

The Layman

RAISING THE STANDARD

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Kirk of the Hills session votes to leave the PCUSA

Documents by denomination's lawyers on property legal strategy cited in decision

By John H. Adams
The Layman

The session of the 2,800-member Kirk of the Hills Presbyterian Church in Tulsa, Okla., the largest congregation in the Presbytery of Eastern Oklahoma, has voted to leave the Presbyterian Church (USA) and align with the Evangelical Presbyterian Church.

On August 30, the congregation overwhelmingly endorsed the session's recommendation, voting 967-36 (96.4 percent approval) with eight abstentions to leave the PCUSA, and 973-31 (96.9 percent approval) with 13 abstentions to affiliate with the Evangelical Presbyterian Church. By acclamation, the members elected the congregation's co-senior pastors, Dr. Thomas W. Gray and Dr. R. Wayne Hardy, to serve Kirk of the Hills Evangelical Presbyterian Church.

Prior to those actions, church leaders deeded the church's property to an independent corporation and filed a "quiet title" suit in civil court to protect the property from seizure by the Presbytery of Eastern Oklahoma. The presbytery – claiming it was not targeting the Kirk of the Hills – had previously filed affidavits in civil court on all local church property, advising the court and lending institutions that the property is held in trust for the benefit of the PCUSA.

But Kirk leaders could not accept the presbytery's contention after *The Layman* published on its Web site the PCUSA's "privileged and confidential" documents that advised presbyteries to take coercive action to prevent local congregations from leaving the denomination with their property.



They said they believed those papers – which included suggestions that presbyteries file affidavits against local church property, just as the Presbytery of Eastern Oklahoma had done – reinforced their opinion that the presbytery was taking a step toward seizing the Kirk's nine acres and buildings that are worth millions of dollars.

They also believe the Kirk's hosting of the New Wineskins Convocation made the church a likely target for a presbytery administrative commission that would remove the session and order the senior pastors

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PCUSA lawyers advise hardline tactics in church property disputes

By John H. Adams
The Layman

The Presbyterian Church (USA) has selectively disseminated two "privileged and confidential" documents by denominational lawyers who advise presbyteries to use Draconian measures when claiming local church property.

The tone of the documents is reflected in the words they use to describe the parties: the "true church" – meaning those who submit to the governance and decisions of the PCUSA – versus the "schismatics" – meaning those who believe the denomination has abandoned its Biblical and Reformed roots. One recommendation for presbytery representatives is to portray themselves as the aggrieved party battling the ungodly – "keep the presbytery in a 'defensive' secular legal posture. (Let the schismatics seek Caesar's help.)"

'Spiritual language'

The documents also suggest that presbyteries use "spiritual language" in staking their claims to local church property, but there's

Download documents at www.layman.org



Use *Layman* Web archives on "Property" to review cases across the nation.

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Baton Rouge First sues presbytery for clear title to property

The Layman

Trustees of 1,700-member First Presbyterian Church in Baton Rouge, La., filed a lawsuit for declaratory judgment on Sept. 6, seeking clear title to church property. The defendant is the Presbytery of South Louisiana.

Filed simultaneously with the suit is a petition for temporary restraining order prohibiting the presbytery from taking any action that would adversely affect the title to the church's property. The petition cites secret strategy docu-

ments written by attorneys in the denomination's Office of the General Assembly and Advisory Opinion Note 19 by Stated Clerk Clifton Kirkpatrick as reasons for the order.

The strategy documents advise presbytery officials to seize local church property, change the locks, freeze bank accounts and take other actions affirming denominational control. The Advisory Opinion Note 19 warns that if presbytery officials won't take such actions, higher governing

Copies of the First Church documents may be viewed on its Web site: www.fpcbr.org

bodies can step in and do it for them.

In a letter to his congregation explaining the trustees' action, Rev. Gerrit Dawson said, "It is important to note what this action does not do: it is not an act of disaffiliation with the PCUSA. It is

not an ecclesiastical action. Rather, it is a legal action related to our property rights."

Dawson said the church session has been developing a master plan for its campus that will require a capital fund campaign. "Succinctly, we cannot hope to raise needed funds until the issue of ownership is settled," he said. "As First Presbyterian finds itself in acute disagreement with recent denominational actions, the denomination's claim that all property is held in trust for

the PCUSA has become even more problematic."

Dawson continued, "The way our legal system works, pursuing this clarity requires filing a lawsuit. In these days of fractured denominational life, it also requires requesting a temporary restraining order from punitive actions that might be taken against us as a result of seeking this judgment. It is the ardent hope of the trustees and session that this claim will be resolved quickly and amicably."

PCUSA lawyers advise hardball tactics

Continued from Page 1

scant reference to Scripture, other than the steely citation about Caesar.

They call for aggressive administrative and/or legal measures designed to intimidate dissenting congregations from attempting to leave the denomination with the property paid for by their members.

The documents suggest that if the presbytery learns that a congregational majority is inclined to leave the denomination, it should look for a “loyal minority” in the congregation and declare it the “true church” with rights to the property.

If a loyal minority cannot be found, denominational lawyers suggest that the presbytery can simply declare the congregation dissolved and take the property.

One document is titled, “Church Property Disputes: A Resource for Those Representing Presbyterian Church (U.S.A.) Presbyteries and True Churches in the Civil Courts.” Authorship is attributed to the PCUSA’s Office of Legal Services, but the name of Eric Graninger, general counsel to the PCUSA, is also listed at the top of the front page as a contact person.

The second document is described as “Processes for use by presbyteries in responding to congregations seeking to withdraw.” It concludes with a notation that it was prepared in September 2005 by Mark Tammen, director of the Department of Constitutional Services in the Office of the Gen-

eral Assembly. Tammen, a Presbyterian minister and a lawyer, is Stated Clerk Clifton Kirkpatrick’s right-hand legal aide.

‘Privileged and confidential’

Both documents include the following underlined and capitalized statement at the top right of their front pages: “PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK COMMUNICATION.”

