

**CASE 2005-8
APPEAL OF TE PETER B. KIM
VS.
KOREAN EASTERN PRESBYTERY**

I. SUMMARY OF THE FACTS

1. On July 12, 2005 Korean Eastern Presbytery (KEP) indicted TE Peter B. Kim (Appellant) on three charges: 1) contumacy for ignoring the authority of KEP and resisting its decision regarding the dissolution of his pastoral relationship with Hudson Presbyterian Church, 2) of having failed to manage and operate the church property in accordance with the civil laws governing a non-profit organization, particularly as relates to the election of trustees, deceiving the church, and dishonoring the name of a deceased trustee whose name he continued to report as being a trustee, and 3) of threatening the church through his attorney by sending a letter of intent, dated December 28, 2004, to file a lawsuit in civil court for defamation of character based on groundless rumors. TE William Jin was appointed as Prosecutor.
2. KEP held a called meeting on August 9, 2005 to deal with two matters, one of which was to try the case against the Appellant. Over the objections of the Appellant, three of the five witnesses requested were not allowed to testify. The Appellant's son, Mr. David Kim, a professional attorney, was not allowed to represent him during the trial. On charge # 1 (contumacy) the Appellant was found guilty (15-0). On charge #2 (related to the board of trustees) he was found not guilty (6-2 which is not a majority of those present and voting). On charge #3 (threatening his congregation with a civil lawsuit) he was found guilty (14-1).
3. KEP immediately voted, 11-3, that "TE Peter B. Kim be deposed and excommunicated, immediately effective and it will continue until overturned otherwise by the General Assembly." The Moderator declared, based on the vote of Presbytery, that "TE Peter B. Kim is suspended from all his pastoral office and duties (BCO 42-6) until his appeal is decided at the General Assembly."
4. On September 6, 2005 the Appellant filed, with the Standing Judicial Commission, an appeal from the judgment of KEP. A panel was appointed to hear the case.

II. STATEMENT OF ISSUES

1. Shall the judgment against TE Peter B. Kim "of being continually contumacious against the authority of the presbytery" be sustained?
2. Shall the censures of deposition and excommunication of Peter B. Kim be sustained?

3. Shall the judgment against TE Peter B. Kim of threatening two ruling elders of the Hudson Presbyterian Church with a civil lawsuit in a letter written by his attorney on December 28, 2004 be sustained?

III. JUDGMENT

1. Yes.
2. Yes in part. The censure of deposition is sustained. The censure of excommunication is not sustained but is changed to indefinite suspension from the sacraments.
3. No. This particular letter of December 28, 2004 is alluded to several times in the Record of the Case, but is not itself in the ROC. Therefore, it cannot constitutionally be considered by the SJC in determining the judgment on this charge.

IV. REASONING AND OPINION

The charge of contumacy for which TE Kim was found guilty was of the broader meaning of not being subject to the brethren as found in the fourth ordination vow (*BCO* 21-5). It was not the type of contumacy described in *BCO* 32-6.

The SJC recognizes the right of the trial court to impose censures on those who have been found guilty of offenses (*BCO* 39-3.3). The censure of deposition is sustained and the Presbytery is reminded of its obligations under *BCO* 46-8.

However, the censure of excommunication was excessive in this instance because of the nature of the conflict. This censure is changed to indefinite suspension from the Sacraments (*BCO* 30-3).

The Statement of the Facts was written by TE Charles E. McGowan. The Issues and Judgment were written by the full Standing Judicial Commission. Revised Reasoning and Opinion was written by TE Dominic A. Aquila, TE Charles E. McGowan, and RE J. Howard Donahoe

The vote on Case 2005-08 was:

TE Dominic A. Aquila	Concur
TE Howell A. (Howie) Burkhalter	Recused
TE Stephen M. (Steve) Clark	Concur
RE M. C. (Cub) Culbertson	Concur
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	Absent
RE Terry L. Jones	Concur

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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	Concur
RE Steven T. (Steve) O’Ban	Concur
TE Michael M. Rico	Absent
TE G. Dewey Roberts	Dissent
TE Michael F. (Mike) Ross	Absent
RE John Tolson	Concur
RE John B. White, Jr	Concur
RE W. Jack Williamson	Concur

Adopted: 17 concurring, 1 dissenting, 0 disqualified, 1 recused, 0 abstained and 5 absent.

