

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
PROBATE DIVISION**

THE GENERAL BOARD OF CHURCH AND  
SOCIETY OF THE UNITED METHODIST CHURCH

Petitioner,

v.

THE DISTRICT OF COLUMBIA, et al.

Respondents.

Case No.: TRP-4-07

Judge Rhonda Reid-Winston

**RESPONDENTS' JOINT PROPOSED FINDINGS OF FACTS AND  
CONCLUSIONS OF LAW**

Pursuant to the request of the Court at the close of trial in the above captioned case, the Respondent the District of Columbia and Respondent Intervenors file this Joint Proposed Findings of Facts and Conclusions of Law, and state as follows:

**DEFINITIONS**

For the Purpose of these Findings of Facts and Conclusions of Law the following shall be used:

- A. Declaration of Trust: the Methodist Building Endowment fund dated March 23, 1965, attached as Exhibit A to the Complaint, will be called "Trust."
- B. The Corporate Entity, The Board of Temperance Prohibition and Public Morals of the Methodist Episcopal Church, incorporated in 1917, will be called the "Old Board of Temperance."
- C. The Board of Temperance of the Methodist Church, incorporated in 1943, will be called the "New Board of Temperance."
- D. The New Board of Temperance, subsequently known as the Division of Temperance and General Welfare of the Board of Christian Social Concerns of the Methodist Church, and later known as the Division of Alcohol Problems and General Welfare of the Board of Christian Social Concerns after a legal name change in 1960, will be called "Division."
- E. The General Commission on Archives and History of the United Methodist Church located in Madison, NJ shall be known as the "Archives."

- F. The "Methodist Building" is located in Washington, DC and is the headquarters of the United Methodist Church.

#### FINDINGS OF FACTS

1. **Petitioner did not present any testimony from witnesses who had first-hand knowledge regarding the intent of the settlors in creating the Trust or of the Trust itself.**
2. **No evidence was presented regarding how the Archives selects or maintains its records. Furthermore, no evidence was presented to establish the completeness and accuracy of their records.**
3. **Petitioner's position that the corpus of the funds was not restricted at the time of formation of the Trust is based solely on documents at the Archives and the Methodist Building.**
4. **Petitioner did not present any evidence that funds were given containing restrictions for use in areas other than temperance and alcohol problems.**
5. **Petitioner did not present any testimony from its witnesses that could establish that the Background and Purpose section of the Trust is incorrect. Furthermore, Petitioner conceded that it has no basis to assert that the narrative in the Background and Purposes section of the Trust is factually correct or incorrect.**
6. **Petitioner has no first-hand knowledge regarding the intent or purpose of any donor regarding gifts made to the Old Board of Temperance or the New Board of Temperance. Moreover, Petitioner did not present any testimony from witnesses who had first hand knowledge regarding the intent or purpose of any donor who gave a gift to the Old Board of Temperance or the New Board of Temperance which formed the corpus of the Trust.**
7. **The Board of Temperance, Prohibition and Public Morals was organized by the General Conference of the Methodist Episcopal Church and was an outgrowth of the Committee on Temperance and Prohibition established in 1888. The Old Board of Temperance was incorporated in 1917. The New Board of Temperance was incorporated in 1943.**
8. **The Discipline of the Methodist Church is the law of the Methodist Church and its agencies including the Old Board and New Board of Temperance. The Discipline sets forth the Constitution of the Old Board and New Board of Temperance and sets forth the scope of work that these Boards could do**

during the quadrennial years that the Discipline was in effect. Further, the New Board of Temperance adopted bylaws and amended them in 1960.

9. The term "Public Morals" is defined in the Book of Discipline and Resolutions of the Methodist Church.
10. The Old Board of Temperance and the New Board of Temperance did work overwhelmingly in the area of temperance and alcohol problems.
11. The bequest by Sarah Simpson specifically restricted the bequest to be used for temperance and temperance educational purposes.
12. Of the four pledge cards submitted by Petitioner into evidence at trial, two stated that the funds were given by the donor to save American Youth which, at that time, meant to promote temperance and alcohol programs. The other two pledge cards amount to a total of \$2000.00 collectively. All four of the pledge cards, were dated between 1923 and 1929.
13. Starting in at least the 1930's, the Old Board of Temperance and the New Board of Temperance treated funds it held as being preserved for temperance and alcohol problems.
14. The publications of the Old Board of Temperance and the New Board of Temperance overwhelmingly dealt with the issues of temperance, temperance education, fighting the alcohol industry, problems of alcoholism, and other societal issues related to alcohol.
15. In 1960, the name of the New Board of Temperance was changed to the Division of Temperance and General Welfare, but it remained a separate corporate entity with its own Board whose CEO was Roger Burgess.
16. Roger Burgess was a long time employee of the New Board of Temperance and was the CEO of the Division of Temperance and General Welfare at the time of the creation of the Trust and instrumental in the Trust's formation.
17. At the time of the formation of the Trust, the settlors knew that they could "do whatever [they] want[ed] to do" with the assets of the Old Board and New Board of Temperance. Roger Burgess is the only witness who had first- hand knowledge of the creation of the Trust, as he was an officer of the settlors.
18. One of the officers of the settlors and a key person in creating the Trust, Roger Burgess, testified that there was no mistake as to the settlors' intent. The court finds the testimony of Roger Burgess credible.

19. The evidence presented at trial establishes that the Old Board of Temperance and the New Board of Temperance communicated to its donors that the money given to it would be used for temperance and alcohol problems. Moreover, the evidence presented also established that the Boards raised money specifically for its primary work in temperance and alcohol problems.
20. Petitioner admitted that funds given to the Old Board and New Board of Temperance from 1917-1960 were to be conserved for the exclusive use of work that the Old Board and New Board of Temperance did during that time.
21. Funds were raised on World Temperance Sunday each year to fund the Old Board of Temperance.
22. The settlors of the Trust intended to preserve the funds of the Old Board of Temperance and the New Board of Temperance for the primary work of those boards, i.e. temperance and alcohol problems.
23. Evidence presented at trial established that the settlors of the Trust believed they had a moral obligation to preserve the funds that were given to it for its primary historic work in the area of temperance and alcohol problems.
24. Prior to 1960, the New Board of Temperance was concerned that its wealth of funds and income from the Methodist Building would be used for areas other than temperance and alcohol problems by other agencies of the United Methodist Church.
25. In an effort to ensure that funds belonging to the Old Board and New Board of Temperance would not be diverted to areas other than temperance and alcohol problems, Roger Burgess and others from the New Board of Temperance lobbied the General Conference to insert language into the 1960 Discipline stating, "funds vested in any of the predecessor boards shall be conserved for the exclusive use of the appropriate division of this board and for the specific purposes for which such funds have been given."
26. After 1960 when the New Board of Temperance, The Board of World Peace and the Board of Social and Economic Relations became Divisions under the umbrella of the General Board of Christian Social Concerns, Dudley Ward attempted to access the funds of the Division of Temperance and General Welfare, some of which consisted of funds belonging to the Old and New Board of Temperance, and which eventually formed the corpus of the Trust.

- 27. In 1960 and thereafter until sometime after the Trust was created and fully executed, the three separate agencies comprising the Board of Christian Social Concerns were separate corporate entities and kept their respective assets separate and distinct. After 1960, until the execution of the Trust, the funds of the Old Board of Temperance and the New Board of Temperance were preserved and used exclusively by the New Board, now called the Division of Temperance and General Welfare, for work in the area of temperance and alcohol problems.**
- 27A. Although Bishop White claims the funds were not segregated, his testimony directly conflicts with that of the CEO, Roger Burgess. The more credible evidence is CEO Burgess, who testified at trial and who's testimony is corroborated by budget sheets of the Division at the time the Trust document was executed.**
- 28. The settlors were aware of the General Board of Christian Social Concerns and specifically Dudley Ward's concerns regarding restrictions on the use and administration of the funds in the proposed Trust document. Despite this fact, they executed the Trust.**
- 29. The Trust document was fully executed on March 23, 1965 by the Old Board of Temperance and the New Board of Temperance, through Paul Hardin, its Chairman, and attested to by Sara J. Clardy, its Secretary, which had legally changed its name to the Division of Alcohol Problems and General Welfare. The Trust was notarized on April 30, 1965.**
- 30. The Bylaws of the New Board as amended in 1960 gave the Executive Committee of the New Board full power to place the assets held by the New Board in trust.**
- 31. Roger Burgess testified as to the meaning of the term "existing situation" in the Trust. The term "existing situation" as the term is stated in the Trust means that the New Board of Temperance had preserved the funds after 1960 to be used exclusively in the areas of temperance and alcohol problems.**
- 32. The Trust was created for the following three reasons: 1) the settlors believed they had a moral obligation to its donors; 2) the settlors did not want the Old and New Board of Temperance's money to be used for areas other than temperance and alcohol problems; and 3) to preserve the primary historic work of the Old and New Board of Temperance.**
- 33. At some point in time after the execution of the Trust, Dudley Ward challenged the Division's authority and proposed modifications to the Judicial Council of the Methodist Church. The Judicial Council never reached a decision.**

34. In October 1965, Bishop Hardin and Dudley Ward discussed modifying the terms of the Trust as to the control or oversight of the funds. However, there is no executed document modifying or amending the Trust.<sup>1</sup>

35. No governing documents of the Old Board or New Board of Temperance prevent the Old Board or New Board of Temperance from entering into the Trust. No evidence was presented at trial which could prevent the Old Board or New Board of Temperance from entering into the Trust. The Court finds that the Bylaws of the New Board of Temperance authorize the Executive Committee of the New Board of Temperance to encumber the assets of the New Board of Temperance as a charitable trust.

