

# The History of the Formation of the Standing Judicial Commission

By Scott Cook

## INTRODUCTION

A 50<sup>th</sup> anniversary is a time for celebration and reflection. Celebration for the ways in which the Lord has blessed; reflection over the past fifty years and what lies ahead in the next fifty years. The fiftieth anniversary of the Presbyterian Church in America (PCA) is no exception. As *The Confession Presbyterian* journal seeks to celebrate and reflect on the first fifty years of the PCA, this article focuses on the issue of discipline and judicial process in the PCA. Discipline is a vitally important matter. The right administration of discipline is the third mark of the church. Moreover, as this article will explain, discipline (or better, the lack thereof) in the Presbyterian Church in the United States was one of the main reasons why the PCA separated from its mother church. This article will explain the initial structure and growth of judicial process in the PCA, with a particular focus on the development of the Standing Judicial Commission (SJC) as a unique form of the polity of the PCA.

## A CONTINUING CHURCH FOR CONTINUING DISCIPLINE

On December 4, 1973, the Presbyterian Church in America was born. In its historic *Message to All Churches*, the denomination unfurled her banner before the world, explaining the reasons for her birth and the hope for the future. One essential reason churches were leaving the mother church, the Presbyterian Church in the United States (PCUS), and forming the Presbyterian Church in America was the failure to exercise church discipline. The *Message to All Churches* admitted, “We frankly confess that the failure of our predecessors in the PCUS to exercise proper discipline was a major cause of the sad condition of this denomination today.”<sup>1</sup> According to the founding fathers of the PCA,

the mother church had failed to uphold orthodoxy and godly living. This lack of discipline came with disastrous consequences. “A Church that will not exercise discipline,” the *Message* declared, “will not long be able to maintain pure doctrine or godly practice.” The decline in discipline was not the byproduct of the turmoil of the 1960s. Rather, the PCUS had been failing to practice discipline effectively for a generation. In *How is the Gold Become Dim!*, an address to the convocation of sessions in Atlanta, Dr. Morton Smith chronicled the failed attempts to maintain orthodoxy in the Southern Presbyterian Church going back to the Hay Watson Smith trial in 1929 and the trial of E. T. Thompson in the 1940s.<sup>2</sup> The loss of discipline eventually led to the formation of the new denomination. The *Message to All Churches* explains, “[w]hen a denomination will not exercise discipline and its courts have become heterodox or disposed to tolerate error, the minority finds itself in the anomalous position of being submissive to a tolerant and erring majority. In order to proclaim the truth and to practice the discipline which they believe obedience to Christ requires, it then becomes necessary for them

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1. The Presbyterian Church in America (hereafter PCA), *The Minutes of the First General Assembly of the National Presbyterian Church* (Lawrenceville, GA: Committee on Christian Education and Publication, 1973), p. 28. Note that the following system for abbreviation will be followed for the minutes of the Assembly: *M(number of General Assembly)GA*, page number.

2. Morton H. Smith, “How Is the Gold Become Dim! A Message to the Convocation of Sessions” (Westminster Presbyterian Church, Atlanta, GA, May 18, 1973), PCA Historical Center, <https://www.pca-history.org/documents/convocation/smith-gold.html>.

to separate. This is the exercise of discipline in reverse. It is how we view our separation.”<sup>3</sup>

The fathers of the PCA claimed that they were a continuing church. In their estimation, alien theological influences had moved the PCUS from its historic commitment to Reformed doctrine and good order. The PCA, by contrast, sought to return to the roots of its American Presbyterian heritage, being the true heirs of the old Southern Presbyterian Church. A self-conscious identity as a continuing church is readily apparent when one peruses the founding documents of the PCA. The fact that the PCA took its *Book of Church Order* from the PCUS highlights the continuing identity of the PCA. However, the PCA was not in 1973 nor in 2023 a mere re-creation of the PCUS. As the theological currents of 1860 shaped the formation of the PCUS, so the loss of the PCUS to the liberals shaped the formation of the PCA in 1973. The reaction of the fathers of the PCA to the struggle for the PCUS led to one of the distinctive marks of the PCA’s approach to polity, the PCA’s commitment to “grassroots Presbyterianism.”

Grassroots Presbyterianism is a distinctively Southern Presbyterian approach to polity, particularly associated with the theologians of the South Carolina Low Country and old Columbia Seminary. A grassroots approach to Presbyterianism is a bottom-up model where the lower-level courts are primary, and the higher courts exist to serve and support the lower courts by establishing the constitution, maintaining discipline, and providing ministry support. The founders of the PCA left the PCUS in part because, as L. Roy Taylor summarizes, the “emergence of an increasingly coercive denominational church polity.”<sup>4</sup> The PCA, then, was founded in part to practice discipline but without a hierarchical or coercive system of government.

What does a system of church discipline look like that is equally committed to being serious about enforcing doctrinal orthodoxy while also protecting the rights of the lower courts? This article will trace the history, theory, and practice of discipline in the

PCA. The first fifty years of the PCA have been marked by a heroic struggle for its birth, remarkable growth, serious difficulties, and sometimes contradictory forces at work. These same dynamics are present in the way the denomination has sought to maintain order through discipline. This article will explain the original shape of the PCA’s *Rules of Discipline*, how the process of handling judicial cases developed at the level of the General Assembly, and detail some important cases that set the tone for the denomination’s authoritative interpretation of the constitution.

#### THE STARTING PLACE: THE 1933 BCO

Many newly ordained pastors have experiences in their first pastorate for which they feel completely unprepared. “They didn’t teach me about this in seminary,” has been uttered by many a frustrated novice wading through the BCO. One can only imagine how the founding fathers of the PCA must have felt as they attempted to create a new denomination, and the sheer volume of sacrifices that they made in order to create the PCA. The complexities of forming a new denomination were legion. One vital aspect was the formation of the constitution of the new Presbyterian church. C. S. Per Almquist gives an able summary of the formation of the BCO in his D.Min project “Presbyterian Polity in Practice: A Commentary on the *Book of Church Order* of the Presbyterian Church in America.”

The BCO began to take shape after the Convocation of Sessions in May of 1973. The Convocation of Sessions was an effort years in the making. The hard work of the men who called for the convocation was successful—the elders present voted 349 to 16 to begin forming a new denomination. The Convocation recommended that the new denomination begin with the 1933 draft of the PCUS BCO. They also called for an Advisory Convention in August of 1973 to further the preparation for the first General Assembly. The Convocation also appointed an Organizing Committee that in turn appointed a Committee on Constitutional Documents to begin drafting the BCO.<sup>5</sup>

Why would the Committee on Constitutional Documents begin with the 1933 PCUS BCO in particular? In the eyes of many founders of the PCA, the 1933 PCUS BCO was the last iteration of the PCUS constitution before the liberals began inserting their influences in the courts of the church. E. T. Thompson argues that 1935 was the turning point where the PCUS began to forsake one of the essential elements of its conservative legacy, the doctrine of the Spirituality of the Church.

3. The Presbyterian Church in America, *MIGA*, 44.

4. L. Roy Taylor, “The Presbyterian Church in America: Non-Hierarchical Presbyterianism” (St. Louis, MO, n.d.), p. 1, PCA Historical Center, [https://www.pcahistory.org/mo/taylorLR/taylor\\_non-hierarchical.pdf](https://www.pcahistory.org/mo/taylorLR/taylor_non-hierarchical.pdf); See also L. Roy Taylor, “The Uniqueness of PCA Polity” (St. Louis, MO, n.d.), PCA Historical Center, [https://www.pcahistory.org/mo/taylorLR/TaylorLR\\_12152009\\_Uniqueness%20of%20PCA%20Polity.pdf](https://www.pcahistory.org/mo/taylorLR/TaylorLR_12152009_Uniqueness%20of%20PCA%20Polity.pdf).