**DISSENTING OPINION
JUDICIAL CASE 2005-8
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The Standing Judicial Commission argued during the deliberation of this case that the requirement in *BCO* 32-6 and 34-4 to have two meetings of a court before censuring an offender for contumacy only applies where a person has refused twice to obey a citation of the court. This line of reasoning belies a misunderstanding of what contumacy is. Contumacy is a hydra sin which is manifested in numerous ways. Contumacy is a sin which attaches itself to other sins and increases the gravity of the transgression. Contumacy is not to be reduced to just a failure to obey a citation of a court which would be *reductio ad absurdum*. As Matthew Henry says, “Whatever the sin itself is, it is contumacy that incurs the anathema. It is rebellion added to the sin that is as witch-craft, and stubbornness as idolatry” (Commentary on Numbers 15). Any sin, however slight, may receive the highest censure if the person responds contumaciously, but this highest censure cannot be administered until the person is given the opportunity to repent. For this reason, a court cannot discipline a person for contumacy—whether it is failure to obey a citation, refusal to submit to the brethren, rebellion against the court or anything else—without having at least two meetings.

MINUTES OF THE GENERAL ASSEMBLY

First, contumacy is variously defined by Christian judicatories as “contempt of court,” “rebellion against censure,” etc. In all the church court cases I have consulted, the charge of contumacy was never attached until at least the second meeting of the court. Contumacy is the offender’s attitude of stubbornness and rebellion against the lawful authority of the court. On what basis is that stubborn attitude to be determined until the court has at least warned the offender and given him time to manifest his response?

On March 29, 1935, J. Gresham Machen, former professor at Princeton Theological Seminary, was defrocked by the Presbytery of New Brunswick of the Presbyterian Church in the United States of America for his alliance with the Independent Board of Presbyterian Foreign Missions. The charges against Machen were as follows:

- 1) Violation of ordination vows; 2) Disapproval of the government and discipline of the Presbyterian Church; 3) Renouncing and disobeying the rules and lawful authority of the Church; 4) Advocating rebellious defiance against the lawful authority of the Church; 5) with refusal to sever his connection with “the Independent Board for Presbyterian Foreign Missions” as directed by the General Assembly; 6) Not being zealous and faithful in maintaining the peace of the church; 7) Contempt of and rebellion against his superiors in the Church in their lawful counsels, commands and corrections; 8) Breach of his lawful promises; and 9) Refusing subjection to his brethren in the Lord.

The charges against Machen can be reduced to two: refusing to be in subjection to the brethren in the Lord and contumacy. Several of the charges against Machen parallel the charges in the Kim vs. Korean Eastern Presbytery case; particularly, the third, fourth, seventh, eighth and ninth charges. While the word contumacy is not used in the charges against Machen, the idea of contumacy is certainly present when he is accused of “rebellious defiance,” etc. In both trials (Kim and Machen), there were numerous constitutional breaches by the presbyteries involved. Yet, unlike the trial of TE Kim by Korean Eastern Presbytery, the New Brunswick Presbytery (PCUSA) afforded Machen time to “repent” of his views before defrocking him. The charges were brought against Machen on December 20, 1934, and the trial was conducted in February and March of 1935. Even in the liberal Presbyterian Church in the United States of America there was respect for the Biblical teaching that an offender cannot be convicted of contumacy at the first trial.

Yet, Machen commented on those proceedings as follows:

I am condemned for failing to obey a lawful order but when my counsel, the Rev. H. McAllister Griffiths, offered to prove that the order that I had disobeyed was not lawful but unlawful the court refused to him a word of argument. I am condemned for making false assertions about the Modernism of the official Board of Foreign Missions, but when my counsel offered to prove that those assertions were not false but true, the court would not hear a word of the evidence that we were perfectly ready to produce. It is not too much to say that a trial conducted in that fashion is nothing but a farce.

