytery called meeting (1 hour 23 minutes).

Present were 34 TEs and 23 REs. Session Reference was titled Attachment A. Presbytery accepted the Reference and appointed a non-judicial Commission of six men: TEs Inman (chair), Hicks, Williams & REs Maney, Andrews, Carter – (hereafter called the Inman Commission). Presbytery empowered the Inman Commission to “fully consider and handle all the matters therein referred; specifically to:

1. Deliberate and act upon the congregational request for dissolution of the relationship between RE Neill Payne and the Friendship Session under the provisions of *BCO* 24-7, paragraph 2;
2. Conduct whatever investigation is required under the provisions of *BCO* 31-2, inclusive of determining whether there is a strong presumption of guilt warranting judicial process, but exclusive of actually instituting such judicial process; (underlining added)
3. Act in whatever way necessary to address any urgent issues that may arise out of their deliberation and investigation that warrant immediate attention, but refraining from taking any action that could await deliberation and action by Presbytery as a whole;
4. Present a report of its proceedings along with any additional recommendations to Presbytery at its August 2, 2008 Stated Meeting for any further action or advice arising out of its work.”

MINUTES OF THE GENERAL ASSEMBLY

Subsequently, the Inman Commission met six times: June 17, 24, and July 1, 8, 15, & 29.

They published a partial report on July 16 after their fifth meeting.

July 15 Inman Commission acts on first two of its four assignments.

Granted FPC request and dissolved call of RE Payne without censure. Results of 31-2 investigations. Five findings:

- a. Did not find strong presumption of guilt for RE Linton
- b. Did not find a strong presumption of guilt for TE Neville
- c. Found a strong presumption of guilt for TE Bulkeley (*BCO* 21-5.7)
- d. Did not find a strong presumption of guilt for views of RE Payne
- e. Found a strong presumption of guilt for behavior of RE Payne (*BCO* 24-6.4)

Commission adopted the following reasoning for not finding a strong presumption of guilt regarding RE Payne's views (underlining added):

MSC that the Commission note for the record RE Neill Payne's belief that relative average intelligence quotient can be correlated to race on a continuum, with "Oriental" as superior, followed by "White" then "Brown" (Hispanic) then "Black in descending order. He explicitly affirms that all human beings are of equal standing before God irrespective of race, and that such a correlation between IQ and race could be attributed to more than one factor, including genetic differences and environmental circumstances, all under God's providence. As summarized, such views are not in themselves explicitly out of accord with the Constitution of the church. However, such views may have an understandable opprobrium and odium attached to them because of their association with other reprehensible views and conduct.

Rationale - At the center of the current distress at Friendship PCA has been the views of RE Neill Payne related to race. It seems incumbent on Presbytery to at least take notice of Mr. Payne's views, and to give some account for how those views have come to be the focus of such controversy as they have. At the same time, Mr. Payne's views on race are quite developed,

and in his estimation are easily misunderstood, especially when summarized by and for those who do not share those views. For the record, then, we have included a brief summary of the specific, explicit and direct statements Mr. Payne has made regarding race in the material presented to the Commission, as well as statements made in our conference with Mr. Payne, per the provisions of *BCO* 24-7. His views as summarized can be understood as falling within our constitutional provision for Christian liberty wherein “God alone is the lord of the conscience, and hath left it free from the doctrines and commandments of men which are in anything contrary to his word, or beside it, in matters of faith or worship” (*WCF* 20.2).

However, with respect to the exercise of this liberty, our Constitution cautions against “such erroneous opinions or practices, as either in their own nature, or in the manner of publishing or maintaining them, are destructive to the external peace and order which Christ hath established in the church” (*WCF* 20.4). Further, even truthful views can be spoken unseasonably (*WLC* 145), which unseasonable speech does not in any way diminish the truthfulness of the views thus spoken.

There may be some disagreements as to whether RE Payne’s views or practices are erroneous, or how his views or practices, or his manner of publishing or maintaining them, may have informed the current controversy at Friendship. The truth can be spoken unseasonably, whether in promoting or maintaining particular views or related practices, or in opposing them. Those who do not share these views with RE Payne may understand his views to be erroneous, destructive in themselves or in his manner of publishing or maintaining them. Nevertheless, shy of demonstration to the contrary, the Commission does not find RE Payne’s views as summarized above in themselves to be explicitly out of accord with the Constitution of the church.

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Views not unlike those summarized above have been associated with ideas and actions that are absolutely reprehensible and sinful. While it is perhaps possible to hold similar views in a way that successfully disassociates them from such abominable notions and practices, clearly RE Payne has not been able to do so recently. Irrespective of what may have contributed to RE Payne's views being associated with sinful ideologies and practices, and irrespective of whatever efforts he has made to rise above such criticism, such associations do in fact exist and contribute to the current controversy. Such associations do not make RE Payne's views inherently wrong, but neither are such associations irrelevant to understanding and resolving the conflict underlying the congregational action requesting dissolution of his official relationship with the Session.

Commission adopted the following reasoning for finding a strong presumption of guilt regarding the behavior of RE Payne:

MSC that the Commission determines that there is a strong presumption of guilt on the part of RE Neill Payne in that he has failed to adorn the profession of the Gospel in his life, and to set a worthy example before the church of which God has made him an officer, contrary to his ordination engagements (*BCO* 24-6.4).