The two documents were mailed anonymously and without comment to *The Layman*. Tammen said he was familiar with documents as described on the front pages of those received by *The Layman*, but he said he would not comment on or validate those copies.

“My job is to hold the church together,” he said, contending that the Lay Committee was trying to cause “schism.”

The document described as “Processes for use by presbyteries ...” includes the prevailing view of both works: “The Office of the General Assembly is aware of Presbyterians who feel compelled not only to abandon their vows and promises, but who are willing also to rend the fabric of the church and sinfully threaten the peace and unity of Christ’s Church.”

How Presbyterians leaving the PCUSA might “sinfully threaten the peace and unity of Christ’s Church” – meaning the universal Church – by affiliating with a more Christ-centered, Biblically grounded alternative is not explained.

But one thing is made emphatically clear in both documents. For purposes of property control and discipline, the documents repeatedly assert that the Presbyterian Church (USA) is a hierarchical church and its members must follow the dictates of its governing body. The papers do not use a theological justification for staking claim to local property or to hierarchical rule.

But they do propose psychological tactics – including one that might be used to divide a local congregation into two camps, the newer members and dead members. “Demonstrate to the court it is the presbytery that keeps the faith with Presbyterians who, in the past, gave their monies, work and hope to create a Presbyterian Church in this place to perpetuate the faith of the Presbyterian Church ... It is improper and unfair to let present members ‘break the chain’ between founding Presbyterians of the past and those of the future.”

The scavenger hunt

On pages 12-13 of the “Church Property Disputes” document, the writers recommend that presbytery officials conduct a scavenger hunt for evidences of a congregation’s past and present identification with the denomination. They list 22 different things to check – ranging from deeds to hymnals.

Others include: Is Presbyterian etched into the cornerstone of your church? Have you



Mark Tammen takes notes at the 2005 New Wineskins Convocation.

used the Presbyterian logo on your letterhead? Did you use Presbyterian hymnals, attend Presbyterian camps, pay per capita, acquire benefits from the presbytery (funds for building, lower insurance rates), etc. There is even reference to worship style as a measure of keeping faith. Presbytery officials are asked to determine, “Are the worship activities of the local church consistent with those of the general church? This factor is challenging within the PCUSA because of the diversity in worship styles.”

Distinctives of the two papers

While the two papers emphasize a common purpose – protecting the denomination’s claim to local church property – they do have their distinctives. “Processes for use by presbyteries ...” focuses on administrative and disciplinary provisions in the *Book of Order* and disputes that have been handled by higher governing bodies and their judicial commissions.

The overriding issue in “Church Property Courts” is preparing presbyteries for litigation. It calls for preparation to build a civil case, hiring the right kind of attorney, determining the religious background of potential judges and compiling evidence favorable to the denomination’s claim. In both cases, the two denominational documents spin their assessments in a way that is most compatible with chapter 8 of the *Book of Order*, which includes the property trust clause. But the *Book of Order* (G-11.0103i) gives presbyteries the options “to divide, dismiss or dissolve churches in consultation with their members.”

The denomination has also produced documents, including one for the Presbytery of Pittsburgh, that was tailored to explain how to secure disputed local church property in the light of state laws. Jim Mead, executive presbyter, declined to divulge the contents.

Summary of some of the recommendations

The Layman

This is a brief summary of some of the recommendations written by the PCUSA’s lawyers:

- Lawsuits against dissenting congregations should pejoratively identify them as schismatics, even in the titles of the complaints. One document gave this suggested example of a complaint title: “Presbytery of Middle Wyoming v. The Schismatic and Purported Covenant Presbyterian Church of Landsburgh.”
- Take steps to secure local church property by filing affidavits in public court “for the purpose of warning all persons the title to the real property is in dispute.” “Moreover, send a letter to all banks and other institutions that hold accounts for the particular church.” That letter would claim the presbytery has jurisdiction over the church; inform bankers and other institutions about the denomination’s property trust clause; and direct them to release no assets or change their title pending notice from the presbytery.
- “Put the presbytery’s and the local

church’s insurance companies on notice.” The purpose is to prevent the dissenting congregation from using its insurance coverage to pay attorneys’ fees in a property dispute.

- When necessary, change the locks and “secure” the property.
- Determine the religious background of potential judges. Certain religious affiliations (specifically, Presbyterian, Episcopalian, Methodist and Roman Catholic) would make a judge sympathetic to the property claims of hierarchical denominations. “For a judge from an Episcopal system (Catholic and Episcopalian), it is very helpful to say, ‘The presbytery is the bishop.’” The recommendation warns against going before a Baptist judge.
- Keep the original church name and corporation within the PCUSA to ensure that the local congregation’s endowments and future estates will be secure.
- “[I]f your state follows a basic hierarchical deference rule, then it will be most important to demonstrate the PCUSA as a hierarchical church and show the court the central authori-

ty of the presbytery in making church property decisions. If your state applies the neutral principles doctrine, then it will be important to note all hierarchical references in the deeds, the local church charter and especially emphasize the church property trust ... If your state applies the third option [majority] rule, it is an uphill battle.”

- “The Office of the Stated Clerk of the General Assembly has some funds available to assist presbyteries when a church is in schism or its property is being used contrary to the Constitution.”
- “When a schismatic faction has failed to appeal the rulings of the presbytery, point this out to the court. ... Because this is a common concept in the civil law, judges should understand this is a reason to dismiss the case as against the schismatics because they failed to exhaust their remedies ...”
- “If case law is favorable to your presbytery, file a motion for summary judgment as soon as practicable. It is not helpful to allow the schismatics to develop a record.”

What's missing?

By Peggy Hedden

As I read the set of "privileged and confidential" papers from lawyers serving under our denomination's highest officers, I was chilled by the tone that pervaded the so-called "legal advice." It is steeped in a "take-no-prisoners" attitude that would discredit any ethical attorney, let alone Christian ones, especially those ordained as pastors or elders in the PCUSA.

As you look at these papers, ask yourself, "What is missing?"

