

ORIGINAL

In the
Supreme Court of the United States

R. W. JONES, SR., et al.,
Petitioners,
v.
CHARLES T. WOLF, et al.,
Respondents.

No. 78-91

Washington, D.C.
January 18, 1979

Pages 1 thru 52

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 Respondents :
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Thursday, January 18, 1979
 Washington, D.C.

The above-entitled matter came on for argument at
 2:01 o'clock p.m.,

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
 WILLIAM J. BRENNAN, JR., Associate Justice
 POTTER STEWART, Associate Justice
 BYRON R. WHITE, Associate Justice
 THURGOOD MARSHALL, Associate Justice
 HARRY A. BLACKMUN, Associate Justice
 LEWIS F. POWELL, JR., Associate Justice
 WILLIAM H. REHNQUIST, Associate Justice
 JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

E. BARRETT PRETTYMAN, JR., ESQ., 815 Connecticut Avenue,
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FRANK C. JONES, ESQ., 2500 Trust Company Tower, Atlanta,
 Georgia 30303 For Respondents

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will receive arguments next in No. 78-91, Jones against Wolf.

Mr. Prettyman, you may proceed whenever you are ready.

ORAL ARGUMENT OF E. BARRETT PRETTYMAN, JR., ESQ.

ON BEHALF OF PETITIONERS

MR. PRETTYMAN: Mr. Chief Justice and may it please the Court:

I am Barry Prettyman, Junior and I represent the Petitioners in this case who, in turn, represent a class claiming to be the True Congregation of the Vineville Presbyterian Church in Macon, Georgia.

Since 1904, that church has been a member of the Augusta, Macon Presbytery which in turn is a part of the Presbyterian Church of the United States which I will call P.C.U.S. in shorthand for purposes of this argument.

As this Court noted in the Hull case and as the trial court held this case, P.C.U.S. is a hierarchial church. It has an ascending order of judicatories beginning with the local church session made up of the Minister and its Elders then proceeding up to the Presbytery which includes ministers and elders from a number of churches and then the Synod, which includes a number of Presbyteries and finally, the General Assembly, the single group that is the highest court and represents all the churches under P.C.U.S.

Each of these bodies is called "Church Court" and each has the power under the P.C.U.S. Constitution to review and overrule the actions of the court below it. Moreover, each can appoint a commission to act in its place --

QUESTION: May I ask, Mr. Prettyman, if that means that the succession is the court of first instance?

MR. PRETTYMAN: Yes, sir.

QUESTION: And that is composed of --?

MR. PRETTYMAN: That is composed of the Minister and elected Elders of the local church.

Now, each of these courts can appoint a commission to act in its place and to report to it and every member -- this is important, every member who joins P.C.U.S. and any of its churches, takes a vow or an oath to be bound by the P.C.U.S. structure and constitution which is principally embodied in the Book of Church Order which is part of the record in this case.

Back in May, 1973 certain members voted at a meeting 165-94 to adopt a resolution separating the Vineville Presbyterian Church from the Augusta, Macon Presbytery and from P.C.U.S. and to be an independent church. The Respondents here represent a class made up of that majority vote and likewise, the Petitioners represent a class of the minority in that vote.

The majority struck the minority members' names from the rolls and refused to let them use the church property as a

unit of the U.S. and the majority subsequently joined the Presbyterian Church in America which is an entirely separate group totally unrelated to P.C.U.S.

The majority also notified the Presbytery of P.C.U.S. of their action and the Minister wrote to the Presbytery relinquishing his membership in the denomination.

I might add here that all of these facts have been stipulated.

The Presbytery appointed a commission, as it had a right to do under its constitution, to investigate this situation, which it did and the commission made three basic findings.

First, it found and declared that those members of the Vineville Presbyterian Church who held to their original vows and did not renounce their affiliations with P.C.U.S. were the True Congregation of the Church.

Secondly, they withdrew all authority from the Minister and officers who agreed to the statement of withdrawal.

And finally, it found that the church session of the Vineville Presbyterian Church was unable to act. It did that because that gave it the power to not only make these findings but made certain further suggestions to the Presbytery.

QUESTION: Mr. Prettyman, assume that the resolution had been adopted unanimously, the May resolution. What is your view as to what the status of the ownership of the church would

have been then?

MR. PRETTYMAN: The unanimous vote in my view, Your Honor, would have had no effect and it has been so held in various state courts.

QUESTION: Who would have owned the church then?

MR. PRETTYMAN: Then under the Constitution it would have reverted to the Presbytery itself.

QUESTION: Mr. Prettyman, supposing that the Commission appointed by -- was it the session you were referring to -- made these three findings.

MR. PRETTYMAN: That is the commission appointed by the Presbytery.

QUESTION: The Commission appointed by the Presbytery had a member who was financially interested in the outcome of this particular dispute and the Book of Order nonetheless provided he was not disqualified but the State of Georgia had a general rule that in all voluntary associations it would enforce their by-laws except requiring that any member to sit in a private adjudication like this should not have a financial interest in the outcome.

Would you say the State of Georgia in a case, perhaps involving the Elks Lodge, would be prevented from applying that?

MR. PRETTYMAN: The question of what happens when a church commission acts improperly is one that is somewhat up

in the air as a result of this Court's decision. You recall originally, back in Gonzalez, the rule was that if there was fraud, collusion or arbitrariness that the Court could look into it.

QUESTION: That was not really my question. I am assuming that the church counsel acted entirely improperly under the --

MR. PRETTYMAN: I thought that you were suggesting that somebody had a financial interest in the outcome.

QUESTION: But I am also assuming that the Book of Order says that is no problem.

MR. PRETTYMAN: Well, if the Book of Order says that is no problem, my own view is that a civil court cannot look into that under the ruling in Serbian.

QUESTION: Even though with respect to all other voluntary associations the state can apply its rule that says no voluntary association can apply that sort of rule.

MR. PRETTYMAN: That is correct but I must --

QUESTION: I gather, unless the situation falls within the Gonzalez fraud or collusion.

MR. PRETTYMAN: Exactly.