36. Petitioners introduced no evidence at trial as to what the intent of the settlors at the time of the formation of the Trust would have been, if there was a mistake of fact or law that warranted reformation.

#### RECORD BASIS FOR FINDINGS OF FACTS

1. Petitioner did not present any testimony from witnesses who had first-hand knowledge regarding the intent of the settlors in creating the Trust or of the Trust itself.

Respondents' Ex. 1: "Declaration of Trust, The Methodist Building Endowment Fund" dated March 23, 1965.

*James Winkler, 10/6/08 Trial Transcript*  
Page 8, Lines 14-19.

14. Q. When did you first become aware of the fact that there was a Trust agreement in 19- dated to 1965?

16. A. Somewhere during 2001. Exactly when during that year, I don't recall.

18. Q. But it was after you became the general secretary?

19. A. That's correct.

Page. 99, Lines 11-15.

11. Q. [S]o do you have any independent knowledge regarding the work of the Old Board of Temperance or the New Board of Temperance prior to 1960 other than what you've seen in these documents?

15. A. No, I don't.

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<sup>1</sup> Even if such a modification or amendment had occurred, it would be unenforceable as the Trust document itself did not reserve the right to amend or modify the Trust. *In re Duroske Marital Trust*, 862 A.2d 914 (D.C. 2004).

*Wesley Paulson, 10/7/08 Trial Transcript*

Page 130, Lines 24-25; Page 131, Lines 1-3.

24. Q. And when did you first read what's marked as Petitioner Exhibit 6? [Trust]

1. A. I was - - it was sometimes [sic] after I started employment in the Spring of 2007. I can't recall the exact date.

Page 132, Lines 23-25; Page 133, Lines 1-4.

23. Q. Other than the research that you did at the General Archives in your office you don't have any independent knowledge regarding the background and purpose of these as stated in Petitioner's Exhibit 6 [Trust]; do you?

2. A. I did not have any - - what did you call it again?

3. Q. Independent personal knowledge.

4. A. No, I wasn't there when it was created.

*Bishop C. Dale White, 10/8/08 Trial Transcript*

Page 33, Lines 19-21.

19. Q. So, the follow-up question is, did you have any part in creating this document? [the Trust]

21. A. No.

Page 35, Lines 16-18, 21-25; Page 36, Lines 1-2.

16. Q. At some time - - at some point, did you have an occasion to talk with the Assistant Attorney General Brian Caldwell?

21. A. Yes.

22. Q. Did you tell him during that conversation that you were not part of creating the Declaration of Trust?

24. A. That's right.

25. Q. And if someone wanted to know why the Declaration

1. of Trust was created they should contact Roger Burgess?

2. A. That's right.

Page 37, Lines 6-8.

6. Q. Prior to March 24, 1965, were you ever consulted for advice on the language of the Declaration of Trust?

8. A. No, not as such, no.

Page 46, Lines 10-19.

10. Q. Is the reason why you said people should talk to Mr. Burgess about this matter was because Mr. Burgess and not you was involved with the actual drafting of the Declaration of Trust?

14. A. That is true. He agrees with that.

15. Q. Do you agree with that, also?  
16. A. Yes.  
17. Q. Is that because you did not know what the drafters had in mind when they drafted the Declaration of Trust?  
19. A. They didn't consult me on it.

*John Stumbo, 10/7/08 Trial Transcript*  
Page 46, Lines 23-25.

23. Q. So, you have no personal knowledge then of any restriction of any of the funds involved in this lawsuit?  
25. A. That's right.

Page 84, Lines 4-8.

4. Q. Now, with respect to the Declaration of Trust that was executed on March 23, 1965, did you ever have any conversations with anybody that was involved with the actual drafting of the Declaration of Trust?  
8. A. Not to my recollection.

**2. No evidence was presented regarding how the Archives selects or maintains its records. Furthermore, no evidence was presented to establish the completeness and accuracy of their records.**

*James Winkler, 10/6/08 Trial Transcript*  
Page 51, Lines 9-11, 24-25; Page 52, Lines 1-2.

9. Q. You don't know how the archivists [sic] keeps his records at the Archives; do you?

11. A. No, I don't.

24. Q. So, you wouldn't know if there were other pledge Cards that were out there that didn't make it to the

1. Archives.

2. A. No, I would not.

Page 70, Lines 6-19.

6. Q. You do not know when the documents prior to 1965 got to the General Archives from the Board of Temperance or from the Old Board of Temperance; do you?

10. A. I do not.

11. Q. And you do not know what documents the general archivist - - well, let me strike that. Was there a general archivist back in - - prior to 1965?

14. A. I don't know.

15. Q. So, that begs the question then. You obviously would not know then what protocol the general archivist, if one existed prior to 1965, gave the Board of Temperance

regarding the documents?

19. A. No idea.

Page 79, Lines 8-14.

8. Was this - - did anybody working for you  
Bother to look at - - for annual reports for the Old Board  
of Temperance or the New Board of Temperance when you were  
at the General Archives or in your own offices?

12. A. As I said, we were looking for information related  
to the Declaration of Trust and gifts to the Old Board of  
Temperance. I was there one day, please understand.

*Wesley Paulson, 10/7/08 Trial Transcript*

Page 124, Lines 10-25.

10. Q. You

don't know what documents the Old Board of Temperance gave  
to the General Archivist, do you?

13. A. I don't know what the Old Board - - what they gave  
to the General Archivist, that's correct.

15. Q. Likewise, you don't know what the New Board gave  
the General Archivist?

17. A. I don't know the source of the documents of the  
Archives and where they came from.

19. Q. And, in fact, you don't know whethere[sic] any of the  
documents that were at the General Archives were received  
by the General Archivist?

22. A. I know that we, the General Board, sent a large  
shipment up in 1995, the documents, which of these were  
from that set versus something that were sent earlier, I  
couldn't tell you.

**3. Petitioner's position that the corpus of the funds was not restricted at the  
time of formation of the Trust is based solely on documents at the Archives  
and the Methodist Building.**

*James Winkler, 10/6/08 Trial Testimony*

Page 69, Lines 22-25; Page 70, Lines 1-4.

22. Q. And you didn't speak to anybody alive that had  
donated money to the Old Board of Temperance or the New  
Board of Temperance, did you?

25. A. No, I couldn't find any such person.

1. Q. So, the only knowledge you have is based upon  
documents at the General Archives and also at your  
headquarters?

4. A. Correct.

- 4. Petitioner did not present any evidence that funds were given containing restrictions for use in areas other than temperance and alcohol problems.**

*Roger Burgess, 10/21/08 Trial Transcript*  
Page 96, Lines 16-22.

16. Q. During your time in the division and, and with the old, the New Board of Temperance, excuse me, have you ever had occasion to come across a gift instrument to the Board of Temperance that appeared to restrict the gift used to an area other than temperance and alcohol problems?

22. A. No.

- 5. Petitioner did not present any testimony from its witnesses that could establish that the Background and Purpose section of the Trust is incorrect. Furthermore, Petitioner conceded that it has no basis to assert that the narrative in the Background and Purposes section of the Trust is factually correct or incorrect.**

*Wesley Paulson, 10/7/08 Trial Transcript*  
Page 138, Lines 21-25; Page 139, Lines 1-4, 6-12.

21. Q. The question is: Is the General Board of Church and Society able to say that the narrative in the background and purpose section of the Declaration of Trust is factually correct? Either it can or it can't. So, can they?

1. A. No.

3. Q. Likewise, you cannot say that it is factually incorrect; can you?

5. A. I would say I would agree with that statement speaking for myself.

9. Q. I'm asking you to speak on behalf of the General Board. You are an officer of the General Board.

11. A. Then at this point I would say I can't say that it's incorrect and I can't say that it's correct.

- 6. Petitioner has no first-hand knowledge regarding the intent or purpose of any donor regarding gifts made to the Old Board of Temperance or the New Board of Temperance. Moreover, Petitioner did not present any testimony from witnesses who had first hand knowledge regarding the intent or purpose of any donor who gave a gift to the Old Board of Temperance or the New Board of Temperance which formed the corpus of the Trust.**

*James Winkler, 10/6/08 Trial Transcript*

Page 69, Lines 22-25; Page 70, Lines 1-4.

22. Q. And you didn't speak to anybody alive that had donated money to the Old Board of Temperance or the New Board of Temperance, did you?

25. A. No, I couldn't find any such person.

1. Q. So, the only knowledge you have is based upon documents at the General Archives and also at your headquarters?

4. A. Correct.

*Wesley Paulson, 10/7/08 Trial Transcript*

Page 116, Lines 11-14.

11. Q. You have no firsthand knowledge regarding any gifts being made to the Old Board of Temperance or the New Board of Temperance; do you?

14. A. No, I don't.

15. Q. Any knowledge that you have is solely based upon searches that you've done at the Methodist Building and at the General Archives?

