

Analysis of the Florida Trademark

Court Transcript

PART ONE OF NINE

INTRODUCTION

The March 13-16 Florida Trademark Lawsuit Court Trial, held in the federal courthouse in Miami, was a major historical event for Seventh-day Adventists.

It was also of major importance because of the repercussions it could have on faithful believers as they continue to meet with hostility and separation from the main denomination, because they refuse to abandon historic beliefs and standards. None can know when they might be haled into Court to answer the charge of openly admitting they are Seventh-day Adventists.

It clearly represented a major shift for leaders on the highest level; they have clearly stated that they intend to continue using federal Courts to coerce all separated groups from openly declaring themselves to be Seventh-day Adventist believers—until Adventism shall be eradicated from all those who refuse to submit to their control. Since violation can involve heavy fines and federal imprisonment, we are here dealing with no small matter. The significance of this should not be underestimated.

We recently mailed you a twelve-page report, dealing with the Florida Court Trial (*The Florida Trademark Trial* [WM-941-943]).

Quoting the General Conference attorney in the March 2000, Florida Trademark Lawsuit: "The Supreme Court in the case of Employment Division vs. Smith, in 1990 . . . The Smith opinion, I think, says it all. It says we have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct . . . The Smith Court basically says that to make an individual obligation to obey such a law contingent on the laws coincident with his religious beliefs, contradicts both constitutional tradition and common sense."

[This is important! It is of the deepest significance that the General Conference would use the Smith case to defend itself! The 1990 Smith decision by the U.S. Supreme Court was notorious! This was the Oregon Indian case, which declared that the religious beliefs of individuals and groups had to yield to governmental laws, when they required actions contrary to those religious beliefs! —Yet the General Conference is using that case to support its position that the religious beliefs of Seventh-day Adventists and their churches must yield to governmental laws and court decisions, which would force them to act contrary to their religious practices!]

"The Smith court, your honor, at page 886 and 887, specifically rejects the defendant's argument in this case, that you cannot apply the trademark law, since use of the name is central to Mr. Perez's religious belief . . . What the Smith court held in 1990 was that the court

should decide cases on neutral, if the law is neutral and applies to everyone. It should be applied on those terms without regard to whether the defendant claims that he has some central belief and some practice. Certainly, the use of the name is a practice. It is not a belief. [The use of the name is a mindless practice, not based on any belief.]

"Later, Bernie reinforced this: The Supreme Court of the case of the city of Bernie, which is a much more recent case [than Smith]; its a 1997 [case] . . . Supreme Court case reaffirmed that Smith is the right test, that you can regulate religious practice. Use of a trademark, use of name, as a church name, or in advertising, is a religious practice, your honor. Smith [case] in the Supreme Court [said] you can prohibit a [religious] practice because that's constitutionally permitted if it's a neutral law that applies across the board."

[Did you read that! "You can prohibit a [religious] practice because that's constitutionally permitted if it's a neutral law that applies across the board." That was the decision in the Smith case, which the General Conference wants applied to noncompliant Seventh-day Adventists! The Smith case will be wonderful help when, after the National Sunday Law is enacted, believers are dragged into court and told: "The U.S. Government can prohibit Sabbathkeeping because it is a neutral law; that is, it applies to everyone in the nation!"]

Since then, a complete transcript of the Court proceedings has arrived. This present report will provide you with an analysis of key points which occurred at that Miami hearing.

In addition, we will make the complete transcript available for those desiring to obtain a copy. "The March 2000 Florida Trademark Lawsuit Court Transcript" has 494 pages, costs 7 cents a page, or \$35.00 each + \$5.00 p&h. However, unless you feel your group is in danger of being sued, you really do not need that transcript. It is expensive to reproduce, and the report you now have in hand will provide you with all necessary information. (There are instances in which book or manuscript sources, dates, and page numbers are not given in this analysis; that is because they were not given in the transcript and we could not locate them anywhere else. You would need to contact the Perez group for those

sources. When a source was given, we always named it.)

Since our analysis will be keyed to specific pages of the transcript, you will be able to easily use this present analysis as a study guide to the complete transcript. (Be aware that each of the four days is separately paged and begins with page 1.)

We went to the all the work of preparing this analysis for a special reason: Anyone that is later sued is likely to be confronted with essentially the same tactics and arguments as you will find explained here and in our previous description of the Miami trial.

The General Conference knew that everything hinged on winning this suit, so they put all their essential points and arguments into it. If the time comes that your group is threatened, you will want to know exactly how they conducted themselves in

The trial transcript did not have a table of contents, so we have prepared one.

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this Florida case.

In the following analysis, the present writer corrected typos in quoted material in the transcript, and there were many of them (such as “Miller Rights” for “Millerites”; “agrogate” for the legal word, “abrogate,” etc.)!

CASE DATA

United States District Court, Southern District of Florida, Miami Division, Case 98-2940-CIV-KING.

General Conference Corporation of Seventh-day Adventists

vs.

Raphael Perez d/b/a Eternal Gospel SDA Church, Eternal Gospel Church of Laymen Seventh-day Adventist, and Ministerio Adventista del Septima Dia del Evangelio Eterno, Inc. (Eternal Gospel of the Seventh-Day Adventist Ministry, Inc.), an inactive Florida corporation.

Transcript of Bench Trial Proceedings before the Honorable James Lawrence King, Senior United States District Judge: Day 1, Day 2, Day 3, and Day 4.

Two points in the above data should be clarified:

(1) Perez’ nonprofit corporation was currently “inactive” at the time of the trial, and for this reason: A number of remarkable ploys had earlier been used by the General Conference to pressure the Perez group to knuckle under and sign the notorious *Settlement Agreement*, a copy of which had been sent to them. (See our booklet, *Legal Defense against a Trademark Lawsuit plus the Notorious Settlement Agreement*, 44 pp, \$4.00 each + \$1.50 p&h, for a copy of that terrible contract, which would require the Perez group to abandon their faith and turn over their Adventist books to the General Conference for destruction). One of the pressure methods used was a second lawsuit against the members of Perez’ corporation board! Although legally unjustifiable (since no criminal activity had occurred), it frightened most of the board into resigning. (I warn you because they may later try that illegal tactic against your group.)

(2) This was not a jury trial, but a “bench trial,” in that the judge would decide the outcome.

THE PLAINTIFF

Jeffrey Tew (pronounced “Tu”), a Southern Baptist, was the attorney representing the General Conference in this trial. At the plaintiff’s table with him was Vincent L. Ramik and Walter E. Carson. Because Ramik did not have certification to present the case in a Florida federal Court, he sat there and continually advised the others as to how they should respond. Carson sat there and did nothing. He was probably there, so it could be said that a General Conference in-house attorney was present. (Robert

Nixon, the usual in-house attorney for the trademark cases, appeared as a witness at this trial.)

The General Conference witnesses were, as follows:

George Reid, head of the General Conference Biblical Research Department.

Robert Nixon, head of the General Conference Office of Counsel (attorneys’ office), the office in charge of defending Adventists in “religious liberty” cases.

Harry O’Neill, a surveyor who was hired to take a poll of what a small sampling of Americans thought was meant by the phrase, “Seventh-day Adventist.”

Grace Cancelado, administrative secretary in the office of the secretary of the Southeastern Conference of Seventh-day Adventists, who stated that the Perez group had no earlier contacts with the conference office.

Raymond H. Carr, a detective (and former police officer) who was hired by the General Conference to photograph a number of denominational buildings and signs in the State of Florida.

THE DEFENDANT (DEFENSE)

Robert E. Pershes, a reformed Jew, was the attorney representing the Perez group. At the table with him sat Pastor Raphael Perez and Pershes’ legal associate, Norman Friedman, also a Jew.

The Perez group witnesses were, as follows:

Clark Alan Floyd, a former Adventist pastor and attorney, living in North Carolina.

Colin Standish, a former denominational college administrator and currently head of Hartland Institute in Virginia.

David Zic, archivist for one of the two branches of the Seventh-day Adventist Reform Movement.

John Nicolici, a former church officer in the Adventist Reform Movement.

Russell Standish, a physician, speaker, and writer, living in Australia.

John Grosboll, head of Steps to Life.

Raphael Perez, senior pastor of the church group being sued. (His Hispanic group has a church in West Palm Springs near Miami, a church in Orlando, and an academy near Orlando.)

We will now begin our analysis of the Trial Transcript: To avoid confusion: the word, “name,” refers solely to the phrase, “Seventh-day Adventist.” The word, “title,” refers to the official name of a church, organization, book, etc. “Plaintiff” means the General Conference (the organization which filed the “complaint” or lawsuit) and its arguing attorney, Jeffrey Tew. “Defendant” or “Defense” means the Perez group and statements by their attorney, Robert Pershes.

DAY ONE - MORNING SESSION

The Morning Session of Day One (Monday, March 13, 2000) of the trial began at 9 a.m., with the Plaintiff's Opening Statement (p. 4).

**PLAINTIFF'S OPENING STATEMENT
BY JEFFERY TEW (pp. 4-13)**

This consisted of a brief overview of many of the key reasons, submitted to the Court by the General Conference, as to why it deserved exclusive control of the name:

- With the exception of only a couple individuals, and possibly a few other unknowns, no congregations used the name, "Seventh-day Adventist," prior to 1860 (pp. 5-6).

[In the transcript, we will find only two letters cited by Tew's witness. **Ellen White's 1858 appeal, that our people must ever use the name, is totally ignored by the plaintiff throughout the trial.**]

- At the 1860 meeting, no one wanted to use the name, but a subcommittee selected it anyway (p. 7).

[The 1858 Spirit of Prophecy call to use the name is totally ignored. **Throughout the trial, both sides tacitly assume that the 1860 meeting marked the beginning of church organization. In reality, the first organization began in 1862 and the General Conference was not organized until 1863. But the name was selected for individuals, churches, and the Review office in 1860. Prior to 1862, every Adventist church in the world was independent!**]

- The denomination has used the name exclusively on its signs and as the name of its institutions since that time (pp. 7-8).

[Our recent study (*The Seventh-day Adventist Non-Identity Factor [WM-944]*) disclosed that, **with only two exceptions, the denomination in America does not use the name on any of its entity names, other than church headquarters and many local congregations.**]

- The trademark was filed in 1980, "and became uncontestable in 1985" (p. 7).

[**Ignored is the fact that the trademark permit was originally obtained on false pretenses: They did not tell that (1) no one else was using the name, or had used it prior to 1980, and (2) no individual Adventists or independent churches called themselves by that name prior to the 1863 formation of the General Conference (which obtained the trademark).**]

- In the minds of the public, the name applies to the church (pp. 7-8).

[**As we shall discover, deceptive polling ques-**

tions were used; also these were wrongly bunched together and improperly tabulated, later resulting in skewed totals.]

- Because "of this overwhelming use evidence," the name could not be generic (p. 8).

[**Three facts are ignored: The generic factor is keyed to (1) widespread use by groups apart from the denomination; (2) the fact that the name represents a faith, not just organizational groups; (3) the fact that the Kinship judge ruled that the name was generic.**]

- The judge in the Kinship case ruled that Kinship could use the name because they were not a church; and that, if it had been a church, they would not have been awarded the case (p. 9).

[**This is an untruth. The Kingship judge ruled that the name "Seventh-day Adventist" is generic, but that she was not ruling on "Seventh-day Adventist Church"; that would have to be decided by another Court. She did not say it would be ruled against by another Court.**]

- The Perez use of the name, for his church and in his ads, produces confusion in the minds of the people—as long as the name, "Seventh-day Adventist," appears. **Their use of the name caused distress to the Cardinal in Washington, D.C.** The Perez group ads "connotes the Seventh-day Adventist Church as being intolerant, bigoted, and a hate group as to not only Catholics, but Protestants who observe Sunday as the Sabbath" (pp. 10-11).

[**The Perez ads quote from the Bible and from the Spirit of Prophecy. There is little else in those ads. The General Conference is here declaring that it no longer believes nor proclaims those truths. Several times in the trial, the plaintiff mentioned the distress of that cardinal. This was apparently a matter of deep concern to the General Conference.**]

- "This case . . . is a classic case of a breakaway church trying to use the Mother church's name" (p. 11).

[**Totally ignored is the fact that the name represents our faith, and that we are commanded by God to use it to describe our faith.**]

- Several Court precedents declare that trademarks are property rights and should be protected (pp. 12-13).

[**Court rulings about tin can labels and manufacturing firms should not take precedence over First Amendment rights of free speech and religious liberty.**]

- There is no constitutional (*i.e.*, First Amend-

Continued from the preceding tract in this series

ment) right protecting these people in their claim to use of the name (p. 13).

[The judge in the Kinship case said there was a definite First Amendment factor; and, for that reason, she ruled in favor of Kinship. See our papers on the Kinship case. (*Kinship Legal Papers Tractbook*, 56 pp., \$4.50 each + \$1.50 p&h.)

DEFENDANT'S OPENING STATEMENT BY ROBERT PERSHES (pp. 13-24)

A brief overview of much of what the defense (the Perez group) wished to present:

- A name that is generic cannot properly be used as a trademark. "Seventh-day Adventist" is such a name (pp. 13-14).

- "Seventh-day" is a phrase used by many religionists to express their faith—Seventh-Day Baptists, Jews, etc. (pp. 14-15).

- The word, "Adventist," is also a religious word used by many Christians to express their faith in the soon return of Jesus Christ (p. 14).

- A key objective of the General Conference "is estoppel" (p. 16). [*Estoppel* is a legal term: Here are definitions from two different dictionaries: "prevention of a party from asserting or denying a fact or claim that is consistent with his previous statements or acts" (*Macmillan Contemporary Dictionary*). "A bar or impediment preventing a party from asserting a fact or a claim inconsistent with a position he previously took; either by conduct or words, especially where a representation has been relied or acted upon by others" (*Webster's Encyclopedic Dictionary of the English Language*).] In explanation of this point, Pershes said: "The General Conference is on a campaign to stop anyone from using the term Seventh-day Adventist or its abbreviation, SDA, in any shape or form whether it has 'church' next to it or not" (p. 16).

- The General Conference tried to prove its hold on the trademark by the fact that it won in the Stocker case (p. 17).

[This case, *Stocker and Perry vs. the General Conference*, was an attempt by two faithful Adventists to cancel that trademark; but Stocker/Perry only lost because of an error their attorney made on appeal. (See our book, *Story of the Trademark Lawsuits* 80 pp., \$7.00 each + \$1.50 p&h, for details.)]

- Ellen White, the prophet of the church, said that the people were Seventh-day Adventist; "she wasn't talking about a church" (p. 17), but about what she was and how the people were to describe themselves. This makes the name a "fair use"; that is, a name people have a right to use (p. 17).

- The name, "Seventh-day Adventist," is like escalator, refrigerator, and aspirin; originally the name of one thing, but now an untrademarkable name used to describe variations (pp. 17-19).

- The General Conference's survey, which it will present as evidence in this trial, is flawed and the Court should reject it. This is because it is based on a leading question, asking "what organization do you think of" [leading the people to reply "church organization"]. It was a tainted question (pp. 19-20).

- This trademark violates the First Amendment, because "if you are a believer in Seventh-day Adventism, you are a Seventh-day Adventist" (p. 20).

- Seventh-day Adventist believers equate Ellen White's writings right after the Bible; and she "said the name, Seventh-day Adventist, has been given to us by God" (p. 20).

[When Pershes said that, the audience uniformly, but softly, said "Amen." Judge King then courteously explained that they must be quiet or he would empty the chamber. However, a message had inadvertently been given: The audience was packed with Adventists opposed to the trademark.]

- "From her writings, calling yourself a Seventh-day Adventist is the faith. That's not a choice. That is a conviction that, if you are following the faith, you must do" (p. 21).

- Adventists "also believe that they must tell people who they are . . . That is a conviction of the faith" (p. 21).

- The trademarked name is twisted to apply commercially, when it originally and actually applies to the First Amendment "exercise of religion." This case "goes to the heart of religion" (p. 22).

- "One segment [group of people in] the religion, even if it's a large segment, should not be entitled to get a monopoly on the name of the religion and use the Lanham Act [U.S. trademark law] to accomplish that" (p. 22).

- The General Conference does not like the fact that the Perez group, a very fundamentalist group, is placing the original beliefs of Seventh-day Adventists in newspaper ads. In later years, the

Adventist Church “shifted a little bit, taking a different position” (p. 22). “The church has altered its position a little. It has become, and trying to be, more ecumenical; but those of the fundamental belief, or who follow the very fundamentals of the belief, are still entitled to use the name when the Mother Church shifts” (p. 23).

- The General Conference applies a logo [the open Bible, flame, and squiggle marks in it indicating three feathers] “that they put on their material.” “If anything can be said to be their trademark, that would be what the trademark is,—and that’s what they utilize as their trademark, not the phrase Seventh-day Adventist” (p. 23).

- “The basic test is where you come from versus who you are. When you apply that basic test, ‘you can only come to one conclusion: that what we are is Seventh-day Adventist. Where we come from could be the General Conference’ or some other group. ‘That’s a second question which requires additional information;—that means it’s generic! It’s a class, a genus’ ” (p. 24).

