

The Theology of Due Process:
The Adjudication Cases of Robert Preus in the LCMS
And Rolf Preus in the ELS

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In asking me to speak about my father's trials in the Missouri Synod and my trial in the ELS you are not asking for an objective analysis. How could I be objective? Nothing that happened to my father had more of an impact on me personally than his being fired as president and tenured professor at Concordia Theological Seminary in 1989, suspended from the Missouri Synod for trying to get his position back, and then denied his rightful position after prevailing in the church courts. My removal from the ELS and from River Heights Lutheran Church in East Grand Forks in 2006 was also a very significant event in my life.*

I am by no means impartial in regard to these events. Justice must be impartial. This is why it requires due process. Due process is a given among Americans. We trace it back to the Magna Carta where the king was placed under the authority of the law. Nobody is above the law. The American Revolution – a righteous cause and a just war – was fought on this principle. History, reason, culture, civil law, and natural law all teach due process. It is enshrined in the American Constitution. Both the fifth and fourteenth amendments guarantee that no one can be deprived of life, liberty, or property except by due process of law.

The principles of due process in the civil realm are grounded in large part on the teaching of the Holy Scriptures. Due process requires that the accused face specific accusations. We read in John 18:29-30:

Pilate then went out to them and said, "What accusation do you bring against this Man?" They answered and said to him, "If He were not an evildoer, we would not have delivered Him up to you."

* The documentation for much of what follows is in the official record of the Robert Preus cases that were adjudicated through the process of adjudication of the Missouri Synod. The adjudication system was radically changed at the Pittsburgh Convention in 1992. The documentation for my case in the ELS is available on my website: christforus.org.

In Deuteronomy 19 the testimony of two or three witnesses is required and a false witness is liable to the same penalty that would have been leveled against the accused had he been found guilty. In 1 Timothy 5:19 St. Paul appeals to the principle enshrined in Deuteronomy to require that no accusation against a pastor may be received except by the testimony of two or three witnesses. The right of cross examination is taught by Solomon in Proverbs 18:17 where we read:

The first one to plead his cause seems right,
Until his neighbor comes and examines him.

Due process is more than a civil concern. The Holy Scriptures require it. That makes it a theological concern. Due process is not just for the sake of good order in the civil arena. It is mandated by divine law. Read Luther's Large Catechism on the Eighth Commandment. Luther does not treat civil, legal, procedural issues that deal with our neighbor's good name as matters of indifference on which we may agree to disagree. Our neighbor's honor and livelihood are not to be trifled with. Nobody is above the law.

Today I will be talking to you about the adjudication cases of Robert Preus in the Missouri Synod in the late eighties and early nineties and my case of adjudication in the ELS in 2006. I am not interested in opening old wounds or settling scores. My purpose is theological. I believe that our sound Lutheran theology is best understood in the light of real life events. Theology is not an abstract academic discipline. It rules our hearts and directs our lives.

On July 27, 1989, the Board of Regents (BOR) of Concordia Theological Seminary (CTS) in Ft. Wayne removed Robert Preus from his office as president and tenured professor at the seminary. They called it an honorable retirement. If they had removed him for cause, the rules would have forbade them from replacing Preus until after he had fully availed himself of the adjudicatory processes of the Missouri Synod. Under the rubric of an "honorable retirement" the board could replace him. They could do so before he could bring his case through adjudication so that even if he won it would be a pyrrhic victory because he would have already been replaced by someone else.

In adjudicating the matter through the church courts, Robert Preus took a number of actions that President Bohlmann said were sins. All of the alleged sins were actions Preus took to bring his case before the brethren as St. Paul in 1 Corinthians 6 teaches we should do. Professor Kurt Marquart, Preus' theological advisor through the adjudication process, addressed Bohlmann's accusations against Preus in a brief submitted to

the Commission on Appeals (COA). Under the heading, “Legalistic Ignoring of Context,” he wrote:

All the Eight Counts supposedly illustrative of a broad “pattern” actually deal with one very narrow range of actions: Dr. Preus’ resistance to his forcible removal as seminary president. Any fair and realistic evaluation of these actions must see them in this context. He, Defendant, is the victim, who had been deprived of his ministry. And when he defends himself against what was done to him, he is portrayed as the aggressor, and his tormentors present themselves as the injured party! That is like the wolf upstream blaming the lamb downstream for muddying the waters for him, as Luther would say.

One of these alleged sins was seeking a civil court injunction to prevent the BOR from replacing him until he had exhausted available appeals to their decision in the church courts. Another was his refusal to submit to a reconciliation process directed by Ralph Bohlmann. Another was an alleged lie he told Judge Ryan of Ft. Wayne, from whom he sought the injunction, when he interpreted a conversation between him and Bohlmann as having Bohlmann concede that he would not be able to get his job back whereas the transcript of Bohlmann’s secretary, who had been secretly listening in on the conversation, quoted Bohlmann as saying that Preus could take the matter through adjudication. Of course, both Preus and Bohlmann knew that that wouldn’t get his job back if in the meanwhile another president was elected.

