Dennis Lawsuit Update June 1999

GENERAL CONFERENCE STUNNED BY DECISION OF MARYLAND SUPREME COURT

A totally new development has occurred in the Dennis lawsuit—which may spell the beginning of the end to General Conference efforts to eliminate this case.

In the January 1999 issue of *Checkpoints*, we reported that there was considerable rejoicing at world headquarters over the December 17, 1998, decision of the Maryland Court of Special Appeals in the David Dennis case.

They had reason to rejoice, for they saw this as a decisive victory in an effort, spanning several years, to keep a number of facts hidden. 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.

On the very next day, December 18, 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."

You will recall that the case was supposed to be heard by a circuit judge—when 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 appeal judges heard the case, about a year passed with no action being taken in the case (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.

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."

Here is the wording of this ruling #31, by the Maryland State Supreme Court, as signed by Robert M. Bell, its chief judge. (In legal language, "the Court of Appeals" means the State Supreme Court.)

"Per Curiam Order

"The Court having considered and granted the petition for a writ of certiorari in the above entitled case, it is this 14th day of May, 1999.

"ORDERED, by the Court of Appeals of Maryland, that the judgment of the Court of Special Ap-

peals be, and it is hereby, vacated [overturned; rendered null and void], and the case is remanded [sent back down] to the Court of Special Appeals with directions to dismiss the appeal . . [Three precedent-setting court cases are then cited] . .

"Costs in this Court and in the Court of Special Appeals to be divided equally between the parties."

In laymen's language, this meant a complete setting aside of the Special Appeals Court decision. The case had been remanded (handed back) to the lower court for Montgomery County to at last hear.

It is believed that the Supreme Court recognized that there may have been a political relationship between the Maryland governor and the judges of the Special Appeals Court who had ruled against Dennis. Last August, when the governor was running a close race for re-election, Robert Folkenberg, a principal defendant in the Dennis case, invited the governor to world headquarters for a special feast in his honor. It is the governor who directly appoints the judges who are on the Special Appeals Court bench.

There is a legal aspect to this remand which you should understand. Although the Maryland State Supreme Court read over the paperwork in the Dennis case (it would have to do so, in order to issue any kind of decision), it refused to formally hear the case. Instead, it remanded the case directly back to the Montgomery County Circuit Court. Because the State Supreme Court refused to hear the case, it will later be much more difficult—if the General Conference loses the lower court case—to appeal it to the U.S. Supreme Court.

Therefore, except for the anticipated mountains of additional paperwork and motions which are likely to be filed, the case tends to be locked in the Circuit Court. Compounding the problem is the fact that the General Conference appealed the case before it went through the Circuit Court, as it normally ought to. That also tends to shut it out from further appeals.

This means that, after engaging three of the most prestigious (and expensive!) law firms on the East Coast to represent the defendants—Robert Folkenberg (more recently dislodged from the presidency for unsavory activities), Walter Carson (now known to be Folkenberg's close business associate in the James Moore/Catholic charities scandal), Kenneth Mittleider, and a young lady in Oregon State—they must now deal with the lower court. It appears that they will be unable to escape it.

The costs in time and church dollars, over the past four years, has been staggering; yet they are right back to where they started from! —Yet all those lawyers will continue to throw paper at the case to delay it. They will tell the lower court judge that this cannot be done, and that must be changed; and on it will go for a number of months until the judge tires of it—and tells them to shape up or be held in contempt of court.

You will recall our earlier report that, a couple weeks prior to his re-election at the 1995 Utrecht Session, Folkenberg sent a fax letter to every delegate, telling them that it was his great desire to open before the church all the details of the case—and would do so as soon as the case was settled. He issued that statement only three and a half months after Dennis filed the complaint in the Montgomery County Court in February.

Yet, for the next four years, the General Conference spent millions upon millions of dollars to stall the proceedings and hide the facts.

Whereas David Dennis has had one lone attorney (probably a very medium-priced one), the General Conference felt it needed several high-priced attorneys, not one but three, of the most expensive Washington, D.C., law firms. Such was their concern to avoid certain facts from being disclosed.

They were quite willing to discharge and defame David Dennis, but they were not willing to answer for what they had done in a court of law. They said they had facts to prove their position. If the facts are on their side, why would they not want them brought forth?

When the Court of Special Appeals threw out the case on December 17, the very next day the General Conference reported it as widely as possible.

Here is the news release they sent out a few minutes after midnight. The reasoning used as the basis for the decision is incredible! Yet it is exactly the logic presented by the General Conference in their defense:

"Date: 12/18/1998 12:17 p.m.

"Re: Dennis Suit Dismissed.

