

MEMORANDUM

April 9, 2007

To: House of Bishops

From: Task Force on Property Disputes

Re: Connecting the Dots

Introduction

The House of Bishops Task Force on Property Disputes (Task Force) was formed at the Spring, 2006 meeting of the House at Kanuga. It consists of the following episcopal members: Mark Andrus, Charles Bennison, Jon Bruno, Philip Duncan, Mark Hollingsworth, John Howard, Jim Mathes, Bill Persell, Stacy Sauls, Kirk Smith, and Dean Wolfe.¹ It was originally chaired by Bill Swing and has been chaired by Stacy Sauls since Bill's retirement. The bishop members are advised by 19 lawyers, all serving as volunteers.

The March, 2006 Executive Council meeting allocated \$100,000 to fund the work of the Task Force. The Church Pension Group has contributed another \$25,000. To date, no funds have been expended, despite a considerable amount of work done by the members of the Task Force. All fees, legal expenses, meeting costs, travel costs, and telephone conference-call costs have been donated by the members and lawyers of the Task Force out of devotion to The Episcopal Church (TEC).

The Task Force has accomplished a significant amount of work. It has conducted extensive research, compiled a research bank for relevant materials, and has met on a regular basis, almost entirely by conference call. It has also met twice in person, once when it organized itself as an ad-hoc group, in December, 2005, and again with the then Presiding-Bishop Elect in July, 2006. The Task Force has furnished suggestions to the Presiding Bishop covering legal issues, pastoral concerns, and public relations matters. It has consulted regularly with the Presiding Bishop's Chancellor. It has advised, and it remains willing to advise, Bishops and others seeking to further the Task Force's goal of preventing the removal of property from TEC.

The Legal Lay of the Land

TEC is dealing with a well-thought-out, well-organized, and well-funded² strategy designed to enable and justify the removal of assets from use for the Church's mission

¹ Bishops Bennison, Bruno, Hollingsworth, Howard, Persell, Sauls, and Wolfe were appointed to the Task Force by the Presiding Bishop. Bishops Andrus, Duncan, Mathes, and Smith have volunteered their assistance.

² The Task Force has not explored funding issues as of yet. Funding, including the involvement of the Institute for Religion and Democracy, is addressed in "Following the Money" available at http://www.edow.org/follow/Following_the_money.pdf. The Task Force has prepared and proposed a plan for funding the defense of attempts to remove property.

and ministry in the world. To understand the strategy, it is necessary to have a basic understanding of the legal principles, civil and canonical, that form the backdrop for the strategy.

There are two rules for determining church property disputes in the United States, which, for the most part, are determined under state law rather than federal law.

A. Deference to Hierarchical Authority Rule—Some courts defer to hierarchical denominations, such as TEC, to determine which local faction to recognize as properly in possession of congregational property.

B. Neutral Principles of Law Rule—Some courts analyze the underlying instruments or instruments by which title was conveyed to the record owner of the congregational property, along with any documents that create a possible trust relationship with respect to such property, as well as other facts, such as the way the parties have behaved historically with respect to property ownership.

Since TEC has been recognized by courts as a hierarchical church, TEC's determinations should be dispositive in those states which defer to denominational hierarchies. On the other hand, in states that apply the neutral principles of law rule, a departing congregation would still have to overcome the Canon I.7.4 and II.6.4 of the Constitution and Canons of the Episcopal Church (2006), which declare that all parish property is held in trust for both the relevant diocese and TEC.³

Those seeking to remove property from TEC hope to create confusion as to the nature of the hierarchy of TEC by claiming that its authority is subservient to the Anglican Communion. They hope to be able to argue that a departing faction is recognized by a competing hierarchical authority within the Anglican Communion. They either will urge the court to refrain from choosing between competing hierarchies and picking winners and losers or they will claim that they are acting under the authority of some other body that is within the Anglican Communion as a higher authority to TEC. This is why they have pointed to the Preamble to TEC's Constitution. As amended in 1967 as a compromise over the issue of whether to retain the word "Protestant" in the name of TEC, the preamble declares, in pertinent part: "The Episcopal Church . . . is a constituent member of the Anglican Communion, a Fellowship within the One, Holy, Catholic, and Apostolic Church, of those duly constituted Dioceses, Provinces, and regional Churches in communion with the See of Canterbury, upholding and propagating the historic Faith and Order as set forth in the Book of Common Prayer."