SWEARING IN OF WITNESSES AND INVOCATION OF ABSENCE RULE (pp. 24-26)

Before beginning his questioning of General Conference witnesses, Jeffrey Tew invoked the absence of witness rule. “The plaintiff would like to invoke the rule that any witness that is going to testify not be present during the testimony by the witnesses” (p. 24). The reason Tew invoked this rule was obvious: to keep the defense witnesses confused as to what was happening, until they came out for questioning. In this way, they would be less prepared for the procedure. If they could have sat through the earlier portion of the trial, they would have had a better feel for the situation and how to answer the questions. Keep in mind that nearly all the plaintiff witnesses were highly skilled, from previous experience, in appearing as Court witnesses—and they appeared earlier in the trial. Although Pershes objected, the judge invoked the rule. This meant that all the defense witnesses would have to remain outside the courtroom until they individually entered as witnesses. All of the witnesses were sworn in, and then asked to leave the courtroom.

PLAINTIFF’S FIRST WITNESS

GEORGE REID (pp. 27-58)

DIRECT EXAMINATION BY TEW

On behalf of the General Conference, Jeffrey Tew now calls his first witness, which is George Reid, head of the General Conference Biblical Research Institute:

George Reid was asked a number of questions regarding his name; position; office address; nature of the Biblical Research Institute; tenor as director; past education; area of study; languages spoken and read; ministerial ordination; work record in the church; membership in professional societies; author of one book; access to General Conference Department of Archives; and his statement that he is an expert in Adventist church history, its beliefs, and splinter groups (pp. 27-33).

“Your honor, at this point we tender him as an expert in those areas” (pp. 33-34).

At this juncture, Pershes asks that he may briefly do a *voir dire* on Reid. Permission is granted. *Voir dire*, “to say the truth,” is a legal term from Old French and means an additional clarification that a witness will be telling the truth in regard to areas of his competency (p. 34).

Pershes then asks Reid if he has personally searched for the evidence he is about to present, personally examined it, looked for everything he could find; and did he look for evidence from “other groups using the name of Seventh-day Adventist” (p. 35). Pershes also asked Reid if he was a practicing Adventist and whether his opinions would be influenced by his faith.

The Court then officially recognized George Reid as an expert, and added this enlightening legal comment: “We all understand that **an expert may express opinions, whereas a lay witness is precluded from so doing**” (p. 36).

George Reid’s testimony included these points:

- William Miller’s preaching produced great interest, attracting people from many different denominations, and resulted in a great disappointment, when Christ did not return (pp. 36-38).

- One of the fragmentary groups which remained later developed into, what we know of as, the Seventh-day Adventist Church (p. 38).

- According to primary evidence, prior to 1860, no believers, churches, or congregations were called or known as Seventh-day Adventists. [“Primary evidence” would consist of records from that very time. “Secondary evidence” would be writings from later times about that earlier time (pp. 38-39).]

- Reid and his archivist assistant did “search and pull material, [*ie.*, read] all primary evidence, from the period 1844 to 1860, which would relate to the [identifying name] references to this group of people and their congregations, houses of worship, or churches” (p. 39).

- Sources used primarily consisted of *Review and Herald* issues.

[Here is a statement which independent researchers might find of interest, as they search for information:] “This material has been preserved and is

kept . . . **This has been included in the Adventist Pioneer Library. It's available on microfiche for anyone who wants to see it**" (p. 39). Therefore, you, yourself, can order these microfiches or personally examine them at your nearest Adventist archive. The General Conference, Andrews University, and Loma Linda University would have the most complete collection of Adventist materials.]

- Prior to 1860, no group "called itself the Seventh-day Adventist Church" (p. 41).

- Tew notes that Pershes, in his opening statement, had mentioned a lady (called P. P. Lewis) that used the phrase, Seventh-day Adventists; therefore there were groups prior to 1860 which called themselves by that name. Reid replied that Lewis probably was only referring to herself (p. 43). [A few paragraphs down, we quote the letter from the transcript.]

- Reid again said that no groups or churches were using the name prior to 1860. Then he said this: "There are two place[s] the words, Seventh-day Adventist, are used during this period; but, in neither case, are they identifying a group of a certain church" (p. 43).

[It is a remarkable fact that here, and throughout this trial, the General Conference, its attorney, and witnesses—never once mentioned the 1858 statements by Ellen White, that God's people must call themselves by the name "Seventh-day Adventist" (*1 Testimonies*, 223-234). In view of that statement, we can KNOW that many faithful believers in the Spirit of Prophecy (and most Adventists believed in those writings in the 1850s) must, from 1858 onward, have called themselves and their groups by this God-given name. **This ignoring of the Spirit of Prophecy is consistently done by the plaintiff throughout the entire trial. Later we shall find that, when reference is made to the authoritative bases for the denomination, neither the Bible nor the Spirit of Prophecy is once mentioned by the plaintiff!**]

- A letter is quoted from a "Brother Cranston," to the Review (date is not given in transcript): "I start out to hold meetings in the vicinity of Jackson [Michigan], being invited. I called on Mr. Holford who was keeping the seventh day, called Seventh-day Adventists. But I looked upon the whole body of Millerites as a set of enthusiasts" (p. 44).

[You should know that, throughout the entire Court transcript, the phrase, "Seventh-day Adventist," is always written in the singular, never plural ("Seventh-day Adventists"). This is obviously due to some kind of flaw in the recording device used by the Court reporter. On pp. 71-73 of the transcript, Pershes got Reid to agree that both letters referred to "Seventh-day Adventist" in the plural.]

[Rather consistently in the transcript, the plain-

tiff's attorney and witnesses were rather sloppy in not citing references (dates, sources, page numbers, etc.); whereas the attorney and witnesses for the defense tended to provide this information.]

- That letter, mentioned earlier, by P. P. Lewis from Grantville, Vermont, is then quoted (apparently it was printed in the *Review*, but this fact and the date are not mentioned in the transcript): "My parents were among the first here in the advent faith and for about 10 years or more kept the seventh-day Sabbath . . . I had soon commenced searching the Bible to learn, if possible, what professed Christians were the nearest Bible Christians. I found no difficulty in deciding in favor of the Seventh-day Adventists. Indeed, I am surprised that professed Christians have not long ago seen that the seventh day was the true Sabbath." [Reid earlier said that Lewis was only speaking of herself—and no one or any group—as "Seventh-day Adventists (p. 45)."]

- "That's the only reference in the 153 documents that were published during this period where the name Seventh-day Adventist is used to describe believers in the Sabbath as the seventh-day and the advent?" "Yes, Mr. Tew, these are the only [two] references" (p. 46).

[This is truly remarkable. Surely, Mr. Tew and Elder Reid, the 1858 statements by Ellen White, in which she specifically named the name, declaring that God's people must ever call themselves this by that time,—must be somewhere in the General Conference archives! Here are these statements:

"No name which we can take will be appropriate but that which accords with our profession and expresses our faith and marks us a peculiar people. The name Seventh-day Adventist is a standing rebuke to the Protestant world."—*Testimonies for the Church, Vol. 1, page 223 [written in 1858].*

"The name Seventh-day Adventist carries the true features of our faith in front, and will convict the inquiring mind. Like an arrow from the Lord's quiver, it will wound the transgressors of God's law, and will lead to repentance toward God and faith in our Lord Jesus Christ."—*Testimonies for the Church, Vol. 1, page 224 [written in 1858].*

[It is astounding that Elder Reid and his archivist assistant looked everywhere for "primary evidence" (i.e., documents written prior to 1860),—yet failed to look in Volume 1 of the Testimonies, by Ellen G. White!

[We would ask our readers to turn to pp. 5 and 6 of *1 Testimonies* and read it. That publisher's statement by the publisher (the Review) clearly shows that *1 Testimonies* covers primary evidence, penned by Ellen White from 1855 to 1868, and that the first

part deals with manuscripts written by her as early as 1855. Volume 1 is 758 pages in length, and we have above quoted from pp. 223 and 224, which was quite early in the book. Each item in the *Testimonies* follows the next in order of date of writing. Notice that, many pages farther on, on p. 244, the date, September 1860, is given.]

[If anyone desires a gold mine of source material, against these trademark claims of the General Conference, we direct your attention to two of our books: *The Story of the Trademark Lawsuits*, 8½ x 11, 80 pp. (do not overlook the appendix material in back), \$7.00 each + \$1.50 p&h; and *Legal Defense against a Trademark Lawsuit, Plus the Notorious Settlement Agreement*, 8½ x 11, 44 pp., \$4.00 each + \$1.50 p&h.

Here is an example of what you will find in those two books: **This is the part of Judge Marian Pfaeizer's summary ruling in the Kinship Case, which dealt with the origin of the name. Keep in mind that her statement was the result of her having looked at stacks of evidence presented by both sides:** The following is reprinted from our *Legal Defense* book, p. 14:

“a. The name ‘Seventh-day Adventists.’

“The first to use the name ‘Seventh-day Adventist’ appear to have been their opponents. One of the earliest references to the name Seventh-day Adventist occurred in the *Advent Herald*, the main publication of the non-Sabbatarian Adventists in 1847. In 1853 the Seventh-Day Baptist Central Association designated the Sabbatarian Adventists as the ‘Seventh-day Advent people’ . . .

“At the 1860 Battle Creek Conference of Sabbatarian Adventists, the decision was made to adopt an official name . . . Then the name ‘Seventh-day Adventist’ was proposed as a ‘simple name and one expressive of our faith and position.’ After discussion, it was adopted by those present at the conference and recommended to the believers at large. In general it was well received . . .

“Finally in 1863, having overcome the theological obstacles to organization [a concern that it would be wrong to organize into a definite church structure], the SDA organized legally with the specific purpose of ‘securing unity and efficiency in labor.’”—*P. G. Damsteegt, Foundations of the Seventh-day Adventist Message and Movement*, pp. 254-255.

Judge Pfaeizer, in the Kinship Case, noted this same point. She wrote this in her ruling against the General Conference:

“The parties [both the General Conference and Kinship] stipulated that the basic tenets of the religion practiced by the Seventh-day Adventist Church were established by 1850, and that no formal organizational structure was established until 1860. The name ‘Seventh-day Adventist’ was officially adopted by the Battle Creek Conference in 1860. Prior to that time, Seventh-day Adventists were known by a variety of names . . . but the name ‘Seventh-day Adventist’ was clearly in use prior to its adoption at the Battle Creek Conference [in 1860], as evidenced by a letter published in the *Review and Herald* in 1859. *Review and Herald, Aug. 18, 1859*. [However, the Seventh-day Adventist Church, as an organization, was not legally incorporated until 1863.] The Court finds, therefore, that Seventh-day Adventism, the religion, pre-existed the Seventh-day Adventist Church.”—*Judge Pfaeizer's opinion, Kinship case, p. 13 (General Conference Corporation of Seventh-day Adventists vs. Seventh-day Adventist Kinship, International, Inc., CV 87-8113 MRP, Judge's opinion dated October 3, 1991, filed October 7, 1991, U.S. District Court, Central District of California)*.

“In holding that ‘Christian Science’ was the name of a religion, and hence, unprotectable, the Court in *Evans* found that the religion and the mother church were conceptually separate and that the religion pre-existed the organization.”—*Ibid.*]

• The Court [Judge King]: “Are these the only two references that your scholarly research into these 153 documents reflect use or refer to the term or name Seventh-day Adventist?” Reid: “Yes, your Honor. These are the only two.” “The Court: Okay” (p. 47).

• Tew: “Of all the references that exist, contemporary references during this period [i.e., written prior to 1860], and they total 153 documents, that of all of these references, the only two are Exhibits 4 and 87, the Brother Cranston and P. P. Lewis letters?” Reid: “That’s correct” (p. 47).

• Reid: “I would assume that the evidence does not support the idea that we have here, the use of the name Seventh-day Adventist” (p. 47).

[At this juncture, the questioning turns to the 1860 conference; at which time the name, Seventh-day Adventist, was selected (p. 48). But all the talk speaks of how the committee adopted the name as the name of the church,—*when in reality, the denomination did not come into existence until three years later!* That point, clearly noted in Judge

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Pfaeizer's Kinship ruling, appears to have been totally ignored in the Florida case,—where **it is made to appear that the denomination was founded in 1860! That is not true. The only result of the 1860 meeting was that the Review and Herald Publishing Association began using the name, and the local, independent churches did also! And, yes, they were all independent. For three years, an independent printing house, independent local churches, and believers everywhere called themselves "Seventh-day Adventists."**]

Tew: "Now, after the adoption of the name [in 1860], when was the General Conference of Seventh-day Adventists formed?" Reid: "The General Conference of Seventh-day Adventists was organized in 1863. This was the organization of the Michigan Conference" (p. 50).

- Under questioning, Reid then says that, although it is true that the Seventh-day Adventist Reform Church and the Davidian Seventh-day Adventist Church had the name prior to 1980, yet they really did not count since their numbers were so few (pp. 51-55).

[If people were manufacturing Coca Cola by that name for decades before that firm trademarked the name, their trademark would be worthless. The same with the General Conference trademark on our special name of faith.]

- The next point made was that the Perez group, and other independent groups, do not have the faith of Seventh-day Adventists! The reason given is that the Statement of Beliefs requires that they belong to General Conference (p. 56)! [Yet no evidence was ever tendered that the Statement says this anywhere! The closest they could come was saying that two paragraphs recommend unity.]

- This reasoning is based on the concept that the fundamental beliefs of the denomination are in the 1980 Dallas 27-point Statement of Beliefs, and the independent groups are in violation of it (p. 56).

Tew: "You may have heard from the defense counsel [Pershes] that they contend that they are fully practicing all the tenets and beliefs of the Seventh-day Adventist Church, and that's one of the positions they take. Are the fundamental beliefs of the Seventh-day Adventist Church written down or codi-

fied anywhere" (p. 56)?

Reid: "Yes. Seventh-day Adventist Church has a statement of 27 statements of faith. They were voted formally by delegates from all over the world in Dallas, Texas, in 1980. That remains our position" (p. 56).

Tew: "Now, under those basic beliefs, can a congregation function as a Seventh-day Adventist church without being admitted to one of the conferences of the General Conference of the Seventh-day Adventist Church" (p. 56)?

Reid: "I am looking for the best way to answer your question. I think that the 27 statements of faith assumes that a person would be a member of the Seventh-day Adventist Church. Based essentially upon two statements that occur in it, which talks about the unity of the church. Again, remember that these statements are actually theological statements and the unity of the church is strongly presented there. The church will be a united body, will not be a group of separate bodies" (p. 56).

Tew: "So, in light of that, can a church accurately describe itself as a Seventh-day Adventist church if it is not admitted to membership to a conference of the General Conference of the Seventh-day Adventist Church" (p. 57)?

Reid: "**In my opinion, a church would need to be organically united with the Seventh-day Adventist Church to be an authentic Seventh-day Adventist church**" (p. 57).

[This is, quite obviously, a key point. It is also astounding! But you can expect astounding things from desperate men who are trying to defend an untenable position. **To this, we would reply:**

1 - The Bible and Spirit of Prophecy are the basis of our beliefs, not a man-made set of 27 paragraphs! Not once in this Court trial does the General Conference say that either has any importance in the matter. Indeed, the plaintiff prefers not to even mention their existence!

2 - There is absolutely nothing in the 27-point Statement of Beliefs about church membership, nor the necessity of belonging to the General Conference, in order to be a true Seventh-day Adventist.

3 - It would not matter if it did have such a paragraph. The Statement of Beliefs is not the basic, historical document of our beliefs and practice; it is the Bible and Spirit of Prophecy, to-

gether, equally which are the authoritative foundation of our faith and the documents we are to obey.

4 - Reid is careful to couch his reply as a tentative statement, which he describes as his opinion. He must do this, for he dare not quote anything in the 27 points as evidence for his contention.

5 - He could quote from the Working Policy of the church, which will declare that one cannot be a member of the denomination without official approval,—but nowhere will he find a statement that one cannot have the Seventh-day Adventist faith unless he submits to church authority. They would not dare write such a policy.]

That concluded Tew's questioning of Reid.

GEORGE REID (pp. 58-86)

CROSS EXAMINATION BY PERSHES

Next came the cross examination by Pershes. Under his questioning, the following points were brought out:

- Reid and his archival assistant decided which documents to include in the 153 submitted to the Florida Court (pp. 58-59).

- On page 264 of the book, *Foundations of the Seventh-day Adventist Message and Mission*, by P. Gerard Damsteegt (that faithful believer who, at Utrecht, so ably defended against women's ordination), there is a footnote to an August 11, 1853 *Review* letter, quoted by James White, from a J. C. Rogers, which quoted a resolution of the Seventh-Day Baptist Central Association. In it, our people were called "Seventh-day Adventists" (p. 59).

- **It was clear from the conversation, that Reid was well-aware of the *Review* letter, but that he did not bring it to Court "because it was a Baptist statement" (!) (pp. 59-60).**

Pershes: **"You didn't include that in your material. Is that because it was from a Baptist source?"** Reid: **"It was not from an Adventist source, that's right . . . We are dealing with a period prior to a General Conference. I was looking for things coming from the Adventist sources themselves. This is a reference which comes from outside"** (pp. 60-62).

- A 1952 book, by Arthur Maxwell, stated that the followers of William Miller found the Adventist Church in 1845; and that Seventh-day Adventists separated from the parent body in 1846 (pp. 62-63).

- The Dallas Statement of Beliefs did not exist in 1860.

