

## **The Washington Chapter of the American Anglican Council**

### **Nalls: Court's Over-Reach Damages Church Polity**

By Robert Stowe England  
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WASHINGTON, D.C. -- Charles Nalls, attorney for Fr. Edwards and Christ Church, Accokeek, accused the Fourth U.S. Circuit Court of Appeals in Richmond of over-reaching with its decision rejecting Fr. Edwards appeal.

That decision will, he said, if left intact, prove damaging to the polity of the Episcopal Church by delivering the discipline of priests into the hands of the whims of bishops, whose actions will be judged only by a politically-motivated Review Panel.

Ironically, while the decision could leave lasting damage to the Episcopal Church, on a personal level it may, in fact, be a "hollow victory" for Acting Bishop Jane Dixon, who brought her lawsuit against Fr. Edwards as an individual and not as the Diocese of Washington.

The court, in its ruling, stated the relief and rights Dixon gained under the district court's decision expire June 1, when she is no longer Ecclesiastical Authority. Her rights and, potentially, the restrictions against Fr. Edwards, could end on that date unless Bishop-elect Chane chooses to demand the same.

Fr. Edwards was ousted from Christ Church in November in an order from Judge Peter Messitte of the U.S. District Court of Maryland's southern district in Greenbelt. The ouster came in response to a lawsuit brought by Acting Bishop Jane Dixon, who refused to accept the parish's call of Fr. Edwards in December 2000. She waited 83 days -- 53 days after the 30-day limit for a bishop's review, to reject Fr. Edwards.

Speaking of the unanimous decision of the three appellate judges, Nalls said, "I think it's a disturbing over-reach of the court into matters it wasn't privileged to reach in."

He cited as an example that "the appellate court appears to have done fact-finding with respect to ecclesiastic proceedings, which it is not permitted to do." He was referring to the court's statements regarding the findings of a Review Panel that considered charges brought against Acting Bishop Jane Dixon last summer for rejecting Fr. Edwards after the 30-day limit. The Review Panel refused to forward the charges against her for trial.

The fourth circuit court concluded that because the Review Panel found no objections to Dixon's delay and violation of the canons, that Dixon had the authority to do what she did. The court also disregarded the

fact that proceedings are still pending against Fr. Edwards in Ft. Worth for conducting services more than 60 days without a license from the local diocese. Dixon refused to license him.

"Basically, while facially seeming to take a restrained position, the court is taking quite an activist position" to allow the decision of a highly politicized review panel to settle an essentially theological dispute in a civil court, Nalls says.

The court's decision should prompt the General Convention to consider revising its canons "to eliminate the highly politicized Review Panel process," Nalls says. "Basically it becomes a sort of Star Chamber to either pass along prosecutions or stop them. And that's not fair to clergy discipline."

The fourth circuit's deferral to the Review Panel and its apparent unwitting grant of power to bishops to interpret the canons any way they see fit means that "a million dollar lawsuit has reduced the Episcopal Church, which is supposed to be governed on a democratic model, to government by the whim of the bishop," Nalls says. If the General Convention fails to react to this, "lay power in the Episcopal Church will become a nullity."

Nalls found the court's "very difficult decision" to also be "puzzling" because of its statement that the rights and relief granted Dixon were for her only as an individual while she is Ecclesiastic Authority and that those rights expire on June 2, when she is no longer Ecclesiastic Authority. That language "seems to fly in the face of the logic the court employed to accept the diversity of jurisdiction necessary for the case to be heard in federal courts," Nalls says.

Dixon, a resident of the District of Columbia, brought the case against Fr. Edwards and the parish, both in Maryland. This diversity of geographic jurisdiction allowed Dixon to bring the case in federal court. If the diocese had also been a party to the case, it would have lacked diversity of jurisdiction, because the diocese is located in both D.C. and Maryland.

What happens to the restrictions on Fr. Edwards, if Dixon no longer has rights, since these restrictions were based on her rights? "We don't know how the lower court will treat that," Nalls replied.

Nalls says that he, Fr. Edwards and the vestry of Christ Church Accokeek are considering several legal avenues at this point.

"We're reviewing the case from a constitutional perspective. We're seriously considering a petition for writ of *certiorari* to the Supreme Court. Even if we don't do that, we certainly plan move to vacate and dismiss [the injunction] once she leaves because the court's made very clear any rights are there only as long as she's in office," Nalls says.

If restrictions only apply while Dixon is Ecclesiastical Authority, then theoretically is this a very hollow victory? "On an individual level it

is a very hollow victory, a very hollow victory," Nalls says.

For Dixon as an individual, one has to ask at what price did she gain "an evanescent victory," Nalls says. "How much of Jesus Christ's money has been spent for this woman's sense of pride and hatred of traditional Episcopalians?"

"It's going to be a little like a sailor who wakes up after shore leave. It was a really good bar-room fight, but you wake up in the morning and what do you have? Nothing," Nalls says.

The court's decision also raises questions about whether Bishop-elect John Chane can continue the injunction when he becomes bishop on June 2. Chane is believed to have moved to a house in Maryland. It's not clear whether any lack of jurisdiction diversity would affect his right to seek to continue the injunction in the federal courts.

Nalls admits that he was surprised at the court's decision. "Based on the questions at the bench, the briefing schedule and the interest the court showed in the issue, I have to say I am taken aback." The reason, he says, is that "the court displayed in oral arguments an understanding of what we were arguing and certainly the call for additional briefing schedule was constant with patterns of reversal."

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