5. C. S. Per Almquist, “Presbyterian Polity in Practice: A Commentary on the Book of Church Order in the Presbyterian Church in America” (Doctor of Ministry, Charlotte, NC, Reformed Theological Seminary, Charlotte, 2023), pp. 83–86.

Morton Smith agrees with Thompson that 1935 was the time when liberals, such as Thompson, began to direct the PCUS towards liberalism. The GA of the Southern Presbyterian Church appointed a Committee on Social and Moral Welfare in 1934. Once that committee reported back to the GA in 1935, the direction of the denomination began to change. Hence, the fathers of the PCA started with a version of the *BCO* that predated the influence of liberalism in the mother church.<sup>6</sup>

#### THE ADOPTION OF THE RULES OF DISCIPLINE

The constitutional history of the PCA began on December 4, 1973, in Briarwood Presbyterian Church in Birmingham, Alabama. The fledgling denomination had to create every part of the constitution, every permanent committee, and establish every procedure out of whole cloth. For instance, the Assembly had to adopt rules for electing a Moderator immediately before electing its first Moderator. The First Assembly set the basic structure of the *BCO* but would perfect it over the next several Assemblies. The Rules of Discipline were adopted as presented by the Committee on Constitutional Documents without any debate or amendments.

Comparing the 1933 PCUS *BCO*'s Rules of Discipline to the 1973 PCA *BCO*'s Rules of Discipline shows them to be nearly identical. The layout, number and order of chapters, and chapter headings are all identical in both documents. Perhaps the significant difference in the PCA version of the Rules of Discipline pertains to process against a minister. PCUS *BCO* paragraph 217 states "Process against a Minister shall be entered before the Presbytery of which he is a member." The PCA equivalent, *BCO* 8-1, contains a significant addition. "Process against a Minister shall be entered before the Presbytery of which he is a member. *However, if Presbytery refuses to act in doctrinal cases or public scandal, and other Presbyteries request the Assembly to assume original jurisdiction, the Assembly shall do so.*" (emphasis added) Here one sees the founding fathers wanted a denomination where ministers/teaching elders could be held accountable for their doctrine and practice. Even in situations where the Presbytery fails to enforce the standards of the church, the PCA would have recourse to bring judicial proceedings against a minister at the level of the General Assembly. The PCA would eventually renumber the *BCO* by introducing the PCUS practice of a continuous numbering system running through the Form of Government, the Rules of Discipline, and the Directory of Worship, but retain the PCA practice of numbering the paragraphs according

to chapter, section, subsection, etc. PCA *BCO* 8-1 would eventually become *BCO* 34-1. The current language of 34-1 retains the phrase "refuses to act" but adds additional qualifiers, which make it arguably the most controversial clause in the *BCO*.

#### FORMING THE RULES OF DISCIPLINE

The Rules of Discipline were adopted without comment or revision at the first General Assembly. However, Per Almqvist notes that the Assembly approached the Constitution as a work in progress for the first several meetings of the Assembly. The first Assembly was beset with certain theological and polity debates that would be present for nearly the first decade of the denomination's existence. "Among the issues receiving significant attention at the Assembly," Per Almqvist writes, "were: (1) church property, (2) miraculous gifts, (3) the length of the term of service for church officers, and (4) ruling elders administering the sacraments. The issue of church property, a major issue in the separation from the PCUS, was addressed with the inclusion of what is now *BCO* 25-8 through 11."<sup>7</sup>

The divided attention of the Assembly and the sheer volume of constitutional material to be ratified caused the Assembly to suspend the normal process of constitutional amendment. The first page of the constitution recorded in the minutes of the first GA contained the following comment. "Note: The procedure for amending the Book of Church Order, 27-2, was suspended by the First General Assembly until after the final report of the Constitutional Documents Committee to the Second General Assembly."<sup>8</sup> Hence, the *BCO* was adopted at the first General Assembly, but the document was not set in stone.

The editorial work on the *BCO* continued at the second General Assembly in earnest. Presbyteries and commissioners proposed numerous changes both to the Form of Government and the Rules of Discipline. Per Almqvist notes one communication alone requested forty-seven amendments to the *BCO*.<sup>9</sup> The Assembly amended the Form of Government one hundred times at the second GA.<sup>10</sup> The Assembly also edited the Rules of Discipline. The changes were fewer in number and significance when compared to the edits to the Form of Government. However, some significant insertions were

6. Per Almqvist, "Presbyterian Polity in Practice," pp. 86-89.

7. Per Almqvist, "Presbyterian Polity in Practice," p. 90.

8. The Presbyterian Church in America, *MtGA*, p. 127.

9. Per Almqvist, "Presbyterian Polity in Practice," p. 94.

10. Per Almqvist, "Presbyterian Polity in Practice," p. 94.

made. For instance, the Assembly inserted the well-known section that discipline is for the purpose of glorifying God, the purity of the church, preserving the saints, and recalling wayward sinners.<sup>11</sup> The Assembly set the meeting of the third Assembly as the deadline to continue editing the Rules of Discipline without moving through the normal process of constitutional amendment.<sup>12</sup>

The Constitutional Documents Committee brought a report to the third General Assembly in 1975 that contained a number of minor changes to the Form of Government and the Rules of Discipline.<sup>13</sup> The most significant change to the Rules of Discipline was the insertion of a new paragraph specifying a fifteen (15) day window to file a complaint with an added warning against circularizing the court ahead of the hearing of the complaint.<sup>14</sup> The Committee recommended that the Assembly set the then-current form of Part II of the BCO in stone so that any further substantial edits must go through the normal process of constitutional amendment, where two consecutive Assemblies must vote along with two-thirds of the Presbyteries concurring. Finally, the Rules of Discipline were set for the denomination.<sup>15</sup>

The enduring quality of the Rules of Discipline is evidenced in how little has changed since 1975. Indeed, there are a few significant changes to the judicial process of the denomination. However, the basic structure of the Rules of discipline have remained largely unaltered from the time the denomination set the Rule of Discipline in stone.

#### THE COMMITTEE ON JUDICIAL BUSINESS

An important feature of discipline in the early days of the General Assembly was the Committee on Judicial Business. The Organizing Committee appointed a number of standing committees to prepare the business for the Assembly.<sup>16</sup> The Judicial Committee was a

subcommittee of the Organizing Committee, but was elected as a permanent committee. The initial members considered of ruling elders Leon Hendrick (chairman), John Glasser, Ralph Langford, John Barnes, and James Campbell, along with teaching elders Todd Allen and Charles McNutt. The first permanent committee was populated with the members of the original subcommittee, with Ruling Elder Robert Canada serving as convener, replacing Leon Hendrick.<sup>17</sup>

The Judicial Business Committee's first report represented its broad mandate. The Committee reported the incorporation of the denomination with the state of Delaware, suggested that all presbyteries likewise incorporate themselves with the state of Delaware, and made recommendations concerning overtures relating to presbytery boundaries.<sup>18</sup> There was as of yet no defining document for the duties of the Committee as the *Rules of Assembly Operation* had yet to be drafted. The second General Assembly saw a more focused set of duties for the Committee. The report of the Committee detailed their main work as supervising the legal counsel for the denomination and offering support to congregations or presbyteries who were facing legal challenges, particularly when dealing with property claims from the PCUS.<sup>19</sup>

By the third General Assembly, the denomination had expanded the role of the Judicial Business Committee. The report of the Committee on Judicial Business continued to report on litigation that churches were facing. In a supplemental report to the Assembly, the committee noted the awkward situation that while the Judicial Subcommittee had existed since the first Assembly, and the Assembly had voted to elevate the Judicial Subcommittee to a permanent committee, but the Second Assembly forgot to write the committee into the bylaws of the denomination. The Committee Report explains:

"In the restructured Bylaws adopted by the Second General Assembly in Macon, Georgia, in September, 1974, the Committ [sic] was not included. However, the rules for Assembly operation (Appendix A, Section 7-6, page 91) do provide for such an Assembly Committee with responsibilities as originally envisioned by the Advisory Convention. Further, under the duties for the Committee on Administration (Journal, page 73, item 8), approved by the Assembly, a Sub-Committee on Judicial Business is provided for but in neither reference is there any specific provision regarding the number of members nor the method of their selections."<sup>20</sup>

11. PCA, *The Minutes of the Second General Assembly of the Presbyterian Church in America* (Lawrenceville, GA: Committee on Christian Education and Publication, 1974), p. 60.

