

Address to the Presbytery
November 12, 2011

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Presbytery of the Miami Valley

Exactly four years ago, November 12, 2007, I began serving as your executive presbyter. The following evening, at our presbytery meeting at Southminster Presbyterian Church, I spoke to you very briefly about how happy and privileged I was to be here and that it would be my practice not to address the presbytery at its meetings, except when there were extraordinary circumstances that required my doing so.

Today, both of those statements are still true.

I am very happy to be here serving you and it is still a remarkable privilege for me. And I am speaking to you now because extraordinary circumstances demand that I do so.

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Four of our congregations, Kirkmont in Beaver Creek, First Presbyterian in Greenville, Lebanon Presbyterian Church, and First Presbyterian in South Charleston, have chosen to leave the denomination, voting to do so by overwhelmingly majorities, each in excess of ninety percent.

What I wish to do here is to help you understand the processes that have unfolded, and are continuing to unfold before us, and to explore what all of this might mean for us as a presbytery.

We have elected and charged an Administrative Commission to deal with these matters. These nine women and men have set about to approach their work guided by two over-riding principles:

1. Do no harm to the Church of Jesus Christ
2. Model Christ in the undertaking of the tasks at hand.

Thus far, the commission has had very productive and constructive meetings with the session of Lebanon Presbyterian Church. While both the presbytery and the church are represented by counsel, conversations thus far, have been free from legal wrangling and brinkmanship.

The commission has also begun to engage the other three congregations, and there is every reason to believe that these processes can move forward in the same manner, particularly with the hope of avoiding unnecessary litigation.

In this connection, let me say a few words about the legal context which surrounds all this.

It is simply a fact of the complexity of both the litigious time in which we find ourselves, and the nuances of law that vary from state to state, that in order to navigate well the seas of judicial process, it is necessary that the presbytery's legal representation has expertise in three areas, litigation, property, and constitutional law.

Thus we are receiving counsel on several different, but coordinated fronts. Our attorneys are Vorys, Sator, Seymour & Pease, a litigation and lobbying firm and the fourth largest law practice in Ohio. Vorys is based in Columbus, and has seven other offices both inside and outside the state. In the Columbus office, the partner overseeing the case is the former stated clerk of the Presbytery of Scioto Valley, who has also served a recent term on the General Assembly Advisory Committee to the Constitution.

Vorys is providing their legal service at a substantial discount, something for which we must all be grateful.

We are also being assisted by the Office of Constitutional Services of the General Assembly, the General Counsel of the General Assembly Mission Council, and through them, counsel from Weil, Gotschal and Manges, which is one of the largest international law firms, based in New York, and which continues to provide pro bono counsel to the PCUSA.

The obvious legal concern for most of us is about property rights.

We all know that the Book of Order addresses property in connection with the so-called implied trust clause – that church property is understood to be held by a congregation or higher council (presbytery, synod or General Assembly) in trust for the denomination.

Historically, the tradition in English law, on which much of our legal understanding was founded, assumed that the “courts will rule in favor of that faction whose theological tenets most nearly approximate those that the courts may reasonably infer were held by the property's original donor(s).”¹

This essentially confirms how we understand the trust clause – that property of PCUSA congregations must be viewed through the lens of the *intent* of donor.

However, in 1959, a new term, *Neutral Principles of Law*, coined by Herbert Wechsler, a Harvard Law professor, crept into the legal lexicon. Its premise is that a court must apply two elements of neutrality to any judicial review: *content generality* and *equal applicability*.

¹ *Neutral Principals of the Law and Church Property in the United States*, Troy Harris, (Oxford) Journal of Church and State, Volume 30, Issue 3, p. 515

While there was no specific application from Wechsler to anything about church property, in 1979, the Supreme Court overturned lower court decisions in Georgia that awarded church property to a minority of church members in a dispute in which the majority sought departure from the Presbyterian Church in the US. The Supreme Court ordered the case for re-argument because the lower courts did not adequately explain their neutral grounds for this decision, with Associate Justice Harry Blackmun writing:

The state has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively. The primary advantages of the neutral principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. ...It thereby promises to free civil courts completely from entanglement in questions of religious doctrine²

Please note that this is not a precedent that necessarily renders the trust clause null. But it is a significant decision that underscores the importance of the two elements of neutral principles, *content generality* and *equal applicability*.

So what does that mean for us?

In general, Ohio is viewed as a *neutral principles* state which means that “neutral” information, such as “what in fact is on a property deed” is often given much more weight by the courts than “what may or may not have been intended by a donor.”

While this is only a brief and simplified explanation of some very complicated legal issues, it is offered here primarily to frame our understanding that perhaps some long standing assumptions about property might not be borne out in legal process. Again, this does not invalidate the trust clause, but allows us to recognize that there are many significant factors to be weighed as we, through the Administrative Commission, proceed.

