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order to obtain a quorum the Moderator of the electing court shall appoint to the Commission for the purpose of trying that case a sufficient number of former Permanent Judicial Commission members whose terms have expired within the last six years or, if none are available, then any persons who would be eligible for election to the Commission. The Commission as so constituted shall proceed to the trial of the case.

§ 20-6. The judgment of a Permanent Judicial Commission shall be the judgment of the electing court.

§ 20-7. The Stated Clerk of the General Assembly shall refer to the Permanent Judicial Commission of the General Assembly all questions arising from courts of the Church or from individuals requiring an interpretation of the Book of Church Order by the General Assembly and all overtures requesting amendment of the Book of Church Order.

a. On questions of interpretation of the Book of Church Order sought from the General Assembly, the Commission shall act as a Committee. It shall report to the General Assembly recommending the interpretation it thinks correct and giving the reasons for its opinion.

b. On questions of amending the Constitution, the Commission shall act as a Committee. It shall report to the General Assembly all pertinent facts, particularly those concerning the relation of the proposed amendment to the Constitution as a whole, and shall recommend to the General Assembly concerning the proposed amendment. The Assembly cannot consider an amendment until there has been opportunity for a report from the Commission.

§ 20-8. The Permanent Judicial Commission shall meet as directed by the General Assembly, provided that, if business has arisen which it must transact for the Assembly, the Commission shall meet in ample time to make its report.

Q. That § 21-2(1) be amended by deleting the words "as provided in the Rules of Discipline" from its first sentence and by deleting the references to § 107-8 at the end.

R. That § 21-4 be amended by deleting the last sentence and all references and by adding the following sentence:

When so acting the Commission on the Minister shall always hold hearings which afford procedural safeguards of the Rules of Discipline as far as they are appropriate.

S. That Chapter 22, "Permanent Judicial Commissions of Synod," be deleted in its entirety.

T. That § 29-8 be amended by deleting the reference to § 107-8 at the end of the section.

U. That § 29-9 be amended by deleting the phase "as in cases of process" in the third line and inserting the phase "and due process as in remedial and disciplinary cases" and by deleting the reference to § 19-3 at the end of the section.

(NOTE: The above amendments will, if finally enacted, take effect on January 1 of the year following their final approval and enactment pursuant to § 30-1 of the Book of Church Order. Further, that the Rules herein shall govern all proceedings and actions brought after they take effect, and also all further proceedings and actions then pending, except to the extent that in the opinion of the court having jurisdiction, their application in a particular action pending when the Rules take effect would not be feasible or would work injustice, in which event the former procedure applies.--Stated Clerk.)

B. AMENDMENTS DEALING WITH CHURCH PROPERTY.
That the present Chapter 6 be deleted and the new Chapter 6 be adopted:

CHAPTER 6

CHURCH PROPERTY

§ 6-1 If a particular church is not incorporated, it may, at a regularly constituted congregational meeting, elect certain of its confirmed members as trustees, to hold title to property in trust for the benefit of the particular church and of the Presbyterian Church in the United States. The trustees have power and authority to buy, sell or mortgage property for the church, to accept and execute deeds and to manage any permanent special funds entrusted to them for church purposes. In buying, selling or mortgaging real property, the trustees shall act under the instructions of the congregation adopted in a regularly constituted meeting. Their powers and duties cannot infringe upon the powers or duties of the Session or the Board of Deacons. The trustees do not hold title to personal property or have responsibility for it except to the extent expressly given to them.

§ 6-2 If a particular church is incorporated, the provisions of its charter and bylaws must be in accord with the Constitution of the Presbyterian Church in the United States. All of its confirmed members on the active roll are members of the corporation. The officers of the corporation, by whatever name they are given, shall be elected from the confirmed members of the corporation in a regularly constituted congregational meeting.

The officers of the corporation may be given any or all of the following responsibilities: holding title to church property for the benefit of the corporation and the Presbyterian Church in the United States; acquiring and conveying title to the property; buying, selling and mortgaging the property of the church; and managing any permanent special funds entrusted to them for church purposes. In buying, selling and mortgaging real property, the officers shall act under the authority of the corporation granted in a duly constituted meeting of the corporation. Powers and duties of the officers cannot infringe upon the powers and duties of the Session or the Board of Deacons, who maintain control and disbursement of all funds collected for the support and expense of the church and for the benevolent purposes of the church.

§ 6-3 All property held by or for a particular church, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of the particular church or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church in the United States.

§ 6-4 If a particular church is dissolved by the Presbytery, attempts by either majority or unanimous vote to withdraw from the Presbyterian Church in the United States or otherwise ceases to exist or function as a member of the Presbyterian Church in the United States, any property that it may have shall be within the control of the Presbytery and may be held for designated purposes or sold or disposed of in such manner as the Presbytery, in its discretion, may direct.

§ 6-5 The relationship to the Presbyterian Church in the United States of a particular church can be severed only by constitutional action on the part of the Presbytery (4-2). If there is a schism within the membership of a particular church and the Presbytery is unable to effect a reconciliation or a division into separate churches within the Presbyterian Church in the United States (see 16-7), the Presbytery shall determine if one of the factions is entitled to the property because it is identified by the Presbytery as the true church within the Presbyterian Church in the United States. This determination does not depend upon which faction received the majority vote within the particular church at the time of the schism.

§ 6-6 Nothing in this chapter shall be construed to render a particular church, church court, or its property liable for the debt or obligations of any other church court.

§ 6-7 Nothing in this chapter shall be construed to limit the power of Presbytery to receive and dismiss churches with their property, providing such requests are made in proper order.

§ 6-8 Nothing in this chapter shall be construed to require a particular church to seek or obtain the consent or approval of any church court above the level of the particular church in order to buy, sell or mortgage the property of that particular church in the conduct of its affairs as a church of the PCUS.

§ 6-9 The provisions of 14-5 and 14-6, and of other sections in this Constitution setting forth the manner in which decisions are made, reviewed and corrected within the Presbyterian Church in the United States, are applicable to all matters relating to property.

§ 6-10 This Chapter is declaratory of principles to which the Presbyterian Church in the United States and its antecedent church bodies have adhered from the inception of the presbyterian form of church government.

(NOTE: For the Report of the Subcommittee on Church Property and the Appendices, which are to be included on the ballot, see Appendix, page 000—Stated Clerk.)

C. AMENDMENTS DEALING WITH A "DESIGNATION PLAN" FOR A TEMPORARY PASTORAL OFFICE.

1. That Section 25-1 be amended by the addition of the following italicized words so that the third paragraph reads:

   The temporary pastoral relations which may exist between a Minister of the Word and a particular church are: *Pastor, when called under the Designation Plan for nominating a Pastor*; Stated Supply; Interim Supply; and Occasional Supply.

2. That Section 26-3 be amended by adding the following paragraph:

   A congregation may call a Pastor to serve for a limited term of service of not less than two, nor more than four years, only if it is participating in the Designation Plan for Nominating a Pastor. This plan provides that the Pastor shall be nominated by the congregation's Pastor Nominating Committee only from among those designated by the Commission on the Minister of the Presbytery. Congregations and Ministers of the Word who participate in the plan shall do so voluntarily and only after prior concurrence of the Presbytery. A Pastor or Candidate called in this way shall be elected by the congregation, and the terms of call shall be approved by Presbytery. A Pastor serving a limited term shall be eligible for another limited term or for a permanent call following the constitutionally prescribed processes of BCO 26-1 and 26-2.

D. AMENDMENTS PERMITTING A CONGREGATION TO HAVE MORE THAN ONE INSTALLED PASTOR. (Note: The 121st General Assembly did not require the Presbyteries to consider the following amendments as a unit. However, they are closely related and should be passed or rejected together— Stated Clerk.)

1. That Section 25-2 be amended by inserting the italicized words so that it reads:

   25-2. In each church there should be a Pastor who has the duty of offering the full Ministry of the Word and Sacraments. *Churches may choose to call more than one Pastor. When there are two or more Pastors, they together have the duty of offering the full Ministry of the Word and Sacraments.* With the Session, the Pastor *or Pastors* shall see that the order and discipline of the Church under Christ the Head are properly observed.

2. That the first sentence of Section 25-3 be amended by inserting the italicized words so that it reads as follows:

   25-3. A church may call other Ministers of the Word to labor with the Pastor *or Pastors* in performing such pastoral duties as are needful for the edification of that church. (Delete last sentence.)

3. That a new Section 25-3(a) be adopted to read:

   25-3(a). When the congregation exercises the right of calling two or more Pastors, the Pastors shall be charged specifically with the special responsibility constantly to maintain open and creative communication in this delicate relationship.

4. That present 25-3(a) become 25-3(b).

5. That present 25-3(b) become 25-3(c).

6. That Book of Church Order 15-1 be amended by inserting the italicized words so that it reads as follows:

   15-1. The church Session consists of the Pastor *or Pastors*, any Associate Pastors, and the duly elected and installed Ruling Elders currently on active service in that congregation. The Pastor is the Moderator of the Session. *In congregations where there are Pastors functioning jointly, they shall, when present, alternately moderate the Session: or the Presbytery, after consultation with the Session, may appoint one of the Pastors to serve as Moderator for a term to be established by the Session.* An Associate Pastor is also a member of the Session and may substitute for the Pastor as the Moderator of the Session at the discretion of the Pastor and Session. All members of the Session, including the Pastor and Associate Pastor, are entitled to vote.