18. A. And also Wesleyan Seminary.

- 7. The Board of Temperance, Prohibition and Public Morals was organized by the General Conference of the Methodist Episcopal Church and was an outgrowth of the Committee on Temperance and Prohibition established in 1888. The Old Board of Temperance was incorporated in 1917. The New Board of Temperance was incorporated in 1943.**

Respondents' Exhibit Nos.:

15 Discipline of the Methodist Episcopal Church - 1908

16 Discipline of the Methodist Episcopal Church -1912

34 Annual Report 1936

130 Articles of Incorporation - May 23, 1917

131 Articles of Incorporation - May 11, 1943

- 8. The Discipline of the Methodist Church is the law of the Methodist Church and its agencies including the Old Board and New Board of Temperance. The Discipline sets forth the Constitution of the Old Board and New Board of Temperance and sets forth the scope of work that these Boards could do during the quadrennial years that the Discipline was in effect. Further, the New Board of Temperance adopted bylaws and amended them in 1960.**

Petitioner's Exhibit No. 3 By-Laws of the Board of Temperance of the Methodist Church. July 13, 1949.

Petitioner's Exhibit No. 4 Amended Certificate of Incorporation 1949

Petitioner's Exhibit No. 5 Amended By-Laws of the Division. April 28, 1961.

Respondents' Exhibit Nos.:  
132 Amended Certificate of Incorporation 1944  
133 Amended Certificate of Incorporation 1950

*James Winkler, 10/6/08 Trial Transcript*  
Page 14, Lines 12-21.

12. Q. We've heard about a Book called the Discipline.  
Would you tell us what the Discipline is?

14. A. The Book of Discipline is the, I guess you would say, the law-making or the law-giving Book of our Church, it's sort of governs the life of the Local Church, the annual conference, and the General Church, and there are provisions within the Discipline for any variety of matters within the life of the Church. There's a section devoted solely to the General Board of Church and Society that's in the Discipline.

*Roger Burgess, 10/9/08 Trial Transcript*  
Page 53, Lines 22-25; Page 54, Lines 1-3.

22. Q. What is the Book of Discipline?

23. A. The Book of Discipline is the Law of the Church. This is the Book that guides this very large organization in its actions and policies, if you will. It instructs

1. the officers and their responsibilities of the various Boards and Agencies and it instructs the Local Church and the way the Local Church will do its business and operate.

*Roger Burgess, 10/21/08 Trial Transcript*  
Page 82, Lines 9-15, 23-25; Page 83, Lines 1-4, 15-20

9. Q. In turning to the second page of that exhibit, [Pet. Ex. 4] and let me know if I'm reading this correctly. Number two, in effecting the above-mentioned objects and purpose, this corporation shall be amenable and power granted from time to time by the general conference of the Methodist Church and its successors.

23. Q. In effecting the above-mentioned objects and purpose, this corporation shall be amenable to and have and exercise all of the rights, authority and power

1. granted from time to time by the general conference of the Methodist Church and its successor. Did I read that correctly?

4. A. Yes.

15. Q. The statement that I just read from the Articles of Incorporation, as amended of the Board of Temperance, was that your understanding as to the role that the general conference had regarding the purposes

and what the Board of Temperance could and could not do?  
20. A. Correct.

Respondents' Exhibit Nos.:

- 30 Doctrines and Discipline - 1916
- 17 Discipline of the Methodist Episcopal Church - 1920
- 18 Discipline of the Methodist Episcopal Church - 1924
- 19 Discipline of the Methodist Episcopal Church - 1928
- 20 Discipline of the Methodist Episcopal Church - 1932
- 21 Discipline of the Methodist Episcopal Church - 1936
- 22 Discipline of the Methodist Episcopal Church - 1940
- 23 Discipline of the Methodist Episcopal Church - 1944
- 24 Discipline of the Methodist Episcopal Church - 1948
- 25 Discipline of the Methodist Episcopal Church - 1952
- 26 Discipline of the Methodist Episcopal Church - 1956

**9. The term "Public Morals" is defined in the Book of Discipline and Resolutions of the Methodist Church.**

Respondents' Ex. Nos.:

- 7 Resolutions - 1932 Book of Discipline
- 8 Resolutions - 1936 Book of Discipline
- 9 Resolutions - 1936 Book of Discipline
- 10 Resolutions - 1944 Book of Discipline
- 11 Resolutions - 1948 Book of Discipline
- 12 Resolutions - 1952 Book of Discipline
- 13 Resolutions - 1956 Book of Discipline
- 14 Resolutions - 1960 Book of Discipline

*Roger Burgess, 10/21/08 Trial Transcript*  
Page 86, Lines 24-25; Page 87, Line 1.

24. Q. Mr. Burgess, is the term public morals a religious term in the Methodist Church?

1. A. Yes.

**10. The Old Board of Temperance and the New Board of Temperance did work overwhelmingly in the area of temperance and alcohol problems.**

Respondents' Exhibits Nos.:

- 4 Resolutions - 1920 Book of Discipline
- 5 Resolutions - 1924 Book of Discipline
- 6 Resolutions - 1928 Book of Discipline
- 7 Resolutions - 1932 Book of Discipline
- 8 Resolutions - 1936 Book of Discipline
- 9 Resolutions - 1936 Book of Discipline

- 10 Resolutions – 1944 Book of Discipline
- 11 Resolutions – 1948 Book of Discipline
- 12 Resolutions – 1952 Book of Discipline
- 13 Resolutions – 1956 Book of Discipline
- 14 Resolutions – 1960 Book of Discipline
- 17 Discipline of the Methodist Episcopal Church - 1920
- 18 Discipline of the Methodist Episcopal Church – 1924
- 19 Discipline of the Methodist Episcopal Church – 1928
- 20 Discipline of the Methodist Episcopal Church – 1932
- 21 Discipline of the Methodist Episcopal Church – 1936
- 22 Discipline of the Methodist Episcopal Church – 1940
- 23 Discipline of the Methodist Episcopal Church – 1944
- 24 Discipline of the Methodist Episcopal Church – 1948
- 25 Discipline of the Methodist Episcopal Church – 1952
- 26 Discipline of the Methodist Episcopal Church – 1956
- 53 Quadrennial Report – 1920
- 54 Quadrennial Report – 1924
- 187 General Conference Journal - 1928
- 56 Quadrennial Report – 1932
- 57 Quadrennial Report – 1940
- 58 Quadrennial Report – 1944
- 192 Quadrennial Report - 1952
- 60 Quadrennial Report – 1960
- 62 The Voice Index – 1940
- 63 The Voice Index – 1941
- 64 The Voice Index – 1942
- 65 The Voice Index – 1943
- 66 The Voice Index – 1944
- 67 The Voice Index – 1945
- 68 The Voice Index – 1946
- 69 The Voice Index – 1947
- 70 The Voice Index – 1948
- 71 The Voice Index – 1950
- 72 The Voice Index – 1951
- 73 The Voice Index – 1952
- 74 The Voice Index – 1953

*Wesley Paulson, 10/7/08 Trial Transcript*

Page 118, Lines 21-25

21. Q. Isn't it true that the remaining of The Voices that you looked at dealt overwhelmingly with Temperance and Alcohol Problems?

24. A. That's correct. The majority of the articles were about Temperance and Alcohol.

*Roger Burgess, 10/9/08 Trial Transcript*

Page 34, Lines 17-25; Page 35, Lines 1-10.

17. Q. While you were associate general secretary for the Board of Temperance, what were the principle areas of programmatic concerns for the Board of Temperance?

20. A. The principle area was the Alcohol Problems and Temperance. I characterized before while the initial Board during the era, before and after Prohibition, was know as the Board of Temperance. It included in the name, I can't quite come up with the name. The Board of Temperance, Prohibition and Public Morals, that's the name of that

1. previous board.

2. Q. Right.

3. A. And in the area of public morals were included issues, gambling, use of tobacco and other injurious practices. But the amount of resources and funding and staff time spent on those were minimal compared to the nature work of the Board which was on Alcohol Problems and Temperance. And I'm sorry to say I described that before. Those additional areas of work were like the tail on a dog with the alcohol problems being the dog.

Page 42, Lines 23-25, Page 43, Lines 1-2.

23. Q. Again, what was the primary work that was promoted by the Board of Temperance?

25. A. Eighty to ninety percent of the work of the Board

1. of Temperance was directly involved with Alcohol Problems, and Temperance, Education.

Page 50, Lines 20-25; Page 51, Lines 1-7.

20. Q. How would you characterize the vast majority if not all of the money that was being received by the Board of Temperance from World Service and the Methodist Building Endowment Fund, how would you - - on what programs would you say that these funds were being used?

25. A. They were all being used for the program of the

1. Board of Temperance which was predominately ninety percent, at least, alcohol related programs. And the World Service income mentioned here of two hundred thousand per year was one source of income, and then from thirty thousand to maybe forty, fifty thousand in that range was income which came from which is now called the Methodist Building Endowment Funds.

*James Winkler, 10/6/08 Trial Transcript*

Page 69, Lines 17-21.

17. Q. You wouldn't disagree with the statement that the

Board, the Old Board of Temperance and the New Board of Temperance were well-known for Temperance and Alcohol Problems; would you?

21. A. Of course, yes, I would agree.

*Wesley Paulson, 10/7/08 Trial Transcript*  
Page 121, Lines 19-24.

19. Q. And you're going through The Voices at Wesleyan Seminary isn't it true that the Board of Temperance and the New Board of Temperance considered public enemy number one to be the liquor industry?

23. A. I don't know about public enemy number one. The majority of their work was on Temperance and Liquor.

**11. The bequest by Sarah Simpson specifically restricted the bequest to be used for temperance and temperance educational purposes.**

Respondents' Ex. No. 121, Sarah Simpson Will and Codicils 1933-1935.