Rationale – Without in any way infringing upon the liberty of conscience RE Payne has to hold such views as he does concerning race, it is the opinion of the Commission that he has failed to do so in a way that dissociates his views from the opprobrium and odium that attach to such views in other contexts. Despite his history of association with more than one racist organization, which history continues to haunt the flock he helps tend, and in the face of open disagreement from his pastor, all the while knowing his racial views to be unusual and disturbing to many, RE Payne has continued to press his views, both in Internet correspondence and in conference with this

Commission. In so doing he has favored his own Christian liberty and made his own interests a higher priority than the well-being of his flock and the reputation of Christ's church (Philippians 2:3-4). He has thus failed to avoid such things as procure an ill name for himself and others (WLC 145). An elder must be above reproach (1 Timothy 3:2; WLC 129), which qualification RE Payne has not been able to maintain with respect to his views on race.

Aug 2 Presbytery Stated Meeting. Per *BCO* 15-1, the report of the Inman Commission is entered on the minutes, including its five findings regarding presumption of guilt.

Prior to Presbytery acting further on the finding that there was a strong presumption of guilt regarding RE Payne's behavior, RE Payne came forward per *BCO* 38-1 and made confession regarding his behavior. Presbytery accepted his confession as a full statement of facts per *BCO* 38-1 (below) and handled it as a case without process. (A question of whether it was a "full" statement of the facts became the issue in Case 2008-16.)

"Attachment E" and shown below.

I, Neill Payne, intend to confess my guilt, and I approve this confession of guilt to be a full statement of the facts on the basis of which I intend to permit Presbytery to render judgment without process, per the provisions of *BCO* 38-1.

I hereby confess that I have failed to adorn the profession of the Gospel in my life, and to set a worthy example before the church of which God has made me an officer, contrary to my ordination engagements.

I have failed to hold my views concerning race in a way that dissociates them from the opprobrium and odium that attach to such views in other contexts. Despite my history of association with more than one racist organization, which history has continued to haunt the flock I was called to help tend, and in the face of open disagreement with my pastor, all the while knowing my racial views to be unusual and disturbing to many, I continued to press my views, both in Internet correspondence and in conference with Presbytery's Commission.

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In so doing I have favored my own Christian liberty and made my own interests a higher priority than the well-being of the flock and the reputation of Christ's church. I have thus failed to avoid such things as procure an ill name for myself and others. An elder must be above reproach, which qualification I have not been able to maintain with respect to my views on race.

Presbytery imposed the censure of indefinite suspension from office and instructed him to "do all he can, upon counsel of the Shepherding Committee, to be part of the reconciliation process at Friendship and the repair of the public reputation of the church, and that he be strongly encouraged to read his confession of guilt to the congregation of Friendship." (His call was previously dissolved July 15 by Inman Commission at congregation's request and per the Reference from the Session.)

Aug 19 Presbytery called meeting (3 hours 16 min) Present: 35 TEs & 25 REs  
Motion to declare meeting out of order failed. Motion to find call in order, passed 30-20. TE Bulkeley gave a "speech to Presbytery." It is not clear from minutes how this was delivered. He asked Presbytery to find the Session's actions on August 6 [seeking to cancel the congregational meeting of Aug 7] to be "not wise, equitable, or suited to promote the welfare of the Church, or in accordance with the Constitution." He also asks Presbytery to find that the congregational meeting of August 7 was in order.

Presbytery took the following actions:

The actions of the Session at its called meeting on Aug 6 (regarding cancelling the congregational meeting the next day) were deemed "to not be wise, equitable, suited to promote the welfare of the church or in accordance with the Constitution."

Motion was defeated that sought to cite Session to appear and answer questions per *BCO* 40-2 regarding a "credible report of disorder." Motion was also defeated that sought to have the moderator appoint a committee to review the church's records.

Took original jurisdiction under *BCO* 13-9 to act on FPC request to dissolve the relationship of REs Linton and

Pellom. Appointed a non-judicial commission per *BCO* 15-1 & 2 to “deliberate and act upon the congregation’s request for the dissolution between REs Linton and Pellom under the provisions of *BCO* 24-7, paragraph 2.” Six men were appointed: TEs Sealy, Bancroft, Osborne, REs Griffith, Leissing, and Maney (hereafter called the Sealy Commission).

Postponed consideration of congregation’s call to TE Neville as Associate until after the Sealy Commission reports.

Aug 29 TEs Bulkeley & Hutchinson filed two Complaints against Presbytery not finding a strong presumption of guilt. (A finding made by the Commission on July 15 and reported to Presbytery August 2.) The two Complaints (later labeled as Complaints 2 and 3 in Nov 7 Minutes) alleged Presbytery, through its Commission, violated *BCO* 13-9(f) by “failing to condemn erroneous opinions which injure the peace and purity of the Church,” specifically:

- racial views of RE Payne expressed in a November 26 e-mail to 19 people, [which later became an issue in SJC Case 2008-18]
- Payne’s view (as summarized by the Presbytery Commission) that Relative average intelligence quotient can be correlated to race on a continuum, with “Oriental” as superior, followed by “White” then “Brown” (Hispanic) then “Black in descending order. All human beings are of equal standing before God irrespective of race, and that such a correlation between IQ and race could be attributed to more than one factor, including genetic differences and environmental circumstances, all under God’s providence. [which became this Case 2009-02]

Nov 7 Presbytery Stated Meeting (later adjourned and reconvened Nov 18). Moderator appointed a Standing Judicial Committee of 3+3 to report recommendations later in the meeting on six complaints and the request for an investigation of TE Bulkeley. TE Basham is convener. Later, in the meeting the Basham Committee recommended the following, but action was postponed as the meeting was adjourned and reconvened on Nov 18.