It is equally important that we note that the Book of Order, before ever introducing the trust clause, states that church property is “a tool for the accomplishment of the mission of Jesus Christ in the world.” (*G-4.0201*)

James A. Wilson, a former presbytery stated clerk, who has served on the Advisory Committee to the Constitution, has written:

The trust clause, and related Form of Government provisions, as with other provisions of the Form of Government, are part of Constitution for the purpose of protecting the ability of presbyteries, and the whole church, to engage in its mission:

² *Jones v. Wolf*, US Supreme Court (1979)

“In Christ, the Church participates in God’s mission for the transformation of creation and humanity by proclaiming to all people the good news of God’s love, offering to all people the grace of God at font and table, and calling all people to discipleship in Christ.” (*F-1.01*)

As Presbyterians, we seek to do this work consistent with our historic polity, recognize both that our connections are a gift of God and that God alone is the Lord of conscience. (*F-3.0101*)

As a presbytery, our particular role in the mission of the church is to discern, plan and provide for, in partnership with our congregations, within our geographic bounds:

Presbytery, being composed of the teaching elders and commissioners elected by the session of congregations within its district, has a particular responsibility to coordinate, guide, encourage, support, and resource the work of its congregations for the most effective witness to the broader community. In order to accomplish this responsibility, the presbytery has authority to:

- a. develop strategy for the mission of the church in its district;
- b. control the location of new congregations and of congregations desiring to move as well as to divide, dismiss, or dissolve congregations in consultation with their members; (*G-3.3030*)

The trust clause, and other provisions related to the property of local congregations, should be understood as tools given the presbytery to accomplish its role in carrying out the mission of the church, rather than as rights the presbytery must uphold regardless of the cost. Thus, when a congregation seeks to leave the PCUSA, the presbytery is called upon to seek to discern how such actions impact its responsibility to provide for the mission of the church in this place, not simply to reflexively fight for the property of that congregation. While the presbytery must live within the guidance of the larger PCUSA in discerning what it is called to do with respect to a particular congregation, it is also given broad discretion when it dissolves the bonds that link a congregation to the Presbytery, so as not to engage in fights over property that will not serve its mission and to exercise forbearance and love as a witness to gospel of Jesus Christ.³

³ James A. Wilson, letter to Dennis Piermont, November 8, 2011

Therefore, we need to step back from our assumptions, our expectations, and any senses of entitlement concerning property and take a larger view, asking ourselves: how are we to balance our use of resources to protect property, if our doing so impedes our ability to engage the accomplishment of Christ's mission?

Litigation, even when provided at substantial discounts, is frighteningly expensive. Jim Cory, General Presbyter of the Presbytery of Western Colorado, conducted an informal survey of what presbyteries have spent in legal costs for property issues over the last two or three years. The dozen or so presbyteries, representing all parts of the country, reported having each spent on the average more than *three hundred fifty thousand dollars*, with some individual cases estimated in excess of *two hundred thousand dollars* each.

Frighteningly expensive.

For us, this should beg many questions:

If we strip ourselves of nearly all of our resources to hold on to property, how does this reconcile with understanding property as a tool for the accomplishment of Christ's mission?

Is this a proper response in stewardship of all our resources, resources we understand as belonging to God?

And, might we be moving perilously close to making an idol of property?

Looking for answers to these questions is one of the significant tasks of the Administrative Commission. And when the commission reports to the presbytery, making its settlement recommendations, the rest of us will have to consider our answers to precisely these same questions.

Therefore pray for their discernment of the Holy Spirit's movement in the commission's work; pray for our patience to resist our heaping upon them our anxieties; and pray for the wisdom to step away from our anxiety when we as a council of the church, are asked for approval of the commission's work.

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But as we let the commission do its work, and as we pray for discernment, patience, and wisdom, what else must we be doing?

First, I believe, we need to be honest with ourselves about how all of this feels. The range of emotions is great and necessary. We have each felt in varying degrees, and at varying intervals, anger, betrayal, and perhaps even a lust for retribution. And we know that whatever we are to do, we cannot act out of *those* emotions.

But in our emotional honesty we cannot ignore other feelings – loss, sadness, grief – because for us to do so would be to say that these congregations did not matter, that we are somehow better off without them, and that the relationships forged as colleagues and partners in ministry were of no consequence.

And were this to be true, then what does it say about God’s caring?

It is inconceivable to me that all of this does not bring God sorrow. And I believe owning our sense of loss, sadness and grief – our journey in sorrow as it were – can allow us to understand Jesus’ meaning in “Blessed are they who mourn, for they shall be comforted.”⁴

If we are to look for God’s blessing as we move through this, then we must mourn that which brings God sorrow.

And indeed, if we are to mourn, we must do so trying to understand *specifically* what about this brings God sorrow. I cannot imagine that God really is concerned here with looking for the heroes or villains, or the angels or devils – because while surely we all have our own opinions as to “who might be who,” it is also true that none of us can be completely free from culpability, because of *our posturing about our certainty*.