The history of this change in the Preamble makes it clear that it was not intended to make TEC subject to any other Anglican decision-making body. There is also no doubt that the Preamble was intended to be descriptive rather than prescriptive. In addition, it is well recognized in constitutional law that prefatory materials, such as a preamble, are not authoritative law. Still, those seeking to undermine the rights of TEC to local church

³The Diocese of Pittsburgh passed a resolution in 2003 purporting to nullify Canons I.6.4 and II.7.4.

property have shown that they intend to use the Preamble’s language in future litigation over church property.⁴

Therefore, in those states that defer to the hierarchical denominations, the court will have to determine the identity of highest decision-making body in the denomination.⁵ Those seeking to undermine TEC, will contend that it is not the General Convention, but some structure within the Anglican Communion whether it is the Primates Meeting, the Anglican Consultative Council, the Lambeth Conference, the Archbishop of Canterbury, or perhaps something else. They might also debate what authority represents the top of Anglican hierarchy in the United States (*e.g.*, Is it the one represented by the General Convention, and the Primate of which is Katharine Jefferts Schori, or is it the one that we now know as the Anglican Communion Network?).⁶

Connecting the Dots of the Strategy to Remove Property

The strategy with which we are confronted is well-documented. It was, conceptually, formed very soon after the close of the 2003 General Convention and contemporaneously with the formation of the Anglican Communion Network.

A. The *Pittsburgh Tribune Review* Interview—October 7, 2003 (Appendix A)

Newspaper report entitled “Episcopal Meeting Tackles Controversy” quoting Bishop Duncan regarding the Anglican Communion Network as the *bona fide* Episcopal Church.

B. The Mainstream Meeting—November 20, 2003 (Appendix B)

We do not know what Bishops attended this meeting except that the notation at the top of the minutes is in Bishop Duncan’s handwriting, but the typed minutes from this meeting pledge the participants to:

- “Tell +Rowan that if he will not recognize the Network [the Global South Primates] will separate from him,”
- “Declare that in the present crisis the issue of boundaries is suspended,”
- Form a “Network of Confessing Dioceses and Parishes . . . established in good faith with our Constitution . . . [with] Bob Duncan, Bishop of Pittsburgh, as Moderator Bishop,” and
- Commit to wage the “guerilla warfare of the next year.”

⁴The provision in TEC’s Preamble is rare in the constitutions of Anglican Provinces (Norman Doe, *Canon Law in the Anglican Communion* (Oxford: Clarendon Press, 1998) p. 341). A similar provision was recently removed from the Constitution of the Anglican Church of Nigeria.

⁵Action by some dioceses, including Quincy (predating 2003), Pittsburgh, Dallas, Ft. Worth, and San Joaquin, to remove the accession clause required by the Constitution of TEC (Art. V, Sec.1) might be advanced to obscure the hierarchical nature of TEC.

⁶The Anglican Communion Network asserts that it is intended to operate only within the Constitution and Canons of TEC, a claim which takes on a considerably different meaning if the Network should claim actually to be TEC, exclusive of non-Network parishes and dioceses.

C. The Blankingship E-Mail—December 9, 2003 (Appendix C)

This email from Hugo Blankingship, the Chancellor of the Network, to Bishop Duncan, the Moderator of the Network, reports on a meeting between Blankingship and John Rees, the Archbishop of Canterbury’s legal advisor (equivalent to a Chancellor in TEC), and reports that Rees “simply won’t listen to anything but our staying in ECUSA.”

D. The Chapman Memo—December 28, 2003 (Appendix D)

The Chapman Memo has been well-publicized and has never been repudiated by the Anglican Communion Network. It provides details of a strategy that was virtually completely formed by this point.⁷ At the outset, it declares: “Our ultimate goal is a realignment of Anglicanism on North American soil,” which “[w]e believe in the end should be a ‘replacement’ jurisdiction with confessional standards.” Chapman notes that “[w]e seek to retain ownership of our property as we move into this realignment.” According to the memo, the realignment is to be accomplished through a two-stage strategy.

“Stage 1 will feature ‘spiritual realignment’ while remaining within the letter of current canons,” and will allow those participating “to keep clear use of their buildings for the foreseeable future.”

The memo says that it would be during Stage 2, which was to be launched “at some yet to be determined moment, probably in 2004,” that the Network or those associated with it would “seek, under the guidance of the Primates, negotiated settlements in matters of property, jurisdiction, pastoral succession and communion,” adding, however: “If adequate settlements are not within reach, a faithful disobedience of canon law on a widespread basis may be necessary.”

The Chapman Memo goes into considerable detail in discussing the development and implementation of the strategy to use “offshore” bishops and a variety of practical, political, and financial issues for implementing the strategy.