E. AMENDMENT SPECIFYING SESSION RESPONSIBILITY TO LAY AND MINISTERIAL STAFF.

1. That Section 15-6 be amended by the addition of a new paragraph as follows:

   (17) To fulfill, ordinarily through a committee, the personnel responsibilities to its staff, lay and ministers.

F. AMENDMENT REDUCING THE QUORUM OF SYNOD.

1. That Book of Church Order Section 17-3 be amended to read as follows:

   17-3. The Synod shall meet at least once every two years. The quorum for a meeting of Synod shall consist of one-fourth of the first one hundred eligible participants and one-tenth of all eligible participants in excess of one hundred, providing one Minister and one Ruling Elder are present from each Presbytery of the Synod (See Sections 13-6; 16-10.)

G. AMENDMENT DEALING WITH THE NURTURE OF BAPTIZED CHILDREN.

1. That a new Section 209-11 be approved as follows:

   209-11. As children are taught and nurtured in the faith by their parents or guardians and the church, in fulfillment of baptismal vows, to listen responsibly to the Word of God in worship, they can and should be encouraged to participate responsibly in the Sacrament of the Lord's Supper.

APPENDIX

REPORT OF THE AD INTERIM COMMITTEE ON CHURCH PROPERTY

The Committee on Church Property was established in 1975 to provide advice and counsel to Presbyteries and particular churches in situations where efforts were being made to create schisms within congregations, or to take away the property rights of persons who wished to remain members of the Presbyterian Church in the U.S.

The major work of the committee has been an ongoing review of the legal situation with regard to Church property in the several States, to maintain a resource file of legal materials in the Office of the Stated Clerk, and to publish documents for the assistance of persons who felt their rights as PCUS members were being violated.

At its last meeting on August 7, 1979, the Committee on Church Property undertook to secure a review of the current legal situation, and the effect on the Constitution of the Presbyterian Church in the United States of decisions by the Supreme Court of the United States in Church property litigation originating in several states. The following persons, all of them attorneys presently or formerly on the Permanent Judicial Commission of the General Assembly, agreed to join Church Property Committee Chairperson J. Gaston Williamson in serving on a Subcommittee on Revision of Chapter 6, Form of Government:

Mr. Joseph Grier, Charlotte, N.C.
Ms. Elizabeth Parrigin, Columbia, Mo.
Mr. David Quattlebaum, Greenville, S.C.
Mr. Lee Smith, Dallas, TX
Dr. John W. Wade, Nashville, TN

The subcommittee met twice in fulfilling its assignment, and the members of the ad interim Committee on Church Property have reviewed its report and present it to the 121st General Assembly with the recommendations at the end of this report.

The Ad Interim Committee on Church Property has two additional matters to report to the Assembly. First, two new members, appointed by the Moderator of the 119th General Assembly, the Reverend Dr. Albert C. Winn, have begun to share in the work of the committee. They are Mr. Paul Cadenhead of Atlanta, GA, and the Reverend Mr. William R. Klein of Roanoke, VA.

Second, the committee has reviewed and approved a revision of the case law section of the pamphlet "A Legal Memorandum on Church Property," and a new edition of that publication is in preparation and will be mailed at an early date to the executive officers and clerks of the Presbyteries.

The Ad Interim Committee on Church Property expresses its gratitude to Professor John W. Wade, Dean Emeritus of the Vanderbilt University School of Law, and a former chairperson of the Permanent Judicial Commission, for the research and drafting of the major portion of the report of the Subcommittee on Revision of Chapter 6, Form of Government; and to Ms. Elizabeth Parrigin, member of the faculty and law librarian of the School of Law of the University of Missouri, for her research and drafting of the appendix on legal studies attached to the subcommittee's report and for the text of the revised case law section of "A Legal Memorandum on Church Property."

The Committee on Church Property recommends that the 121st General Assembly (1981) take the following action:

1. The 121st General Assembly (1981) approves the proposed revision of Chapter 6, Form of Government, and recommends it to the Presbyteries for advice and consent.

2. The 121st General Assembly (1981) approves the report of the Subcommittee on Revision of Chapter 6, Form of Government, with its appendices and directs the Stated Clerk to include the report and appendices in the printed ballot distributed to the Presbyteries in connection with the vote on the proposed revision of Chapter 6, Form of Government.

3. The 121st General Assembly expresses its appreciation for the long and faithful service of the Ad Interim Committee on Church Property, commends the committee for its efficient and economical work style, and continues the committee for a period of three years.

V. Gaston Williamson,
Chairperson.

REPORT OF THE SUBCOMMITTEE ON REVISION OF CHAPTER 6, FORM OF GOVERNMENT

This Report recommends the adoption of certain amendments to the Form of Government in the Book of Church Order of our Church, the Presbyterian Church in the United States (PCUS).

Succinctly stated, the purpose of these amendments is to keep unchanged in its application to specific cases the system of control of church property that our Church has consistently followed through the years, regarding it as fully in accordance with the presbyterian tradition. This is based on the presbyterian graduation of "church courts," ranging from the church session, to the presbytery, to the synod, to the general assembly. On church matters the decision of the highest court to which a question comes is binding and controlling. This position has been traditionally followed not only for ecclesiastical issues but also for issues involving property interests.

This has also been the general position of the civil courts in this country. It started with the landmark decision of the United States Supreme Court in Watson v. Jones, 80 U.S. 679, 20 L. Ed. 666 (1872), involving a presbyterian church, and holding that when the governmental system of a general church is hierarchical rather than congregational in character, the final decision of the church courts regarding the beneficial interests in property held in the name of a particular church is controlling when the local church seeks to break away from the general church or has an internal schism. The opinion in this case was quite generally followed by the state courts, not because it was regarded as legally binding on them but because of its sound and persuasive reasoning. As a result of developing changes in constitutional law, making the First Amendment to the Federal Constitution (including its "free exercise of religion" clause) binding on the States and state courts, the Watson rule later came to be a rule of constitutional law, and all of the states were required to abide by it.

In July, 1979, however, the Supreme Court rendered an important decision in the case of Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979), also involving a presbyterian church, the PCUS. It continued to hold that the state or federal courts are not permitted under the Constitution to decide matters that require an interpretation of religious doctrine. The Watson rule required them to decide property issues in a hierarchical church like the PCUS by enforcing the decision of the highest church court, thus not becoming involved in questions of religious doctrine. In Jones, the Court held that a state court might still constitutionally follow this rule; but on a 5-to-4 vote, it also held that under the Constitution the States might instead decide property issues in case of a breakaway church or a schism, on the basis of "neutral principles of law." These neutral principles would include such matters as the wording of the deed to the local church, of a state statute, of the charter of the local church and of the constitutional provisions of the general church. Twice in the majority opinion, the Court expressly invited general churches with a presbyterian form of government to make certain that their constitutional provisions provide explicity that the general church has a legal or equitable interest in the real property of the local church. If the general church accepts this invitation and adopts appropriate provisions to this effect in its Constitution (our Form of Government, in the Book of Church Order), then the changes in constitutional law made in Jones v. Wolf by the Supreme Court will have no significant effect on the outcome of cases involving church property.

Many state courts will undoubtedly continue to follow the original rule of Watson v. Jones. But others will perhaps adopt the neutral-principles approach. This has already happened in Georgia, where Jones v. Wolf arose. The recommended change in the language of our Book of Church Order will rectify the matter, even in Georgia, since the Georgia Supreme Court has already recognized the effect of express provisions for a trust for the benefit of the general church in the constitutional provisions of other denominations.

Other presbyterian denominations -- e.g., The United Presbyterian Church in the United States of America, Cumberland Presbyterian Church, and some other reform churches --are already moving in this direction, and this church needs to take similar action.

The statement above is quite accurate -- particularly in the conclusion that the proposed constitutional language is not intended to change the results customarily reached in property cases in our Church but will simply ensure that the traditional results will continue to be attained. But the statement may be somewhat elliptic because of its brevity. It does not spell out developments in sufficient detail to give a complete understanding of their meaning. To do this, three Appendices are attached to this Report. The first sets forth an exposition of the traditional position of our Church on property matters. The second depicts the legal implications more completely, tracing carefully the developments in constitutional law. The third is bibliographical in nature, containing abstracts of the relevant cases on church property in the States containing PCUS churches and some of the more important cases in other parts of the country; it also contains citations to legal studies of the case law.

A study of these Appendices will make clear that the recommended changes are in accord with the presbyterian tradition in general and the PCUS tradition in particular, and that these changes will ensure that the state courts will uniformly reach a result in church property cases in accordance with both the PCUS tradition and the legal tradition established by Watson v. Jones.