I find three crucial things absent. First is any concern to help presbytery officials give pastoral care to a congregation at a crossroad in considering how to continue its ministry in light of the actions of the most recent General Assembly. There is no examination of how Jesus teaches us in Scripture to deal with conflicts personally, as a church or in secular courts. There is no theological reflection on or recognition of legitimate issues of conscience that a congregation could express under our Presbyterian constitution. The papers do not recognize any distinction between those things which are permitted – dissent or the request for dismissal under G-11.0103i – and those which are not – disobedience to constitutional provisions. Instead, the papers advocate ruthlessly cutting off all discussions that may cause trouble in the eyes of Louisville.

Also lacking is any shred of advice to try to reconcile with the congregation. The prevailing characteristics of these papers are intimidation, coercion, punishment, and the lack of love for Christian brothers and sisters.

The third thing missing from this formidable marshalling of forces from Louisville is any comparable effort during the last 10 years to uphold the ordination

standards of G-6.0106b (validated by presbytery votes three times). Indeed, in the past decade, the public advice from the stated clerk's office has been to confuse and temporize in the face of clear and persistent disobedience of those constitutional criteria by congregations, presbyteries and synods.

These newly disclosed papers were prepared for training presbytery lawyers just months before the probable passage of the PUP recommendations to allow evasion of ordination standards. Clearly, the stated clerk anticipated the widespread concern over the adoption of the PUP report and sought to suppress legitimate discussion, advising presbyteries to play what he views as the apparent trump cards of administrative commissions or court battles over property. At the time the stated clerk was piously calling for a "season of discernment," he was in truth exercising all his powers to quash an expected season of dissent. And, in his just-issued Advisory Opinion Note 19, he goes even further by threatening presbyteries that if they are not rapacious in confiscating local church properties, synods should assume control over the presbyteries.

In sum, what the papers lack, from title to concluding sentence, is something of Jesus Christ – his Word and truth, his fairness and justice, his concern and love for individuals and his Church, his grace and graciousness.

Peggy Hedden, an elder in Columbus, Ohio, is the chairman of the Board of Directors of the Presbyterian Lay Committee.



Advisory opinion reinforces hardline stand on property

The Layman

The Office of the General Assembly has now encouraged what could become a messy fight between presbyteries and synods over who should extract the highest price from a congregation seeking to leave the Presbyterian Church (USA) with its property.

The OGA's Department of Constitutional Services recently posted Advisory Opinion Note 19, which, in effect, tells presbyteries they have a constitutional obligation to "take appropriate action" to prevent congregations from leaving the denomination with their property – unless, of course, they pay an exit fee.

But if the presbyteries fail to do the job, the opinion says, then the synod must either 1) step in and "direct the presbytery to appropriate action" or 2) "assume jurisdiction over the presbytery's powers."

The opinion offers no suggestion that graciousness be applied toward a friendly agreement suitable to both the

presbytery and the congregation.

Jim Berkley, formerly the issues director for Presbyterians for Renewal and currently director of Presbyterian Action, called the advisory "a narrow, parochial, covetous, desperate, bullying opinion, unworthy to be emanating from our highest constitutional authority. Or his office. Or whoever was on duty at the time and did not see fit to attach his name."

Berkley offered his own advisory by paraphrasing a portion of the controversial authoritative interpretation on ordaining practicing homosexuals and adulterers that has fueled discussions of leaving the denomination. His paraphrase made the PUP comments applicable to enforcement of the property clause: "All parties should endeavor to outdo one another in honoring one another's decisions, according the presumption of wisdom to presbyteries in graciously blessing departing congregations and to synods in respecting that generosity."

church down.

The rulings did not end the dispute over who owns the property.

"It's a lot like telling my employees that if they leave my employment, that they forfeit their houses to me," St. Andrews' attorney, Raymond J. Dague, argued. "A court should laugh at any employer who pulled that kind of stunt. But this is effectively what the Episcopal Church is trying to do to St. Andrews."

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Raising the Standard since 1965

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Mission Statement

The mission of the Presbyterian Lay Committee is to inform and equip God's people by proclaiming Jesus Christ alone as:

- The Way of salvation.
- The Truth of God's Word.
- The Life of discipleship.

Objectives

1. To put greater emphasis on the teaching of the Bible as the authoritative Word of God in our seminaries and churches.
2. To emphasize the need for presenting Jesus Christ as the Lord and Savior through preaching, teaching and witnessing, with evangelical zeal, as the primary mission of the Church, and to stress the need for regular Bible study and prayer.
3. To encourage individual Presbyterians to take their place in society and, as led by the Holy Spirit, become involved in social, economic and political affairs as Christian citizens.
4. To encourage official church bodies to seek and express the mind of God as revealed in Scripture on individual and corporate moral and spiritual matters. We urge that official church bodies refrain from issuing pronouncements or taking actions unless the authority to speak and act is Biblical, the competence of the church body has been established and all viewpoints have been considered.
5. To provide an adequate and reliable source of information on significant issues confronting the church, including those being proposed for consideration at General Assembly or other governing bodies, in order to enable Presbyterians and others in the Reformed family of faith to express informed positions.

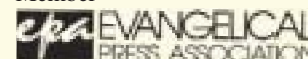
Diocese barred from suing individual church leaders

The Layman

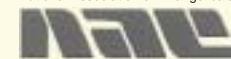
In a Sept. 1 ruling, a New York judge said an Episcopal diocese's lawsuit against a congregation that left the national denomination cannot list the church's leaders as defendants.

In addition, state Judge James Murphy also denied the request of the lawyers for the Diocese of Central New York for an injunction against St. Andrews Church in Syracuse, which would have shut the

Member



National Association of Evangelicals



Property worth millions at stake in bitter case

The Layman

In a few weeks, a long and bitter split in the membership of First Presbyterian Church in Torrance, Calif., will come to a head in a civil trial to determine which group owns the property.