As Preus sought to regain his office, President Bohlmann, along with the synodical vice presidents, charged Preus with eight sins that they claimed evidenced a “persistent pattern of untruthfulness and unbrotherly treatment of fellow Christians.” Bohlmann’s charges persuaded the Indiana District President to suspend him from office. The Synodical Commission on Adjudication gave a mixed ruling on Preus’ removal from office that did not restore to Preus his office. The Indiana District Commission on Adjudication gave a mixed ruling on the presidium’s charges against Preus, rejecting three and a half and affirming four and a half of them. Preus appealed both of these decisions to the COA. The COA was the highest court in the Missouri Synod. Bylaw 8.69 read,

All final decisions of the Commission on Appeals . . . shall be binding upon all parties to the case and not subject to review, reversal, amendment, or modification, any provision to the contrary in the Bylaws notwithstanding.

Nevertheless, the BOR, under the direction of Ralph Bohlmann, expressed its defiance of the rulings that put Preus back into office and refused to implement them. Commenting on the so called Pittsburgh Agreement that, for a fleeting moment, put Robert Preus back into the presidency at the Missouri Synod convention in Pittsburgh in 1992, the August 1, 1992 Rochester, Minnesota "Post-Bulletin" reported:

In the presidential election, the Preus controversy is believed to have helped Barry (Preus supporters campaigned for him) and hurt Bohlmann. Had the Preus agreement been reached earlier, Bohlmann probably would have been re-elected, observers believe.

Ralph Bohlmann's career as president of the Missouri Synod crashed on the reef of the Robert Preus cases. The theological principle of due process was at the heart of his defeat. He lost the election to Al Barry. Bohlmann had become too controversial. One could argue that the controversies that led to Bohlmann's defeat by Al Barry centered on such theological concerns such as closed Communion, the charismatic movement, lay ministry, Missouri's posture over against the ELCA, and related issues on which the faculty of Concordia Theological Seminary had taken positions different than that of President Bohlmann. That's true. But, even as the St. Louis seminary under the John Tietjen administration became a symbol of a theological movement away from Missouri's historic confessional Lutheran stance, the Ft. Wayne seminary under the Robert Preus administration became a symbol of a theological movement back to that historic stance.

Robert Preus was the leader of a theological movement. So was Ralph Bohlmann. Some years earlier they had been theological allies. During the Battle for the Bible, prior to the suspension of John Tietjen as President of Concordia Seminary in St. Louis, the conservative professors who supported the Synod's historic teaching on biblical inerrancy and opposed the theology of the faculty majority, along with likeminded students at the seminary, would often meet at the home of Robert Preus at #4 Seminary Terrace. I would sometimes join in on the edge of the conversation when they were talking theology. Robert Preus was the leader of the group. Ralph Bohlmann deferred to him. Robert and Ralph were friends.

Their theological differences became evident shortly after the conservatives won the Battle for the Bible. Early in 1974, ninety percent of the faculty of Concordia Seminary in St. Louis went on strike in protest of the suspension of Concordia Seminary President John Tietjen. They refused to return to work and so they were fired. A seminary made up of the former Concordia Seminary professors was formed, which called itself Concordia Seminary in Exile, or Seminex, for short. Several

years later, Seminex died, fulfilling the destiny its name gave it. Seminex is Latin for half dead.

Throughout the synodical controversy that culminated in the suspension of John Tietjen, the faculty majority walk-out, and the formation of Seminex, five professors at the St. Louis seminary stood in opposition to the leadership of the John Tietjen administration and sided with Missouri Synod president Jack Preus, Robert Preus' older brother, in support of the historic biblical and confessional theology of the LCMS. After the walkout, four of those five men continued to teach at the seminary, along with professors from Concordia Theological Seminary in Springfield, Illinois and from Valparaiso University, and some parish pastors. Ralph Bohlmann was the Executive of the recently formed synodical Commission on Theology and Church Relations at the time and was too busy with his work for that commission to teach any classes at the seminary during the critical months after Tietjen's removal when the former faculty and their allies were doing their best to force the closure of the school. Acting President, Martin Scharlemann, having for some time suffered extreme harassment from some of his former colleagues, resigned his position due to nervous exhaustion, and recuperated in a quiet, stress-free environment some place in Tennessee. Robert Preus, who had been serving as Academic Dean, took over the duties of acting president.

In 1974 Ralph Bohlmann received the call to be president of Concordia Seminary in St. Louis, Missouri and Robert Preus received the call to be president of Concordia Theological Seminary in Springfield, Illinois. Two years later, Concordia Theological Seminary moved from Springfield to Ft. Wayne, Indiana. When Robert Preus received his call, Ralph Bohlmann encouraged him to decline it and to serve as his Academic Dean.

Bohlmann served as president of the seminary in St. Louis for seven years. During those seven years the relationship between the two seminaries was cordial. One issue, however, arose that distinguished the leadership of the two schools. During the seventies, the Charismatic Movement posed a threat in large portions of the Synod. It had a strong influence among many of the faculty and staff at Concordia Lutheran Junior College in Ann Arbor, Michigan and at other synodical colleges. It had a strong contingency throughout the synod. The Ft. Wayne seminary under the Robert Preus administration adopted a policy that informed prospective seminarians if they claimed to speak in tongues or were involved in this movement they would not be certified for ordination by the seminary. The leadership of the St. Louis seminary publicly criticized this policy, arguing that the Charismatics should not be singled

out for criticism. A few years later a group of students at the St. Louis seminary formally complained about their Charismatic problem.