12. Per Almquist, "Presbyterian Polity in Practice," p. 95.

13. PCA, *The Minutes of the Third General Assembly of the Presbyterian Church in America* (Lawrenceville, GA: Committee on Christian Education and Publication, 1975), pp. 211-13.

14. PCA, *M3GA*, p. 214.

15. PCA, *M3GA*, p. 211; Per Almquist, "Presbyterian Polity in Practice," p. 96.

16. Per Almquist, "Presbyterian Polity in Practice," p. 84.

17. PCA, *M1GA*, p. 25.

18. PCA, *M1GA*, p. 36.

19. PCA, *M2GA*, pp. 147-48.

20. PCA, *M3GA*, p. 178.

The Committee recommended amending the bylaws and solidifying the existence and purpose of the committee across the RAO and other Assembly documents. The purpose of the Committee was expanded to move beyond advising in cases of litigation. The Committee began to take on the roles of advice regarding litigation, constitutional matters, and judicial matters. The language drafted for the purpose of the Committee stated, “The Committee shall advise the Assembly on all constitutional matters, and between Assemblies shall function as advisory to the Stated Clerk and the Committee on Administration. The Committee shall not be separately funded but administratively will operate as a Sub-Committee of the Committee on Administration. The Committee will make direct report to each Assembly.”<sup>21</sup>

#### THE PROCESS FOR THE FIRST COMPLAINTS

The first judicial matter arising from the presbyteries for the newly formed denomination was a complaint against Pacific Presbytery submitted to the third General Assembly. The Stated Clerk noted that he had received the proper paper work for the complaint of Revs. Harold L. Webb and Thomas Miller against Pacific Presbytery. The case is fascinating in its own right and as a window into the early, chaotic life of the denomination after its founding. Revs. Webb and Thomas complained that the presbytery conducted significant business at a called meeting without the three ruling elders required by the constitution for a quorum. The moderator of the presbytery overruled a point of order objecting to the lack of quorum, stating that the urgent business on the docket needed to be addressed. The moderator also noted that previous meetings had been held without the necessary number of ruling elders, so the court should follow suit. When Revs. Webb and Thomas brought their complaint to the GA, the reply of the presbytery admitted that they were correct. The Presbytery reply states, “The Stated Clerk reviewed the minutes of all previous meetings and reported that, since the Presbytery’s founding, no meeting had had the proper number of accredited ruling elders present. (We have few churches and they are widely scattered.)”<sup>22</sup> The Presbytery claimed that the two complaints objected to the lack of a quorum in this meeting because one of the candidates for ministry held to a Billy Graham style of “ecumenical evangelism,” and they wanted to oppose his ordination.<sup>23</sup>

The Clerk referred the complaint to the Committee

of Commissioners on Judicial Business, which recommended that their committee be allowed to study the matter and report back to the assembly for adjudication. The Assembly accepted this proposal and allowed the Committee to report back at a later time. The committee’s report was anticlimactic. The Committee noted the logistical difficulties and, hence, their sympathy to Pacific Presbytery. However, the Committee argued that no presbytery may conduct serious business in the absence of a quorum. Yet the Committee was informed that Presbytery rectified the problem by adopting the actions of the quorum-less-meeting in a subsequent meeting where a quorum was present. In light of the Presbytery’s subsequent action, the Committee recommended and the GA concurred that the case should be dismissed.<sup>24</sup>

The first judicial action of the fledgling denomination was not a significant action, except that it demonstrates a difference between the early approach to discipline in the PCA compared with the present. The third General Assembly did not refer the case to a commission for adjudication. Instead, the recommendation was that the Assembly hear the matter for itself, aided by the relevant Committee of Commissioners. The size and ethos of the denomination changed from these early days to where now most of the judicial cases brought to “the Assembly” go before the SJC.

#### THE 13<sup>TH</sup> GENERAL ASSEMBLY: A PIVOTAL YEAR

The first move towards a new mode for discipline at the Assembly level came out of a study committee appointed at the 12<sup>th</sup> General Assembly. The denomination was experiencing growing pains in a number of areas, including the volume and nature of discipline cases, on the heels of Joining and Receiving into the PCA of the Reformed Presbyterian Church, Evangelical Synod in 1982. The 12<sup>th</sup> General Assembly instructed the moderator to appoint a study committee to make recommendations to the 13<sup>th</sup> General Assembly concerning the structure of the PCA, judicial processes, and the relationship between the permanent committees, Stated Clerk’s office, and the other committees of the Assembly. Moderator TE James Baird appointed teaching elders Frank Barker, Paul Gilchrist, William Barker, and ruling elders Richard Chewning, Robert Canada, and Jack

21. PCA, *M3GA*, p. 178.

22. PCA, *M3GA*, p. 50.

23. PCA, *M3GA*, p. 50.

24. PCA, *M3GA*, pp. 85–86.

Williamson, with the Moderator and then Stated Clerk Morton Smith to serve as consultants.<sup>25</sup>

The Structure and Procedure Committee noted the wide scope and breadth of the task assigned to them. “As your Committee began to study and deliberate upon these issues, it soon recognized the enormity of the task assigned. After a decade of existence, PCA structure, organization and procedure needed reflection and refinement. Your Committee received helpful suggestions from many of you in many of these areas. The Committee has considered each such suggestion. The Committee feels that we should not move too rapidly but gradually after the Church as a whole reaches a consensus.”<sup>26</sup> The Committee chose to begin with two pressing matters, procedures for discipline and the idea of a representative assembly. The Committee’s proposals for a delegated assembly model never came to fruition, but their recommendations would set into motion the creation of the Standing Judicial Commission.

The Committee assigned major areas of its work to a particular member of the committee. Future PCA Stated Clerk, and former RPCES Clerk, TE Paul Gilchrist was assigned the work regarding “Judicial Business Procedure.” The portion of the report dealing with judicial matters, which one presumes was primarily authored by TE Gilchrist, begins by noting the burden placed on the Assembly by the growing number of judicial issues.

In the last few years, the General Assembly of the Presbyterian Church in America has had to deal with an inordinate number of complaints and appeals from decisions of lower courts. Whatever reasons may be given, such as ineptitude of lower courts, legalism on the part of some, inadequacy or lack of clarity in the Book of Discipline, etc., nevertheless it has become sufficiently clear that an inordinate amount of time has been spent by a large number of commissioners to General Assembly, and that some unsatisfactory results have emerged. These seem to point up the inadequacy and inefficiency of the current system of judicial process.<sup>27</sup>

The tone of the above quotation is interesting in historical perspective. One is given the impression that there was much frustration with the operation of discipline in the denomination. The language about ineptitude, legalism, and lack of clarity in the “Book of Discipline” (a misnomer, as the relevant portion of the BCO is the Rules of Discipline) make this frustration palpable even when read over thirty years later.

