

When the General Conference Sued SDA Kinship: KINSHIP GOES TO TRIAL

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The trial of the suit brought against SDA Kinship by the General Conference of SDAs was argued in the Federal District Court in Los Angeles on February 26 and 27, 1991.

Background

Kinship was formed in 1976, and shortly afterwards, through a ballot among its members, chose the name "Seventh-day Adventist Kinship International" as best describing its members and constituency. It incorporated as a not-for-profit religious corporation in California early in 1981.

Towards the end of 1981 the General Conference trademarked the name "Seventh-day Adventist", which it had been using since its official formation in 1863. Trademarking its name was then an unusual action for a religious denomination, although some others have since followed suit. It is not clear what events prompted the action, although as early as April 1981 (when the trademarking process was probably already under way) the North American Division committee had mentioned seeking counsel concerning what could be done to stop Kinship using the denominational name. (This was shortly after the GC decided to throw its lot with Colin Cook's "change" approach as the answer to the homosexual problem, and to come out against Kinship.) The GC later trademarked "Adventist" also, although it has yet to try to enforce that mark legally.

Minutes from the GC's Trademark and Legal Affairs Committees sent to us as a result of court "discovery" reveal that there were several committee moves against SDA Kinship in the next few years, but we did not hear about them until Bob Nixon, then head of the GC Communications Department and formerly and now again an Associate Counsel at the GC, contacted me in November 1985 to request that we change our name. We waited to debate the matter at the 1986 Kampmeeting, when we voted unanimously to refuse the request. In December 1987 the GC brought suit against us, demanding that we change our name, and requesting that they be awarded both damages and legal costs.

The legal "complaint" was a strange document, for since it was brought under trademark laws it had to be couched in purely commercial terms. So Kinship was accused of trying to encroach on the church's market and to utilize the good will which their marketing had built up around the name of the church. It did not mention that we were either Adventists or gay/lesbian.

The GC hired two law firms to lead its case: Diller, Ramik and Wight from Virginia, who are trademark specialists, and Welebir and Lister of San Bernardino. Vincent Ramik, who is purportedly a Catholic, has done a lot of major legal cases for the GC in the past decade. Doug Welebir, a very experienced trial attorney, is an Adventist, and was formerly mayor of Loma Linda and an elder of the Loma Linda University Church. Kinship was blessed when the National Gay Rights Advocates agreed to fund the case, and Fulbright and Jaworski, one of the nation's largest legal firms, then took the case "pro bono." The attorney with responsibility for the case was Parry Cameron.

Meanwhile, the GC had been bringing legal pressure on several other small groups that used 'SDA' as part of their names. Most gave in at once, being without the resources to fight Goliath. But one case,

against a small, initially 15-member "Congregational SDA Church" in Hawaii, went to trial. A well informed friend in the GC suggested to me that the purpose in proceeding with that case was to give the GC legitimacy in their attack on us.

During 1990 Cameron took depositions from Neal Wilson (former GC President), Duncan Eva (former GC VP and chair of the board of Colin Cook's Quest/Homosexuals Anonymous), Nixon, and Monte Sahlin (GC Church Ministries Dept). Welebir and Ramik deposed Bob Bouchard (former Kinship president), me (former church liaison), Larry Hallock (current liaison), and Van Johnson (former public relations officer). We had hoped that when Neal Wilson, who had been an especially litigious GC President, was replaced by Robert Folkenberg in July 1990, that the new administration would decide not to pursue the case either because it found the action unchristian or to save costs since the GC was now in financial difficulties. But not so.

The GC Case

The depositions taken by both sides were entered into the court record without being read. Welebir called only one live witness: Nixon. He established the GC trademark by identifying the appropriate documents. He spent most of his testimony establishing that the church had built a grand publishing empire by identifying dozens of magazines - a very boring process. He then showed that we had "transgressed" the trademark, using the "SDA Kinship Connection" and advertisements in the "Advocate" using our corporate name as evidence. He claimed that this was likely to cause "confusion" - that is, that people would be likely to think that these were sponsored by the church - although the GC had failed to produce any evidence of actual confusion.

The Kinship Case

Cameron called two witnesses, Marge Doyle (Kinship's current president) and me. His attempt to call Fritz Guy, president of Loma Linda Riverside, and Harvey Elder, AIDS specialist from Loma Linda, both Kampmeeting veterans, was aborted as a result of Welebir's legal maneuverings (we had come up with the idea of including them too late). Since this was a legal case we had to speak to the legal issues, which meant that our evidence was intended to bolster four legal "defenses":

(1) "Fair use": we chose our name because it describes who we are - Kinship is a ministry by Adventists for Adventists. We detailed our ministry, and how important our name is in reaching out to people (it is seeing the name SDA that shocks most of our would-be members into reading further); the GC has no viable ministry for either its gay/lesbian members or those with AIDS - or for our families. (Fritz and Harvey would have testified further to the importance of our ministry and how it fills a real gap in the church. It would have been compelling to hear this from non-gays who are key church officials - which is why Welebir was so eager to exclude their testimony.) It also involved testimony concerning the meaning of "SDA", which Nixon had defined as a member of the church. I gave it a much broader, cultural and religious, meaning; I also showed that the decision of who entered and remained a church member was not a GC decision, but that of the local churches, many of which accept us, so that many of us are officially, as well as culturally, Adventists. Welebir tried to show in his cross-examination that neither Marge nor I were "really Adventists", succeeding in reducing Marge to tears in the process - which did not help his case.

