

Minutes

White & Dykman Subcommittee
Standing Commission on Constitution and Canons (SCCC)
June 11-13, 2012
Maritime Institute of Technology
Linthicum, MD

June 11, 2012

Present: William Cathcart, Mark Duffy (Canonical Archivist), Joan Geiszler-Ludlum, Dorsey Henderson, Steve Hutchinson, Sally Johnson, Diane Sammons, Tom Little.

Excused: Larry Hitt II. Eric Lobsinger is en route but his train has been delayed. Gregory Straub is expected to join the meeting by mid-day tomorrow.

Chair Diane Sammons convened the meeting at 7:30 pm on June 11, 2012. The Chair thanked everyone for attending and reviewed the Subcommittee's purpose, to begin a process to update the publication, "Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America, otherwise known as The Episcopal Church", and also known as White & Dykman (W&D) after two previous editors (herein abbreviated "AC&C"). The Chair noted that the initial focus would be on Title IV to incorporate the 1994 and 2009 revisions because it is such a big section of the material needing an update. The Chair reviewed the proposed agenda (Attachment 1), and in response to a question from Sally Johnson about including the 1997 revisions to Title IV applying to bishops, the 1997 revisions were added to the agenda.

The Chair reviewed the mandate to SCCC contained in Canon I.1.2 (n) (3) (iv) which was added by General Convention 2006. Tom Little reviewed the purpose of the 2006 amendment, which intended to incorporate the work of updating AC&C into the on-going work of SCCC, replacing the previous practice of periodic charging by General Convention. Question was asked about the meaning of "the authorized 'Annotated Constitution and Canons ...'" in the mandate. Joan Geiszler-Ludlum pointed to the foreword of the 1981 edition of (W&D), which states that the annotation is "an authoritative expression of the meaning of the Constitution and Canons of the Episcopal Church as they exist at this time." Discussion followed around whether the Subcommittee might adopt this statement or might write its own? Does "authorized" mean the same thing as "authoritative"? This question is left for further consideration and discussion. Tom Little asked whether there would be any issues with the DFMS copyright. Mark Duffy said that would arise only at the time of publication, although he believes the copyright is not registered.

Eric Lobsinger arrived at 7:55pm. The Chair asked the members to introduce themselves.

The Chair moved to the next item, the approval of the minutes of the teleconference of April 2, 2012. On motion by William Cathcart, seconded by Steve Hutchinson, the minutes were approved as submitted.

The Chair reviewed the goals that were established in the April 3 teleconference: (a) develop an archival resource of historical documents related to the 1994, 1997 and 2009 revisions process and work product; (b) develop a commentary on Title IV; (c) compile case law that has applied and interpreted Title IV in cases tried under the revisions; and (d) develop a process for future updates by SCCC during subsequent triennia.

Tom Little asked what we mean by “commentary”. The spectrum might include:

- Description of canonical changes
- Explication/exposition of changes
- Rationale (at the time) for changes
- History of changes
- Legislative history of changes
- Context of changes

He noted that previous editions contain two sections of commentary, “exposition” and “commentary”. Additional ideas came forward in the discussion:

- Capture the influence of the research and thinking/theology that went into the 2009 amendments;
- Capitalize on electronic formats through the Archives to link to some/all the influential documents;
- Difficulty in following the traditional section by section format of W&D format due to the rewrites;
- Include exposition about amendments not adopted, a practice of W&D.

Sally Johnson suggested an alternative format of comparing by subject areas, such as statutes of limitation, provisions for appeals, structures of courts. The 1994 materials should include discussion of what was unsatisfactory in the pre-1994 canon, prompting the 1994 revision.

Eric Lobsinger said he has been reviewing the Roman Catholic Canon Law which goes section by section with commentary. It was last revised in 1993-94 and published in 1995. The Chair asked **Eric to copy a few pages showing the Roman Catholic format and post on the Extranet as a PDF.**

Discussion then followed about the audience for the AC&C: disciplinary boards, chancellors, church attorneys, scholars. The subjects of Title IV, deacons, priests and bishops, are not the intended audience.

Mark Duffy presented an outline he prepared on the prospects for online publication, addressing Content, Functional Requirements for Collaborative Exchange, and what an SCCC site within the Archives might include. **[Post Mark's memo dated 6/12/12 on Extranet site]** As he reviewed the outline, he made a number of helpful comments and suggestions related to the previous discussion:

Annotations are supposed to be brief and neutral. Commentary is a fuller exposition including what the author thinks about the text. Legal/Canonical opinion is an expression of views that are interesting arising from the application of the text to a particular case. He recommends moving away from a print/book format, which is static, to electronic format which is dynamic and faster to implement. He suggested creating a separate forum for commentary, which becomes authorized since its location is known and accessible. The problem is cost. Some of what is proposed requires open source software and a long term development project. Archives is experimenting with this idea in hosting the SCLM C056 archive, the Hispanic song book, and the work of the Anti-Racism Task Force of Executive Council. SCCC's work offers another opportunity to experiment with new electronic forms using real content.