Committee recommendations (Underlining added referencing this present case.)

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Deny Hutchinson Aug 14 Complaint 1 regarding RE Linton  
Deny Hutchinson/Bulkeley Aug 29 Complaint 2 which complains against not finding a strong presumption of guilt for Payne's views  
Sustain Hutchinson/Bulkeley Aug 29 Complaint 3 [later related to Case 2008-18]  
Sustain Hutchinson Aug 29 Complaint 4  
Sustain Hutchinson Sept 1 Complaint 5  
Deny Smith Aug 30 Complaint (containing multiple specifications)  
Deny the Aug 19 request from 19 FPC members to further investigate TE Bulkeley

Nov 18 Reconvened stated Presbytery meeting. TE Silman brings recommendations from the Basham Committee.

H Complaint 1 Committee recommendation to deny passed.  
H/B Complaint 2 Committee recommendation to deny failed 22-30.  
Complaint sustained 27-22  
H/B Complaint 3 Committee recommendation to sustain failed.  
Complaint then denied 24-13  
H Complaint 4 Committee recommendation to sustain failed.  
Complaint then denied  
H Complaint 5 Committee recommendation to sustain failed.  
Complaint then denied.  
Smith Committee recommendation to deny passed.

19 FPC members Committee recommendation to deny failed. On motion, the Moderator was authorized to appoint a committee "to review and investigate grievances affecting the Christian character" of TE Bulkeley.

Sustaining the Hutchinson/Bulkeley Complaint 2 rescinded Presbytery's finding of no strong presumption of guilt on views. (Commission's July 15 finding, entered into Presbytery's minutes at the stated meeting on Aug 2). The Hutchinson/Bulkeley Complaint 2 also recommended, and Presbytery ruled the following summary of RE Payne's views (summarized by the Commission) is contrary to our Constitution and is not an issue of Christian liberty.

Relative average intelligence quotient can be correlated to race on a continuum, with "Oriental" as superior, followed by "White" then "Brown" (Hispanic) then "Black in descending order.

All human beings are of equal standing before God irrespective of race, and that such a correlation between IQ and race could be attributed to more than one factor, including genetic differences and environmental circumstances, all under God's providence.

Dec 15 TE Smith files complaint against Presbytery's action of Nov 18 in which they sustained the Hutchinson/Bulkeley complaint, offering two reasons:

1. The content of this action is beyond the proper purview of the Church to decide. It is dealing with a matter not addressed by the Scriptures, or by our Standards.
2. The Presbytery has further erred in that it denies the right of difference of opinion on a matter not specifically addressed in the Scripture.

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Feb 28 Presbytery stated meeting. Denies Smith's complaint.

## **II. STATEMENT OF ISSUES**

Did Presbytery err on November 18, 2008 when it sustained the Hutchinson complaint, to wit:

[b]y this Complaint I am requesting that we correct our error by reversing the action and judgment of the Commission, publicly declaring, at the very least, that the view, "that relative average intelligence quotient can be correlated to race on a continuum, with 'Oriental' as superior, followed by 'White' then 'Brown' (Hispanic) then 'Black' in descending order," is indeed out of accord with the Constitution of our Church; and publicly declaring that holding to such a view is indeed a violation of Christian liberty, destroying the very purpose of the liberty Christ has purchased for believers under the gospel, whereby there is neither Jew nor Gentile, for we are all one in Christ Jesus (Galatians 3:28)." ?

## **III. JUDGMENTS**

Yes, in part, and No, in part.

We do not find Presbytery erred in its November 18 decision to reverse its previous decision, which did not find a strong presumption of guilt on the matter of views. This is a matter of discretion and judgment on which the higher court must afford great deference (*BCO* 39-3.3). However, the

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SJC is not hereby rendering any opinion on the merits of that decision or the reasoning in the Hutchinson Complaint.

We find Presbytery erred procedurally by immediately adopting a judgment against RE Payne's views without process. The SJC annuls the declaration made by Presbytery regarding RE Payne's views, and remands the case to WCP for adjudication.

### **IV. REASONING AND OPINION**

The effect of Presbytery's action in sustaining TE Hutchinson's complaint on November 18, 2008 was to reverse its prior finding that there was not a strong presumption of guilt against RE Neil Payne regarding his views. By sustaining the complaint, WCP ruled in essence there is a strong presumption of guilt against Mr. Payne regarding his views. And since Presbytery ruled there is a strong presumption of guilt regarding his views, the case is remanded to Presbytery to take the next appropriate Constitutional steps and commence process against RE Payne on the matter of his views (i.e., appoint a prosecutor, draft an indictment, hold arraignment and, if necessary, conduct a trial and, if found guilty, impose censure) or rescind their Nov 18 decision that there is a strong presumption of guilt and drop the matter.