The Structure and Procedure Committee made two initial recommendations. The first was that the Assembly create a Permanent Judicial Commission. Their proposal led to the formation of the SJC, but their initial formulation looked significantly different from the PCA’s current structure. The Committee recommended that the GA Permanent Commission have the power to refer judicial matters before the Assembly to Regional Commissions. “These Regional Commissions,” the report explained, “would be responsible for the law-of-the-case, hearing of witnesses, the finding of facts, and decisions which would be final and conclusive unless appealed to the Permanent Judicial Commission. The Permanent Judicial Commission would serve as an appellate court which would only review the record, check on procedures, but would not try the case de novo. It may decide the record is clear and judgment is correct, and the decision would stand. However, if it wishes, it may hear oral arguments citing only the two parties to appear, but no additional witnesses.”<sup>28</sup>

The Regional Judicial Commissions would be appointed from TEs and REs within the geographical vicinity of presbytery that originates the case. Each Presbytery would be required to nominate two TEs and two REs who could be called upon to constitute a Regional Commission. Perhaps most interestingly, the Structure and Procedure Committee’s proposal provided no avenue for appealing its decision or any mechanism for bringing a matter directly before the Assembly.

The other recommendation was to turn the then current committee on Judicial Business into a Committee on Constitutional Business. The new committee “would have nothing to do with judicial cases. Future matters of constitutional inquiries would continue to be addressed to this Committee on Constitutional Business, but responses to such inquiries need not be reported to General Assembly and would not be binding on the Church as a whole. Such response would be merely advice to the inquirer.”<sup>29</sup>

The Committee provided a long, detailed report with its thoughts regarding a total restructuring of the Assembly, even to the point of creating a new, simpler

25. PCA, *The Minutes of the Thirteenth General Assembly of the Presbyterian Church in America* (Lawrenceville, GA: Committee on Christian Education and Publication, 1985), Appendix P, p. 313.

26. PCA, *M13GA*, p. 313.

27. PCA, *M13GA*, p. 315.

28. PCA, *M13GA*, p. 315.

29. PCA, *M13GA*, p. 316.

set of rules for parliamentary procedure to replace *Robert's Rules*.<sup>30</sup> The Committee offered the following recommendations to the Assembly:

1. That the Ad-Interim Committee be continued for an additional year to report to the 14<sup>th</sup> General Assembly.
2. That the General Assembly approve and send to the Presbyteries for action the proposed amendments to Book of Church Order Chapter 15 attached in Exhibit "A" to this report.
3. That the General Assembly approve and send to the Presbyteries for action the proposed amendment to Book of Church Order Section 14-2 as set out in Exhibit "B" of this report.
4. That individuals and churches be urged to communicate with this Ad-Interim Committee with their suggestions and reactions to this report.
5. If the Presbyterian Church in America amends its Book of Church Order chapter 15 as set out in Exhibit "A" to this report, the first class elected to the Permanent Judicial Commission shall serve for three years, and the fourth class for the full four year term; and thereafter all classes shall serve for the full four year term as set out in the Book of Church Order change.<sup>31</sup>

The report of the Ad-Interim Committee proved to be one of the more controversial matters taken up at the Assembly that year. The Moderator, RE Richard Chewning, was a member of the Committee, so he asked former Moderator TE Paul Settle to assume the Chair for the Committee's report. The first recommendation was put on the floor. The continuation of the Committee was apparently controversial. The Assembly did not vote on the recommendation before an order of the day delayed the vote until later in the Assembly.<sup>32</sup> When the Committee resumed its report, RE Jack Williamson, Chairman of the Committee, removed the first recommendation from consideration. The Minutes state, "By ommon [*sic*] consent, Mr. Williamson was permitted to withdraw Recommendation 1 which had been presented Monday afternoon (13-9, p. 70), and Recommendations 1,2, 3, 4, & 5 were renumbered 3, 1, 2, 4, & 5 respectively (see Appendix P, p. 320)."<sup>33</sup>

The Assembly then began to debate the substance of report via its recommendations to begin amending the BCO. The GA's Committee of Commissioners on Judicial Business moved a report, and then a substitute motion

was made from the floor. This fairly chaotic series of events was nullified by a point of order regarding the appropriateness of taking this report without consulting the Committee on Judicial Business. A Commissioner moved that the report of the Committee is out of accord with the RAO unless it is first brought to the floor through the Committee on Judicial business and the Committee of Commissioners on Judicial Business. TE Settle sustained the point of order, and his ruling was confirmed by the house when a member of the Assembly challenged the ruling. The report was referred to relevant committees of the Assembly to be brought back later in the Assembly.<sup>34</sup>

The way in which the Assembly concluded the report of the Ad-Interim Committee was fascinating. The Committee's report was brought back to the Assembly through the Committee on Judicial Business. TE Rodney King, Chairman of the Committee on Judicial Business, noted a constitutional inquiry regarding the constitutionality of the Ad-Interim Committee on the Assembly. The query expressed concern that

"The new procedure raises the constitutional question whether the General Assembly can properly commit matters to a commission, which commission's actions are the actions of the court without the option of veto by the court (WCF XXXI:3). The PCA, in its formation, consciously avoided this procedure. On the other hand, the new process, allows:

- a) appeal to a General Assembly regional judicial commission;
- b) appeal to and review by the General Assembly's Permanent Judicial Commission;
- c) control by General Assembly through the nomination and election procedure which is similar to the control currently exercised over trustees of agencies in the PCA (e.g., GA Bylaws IV Section 1-2-d).<sup>35</sup>

The Assembly also discussed the possibility of moving towards a delegated assembly. The following recommendations from the Committee on Judicial Business were adopted by the Assembly:

30. PCA, *M13GA*, p. 320.
31. PCA, *M13GA*, p. 321.
32. PCA, *M13GA*, p. 70.
33. PCA, *M13GA*, p. 83.
34. PCA, *M13GA*, p. 83.
35. PCA, *M13GA*, p. 120.

1. That the advice of the Committee on Judicial Business regarding Constitutional Inquiry (Appendix I, I.C. 1, p. 245) from the Ad-Interim Committee be ratified; that the proposed amendments touching both judicial process and representative assembly (Appendix P, p. 313) be referred back to the Ad-Interim Committee; and that it be noted that the proposal of the Ad-Interim Committee's report marks a radical departure from the original tenets of the Presbyterian Church in America.
2. That the Ad-Interim Committee be continued for an additional year to report to the Fourteenth General Assembly, that the Stated Clerk add to the Ad Interim Committee four additional members who have some differences with the report and who would bring other perspectives to the Committee, and that all future recommendations of the Committee be communicated to the presbyteries at least 90 days before the next General Assembly.<sup>36</sup>

Notice several important facts as the Assembly considered erecting a permanent judicial commission. First, the idea of a permanent judicial commission was extremely controversial. Perhaps the antipathy of the Assembly towards a standing judicial commission will strike younger ministers in the PCA as odd, given that many younger minister have known the denomination to have such a body for their entire lifetime. However, the grass-roots impulse was still strong at the 13<sup>th</sup> General Assembly. The Commissioners appeared to be very hesitant to move in this direction.

Second, notice that the original formulation of a standing judicial commission had no real mechanism for appealing a decision to the floor of the Assembly. The Assembly would exercise influence by way of appointing the membership of the commission, but the GA would have no review and control over the commission. This appears to be one of the most controversial features of the Ad-Interim Committee's recommendation, if not the single most controversial aspect.

Third, notice that the Assembly wanted some other voices in the process. The Assembly wanted more men appointed to the Committee in order to bring other perspectives to the discussion. That sort of recommendation is orderly but unusual in that

study committees are usually left with their original composition if their work is continued for another year. It is probably not too much speculation to assume that the sweeping, radical recommendation of the Committee caused the Assembly to bring so much balance to the membership of the Committee. The way in which the Assembly chose to add members is even more striking. Ordinarily, the Moderator appoints members to a committee such as this one. However, the Moderator was a member of the Committee. The Assembly authorized the Stated Clerk, TE Morton Smith, to add the four additional members to the committee.

