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Gilchrist Hides PCA Audit

A major confrontation may be brewing in America's second-largest Presbyterian denomination over a decision not to release a "legal audit" of the corporate structure of the Presbyterian Church in America. Noting that "the very reason for having the legal audit was to find out areas of civil vulnerability that could be corrected before we got hit with another lawsuit," PCA stated clerk Dr. Paul Gilchrist has sent a letter to over 30 PCA pastors and elders who had requested the audit stating his reasons for declining to release it.

In the letter, Gilchrist said the primary reason for not releasing the audit was that "if the legal audit were published or circulated, two things would happen: (1) The information could fall into the hands of someone who planned to sue the denomination and would try to use any 'weak spots' in our civil structure for their legal advantage. (2) Furthermore, once the report has been circulated, it would be admissible in court and could not be protected by the attorney-client privilege." Gilchrist wrote that the PCA "had no control" over a secondary reason, that the legal audit is copyrighted by the Washington law firm which produced it, and if the audit were released "Cammon & Grange would probably suffer significant financial damage as the format and content [of] their system got into the hands of others who could easily duplicate and use the system."

However, Gilchrist insisted that "there is no coverup or desire to keep secrets from the grassroots of the PCA." "I don't feel the legal audit found any 'skeletons in the closet,' but taken out of context, almost any recommendations concerning improvements in our legal structure and operations could be distorted and

abused," wrote Gilchrist.

Gilchrist did not return repeated calls to his office over a two week period prior to deadline.

The latest requests for the audit stem from a presentation at a March 25 meeting of Concerned Presbyterians. To date 34 PCA ministers and elders and two local church sessions have sent Gilchrist pre-prepared legal forms requesting copies in his dual capacities as PCA stated clerk and secretary of the PCA corporation.

The letters state their senders are "making an effort to be as well informed and as prepared as possible to do the work of the Lord which lies before us," and are therefore "requesting and requiring a copy of the legal audit" to be mailed "along with a bill for the reasonable costs of copying and handling" so they may "consider it before the rushed atmosphere of GA [General Assembly]." Southwest Florida, Northern Illinois, and Ascension presbyteries have sent overtures to the Assembly requesting its release.

"What have they done that makes them so afraid of lawsuits?" asked Charles Wilson, chairman of Concerned Presbyterians. "If there is no coverup or desire to keep secrets from the grassroots of the PCA, why are they being so secretive? They won't tell anyone anything, they won't answer questions. Why won't they answer basic questions and give basic information?"

The letter Gilchrist sent to those requesting copies of the legal audit states that "Mr. James Ostenson, our legal counsel, has discussed with our AC [Administrative Committee] officers a procedure for making the AC's portion of the report available to the Committee of Commissioners on Administration that would provide full disclosure to the Committee of

Commissioners while preserving the copyright and attorney-client restrictions." Noting that the 1993 Assembly voted to make the legal audit "available to the particular committee of commissioners but not to the entire General Assembly," Gilchrist wrote that "the Committee of Commissioners last year and the General Assembly understood very clearly the problem of publishing abroad the legal audit."

According to Wilson, this is not adequate disclosure. "The problem with the assembly's action is that the average man sitting in the General Assembly did not understand what a legal audit is, plus as this was presented it was greased with the explanation that the boards and agencies had not had time to study the legal audit, even though they had three months, so the average man thought they should have more time," said Wilson. *"Also the average commissioner did not realize that the legal audit should have been delivered to him, that this was not the property of the boards and agencies but that it was his property as a member of the corporation."*

"What they're doing is saying they did not have enough time to study this in three months, but they expect a member of the committee of commissioners to study and understand a portion of the audit in his spare time during a very hectic, business-packed, week-long General Assembly," said Wilson.

At the March 25 meeting, a California attorney consulted by Concerned Presbyterians presented a written legal opinion stating all PCA pastors and ruling elders to attend the annual General Assembly are legally entitled to obtain copies of the legal audit. Unlike most Presbyterian denominations, all PCA pastors may

attend the Assembly; each local church is entitled to a proportional number of ruling elder commissioners based on its size.

According to attorney Walt Porr, corporate bylaws state that the "the members of the corporation shall be those duly ordained Teaching Elders enrolled in a Presbytery affiliated with the Presbyterian Church in America, and those Ruling Elders representing local congregations, which congregations are affiliated with Presbyteries affiliated with the Presbyterian Church in America who have been designated or commissioned to attend the next General Assembly of the Presbyterian Church in America." The bylaws also specify that "such individuals shall be the members of the corporation until the next meeting of the General Assembly of the Presbyterian Church in America at which time the members of the Corporation shall be those individuals designated or commissioned as hereinabove set forth to attend such General Assembly."

The PCA Book of Church Order, Rules of Assembly Operations, and Bylaws specify that the denominational stated clerk is "to preserve the records carefully, and to grant extracts from them whenever properly required."