In June 2008, Presbytery appointed a commission authorized to "conduct whatever investigation is required under the provisions of *BCO* 31-2, inclusive of determining whether there is a strong presumption of guilt warranting judicial process, but exclusive of actually instituting such judicial process." The commission conducted an investigation and did not find a strong presumption of guilt with reference to certain views of RE Payne. However, with regard to how RE Payne pressed his views and the manner in which he advocated them, the commission determined there was a strong presumption of guilt "in that he has failed to adorn the profession of the Gospel in his life, and to set a worthy example before the church of which God has made him an officer, contrary to his ordination engagements."

Presbytery did not need to vote on these two decisions regarding presumption of guilt because the commission had been appointed as a commission under *BCO* 15-1, not under *BCO* 15-3, when it was empowered for this limited judicial task. Instead, the report of the commission was simply entered on its minutes in accordance with *BCO* 15-1 as the action of Presbytery. Since Presbytery (through its Commission) had found a strong presumption of guilt, Presbytery was under an obligation to

institute process (something the Commission was not authorized to do). However, instituting process on the matter of behavior was deemed unnecessary because RE Payne subsequently confessed to being guilty of the offense for which the Presbytery through its Commission had found a strong presumption of guilt, and he was censured.

The Inman Commission was not a “study committee” examining the issue of race and IQ. It was an investigating commission tasked to fulfill the first part of the duties of *BCO* 31-2 and to render a finding on the existence or absence of a strong presumption of guilt. It found a strong presumption of guilt on the matter of how RE Payne held his views, but not on the holding of those views, *per se*.

In essence, TE Hutchinson's complaint asserted Presbytery erred in not finding a strong presumption of guilt with regard to views. On November 18, 2008, the complaint was sustained, which had the effect of reversing the previous finding of the Commission/ Presbytery that there was not a strong presumption of guilt on views. As a result of sustaining the complaint on November 18, 2008, what the Presbytery found was that there was a strong presumption of guilt against Mr. Payne regarding his views and it should have then instituted judicial process under *BCO* 31-2 and 32-3. This is emphasized by the Rev. F.P. Ramsay in his 1898 *Exposition of the Book of Church Order*:

And after an investigation is once originated, the court no longer has discretion not to institute process if the investigation results in raising a strong presumption of guilt of the accused. It appears, then, that, after an investigation, the court must always institute process, except where the court judges that the investigation fails to result in raising a strong presumption of guilt, and, of course, the court may institute process, even when the members of the court believe that there is no guilt, if they are persuaded that this is desirable for the vindication of innocence or for other reasons. The sum of the matter is, that the court has unlimited discretion (subject, as in all matters, to the review of higher courts), only that it has not discretion to raise by investigation a strong presumption of guilt and then not institute process. (pp. 185-186)

The action of WCP on November 18, 2008 was not a declaration but a finding under *BCO* 31-2 with regard to presumption of guilt. The action is not to be understood as a position statement of WCP other than

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recognizing the authority of Presbytery to institute judicial process. In essence the effect of the November 18, 2008 action is to take the Presbytery back to August 2, 2008 where it had judicial authority over Mr. Payne since it accepted the Reference from the Friendship Presbyterian Church Session in this matter. In this case, since all matters related to the 31-2 investigation and any subsequent judicial process were Referenced to the Presbytery, it is the court of jurisdiction in judicial process against RE Payne on this particular matter (and not his current Session). However, if his Session requests the return of jurisdiction for adjudication, it can be returned with the consent of Presbytery.

Once a *BCO* 31-2 investigation has commenced, Presbytery cannot just administratively "declare" that the allegedly-sinful view is out of accord with the Constitution and a violation of Christian liberty. Granted, Presbyteries sometimes declare certain views as being contrary to the Constitution (as in some ordination exams). And in some rare instances, they might declare that the candidate does not even have the Christian liberty to hold the view, regardless of his demeanor in holding it (assuming Presbytery demonstrates such prohibition from Scripture and/or the Constitution). That is Presbytery's right and responsibility. But in this present case, Presbytery's declaration was tied directly to the views of an RE under judicial investigation. In other scenarios (ones not involving an investigation of alleged sin) a Presbytery would be constitutionally free to adopt a statement related to a subject like race, regardless of whether it comes as a recommendation from a study committee or as a motion from an individual presbyter. And, like other decisions of the court, the adoption of such a statement would be an action against which a Complaint could be filed. But that was not the situation in this case.

On November 18, 2008, by proceeding immediately to declare Mr. Payne's view out of accord with the Constitution and a violation of Christian liberty, they denied him due process. Again, this SJC ruling is not expressing any opinion on whether the indictment against Mr. Payne and his views is warranted. It is simply ruling that commencing process is the proper procedure for Presbytery to follow once they ruled there was a strong presumption of guilt on the matter of views.

This Decision was drafted by the Panel (Dominic Aquila, Howard Donahoe, and Grover Gunn) and amended by the full Standing Judicial Commission.

