

**THE PROTESTANT EPISCOPAL CHURCH
IN THE UNITED STATES OF AMERICA
BEFORE THE COURT FOR THE TRIAL OF A BISHOP**

The Protestant Episcopal Church in the United States of America,	:
	:
Complainant,	:
	:
v.	:
	:
The Right Reverend Charles E. Bennison, Jr.,	:
	:
Respondent.	:
	:

**THE RIGHT REVEREND CHARLES E. BENNISON'S MEMORANDUM IN
RESPONSE TO THE COMPLAINANT'S SENTENCING STATEMENT**

Pursuant to Canon IV.5.27 of the Rules of Procedure of the Ecclesiastical Trial Courts and the Court for the Trial of A Bishop, the Right Reverend Charles E. Bennison, Jr. (hereinafter "Charles Bennison" or "Bishop Bennison"), by and through his counsel, Christie, Pabarue, Mortensen, and Young, A Professional Corporation, submits this memorandum in response to Complainant's sentencing statement.

I. Introduction

The Church Attorney's demand that Bishop Bennison be deposed as punishment for the Court's finding is nothing short of shameful and hypocritical, and confirms the worst fears of many in the Church, namely that this entire process has been engineered and motivated, not primarily out of a desire to assist victims of clergy sexual abuse, but rather to rid one diocese of a Bishop with whom some of its members are in conflict.¹ Deposition is such a lop-sided

¹ See the article attached as Exhibit A from The Living Church entitled "Show Trial is Not Justice".

punishment for the conduct which Bishop Bennison is judged to have engaged in that all Bishops, priests and deacons in this Church ought to fear potential deposition. The Complainant's submission with the sentencing memorandum of prejudicial statements by the Presiding Bishop and Standing Committee of the Diocese of Pennsylvania is in such violation of the Canons, moreover, as to require the Court's declaration of a mistrial in this case.

II. Argument

- A. **The Presiding Bishop's recommended sentence in the Complainant's Sentencing Statement, violates the intent of the Canons, should not be considered when the Trial Court decides a sentence, and has so prejudiced the Court already that a fair sentence is impossible, requiring the Court to declare a mistrial.**

The Presiding Bishop's statement on Pg. 11 of the Complainant's Sentencing Statement regarding the sentence that should be imposed on Bishop Bennison is unprecedented, uncanonical and highly prejudicial. The Presiding Bishop's recommendation on the sentence should be stricken and not considered by the Court because she and other persons in the Office of the Presiding Bishop, particularly her Executive Director of the Office of Pastoral Development of the House of Bishops, have sought to have Bishop Bennison removed, not because of the charges in the Presentment, but because of conflict in the Diocese of Pennsylvania for years prior to this Presentment and trial. Furthermore, the statements of the Presiding Bishop, by virtue of her office, will be given undue weight in a sentencing process. This combination of undue weight and lack of impartiality ascribed to the Presiding Bishop's comments makes it wholly unfair and prejudicial to Bishop Bennison for the Court to take her

and the Office of Pastoral Development should result in the declaration of a mistrial and reversal of judgment.

One of the basic tenants of the Canons is the impartiality of the Court and the right of the Respondent to receive a fair trial. This is expressly provided throughout the Canons. Canon IV.5.5(a) states:

No Judge shall sit as a member of a Court who is a Complainant, or is related to the Respondent, or is related to the Respondent or Complainant by affinity or consanguinity, or who is excused pursuant to Canon IV.14.13; nor shall any Judge sit who, upon objection made by either party for any reason, is deemed by the other members of the Court to be disqualified.

Canon IV.14.13 provides:

- (A) Any Bishop exercising authority as provided in this Title shall disqualify himself or herself in any proceeding in which the Bishop's impartiality may reasonably be questioned...
- (B) Any member of any Diocesan Review Committee, Review Committee, or any Ecclesiastical Court provided for in this Title, shall disqualify himself or herself in any proceeding in which the member's impartiality may reasonably be questioned.

Furthermore, the Canons provide for the role of the Presiding Bishop during the sentencing phase. The Presiding Bishop's role is not to recommend a sentence but rather to pronounce the sentence as it has been adjudged by the Court alone. The Presiding Bishop's recommendation as to sentencing oversteps the bounds of her role as specifically enumerated in the Canons. See Canon IV.12.10, Article IX of the Constitution, and Canon III.12.7(b).

Fundamental to the concept of a fair trial is the requirement that a defendant or respondent should be able to face his or accuser or complainant in Court. Under Canon IV.5.27, only "the Respondent, Church Attorney, each Complainant, and Victim have had a reasonable

opportunity to offer matters in excuse or mitigation or otherwise comment on the Sentence” – as has the Presiding Bishop. Clearly, she is not the Respondent, Church Attorney, or Victim. In submitting her recommendation to the Court, is she claiming to be the Complainant? Only then would she, under Canon IV.14.9, have a right to influence the Trial Court. And, if so, why was she not at the Trial to face Charles Bennison as his accuser? Therefore, if she is not the Complainant, then her statement is in violation of Canon IV.5.27 and Canon IV.14.9.