Fifth Codicil, para. 2, "I hereby direct and designate that all of the legacies left to the said Board shall be held and the income therefrom used simply for the educational temperance program of the Board, and shall not be used in any way for the purpose of carrying on propaganda or otherwise attempting to influence legislation, but is to be used exclusively for educational purposes."

**12. Of the four pledge cards submitted by Petitioner into evidence at trial, two stated that the funds were given by the donor to save American Youth which, at that time, meant to promote temperance and alcohol programs. The other two pledge cards amount to a total of \$2000.00 collectively. All four of the pledge cards, were dated between 1923 and 1929.**

Petitioner's Ex. 14, "Report of Annual Meeting of Board of Temperance" 1917.

Petitioner's Ex. 128, Pledge Cards: April 4, 1929, August 22, 1928.

Petitioner's Ex. 129, Pledge Card, December 17, 1928.

Petitioner's Ex. 226, Pledge Card, October 18, 1922

Petitioner's Ex. 268, Pledge Card, October 5, 1923

Respondents' Ex. Nos.:

36 Annual Report-February 1941

38 Annual Report-October 1949

39 Annual Report-April 1950

42 Annual Report-January 1953

56 Quadrennial Report 1932

57 Quadrennial Report 1940

*Roger Burgess, 10/9/08 Trial Transcript*  
Page 101, Lines 10-21.

10. Q. Mr. Burgess, we saw some pledge cards earlier in this litigation with the phrase to Save the American Youth on it. Do you know that that means?

13. A. Well, there was a strong feeling on the part of the leadership of the Church that alcohol use was very detrimental to the youth of our Church and our Country, and so that's what that phrase meant on the Commitment card.

17. Q. So, it wasn't to save the youth - - the American Youth in the general sense, it was more specifically?

20. A. It was more specifically for the use of alcohol and the dangers related thereto.

**13. Starting in at least the 1930's, the Old Board of Temperance and the New Board of Temperance treated funds it held as being preserved for temperance and alcohol problems.**

Respondents' Ex. No. 127 Report of Audit, 1936.  
Respondents' Ex. No. 163 Letter to Rev. Leavitt, 1932  
Respondents' Ex. No. 36 Annual Report-February 1941. p. 15

Petitioner's Exhibit Nos.:  
17 Minutes of the Executive Committee 1931  
19 Minutes of the Executive Committee 1933  
25 Minutes of the Executive Committee 1935  
29 Minutes of the Executive Committee 1942

*Roger Burgess, 10/9/08 Trial Testimony*  
Page 37, Lines 16-25; Page 38, Lines 1-9.

16. Q. I'm talking specifically about the Methodist Building Endowment Fund.

18. A. Yes.

19. Q. Okay.

20. A. It was exclusively property of the Board of Temperance and the income was exclusively for it, for working in the field of alcohol problems which was the responsibility of the Board of Temperance.

24. Q. And decisions as to how those monies would be used was exclusively that of the Board of Temperance?

1. A. Exclusively.

2. Q. In your mind is the work of the Board of Temperance synonymous with the Temperance Cause and Alcohol

problems?

5. A. Yes, yes. Again, the history of Methodism is a great concern for that Temperance Cause which goes back a long, long way in history, and it was very well supported by the Church, the Board of Temperance particularly in my time.

**14. The publications of the Old Board of Temperance and the New Board of Temperance overwhelmingly dealt with the issues of temperance, temperance education, fighting the alcohol industry, problems of alcoholism, and other societal issues related to alcohol.**

Respondents' Exhibits Nos.:  
62-74, The Voice Indexes from 1940-1953.  
75 The Voice - December 1922  
76 The Voice - November 1937  
77 The Voice - April 1939  
78 The Voice - May 1939  
79 The Voice - September 1939  
80 The Voice - December 1939  
81 The Voice - February 1940  
82 The Voice - September 1940  
83 The Voice - January 1941  
84 The Voice - February 1941  
85 The Voice - September 1941  
86 The Voice - September 1942  
87 The Voice - February 1944  
88 The Voice - March 1944  
89 The Voice - April 1944  
90 The Voice - October 1944  
91 The Voice - November 1944  
92 The Voice - March 1945  
93 The Voice - March 1948  
94 The Voice - January 1949  
95 The Voice - February 1949  
96 The Voice - April 1949  
97 The Voice - August 1949  
98 The Voice - April 1950  
99 The Voice - May 1950  
100 The Voice - February 1952  
101 The Voice - March 1952  
102 The Voice - November 1953  
103 The Voice - February 1954  
104 The Voice - June 1954  
105 The Voice - February 1955  
106 The Voice - April 1956.

34 Annual Report -1936  
35 Annual Report-1939  
36 Annual Report-1941  
37 Annual Report-1944  
38 Annual Report 1949  
52 Quadrennial Report-1916

*Roger Burgess, 10/8/08 Trial Testimony*  
Page 64, Lines 14-18.

14. Q. So, in your experience as editor of The Voice would it be fair to say that the majority of the topics that articles that The Voice covered were related to alcohol and issues of Temperance and Alcohol Problems?

18. A. Without question.

*Roger Burgess, 10/9/08 Trial Testimony*  
Page 10, Lines 15-23.

15. Q. You mentioned some of what the Clipseet articles were about was legislation, keeping them updated on legislation. Was legislation related to what?

18. A. There was an effort going on at the time that I was there to outlaw the advertising of alcoholic beverages, particularly on television, and there were - - there was legislation before Congress to that effect. And we would be reporting on any steps that were made on the progress of that legislation in Congress.

**15. In 1960, the name of the New Board of Temperance was changed to the Division of Temperance and General Welfare, but it remained a separate corporate entity with its own Board whose CEO was Roger Burgess.**

Respondents' Exhibit No. 35 Annual Report 1939  
Respondents' Exhibit No. 52 Quadrennial Report 1916  
Respondents' Exhibit No. 134 Articles of Incorporation – September 29, 1960

**16. Roger Burgess was a long time employee of the New Board of Temperance and was the CEO of the Division of Temperance and General Welfare at the time of the creation of the Trust and instrumental in the Trust's formation.**

Respondents' Ex. No. 141 Letter from Dr. Hooton – May 1959.

*Roger Burgess, 10/8/08 Trial Transcript*  
Page 57, Lines 8-15

8. Q. After that what was the next job you had after that?

10. A. In 1953, I was recruited to move to Washington, DC where I became director of communications of the then-Methodist Board of Temperance.

13. Q. Is that the same Board of Temperance that has been the subject matter of this litigation?

15. A. Yes.

*Roger Burgess, 10/9/08 Trial Transcript*

Page 33, Lines 4-19, 24-25; Page 34, Lines 1-4, 8-14.

4. Q. Well, after you completed your tenure as editor of The Voice, what did you do next for the Church? What was your next assignment?

7. A. I was elected associate general secretary of the Board of Temperance, they were changing terms at that point, so that the chief executive officer was known as general secretary and then the number two person was the associate general secretary.

12. Q. So, you were the associate general secretary for the Board of Temperance?

14. A. That's correct.

15. Q. When was that? When did you become associate general secretary?

17. A. Approximately, 1960.

18. Q. 1960, for the Board of Temperance?

19. A. Correct. Prior to the merger of the Boards?

24. Q. How would you characterize the rank of the associate general secretary that position within the Board of Temperance?

2. A. It was an administrative post. It might be corresponding corporate terms to the chief operating officer.

8. Q. And what were the responsibilities of the associate general secretary of Board of Temperance?

10. A. He was totally responsible for the program of the Board. He was the staff for the staff of the Board. And associate general secretary position was kind of clerk of the Board to keep everything going, to report regularly to their president who concentrated more on policy matters ...

Page 61, Lines 6-16, 23-25.

6. Q. How long did you hold the position associate general secretary for the Division?

8. A. From the time of this meeting until I departed in 1965.

10. Q. Do you recall when you departed in 1965?

11. A. Yes, I left the work of that Board in 1965.

12. Q. Right. Do you recall when in the year of 1965 you left the Division?

13. A. It would have been in October or November. I think I announced my decision to leave at a Board meeting about that same time, a Division meeting.

23. Q. Did you announce your resignation in October of 1965?

25. A. Yes.

Page 78, Lines 13-19.

13. Q. When did Dudley Ward become general secretary of the Board of Christian Social Concerns?

15. A. After the death of Dr. Caradine Hooten. T[w]hen [sic] the Board was merged and Dr. Hooten was named general secretary of the New Board and I was named associate general secretary which means CEO of the Division of Temperance and General Welfare.

Page 52, Lines 8-9.

8. Q. Were you involved in drafting this document? [Trust]

9. A. Yes, I was.

**17. At the time of the formation of the Trust, the settlors knew that they could "do whatever [they] want[ed] to do" with the assets of the Old Board and New Board of Temperance. Roger Burgess is the only witness who had first hand knowledge of the creation of the Trust, as he was an officer of the settlors.**

Respondents' Ex. No. 170 Letter from Roger Burgess to Bishop Hardin, March 10, 1965.

*Roger Burgess, 10/9/08 Trial Testimony*

Page 111, Lines 10-19; Page 113, Lines 1-4, 18-25; Page 114, Lines 1-10, 13-18, 21-25; Page 115, Lines 1-25.

10. Q. And what does it [Resp. Ex. 170] say it's regarding?

11. A. Comments on the Dudley Ward letter of March 4 relating to the Trust agreement.

13. Q. Can you please read the first paragraph?

14. A. This proposal was not, underline not, represent the agreement of Mr. Raysor and Mr. Jones as is implied. Mr. Raysor's advice is only we can do whatever we want to do. Mr. Jones has told me in private conversations that the letter does not represent his views. I have asked him to write you further.

