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The decision to diverge from historic Presbyterian polity should be determined by the “grassroots” of the PCA rather than by the judicial decisions of the SJC.

Respectfully submitted,

RE L. Del Bailey

TE Larry Ball

TE Brent Bradley

RE Robert H. Cato

RE Larry Crigger

TE Daniel Foreman

TE Carl C. Howell, Jr.

TE Daniel Jarstfer

TE Ross Lindley

RE Jim McGowan

RE Jerry Neas

TE Jim Richter

TE Morton H. Smith

TE Curtis Stapleton

TE Carl Van Der Merwe

TE Steven Warhurst

RE Dan Witcher

APPEAL 2005-1
TE MICHAEL CHASTAIN
VS.
HERITAGE PRESBYTERY

I. SUMMARY OF THE FACTS

Introduction

This case arises, in part, from TE Kenneth L. Gentry, Jr.’s (TE Gentry) Report to the Session of Christ Presbyterian Church (CPC) of his “Pastoral Concerns and Recommendations” (PCR) in regard to TE C. Michael Chastain (TE Chastain). TE Gentry was an Assistant Pastor at CPC with responsibility to establish Westminster Classical College (WCC) in Elkton, Maryland. TE Chastain was the Pastor at CPC and Chancellor of WCC. Apparently, TE Gentry and TE Chastain blamed each other in connection with the failure of WCC, which was a related ministry of CPC. The WCC faculty and certain assets were transferred to and/or merged with Christ College in Lynchburg, Virginia.

TE Gentry states in the PCR that he was motivated to write because TE Chastain “has been denigrating me in the context of WCC’s failure to open.” He states that he is not bringing judicial charges, but wants the Session of CPC to consider the same as a matter of pastoral concern in regard to both TE Chastain and CPC.

These pastoral concerns were that TE Chastain’s spiritual and professional failures “may be dangerous as CPC attempts to raise money for

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its building program” and that TE Chastain “lacks not only the caution, but the financial, contractual, negotiating, and communication skills necessary to safely lead CPC into such a long term financial commitments.”

More specifically, TE Gentry’s concerns are TE Chastain’s “need of spiritual counseling related to what appear to me to be his tendencies to pathological falsehood and regarding his frequent mistreatment of believers.” The assertions are basically twofold: a) that TE Chastain’s personal lack of giftedness results in undesirable, but not sinful behaviors, which if continue unchecked, might cause future ventures of CPC to have less than favorable outcomes and b) that TE Chastain’s behavior was sinful.

Although TE Gentry specifically claims to be neither a prophet, nor the son of a prophet, he states in the PCR that he is “concerned that CPC may one day call an Associate Minister, or perhaps even a Campus Minister, either of whom (I am convinced) TE Chastain will almost certainly develop strained relationships with, thereby causing ministerial and contractual difficulties.”

Facts

- 02-04-03 TE Chastain, as Chancellor of WCC, signed an application for WCC to be approved by the State of Maryland as a religiously-exempt degree granting college.
- 02-22-03 TE Gentry reports that the Maryland Higher Education Commission gave TE Chastain an oral approval of the WCC application for degree-granting status.
- 02-24-03 Per the unsigned Memorandum of Understanding, merger negotiations begin between WCC (represented, in part, by TE Chastain) and Christ College.
- 02-25-03 The WCC Board decides to withdraw the application for degree-granting status and pursue transfer/merger with Christ College. TE Chastain directs TE Gentry to withdraw WCC’s application.
- 02-27-03 TE Chastain, on behalf of WCC, reports to the Session of CPC that WCC had not yet been granted degree-granting status and that the same would not likely be achieved in a timely fashion.
- 02-27-03 Letter from Maryland Higher Education Commission to TE Chastain, Chancellor of WCC, to wit: certification that WCC “satisfies all of the criteria for the status of a religious degree-granting institution as set forth in Section 11-202 of the Education Article. As such, WCC may operate and grant degrees in religious disciplines without the approval of this Commission.”
- 03-04-03 TE Chastain sends an e-mail to the Congregation of CPC concerning reasons for the transfer/merger of WCC to/with Christ College, to wit: delays have resulted in WCC not being able “to

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- achieve key timely milestones such as ‘Caesar’s’ approval to grant degrees,” and a response from the State of Maryland to WCC’s application for degree granting status has not been received.
- 03-11-03 At TE Chastain’s direction and under his active supervision, a letter on WCC letterhead was mailed implying that the State’s approval had not been given.
- 03-12-03 Merger negotiations end between WCC (represented, in part, by TE Chastain) and Christ College. Note: the Merger Agreement in the RoC is not signed or dated, but does recite the negotiation dates.
- 03-17-03 Letter from TE Chastain to the Congregation of CPC concerning reasons for the transfer/merger of WCC to/with Christ College, to wit: delays have resulted in WCC not being able “to achieve key timely milestones such as ‘Caesar’s’ approval to grant degrees,” and a response from the State of Maryland to WCC’s application for degree granting status has not been received. (same letter was e-mailed to the Congregation on 03-04-03).
- 03-31-03 TE Gentry learns that the WCC application was approved by the State.
- 05-06-03 Letter from Maryland Higher Education Commission to TE Chastain, Chancellor of WCC that is the same as the 02-27-03 letter. This letter was requested by TE Gentry as evidence that the approval had been given.
- 06-04-03 At a Congregational Meeting of CPC, a proposal was made to change the Calls of TE Don Post, who was the Administrator/ Headmaster of Tall Oaks Classical School (TOCS), a related ministry of CPC, and TE David Lort from Assistant Pastors to Associate Pastors. This matter was referred to the existing Associate Pastor Search Committee.
- 06-19-03 TE Gentry’s PCR is received by the Session of CPC (TE Chastain and 3 Ruling Elders), and the Session began their study of it.
- 07-23-03 TE Chastain, in response to a concern that he had lied to the Congregation of CPC in his 03-17-3 letter concerning the State’s approval to grant degrees, produces the 05-06-03 letter from the State as evidence that he did not know (prior to that date) that WCC’s application to grant degrees had been approved.
- 08-21-03 The Associate Pastor Search Committee’s Report was presented to the Session of CPC, i.e. call TE Don Post as an Associate Pastor.
- 09-11-03 Private (unofficial) letter from 2 of the 3 Ruling Elders at CPC to TE Chastain, to wit: recent events have brought to light your tendency toward falsehoods, as well as a lack of managerial and administrative ability, all of which has probably been present for

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years, but only recognized by the 2 Ruling Elders as a result of the closing of WCC. TE Chastain is called to acknowledge these sins and repent.

- 12-04-03 Session of CPC tabled a motion concerning TE Gentry's PCR.
- 12-11-03 Session of CPC calls a Congregational Meeting for 12-17-03 to vote on the Associate Pastor Call to TE Don Post. Only TE Chastain opposes extending this Call.
- 12-16-03 E-mail to Congregation of CPC from TE Chastain concerning the Congregational Meeting to call Don Post as an Associate Pastor stating that "[i]n this particular situation, I believe that our governing standards are being bent and broken and in order for me to be faithful to Christ and to you, I need to instruct you pastorally and principally," that he was concerned with the Call and job description, i.e. that the work is not to be "incidental or part time to the church" and not "a sideline or an ancillary position," that the Call and proposed job description for TE Don Post were "not in keeping with the spirit or intention of the BCO," that it was "unBiblical to call a man to the sacred office of pastor and have his duties be only those listed above," that TE Don Post was currently an Assistant Minister at CPC and could already "do any and all of the above [with the exception of voting at Session meetings] in his spare time from his full time calling at TOCS," that he has "gathered counsel from four other ministers as to their opinion as to the legitimacy of the proposed call and job description" and they agree with me that "the job description is illegitimate," and that he has "expressed these concerns to the others on the Session and they do not share them" as the others would like for TE Don Post to be able to vote on the Session, that "[w]hile this may be a noble desire, I do not believe it to be pleasing to Christ to go about achieving this desire in a way that undermines the very principles of the Church that we are vowed to uphold," and that he contends "the job description and call that are proposed do not [satisfy the criteria for moving from Assistant to an Associate] and that it would be illegitimate for us to hire Don to function within them."
- 12-17-03 Congregational Meeting of CPC, re: TE Don Post was called as an Associate Pastor (53 - yes, 7 - no, 2 - abstain)
- 01-07-04 Session of CPC "questioned the validity of their acting 'un-Biblically' as noted in the congregational letter that was

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distributed the night before the meeting via e-mail. The arguments put forth were challenged on all counts. First, it was not clear what Bible, *BCO*, or Westminster principles were ‘bent and broken’ by the congregation in calling Assistant Pastor Don Post to be an Associate Pastor. Second, the Session was misrepresented as having discussed the Biblical issues over this position, when in fact the Session had never discussed Bible references over the previous months. Third, the congregation was led to believe that desiring an Associate with this call was an unusual circumstance when other Associates are noted on Presbyterian databases with similar responsibilities. Fourth, four nameless ministers were referred to as giving their opinion of the illegitimacy of the proposed call and job description, but not one name was made available to Session so that members could contact them to understand the precepts leading to their conclusions. The discussion ended without satisfactory answers neither for the congregant’s letters nor the Session members concerns on all issues.”