The stakes are high – court documents say the property is worth “tens of millions of dollars” – and the battle has been studded with denominational luminaries, including former General Assembly moderators Rick Ufford-Chase and Syngman Rhee.

Ufford-Chase and minority church members and officials from the Synod of Southern California and Hawaii and the Hanmi Presbytery disrupted a June 6, 2005 worship service. Some of those members made a noisy and sometimes physical attempt to take over the worship service. Rhee later accepted a call to serve the members of the congregation who remained loyal to the Presbyterian Church (USA).

With more than 2,700 members before most of them left the PCUSA to join the Korean

Presbyterian Church in America [KPCA], the Torrance congregation was the largest Korean church in the denomination.

For the time being, a Los Angeles Superior Court judge is allowing both groups to use the property. The KPCA congregation, whose leaders say its membership has grown to nearly 3,000 since the split, uses the large sanctuary; the PCUSA “loyalists,” estimated at 400, use the fellowship hall.

So far, the most significant ruling has been made by Los Angeles Superior Court Judge David Yaffe, who declared on June 6: “The court agrees with the national church [PCUSA] that the local congregation holds its church property, real and personal, in trust for the national church, and that it cannot revoke such trust without the consent of the national church, pursuant to section 9142 (c) and (d) of the Corporations Code.”

But in a related case, Yaffe questioned the constitutionality of two sections of the Corporations Code. “The court can think of no plausible purpose for the legislation except to give hierarchical churches a more advantageous rule for determining the revocability of trusts made for their benefit than any other beneficiary of such a trust has,” he said. The case was filed by Thomas Lee, a member of the KPCA congregation, against the PCUSA.

In a United Methodist Church property dispute in 2004, the California Court of Appeal held that the Corporations Code did support denominational claims to property. However, the appellate court ruled that Probate Code 15400 trumped the Corporations Code and allows a congregation to change its bylaws to revoke the denomination’s property trust clause.

Since the ruling in the United Methodist case, which the California Supreme Court received but did not review, California courts have allowed four congregations formerly affiliated with the Episcopal Church (USA) to leave the denomination with their property.

Des Moines church votes to become independent

The Layman

The congregation of Windsor Presbyterian Church in Des Moines, Iowa, voted 53-26 on August 13 to separate from the Presbyterian Church (USA) and become an independent church.

Much of what happens next will depend on the Presbytery of Des Moines, which has convened an administrative commission.

The Windsor session met on June 25 – three days after the 2006 General Assembly adjourned – and approved the resolution calling for leaving the PCUSA. The precipitating cause was the GA commissioners’ approval of an authoritative interpretation that allows presbyteries and sessions to decide that the constitutional “fidelity/chastity” clause does not prohibit ordaining practicing homosexuals and adulterers.

Windsor Presbyterian had 524 members in

THE WAR OVER PROPERTY

PCUSA wants congregations to lose in court or pay their way out.

1995, but a church split thinned the ranks to a low of 170 by 2003 – two years before Terry Amann became the pastor. It has been growing slowly under Amann’s evangelical leadership.

The congregation’s leaders are in the minority in the presbytery, which voted in 1997 against the constitutional “fidelity/chastity” requirement and in 1998 and 2001 in favor of repealing the *Book of Order* requirement. It was one of nearly two dozen presbyteries that overtured the 2006 General Assembly to call a fourth national referendum on repealing the requirement.

N.Y. judge rules church can keep its property

The Layman

New York Judge John K. McGuirk has ruled that Hudson River Presbytery has no claim to the property of the now independent Church of Ridgebury.

The August 15 decision was a big, if temporary, victory for a tiny congregation – membership 29 at the end of 1995, according to PCUSA records – that voted unanimously on Jan. 10, 2005, to leave the Presbyterian Church (USA).

“The Episcopal Church has a structure of government which follows, roughly, the models of the Roman Catholic Church and the Eastern Orthodox Churches pursuant to which a diocese is governed by a bishop to whom the parishes in the diocese owe ecclesiastical obedience,” McGuirk said in his ruling. “The Presbyterian Church, following a Calvinist tradition, has a different system of government.”

The leaders of the congregation announced their departure by warning that any attempt by the presbytery or the denomination to claim the church’s property “will be deemed slander of title, compensable by damages, and any entry onto Ridgebury Church property by any officer and/or agent of the Presbytery of Hudson River shall be deemed criminal trespass.”

The presbytery filed a lawsuit claiming that the property belongs to the denomination. The complaint named as the defendants individual trustees, a denominationally recommended strategy intended to warn elders and trustees that they could incur personal liability amounting to thousands of dollars each if they persisted in their local church ownership claims.

Deciding the case under “neutral principles of law,” as recommended by the U.S. Supreme Court, McGuirk turned aside the PCUSA’s argument that it is the rightful owner of the property under the denomination’s property trust requirement in chapter 8 of the *Book of Order*.

Under New York law, McGuirk said, “It is hornbook [rudimentary] property law that only the owner of real property can convey an interest in the property; B cannot create a future interest in A’s property without A’s consent.” McGuirk said the congregation’s property deeds never mentioned the Presbyterian Church (USA).

Attorneys for the presbytery and the PCUSA argued that Ridgebury silently assented to the trust clause for 25 years before voting to leave the denomination.

McGuirk ruled that “mere silence and continuing its membership in the denominational church, absent more, is an insufficient expression of an intent [by Ridgebury] to express a trust.”

The attorney for Ridgebury is Don Nichol of Jacobowitz & Gubits, Walden, N.Y., who also represented Circleville Presbyterian Church during its separation from the Presbytery of Hudson River. After a 72-2 congregational vote in December 2002 to leave the PCUSA, Circleville negotiated its dismissal by paying the presbytery \$112,000 – then the equivalent of \$1,120 per member. Circleville is now affiliated with the Evangelical Presbyterian Church.

After paying ‘thank gift,’ church leaves with property

The Layman

A Dubuque, Iowa, congregation has left the Presbyterian Church (USA) with its property in what congregation and presbytery officials called “a cooperative move forward in the work of Jesus Christ.” But the congregation had to pay an undisclosed “thank gift” to the presbytery to keep the property.