Ralph Bohlmann identified himself as a “progressive conservative.” Robert Preus, on the other hand, was the leading authority among English speaking Lutherans on the classical Lutheran theology of the 16th and 17th centuries. As president of CTS he set out to reaffirm the Lutheran identity that had come under attack within the Missouri Synod since at least World War II. The conflict between Bohlmann’s theological leadership and Preus’ theological leadership was apparent to every theologian in the Synod during the eighties. Bohlmann sought a synodical theological synthesis to bring about greater consensus and less conflict. Preus was not focused so much on a synodical consensus as he was on the theological task itself and in training men to be, first and foremost, Lutheran theologians. The friction between the synodical administration and the Ft. Wayne seminary administration during the eighties could be described as competing loyalties: synodical loyalty on the part of the synodical administration and confessional loyalty on the part of the seminary administration. We need to keep in mind that the theological consensus that had existed in Missouri prior to World War II was lost. A critical issue during the eighties was the role of theological education and its oversight. The office that Robert Preus held – seminary president and theological professor – became both symbolically and literally the point of controversy between Ralph Bohlmann and Robert Preus.

Does a theological faculty have the duty to obey the representative of the people they serve by submitting to his advice, counsel, and direction? Or does a theological faculty have the duty to submit to the theological norms to which they subscribed when they were ordained? Are seminary professors pastors? Or are they at will employees of the synods that hire them? What is the nature of synodical loyalty? What is the nature of confessional loyalty? These are the issues that swirled around the conflict between Ralph Bohlmann and Robert Preus during the latter part of the seventies, throughout the eighties, and into the early nineties. Was there personal conflict between the two men? Yes, indeed! But it was based on a fundamental theological divide, a divide that continues and has not yet, to my knowledge, been honestly addressed.

Let me illustrate. In July of 1977, Douglas Judisch, a young assistant professor at the seminary, wrote some theses on women’s suffrage in the church, arguing that the practice was unbiblical. The exegetical department of the faculty adopted Judisch’s theses. Ralph Bohlmann told Robert Preus that since the Missouri Synod had approved of women’s suffrage in the church at the 1969 convention the exegetical department had no business adopting a position critical of the practice.

Robert Preus replied that the professors in the exegetical department had done what they did according to their office. He did not think it would be appropriate for him to ride herd on what he considered to be a legitimate function of teachers of the church. After persistent pressure from Bohlmann, the BOR of CTS asked Preus to tell the exegetical department to clarify their position to say that they were not accusing the synod of anything.

Let me illustrate again. When the seminary was in Springfield, it did not feature Holy Communion at any of the chapel services. Shortly after the seminary moved to Ft. Wayne, Daniel Reuning, who was Dean of Chapel, asked Robert Preus if he would object to having the Lord's Supper offered at Wednesday chapel services under the auspices of a local Ft. Wayne congregation. Robert Preus told me that had he been Dean of Chapel he would not have introduced it. But he was not the Dean of Chapel. He did not believe it was his place to tell Reuning what to do.

The theologian must rightly distinguish between divine doctrine and theological opinion. For Robert Preus, this was fundamental. When this distinction is clearly made, theology becomes primary and the rules that we adopt to govern affairs in the church are always understood according to their theological purpose.

The conflict between Bohlmann and Preus developed into a conflict between the synodical Board for Parish Education Services (BPES) and Concordia Theological Seminary. The BPES was able to stymie efforts of the Preus administration to improve the academic standing of the seminary, vetoing attempts to begin new academic programs as well as efforts to call new professors. In those days the BPES had to approve of new faculty at the seminaries. From 1974 to 1984 the BPES declined 14 requests from the Ft. Wayne seminary to approve the calling of certain men as professors. This was unprecedented and unique to Ft. Wayne. The BPES also became the depository of accusations against Preus and the seminary on the part of people unhappy with the removal of a certain Academic Dean from the Ft. Wayne seminary in 1982. He had been removed from his position by the Board of Regents for persistent insubordination. Alleging divisions on the campus, the BPES solicited complaints from disgruntled former employees of the seminary. If Robert Preus was guilty of any lack during those years it was his continued naiveté concerning Bohlmann's personal involvement in the criticisms emanating from the BPES against his administration.

Any student of the Holy Scriptures knows that in battles between the prophet and the king the king always wins. You theologians will disagree. You will point to a hidden spiritual victory, and if that won't persuade, you'll start speaking eschatologically, and who can argue with

that? I won't argue against the spiritual victory of truth against error in the here and now through faith and visibly before all creation at the end of time. But in the visible world in which we live, walk, and breathe, a seminary president doesn't have a chance against a synod president. Tietjen learned that lesson. So did Robert Preus.

On May 3, 1984 Ralph Bohlmann met with Robert Preus to ask him to resign as president of Concordia Theological Seminary. He handed to him a resolution adopted at a meeting on April 27 of the BPES that alleged problems at the seminary that had reached a critical point. It requested that the President of the Synod do something about it. Bohlmann brought this matter to the attention of the entire Council of Presidents before Preus or the Board of Concordia Theological Seminary were aware of it. When Preus pressed Bohlmann to provide specifics about the alleged problems, Bohlmann could not do so. But he did appoint a so called "Pastoral Visitation Team" to visit the seminary, over the objections of Preus and the Board of Regents. They issued a report, which soon became public, alleging, among other things, that in the opinion of some unnamed faculty members, the president of the seminary might have a "spiritual problem" that needed to be addressed. The visitation and report of conflict stirred up conflict.