QUESTION: Otherwise --

MR. PRETTYMAN: Exactly. That is what you said in Serbian and you in effect eliminated the arbitrariness standard and said that you could not go behind the church ruling but I

want to emphasize very strongly that that is not this case because here there has at no point been any challenge to the commission's ruling and in fact I think your job is made much easier by the fact that the Respondents have admitted that the P.C.U.S. does have authority to determine the true denomination of the church.

QUESTION: You are going to tell us what basis you have for saying that the property follows the denomination, I am sure.

MR. PRETTYMAN: Tell you what, Your Honor? I am sorry.

QUESTION: What basis you have for saying the property follows the true congregation.

MR. PRETTYMAN: Yes. Well, that is based on the Constitution of P.C.U.S. and the fact that it allows commissions to be appointed to determine true denomination.

QUESTION: Well, I know -- true congregation -- but you determine who the true congregation is. But why does that determine the ownership of the property?

MR. PRETTYMAN: Everyone in this case agrees, Your Honor, that the title to this property is in certain trustees who hold it for the benefit of the church which is made up of the congregation so that the congregation owns this property. And --

QUESTION: Well, do you think that --

MR. PRETTYMAN: -- consequently the only question is, who is the congregation?

QUESTION: And why did the Supreme Court of Georgia disagree, then?

MR. PRETTYMAN: Well, the Supreme Court of Georgia, quite frankly, misunderstood the argument in this case and I will be very candid, I think Respondents have, too. The Supreme Court of Georgia thought that this was the Hull case and in Hull it was argued that there was an implied trust in favor of the Mother Church, that the Mother Church was a party in that case.

The Mother Church is not even a party in this case although it has agreed to be bound by the results and in that case it was argued both in the Georgia courts and in this court that there was an implied trust in favor of the Mother Church. This Court ruled, as you will recall, that the problem with the implied trust was that it incorporated the doctrine that you could not depart from, from church doctrine and struck that down.

When it went back to the Georgia courts they said, "Well, if you are going to strike down part of our implied trust we'll strike it all out and there is no implied trust."

But the courts below treated this case as if it was an implied trust case. If you will look at the complaint, you will find nothing about an implied trust.

QUESTION: May I get at something perhaps more direct?

MR. PRETTYMAN: Sure.

QUESTION: What about the title documents?

MR. PRETTYMAN: The title document --

QUESTION: Look at -- may I just finish?

MR. PRETTYMAN: Sure. Oh, excuse me.

QUESTION: Exhibit G.

MR. PRETTYMAN: Umm hmn.

QUESTION: Is that a sample of all the title documents involved here?

MR. PRETTYMAN: All of the title documents except one place the property in the names of trustees.

QUESTION: Well, I am reading here, "Present trustees for Vineville Presbyterian Church and their successors are not as such trustees."

That is the way all of them read?

MR. PRETTYMAN: Yes, that is typically except one. There is one that gave the church property directly to the church. Now, that one gave the church property directly to the church but the others all gave it to trustees and virtually all of them knew that the words --

QUESTION: Who were they trustees for?

MR. PRETTYMAN: Pardon me?

QUESTION: Do any of the deeds say who the trustees

hold for?

MR. PRETTYMAN: Yes, the deeds say -- normally say, "For the use, benefit and behoove of the Congregation."

Of the church which, of course --

QUESTION: Of the church.

MR. PRETTYMAN: Of the church which, of course, is the congregation.

QUESTION: Well, I do not understand the difference.

QUESTION: I just wondered if the church would not be deemed that group of people who within the corporation manage to control it?

MR. PRETTYMAN: Well, under Section 2 3 of the Book of Church Order it reads, "The Visible Church Catholic includes the local congregations or particular churches. This is in accord with scriptural teachings. In other words, it is a part of the religious belief of this organization as set forth in its constitution that the congregations and churches are an integral part of P.C.U.S. and that is what the members vow to, swear to when they become members of the church, that they will follow that.

QUESTION: Well, what if the state law simply said that churches, in taking property, shall take the property in the name of the religious corporation and that is the end of it and whoever controls the religious corporation controls the property. Would you think that would be invalid?

MR. PRETTYMAN: No, not necessarily because here that would follow what happens here. The trustee --

QUESTION: You have to put in some power in the Presbytery to overrule the rule of majority rule inside the corporation.

MR. PRETTYMAN: Well, Your Honor, there are all kinds of -- there are at least six different provisions in here that in my judgment give the Presbytery power to say who the congregation is.

QUESTION: May I get back a moment to putting in my question?

MR. PRETTYMAN: Sure.

QUESTION: There was a religious corporation organized there, was there not?

MR. PRETTYMAN: Yes, it was a corporation, that is correct, corporation, organized in 1950.

QUESTION: Now, it had a 35-year life.

MR. PRETTYMAN: Yes.

QUESTION: And that 35 years expired in, when was it, 19 --?

MR. PRETTYMAN: Well, I forget the date but there was a lapse of years because the church did not realize that it had a --

QUESTION: And then, as I understand it, there was a petition for reincorporation.

MR. PRETTYMAN: That is correct and that was granted.

QUESTION: And it was granted. And that gave it another 35 years.

MR. PRETTYMAN: That is correct.

QUESTION: And that expired in 1970.

MR. PRETTYMAN: I have done the question that the church is presently incorporated, Your Honor.

QUESTION: Well, that I cannot find in the record. I was looking in the record for it.

MR. PRETTYMAN: Well, I cannot account for that.

QUESTION: My question was, who does own the title now if there is no longer a corporation?

MR. PRETTYMAN: Oh, I understand that under Georgia law corporations are now perpetual. That is the reason that it was --

QUESTION: Oh, I see, in term.

MR. PRETTYMAN: I have been advised of that by Georgia counsel.

QUESTION: In the record it indicated it had a 35-year life.

MR. PRETTYMAN: No, apparently they do not need to keep reincorporating now and that is the reason that the church is presently considered incorporated. And as a matter of fact, the trial court so referred to it and the commission and so forth treated the court as an incorporated court.

QUESTION: Now, that petition for reincorporation was a 1938 one, was it not? That had a provision in it where the petitioners show further that they are the successors of the original corporation, that they have been duly authorized by resolution of the Session of said church. You said the Session is the court of first instance in the hierarchy.

MR. PRETTYMAN: Yes, the Session is elected by the --

QUESTION: In which is vested the legal supervision of the affairs of said church to make this application for revival and renewal of said charter as will appear from the duly certified resolution of the Session of the church.