Thus, Machen took the position that disobedience to unlawful orders or proceedings of a court are permitted and with this position the *BCO* agrees.

Second, the *Book of Church Order* of the PCA is based on general Biblical principles. Courts in the Presbyterian Church in America do not rule by fiat authority. The Scriptural principle in general is that courts should move slowly in administering discipline. The passage which most clearly teaches this principle is Titus 3:10. On any given passage of Scripture, commentators can be consulted who either affirm or deny any particular doctrine because Biblical interpretation is not undertaken in a vacuum. The only important question for us is this: How do those commentators in the Presbyterian and Reformed community interpret this verse? The comments of John Calvin on this passage are instructive:

But we must exercise moderation, so as not instantly to declare every man to be a “heretic” who does not agree with our opinion. There are some matters on which Christians may differ from each other, without being divided into sects. Paul himself commands that they shall not be so divided, when he bids them keep their harmony unbroken, and wait for the revelation of God (Philippians 3:16). But whenever the obstinacy of any person grows to such an extent, that, led by selfish motives, he either separates from the body, or draws away some of the flock, or interrupts the course of sound doctrine, in such a case we must boldly resist.

In a word, a heresy or sect and the unity of the Church -- are things totally opposite to each other. Since the unity of the Church is dear to God, and ought to be held by us in the highest estimation, we ought to entertain the strongest abhorrence of heresy. Accordingly, the name of sect or heresy, though philosophers and statesmen reckon it to be honorable, is justly accounted infamous among Christians. We now understand who are meant by Paul, when he

bids us dismiss and avoid heretics. But at the same time we ought to observe what immediately follows,

After the first and second admonition; for neither shall we have a right to pronounce a man to be a heretic, nor shall we be at liberty to reject him, till we have first endeavored to bring him back to sound views. He does not mean any “admonition,” whatever, or that of a private individual, but an “admonition” given by a minister, with the public authority of the Church; for the meaning of the Apostle's words is as if he had said, that heretics must be rebuked with solemn and severe censure. . .

Yet moderation is always best, that, instead of being restrained by force and violence, they may be corrected by the discipline of the Church, if there be any ground to believe that they can be cured (John Calvin, Commentary on Titus).

If even heretics are to be given the opportunity to repent before they are removed from the church, how much more is it necessary to show leniency towards the contumacious that they also may be corrected and restored to fellowship? Other Reformed commentators such as William Hendrickson, Patrick Fairbairn, Benjamin Keach and George Knight agree with Calvin's interpretation on Titus 3:10. Their comments can be perused by those who are interested, but space does not permit them to be included in this dissent.

Third, the purpose of discipline is to keep and reclaim disobedient sinners (*BCO* 27-3) and is to be administered under a dispensation of mercy, not of wrath (*BCO* 27-4). The censure of excommunication, if administered too quickly, overturns the real purpose of discipline; which is, to promote the glory of God, to purify the church, and to keep and reclaim the sinner. In the trial of TE Kim, Korean Eastern Presbytery both deposed him from office and excommunicated him at the first meeting of the court. It is hard for this presbyter to understand how such action by that court can be called a “dispensation of mercy.”

Fourth, the *Book of Church Order* gives instructions about a minister guilty of contumacy:

- 34-4. a. When a minister accused of an offense is found contumacious (cf. 32-6), he shall be immediately suspended from the sacraments and his office for his contumacy. Record shall be made of the fact and of the charges under which he was arraigned, and the censure shall be made public. The censure shall in no case be removed until the offender has not only repented of his

contumacy, but has also given satisfaction in relation to the charges against him.

- b. If after further endeavor by the court to bring the accused to a sense of his guilt, he persists in his contumacy, he shall be deposed and excommunicated from the Church.

