

The Dennis Case: September 2000 Update

W
M

9
8
9

EARLIER DEVELOPMENTS

David Dennis had been head auditor of the church since November 1976. He held that position until December 29, 1994. In that capacity, he repeatedly pled with church leaders to not carry out plans which were wrong, divert funds, or unnecessarily waste money.

An unsuccessful attempt had been made to keep him from being re-elected at the 1990 General Conference Session. Then, in the fall of 1994, a pretext was used to demand that he immediately resign.

After several meetings which failed to accomplish this, on October 11, he was told that the General Conference now had documentary proof of each and every charge leveled against him. David knew this claim was as unfounded as all the others, and he challenged them to produce the documents. At this, in bursts of anger they demanded his immediate resignation. The evidence was not presented.

Later, on December 20, 1994, Dennis was fired (to take effect December 29). The last whistle-blower at the General Conference was gone. The following summer, at the Utrecht Session, Folkenberg had about 70 church governance changes made in church policies which granted him immense power over workers at world headquarters and the *Adventist Review* editorial offices.

In a special letter mailed to every delegate about two weeks before that 1995 General Conference Session, Robert Folkenberg declared that he wanted the whole matter brought out into the open, but that he would have to wait until the lawsuit was settled—and he expressed hope that this would be done quickly. That letter helped reelect him to a second term. He had promised that the case would speedily go to trial.

But, in the five years that have followed, Folkenberg has had a hired battery of lawyers, from three (3!) high-priced Washington, D.C. law firms at work delaying the suit. We have written several articles on the delaying tactics.

As the trial date neared, when the time came for depositions to be made by both sides, **the three law firms representing the General Conference asked that they might depose (ask questions of) David**

Dennis and his family before their leaders were deposed. This was granted. After a grueling three and a half days of questions on every conceivable topic, before their own leaders could be deposed, **the General Conference attorneys immediately appealed the case to the Maryland Court of Special Appeals.** This move was surprising, since the case had not yet been heard in the lower court.

Although the depositions of General Conference personnel were supposed to be held next, following a hearing before a circuit judge—suddenly highly paid attorneys, from three different law firms retained by the General Conference, appealed the case to the Maryland Court of Special Appeals.

A judge, not normally on the Appeals Court, was assigned to provide special oversight of this case. After the appeals judges heard the case, about a year passed with no action being taken (while all other cases were decided within a few months). During that interim, President Folkenberg had lunch with the governor of the state. Then a decision was handed down which, surprisingly, dismissed the case.

On December 17, 1998, the Appeals Court essentially dismissed the case. The very next day the General Conference reported it as widely as possible. It was the first time in over four years that any judge had ruled in their favor. Their defense had been that the First Amendment gave them the right to do whatever they wanted, regardless of the laws of the land. The news went out, via fax and the internet from the Communications Department of the North American Division, that the court “threw out Dennis’ suit.” With that Appeals Court decision, the case appeared ended.

But then, **on February 25, 1999, David Dennis’ attorney, Richard L. Swick, filed a 24-page Petition for a Writ of Certiorari with the highest court in the State: the Maryland Supreme Court.**

In response, on March 16, several attorneys, representing two of the three large law firms engaged by the church to fight this case, filed a motion with the State Supreme Court which, in effect, provided reasons why the court should rule in their favor. Entitled *Answer to Petition for Writ of Certiorari*, this

15-page legal paper attempted to show that Adventist church officers could defame their workers and get away with it, since the First Amendment protects their actions from legal scrutiny!

The issue was very technical. **Attorneys representing the General Conference argued that, to allow the case to continue in the secular courts was a violation of their First Amendment rights.** Why? because the “discovery” would “entangle” the church’s internal activities.

In contrast, the appeal of the lone attorney representing David Dennis declared that defamation of character is outside the parameters of any immunity the church could claim as being based on its doctrines. The attorney contended that to permit the case to be dismissed at this stage of the proceedings would seem to create a situation in which a church, any church, could murder its employees and not be held accountable in a secular court of justice.

The judges in the Maryland State Supreme Court considered the matter carefully; and, on May 14, 1999, they remanded the case back to the lower court.

In the most dramatic and surprising defeat of General Conference legal maneuvers to have occurred within the past four years, the State Supreme Court “ordered the Court of Special Appeals to vacate the case and . . . with directions to dismiss the appeal.”

Then, on November 1, 1999, Judge Chapin in the District Court met with eight attorneys representing both sides. On one side was a single attorney representing David Dennis. On the other were seven attorneys representing Folkenberg and the General Conference.

Why seven? There was a reason. As soon as the meeting began, the seven attorneys would, in tandem, speak in order to dominate the event, sidestep the reason for the meeting, overawe the judge, confuse him in regard to earlier court actions in the case, and hinder any comments by Dennis’ attorney.

The seven attorneys tried to revive the claim that their clients had separation of church and state “immunity.” But the judge recognized that this position had earlier been rejected by the court.