According to Porr, since the PCA General Assembly voted to commission the audit, this means that under civil law any voting member of the corporation is legally entitled to "request and require" a copy from the stated clerk.

After reviewing the history of the audit commissioning, Porr wrote "it seems obvious that the report was commissioned by the General Assembly and that the General Assembly has every right to review the report in full."

"Members of the General Assembly should be entitled to request and receive a copy of the legal audit for their review," wrote Porr. "In the event that the Stated Clerk refuses to

produce a copy of the legal audit, traditional legal means exist whereby its production may be compelled."

The audit was commissioned by the 1992 Assembly but on recommendation of the Committee of Commissioners on Administration was not reported to the 1993 Assembly. The decision not to report to the Assembly was made by a 13 to 5 split vote.

In a minority report withdrawn shortly before it was to go to the floor, five commissioners advocated having the Assembly instruct the Committee "to review the entire Legal Audit and report any recommendations that may need to be handled at this General Assembly."

Grounds cited by the minority included that "PCA men, who reviewed portions of the Legal Audit with permission, communicated to our Committee of Commissioners that they believe there are serious matters that may need to be dealt with by this General Assembly."

The report also noted that there are almost two dozen for-profit and not-for-profit corporations which list "1852 Century Place (The PCA Office Building) as the Registered Office of these Corporations" and the search lists "PCA employees as some of the directors and officers of these corporations."

Concerned Presbyterians chairman Wilson and North Carolina banker Charles Ledford are the two men mentioned in the minority report. Ledford, a vice-president of Park-Meridian Bank in Charlotte, reviewed a portion of the audit and indicated that it needed much more careful evaluation in light of potentially serious problems.

"We felt it was an emergency situation that needed to be handled

right away; the rest of the committee agreed that it ought to be handled but thought it could wait," said George

Caler, chairman of the committee minority. Caler noted the minority report was withdrawn over his objections after Cecil Brooks, Director of the PCA Investors Fund, met with the minority and broke down in tears during an emotional speech to the Assembly.

"If I had to do it over again I would not have backed out but that's what happened," said Caler.

Caler said he had sent his prepared letter to Gilchrist and received the standard form response. "I have a terrible feeling about those who are supposed to be my Christian brothers," said Caler. "I wonder how they can act that way and still consider themselves to be Christians, but they do."

One key question is the relationship between the various for-profit and not-for-profit corporations doing business out of the PCA denominational building, many of which list top PCA denominational leaders as their corporate officers. Although the PCA was organized in 1973 and incorporated in 1974, most of these corporations are of much more recent date. With a few exceptions, they were incorporated from 1989 to 1991.

"If you're painting a worst case scenario you could have criminal fraud either in the context of criminal corporate violations or criminal tax or financial violations," said Porr. "Some corporate crimes or just simply tax fraud crimes could be tied up in this. People do go to jail in the extreme cases; you could have embezzlement, someone could be cooking the books."

According to an "Audit Risk Update" published by the American

Do they have ongoing business relationships with the PCA and if so authorized by whom and what is the volume of business in dollars?

Institute of Certified Public Accountants, the question of income from unrelated business activities is specifically marked by the Internal Revenue Service for evaluation as not-for-profit organizations return their 1993 tax forms.

"Continuing pressures on the federal government to raise revenues make it likely that the IRS will continue to scrutinize the activities of not-for-profit organizations that claim exemptions from taxation under the Internal

Revenue Code," according to the Audit Risk Update. ***Items to which "IRS agents are increasingly likely to pay attention" include "the existence of income from unrelated business activities, which is subject to tax at corporate rates."***

While the audit is presently unavailable, a review of corporate annual reports filed with the Georgia Secretary of State and obtained through the Lexis/Nexus legal database has turned up some unusual arrangements. At the time of the audit, the PCA building was the legal mailing address of seven not-for-profit corporations, four of which have the identical suite numbers, similar names, or almost identical corporate officers as 12 for-profit corporations which also use the PCA building as their registered office or legal mailing address.

A number of these for-profit and not-for-profit corporations list top PCA denominational officers as corporate officers, registered agents, or applicants for corporate status.

"They must be awfully large suites or very diminutive people," noted Porr. One example of the interlocking boards of directors is "CAM Professional Training Institute, Incorporated," which incorporated on March 26, 1990 and lists its mailing address as Suite 130 of the PCA denominational building.

The Chief Executive Officer (CEO) of this corporation is Cecil A. Brooks. John K. Underwood, Jr., who is registered agent and applicant for corporate standing, holds a dual position as its Chief Financial Officer (CFO) and Secretary.