Recommendation

It is recommended that Chapter 6 in the Book of Church Order be deleted in its entirety and the following new Chapter 6 be adopted in substitution for it.

CHAPTER 6

CHURCH PROPERTY

§ 6-1 If a particular church is not incorporated, it may, at a regularly constituted congregational meeting, elect certain of its confirmed members as trustees, to hold title to property in trust for the benefit of the particular church and of the Presbyterian Church in the United States. The trustees have power and authority to buy, sell or mortgage property for the church, to accept and execute deeds and to manage any permanent special funds entrusted to them for church purposes. In buying, selling or mortgaging real property, the trustees shall act under the instructions of the congregation adopted in a regularly constituted meeting. Their powers and duties cannot infringe upon the powers or duties of the Session or the Board of Deacons. The trustees do not hold title to personal property or have responsibility for it except to the extent expressly given to them.

§ 6-2 If a particular church is incorporated, the provisions of its charter and bylaws must be in accord with the Constitution of the Presbyterian Church in the United States. All of its confirmed members on the active roll are members of the corporation. The officers of the corporation, by whatever name they are given, shall be elected from the confirmed members of the corporation in a regularly constituted congregational meeting. The officers of the corporation may be given any or all of the following responsibilities: holding title to church property for the benefit of the corporation and the Presbyterian Church in the United States; acquiring and conveying title to the property; buying, selling and mortgaging the property of the church; and managing any permanent special funds entrusted to them for church purposes. In buying, selling and mortgaging real property, the officers shall act under the authority of the corporation granted in a duly constituted meeting of the corporation. Powers and duties of the officers cannot infringe upon the powers and duties of the Session or the Board of Deacons, who maintain control and disbursement of all funds collected for the support and expense of the church and for the benevolent purposes of the church.

§ 6-3 All property held by or for a particular church, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of the particular church or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church in the United States.

§ 6-4 If a particular church is dissolved by the Presbytery, attempts by either majority or unanimous vote to withdraw from the Presbyterian Church in the United States or otherwise ceases to exist or function as a member of the Presbyterian Church in the United States, any property that it may have shall be within the control of the Presbytery and may be held for designated purposes or sold or disposed of in such manner as the Presbytery, in its discretion, may direct.

§ 6-5 The relationship to the Presbyterian Church in the United States of a particular church can be severed only by constitutional action on the part of the Presbytery (4-2). If there is a schism within the membership of a particular church and the Presbytery is unable to effect a reconciliation or a division into separate churches within the Presbyterian Church in the United States (see 16-7), the Presbytery shall determine if one of the factions is entitled to the property because it is identified by the Presbytery as the true church within the Presbyterian Church in the United States. This determination does not depend upon which faction received the majority vote within the particular church at the time of the schism.

§ 6-6 The provisions of 14-5 and 14-6, and of other sections in this Constitution setting forth the manner in which decisions are made, reviewed and corrected within the Presbyterian Church in the United States, are applicable to all matters relating to property.

§ 6-7 This Chapter is declaratory of principles to which the Presbyterian Church in the United States and its antecedent church bodies have adhered from the inception of the presbyterian form of church government.

Comments on the Sections

§ 6-1 This is the present 6-1, first appearing in the BCO in 1949-50, in essentially its present form. It has been somewhat rearranged and edited in the interests of clarity of expression and ease of understanding. The only new matter in it is the phrase at the end of the first sentence, providing that the property is held in trust for the benefit of the particular church "and of the Presbyterian Church in the United States." The last sentence was added for clarification.

§ 6-2 This is the present 6-2, first appearing in the BCO in 1925 and essentially in its present form in 1949-50. It has also been somewhat edited in the interest of clarity. Here, too, a phrase has been inserted in the third sentence providing that property is held for the benefit of the corporation "and the Presbyterian Church in the United States."

§ 6-3 This new Section provides expressly that property of a local church, no matter how held, is also held in trust for the general Church. This trust has traditionally been implied rather than express. In stating it expressly in the Book of Church Order, the Church would be accepting the invitation of the Supreme Court to make this matter clear and to ensure a uniform interpretation in all States. A provision to this effect has been willingly accepted and followed even in a State that purports to reach its decisions on church property based on "neutral principles of law." The Section confirms what is stated in 6-1 and 6-2.

§ 6-4. This Section is based on the present 6-3. The revision is for the purpose of making the provision more specific and more direct. Instead of putting a duty (moral or legal?) on the persons holding legal title to the property to convey it to the presbytery when they may perhaps be disinclined to comply, the Section provides directly that the property is "within the control of the Presbytery" and thus enables the presbytery to act without having to resort to legal action in a civil court.

§ 6-5 This Section treats the matter of a schism within a local church. It begins by quoting present 4-2, thus bringing this provision into the Chapter on property. Then it provides that in case of a schism, if the presbytery is unable to bring about a reconciliation or other accommodation, it shall determine which faction is entitled to the property as being the true church within the PCUS. Once specifically provided for in Chapter 6, this determination cannot constitutionally be ignored or reversed by a court of law in the way that the state court did in Jones v. Wolf. The presbytery's determination is not based on majority vote in the local church.

§ 6-6 The reference to 14-5 is to the statement of the hierarchical system of judicatories in which PCUS church decisions are "made, reviewed and corrected." Church polity (or form of government) for making doctrinal and ecclesiastical decisions is the same polity for making decisions on church property. This is specifically stated in Chapter 6 in order that a court of law will not be required to look through the whole Book of Church Order. Section 14-6 indicates the methods by which a decision of a lower court is brought to a higher court. Procedural details are stated in the Rules of Discipline.

§ 6-7 This is a declaratory provision, indicating that the Sections in the Chapter do not adopt new policies but are simply stating traditional principles.

Attention is called again to the three Appendices to this Report. They spell out in more complete detail matters that have been elided in this Report to keep it from becoming too long and complicated.

These Appendices are as follows:

Appendix 1. Church Property, Church Polity and the Presbyterian Tradition.
Appendix 2. Church Property, Church Polity and the Federal Constitution.
Appendix 3. A Bibliography of Legal Studies on Church Property and the Constitution.

Appendix 1

CHURCH PROPERTY, CHURCH POLITY, AND THE PRESBYTERIAN TRADITION

The Presbyterian Church in the United States is characterized by a concern for Christian unity, a concern founded upon a deep commitment to Reformed principles of theology and polity. In an "Address to all the Churches of Jesus Christ Throughout the Earth," the First General Assembly of the new denomination in 1861 cited the need to "give expression to their unity" as a reason for the representatives of the congregations to gather in a supreme ecclesiastical court. The sense of oneness in Jesus Christ, expressed in a graded structure, has remained a distinctive feature of both faith and order in the Presbyterian Church in the U.S. The need to consider afresh the Constitutional provisions for church property ownership is before the Church at this time because of threats to the unity of the Church. The issue is not one of where the formal title lies -- to the property of a particular church -- the denomination has frequently affirmed the principal that the legal title rests in the congregation. The essential issue is the extent to which the particular church can exercise its ownership in the light of the concept of Christian unity and the structure of Reformed polity. Under this polity, specifically established in the Presbyterian Church in the United States, the particular church is under the control of Presbytery and higher judicatories. The Church has consistently sought to express its understanding of oneness in Jesus Christ in its theological articulation of the faith, in its governmental practices, and in its provisions for property ownership.

The doctrinal standards of the Presbyterian Church in the U.S., make clear the denomination's view that it is a part of the visible Church catholic (Westminster Confession, Chapter XXVII). The governmental standards require all of the denomination's ecclesiastical courts to relate to each other in a way that expresses "the unity of the Church" (Book of Church Order, Preface III.5.), and Church members are clearly identified as members of that universal Church.

The transfer of Reformation Presbyterianism to the New World, while reinforcing the tendencies toward denominationalism that developed soon after the publication of the Westminster Standards, did not erase the basic commitment to unity. As Professor Lefferts A. Loetscher has clearly established, American Presbyterianism refused to "slide into independency . . ." (Blue Book (U.P.C.U.S.A. Assembly Reports), 1980, p. A-23.) The congregations moved as early as possible to form Presbyteries in order to demonstrate a devotion to unity, making themselves dependent, in many ways, upon those Presbyteries.

The Presbyterian Church in the United States has sought to broaden its expression of unity throughout its history. Soon after it established itself as a separate denomination it entered into union with groups in Virginia, Kentucky, Missouri, and (in the case of the United Synod of the South) across the entire span of its chosen territory. The denomination was a founding member of the three major ecumenical bodies to which it now belongs -- the World Alliance of Reformed Churches, the World Council of Churches, and the National Council of the Churches of Christ in the U.S.A. The history of the denomination demonstrates that devotion to the catholicity of the Church is a principle as clearly characteristic of the Presbyterian Church in the U.S. as are the classic Reformed principles of the sovereignty of God, the centrality of Scripture, simplicity and piety of life, and the full participation of all persons in the full life of the Church.