This was the pattern throughout the eighties: an ongoing party of character assassination with Ralph Bohlmann serving as master of ceremonies. Anonymous and non-specific allegations against Robert Preus – that he was vindictive and intimidating – were offered up with the excuse that one could not actually bring specific allegations to Robert Preus as God's word requires because he is intimidating.

After Bohlmann's "Pastoral Visitation Team" published their hatchet job on Robert Preus – filled with anonymous and non-specific allegations against him – Preus visited with every faculty member he had reason to believe may have had aught against him. He found three men who still resented him for the dismissal of the insubordinate Academic Dean.

Shortly after Bohlmann's appointed "Pastoral Visitation Team" issued their report alleging turmoil on campus, I visited with one of those visitors, my District President, August Mennicke. I drove down to Brainerd, Minnesota, from East Grand Forks and spent about three hours visiting with him. I showed him what Luther said in the Large Catechism on the Eighth Commandment. I emphasized these words:

Every report, then, that cannot be adequately proved is false witness. No one should publicly assert as truth what is not publicly substantiated. (LC, Ten Commandments, par 271-271)

I pointed out to Mennicke that he and the other district presidents sinned against the Eighth Commandment when they reported anonymous and non-specific allegations against Robert Preus, specifically the allegation that “a problem of a moral or spiritual nature might exist.” He patiently listened to me and said nothing. When I pressed him to reply, he told me that the president of the synod had asked him to participate in a visitation of the seminary and to give a report and that’s what he did. I tried repeatedly but failed to engage him in conversation on the application of the confessional norm to which he and I had both pledged ourselves when we were ordained. He wouldn’t engage. He would only repeat that he was carrying out a task assigned to him by the synodical president.

After three hours, I gave up. As I was preparing to leave, Mennicke asked me how it was that Ralph Bohlmann and my father, who had previously been friends, did not get along with each other! August Mennicke was elected First Vice President of the Missouri Synod at its next convention in 1986.

After Bohlmann’s “Pastoral Visitation Team” visited the seminary and gave their report, the BOR of CTS appointed their own pastoral visitation team of three district presidents that refuted the findings of Bohlmann’s team. Finally, on Ash Wednesday, 1986, it appeared that the conflict had been brought to a close. Bohlmann, Preus, representatives of the BHES and the BOR of CTS as well as Bohlmann’s “pastoral visitors” and the visitation team invited by the BOR all agreed to a statement to resolve any remaining problems through the regular channels, a position that Preus and the BOR had been seeking all along.

Up until about a year before Preus was removed as president of the seminary he enjoyed the support of the majority of the BOR. On May 2, 1988, the BOR chairman and Ralph Bohlmann met privately in Ft. Meyers, Florida, to discuss the retirement of Robert Preus. During the next year, Preus gradually lost the support of the majority of the BOR. By the time he was removed as president, only two men on the board – the two parish pastors – opposed his removal.

The BOR purported to remove Preus from his office by means of an honorable retirement. The BOR handbook gave them the authority to retire a president after he had served for fifteen years or when he was sixty years old. But the synodical handbook had been revised in 1986 in order to bring Synod’s rules into harmony with federal law against age discrimination. The 1986 synodical handbook read:

The president of a synodical institution shall be relieved of his presidential responsibilities at the end of the school year at which he reaches the age of 70.

After this change in the synodical handbook was made, the BOR of CTS charged Board member Melvin Bredemeier and CTS Professor Norbert Mueller to bring the Board handbook into harmony with the Synod handbook. Bredemeier and Mueller updated the BOR handbook in every respect except for the provision regarding the retirement of the president. Neither Bredemeier nor Mueller informed either Preus or the BOR of this. It was this outdated rubric that the BOR later used as justification for its forced “honorable retirement” of Robert Preus. After the BOR removed Preus from office they made Professor Norbert Mueller acting president.

As the Robert Preus matter moved at a snail’s pace through the adjudication process of the Missouri Synod, Ralph Bohlmann assumed two contradictory roles at the same time. First, he argued in support of the BOR’s authority to remove Robert Preus from his office. That, of course, was the issue that needed to be resolved. Second, he assumed the role of heading up the synodically mandated reconciliation process. One of the sins of which he accused Robert Preus was his refusal to submit to the process that he, Bohlmann, was directing. Preus would not meet with a reconciliation committee appointed by Bohlmann. This was one of the “sins” for which Robert Preus was removed as a minister of the Synod by the president of the Indiana District.