MR. PRETTYMAN: Yes.

QUESTION: Now, what I am trying to get at is, that reference to Session deals with the -- who is the corporation, does it?

MR. PRETTYMAN: Yes, the Session appoints the trustees from time to time who hold title for the benefit of the congregation, the church, which, of course, is the congregation.

QUESTION: But you are not suggesting that the Session and the corporation are one and the same things?

MR. PRETTYMAN: Well, I am suggesting -- well, wait -- no, I am not. I am suggesting that the corporation is more the church, the legal -- holds the legal title in the church. The Session determines who the trustees are and of course the Session can be overruled at any time by the Presbytery and on

up the judicature scale.

QUESTION: I take it your submission would be, then, that if the church rule is that when the local congregation affiliates it becomes bound by a set of hierarchical rules in the sense that the Presbytery has control of -- has the decision-making power over who the congregation is. If a state -- your submission, I take it, is that a state may not disregard that once the affiliation has been made.

MR. PRETTYMAN: Absolutely. There are at least 11 different oaths set forth in the Book of --

QUESTION: Well, more simply than that -- if, in fact, these documents indicate there is some coincidence between the legal corporate form and the Session then automatically you bring in the hierarchical definition in the Book of -- what do you call it -- Common Prayer?

MR. PRETTYMAN: Yes. In view of the fact that these various deeds and so forth, the only effect of them --

QUESTION: Well, really, what I am trying to get at is, if you were to make that argument, then why would not you be making the argument that these are simply neutral principles dealing with the title to real estate?

MR. PRETTYMAN: Well, the reason that I do not have to make that argument is that everyone --

QUESTION: It is much simpler than the one you are making.

MR. PRETTYMAN: Well, I will happy to make that one then, Your Honor.

QUESTION: But you are making a half of a neutral principles argument in the sense that right on the face of the document you say title is in the congregation.

MR. PRETTYMAN: Neutral principles --

QUESTION: And then you just merely have to determine who the congregation is.

MR. PRETTYMAN: That is the point. Even if we were to use neutral principles which we say you do not really get to but even if you were to use them, all it does is get you right back to the beginning again that this title is in the local church which is made up of its congregation and therefore, who is the congregation? And the church has properly ruled on the question --

QUESTION: You use the neutral principles that suit you and the other ones you pick from a church law.

MR. PRETTYMAN: I do not use any neutral principles at all. All I am saying is that if you use so-called "neutral principles," under state law all you would get is a ruling that this particular church property belongs to the local church or its congregation and that is all they will do for you.

QUESTION: Well, then, why did not the Supreme Court of Georgia rule in your favor?

MR. PRETTYMAN: Because the Supreme Court of Georgia

thought that this case was the Hull case in which we were trying to assert an implied trust in favor of the Mother Church and it said, since Hull there is no implied trust in Georgia and consequently the property is in the church but then it went on to say without citing any reason for it at all, "Composed of the majority" and that the majority could rule.

It did not give any reason for that. It did not look into our Book of Church Order to see if that was proper and it totally ignored, refused to give any credence to this administrative authority.

QUESTION: If the Georgia court had said we have looked at the books and said, we know the book says the Presbytery has this power but we under the Supreme Court's cases are privileged to disregard that and just to apply so-called "neutral principles" you would say they were disentitled to do that.

MR. PRETTYMAN: Well, you ruled in Kedroff and Gonzalez and Serbian and in all of these cases that of course they have to follow that. They have the proper church ruling.

Let me show you where I think they went off, right in the beginning and if you look at Respondents' brief I think it is the same thing.

What the trial court said was, P.C.U.S. had no authority by resolution to constitute Plaintiffs as trustees or as the True Congregation for the purpose of creating a trust

relationship with respect to the church property of VPC when none previously existed.

They thought this was an implied trust case and we have never claimed an implied trust on behalf of the Mother Church here. What we have said is that we decided one question and one question only that is pertinent and that is that the True Congregation of this church is the minority and --

QUESTION: Mr. Prettyman, when I asked at the beginning if there were -- if the vote had been unanimous I asked you where would title be? You said it would have been in the Mother Church. Is not that an implied trust theory?

MR. PRETTYMAN: No, that is because of a particular provision of what happened in the Book of Church Order, Your Honor. In 6-3 you will find that there is -- let me just read it to you here --

"If a church is dissolved by the Presbytery or otherwise ceases to exist and no disposition had been made of its property, those who hold the title to the property shall --

This is, I am sorry, Joint Appendix 36.

" -- shall deliver and convey and transfer to the Presbytery" so this would be by -- I think under those circumstances, if you had a unanimous vote so that the entire congregation walked out, in effect, the church would be standing there ceasing to exist, certainly, as a congregation and I think under 6-3 you could say that the church property would

revert to the Presbytery.

But here I do not think, you know, you have no such problem because you did not have a majority vote and what they found was, in effect, that the church does still cease to exist. Its Session cannot act but it does have a congregation and the congregation is the minority.

Now, I must say in all candor, Mr. Justice Brennan, that I think some of the confusion in this case has arisen because of a misreading of your concurrence in --

QUESTION: You mean in Sharpsburg?

MR. PRETTYMAN: In Sharpsburg. And I would like to make three points about that. The misreading, of course, is that you can pick neutral principles even in the face of a direct court ruling on a subject. You can just ignore the court ruling and apply so-called "neutral principles."

In the first place, your language, carefully read, simply does not say that.

Secondly, such a reading would be directly contrary to what you wrote, Mr. Justice, in your concurrence in Abington School District and;

Thirdly and finally, such a reading simply would fly squarely in the face of this Court's rulings in other cases, those before and since Sharpsburg.

Church

If the Mother Court has made a judgment and a civil court can simply ignore it and decide the case on some general

principles of property law, that court has effectively overruled the Church and that is precisely what this Court has repeatedly said that civil courts may not do. We believe that what you meant -- and this is certainly the way I read your language -- is that absent a court ruling on the point in issue -- I mean, church ruling on the point in issues, that the state court is free to --

QUESTION: Assuming it is hierarchical.