1. Q. Did you ever have any conversations with Mr. Raysor regarding the legality of restrictions on the use of funds for Temperance and Alcohol Problems?

4. Yes, because - -

18. Q. And did some of those conversations relate to the restrictions of the funds used to strictly Temperance and Alcohol Problems?

21. A. Yes. He understood our purpose clearly and drafted - - made the first draft of the Trust document, achieve that purpose and legally do so.

24. Q. And did you have any follow-up conversations with him about that topic?

1. A. I'm sure I had more than one conversation with him as we went through the process of finalizing the document.

3. Q. And it is then - -

4. A. And Mr. Raysor's advice then is, you know, was clearly would you do what we wanted to do.

6. Q. And is that what you're referring to in paragraph one of the March 10, 1965 letter?

8. A. That's correct.

9. Q. Now, turning your attention to paragraphs two through five.

13. Q. Would you again characterize the issues here as relating to matters of control over the changing control of the funds?

16. A. Yes.

17. Q. And can you please read paragraph number six? You can read that out loud.

21. A. With regard to the broadening of the scope of the use of the funds, does the Division have any obligation to people who gave the money and the intent, underline intent, for which it was given. It might legally be possible to broaden this Trust but the rightness, end quote, of such a

1. move needs to be carefully considered, and that's in reference to the moral obligation that was felt on the part of the leadership to the people who had given their funds to the Temperance Cause.

5. Q. Can you please elaborate a little bit more by what you meant between this distinction about what is legally possible and what is right?

8. Mr. Raysor had indicated that we could do whatever we wanted to do, which would mean that we couldn't - - the Trust could be broadened and the funds could be used for other purposes. But the Division and the Executive Committee unanimously felt a moral obligation to restrain the use of those funds for the purposes for which they had been given to the Temperance Cause over many, many years.

15. Q. And was Dudley Ward who was pushing the Division to broaden the scope of the funds?

17. A. Very, very hard. It was - - he was trying repeatedly to influence the opinion of the Divisions and the Executive Committee with that regard and that was resistant on the part of the Executive Committee and myself as their employee.

22. Q. Is that why any broadening of the scope would require careful consideration as you state in that paragraph?

25. A. Exactly.

*Roger Burgess, 10/21/08/ Trial Testimony*

Page 71, Lines 9-11.

9. Q. So, along with Thomas Raysor, you had been one of the scribes of the trust funds, correct?

11. A. Correct.

Page 78, Lines 21-25

21. Q. So at that time in March 10, 1965, it was your understanding from Mr. Raysor that the division could do whatever it wanted with the funds, i.e., the building and its investments.

25. A. That's true.

**18. One of the officers of the settlors and a key person in creating the Trust Roger Burgess, stated there was no mistake as to the settlors' intent. The court finds the testimony of Roger Burgess credible.**

*Roger Burgess, 10/21/08 Trial Transcript*

Page 90, Lines 15-24

15. Q. "It is the purpose and intent of the trust funds to be invested and reinvested so as to produce an income to be applied and used for the trust purposes." [Resp. Ex. 1]

At the time of the creation of the trust on March 23<sup>rd</sup>, 1965, was there any mistake in this, in this phrase as this being the restriction on the trust?

21. A. No mistake. The people who did this work are all had graduate degrees at one time or another. They had an excellent counselor in Mr. Raysor and their intents and purposes are very clear throughout the document.

**19. The evidence presented at trial establishes that the Old Board of Temperance and the New Board of Temperance communicated to its donors that the money given to it would be used for temperance and alcohol problems. Moreover, the evidence presented also established that the Boards raised money specifically for its primary work in temperance and alcohol problems.**

Petitioner's Ex. 132, Letter to Mr. James, 1929  
Petitioner's Ex. 138, List of Donations for the Fiscal Year - - June, 1951-  
May, 1952 (Undated)

Respondents' Ex. Nos.:  
34 Annual Report 1939

38 Annual Report-October 1949 p. 4  
" Contributed the services of Mr. Hayward H. Johnson that in addition to  
the value we received in showing the people the evils of the alcoholic  
traffic, resulted in an immediate net cash return to us of \$2,905.29 and  
pledges of \$9,500.00."

52 Quadrennial Report 1916  
54 Quadrennial Report 1924

163 Letter to Rev. Leavitt, August 12, 1932  
164 Letter to Rev. Leavitt, September 2, 1932  
169 Letter to Ms. Marsh, December 21, 1939

*Roger Burgess 10/9/08 Trial Transcript*  
Page 27, Lines 17-25; Page 28, Lines 1-12.

17. Q. Do you know did the Board of Temperance  
ever send people out to give talks about the Cause of  
Temperance?

20. A. Definitely, all the staff would do that from time  
to time. They would be invited to speak at rallies, to  
speak at Conference and District events. And in addition  
at that time we had full-time people who were driving  
around the Church and holding both Seminars and Local  
Church events at which - - giving to the Cause of Temperance

1. and the Board of Temperance was emphasized.

2. Q. So, after these talks were given was money  
solicited from the audience for the Temperance Cause?

4. A. In some cases, that's true. Particularly in what  
was then called the Central Jurisdiction which was the  
Black Churches of the United Methodism and the history  
there was that fund raising for this Cause was important,  
and we had, I think, at least four or five preachers who  
were compensated by the Board of Temperance to visit local  
Churches, Districts and Conferences to raise money as a  
result of their eloquent speaking on the subject which  
would support the work of the Board of Temperance.

Page 11, Line 25; Page 12, Lines 1-20.

25. A. Yes. In the denomination prior to the creation of  
1. what was called the World Service Fund, each General Board  
or Agency would be funded in two ways: First, by monies  
sent from annual conferences - - let's start again. Local  
Churches contribute to the Temperance Movement, those funds  
going to the Conference Boards of Temperance, which carried  
on activities on the conference level and also sent a  
portion of those funds to the Board of Temperance or the  
Board of Missions or the Board of World Peace. And the  
Board of Temperance was rather popular and we received  
rather a large amount of money through that process.

11. Q. So, whatever funds that were left over from the  
National Boards they would send it directly to the Board - -  
I'm sorry, from the Regional Boards that would be sent  
directly to the Board of Temperance?

15. A. That's correct.

16. Q. Do you know what this money was sent to the Board  
of Temperance to do?

18. A. Generally to support the work of the Board of  
Temperance and broadly the Cause of Temperance which was  
very important historically to the Methodist Church.

Page 29, Lines 19-25; Page 30, Lines 1-2; Page 32, Line 25; Page 33,  
Lines 1-3.

19. Q. And how did Bishop Hammacher come to receive so  
many - - so much money from so many people?

21. A. Well, I suspected in the course of his public  
speaking across the church he came to know a lot of people  
and at the time of his - - if he were leading a Temperance  
Rally, let's say, people would often be asked to contribute  
funds for the Board of Temperance and this was a list of an

1. example of those kinds of contributions in this case all  
from individuals.

25. Q. Do you know what Bishop Hammacher did with all of  
1. the money that he received?

2. A. He gave it to the Board of Temperance. He was  
raising it for the Board of Temperance.

**20. Petitioner admitted that funds given to the Old Board and New Board of  
Temperance from 1917-1960 were to be conserved for the exclusive use of work  
that the Old Board and New Board of Temperance did during that time.**

*James Winkler, 10/6/08 Trial Transcript*  
Page 76, Lines 20-25; Page 77, Line 1-6.

20. Q. I'm asking if you remember me asking  
you a question at your deposition and you're responding a

certain way. And so I'll read the relevant portion starting at page sixty: Do you agree that the funds given to the Board of Temperance, using my definition of the Board of Temperance, in 1960 were to be conserved for the

1. exclusive use of the work that the Board of Temperance did during the period of 1917 to 1960. And you responded, yeah, I think that I understand that to be the case. Isn't that how you responded to that question?

5. A. Are you reading from the deposition? Yes, that's how I respond.

**21. Funds were raised on World Temperance Sunday each year to fund the Old Board of Temperance.**

Respondents' Exhibit No. 112 Letter to Rev. Leavitt, 1932

"October thirtieth has been set by General Conference action, as World Temperance Sunday, with emphasis on a great Nation-wide Campaign for total abstinence, and a collection taken by every Church and Sunday School of the M.E. Church, for the cause of Temperance."

**22. The settlors of the Trust intended to preserve the funds of the Old Board of Temperance and the New Board of Temperance for the primary work of those boards, i.e. temperance and alcohol problems.**

*Roger Burgess, 10/9/08 Trial Transcript*  
Page 121, Lines 6-11.

6. Q. Was there any discussion at this meeting [March 23, 1965] about the moral obligations of the members of the Executive Committee concerning why money was given to the Board of Temperance?

10. A. It was a major part of the discussion and a real concern on the part of the participants.

Page 136, Lines 11-25; Page 137 1-11.

11. Q. Reading [Resp. Ex.1]: The Old Board of Temperance has been continued in existence through annual meetings and annual elections in offices in order to make it easy and uncomplicated to receive bequests of old assets and receive donations made out in favor of that Board for work in the area of Temperance and Alcohol Problems. My question: Did I read that correctly?

18. A. Yes.

19. Q. And my question to you is: When you use the language work in the area of Temperance and Alcohol Problems, are you talking about the historic work of the

Old Board of Temperance?