- 01-28-04 Session of CPC was “stalemated by a 2 to 2 vote” in connection with a motion to take the pastoral concerns expressed in the PCR off the table.
- 01-31-04 Letter from TE Chastain to Heritage Presbytery, re: plea to vote against the motion to approve the Call of TE Don Post as Associate Minister at CPC. Presbytery erected a Special Committee to investigate all related matters and bring back a recommendation to the Presbytery regarding the disposition of the call.
- 02-19-04 Session of CPC was “stalemated” in connection with the motion made at the 01-28-04 meeting, re: TE Gentry’s PCR.
- 02-26-04 Session of CPC considered a motion to prohibit TE Chastain from talking to others outside of the Session about the PCR. TE Chastain, as Moderator, ruled the motion out of order. The chair was challenged successfully. The motion carried, with TE Chastain refusing to participate. A Ruling Elder was directed to draft a letter to the congregation stating the Session is dealing with difficult issues. The Session of CPC considered a motion to require TE Chastain to provide the names of those outside of the Session with whom he has talked about the PCR. TE Chastain, as Moderator, ruled the motion out of order. The chair was challenged successfully. The motion carried, with TE Chastain refusing to participate in the vote, and he noted his refusal to comply with the request. There was a similar motion and result,

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re: motion to prohibit TE Chastain from speaking further about the PCR. Complaint was passed on to the Presbytery. The Session discusses TE Gentry's PCR.

- 04-26-04 Letter from TE Chastain to TOCS Board and TE Don Post, re: "there is teaching in the classroom which is in direct contradiction to the Westminster Standards. Specifically, the children have been encouraged to see the movie, *The Passion of the Christ*, which is a violation of the Standards adopted by our Board" and "I know that when I was a permanent member of the Board, our highest calling was to see that what was taught in the classroom was consistent with the Reformed faith as expressed through our standards. Maybe you could instruct the Headmaster [TE Don Post] to instruct the faculty accordingly."
- 05-11-04 Presbytery received a Report from the Special Committee and approved TE Don Post's Call as an Associate Pastor at CPC, approved sending a letter to the CPC Session, appointed a Commission (the members of the Special Committee), appointed a Prosecutor to prepare an indictment and conduct the case against TE Chastain [this action presupposes an investigation and a finding of a strong presumption of guilt, as per *BCO* 31-2], found that Matthew 18 had been followed, and authorized a Called Meeting of Presbytery to receive the charges [against TE Chastain].
- 05-12-04 Seven (7) page letter from TE Chastain to the Congregation of CPC stating that "[t]hese are difficult times for CPC" and that in a 2001 Pastoral Letter, "I told you to watch and pray, that because of the great work that Christ has done here in you, Satan would attack us. He has." The letter recounts the history of the conflict, from TE Chastain's point of view, and states that as a result of his efforts to start TOCS, the church in Annapolis, and start WCC, he did not "nurture relationships and provide the leadership in many areas that might have averted many of the troubles in which our church is now embroiled," that after TE Gentry was hired in 2001, it became clear that TE Gentry's "ideas of what the college should look like were very different from our own," and that those "differences caused many delays in achieving foundational objectives necessary to open, such as the ability of WCC to enroll students and achieve approval from the State in a timely way," [Note: TE Gentry reports, and the RoC confirms, that the application, which consists of 3 fill-in-the-blank pages, was signed by TE Chastain on 02-04-03, submitted to the State, and

informally approved on or about 02-22-03 and formally approved on 02-27-03] that a solution to the problem came from Christ College, with negotiations between the two institutions beginning in January, 2003, and with a decision by the WCC Board being made by the end of February, 2003, to merge with Christ College, that it was WCC's Board's desire to not make the divergent views a public matter, that TE Gentry's presentation of his PCR to the Session "set into motion a series of events which have been divisive among the brethren and have been dividing your leaders ever since," that the Ruling Elders and Assistant Pastors "took and read the PCR, and in fact studied it ... in spite of my pastoral verbal and written Scriptural proofs, explanations and objections," that Session meetings "from that time on were almost consumed with their [the Ruling Elders] insistence that I answer the accusations leveled in the PCR and my exhorting them to follow Scripture and return the document because I believed they were sinning against me and my wife by having it," TE Chastain's concern was that "they [the Session] wrongly received these slanderous allegations," that because TE Chastain "did not feel loved or biblically treated," TE Chastain did not "want to participate in nor affirm what I [TE Chastain] believed to be sin in their [the Session's] having received accusations against me and dealing with me in this manner," that "not only did they [the Session] receive the PCR wrongly and sinfully but that they were not the proper court in which to deal with the matter and were in violation of their ordination vows," that he [TE Chastain] had lied at the Congregational Meeting to approve the Call of TE Don Post as an Associate Pastor by stating that he [TE Chastain] "had no problem with Don," when, in fact, he [TE Chastain] "did have problems with Don and took some of them to Presbytery rather than you," and that he [TE Chastain] allowed the Congregation to vote "having received inaccurate instruction from your pastor [TE Chastain]," and that as a result of TE Chastain's challenge to Presbytery's approval of TE Don Post's Call, Presbytery assigned a committee to examine the conflict.

05-21-04 Letter from the TOCS Board to TE Chastain, re: concerns about the movie, *The Passion of the Christ* - both historical views within the Reformed faith regarding "images of Christ" were taught and that the Board does not believe the views and teachings taught in the Apologetics Class are inconsistent with the Westminster Standards, let alone "non-Reformed" and "anti-confessional."

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- 07-17-04 Presbytery appointed a Temporary Judicial Commission (Commission) to hear the Complaint and the Charges against TE Chastain. The Charges were read, and he pled not guilty to all Charges, i.e. Charge 1 -Violations of the Ninth Commandment/Frugality with the truth, Charge 2 - Harsh Treatment of Brothers, Charge 3- Divisive Behavior, and Charge 4 - Failure to Properly Shepherd.
- 08/04 to 12/04 Commission conducts its work. Trial began on 10-23-04 and continued in full day sessions on 11-06-04, 11-08-04, 11-19-04, 11-22-04, 12-04-04, 12-11-04, and 12-18-04 (partial day).
- 01-08-05 The Commission presented the following actions to Presbytery, to wit: Charge 1—Violations of the Ninth Commandment/Frugality with the Truth (Not Guilty/Dismissed); Charge 2—Harsh Treatment of Brothers (Dismissed); Charge 3—Divisive Behavior (Guilty of Specifications 3.1 [TE Chastain attempted to divide the TOCS Board from the Headmaster and a faculty member concerning Mel Gibson’s movie *The Passion of the Christ*], 3.2 [TE Chastain’s divisive behavior by speaking to the Congregation concerning the divided Session - the only division was his from the rest of the Session], and 3.4 [using the PCR to take his case of divided views with Session members to members of the Congregation, in spite of warnings from other elders in regard to the divisive nature of such actions], and Not Guilty of Specification 3.3; and Charge 4—Failure to Properly Shepherd (Dismissed). TE Chastain needs to be reconciled with the CPC Ruling Elders and Teaching Elders before TE Chastain can be restored, as well as counseling. Presbytery received a Report/Judgment from the Commission, which was adopted (32 yea - 2 nay - 3 abstaining). This Report/Judgment contained a censure of indefinite suspension from office and the Sacraments and a charge to meet these findings with a positive attitude and a heart willing to repent. Presbytery erected a “Reconciliation Commission” to work toward reconciliation of all parties at CPC. TE Chastain announced his intention to appeal the decision and provided the Presbytery Clerk with a letter to that effect; thereby suspending the Judgment of the Court pursuant to *BCO* 42-6. Presbytery, in accord with *BCO* 42-6 and to promote peace in the local church and provide TE Chastain with time to consider how to best achieve reconciliation with his brothers, suspended TE Chastain from the Lord’s Table and from office, not as a censure but for the reasons cited (27 yea - 1 nay - 2 abstaining).