There is an inherent conflict between serving as both accuser and reconciler at the same time. That is obvious. What was equally obvious to Robert Preus but steadfastly denied by Ralph Bohlmann was that the underlying theological issues that divided them were the real reasons for his removal. Bohlmann and his associates, in forum after forum, resorted to the “if you only knew” argument in response to criticisms of the BOR’s action against Preus. They could not credibly cast aspersions on his theology or academic credentials. The “if you only knew” argument included veiled references to Preus’ drinking, mental health, and so forth. Throughout the process of removing Preus from office and keeping him out of office, Bohlmann and his supporters avoided confronting the theological divide between Preus and Bohlmann. It was the big pink elephant on the dining room table. Marquart writes, in a brief to the COA:

The basic question here is the theological rift between the administrative echelons led by President Ralph Bohlmann and the Ft Wayne Seminary Faculty, led by Robert Preus. Two basic scenarios are possible. Either Preus and his faculty were inflexible super-orthodoxists, who accordingly misread Synod’s confessional

situation and promoted extremism, intransigence, and divisiveness. In that case they got what they deserved. Or else Preus and his faculty were faithfully trying to defend Synod's confessional heritage against erosion by cultural pressures, an erosion presided over and protected by a hear-no-evil, see-no-evil, speak-no-evil Synodical administration seeking outward tranquility by means of a pragmatic activism and the quiet accommodation and toleration of theological differences. If the latter was the case, then Preus and his seminary must indeed have posed a formidable threat, which had to be neutralized. In that case Preus was punished precisely for being a faithful champion of the evangelical truth, and his call was violated for the worst possible reason, under a threadbare "show of right." It has ever been the practice of those who cry "peace, peace," when there is no peace (Jer. 8:11) to blame those who tell the inconvenient truth for "troubling Israel" (1 Kings 18:17).

Instead of confronting the theological issues and engaging in theological conversation as the former friends had done in the seventies at #4 Seminary Terrace, Bohlmann assumed an officious posture of legal authority over Preus, a posture that got Preus' back up. Robert Preus did not like being pushed around.

Contrast Bohlmann's dealing with Preus to Preus' dealing with Walter A. Maier, Jr., during the controversy over Maier's teaching on justification. Robert's brother, Jack, who was president of the synod at the time, expressed to Robert his dissatisfaction with his failure to get Walter A. Maier to affirm objective justification. Robert asked him to be patient. I witnessed an argument between them about this on the American shore of Gunflint Lake the summer before Jack made his concerns about Maier's teaching public. Robert argued that Walter had not been formally charged. He said to his brother, "If you want someone to charge Walter, you do it." Jack never did. Nobody did. On that day on Gunflint Lake, Robert argued with his brother that it was his duty as president of the seminary to defend Walter A. Maier. He defended his approach to persuade rather than to pressure Walter. In time, after many visits with such men as Harry Huth and Kurt Marquart, Marquart finally succeeded in getting Walter A. to affirm that the justification of Jesus (1 Timothy 3:16) was the justification of those whose sins he bore.

What's the point? Due process! Nobody ever charged Walter A. Maier with false doctrine! Some years later when a professor at CTS by the name of Al Schmidt was teaching that neither 1 Corinthians 14 nor 1 Timothy 2 forbade the ordination of women as pastors, a pastor of the LCMS, Rev. Jack Cascione, formally charged him with false doctrine. Schmidt was given due process and found guilty. He was fired. He

promptly sued the seminary, the synod, Robert Preus, and Jack Cascione. Bohlmann sought to have the court case dismissed by paying Schmidt \$40,000 in legal costs and getting him to sign an agreement that had him agreeing with the official teaching of the LCMS on the matter. He asked Robert to support this agreement because the president of the seminary needed to sign on. Robert refused to agree unless Schmidt affirmed that the Holy Scriptures, not just the LCMS, forbade women to be pastors. It was shortly after he refused to support the agreement with Al Schmidt that he was removed as president of CTS. Norbert Mueller, the interim president appointed by the BOR, promptly signed on.

Ralph Bohlmann's approach required Al Schmidt to agree with the Missouri Synod. Robert Preus' approach required Walter A. Maier to agree with the Bible. Walter A. Maier, who was never charged with false doctrine for denying objective justification, finally agreed that the Bible taught objective justification. Al Schmidt, who was found guilty of false doctrine by denying that 1 Corinthians 14:34 and 1 Timothy 2:12 prohibited women from serving as pastors has not, as far as I know, ever publicly expressed his belief that the text of Holy Scripture forbids women pastors.

Replacing biblical authority with synodical authority is a scandal. In Kurt Marquart's written argument to the COA on behalf of Robert Preus, he addressed the claim of Ralph Bohlmann and the praesidium that identified opinions of the CTCR with the doctrinal position of the Missouri Synod and claimed the right to protest any decision of the COA that deviated from opinions of the CTCR. Marquart wrote:

The implications here are nothing short of staggering. Had Plaintiffs simply asserted everyone's right to protest any decision by anyone, including the CTCR, which is contrary to Holy Scripture and the church's orthodox Creeds and Confessions, that would have been Christian and Lutheran. To suggest instead a privileged position of immunity from adverse judgment for CTCR pronouncements – by equating them with “accepted doctrinal positions of the Lutheran Church Missouri Synod,” from which therefore even Synod's organs of adjudication may not “deviate” – is scandalous.

The attempt to bind the Commission on Appeals, and thereby all parties coming before it, to CTCR opinions, as if they authoritatively defined Synod's doctrinal position, would if successful, effectively lobotomize the COA and others on any subject on which the CTCR chose to express itself. Such unheard of oppression of free Christian conscience flies in the face of our

church's whole evangelical confession, which demands "that the church [be] not deprived of the power of making judgments and decisions according to the Word of God" (Treatise, 56).