MR. PRETTYMAN: Yes, assuming it is hierarchical and there is no question here that this trial court held we are hierarchical, that the state court can then turn to statutes or turn to neutral principles or whatever. But as I have said, neutral principles even if they crept into the case in some fashion, I do not think do Respondents any good because it gets you back to the basic question of who is the congregation and whether you say that is a question of polity or church administration or internal organization or church government or internal discipline or faith or whatever, it comes within what this Court in Watson, Kedroff and Serbian has said that the Mother Church can decide for itself.

Those are the very roots of the Presbyterian structure and its faith because of the reasons that I have already indicated.

Now, why do Respondents admit that we can determine who the True Congregation is? They say it is irrelevant

because Watson -- the Watson rule is not applicable in Georgia.

Well, that cannot be. The Watson rule, this Court has said, is of constitutional dimensions, even though it was not when it was originally decided and the Watson rule is very simply that when you do have, in a hierarchical structure as you have here, you have a proper, short church-court decision on an issue, that the civil courts must give due deference to it. That is a constitutional rule. Of course it is the rule of Georgia.

QUESTION: Is it not a little more than deference?

MR. PRETTYMAN: Must absolutely abide by it. I used "deference" --

QUESTION: That is not deference.

MR. PRETTYMAN: You are absolutely right. I think it has been referred to, Your Honor, as the deference rule. That is the reason I say that but of course it is more than deference. It is absolutely binding.

We think this case is like you said in --

QUESTION: Now, where did you find in Sharpsburg the suggestion that it is only where there is not any church-court decision --

MR. PRETTYMAN: Because you said, after you referred to neutral principles, you then said, "Again, however, general principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues."

And that is what you would do here. You would have to have a civil court saying, oh, no, we override this resolution of this proper church body and say that that is not the True Congregation.

And when you referred to statute you said, "In a manner that precludes state interference in doctrines such statutes must be carefully drawn to leave control of ecclesiastical polity as well as doctrine to church governing bodies."

So in each instance it seems to me you said, in effect, you can use these neutral principles and so forth only if it does not involve you in church polity as you are immediately involved in here if you try to apply them.

In Kedroff this Court said there is no problem of title. It is in the appellee corporation. The issue is the right of use. That is what the issue is here. The title is in the local church as to the use that is in the congregation. As to the congregation, that has been decided by the Mother Church.

It is the Petitioners and that, we respect, should end the matter.

I would like to save --

QUESTION: Mr. Prettyman, suppose the church law was that the title to church property shall be in -- taking the name of the congregation or for the benefit of the congregation but the state law says title to property shall be taken in the

name of the board of directors of the religious corporation or in the name of the corporation alone and that is the end of it. That is just --

MR. PRETTYMAN: There is nothing wrong with any state law so long as it does not intrude upon the system set up within the hierarchical --

QUESTION: Yes but according to the state law, the property is not held for the benefit of the congregation. It just says it is in the name of the corporation or the name of the board of directors.

MR. PRETTYMAN: Well --

QUESTION: And that whoever the board of directors happens to convey it off to, that is the end of it.

MR. PRETTYMAN: Well, the board of directors could do nothing under the P.C.U.S. constitution that is not reviewable. Under the P.C.U.S. constitution --

QUESTION: So you would say that the state law may not give that board of directors of that church power to convey the property contrary to church law.

MR. PRETTYMAN: Absolutely. Sure. I think that is quite correct.

QUESTION: Mr. Prettyman, before you step down, let me ask you probably a fairly stupid question. You phrased the question as whether or not the decision that your clients or the congregation is reviewable and they agree who the

congregation is.

I am trying to figure out, what is the issue, as you see it? If they have answered the question you put the same way you answered it, what is the question that separates you? How would you phrase that?

MR. PRETTYMAN: They would say that it is -- if I understand them -- they would say --

QUESTION: What do you say? Do not tell me what they do. What do you say the issue is?

MR. PRETTYMAN: What I say --

QUESTION: What do you conceive, as you depict the congregation?

MR. PRETTYMAN: I say the issue is, the hierarchical church, having properly decided who the congregation is and everybody agreeing that the congregation owns the property, we, the Petitioners --

QUESTION: Well, but they do not agree to that. The issue is whether or not the congregation owns the property. Is that it?

MR. PRETTYMAN: No, I do not think they disagree with that. I do not think they disagree with that as to -- what they say is that we have no business saying who the congregation is.

QUESTION: Well, they start out saying they agree you are the congregation.

MR. PRETTYMAN: Well, then they say that at least the Georgia court is right in saying that a majority can decide and I have --

QUESTION: Decide what?

MR. PRETTYMAN: -- I have to be very candid with you, Mr. Justice. I am not sure I fully understand their argument. I am going to be interested to hear it because it seems to me that they really are saying in effect, when they say we can decide who the congregation is and that title is in the congregation, that we should be agreeing with each other and that is why I do not quite understand their position.

QUESTION: So you do not know what the issue is, either.

MR. PRETTYMAN: But I do know that they say that the Watson rule is not the rule in Georgia and I do know that that is wrong so maybe that is the issue.

MR. CHIEF JUSTICE BURGER: Mr. Jones, before you continue, I think at this time it is clear that we will be occupied until 3:00 o'clock and Mr. Oberly and Mr. Lukoff are free to retire and return at 10:00 in the morning if you wish.

Mr. Jones, you may proceed when you are ready.

ORAL ARGUMENT OF FRANK C. JONES, ESQ.,

ON BEHALF OF RESPONDENTS

MR. JONES: Mr. Chief Justice and may it please the Court:

This is a church property dispute that involves real property in Macon, Georgia. The courts of Georgia simply applied neutral principles of law in ruling that the Respondents and not the Petitioners hold title and were entitled to prevail. It is not a religious controversy.

No question of religious doctrine or practice or polity was raised by the pleadings or was considered or decided by the trial court or the Supreme Court of Georgia.

The decision of the Supreme Court is in full accordance with this Court's decisions in Hull, Sharpsburg and Serbian and with an earlier decision of the Supreme Court of Georgia, which was not even cited in the Petitioner's brief, Carnes versus Smith, that I will refer to in just a moment.

QUESTION: Mr. Jones, when you refer to Carnes, that involved the Methodist Church.

MR. JONES: Yes, Your Honor.

