

# DISPUTE RESOLUTION IN THE MISSOURI SYNOD

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*(In the light of the post-2004 "LC-A-Mess" convention, this article, and others like it, are quite prescient. Ray saw the writing on the wall long before most others it. - Pr. William P. Terjesen.)*

This column in the Summer 1997 issue of Word & Witness dealt in considerable detail with this month's topic which is "Due Process". Justice is never served but rather denied when due process is ignored or neglected!

The following appeared in the October 13th issue of Christian News:

"LCMS Dispute Resolution, By Attorney Robert Doggett" [Mr. Doggett served for 14 years as a member of Synod's Commission on Adjudication and for 6 years on the Commission on Appeals until these commissions were superseded in 1992 by the Dispute Resolution Process.]

"For many years, the Lutheran Church-Missouri Synod Bylaws provided for a reconciliation, adjudication and appeals process available to Synod and District organizations, Congregations, ordained ministers, commissioned ministers and other church workers. This dispute resolution process worked very well and justice was done. Each LCMS district had a Commission on Adjudication which decided cases arising in a District. The Synodical Commission On Adjudication decided disputes at the Synod level, for those holding positions with Synod including the colleges and seminaries. A party could appeal a decision of a district or synodical Commission on Adjudication to the synodical Commission on Appeals (COA), the LCMS supreme court.

"I served on the Synodical Commission on Adjudication for 14 years and on the Commission on Appeals for six years. My colleagues and I serving on these Synodical commissions were all elected by delegates at Synod conventions. Members of District Commission on Adjudication were elected at district conventions. Our Commissions heard disputes such as claims for compensation one by a medical missionary from Nigeria, one by a former Executive Director of a discontinued Synodical Department, and several by former college and seminary faculty members. We decided many difficult cases--expulsions and removals from the clergy roster and college faculties, reinstatements and excommunications. We decided major disputes, including the Robert Preus cases in 1991 and 1992. In all these cases, my Commission colleagues served with wisdom, knowledge of Christian doctrine and dedication to justice. We brought with us experience as clergy or attorneys and learned more as we served. The majority of the members of these adjudication Commissions were ordained ministers and the remaining were laymen. All of the laymen on both commissions that I served on for 20 years were experienced lawyers. My colleagues on these commissions had expertise in Christian doctrine, in LCMS polity, in the concept of justice and in the adjudication process. As we continued over the years to hear disputes we learned from each other about justice.

"Beginning after 1986, many of our actions and decisions on both commissions I served on were challenged by former LCMS President Bohlmann. In 1992, arising from President Bohlmann's disagreement with our decisions, he put through major changes in the LCMS Dispute Resolution process, helped by a "task force" he selected. They drew up the new dispute

resolution system the 1992 convention adopted. Under the new system, reconcilers are appointed by district Boards of Directors, replacing elected members of former adjudication commissions.

So how is the new system working? Under the new system in effect since 1992, three district-appointed reconcilers make up a Dispute Resolution Panel (DRP), which decides disputes which were in the past decided by elected members of commissions on Adjudication. Reconcilers need not have any qualifications. I have dealt with two DRP panels as advisor to a party to a dispute. In a 1997 dispute involving a congregation and dissident members removed by self-exclusion, the DRP panel consisted of two clergymen and a layman. The layman told me he was not a lawyer, but that he had once worked in a court house. This 1997 case was the first case these DRP panelists had heard in the five years since their 1992 appointment. They refused to make a record of the hearing, although a record is allowed by the rules of procedure. Their DRP decision was so flawed that an Appeals Panel consisting of three district Presidents ordered a new hearing and a record made, the new hearing to be conducted by a Review Panel (RP).

"This RP panel consisted of five reconcilers drawn from the pool of District-appointed reconcilers. They knew about as much what they were doing as the DRP panelists knew--not much. Disregarding the order of the Appeals Panel's three District Presidents, the five RP panelists held no new hearing, made no record, and adopted the main parts of the decision of the DRP panel, which the Appeals Panel had ruled to be no decision. In this adjudication, the new system failed. I saw sincere efforts by the eight DRP and RP panelists to do their job but they never understood what they were supposed to do. And they showed no understanding of the doctrinal issue underlying the dispute--what constitutes an excommunication.

"In another dispute I am advising on, the Chairman of the DRP panel called my party, a teacher, and told her she did not have a case. End of dispute. Not even a hearing. The current LCMS Bylaws state that there "shall" be a hearing by a DRP panel and also state that "shall" means "must". The teacher has appealed this non-decision to an Appeals Panel. I have learned from others of what DRP panels similarly have done then--perfunctory actions or no action. Their experiences are the same as I have seen myself. The new reconcilers surely mean well, but it seems that they just cannot be bothered or want to save the expense of doing their jobs. I am compiling case histories about actions of these new DRP and RP panels and would like to hear more about what is happening.

"There is no Commission on Appeals, but there is an Appeals Panel consisting of three District Presidents, the best part of the new system. If the Appeals Panel of three District Presidents could render a final and binding decision, there would be some hope for the new system. But they may only refer the dispute to an RP panel. It is time for another presidential task force to review and recommend changes in the LCMS dispute resolution system. It is time to restore what we had, an adjudication system that worked, with commission members elected at Synod and District conventions.

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The failings, the injustices inherent in the current Dispute Resolution process I think are obvious here as well as in the Summer column containing the quotations from Dr. John Warwick Montgomery. Mr. Doggett writes from his own knowledge and experience, both from his twenty years on the adjudicatory side and afterward on the "other" side as advisor to parties to disputes.

It needs to be recalled in the case of the late Dr. Robert Preus, improperly and unjustly removed as President of Concordia Theological Seminary and then charged with certain offenses

by (then) President Bohomann, that under the then extant Adjudication and Appeals process (pre-1992 Bylaw VIII) he had been vindicated, but this decision was ignored. Dr. Preus then sued for a remedy in civil court and won. He was then vilified for having taken this alleged unscriptural action, notwithstanding the provisions of Bylaw 8.07 Exclusiveness of Remedies, paragraph b., in part: "In such cases each party to the disagreement, accusation, or controversy shall be free to enforce or defend his rights in the civil courts." The 1992 Synod Convention, in its revision of Bylaw VIII, among other provisions removed this right so that there would be no appeal from an unjust ruling nor to enforce a just ruling. The 1995 convention did amend Bylaw 8.09 to provide for an appeal procedure, but a careful reading of this added provision reveals, to me, that it falls far short of anything like that offered by the former Commission On Appeals. This is borne out by Mr. Doggett's comments above.

An interesting bit of irony here. These same vilifiers, namely (then) President Ralph Bohlmann and those vice-presidents together constituting the Praesidium, having "had the opportunity to file a motion for reconsideration [by the Commission on Appeals], but chose instead to take action contrary to the Bylaws of the Synod;" and then "restated those charges to the 1992 convention...thus defying a decision of the Commission on Appeals and synodical Bylaws;". "At least one of these vice-presidents has continued to insist on the validity of the charges, in spite of the fact that the charges were proven to be false,...". (Quotes from the 1995 Synod Convention Workbook)

I think it is reasonable to conclude that ex-president Bohlmann and his followers did not succeed in "killing all the lawyers"!

Is this, together with what has been presented in previous columns, disconcerting and even shocking? Yes! But, should we be surprised? No! The answer, as always, is in Scripture. Just study Matthew 10:34-36 and Luke 12:51-53 for understanding.

Sola Scriptura.