The polity of a Reformed Church is derivative, based upon its understanding of the theological concepts that give the Church life. The polity of the Presbyterian Church in the U.S. demonstrates the same devotion to unity, and the same history of an expanding application of that principle in the governmental life of the denomination, that we observed in the theology of the Church.

Early American Presbyterians took as their own the system of order set forth in the Westminster Assembly's Form of Presbyterial Church Government. The major influences on this governmental, or disciplinary, expression of Calvinistic theology grew out of the experiences of the Reformed Church of France, where the first nationwide Presbyterian system was developed. The experiences of the Church of England following the death of Henry VIII, and the developments of the Church of Scotland (especially Andrew Melville's Second Book of Discipline in 1592) were critical for the establishment of a graded system of courts, the rise of the Elder as a chief participant in Church government, and the establishment of Presbytery jurisdiction over Ministers and Churches.

Early American Synods adapted the Westminster provisions to the necessities of a sparse population spread along the Atlantic seaboard. Following the organization of an American General Assembly a strong tendency towards "American pragmatism" developed in the polity of the denomination, often in an effort to express the basic concern for unity as well as to meet the needs of vast distances between population centers and the presence of the frontier.

When the Presbyterian Church in the United States began its separate existence, a revision of the Book of Church Order had already been initiated. The First General Assembly of the new Church continued such work through a process that required eighteen years to complete. The new Book of Church Order approved in 1879 represented a distinct turn away from the pragmatic approach of the earlier period, reestablishing a more theologically oriented approach to polity. The central concern for unity was retained in such language as:

> This visible unity of the body of Christ, though obscured, is not destroyed by its division into different denominations of professing Christians; but all of these which maintain the Word and Sacraments in their fundamental integrity are to be recognized as true branches of the Church of Jesus Christ. (Paragraph 13.-II.)

The language of contemporary Section 2-2 retains much the same language in less classic form.

PCUS ACTIONS REGARDING CHURCH PROPERTY

A concern for Church property, how it is owned, how ownership is expressed, how title is transferred, is of more recent concern to the denomination than are the matters of faith and order discussed in the preceding paragraphs. In common with other American institutions, the Presbyterian Church in the U.S. inherited many of its property concepts from its European ancestors, adapting them to the situation of a new continent and refining its understanding as it matured.

Early Presbyterianism in America exhibited a variety of practices in securing control and ownership of places of worship. In some colonies only established Churches could secure charters easily, and the dissenting folk known as Presbyterians struggled for recognition. Title to property used by Presbyterian congregations was often held by individuals rather than by congregations. Some early Ministers were licensed only to preach in homes. In other colonies it was possible for an organized religious association to hold title to real property. No established Presbyterian attitude towards property ownership developed during the colonial era, nor immediately after the organization of the first

General Assembly in 1789, the same year in which the ratification of the Constitution brought enduring structure to the nation. Traditional practices and inherited legal concepts still prevailed, with considerable regional variations.

1838. The first formal consideration of the matter, at least at the level of the General Assembly, seems to have been in 1838, when the Assembly (Old School) voted the following resolution:

> Considering that it is necessary to the due and orderly maintenance of the Constitution of the Presbyterian Church in its various provisions that care be taken, in obtaining legal enactments of a secular kind, that they be so formed as not to come in conflict with any such provisions; and whereas, it is known that instances have existed, and probably do still exist, in which the charters of churches, and perhaps other legal instruments, are so framed that the laws of the Church and the laws of the land are not reconcilable with each other; therefore,
>
> Resolved, That the General Assembly earnestly recommend it to all the congregations under their supervision that in resorting to the legislatures or tribunals of our country they use the utmost care to ask nothing which, if granted, will in any respect contravene the principles or order of our Church, and in any cases in which civil enactments, heretofore obtained, do militate with any of the principles or order of our Church, they endeavour, as soon as possible, to obtain the repeal or modification of such enactments, so as to make them consistent with the ecclesiastical order and principles of the Presbyterian Church. (Minutes (Old School), 1838, 1st Ed., p.26.)

The action followed by a single year the division of American Presbyterianism into Old School and New School factions. Since that period it has been consistently true that concern over church property arises when Presbyterianism loses its vision of Christian unity.

1879. The 1879 Book of Church Order, like its immediate ancestor, said nothing specific about church property. In elevating the office of Deacon it did make such Church officers responsible for "the temporal affairs of the Church." (Paragraph 23.-IV.)

1890. Only minor amendments, none of them affecting property matters, were noted by the General Assembly for nearly fifty years. In 1890 the General Assembly refused to send to the Presbyteries amendments providing for congregational trustees, but did declare each congregation possessed "the right and power to appoint and remove at will trustees" who could purchase, sell, mortgage, or exchange property when authorized to do so by the congregation. (Minutes, 1890, p. 28)

1925. In 1921 a major revision of the Book of Church Order was initiated, leading to the approval in 1925 of several amendments dealing with property matters. These included provisions for churches to incorporate under charters and by-laws "which must always be in accord with the Standards of the Presbyterian Church in the United States, and must not infringe upon the powers or duties of the Session or of the Board of Deacons." (BCO, 1925, p.84.) An additional paragraph, virtually identical with current Section 6-3, required that title to the property of dissolved churches must be conveyed to the Presbytery.

1932. During this period of Constitutional development the Assembly dealt with other attitudes within the Church on the subject of church property ownership. The 1932 Assembly sent to the Presbyteries a proposed amendment which would have provided that:

> The right of a Church, a Presbytery and a Synod in and to its property is a civil right and cannot be involuntarily impaired or affected by an ecclesiastical action of any other Church court. (Minutes, 1932, p. 142.)

The amendment failed to pass the Presbyteries by a vote of 38 in favor, 51 against, with 2 Presbyteries not voting. The Assembly refused to resubmit the amendment in an amended form.

1938. The same amendment was sent to the Presbyteries by the 1938 Assembly, modified only by changing from a three-fourths to a majority the vote by which a congregation must approve an action "to impair or divest such title so held . . ." (Minutes, 1938, p. 60.) The amendment was again defeated, by a vote of 30 in favor, 54 against, with four Presbyeries unreported or not voting.

1944. The 1944 edition of A Digest of the Acts and Proceedings of the General Assembly stated: "In the final analysis the right in and to all property within its ecclesiastical jurisdiction belongs to the Church as a whole - the entire denomination. This is the opinion which has been sustained by the Supreme Court of the United States (Watson vs. Jones, 13 Wallace, 679) in the 'Walnut Street Church Case.' " (Digest, 1944, p. 80.)

The Digest further stated that the 1925 amendments to the Book of Church Order have their "precedents in respect to the civil law from the above cited cases" (Watson vs. Jones and cases growing out of litigation that developed in connection with the union of the Presbyterian Church in the U.S.A. and the Cumberland Presbyterian Church). (Ibid., p. 81.)

1949. The Assembly moved into a period of renewed emphasis on the issue of church property a few years after the publication of the Digest edition of 1944. Proposals for Presbyterian reunion were being widely discussed in the denomination, raising once again the issue of the nature of Christian Unity. In 1949, the Assembly rejected proposed amendments that would have limited congregational power to sell, mortgage, or otherwise alienate property. (Minutes, 1949, p. 57.)

1950. The 1950 General Assembly enacted the language of contemporary Section 6-1, giving unincorporated churches the authority to elect "trustees or officers of like nature" who were empowered to carry out the same functions as trustees of an incorporated church with regard to property. The right originally articulated as an interpretation by the 1890 General Assembly thus became a part of the language of the Constitution.

The 1950 General Assembly also had before it, and rejected, amendments that would have limited congregational power to sell, mortgage, or otherwise alienate the property. The 1950 General Assembly considered reported amendments to the charters of incorporation in several particular churches which described property as being owned "for the absolute, sole and exclusive benefit of the members of 'the church' without any right, title, interest or estate, legal or equitable, existing in favor of any denomination, presbytery, or other ecclesiastical body whatever." Such charters were determined to be "contrary to and in violation of the historic practice and polity of the Presbyterian Church in the United States and, if upheld by the civil courts, would make it possible for 'such churches' to withdraw from the Presbyterian Church in the United States with their property at their own discretion." The Assembly advised the Presbytery having jurisdiction over one congregation with such a "contrary" charter to direct the church to amend its charter to conform to the Book of Church Order so that the authority of PCUS courts might be recognized and the denomination's property rights "adequately safeguarded." The Assembly said that a particular church does not have "absolute ownership of its property without reference to the denomination," and authorized a committee to study the matter of church property. (Minutes, 1950, pp. 60,61.)

1951-52. That Ad Interim Committee "To Study the Whole Question of Church Property as Related to the Presbytery and Other Church Courts" brought in a report which stated:

1. The legal title to property of a particular church is in its trustees on the behalf of that congregation. Therefore, the property is actually controlled by that congregation. This is recognized by both Civil and Ecclesiastical courts. The right to hold and dispose of property is granted by the State.
2. A voluntary religious society which constitutes a part of a religious organization or denomination, having established tribunals authorized to decide questions of faith, discipline, rule, or ecclesiastical government, is bound by decisions of such tribunals in such questions.
3. In such cases where a right of property asserted in a civil court is dependent solely on a question of doctrinal discipline, ecclesiastical law, rule, or church goverment and that question has been decided by the highest tribunal within the organization, the civil courts will ordinarily accept that decision.
4. Where property is acquired by a particular church;, by purchase or otherwise, for the use of such church, it will be a matter for the civil courts to determine who constitute such church or its legitimate successors.
5. If trustees or members of a particular church undertake to withdraw and attempt to take their church property with them, it may subject all questions of ownership and control to a decision by the civil courts. (Minutes, 1951, p. 142.)