QUESTION: Why do you think there is an Amicus brief here by the appropriate body of the Methodist Church opposing your position?

MR. JONES: Your Honor, I find that somewhat difficult to understand and I would like to answer it in this way, if I may. Carnes versus Smith was decided in 1976 by the Georgia Supreme Court and as you have observed, it involved the United Methodist Church. That case ruled for the denomination, applying neutral principles of law.

The Georgia Court simply looked to the Book of Discipline, which is the Methodist counterpart of the Book of Church Order and found clear-cut provisions saying that local church property in the United Methodist Church is held in trust for the use of the Ministry and the members of the church and based upon the application of neutral principles in Carnes versus Smith, just as the Maryland Court of Appeals had done in Sharpsburg, it was held that the denomination was entitled to prevail.

I cannot answer the question other than to speculate that perhaps the position being urged by Petitioners here would go even farther than that and would accomplish what would amount, as I would term it, to a 100 per cent deference rule and would say that in all events, neutral principles cannot be applied if any body of the church, regardless of what is in the Book of Discipline or the Book of Church Order had issued a ruling, a judgment or an order as existed here.

QUESTION: Well, do you believe that a property is held for the benefit of the congregation?

MR. JONES: No, sir. This case, Your Honor --

QUESTION: What if you did? Then would Mr. Prettyman's result follow or not?

MR. JONES: Let me answer it this way. Immediately prior to the controversy arising --

QUESTION: Well, is there a yes or no answer to that

or not?

MR. JONES: Your Honor, I disagree with the conclusion reached by Mr. Prettyman.

QUESTION: I know but assume that the property were held for the congregation. Would his result follow?

MR. JONES: No, sir. Immediately prior to May of 1973 the property was held in the name of a corporation. Under the Book of Church Order, trustees of that corporation acted and were appointed. Under the Book of Church Order, the majority of the congregation was entitled to control the property.

As I will point out in a little more detail later, the Book of Church Order is absolutely explicit in making it clear that there is no right whatever in the Presbytery, a Session, in the Synod or in the General Assembly or in any commission or committee of the church to have anything to do with local church property.

To the contrary, in Sections 6.1 and 6.2 of the Book of Church Order, which deal with local church property, it is expressly --

QUESTION: This is an argument with Mr. Prettyman's reading of the Book of Church Order?

MR. JONES: Yes, sir.

QUESTION: Is that it?

MR. JONES: Yes, sir.

QUESTION: While I have you interrupted, may I ask this question --?

MR. JONES: Yes, sir.

QUESTION: What are the title deeds which led the Supreme Court of Georgia to reach the result it did?

MR. JONES: Your Honor, the title deeds are -- there are three tracts.

QUESTION: Yes.

MR. JONES: Two of the tracts are to trustees of the local church.

QUESTION: This is the exhibit? G, that I referred to earlier? Exhibit G?

MR. JONES: Your Honor, there actually are a total of six deeds, I believe and --

QUESTION: I thought this was just a sample.

MR. JONES: Well, all six appear in the Appendix.

QUESTION: This one is a conveyance to the present trustees for Vineville Presbyterian Church and their successors in office.

MR. JONES: Yes, sir.

QUESTION: And is that the way the others read, too?

MR. JONES: It is typical. There is one deed that goes to the corporation itself, Your Honor.

QUESTION: Now, the Supreme Court of Georgia relied on these deeds.

MR. JONES: Yes, sir.

QUESTION: And then what next?

MR. JONES: They relied on four things, Your Honor. They relied first of all on the deeds to the property. They relied next on the corporate charter which provided that only the local church would have the right to control the local church property.

They next looked at some state statutes and concluded that those statutes did not in and over themselves give any rights to the denominations and finally, they looked to the Book of Church Order itself.

QUESTION: Now, was there any definition of local church in any of these papers?

MR. JONES: Yes, sir, either the trustees of the local church or the corporation itself was the local church.

The point that I would make that radically differs from Mr. Prettyman, there is no question but that the title was in the local congregation immediately prior to the date in May of 1973 when the controversy arose but on that date by a vote of approximately two to one, the Respondents in this case voted to withdraw from the denomination and to control their property independently of the denomination.

They did this on the basis of these provisions in the Book of Church Order.

QUESTION: Now, before you get to that --

MR. JONES: Yes, sir.

QUESTION: At that point there is -- that is the beginning of the controversy, is it not?

MR. JONES: Yes, sir.

QUESTION: And under the church orders, under the law of the church, who resolves disputes?

MR. JONES: Solely the local congregation. Your Honor, this --

QUESTION: Well, may I -- I thought one thing, that if anything, Hull and all the other cases stood for is that courts, including this one, ought not get into resolving controversies of the kind that apparently exist between you and Mr. Prettyman over the meaning of the Book of Church Order, that that is something that the church courts decide.

MR. JONES: Your Honor, that is certainly --

QUESTION: That you take whatever the church courts decide.

MR. JONES: -- that is certainly true if it involves an in-depth analysis but as the Maryland Court of Appeals held in Sharpsburg and this Court approved, a facial or superficial examination is permitted under the application of neutral principles of law.

QUESTION: It is not in opposition to a contrary judgment of what everybody agrees is a higher authority in the church.

MR. JONES: Your Honor, I am coming to that in just a moment.

QUESTION: The Presbytery certainly does not agree with you.

MR. JONES: We take the position --

QUESTION: As to what that book means.

MR. JONES: Your Honor, let me reply to that in some detail, if I may.

QUESTION: That is all right. Go ahead.

MR. JONES: I think it is a terribly important question.

QUESTION: Go ahead. I would think it is.

MR. JONES: First of all, the Book of Church Order itself in Sections 6.1 and 6.2, one deals with an unincorporated church, the other with an incorporated church. In each instance it provides that the local congregation solely shall have the right to buy, sell, own, dispose, hold, or otherwise deal with real property.

There is no accountability by the local congregation to any higher body. There is no right of review by any higher body with respect to --

QUESTION: I think the issue that is important to define is who or what is the local congregation.

MR. JONES: Well, Your Honor, this controversy, when it arose, of course resulted in two factions.

QUESTION: Yes.

MR. JONES: And this Court from the very outset has never -- this case has never been concerned with the identity of the two congregations.