An official entity granted the right, by virtue of its office, to issue binding definitions of the Synod's doctrinal position – thus robbing even the church's own courts and tribunals of independent judgment under the Scriptures and the Confessions – would thereby in effect become a corporate papacy: [Marquart then quotes from the Treatise, paragraphs 49-51]

This is no minor procedural squabble. It strikes at the heart of what makes the church the church. Marquart argued strongly for the proposition that the synod does indeed have churchly power and exercises churchly authority. The theme of his argumentation throughout the adjudication process was the need to exercise churchly, as opposed to legalistic, authority, that is, to rely on God's word. The churchly authority of a synod is derivative from and delegated by the congregations that form the synod. In defending Robert Preus' call as president/professor, Marquart argued before the COA:

Theologically therefore it is not possible to discount synodically mediated calls – that is, calls issued by many congregations jointly – as being on that account in any respect inferior to the full dignity of calls issued by one single local congregation.

At this point, it is important to emphasize that when Robert Preus received his call to serve as president of CTS in Springfield the call explicitly said that it was as president and professor with tenure. That was the position to which he was called. He was assigned the duty to be a teacher of the church and not just an administrator of an institution of the synod. Listen to Marquart's theological distinction between the office Preus held and the office Bohlmann held. He writes, again to the COA,

There is a prima facie case for distinguishing in principle between ordained professors ("teachers") and missionaries ("evangelists") on the one hand, and Synodical superintendents or supervisors on the other: the former are by definition called to the quintessential work of the Gospel ministry: teaching and preaching. The "ruling" (see Walther, Church and Ministry, 294) of supervisory officials beyond the parish level, on the other hand, is as such only a "humanly devised office of oversight (episcopate)" (H. Sasse, We Confess the Church, 57), hence not in and of itself a part of the one Gospel-proclaiming ministry.

This vital distinction became an issue in the Evangelical Lutheran Synod after the ELS adopted a doctrinal position breaking with the teaching of such men as Walther, Sasse, and Marquart and adopting the formless Wisconsin Synod doctrine that teaches the office of full time synod president is a form of the pastoral office.

On October 19, 1991, nine months before the LCMS convention in Pittsburgh in July of 1992, the COA issued its final ruling in the Robert Preus cases, overturning his suspension from the synod ministerial roster, ruling against the BOR of CTS, and restoring Preus to his office as president of Concordia Theological Seminary.

The COA concluded that the BOR had not honorably retired Robert Preus, but had dishonored him in violation of the Eighth Commandment. They set forth the facts of the case, citing copiously from the Scriptures and from Luther's Large Catechism to substantiate their ruling. They wrote in their opinion:

The BOR majority chose removal by a "show of right" (the Jezebel method I Kings 21; 1-16) rather than to show cause.

They wrote:

. . . the majority of the BOR substituted show of right and secular legal maneuvering in place of Christian fairness and justice. Thus by a "show of right" Dr. Preus was deprived of his honor and his position. He was not allowed to face his accusers and defend his good name.

They wrote:

Holy Scripture was transgressed by the majority of the BOR, when it took from him Preus' position and his more precious possession, his honor, by show of right. No statement in the Seminary Handbook could supersede or silence the Scriptures, and validate the BOR majority's actions. Eph. 4:25 "leaps from the pages" of Scripture that the BOR failed "to speak every man truth with his neighbor."

The Missouri Synod had years earlier dealt with the question of whether a Synod convention could overturn a final decision of the Synod's Commission on Appeals and had decided that such a procedure would violate the requirements of due process. This is what led to Bylaw 8.69, which made final appeals of the COA binding on everyone concerned, "and not subject to review, reversal, amendment, or modification, any provision to the contrary in the Bylaws notwithstanding." Bohlmann had

previously expressed his support of this Bylaw. At a joint pastors and teachers conference in the South Wisconsin District of the LCMS just a few months before the final ruling of the COA, Bohlmann was receiving questions from the assembly and I was waiting at the microphone to ask him a question. He ignored me and was about to end the question and answer session until the people who had been standing behind me at the microphone shouted out that I should be permitted to ask a question. Bohlmann relented. I asked him if the Commission on Appeals were to rule in Preus' favor and order his reinstatement as president of the seminary would he urge the BOR to obey such a decision. Bohlmann chided me for asking such a question. Later, he encouraged them to disobey the decision.

The synod was in crisis as the Pittsburgh convention began. The BOR had made it clear that it would not honor nor implement the COA decision that required Preus be returned to his office as president of the seminary. Ralph Bohlmann had appointed another committee to undercut the binding authority of the COA's decision. In negotiations between representatives of the BOR and Preus, the BOR repeatedly offered Preus a figurehead position that Preus repeatedly rejected. The two sides finally agreed that Preus would remain as president of the institution, exercising spiritual authority over the seminary, and that he would delegate the day to do administrative functions to an administrative assistant. Preus and the Board agreed on Rev. Michael Stelmachowitz. I was on vacation up on the Canadian border when I first learned of the Pittsburgh Agreement. My father called my mother and told her about it. She and I were both very disappointed, to put it mildly, that he had entered into any agreement at all with the Board. If they would defy the rules of the Synod, how could they be trusted to honor such an agreement? My mother and I were right. Immediately after the BOR signed the Pittsburgh Agreement they interpreted it to mean what they had previously proposed to Preus and that Preus had rejected. They make Robert Preus into a mere figurehead. They made Stelmachowitz the de facto president, and stripped Preus of any duties at all at the seminary. Preus appealed to the newly elected president of the Synod, Rev. Al Barry, and while Barry said that he disagreed with what the Board did he claimed that the Board had the authority to do what it did. I wrote him a letter arguing that he was wrong based on the facts of the case, and he never replied to my letter.

