

LETTERS TO THE EDITOR

ECCLESIASTICAL PRAYER

From Quentin Edwards

Dear Sir,

When I first sat with the late Chancellor Garth Moore, as his 'marshal' in the consistory court of the Diocese of Southwark, in the late '40's, I was surprised that the proceedings were not opened with prayer. On enquiry Garth Moore told me that it was not the practice, as far as he knew, in any diocese. When I pressed him he said that there were practical difficulties; the court usually, in faculty matters, sat in a parish church and so courtesy demanded that, if prayers were to be said, the parish priest should be invited to say them. But the parish priest would almost certainly be a party, or have an interest, in the case to be heard and so it would be inappropriate to ask him. Equally, said Moore, it would, if the archdeacon were present, be awkward to ask him. He was likely to have an interest by virtue of his office, or to have given advice to one or more of the parties. In any event he might be called upon to make submissions to the court.

These reasons did not convince me then and I resolved, were I ever to be appointed a chancellor, that the practice of any consistory court of which I were the judge, would be that the sittings should begin with prayer. So they were, in the diocese of Blackburn, after Bishop Martineau appointed me as his chancellor in 1977. I resigned that office in 1990 but have followed the practice in the diocese of Chichester since my appointment by Bishop Kemp as his chancellor in 1978.

At first I used to ask the archdeacon, if he were present, to say prayers but after the requests of more than one that I should say a prayer myself I have almost invariably done so. I made an exception in *Burridge v Tyler*, a well publicised disciplinary case, first heard in 1990 in a church hall in the suburbs of Chichester, when I asked the incumbent of the church to open each day with prayers and he graciously did so, having agreed with me in advance what their form should be.

I am sure that the proceedings in consistory courts should be opened with prayers. My reasons for so holding appear, in large measure, from the text of the prayer which I adopt. I add that the very fact that the court usually sits in a consecrated building makes it seemly to do so, or, put in the negative, that no activity should take place in a consecrated building unless it is associated, by prayer, with the dedication of the building. But, wherever the court sits, its purposes should be the furtherance of the Church's purposes and so should have the blessing and aid of Almighty God.

I append to this letter the text of the prayer presently in use in the consistory court of the diocese of Chichester in the hope that future chancellors may find it of some help.

Let us pray for the consistory court of the diocese of Chichester: O Lord, Holy Father, Almighty Everlasting God, vouchsafe, we beseech Thee, so direct and govern the hearts and minds of all here assembled that we may, whether as judge, officers or advisors of the court or as advocates, parties or witnesses, so bear our several parts that the proceedings in this Court now pending may be

conducted with candour and charity, that all we do here may be the good of Thy Church and that, with Thy help, we may follow the ways of justice and of truth: We ask this in the name of Jesus Christ, our only Advocate and Mediator. Amen.

I remain, your obedient servant
QUENTIN EDWARDS
13 South Grove
Highgate
London N6 6BJ

CANONICAL CONFUSION

From Michael Smith

Dear Sir

Having read and compared the Episcopal Ministry Act of Synod 1993 with the commission issued under the hand and seal of the Archbishop of Canterbury to the new Bishop of Ebbsfleet I confess to being baffled by the position in law of the new Provincial Episcopal Visitors (PEV) and I should be interested to learn what members of the Society make of it all.

The term 'visitor' has long held a place in Canon and Ecclesiastical Law. It is a technical term used to describe someone who assumes the exercise of jurisdiction in a particular and immediate form and for a limited period of time. The jurisdiction may be inherent in the office held, in which case he is also described as an 'ordinary'. An ordinary may delegate the exercise of jurisdiction in this form to one or more persons. The transference of the exercise of jurisdiction may be whole or partial at the discretion of the ordinary and it is a temporary transference only because that is the nature of a visitation. A commission is a delegation of the exercise of jurisdiction: it is not a delegation of the jurisdiction itself which requires letters patent. A commissary cannot himself delegate to another because he has been entrusted only with the exercise of jurisdiction and not with the jurisdiction itself.