QUESTION: No, it is the local -- if, under the law the local congregation owns the property then it is vital to determine and find what or who is the local congregation.

MR. JONES: Well, YOur Honor, this is a typical local church property dispute where there are two factions and the question is, does this faction or that faction have title to the property under the mutual principles o formal title doctrine?

QUESTION: And --

MR. JONES: Which this Court has approved and --

QUESTION: -- that depends on who is the local or what is the local congregation. Is that not self-evident?

MR. JONES: Your Honor, I would respectfully disagree. That issue was not raised in the trial court or the Supreme Court --

QUESTION: That is the issue, is it not?

MR. JONES: -- and was not decided by the local court.

QUESTION: If the local congregation owns the property then in order to determine who owns the property it is essential to determine who is the local congregation.

Does that not follow, just as a matter of --

MR. JONES: Your Honor, may I answer it two ways?

QUESTION: Well, yes.

MR. JONES: I would respectfully say that is not the issue but I would like to give a full answer to it. I think the issue in this case is, which faction of the church is entitled under the formal title doctrine, the neutral principles of law approach, to hold the title?

But secondly in any event, if it be viewed as it has been stated in that question, nevertheless, we look to the Book of Church Order as it existed in May of 1973 to determine how the local congregation acts, how it determines what happens to property and that is the point I was about to address a moment ago.

The Book of Church Order says that the local congregation itself is the sole and exclusive body or group that has the right to say what happens to real property and secondly says that the local congregation act by majority vote which is what happened in this instance.

Now, this administrative commission that was appointed is not the party, pursuant to any provision in the Book of Church Order, which gives authority to a Presbytery, a Synod, the General Assembly, a Commission or a Committee any right to review or to consider a local church property dispute.

QUESTION: The Presbytery thought otherwise, did it

not?

MR. JONES: They are contending otherwise obviously, Your Honor.

QUESTION: So they disagree with you on the reading of the book?

MR. JONES: Your Honor, no citation appears to the Book of Church Order that gives any such authority. Obviously, the contention is being made. And there is another point I would make in this connection that I think is extremely important.

The Petitioner's reply brief at pages 6 to 9, it seems to us, recognizing that there simply is an absence of any provision in the Book of Church Order that authorizes the administrative commission to exercise jurisdiction or to give power to anyone other than the local congregation as to local church property, quotes from a so-called "ruling of the general assembly of the Presbyterian Church --"

QUESTION: What page is that?

MR. JONES: At pages -- beginning at page 6, Your Honor, of the Petitioner's reply brief.

QUESTION: Yes, thank you.

MR. JONES: I would like to make three points about that as to why I think they should be totally disregarded.

First of, the so-called "ruling" which begins to be quoted at page 6 is not in the record in this case. That is a

quotation from an Amicus brief that was filed by the denomination and the denomination itself quoted some things which are not a part of the record in this case.

The second point is that it is contrary to the stipulation of the parties. There is a stipulation in this case which appears at page 316 of the Appendix which provides that this case will be decided on the basis of the pleadings, the stipulation of the parties and the exhibits to the pleadings and to the stipulations.

The Book of Church Order as it existed in its entirety in 1973 when this controversy arose is a part of the Appendix. The ruling which is referred to beginning at page 6 of Petitioner's reply brief is not in the Book of Church Order, is not in the Appendix, is not in the record and is contrary to the stipulation.

And third and finally, in any event, even if the so-called ruling had been in the record it is not a part of the Book of Church Order which I think is of fundamental importance. The Book of Church Order can only be amended or changed by a three-step process.

First of all, there must be the adoption of a proposed amendment by the General Assembly, the highest body of the Presbyterian Church.

Secondly, that must be recommended to the Presbytery as of which there are 72, I believe and must be consented to

by at least a majority of them.

And third and finally, the General Assembly, following consent by the Presbyteries, must then adopt and approve again.

None of that has been done as to any ruling, rule, opinions, anything of that kind which is cited for the first time in this case in the reply brief of Petitioners and we would respectfully ask that that be disregarded by this Court.

It is not in the record. It is contrary to the stipulation. It is not in the Book of Church Order.

QUESTION: What if the Book of Order provided, just as it did with respect amendments to the Book of Order but had an additional provision that only a session of the General Assembly shall be entitled to question the validity of an amendment that is adopted?

MR. JONES: Your Honor, I suppose there would simply be a different amending process. The point is that no amending process was followed, whatever it might be in this case.

Perhaps I misunderstood the thrust of the question?

QUESTION: Well, can a denomination prescribe a method for amending its fundamental charter which in this case I take it is the Book of Order and say that challenges to the method by which the particular amendment was adopted may only be raised in the canonical church or before the canonical session?

MR. JONES: Probably so. I think that that would be a matter of church government or policy. In any event, that issue is not in this case because it is not contended that there has been any amendment to the Book of Church Order that incorporates the ruling or any of the other matters that are referred to beginning at page 6 of Petitioners' brief.

QUESTION: Mr. Jones, I want to be sure I understand your argument. And is it that we cannot consider in this case the fact that the Presbytery made a final decision that the Petitioners were the True Congregation?

MR. JONES: Your Honor, we do not question the right of the Presbytery to decide --

QUESTION: No, no, now, perhaps I did not state my question very well. May we consider, in this case, the fact -- and I gather it is a fact -- that the Presbytery, which is a church court, made a final decision in favor of the Petitioners?

MR. JONES: Your Honor, that may be considered --

QUESTION: And since that is not in the stipulation, we may not consider it in this case.

MR. JONES: No, sir, the administrative commission ruling is in the record of the case. There is no question of that and I did not mean to suggest otherwise.

What I am saying is that the so-called ruling which has nothing to do with this case -- it is an interpretation of the Book of Church Order or it is a proposed amendment to the

Book of Church Order that appears at page 6 -- never materialized into the form of an amendment. It never became a part of the Book of Church Order.

QUESTION: But it is the kind of a thing that the commission was carrying out.

MR. JONES: No, sir, the commission did not propose to act pursuant to what is quoted at page 6.

QUESTION: But do you say that it was powerless to do what it purported to do?

MR. JONES: Your Honor, we say that it had full power to do everything that it did except for the final act. There is no question but that the commission, the Presbytery which appointed it has the power to make determinations of that membership and about faith and about doctrine and matters of --

QUESTION: And as to who the True Congregation is?