Finally, the Assembly wanted more time to digest any further recommendations of the committee. The Assembly asked that the Committee issue its report to the Presbyteries at least 90 days before the General Assembly. This timeframe certainly shortened the working time for the committee given the demands of writing, printing, and mailing the report according to this time frame.

#### THE 14<sup>TH</sup> GENERAL ASSEMBLY: A WORK IN PROGRESS

The Ad-Interim Committee on the General Assembly brought another report to the 14<sup>th</sup> General Assembly in Philadelphia, Pennsylvania in 1986. TE Morton Smith added four members to the Committee: Ruling Elder David Coffin, Ruling Elder Bruce Ferg, Teaching Elder George Knight III, and Teaching Elder Paul Settle. The Committee spent the year studying the philosophy and theology of the PCA's structure, the possibility of a representative assembly, and the judicial process of the General Assembly. Numerous individuals sent correspondence regarding these areas, and the Committee sent representatives to some presbyteries to field questions and address concerns.<sup>37</sup> The Committee focused its work on three areas, the theological and philosophical basis for PCA Polity, the idea of a representative assembly, and judicial process.

The Committee noted up front that it responded to the widespread concern expressed in the last Assembly that the GA wanted to retain some direct method of intervening in judicial cases. The Committee proposed that the Assembly retain "final action on each complaint or appeal."<sup>38</sup> The Committee's proposal focused exclusively on BCO 15. They proposed an amendment to BCO 15-1, adding BCO 15-3 through 15-7, and renumbering the then 15-4 as 15-8. The Committee was not unanimous in

36. PCA, *M13GA*, p. 121.

37. PCA, *The Minutes of the Fourteenth General Assembly of the Presbyterian Church in America* (Lawrenceville, GA: Committee on Christian Education and Publication, 1986), Appendix P, p. 425.

38. PCA, *The Minutes of the Fourteenth General Assembly of the Presbyterian Church in America*, p. 425.

its recommendation. In fact, two members of the Committee filed a minority report.

The amendment for 15-1 allowed for judicial commissions to hear the case, but that their actions would be subject to approval by the appointing court, with the right to appeal or complain to the appointing court or the next higher court, excluding the General Assembly Permanent Judicial Commission.

It shall keep a full record of its proceedings, which shall be submitted to the court appointing it, which if approved, shall then be entered on its minutes, and regarded and treated as the action of the court. In the event of complaint or appeal against an action of a commission, such complaint or appeal shall be made to the court appointing said commission, or the next higher: except there may be no complaint or appeal by any party in the case from a final decision or judgment of the Permanent Judicial Commission of the General Assembly. Every commission must be appointed by the court which constitutes it, except the Permanent Judicial Commission of the General Assembly which shall be elected as provided in BCO 15-4 and the Regional Judicial Commissions may be constituted as provided in BCO 15-5.<sup>39</sup>

The proposed language of BCO 15-3 would allow for parties in cases before Presbyteries to request a hearing by a commission. The language of the proposal strongly encouraged Presbyteries to use a judicial commission but did not require it. “Presbytery may of its own motion commit any judicial case within its jurisdiction to a commission, and should ordinarily follow this procedure, especially when requested by one or both parties to the case. Such a commission shall be appointed by the Court from its members other than members of the court from which the case comes up.”<sup>40</sup> Presbytery would have the right to approve all actions of judicial commissions. Should the Presbytery reject the decision of the commission, it could either hear the case itself or appoint a new commission.<sup>41</sup>

The General Assembly would have a new Permanent Judicial Commission according to the Committee’s plan. The Commission would have eight members with membership parity between teaching and ruling elders. (Proposed 15-4) The new Permanent Judicial Commission would be able to commit cases to regional commissions for the hearing of cases complained or appealed to the GA. Here, the report is ambiguous. It assumes that the Permanent Commission would not hear the cases directly, but leaves the door open for that

possibility. The proposed language for BCO 15-5 read, “The Permanent Judicial Commission may delegate specific judicial cases to a Regional Judicial Commission which shall be responsible for adjudication of the case.”<sup>42</sup> The regional commissions would be chosen from neighboring presbyteries, and each presbytery would be required to nominate a teaching and ruling elder to be on standby for such duties. The proposal for BCO 15-6 states that the regional commissions shall hear the case according to the Rules of Discipline. The regional commission would submit its decision to the GA Permanent Commission for report to the GA.<sup>43</sup>

The GA would receive the actions of the regional committees through the Permanent Commission. The actions of the regional commissions would be final if approved by the GA. Significantly, the vote to approve the actions of the regional commission would be a non-debate motion. Hence, there could be no debate or discussion. If the Assembly did not approve them, the Assembly “must set the case for hearing before the General Assembly or a Special Commission appointed by it to try the case on the record as delivered to the Stated Clerk. Such Special Commission shall then proceed and shall report its judgment, in like manner, to the General Assembly for its approval or disapproval.”<sup>44</sup>

Notice three aspects of the recommendation from the committee regarding judicial process. First, the Committee responded to the push-back from the Assembly regarding its authority to review judicial decisions of a commission. The report from the Committee to the 13<sup>th</sup> GA allowed for the Permanent Commission to have the final say in all judicial matters. The report to the 14<sup>th</sup> General Assembly allowed for approval by the GA. It even went so far as to allow the Assembly to try the case itself and approve all actions of all judicial commissions, permanent or ad hoc. These modifications represent a substantial change in the Committee’s proposal.

Second, notice the ambiguity of the proposal regarding the function of the GA Permanent Commission. According to the proposal, the GA had the right to hear cases that were adjudicated by the regional commissions. The Permanent Judicial Commission reports the actions of the regional commissions, but the report says nothing about the Permanent Commission

39. PCA, *M14GA*, pp. 438–39.

40. PCA, *M14GA*, p. 439.

41. PCA, *M14GA*, p. 439.

42. PCA, *M14GA*, p. 439.

43. PCA, *M14GA*, p. 439.

44. PCA, *M14GA*, p. 439.

hearing cases directly. The problem here is that the language of the proposed BCO 15-5 said the Permanent Commission “may” refer to regional commissions, while the other sections assume that regional commissions will be the entities hearing complaints and appeals. It seems that the Permanent Commission’s only significant duty would be to select the presbyteries from which the members of the regional commissions are drawn.

Finally, notice the inchoate polity of the proposal. The PCA has three levels of church courts, Sessions, Presbyteries, and the General Assembly. Unlike the PCUS, the PCA did not have Synods. However, the proposal seems to have a synodical impulse to it, allowing for regional commissions to be appointed with members who have not been vetted by the GA, except through the Permanent Commission. This proposal appears to take a step towards Synodical functions, but then proposals of the Committee do not recommend adding another level of church court to the polity of the PCA.

The recommendations of the Committee were filed with the General Assembly along with a minority report from two of its members, TE George Knight and RE Bruce Ferg. The minority opposed all of the recommendations of the majority, either by asking their recommendations to be received as information without action, or rejected in favor of proposals by the minority. The Minority Report concerning judicial process argued against the Majority on the basis of the report to the 13<sup>th</sup> GA, which is the only place where the majority argued for a pressing need for change in PCA judicial procedure. According to the Minority, the arguments of the Majority in favor of a radical change in PCA polity “cannot survive analysis.”<sup>45</sup>

The Minority rejected the reasoning of the majority at two significant points. First, the Minority argued that there are not an inordinate number of cases coming before the GA. The new system, according to the Minority, would not address the purported root-issue of litigiousness. “The proposed new procedures do nothing at all to cure what the majority alleges to be the root of the problem— litigiousness at the presbytery level.”<sup>46</sup> Moreover, the Minority argued that there is not an inordinate number of judicial cases. The members created a table representing the total number of complaints or appeals at each GA, noting in parenthesis the number of unique cases (since some cases produced

multiple complaints). The Minority listed the number of cases with the following commentary