Pershes: "You had mentioned the 27 tenets of the faith, is that correct?" Reid: "That's right." Pershes: "You said this was adopted in 1980?" Reid: "As currently stated." Pershes: "Would it be correct that those

tenets of the faith did not exist in 1860?" Reid: "In 1860; is that the question?" Pershes: "Yes, in 1860." Reid: "In the present form it would not have existed in 1860; that's right . . . There are certain things that Seventh-day Adventists believe today, which were not included in 1860" (pp. 64-65).

- Pershes brought out the point that a Dr. Smith, at the Stocker case (during which Mrs. Stocker and Mr. Perry attempted to cancel the General Conference trademark), gave sworn testimony that, **"I know of no other publication, books or the like, which bear the term Seventh-day Adventist that are other than those printed and published by the Seventh-day Adventist Church"** (pp. 65-66). Reid admitted that it was an incorrect statement. (The context on pp. 66-67 indicates that Smith meant that no other non-General Conference religious group had ever identified itself as Seventh-day Adventist.)

- Pershes established that a General Conference-published book, *The Seventh-day Adventist Reform Movement*, referred to that offshoot as "Seventh-day Adventist" (p. 67).

- Upon urging, it was brought out that Statement 13 of the Dallas Statement is "an implication" [implies] that one would need to belong to the General Conference in order to be a Seventh-day Adventist, and nothing more (pp. 68-69).

- Therefore, **"Yes, we would expect a person who is a Seventh-day Adventist to be in fellowship in the Seventh-day Adventist denomination"** (p. 69).

- Reid maintained that the two documents, earlier referred to (pp. 44-45 in the transcript), which mentioned "Seventh-day Adventists" prior to 1860, only referred to one person in each document; but Pershes noted that both stated it in the plural: "Seventh-day Adventists" (pp. 71-72). Reid finally admitted this. "Yes, it is plural" (p. 72).

- **Under questioning, Reid admitted that there were obviously many groups, including the *Review* office, which began using the name between 1860 and the founding of the denomination in 1863.** "But I don't have the exact numbers I can give you" (pp. 72-73).

- A statement in the *Review*, for October 1863 (the month the denomination was formed), indicated that a large number of "Seventh-day Adventists" existed by that time (pp. 73-74).

- The *Review* for December 24, 1861, said "According to a request of the Seventh-day Advent brethren of Wright, Michigan made through the *Review*, for aiding, counseling, and organizing a church in said place, a series of meetings that were held, commencing in December 14, 1861." Reid agreed that "Seventh-day Advent brethren, I would certainly expect to mean Seventh-day Adventists" (pp. 74-75).

• It was brought out that, at that 1860 meeting, the name had been adopted by the Michigan Conference and the publishing house—not by the denomination, for it did not yet exist (pp. 75-76).

[Throughout the entire Florida trial, the historical facts about the 1860 meeting were not correctly stated by either side. We will quote them here, from our paper, *Summary of 36 Legal Defense Points to be used in a Trademark Lawsuit or Appeal*. Please note that the first Adventist conference did not come into existence until 1861, and did not begin functioning until the following year. That which was accomplished at the 1860 meeting was the selection of a name for the believers, independent churches, Review office, and the yet-future Michigan Conference.]

On September 28-October 1, 1860, the Battle Creek meeting occurred, at which time the name was adopted for the believers and the independent churches. The purpose was to form a legal organization to own the publishing house. With only one dissenting vote, the name, “Seventh-day Adventist,” was selected (*Review, October 9-23, 1860; Seventh-day Adventist Encyclopedia, article, “Development of Organization in SDA Church,” p. 1044*).

In 1860, only the *Review* periodical, the believers, and their congregations—all of which were independent of any organization—began using the name. The immediate results were that the *Review* used the name and promoted it heavily. The believers fully accepted it. By the end of 1860, although the name of the believers and their independent churches had been determined, no local conference, North American Division, or General Conference yet existed.

It was not until the next year, 1861, that the publishing house was transferred to a holding company (May 13, 1861, under Michigan laws). (*See SDA Encyclopedia, pp. 1044-1045*.)

Prior to October 1861, every Seventh-day Adventist church in the world was an independent church, yet the name had been adopted by the believers a full year earlier. Not until October 5-6, 1861, did the first Adventist conference come into existence.

“In a meeting on October 5 and 6, 1861, a year after the name Seventh-day Adventist was adopted, the Michigan churches united to form the Michigan Conference of Seventh-day Adventists” (*SDA Encyclopedia, p. 880; article: “Michigan Conference”*). The formation of the Michigan Conference was recommended at the 1860 meeting, but not carried out until the following year (*SDA Encyclopedia, pp. 1045-1046*).

This first Seventh-day Adventist organizational church body, the Michigan conference, began operating in 1862.

“The first regular session of the Michigan Conference convened at Monterey, Michigan, October 4-6, 1862” (*SDA Encyclopedia, p. 1046*).

In 1862, seven more local conferences were formed. This brought the total to eight independent conferences.

“During 1862 other local conferences were formed: Southern Iowa (March 16), Northern Iowa (May 10), Vermont (June 15), Illinois and Wisconsin (September 28), Minnesota (October 4), New York (October 25).”—*SDA Encyclopedia, p. 1046*.

On May 21, 1863, the General Conference was formed by a meeting attended by only six conferences. The problem was that leadership could get the people to adopt the name, but could not get a majority of the believers to agree to the forming of a central church governing agency. Therefore it was done by going over the heads of the members (who never gave formal approval to the plan). The General Conference was formed by as many of the separated conference leaders as would approve it. The resulting “denomination” was only composed of believers living in six states (*SDA Encyclopedia, pp. 496, 1046-1047*).

• A number of other points were brought out by Pershes (including that interesting definition of “church” in *Upward Look*, p. 315:4), just before and after the noon break. We refer you to the complete transcript for these (pp. 77-92).

[The Spirit of Prophecy defines God’s “church” as being the commandment-keeping people of God. The true church is not a building or office, and it is not the General Conference. This agrees with the Revelation 12:17 definition of the last-day “remnant.” Here are some of the many references. These are important: UL 315, 5T 527, 1SM 208, 8T 200, GC 445-446, 4T 253.]

**GEORGE REID (pp. 86-92)
REDIRECT EXAMINATION BY TEW**

Nothing of significance was discussed. Tew reviewed some of the documentary evidence which Reid had earlier presented.

DAY ONE - AFTERNOON SESSION

PLAINTIFF’S SECOND WITNESS

**ROBERT NIXON (pp. 92-127)
DIRECT EXAMINATION BY TEW**

- The second plaintiff's witness, Robert Nixon, took the stand. He gave his position and background; and was accepted as a witness, but not as an expert witness. [They were saving their second "expert" category for the surveyor, who would be bringing obviously faulty data which would need "expert opinions" to uphold.] Nixon then gave the U.S. membership of the denomination; number of congregations and ordained ministers; and the registration number of the trademark, #1177185 (pp. 92-99).

- In connection with this, Nixon mentioned two interesting facts: (1) **Nixon was involved in the 1981 registration of the trademark.** This is new light; for our earliest record of him was a 1984 letter to Marik in Hawaii, preparatory to filing a suit against him (p. 97). I would not want to be in Nixon's place in the Judgment. (2) He said the church totally disclaims any control over the word "Adventist" by itself, except when used in other trademarked phrases, such as "Adventist Health Systems" (p. 99).

- This was followed with letters from two trademark officials, certifying General Conference ownership of the name, and a letter from the State of Florida Department of State, certifying the name had been trademarked there also (pp. 98-102).

- Nixon then discussed the acronym, "SDA," and noted that they have trademarked that also (p. 102).

- Nixon explained about the *Global Identity Standards Manual*, a publication which, he said, portrayed the open Bible with a cross in it and a stylized flame signifying the Holy Spirit and the three angels (pp. 102-103). [That irrelevant point was introduced, obviously, to get the Court to include it in the protective decision. Have you noticed that Christians want to give. The Perez group wants to give the name to the world, through enlightenment and conversion to the truth. The General Conference wants to grasp the name to itself and not share it.]

- Nixon then discussed the *Church Manual* and how it is the basic document of the denomination.

[It is an interesting fact that the *Church Manual* only affects local congregations; it is actually the Working Policy which governs everything else;—yet the laymen are always told about the *Church Manual*, as though that is all that matters. **The Church Manual is in no way a governing document of the world headquarters, which is doing the suing. One cannot help but wonder why so much time is occupied with discussing the Church Manual. There are two reasons: (1) The Church Manual and the 27-belief Statement are cited as the doctrinal au-**

thority of the church. (2) The Church Manual is one of the very few books, printed by the denomination, which has the phrase, "Seventh-day Adventist," in its title. (The Yearbook is one of the only other ones.)]

- Tew: "How long has the church been publishing the manual bearing the name, *Seventh-day Adventist Church Manual*?" Nixon: "Since early last century" (p. 105).

[Let us compare that erroneous remark with a statement on p. 146. Later, under cross examination, Pershes got Nixon to say something a little different.

Pershes: "Now, with regard to the *Church Manual* which you identified, isn't it a fact that the *Church Manual* has only been in use for a limited period of time?" Nixon: "I think the introduction explains since when. I thought it was the 1920s; that may be a limited time; I don't know." Pershes: "Prior that time church groups, Seventh-day Adventist church groups, did not accept having a church manual; isn't that a fact?" Nixon: "I think this is all explained in the preface or introduction; for a long time, yes" (pp. 145-146)].

- The next item mentioned was, yes, you guessed it, the other main book which has "Seventh-day Adventist" in the title: the *Yearbook* (pp. 105-107).

[The truth is that the denomination does not use its name in book, or any other, titles anymore than it has to; we refer you to our recent research study, *The Seventh-day Adventist Non-Identity Factor [WM-944]*, which shows that (aside from offices and congregations), out of 1,673 church entities in the world, only 101 include the name, "Seventh-day Adventist," in their titles—only one of which is in the continental United States (Holbrook Seventh-day Adventist Indian School, Holbrook, Arizona). The General Conference ought to mount a historic plaque in front of that school: "Aside from church offices and congregations, this is the only church entity in the U.S. mainland which has the denominational name in its title."]

- Next came photographs of church road signs and church names. Reference is also made to hospitals and church schools [but these never have the name in the title; only in a separate subtitle, when mentioned at all]. Signs by churches and church offices are shown (pp. 107-115).

- Enrollment figures for academies, colleges, and Sabbath schools. Number of periodicals, radio and television broadcasts, radio stations, clinics, hospitals, nursing homes (pp. 115-126).

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• Reference was made to the sign in front of the Perez church and a conference statement that they had not received permission to use the name in the title (pp. 126-127).

ROBERT NIXON (pp. 127-147)

CROSS EXAMINATION BY PERSHES

• After establishing that Nixon testified in the Stocker case, Pershes cites the General Conference Working Policy, p. 1389, where it says that **board membership is only open to “Seventh-day Adventists in good and regular standing.”** Then Pershes asks: “Has that phrase, ‘Seventh-day Adventist,’ as used in that sentence—is that referring to someone who believes in Seventh-day Adventism?” When Nixon hesitates, Pershes says it again: “Does the use of ‘Seventh-day Adventist’ in that sentence refer to a person who holds that belief?” Nixon: “No.” Pershes: “What does it refer to?” Nixon: “That means in good and regular standing. **That is a term of ours in church membership; the membership in a Seventh-day Adventist church**” (pp. 128-130). [**So membership on a church board, anywhere, does not depend on what you believe but whether your name is on the church rolls.**]

• Pershes then focused on the *Global Identity Standard Manual* and put across the point that **it is the design logo which should be trademarked, not the name “Seventh-day Adventist.”** He also noted that the plaintiff presents the logo as part of its defense of its trademarked name. [Both are good points.]

This was followed by extensive discussion with the judge (with Tew interrupting from time to time) over whether Pershes should be discussing the logo aspect (130-142).

• Pershes also noted that many of the early documents say “General Conference of Seventh-day Adventists,” not merely “Seventh-day Adventists” (pp. 142-145).

• **Pershes also brought out that the Church Manual is continually being amended—changed (p. 146). [As is the 27-point Statement. God’s Word never needs changing.]**

DAY TWO - MORNING SESSION

[Keep in mind that, on the official transcript, each day begins anew with page 1.]

PLAINTIFF’S THIRD WITNESS

HARRY O’NEILL (pp. 4-30) DIRECT EXAMINATION BY TEW

The next witness for the plaintiff was Harry O’Neill. He has a degree in psychology and works in a polling firm (The Roper Corporation) which conducts public opinion research; he was accepted by the Court as an expert in polling research, thus making his opinions worth entering into the Court records (pp. 4-9).

O’Neill then discussed how he went about carrying on his survey (pp. 10-16).

Then he told about, what he called, the “three questions” [which it turns out are actually just two, for only two responses are recorded].

O’Neill: “**The first question was quite simply: ‘Have you ever heard or seen the term, Seventh-day Adventist?’**

The second question was: ‘What type of organization, if any, comes to mind when you see or hear the term, Seventh-day Adventist?’

And that was followed up with each respondent by the following question that says: ‘Do you associate the term, Seventh-day Adventist, with anything else?’

And anybody who said yes was then asked: ‘With what else do you associate it’ ” (p. 16)?

Discussion followed about how very fair and proper these questions were (pp. 16-19). [Note the following comments which tried to sidestep the fact that the wording and arrangement of the questions were slanted to elicit a certain response:]

Tew: “What was your thinking in phrasing the second question: ‘*What type of organization, if any, comes to mind when you see or hear the term, Seventh-day Adventist?*’ ”

O’Neill: “**I believe that to be about the fairest way to get a meaningful answer. The term, ‘organization,’ subsumes a church or religion or what have you. It could bring forth a variety of answers**” (p. 17). [Read that over several times!]

According to O’Neill’s math, here were the results:

56 percent recognized the name. Of this 56 per-

cent, an average of 44 percent connected it to an organization or group, as follows:

23 percent said a religious organization or group.

18 percent said a church.

5 percent said a church organization or group.

This adds up to 46 percent, because some responded to more than one of these; therefore the total was averaged to 44 percent of the 56 percent who recognized the name (p. 20).

Of that 56 percent, 13 percent said the name represented a religion (rather than an organization or group).

Of the total number surveyed (100 percent, including all those who did not recognize the name), 17 percent said it represented a religion.

There were other responses which were much smaller: Out of the 100 percent, 7 percent said keep Saturday instead of Sunday; 2 percent said religious cult; 3 percent said cult; 2 percent said vegetarian diet; 1 percent said a hospital or other medical institution; 1 percent said education or a school (pp. 20-21).

72 percent of Christians recognized the name; 59 percent of non-Christians; 78 percent of Protestants; 58 percent of Catholics (p. 22).

Of everyone surveyed, 70 percent had heard the name; over half said it represented a church. Among Protestants, over 70 percent identified it with a church; among Catholics, over half (p. 23).

Additional details were given regarding surveying procedures (pp. 23-26).

When the exhibit (the survey) was about to be admitted as evidence into the Court record, Pershes objected. But the judge told him to save his objection till the cross examination. The judge said he would later consider whether to admit the survey as evidence.

Tew asked the surveyor (because he was considered an expert) his opinion regarding the possibility that the evidence indicated that a majority of people considered the name represented a church, not a set of religious beliefs. O'Neill, of course, said it did (pp. 26-30).

HARRY O'NEILL (pp. 31-48)

CROSS EXAMINATION BY PERSHES

This was a lengthy cross examination (pp. 31-48), and brought out several key points:

• **Seventh-day Adventists, who were interviewed, were included in the survey.**

[This would skew the survey results.]

• **The survey deliberately asked to speak, by phone, with the oldest female.** If not available, the youngest adult male was selected.

[An older woman would more likely be religious and consider the name to apply to a church. The

youngest adult male would be likely to quickly accept the leading question and also select organization or group.]

• **In order to confuse the sources, no ages were asked of those surveyed.**

[Lacking a demographic view, one could not tell how old the women were. Yet age would be an important indicator in religious recognition.]

• The phone interviews were conducted from 3 through 9 p.m., seven days a week.

[The women would more likely be home then.]

[At this point, let us restate the "three" (actually two) questions (p. 16)]:

First question: "Have you ever heard or seen the term, Seventh-day Adventist?"

Second: "What type of organization, if any, comes to mind when you see or hear the term, Seventh-day Adventist?"

Before the person could reply, this was added: "Do you associate the term, Seventh-day Adventist, with anything else?"

Anybody who said yes was then asked: "With what else do you associate it?"

[The first half of the second question is the key problem. It loaded the person's mind with "organization; indeed, it actually asked "What type of organization"! The responses to the first and second halves of the "second" question (questions 2A and 2B) were purposely jumbled together.]

• **Pershes then showed that the surveyor should have asked, "What comes to mind when you hear the term, Seventh-day Adventist?"** But the surveyor repeatedly maintained that he had asked a totally fair question; and, in order to avoid further questioning, he made a show of anger when it was suggested that he had not done so.

• The surveyor never broke down (separated between) **the answers to question 2A and 2B.** They were always lumped together. Since 2A asked "what organization," of course the answers were weighted to be a church or group or church organization.

• Under prompting, **the surveyor admitted he had carefully read the plaintiff's complaint (the lawsuit paper)** before framing how the questions would be worded! [Later (pp. 38-39), as you will see, he denied knowing what were the issues in the complaint! ("Complaint" is the name of the formal lawsuit paper, filed by the General Conference against the Perez group.)]