In the past Archbishops of Canterbury have issued commissions for purposes other than visitations. Such a commission might be particular as when, in 1588, Archbishop Whitgift gave the Dean of Gloucester and the Archdeacon of North Wiltshire power to induct a new incumbent in the diocese of Salisbury; or it might be general as when Archbishop Bancroft delegated to the Bishop of Coventry and Lichfield in 1609 the task of carrying out ordinations and institutions in any part of his province. This type of commission would seem to be recognised in clause 11 of the Act of Synod.

So what is the nature of the commission to the Bishop of Ebbsfleet? Is he a visitor in any legal sense of the word? The answer would appear to be, no. The term 'visitor' is applied loosely in much the same way people talk about 'a rural dean's visitation' when they really mean 'a rural dean's inspection'.

This answer gives rise to other questions. The first is a question of ceremonial. Can a PEV carry his pastoral staff at any service outside the diocese of which he is suffragan? If he may do so then in what capacity? Is he acting as a commissary of the archbishop?

What happens if a diocesan bishop refuses to allow a PEV to do anything in his diocese? If an archbishop were to apply pressure on the diocesan bishop to agree to have the PEV, would that pressure be jurisdictional or moral only?

The commission states specifically that the Archbishop of Canterbury is acting “in accordance with clause 5 of the Episcopal Ministry Act of Synod 1993.” The commission then repeats parts of clause 5(3) but omits any reference to clause 5(4) and excludes the phrase “in addition to his other duties” which appears in 5(3).

It is not entirely clear what is meant by “other duties” but, presumably, the phrase includes the duties laid out in 5(4) namely, (a) that he shall act as spokesman and advisor for all those who are opposed”, and (b) he “shall assist the archbishops in monitoring the operation of this Act of Synod”.

Has the Archbishop withheld from the Bishop of Ebbsfleet two of the duties mentioned in clause 5 of the Act of Synod? There is at least one diocesan bishop who seems to think that the Archbishop has. If he is correct then such an interpretation could have far-reaching consequences for the whole concept of the two integrities. If we look to past practice, however, exceptions and reservations have been specifically included in a commission. If none appear then full authority to act is presumed to have been given. The commission to the Bishop of Ebbsfleet has no exclusion clauses.

Another legal obscurity lies in the way a PEV is to carry out his duties. Both the Act of Synod and the commission say he is to carry out “or cause to be carried out” such episcopal duties “as the diocesan bishop concerned may request”. This phrase raises two points.

First, does this mean that a PEV has been authorised to delegate to others his duties given in clause 5(3)? May he develop a network of his own commissaries? And do all duties require them to be in episcopal orders?

Secondly, when an archbishop commissions a PEV is he acting as a metropolitan or is he acting as an executive officer of the General Synod? A right of veto has been written into the Act of Synod. In clause 4 diocesan bishops may enter into a regional arrangement making the services of a PEV unnecessary thus withdrawing an area of the province from the scope of an archbishop’s commission. According to clause 5 (also repeated in the commission) a PEV may act only at the request of an individual diocesan bishop and the implication here is that the diocesan bishop may request some duties but not others. Clause 11(2) of the Act of Synod makes a reference to the archbishops’ metropolitanical jurisdiction but in the same sentence curbs the exercise of it. It can only be invoked if the diocesan bishop concerned has no objection!

Now, an archbishop who can only exercise his metropolitanical jurisdiction with the consent of the diocesan bishop concerned can have no jurisdiction worthy of the name. How can an Act of Synod, which appears to have no legal force, yet claim to limit the authority of an archbishop?

It seems to me that the situation may be summed up as follows:

Question: When is a Visitor not a Visitor?

Answer: When he is a Provincial Episcopal Visitor.

Question: When is an Archbishop not an Archbishop?

Answer: When he is commissioning a Province Episcopal Visitor.

Yours faithfully,

MICHAEL SMITH

*POST-GRADUATE DEGREE COURSE**From G. C. H. Spafford*

Dear Sir

Since our Society welcomed the creation of a post-graduate degree course in Canon Law by the Cardiff Law School of the University of Wales, readers of this Journal might be interested to learn what it was like to have been a student on the first course. (Its members are now waiting to learn whether or not they are to be awarded the degree of LL.M. as a result of their 2¼ years of part-time study, carried out largely at home.)