Robert Preus won his cases in adjudication, but he did not regain his office and he never again taught at the seminary. He was finally scheduled to teach in the spring quarter of 1996 but he died on November 4, 1995. Concordia Theological Seminary has never officially acknowledged that Robert Preus was wrongfully removed as president and tenured professor. Reading the official releases and publications

from CTS concerning Robert Preus since his death one would think that he was honorably retired as president in 1989. He was not.

My own removal from the ELS is a much shorter story for the simple reason that, while Robert Preus did not receive the benefits of due process in his efforts to regain what was wrongfully taken away from him, he was at least accorded the process. When I was suspended, that is, expelled from the ELS in 2006, there was no due process.

The Little Norwegian Synod was formed in 1918 at a time of ecumenical fervor among Norwegians in America. Its predecessor body, the Norwegian Synod, merged with a couple of synergistic Norwegian Lutheran church bodies to form a new church body called the Evangelical Lutheran Church in America or ELC for short. Luther Seminary, where my father, his brother, and his uncles all received their theological training, belonged to the ELC. The Little Norwegian Synod, later to be called the ELS, held to the doctrine of C. F. W. Walther and Francis Pieper on everything, including church and ministry. The first ten years of my father's ministry was as a pastor of the Little Norwegian Synod. I was baptized into a congregation of the Little Norwegian Synod. I grew up with a positive view of this little synod and had always regarded joining the ELS as an option, thinking it was a more conservative version of the Missouri Synod. I joined the ELS in 1997, accepting a call to River Heights Lutheran Church in East Grand Forks, Minnesota.

I knew that the ELS was in fellowship with the WELS and I knew that the WELS view on church and ministry was not something I could subscribe but I also reasoned that since the ELS tolerated both the Missouri and the Wisconsin views and that the Missouri Synod also permitted the Wisconsin view it should not be a problem. A brief explanation of the Missouri and Wisconsin views may be helpful at this point.

The differences between the Missouri and Wisconsin views on church and ministry can be summed up with the words formed and formless. The Missouri Synod teaches that the divinely established form of the visible church is the local Christian congregation and that that divinely established form of the ministry is the pastoral office. The Wisconsin Synod teaches that there is no divinely fixed form for either the church or the ministry. It is a question of whether Jesus or the church establishes the form of the office. In the Wisconsin teaching, the office assumes different forms according to circumstance as the believers are led by the Spirit to establish various forms of ministry to meet the church's needs. There are more comprehensive and less comprehensive forms of the public ministry. All of them are the public ministry. They are established by the Holy Spirit through the common faith of the believers.

In the Missouri teaching, Jesus established the form of the office when he sent out the first pastors with the duty to preach the gospel and administer the sacraments. The Missouri view permits auxiliary or assisting offices, but makes a clear distinction between the divinely established pastoral office that is by divine right and the church established offices that are by human right. Missouri calls the Wisconsin position enthusiasm and Wisconsin calls the Missouri position legalism.

The ELS had been strongly Missourian on church and ministry but after the ELS broke fellowship with Missouri in 1955 it moved more toward the teaching of the Wisconsin Synod. At their annual convention in 2005, by a vote of 62% to 38%, the ELS adopted a document of the ministry that, while on the surface was a rather clumsy synthesis between the two positions, was upon closer examination, in effect, the Wisconsin Synod position. The document was prepared by a committee appointed by the president of the synod who himself was devoted to the Wisconsin Synod position.

After this document was prepared and before the 2005 convention, a number of us pastors who wanted to keep our synod from adopting the WELS position revised the proposed document so as to remove from it the most blatant elements of Wisconsin Synod formlessness that it featured. Particularly troubling was the document's claim that the Bible taught a limited public use of the keys: that one was in the public ministry of the word to this or that extent. We did not believe that was so. While as many as twenty pastors participated in the production of this revision, it became known as the Circuit 8 revision because almost all of the pastors in Circuit 8 participated in its production. I was the Circuit Visitor of Circuit 8. The Circuit 8 revision went nowhere at the convention, and the convention adopted the document that the committee appointed by the president had prepared. A layman from Circuit 8 then asked the presidium of the synod if they would be willing to explain why the Circuit 8 revision was not in order. The synod adopted a resolution asking the presidium to do just that.

The response to the Circuit 8 revision that the presidium produced a few months later featured two papers, one from the president of the synod and one from Bethany College professor Erling Teigen, who had helped write the document the synod had adopted. Their responses were in large part directed in response to things I had personally written. They apparently assumed that I was the primary author of the Circuit 8 Revision and a refutation of my writings would serve as a refutation of the Circuit 8 revision. In fact, while I had a role in preparing the Circuit 8 revision, it was a genuinely collaborative effort on the part of a group of pastors.