Roll call in 2009-2:

TE Dominic A. Aquila, Concur	TE William R. Lyle, Concur
TE Howell A. Burkhalter, Concur	RE J. Grant McCabe, Concur
RE E.C. Burnett III, Disqualified	TE Charles E. McGowan, Concur
TE David F. Coffin, Jr., Concur	TE D. Steven Meyerhoff, Concur
RE Marvin C. Culbertson, Concur	TE Timothy G. Muse, Concur
RE J. Howard Donahoe, Concur	RE Frederick J. Neikirk, Concur
RE Samuel J. Duncan, Concur	RE Steven T. O'Ban, Absent
TE Fred Greco, Concur	RE Jeffrey Owen, Concur
TE Grover E. Gunn III, Concur	RE Calvin Poole, Concur
TE William W. Harrell Jr., Concur	TE G. Dewey Roberts, Concur
RE Terry L. Jones, Concur	TE Danny Shuffield, Concur
RE Thomas F. Leopard, Disqualified	RE John B. White Jr., Concur

21 Concur, 2disqualified, 1 absent

**CASE 2009-05 COMPLAINT OF TE MARTIN PAYNE  
2009-08 COMPLAINT OF JAMES R. LINTON,  
2009-09 COMPLAINT OF KIRK D. LYONS, AND  
2009-10 COMPLAINT OF ROBERT C. WOODWARD  
VS.  
WESTERN CAROLINA PRESBYTERY**

**I. SUMMARY OF FACTS**

This Complaint alleges Presbytery erred when it did not find a strong presumption of guilt of TE Craig Bulkeley, pastor of Faith Presbyterian Church, Black Mountain, NC. Complainants also contend *BCO* 31-2 was violated by an alleged undue delay in investigation and because the accusers were not interviewed by Presbytery's investigating committee.

In 2008, the church had a four-man Session composed of TE Bulkeley and REs Payne, Linton and Pellom. Conflict arose primarily between TE Bulkeley and RE Payne regarding Payne's views related to race and IQ and some material Payne had circulated. Eventually, there was a congregational meeting on June 1, 2008 where a motion was adopted to dissolve RE Payne's call. The four-man Session referred this and other matters to Presbytery per *BCO* 41, which Presbytery accepted on June 17 and formed a Commission to fulfill the Session's duties of *BCO* 24-10 and 31-2.

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June 1 Congregational meeting. Votes against dissolving the call of TE Bulkeley. Votes to ask the Session to dissolve the call of RE Payne.

June 17 Presbytery called meeting (1 hour 23 minutes). In response to a Reference from the Session, Presbytery appointed a *BCO* 15-1 Commission (chaired by TE Inman) to conduct *BCO* 31-2 investigations of reports on several individuals (including two TEs and two REs) and to determine whether or not there is a strong presumption of guilt.

July 15 Inman Commission acted on the first two of its four assignments, which included their finding that there was a strong presumption of guilt for RE Payne in the manner in which he held his views, and for TE Bulkeley “in that he has failed to adorn the profession of the Gospel in his manner of life, and to walk with exemplary piety before the flock of which God has made him an overseer, contrary to his ordination engagements (*BCO* 21-5.7).”

Commission’s Rationale: Without in any way diminishing an understandable concern to correct error and dissociate both the gospel and the church from the opprobrium and odium attaching to racist views and practices, TE Bulkeley published his disagreement with a fellow elder far and wide, both in Internet correspondence and in conference with others, despite counsel to the contrary, without applying the directives of Matthew 18 and the provisions of *BCO* 27-5. An elder must set an example in both speech and conduct (1 Timothy 4:12; WLC 129), neither of which requirements TE Bulkeley has fulfilled in addressing his concerns surrounding RE Payne’s views, thus failing to avoid such things as procure an ill name for himself and others (WLC 145)”.

Aug 2 Presbytery Stated Meeting. Prior to Presbytery instituting process based on the Commission’s finding, TE Bulkeley confessed and Presbytery handled it as a case without process per *BCO* 38-1. Presbytery voted to impose the censure of admonition on TE Bulkeley, having been “satisfied with his repentance.” (RE Payne also confessed per *BCO* 38-1 and he was indefinitely suspended from office.) Bulkeley’s confession is below:

I, Craig Bulkeley, intend to confess my guilt, and I approve this confession of guilt to be a full statement of the facts on the basis of which I intend to permit

Presbytery to render judgment without process, per the provisions of *BCO* 38-1.

Without in any way relinquishing my concern to correct error and dissociate both the gospel and the church from racism, with its ungodly contempt, disrespect and scorn for those of different tribes and tongues, I confess that I have published my disagreement with a fellow elder, both in Internet correspondence and in conference with others, far and wide, despite counsel to the contrary, without applying adequately the directives of Matthew 18 and the provisions of *BCO* 27-5. In this I have failed to adorn the profession of the Gospel in my manner of life, and to walk with exemplary piety before the flock of which God has made me an overseer, contrary to my ordination engagements. An elder must set an example in both speech and conduct, neither of which requirements have I fulfilled in addressing my concerns surrounding the view of my fellow elder, thus failing to avoid such things as may procure an ill name for myself and others.

- Aug 6 Session called meeting (the evening before congregational meeting). Votes 2-1 to cancel the Aug 7 congregational meeting. TE Bulkeley voted against cancellation.
- Aug 7 Congregational meeting convened by TE Bulkeley. REs Linton and Pellom not present. Among other things, congregation votes to dissolve calls of REs Linton and Pellom and ask Presbytery to fulfill the Session responsibility of *BCO* 24-7 in considering such requests to dissolve.
- Aug 19 Presbytery called meeting (3 hours 16 min)  
Present: 35 TEs & 25 REs  
Motion to declare meeting out of order failed. Motion to find call in order, passed 30-20. TE Bulkeley gave a “speech to Presbytery.” It is not clear from minutes how this was delivered. He asked Presbytery to find the Session’s actions on August 6 [seeking to cancel the congregational meeting of Aug 7] to be “not wise, equitable, or suited to promote the welfare of the Church, or in accordance with the Constitution.” He also asks Presbytery to find that the congregational meeting of August 7 was in order.