O'Neill: **"I read the complaint."** Pershes: **"So you actually read the complaint before you formulated your questions?"** O'Neill: **"That tells me what the issues were"** (p. 38).

• **In writing up the responses, O'Neill separated between "religion" and "worship," so that they would not be combined, but appear sepa-**

rately and each with a smaller percentage. [But, below, we will find that he combined the two “organization” replies to enlarge that total.]

- **O’Neill gave no weight to small percentages (i.e., did not count them in figuring up his totals). [If he had done so, religious faith would have been larger.]**

- **Only 5 percent of the total actually said church organization! [O’Neill’s statistics appeared larger, because he had lumped church organization with several other categories.]**

Pershes: “So that, if we looked at this survey, the only thing we can be sure of, with regard to respondents that say that Seventh-day Adventist brings to mind an actual church organization, is actually the 5 percent of the total public and only 6 percent of those who are even aware of the term, Seventh-day Adventist; isn’t that true?” O’Neill: “Those are the numbers of the respondents that gave that response, yes.” Pershes: “Would it be fair to say that, since you asked no follow-up questions with regard to what people meant by the other responses, we would have to speculate as to whether or not those other responses actually refer to a church organization; isn’t that true?” [O’Neill skillfully dodged this one, and never did answer it (p. 44)].

- Although he earlier (p. 38) said he had carefully read the lawsuit paper before formulating the questions, under pressure, O’Neill later said (p. 45) he did not really know what the issues were.

Pershes: “Do you know whether or not, for this litigation, it was important to determine whether or not we were talking about a specific church organization as a source or just a religious grouping?” O’Neill: “**I am not thoroughly familiar with all the ins and outs of this case in detail. I’m doing a survey**” (p. 45). [Earlier, O’Neill said he had “read the complaint [lawsuit paper] and learned “the issues.”]

- **O’Neill admitted that he had reviewed an earlier Gallup poll which indicated that awareness of the Seventh-day Adventist Church has increased most sharply among people who are 50 years of age or older [O’Neill had been careful to instruct his phone surveyors to always first ask for the oldest woman in the house, and get her responses (p. 46)].**

- O’Neill was paid \$29,000 to do this survey, and his firm was paid \$350 an hour for him to come and testify in the Miami Court trial (p. 48).

HARRY O’NEILL (pp. 48-51) REDIRECT EXAMINATION BY TEW

Tew asked questions, to make it appear that O’Neill simply wanted to get a balance of young and old by first asking for oldest female (p. 48); that the

questions asked were good ones, simply because the surveyor did not dialogue beyond asking them and recording the results (pp. 48-49); and that all the responses were written under various codes (pp. 49-50). [Note that the above points were all irrelevant smoke screen, provided in the hope of covering over damaging information that Pershes had elicited.]

PLAINTIFF’S FOURTH WITNESS

GRACE CANCELADO (pp. 51-53) DIRECT EXAMINATION BY TEW

Grace Cancelado was the next witness for the plaintiff.

- It was established that she works at the South-eastern (regional [Black and minority]) Conference office, in Orlando, and is in charge of keeping the conference records.

- **She said she had made a search to see if the Perez church had ever been part of the conference, and found it never had been. [We will learn that this was not true.]**

This concluded this very brief questioning by Tew. [The reason it was so brief was because there were other facts which it was best not to ask questions about.]

GRACE CANCELADO (pp. 53-55) CROSS EXAMINATION BY PERSHES

Cross examination of Cancelado by Pershes.

- Pershes asked if she knew of any typed envelopes or correspondence which had been mailed back and fourth to the Perez group. She said the conference would have all those records in her office; and **she repeatedly replied that no Perez records existed.**

Cancelado: “**I keep all the records of the church since the conference has been established. [The conference was established in 1981, and the Perez church started in 1990.] We don’t have a record of that. So there is no correspondence [with the Perez group] or any paper trail.**” Pershes: “Did you take a look for any?” Cancelado: “As far as the office of the secretary is concerned, we have no record.” Pershes: “**So you have nothing on your register as a church [regarding the Perez church] within the Southeast Conference?**” Cancelado: “**Officially, no.**” Pershes: “**Unofficially do you have any record?**” Cancelado: “**No.**” Pershes: “Does anyone keep correspondence between a group that wants to be part of the Southeast Conference?” Cancelado: “Our office keeps those kinds of records.” Pershes: “Did you make any search with regard to that?” Cancelado: “**I searched as far as I could go and there isn’t anything**” (pp. 53-54).

[When Perez is later on the witness stand, it

will be brought out that he had extensive contacts with the Southeastern Conference office; one of their officials asked him to start the church in West Palm Beach, and another conference official was present on the opening day of their church.]

PLAINTIFF'S FIFTH WITNESS

RAYMOND H. CARR (pp. 55-63) DIRECT EXAMINATION BY TEW

- Carr is a private investigator and former police officer. He said that, at Tew's request, he photographed church signs (including Perez') in various parts of Florida. In Court, he was asked to identify a number of photographs he had taken as to their authenticity (pp. 55-58).

- Upon objection by Pershes ["**lack of materiality and relevance; it doesn't show proof of anything with regard to this case**" (p. 58)], the judge repeatedly asked Tew to explain how the conference church signs related to the case. The judge finally admitted them as evidence (pp. 58-60).

- Carr was then asked, by Tew, about a number of xeroxed pages of church listings he had collected from phone book yellow pages (pp. 60-63).

RAYMOND H. CARR (pp. 63-67) CROSS EXAMINATION BY PERSHES

- Pershes asked Carr how he decided which churches to go to, how he found their addresses and obtained the xeroxes.

JUDICIAL CONVERSATION (pp. 67-79)

- The last witness for the plaintiff had been called, and Tew entered two volumes of deposition from Perez (*i.e.*, Perez' answers to questions given him by Tew at an earlier time).

- The first deposition transcript was 159 pages and the second 89 (248 pages total). The judge said he would read it all before closing arguments which was later held on Thursday morning (pp. 68-69).

- Other depositional material included the Perez' newspaper ads, their other published material, and reactions in newspapers, editorials, and from individuals (pp. 69-72).

- Considerable discussion of these was held by both attorneys and the judge. **Pershes' contention was that the plaintiff's statement, that all this evidence "showed general confusion by the public," was simply not true. The Perez use of the name was not producing "general confusion by**

the public."

Court: "Whatever it may show is immaterial at this point. You will argue it doesn't and he [Tew] will argue it does if they are admitted into evidence. The question we have now is Is it precluded or excluded by any rule of evidence, materiality, hearsay? Then you all argue the effect of it later on if it is admitted. If it's not admitted, you don't have to argue it." Pershes: "**They all constitute hearsay, your Honor.**" Court: "**They do and I agree with you.** Normally, it would be the responsibility of the party offering them to introduce the author of such an article. Here, though, they are being offered to show or to try to establish some confusion in the mind of the public . . . But I still think it does not get beyond the prohibition of introducing hearsay into the record" (pp. 72-73).

- At this juncture, **Tew said that these newspaper articles and statements by Catholic priests were significant.** To this the Court made a reply. Technical legal aspects continued to be discussed, back and forth, between the two attorneys and the judge for several more minutes. Finally these were admitted as evidence, so the Court could personally examine their contents (pp. 73-78).

It was then decided to recess, for noon lunch, and reassemble at 2:30 p.m.

DAY TWO - AFTERNOON SESSION

DEFENSE MOVE TO DISMISS THE CASE (pp. 79-86)

Pershes immediately moved to dismiss the entire case.

"We move to dismiss, based on we find no credible proof being presented to this Court, that there is general confusion to the public with regard to the use of the phrase and the trademark, Seventh-day Adventist" (p. 79).

Pershes' oral motion fills several pages of transcript (pp. 79-86), and is full of worthwhile points. Those presenting this case, either on appeal or defense against a trademark lawsuit, will want to consider it. Here is a brief summary of key points:

- **No evidence of general confusion to the public has been presented. Instead, just a lot about the use of the name, attached to "Church" and "General Conference"** (pp. 79-80).

- **Innuendo and counsel [lawyer] argument is being used to establish the existence of a confusion which does not exist** (p. 80).

- **"There has been no proof of damage or harm**

Continued from the preceding tract in this series

being shown” (p. 80).

• **Nothing has been presented—no evidence, no testimony—about the initials, SDA;** yet the Plaintiff claims to have been offended about its use by the Perez group. [Under Tew’s prompting, Nixon had made a passing reference to SDA, in order to get it into the Court record; so that, if they won this case, they might hopefully legally sew up a precedent for SDA as well as the name. It is obvious that the General Conference preparation for this trial was carefully handcrafted.]

• **The name is descriptive, and therefore generic. It should not belong to a single denomination. Seventh-day stands for we celebrate the seventh day, and Adventists relates to the awaiting of the second coming of Christ. It describes what our faith is** (p. 81).

• **The name is an adjective, and the plaintiff is trying to use it as a noun.** [Adjectival use: The General Conference is Seventh-day Adventist, and the Perez group is Seventh-day Adventist. Nominative use: If you are on the General Conference church rolls, you are a Seventh-day Adventist; otherwise you cannot be one (p. 81).

• **The name is generic. A generic word can apply to many different things,** and is in the general vocabulary. Harley Davidson tried to trademark the word, “hog,” and could not do it. They were not permitted to strip the word from the English language (p. 82).

• The defendant [Perez group] uses the name “in the descriptive sense, the religious sense of what the faith is that is being practiced. **To that extent when it is being used in that name and that context, it’s generic. That’s what the California Kinship Case Court looked at**” (p. 82) and ruled on the basis of.

• **There is “no evidence actually submitted to this Court, that the defendant is using it in other than a descriptive sense”** (p. 83).

• **The Perez group actually changed the wording in their church title in order to clarify this:** They changed it from Eternal Gospel Seventh-day Adventist Church to Eternal Gospel Church of Seventh-day Adventists (p. 83).

• **Not one witness has been brought in this courtroom that said he saw the Perez building**

and walked into it by mistake (p. 83).

• **What we have here is a “hidden agenda, because it’s an ad that is found to be offensive by plaintiff . . . What they have done is to try to actually muzzle Pastor Perez, saying we don’t like what you are stating”** (p. 84).

• **At the bottom of the ad, it says “Eternal Gospel Church of Seventh-day Adventists, saying who the religion is but identifying the church, Eternal Gospel Church. No confusion, no misstatement that it’s the General Conference”** (p. 84).

• **No survey was made “within this area [South Florida] or the areas where the ad went, that there is any confusion to the populace that might have seen the ad . . . Did anyone get confused by seeing this material? Nothing of that has been presented. No survey to see if there’s any confusion [about the Perez church]”** (p. 84). [You never know; the plaintiff may have done such a survey and, having found it presented no confusion, did not enter it as evidence.]

• **Instead, a survey was done; “the best they can say is maybe 5 percent of the respondents believed it was a church organization.** The association to one particular church association or organization would have to be made yourself, but only 5 percent” (p. 84).

• **Yet the survey expert left out the fact that 2 percent of those surveyed were Seventh-day Adventists! The rest are only 3 percent, a *de minimus* amount** (pp. 84-85). [*De minimus* is a phrase used in survey techniques, and means an amount too small to be included in the final results. The Latin phrase it is derived from is also used in law: *de minimis non curat lex* (the law does not concern itself with trifles).]

• **Nothing in the survey associated it with the plaintiff’s organization [The General Conference].** Instead, people said it might refer to a group or a religion. Thus the general public viewed the name in a generic sense (p. 85).

• **The Court has been presented with a stack of documents, and little else** (p. 85).

• Their “own survey discredits the documents that they submitted to this Court. And **their own expert says you should not even count it. It’s statistically not to be looked at**” (p. 85).

• **“Weight of the evidence is not necessarily the amount of paper that we pile into the court-**

house. There is, under their own basis, nothing here to support their contentions” (p. 85).

Pershes: “Accordingly, I would move to dismiss the plaintiff’s action and the case at this point. Thank you” (pp. 85-86).

PLAINTIFF’S OBJECTION TO DISMISSAL (pp. 86-92)

In response, Tew argued that Pershes’ motion should be denied, and for the reasons previously cited in the case; such as these:

- The church has a trademark on the name [obtained on a fraudulent basis of sole use], over which it waited five years, making the trademark “incontestable” (pp. 86-87). [**He did not mention that, during which time (1981-1986), no one else—including the other Seventh-day Adventist Church denominations—knew the General Conference had trademarked the name.**]

Evidence of General Conference use of the name has been duly filed in the Trademark Office. The defendant violates our trademark by having a similarity of mark and “similarity of products,” and there is actual confusion (pp. 87-88). [In reality, **this claim of “incontestability” is ridiculous. Trademark attorneys know that anything can be trademarked; it is not until it is contested in Court that the soundness of the mark can be tested.**]

- **“It shows the Cardinal, the Archdiocese of Washington, raising the issue:** Are these authorized by the legitimate Seventh-day Adventist Church? And he calls for us to apologize if they are” (p. 88).

- “There are other articles and letters to the editor” (p. 88).

- **Tew then compares the name to a bottle of Pepsi Cola** (p. 88). [**Is this what the General Conference has degenerated to, comparing our precious name to a poisonous substance which will ruin one’s health?**]

- We have signs on thousands of churches (p. 90).

- The survey proves “we have secondary meaning.” [Speaking about the survey, Tew makes this interesting statement: “Even if the religion [religious meaning of the name] means it’s generic, and we don’t think that’s true . . .” (p. 91)]

- Tew: “Dr. Reid completely has established that there is no historical evidence, from which this Court can find, that at the time the Seventh-day Adventist Church adopted its name in 1860, that was a commonly used or generic term” (p. 91).

[We quote this, because it nicely summarizes a fundamental flaw in their 1860 argument: **The plaintiff assumes that the denomination existed in 1860,—which it did not! It did not come into existence until 1863. (1) According to documents**

discussed earlier in this case, the name was in use prior to 1860. (2) Ellen White called for the people and congregations to use the name in 1858. (3) The name was chosen as the sole name for the people, the independent congregations, the Review office, and the forthcoming first conference (Michigan, which was not legally established until 1861 and did not begin operating until 1862). (4) The denomination did not come into existence until 1863.]

Tew: “So we respectfully request the Court to deny the motion” (pp. 91-92).

The judge ruled that the case should continue (p. 92).

FIRST DEFENSE WITNESS

CLARK A. FLOYD (pp 92-107) DIRECT and CROSS EXAMINATION

The first defense witness was Clark Alan Floyd, an Adventist attorney now pastoring an independent Adventist church in North Carolina. Direct questioning (by Pershes) fills pp. 92 to 106 of the transcript; cross examination (by Tew) is on pp. 106-107 (although he objected a lot before then).

The remarkable fact we find here is that Floyd is a full-fledged attorney, an ordained Adventist denominational pastor for five years, and a pastor of denominational and independent Adventist churches since then;—yet, due to Tew’s objections, he was found to be unqualified to provide expert testimony in anything! He was only able to speak of what he himself had experienced in his little North Carolina church. The judge fully concurred in this limitation.

[We have here an ominous situation. If you are confronted with a trademark lawsuit, you had better counsel with independent church leaders regarding those whom they would know who could provide you with “expert” testimony.

The Court apparently wants men to be well-versed in one of two fields: Adventist church history and/or Adventist theology.

In order to fulfill the church history requirement, the possible witnesses would need to either have advanced degrees in church history or have written many books and papers on Adventist church history.

In order to fulfill the theology requirement, the prospective witnesses should have taken many years of undergraduate, graduate, and post-graduate work in Adventist colleges and universities, with degrees. It would also be well if they had written heavily and broadly about Adventist teachings.

Finding men faithful to our historic positions who are able to provide either of these qualifications will be difficult. Yet, in the providence of God, it may

not be impossible.

Why are defense witnesses needed? The defending attorney can present documentary evidence and he can interview witnesses. In order to clarify key issues, witnesses are most helpful.

What are the key issues? You will find them in abundance in our previous publications on the trademark lawsuits, which number over 60 tracts (from August 1987, onward); 6 legal tractbooks (totaling over 1,700 pages); and two outstanding summary books (*The Story of the Trademark Lawsuits* and *Legal Defense against a Trademark Lawsuit, plus the Notorious Settlement Agreement*). The key defense points are summarized in both books and expanded somewhat in our forthcoming 8-page paper, *Summary of 36 Legal Defense Points to be used in a Trademark Lawsuit or Appeal*.]

SECOND DEFENSE WITNESS

COLIN D. STANDISH (pp 108-145) DIRECT EXAMINATION BY PERSHES

Colin Standish, head of Hartland Institute, was the next witness. He very narrowly missed being rejected as a witness at all, much less an “expert witness.” He had no degrees in either theology or history, and his professional training had been in the fields of psychology and education.

It was only because he had written so extensively on Adventist theological and historical topics that the Court accepted him as an expert witness. Unfortunately, we do not have many men who have written extensively on those topics.

As noted in our earlier analysis of the Florida courtroom trial (*The Florida Trademark Trial [WM-941-943]*), this marked a turning point in this trial. Judge King, who throughout the trial had shown himself to be a very fair person, recognized in Colin a man who could provide him with information he needed in order to arrive at a wise decision in this case.