Archives has begun digitizing cases deposited with them from Ecclesiastical Trial Courts and Appellate Courts, including cases involving bishops. So far case exhibits and video depositions are not scanned, but a Table of Contents will list what is available. SCCC might contribute to this work by writing guidelines for what canonical background materials should go to the Archives; writing guidelines defining what records Disciplinary Boards/Ecclesiastical Trial Courts/Appellate Courts send to Archives; and develop some clear guidelines and principles for incorporation of opinion in Exposition/Commentary.

The Chair suggested that the meeting continue at 9:00am tomorrow with further discussion of what goes into "exposition" and "commentary" and guiding principles. Sally suggested reviewing some of the documents that she and Steve posted on the Extranet site to get context.

The meeting concluded with Compline and recessed at 9:15 pm.

June 12, 2012

The Subcommittee reconvened at 9:10 am with Joan leading Morning Prayer.

Diane proposed these elements for Commentary/Exposition of Title IV through the 1994 and 1997 revisions, and the 2003-09 revisions:

1. Rationale for the changes (given at the time);
2. History of discussions leading to the change;
3. Theological underpinnings, if any;
4. Comparison between old/new major components; and

5. Visual sense/flow of the process.

Legislative History would include:

- Blue Book Reports
- Standing Commission/Task Force/Legislative Committee Minutes*
- Resolutions
- Journal
- Interviews with former members of SC/TF/Legislative Committee

* Mark Duffy noted that the Archives currently has very little of these types of records prior to 2009.

Other Materials might include:

- Background documents
- Training materials
- Flow charts
- Purpose of flow

Legislative History

Sally Johnson offered a chronology of Title IV revisions:

Late 1980s - TEC began to receive sexual abuse complaints from adults. In response, there was a shift in risk management for insurance purposes and interest in preserving 1st Amendment protections for the ecclesiastical process.

1988 – General Convention created a national sexual exploitation committee, the predecessor to COSE, which created a manual on dealing with sexual abuse.

1991 - COSE presented a resolution asking SCCC study sexual misconduct complaints for review at the next General Convention with adoption in 1997.

1994 - SCCC proposed instead a rewrite of Title IV for priests and deacons, authored by the Chancellors of Iowa, Southern Ohio and Long Island. After many amendments in committee and an effort to kill the amended resolution on the floor, it passed with minor floor amendments. SCCC was also charged with bringing back similar revisions for discipline of bishops at the next GC.

1997 – Canon changes and constitutional change initiated to create two courts, one for Title IV and one for doctrinal issues.

1998 – SCCC and COSE initiated surveys of Dioceses to study how Dioceses were operating under Title IV. The survey found that many Dioceses lacked sufficient resources to handle Title IV proceedings.

2000 – In response to the survey results, GC appointed Title IV Task Force I which, during the following triennium, studied theology producing the theological paper by Pamela Cooper-White, which is published in the 2003 Blue Book, and researched other church and professional discipline models. During the 2003-06 triennium, the Task Force I drafted a sweeping reform of Title IV, moving from a punishment/criminal model to a professional discipline model with more focus on truth telling, reconciliation and forgiveness. Provisions on dealing with impairment in clergy and discipline of the laity ran into stiff opposition at GC 2006 which put forth a resolution affirming the work of Title IV Task Force I and directed the work of Title IV Task Force II to respond to the comments on the draft.

2009 – GC adopted the revised Title IV, a professional discipline model.

Eric asked whether the Title IV canon is directed at the secular courts. Actually, Title IV includes measures to keep secular courts from interfering in clergy discipline proceedings. Eric brought a volume of the Roman Catholic Canon Law on clergy discipline for review as a possible model. This is produced by an annual meeting of the Canon Law Society of America, organized by the University of Ottawa for the US and Canada.

Tom asked for clarification of item 4 of Commentary/Exposition: “old/new major components” which was clarified as identification and description of the major elements of the changes between prior and new constitution/canon provisions.

Diane returned the discussion to the elements of legislative history:

- Blue Book Reports
- Standing Commission/Task Force/Legislative Committee Minutes*
- Resolutions
- Journal
- Interviews with former members of SC/TF/Legislative Committee

Tom noted there is a wide variety in the detail of legislative committee minutes. Mark noted that minutes of all the groups are nonexistent before 2009 or very sketchy, so likely have not been a useful resource for updating White & Dykman. Eric asked about the approach taken toward applying Title IV. Tom explained that TEC has no Supreme Court; SCCC mandate expressly limits SCCC in opining upon the substance of amendments; and there is limited judicial review and no court of last resort on the rules. General Convention by default is the only final arbiter.