There are some points that must be made about this section of the *BCO*:

- (1). The sin of contumacy is distinguished from the offense which brought the matter before the court- “when a minister *accused of an offense* is found contumacious.” How is the accused found guilty of contumacy? Obviously, it is by his rebellion against the court in the matter of his offense. *BCO* 34-4 references *BCO* 32-6 which gives three examples of contumacy—
 - a. failure to obey a citation, which is twice given by the court,
 - b. refusal to plead before the court,
 - c. or refusal to cooperate with *the lawful proceedings* of a court.

Yet, contumacy may take a multitude of forms in addition to those specifically spelled out in the *BCO*.

- (2). Deposition and excommunication are not to be administered until two thresholds are reached—
 - a. *further endeavors by the court* to bring the accused to a sense of his guilt,
 - b. and *persistence in contumacy* by the accused.

Neither of these thresholds was attained in the judicial case against TE Kim before Korean Eastern Presbytery.

- (3). The offense is obviously distinct from the contumacy because the *BCO* says that “the censure shall in no case be removed until the offender has not only repented of his contumacy, but has also given satisfaction in relation to the charges against him.” Thus, contumacy in the *BCO* is a sin of rebellion which attaches itself to other offenses and aggravates them and is manifested by a stubborn refusal to submit to the court.

Fifth, the actions of Korean Eastern Presbytery, which led up to this trial of TE Peter Kim, were egregious breaches of constitutional authority. It cannot be maintained by those who love the Scripture that it is always the responsibility of a member of the Presbyterian Church in America to obey the decisions of the courts (unless those courts are considered to be infallible).

There are numerous examples of righteous people who disobeyed the “authorities” over them. The Apostles were given strict orders not to continue teaching in the name of Jesus to which they replied, “We must obey God rather than men” and “Whether it is right in the sight of God to give heed to you rather than to God, you be the judge; for we cannot stop speaking what we have seen and heard” (Acts 4:19; 5:29). The ordination vows, which all ministers of the PCA take, require them to promise “subjection to the brethren *in the Lord.*” It is not subjection to the whims or capriciousness of church courts in their abuse of power. When Martin Luther defied the Church in his day, he said, “Here I stand; I can do no other.” Soldiers in the army are required to obey *only* the lawful orders of superiors.

Thus, contumacy is a charge, which cannot be separated from the issue involved. As nothing but a violation of Scripture can be a charge against any person, so nothing can be called contumacy except rebellion against lawful authority. Disobedience against breaches of constitutional authority is not contumacy. Disobedience against illegal orders of a court is not contumacy. Might does not make right in God’s Church. If a person is contumacious simply for disobeying the unlawful authority of the court, then Christ was contumacious for opposing the religious leaders in His day; then the Apostles were contumacious for refusing to bow to the Sanhedrin’s order that they cease preaching in the name of Jesus; then Martin Luther was contumacious against the Diet of Worms; then Machen was contumacious against the Presbytery of New Brunswick (PCUSA); then the founding fathers of the PCA were contumacious for not submitting to the decisions of the PCUSA; etc. Contumacy is stubborn persistence *in sin*.

Every person has a responsibility first to obey God and then to obey those lawful authorities God has placed over them. Where there is a conflict between God’s commands and man’s orders, God must be obeyed and man must be disobeyed. Such disobedience is not contumacy.

In the deliberations on this case, the SJC could cite no Scriptural warrant for their position, no part of the *BCO* which supports their decision (except in denying that the *BCO* sections on contumacy applied to this case) and no precedent in church history. Yet, the responsibility of a juror on the SJC is to judge every case on the basis of the constitution of the Presbyterian Church in America.

The effect of this decision by the SJC is to affirm that Korean Eastern Presbytery has the power to act unconstitutionally with impunity. Courts, which want to disregard the constitution of the PCA, are now and will be strengthened by this ill advised, unconstitutional decision of the SJC.

Respectfully Submitted by TE Dewey Roberts, Panel Chairman in SJC cases 2005-8 and 2005-9