OVERTURE 7 from the Session of New Hope PCA, Fairfax, VA (to CCB, OC)
"Amend *BCO* 35-1.to Require Church Officers to Testify"

Note: (*RAO* 11-10) The overture was rejected by Potomac Presbytery at a Special Meeting on February 7, 2015, by a vote of 18 to 24.

Whereas, there is a long established tradition in Anglo-American law, with the respect to the compulsory powers of government, that an accused person cannot be required in any criminal case to testify against himself, the justice of which we raise no question or objection, and,

Whereas, that tradition appears to have influenced the language with respect to the Rules of Discipline of the Southern Presbyterian tradition (*BCO* 35-1), in the right of the accused not to be compelled to testify, and

Whereas, a church court has no recourse to the use of force, or physical pains and penalties, and does not pretend to adjudicate criminal cases, but, on the contrary, has only moral and spiritual power exercised, as ministerial and declarative (Preliminary Principles 7.-8.), and

Whereas, church officers are *required* to explain and defend their life and doctrine in order to be ordained to office (e.g., *BCO* 21-4.c.);

Whereas, church officers are *required* to explain and defend their life and doctrine when seeking admission to serve under the jurisdiction of another court (e.g., *BCO* 13-6.);

Whereas, church officers are *required* by their ordination vows to come forward and make known any way in which their views might have become out of accord with any of the fundamentals of our system of doctrine (e.g., *BCO* 21-5.2.); and

Whereas, church officers are *required* to explain and defend their life and doctrine to the court under whose authority they labor upon mere reports that their views or actions are inconsistent with their profession (*BCO* 31-2);

Whereas, in each instance the context is a quasi-judicial setting and officers are *required* to "testify";

Whereas, should the person in question fail in his testimony, he would not be ordained, or not admitted to the new court, or make himself liable to censure after further proceedings;

Whereas, according to the foregoing, church officers are in the nature of the case continually obliged to voluntarily have their life and doctrine subject to legitimate scrutiny (1 Tim. 4:16; 1 Tim. 5:22; Acts 20:28-30);

Whereas, in this context, a rule relieving *all* accused persons from an obligation to testify, as does *BCO* 35-1, undermines the responsibilities of our courts of original jurisdiction and our officers (cf. *BCO* 31-2);

Therefore be it resolved, that the 43rd General Assembly begin the process of amending *The Book of Church Order* by approving the amendment to *BCO* 35-1 set forth below and sending the same for the advice and consent of the Presbyteries:

strike the second sentence and add in its place

> In general, the accused party may be allowed, but shall not be compelled to testify. However, because of the relationship of mutual accountability between church officers and the church created in the voluntary affirmation of ordination vows, church officers under accusation shall be required to testify before the court of original jurisdiction. In all cases the accuser shall be required to testify, on the demand of the accused.

so that the amended provision reads as follows (added material underscored):

> *BCO* 35-1. All persons of proper age and intelligence are competent witnesses, except such as do not believe in the existence of God, or a future state of rewards and punishments. <u>In general, the accused party may be allowed, but shall not be compelled to testify. However, because of the relationship of mutual accountability between church officers and the church created in the voluntary affirmation of ordination vows, church officers under accusation shall be required to testify before the court of original jurisdiction. In all cases the accuser shall be required to testify, on the demand of the accused.</u> Either party has the right to challenge a witness whom he believes to be incompetent, and the court shall examine and decide upon his competency. It belongs to the court to judge the degree of credibility to be attached to all evidence.

Adopted by the Session of New Hope Presbyterian Church at its stated meeting, February 12, 2015
Attested by RE Frederick Kuhl, stated clerk of Session