II. STATEMENT OF THE ISSUES

1. Was Heritage Presbytery's charge a lawful charge?
2. Was Appellant's behavior divisive in the Church?
3. Was the censure unjust?
4. Were there errors in the process?

III. JUDGMENT

1. Yes.
2. Yes.
3. No.
4. Yes, but none that would require the Presbytery's Judgment to be reversed or the case remanded.

IV. REASONING AND OPINION

First, in regard to whether or not there was a lawful charge, TE Chastain maintains that his conduct was not sinful. TE Chastain argues that his letters indicating his disagreement with a church court, upon which the Presbytery's decision is based, do not rise to the level of an offense.

More specifically, TE Chastain contends that since the terms "divisive" and/or "divisiveness" do not appear in the AV, the RSV, or the ESV, then the behavior alleged to be contrary to Scripture cannot be proven to be such. Likewise, TE Chastain points out that said terms are not found in our Constitution.

Regardless of whether or not the terms divisive and/or divisiveness are found in Scripture or our Constitution, such behavior can constitute an offense and be a sin. In this case, TE Chastain took an ordination vow to "promise subjection to your brethren in the Lord" and "be zealous and faithful in maintaining the truths of the Gospel and the purity and peace and unity of the Church." See *BCO* 21-5. It is clear that TE Chastain's comments in his letters to the CPC congregation, as described above, evidenced a violation of his vow to be subject to his brethren and maintain the peace and unity of the Church. TE Chastain's views, while not sinful in and of themselves, should not have been published to the CPC Congregation, especially after the Session had made its decision. In doing so, TE Chastain was divisive, broke his vows, and was in sin. If TE Chastain believed the action(s) of the Session violated the Constitution to such an extent that he could not be subject to the Brethren and/or that the action somehow violated the purity of the Church, his redress was either to attempt to persuade the Session to reconsider its action or file a complaint against the action, not engage in a letter writing campaign, which attempts to place his views over that of the Session's adopted positions.

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Second, in regard to whether or not TE Chastain's behavior in the Church caused division in the Church, he argues that he merely disagreed with TE Gentry's PCR and with the Session concerning the way in which the same was handled. Basically, TE Chastain contends that the Session was not the proper Court to investigate the matter. While this is true for any judicial action against TE Chastain, it belies the Session's right pastorally to investigate matters concerning CPC and determine what the problem is and whether it should be handled by the Session or referred to the Presbytery for its consideration.

TE Chastain frames the issue by asking whether or not he responded to TE Gentry's PCR (and subsequent events) in a manner that was contrary to Scripture or the Standards. As set forth above, his actions in response to the same were violations of his ordination vows.

TE Chastain argues that it was his duty publicly to disagree with the Session and that it was not inherently divisive as alleged by Presbytery. In support of this, TE Chastain cites it as his duty to defend his good name and instruct the officers and congregation in discipline. He states that he sincerely believed that the procedures adopted by the Session were contrary to church discipline as taught in the Scriptures or the Constitution and that it was his duty to testify as to what he deemed to be an error. As set forth above, if TE Chastain believed the actions of the Session required him not to be in subjection to the Brethren and upset the peace and unity of the Church, based on a need to protect its purity, then his proper course of conduct would be for him attempt to have the Session reconsider the matter or to file a complaint objecting to the offending action, not publicly debate the issue after the Session has acted. While expressing an opinion that the *Passion of the Christ* violates the 2nd Commandment is not a sin, the manner and circumstances under which TE Chastain did so was divisive.

Third, in regard to whether or not the censure was unjust, TE Chastain contends that the censures of indefinite suspensions from the Lord's Supper and office were unduly harsh. TE Chastain argues that the censures of admonition and definite suspension should be used prior to indefinite suspension. Such an argument would be valid if TE Chastain had, upon conviction, satisfied the Presbytery as to his repentance and made such restitution as is appropriate. *BCO* 30-1. There is an absence of any admission of guilt/confession of sin and reconciliation in the Record in connection with the charges of which TE Chastain was found guilty. Accordingly, a censure of indefinite suspension is appropriate until the impenitent offender exhibits signs of repentance. *BCO* 30-3.

Fourth, in regard to whether or not there were errors in process, TE Chastain contends that Presbytery erred in the following ways, to wit: a) in the initiation of the charges by receiving and acting on a recommendation from a

committee which exceeded its appointed task, b) the indictment failed to meet the requirements of *BCO* 32-5 by not giving proper times, places, and circumstances necessary to make a proper defense, and c) failing to properly handle evidence and testimony, which put TE Chastain at a great disadvantage in conducting his defense.

As to point a) above, TE Chastain asserts that the Special Committee, in recommending charges be brought against him, exceeded its authority. TE Chastain states that the Special Committee conducted an improper and unauthorized judicial investigation beyond the scope of its charge. If the scope of the Special Committee's charge had been solely to review and report back in connection with the Call of TE Don Post as an Associate Pastor, the point might have merit. However, Presbytery erected the Special Committee to investigate all related matters and bring back a recommendation to the Presbytery regarding the disposition of the call. In this case, the Special Committee investigated all matters related to the Call of TE Don Post. Out of this investigation, the recommendation to bring charges against TE Chastain arose. Such a recommendation, to bring charges, is not outside of the scope of the Special Committee's authority. As such this process is in accord with *BCO* 31-2 and presupposes the raising of a strong presumption of guilt, justifying the appointment of a prosecutor to prepare and indictment and conduct the case.

As to point b) above, TE Chastain states that the Indictment failed to meet the requirements of *BCO* 32-5 by not giving proper times, places, and circumstances. While the charges may not have been as specific as one would desire at the early stages of this proceeding, the same were revised and were sufficiently specific and provided to TE Chastain sufficiently in advance of his trial so as to not constitute prejudice or reversible error.

As to point c) above, TE Chastain contends that evidence and testimony were not properly handled. TE Chastain points out that the Court allowed a letter from TE Gentry into evidence without being subject to cross-examination. While this was error, the same does not directly relate to any of the matters on which TE Chastain was found guilty and is therefore moot. TE Chastain next points to the Court's exclusion/abridgement of Michael Peroutka's interrogatories. While this may have been error, the same does not directly relate to any of the matters on which TE Chastain was found guilty and is therefore moot. TE Chastain complains that the Court failed to require witnesses to answer and/or return interrogatories. While this may have been error, the same does not directly relate to any of the matters on which TE Chastain was found guilty and is therefore moot. TE Chastain claims the Court erred by deciding the case before all testimony was complete. The argument made by TE Chastain is not persuasive or supported by the Record of the Case.

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The Summary of Facts, Statement of Issues, Judgment, and Reasoning and Opinion were drafted by Samuel J. Duncan.

The vote on Case 2005-1 was:

TE Dominic A. Aquila	Concur
TE Howell A. (Howie) Burkhalter	Concur
TE Stephen M. (Steve) Clark	Concur
RE M. C. (Cub) Culbertson	Absent
RE Perry Denniston	Absent
RE J. Howard (Howie) Donahoe	Concur
RE Samuel J. (Sam) Duncan	Concur
TE Paul B. Fowler	Concur
TE William W. (Bill) Harrell Jr.	Concur
RE Terry L. Jones	Concur
TE Paul D. Kooistra	Absent
RE Thomas F. (Tom) Leopard	Concur
TE John M. McArthur Jr.	Concur
RE J. Grant McCabe	Concur
TE Charles E. McGowan	Concur
TE D. Steven (Steve) Meyerhoff	Concur
RE Frederick (Jay) Neikirk	Dissent
RE Steven T. (Steve) O'Ban	Concur
TE Michael M. Rico	Concur
TE G. Dewey Roberts	Concur
TE Michael F. (Mike) Ross	Concur
RE John Tolson	Concur
RE John B. White Jr.	Concur
RE W. Jack Williamson	Concur

Adopted: 20 concurring, 1 dissenting, 0 disqualified, 0 recused, 0 abstained and 3 absent.