- Under questioning by Pershes, Standish discussed several points. He spoke clearly and without confusion. The Sabbathkeepers came out of the Millerites, the Bible Sabbath in the fourth commandment, the name was used by some of them prior to 1860 (the first Seventh-day Adventist Church in Washington, New Hampshire was mentioned), and details about the 1860 meeting (pp. 116-120).

- The 1860 meeting settled the matter as to which name should be used (pp. 120-121).

- The name represented the faith of the believers (pp. 121-122).

- **They recognized they must evangelize the world and share the news about their name and their message** (pp. 122-123).

- **The work on all continents was first started by, what Colin calls, self-supporting workers [i.e., workers not officially authorized or salaried by the church to work** (p. 123)] .

- **Ellen White is the inspired prophet of the church, a fulfillment of Revelation 12:17 (19:10); and she told the people to use the name.** Two of her statements about this are in *2 Selected Messages*, 384. She said it was “a banner, a sign,” “a symbol” of our faith. [Tew frequently tried to keep Standish from saying that the name represented the faith of the believers, but the judge overruled him.] **All people who accept the Seventh-day Sabbath and believe in the soon coming of Jesus may call themselves by the name** (pp. 123-126).

- **It is a conviction, required of faith, to use the name** [Tew tried hard to keep Standish from saying that]. **It would be impossible for a believer to remain faithful if he did not use the name; he would have to use it to explain his beliefs and share his message** (pp. 126-127). [This paragraph is the foundation issue that these trademark suits center on. **Every true believer accepts the fact; yet, incredibly, the General Conference spends millions of dollars on lawyers in an effort to deny it. To the faithful, it is the expression of their deepest faith; to the General Conference it is equivalent to a Pepsi Cola can.**]

- After entering a statement by Arthur Maxwell (that the early believers were Seventh-day Adventists) into the Court record [document name and date not given] (pp. 127-129), Pershes tried to establish that there is no confusion on the part of those who attend either the General Conference churches or the independent churches. But he met with strong opposition from Tew (pp. 129-132).

At this juncture, something important happened. Judge King decided that the topic under consideration was important enough that he should take over the interrogation of the witness. By so doing, he effectively stopped Tew from interrupting (pp. 132-139).

Here is the key sentence which started this questioning by the judge:

Court: “I do think we do need to bring it down and focus on **what this defendant is, or is not, doing that may engender confusion** in the minds of the persons that would wish to associate with the Seventh-day Adventist faith” (p. 133).

[**Confusion in labeling is the foundation that the Lanham Act (U.S. trademark law) is built upon** (p. 133)]. So Judge King is trying to find whether the name is confusing to the public, and to Adventists in general, when both denominational and non-denominational churches have the same name.

- Colin’s reply, essentially, was that there would

be no confusion (pp. 132-141).

Court: "These lawyers, contrary to another portion of the Bible, mentioned about church people—do not take your disputes to the courts. You [Colin] can probably tell me the verse and chapter." Colin: "Chapter 6, 1 through 9." Court: "Thank you. I may have to use that in this opinion [Court decision] I write. I don't know. I certainly don't want to impute any broader scope to whatever decision I ultimately have to make that is entitled to—and I make no claim [as to what decision I will make]" (p. 139).

At this point, the judge returns the questioning to Pershes.

• Pershes asks about *Great Controversy*, as the basis of the newspaper ad, and whether the special name is generic.

Pershes: **"In your opinion, based on your research, is Seventh-day Adventist a generic name for the religion?" Tew: "Objection, foundation." Court: "I will let him answer the question. Go ahead and answer the question." Colin: "Absolutely"** (p. 143). [It is obvious that Tew had been instructed by the General Conference to stop every effort of the defense to associate the name with a religious faith. To paraphrase John 19:11: He that delivered this holy name to the Courts hath the greater sin.]

• Colin is then asked about one of the offshoot groups, the Reform Church (pp. 143-145).

Pershes: **"If you were asked what your religion is, what would be the response?" Colin: "Seventh-day Adventist."** Pershes: "Thank you. No further questions."

[So far, the 1858 statements, by Ellen White, have not been referred to or quoted. Indeed, throughout the trial they never are. They should have been. The two Ellen White statements in 2 Selected Messages, 384 (written in 1902 and 1903) were quoted. But the 1858 statements (1 Testimonies, 223-224) were not mentioned, and they are important. (1) They show that—two years before 1860—we were commanded to call ourselves by the name. (2) They, together with the 2 Selected Messages statements, show a 55-year span. From nearly the beginning of the movement, on down to a decade before Ellen White's death, the command was clear-cut: We must ever call ourselves by the special name.]

COLIN STANDISH (pp. 146-156) CROSS EXAMINATION BY TEW

• **Tew questioned Colin about primary documents (i.e., writings prior to 1860, which mention the name as applied to our people.** [Please understand that Colin, and all the other defense witnesses, work at a disadvantage, because they were not in the courtroom prior to their appearance to testify; so they do not know what was admitted earlier as evidence.] Colin replies that there is not much. [Oddly enough, he does not mention the *1 Testimonies*, 223-224 statements. That two-page passage is powerful, for it dates how early the command to keep the name was given!] But Colin does quote from memory the first of the two paragraphs, which he says is found in *Faith I Live By*, 304 (pp. 149-150). [The quoted paragraph comes from *2 Selected Messages*, 384—the 1902 statement. (The origin of the second, unmentioned paragraph is *1 Testimonies*, 224, penned in 1858).]

[By this time, the one reading this might be getting confused about these various Ellen White statements. So here is clarification on all these passages. You ought to become an expert on this, if you intend to defend your group in Court!

(1) The first passage was penned in 1858, and fills a page and a half. It is 1 Testimonies, 223-224, and is chapter 42 of the 120 chapters in the first of the nine volumes of the Testimonies; this is entitled, *"Our Denominational Name."* Because of its 1858 date, it is obviously a very important statement; yet it appears that neither side mentioned it at the Florida trial. (Please understand: If you or I had tried to plead the case in this trial, we would have made far more mistakes than the brethren down there did.)

We will here quote the entire chapter. Keep in mind that **this was written by our prophet in 1858, two years before the 1860 meeting, when the Michigan Conference was formed and seven years before the formation of the General Conference and our denomination.** When we are brought before the Courts of the land, we should not only use the 1902 and 1903 statements.

"Our Denominational Name

"I was shown in regard to the remnant people of God taking a name. Two classes were presented before me. One class embraced the great bodies of professed Christians. They were trampling upon God's law and bowing to a papal institution. They

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were keeping the first day of the week as the Sabbath of the Lord. The other class, who were but few in number, were bowing to the great Lawgiver. They were keeping the fourth commandment. The peculiar and prominent features of their faith were the observance of the seventh day, and waiting for the appearing of our Lord from heaven.

“The conflict is between the requirements of God and the requirements of the beast. The first day, a papal institution which directly contradicts the fourth commandment, is yet to be made a test by the two-horned beast. And then the fearful warning from God declares the penalty of bowing to the beast and his image. They shall drink the wine of the wrath of God, which is poured out without mixture into the cup of His indignation.

“No name which we can take will be appropriate but that which accords with our profession and expresses our faith and marks us a peculiar people. The name Seventh-day Adventist is a standing rebuke to the Protestant world. Here is the line of distinction between the worshipers of God and those who worship the beast and receive his mark. The great conflict is between the commandments of God and the requirements of the beast. It is because the saints are keeping all ten of the commandments that the dragon makes war upon them. If they will lower the standard and yield the peculiarities of their faith, the dragon will be at peace; but they excite his ire because they have dared to raise the standard and unfurl their banner in opposition to the Protestant world, who are worshipping the institution of papacy.

“The name Seventh-day Adventist carries the true features of our faith in front, and will convict the inquiring mind. Like an arrow from the Lord’s quiver, it will wound the transgressors of God’s law, and will lead to repentance toward God and faith in our Lord Jesus Christ.

“I was shown that almost every fanatic who has arisen, who wishes to hide his sentiments that he may lead away others, claims to belong to the church of God. Such a name would at once excite suspicion; for it is employed to conceal the most absurd errors. This name is too indefinite for the remnant people of God. It would lead to the supposition that we had a faith which we wished to cover up.”—*1 Testimonies*, 223-224.

(2) The 1902, 1903 statements are found in 2 Selected Messages, 384. Next, I will quote the 2

Selected Messages statements. Both are brief; one was penned in 1902 and the other in 1903. The entire 3-page chapter (2 SM 384-386) elaborates on the thought.

“We are Seventh-day Adventists. Are we ashamed of our name? We answer, ‘No, no! We are not. It is the name the Lord has given us. It points out the truth that is to be the test of the churches.’”—*Letter 110, 1902; 2 Selected Messages, 384.*

“We are Seventh-day Adventists, and of this name we are never to be ashamed. As a people we must take a firm stand for truth and righteousness. Thus we shall glorify God. We are to be delivered from dangers, not ensnared and corrupted by them. That this may be, we must look ever to Jesus, the Author and Finisher of our faith.”—*Letter 106, 1903; 2 Selected Messages, 384.*

Our primary defense for using this hallowed name is that God’s Inspired Word requires us to use it. Therefore we must know and use the statements which so direct us.

• In his cross examination of Colin Standish, Tew next turns to the 27-point Statement of Beliefs. As every faithful Spirit of Prophecy believer knows, that Statement of Beliefs is such a brief, simplistic once-over-lightly summary, that it hardly touches on even a small part of what we believe. Yet Southern Baptist Tew was not aware of this; for he had been told by the General Conference attorneys that Adventists believe the “27 Fundamental Beliefs,” and that’s it. **Tew had been fed the line that, if something is not taught in those 27 paragraphs, it is not true Adventist teaching** (pp. 150-152).

Tew: “Do any of those 27 essential, or basic, principles mandate, or say, that you must use the name Seventh-day Adventist in your advertising?”

Colin: “That’s not the issue with an Adventist. By the way, we have no creed but the Bible. It cannot be treated as a creed, if that’s the direction of your question” (p. 150).

• Tew then tried to corner Colin into saying that the independent groups did not believe the Statement of Beliefs; but Colin stated again that it was merely a statement, not an accepted creed.

Colin: “It’s not something that we have to give allegiance to; because, very fundamentally this [rejection of creed worship] is a statement of Ellen White” (p. 151).

[This emphasis on adherence to a church creed is an important plaintiff point; so you should be prepared for it when confronted with a trademark lawsuit by the brethren. Here are references you will want to look up: TM 421, GC 456, 596, 388-389, AA 451. There are others.]

• Tew: “If you would answer my question, please. The 27 basic principles of the General Conference; none of those principles say that you must use the name; there’s no language mandating name use in those 27 principals, are there?” Colin: “There are not, no.” Tew: “There are not?” Colin: “No” (p. 151).

[At this, Tew assumes that he has hit upon a point of weakness in the independents; when, in reality, it is our strength. He recognizes that Colin is accepting the authority of Ellen White as above that of the General Conference’s 27-point Statement.]

• Tew: “So, to be clear about your testimony, when you said that a person could not practice the Seventh-day Adventist religion without using the name, you were referring to your interpretation of writings of Ellen White. You were not, I take it, referring or saying that this is a requirement of the General Conference of Seventh-day Adventists?”

Colin: “No, sir. —Wait a minute! You may have not understood what my ‘no’ meant. My ‘no’ was I don’t agree with what you said. Your question was that it was my interpretation. I don’t believe that at all. [It is Ellen White’s statement, not my interpretation of her statement.]”

Tew: “Well, let me try to clarify. I want to make sure that your answer is clear. Your statement that a person could not practice the Seventh-day Adventist religion unless he used the name; that statement by you is based on writings of Ellen White that is not found [i.e., not found in the entries into this Court records], and your statement is not based on the 27 principles, basic principles which have been adopted by the General Conference of Seventh-day Adventists?”

Colin: “It’s based on the Bible.”

Tew: “Well, could you answer my question, please?”

Colin: “Not on those statements, no” (p. 152).

• Tew next turned to the newspaper ads, and asked Colin whether or not a person reading them would recognize the fact that the “Seventh-day Adventist Church” at the bottom did not refer to the General Conference and its churches. Colin’s position on this is shown in his reply.

Tew: **“Now, a Catholic in New York who reads that advertisement and [which] refers to his church as a harlot, do you think he would understand whether that advertisement by the Eternal Gospel Church of Seventh-day Adventists, whether**

that ad was being sponsored or wasn’t being sponsored by the denominational church as opposed to a self-supporting church?”

Colin: “It wouldn’t make any difference because **[a] self-supporting church is just as [much] a part of the Seventh-day Adventist Church as the denominational church.** Apparently, that hasn’t been explained in this Court” (p. 154).

[Colin’s position is that we are all part of the “Seventh-day Adventist Church,” and the General Conference churches are all part of it too. He defines “Seventh-day Adventist Church” as a large circle, in which all the churches—General Conference or otherwise—are smaller circles inside the one larger circle. (Of course, we could say that, because of their apostate errors, not all churches which want to call themselves by the hallowed name should be permitted to do so. Yet if we took that position, we would be saying just about the same thing as the General Conference, which would like to eliminate groups it does not approve. Luke 9:49-50.)]

Tew immediately pressed in closer:

Tew: **“Please answer my question. The Catholic in New York who reads in the advertisement that his church is considered the harlot; you are not contending that he would understand that that advertisement is not being sponsored or authorized by the General Conference?”**

Colin’s reply is beautiful.

Colin: “He may not understand that; but that’s, of course, what the denominational church espouses” (p. 154).

[In other words, that which is printed in the newspaper ads is fundamental Seventh-day Adventist beliefs, the teachings which the denomination accepts as its beliefs (although the General Conference was careful to omit those beliefs from its 27-point Statement). —**If the denomination denied what was in those ads, it would be denying that it was Seventh-day Adventist!**]

Tew continued:

Tew: “It wouldn’t make a difference between self-supporting or denominational? If a person looked up in the phone book under the heading ‘Seventh-day Adventist churches’ and saw a listing for Eternal Gospel SDA Church, would he be able to tell—average person, not a Seventh-day Adventist—**would he be able to tell whether that church was, or was not, affiliated with the General Conference?**”

Colin’s reply was excellent!

Colin: “Not initially. Probably he wouldn’t have any thought about a General Conference. Why would anyone looking at it even think in that term? Just as if I saw a Baptist ad; I wouldn’t think of a Southern Baptist or the Free Will Baptist. You would just know it was a Baptist organization” (p.

155).

- Tew then asked about the acronym, SDA, and Colin agreed that it stands for Seventh-day Adventist (p. 155).

- **Tew then asked who publishes Ellen White's books, and was told that both the church and self-supporting groups print them.** That concluded his cross examination of Colin (pp. 155-156).

COLIN STANDISH (pp. 156-157) REDIRECT EXAMINATION BY PERSHES

This second interview of Colin by Pershes is brief, but worthwhile.

Here are points that Colin brought out:

- Without giving a reference, he quotes the Ellen White statement, a “thus saith the Lord is not to be set aside for a thus saith the church.” That, he added, is a tenet of the Seventh-day Adventist Church. [For much more on this, read *Great Controversy, chapter 37, pp. 593-602* (p. 156)].

- We must be loyal to Caesar and to God, but our first loyalty must be to God (p. 156).

- There are two sets of beliefs in the official policy books; but, if they conflict with Scripture, we are to obey neither (pp. 156-157).

Colin: “In the main policy book of the Seventh-day Adventist Church, there are two sets of statements of belief. I found that our leaders didn’t know that. Amazing, but it was true.” Pershes: “Why two?”

Colin: “The first one is the 27 statements. This is the [one] published in 1995, the last publication [latest revision] of it. It will be published [revised] again probably in 2000, after the General Conference Session in June or [and] July of this year. It has 27 basic fundamental beliefs.

“Then, in the back of the same [General Conference Policy] Book, it has 28 statements—not an additional one statement but an entirely separate 28 beliefs. Both of them are in the official document of the church. I had a pastor come to me, not long ago, and say Which one do I accept? I said to him, You accept neither. You accept the Bible. You are a Seventh-day Adventist pastor (p. 157).

- If the 27-point Statement of Beliefs conflicts with the Bible, we are to obey the latter (p. 157).

Pershes: **“When there is a conflict or a following compared to the Bible to the 27 tenets, which does one follow?”**

Colin: **“To the law and to the testimony. If they speak not according to this Word, there is no light in them [Isaiah 8:20]”** (p. 157).

- If the 27-point Statement of Beliefs conflicts with the Spirit of Prophecy, we are to obey the latter.

Pershes: **“If there are words giving direction in Ellen White’s writing versus the 27 statements, what do you follow?”**

Colin: **“Follow the Spirit of Prophecy, as we call it, the writings of Ellen White. Every Seventh-day Adventist would agree to that”** (p. 157).

That ended Colin Standish’s testimony. We are so thankful that, in the providence of God, he was permitted to give it.

JUDICIAL STATEMENT (pp. 158-161)

At this juncture, Judge King spoke; he asked the two sides to meet together there in the federal building and try to resolve this problem, so it can be settled out of Court—and he will not have to do it.

Court: **“Perhaps some resolution of this matter might come about that would save me the agonizing responsibility; my job, which of course I accept and I will do as God gives me the intelligence to do and the insight to do what I have to do,** but it would be so much preferable if there could be some sort of resolution of the issues between the parties” (p. 158).