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Presbytery took the following actions:

The actions of the Session at its called meeting on Aug 6 (regarding cancelling the congregational meeting the next day) were deemed “to not be wise, equitable, suited to promote the welfare of the church or in accordance with the Constitution.”

Motion was defeated that sought to cite Session to appear and answer questions per *BCO* 40-2 regarding a “credible report of disorder.” Motion was also defeated that sought to have the moderator appoint a committee to review the church’s records.

Took original jurisdiction under *BCO* 13-9 to act on FPC request to dissolve the relationship of REs Linton and Pellom. Appointed a non-judicial commission per *BCO* 15-1 & 2 to “deliberate and act upon the congregation’s request for the dissolution between REs Linton and Pellom under the provisions of *BCO* 24-7, paragraph 2.” Six men were appointed: TEs Sealy, Bancroft, Osborne, REs Griffith, Leissing, and Maney (hereafter called the Sealy Commission).

Postponed consideration of congregation’s call to TE Neville as Associate until after the Sealy Commission reports.

Aug 19 (Same day as called Presbytery meeting)

Four page letter (hereafter, the “Grievance Letter) signed by 19 members of FPC addressed to Presbytery alleging things about their pastor, TE Bulkeley, asking Presbytery to investigate per *BCO* 31-2. Signers included REs Linton and Pellom and members from seven families: Linton (6), Lyons (5), Payne (3), Tate (2), Mahaffey, Pellom, and Woodward. (The letter in the Record indicates it was “modified with permission of signatories on Sep 11, 2008.”)

Six “illustrations” alleged that TE Bulkeley:

1. Convened an illegal congregational meeting on August 7. [later an issue in Case 2008-15]
2. Violated the 9th commandment regarding giving church membership roll to Session.
3. Violated the 9th commandment regarding a mailbox key, and spread or allowed to be spread a rumor about the racial views of Neill Payne.
4. Failed to control his wife’s speech and e-mail.

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5. Abandoned pastoral functions: lack of attendance at Boy Scout meetings and men's prayer meeting, neglect of visitation, and neglected to notify Session of death of an elder emeritus.
  6. Caused [unspecified] further divisions in the church.
- Sept 9 TE Martin Payne (pastor of Lakey Gap PCA in Black Mountain, NC, about 3 miles from FPC) e-mails WCP clerk and moderator urging attention to the Grievance Letter and its allegations. Also copies Richard Hicks, TE Inman, TE Smith, RE Linton, Mr. Lyons, and Neill Payne (no relation to TE Payne).
- Sept 10 WCP Clerk TE Gillikin responds with brief e-mail, copied to same men.
- Sept 11 TE Payne e-mails again. Clerk responds that the matter would need to wait until the Nov 7 stated meeting, unless the requisite number of presbyters asked for a called meeting.
- Nov 6 Bulkeley files with WPC Clerk a 10-page Response to Request for Investigation (hereafter, RRI) asking Presbytery to "accept it as a 'satisfactory explanation' of the reports affecting my Christian character and conclude that there is no strong presumption of guilt on my part for the grievances therein."
- Nov 7 Presbytery Stated Meeting at Ridge Haven. Moderator appoints a six-man Committee (TE Basham convener) and referred to them several items related to FPC to report later that meeting. The meeting adjourned until Nov 18, with unfinished business, including consideration of the Aug 19 Grievance Letter.
- Nov 12 Letter from Kirk Lyons and Charles and Betty Tate, to WCP Clerk asking that "charges against TE Bulkeley be acted on immediately." The two-page letter had 10 pages of attachments, and listed six items, alleging that TE Bulkeley:
1. Initiated counseling with Charles and Betty Tate.
  2. Humiliated the Tates from the pulpit.
  3. Made tacit assumptions about the Tates and entered them in Presbytery's record.
  4. TE Neville admitted Tates into membership 12 years ago.
  5. From the pulpit, accused Kirk Lyons of asking him to lie in sermons.
  6. Circularized presbyters with his rebuke of Kirk Lyons

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Nov 14 E-mail from Robert Woodward, a member of FPC. In the Record, it is addressed to RE Linton, but the body of the e-mail addresses the WCP Clerk. E-mail accuses TE Bulkeley of “spreading misinformation about me and doing so in an unbiblical manner (disregarding Matthew 18)” with regard to something Bulkeley wrote in his Nov 6 RRI. He denied ever saying what Bulkeley alleged he said in a conversation prior to the June 1 congregational meeting.

Nov 18 Continuation of Nov 7 Presbytery meeting, now at Covenant Reformed Church. Among considering many other matters and complaints related to FPC, Presbytery instructs Moderator to appoint a Committee to investigate TE Bulkeley in accord with *BCO* 31-2.

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Jan 5 WCP Moderator notifies presbyters by e-mail that he has appointed the Bulkeley Investigation Committee (BIC).

Jan 9 BIC meeting 1 lasts one hour. Present were TEs Phillis (chair), Drake & McGinn and REs Brown & Russell (RE Cook absent). BIC minutes record “... all the documents pertaining to this matter, as forwarded by the clerk of Presbytery, had been reviewed by the committee members prior to the meeting.”