23. A. That is correct.

24. Q. Likewise, the next sentence it holds at the present time titles to securities only which had been given

1. to it over the years through donations, contributions and bequests to support its work in the field of Temperance and Alcohol Problems. Did I read that correctly?

4. A. That's correct.

5. Q. And once again, when we talk about bequests and support in the field of Alcohol Problems, were you talking about the moral obligation there?

8. A. That's correct. It was a reference to the history and the moral obligation of the Executive Committee of the Division of Temperance and General Welfare believed sincerely.

*Roger Burgess, 10/21/08 Trial Transcript*

Page 79, Lines 19-25; Page 80, Lines 21-25; Page 81, Lines 1-5.

19. Q. And the issue of moral obligation and rightness, was that because the settlors of the trust believed that because the primary work of the Old Board of Temperance and the New Board of Temperance was for temperance and alcohol problems, that there was a moral obligation and rightness to preserve those funds to continue that work after a merger?

21. A. It was my opinion certainly that there was a moral obligation to use the funds, the income from the funds which had been given to the boards, the Old Board of Temperance, the New Board of Temperance, for the purpose for which they

1. were given.

They were continuing toward the success of the movement across the church and country to deal with the problems that were created by the use of alcoholic beverages.

Page 93, Lines 23-25; Page 94, Lines 1-3.

23. Q. At the time the division executed the Declaration of Trust, did you believe that the primary reason why donors had contributed to the Board of

1. Temperance was to further the board's work in the area of temperance and alcohol problems?

3. A. Yes.

Page 143, Lines 15-23.

15. Q. So, even if a will bequest had in it that it was

to be given to the Board of Temperance it was the feeling of the Division when they created the Trust that it needed to honor the historic work of the Cause of Temperance?

19. A. That's correct. Many of those gifts were given just because of that phrase the Cause of Temperance or were given because of an individual or even a family were very supportive of the Cause of Temperance and felt that we were on the right track to help families and young people.

**23. Evidence presented at trial established that the settlors of the Trust believed they had a moral obligation to preserve the funds that were given to it for its primary historic work in the area of temperance and alcohol problems.**

Respondents' Ex. 170, Memo from Roger Burgess to Bishop Hardin. 1965.

*Roger Burgess, 10/21/08 Trial Transcript*  
Page 80, Lines 4-5, 21-25; Page 80, Lines 1-5.

4. Q. What was the reason for the moral obligation and rightness?

21. A. It was my opinion certainly that there was a moral obligation to use the funds, the income from the funds which had been given to the boards, the Old Board of Temperance, the New Board of Temperance, for the purpose for which they

1. were given.

They were continuing toward the success of the movement across the church and country to deal with the problems that were created by the use of alcoholic beverages.

**24. Prior to 1960, the New Board of Temperance was concerned that its wealth of funds and income from the Methodist Building would be used for areas other than temperance and alcohol problems by other agencies of the United Methodist Church.**

Petitioner's Ex. No. 38, "Minutes, The Executive Committee, The Board of Temperance of the Methodist Church." 1957.

Respondents Ex. No. 141, Letter from Caradine Hooton to the General Board of Temperance. 1959.

*Roger Burgess, 10/9/08 Trial Transcript*

Page 39, Lines 5-25; Page 40, Lines 1-25; Page 41, Lines 1-9; Page 42, Lines 1-5.

5. Q. What was happening that caused the Board of Temperance - - well, what was item ten about. [Pet. Ex. 38]

7. A. This was prior to the merger of the three Boards, the Board of Temperance, the Board of World Peace and the Board of Social and Economic Relations. The elected members of the Board of Temperance were concerned that if such a merger were to go through the Methodist Building Endowment Fund and the income from the Methodist Building itself might be spread across the three Boards and they wanted to ensure that the Board of Temperance was continued to receive its proper share of World Service dollars and that the resources of the Board, the Endowment Fund would be retained by the Board and the income from that Fund would go to what became later the Division of Alcohol Problems and General Welfare when the Boards merged.

20. Q. What was happening that caused the Board of Temperance to have questions or concerns about the control over their funds?

23. A. There was discussion about the reorganization of the National Boards and Agencies of the Church, and the possibility that the Board, the three Boards I just named

1. would come together under the title Board of Christian Social Concerns, and the feeling on the part of Temperance, elected members was that they had an obligation to retain those funds, that Endowment Fund and use the money for the income, for the work of Temperance and for the Cause to which those funds had been given.

7. Q. Who were the other Boards which the Board of Temperance was going to be merged with?

9. A. The Board of World Peace and the Board of Social and Economic Relations.

11. Q. Why was control over funding a concern for the Board of Temperance?

13. A. Well, as you could imagine when the three Boards came together, first of all, the Board of Temperance had more resources and more income from World Service than the other two Boards did, because it had been a very popular issue for the Church for many, many years. And there was concern that that might be diminished, the amount of money devoted to the work of Temperance, might somehow be diminished that there was a merger of three.

21. There was concern that some of the money might be allocated away from Temperance work, let's say, to World Peace. So the feeling on the part of the group was that,

and it was unanimous, that there ought to be a step taken to make sure that the funds given to the Temperance

1. Movement and the Temperance Cause were retained by the Board and later the Division of Alcohol Problems and General Welfare.

4. Q. Now, was the concern over funding, was that over future funding, was that specifically or exclusively related to World Service Funding or was there a concern about other funds as well.

8. A. Both World Service Funding and funding from the Endowment.

**25. In an effort to ensure that funds belonging to the Old Board and New Board of Temperance would not be diverted to areas other than temperance and alcohol problems, Roger Burgess and others from the New Board of Temperance lobbied the General Conference to insert language into the 1960 Discipline stating, "funds vested in any of the predecessor boards shall be conserved for the exclusive use of the appropriate division of this board and for the specific purposes for which such funds have been given."**

Respondents' Ex. No. 156, "Doctrines and Discipline of the Methodist Church" 1960.

*Roger Burgess 10/9/08 Trial Transcript*

Page 56, Lines 2-25; Page 57, Lines 1-25; Page 58, Lines 1-7.

2. Q. Turning your attention to paragraph fifteen twenty-five of the Exhibit 156.

4. A. I have that.

5. Q. Okay. It's on the fourth page of the Exhibit Number 432 at the bottom. If you can look at paragraph two of that or sub-paragraph two of fifteen twenty-five. Briefly take a look at that?

9. A. Yes, I have.

10. Q. Is that the same language that's quoted in the Declaration of Trust on page three?

12. A. Yes, it is.

13. Q. What role did you play in getting this language inserted in the Discipline in 1960?

15. A. The role on behalf of the Boards, the Senior staff of the Board was to give advice and counsel to the various programs or rather Committees of General Conference. So, I would have had a hand in this. However, more importantly, the representatives, the elected representatives of the Board of Temperance who are now also had been elected delegates of the General Conference would have been the

principal advocates for including this wording in the Discipline because it would have had to have been approved by the Committee of Social Concerns and then it would have to go to the entire General Conference for discussion and

1. action, much like the Legislative powers and process of our own Government.

3. Q. And so you've participated in this process?

4. A. I did participate in the process, yes.

5. Q. Was it important to you that this language be included in the 1960 Book of Discipline?

7. A. Yes. Again, for the purpose for reserving the funds which had been allocated to the Board and which had made up the Endowment for the work of Temperance and assigned to retain by the Board of Temperance.

11. Q. And this was because the Discipline is the Law of the Church.

13. A. That's correct.

14. Q. So, turning your attention back to Respondent Exhibit 1.

16. A. Yes.

17. Q. Was it important that the same language from the 1960 Discipline be quoted exactly as written in the Declaration of Trust.

20. A. Yes. Because the Discipline was the Law of the Church, and, therefore, it was important in establishing this Trust that it indicated that the General Conference and the Discipline had specifically included the words fund-invested in any of their predecessor Boards shall be concerned for the exclusive use of the appropriate Division

1. of this Board meaning the New Board of Social Concerns and for the specific purposes for which such funds had been given. Each of the three Boards had some allocation of funds beyond the World Service. But the Board of Temperance having been much longer in existence and more prominent had a larger amount of the funds in the Endowment.

**26. After 1960 when the New Board of Temperance, The Board of World Peace and the Board of Social and Economic Relations became Divisions under the umbrella of the General Board of Christian Social Concerns, Dudley Ward attempted to access the funds of the Division of Temperance and General Welfare, some of which consisted of funds belonging to the Old and New Board of Temperance, and which eventually formed the corpus of the Trust.**

*Roger Burgess, 10/9/08 Trial Transcript*

Page 40, Lines 7-10.

7. Q. Who were the other Boards which the Board of Temperance was going to be merged with?

9. A. The Board of World Peace and the Board of Social and Economic Relations.

Page 79, Lines 1-16.

1. Q. What was Mr. Ward's position with respect to the Division's Funds, if you know?

3. A. Well, he eyed them with a great interest and took generally a position that those funds should be offered entirely to the Board of Christian Social Concerns and not to just one Division.

7. Q. Did that include the Methodist Building Endowment Fund?

9. A. Yes, it did, particularly that Endowment Fund.

10. Q. Why was he interested in raiding the Division's Fund?

12. A. Well, he could see a responsibility - - his responsibility was these three Divisions, and there were a number of proposals for use of those funds for projects of other Divisions, and his motivation clearly was to have more control over the Endowment Fund.