The General Assembly did not adopt the report, but received it as information. In 1952 a new committee was erected to "study the whole question of church property" and report to the 1954 General Assembly "with a definite recommendation for amendment to the Book of Church Order, if found necessary." (Minutes, 1952, p. 51.)

1953. The committee reported ahead of schedule, in 1953, recommending two paragraphs for adoption by the Assembly "as a declaratory statement," and advising the Assembly that the paragraphs could be approved as amendments to the BCO if desired. An effort to approve such amendments failed, and the following language remained on the record as a declaratory statement, that is, an Assembly interpretation of what the Book of Church Order means:

Item I

> The beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation, with respect to such property, may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. In every instance nothing in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church in the United States as established by the Constitution of such Church. (Emphasis added.)

Item II

> Disposition of the property of a particular church rests in the will of the congregation of that church. The congregation is that body of persons recognized as members of that particular church by the respective courts of the Church. (Minutes, 1953, pp. 43, 143.) (Emphasis added.)

1965. The 1965 edition of the Digest, reviewing twenty years of denominational effort to express the concept of Christian unity through its Constitutional provisions for property ownership, does not retain the earlier statement of the jurisdiction of the whole denomination over property. In its place an editorial note says:

> The Church has refused to affirm that the property of a congregation belongs to that congregation absolutely and without any relation to the Church as a whole. . . The Church has likewise refused to affirm any original powers of higher courts over the property of a congregation. (Digest, 1966, p. 74.)

1967. The declaratory statement of 1953 was reaffirmed by the 1967 General Assembly in response to an overture from the Presbytery of Potomac. The Assembly stated that further clarification was not needed. (Minutes, 1967, p. 127.)

1971. But four years later the General Assembly provided just such a clarification in a pivotal statement which quoted verbatim the 1953 declaration and expanded it extensively:

The following declaratory statement was adopted by the General Assembly in 1953 (Minutes, 1953, pp.42-43, 143) after a study and recommendation of a committee appointed for the purpose of studying the question and reporting back with a recommendation for amendment to the Book of Church Order, if found necessary.

The beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation, with respect to such property, may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. In every instance nothing in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church in the United States as established by the Constitution of such Church. (Emphasis added.)

Disposition of the property of a particular church rests in the will of the congregation of that church. The congregation is that body of persons recognized as members of that particular church by the respective courts of the Church. (Assembly's Digest, p. 76) (Emphasis added.)

In 1967 the Presbytery of Potomac overtured the General Assembly to make clear the Presbyterian Church, U.S. position regarding the ownership of church property. The General Assembly reaffirmed its 1953 statement and responded: 'The Book of Church Order, when supplemented by the declaratory statement of the General Assembly of 1953, is sufficiently clear.' (Minutes, 1967, p. 127).

The Book of Church Order provides that Presbytery has the authority to receive and dismiss churches. Appellate procedure is outlined in Chapter 14 of the Form of Government and Part V of the Rules of Discipline.

It should be pointed out that Section 4-1 (2) provides that upon organization, the members of the congregation of a Presbyterian church shall enter into a covenant and with uplifted hand '. . . solemnly promise and covenant that they will walk together as an organized church, on the principles of faith and order of the Presbyterian Church in the United States. . . ' (Emphasis added.)

All persons who subsequently enroll themselves as communing members on profession of faith of the particular church must first agree to submit themselves to the government and discipline of the Church. (Section 210-5(5), Directory for the Worship and Work of the Church.)

Ministers and other officers before ordination approve the government and discipline of the Presbyterian Church in the United States, and promise subjection to their brethren in the Lord. (Form of Government, Sections 29-3, 27-6.)

When any Minister, other officer or communing member feels that he can no longer in good conscience remain a part of the Presbyterian Church in the United States, the Book of Church Order provides an honorable and orderly procedure for separating himself from it. (Rules of Discipline, Chapter 11.)

Section 14-5, of the Book of Church Order sets forth the sphere of action of each Church court and their interrelations to each other: 'These courts are not separate and independent tribunals. They have a mutual relation, and every act of jurisdiction is the act of the whole Church performed by it through the appropriate Church court.'

Section 16-7 of the Book of Church Order provides that Presbytery has the power to receive, dismiss, ordain, install, remove and judge ministers, to review the records of the Sessions, redress whatever they may have done contrary to order, and take effectual care that they observe the Constitution of the Church. The Presbytery further has the power to establish the pastoral relation and to dissolve it at the request of the one or both of the parties or where the interest of religion imperatively demands it and, further, the Presbytery has the power and authority to see that the lawful injunctions of the higher courts are obeyed, to condemn erroneous opinions which injure the purity or peace of the church, to visit churches for the purpose of inquiring into and redressing evils that may have arisen in them, to unite or divide churches at the request of the members, to form and receive new churches, to dissolve churches and in general to order whatever pertains to the spiritual welfare of churches under it care. Further, the Presbytery has the power and authority to appoint commissioners to the General Assembly of the Church and to propose the Synod or to the General Assembly such measures as may be of common advantage to the whole Church.

It takes more than a name to become a Presbyterian Church, U.S. It takes more than to profess the same faith as the Presbyterian Church, U.S. professes to become a Presbyterian Church, U.S. It takes a profession of that faith and subjection to the government of that Church to make a Presbyterian Church, U.S.

A Presbyterian congregation, with its officers, pastor, elders and deacons, is a complete organization in itself, but it is not independent. (Preface to the Form or Government, III.1.5.) It is a part of an extended whole, living under the same ecclesiastical constitution, and therefore subject to the inspection and control of the Presbytery, whose business is to see that the standards of doctrine and rules of discipline are adhered to by the particular churches under its care. It is the court of review and control, over all the sessions of the particular churches within its bounds. To the Presbytery are superadded the higher judicatories of Synods and General Assemblies, as the means of preserving the standards of doctrine and discipline on a more extended territorial scale.

> Such has been the organization of the Presbyterian Church in Scotland, from the time of John Knox to this date, and has been substantially followed by the Presbyterian Church in England and the United States.
>
> The foregoing represents the Presbyterian Church, U.S. position on church property. This position is subject, however, to the civil laws of the State where the property is situated. Generally, however, the civil courts concluded that a congregation belonging to a religious denomination and subject to the constitution, faith and doctrines thereof, cannot use its property for a purpose which violates the relationship of the congregation to the denomination. (Minutes, 1971, pp. 171-172.)

CONCLUSION

The final paragraph of the 1971 statement just quoted reiterates the strong traditional concern of the Presbyterian Church in the U.S. for the organic unity of the denomination. The position of the 1949 Assembly is expanded and clarified — congregations must hold property in a way that safeguards the denomination's rights in such ownership, but the higher courts are not granted any original powers over the property of a congregation. The appellate powers of the higher courts of the Church in these matters are solidly affirmed.

Soon after the approval of the 1971 statement, the focus of concern for property matters shifted to the civil courts as organized efforts were mounted to encourage particular churches to leave the denomination. In most of these cases, Presbyteries dismissed the congregation with their property. In some cases the congregations voted to withdraw, declining any further communication with the Presbytery of jurisdiction. Presbytery reactions were mixed, with these reactions predominant:

1. The seceding congregations were simply removed from the roll.
2. Some congregations managed to secure clear title to their property through the civil courts.
3. The right of the Presbytery to determine the "true congregation" in a divided church was upheld in litigation before civil courts, and the congregations continued as particular churches of the PCUS, often with reduced membership.

In 1975 the denomination answered the withdrawal movements by enacting a new Section 4-2, which says:

> The relationship to the Presbyterian Church, U.S., of a particular church can be severed only by constitutional action on the part of the Presbytery of which it is a member. (Minutes, 1975, p. 105.)

This provision was not in effect when the case of Jones vs. Wolf, discussed in Appendix 2, arose, and it was not considered by the courts that heard that case.

The 1971 statement has been the "law" of the Presbyterian Church in the United States for a decade, through the authority of the General Assembly to interpret the denomination's Constitution (BCO 18-6(3), 20-2, and 20-6). That statement itself was considered to be a clarification of the earlier declaratory statement of 1953. The amended Chapter 6, Book of Church Order, proposed to the 121st General Assembly (1981) does not represent a change but simply sets forth in the BCO chapter on property what preceding General Assemblies have declared the existing language to mean. Rather than representing an innovative or startling change, the amendments presented in the report which precedes this appendix are, like those proposed to the General Assembly of 1924, an effort by a well-qualified committee "to make such revisions as would clarify ambiguous sentences and paragraphs, replace obsolete work and phrases with words and phrases that are used today, and bring the Book of Church Order into conformity with interpretation given by various Assemblies and with present day usage" while trying "to keep in mind what it believes to be the principles of Church government taught in the Holy Scriptures." (Minutes, 1924, pp. 116, 117.)