Suite 150 of the PCA building is listed as the address of two for-profit

corporations, "CAM of Georgia, Inc.," and "CAM of North Atlanta, Inc.," both of which incorporated two years

earlier in 1988. All three of these corporations share the same CEO, Cecil A. Brooks. John K. Underwood, Jr. and John T. Ottinger trade positions as CFO and secretary of the two for-profit corporations: Underwood serves as the Secretary of "CAM of Georgia, Inc." and CFO of "CAM of North Atlanta, Inc.," Ottinger serves as the CFO of "CAM of Georgia, Inc." and Secretary of "CAM of North Atlanta, Inc." Ottinger is listed as the applicant for corporate standing of CAM of North Atlanta; Robert F. Cook is the applicant for CAM of Georgia. Suite 130 also

houses multiple corporations. ***Why these corporations exist and what they do is not entirely clear.***

CAM of North Atlanta states in its articles of incorporation that "the purpose of this corporation shall be the transaction of all lawful business allowed under the Georgia business corporation code." ***If the articles of incorporation are being followed, a number of the other corporations are related in various ways to operation of retirement homes.***

Who are these men? According to the PCA yearbook, four are ordained PCA ministers. Brooks serves as the coordinator for the PCA

Investor's Fund for Building Development and the financial services coordinator for the PCA's home mission committee, Mission to North America. Ottinger is associate coordinator for the Investor's Fund and coordinator for the Mission to North America Mercy Field Ministry. Sweet is editor of *The Messenger*. Gyger is coordinator for Mission to North America. The yearbook lists Wilhelm as an ex-officio member of the PCA's Interchurch Relations Committee from North Georgia Presbytery representing Mission to the World.

Ostenson is the denominational attorney. Blaylock is a PCA elder and husband of Virginia Blaylock, until 1993 the assistant editor of *The Messenger*. Since Gilchrist did not return calls, it could not immediately be determined who Underwood, Marshall, or Covington are and what relationship they have with the PCA.

According to Porr, the entire structure of interlocking boards sharing the same offices is questionable. "You have the PCA itself, a nonprofit corporation, with almost 20 or so corporations involving multiple

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interlocking directors doing business out of the PCA building in apparently unrelated fields," said Porr. "My first concern is breach of fiduciary duty by those PCA officials who are involved in these corporations; my second concern is insider-type trading or a nepotism problem with the various companies feeding each other business and all of them potentially feeding off the PCA treasury."

Porr said that the structure could

cause legal problems even if there is no fraudulent intent. According to the written opinion provided by Porr to

possible conflict of interest, either previously existing or potential, on the part of any Management Personnel,

they use PCA staff? Do they use PCA phones, furniture, fixtures, or consumable goods, i.e. office supplies? Do they

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Concerned Presbyterians, the PCA bylaws and rules of assembly operations specify that the authority to incorporate any of the agencies of the PCA rests with the General Assembly.

"I do not see in the minutes and in the reports of the General Assembly, nor have the teaching and ruling elders of Concerned Presbyterians been able to bring to my attention, minutes or records of the General Assembly where the existence and relationship of these businesses has been discussed, noted, acknowledged, or approved," said Porr. "The impression one is left with is the people in power simply seized the opportunity to make these decisions, absent some action by the General Assembly and I'm aware of none."

Porr also noted that the PCA's policy on conflicts of interest may have been violated. The policy states that the denomination "has a mandate to conduct all its affairs decently and in order and in a manner which is above reproach in the sight of both God and man" and that both Internal Revenue Service regulations and the PCA's membership in the Evangelical Council for Financial Accountability require adherence to such standards.

Noting that "the Internal Revenue Service and state corporate and tax officials view the operations of the church and its parts as in the nature of a public trust that is subject to scrutiny by and accountability to both governmental authorities and members of the public," the conflict of interest policy requires that "any

affecting activities, property, funds, services, or employees shall be fully and promptly disclosed in writing to the chairman of that body, or if the chairman is involved in the conflict, to the vice-chairman or other appropriate officer." **All PCA management personnel must either sign a written statement that no conflicts of interest exist or list those exceptions in writing.**

Examples of conflicts of interest stated in the official policy include "owning stock, holding debt, holding office, or other proprietary interests in any third party dealing with the PCA." Regardless of the nature of the corporations doing business out of the PCA denominational building, all PCA officials who hold office as directors of these corporations would be required by the conflict of interest policy to state that fact in writing. Since the corporations state their mailing address as the PCA denominational building, another potential area of conflict would be "expending unreasonable staff time during normal business hours for personal affairs, or for other organizations, to the detriment of work performance for the PCA."

Porr cited a number of examples of potential conflict of interest which could have legal as well as ethical implications. **"Who authorized these companies to do business in the PCA building?"** asked Porr. "Are they paying rent? Do they have insurance? Have they agreed to indemnify the PCA for any liability arising out of their operations? Do

have ongoing business relationships with the PCA and if so authorized by whom and what is the volume of business in dollars?"

"It kind of goes back to the old adage, if it looks like a duck, if it flies like a duck, if it quacks like a duck, it's a duck," said Porr. "Why in the world does a man need to have some 18 to 20 corporations? It doesn't take a rocket scientist to look at this and say this doesn't look right."

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✱ A detailed background file and expanded version of this report may be obtained from Reformed Believers Press Service for \$10.