DISSENTING OPINION
JUDICIAL CASE 2005-1
APPEAL OF TE MICHAEL CHASTAIN
VS.
HERITAGE PRESBYTERY

The undersigned respectfully dissents from the decision in case 2005-1, *Chastain v. Heritage Presbytery*. While I am fully cognizant of the proper deference due to presbyteries (see *BCO* 39-3.2,3 and my dissent in cases 2003-2 and 2003-5, *Thornton v. Westminster Presbytery*), I also recognize that the "...higher court should not consider itself obliged to exhibit the same deference to a lower court when the issues being reviewed involve the interpretation of the Constitution of the Church." (*BCO* 39-3.4.) I believe such a constitutional interpretation is at stake in this case.

TE Chastain was charged with a series of offenses to wit: Charge 1 - Violations of the Ninth Commandment/Frugality with the Truth [a charge that included eleven specific allegations of wrong doing (see "revised set of charges and specifications" at ROC 58-60)]; Charge 2 - Harsh Treatment of Brothers [a charge that included two specific allegations of wrong doing (see ROC 60)]; Charge 3 - Divisive Behavior [a charge that included four specific allegations of wrong doing (see ROC 60-61)]; and Charge 4 - Failure to Properly Shepherd [a charge that included two allegations of wrong doing (one of which had two distinct parts) (see ROC 61)].

The Judicial Commission of Heritage Presbytery did not convict TE Chastain on Charges 1, 2, or 4; nor did it convict him on the third Specification of Charge 3. Thus, the crux of the matter before the Standing Judicial Commission was the validity of the remaining three particulars of Charge 3 - "Divisive Behavior."

The specific "divisive behaviors" of which TE Chastain was convicted were: Specification 3.1 [TE Chastain attempted to divide the TOCS Board from the Headmaster and a faculty member concerning Mel Gibson's movie *The Passion of the Christ*]; Specification 3.2 [TE Chastain's divisive behavior by speaking to the Congregation concerning the divided Session - the only division was his from the rest of Session]; and Specification 3.4 [using the PCR to take his case of divided views with Session members to members of the Congregation, in spite of warnings from other elders in regard to the divisive nature of such actions]. (See "Statement of Facts" at 01-08-05.) *BCO* 29-1 states:

An offense, the proper object of judicial process, is anything in the doctrines or practice of a Church member professing faith in Christ, which is contrary to the Word of God. The *Confession of Faith* and

the *Larger and Shorter Catechisms* of the Westminster Assembly, together with the formularies of government, discipline, and worship are accepted by the Presbyterian Church in America as standard exposition of the teachings of Scripture in relation to both faith and practice. Nothing, therefore, ought to be considered by any court as an offense, or admitted as a matter of accusation, which cannot be proved to be such from Scripture.

It is my contention that Heritage Presbytery did not meet this standard when it charged TE Chastain with “divisive behavior.”

As the Appellant notes in his brief, the terms “divisive” and “divisiveness” do not appear in the AV, the RSV, or the ESV, and in the one place where the term “divisive” appears in the NKJV (Titus 3:10) the application seems to be to a doctrinal deviation (which is not what is being alleged here). Similarly, neither the term “divisive” nor the term “divisiveness” appear in the *Westminster Confession*, the *Larger and Shorter Catechism*, or the *Book of Church Order*. Moreover, the only passage of Scripture cited in the indictment that might bear on the charge of “divisive behavior” *per se* is Romans 16:17. But, as is the case with Titus 3:10, the primary focus of this verse is on division that grows out of departures from sound doctrine. “Division resulting from a departure from sound doctrine,” however, is not what is in view in the charges against TE Chastain.

In short, the charge of “divisive behavior,” the only charge of which TE Chastain was convicted, does not meet the standard required by *BCO* 29-1 in that the offense cannot be proven from either Scripture or our subordinate standards. In that sense, Charge 3 is of a very different character from Charges 1 and 4. Both Scripture and our subordinate standards have clear discussions of the meaning of the Ninth Commandment and the need to shepherd the flock. This clarity is lacking in the charge of “divisive behavior.”

The majority of the SJC deals with the appellant’s concern about the Constitutional validity of the charge of “divisive behavior” by equating that charge to “. . . a violation of his vow to be subject to his brethren and maintain the peace and unity of the Church.” (See paragraph 3 of the Majority’s “Reasoning and Opinion.”) In my view there are at least two problems with this line of reasoning.

First, this change, in essence, creates a new charge against TE Chastain. Heritage Presbytery did not charge TE Chastain with violating the 4th ordination vow (“Do you promise subjection to your brethren in the Lord?”). Indeed, there is no reference to the 4th ordination vow anywhere in the “Charges and Specifications” against TE Chastain. Yet discussion of TE Chastain’s

failure to be subject to the Session of CPC is central to the majority's reasoning that TE Chastain was "divisive." In interpreting "divisive behavior" to mean failure to be "subject to his brethren," the majority has raised a new issue in violation of *BCO* 39-3.1, and it has underscored the ambiguity of the charge of "divisive behavior."

The second, and perhaps larger, concern lies in the reasoning of the majority of the SJC in support of the conclusion that these specific actions of TE Chastain, on their face, violated his ordination vows. Consider the specifics underlying the specifications in Charge 3. Specification 3.1 involved a letter TE Chastain wrote to the Board of the Christian School associated with the Church in which he states "...there is teaching in the classroom which is in direct contradiction to the Westminster Standards. Specifically, the children have been encouraged to see the movie, *The Passion of the Christ*, which is a violation of the Standards adopted by our Board...." and "...I know that when I was a permanent member of the Board, our highest calling was to see that what was taught in the classroom was consistent with the Reformed faith as expressed through our standards. Maybe you could instruct the Headmaster...to instruct the faculty accordingly." (See "Statement of the Facts" 04-26-04.) Specification 3.2 was specifically directed against an e-mail TE Chastain sent to the Congregation relative to a called Congregational Meeting to vote on calling an Associate Pastor. In the e-mail TE Chastain expresses his conviction that the call and job description are inconsistent with the Constitution, states that "our governing standards are being bent and broken," and urges the Congregation to vote against the proposed call. (See "Statement of Facts" 12-16-03.) Specification 3.4 was that TE Chastain in response to questions from congregants "us[ed] the PCR to take his case of divided views with Session members to members of the Congregation, in spite of warnings from other elders in regard to the divisive nature of such actions." This culminated in the letter summarized in the "Statement of Facts" at 05-12-04. (The quoted section in this specification is from the final statement of fact in the majority opinion. The underlined material is, in my view, a crucial omission in that summary of the facts of the case. See ROC p. 61.)

In finding TE Chastain guilty of Specifications 3.1, 3.2, and 3.4 Presbytery concluded these communications were, on their face, sinful. The majority opinion of the SJC underscores this finding by arguing that in making these communications TE Chastain was in violation of his vow to be subject to his brethren (paragraph 3 of "Reasoning and Opinion") and that he should not "...publicly debate the issue after the Session has acted." (Paragraph 6 of "Reasoning and Opinion.") The implications of these conclusions are startling. They appear to me to indicate that a teaching elder

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in the Presbyterian Church in America cannot express strong disagreement with what is being taught in a church related Christian school without running the risk of being accused of “divisive behavior” and “violation of his ordination vows.” Similarly, the position of the Presbytery and the SJC seem to indicate that a PCA teaching elder cannot tell his congregation that he disagrees with an action of Session (to endorse the call and job description for the Associate Pastor), even when that action is merely a recommendation to the Congregation on which the Congregation must vote, nor may he answer honestly questions posed to him by congregants or write a letter to the Congregation explaining (even defending) his thinking on a difficult matter in the life of the Church.

In my view the reasoning adopted by the majority of the SJC, will, if appealed to in future cases, have a chilling effect on the right and responsibility of teaching elders (and, potentially, ruling elders) to shepherd and care for their congregations. Certainly I could envision situations in which a Session could ask a teaching elder not to raise certain issues or in which a Presbytery could demand that a teaching elder not raise such issues (e.g., doctrinal exceptions to the Constitutional documents). But, contrary to the reasoning of the majority, either of these would have to rest on more than the simple fact that the Court had reached a decision on some issue (particularly an issue not related directly to doctrine). In my judgment it would demand a clear action of the Court to ask/demand that the teaching elder not share his minority view outside the Court and it would require a statement of the reasons for such an action, which reasons could be reviewed by the higher court.