Case Law

The Chair turned to review of the list that Mark Duffy provided on what Archives has currently on Title IV proceedings. The goal is to create an accurate list of all trials and appeals, believed to cover some 25 to 30 ETC decisions and perhaps 6 Courts of Review

decisions, all since 1994. There have been 3 trials of bishops since 1994: Righter, Jones and Bennison.

Bill asked whether this is a matter of soliciting documents from Bishops and Chancellors to file with Archives. Mark would want to coordinate such a request with and for Archives. Discussion followed regarding what documents need to be filed:

- Statements of facts/Conclusions of law
- Orders/Accords
- Other agreements?
- Trial transcripts
- Presentments?
- Intake reports?
- Church Attorney summary of case/charges?
- Waivers/voluntary submissions?

Notices of Accords and Orders are reported to the Recorder of Ordinations for record keeping and distributed by the Diocese according to Canon IV.14 12. Further discussion of what is filed with Archives focused on what the Canon requires v. what should the Canon require, the latter question addressing whether amendments to the canons are necessary and/or desirable.

Gregory Straub joined the meeting at 11:15am.

Mark distinguished between publishing data and making data available to designated classes of persons. Some data would be accessible to anyone, such as Blue Books or Journals, while other data may be available to certain classes of persons, such as Respondents, Complainants and Victims, upon request. Mark noted that Archives has done research for Respondents and their attorneys previously. Concern is to balance disclosure and confidentiality.

The plan is to work in four small groups and reconvene at 3:00pm:

1. Documents/Archives – Larry, Mark, Gregory, Joan
2. Commentary 1994 and 1997 – Sally, Steve and Eric
Commentary 2009 – Tom, Steve, Sally, Eric
3. Case Law – Bill, Diane and Dorsey
4. Process for Future Annotations – Diane, Joan, Bill and Tom

The Subcommittee reconvened at 3:00pm for reports from the task groups.

Commentary

Tom reported the development of a common format for the work and posted a draft. (See **File**) Steve prepared a summary of the history of Title IV 2000-2009, and Sally is working on the same for 1994-97. Both will be posted.

Case Law

Bill explained that the work plan for this subgroup will focus on soliciting materials for post-1994 Title IV proceedings that reach a certain point, and developing a uniform system for making those available through Archives by mid-2013. The proposed timeline is:

8/1/12 – Mark will update the list of cases, adding date and Diocese of origin.

9/1/12 – Call for documents will be issued

12/1/12 – Receive the necessary records, identify and follow up on any not yet received.

4/1/13 – Complete organization of documents received.

Summaries of factual findings, case decisions, interpretations of Title IV

5/1/13 – Divide up decisions to develop commentary

10/1/13 – Complete commentary

Documents/Archives

Joan reported that the time frame will be about 18 months as Archives has a digitization project with a target date of March 2013 for completion. The work needs a budget, in SCCC, ECN or other? Products will include developing a database or document library to support the Annotation; supporting the continuing update; and a library of resources for Chancellors. The focus will be Title IV first, continue with the Constitution and Titles I, II and V, then Title III including the Standing Commission on Ministry Development (SCMD). Mark reviewed the Archives' data management need for a protocol for collecting and organizing documents from the Extranet, CCABs during the Triennium, capturing information from the GC website. Electronic downloading requires electronic keeping and storing capacity. Archives is pursuing an outsource program to collect from other sites and sources, but will require extensive development to adapt it to Archives' needs.

Future Annotation Process

Diane reported that the goal is a sustainable process that produces an update during the ensuing triennium. Consideration may be given to an amendment to SCCC's mandate to complete an update every three years. This will put a great deal of work and budgetary pressure on SCCC. Existing work cycles for the Archives following General Convention is to produce a list of all Constitution and Canon changes by March 1 following adjournment, as all such amendments become effective January 1 following adjournment. There is an appointment "gap" between adjournment and appointment of the subsequent SCCC. Tom suggested forming an editorial committee not tied strictly to SCCC but accountable to SCCC, which appears to have been the pre-1981 process. Members suggested various deputies who may be able to assist with following key pieces during this General Convention. Desire is for continuity to sustain the process. Mark felt that once this update is completed, triennial update will not be too difficult.

Gregory suggested submitting a budget resolution requesting \$40,000 for this work in the 2012-15 triennium with funding for regular updates coming from SCCC's regular budget in the future. Joan agreed to draft such a resolution for filing with General Convention. Someone will have to appear at PB&F's funding hearing. Mark asked that collaboration with Archives on this project be noted.