Appendix 2

CHURCH PROPERTY, CHURCH POLITY, AND THE FEDERAL CONSTITUTION

This country was founded on the concept of the separation of Church and State. American courts have been very slow to engage in determination of ecclesiastical matters, especially when they involve theological issues.

This hesitation did not exist for the courts in England, where there was an established religion. The first reported English case was one in which the court went into a determination of ecclesiastical matters. The case was Craigdallie v. Aikman, 1 Dow. 1, 3 Eng. Rep. 601 (H.L. 1813) (Scot.). Ten years later the same case came before the House of Lords again on appeal. This time, Lord Eldon, who had rendered the previous decision, admitted that he had studied the doctrinal positions of the litigants and that he could not understand the difference in the positions, but he nevertheless attempted to reach a decision in the case. Craigdallie v. Aikman, 2 Bligh 529, 4 Eng. Rep. 435 (H.L. 1820) (Scot.).

But civil courts must dispose of questions of the ownership and right to possession of property. American courts floundered over the problem in the beginning, not reaching any consensus of approach — so that a commentator somewhat cynically but perhaps accurately declared that the results reached by a particular court seemed to depend upon the kind of church organization in which the judge participated and the doctrinal beliefs that he found familiar.

Then in 1872 there came the decision of the United States Supreme Court in the landmark case of Watson v. Jones, 80 U.S. 679, 20 L. Ed. 666 (1872). This case involved a split in the Presbyterian church resulting from the Civil War. In a lengthy and carefully prepared opinion, Mr. Justice Miller laid down three rules governing the issue of determination of rights to church property. These rules were as follows:

1. If "the property...has been, by the deed or the will of the donor, or other instruments devoted to the teaching, support, or spread of some specific form of religious doctrine or belief...it would...be the obvious duty of the court...to see that the property so dedicated is not diverted from the trust...." 80 U.S. at 722-23.

2. If "the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, holds no fealty or obligation to any higher authority ("a church of a strictly congregational...organization")...(and if) the principle of government in such cases is that the majority rules, then the numerical majority of numbers must control the right to the use of the property." Id. at 722, 725.

3. If "the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over the whole organization, (and)...whenever the questions of discipline or faith, or ecclesiastical rule, custom, or laws have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." Id. at 722, 727.

The Court did not purport to lay down a rule of constitutional law, since this was long before the decision had been reached that the Fourteenth Amendment had the effect of imposing the restrictions of the First Amendment (including "free exercise of religion") on the States and decisions of state courts. Instead, it was laying down common law of the kind to be applied by the federal courts under the rule of Swift v. Tyson, 41 U.S. 1, 10 L. Ed. 865 (1842), which was applicable at that time. The decision, however, had strong constitutional overtones and it was so persuasively stated and regarded as so appropriate in drawing the right line between Church and State that it was widely followed and came to be regarded as laying down the common law for most of the States as well.

The three rules of Watson v. Jones have worked out most satisfactorily and the distinction between congregational and hierarchical churches has been quite generally followed. If a particular church wishes to break away or there is a schism within a church of the congregational type it has been held to be within the authority of the local church to decide by majority vote of its members where the property goes. The majority of the local church would determine who was qualified to vote and its decision would be followed by the civil courts. In the hierarchical church, on the other hand, it was the highest "judicatory" in the general church to which the case was appealed whose decision would be regarded by the civil courts as binding on them.

It has come to be recognized, however, that there are two forms of hierarchical churches —episcopal and presbyterian (or synodical or representative). For the episcopal type, legal title (or express equitable title) to the property for the particular church has normally been placed in name of the bishop or other episcopal official and there have not been many cases to be litigated. There have also not been many cases to be litigated for the congregational churches. Most of the church property cases have arisen with hierarchical churches of the presbyterian type. Nevertheless, if the principles of Watson v. Jones are followed conscientiously, the result seems to be clear in the PCUS. This denomination is recognized as hierarchical in character - from session to presbytery to synod to general assembly, with the decision of the highest court to which appeal has been made being treated as binding on the parties and on the civil courts. And this applies also to decisions on schisms and property determinations. See Book of Church Order 14-5.

State courts have usually adopted this position. Watson v. Jones continues to be a leading case followed by the majority of the States today.

It is useful now to digress at this point to refer to the so-called doctrine of implied trust and its significance. This doctrine began with the early English cases — especially the decision of Lord Eldon, in Attorney General v. Pearson, 3 Mer. 353, 36 Eng. Rep. 135 (Ch. 1817). Its prime application was to keep a majority in an individual church, not in a hierarchical system, from making a fundamental change in doctrine — e.g., change from a trinitarian ministry to a unitarian ministry — and keeping the church property from a dissenting minority.

This concept of an implied trust was imported into this country, though it was obviously a legal fiction and did not fit in with the recognized law of trusts, whether express, implied or charitable. It applies more appropriately in case of a congregational church and obviously if "departure from doctrine" is construed broadly, it has the inevitable effect of stultifying the growth or development or modification of views over the years. And there was a clash, especially in New England, between it and ideas of democracy and majority rule.

The implied trust doctrine also came to be applied to hierarchical churches, but here the implied trust was frequently used to mean that the local church held the property in implied trust for the general church. The emphasis here was usually on the system of government rather than doctrinal differences. It was not departure from doctrine but departure from the church polity or form of government that the "implied trust" prevented. It is thus apparent that this application of the implied trust doctrine would have the result of reaching the same result as that reached by application of the rule of Watson v. Jones, though on a slightly different basis.

On either of these two bases the decision of the appropriate PCUS church court would be controlling on the issue of beneficial interest in property in the case of a local church being dissolved or attempting to break away or being beset by schism. Hence, there was little need to make specific provision on this matter in the Book of Church Order.

We return now to a consideration of developments in the Supreme Court. The case of Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1, 50 S. Ct. 5, 74 L. Ed. 183 (1929), reiterated the holding in Watson v. Jones, but the opinion of Mr. Justice Brandeis set forth three exceptions to the Watson rule of noninterference in church matters. It declared that civil courts need not defer to the decisions of appropriate church judicatures when the decisions were as a result of "fraud, collusion, or arbitrariness." Id. at 16.

A significant holding now came in two decisions involving the Saint Nicholas Cathedral of the Russian Orthodox Church. In Kedroff v. Saint Nicholas Cathedral of the Russian Orthodox Church in North America, 344 U.S. 94, 73 S. Ct. 143, 97 L. Ed. 120 (1952), the court indicated that the Watson rule —specifically, the third rule — had now become a principle of constitutional law binding on the state courts. This was through the process of holding that the provisions of the First Amendment to the Constitution had become applicable to the States through absorption into the Fourteenth Amendment. Decisions establishing this process were Cantwell v. Connecticut, 310 U.S. 296 (1940); and Emerson v. Board of Education, 330 U.S. 1 (1947). The "free exercise of religion" clause in the First Amendment was therefore applicable to the States and it was held to include the Watson rule of noninterference by civil courts. The statement in the Kedroff case was somewhat oblique since it involved more strictly ecclesiastical matters and concerned property only incidentally, but it seemed clear enough and it was reiterated when the same case came up before the Supreme Court again in Kreshik v. Saint Nicholas Cathedral, 363 U.S. 190, 80 S. Ct. 1037, 4 L. Ed. 2d 1140 (1960). This position was also confirmed by subsequent decisions of the Supreme Court expressly holding that the noninterference rule of Watson v. Jones was a constitutional rule that must be complied with by the state courts. The rule was held to be subject to the three exceptions set forth in Gonzalez.

This brings us then to the first of two cases in the Supreme Court involving the PCUS and a breakaway local church in the state of Georgia. Some detail on the facts and exposition of the position of the Georgia courts is necessary to understand the very important decisions of the Supreme Court in these two cases.

The first case grew out of the vote by two Savannah Churches — the Eastern Heights Presbyterian Church and the Mary Elizabeth Blue Hull Memorial Presbyterian Church —to withdraw from and to sever all connection with the PCUS. The resolutions cited as the basis for the withdrawal the general Church's alleged violation of its constitution and departure from its faith and practices. Indications of the "departure" included such matters as a declaration that the doctrine of predestination was not essential to reform theology, ordination of women as ministers and elders, refusal to endorse a presbytery proposal to seek a constitutional amendment to permit voluntary Bible reading and prayer in the public schools, involvement with the National Council of Churches in the Mississippi Delta Project, issuing pronouncements on civil affairs such as the Vietnam conflict and speaking of civil disobedience in favorable terms in certain church school literature.

A commission appointed by presbytery met and heard evidence and directed, with presbytery approval, that the dissenters relinquish the church property to the presbytery. The presbytery action was ignored by the dissenters, who did not appeal from it to synod. Each party sought injunction against the other. The trial court admitted evidence of the alleged departure from doctrine and submitted to the jury the question of whether a departure was proved. The jury held that it was and the trial court then held for the two withdrawing churches, granting the property to them and enjoining the presbytery from interfering with its use.