After having been accepted for the course, each student received by post in late summer 1991 photostats of over 200 pages in all of such periodicals as 'St Vladimir's Theological Quarterly', 'The Jurist', 'Theological Studies' and 'Concilium'. These photostats were accompanied by a seven-page list of articles or passages in books for possible further reading. All the photostats, articles and book passages related to the first of eight subjects into which the course was divided.¹

Cardiff Law School also arranged for each student to have access to an appropriate university library that was closest to the student's home. In addition, books could be borrowed from two libraries in Cardiff.

This student was slightly overwhelmed by the initial reading list, and wondered if his failure to master all the suggested passages would be exposed. The fear was groundless. No awkward questions were ever asked about precisely how much 'homework' had in fact been done.

About two months or so after receiving this first bunch of photostats, the students attended the first of eight weekends spent at St Michael's College, Llandaff, Cardiff. The first visit takes place in late September, followed in succession by weekends in early January, late March and late June or July. Each weekend lasts from Friday dinner to Sunday lunch.

On arrival at the College, and having found the front door – not very obvious – and someone to open it, the new student is faced by a large number of notices, one of which gives the numbers of the single rooms chosen for the course. Having inadvertently disturbed earlier arrivals, the student finds an unoccupied and surprisingly comfortable room with a pleasant view of the college campus.

The first event is a welcoming drink with the College Warden, and with Dr Doe (the course tutor), staff and fellow students. Save for this first course, a new student also meets those who are starting their second year as students. Dinner and a lecture then follow.

Lectures fill most of these residential weekends. They take an overall view of the subjects studied in the previous three months, and each is immediately followed by a discussion. The time available usually is all too short, since mature students are rarely shy and have a wide variety of experience.² This seminar style worked well.

At the end of the weekend a choice of essay titles is supplied, with an option of suggesting an alternative title for approval. These subjects arise out of the previous months' reading and weekend lectures. A completed essay of up to 4,000 words should be posted to Cardiff before the next Llandaff meeting. (In the meantime, the next set of photostats will have arrived.) Each of the essays is returned to its maker with comments by the course tutor. The comments are detailed and strict but fair. There is an outside assessor for the essays and another for the final dissertation. There are no examinations as such.

During the eighth weekend, a student chooses a subject for the dissertation of up to 20,000 words and based on the previous two years work, or on part of it. This dissertation is sent to Cardiff. If it is deemed to be acceptable, two copies are bound for retention by the University.

University fees at the moment are £565 a year. St. Michael's College for a weekend on full board – good cooking but not *haute cuisine* – charge £50. In addition, there is the cost of transport to and from Llandaff, any charges for the typing of essays, (typing is now essential), postage and about £40 for binding.

Overall, I enjoyed studying again. The syllabus was interesting and not too difficult to master. A highspot for me was the excellence and variety of the lecturers.³ (They included at times fellow students with expertise or special study in particular subjects.) Also noteworthy was evensong in Llandaff Cathedral and the enthusiasm of the course tutor. Best of all was the friendliness of my fellow students. My course have already arranged for a reunion in September 1994.

I found very little for adverse criticism. It would have been helpful, if each student could have discussed with Dr Doe his comments on each essay, perhaps on Saturday afternoon, but the timetable did not allow for this. (However, Dr Doe frequently had informal discussions with various students on such comments.) Other criticisms are all trivial. For instance, it would have saved time on arrival if we had been told bus timings from Cardiff railway station to Llandaff, and the relevant bus number. It would also have been convenient if rooms could have been allotted in advance. A few lecturers did not allow enough time for discussion. These discussions, or fresh ones, very often continued by the kettles in the corridors at St. Michael's, so much so that almost invariably the supply of milk and coffee close by the kettles failed during the weekend.

I am very glad that I was accepted for this civilised course. I learnt a lot, and commend it to readers of this Journal.