Third Presbyterian Church in Dubuque joined the Evangelical Presbyterian Church. Beverly Van DerZyl, a member of the church’s session, told *The Layman* that John Knox Presbytery, meeting at Dubuque Theological Seminary, approved the action by a vote of 54

yes and 7 no, with one abstention.

The Dubuque *Telegraph Herald* reported that for nearly 30 years, “Third Church members have differed with their denomination over basic Biblical interpretation and politics. More recently, Third Church voted to withhold its per-capita assessments from the church’s General Assembly. Eventually, the congregation told presbytery officials they could not continue as part of the Presbyterian Church (USA) because ... the General Assembly ‘continues to debate issues which the session and members of Third Church consider to be settled according to their understanding of Biblical authority.’”

Facing individual liability, church leaders settle suit

The Layman

Serone Presbyterian Church in Los Angeles, Calif., a Korean congregation that voted to leave the Presbyterian Church (USA) and went to court to prohibit the presbytery from seizing the church property, has reached a settlement in the case. The judge ordered that the settlement not be disclosed.

The leaders of Serone Presbyterian Church, realizing that they each faced individual costs that could have reached several thousand dollars if they lost a trial, agreed to a mediated settlement in Los Angeles Superior Court in August. The leaders were listed as defendants in the case, a tactic recommended by the denomination in its “privileged and confidential” legal papers.

The settlement was announced in a statement released by the Presbyterian Church (USA), the Synod of Southern California and Hawaii and the Presbytery of Hanmi, Serone Church, the Rev. Taek Ho Yang and elders Fred Yu and Stephan Park.

Congregation’s majority loses property; ‘true church’ dissolved

The Layman

The record at the Presbytery of Western North Carolina, posted on Jan. 28, 2006, reads like an obit: “Approved with regret, the dissolution of the Hephzibah Presbyterian Church.”

It is the last witness to the unsuccessful

attempt by the small, rural congregation near Bessemer City, N.C., to leave the Presbyterian Church (USA) with its property.

In 2002, the congregation voted its way out of the Presbyterian Church (USA) because of a bitter disagreement with the denomination’s direction – particularly the continued consideration of whether to ordain homosexuals and the failure to enforce the constitution that forbids their ordination. They sought to realign with the Evangelical Presbyterian Church.

The presbytery named four persons, two of whom did not live in the community, the “true church.” Together, they filed a property claim in North Carolina’s Superior Court. The judge, ruling that the PCUSA is a hierarchical denomination like the Roman Catholic Church and the Episcopal Church (USA), awarded the property to the minority. The majority appealed the verdict, but the North Carolina Court of Appeals declined to review the case.

Hephzibah’s lawyer, R. Locke Bell of Gastonia, N.C., told *The Layman* that he believes the congregation would have won the case if the appeal had been granted. He believes the decision would have swung to Hephzibah on one word – the PCUSA’s contention that it is a “hierarchical” denomination. That’s a term used by the PCUSA only in the denomination’s legal cases.

Although the government of the PCUSA is by elders – not hierarchical, with a bishop issuing decrees – the PCUSA’s “privileged and confidential” legal strategies recommend that presbyteries claim they are “bishops” when they take congregations to court in property disputes. That’s also why the denomination recommends that they try to get their cases before Catholic or Episcopal judges who are sympathetic to hierarchical claims.

Bell, an evangelical Methodist layman, goes back to Hephzibah Evangelical Church – which has never officially affiliated with the Evangelical Presbyterian Church – but not to

do legal work. He preaches, and urges the remnant to become intentionally evangelical and not merely conservative and angry at the denomination.

In the meantime, the presbytery is stuck with a piece of property that has little potential other than use by Hephzibah Evangelical Church. The presbytery realized that when it attempted to gather a “true church” for worship led by presbytery appointees, and no one came.

Property settlement cost averages \$2,206 a member

The Layman

The Presbytery of Milwaukee has released a small congregation in Cedar Grove, Wisc., to the Evangelical Presbyterian Church on the condition that the congregation pay a \$150,000 settlement to keep its property.

For the 68 members of First Presbyterian Church – now First Evangelical Presbyterian Church – the settlement amounts to \$2,206 per member. The congregation also had to agree that if it sells the church property within 10 years, the presbytery will get 80 percent of the proceeds.

Negotiations for the settlement began at \$400,000, the estimated value of the congregation’s property.

Gregg Neel, the presbytery’s executive, told *The Layman* that the separation was amicable. An administrative commission was unable to find anyone in the congregation who was opposed to the separation from the Presbyterian Church (USA).

David Van Dixhorn, the interim supply pastor at Cedar Grove, which began in 2005, was difficult.

He said the members of the presbytery’s administrative commission repeatedly tried to convince the session that theological diversity was worth celebrating. He said the negotiations began with commission members declaring, “We don’t give away our buildings. We don’t give away property.”

Iowa congregation votes to affiliate with the PCA

The Layman

While the Presbytery of Prospect Hill continued to map plans to take over Riverside Presbyterian Church in Linn Grove, Iowa, the congregation voted 83-0 on August 27 to petition for membership in the Presbyterian Church in America.

On August 24, Russell Westbrook, pastor of the separating congregation, became a member of the Iowa Presbytery of the PCA “after a very thorough examination. If the Lord wills, our church will officially be in the Iowa Presbytery of the PCA very soon.”

Meanwhile, Westbrook said the Riverside “session and congregation are still being harassed by the presbytery.”

Riverside, a 124-member congregation at the end of 2005 according to the denomination’s records, claims to be the rightful owner of the local church property.

The presbytery disputes that claim and is using strategies as outlined by the denomination’s lawyers in their “privileged and confidential” documents to secure the property, but no civil lawsuit had been filed at press time for *The Layman*.

Before the congregational vote, the presbytery ordered Westbrook to begin administrative leave and told him to have no contact with church members and not to enter the church building. He ignored those orders.