The attorneys claimed they had lots of witnesses who said that Dennis was a bad person, and said these witnesses included Dennis’ own children. However, the court record revealed that when they were deposed, his children had denied that charge. **If the seven attorneys had so many witnesses to prove their case, why were they spending years stalling for time and trying to get the case thrown out of court, so they would not have to present them?**

After letting that continue awhile, the judge came

to the point of the meeting: **Where, he asked, were those incriminating documents which, months earlier, he had ordered the General Conference to hand over? The seven attorneys hemmed and hawed.**

Then the judge asked why the attorneys had not brought the documents by now, in view of the fact that Dennis’ attorney had recently entered a motion into the court demanding them?

The name of that legal paper was *A Motion to Compel Production of Documents*. Unbelievably, **the attorneys replied that they had not received a copy of that motion, which required them to immediately produce the long-ago ordered documents!**

At this, Dennis’ attorney stepped forward with a paper, signed by a representative of this conglomerate of high-priced law offices,—which proved they had, indeed, received a copy of the Motion.

David Dennis’ attorney then told the judge that he must receive the court-ordered church documents, in order to properly proceed with his case and also know how to frame his questions during the forthcoming depositions (questioning) of various church officers and Robert Folkenberg.

So the judge concluded the meeting by declaring that, since the order for the evidence had been given months earlier, and the more recent *Motion to Compel Production of the Documents* had actually been received by the foot-dragging General Conference, the judge would set December 9, 1999 as the date when he would rule on what would be done next about this problem.

But then the General Conference brought up its next defense, which was that Dennis had been an “elected official,” so they had a right to slander him worldwide.

A legal paper was filed; and this, of course, meant an additional court delay.

In late spring, 2000, the court ruled that a meeting would be held in September.

THE MOST RECENT EVENTS

On the morning of Monday, September 18, 2000, Judge James Chapin convened a special hearing in his chambers at the Circuit Court for Montgomery County, Rockville, Maryland. The hearing has wide-ranging implications in the six-year-old litigation initiated by David Dennis, former Director of the General Conference Auditing Service, against the deposed former president of the General Conference, Robert S. Folkenberg, *et al.*

The hearing began at 9:50 a.m. in Courtroom 11 on the seventh floor of the courthouse.

The Dennis Case: September 2000 Update

Facing Judge Chapin were the following individuals for the defense: Kevin Baine, representing defendants Kenneth Mittleider and Walter Carson; Deborah Whelihan, representing Robert Folkenberg and the General Conference; and Thomas Wetmore of the General Conference legal department. Another associate attorney with Baine was present, along with Lauri Cleary who has been retained to defend Elizabeth Heisler Adels.

Representing the plaintiff, David Dennis (who was present), was attorney Richard Swick. As usual, the defense outnumbered (and outspent) the plaintiff by a great deal. Washington, D.C. law firms are among the highest paid in the nation, for they defend in the most publicized cases.

A small group of visitors attended this public hearing and were also present for the all-day session on September 18. The defendants presented witness and after witness in their behalf until 11:30 a.m. **on Wednesday the 19th, at which time Judge Chapin ruled that the defense could not drag the meetings out with further witnesses.** The hearing did not end until September 20, when two hours were allotted to the attorneys for a final summation of their closing arguments.

Keep in mind that this hearing was limited to making a decision as to whether Dennis was a “highly elected official of the church.” The defense believes this thin issue of law grants them immunity from having the case tried before a jury. **Their position, repeated over and over again, was that a “high church official” cannot “entangle” the court in religious matters (a prohibition of the First Amendment) even if they have willfully and maliciously maligned and slandered him.**

In order to achieve their objective, the General Conference used a tactic successfully used in the recent Florida Trademark Lawsuit. Their legal strategy was to swamp the courtroom with mountains of paperwork and confusing, empty speeches. The General Conference attorneys brought some 2,000 pages of documents to the hearing. They had, for example, copied, in its entirety, *The Church Manual* and the *General Conference Policy Books*. Why would the *Church Manual* be involved, since that only concerns local churches’ (but not General Conference) activities?

The General Conference is likely to declare this September hearing to be a “trial.” Actually, it is but another roadblock placed in the pathway to the trial.

Judge Chapin will give a ruling at an undisclosed time after receiving written statements from the attorneys on or before October 5.

As mentioned in our earlier reports, if the General Conference loses this decision they will appeal and twist in the wind until the judge orders them to

hand over the documents and testimony, so the case can be presented before a jury trial.

But if the GC is able to get the judge to rule in their favor, even though the plaintiff still has legal appeals available to him, it is unlikely, for lack of legal funds, that the case will continue.

With millions of dollars of tithe money already spent on this case, the GC presses on with a determination to have the case dismissed,—so the very issues which caused Dennis to bring the case in the first place will not be opened up and settled. **If the General Conference was in the right, would it not want the case to go to trial?**

EVENTS DURING THE HEARING

On Monday morning, September 18, after the court convened, all of the attorneys gave their opening statements.