Page 142, Lines 8-16.

8. Q. Wasn't it the case that Dudley Ward prior to the merger was trying to get at the assets of the Board of Temperance?

11. A. Yes, he was a very aggressive guy, and the concern of the members of the Board of Temperance was that if the Board were merged into a Board in which Dudley Ward was also a principal that he would make an effort to either take over the funds, the Endowment Funds or to use the Endowment Funds for purposes to other than to which they were given.

**27. In 1960 and thereafter until sometime after the Trust was created and fully executed, the three separate agencies comprising the Board of Christian Social Concerns were separate corporate entities and kept their respective assets separate and distinct. After 1960, until the execution of the Trust, the funds of the Old Board of Temperance and the New Board of Temperance were preserved and used exclusively by the New Board, now called the**

**Division of Temperance and General Welfare, for work in the area of temperance and alcohol problems.**

Respondent's Exhibit No. 161, Report of the Board of Christian Social Concerns for Fiscal Year 1965-1966.

*Roger Burgess, 10/21/08 Trial Transcript*

Page 87, Lines 22-25; Page 88; Lines 1-25; Page 89, Lines 1-7.

Q. And is this the document by which, after it was executed on March 23,<sup>rd</sup> 1965, that you abided by its terms and used the income from the Methodist Building and the investments for work in the areas of temperance

1. and alcohol problems?

2. A. Definitely.

3. Q. Prior to the execution of this trust, Exhibit one, on March 23<sup>rd</sup>, 1965, was it the practice of the division to segregate the funds from, the income from the Methodist building and the investments that belonged to the Old Board of Temperance and what was previously known as the Board of Temperance prior to 1960 for alcohol and temperance problems?

10. A. Very diligently.

11. Q. And as the associate general secretary of the division and CEO, were you in charge of how funds were spent and allocated?

12. A. Yes, under direction of the executive committee.

16. Q. And after the merger of the three agencies of the Methodist Church in 1960, I think I believe I understood you previously that Mr. Webster asked you questions regarding the fact that work of the Division of Temperance and General Welfare was expanded from the work of the Board of Temperance, is that correct?

23. A. That is correct.

24. Q. And during that period of time, prior to the execution of the trust in March 23, 1965, from the

1. point of the merger to the execution of the trust, did the Division of Temperance and General Welfare segregate the funds that were generated from the income of the Methodist building and the investments of the Board of Temperance and the Old Board of Temperance in any manner?

7. A. We diligently used those funds only in the field of alcohol problems.

Page 65, Lines 3-19.

3. Q. How were Temperance and Alcohol-related Programs funded after the merger and the expansion of programmatic responsibilities?

6. A. Each of the Divisions received World Service Funds. A good portionment approximately there were in the past, and then we created within our Division a Department of Alcohol Problems, and the funding which came from the Endowment underwrote that particular - - was allocated to that particular department. There was a strong effort to use those funds for the purpose for which they had been given over the years which was the Cause of Temperance and we wanted to be good stewards of those funds. So we established the Department of Alcohol Problems as a department which would be funded by that Endowment.

17. Q. By the Methodist Endowment Fund - - Methodist Building Endowment Fund?

19. A. Correct.

Page 103, Lines 1-10.

1. Court: [W]hatever those issues were, were any of the endowment funds used for those activities, however small?

3. A. Not during my watch.

4. Court: And how do you know, I mean, how do you know that?

6. A. Because we restricted, we restricted the endowment income for use on alcohol, temperance and alcohol problems. And even set up a department that we used those funds for, that in part funded that department.

**27A. Although Bishop White claims the funds were not segregated, his testimony directly conflicts with that of the CEO, Roger Burgess. The more credible evidence is CEO Burgess, who testified at trial and who's testimony is corroborated by budget sheets of the Division at the time the Trust document was executed.**

*Bishop C. Dale White, 10/8/08 Trial Transcript*  
Page 19, Lines 10-18.

10. Q. Did anyone say to you you can only use the funds from the Building Endowment Fund for work in alcohol?

13. A. No, no one ever said that to me.

14. Q. Were you restricted in your application of what you could do by virtue of the fact that you were not

permitted to use the funds from the Building Endowment Fund for any of your programs?

18. A. Never restricted in that sense.

**28. The settlors were aware of the General Board of Christian Social Concerns and specifically Dudley Ward's concerns regarding restrictions on the use and administration of the funds in the proposed Trust document. Despite this fact, they executed the Trust.**

Respondents' Exhibit 179, Letter from Roger Burgess to Executive Committee, Division of Alcohol Problems and General Welfare. January 29, 1965.

Respondents' Exhibit 180, Letter from Roger Burgess to Bishop Hardin, January 22, 1965.

Respondents' Exhibit 181, Letter from Bishop Hardin to Roger Burgess. January 27, 1965.

Respondents' Exhibit 177, Letter from Bishop Hardin to Dudley Ward, February 18, 1965.

Respondents' Exhibit 171, Letter from Dudley Ward to Bishop Hardin, March 4, 1965.

Respondents' Exhibit 170, Letter from Roger Burgess to Bishop Hardin, March 10, 1965.

Respondents' Exhibit 144, Minutes of the Executive Committee Division of Alcohol Problems and General Welfare, General Board of Christian Social Concerns, Methodist Church, March 23, 1965.

*Roger Burgess, 10/9/08 Trial Testimony*  
Page 88, Lines 1-16.

1. Q. Can you please read the first section of this letter? [Resp. Ex. 180]

A. Dudley Ward has now seen the Trust document and has raised the following objections: One, this is not a Division matter alone and should come before the entire Board Executive Committee.

Two, the responsibility for the Trust should be lodged in the Board rather than in the Division.

Three, administration of the Trust should not be spelled out by the title associate general secretary for the Division.

Fourth, the trust should be more broadly drawn to

allow use of the funds for purposes other than alcohol problems.

15. Q. Can you read the first full sentence after that?

16. A. Yes. I have responded to points one, two, and three in exchanged that the Trust clearly spells out what is the existing situation and has been since the 1960 merger.

Page 102, Lines 7-25; Page 102, Lines 1-7.

7. Q. Can you please read the next two paragraphs of this letter? [Resp. Ex. 180]

9. A. In general Dudley Ward argues that the Trust as now drawn is not in keeping with the intent of the General Conference merger action or the present Discipline. I [do not] agree, of course, but I've responded that I do not wish to debate the manner. This is a matter of policy for the Division of the Executive Committee. I'm acting under orders. I will accept gladly any change in those orders which the Division of Executive Committee wishes to make.

17. Q. And the next paragraph, as well.

18. A. As to procedure it would be my recommendation that Dudley be invited to appear before the Division of Executive Committee to present his point of view regarding the document. I would like an opportunity to present my views, as well, then the Division Executive Committee can take over and make the necessary decisions.

24. Q. Mr. Burgess, why do you feel it was important to invite Dudley Ward to the meeting of the Executive

1. Committee?

2. A. Again, this is a good reference to the way in which the Church operated. It was very democratic. It wanted every voice to be heard. It felt it was required courtesy, if you will, that Dudley Ward be invited to express his point of view to the Executive Committee of the Division of Temperance and General Welfare.

Page 120, Lines 7-25; Page 121, Lines 1-5

7. Q. Was the general secretary referred to you in that sentence Dudley Ward? [Resp. Ex. 144]

9. A. Yes, it was.

10. Q. Did he present his views to the Declaration of Trust to the Executive Committee of the Division?

12. A. Yes.

13. Q. Do you know approximately how long? Do you know approximately how long he presented his views?

15. A. Oh, half an hour.

16. Q. Did Mr. Ward present his concern that the scope of

the Trust document should be broadened?

18. A. Definitely.

19. Q. And was there any discussion regarding - - at that time among the Executive Committee regarding the intent of the donors who gave money to the Board of Temperance?

22. A. Yes, you would note in one of the paragraphs began after lengthy discussion there was an effort to be fair and reasonable with regard to the proposals mad by Dudley Ward.

1. Q. Did Dudley Ward ever say at this meeting that he believed gifts to the Old Board of Temperance back in the '20s and '30s were not given to further the Cause of Temperance?

5. A. No, he did not make that suggestion.

**29. The Trust document was fully executed on March 23, 1965 by the Old Board of Temperance and the New Board of Temperance, through Paul Hardin, its Chairman and attested to by Sara J. Clardy, its Secretary, which had legally changed its name to the Division of Alcohol Problems and General Welfare. The Trust was notarized on April 30, 1965.**

Respondents' Ex. 1: "Declaration of Trust, The Methodist Building Endowment Fund" dated March 23, 1965.

Respondents' Ex. 144: Minutes of the Executive Committee Division of Alcohol Problems and General Welfare. Marc 23, 1965.

*Roger Burgess, 10/9/08 Trial Transcript*

Page 130, Lines 3-11

3. Q. Now the minutes - - the motion goes on to say that the president of the Corporation is authorized to execute the same on behalf of the Corporation as its Attorney-in-fact. Who is the president of the Corporation at that time?

8. A. It would be Bishop Harding [sic].

9. Q. And did Bishop Harding [sic] then execute - - or did he execute that Declaration of Trust?

11. A. Yes, he did.

**30. The Bylaws of the New Board as amended in 1960 gave the Executive Committee of the New Board full power to place the assets held by the New Board in trust.**

Petitioners Exhibit No. 5, Page 8, 9

**31. Roger Burgess testified as to the meaning of the term "existing situation" in the Trust. The term "existing situation" as the term is stated in the Trust means that the New Board of Temperance had preserved the funds after 1960 to be used exclusively in the areas of temperance and alcohol problems.**

Respondents' Ex. 1: "Declaration of Trust, The Methodist Building Endowment Fund" dated March 23, 1965.