Considering that his wife is one of the members, Westbrook said he wasn’t about to comply with the presbytery’s order. Furthermore, he said he contacted other members, including visiting and praying with a family whose son died of cancer and counseling a member whose life was in turmoil.

Presbytery wants church to change its charter

The Layman

The members of Harrisburg Presbyterian Church voted 72-22 to reject the Charlotte Presbytery’s proposal that the congregation revise its charter by making a commitment to hold the church’s property in trust for the benefit of the Presbyterian Church (USA). But that wasn’t the last word.

Later, the presbytery-appointed interim minister told members of the congregation that they were violating the PCUSA’s Constitution by refusing to change their 1967 articles of incorporation, which says church property and assets are for the “sole and exclusive benefit of the members of the congregation ... without any right, title, interest or estate, legal or equitable, existing in favor of any denomination, presbytery, synod, general assembly, or other ecclesiastical body whatever; and with the exclusive right of the civil courts to determine who are the members of said corporation.”

Nothing in the *Book of Order* requires a congregation to revise its articles of incorporation to state that its property is held in trust for the benefit of the denomination.

The presbytery’s proposal is part of a legal tactic that is recommended by the Office of the General Assembly to enforce the denomination’s property trust clause in chapter 8 of the *Book of Order*.

Harrisburg Presbyterian Church, 15 miles northwest of Charlotte, is a 295-member congregation that was organized in 1967.

Scenes from Torrance service disruption in June 2005



Statement from the Presbyterian Lay Committee's board of directors

A call for Presbyterian decency and order

The secret strategy papers drafted by the offices of the General Assembly and General Assembly Council should profoundly shock and disturb all faithful Presbyterians. These "Louisville Papers" reveal that since late 2005, the denomination's two highest offices have been counseling governing body officials to squelch any questioning and retaliate against any dissent from local churches by filing civil claims on their properties, freezing their bank accounts, changing the locks on their buildings, bringing suits for damages against individual elders and pastors, defrocking their ministers and taking over their sessions. The use of such tactics as instruments of church policy is unconscionable.

Most disturbing is the fact that the Office of the General Assembly was distributing this advice to middle governing body lawyers at precisely the same time that the head of that office, Stated Clerk Clifton Kirkpatrick, was extolling the conciliatory language of the General Assembly Task Force on Peace, Unity and Purity.

On the one hand, Stated Clerk Kirkpatrick publicly called for Presbyterians who differ to "endeavor to outdo one another in

honoring one another's decisions." He endorsed task force recommendation seven, asking all church members to acknowledge their traditional Biblical obligation, as set forth in Matthew 18:15-17, Matthew 5:23-25, and in the Rules of Discipline in the *Book of Order*, "to conciliate, mediate, and adjust differences without strife" prayerfully and deliberately (D-1.0103) and to institute administrative or judicial proceedings only when other efforts fail to preserve the purposes and purity of the church."

On the other hand, in January 2006, while Stated Clerk Kirkpatrick was publicly advocating such peaceable procedures, his office was privately training presbytery executives and lawyers in closed-door meetings to take aggressive, pre-emptive legal actions against local churches whose ministers and sessions might be prayerfully and openly seeking to discern the Lord's will regarding their continuing associa-

tion with the Presbyterian Church (USA) in light of recent General Assembly actions.

The "Louisville Papers" ignore the responsibility of presbyteries imposed by the *Book of Order* in G-11.0103i to consider requests by

Most disturbing is the fact that the Office of the General Assembly was distributing this advice to middle governing body lawyers at precisely the same time that the head of that office, Stated Clerk Clifton Kirkpatrick, was extolling the conciliatory language of the General Assembly Task Force of Peace, Unity and Purity.

congregations to be dismissed. The "Louisville Papers" also ignore the clear teaching of our confessions by self-righteously and erroneously proclaiming that Presbyterian Church (USA) institutionalists are "the true church," and that any who dissent from that institution should be branded as "schismatics." The Second Helvetic Confession makes plain:

(1) ... [I]t pleases God to use the dissensions that arise in the Church ... to illustrate the truth and in order that those who are in the right might be manifest." (I Cor. 11:19) 5.133

(2) "... [W]e do not acknowledge every church to be the true Church which vaunts herself to be such; but we teach that the true Church is that in which the signs ... of the true Church are to be found, especially the lawful and sincere preaching of the Word of God as it was delivered to us in the books of the prophets and the apostles, which all lead us unto Christ ..." 5.134

(3) As to those who seek righteousness and life outside of Christ and faith in him alone, "... we condemn all such churches as strangers ... no matter how much they brag of a succession of bishops, of unity, and of antiquity." 5.135

The Scots Confession instructs us that, contrary to the self-righteous counsel of the Louisville bureaucracy, the true church is not identified by "antiquity, usurped title, lineal succession,

appointed place, nor the numbers of men approving an error ... [Rather,] the notes of the true Kirk ... [are] the true preaching of the Word of God ...; the right administration of the sacraments of Christ Jesus ...; and, lastly, ecclesiastical discipline uprightly ministered, as God's Word prescribes, whereby vice is repressed and virtue nourished." 3.18

We believe that many faithful Presbyterian congregations are sincerely struggling with whether they can clearly manifest the marks of the true church as taught by our confessions while continuing as a part of the Presbyterian Church (USA). Such faithful brothers and sisters should be embraced and encouraged pastorally by the presbyteries. The deceitful hypocrisy of the stated clerk's office is further evidenced by its summary rejection of the New Wineskins Association of Churches' call for a moratorium on hardball legal tactics during this season of discernment.

We are forced to conclude from such conduct that Stated Clerk Kirkpatrick's public words were hollow and that he does not honestly advocate that denominational officials should seek to "conciliate, mediate, and adjust differences without strife." To the contrary, he endorses stifling any dissent, as can be seen in the treatment of

Serone Presbyterian Church in California and Ridgebury Presbyterian Church in New York, where the senior pastor and elders were sued as individuals. The Riverside Presbyterian Church in Iowa requested discussion about being dismissed from its presbytery and was met with the establishment of an administrative commission that placed the pastor on administrative leave. The latest example is Kirk of the Hills in Tulsa, Oklahoma, where the presbytery filed an affidavit clouding the title of the church's property, followed by an administrative commission's attempt to split the congregation.