MR. JONES: They have the right to decide for themselves who will be recognized by the denomination as the loyal or true members of the denomination and there is no question as to that. There has never been a question in this case but when the commission tries to go one step farther and to declare as they did that property rights are forfeited, that is the last sentence that appears in this commission finding. They cite no basis in the Book of Church Order for attempted forfeiture of property rights.

It then becomes proper and appropriate under the application of the Mutual Principles Doctrine for a civil court to look at least superficially or in a beginning manner at the Book of Church Order and see if there anything, is there anything in the Book of Church Order that says that anybody other than the local congregation has the right to do anything with respect to local church property.

QUESTION: We just skipped over the point that we have been at several times here. If the commission has the authority to determine who is the congregation and it determined who is the congregation, then the only question left is, was the property really being held for the congregation or was it not?

If it was -- which I thought you said it was -- why should not the congregation as determined by the hierarchy have the property?

MR. JONES: Your Honor, I do not mean to be evasive. I am attempting to answer it. We have a fundamental difference as to the issue in the case, obviously.

The determination by the commission was four months after the controversy had arose and the vote had been taken.

QUESTION: It is always going to be after the event, is it not, as a lawsuit is always subsequent to the controversy as well as to the injury.

MR. JONES: Yes. But the question is, what were the

relative rights of the denomination on the one hand and the local congregation which was authorized to act by majority vote on the other on the date on which the vote was taken?

And according to the Book of Church Order, the local congregation was congregational. It was not hierarchical, with respect to the use and disposition of local church property on the date that the majority vote was taken.

QUESTION: Obviously, the Presbytery and the commission read the church book differently than you do in terms of that last step that you were talking about. They think that property follows the congregation under the church law.

MR. JONES: No, sir, I think the sole basis for the claim that is made by the Petitioners, at least in the trial court, is the ruling of the administrative commission. Nothing was pointed to elsewhere in the Book of Church Order that would justify any claim by the denomination.

Absent the action of the administrative commission, this would be like any other voluntary association which by majority vote had voted two to one that the property should be used in a certain way. The sole basis for the Petitioners' claim is that an administrative commission was appointed and the administrative commission recognized the minority as being loyal to the denomination. We have no quarrel with that whatever. The denomination --

QUESTION: I gather that your position relies on the

same documents that Mr. Prettyman relies upon, does it not? Namely, the deeds, the --

MR. JONES: Your Honor, other than the documents that are outside the record to which I alluded a moment ago --

QUESTION: Yes but I mean the deeds, the Book of Church Order, correct? And as to which, as my brother White has suggested, at least the church courts have made a different interpretation than the one that you suggest.

MR. JONES: They made no interpretation, Your Honor, as far as the record reveals. There was simply a blanket assertion that --

QUESTION: They reached a conclusion, though, did they not?

MR. JONES: Your Honor, they reached a conclusion that the minority were true to the denomination. That is unquestioned, yes, sir.

QUESTION: Well, did they not order somebody to turn over some property?

MR. JONES: They declared -- no, sir.

QUESTION: What did they declare?

MR. JONES: This was an ex parte proceeding, incidentally, that was not participated in by the Respondents. The commission simply issued an edict and they said that the property rights of the majority of the members of the local congregation are hereby forfeited. They cited no provision in

the Book of Church Order that authorized such action.

QUESTION: Mr. Jones, just before the resolution was adopted, is it correct that the property was owned for the benefit of the congregation?

MR. JONES: Yes, sir, by trustees and some of the congregation.

QUESTION: Did it, at some point in time, cease to be owned for the benefit of the congregation?

MR. JONES: I am sorry, sir, I did not hear that.

QUESTION: At some point in time did the property cease to be owned for the benefit of the congregation?

MR. JONES: Yes, sir, the moment that the vote was taken two to one and two factions were created, then by virtue of the majority provision in the Book of Church Order, at that time the title was in the majority of 165 who voted to withdraw from the church and to hold the property independently of the denomination.

QUESTION: As a matter of state law did the property --

MR. JONES: Matter of state law.

QUESTION: -- property ownership change just by adopting a resolution?

MR. JONES: Well, there being nothing in the Book of Church Order to the contrary and since the Book of Church Order expressly said that the local congregation acts by majority vote and that it has the sole and exclusive power to

buy, sell, mortgage, own and dispose of property, that in the moment --

QUESTION: The majority of the local congregation. First of all you have to decide -- you have to determine who, what is the local congregation. Is that not correct?

MR. JONES: Obviously, certainly. If I could answer --

QUESTION: It was the local congregation when they adopted the resolution and then immediately after they adopted the resolution, is it not true -- I think you conceded this -- that the 95 were then the local congregation.

MR. JONES: No, sir. The 95 at that point --

QUESTION: But you say that in your brief. You say you do not dispute the fact that the minority is and always has been the True Congregation.

MR. JONES: Your Honor --

QUESTION: Maybe you did not mean it but you say it.

MR. JONES: I do not think we answered it, we stated it in those words. What we, I believe, said and certainly intended to say is that the denomination has the unquestioned right to determine for itself who it will recognize as being true or loyal members in the denomination's eyes.

We have never acknowledged that the denomination had any right whatever with respect to local church property.

If I may answer these several questions a little more fundamentally, to go back --

QUESTION: Would you tell me before you are through what you understand the issue to be?

MR. JONES: Yes, I understand this to be the issue: In a state such as Georgia that has adopted the neutral principles approach which is one of the three approaches that this Court has recognized as being constitutionally permissible, where the neutral principles approach is applied by looking simply at deeds, state statutes, the corporate charter of the local church and the applicable provisions of the denomination's government and where, by using neutral principles it found that title is in the majority that voted to withdraw as a result of the resolution of withdrawal. And no religious question is involved.

Nevertheless, is it requisite that a civil court defer to an ex parte administrative commission which is appointed by the denomination and which issues an ex parte finding or declaration that the property rights of the majority are forfeited under those circumstances.

Now, if I may go back more fundamentally, this case is absolutely identical with what the Maryland Court of Appeals did in the Sharpsburg situation. Your Honors will recall that that case first came up and was then remanded in the light of Hull for further consideration in the light of what was held in that case.