The Supreme Court of Georgia affirmed in Presbyterian Church in the United States v. Eastern Heights Presbyterian Church, 224 Ga. 61, 159 S.E. 2d 690 (1968). It held that the particular church holds the property under an implied trust

for the general church but that the "trust is conditioned upon the general church's adherence to its tenets in faith and practice existing when the local church affiliated with it and that an abandonment of, or departure from, such tenets is a diversion from the trust, which the civil courts will prevent." 224 Ga. at 68. It "expressly overruled" an earlier case holding that "complete abandonment is required" and carefully examined the allegations of departure, decided that the jury was justified and held for the local churches.

This, of course, was the implied trust theory of Lord Eldon back in 1817 in England, where there was no separation of church and state. It was patently in conflict with the principles of Watson v. Jones.

This was the position taken by the Supreme Court of the U.S. in unanimously reversing the decision of the Supreme Court of Georgia and holding "Georgia's departure-from-doctrine approach" unconstitutional and saying that "Georgia's implied trust theory can play no role in any future judicial proceeding." Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 450-51, 89 S. Ct. 601, 21 L. Ed. 658 (1969). Declaring that "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes," the Court declared that it "commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine." 393 U.S. at 449.

When the case came back to the Supreme Court of Georgia for action, it decided that if it could not apply the implied trust for the general church with its limitation involving the "departure-from-doctrine element," it would not invoke the implied trust for the general church at all. This left the legal title, as created by the deeds, in the local churches or in trustees for them, and, without remand to the trial court, the court declared the "legal title to the property (to be) in the respective local churches." Presbyterian Church in the United States v. Eastern Heights Presbyterian Church, 225 Ga. 259, 167 S.E. 2d 658 (1969). No reference was made to the action of the Presbytery of Savannah in declaring that it would exercise jurisdiction over the churches and provide ministerial leadership and regular services "for those members who wish to continue their membership in and communion with" the general church, although those members would appear to compose the true local churches under church laws and to be entitled to the property under the rules of Watson v. Jones. But the U.S. Supreme Court declined to review that decision by refusing to grant certiorari. 396 U.S. 1041 (1970).

Reference should also be made to a companion case to Hull Memorial. In this case, the Maryland Court of Appeals had held that two local churches might withdraw by majority vote from the denomination and keep the property. Maryland and Virginia Elderships of the Churches of God v. Church of God at Sharpsburg, Inc. 249 Md. 650, 241 A. 2d 691 (1968). This action was vacated by the U.S. Supreme Court and remanded to the Maryland Court of Appeals for further consideration in the light of the Supreme Court's opinion in Hull Memorial, supra. See 393 U.S. 528 (1969). The Maryland court persisted in its holding, declaring that it had reached its decision on the basis of "neutral principles of law" as stated in the Supreme Court's Hull opinion. See 254 Md. 162, 254 A. 2d 162 (1962). This holding was appealed to the Supreme Court and in a very short per curiam opinion it dismissed the appeal for want of a substantial federal question on the ground that the "Maryland court's resolution of the dispute involved no inquiries into religious doctrine." Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 90 S. Ct. 499, 24 L. Ed. 2d 582 (1970). Mr. Justice Brennan wrote a "separate opinion," stating that there are three ways in which a state may settle a church property dispute without consideration of doctrinal matters: (1) "the approach of Watson v. Jones," (2) use of "neutral principles of law developed for use in all property disputes" and (3) "passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine." 396 U.S. at 368-70. Only two justices concurred in this opinion.

The next Supreme Court decision came six years later, in Serbian Eastern Orthodox Diocese for the United States and Canada v. Milivojevich, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976). The Serbian Orthodox Church ("Mother Church") removed and defrocked the bishop of the American Canadian Diocese and divided the diocese into three others, and he sought relief. The Illinois Supreme Court set aside both actions, the first action on the ground that it was "arbitrary" in not following the Mother Church's constitution and thus came within one of the three exceptions to Watson v. Jones that were laid down in Gonzalez v. Roman Catholic Archbishop, 280 U.S. 1 (1929) (fraud, collusion, arbitrariness). In passing on this, the Supreme Court invalidated the arbitrariness exception, at least in so far as it involved "rejection of the decision of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute and...substitutes its own inquiry into church polity and resolutions." Id. at 708. "(W)here resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and politics the First and Fourteenth Amendments mandate that civil courts shall not disturb the decision of the highest ecclesiastical tribunal within a church of hierarchial polity, but must accept such decisions as binding upon them, in their application to the religious issues of doctrine or polity before them." Id. at 709.

The Illinois court had set aside the reorganization of the dioceses by what it called "neutral principles" that would not "in any way entangle (it) in the determination of theological doctrinal matters." But the Supreme Court held that the Illinois court "substituted its interpretation of the Diocesan and Mother Church constitutions for that of the highest ecclesiastical tribunal in which church law vests authority to make that determination. This the First and the Fourteenth Amendments forbid." Id. at 721.

Thus the accumulated effect of the Supreme Court decision as of mid-1976 was that the Federal Constitution (including the First and Fourteenth Amendments) forbids a civil court in a property dispute between a local church and a general hierarchical church from resolving the dispute contrary to the decision of the highest ecclesiastical court so long as that decision is based on church polity that the civil court would need to inquire into. This state of the law was leaving the property situation for the PCUS apparently in a satisfactory situation, since it was the traditional understanding,

though not set forth in express detail in the BCO, (1) that property of the local church was held in "implied trust" for the whole church acting through the presbytery, and (2) that in case of a schism within a local church either group might appeal to the presbytery, which would appoint a commission to hold a hearing, providing "procedural safeguards as in cases of process" (BCO 14-3) to determine what action should be taken regarding the continuation of the local church and report to the presbytery for its action.

The second case involving the PCUS and the Georgia courts is Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L.Ed.2d 775 (1970). This is the last case to come before the Supreme Court and the most important case for present purposes, since it is the holding in this case that is making changes necessary in the Book of Church Order. The Vineville Presbyterian Church of Macon, Georgia, had a division into factions on the issue of whether it should withdraw from the PCUS. It voted 165 to 94 to withdraw and become an independent self-governing church, though later it joined another denomination. The Augusta-Macon Presbytery appointed a commission to mediate. Unable to reach an agreement, it declared the minority faction to be the "true congregation" of the church and withdrew authority from the majority and the pastor. The majority retained possession and control of the property and the minority brought an action seeking a declaratory judgment and an injunction. The trial court held for the defendants (the majority). The Supreme Court of Georgia affirmed. Jones v. Wolf, 241 Ga. 208, 243 S.E. 2d 860 (1978). Following the neutral principles approach, it found nothing in the deeds, charter of the Vineville Church, the Georgia statutes or the PCUS constitution (BCO) that would give a legal interest in the property to the general church. The fact that Vineville "had been a connectional church within the Augusta-Macon Presbytery and the PCUS" was held insufficient to "give rise to property rights in the general church." 243 S.E. 2d at 864. No significance was attached to the action of the presbytery in declaring the minority faction to be the true congregation and therefore the local church; this matter was ignored.

The case was appealed to the Supreme Court of the United States, where the court split 5-4. Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 773 (1979). The majority opinion, written by Mr. Justice Blackmun, reiterated the established constitutional rule that "the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice." Id. at 602. It also definitely adopted the "neutral-principles-of-law approach" that it had earlier "noted in passing" (p. 599) in Hull Memorial, holding that this approach might be constitutionally followed; and held that it was properly followed by the Georgia court since the PCUS Book of Church Order "failed to reveal any language of trust in favor of the general church." Id. at 601.

But the Supreme Court recognized that another question must be answered before a decision could legitimately be reached. The Supreme Court of Georgia had assumed "without discussion on analysis" that the majority faction of the Vineville church composed the local church, ignoring the action of the Presbytery in declaring the minority faction to be the "true congregation." The United States Supreme Court declared that the "question presented by this case is which faction of the formerly united Vineville congregation is entitled to possess and enjoy the property." Id. at 602. The Court had held that the Georgia court might apply neutral principles of law here too. It could adopt a "presumptive rule of majority representation, defeasible upon a showing that the identify of the local church is to be determined by some other means." Id. at 607. The "other means," as determined by neutral principles might be by "providing in the corporate charter of the constitution of the general church that the identity of the local church is to (be) established in some other way (than a majoritarian presumption) or by providing that the church property is held in trust for the general church and those who remain loyal to it." Id. at 608.