There is nothing of Christ in the content and tenor of these papers, and we call upon the whole church to join us in denouncing them. Scripture shows us the "still more excellent way" of love. There are indications that in the next several months, some churches will discern that God's will is leading them to associate with like-minded Christians in other denominations. We call on the stated clerk and other denominational officials to renounce the tactics now being used against dissenting churches, to honor the decisions of those churches, and to work with them to reach an amicable departure that will glorify God. Even on such occasions of separation, we are constrained by God's Word to reflect the grace of our Lord Jesus Christ, the love of God, and the fellowship of the Holy Spirit.

Presbyterian Lay Committee
September 6, 2006

The Layman

John H. Adams
Editor

Craig M. Kibler
Director of Publications

Parker T. Williamson
Editor Emeritus

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Kirk of the Hills leaves PCUSA

Continued from Page 1

to go on administrative leave – tactics such as were used in California to create a huge rupture at the famed First Presbyterian Church of Hollywood.

"The session decided that, especially in response to the recently-revealed legal plans of the PCUSA, it was time to take decisive action," Gray said. "The disaffiliation, though, is independent of whatever



Thomas Gray

happens with the property. We have done what we believe to be right."

According to denominational statistics, Kirk of the Hills has increased its membership by 600 since 1995 – a 27.3 percent gain – while the presbytery has lost 1,310 members, a decline of 9.1 percent. The church's building is on a rolling hilltop in Tulsa. Its budget in 2005 was more than \$3.2 million.

Stated clerk rejects call for environment of peace

The Layman

Unlike 1998, when he initiated a voluntary “sabbatical” calling on Presbyterians to forego filing disciplinary charges in ordination cases, Stated Clerk Clifton Kirkpatrick has rejected a request for a moratorium on legal and administrative actions against congregations considering leaving the Presbyterian Church (USA).

Delegates to the New Wineskins Convocation voted in July to request the moratorium. Rev. Dean Weaver, moderator of the New Wineskins Association of Churches relayed that request in an August 5 letter to Kirkpatrick and General Assembly Moderator Joan Gray.

The New Wineskins resolution noted, “The 217th General Assembly, in adopting the Report of the Task Force on Peace, Unity and Purity, called the church to enter into a season of discernment and, as much as possible, to ‘conciliate, mediate, and adjust differences without strife’ prayerfully and deliberately.”

In his letter, Weaver said, “At our convocation we heard numerous stories of individuals and congregations that have been the focus of actions and measures by their presbyteries that are creating a culture of fear and intimidation.”

“For daring to think certain thoughts or, worse yet, consider openly actions that are permitted within our polity, member congregations are facing threats and what appear to be vindictive actions. This ought never to be in an institution that seeks to reflect the heart of Christ to the world,” he added.

He asked the denomination’s leaders “to work with us to help create an environment of real peace during these troubling times” and to “exercise the leadership of your respective offices and lead the way through these turbulent waters through compassion and understanding.”

Kirkpatrick and Gray responded in an August 22 letter, saying that “we cannot comply with your request to set aside portions of the Church’s Form of Government. Such action is beyond our powers as moderator and stated clerk of the General Assembly.”

They made three points in their response to Weaver:

- Moderators and stated clerks of governing bodies, including those of the General Assembly, “are bound to uphold the Constitution of the Church.”
- “Freedom of conscience as it is understood in the Reformed tradition does not permit church officers to act outside the Constitution of the church.”
- The *Book of Order* states that “every

Christian Church, or union or association of particular churches, is entitled to declare the terms of admission into its communion, ... as well as the whole system of its internal government which Christ hath appointed.’ This includes those matters related to property held in trust for the denomination.”

In 1998, Kirkpatrick instigated a “call for sabbatical” that included a plea for a “season of peace and rest from the confrontations [over ordination requirements] of recent years.” One of the recommendations of that sabbatical was to ask Presbyterians to “resist the inclination to provoke or initiate judicial confrontation.”

Kirkpatrick’s sabbatical called for inactivity in the judicial arena on enforcing the constitutional prohibition against ordaining practicing homosexuals. The New Wineskins called for a moratorium on presbyteries taking action against ministers and congregations trying to discern how to respond to the constitutional right to follow their conscience.

Kirkpatrick’s view toward his constitutional duties has varied. In the past, he has declared that it was not his duty to enforce the constitution and that he must remain a neutral participant and not a prosecutor. But his neutrality has a wide range – as evidenced by a letter he sent to stated clerks and presbytery executives on Jan. 3, 2002.

In that letter, Kirkpatrick commented on sessions and presbyteries that were ordaining practicing homosexuals. He declared that the fidelity and chastity requirement in the *Book of Order* was the law of the church, but added sympathetically, “I am well aware that there is considerable debate about the wisdom of this provision in our constitution in light of our historic Presbyterian polity ...”

In the same letter, Kirkpatrick criticized ministers and elders considering withholding per-capita requests because of their conviction that ordaining practicing homosexuals was unBiblical. “Such actions are unconstitutional, and I urge that they stop,” Kirkpatrick said. “It is a violation of our ordination vows to promote schism or the defiance of constitutionally sanctioned governing body directives.”



Clifton Kirkpatrick

God bless the Kirk

Kirk of the Hills did what it had to do, faithfully, thoughtfully, deliberately, and with a manifold measure of grace.

More than a decade ago, Rev. Tom Gray and Rev. Wayne Hardy realized that Presbyterian Church (USA) leaders had set the denomination on a course of cultural compromise that could only end in apostasy. They presented evidence to the Kirk’s session, and together they committed themselves to denominational renewal.

