

# A Texas catastrophe coming

*Forum Letter* April 2004

by Russell E. Saltzman, editor, *Forum Letter*

Copyright 2004 by American Lutheran Publicity Bureau

This is very serious, very messy and potentially very, very costly to the Evangelical Lutheran Church in America (ELCA). We are speaking of the lawsuit against Trinity Lutheran Seminary, Columbus, OH and the ELCA. We have mentioned it before (*FL:33:1*).

The suit was instigated by the families of the teenage boys who fell victim to sexual molestation by Gerald Patrick Thomas. Thomas is the 1997 Trinity graduate who, at the time of his arrest, was serving an ELCA congregation in Marshall, TX. His 2002 conviction on multiple counts of sexual abuse resulted in a prison sentence of 397 years, reputed to be the most severe penalty ever meted out in such a case by any criminal court. The only comparable sentence we have heard about is 270 years given to a Catholic priest. The lawsuit is seeking more than \$300 million from the ELCA and will be heard before Judge Bonnie Leggat in her Harrison County, TX district courtroom — the same judge, incidentally, who presided over Thomas' criminal trial.

Were you to visit <<http://www.co.harrison.tx.us/>> and click under the district court's jury docket schedule, you will find *John Alfred Doe, et al vs. Evangelical Lutheran Church of America, et al* scheduled for April 5, provided no settlement is reached in the meanwhile. We know that negotiations were held early February. We know, too, that the plaintiffs are confident, very confident, of going to trial.

Given the materials related to the case that we have in hand, we can understand why.

## **Depositions and memos**

*Forum Letter* is in possession of the deposition of James M. Childs, one of the defendants named in the suit. At the time Thomas was a seminarian, Childs was Trinity's academic dean and is now director of the ELCA's sexuality task force. We also have several other depositions given by ELCA officials during discovery, including that of ELCA Presiding Bishop Mark S. Hanson, made in Chicago at the Lutheran Center last September 22. Additionally, we have copies of numerous internal seminary memos related to Thomas' internship and behavior while a student at the seminary, and we have memos from Bp. Kevin Kanouse, bishop of the ELCA Northern Texas/Northern Louisiana Synod related to the arrest of Gerald Thomas. Bp. Kanouse within days of Thomas' arrest specifically alerted a seminary official to a possible lawsuit.

From these items we now know that at least some Trinity officials were well aware of Thomas' problematic behavior with adolescent boys, and they were aware of it prior to his certification for call. They knew that while on his internship Thomas provided alcohol to adolescent boys in his apartment and allowed them to watch a same-sex male pornographic video. There was police involvement at the time, but no charges were filed.

### **Question in dispute**

This incident did not end his internship, which concluded in the normal fashion. He returned to Trinity Seminary for his final year. The incident did merit an "incident report" by his internship supervisor, Pr. Melvin Swoyer, which is also in our possession. Seminary officials never shared the report with Thomas' synodical candidacy committee, though at least one memo speculates about the impact such a report might have upon a candidacy committee.

Further, seminary officials knew that a pastor in charge of an after-school youth program in Columbus, OH, where Thomas worked during his senior year, had also raised concerns about Thomas over the manner of his involvement with male youth in the program.

To be clear, the seminary faculty did not specifically vote to approve Thomas' candidacy. Instead, of three recommendations available to the seminary — approve, deny, postpone — the faculty took no action. None of the appropriate blanks were checked. In effect, the faculty rendered a "no comment" on the fitness of his candidacy for certification. We do not know what questions, if any, the candidacy committee may have raised given Trinity's lack of recommendation.

The issues around Thomas' behavior on internship and with the after-school program were addressed with Thomas.

How thoroughly and how seriously the seminary addressed those questions is the subject in litigation.

He was urged to seek therapy because of his unstable "boundaries" with teenage male youth. He never did, nor did anyone at the seminary insist. Moreover, they claim they could not. In the depositions we have seen, all plead a lack of authority to compel or require any student to seek therapy. That is probably so, absent a threat of dismissal. But there was not, in the seminary's opinion, reason to make therapy an absolute requirement before certification. Thomas' inaction in seeking therapy did raise concern with at least one seminary official, but by that time Thomas was certified with a call in hand to Marshall, TX.

### **Casting a wide net**

Among those named as ELCA defendants from Trinity Seminary are: Brad Binau (who conducted several sessions with Thomas post-internship), Allan Sager (internship director), Dennis A. Anderson (seminary president at the time), Leland Elhard (then on

faculty, now retired), Don Luck (faculty), Mark Ramseth (current president). Defendants from the Northern Texas/Northern Louisiana ELCA Synod include: Mark Herbener (synod bishop when Thomas was called to Marshall, TX), Kevin Kanouse (Herbener's successor and bishop at the time of Thomas' arrest), Earl Eliason (an assistant to Herbener, of whom more in a moment). Named as ELCA defendants are: H. George Anderson (presiding bishop during that period) and Mark S. Hanson (the present presiding bishop).

The plaintiffs, of course, cast as wide a net as possible hoping to haul in a big catch. Our opinion, the only names of merit in the lawsuit are the synodical and seminary officials.