Some of us speak about knowing the heart of God. Some of us speak about knowing the mind of God. While we all might have glimpses of both, none of us can ever truly *know* either – and for us to say otherwise is tantamount to saying that we can own the truth.

For the church, the truth is Jesus Christ. And Jesus Christ is beyond anyone’s ownership.

My friends, we have an opportunity before us to begin a journey as a presbytery that is shaped by our sorrow and by our admission that the responsibility for God’s sorrow in *all of this*, lies with *all of us*. We cannot proceed as if we are not profoundly changed.

We cannot proceed pretending that because of these departures we will somehow be free from our disagreements or that our theological positions have been somehow vindicated. I urge you to look around at those men and women who are have chosen to remain in the presbytery while still sharing many of the same concerns and convictions of those who are departing. That some have chosen to remain does not mean everyone is in agreement. These companions in Christ have, in many ways, made the harder decision. And this choice deserves respect, honor and love.

We must not let ourselves be deluded into thinking that these things are only about theological differences, for like it or not, all of us have created an atmosphere of distrust that has shrouded the church for decades; all of us – irrespective of theological orientation or Biblical understanding.

⁴ Matthew 5:4 NRSV

And for much of those decades we have all heard talk about the need to build bridges of trust. I do not think that such is the way. We do not build bridges with the intent of supporting or upholding trust, as though trust was added onto the bridge much like the traffic moving across the Golden Gate.

No. We trust. Trust is a unilateral action. Trust is itself, the bridge.

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Over the last two months or so, many of you have spoken to me about how important what we do will be, because the “world is watching.” I have no disagreement whatsoever with the notion that we might be able to demonstrate a new paradigm for behavior that might make some in the secular world, who see us as decidedly un-Christian in how we seem to treat each other, re-think some of their simplistic opinions. But it cannot be for them, or indeed anyone else, that we must proceed with the two dicta from the Administrative Commission:

1. Do no harm to the Church of Jesus Christ
2. Model Christ in the undertaking of the tasks at hand.

The importance for us cannot be because the *world* is watching.

Let me close by telling you a story about my father, Sid Piermont, who was born 110 years ago come January.

By the late 1920s, he was the head booker for the Loews Theater chain – in those days, the big thing in the theater was not the movies but the vaudeville shows that alternated with the films. For a single ticket, you got to see a stage show *and* a movie.

You also need a few points here for background – the booker was the guy who decided what act should be in what show, and how much to pay the act. As a result, bookers wielded pretty big sticks in vaudeville. And my father, as the head booker for the largest theater chain in the country, was quite literally in a position to make someone a star. Nearly all of the great radio stars, along with many of the television stars, first became stars in vaudeville. You also need to know that big-time vaudeville was centered in New York, and nearly exclusively, big-time vaudeville was run by Jewish immigrants and first generation Jewish-Americans like Dad.

This story takes place around 1935. Even though most of the country was in the throes of the Great Depression, show business was still prosperous and burgeoning. Indeed, during the 1930s nearly all forms of entertainment – especially show business and sports – assumed a major role in the health of the country’s morale.

Dad and a couple of business friends were driving up to “the mountains” to scout some new acts. “The mountains,” of course, are the Catskills, an unimposing range in central New York State, about a hundred fifty miles from New York City. The Catskills were home to many resort hotels that featured live variety shows. Over the years, countless

stars traced their big breaks back to the “Borscht Belt” – which was how the region was affectionately known. The mid thirties were part of this region’s golden age which lasted up to the mid 1950s when it was overtaken by the glitz, glamour, and gambling of Las Vegas.

At that time, the drive up to the mountains took much longer than it does today – there were no real highways back then. It probably took something around five or six hours. Midday, the three men stopped for lunch at a diner in some tiny, very rural, upstate town. They sat down at a booth and were immediately handed menus by a waitress.

Printed across the top of each menu were the words,

“We don’t serve niggers or Jews.”

Dad put down his menu and said his two companions, “Come on. Let’s go. We can’t eat in a place like this.”

But one of the other guys responded, “Why? How are they going to know?”

Dad answered, “It doesn’t matter what *they* know. What matters is that *you* know.”

He got up from the table, left the diner, and sat in the car while his two friends stayed and had lunch. They continued their trip with no big deal made over the incident. Dad seemed to harbor no ill toward his friends for their having had lunch in such a place, and did not mention it again.

I learned all this from one of the other men – someone who over the years became one of Dad’s very close and loved friends, and who, in 1968 needed to tell his dying friend’s son this story, because of how it had changed his life.

“It doesn’t matter what *they* know. What matters is that *you* know.”

Sisters and brothers in Christ, in the end, what we do through all of this – how we engage each other, how we mourn and grieve, how we move on to become a presbytery steeped in modeling Christ – really matters little because the *world* is watching, but matters greatly because *we* are watching.

Because we are watching with Christ in our hearts.

To God alone be the glory.

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