(2) "Laches": this defense contends that the party bringing suit waited too long to do so, and so will now cause great harm to the party being sued. While it is almost certain that the GC knew of us and of our

name before 1980, this (the first Kampmeeting) was the first date we could nail down - still over five years before they contacted us and over seven years before they acted. I went into detail concerning the contacts with Wilson and Eva concerning the 1980 and 1981 Kampmeetings (contacts they had conveniently forgotten during their depositions).

(3) "SDA" is "generic": A case in the New Jersey Supreme Court had found that "Christian Science" was generic (and therefore could not be trademarked) because it was used for 30 years before the denomination was organized. We had arranged for Adventist historian Jonathan Butler to give "expert testimony" to the use of the name before 1863, but he was precluded from participating at trial because of an earlier attorney-client relationship with Welebir. As a compromise, Ron Graybill, from Loma Linda Riverside, whom both sides had earlier tried to recruit, was brought in as an independent, court-appointed expert witness. However, he came up with only one earlier use of the name, in 1859. Cameron also showed that the breakaway groups "SDA Reformed Church" and "Davidian SDAs" had used the name since the 1920s and 1930s without being challenged by the GC, along with several groups of professional SDAs who used the name without permission.

(4) "Likelihood of confusion": We showed in our testimony that when an advertisement was placed in a gay paper it was most unlikely, because of its context and readership, to be misunderstood as an official church ad. Similarly, the reporting of our mailings to the colleges (which Welebir had made a great fuss about) in the college papers had shown no confusion - it was clear there that we were a separate organization, had a different position from the church, but we were treated seriously because we were Adventists. When Marge went through our annual budgets it did seem to many sitting in the court that the claim that we were causing commercial damage to the giant SDA enterprise was ludicrous.

The Response of the Judge

However, in a nonjury trial the judge is pivotal. The Hon. Mariana Pfaelzer came well prepared to the trial: she had been thinking through the legal issues, and the trial both interested and disturbed her. Occasionally she interrupted the lawyers to clarify issues. She seemed to be very conscious that the case could end up under appeal. Most of the testimony was routine: identifying Adventist publications, Kinship advertisements, discussion about our budget. I was told that when I launched into the details of the early GC-Kinship contacts concerning clergy for Kampmeetings she really sat up and paid close attention.

At the end of the trial, around noon on Feb 27 following the summations by Ramik and Cameron, she told both lawyers that they had addressed only the generic issue raised by the NJ Christian Science case, and had not addressed the other - religious liberty. She gave them four weeks to each give her briefs addressing the relevance of the free exercise of religion issue to this case. This means that we will not get a verdict until after that point - and she must also consider all the written and live testimony. It is difficult to read where she stands on the legal issues.

My Response

I found the trial a deeply disturbing experience. The GC was ignoring what the Bible says about taking brothers to court in attacking us. Moreover, it was attacking a ministry which God has clearly blessed and used - in an area where it does nothing. In taking offense at finding the name of the church linked to gays and lesbians it forgets that our Lord chose to mix freely with publicans, prostitutes, and people whom the religious establishment of the time regarded as "sinners". Our church, which claims to believe

in religious liberty - when its own liberty is threatened - here chose to attack the religious liberty of some of its own members. Its leaders, whose prophetic interpretation identifies the US with the "lamb-like" beast of Revelation 13 which will some day "speak as a dragon" were themselves flexing their muscles and behaving as a dragon. I told Welebir afterwards that I was very disturbed to see one Adventist cross-examining another in a hostile manner - it just did not seem to be the role for a follower of Jesus.

The Hawaiian Church Contingent

The trial was also attended by John Marik, the pastor of the Hawaiian "Congregational Seventh-day Adventist Church," Max Corbett, his pro bono conservative Adventist lawyer, and a large group of his obviously very conservative supporters. Marik has already spent six days in prison as a result of the suit - his congregation was too poor to hire a lawyer and he answered with a theological treatise, which the court did not accept, and was later found in contempt of court when he refused to take down the sign on the church and hand over all his books with "SDA" in them! Corbett later had the default judgment reversed, and it is now to be tried - however this trial was postponed pending the result of the Kinship case. It was amazing to see the supporters of the Hawaiian church come to understand and support Kinship's issues - the liberals and the conservatives coming together because the church had turned into a bully. They said that it was abundantly clear from the testimony which side was exercising compassion - and that this was true of the lawyers also. I interviewed Marik and Corbett for three hours concerning their case after ours concluded.

Tom Wetmore, another member of the GC legal department, who was brought to the trial but not called to testify, told me that it was likely that the Kinship case would settle the legitimacy of GC trademark-based legal actions one way or the other. Thus, a lot hangs on this case, and we should expect and prepare for a great deal of press when the decision is announced.