Another important tenants of the Canons is that of impartiality of the Court. If there is any suggestion or hint of partiality by the Court any confidence in the Respondent’s right to a fair trial would be shattered. The conduct of the Presiding Bishop and her office, both before trial and at sentencing has made it nearly impossible for the Court to remain impartial.

The Presiding Bishop and her Office have had a role in attempting to remove Bishop Bennison for a number of years for reasons wholly unrelated to the charges of conduct unbecoming a member of the clergy. In February 2006, under the guise of attempting to mediate a resolution of conflict in the Diocese of Pennsylvania, Bishop Clay Matthews of the Office of Pastoral Development, an office under the control of the Presiding Bishop, facilitated a meeting in Philadelphia with members of the Standing Committee and others who had differences of opinion with Bishop Bennison over various diocesan issues. During the day of the meeting, Bishop Matthews advised Bishop Bennison to resign and warned him not to be too tenacious. When Bishop Bennison refused to resign, Bishop Matthews publically announced that the Standing Committee should hire, at diocesan expense, an attorney to effect Bishop Bennison’s removal. It is remarkable that the Office of Pastoral Development, which was established to provide *assistance* to bishops in their roles, could so publically undermine the authority of a

sitting bishop. Bishop Matthews' actions clearly led to even more conflict within the Diocese of Pennsylvania.

During 2006 and 2007, the Presiding Bishop four times requested that Bishop Bennison step down as Bishop of Pennsylvania due to conflict within the Diocese. When Bishop Bennison would not agree to resign, the Presiding Bishop made the unusual decision to inhibit Bishop Bennison from exercising his ordained ministry, not because she determined that the Presentment against him indicated that there was a danger to the Church, but to provide the diocese with, in her words, a "cooling off period." The decision by the Presiding Bishop to inhibit Bishop Bennison and her repeated demands for him to resign are proof positive that either she had pre-determined Bishop Bennison's guilt before the canonical process had even begun or had determined to wield the canonical disciplinary process as a weapon to effect his removal from office.

Shockingly, through discovery during the trial, we learned that, far from simply forwarding material to the Review Committee for evaluation as to whether charges should be brought, the Presiding Bishop's Office, with the assistance of the Standing Committee of the Diocese of Pennsylvania, had undertaken a number of steps to stack the deck in favor of the charges and conviction. At trial, Bishop Richards, Bishop Clayton Matthews' predecessor, once removed, in the Office of Pastoral Development, testified that Bishop Matthews contacted him approximately six months *before* the Presentment was issued to determine if he would be willing to testify as an "expert" against Bishop Bennison at trial. See Trial Testimony of Bishop David Richards, May 28, 2008, Pgs. 58-61. Furthermore, Bishop Richards testified that prior to the trial, at a meeting in Miami, the Presiding Bishop told him how "important" his testimony would be to the Church. See Trial Testimony of Bishop David Richards, May 28, 2008, Pgs. 68-69.

David Booth Beers, the Presiding Bishop's Chancellor, represented Bishop Harold Hopkins, Bishop Matthews' immediate predecessor in the Office of Pastoral Development, at Bishop Hopkins' pre-trial deposition. Maggie Thompson stated in her deposition that in May or June 2006 she also was contacted by Bishop Matthews about an April 1979 letter written by Charles Bennison. See Trial Testimony of Maggie Thompson Vol. III, June 11, 2008, Pg. 667. This letter was ultimately used by the Church in the Presentment to support the charges that were brought against Bishop Bennison.

It has become clear that the Presiding Bishop's office was working behind the scenes of the canonical process to ensure that Bishop Bennison would face trial. The Presiding Bishop herself revealed that she had prejudged this case when she met with Maggie Thompson in 2007. During her deposition Maggie Thompson testified proudly about the Presiding Bishop's comments stating:

She said she was pleased to meet me. She thanked me for my efforts. She said she was sorry that it had taken so long for there to be action on the case.

See Maggie Thompson Deposition Pg. 283.

From this statement and the actions of members of her staff and their predecessors it is manifestly evident that the Presiding Bishop was working to oust Bishop Bennison from office even before the trial. Indeed, members of her staff took steps to ensure a Presentment and trial would ensue. Because of the role of the Office of the Presiding Bishop in bringing charges against Bishop Bennison, this Court's consideration of any recommendation that she makes regarding a sentence calls into grave question the fairness of the sentencing process. To now consider the Presiding Bishop's recommendation on the sentence after her office and that of her

sentence under the canonical disciplinary process. Such interference and intervention from the Presiding Bishop's office should have no part in the trial or the sentencing process and the only possible decision open to the Court, at this point, is to declare a mistrial.