Yours faithfully

G. C. H. SPAFFORD

1. *Course Subjects*

1. Conceptual Foundation and Sources of Canon Law
2. The Historical Development of Canon Law
3. Constitutional Church Government, Institutions and Powers (including Church Courts, the Doctrine of Precedent, and the Principles of Equity, Necessity and Economy)
4. Ecclesiastical Persons, Rights and Duties (covering Bishops, Archdeacons, Priests and Laity)
5. Doctrinal Authority and Worship (including *Ius Liturgicum*, Dissent, Blasphemy, Religious Education and Broadcasting)
6. The Law of Church Services (including Baptism, Confirmation, Eucharist, Burial, Confession and Penance)
7. The Law of Church Property (with Religious Charitable Trusts, Parson's Freehold, Finance and Faculty Jurisdiction)
8. The Relation of Secular to Church Law (including Establishment, Abortion and Data Protection).

2. *Background of students:*

1991 intake: 13 students. 1 former chairman House of Laity General Synod Church of England; 1 Legal Adviser to General Synod CofE; 1 Dean of the Arches; 1 Diocesan Chancellor; 1 CofE Archdeacon, 1 Church in Wales Archdeacon; 2 CofE parish priests; 3 CinW parish priests; 1 CinW Cathedral Succentor; 1 Barrister.

4 of the priests have law degrees already.

1992 intake: 13 students. 1 CofE Diocesan Administrator; 1 CofE Cambridge college chaplain; 1 CofE parish priest; 3 CofE cathedral canons; 2 CinW parish priests; 1 CinW former archdeacon and deputy diocesan registrar; 1 accountant (and treasurer of Oxford theological college); 1 churchwarden (and law graduate banker); 1 law graduate trainee solicitor; 1 law lecturer (non-conformist).

5 already had first degrees in law.

1993 intake: 13 students. 1 CofE diocesan secretary; 1 QC; 3 barristers; 1 CofE former Deputy Diocesan Registrar; 1 solicitor; 1 college chaplain; 1 university law lecturer; 1 former CofE archdeacon; 1 chaplain to the Queen. Only 3 clerics and 10 law graduates.

1994 intake: 13 students. 2 solicitors, 4 CofE priests (1 college chaplain, Durham University); 1 RC chancellor; 1 RC Defender of the Bond; 1 policeman; 2 barristers; 2 lay administrators CofE.

6 have first degrees in law. Others have degrees in various subjects.

1995 intake: 14 students. 1 Diocesan Registrar; 6 priests; 2 barristers; 2 law lecturers; 1 Council of Legal Education administrator; 2 solicitors.

7 have law degrees already. Other degrees in various subjects.

1996 intake: so far 5 students. 1 CinW Diocesan Secretary; 1 CofE priest; 1 solicitor; 2 theology graduates.

3. *Outside Lecturers*

Dr Malcolm Evans (University of Bristol) - civil liberties

Dr Nikolai Semidorkin (University of Moscow) - Russian canon law

Fr Robert Ombres (Blackfriars, Oxford) - history of RC law

Rev Roger Brown (CinW priest) - disestablishment

Mr Eric Owen (barrister) - disestablishment

Ms Karen Counsell (Univ. of Glamorgan) - ecl. sanctions

Very Rev Alun R Davies (former Dean of Llandaff) - custom

Mr Magnus Ryan (St John's College, Cambridge) - medieval CL

Fr Matthew Jones (RC Vice Officials of Matrimonial Tribunal) - history and administration of temporal goods

Mr John Haddrell (solicitor) - CofE property

Mrs Eithne D'Auria (RC Defender of the Bond) - RC marriage

Rev Joanna Pemberty (deaconess) - ordination of women

Dr Dominique Gaurier (University of Nantes) - French CL

Rev David Holloway (Newcastle) - religious broadcasting

Mr Colin Hart (Newcastle) - religious education

Professor John Lewis (Univ. of Windsor, Ontario) - RC rights

Ven John Lewis (Archdeacon CinW) - church education