1—0  
2—0  
3— 1  
4—2  
5— 5  
6—2  
7—0  
8— 5  
9—4  
10—6 (5)  
11—15 (7)  
12—7 (4)  
13—6 (2)

At Assemblies Ten through Thirteen there were instances of multiple cases arising out of a single proceeding below which were consolidated for hearing, and of cases not heard for various procedural reasons, so the number of cases really heard in those years is the smaller figure in parentheses. The total for the 13 years therefore is 35, or only 2.7 cases per year. That hardly seems “inordinate,” especially in light of our denomination’s history. Our church has had to struggle with the process of becoming truly presbyterian in its polity, with a working system of graded courts. The only way to preserve some degree of doctrinal integrity during the declension of the PCUS was to resort to de facto Congregationalism. That this had occurred (though not the reason for it) was recognized by the PCUS itself in a report presented to its 1970 General Assembly, which is reprinted in *Dim Gold* at 379–380. Return to real Presbyterianism has naturally created some stresses, which occasionally result in judicial cases.<sup>47</sup>

The Minority argued from Scripture that the hard work of the GA regarding discipline is an important part of the church’s work. “Far more important,” the Minority writes, “is the fact that, though it may be unpleasant (like bitter medicine or parental chastisement), a vigorous system of judicial process is absolutely necessary. James 3:17 teaches us that ‘the wisdom from above is first pure, then peaceable;’ indeed, without purity, the peace cannot long exist.”<sup>48</sup> The Minority report also rejected the premise of the Majority report, namely, that an increasing number of judicial cases is a problem. The zeal for purity, according to the Minority report, is not a problem. “Perhaps instead of complaining about

45. PCA, *M14GA*, p. 445.

46. PCA, *M14GA*, p. 445.

47. PCA, *M14GA*, pp. 445–46.

48. PCA, *M14GA*, p. 446.

too much litigation in our church courts,” the Minority responded, “we should be thanking God for the zeal of a Phinehas here and there among us. If maintaining the purity of our doctrine and our form of government through judicial processes is too bothersome for us to do, so that our Assemblies become nothing but overgrown missions conferences, we might as well distribute our assets to parachurch groups and go home, because we will have forfeited the right to identify ourselves as the Church.”<sup>49</sup>

Second, the Minority argued that the proposal of the majority will not fix any of the problems identified by the Majority. The Majority complained of the “ineptitude of the lower court.” Problems with the process of the lower courts will not be addressed by the proposal of the Majority. How so? The Minority argued that if there are problems in the process of lower courts, the current system is addressing those inadequacies through review and control. If there is nothing wrong with the process of the lower court, then the proposal of the Majority does nothing new. Moreover, the Minority argued that addressing problems at the lower court level through education would be more effective than adding bureaucracy to the judicial process. “Adding levels of judicial bureaucracy,” the Minority writes, “may lengthen the process, but the regional and permanent judicial commissions will be staffed by the same sort of allegedly inept presbyters as those who supposedly are creating the problem. If, as was suggested in the Committee meetings, review of lower court actions is made difficult by poor records, the answer is to educate the presbyters making the records, not interpose whole new levels of courts.”<sup>50</sup> If there is a problem with inept process in the lower court, the majority proposal would not address the root problems.

The Majority also identified a legalistic spirit and lack of clarity in the BCO as root causes for the increasing number of judicial cases. The Minority argued that neither of these issues are apparent in the recent history of the assembly. The allegations of legalism need to be substantiated, as do the assertions that the BCO is not sufficiently clear. The BCO can be rewritten by overture and interpreted by judicial precedent.<sup>51</sup>

The Minority concluded that the problems identified by the Majority are less than self-evident. Even if there were significant issues, the Minority argued that the Majority’s proposal would compound present problems in a number of ways. The Majority’s proposal goes contrary to the will of the 1984 General Assembly that rejected the idea of a permanent judicial commission.<sup>52</sup> The Minority also found the idea of the regional

commission as problematic. The Minority gave a lengthy quote from Samuel Baird.

A commission is an extraordinary committee of a Church Court, appointed either for some special business, or to take cognizance of such as may arise during the vacations of the Court. It differs from an ordinary committee in that it is empowered not only to inquire and prepare business for the action of the court, but also provisionally to come to any such determinations, and enforce any such decisions, as would be within the competence of the court itself. It differs from a court, as its decisions and determinations are merely provisional, and of force ad interim; and must be subjected to the revision and ultimate determination of the court, by which they may be set aside and annulled, and which alone can by its sanction give them permanent authority. (Baird’s Digest at 213; emphasis added.)<sup>53</sup>

Interestingly, the Minority does not raise issue with the GA voting on the reports of the regional commissions without debate. They did raise the issue regarding presbyteries not having the right to debate. According to the Minority, the Majority, “proposes to hamstring the presbyteries in their consideration of their own cases by explicitly depriving them of a right they at least arguably possess now, the prerogative to fully debate their own commission reports. (See Exhibit C, proposed new BCO 15-3.)”<sup>54</sup> However, the proposed language for BCO 15-3 does not explicitly deny presbyteries the right to debate judicial cases. The language requires presbyteries to follow the Rules of Discipline, but there were no rules prohibiting presbyteries from debating judicial cases. But the Minority clearly took issue with what they saw was an increasing bureaucracy in the denomination. They expressed concerns that a permanent commission would lead to a similar situation that they experienced in the PCUS, where the Assembly would merely rubberstamp the decision of the commission.

The Minority concluded on a strong tone of condemnation. “The conclusion is plain.” The Minority wrote, “The proposal for the Regional and Permanent Commissions is pernicious in the extreme and should be totally rejected. Does that mean that our procedures

49. PCA, *M14GA*, p. 446.

50. PCA, *M14GA*, p. 446.

51. PCA, *M14GA*, p. 446.

52. PCA, *M14GA*, p. 446.

53. PCA, *M14GA*, p. 446.

54. PCA, *M14GA*, p. 446.

are so perfect as to be beyond improvement? No; but the changes that should be made go in precisely the opposite direction from those proposed by the majority.”<sup>55</sup> What did the Minority propose instead? They did not produce counter BCO language. Rather, they offered a general proposal, requested that the Assembly reject the majority’s judicial recommendation, and instruct the Ad-Interim Committee to draft BCO language in keeping with the philosophy of the Minority. They argued that the Assembly should function merely as an appellate court, only reviewing the written record of the lower courts. A committee to help “screen” the actions of the lower court with recommendations to the Assembly along with the right of parties in the cases to produce briefs would enable the Assembly to make coherent decisions when reviewing the lower court.<sup>56</sup>

With Majority and Minority reports coming before the floor, the stage was set for a debate at the 14<sup>th</sup> GA. The Ad-Interim Committee brought their report to the floor through the Judicial Business Committee. The Assembly decided to function as a committee of the whole in order to have public discussion on every aspect of the report without the need or possibility of motions being made.<sup>57</sup> When the Assembly took up the report of the Committee, Alan Chewing relinquished the chair to TE Cortez Copper, because Chewing was a member of the Ad-Interim Committee. The Assembly allowed the Majority to present with the Minority report being moved as a substitute motion. The first recommendation regarding the philosophy and theology of PCA polity from the Minority failed to prevail on a vote of 372-373, with the acting Moderator casting the deciding vote.<sup>58</sup> The minutes note that the Minority report failed to prevail. However, the floor did not accept the position of the majority. There is ambiguity in the minutes where the Stated Clerk appears to be confused about a motion to amend the recommendation of the Majority regarding judicial matters.<sup>59</sup> When the matter came before the floor for a vote, the Judicial Business Committee noted that the Majority recommended sweeping changes without all the details necessary.<sup>60</sup> Yet

the Committee did not call the Ad-Interim Committee’s recommendation out of order. The Assembly decided to refer all of the judicial matters back to the Ad-Interim Committee requesting that they work on the matter for yet another year.<sup>61</sup>

#### THE 15<sup>TH</sup> GENERAL ASSEMBLY: THE BIRTH OF THE SJC

The Committee took another year to work on the judicial matters recommitted to it. The report it brought back to the 15<sup>th</sup> General Assembly proved to be one of the more significant reports adopted by the Assembly. At the 15<sup>th</sup> Assembly, the current judicial structure of the Assembly was set. The commissioners assembled in Grand Rapids, MI approved what we now know of as the Standing Judicial Commission (SJC), the basic process for how the Assembly would handle cases through the SJC, and the function of the Committee on Constitutional Business. The creation of the SJC, like the previous reports of the Ad-Interim Committee on the structure of the PCA, was not without controversy. There were, yet again, multiple minority reports to nearly every part of the Committee’s report. Two members filed a minority report regarding the recommendations of the Committee on judicial process.