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requested the attendance and testimony of Rev. Wood at trial, he once again refused to appear. To now allow the Standing Committee to submit a Resolution on sentencing and hurl unsubstantiated allegations at Bishop Bennison when it has thumbed its nose at the Court and the canonical disciplinary process would be an abomination. How can a Standing Committee, whose members flagrantly refused to participate and provide testimony at deposition and at trial, now have the audacity to recommend that Bishop Bennison be deposed?

The Standing Committee's Resolution not only recommends the sentence of deposition, but includes a section entitled "Summary of Conduct of Bishop Bennison in the Diocese of Pennsylvania." Given the long-standing and well-known animosity the Standing Committee has expressed to the Bishop, it is not surprising that they are seeking his ouster. However, the scurrilous allegations regarding Bishop Bennison's handling of sensitive pastoral matters is highly offensive to the entire canonical process. The Standing Committee's Resolution summarily alleges five situations where they feel that Bishop Bennison "ignored Title IV and essentially covered up serious misconduct by a number of priests." As an initial matter, these situations do not pertain to any of the allegations in the Presentment, and thus have no bearing whatsoever on *this* sentencing process. Further, there is absolutely no factual support for any of these vague allegations. No names or dates were provided. One can assume this information was not included precisely so that no investigation could be conducted as to the truth of these allegations.

No wrongdoing has ever been alleged by the Church against Bishop Bennison regarding his handling any of the situations listed in the Resolution. If there were any substance to any of the allegations in the Resolution, surely the Standing Committee would have found a way to bring charges, as they surreptitiously did in this case and attempted to do in another charge

which the Presiding Bishop forwarded to the Title IV Review Committee and which the Review Committee dismissed as being without merit in June 2008. Contrary to their actions, the Standing Committee's role is not that of prosecutor to gather intelligence and decide, with limited information, whether Bishop Bennisson should be charged with violating the Canons. Indeed, if that were a Standing Committee's role, it would be impossible for any Bishop of a Diocese in this Church to fulfill the responsibilities of his or her office. Although the Standing Committee of the Diocese of Pennsylvania seems to excel at "Monday morning quarterbacking" on all matters pertaining to Bishop Bennisson, the Court should not dignify that behavior by paying heed to the Standing Committee's submission.

The Standing Committee's actions have been un-canonical, cowardly, disgraceful, and have brought disrepute upon the Church. According to the canonical definition of "conduct unbecoming a member of the clergy", its five clergy members are guilty of such and should be charged accordingly. Hiding behind the doors of secrecy and refusing to testify at trial are evidence of disrespect for the Ecclesiastical Court. This group, which has been working behind the scenes for years to discredit and remove Bishop Bennisson because of their own agenda, has never publically acknowledged their role in the charges that were brought against Bishop Bennisson, and has steadfastly refused to participate in the trial. Accordingly, it should have no voice in the imposition of a sentence.

This smear campaign, designed by the Standing Committee, is wholly improper, and should not have been presented to the Court in determining the appropriate sentence. Unfortunately, the inclusion of the statement by the Church Attorney has already prejudiced the Court to such an extent that no sentence, whatever it may be, could be regarded as fair, unbiased, and canonically proper. The only reasonable decision the Court can make is to declare a mistrial.

C. The Complainant's sentencing statement itself is rife with inaccuracies and mischaracterizations of Bishop Bennison's testimony at trial.

Throughout the Church Attorney's sentencing statement there are citations to Bishop Bennison's testimony without the proper context to enable the Court to fully understand the testimony. This tactic of taking selective "snippets" from testimony and documents out of context has repeatedly been used by the Church Attorney in the Presentment and at trial. Although the Court was obviously present for the testimony and can review the transcript for itself, we take this opportunity to point out the true context of Bishop Bennison's testimony regarding certain critical issues.

As support for its recommended sentence, Section A of the Complainant's sentencing memorandum states that Charles Bennison did not help Martha when he saw her alone with his brother in a classroom. Instead, he "turned bright red, turned on his heel and left." This insinuates that Charles Bennison came upon clear evidence of an abusive situation and did nothing to stop it. However, the true and complete testimony of both Charles Bennison and Martha Alexis does not support that insinuation. Charles Bennison testified that he had no recollection of the two incidents that Martha described. He testified that even if John and Martha were alone in the classroom together, this would not come as a surprise to him. See Trial Testimony of Charles Bennison, Vol. III, June 11, 2008, Pg. 794. Between 1971 and 1975, the time period when Martha was part of the Church youth group, Charles Bennison stated that he never witnessed anything inappropriate about the relationship between Martha and John. See Trial Testimony of Charles Bennison, Vol. III, June 11, 2008, Pg. 793. He saw Martha as someone "who was often at the Church helping out with the youth ministry." See Trial Testimony of Charles Bennison, Vol. III, June 11, 2008, Pg. 793. Furthermore, even Martha Alexis testified that she was fully clothed at the time Charles Bennison apparently walked in on