Had TE Chastain been found guilty of continuing to discuss a matter after a court of the Church took a specific action to direct that he not talk about that matter (subject to review by a higher court) I might well agree that he had failed to be in subjection to his brethren. But a blanket statement indicating that one may “not publicly debate the issues after the Session has acted” goes too far in undercutting the rights and responsibilities of elders (both teaching and ruling) as spelled out in *BCO* 8 and the ordination vows. I agree that the normal course for an elder should be to “get behind” the actions of his session. But, if Preliminary Principle 1 and the several (as opposed to joint) responsibilities of elders (see *BCO* 8-3) mean anything, there must be room for a PCA teaching elder to communicate to the Board of a church related Christian school that he believes they are in doctrinal error, and there must be room for a PCA teaching elder to tell his congregation that he thinks session has erred in a particular recommendation to the congregation.

I do have concerns about a teaching elder using a mass e-mail to express his disagreement with a recommendation of Session to the Congregation and with

the use of a generally circulated letter to explain the difficulties that have arisen between himself and the rest of the Session (even while taking some of the blame for those difficulties). But I cannot say that such communications are, on their face, sinful, nor do I believe the lower court has demonstrated that the content of these particular communications was sinful.

In sum, I do not believe Heritage Presbytery met its Constitutional obligation to demonstrate that the matters contained in Charge 3 met the standard of *BCO* 29-1. Given that this was the only charge on which TE Chastain was convicted, I would find in favor of the appellant, and would void the conviction of TE Chastain and return the matter to Heritage Presbytery. This would not prevent the Presbytery from filing new charges against TE Chastain should they find that to be necessary and should such charges meet the requirements of *BCO* 29-1. Moreover, I believe the reasoning adopted by the SJC in support of the decision of Heritage Presbytery has dangerous implications for the rights and responsibilities of teaching and ruling elders to teach and shepherd their congregations as mandated by Scripture and our Constitution. For these reasons I respectfully dissent.

RE Frederick R. Neikirk

**JUDICIAL CASE 2005-1
TE MICHAEL C. CHASTAIN
VS.
HERITAGE PRESBYTERY**

**OBJECTION
TO DECISION OF STANDING JUDICIAL COMMISSION
APRIL 3, 2006**

Introduction

In its decision of March 14, 2006, the Standing Judicial Commission concluded that Heritage Presbytery acted rightly in indefinitely suspending TE Michael C. Chastain from both the Lord's Supper and from his office as a minister, on the ground that he was "in sin" for stating publicly his disagreement with the Session of his church after it had taken action on a matter. In the process of rendering this judgment, the SJC violated the ninth commandment as regards TE Chastain, violated the requirement of *BCO* 29-1 that a charge not be admitted or considered as an offense unless it could be proven to be so from scripture, and misunderstood the ministerial ordination vows.

Consequently, and pursuant to *BCO* 45-1, I write to record my objection to SJC Case 2005-1, Michael C. Chastain vs. Heritage Presbytery.

Before recording the grounds for my objection, I wish to express my gratitude to the Panel members who originally heard the case, and to the members of the SJC also. Service on the SJC is voluntary, and those who serve our communion in this manner choose to be absent from family and home in order to do their best to render justice. Their work is difficult, at times painstakingly technical, and almost always thankless, and I am grateful to them for their willingness to do such work on behalf of our church and her exalted Head. The Panel, in particular, was efficient, gracious, and considerate of both parties at the hearing on November 18. It addressed pertinent and thoughtful questions to both parties, and listened patiently to their answers.

All human actions, such as the writing of this objection, are imperfect, and there might be several imperfections in SJC's ruling in this case, none of which would be sufficient for an objection to be filed. Three aspects of SJC's ruling, however, are significant, and errors in these areas are sufficient to elicit an objection. First, the Summary of the Facts contains material that is irrelevant, misleading, and possibly prejudicial and/or libelous; second, SJC's ruling fails to conform to the requirements of *BCO* 29-1; and third, SJC's ruling demonstrates a significant misunderstanding of ministerial ordination vows.

1. SUMMARY OF THE FACTS

Throughout the "Summary of the Facts" in SJC's decision, there are many references to specific allegations Mr. Gentry had lodged against TE Chastain. Most of these allegations were later formalized by the Presbytery's Commission into charges, and the charges were judicially adjudicated in Heritage Presbytery. In every particular, Presbytery's Record of the Case shows that the charges either were vacated or TE Chastain was found not guilty. He was only found guilty of one charge--divisiveness--which Mr. Gentry had not alleged. Not one of Mr. Gentry's allegations were judicially sustained by Heritage Presbytery, and therefore TE Chastain brought no appeal against the judgment of Presbytery on any of these points. Yet, despite the fact that TE Chastain was absolved of each of Mr. Gentry's allegations taken up by the lower court, the higher court has re-iterated them, in writing, *without* stating that the lower court had absolved TE Chastain of each of these charges. At the end of the section on "facts" (entry 01-08-05), SJC contains a

list of commission findings that is almost indecipherable to a reader not already familiar with the circumstances. Those familiar with the circumstances realize that these were the findings that exonerated TE Chastain of Gentry's allegations, but since the Summary does not make any reference to Mr. Gentry at this point, it would be almost impossible for a reader of the Summary to realize that this list of commission findings absolved TE Chastain of the many allegations previously mentioned under "Facts."

The implication in the "Summary of the Facts," and the first twelve items under "Facts," (02-04-03 to 05-06-03) is that TE Chastain had been untruthful in reporting about the relation of Westminster Christian College to the state of Maryland. Placing these allegations by Mr. Gentry before the public, without candidly stating that the lower court had found TE Chastain *not* guilty of them, has the effect of implying that both the lower and higher court found him *guilty* of them. Later, in Panel's statement of "Facts," the entry on 01-08-05 indicates that Presbytery's commission dismissed the charge of violating the ninth commandment, but no reader of the report not already familiar with the case would have any way of knowing that this exonerated TE Chastain from the specific allegations already mentioned twelve times earlier in the "Summary of the Facts."

Since the lower court absolved TE Chastain of Mr. Gentry's allegations, no appeal arose from the lower to the higher court on any of these matters. The Panel's statement as it now stands transgresses the Larger Catechism's exposition of the ninth commandment (LC 145):

The sins forbidden in the ninth commandment are, all prejudicing the truth, and the good name of our neighbors, as well as our own, especially in public judicature; ...speaking the truth unseasonably, or maliciously to a wrong end, or perverting it to a wrong meaning, or in doubtful and equivocal expressions, to the prejudice of truth or justice.

Since the Panel's frequent references to Mr. Gentry's allegations are not complemented by the clear testimony from the Record of the Case that TE Chastain was absolved of these charges, the impression left, in a case of "public judicature," is that some church court has found him guilty of these charges. To cite these allegations in the section entitled "Summary of the *Facts*," without also stating that the lower court found TE Chastain not guilty of these allegations, perverts the truth to a wrong meaning, to the prejudice of truth or justice, which the Catechism plainly condemns.

2. *BCO 29-1*

BCO 29-1 states:

An offense, the proper object of judicial process, is anything in the doctrines or practice of a Church member professing faith in Christ which is contrary to the Word of God. The *Confession of Faith* and the *Larger and Shorter Catechisms* of the Westminster Assembly, together with the formularies of government, discipline, and worship are accepted by the Presbyterian Church in America as standard expositions of the teachings of Scripture in relation to both faith and practice. Nothing, therefore, ought to be considered by any court as an offense, or admitted as a matter of accusation, which cannot be proved to be such from Scripture.

A central Protestant teaching is contained in this part of our constitution, because Protestantism believes the Church is to be guided by the Scriptures *alone*. Luther and Calvin did not differ from Rome by believing in the Bible's authority in the Church, since Rome also believed in the Bible. The difference was in the "alone." People are not to be disciplined in the Church of God for violating the conventions or beliefs of any culture or church; they are to be disciplined only for violating God's commandments. As *BCO 11-2* puts it, the courts of the church only "possess the right to require obedience to the laws of Christ." Therefore, *BCO 29-1* prohibits anything from even being "considered" by any church-court as an offense, unless the behavior can be "proved to be such (contrary to the Word of God) from Scripture."