The majority of members on the committee incorporated advice and pushback from the previous Assembly debate into their new and final proposal regarding the formulation of a permanent judicial commission at the Assembly level. They incorporated three significant changes. First, The Committee noted that they took the advice of TE Don Clements in recommending that part of the functional rules regarding the SJC be placed in the RAO instead of the BCO, so that the Assembly could more easily make changes in procedural matters.<sup>62</sup>

Second, the Committee also clarified its original proposal so that presbyteries could hear the case as a whole or refer it to judicial commission. “At the presbytery level,” the Committee wrote, “this proposal would allow the presbytery the option of trying a judicial case as a whole or submitting it to a commission. The Committee felt that presbytery was small enough to be able to try the case as a whole, if it so desired.”<sup>63</sup> The Committee’s proposal would allow the court to debate the entire case if the presbytery tried the case without a commission. However, the Committee proposed that presbyteries not be allowed to debate the case when approving the actions of a commission. The Committee reasoned that a presbytery should not enter into debate

55. PCA, *M14GA*, p. 447.

56. PCA, *M14GA*, pp. 447–48.

57. PCA, *M14GA*, p. 81.

58. PCA, *M14GA*, p. 102.

59. PCA, *M14GA*, p. 106.

60. PCA, *M14GA*, pp. 107–8.

61. PCA, *M14GA*, p. 108.

62. PCA, *The Minutes of the Fifteenth General Assembly of the Presbyterian Church in America* (Lawrenceville, GA: Committee on Christian Education and Publication, 1987), Appendix S, pp. 475–477.

63. PCA, *M15GA*, p. 477.

when all of the members of the court had not heard the case. That is, since the court had not seen the witnesses, the presentation of the prosecution nor the defense, or read all the relevant documentation, it would be unjust for the court to enter into debate. “[T]o allow the presbytery to debate the case when it did not hear the witnesses, have all the facts and exhibits, nor hear the arguments of the parties, would be very frustrating to presbytery members who would be asked to make a judgment on the subjective arguments of presbyters without hearing the case. Such a debate would open the presbytery to the persuasive arguments of eloquent presbyters rather than having the protection of the checks and balances in the Rules of Discipline.”<sup>64</sup>

Third, the Committee also clarified the proposal regarding the permanent judicial commission for the Assembly by replacing the regional commissions. The concept of a regional commission was not scrapped altogether. Rather, the idea was transformed into the concept of the SJC using panels to hear cases brought to it, a process that is still used today.<sup>65</sup>

The final shape of the Committee’s recommendation was as follows. They recommended that the Assembly create the Standing Judicial Commission. The Commission would consist of twenty-four members. The membership would be nominated and appointed by the Assembly, with the rule that no presbytery may have more than one member on the commission at the same time. The SJC was to submit the following material to the sessions of the church at least thirty days ahead of the meeting of the Assembly: summary of facts, the issues of the case, the written briefs from the parties involved, the recommendations of the judicial panel (if any), the rationale of the commission, and its judgments in the case. The SJC had the option of trying a case by assigning it to a panel of its members. “Such a panel shall be chosen,” according to the Committee, “from its members who are geographically nearest to the locus of the case. Such a panel shall propose to the Standing Judicial Commission a recommended decision. We believe this will enable a panel to hear the case quickly when it arises and while all the facts are fresh on the minds of the witnesses. We believe it will work for quicker and fairer judgment.”<sup>66</sup>

To ensure that a panel’s work would be reviewed by the whole SJC, the decision of the panel would be submitted to the SJC. Both parties in the case and any member of the SJC could request the entire commission to review the matter. A review would be required when requested either by four members of the SJC or a dissenting member of the panel that heard the case.<sup>67</sup>

The Committee also recommended that the Committee on Judicial Business be transformed into the Committee on Constitutional Business. The committee would give non-binding advice to the Assembly for matters referred to it. The Committee could not take up matters of its own accord nor would it give regular reports to the Assembly. “Since its advice would be non-binding,” the Ad-Interim Committee wrote, “it would not need to report to a Committee of Commissioners nor to General Assembly, except when so requested. This would eliminate the time consuming reports to General Assembly. If the party receiving this nonbinding advice is not satisfied, your Committee believes the proper procedure to get a binding opinion is through the courts of the church by overture, judicial case, or other permissible procedures.”<sup>68</sup>

Two members decided to submit a minority report to the Assembly regarding judicial process, RE Bruce Ferg and TE George Knight. The Minority opposed the Majority on only one issue, whether or not presbyteries or the General Assembly could debate the report of a commission. The tone of the Minority report changed remarkably from the previous year. The Minority noted that much of its objections to the previous proposals of the Majority were adopted in substance in the new proposal. “The revisions in procedure offered by the Committee incorporate many of the ideas suggested by the Minority Report in 1986. The new procedures would permit more timely adjudication of judicial cases by use of the regional panels and the whole Permanent Judicial Commission between General Assemblies.”<sup>69</sup> The Minority further noted that the new permanent judicial commission would streamline the work of the Assembly, provide for review and control of decisions of the SJC, and that the creation of the Committee on Constitutional Business would greatly help the Assembly.<sup>70</sup>

If the new proposal of the Minority was so much better, why offer a minority report? The Minority argued against one aspect of the Majority’s proposal, the idea that a presbytery or the General Assembly would not have the right to debate when approving the report of a commission. “Our sole area of disagreement,” Ferg and Knight wrote, “is the refusal to permit debate of the

64. PCA, *M15GA*, p. 477.

65. PCA, *M15GA*, p. 478.

66. PCA, *M15GA*, p. 478.

67. PCA, *M15GA*, p. 478.

68. PCA, *M15GA*, p. 478.

69. PCA, *M15GA*, p. 501.

70. PCA, *M15GA*, p. 501.

reports on judicial commissions, either by presbyteries or by the General Assembly. We should be mindful that, at the Council of Jerusalem, there was “much debate,” even on the merits of the issues. (Acts 15:7-21.) The proposals should be modified to permit such debate, and should be passed as amended.”<sup>71</sup> The Minority recommended that the words “without debate” and “without question, debate or discussion” be removed from the proposed BCO language recommended by the Majority. Thus, the Minority did not oppose the creation of the SJC, but only that its decisions could not be fully debated by the Assembly.