Jan 30 BIC meeting 2 lasts two hours ten minutes. All present, including TE Bulkeley, who was dismissed halfway through the meeting. After further discussion and upon motion, “the committee determined that no strong presumption of guilt could be found with him regarding the alleged grievances.”

Feb 28 Presbytery Stated Meeting at Dillingham PCA. TE Phillis reported for BIC. Their report was titled “Attachment G” but is not in Record. On motion, report of BIC was received and Presbytery accepted its finding that there was not a strong presumption of guilt with regard to the alleged grievances.

Mar 30 Four Complaints are filed with Presbytery Clerk.

TE Martin Payne files 23-page complaint with Presbytery, asking Presbytery to:

1. Reconsider its finding of Feb 28 of no strong presumption of guilt.
2. Vote against BIC recommendation of no strong presumption of guilt.

3. Refer the 31-2 investigation to the SJC.
4. Urge SJC to do “full eye-to-eye interviews with the 19 Aggrieved Members of FPC.”
5. “Admit her fault of withholding due process from the 19 Aggrieved Members and make a sincere, public, Presbytery-in-full-session apology to the 19.”
6. “Rebuke the BIC for their incomplete and poor adjudication of this serious matter, and be dismissed without thanks.”

RE James Linton files a one-page “Complaint” with Presbytery, signed only by him but indicating it was “on behalf of and with permission of RE Pellom, Charles and Betty Tate, Neill Payne, Elizabeth, Margaret and Duncan Linton, and others.” The Complaint alleges the BIC failed to investigate the grievances fully, offering the following reasons:

1. Complainants were denied due process in that they were not contacted, consulted or allowed to give evidence in any fashion before the BIC or Presbytery.
2. The BIC declined to receive proper evidence and thus failed in their duty of due diligence as required by *BCO* 31-2.
3. The BIC and Presbytery after delaying 5 months, hurried to a decision before any evidence of the Complainants was taken.
4. In declining to hear the aggrieved parties, the BIC appears to manifest extreme prejudice.
5. The judgment is manifestly unjust.
6. The decision was made without Christian love and in violation of Matthew 18.
7. By denying the Complainants a proper and fair hearing, the Committee is guilty of screening TE Bulkeley in his sin per *BCO* 34-2.

Kirk Lyons files one-page “Complaint” with Presbytery with 13 pages of attachments. He alleges Presbytery erred in accepting the finding of the BIC on Feb 28 and in their “defacto denying the charges of public sin” that he alleged in his letter of Nov 12. He presented the following reasons:

1. He was given no opportunity to present evidence for the charges he made in the Nov 12 letter.
2. He requested a formal hearing to present his evidence.

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3. He was denied fundamental due process by not presenting his evidence.
4. Presbytery and the BIC declined to receive proper evidence and thus failed in their duty of due diligence required by *BCO* 31-2.
5. Presbytery and BIC hurried to a decision before evidence was taken.
6. Presbytery and BIC appears to manifest prejudice in declining to hear evidence.
7. The judgment is manifestly unjust.
8. The decision was made without Christian love and in violation of Matthew 18.
9. By denying Complainant a proper and fair hearing, the BIC is guilty of screening TE Bulkeley in his sin per *BCO* 34-2.

Robert Woodward files two-page “Complaint” with Presbytery, alleging he was never given an opportunity to present his evidence or to be heard (regarding his November 14 e-mail accusing TE Bulkeley of spreading misinformation.) Items 2-9 in his complaint are the same as in Kirk Lyons’.

May 5 Presbytery Stated Meeting at Arden PCA. A Judicial Business Committee was appointed to consider and report (at this meeting) recommendations on “Attachments B, C, D and E” – the four complaints. JBC included TEs Kreitzer, Litchfield & Russ and REs Roberson, Wilson & Cook (convener). Later in the meeting, RE Cook reported for the JBC. A motion to rescind Presbytery’s action of Feb 28 (which did not find a strong presumption of guilt against TE Bulkeley) failed by vote of 31-20 (i.e., 60%, but lacking the 2/3 required to rescind something previously adopted without prior notice).

A motion to answer all four complaints by appointing a new committee to examine the charges against TE Bulkeley giving all parties a full hearing and reporting back to the next stated meeting of Presbytery failed by a vote of 20-32. Separate motions to deny each of the four complaints were then adopted by votes shown: Payne (32-16). Linton (32-17), Lyons (31-17) and Woodward (34-18).

May 8 Payne complaint received by PCA. (2009-05)

May 19 Linton complaint received by PCA (2009-08).

May 26 Lyons complaint received by PCA (2009-09).

Woodward complaint received by PCA (2009-10).

## **II. STATEMENT OF ISSUES**

1. Did Presbytery err in how it conducted the 31-2 investigation of accusations related to TE Bulkeley?
2. Did Presbytery err at its stated meeting on February 28, 2009 when it judged there was not a strong presumption of guilt related to accusations made against TE Bulkeley?

## **III. JUDGMENTS**

1. No.
2. No.

## **IV. REASONING, OPINION AND AMENDS**

Complainants allege two primary irregularities with the process Presbytery followed, arguing the conclusion would have been different if a different process had been followed. They allege (1) it was error for the Investigating Committee not to interview any of the people who sent grievance letters to Presbytery and (2) the process took far too long.

*BCO* 31-2, however, does not specify any particular procedures for a court to follow for investigations. It enjoins them to use “due diligence” but also affords them “great discretion.” It does not stipulate a timeline, composition of the investigating body, interview requirements, etc.