"From: Kermit Netteburg

"Yesterday the Court of Special Appeals of Maryland ruled that David Dennis' claims were not a legitimate issue for the courts to consider. '[We] find that the authorities cited prohibit the maintenance of the suit on a constitutional level' [i.e., the church was safe from suit because the First Amendment lets them safely do whatever they want].

"In other words, they threw out Dennis' suit. Their reasoning said that the First Amendment freedom of religion does not allow the courts to hear Dennis' claims, because they are ecclesiastical in nature. The church has 'absolute immunity from suit involving their ecclesiastical activities in the instant case,' the court said.

"The ruling is 28 pages long, so I have not summarized it all. However, I can say that the ruling makes it clear that the court concluded that David Dennis' lawsuit has to be over. There are no longer any issues that are capable of being litigated in court, according to the Court of Special Appeals.

"David Dennis can appeal this decision, but the case is over unless he appeals the decision.

"Kermit."

But when the State Supreme Court sent the case back to the lower court, the General Conference news outlets were totally silent for weeks. Others had to leak the news that church leaders would now have the opportunity to spread out, in court, the facts which they

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had been saying for four years they wanted to do.

Incredibly, the denomination still has issued no statement of any kind about the decision of the Maryland Supreme Court! Total silence. Not one word.

You will recall that we quoted Kermit Netteburg, above, as saying, "The church has absolute immunity." *This is the issue.* The General Conference claims absolute immunity while Dennis' attorney contends they only have relative immunity. It is extremely rare for an individual or organization in America to have "absolute immunity." Here is one example: A foreign embassy in Washington, D.C., posts a sign inside their grounds, saying that every member of Congress has committed adultery—and they cannot be sued or held liable.

But all those expensive attorneys fell on their faces when they thought they could sell the "absolute immunity" argument to the court. They are deeply embarrassed, yet their paychecks continue.

What will happen next? Thomas Wetmore, an in-house attorney at world headquarters, has been quoted as saying the process of getting the paperwork back to the Circuit Court will take from 30 to 60 days. If we can learn anything from history, what he has not disclosed is how much more paperwork will be filed to stall the proceedings.

The General Conference is likely to try at least once more to get the attention of the State Supreme Court, with some sort of delaying motion to "reconsider" their decision, or "clarify" its meaning. They may, somehow, even try to take the matter to the U.S. Supreme Court. Whatever they can do to stall or eliminate the case will be done. For they do not intend to turn over the incriminating records which Dennis has asked for.

Far more than the Hawaii and other trademark lawsuits,—all this paperwork is costing the church millions, millions, millions! In the late 1980s, Robert Nixon, one of their in-house attorneys, admitted in a letter that lawsuit expenses are paid from tithe funds. Brethren and sisters, this should not be.

We have learned that, for a number of years now, the legal expenses of the General Conference have been the greatest expense of all the departments in the entire denomination. Year after year, they consistently manage to outspend even evangelism! The true accounting of these costs will never be known.

While Dennis has one lone attorney to ask that the case come to trial so the facts can be heard, the General Conference feels it needs several attorneys from three outside law firms, plus its staff of in-house attorneys—all needed to devise ways to keep stalling the case, so no facts will be heard.

There is an interesting play of events here: This four-year case has dragged on because Folkenberg and Carson (key defendants in the case) refused to disclose certain facts. On December 17, the Court of Special Appeals threw out the case and both church leaders rejoiced. Between December 31 and March 1, other facts surfaced—Folkenberg was no longer president and Carson (because of his part in the Moore case) came very close to release also.

Midway through that presidential crisis, Dennis appealed to the State Supreme Court, asking that the facts might still be heard in court.

On March 16, 15 days after Folkenberg left the presidency, the Supreme Court sent the case back to the lower court.

With great interest, many have been watching how the new administration would handle this situation. Jan Paulsen has a reputation for being "open." Indeed, there is word from world headquarters that there is an improved morale among the staff.

Frankly, Paulsen inherited a problem in all these lawsuits. The trademark litigation continues, as attorneys try to destroy a small group of Adventists in south Florida who are trying to spread the message about the Bible Sabbath. The little group has no false teachings of any kind, yet they are being persecuted because they publicly proclaim the Bible Sabbath! (More on this in our other publications.)

The indications are that, to date, the new president is not going to interfere in any of the lawsuits, but plans to let his in-house attorneys continue with them. Whether that will change, in the weeks and months ahead, is a question. Actually, there are those who know that, since they do not have favorable facts on their side, they dare not do anything else but continue stalling the inevitable outcome.

General Conference attorneys continue to promise a "full review," but say they cannot do so until the litigation is over.

—Yet a review was immediately made after the lawsuit of James Moore was made public. The review was partially made public through a variety of church news media—before the Moore litigation was settled!

What makes the Dennis allegations different?