The Maryland Court of Appeals then wrote a second

opinion in which they reviewed in great detail what had been done earlier. In short, four things were done.

First of all, they looked at the deeds. The deeds were identical in result to the deeds to the Georgia property in this case.

Secondly, they looked at the local corporation charter which, as here, provided that title was held by the local congregation and it had the right to buy, sell and so forth the property.

Third, they looked at state statutes which just as here, did not give any rights to the denomination and,

Finally, they looked to the Book of Church Government of the Church of God and just as here, just as the Book of Church Order, they found nothing that gave any rights other than to the local congregation.

So applying the neutral principles of law which this court has recognized can be applied if it does not involve going into questions of doctrine in Hull, again using one of the three constitutionally-permissible methods that Mr. Justice Brennan singled out in his concurring opinion in Sharpsburg and which this Court unanimously in Sharpsburg upheld in the case of the Maryland situation and again, following the mutual principles --

QUESTION: What church was that in Sharpsburg?

MR. JONES: Church of God.

QUESTION: And was there not a determination first that that was not a hierarchy for the church, that it was a Congregational Church and was not that an absolute key to the decision in that case?

MR. JONES: I would respectfully say no, Your Honor. There is a statement that it is not totally hierarchical but there is also a statement that it is primarily Presbyterian in nature which is one of the forms of hierarchical churches.

The significance, I would submit, is that it was found in the Church of God case that as to local property that it was indeed congregational, that is, that it was not hierarchical as to that matter.

QUESTION: And that was quite essential to the decision in that case.

MR. JONES: A very important fact, yes, sir. And I would call attention to footnote 8 in the Petitioner's reply brief in which it is acknowledged in this case that even in a hierarchical church the Book of Church Government says that as to certain matters that it is not hierarchical, then that result, of course, obtains.

Well, that is precisely what the Book of Church Order does in the present case as to local church property. It says the local church property shall be subject to the sole and exclusive power of the local congregation and that is identical to the Church of God situation.

It meant in short that neither the Presbytery, the Synod nor the General Assembly nor any commission nor committee of any of them had any claim of any kind to local church property.

I would say in conclusion, may it please the Court, that we feel that this is simply a local church property dispute in which the neutral principles of law doctrine has been properly applied by the Supreme Court of Georgia whereas in Carnes versus Smith the denomination prevailed because it had in its discipline appropriate provisions with respect to local church property.

In this case the denomination did not prevail because of a complete absence of any right or power in anyone other than the local congregation with respect to local church property.

QUESTION: But you still say in your own church papers that the local congregation is the Petitioners.

MR. JONES: No, sir, the minority of the local congregation are the Petitioners, Your Honor.

QUESTION: And did you not say, repeatedly, that there is the congregation?

MR. JONES: No, sir. If I said so I retract that statement.

QUESTION: You said so in footnote 9 in your brief.

MR. JONES: I am afraid my time is running out.

What we have sought to say -- and I would clarify it if we have created the contrary impression -- is that we recognize that on matters of faith and membership, there is no question but the denomination has a right to recognize whoever it sees fit for its purposes to recognize but we have never acknowledged that as far as property rights are concerned --

QUESTION: But is it not perfectly clear that the purpose for which they adopted this or made this decision was for the purpose of trying to decide who owned the property? That is the only reason they got involved in this, is it not?

MR. JONES: That obviously was the ultimate result that was sought. There is no question of that but nothing, Your Honor, was cited as a basis for such a finding in the Book of Church Order itself and we have never acknowledged --

QUESTION: If I read your brief correctly you did not challenge anything in their findings except the ultimate conclusion that the ownership followed the congregation.

MR. JONES: Your Honor, it is difficult for me to reply to that in the time that remains other than to say that our position, we believe, has consistently been that the Petitioners represent only the minority of the local congregation and the denomination has only the right to recognize the minority as being true as far as membership is concerned but not with respect to property rights.

Property rights are determined by what was in the

Book of Church Order on the date that the schism took place and on that date the Book of Church Order said that by majority vote the local congregation had the right to withdraw from the congregation and to hold its property independently of the denomination.

REBUTTAL ARGUMENT OF E. BARRETT PRETTYMAN, JR., ESQ.

MR. PRETTYMAN: Do I have enough time to make my rebuttal argument?

MR CHIEF JUSTICE BURGER: You have three minutes and that will take you one minute overtime.

MR. PRETTYMAN: Thank you very much. First, my opponent has said that there is no question of religion raised by the pleadings. I would simply call your attention to the complaint which was based squarely, totally, completely on this church ruling as to who the congregation was.

Secondly, I agree with the thrust of some of the questions that we really probably should not even be arguing about an interpretation of the Book of Church Order. That is not for us to do but at least to give you some comfort, I would impose upon you to make a note, if you would, of three sections, 114, 16-7 and 19-3 which clearly show that even as to property the Presbytery and each ascending judicator has not only a right but the duty every year to review the acts of the next lower court and to change anyone, anyone of any nature that goes, among other things, against the best interests of the

Mother Church and finally --

QUESTION: Mr. Prettyman, would you not agree that on the date they adopted the resolution that the majority of the congregation could have conveyed good title to this property without the consent of the people in the central church?

MR. PRETTYMAN: I agree that they could have sold it but the money would have been held in trust for the congregation of the church as determined by the Mother Church when the Mother Church reviewed that action.

I doubt if they could have gotten title back because you have a third innocent party but there is no question but that the money would have been held subject to review and when the Presbytery came around if they said that that property should not have been sold, that was not in the best interests of the church, they could have said where that money should have gone.

My last point is in regard to Sharpsburg, it is very interesting that Maryland at that time had a statute -- you remember that was a congregational case but Maryland had a statute which said, "Such Presbyterian churches --" and we are now referring to the Presbyterian Church of the United States -- may be incorporated only in conformity with the provisions of the Constitution of the Presbyterian Church in the United States of America."

In other words, Maryland recognized in the Sharpsburg

situation that you had a different situation from the Church of God than you did in the Presbyterian Church, which was hierarchical in nature.

Thank you very much.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen, the case is submitted.

[Whereupon, at 3:02 o'clock p.m. the case was submitted.]

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