Respondents' Exhibit 180, Letter from Roger Burgess to Bishop Hardin, January 22, 1965.

*Roger Burgess, 10/9/08 Trial Transcript*  
Page 89, Lines 1-3, 15-25; Page 90, Lines 1-2.

1. Q. Can you please read from the third sentence of the third full paragraph starting with it is the purpose?

15. A. It is the purpose of this Declaration of Trust to formalize the existing situation and to provide a method for the continued management investment, reinvestment and application of the principal and accumulated income for the purpose for which the funds were originally given, that is to say, work in the areas of Temperance and Alcohol Problems.

22. Q. So, is this the same existing situation you referred to in your letter of January 22, 1965? [Resp. Ex. 180]

24. A. Yes.

25. Q. So, with respect to points one, two and three of 1. this letter, that is the existing situation?

2. A. Yes.

Page 93, Lines 6-25; Page 94, Lines 1-2.

6. Q. What does the existing situation as referred to in the Declaration of Trust mean?

8. A. It means the funds that were in the Endowment have been historically the responsibility of the former Board of Temperance and now were continuing by the Discipline to be the responsibility of the Division. And that phrase, the existing situation, refer to the fact that the officers of the former Board and now the Division were the Trustees of the Endowment and the staff person to allocate funds from the income from the Endowment was formally the general secretary, the Board of Temperance and now the associate general secretary was the title, but still CEO of the Division of Temperance and General Welfare, and as I said before, the purpose was clear and that was to keep these funds in Trust to be used for the purposes to which they

were given by a great many people across the Church.

22. Q. So, the existing situation was a matter of control of the funds?

24. A. That was definitely a part of it and a concern that Dudley Ward had because he had asked that we strike

1. the phrase associate general secretary for the Division from the Trust itself.

**32. The Trust was created for the following three reasons: 1) the settlors believed they had a moral obligation to its donors; 2) the settlors did not want the Old and New Board of Temperance's money to be used for areas other than temperance and alcohol problems; and 3) to preserve the primary historic work of the Old and New Board of Temperance.**

*Roger Burgess, 10/9/08 Trial Transcript*

Page 142, Lines 22-25; Page 142, Lines 1-14.

22. Q. And after 1960 and after the departure of Dr. Hooten did Dudley Ward then again try to get at the assets of the Board of Temperance?

25. A. That was a continuing effort on the part of the  
1. new general secretary, in those days, Christian Social concerns.

3. Q. Was this one of the reasons why the Division of Temperance and General Welfare felt that they had to create a Trust document to memorialize?

6. A. That was certainly one of the most important reasons, but the other reason, of course, as I've said repeatedly was to keep the faith with the people who gave those fund over a period of time and these were individuals and organizations and people remembering the Board of Temperance in their will. All of which it was understood that it was given to the Cause of Temperance and they felt we really had to restrict these funds to make them useful for that particular program of the Church.

**33. At some point in time after the execution of the Trust, Dudley Ward challenged the Division's authority and proposed modifications to the Judicial Council of the Methodist Church. The Judicial Council never reached a decision.**

Petitioner's Ex. Nos.:

59 Minutes of the Meeting of the Executive Committee of the Board of Christian Social Concerns. March 24, 1965.

262 Minutes of A.M. Meeting of the Executive Committee. October 18, 1965.

263 Minutes of P.M. Meeting of the Executive Committee. October 18, 1965.

264 Minutes of the Bd. Ch. Soc. Con. October 18, 1965.

*Roger Burgess, 10/9/08 Trial Transcript*

Page 160, Lines 21-25; Page 161, Lines 1-15.

21. Q. The action taken by the Board of Christian Social Concerns is shown on page eleven. [Pet. Ex. 59] The motion was carried to request a ruling from the Judicial Council on the intent of paragraph fifteen twenty-five of the 1964 Discipline. Bear in mind this is 1965. And were

1. you there present when that motion was carried?

2. A. Yes.

3. Q. And is it accurate as reflected in these minutes that it was carried?

5. A. I'm sure it was carried.

6. Q. Now - - and you've told us what the Judicial Council is?

8. A. Yes.

9. Q. It is an Agency of the Church?

10. A. It is the Supreme Court of the United Methodist Church.

12. Q. Are you aware of the fact, sir, that no decision was ever made by the Judicial Council pursuant to this reference?

15. A. That is my understanding.

Page 165, Lines 19-25; Page 166, Lines 1-10.

19. Q. My question immediately before was do you know why the Judicial Council never decided that matter referred to it, whatever it was, and your answer is you really don't know why?

23. A. No, I do know why. You have refreshed my memory. The question of whether the Judicial Council would favor the position of the Division of Temperance and General

1. Welfare or the position of Dudley Ward was discussed at some length probably after the Board meeting. It turned out there seemed to be some general agreement that it would be a fifty/fifty proposition, and, therefore, it was my understanding at the time that Dudley Ward did not pursue it further and it was allowed to kind of fade away.

**34. In October 1965, Bishop Hardin and Dudley Ward discussed modifying the terms of the Trust as to the control or oversight of the funds. However, there is no executed document modifying or amending the Trust.<sup>2</sup>**

Petitioner's Ex. Nos.

262 Minutes of A.M. Meeting of the Executive Committee. October 18, 1965.

263 Minutes of P.M. Meeting of the Executive Committee. October 18, 1965.

264 Minutes of the Bd. Ch. Soc. Con. October 18, 1965.

*Roger Burgess, 10/21/08 Trial Transcript*

Page 32, Lines 23-25; Page 33, Lines 1-3, 24-25; Page 34, Lines 1-7.

23. Q. [W]ell, down at the bottom of page one [Pet. Ex. 263] when, when the executive committee of the division got to the trust fund proposal, the chair reported that he

1. has been in conference with Dr. Ward. That's Dudley Ward, right?

3. A. Right.

24. Q. In that proposal, Dr. Ward will recommend to the general executive committee that the

1. words "by the board" be deleted from the proposed new discipline. And that a staff treasurer be elected.

Then this division would agree to the enlarged representation on the board of trustees as proposed by the general secretary. The general secretary was Dudley Ward, correct?

7. A. Correct.

**35. No governing documents of the Old Board or New Board of Temperance prevent the Old Board or New Board of Temperance from entering into the Trust. No evidence was presented at trial which could prevent the Old Board or New Board of Temperance from entering into the Trust. The Court finds that the Bylaws of the New Board of Temperance authorize the Executive Committee of the New Board of Temperance to encumber the assets of the New Board of Temperance as a charitable trust.**

Petitioner's Exhibit Nos. 3 and 5.

**36. Petitioners introduced no evidence at trial as to what the intent of the settlors at the time of the formation of the Trust would have been, if there was a mistake of fact or law that warranted reformation.**

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<sup>2</sup> Even if such a modification or amendment had occurred, it would be unenforceable as the Trust document itself did not reserve the right to amend or modify the Trust. *In re Durosko Marital Trust*, 862 A.2d 914 (D.C. 2004).

### CONCLUSIONS OF LAW

Based upon the findings of facts, the testimony at trial, the exhibits admitted into trial, and the record before the Court, Respondents respectfully request that the Court reach the following conclusions of law:

**1. This Court has jurisdiction over the parties and subject matter of this action.** D.C. Code § 13-422, D.C. Code § 19-1301.10(c), D.C. Code § 19-1304.15, and Rule 208 of the Rules of this Court.

**2. The language of the Trust is unambiguous.** Court Order, dated January 18, 2008, at page 6.

**3. The trust document restricts the funds' usage to matters relating to the abstinence from alcohol – a commonly understood meaning of “temperance” – and to other alcohol problems.** Court Order, dated January 18, 2008, at page 6.

**4. An unambiguous trust document is entitled to a strong presumption that it is correct.** Restat 3d of Prop: Wills & Other Donative Transfers, § 10.2 i. Standard of proof – ambiguous and unambiguous documents. In re Durosko Marital Trust, 862 A.2d 914, 921 (D.C. 2004)

**5. The Court may reform the terms of a trust to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the**

settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement. D. C. Code § 19-1304.15 (2004).

6. **The intent and purpose of the settlor at the time the trust gift was established is the law of the trust.** In re Durosco Marital Trust, 862 A.2d at 921, *citing* Albright v. United States, 308 F.2d 739, 743 (5<sup>th</sup> Cir. 1962).

7. **It is well established that in construing a trust the court will endeavor to determine and to effectuate the ideas and purposes of the settlors at the time the trust gift was established.** In re Durosco 862 A.2d at 23 (*citing* Petition of U.S. on Behalf & for Benefit of Smithsonian Instit., 485 F. Supp. 1222, 1225 (D.D.C. 1980)) (*citing* Smith v. Bell, 31 U.S. 68, 6Pet. 68, 8 L.Ed. 322 (1832)).

8. **The standard of clear and convincing evidence is an intentionally elevated one.** Blackson v. United States, 897 A.2d 187, 195 n.12 (D.C. 2006).

9. **Unlike the preponderance standard, which simply requires the fact finder to believe that the existence of the contested fact is more plausible than its nonexistence, the standard of clear and convincing proof requires evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.** In re Dortch, 860 A.2d 346, 358 (D.C. 2004).