

1 who is acquitted can never again be held accountable for his views. A court (whether the
2 same or another) is not prohibited from the initiation of process against the same
3 defendant in the event of change in views or subsequent publication or advancement of
4 erroneous doctrinal views or scandal. Such subsequent actions may create a new “cause
5 of action” or grounds for inquiry that may become the subject of judicial process, or
6 liable to a request for the assumption of original jurisdiction under *BCO* 34-1 should the
7 court of original jurisdiction refuse to act.

8
9 Finally, the Overtures offer as ground for an assumption of original jurisdiction an
10 alleged failure of the Presbytery to act to declare a mistrial. They ask the Assembly to:

11
12 Assume original jurisdiction and direct the Standing Judicial Commission to hear
13 “Pacific Northwest Presbytery vs. Peter Leithart,” because PNWP has “refused to
14 act” per the provision found in *BCO* 34-1, by not declaring a mistrial in this case
15 because of its chief prosecutor’s conflict of interest. . . .

16
17 However, a mistrial is the termination of a trial process before its natural completion, that
18 is, the rendering of a judgment. In this case the trial was completed. A motion for
19 mistrial is not available to either the prosecution or the defense after completion of a trial,
20 rendition of judgment by the trial court, and the issuing of the decision of the appellate
21 court. Further, the failure of a court to declare a mistrial once process is completed is not,
22 in itself, a “refusal to act” under *BCO* 34-1.

23
24 A vote was taken on the Committee’s recommendation to answer the Overtures in the Negative,
25 with the Grounds as amended. The vote was 15 Concur, 1 Dissent and 1 Abstain on the decision
26 as shown below.

27
28 TE Barker – Absent RE Donahoe – Abstain TE McGowan – Concur
29 RE Bise – Concur RE Duncan – Concur TE Meyerhoff – Concur
30 TE Burkhalter – Absent TE Fowler – Absent RE Neikirk – Concur
31 RE Burnett – Concur TE Greco – Concur RE Nusbaum – Concur
32 TE Cannata – Concur TE Gunn – Dissent RE Pickering – Concur
33 RE Carrell – Concur RE Haigler – Absent RE Terrell – Concur
34 TE Chapell – Absent TE Kooistra – Absent RE White – Concur
35 TE Coffin – Concur TE Lyle – Absent RE Wilson – Concur

1 May 20, 2012 Hedman Complaint filed with SJC (Case 2012-05)
2
3 May 31, 2012 The Prosecutor advises PNW of his changed views and resigns from his
4 Call.
5
6 September 23, 2012 The Prosecutor joins the Roman Catholic Church and is erased from roll
7 of PNW Teaching Elders.
8

9 The Overtures ask the General Assembly/SJC to:

10
11 Assume original jurisdiction and direct the Standing Judicial Commission to hear
12 “Pacific Northwest Presbytery vs. Peter Leithart,” because PNWP has “refused to
13 act” per the provision found in *BCO* 34-1, by not declaring a mistrial in this case
14 because of its chief prosecutor’s conflict of interest, stemming from his transition
15 into membership of the Roman Catholic church. SJC should not fail to take into
16 consideration the Westminster Confession of Faith and Catechisms in hearing the
17 case.
18

19 As demonstrated in the SJC’s Answer/Grounds, I believe the request for a “mistrial” is
20 fatal to granting the relief sought in the Overtures. The reasons for this are clearly set out in the
21 SJC Answer/Grounds.
22

23 However, while still seeking a “mistrial” in its Statement in Support, Calvary
24 Presbytery’s argument leads me to believe that the relief that should have been sought was a
25 request to take original jurisdiction of TE Leithart at the point in time when PNW was
26 considering the Complaint, i.e. April, 2012. *BCO* 34-1 neither specifically allows, nor prohibits,
27 taking original jurisdiction in this manner.
28

29 A review of the PNW Minutes indicates that no action was taken in connection with the
30 Prosecutor’s doctrinal questions/changed views (and the effect this might have on the case) when
31 it considered whether or not the Complaint should be sustained or denied in April, 2012. Given
32 the Prosecutor’s Blog statements, it seems members of PNW knew of his struggles at this time,
33 but did not share this knowledge with PNW during the handling of the Complaint. So it appears
34 PNW did refuse to act (by taking no action) in regard to considering whether or not the
35 Prosecutor’s doctrinal questions/changed views could be a basis for sustaining the Complaint.
36

37 While in Blog postings, the Prosecutor denies his doctrinal questions/changed views
38 affected his work as a prosecutor, his statement that he could not just “get out” of the process
39 does cause concern. And to be fair, the Prosecutor’s doctrinal questions/changed views should
40 have been well known to the Complainant(s), whom I understand were members of the
41 Prosecutor’s Session. Regardless, the Prosecutor’s doctrinal questions/changed views were not
42 formally brought to the attention of PNW at the time the Complaint was denied.
43

44 Theoretically, if original jurisdiction was assumed at the point in time when the
45 Complaint was being considered by PNW, the denial of the Complaint by PNW on April 26-27,
46 2012, and all actions thereafter would be moot/set aside, and the SJC would hear the Complaint

1 and consider, in addition to the other matters raised in the Complaint, whether or not the
2 Prosecutor's doctrinal questions/changed views, under the general principles of justice, and the
3 importance of objectivity and impartiality in judicial proceedings (*BCO 32-17, OMSJC 2.1, 2.4,*
4 *2.10*), would justify sustaining the Complaint and conducting a new trial. If the Complaint was
5 sustained, there would be no double jeopardy in conducting a new trial, as there would be no
6 final verdict from the June, 2011 trial.

7
8

RE Samuel J. Duncan