The defense stated that Dennis was a highly elected official. They made that defense, in spite of the fact that the auditors of the church are independent and not members of any policy-making committees or boards. The defense repeatedly used the term, “a position of denominational leadership.”

Oddly enough, **the General Conference had coached their witnesses to repeatedly point out the similarities of the Adventist Church structure with that of the Roman Catholic Church! Yet this was a key defense used in the Marikay Silver lawsuit against Pacific Press in the 1970s!**

The idea was that, **because, in the Adventist Church as in the Roman Catholic Church the rule is from the top down, leadership has a right to do whatever it wants to its employees! No one dares oppose the will of the hierarchy. It can do things not ordinarily done outside the church, because it is a law to itself and above the laws of the land.**

This is, indeed, an unfortunate position to be stated in a U.S. court of law. It will be used against our people later on, when the National Sunday Law is enacted and many of our temporizing leaders go over to the other side.

In the opening statement by Attorney Whelihan, she stated the fact that Dennis had been involved, during his entire working career, in ministry and evangelism for the church; this automatically made him a “high church official.”

The only witness for the plaintiff was Dennis himself. He is getting older now, and his hair is turning white; but he continues to stir fires of controversy as in earlier years when, as General Conference head auditor, he blew the whistle on a number of secret deals and pled with leadership for change. When they successfully ousted him in December 1994, the

last whistle-blower at world headquarters was eliminated.

Four reams of documents were brought by the defense. These consisted of letters which Dennis had earlier written in his official capacity which opposed the defendants' pillaging of church funds.

At the opening of the proceedings, Attorney Swick put Eric Korff on the stand. He is the policy-wise auditor who followed Dennis as director of auditing, after he was terminated as of December 29, 1994. Even though highly coached as to what to say and not say, Korff admitted that auditing was a technical/professional vocation. He again affirmed that ordination was not a requirement for the auditors, nor was it expected that they be preachers.

His testimony was followed by David Dennis, who was on the stand for more than three hours. Dennis was examined extensively as to his "controversial role" and his unwillingness to bend proper auditing procedures and church policies to the wishes of high-placed church leaders.

Current General Conference Treasurer Robert Rawson made an appearance, but provided little in the way of new information for the court. Other witnesses for the defense included G. Ralph Thompson, who had served as General Conference Secretary from 1980 to 2000. **Thompson strongly emphasized the kinship between Seventh-day Adventists and Roman Catholics.**

Tuesday morning the defense brought to the stand Neal C. Wilson, who has been involved in extensive litigation by the General Conference over a period spanning some 30 years. He is the one who submitted the legal statement to the federal court in the protracted Silver vs. Pacific Press case back in the 1970s, that the Seventh-day Adventist Church had a "hierarchy" like that of Rome. Statements were made by the General Conference that the women workers were like nuns, in utter subjection to the wishes of leadership. Therefore, the church did not have to obey the equal-pay laws of the United States.

Elder Wilson pointed out to the court that Dennis lacked "people skills," to help explain the dislike church leaders have shown toward him.

Finally, before the judge announced there would be no more witnesses, Kenneth Mittleider was called to the stand; he was, at one time, a General Vice-President for the General Conference and Folkenberg's close associate in persecuting Dennis, in order to force him from office and prevent him

from giving disclosure to matters involving high-level corruption in the church.

Mittleider attempted to show the judge how, through continuous prayers, the Holy Spirit is available in greater abundance at the General Conference in Session. One would think that we held a high mass there! He failed to explain how, on that basis, the decision was reversed in Indianapolis in 1990, when, after the new president Folkenberg tried to keep Dennis from being re-elected, by acclamation of the nominating committee, he was voted back into office by the delegates in session on the main floor.

Mittleider explained how Folkenberg had assigned him to prosecute the Dennis case with the help of Attorney Walter Carson.

When asked why the punishment of Dennis was so much more severe than that of well-known adulterers who were retained in the ministry of the church, Mittleider grew red and had a difficult time framing a reply.

On the final morning, all attorneys gave closing statements. **The speeches by the attorneys for the defense represented an effort to confuse the judge. But Judge Chapin asked that written statements be sent to him by all legal counsel on or before October 5, after which he will eventually rule on this issue.**

A roar of laughter arose from the gallery when, in her closing statement, Attorney Whelihan, boasting of the many cases she has been involved with for the General Conference, referred to the distinguished officers of the church: Wilson, Thompson, and Rawson as being akin to the "Cardinals and the Pope."

LOOKING TO THE FUTURE

We now await a late October or early November ruling by the court. If Dennis wins, then the case should proceed to depositions of certain church leaders and a jury trial.

If the General Conference wins, then the case will be thrown out; and few church workers will, in the future, dare plead that wrongs be righted and changes be made in the church. It is a serious matter and a time for prayer.

Current and former church workers have told me that, if the General Conference wins, they will think they can more easily mistreat workers wrongly in the future.

Read Isaiah 58:1 to 4. Did you know it is the chapter written to Seventh-day Adventists? —*vf*