Yet SJC's decision of the matter is different. SJC says: "Regardless of whether or not the terms divisive and or divisiveness are found in Scripture or our Constitution, such behavior can constitute an offense and be a sin." If *BCO 29-1* prohibits the court from considering a matter as an offense, and prohibits the court from admitting a matter as an accusation "which cannot be proved to be such from Scripture," how does SJC expect to prove "from Scripture" anything at all about a matter that, by its own admission, is not addressed in Scripture? SJC's decision has failed to regard *BCO 29-1* rightly. SJC says a matter unspoken of by Scripture "can constitute an offense and be a sin," yet *BCO 29-1* prohibits the SJC from considering or admitting a matter as an accusation unless it can be "*proved to be such from Scripture.*" The difference is not merely lexical; if the behavior in question (to wit, writing letters disagreeing with the majority of a church court) were condemned by scripture, even though scripture used another term for it, then *BCO 29-1* would be satisfied. But SJC offered no such proof "from Scripture." It pointed out no place in Scripture where disagreeing with the majority of a Session is condemned as sinful. The term "divisive" is not found in Scripture,

nor are any condemnations of writing letters disagreeing with Sessions found in Scripture, yet SJC asserted that such letter-writing may indeed be admitted and considered by a church-court as a chargeable offense, even though SJC recognized that Scripture never condemns the behavior in question.

Further, SJC had already been alerted by Appellant’s brief that there were pertinent scriptures that suggested the opposite: Paul’s two letters to the Corinthians and his letter to the Galatians, in which Paul candidly and publicly disagreed with the majority of the rulers, and even cited Peter and Barnabas by name, were cited by Appellant’s brief to prove that Scripture does *not*, in fact, condemn such behavior out of hand (cf. Appellant’s Brief, pp. 2-4). SJC answered with nothing, with no citation of Scripture at all, and neglected the requirements of *BCO* 29-1, as did Heritage Presbytery before it. Both the lower and higher court admitted as a charge and considered as a chargeable offense a matter that was not proven to be such “from Scripture,” and which could not be proven to be such “from Scripture.” In failing to sustain the appeal on this ground, the highest court of our church in this decision failed to uphold the role of Scripture as the exclusive authority in the Church, the exclusive judge of whether a charge will be admitted or not.

3. SJC Has Misunderstood the Ordination Vow

SJC’s third error that rises to the level of objectionable is its almost-total misunderstanding of the ministerial vows at ordination. Having neglected the duty to prove “from Scripture” that TE Chastain’s behavior was a chargeable offense, SJC attempted to prove from *BCO* 21-5 that his behavior was a chargeable offense. Referring to this passage, SJC said:

It is clear that TE Chastain’s comments in his letters to the CPC congregation, as described above, evidenced a violation of his vow to be subject to his brethren and maintain the peace and unity of the Church. TE Chastain’s views, while not sinful in and of themselves, should not have been published to the CPC Congregation, especially after the Session had made its decision. In doing so, TE Chastain was being divisive, broke his vows, and was in sin.

When a minister, at ordination by presbytery, promises subjection to his brethren in the Lord, he makes that vow to the presbytery that has jurisdiction *over* him, not to the Session that he moderates, which has no jurisdiction over him (cf. the statements about jurisdiction in *BCO* in *BCO* 11-4 and 34-1). No TE in the PCA is obliged to concur in, or submit to, the judgments of his Session. If SJC’s reasoning were correct, ministers would have no effective rule in the church at all, because they are always outnumbered on the local level by REs, to whom, by SJC’s reasoning, TEs must silently submit. So the

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one officer in the church equipped by education and vocation to lead the church *via* the Scriptures is effectively, by this reasoning, squelched.

Suppose TE Chastain's ruling elders had ordered him to practice paedocommunion--would TE Chastain have been obliged, mutely, to administer communion to infants, without expressing before his congregation any dissent? By SJC's reasoning, he could not have objected. SJC said:

If TE Chastain believed the action(s) of the Session violated the Constitution to such an extent that he could not be subject to the Brethren and/or that the action somehow violated the purity of the Church, his redress was either to attempt to persuade the Session to reconsider its action or file a complaint against the action, not engage in a letter writing campaign, which attempts to place his views over that of the Session's adopted positions...his proper course of conduct would be for him to attempt to have the Session reconsider the matter or to file a complaint objecting to the offending action, *not publicly debate the issue after Session has acted*" (emphasis mine).

SJC has misunderstood the vow of submission in two ways, by misunderstanding to whom the submission is pledged, and by suggesting that submission demands *mute* obedience of the minority party. Our standards do not require such mute obedience. According to the Westminster Confession regarding synods and councils of the church, their "decrees and determinations, *if consonant to the Word of God*, are to be received with reverence and submission" (WCF 31:2, emphases mine). TE Chastain did not judge the Session's determination to be consonant to the Word of God, and therefore he was not obliged to receive their determination with reverence and submission, and he surely was not constitutionally obliged to receive any deliberation of a church-court with *silence*. Westminster does not require that we receive the determinations of church courts "with reverence, submission, and silence;" it only requires that we receive her scriptural determinations "with reverence and submission." Such reverence and submission does not require, as SJC erroneously declares, that a minister must "not publicly debate the issue after the Session has acted." If SJC's reasoning were correct, Martin Luther sinned by publishing his theses regarding indulgences, Jonathan Edwards sinned by publishing his disagreement with his Session (and his grandfather and copastor, Solomon Stoddard) regarding the half-way covenant, and J. Gresham Machen sinned by publishing his disagreement with his Presbytery regarding the Independent Board for Presbyterian Missions. If

their reasoning were correct, it hardly needs to be said that I am now sinning by publishing my disagreement with their ruling after they have acted.

Far from demanding silence from minority parties, our constitution authorizes not only complaints and appeals (*BCO* 42 and 43), but also dissents, protests, and objections (*BCO* 45) to be publicly articulated, and even entered into the records of the minutes, if they be couched in temperate and respectful language. Our constitution expressly and formally recognizes five *different* ways that the minority may publicly articulate their disagreement with the majority, and it never *prohibits* such expressions, or any other, less formal, expressions.

Ironically, SJC's decision has had the simultaneous effect of rejecting the authority of Scripture and canonizing the authority of Ruling Elders. By their ruling, in this case, we may all publicly debate matters about the Holy Scriptures, but we may not, by their ruling, "publicly debate [an] issue after the Session has acted." Though I speak of this as an irony, it is not a random one: Once the authority of Scripture is rejected, what is left *but* the authority of men? If neither the original court nor the appellate court required that a charge be proven to be such "from Scripture," is it in fact surprising that some new source of religious authority will emerge, in this case the infallible Session?

Conclusion

Each of these three errors is of an objectionable nature and dimension. For a Protestant church to remove an individual from the sacrament and an officer from his office, who has not violated any portion of the Word of God, but only the custom of some Sessions, is a grievous and serious error. To require the minority of any church court, and especially a Teaching Elder, to be silent when he disagrees with a court of which he is a member, is a violation of our constitution and of liberty of conscience. To record as "Facts of the Case," allegations that not only were not proven by the lower court, but were disproven by that court's own records, is to act with disregard for justice, and for the good name of a fellow-believer. Therefore, with gratitude to the members of SJC for their courtesy, patience and diligence, I hereby respectfully register my objection to their summary of the facts and to their reasoning in Case 2005-1.