As the report of the Ad-Interim Committee came to the floor, the Committee on Judicial Business gave its recommendation regarding the report. Given the complexity and the number of controversial issues put forward by the Ad-Interim Committee, regarding judicial business and many other matters, the Judicial Business Committee recommended that the Assembly adopt the following procedure for debating the report

That the Assembly resolve itself into a “quasi committee of the whole” to hear the majority and minority position on each issue, with no motion to amend or vote, but with questions permitted, and with specific time allotted. Upon the expiration of the allotted time the Committee of the Whole shall automatically rise and proceed to debate and vote on each issue. This process shall be repeated for each of these issues (1) Representative Assembly, (2) Judicial Business Procedure, (3) Nominations, and (4) Structure (Exhibits D through L). Time allotted to each in “quasi committee of the whole” as follows: Representative Assembly - 15 minutes to the majority and 15 minutes to the minority; Judicial Business - 20 minutes to the majority and 20 minutes to the minority; Nominations - 15 minutes to the majority and 15 minutes to the minority; Structure - 20 minutes to the majority and 20 minutes to the minority. Exhibits M through P of the Committee Report shall be considered without going to quasi committee of the whole.<sup>72</sup>

The Assembly accepted the recommendation of the Judicial Business Committee and proceeded to take up the matter. Chairman of the Committee RE Jack Williamson called on TE Paul Gilchrist to present the

portion of the report regarding the Judicial Business. The Minority report is not mentioned in the minutes. However, the minutes note that the Majority’s recommended changes to BCO 15, including the language that prohibited presbyteries or the Assembly to debate the decision of a commission, were adopted by the Assembly.<sup>73</sup>

The other recommendations of the Ad-Interim Committee were also adopted. The matters were clearly controversial. A protest was entered by eight commissions against the adoption of the BCO 15 amendments. The protestors objected to what they perceived as a lack of time to consider and debate the merits of the Committee’s recommendation.<sup>74</sup> When the bulk of the other recommendations of the Committee were considered, (numbers 4-12) the vote to approve was 460-288. About 120 commissions recorded their no votes regarding the recommendations of the Ad-Interim Committee.<sup>75</sup> This number represented about 16% of the commissioners voting at the Assembly during the report of the Ad-Interim Committee.

The recommended changes to the BCO went down to the presbyteries for their ratification. Forty-two presbyteries voted on the amendments, with only one presbytery, Korean Central, not voting on the BCO changes. The votes of the presbyteries totaled 29-13, meaning that the amendments barely scraped by the constitutional threshold of two-thirds of the presbyteries required to ratify changes to the BCO.<sup>76</sup> As of the 17<sup>th</sup> General Assembly, the PCA would have the SJC and the Committee on Constitution Business to handle all judicial matters arising before the Assembly.

#### CONCLUSION

As we take stock of the first fifty years of the PCA, particularly concerning the denominations growth in judicial process, there are a number of noteworthy items. First, younger elders should give thanks for the courage and hard work of the founding fathers of the PCA. The effort that the first generation of teaching and ruling elders gave in order to give birth to a denomination committed to the Scriptures, the Great Commission, and the Reformed Faith was nothing short of remarkable. Their herculean efforts are apparent in the way that they took the 1933 PCUS Rules of Discipline, crafting and shaping them to suit the needs of the PCA. It is worthwhile to remember their efforts and the chaos they went through in order to give decency and order to a fledgling denomination.

*Continued on Page 322.*

71. PCA, *M15GA*, p. 501.

72. PCA, *M15GA*, pp. 105-6.

73. PCA, *M15GA*, pp. 106-7.

74. PCA, *M15GA*, pp. 107-8.

75. PCA, *M15GA*, p. 108.

76. 16th GA, 90, p. 133.

### ***The History of the Formation of the Standing Judicial Commission. Continued from Page 74.***

Second, the first fifty years of the PCA has been one of growth and development. The ethos that gave birth to the PCA is in some ways still present. However, the denomination has changed since those early days. This is apparent in the way the Assembly handles judicial cases. The Assembly originally handled all matters directly, excusing commissioners from the floor to go act as committees, reporting back to the Assembly with recommendations. After a decade of growth and the process of Joining and Receiving, the Assembly sensed that it needed another mechanism to handle the growing number of cases. Hence, today we have the SJC and the Committee on Constitutional Business to assist the Assembly. The development of the SJC mirrors the growth and evolution of the denomination as a whole: going from a regional denomination with no regular judicial cases to a national denomination with a much larger, regular load of judicial cases.

Third, the formation of the SJC was a complicated and messy process. The Ad-Interim Committee that recommended the formation of a permanent judicial commission had several reports returned to it for further work, had new members added to it by the Stated Clerk, and had numerous minority reports for almost all of its significant recommendations. In hindsight, the wisdom of both the majority and the minority reports are apparent. The Minority was correct that the formation of the SJC would lead to a change in the culture and ethos of the denomination. The formation of the SJC was a by-product of larger issues of identity that the denomination was grappling with in the 1980s. The Majority proved to be correct in saying that a denomination the size of the PCA could not keep up with the number of complex cases coming before it. That simply would not have been sustainable with the number of cases the SJC has to handle each year. The conflict between the Majority and the Minority arguably made the formation of the SJC a better reflection of both the PCA's historic commitment to non-hierarchical Presbyterianism and the fact that the growth of the denomination necessitated more efficient mechanisms for the work of the Assembly.

Finally, the history of the SJC in the last twenty-five years

shows that the concerns of the Minority regarding the Assembly's ability to debate the actions of the SJC were well founded. The issue has been most acute regarding instances where presbyteries invoke BCO 34-1, asking the SJC to assume original jurisdiction over teaching elders in cases relating to doctrine. Arguably, the most contentious judicial case involving 34-1 that came to the floor of the Assembly was the John Wood Case. The Wood case was a very rare instance where the Assembly overrode the SJC, instructing them to take up the 34-1 requests and investigate the accusations of women preaching.<sup>77</sup> In other contentious matters, then Assembly's inability to deliberate upon and reverse SJC decisions (except where a sufficient number of dissenting members may file a minority report) has been problematic. One thinks of the Peter Leithart and Greg Johnson cases. In Leithart's case, the SJC argued that they could not retry the charges against Leithart, even though there was clear evidence of a strong presumption of guilt and problems with the prosecution of the case. A request for the Assembly to have the case reheard by the SJC from Iliana Presbytery was ruled out of order. The Assembly was not allowed to debate the merits of the case and an objection by a member of the Assembly was ruled out of order because the Assembly cannot debate SJC cases.<sup>78</sup> The case of Greg Johnson contained a highly complex set of issues in which the SJC decided not to try Johnson for his views on gender and sexuality. The Minority of the SJC was one vote short of being able to file a minority report, which would have allowed the Assembly to debate the merits of the case.<sup>79</sup> These cases demonstrate a fact that all churchmen learn: the process of discipline is complicated, complex, and often convoluted. The Assembly delegating its authority to a commission to handle discipline, particularly in doctrinal cases, without retaining the ability to debate and review cases at will is, as Knight and Ferg argued, problematic. Perhaps the next fifty years will see the BCO continue to evolve by allowing the Assembly to debate cases handled by the SJC when important or novel doctrinal issues are at stake.

### ***Ecclesial Unity and Creation Doctrine. Continued from Page 162.***

If the text of Genesis on the days of creation is held as inerrant, divine revelation, but the days as a literary device, there is a two-fold divergence from a six-day view: (1) the durational markers have been removed, (2) a different literary/genre hermeneutic is employed. Removing the durational marker opens the possibility of allowance for either old-earth creationism (an ancient initial creation, with punctuated occasions of special creation across the ages) or old-earth theistic evolution. In relation to the adoption of an alternative literary/genre hermeneutic, the answer of the question of how and where in Genesis a hermeneutical transition takes place

77. The Presbyterian Church in America, *The Minutes of the Twenty-Eighth General Assembly of the Presbyterian Church in America* (Lawrenceville, GA: Committee on Christian Education and Publication, 2000), p. 275.

78. The Presbyterian Church in America, *The Minutes of the Forty-First General Assembly of the Presbyterian Church in America* (Lawrenceville, GA: Committee on Christian Education and Publication, 2013), pp. 39, 83 (footnote 4), pp. 583–614.

79. The Presbyterian Church in America, *The Minutes of the Forty-Ninth General Assembly of the Presbyterian Church in America, vol. II* (Lawrenceville, GA: Committee on Christian Education and Publication, 2022), pp. 730–822.