### **Disingenuous discipline**

Nonetheless, the deposition of Bp. Hanson reveals the plaintiff's interest, keen interest, in ascertaining just exactly how rigorously ELCA disciplinary policies on sexual misconduct are actually enforced. Any pattern of non-enforcement common throughout the ELCA arguably strengthens the plaintiff's case for negligence regarding Thomas.

In this respect, Hanson is asked about his period of service as a synod bishop. He is questioned, "When you were synod bishop, did you have a lesbian minister in your synod?" Hanson: "I literally would have to take time to think through who was in the synod." Next, "Did you have a lesbian minister in the synod while you were bishop that was engaged in a committed sexual relationship with another lesbian and would not take a vow of celibacy?" Hanson: "I was never given allegations of that kind of behavior about one of the rostered persons in my synod by anyone."

This may seem more than a little disingenuous. It is not, as some might suspect, a reference to the illicitly ordained Anita Hill who was never on the synod roster. Instead it refers to another pastor presently on the clergy roster of the St. Paul MN Area Synod.

### **Zipper troubles**

What is evident is that some synod bishops construe an absence of formal allegations — never mind how well-known the problem may be — to mean it does not exist and therefore does not merit intervention by a church authority. The crisis of the Roman Catholic scandal, we point out, isn't just that some pastors acted badly, but that so many bishops failed in their responsibilities to enforce policies in existence.

The similar factor here — which admittedly is an oversimplification — is the "old church" culture that would not directly confront rumored heterosexual misconduct, in the hope it could be dealt with "pastorally" among "old boys" in a "friendly" and "paternal" way. That often amounted to nothing more than allowing the pastor to receive another call. The egregious problem of pastors with multiple incidents of "zipper trouble" is one the ELCA has been forced to face. Meanwhile, though, since the ELCA does not know what to teach about homosexuality, the "paternal," "pastoral" approach, disgraced as a way of dealing with heterosexual predator offenses, seems to be alive and well when the

context is homosexuality. In short, the once “tolerated” list of “acceptable” kinds of sexual misconduct has been replaced by another one.

### **Little distinction**

Questions surrounding disciplinary enforcement grew much sharper as the plaintiff’s attorney raised in one deposition the instance of former Bp. Mark Herbener’s assistant, Earl Eliason. Eliason installed Thomas at Marshall, TX in June 1997. Just four months earlier, Eliason had pled guilty to misdemeanor charges of lewd behavior with several men in a public restroom. No public action was taken by the synod bishop; what private action may have been taken is unknown. Eliason remained on Herbener’s staff until Herbener’s term expired. He took retirement shortly afterward and then resigned from the ELCA clergy roster in early June 2002, four months after the Marshall, TX lawsuit was filed.

It must be said the plaintiff’s attorney makes little distinction between gay men attracted to teenage boys and gay men content with more age-appropriate partners. Yet the suggestion here is that in cases involving homosexual men and women, ELCA discipline amounts to a wink and a nod whatever risks exist, even when the risk is posed to adolescents and children.

When standards for pastors — said to be devised in part to limit potential liability arising from misconduct — are not enforced, a liability insurer conceivably is let off the hook. The insurance against liability is good only so long as the disciplinary policy, upon which the guarantee is based, is in fact put into effect.

This is what Trinity Seminary officials are accused of doing — winking, nodding, going along, failing to enforce church policy.

Is that what happened?

As we said earlier, and we wish to stress it again, the issues around Thomas’ behavior as an intern and as a student were addressed. At litigation is, were they adequately addressed? Testimony from the seminary officials involved asserts that the answer is clearly yes. As best they could view things at the time, there was not enough evidence to warrant Thomas’ dismissal.

But this isn’t to say a Texas civil court jury will not view matters differently. — *by the editor*

## **Restoring credibility to the task force**

*Forum Letter April 2004*

Copyright 2004 by American Lutheran Publicity Bureau

A victims' rights group has made hay off the Trinity Lutheran Seminary lawsuit. Survivors' Network of those Abused by Priests (SNAP) has busily laid out a wide swath of blame leveled at Trinity and the ELCA. Last November SNAP laid a good deal of it at the doorstep of Dr. James M. Childs, the ELCA director of the sexuality study, who was Trinity's academic dean when Gerald Thomas was a student. The sexuality task force had just completed a study unit on the subject of preventing child and adolescent molestation. SNAP went ballistic. To have Childs in charge of a sexuality task force studying child molestation, so they suggested none too gently, was putting an enabler in charge of prevention.

SNAP called for Childs to resign as director of the sexuality study, claiming he participated in a cover-up, or at the very least knew about Thomas and did nothing. While the former is in our estimation clearly false, certainly the latter is true. Dr. Childs did know of the situation. In fairness to him, however, it is also our impression that, as academic dean, he claims he would have had no direct responsibility in dismissing or retaining Thomas as a student.

A small portion of his deposition was released to the Associated Press by SNAP. Childs admits receiving memos raising questions about Thomas when he was at the seminary, but that there was not enough information to justify alerting an ordination candidacy committee.