The judge concluded by saying that, if an out-of-Court-settlement was not achieved, the Court would convene again the next morning at 9:30 a.m.

[We provided you with an eyewitness report of what happened that evening in our earlier study, *The Florida Trademark Lawsuit Trial (WM-941-943)*. At that eight-man meeting, the General Conference attorneys totally rejected all possibility of compromise, said those not on denominational rolls must not use the name, and that they had no intention of stopping their trademark lawsuits.]

DAY THREE - MORNING SESSION

[Remember that, once again, the transcript begins with page 1.]

JUDICIAL CONVERSATION (pp. 4-6)

Pershes tried to warn the judge about the newspaper articles which the General Conference has been feeding into the press, that the Perez group—and all those like them—are “hate mongers.” But Judge King replied that he wanted to hear nothing of it, that he did not listen to the news or read the newspapers. [Throughout this entire trial, Judge King revealed himself to be an extremely fair, conscientious individual.]

THIRD DEFENSE WITNESS

DAVID ZIC (pp. 6-22) DIRECT EXAMINATION BY PERSHES

David Zic is the archivist for one of the two

branches of the Seventh-day Adventist Reform Movement.

- Pershes showed him a number of documents and the Court approved Tew's request, that none of their contents be read.

- A key point, by Zic, was that their denomination, since the early 1930s has been in the United States, has "Seventh-day Adventist" in its title, and is totally separate from the General Conference (pp. 13-14). Anyone joining one of those denominations will be disfellowshipped by the other.

- The Court was particularly interested in the fact that the Reform Church felt it had to use the name, because Ellen White commanded Adventists to use it (pp. 16-17); that there was no confusion because both denominations had the name (pp. 17-18); people clearly knew the difference when they donated to one or the other of the two denominations (p. 18); and their title always includes the phrase "Reform Movement" (pp. 19-20).

[A very obvious way to break the legal logjam would be for the separatist groups to include "Independent," "Congregational," "Self-supporting," or some other such separatist designation in their church titles. By doing this, the confusion aspect of the Lanham Act would be sidestepped.]

**DAVID ZIC (pp. 22-29)
CROSS EXAMINATION BY TEW**

Here is an interesting statement by the Court: **"On cross examination, the lawyers are entitled to lead the witnesses [give leading questions], unlike direct [examination]"** (p. 25).

- Zic mentioned that they have 700 members and 10 or 15 owned church buildings in the U.S. (p. 26)

- **When Tew noted that the index of the *McMillan Encyclopedia of World Religions* did not list the Reform Church, Zic looked at it and replied that it did not list the General Conference branch of Adventism either, only "Adventism."**

**DAVID ZIC (pp. 29-30)
REDIRECT EXAMINATION BY PERSHES**

- Zic said **a church is a group of believers, not a building, nor an organization** (p. 29).

FOURTH DEFENSE WITNESS

**JOHN NICOLICI (pp. 30-36)
DIRECT EXAMINATION BY PERSHES**

- Nicolici explained that the Reform Church is

currently [actually since 1951] split into two totally separate branches—the Seventh-day Adventist Reform Movement, with headquarters in Virginia (which he used to belong to), and the Seventh-day Adventist Reform Movement International Missionary Society, based in Germany (p. 31).

- Nicolici showed two pages (white and yellow) from a current Sacramento directory and a 1977 Sacramento, California telephone directory, with their maze of General Conference and non-General conference "Seventh-day Adventist" organizations in that area (pp. 32-33).

- It was also noted that, in the yellow pages, the telephone company gives the Reform Movement a separate heading than it gives to the General Conference entities (pp. 34-35).

- Corporate filings for the Reform Movement were also discussed (pp. 35-36).

**JOHN NICOLICI (pp. 36-41)
CROSS EXAMINATION BY TEW**

- Tew noted that the Sacramento phone directory did list the two groups (Reform and General Conference) in separate listings (pp. 29-30).

**JOHN NICOLICI (p. 41)
REDIRECT EXAMINATION BY PERSHES**

When Nicolici was about to be excused from the witness chair, he said "Your honor, if it pleases the Court, I would have liked to address a few words at the issue that confronts us." Court: "Well, the lawyers would have to ask you those questions. You are supposed to simply answer the questions that they asked . . . Let me give you the opportunity" (pp. 40-41). Tew said he would wait until Pershes had spoken with Nicolici. But, as soon as Pershes spoke, Tew objected that he was leading the witness and the judge ruled that the point had already been covered. So Nicolici was excused.

FIFTH DEFENSE WITNESS

**RUSSELL STANDISH (pp. 41-68)
DIRECT EXAMINATION BY PERSHES**

Pershes elicited background data on Russell, who also mentioned his co-authorship of those 32 books on Adventist issues (pp. 41-48). When Pershes requested that Russell be admitted as an expert witness, Tew asks to speak with Russell and confirms that he is Australian; got all his education in Australia and England; has degrees in non-theological

Continued from the preceding tract in this series

or historical areas; worked, primarily as a physician for the denomination in Australia and southern Asia; and, since 1992, has not been affiliated with the denomination. On this basis, Tew said Russell was not qualified to provide expert testimony (pp. 48-54). **But the Court ruled that he could, based on his many books on Adventism** (p. 54).

• Standish referred to, and then quoted from, Volume 11 of the *Commentary Reference Series* (which is Volume 2 of the 1996 edition of the *Seventh-day Adventist Encyclopedia*). The entry, “Seventh-day Adventist,” was mentioned and the following statement quoted:

“The full title, ‘Seventh-day Adventist,’ or the equivalent title in various languages is the official name of a specific Christian denomination with a specific body of doctrines . . . **On the other hand, it is not denied to those of like faith who are separated by circumstances from organizational connection with the whole body of Seventh-day Adventists.**”—*The Seventh-day Adventist Encyclopedia*, p. 575, col. 1, para. 2. [You will find the same statement on p. 1324 in the previous (1976) single volume edition of this *Encyclopedia*, under the same entry (pp. 56-57)].

• Russell brought out the point that the Seventh-day Adventist church includes both faithful and unfaithful people; and that, because Seventh-day Adventists, historically, have been at the forefront of religious liberty, believers should be accorded the right to call themselves by the name (pp. 58-59).

• Russell cited the British case, in which William Penn was tried in Court for holding a religious meeting—and the jurors were pressured, and even tortured, in order to get them to rule against Penn (pp. 60-62). [You will find that incident, which occurred on August 14, 1670, discussed in detail on pp. 7-9 of our book, *National Sunday Law Crisis*.]

• Then Russell made this magnificent statement: Russell: “They refused to find the guilty verdict on the ground that, **although he [Penn] had broken the law [by holding a religious meeting], the law was not just. They had distinguished between a legal right and a just right.** One based upon [a] law which the civil authorities have that authority to have a law based upon civil law which relates to the last six [of the Ten] Commandments, those relating to the commandments, and between a matter of reli-

gion; a matter of just [probably ‘justice’] which relates to **the first four commandments—which are not like a legal right.**

“**A legal right can be granted; it can be abrogated [taken away]. But religious liberty, as those men all saw it, and as we as Seventh-day Adventists see it, is based upon, not a legal law that can or cannot be granted, but based upon national justice.** I know that’s a British concept. But **that is a right which cannot be granted because God has granted it and [it] cannot be abrogated because God has not abrogated it.**

“Those are the [first] four commandments of the law [upon which religious liberty is based]. That came over from [that is, to] the United States; and some of you legal men will know the name Chief **Justice Jay, the first Chief Justice of this nation.** He **made the statement, that before a decision is made by a jury or somebody will be judging the case, they must first judge the law,** just as Edward Bushnell and his contemporaries did in acquitting William Penn. He was guilty, but they judged the law as breaching the first four commandments of God.

“Justice Jay made the same statement when he said that **a jury must first judge the law . . .** This is a concept that burns within our hearts of [as] Seventh-day Adventists, that justice is a different matter from a legal law” (p. 62).

• Russell read **Luke 9:49-50** from the Bible, about how the disciples wanted to forbid someone because they had not officially approved him.

Russell: “**We forbade him because he followeth not with us. In other words, we are going to use ecclesiastical authority over this man. He hasn’t got the same name we have . . . That statement, by the way, has been used by Seventh-day Adventists many times in their defense of religious liberty [in Court trials]**” (p. 63).

• Russell maintained that we must remain with the name, and no shortening of it would suffice.

Pershes: “What would be the impact or burden if the [individual] Seventh-day Adventist could not use the name, Seventh-day Adventist?”

Russell: “This would be, I believe, imposing upon people that which God does not condone. **We have to follow God’s Word, not our own reasoning. My own reasoning is very faulty, but I feel on sure ground when I have a plain thus saith the Lord.**”

Pershes: “Can you use a different name, say just

Seventh-day? Would that be sufficient?"

Russell: "Certainly not. We have [are] not Seventh-day believers. We are Seventh-day Adventists. It is a God-given name to this people."

Pershes: "Would the name, Adventist, be just as good?"

Russell: "Certainly not, because it would be a confusing name; because I can point to a large number of Christians who believe in the Advent, the Second Coming of Christ" (p. 64).

- The nine volumes of *Testimonies for the Church* were written for the people, not the organization (p. 66).

- We must evangelize in that name; and Ellen White told us to hold high the banner with the name, Seventh-day Adventist, inscribed on it. Russell: "Even when it is regarded as a matter of contempt, we are still to hold the banner high." Pershes: "Would that be a conviction of the faith?" Russell: "Certainly, a most important conviction" (pp. 67).

The Court recessed, for the noon lunch, and resumed at 2:30 p.m.

DAY THREE - AFTERNOON SESSION

RUSSELL STANDISH (pp. 68-73) CROSS EXAMINATION BY TEW

- Tew tried to sidestep the implication of that *Seventh-day Adventist Encyclopedia* quotation (pp. 70-71).

- Tew once again raised the fact that various separated Adventist groups do not have Seventh-day Adventist in their titles (pp. 71-72).

[This was, in the plaintiff's presentation, a key point. But their point is clearly and fully destroyed by the present author's discovery that (not including church offices and local congregations listed in it) in the 1999 *Seventh-day Adventist Yearbook* of the 1,673 General Conference-affiliated church entities, periodicals, and broadcast stations which are listed—only 101 include the name, Seventh-day Adventist, in their titles! If we omit overseas small clinics and dispensaries, that number reduces to only 34! Inside the United States and its territories (where the trademark suits are being fought), the name is only in the titles of one mainland entity and one territorial location! Both are in way-out localities: *Holbrook Seventh-day Adventist Indian Mission School* in Holbrook, Arizona, and *Guam Seventh-day Adventist Clinic* in Tamuning, Guam. The tract in which this information is detailed (*The Seventh-day Adventist Non-Identity Factor [WM-944]*) has been sent to Mr. Pershes, to send on to Judge King. Anyone wishing to defend themselves in Court should obtain a copy of this research paper as evi-

dence.]

RUSSELL STANDISH (pp. 73-74) REDIRECT EXAMINATION BY PERSHES

- Nothing significant was noted, other than the length of time during which Ellen White wrote *Testimonies for the Church* and the date of her death.

SIXTH DEFENSE WITNESS

JOHN J. GROSBOLL (pp. 74-83) DIRECT EXAMINATION BY PERSHES

[The point is brought out, by the Court, that only a very few witnesses can be considered as expert. This would probably be because more time is spent interviewing such individuals. (In this trial, there were two on each side: Reid and the surveyor; and the Standish brothers on the other.) So, if you have to defend yourself in Court, make sure you select some men guaranteed by their background to be selected as "experts." All your other witnesses will only be "factual" and cannot express opinions (p. 77).]

- Grosboll noted that the name appears in their publications and in the title of their local church, Prairie Meadows Church of Seventh-day Adventists (pp. 77-78).

- Grosboll stated that, of all the material they send out via mail or radio, no one ever responds that they are confused as to denominational affiliation of the name.

JOHN GROSBOLL (pp. 83-86) CROSS EXAMINATION BY TEW

- Tew focused on the fact that it does not interfere with Steps to Life's proclamation of their faith to not use the name in their evangelistic title (Steps to Life); in their radio broadcast (Steps to Life); or in the title of their publication, *Historic Adventist Landmarks* (pp. 83-86).

JOHN GROSBOLL (pp. 86-88) REDIRECT EXAMINATION BY PERSHES

Pershes establishes that the name is in the title of their local church, in the bannerhead of their magazine, and on their printed matter (pp. 86-88).

SEVENTH DEFENSE WITNESS

RAPHAEL PEREZ (pp. 88-102) DIRECT EXAMINATION BY PERSHES

Pastor Perez did a good job on the witness stand, in spite of the fact that he has a slight language difficulty.

- Perez explained that it was at the prompting of the Southeastern Conference office, that he

started his Eternal Gospel Church in West Palm Beach! [This is astounding, in view of the fact that a earlier plaintiff witness (Grace Cancelado, from the Southeastern Conference office, said they never had any contact with Perez or his church!]

Perez explains that, after working toward completion of a ministerial course at Antillean Adventist University (Mayaguez, Puerto Rico) and moving to West Palm Beach, Florida, the Southeastern Conference office phoned him several times, urging him to start a conference church in West Palm Beach. So, around 1990, they started the church (pp. 88-90).

- Perez then explained how the break with the conference occurred. About a year and a half later, some of the other Adventist ministers in the area complained to the conference, that Perez was stealing their members (p. 91). [Actually, he was probably preaching solid truth better than they were, and members started attending his church. The same thing happened in Huntsville, Alabama; so the conference expelled a black pastor and his church. Later, Ramik went after them, on trademark violation. See our *Story of the Trademark Lawsuits* for the details.]

- The original sign on the church at the beginning was Eternal Gospel Seventh-day Adventist Church (p. 91).

- Not only did the conference know about Perez' church, but the Southeastern Conference Hispanic Coordinator was present on the day it first opened. About 450 people were in attendance (pp. 91-92).

- After being threatened by the General Conference about using the name, the Perez group tried changing their church name in various ways; but they could not and would not omit the special phrase, Seventh-day Adventist.

Perez: "Well, I think it has been obvious by people with much more credentials and knowledge than me, with the Seventh-day Adventist name in front of this judge and this Court, that have stated beyond any reasonable doubt **the part that we cannot negotiate, we cannot change, we cannot modify is Seventh-day Adventist. The rest is negotiable**" (p. 93).

Pershes: "When you use that phrase of Seventh-day Adventist, what are you telling people?"

Perez: "**That is our religion; that is our faith**" (p. 94).

- After they started a radio broadcast, other Adventist pastors complained that Perez' voice was heard down in Miami! [Apparently, they cared not about the lost souls in Miami, whom they themselves were doing little to reach.]

Perez: "My answer, of course, was that I pointed to the Bible in Revelation 14, 6 through 12, very well-known verses by Seventh-day Adventists; right there it says that this message be going flying in the midst

of heaven . . . warning the people, because we love them, of what is about to come to this earth" (p. 94).

- Perez trademarked his church name with the State of Florida on July 31, 1990, and the certificate is still in good standing with the state office (p. 95).

- In regard to the radio broadcasts, the conference and General Conference disapproved of the message, not the use of the name.

Pershes: "Was there any complaints on the General Conference or the Southeast Conference with regard to the material that was contained in the radio show?"

Perez: "Yes."

Pershes: "**Was there a complaint with regard to the use of the name, Seventh-day Adventist?**"

Perez: "**No. The complaint was that I was going to bring persecution if they would allow me to keep preaching on the radio**" (pp. 95-96).

- **Perez has received mail from the Southeastern Conference office for years.** The church has regularly bought materials from the Southeastern Conference office (pp. 96-98). The mail was addressed to "Pastor Rafael Perez." [Rafael is the Spanish spelling of Raphael.]

- They also received mail from Pacific Press, addressed to their church. Again, no objection to their church name (p. 99).

- Perez defined the word, "church."

Perez: "**A church is where two or three gather on the name of the Lord**" (p. 99).

- Perez explained the content source of his newspaper ads:

Perez: "**Strictly, what we did was we copied a chapter from a Catholic Bible, and we copy some paragraphs from a book, the Great Controversy written by our prophet, Ellen G. White; and we took a whole column of Ellen G. White comments on that chapter which is found—those comments, on the Seventh-day Adventist Bible Commentary. And, of course, we give the credit to our brethren.**"

Pershes: "And the commentary comes from the General Conference, not from you?"

Perez: "Yes. Not only from the General Conference. The General Conference uses it in their books; but those were the statements that the prophet, that we understand, the last prophet was going to have on this earth" (p. 100).

RAPHAEL PEREZ (pp. 102-120) CROSS EXAMINATION BY TEW

- Although asked by the conference to start the church, the Perez group was never formally accepted as a conference church. Yet they were given an official church record book (pp. 103-104). [Apparently, the complaints began reaching the conference office

after they received the record book and before a formal acceptance could occur.]

Perez: "This [Conference Hispanic] Coordinator was giving us the knowledge or the understanding that [as he told me], You see, you got the book already, you got the book and the tithe envelopes! I recall several times [as we drove together that day] on the way to West Palm Beach, he was referring to the big book [and said]; 'so you see you are official now. Look, you got the book.'

"So, since he was the only coordinator for the Spanish work for the Southeastern Conference, I didn't have any reason to doubt what he was telling us" (pp. 104-105).