Respectfully submitted, TE T. David Gordon, Grove City, PA

**PROTEST AGAINST THE GENERAL ASSEMBLY'S DECISION
IN SJC CASE 2005-1**

TE MICHAEL CHASTAIN VS. HERITAGE PRESBYTERY

The undersigned hereby file a protest against the decision of the General Assembly in SJC Case 2005-1, TE Michael Chastain v. Heritage Presbytery

1. First, we protest against the fact that the Presbytery conducted its trial of Mr. Chastain behind closed doors. It is our conviction that the Courts of the Church of the Lord Jesus should be open, and, in particular, should conduct trials openly for all to be able to observe. Even our civil courts are open to the public.
2. We wish to place in the record the substance of the brief pleading for a full hearing by the Standing Judicial Commission as authored by TE T. David Gordon, in which he points to what appear to be weaknesses and discrepancies in the way in which the Panel handled the case. By doing this we are joining with Dr. Gordon in protesting the way in which this case has been handled. As TE Gordon points out this case is, in many ways, similar to the handling of the Machen case by the PCUSA. For a man to be excommunicated, and thus judged not to be a Christian in ways that at least appear questionable is a most serious matter. TE Gordon's brief is as follows:

I know I speak on behalf of Mr. Chastain in expressing appreciation for the patience, attentiveness, and intelligence of the Panel, who heard this case originally on November 18, 2005. Their demeanor was unprejudiced, and their questions were pertinent to the issues, and equally pointed and demanding of both parties, for which we, along with Mr. Almond, I am sure, are sincerely grateful. The Panel's Statement of the Facts reflects substantial effort at reducing a large ROC to a manageable size. This statement, however, probably contains too much material that is both impertinent and prejudicial--allegations by TE Gentry of wrongdoing by TE Chastain. In point of fact, although TE Gentry never formally placed charges, most (if not all) of the allegations made in his communication were taken up by Heritage Presbytery's commission, and TE Chastain was either exonerated on every point or the charges were dropped. The one charge Heritage *did* find TE Chastain guilty of (divisiveness) was *not* alleged by TE Gentry. The *substance*, therefore, of Mr. Gentry's accusations has nothing to do with the case that came before SJC's Panel on November 18, 2005, and it is surprising, therefore, and

possibly an indication of prejudice, to find such substance in the Panel's Statement of the Facts. Further, *BCO* 31-8 expressly warns that

“Great caution ought to be exercised in receiving accusations from any person who is known to indulge a malignant spirit towards the accused; who is not of good character, who is himself under censure or process; who is deeply interested in any respect in the conviction of the accused; or who is known to be litigious, rash, or highly imprudent.”

Since TE Gentry was relieved of his position by TE Chastain, it is almost certain that he had a “malignant spirit” towards him. Further, since during the trial before presbytery, documented in the ROC, TE Gentry had already pled guilty (ROC 567) in California to indecent exposure (ROC 563) and had been placed on the sex offender notification list (ROC 567), even the judgment of charity would conclude that he was “not of good character.” Finally, TE Gentry was never sworn in or cross-examined in the trial. Therefore, his allegations of wrongdoing should not have been included in Panel's decision as though they were facts, impartial or otherwise, and surely should not have been featured so prominently (24 references in Panel's document).

The Reasoning and Opinion (Section IV., beginning on page 10) of the Panel's decision is, at any rate, significantly flawed, and fails to meet the test of *BCO* 29:1, which says:

An offense, the proper object of judicial process, is anything in the doctrines or practice of a Church member professing faith in Christ which is contrary to the Word of God. The *Confession of Faith* and the *Larger* and *Shorter Catechisms* of the Westminster Assembly, together with the formularies of government, discipline, and worship are accepted by the Presbyterian Church in America as standard expositions of the teachings of Scripture in relation to both faith and practice. Nothing, therefore, ought to be considered by any court as an offense, or admitted as a matter of accusation, which cannot be proved to be such from Scripture.

A central Protestant teaching is contained in this part of our constitution, because Protestantism believes the Church is to be guided by the Scriptures *alone*. Luther and Calvin did not differ from Rome by believing in the Bible's authority over the Church, since

Rome also believed in the Bible. The difference was in the “alone.” People are not to be disciplined in the Church of God for violating the conventions or beliefs of any culture or church; they are to be disciplined only for violating God’s commandments. Therefore, *BCO* 29 prohibits anything from even being “considered” by any church-court as an offense, unless the behavior can be “proved to be such (contrary to the Word of God) from Scripture.”

A Moment in Presbyterian History

Presbyterians conversant with their recent history recall the case of J. Gresham Machen, founder of Westminster Theological Seminary and primary mover in the formation of the Orthodox Presbyterian Church. Machen was ordered by his presbytery to desist from any support of the Independent Board for Presbyterian Missions, and he refused to comply with this order. Presbytery acted to remove him from the ministry for his disobedience to their order, and Machen appealed to General Assembly. When Assembly’s Commission began to hear the case, Machen was informed by the Moderator that the Commission would entertain neither biblical nor constitutional arguments in his defense. After consulting with his attorney, Machen refused to make any defense. Machen’s point was principal. There was no disagreement over the facts of the case: he had indeed supported the independent board; his presbytery had ordered him not to support it any longer; and he had continued his support. But the principal point was important: Did either church-court, Presbytery or General Assembly, have any biblical or constitutional authority to order him as they did? Conservative Presbyterians believed Machen had suffered an extraordinary injustice, and even secular commentators such as H. L. Mencken admired Machen’s stance of effectively declaring his entire communion to be out of order with its own standards.

Similarly, in SJC 2005-1, there is no significant dispute among the parties as to the facts. TE Chastain disagreed with his Session’s recommendation to the congregation, and communicated that disagreement to the congregation. The issue, and the only significant issue in this case, is the same issue in the Machen case: Was the behavior of the accused a violation of the will of God, revealed in Scripture, or merely a violation of the will of a church-court?

To its credit, the Panel who heard the case on 11/18/05 understood this to be the issue, and they managed in their statement to focus their attention on this point in the first matter addressed in

Section IV. No scriptures were cited in their ruling, however, just as no pertinent scriptures had been cited in the original case before the presbytery (Presbytery had cited Rom. 12:16; Rom. 16:17; Prov. 6:12 and 19; and Titus 3:9-11, none of which says anything about public statements disagreeing with governing bodies of churches). Instead, they took the alternate course of arguing that TE Chastain's behavior was a two-fold violation of the ordination vow, to "promise subjection to your brethren in the Lord," and to "be zealous and faithful in maintaining the truths of the Gospel and the purity and peace and unity of the church." In this reasoning, three errors occur:

First, the appellate court has no authority to re-try a case previously heard, creating *new* reasons, rationales, charges, or arguments not produced by the lower court. Presbytery's Brief makes no reference to the ordination vow's statement about submission to the brethren; the lower court did not *charge* TE Chastain with insubmission to his brethren. Therefore, it is quite illegal for the higher court to base its sustaining of the lower court on material that did not arise therefrom. An appellate court reviews the record of the case, reads the briefs of the parties, and determines that the arguments of one party or the other comply more with the standards, and then essentially reproduces one of the party's arguments in its reasoning, making reference to the arguments of one of the parties in the original case. How can General Assembly sustain the *judgment* of the lower court on a ground not presented in the original indictment, not presented at trial, and, most importantly, not presented to the higher court through the brief or arguments of the lower court? Effectively, Panel's reasoning amounts to this: The lower court erred in not satisfying the demands of *BCO* 29-1; however, had the lower court been more clever, it *could* have found another ground, to wit--violation of portions of the ordination vow. So Panel now sustains the *judgment* of the lower court on a ground never argued *by* the lower court in its original indictment, trial, prosecution, or brief. By creating an argument that does not appear in the documents of the original case, Panel as much as concedes that the prosecution in the original case failed to satisfy its burden of proof.

Second, in substance, the Panel's reasoning is erroneous on both points, submission and peace/purity/unity. When a minister, at ordination by presbytery, promises subjection to his brethren in the Lord, he makes that vow to the presbytery that has jurisdiction *over* him, not to the Session that he moderates, which has no jurisdiction over him. No TE in the PCA is obliged to concur in, or submit to, the

judgments of his Session. Panel's reasoning would reduce us from a two-and-a-half-office church to two: elders and deacons. Ministers would have no effective rule in the church at all, because they are always outnumbered on the local level by REs, to whom, by Panel's reasoning, TEs must submit. So the one officer in the church equipped by education and vocation to lead the church *via* the Scriptures is effectively, by this reasoning, squelched. Suppose TE Chastain's three ruling elders had ordered him to practice paedocommunion--would TE Chastain have been obliged, mutely, to administer communion to infants, without expressing before his congregation any dissent? By Panel's reasoning, he could not have objected. Panel says: "If TE Chastain felt the action(s) of the Session violated the Constitution to such an extent that he could not be subject to the Brethren and/or that the action somehow violated the purity of the Church, his redress was either to attempt to persuade the Session to reconsider its action or file a complaint against the action, not engage in a letter writing campaign, which attempts to place his views over that of the Session's adopted positions," none of which could have been done prior to the called congregational meeting (Panel Judgment, pp. 10-11). Panel has misunderstood the vow of submission in two ways, by misunderstanding to whom the submission is pledged, and by suggesting that submission demands mute obedience of the minority party. Our standards do not require such blind obedience. According to the Westminster Standards, we need only to obey the "*lawful* commands" of the civil magistrate (*WCF* 23:4). And regarding synods and councils of the church, their "decrees and determinations, *if consonant to the Word of God*, are to be received with reverence and submission" (*WCF* 31:2, *emphases mine*). TE Chastain did not judge the Session's determination to be consonant to the Word of God. Far from demanding silence from minority parties, our constitution authorizes not only complaints and appeals (*BCO* 42 and 43), but also dissents, protests, and objections (*BCO* 45) to be publicly articulated, and even entered into the records of the minutes, if they be couched in temperate and respectful language. Our constitution expressly and positively recognizes five *different* ways that the minority may articulate their disagreement with the majority, and it never *prohibits* such expressions, or any other, less formal, expressions.