Since their responses revealed misunderstanding of my teaching, I decided to respond to the responses. I wrote a paper, dated December 6, 2005, called, "Clarifying the Issues in the ELS Ministry Debate: A Response to President John Moldstad and Professor Erling Teigen." I sent it to President Moldstad and Professor Teigen and put it up on my website, christforus.org, where it remains to this day. The third to the last paragraph contains pointed criticism of the document the ELS adopted. After reading it but before talking to me about it, President Moldstad told a group of pastors at a Winkel in southern Minnesota that I would have to take back what I had written.

On January 19, 2006, President Moldstad and I met at Gloria Dei Lutheran Church in Cold Spring Minnesota. Present as well were the Vice President and Secretary of the ELS, both pastors, and two pastors from Circuit 8. John Moldstad asked me to retract my paper. I asked him to show me where I wrote anything contrary to God's word. He asked me several times if I were accusing the synod of false doctrine. I repeatedly assured him that I was not. Of particular concern to the President and Vice President of the synod was this sentence in the third to the last paragraph of my paper where I wrote concerning the synodically adopted document:

I will not permit it to be a standard for my teaching and I do not acknowledge it as having any authority over me whatsoever.

They regarded these words as provocative. John Moldstad emphasized that the synod had adopted this document. This made it authoritative over me. I asked him several times to show me where the Bible taught a limited public use of the keys. He asked me several times to retract my paper for the sake of peace in the synod. When I asked him if he would be satisfied if I excised from the paper the paragraph he found so troublesome, he told me he was not interested in editing the paper. He wanted me to retract it.

At one point in the meeting he asked me if my congregation supported my position on this matter. I said they did. He grinned. Both of my witnesses commented on it later. As I learned, he had been in contact with the leadership of my congregation without my knowledge.

On January 26 President Moldstad called me on the phone and told me I would be suspended from the synod effective February 1. My congregation had three options: 1) Remove me as their pastor; 2) Keep me as their pastor and be removed from the Synod; 3) Give me a two week paid leave of absence while they considered their options. They met on January 29. They gave me the two week paid leave of absence. They also voted 13 to 4 that they did not agree with the synodically adopted

statement on the ministry. They also voted unanimously that I had been a faithful pastor, preaching and teaching the pure doctrine to them for the eight years I had served as their pastor.

On February 27 they rescinded my call and voted to support the synodically adopted statement on the ministry. President Moldstad had prepared for them the motion by which my call would be rescinded, citing as reason for my dismissal that I was not in the fellowship of the ELS. A member of the voters' assembly objected to that language, saying that I was in fellowship with them, but was not a member of the synod, so they changed the language to say that my call was being rescinded because I was not a member of the synod. As one member of the congregation said, "After all, the synod is the final authority."

The rest is anticlimax. Once I was removed from the pastorate at River Heights Lutheran Church in East Grand Forks, the appeal of my suspension was rather pointless. We had three vacant congregations in Circuit 8. They formed a parish and called me to be their pastor. Two of the congregations resigned from the ELS before they called me and one was expelled for calling me. I did appeal. You can read about it on my website. The men on the commission on appeals included two pastors who had publicly shown bias against me. One of them had send an email to the entire ministerium of the synod a few years earlier, attacking me for allegedly politicking for the Missouri position on the ministry at a synod convention. Another publicly asserted at a pastor's conference that anyone who disagreed with the synodically adopted statement on the ministry should leave the synod. I asked they be recused but they were not. At my hearing, I was not permitted to ask any questions. My accuser, President Moldstad, was not present. He charged me with "sowing seeds of discord among the brethren" contrary to Proverbs 6:19. I was not given the opportunity to face him, to hear him attempt to substantiate this charge, or to direct any questions to him. The questions the commission asked me showed they could not distinguish between criticizing a synodically adopted document and accusing the synod that adopted it of false doctrine.

I quit the Missouri Synod in 1997, thinking the grass might be greener on the other side of the hill. I objected to the substitution of synodical loyalty for confessional faithfulness. I hoped to find a purer confessional spirit in the ELS. Instead, I found the spirit of synodical triumphalism stronger in the ELS than in Missouri. Their logic is impenetrable. We must belong to an orthodox synod. Therefore, the ELS is an orthodox synod because we belong to it. Therefore, if you say the synod has erred you are accusing the synod of being heterodox and you may not belong to a heterodox synod. So you must leave. If you won't leave voluntarily you will be expelled. This was the basis for my removal from the ELS.

A couple of years ago, President Moldstad communicated with some pastors in Circuit 8, expressing regret for some of the things he did during the controversy of several years earlier. He said nothing about River Heights Lutheran Church, me, or my removal as their pastor at his insistence. He required that they remove their pastor without due process or they would be removed from the ELS. This was and remains a scandal. While President Moldstad has told leaders of our synod that he did not handle things well, he has not yet admitted that he did wrong in forcing a congregation to choose between being thrown out of their synod or removing their faithful pastor without giving him due process. To remove a called minister of the word from office without showing from God's word that God wants him to be removed is an attack on Jesus whose servant the minister is. Due process is not a technicality. It is our sacred duty. The Jewish leaders mocked due process when they said to Pilate, "If he were not an evildoer we would not have delivered him up to you." Those who deny due process to Christ's ministers join with those men in delivering Christ up to be crucified.