- Perez was told not to send in title to the conference because the other nearby pastors were complaining; some of whom were in the [Caucasian] Florida Conference (p. 105).

- When, in 1992, the Southeastern Conference president told Perez to stop broadcasting because he was saying objectionable things, Perez told him to show him in the Bible and Spirit of Prophecy what was wrong with what he was saying.

Tew expressed astonishment that Perez wouldn't stop the broadcasts when officials told him to.

Tew: "Just him telling you to stop; you wouldn't stop, just on the instruction of the Church" (p. 107)? [Perez should have replied: "If the Baptist Board in Nashville told the Baptist church, where you attend, to stop preaching, would you do it?"]

- Because he would not stop broadcasting, they told him his church was no longer connected with the conference (p. 108).

- In an effort to make peace with the General Conference, in 1997, Perez said he would stop using "SDA" or "Seventh-day Adventist Church" in his title, but instead use "of Seventh-day Adventists" (pp. 110-113).

- Perez clearly stated that the reason for using the name is not because they have church approval to use the name, but because it represents the faith of Seventh-day Adventists and that God commanded them to use it (p. 117). Read what he said:

Tew: "You were told you weren't a member of the conference, and after you understood you were not authorized to use the name [you continued using it]. Those are true facts, are they not?"

Perez: **"As a Seventh-day Adventist, I don't need, and no Seventh-day Adventist needs, an authorization by another human being to use an expression of a faith that has been given by God to us. That is the main issue of all of this trial and this**

lawsuit . . . I don't want to sound repetitious, but I hope that this Court already has seen beyond a reasonable doubt that to us, to a Seventh-day Adventist, the name carries the feature of our faith. It is not a matter of waiting for an order or an authorization to be given by a human being. That authorization already has been established by the Lord to us, the Seventh-day Adventists.

"So if we want to obey God rather than man, like if Peter were to say over here. We don't have to wait for an authorization for a group of men or a man to carry on with something that God has been telling us to do. And I appreciate you letting me answer that.

Tew: **"I understand that that's what you believe"** (p. 117).

- The Perez newspaper advertisements began in 1994 (p. 118).

- **Perez said that the "harlot," in the ad, was quoted from a Catholic Bible and that every Protestant going back to Luther has agreed with the fact** (pp. 118-119).

- **Perez said it is because of love that they print these ads.**

Perez: "That is doing the work that is intended to be done right here in the Bible. So they can know because of lack of knowledge like if Isaiah would say, My people are perishing. There are many of God's people in those institutions that needs to hear the truth about the Saturday, the truth about the Second Coming of Christ.

"And who has more love, the question will be asked, those who are telling the truth of the people so they can be saved, or those who know the truth and deny or hide it in the so-called name of their love. Who has more love? Who is doing what God is telling us to do" (p. 120)?

[At this juncture, Tew gave up and stopped questioning him; for he found that the more he did, the more powerful were Perez' convincing replies.]

RAPHAEL PEREZ (pp. 120-123) REDIRECT EXAMINATION BY PERSHES

- Perez: **The name is not used to confuse people.** The content of the ad is found in Protestant teaching as far back as the 16th century [and earlier]. The artwork in the ad can be found in museums. The quotations are from the Bible and *Great Controversy*. The quotations from *Great Controversy* were not altered. Ellen White said that book especially needed to be widely circulated. *Great Contro-*

Continued from the preceding tract in this series

versy has been published by the General Conference publishing houses, as well as by self-supporting ones (pp. 121-122).

• Perez: Many others have called the Catholic system the antichrist. Even popes have called one another that. We did not speak against the Catholic people, just the system and its teachings. Pope John Paul II has the same privilege as I to be saved, but he must renounce that position, because it is the seat of Satan (pp. 122-123).

JUDICIAL CONVERSATION (pp. 123-126)

Thinking that the trial might continue beyond Thursday, Judge King announced that there would be no Court session on Saturday. "We respect all religious holidays, so we will not work on Saturday" (p. 123). He also stated that he would be occupied with pre-trial conferences on Friday.

Upon learning that the last witness had testified, it was mutually agreed that the attorneys would present their closing oral arguments on Thursday morning, starting at 10:30 a.m.; that Tew would be given 30 minutes and Pershes 45 minutes; to be followed by a 15 minute rebuttal by Tew.

DAY FOUR - MORNING SESSION

JUDICIAL CONVERSATION (p. 4)

Robert Pershes again asked the judge to once again consider dismissing the case or ruling in favor of the defendant. Once again, the Court denied the motion (p. 4).

PLAINTIFF'S CLOSING ARGUMENTS BY JEFFERY TEW (pp. 4-26)

As one might expect, Jeffrey Tew's closing arguments primarily consisted of a summary of earlier points. Yet there are a number of new points, here, which neither he nor his witnesses presented earlier in the Court transcript. You should be aware of these, for you might meet them again in Court:

• **The Lanham Act requires that there be no confusing of labeling of products or firms.** We have a registered trademark; we entered, as evidence, an affidavit from the Patent and Trademark Office, that we have had it more than five years (pp. 4-5).

• **The law requires that we only have to prove "likely to cause confusion . . . by an average person who uses reasonable and ordinary discrimination."** Colin Standish, the defense's expert, admitted an average person would not be able to tell the difference. He said he would have to go into the church. "That admission by the defendant's expert, I think, forecloses the defendant from arguing that there is no likelihood of confusion" (pp. 5-6).

• We have also registered under the Florida trademark statute, and that State statute does not require confusion [as a reason to eliminate a business competitor using the same mark]. There need only be a likelihood of injury to the business reputation of the plaintiff. **The plaintiff's reputation has been damaged by the "bigoted, anti-Catholic, anti-Sunday-observing Protestant ads; and that hurts the reputation of the plaintiff"** (pp. 7-8).

• The defendant says the name is descriptive. This is true, but **"the law provides that, even if a mark is merely descriptive . . . once the affidavits of incontestability have been accepted . . . merely descriptive marks are equally valid and equally strong"** (p. 8).

• "We have also proved by a preponderance of the evidence that the public indication of the name, Seventh-day Adventist, is with the plaintiff church" (p. 8).

• "Mr. Nixon put into evidence just a brief sampling of the million of pieces of literature that have been distributed, using the trademark Seventh-day Adventist." There are also road signs, church signs, elementary school signs, etc.

• "The Roper survey, conducted by Mr. O'Neill, shows that **more than 50 percent** of the people that recognized the name or knew the name identified it with a church or church organization" (p. 9).

• Earlier Gallup polls "show **more than 70 percent** of the American public know the name. The name they know is the Seventh-day Adventist Church" (p. 10).

• The defendants cited the [the 1963 case] *Sherbert vs. Vernon* case. Yet they fail to note "that *Sherbert vs. Vernon*, which has a balancing test, was overruled by the Supreme Court in **the case of *Employment Division vs. Smith*, in 1990.**" **"The Smith opinion, I think, says it all. It says we have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law**

prohibiting conduct.” “The Smith Court basically says that to make an individual obligation to obey such a law, contingent on the laws coincident with his religious beliefs, contradicts both constitutional tradition and common sense” (p. 11).

[This is important! It is of the deepest significance that this point would be presented by the General Conference! The 1990 Smith decision by the U.S. Supreme Court was notorious! This was the Oregon Indian case which declared that the religious beliefs of individuals and groups had to yield to governmental laws, when they required actions contrary to those religious beliefs! —Yet the General Conference is using that case to support its position, that the religious beliefs of Seventh-day Adventists and their churches must yield to governmental laws and Court decisions which would force them to act contrary to their religious practices! This is an abomination.]

[Do not confuse this “Smith” with the “Dr. Smith” (referred to on first day transcript, pp. 65-69; fourth day, p. 29), who apparently gave false testimony in the Stocker case.]

[Tew says still more about the Smith decision, and it is full of anti-religious liberty sentiments (pp. 10-12). I will quote it in its entirety, below. I am telling you, the Smith decision is dynamite, able to destroy religious freedom in the United States. And the General Conference is urging its widespread use in America. Read Tew’s statements for yourself. They are quite plain:]

“The Smith Court, your honor, at page 886 and 887, specifically rejects the defendant’s argument in this case, that you cannot apply the trademark law, since use of the name is central to Mr. Perez’s religious belief. The Supreme Court in Smith, says: It is no more appropriate for judges [this probably should be “justice”] to the centrality of religious beliefs than it would be for them to determine the deference of ideas in a free speech case.

“What the Smith Court held in 1990 was that the Court should decide cases on neutral, if the law is neutral and applies to everyone. It should be applied on those terms without regard to whether the defendant claims that he has some central belief and some practice. Certainly, the use of the name is a practice. It is not a belief. [The use of the name is a mindless practice, not based on any belief.]

During the Supreme Court session, referring specifically to Smith, Bernie later reinforced this: “The Supreme Court of the case of the city of Bernie, which is a much more recent case [than Smith]; it’s a 1997 [case]. In setting aside the federal statutes which attempted to interfere with the Smith rule, **Supreme Court case reaffirmed that Smith is the right test,**

that you can regulate religious practice. Use of a trademark, use of name, as a church name or in advertising, is a religious practice, your honor.

“We have cited, and there are many cases, in fact; we cannot find any federal Court which has ever denied trademark protection on the basis of a religious practice argument. **True, some church trademarks have been denied because they didn’t meet the requirements of a trademark law,** but there is no existing federal case which has adopted the defendant’s argument” (pp. 11-12).

- The 1999 case of MacDad vs. Kienfar also says this is a trademark case.

- The **“10 million Seventh-day Adventists’ adopted 27 principles [the Statement of Beliefs]; none of those principles, according to Dr. Reid, mandate [he means ‘forbid’] as a religious matter the use of the church’s name by non-members of the church.** Both Dr. Standishes disagree with that. **But that’s a matter of belief”** (pp. 12-13). [Just a moment before he said that the use of the name was a practice and not a belief; now he says that it is a belief.]

- With the exception of the Seventh-day Adventist Reform Movement, all these self-supporting ministries do not use the name in their titles—and the Reform Church only has 700 members (p. 13).

- **Returning to Smith, in a complicated paragraph, Tew says the trademark restriction on the name “does not burden” the religious beliefs or practices of the defendants.** Here is his statement:

“But the real issue is Does not using the name, Seventh-day Adventist, in those evangelical proselytizing activities bear or burden their religion, even practice? **Smith [case] in the Supreme Court [said] you can prohibit a [religious] practice because that’s constitutionally permitted if it’s a neutral law that applies across the board.** So you can prohibit the trademark practice. But the evidence [requires] that the defendant, of course, **the defendant has got the burden to show that [not being able to use the name] even burdens his practice, and he hasn’t done that”** (p. 14).

[Did you read that! “You can prohibit a [religious] practice because that’s constitutionally permitted if it’s a neutral law that applies across the board.” That was the decision in the Smith case, which the General Conference wants applied to noncompliant Seventh-day Adventists! The Smith case will be wonderful help when, after the National Sunday Law is enacted, believers are dragged into Court and told: “The U.S. Government can prohibit Sabbathkeeping because it is a neutral law; that is, it applies to everyone in the nation!”]

- These self-supporting organizations have been

shown to not need to use the name in their evangelizing work. “So the bulk of the witnesses or the evidence that the defendant has put in as to what is the religious practice of the self-supporting churches is that they don’t use the name, Seventh-day Adventist, in their name” (pp. 14-15). [Tew spends another paragraph or two hammering on this point. As we have noted, the Adventist denomination uses the name in its own outreach even less.]

- **[Tew keeps coming back to the Smith case. It is the bulwark of his argument.** The government can enact “neutral laws” which require you to violate your conscience, and the General Conference is saying that this is a good thing.] **“Of course, the Supreme Court Smith says you can burden practice.** You can’t burden belief. **But if a neutral law, like the trademark law,**—and we have cited at least half a dozen federal Courts which have applied the trademark law in church names and enjoined trademark infringement,—**so we think that the religious argument defense completely fails”** (p. 15).

[The National Sunday Law would be defined as a “neutral law” under this definition, that it “applies across the board”; that is, applies equally to everyone in the nation.]

[The Smith decision said the government cannot burden (destroy) belief, but it can burden (eliminate) practice. —And what is calling yourself an Adventist or keeping the Bible Sabbath? They are religious practices!]

- Tew once again hinges the historic usage defense on the idea that **only two people used the name prior to 1860, so that proves the General Conference owns it, and it was not generic. [But it was not until 1863, that the General Conference and the denomination came into existence! Prior to 1863, many people and many independent churches were using the name.** And Ellen White called for the believers to use the name in 1858, so we can know many did so (pp. 15-16)].

- [Tew tries to nullify the Christian Science vs. Evans case, in which the New Jersey Supreme Court, in a 2 to 1 decision, found that the name, Christian Science, was generic because it was the name of a religion. Tew’s pathetic reasoning is this:] **The Christian Science name was only generic because the Mother Church in Boston said it was; whereas the General Conference says their name is not, so therefore it is not generic.** [How is that for shady reasoning! —But it is not the organization which should decide whether the name is generic (p. 17)!]

- Tew fills two pages, returning to the point that self-supporting groups do not use the name in their titles, whereas the General Conference entities do (pp. 17-19).

- The Kinship case, Tew says, only involved an

organization, not a church. “The [Kinship] Court found that that use was generic because it was not used as a church name” (pp. 19-20).

- Another Court case “says, when a group that has been affiliated with the Mother Church or Mother Organization, when it secedes, it doesn’t gain any rights to the name because it used the name during its period of affiliation” (p. 21).

- **Perez started using the name, without having received permission from the Southeastern Conference to do so** (pp. 21-22).

- Perez started the newspaper ads two years after he knew he had no authorization from the conference “either to be a church or to use the name” (p. 22).

- Regarding the legal “fair use” argument: “The defendant has to prove he is using it not as a trademark; he is using it fairly and in good faith and only to describe the goods. Well, the defendant does use it as a trademark. He does use it as the name of his church.” His good faith is “really in doubt because he knew the use was not authorized” (p. 23).

- A fair use can be made “so long as such does not lead to customer confusion as to the source of the goods or services.” But Perez’ use does cause confusion (pp. 23-24).

- Regarding the defense of acquiescence [*i.e.*, the conference had, for a time, silently permitted the Perez church to use the name; therefore they had a right to use it], he was only a probationary member for a time (p. 24). In addition, his use caused confusion as to the mark (p. 25).

- No use of an attached disclaimer [statement that the Perez group is separate from the conference] can eliminate the confusion (p. 25). [Actually, attaching “Independent, Congregational, Reorganized, etc.” as part of the title would nicely solve the confusion factor. A special letter has been sent, via Pershes, to Judge King by the writer regarding this matter.]

- The Kinship Court did not cancel our trademark (p. 26). [The Kinship decision actually upheld the right of separatists to personally call themselves by the name, and to call their non-church organization by the name.]

DEFENSE CLOSING ARGUMENT BY ROBERT PERSHES (pp. 26-48)

Pershes brings in several excellent new points.

- “I would like to start with the question of the estoppel, because I am concerned. Why are we here on the issue of whether or not Seventh-day Adventist is a generic term for a religion? That specific term was addressed by the Kinship Court . . . We go by a principle that you have an opportunity to present your issue. If you disagree with the determination, you appeal it.”

[Pershes begins with the legal point of estoppel. “Estoppel” is a legal term, and means prevention of a party from saying something (asserting or denying a fact or claim) that is inconsistent with his previous statements or actions. **The General Conference accepted the Kinship generic ruling of the name, Seventh-day Adventist, for they did not appeal it. But now, in a different State, they are carrying on another case on the same issue.**]

“The mark is only the two words” (Seventh-day Adventist [*i.e.*, “Church” is not in the trademark]), and those words were declared to be generic in California. **‘So we start this trial with a decision factually being [earlier] determined that Seventh-day Adventist is a generic name of a religion. However, plaintiff in this [present] case is saying wait, let’s forget about that. Let’s retry it and see if we can get a different result.’ ‘The concept known as issue of preclusion’ applies here.’**” [The legal term, preclusion, means that something is made impossible, because of a previous action (p. 27).]

- In the Stocker case, no Court trial was held; it was only a submission of legal papers. And neither Stocker nor Perry had attorneys to represent them in their effort to cancel the General Conference’s trademark;—yet the decision was two to one, even though the petitioners could get no oral arguments admitted (pp. 27-28).

- The Stocker dissent [the legal paper written by the outvoted one judge on that panel] should be carefully read, for it is well-reasoned and relies on the Kinship case (p. 28).

- It is an interesting fact that **the General Conference asked the trademark Court (in the Stocker case) to stay (table) the case until the Kinship case was completed. But then, when that case went against them, they asked the Stocker Court to ignore its results. The dissent opinion said they should have looked at it and applied it** (p. 29).

- **“One of the key factors that the majority in Stocker relied upon” was a statement by “an expert, for the General Conference, who put in by deposition a statement [that “Dr. Smith”] that said, as an expert, ‘I have never seen any document, any publication using Seventh-day Adventist that didn’t come from the General Conference’ ”** (p. 29). **[Ever since it began this nefarious work in 1986, the General Conference has used threats, coercion, legal maneuvers, delays, fines, imprisonment, lies, and fraud to win its cases. All this is written in heaven.** Read *The Story of the Trademark Lawsuits and Legal Defense against a Trade-*

mark Lawsuit, plus the Notorious Settlement Agreement.]