In this particular case, it is especially ironic to accuse TE Chastain of being insubmissive to his brethren. For over 13 months now,

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he has submitted to his presbytery's censure, and refrained from preaching in his own pulpit, despite repeated unanimous requests from his congregation to do so. Although he believes the lower court's procedures and judgment were unjust, he has submitted to their censure. This he has done, despite such injustices as:

- The lower court imposed harsher censures (indefinite suspension from both the Supper and office) than admonition or definite suspension, on the ostensible ground that TE Chastain was impenitent; and
- The lower court took the unusual step of not suspending the censures pending the appeal process; yet
- The lower court removed the censure of indefinite suspension from the Supper in May of 2005, without removing the censure of indefinite suspension from office, although both censures were imposed for the same alleged offense, and each can only be removed on the same ground, that the offender has manifested repentance.

Such unconstitutional actions manifest extreme degrees of prejudice against Mr. Chastain, yet he has submitted to his brethren, as his ministerial vows require. Having submitted for over 13 months to an unjust trial, judgment and censure by the court of jurisdiction, it is remarkable that the Panel could and would accuse him of insubmission to his brethren for his mere public disagreement with a court that had and has no jurisdiction over him.

Panel similarly misconstrues the vow regarding the peace/purity/unity of the church. Their reasoning is that any public discussion of disagreement with the Session is *necessarily* a violation of the vow. But sometimes purity and peace are at odds with one another. If his Session had adopted the practice of paedocommunion, for instance, the purity of the church would have necessitated TE Chastain's refusing compliance with their wish, and his candid and public teaching on the proper understanding of the ordinance. The vow merely requires that one "be *zealous and faithful* in maintaining the truths of the Gospel and the purity and peace and unity of the church," indicating that we vow to *attempt* zealously and faithfully to achieve these worthy goals, without pledging that they always can be achieved. TE Chastain manifested such zeal and faithfulness by the temperate, respectful, and courteous language he used in the letters to the congregation:

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I find myself pressed between being faithful to my vows to the only Head of the Church, the Lord Jesus Christ, along with my vows to you, and my great desire to be sympathetic to the wishes of the other members of the Session. It has always been my position that the Session must do its utmost to come to the Congregation with one voice. The principle is that we meet together “in session with Christ,” discuss and arrive at Biblical truth as the source of all decisions by the help of His Spirit, and when the discussion ends and the vote is taken, we speak as one....By striving to speak with one voice, we are never agreeing to be silent if our governing standards (the Scriptures first and our subordinate standards of Westminster and the *Book of Church Order*) are broken [letter dated 12/16/03, ROC 328].

As I have said from the pulpit and want to be applied to all of us, “There is no sin so great that it cannot be forgiven and no friendship so broken that the Gospel cannot heal it.” In Christ I hope that this will be the case. Please realize as I said at the beginning, these are mere men and that we all have our faults [letter dated 5/12/04, ROC 337].

These letters, as we indicated at the hearing in November, are evidence of a zealous and faithful *effort* to maintain the purity/peace/unity of the church. They can only be construed as being violations of the ordination vow if one has already committed the earlier mistake of assuming that subjection to one’s brethren requires one never to indicate that he disagrees with them.

Third, *BCO* 29-1 remains unfulfilled, and the behavior charged (publicly disagreeing with the majority of the Session) remains not actions could have been proven to be contrary to scripture. Even if it were true that TE Chastain’s construed by the lower court to have violated the ordination vows, *BCO* 29-1 still would have needed to have been satisfied in the original charge, or the charge could not have been “considered” by the court of original jurisdiction. Panel’s reasoning on this point is rather daring: “Regardless of whether or not the terms divisive and/or divisiveness are found in Scripture or our Constitution, such behavior can constitute an offense and be a sin.” (Panel Decision, p. 10). This will not do. To say that behavior not prohibited in scripture “can constitute an offense” cannot be made conformable to 29-1: “Nothing, therefore, ought to be considered by any court as an offense, or admitted as a matter of accusation, which cannot be proved to be such from Scripture.” Did Heritage Presbytery

ever prove “from Scripture” that one is forbidden from expressing public disagreement with one’s Session? No. Did the Panel prove “from Scripture” that one is forbidden from expressing public disagreement with one’s Session? No. So, as in Machen’s case, a man is defrocked for behavior that violated the sensibilities and judgments of many good people, but behavior that did not violate the Scriptures.

Machen Redivivus

To many people in the Presbyterian Church in the mid-1920s, J. Gresham Machen was a nuisance. I myself think that he was unwise to support the Independent Board of Presbyterian Missions. But nothing in the Scriptures or the constitutional standards prohibited such, so his Presbytery had no authority to restrain his liberty on the matter. Some people in Heritage Presbytery believe TE Chastain is a nuisance. But in the Church, the liberties of a church-member or a minister are not to be limited by those who would exercise their own liberties differently. They are only limited when they are, as *BCO* 29-1 says, “contrary to the Word of God,” and charges against any one, whether officer or layperson, are not even to be “considered” by the church court, unless it can be “proven” that the behavior in question is a violation of scripture. Presbytery failed ever to prove that Mr. Chastain’s behavior violated Scripture. And the Panel failed to prove the matter also. It merely *asserted* that such behavior was contrary to ordination vows, but it never made any exegetical argument of any sort. Panel asserted: “TE Chastain’s views, while not sinful in and of themselves, should not have been published to the CPC Congregation after the Session had made its decision” (Panel Decision, p. 10). But Panel never produced any biblical evidence, argument, or reasoning, for arriving at this conclusion. Of course, no such argument could have been plausibly made in this case. In Appellant’s brief, we had mentioned the apostle Paul’s minority status at Corinth and Galatia, and his nevertheless writing three letters to those congregations indicating his disagreement with the majority. We also mentioned Paul’s disagreement with Peter at Antioch and his “sharp disagreement” with Barnabas, one of which disagreements Paul wrote about in his letter to the Galatians (Appellee Brief, p. 2, lines 25-40). Neither Presbytery nor the Panel have considered it necessary to oppose this

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with counter-arguments from Scripture. Panel asserted the following erroneous opinion, an opinion absent from the arguments and record arising from the lower court, with striking boldness, and without a trace of biblical evidence or reasoning: “When faced with questions about an action of the Session being right or wrong, an elder’s response to such questions should be ‘the Session has decided...’” (Panel Decision, p. 11). This muting of the minority is never countenanced or required in the scriptures, is never mentioned in our constitutional standards (which expressly permit even formal expressions of disagreement by the minority), and is without precedent in Presbyterian courts. The eighth Preliminary Principle of our *BCO* says this:

Since ecclesiastical discipline must be purely moral or spiritual in its object, and not attended with any civil effects, it can derive no force whatever, but from its own justice, the approbation of an impartial public, and the countenance and blessing of the great Head of the Church.

An “impartial public,” familiarizing itself with the ROC, Briefs, and the Panel’s Decision, would determine that TE Chastain was removed from office and sacrament because he disagreed with his Session; *not* because he had violated any part of Holy Scripture. The case would therefore not enjoy the “approbation” of such an impartial public, and would therefore have “no force whatever.”

With appreciation for the Panel’s patient and diligent efforts, and for those of the SJC, we respectfully therefore request that the judgment of this Panel be reversed by the SJC as a whole.

TE G. Brent Bradley, Westminster
TE Bruce G. Buchanan, Ascension
RE Robert H. Cato, Mississippi Valley
TE Daniel J. Jarstfer, Westminster
TE Mark A. O’Neill, Houston Metro

TE Morton Smith, Western Carolina
TE Dechard Stevens, Calvary
TE William C. Traub, Blue Ridge
TE Charles L. Wilson, Palmetto