31-2. It is the duty of all church Sessions and Presbyteries to exercise care over those subject to their authority. They shall with due diligence and great discretion demand from such persons satisfactory explanations concerning reports affecting their Christian character. This duty is more imperative when those who deem themselves aggrieved by injurious reports shall ask an investigation.

If such investigation, however originating, should result in raising a strong presumption of the guilt of the party involved, the court shall institute process, and shall appoint a prosecutor to prepare the indictment and to conduct the case.

In different situations, prudence and wisdom may dictate different procedures. It is up to the investigating court to determine those procedures, subject to review by a higher court. We do not here find evidence sufficient to warrant a finding of clear error that would lead us to question the deference to which the lower court is ordinarily entitled. (*BCO* 39-3.3)

## MINUTES OF THE GENERAL ASSEMBLY

A court has far more flexibility during the investigation phase than it does after it has instituted process. A person under investigation is not “under process.” Process begins with the appointment of a prosecutor (or when the court directs the appointment of one). This is noted in the quote below from F.P. Ramsay’s 1898 *Exposition of the Book of Church Order*. However, once a person is under process, *BCO* 32 and the chapters following outline specific details on how the court proceeds. But no details are stipulated for the investigation.

The court institutes process by appointing a prosecutor. It is the duty of the prosecutor thus appointed to prepare the indictment and to conduct the case; that is, the court, after the appointment of the prosecutor, is simply a judge, and the whole responsibility of representing the Church as an accuser is on the prosecutor. (Ramsay, 1898)

Regarding the timeliness of investigation, Complainant seems to think the Presbytery Clerk or Moderator had authority to initiate a 31-2 investigation of accusations against a TE. But the *BCO* does not give them that authority. Whenever accusations are made against a TE, the Presbytery will usually receive the accusations at the next stated meeting and, if an investigating committee is appointed, Presbytery will hear, consider, and act on their report and recommendation regarding indictment at the subsequent stated meeting. This is what occurred in this case. However, it could go quicker if Presbytery’s standing rules stipulate a different process, such as giving authority to a Shepherding Committee or Presbytery officers to investigate and report. And it could go quicker if there are called meetings of Presbytery to address the matter.

Complainant contends Presbytery erred by delaying to investigate the accusations. In his brief, he alleges the “delay of action” on this matter was “contrary to Scripture precedent (1 Cor 5) . . . and that set forth by Jesus Christ our Lord and Savior (Matt 7:12).” However, if the matter was as urgent as the Complainant contends, it is unclear why neither he nor any of the three REs who signed the August 19 letter took any actions such as the following:

- a. ask for a called Presbytery meeting between August 19 and November 7 (a span of more than 11 weeks).
- b. seek to amend the Nov 7 docket making the Grievance Letter a special order of the day.

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- c. ask for a called Presbytery meeting soon after the Nov 18 meeting to hear and act on the report of the investigating committee which the Moderator was instructed to appoint.

For example, it does not appear that the TE Complainant or any of the RE Complainants took the initiative to call a Presbytery meeting to address the August 19 accusations. The 11 weeks between the August 19 Grievance Letter and Presbytery's November 7 stated meeting would have been sufficient time to (a) announce and convene a called meeting , (b) allow Presbytery to appoint an investigating committee, and (c) report their finding to the November 7 meeting. That would have addressed the matter 16 weeks earlier than the February 28 stated meeting. It is not clear why the Complainants did not call such a meeting, given the alleged sense of urgency.

Regarding the Complaints of Mr. Lyons (2009-09) and Mr. Woodward (2009-10), the Standing Judicial Commission finds neither had standing to bring a complaint because they were not under the jurisdiction of said Court. (*BCO* 43-1 and 11-4)

Therefore, since there is no Constitutional error, we give great deference to Presbytery in accordance with *BCO* 39-3 since this involves a factual matter which the lower court is more competent to determine, because of its proximity to the events in question and because of its knowledge and observation of the parties and witnesses involved (39-3.2). It is also a matter of discretion and judgment that is best addressed by the court most acquainted with the events and parties (39-3.3).

This Decision was drafted by the Panel (Dominic Aquila, Howard Donahoe, and Grover Gunn) and amended by the full Standing Judicial Commission.

Roll call in 2009-5, 16, 17, and 18:

TE Dominic A. Aquila, Concur  
TE Howell A. Burkhalter, Concur  
RE E.C. Burnett III, Disqualified  
TE David F. Coffin Jr., Concur  
RE Marvin C. Culbertson, Concur  
RE J. Howard Donahoe, Concur  
RE Samuel J. Duncan, Concur  
TE Fred Greco, Concur  
TE Grover E. Gunn III, Concur  
TE William W. Harrell Jr., Concur  
RE Terry L. Jones, Concur  
RE Thomas F. Leopard, Disqualified

TE William R. Lyle, Concur  
RE J. Grant McCabe, Concur  
TE Charles E. McGowan, Concur  
TE D. Steven Meyerhoff, Concur  
TE Timothy G. Muse, Concur  
RE Frederick J. Neikirk, Concur  
RE Steven T. O'Ban, Absent  
RE Jeffrey Owen, Concur  
RE Calvin Poole, Concur  
TE G. Dewey Roberts, Concur  
TE Danny Shuffield, Concur  
RE John B. White Jr., Concur

21 Concur, 2 disqualified, 1 absent