The case was therefore remanded to the Supreme Court of Georgia for further action in the light of the majority opinion of the Supreme Court. In Jones v. Wolf, 244 Ga. 388, 260 S.E. 2d 84 (1979), the Georgia Supreme Court affirmed its initial decision. It followed implicitly the suggestion in the majority opinion in the Supreme Court and held that Georgia "has adopted for use in church local schism cases a 'presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means.'.... The presumption may be overcome by reliance upon neutral statutes, corporate charters, relevant deeds, and the organizational constitutions of the denomination.... A review of these sources discloses no provisions that would rebut the Georgia presumption of majority rule as to the right to control the actions of the title-holder — that is, as to the right to possess, enjoy and control the use of the church premises." 260 S.E.2d at 84,85. Although the Book of Church Order indicates that a presbytery, ordinarily acting through a commission, may visit a church for the purpose of inquiring into and redressing the evils that may have arisen within them (cf. 16-7(5), 19-2), the Georgia court made no reference to this, declaring that "The church documents in the present case speak to resolution of doctrinal disputes. They are silent as to which persons have the right to enjoy and use the church property in the event of a schism at the local level." 260 S.E.2d at 85. It therefore affirmed once again the judgment of the trial court in ruling in favor of the majority faction of the Vineville church and dismissing the complaint. Certiorari was sought from the decision of the Georgia court but was denied. 100 S. Ct. 1031 (1980).

It should be noted, however, that in the U.S. Supreme Court four justices dissented vigorously, the opinion being written by Mr. Justice Powell. This opinion starts by declaring that the majority opinion "departs from long established principles" and "superimposes...a new structure of rules" and a "new analysis (that) is more likely to invite intrusion into church polity forbidden by the First Amendment." 443 U.S. at 610, 611. It traces the references to the neutral-principles-of-law approach in previous cases and finds that although the concept had previously been mentioned by the Court, it had not been actually adopted and is now being formally adopted for the first time. But, the opinion continues, even if the approach is now available to be used when there is a unanimous decision to withdraw in the local church, the problem of a schism in the local church requires different handling. The constitution of the general church must be looked to to determine the "form of governance" and what agency makes the decision of what persons constitute the true local church. Here it is clear that the PCUS is a hierarchical church, and the appropriate agency made its decision. To refuse to look at the constitution (Book of Church Order) as a whole to determine who was

authorized to decide but to look only at the secular provisions regarding church property meant that the state court "granted control to the schismatic faction, and thereby effectively reversed the doctrinal decision of the church courts. This indirect interference by the civil courts with the resolution of religious disputes within the church is no less proscribed by the First Amendment than is the direct question of doctrine and practice." Id. at 613.

For present purposes there is no point to be made by seeking to decide whether the majority or the dissenting opinion is better reasoned and more likely to promote the essence of the First Amendment. What is important is to realize that the majority opinion has brought about a change in the interpretation of the First Amendment as it governs the authority of the civil courts in handling disputes regarding church property, and that this change makes it incumbent upon our Church to make appropriate changes in the language of the Book of Church Order in order that the results produced by the landmark decision of Watson v. Jones (as it came to be constitutionalized) will continue to be attained in cases involving our Church.

Indeed the Supreme Court itself, in making the change in its interpretation of the First Amendment, has expressly invited the churches to make the changes in the language of their constitutions. "At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion on trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." Jones v. Wolf, 443 U.S. at 606; see also id. at 603-604. Other Reform churches with a hierarchical form of government like the PCUS, are already engaged in putting these changes into effect, and we must do the same.

The needed changes in the Book of Church Order include the following:

1. Provide expressly in the Book of Church Order (Form of Government) that the local church (or a presbytery or synod) holds its property interest in trust for the PCUS.

2. Provide expressly that in case of a schism in a local church that cannot be settled through the assistance of presbytery, the presbytery shall determine which faction is the true congregation and therefore entitled to the property. This is subject to appeal to higher judicatories in the normal fashion.

3. Place all of this in Chapter 6, on Property, where it will be available to the state courts without their having to inspect doctrinal provisions of the B.C.O.

4. Use secular language rather than the language of church doctrine and practice.

5. Indicate that this is declaratory of what has been the established understanding of these matters since the earliest times.

These changes in language, if properly drafted and adopted, will fully take care of the problem of church property for our denomination. The Supreme Court has indicated as much in inviting the churches to make the changes. And the Supreme Court of Georgia has twice held in very recent years that appropriate language in the constitution of the general church is sufficient to produce a decision that the property is controlled by the general church. See Carnes v. Smith, 236 Ga. 20, 222 S.E.2d 322 (1976) (Methodist Church: Book of Discipline, VIII, 1537 requires that title to real property be held "in trust nevertheless for the use and benefit of such local church and The United Methodist Church"); Crumley v. Solomon, 243 Ga. 323, 254 S.E. 2d 300 (1979) (Holiness Baptist Association held hierarchical; Disciplinary Rules provided that the "Association shall hold all church property regardless if all members vote to change the church to some other faith").

It should be added that for many states — perhaps most of them — this change may not be needed. The present holding of the Supreme Court does not require state courts to follow the new neutral-principles-of-law approach. Instead, they may continue to follow the approach growing out of Watson v. Jones and, for a church with the presbyterian form of government, leave the determination to church judicatories. See, for example, Mills v. Baldwin, 362 So. 2d 2 (Fla. 1978), in which the Florida Supreme Court held that when the majority of a local church voted to withdraw from the PCUS, the loyal minority remained the true church through action of presbytery and was entitled to the property. The decision was vacated by the Supreme Court "for further consideration in the light of Jones v. Wolf." 99 S. Ct. 3105, 16 L. Ed.2d 878 (1979). The Florida Supreme Court "carefully reviewed Jones v. Wolf" and found its decision "to be not inconsistent with the principles enunciated therein." Mills v. Baldwin, 377 So. 2d 971 (Fla. 1979). The Supreme Court denied certiorari. 100 S. Ct. 2964 (1980).

But, under Jones v. Wolf, states may also elect to follow the neutral-principles approach. Now that this option is expressly made available to them, there is no way of predicting which course they will choose. The suggested amendments to the Book of Church Order will eliminate all uncertainty and will make sure that a uniform practice is followed no matter what state the issue arises in.

The recommended amendments are highly desirable.

Appendix 3

A BIBLIOGRAPHY OF LEGAL STUDIES ON CHURCH PROPERTY AND THE CONSTITUTION

A. Legal Studies Published Since the Decision in Jones v. Wolf.

*Note, Church Property Dispute Resolution: An Expanded Role for Courts After Jones v. Wolf?, 68 Geo. L. J. 1141 (1980)

*Note, Judicial Resolution of Church Property Disputes, 31 Ala. L. Rev. 307 (1980)

Note, Jones v. Wolf: Neutral Principles Standard of Review for Intra-Church Disputes, 13 Loyola (L.A.) L. Rev. 109 (1970)

Comment, Church Property Disputes: The Trend and the Alternative, 31 Mercer L. Rev. 559 (1980)

Comment, Constitutional Guidelines for Civil Court Resolution of Property Disputes Arising from Religious Schism, 45 Mo. L. Rev. 518 (1980)

Comment, Constitutional Law - Freedom of Religion - Church and State -Property -Ecclesiastical Law - A State May Constitutionally Adopt a "Neutral Principles of Law" Approach for Adjudicating Church Property Disputes - Jones v. Wolf, 48 U. Cin. L. Rev. 1108 (1979)

Comment, Constitutional Constitutional Law: Neutral Principles of Law and Majority Rule Presumption Applied in Disputes Over Church Property, 19 Washburn L. Rev. 590 (1980)

Supreme Court Review: 1978-79, Term, 7 Hast. Const. L. Q. 315, 374-386 (1980)

B. Important Studies Prior to Jones v. Wolf.

Casad, Church Property Litigation: A Comment on the Hull Church Case, 27 Wash. & Lee L. Rev. 44 (1970)

Kauper, Church Autonomy and The First Amendment: The Presbyterian Church Case, 1969 Sup. Ct. Rev. 347

McKeag, The Problem of Resolving Property Disputes in Hierarchical Churches, 48 Pa. B.A.Q. 281 (1977)

The Supreme Court: 1968 Term, 83 Harv. L. Rev. 7, 126-133 (1969)

*Note, Judicial Intervention in Disputes Over the Use of Church Property, 75 Harv. L. Rev. 1142 (1962)

Note, The Role of Courts in Church Property Disputes, 38 Mo. L. Rev. 625 (1973)

Note, Constitutional Law - Limits on Judicial Review of Hierarchical Church Decisions, 45 Fordham L. Rev. 922 (1977)

Note, Constitutional Law - First Amendment - The Role of Civil Courts in Church Disputes, 1977 Wis. L. Rev. 904

Comment, Judicial Intervention in Church Property Disputes - Some Constitutional Considerations, 74 Yale L. J. 1042 (1965)

Comment, Limitations of the Powers of Courts in Resolving Church Property Disputes, 36 Tenn. L. Rev. 549 (1969)

Comment, Servian Eastern Orthodox Diocese v. Milivajevich, The Continuing Crusade for Separation of Church and State, 18 Wm. & Mary L. Rev. 655 (1977).

C. Committee Studies

PCUS Legal Advisory Committee on Church Property, Legal Memorandum on Church Property (1973)

UPCUSA Permanent Committee on Conservation of Property, Report (1980).