When this became public, Childs not unreasonably asserted that six pages lifted from a 200-plus-page deposition failed to give an adequate picture of his testimony. We agree.

We also agreed at the time with the ELCA spokesman, that SNAP did not accurately portray the facts (*FL:33:1*). That remains our assessment.

SNAP's description of Childs' involvement is lurid and without nuance. Naturally, it is in their interest to present it that way, but it is not a full picture. SNAP also gives every impression of being in a relationship with several law firms in the business of litigating suits of this sort.

All that said, nonetheless we believe that Dr. Childs should resign as director of the ELCA sexuality task force. We believe he should do so immediately, simply to preserve whatever creditability the task force may have throughout the ELCA.

Granted, we are not among those who hold the task force in very high regard. We have been a steady critic of it and its work. Still, we have also said it is our

belief that Dr. Childs — whatever his personal feelings on the acceptance of gay ordination — was determined to produce a fair study.

We believe, however, the lawsuit in Texas calls all that into question, merely by inference.

We would not regard his resignation as in any way an admission of responsibility in the Thomas case. To the contrary, we would regard it as a forthright effort on his part to restore to the task force's leadership, and to the ELCA, some of the credibility that has been considerably damaged by the Marshall, TX lawsuit, whatever its final outcome.

And if he will not resign for the good of the task force, then, perhaps, the task force should resign for the good of the ELCA. — *by the editor*

## More from Texas

*Forum Letter April 2004*

Copyright 2004 by American Lutheran Publicity Bureau

Back to Texas, again. The following are snippets of comment, just our impressions based on materials we have in hand related to the case:

- Based on much of what we have, the ELCA has not been well served by its general counsel, Phil Harris. It is of course handy to have an attack dog attorney around when things like this arise, but maybe the leash should have been shorter. There is early correspondence from Harris on the case suggesting the victims of Gerald Thomas were merely violating the commandment against bearing false witness. In failed negotiations in early February this year, the plaintiffs sought, among other things, an apology from Harris for his remark as part of an acceptable settlement.
- What we said about SNAP earlier, the impression we have that it has a relationship of sorts with some law firms specializing in victims' lawsuits? Well, the settlement the attorneys for the plaintiffs wanted included a demand that the ELCA donate of \$100,000 to SNAP.
- There is a gag order in place. The order was imposed upon the principals in the case April 4, 2002 following some local media accounts in, among other

places, the Marshall, TX *News-Messenger*. The order was sought by the ELCA. The plaintiffs represent this as a hypocritical suppression of information, given the ELCA's public support of full disclosure in these matters.

- The gag order has made it very difficult to piece this story together. No one directly associated with the case is able to speak on or off the record. None of our calls to the plaintiffs' attorneys were returned, nor was our inquiry to SNAP ever returned.

- Flashback to *The Lutheran's* June 2002 issue. An article by Laurel Johnson outlines the Marshall, TX case. "[Northern Texas/Northern Louisiana ELCA Synod Bp. Kevin] Kanouse and Jennifer Parker Ainsworth of Tyler, Texas, the ELCA's [local] legal counsel in the case, said neither Kanouse nor the ELCA knew of Thomas' alleged criminal activities until his arrest." If this is what Bp. Kanouse in fact said to *The Lutheran*, it is technically true, but he misses the point. One memo from Bp. Kanouse in our possession clearly notes the incident from Thomas' internship involving alcohol and a same-sex pornographic video. Kanouse is of the opinion, however, the information should have remained with the seminary. Kanouse learned of the internship affair as Thomas was seeking call in the NT/NL synod. Giving alcohol to minors in Texas is a misdemeanor offence, but perhaps the bishop didn't know that.

- Continuing with the story, in fact, the next sentence from the June 2002 *Lutheran*: "Kanouse said the synod has a zero-tolerance policy for any form of sexual misconduct on the part of its clergy." Which explains why his predecessor, Mark Herbener, retained an assistant to the bishop on his staff convicted of a sexually-related misdemeanor?

- By *The Lutheran's* account in the June 2002 issue, the plaintiffs in the case simply went to court instead of first approaching the ELCA. Material we have directly contradicts *The Lutheran*. As part of an early settlement attempt, the plaintiffs demanded a retraction.

- A final note. I have never covered anything in *Forum Letter* that has created such personal distress. I personally know most of the principal defendants in the lawsuit; know, like and respect them. For that reason I have taken extra care in presenting the facts as I know them, and I have deliberately avoided mention of things that I count as mere rumor. This account is as accurate as I can possibly make it. Any omissions of fact or failures in this are of course entirely my responsibility. — *by the editor*

---

Russell E. Saltzman is pastor of Ruskin Heights Lutheran Church, 10801 Ruskin Way, Kansas City, MO 64138 ([www.rhlc.org](http://www.rhlc.org) 816.761.6815) and editor of *Forum Letter*, published by the American Lutheran Publicity Bureau ([www.alpb.org](http://www.alpb.org)). Permission to reprint in whole or in part is expressly granted with proper credit. He is a 1980 graduate of Trinity Lutheran Seminary, Columbus, OH.