- “When I asked Dr. Reid, who appeared here, if that [Dr. Smith] statement was a key fact predicating this decision [their Florida defense], he honestly answered, it’s not.” Yet **the name has been used by independent groups in America as early as 1925, in New Jersey, and in California since the 1950s,** “showing clearly that the name is being used by multiple groups as the name of their religion, Seventh-day Adventist” (pp. 29-30).

- The Reform Movement has been using that name in this country for years, and there has been no problem of confusion. **There has been “a generic use by a competitor; I say a competitor,” for 75 years** (p. 30). **[The Reform Church began using the name in America about the year 1925, 56 years before the trademark.]**

- **Yet that is still “the wrong context in this case because we are taking a statute, which is basically a commercial statute, and applying it in a religious context”** (p. 30).

- “The key question is whether it’s generic.” “How has the mark or the alleged mark, Seventh-day Adventist, been used by the plaintiff? Their own material will show, your Honor, that they have been using it primarily as a designation of what they are, not source [where it came from]” (p. 31).

- **Only recently did they start using the open Bible, flame, and cross;—but that is [should be] their trademark, not the name”** (p. 31).

- “Prior to that, the Seventh-day Adventists gave their religious practice, they say, **‘of Seventh-day Adventists.’** Seventh-day Adventist **is saying what your religious practice is.** If a church building said the Eternal Gospel Church of Baptists, you would say, Well, ‘Baptist’ is saying what the religious practice is, the religion. It’s not telling you which Baptist group. It’s telling you the name of the religion that is being practiced” (p. 32).

- “The plaintiff would like it [if you said], You can’t say what your religion is. You can’t say that this is a Seventh-day Adventist practice going on in here, because it might cause confusion” (p. 33).

- **“There is no confusion having really been shown here [in this Court case].”** A Reform church, “the Walnut Seventh-day Adventist Church, [is] right down the street from a General Conference Seventh-day Adventist Church, [yet there is] no evidence of confusion. [That is because] There is generic use” (p. 33).

- Look on the cover of their church paper, the

Continued from the preceding tract in this series

Review: “Right on the cover, using it [the name] specifically to say their religion. Not a Church. Not showing a picture of the Church. [But] Showing pictures of family, children, a religious practice” (p. 33).

[As I was concluding this analysis, I looked on the cover, bannerhead (bottom of the contents page), and every other page in the latest issue of the *Review*. Nowhere did I find the name, Seventh-day Adventist! Everything was only “Adventist.” The General Conference wants to sew up the name in a bag and drop it in the ocean, so it will never be heard of again.]

- Dictionaries show the name to be as a noun, not an adjective. “Multiple encyclopedias of world religions always using Seventh-day Adventist as a noun” (p. 34).

- “If you look at the writings of Ellen G. White; she uses Seventh-day Adventist as the name of a religion, not the name of a church” (p. 34).

- Maxwell’s book, media usage, Colin Standish’s reply, school signs,—all point to the fact that it is a religion, not an organization (pp. 34-35).

- This consumer survey is “junk science.” “Surveys should not merit any weight or be considered, and this is one of them.” Almost at the beginning, it asks “what type of organization [and this is], not an open-ended question. It suggests, in the question, the exact response that you are trying to elicit.” “They could have very simply said, What comes to your mind when you hear Seventh-day Adventist” (p. 35)?

- “Those who actually answered ‘a church organization,’ which is exactly the answer that they have been going for, was only 5 percent among the total public [and] 6 percent of those aware of Seventh-day Adventists (pp. 36-37).

- Two percent of the total were Seventh-day Adventists; that 2 percent should be removed (p. 37).

- **“A lot of evidence, a lot of paper put in here with regards to Andrews University,” etc.; “yet their survey say that the weight of that material, association with medical service or educational school service, [amounted to only] one percent or less. Recognition is not being derived by these documents”** (p. 37).

- They *add* the religious organization response [total] to the church response [total]. “That’s how they get this big number, and ask this Court to rely

on it” (p. 37). [And they totaled the worship response separately from the religion response, in order to make that category smaller.]

- There are actually two types of surveys to test genericness in the minds of the public: (1) The thermos type of survey, which determines whether it is a brand name type or a specific type of product (container to keep food or drink hot for hours). (2) The teflon type of survey which shows substance and whether it is considered, by the public, to be a manufacturing brand or a generic name for a type of very smooth, non-sticking surface. **“If there is no source [trademarked brand] relationship, a source identification, then, in fact, the survey is not showing what it is supposed to show: whether or not the mark is actually generically understood or being used as a mark”** (pp. 38-39). [What he means here is that **none of the responses were “General Conference”—and it is the General Conference which holds the trademark!**]

- The Park and Fly case is pointed to by the plaintiff as proving its point;—yet, in that case, the Supreme Court ruled that the phrase was generic.

- The General Conference did not come into existence until 1863,—three years after the 1860 meeting. [At last, this point is introduced (p. 39)!]

- **“Can you take a generic name [which has been used by many groups for years] and then pull it back out as a trademark?”** “I tried to find cases” that did that. “If a trademark becomes generic, **there’s only been two circumstances that I was able to locate where the Courts have ever brought it back into that trademark**, and that was Singer Sewing Company and Goodyear” (p. 40).

Examples which became generic, and remained that way, are aspirin, refrigerator, and linoleum (p. 40).

- **The Kinship case established that the name is generic; and the plaintiff has presented nothing, in this present trial, to get it back into trademark status** (p. 40).

- Regarding fair use: **To say “[Church name] of Seventh-day Adventists” is fair use.** “It’s not the church name”; you are telling people you are of that faith. That is not causing confusion, it is eliminating it (p. 41)!

- Regarding acquiescence: In the case of NAACP vs. NAACP Legal Defense Fund, **“the NAACP had its defense fund. They both had those initials and**

then they split up. Both were using it. They waited 13 years to file suit, to try to control the name. The Court said can't do that. Can't sit back, wait, and then decide to do something." Look at the usage: "This name has been in use in various groups and by splinter groups probably since" the 1840s or 1850s (p. 41).

- **The General Conference stealthily trademarked the name and then waited five years to make it "uncontestable."** They knew that "churches don't believe or check the U.S. [Trademark] Gazette" [to see what's been recently trademarked]. Then "they didn't sue the largest user, which had been the Reform Movement, using [it] for 75 years." [They went after the little guys first, in order to establish easily won precedents.]

- "I would point out to the Court the concurring opinion by Justice Sandra Day O'Connor: **The First Amendment does not distinguish between religious belief and religious conduct. Conduct motivated by sincere religious belief, like the belief itself, must therefore, at least, be presumptively protected by the free exercise clause**" (p. 42). [Tew said that the Smith case permitted the government to overrule a person's religious practice, but not his belief. But O'Connor's statement is that you cannot separate the two.]

- "We had testimony here [from the Standish brothers], that the name is God-given. Use of the name is God-dictated [commanded] and a conviction. If that is true, then designating who you are is an important issue and it is something that goes to that free exercise [clause of the First Amendment]." "To take a totally blind eye [to totally disregard First Amendment rights], we create havoc in how we can separate any control with regard between religion and state" (p. 43).

- **The newspaper article they quoted, to prove there was name confusion, actually shows there is none; since the article clearly identified it as a splinter group, and not part of the General Conference** (p. 43).

- **The General Conference has not presented one witness declaring that what is in that ad is not in accordance with their beliefs or is not published by them also in their books** (pp. 43-44).

- **"Your honor, there's a hidden agenda: They are using the trademark law to stop free speech"** (p. 44).

- Even Justice Scalia, when he wrote the legal opinion on the Smith case, wrote that, **if you combine the neutrality factor with another, such as**

free speech, then that changes the situation—and then the Smith case does not apply (p. 44).

- **Their contention that SDA should be a protected acronym was not proven in this Court.** They gave no evidence, and that point should be dismissed. SDA could mean State Department of Agriculture or anything else (p. 44).

- The Christian Science case is applicable to this one. The Court ruled that Christian Science was generic, and the Kinship case ruled that Seventh-day Adventist is generic (p. 45).

- Not one of the several Jewish religions owns the name "Jewish." "They don't own the word, Jewish, because it tells you what the nature of their religious practice is, not the specific grouping" (p. 45).

- Not long ago, the newspapers told about how the pope apologized for what happened 500 years ago in the Inquisition. But that kind of thing can still happen today. That is why we have the First Amendment, to protect people and their religious beliefs today (pp. 45-46).

- Back in the 1840s, the people believed that Jesus was returning; so they had to call themselves Adventists. Then they found they had to keep the Seventh-day Sabbath; so they had to call themselves Seventh-day Adventists. They have to practice it. **"When you say Seventh-day Adventist, you know someone practices the Sabbath, believes in that second event [coming]. That is describing what they are.** And that Sabbath practice is important" (p. 46).

- It would be devastating to them, seventh day. "It would stop the [First Amendment] exercise of religion. So, if you have a religion here which is saying, I must be able to express the name, who I am," that is a condition of their faith. "Even a follower of Ellen G. White believes that. That is their belief" (p. 46).

- **"They don't try to deceive people. This is what I am [they say]; I am a Seventh-day Adventist.** They are telling people that. It's necessary to practice it." But if you interfere with this and tell them they cannot do it, then you are "interfering with the actual exercise" of their religion (p. 46).

- **"Going back to that Inquisition period, I firmly believe that those who don't believe history are forced to repeat it.** [At this point, Pershes refers to Jewish practices in regard to the Sabbath and the Day of Atonement.] "Seventh-day Adventists here who follow the teachings of Ellen G. White must proclaim themselves as Seventh-day Adventists. They must . . . say who they are" (pp. 46-47).

- "We ask this Court, when you rule, how do

these people use their name? If we put 'Founded by Seventh-day Adventists,' [or] if it [their title] said 'Eternal Gospel by Seventh-day Adventists,' and 'church' wasn't there. **We don't claim that their religion requires the use of the word, 'church.'** That's not part of the conviction. In fact, there's only one phrase [which is] part of the conviction and [which requires] an exercise of the practice: and that is Seventh-day Adventist" (pp. 47-48).

- When the plaintiff says the name cannot be put on a building at all, they have gone beyond a trademark issue; "they have interfered with our religious practice. It is a violation of the First Amendment in that context, and it probably misleads people who are coming into that church" (p. 48).

- "The relief that the defendants ask is that they be permitted to use the name, Seventh-day Adventist. And, as [the plaintiff] counsel said, when we used Eternal Gospel Church by Seventh-day Adventists, he said we were changing it to something that was descriptive. That was his words. I agree with him. That's what we are doing. Using it descriptively as a generic name of the religious practice of a group of people who are, and I think the Court said, firmly believe in their faith. As a conviction, they must use it. Thank you" (p. 48).

**PLAINTIFF'S REBUTTAL ARGUMENTS
BY JEFFERY TEW (pp. 48-55)**

Jeffrey Tew presented nothing new. The same points were presented again:

- We have a trademark on the name. The Kinship case did not rule on Seventh-day Adventist Church. It is up to the defendant to provide genericness; we do not have to; and they did not prove it. We had a good survey (pp. 48-51).

- Their two experts were Australians who have never lived in America. [Here is Tew's exact wording: "**He called two Australians who have never lived in the United States. The two Drs. Standish have always lived outside the United States.** So, when they blithely say, 'Well, two of the average Americans; it means a religion.' I am sorry, Judge, they just don't have the requisite ability to carry the burden of what the average American understands or how the average American connotes the words, Seventh-day Adventist. **They never have lived in the United States. They demonstrated no expertise or even any knowledge of what the average American thinks.** We took surveys to find out what the average American thinks . . ." (pp. 51-52)

- The existence of the Reform Movement does not create a defense for them. The petitioners in the Stocker case had lawyers. [Not true; Bill Perry worked it through without any official legal help. I spoke with him by phone often while he was strug-

gling through the task (pp. 52-53).]

- [Tew then discusses the notorious Smith case again, as the foundation on which the General Conference stands [and on which they will someday will fall, if they do not abandon that foundation]. His words are important, so we will quote them in their entirety:

"On the issue of the religious freedom, they have admitted that the Smith case supersedes the cases in their trial memorandum. I will read the Smith case briefly. It said, citing with the approval the Supreme Court, [from the] Reynolds case: **Can a man excuse his practices to the [when they are] contrary to the law, because of his religious belief to prevent this which would make the professed doctrines of religious belief superior to the law of the land, and then in effect to permit every citizen to become a law unto himself?**

"Later on they say [the Smith ruling says]: This would contradict both constitutional tradition and common sense. They clearly have held, and the Supreme Court says, **we have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law.**

"They go on to say that: The Supreme Court has always differentiated between practice and belief. **[Sabbathkeeping is a practice. On whose side will the General Conference stand when the Sunday law is enacted?]**

"Certainly, the use of a name in advertising as the church name; that's a practice. That is not a belief" (p. 53).

- Perez says he needs to use the name, but the other self-supporting groups do not use the name in their titles. So none of them need to use the name at all. And it's not on the title of their publications (pp. 53-54).

- The Court should be able to enjoin Perez to not use the acronym, SDA, because he said he has abandoned any claim to it. The defense witnesses say it is the common abbreviation for the name (pp. 54-55).

"We wish to file an additional brief on findings of facts and conclusions to assist the Court.

"Your honor is permitted and required under the trademark law, we think, under this evidence to enjoin the defendant's use of our trademark in connection with the defendant's church activities, advertisements and things of that nature, and as the name of his church. We have proven we have a valid mark, and they have not sustained their burden as to any affirmative defense that would prevent Your Honor from entering the injunction that we ask, Thank you" (p. 55).

JUDICIAL CONVERSATION (pp. 55-56)

Robert Pershes asked if he could also submit additional data, and Judge King said that both sides could submit additional materials within the next 15 days. (The present writer, on the basis of his theological training and background in church history writing, sent material to Judge King via Mr. Pershes,

which reached him within that 15-day period.) The judge then indicated that he considered this to be an important case, and that he wanted to resolve the matter promptly. We have been told that a decision is normally handed down within 2 to 6 months (pp. 55-56).

END of the four-day transcript.

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NEW! The Florida Trademark Trial 25 tracts about the March 13-16, 2000 trial: ***The Florida Trademark Trial—Part 1-3 [WM-941-943]***, ***Florida Trial Photos and News Clips [WM-945]***, ***Analysis of the Florida Trademark Court Transcript—Part 1-9 [WM-946-954]***, ***The Seventh-day Adventist Non-Identity Factor [WM-944]***, ***The Seventh-day Adventist Non-Identity Factor [WM-944]***, ***Summary of 36 Legal Defense Points to be used in a Trademark Lawsuit or Appeal—Part 1-2 [WM-955-956]***, ***Letter to the Trademark Court [WM-957]***, ***The Florida Trademark Decision—Part 1-3 [WM-958-960]*** ***Trademark: Past and Present—Part 1-3 [WM-961-963]*** ***How to Protect Your Group from a Trademark Lawsuit [WM-964]*** April 2000, 100 pp., \$7.50 each + \$2.00 p&h.

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Story of the Trademark Lawsuits It covers the whole story of the General Conference trademark lawsuits, prior to the Florida lawsuit, and nicely summarizes the key points in 45 tracts, printed

between August 1987 and January 1992. The appendix includes a chronology, sources, summary of legal principles, and 29 key documents. 1999, 80 pp., 8½ x 11, \$7.00 + \$1.50 / 2 for \$6.50 each + \$2.00 p&h.

Legal Defense against a Trademark Lawsuit, plus the Notorious Settlement Agreement Part One is a collection of legal points; and Part Two is the Settlement Agreement which you will be required to sign, in order to settle the case out of court. The stipulations are astounding. 1999, 8½ x 11, 44 pp., \$4.00 + \$1.50 / 5 for \$3.50 each + \$2.00 p&h.

If you wish to research even more deeply, in preparation for a possible lawsuit, the following trademark tractbooks, containing over 1,700 pages, include most of the blizzard of legal papers produced in the 1980s General Conference trademark court trials.

Hawaii Legal Papers—1 Tractbook Contains all Hawaii legal papers to May 1988. May 1988, 458 pp, 8½ x 11, \$34.50 + \$1.50 p&h.

Hawaii Appeal Documentary Tractbook Contains the legal papers for Marik's trademark appeal case, to August 1988, plus Brief of Amici Curiae (submissions of three parties to Marik's appeal). From July 25-August 8, 1988. August 1988, 269 pp, 8½ x 11, \$20.50 + \$1.50 p&h.

Hawaii-Petition to Cancel Trademark Tractbook Contains the papers submitted by Perry and Stocker to the Patent and Trademark Commission, in an effort to cancel the General Conference trademark on the name which represents our faith. Fall 1991, 8½ x 11, 116 pp, \$9.00 + \$1.50 p&h.

Hawaii Legal Papers—2 Tractbook Contains 71 legal papers in the Marik case, from May 11, 1989 to September 30, 1991. October 1991, 605 pp, 8½ x 11, \$45.50 + \$1.50 p&h.

Kinship Legal Papers Tractbook Contains pre- and post-trial briefs and the October 7, 1991, Kinship decision. October 1991, 56 pp, 8½ x 11, \$4.50 + \$1.50 p&h.