It is known that Elder Paulsen is providing the General Conference officers with periodic details of the Dennis suit. Every time he does this, he is flanked by 4 or 5 of those expensive, non-Adventist attorneys! Can you imagine that, at the highest level of our church, some affairs are being managed with the guidance of non-Adventist lawyers!

It is known that our highest-level leaders know about the State Supreme Court decision. Yet, to this day, little has been told to the church at large about that decision. You will not find it in the pages of the *Review*.

A pall of panic hangs, at this moment, over those directly involved and over their attorneys. The General Conference and North American Division staff have reason to be concerned.

The beleaguered Folkenberg and his business associate, Carson, will have to be examined, under oath, to explain their actions and the continued vilification of Dennis,—who was terminated in December 1994 from his work for the church after more than 34 years of service.

Others will be called to testify, including many who have been retained in church employment and allowed to keep their denominational credentials after admitting to transgressions far more serious than those that Dennis was accused of. Currently employed ministers who are adulterers may be called to testify.

The situation is not a good one. Robert Folkenberg's own brother, Donald Folkenberg, continues on as the chief financial officer, in charge of the moving of all funds within the Global Mission department. This is incredible, in view of his earlier history and all that has happened.

The General Conference Administrative Committee recently "censured" Walter Carson, by asking him to write a letter of apology for what he had done. That was the "discipline" he received. Others involved with the James Moore matter have been completely overlooked and excused.

As head of the General Conference Auditing Department, David Dennis knew what was going on. He had been a whistle-blower, exposing wrongdoing at high levels of the church for a number of years.

But the delight expressed, when he was fired, has turned to misery, now that the entire matter may soon be aired in a court of law.

The General Conference says that Dennis is a bad man, but they do not want to disclose their facts. Dennis says he is innocent, and appears very willing to defend his case in court.

Who is right? Dennis or his accusers? We look to the future, to find out. The outcome of the lower court trial may tell a lot.

On February 25, 1999, the attorney for David Dennis filed a 24-page *Petition for a Writ of Certiorari* with the Maryland State Supreme Court.

The paper he submitted is a public document. Here are some of the concepts presented in this legal paper, the basis of which the Supreme Court rendered its favorable decision:

"Questions for Review:

"1. Whether the First Amendment confers absolute immunity to church officials who make defamatory statements about the former church auditor who was also a volunteer pastor.

"2. Whether Maryland law permits courts to employ neutral legal principles, to resolve defamation claims regarding statements by high church officials about the former church auditor who was also a volunteer pastor."

It is astounding that our church would declare that it is above the laws of the land! What have we come to? We are supposed to be the people who believe in obeying laws.

"The Court of Special Appeals (CSA) allowed respondents interlocutory appeal under the collateral order doctrine, and upheld their claim that the First Amendment granted them an absolute immunity to "the trial process." *Op. 6-16*. "Based upon this finding, CSA determined that the First Amendment prohibited the circuit court from entertaining Mr. Dennis's defamation claim. The CSA's further ruling confused the law terribly. The CSA held that courts do have jurisdiction to resolve *ecclesiastical disputes* about church property, but that courts have no jurisdiction to apply neutral legal principles to a defamation claim against high church officials." *Op. 15.*

"By ruling that the church defendants are *absolutely immune* to the trial process, the CSA substantially departed from prior decisions of this Court and the United States Supreme Court. These decisions established that to qualify for First Amendment immunity, church defendants must demonstrate that the lawsuit impermissibly intrudes into ecclesiastical matters. Following these decisions, the circuit court below correctly refused to dismiss Mr. Dennis's defamation claims unless and until respondent church defendants demonstrated that they qualified for immunity.

"To establish their immunity under the circuit court's ruling, the church defendants had the burden to show that their false statements about Mr. Dennis pertained to his fitness for the clergy. As Church Auditor, Mr. Dennis had been in conflict with the church defendants because he had evidence that they were attempting improperly to use church resources for their own personal benefit. Thus, the church defendants had also to show the circuit court that their false statements were not contrived merely to discredit Mr. Dennis's auditing work aimed at detecting possible financial corruption.

"Whether respondents qualified for First Amendment immunity, according to the circuit court, depended on the resolution of disputed issues of fact. The CSA impermissibly expanded the collateral order doctrine by entertaining [accepting] an interlocutory appeal before the circuit court had resolved those disputed factual issues.

"The CSA confounded Maryland law by ruling that courts were allowed to resolve ecclesiastical issues about church property but could not apply neutral legal principles to a defamation claim involving high church officials. This Court should untangle the snarls embedded in the CSA opinion, and thus prevent future circuit court and CSA decisions from perpetuating or expanding the confusion inherent in the December 18, 1998 decision."—*Italics his.*