The Kirk drafted overtures; sent observers to meetings of higher governing bodies; volunteered for service on committees, commissions and councils; funded advocacy groups that were working for change; sent letters to commissioners; and testified at General Assembly hearings – all the while contributing hundreds of thousands of dollars to the worldwide mission of the Presbyterian Church (USA).

They won a few victories: The General Assembly expressed regret for the worship of “Sophia,” the denial of the incarnation and rejection of the atonement that occurred during its ReImagining God conference. But denominational agencies were not to be deterred, and ReImagining God themes continued to appear in curricula, conferences, programs and policies.

The General Assembly adopted a “both/and” compromise on abortion – a half-loaf victory for evangelicals – but its agencies and Washington lobby implemented only half of the compromise, promoting the agenda of the Religious Coalition for Reproductive Choice.

The General Assembly declined to adopt “Building Community Among Strangers,” a policy paper that celebrated multiple religions as equivalent pathways to God. But Louisville continued to peddle its paper as a “resource to the church.”

Three times, the presbyteries upheld the standard that they would not ordain persons who openly engage in sex outside of marriage. But when blatant defiance repeatedly occurred, the denomination’s highest constitutional officer insisted that it was not his job to enforce the constitution.

Then, in the summer of 2006, the General Assembly, knowing it could not muster the votes required to amend its constitution, undermined it by granting governing bodies that refuse to live by its standards a license to do so.

That did it. The renewed denomination for which the Kirk had prayed and worked has not come to pass. In fact, it is now abundantly clear that among the councils and agencies of this institution the apostasy is intractable.

Kirk members have felt a growing sense of theological estrangement. They ask, “How can we continue to identify with an organiza-

tion whose leaders are ambivalent about Jesus and will not obey God’s Word?” The Kirk’s leaders have not squelched such questions. Instead, they have dealt with them openly and honestly, all within earshot of a dangerously restive denominational infrastructure.

Then, in March, presbytery officials marched unannounced into the courthouse and filed a claim on the Kirk’s property. When asked for an explanation, they said this was done in all Eastern Oklahoma counties in the presbytery because an errant Native American congregation had sold some of its real estate without permission.

In August, the real reason surfaced. “Privileged and Confidential” papers that had been written by Louisville lawyers to guide presbytery officials were leaked to *The Layman*. “The presbytery lied to us,” said Gray, noting how closely the presbytery had been following Louisville’s playbook.

A tectonic shift occurred. Pious assurances to the contrary notwithstanding, the presbytery – and denominational attorneys who advised it – proved they could not be trusted. On August 16, the Kirk’s session announced that Gray and Hardy renounced the jurisdiction of the Presbyterian Church (USA). On August 30, Kirk of the Hills Inc. severed its association with the denomination.

Make no mistake about it: the Kirk did not leave the Presbyterian Church (USA); the Presbyterian Church (USA) left the Kirk, just as it has distanced itself from every congregation that insists on being true to the Gospel. The Kirk is now affirming its membership in the larger worldwide Presbyterian family, finding a home with those who love the Lord, obey his Word, and treat one another with Christ-like grace.

Will the Kirk fend off heavy-handed assaults by an alien that has laid claim to its property? Certainly, it will make every effort to do so. It must, for it cannot allow believers’ gifts that were dedicated to the Lord Jesus to be spent on lesser lords.

But the Kirk will not be tethered by a title. If an Oklahoma court so rules, this congregation is prepared to sing Martin Luther’s great hymn: “Let goods and kindred go; this mortal life also. The body they may kill. God’s truth abideth still. His kingdom is forever.”

Godspeed, Kirk of the Hills. Godspeed!
A column by Parker T. Williamson, editor emeritus and senior correspondent of *The Layman*.



Parker Williamson

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Conflict over property is as old as the Bible itself. It is wise and prudent to acknowledge the problem and seek equitable solutions.

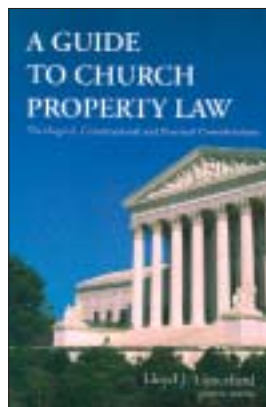
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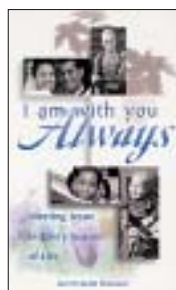


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The war over property

The Layman *RAISING THE STANDARD*
Vol. 39, No. 4 / Sept. 2006

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Presbyterian Church (U.S.A.)

This is a legal strategy memorandum. Do not copy or circulate. Cf. Eric Graninger, General Counsel, at 1-800-729-1221, x 5166 if you have questions.

**CHURCH PROPERTY DISPUTES:
A RESOURCE FOR THOSE REPRESENTING
PRESBYTERIAN CHURCH (U.S.A.) PRESBYTERIES AND
TRUE CHURCHES IN THE CIVIL COURTS**

Draconian legal strategies the PCUSA's lawyers didn't want you to read.

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I. Introduction

This resource is written by the Office of Legal Services for those representing the interests of presbyteries and true churches as demanded by the presbyteries. It is written for both attorneys and non-attorneys. Involve the presbytery attorney early on if a dispute related to church property is developing. The attorney will be able to advise the presbytery in light of the applicable law and the particular facts presented.

A companion piece to this memorandum is the resource prepared by the Constitutional Services Department of the Office of the General Assembly. That resource discusses the factors and strategies presbyteries should consider as church property matters arise within the governing bodies of the church. By contrast, this resource focuses upon church property disputes within the civil courts.

Finally this memo uses "Presbyterian Church," "Presbyterian Church (U.S.A.)," and "PCUSA" interchangeably and in reference to various time periods. Only where the specific point being made relates to a particular predecessor denomination is that denomination named.

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leaves the PCUSA.
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THE WAR OVER PROPERTY

PCUSA wants congregations to lose
in court or pay their way out.

The Layman

RAISING THE STANDARD

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