E. The Barfoot Memorandum—March 3, 2004 (Appendix E)

This memorandum, which followed the Chapman Memo by just slightly more than two months, sets forth a proposed “process and protocol for establishing Overseas AEO as an interim stage on the way towards the realignment of Anglicanism in North America

⁷ It bears noting that at the very time the Chapman Memo was circulated in secret, the assistant to Geoff Chapman, its author, was a man named David Brannen, a priest who had interviewed, signed a contract to purchase a house, and accepted a call from by St. John’s Church in Versailles, Kentucky without the Bishop’s knowledge, and who at first refused to be interviewed by the Bishop. When the Bishop eventually declined to approve the call, three events followed in rapid succession: half the congregation of St. Johns left to form St. Andrew’s Anglican Church; Bishop Duncan transferred David Brannen to the Province of Uganda; and David Brannen accepted a call to be the Rector of the new Ugandan congregation, exactly as the Chapman Memo suggests should happen. The same strategy has subsequently been followed in several other dioceses.

and the reestablishment of biblically orthodox faith as normative in North American Anglicanism.”

It lays out a three-phase strategy to be followed in seeking and obtaining, “offshore” oversight, beginning with steps to be undertaken in selecting an offshore diocese with the assistance of the Council of Anglican Provinces in Africa (CAPA). Various contingencies are discussed, including what actions in response might be expected from TEC, how recommended courses of action would differ depending upon whether the parish owns property, etc.

It details a plan to remove priests to the oversight of foreign bishops and primates as a matter of formality while substantive oversight would be delegated to the Network.

F. The *Living Church* Interview—April 27, 2005 (Appendix F)

This interview of Bishop Duncan includes his summary of the strategy to become a replacement jurisdiction by claiming “to be, constitutionally, The Episcopal Church.”

G. The Request to the Global South Primate for Alternative Primate Oversight—November 6, 2006 (Appendix G)

This document was released publicly two days prior to a requirement to produce it pursuant to court order in *Calvary Episcopal Church v. Duncan*, Prothonotary Court for Allegheny County, Pa. (GD03020941). It is the Diocese of Pittsburgh’s request to the Global South primates for Alternative Primate Oversight and explicitly seeks assistance in property disputes under a section entitled “Cover” while a separate ecclesiastical structure is formed. In addition, the document details what duties of the Presiding Bishop should be delegated to a Primate Vicar under any such pastoral scheme.

H. The Bishop’s Address to the 47th Annual Convention of the Diocese of San Joaquin—December 1, 2006 (Appendix H)

This document is listed out of chronological order because it is necessary to identify the Westfields Response, discussed below. Bishop Schofield describes a Global South Steering Committee consisting of “John Chew,⁸ Archbishop of Singapore; Drexel Gomez⁹ of the West Indies and the Caribbean; Gregory Venables, Primate of the Southern Cone, South America, and a [*sic*] three Archbishops from Africa, including Peter Akinola of Nigeria as Chairman.” Bishop Schofield also asserts that representatives of 10 American dioceses met in Virginia and submitted to the authority of the Steering Committee.

Speaking at a deanery meeting on November 21, 2006, Bishop Schofield further described the commitment to the Global South Steering Committee in these words:

⁸ Archbishop Chew is a member of the Covenant Design Group for the Anglican Communion.

⁹ Archbishop Gomez is the chair of the Covenant Design Group for the Anglican Communion.

And then we were asked whether or not we would sign a document submitting to the authority of the Primates and we had to give serious consideration as to what that might be. And everyone present at the conference, which included Bishops, presidents of standing committees, chancellors, and other counselors—all signed that document.

I. The Westfields Response—November 16, 2006 (Appendix I)

This appears to be the document (perhaps incomplete) described by Bishop Schofield. The copy attached as Appendix I is signed by Bishop Duncan, Robert G. Devlin (Chancellor of the Diocese of Pittsburgh), and John M. Heidengren (President of the Standing Committee of the Diocese of Pittsburgh). There is significant blank space between the signatures.

J. Bishop Duncan’s Pastoral Letter—March 9, 2007 (Appendix J)

This pastoral letter was sent to “all who are part of the Anglican Communion Network or are allies in its welfare” with the request that it be read to congregations by all Network priests on March 11 but not published until March 12, 2007. It describes the Network’s understanding of the Dar es Salaam communiqué as creating an ecclesiastical structure not accountable to TEC.

Conclusion

The Task Force has obtained and reviewed a broad array of other significant documents that relate to the strategy for removing property from TEC and that, in some cases, explicitly describe, often in considerable detail, elements of and reasons for that strategy. Those mentioned here are sufficient to clearly establish the essential nature of the strategy being followed.

As a concluding note, it has occurred to many in the Task Force that it may have been misnamed. In truth, the matters that the Task Force has found it necessary to address are much larger than mere property disputes. Experience has shown that, at the root of every property issue, there is an issue of identity and integrity, and not merely an issue of polity.

In reality, it is the church “homes” of countless loyal Episcopalians, the legacy of countless Episcopalians, past and present, and the spiritual well-being of those who always have found immeasurable comfort in their church homes, that are at issue as well as the nature of TEC and Anglicanism. The strategy at play must be revealed and understood if we are to protect the faithful from having their places of worship, and the assets accumulated by generations of Episcopalians, removed from them and removed from their use in the mission of TEC.