All task groups were asked to e-mail reports to Joan for inclusion with the Minutes. Tom will follow up with Anne Karoly to determine the status of the updates to the Constitution and Titles II and V that were substantially complete in 2006. Anne was to make the final edits but left the Church Center for VTS before that was done. Gregory reported Anne will be helping during General Convention. He further reported that he will inquire whether the Church Center has that draft.

The meeting recessed at dinner time until 9:00am on June 13.

June 13, 2012

The Subcommittee gathered at 9:10am with Joan leading Morning Prayer.

Chair Diane Sammons reviewed the agenda. The next in person meeting will be January 7-10, 2013, location to be determined and budget permitting. The next teleconference will be September 19, 2012, 4:00pm to 6:00pm EDT, for checking in on progress on the timelines and to do lists.

The group reviewed and edited the proposed funding Resolution which Joan will finalize with the other endorsers and file with the General Convention Office ASAP.

The writing subgroups reported on their proposed tasks. Sally reported for the 1991/1994/1997 revisions group that the 1994 revisions are compiled section by section. Her thought is to treat the pre-1994 Canon in broader topical strokes and the 1994 revisions in those same broader categories, rather than section by section. An example is Provincial Courts before 1994 and Provincial Courts after the 1994 revisions. Sally proposes to combine chronology and commentary in a draft with Eric to edit.

The 1998-2009 group will begin with Steve compiling a chronology of the legislative history and Tom to pick up with commentary.

Mark noted that Archives reports on updates of the Constitution and Canons. He will determine what he has and in what form and get those to Eric. These will be divided with Tom by time period of the subgroups. Tom will follow up with Mark and the Church Center to locate or recreate the previous work on the Constitution and Titles II and V.

TO DO: Schedule interim report reminders for August 1 for the task subgroups.

ATTACHMENT 1

SCHEDULE OF EVENTS

White & Dykman Subcommittee
June 11 – 13, 2012

Maritime Institute of Technology
692 Maritime Boulevard
Linthicum Heights, MD
410-859-5700

GROUP ON-SITE CONTACT: DIANE SAMMONS

AGENDA

Monday, June 11, 2012

Arrivals and check-in

6:00pm Dinner for 10 people (Main Dining Room)

7:00pm Meeting convenes (Room A305)

I. General Guidelines for Our Work

- Review Constitutional Mandate, Minutes for April Meeting; Subcommittees)
 - SCCC charges:
 - a) archival resources for important historical documents
 - b) a commentary;
 - c) case law
- Our focus: Title IV-94 and 2009
- Format to incorporate future annotations as part of routinized process
- Time Line 18 months
- Groups
 1. Documents/Archives (Larry Hitt)

2. Commentary (Tom Little, Eric Lobsinger and Steve Hutchinson, Sally to reflect on which group she wishes to serve)
 3. Case Law: Bill Cathcart and Dorsey Henderson
- II. Questions to Be Determined Before Dividing Into Subgroups:
- What types of documents to be included in Archive? What constitutes important historical documents?
 - What does commentary consist of: Legislative history-Opinion
 - Length and Format of Commentaries

Compline

Tables set in hollow-square for 10 people

Audio Visual: Easel, flip chart, markers
Pens, note pads
Wireless internet connectivity
Extra power cable for laptops
(Place cables on top of table)

9:00pm Meeting adjourns for the day

Tuesday, June 12, 2012

Breakfast included in room rate

9:00am Meeting Re-convenes (Room A305)

Morning Prayer

- III. Questions to Be Determined Before Dividing Into Subgroups:
- What types of documents to be included in Archive? What constitutes important historical documents
 - What does commentary consist of: Legislative history-Opinion
 - Length and Format of Commentaries

- What about commentaries moving forward, does the format change back to section by section format?

10:30am Coffee Break

CONTINUED

12:00pm Lunch (Main Dining Room)
for 10 people

1:00pm Meeting re-convenes

IV. Subgroups Continue to Meet

3:00pm Coffee Break
V. Subgroups Continue To Meet

6:00pm Dinner (Main Dining Room)

7:00pm Meeting adjourns for the day

Wednesday, June 13, 2012

Breakfast included in room rate

9:00am Meeting Re-convenes (Room A305)

Morning Prayer

VI. Full Committee, Subgroups Report

10:30am Coffee Break
VII. Next Meetings
VIII. Assignments/Deadlines

12:00pm Meeting adjourns

Lunch included in rate (Main Dining Room)

Departures

ATTACHMENT 2

Reports Posted to ExtraNet During the Meeting

These reports outline the task group work plans in more detail for the continuing work.

Hutchinson, “Outline of Title IV History 2000-2006”

Sammons, “Notes from Meeting of Subcommittee to Create Format for Triennial Review of Annotation”

Geiszler-Ludlum, “Case Law Subgroup Work Plan”

Little, “Approach to Commentary on Title IV Changes 1994, 1997 and 2009”