

Lawsuits and the Church: Notes on the Vienna Decision

by Elvin Benton

Agrieving Apostle Paul listed the vices of his “beloved children,” the Corinthian Christians. Among their offenses was their leaning toward litigation. “When one of you has a grievance against a brother, does he dare go to law before the unrighteous instead of the saints? . . . I say this to your shame. Can it be that there is no man among you wise enough to decide between members of the brotherhood, but brother goes to law against brother, and that before unbelievers?” I Cor. 6:1, 5, 6, R.S.V.

A growing twentieth-century Adventist proclivity for adversary proceedings sent a substantial muster of church leaders to the 1975 General Conference session in Vienna with a proposal to permit the church to censure or disfellowship those who seek legal redress of their grievances outside the doors of the church.

The history of the proposed ban on litigation by members does not seem to be very complicated. From Adventist fruitsellers and accountants to General Conference officers, all seem to believe that the current lawsuit by Merikay Silver against the Pacific Press had something to do with the urgency that attended the intro-

duction of the proposed amendment. It probably would not be fair, however, to assume that *Silver v. Pacific Press* started it all. According to W. Duncan Eva, a General Conference vice-president and chairman of the Church Manual Committee, the issue of the standing of those church members who litigate against other church members has been under consideration “at least for two years that I know about—I’ve been here for two years now.”

New material concerning litigation proposed for addition to the *Church Manual* came in two parts—both to be added to Chapter 13, entitled “Church Discipline.” The first was a two-paragraph explanatory introduction to the problem of litigation, which previously had not been specifically dealt with in the *Manual*. Its text:

Litigation.—The Lord has placed within the church all necessary means for settling differences between individual members and between members and the church or its institutions. There is therefore no need for recourse to secular courts of law: the church’s own procedures for appeal and redress are adequate for all situations, being based on inspired counsel. “Dare any of you, having a matter against another, go to law before the unjust, and not before the saints?” (I Cor. 6:1). “To it (the church) the Lord has delegated the power to settle all questions respecting its prosperity, purity and order.”

Elvin Benton is a member of the Maryland Bar and director of the religious liberty department of the Columbia Union Conference. His law degree is from the American University.

—Testimonies, Vol. 7, p. 263. “When troubles arise in the church we should not go for help to lawyers not of our faith.”—*Undated MS No. 112*. “Contentions, strife and lawsuits between brethren are a disgrace to the cause of truth.”—*Testimonies*, Vol. 5, pp. 242, 243. “I call upon you in the name of Christ to withdraw the suit you have begun (against a denominational institution) and never bring another into court.”—*Letter 301*, 1905 (see also pp. 222-226).

In the light of this clear counsel, any member who persists in taking legal action against the church shall be rightly subject to the discipline of the church.

The second proposed part had the stinger in it, for it was designed as an addition to the short existing list of offenses under the heading “Reasons for Which Members Shall Be Disciplined.” Its wording was disarmingly brief:

7. Instigating or continuing legal action against the church or any of its organizations or institutions, contrary to Biblical and Ellen G. White counsels.

The regular Church Manual Committee of the General Conference comprises 24 General Conference personnel, many of them officers and all of them ordained ministers. For the session at Vienna, a “standing” Church Manual Committee of 39 was elected by the delegates, all but one ordained ministers.

Significantly, however, it is not so much the Church Manual Committee as the General Conference administration that, in fact, originates and sponsors revisions. According to committee chairman Eva, “the Church Manual Committee really doesn’t decide what’s going to go into the *Church Manual*. It’s given its instructions and directions by the General Conference Committee or by the officers . . . but it doesn’t initiate too many matters itself.”

General Conference officers chair the sessions at which such proposals are presented. The strength of their influence is thus multiplied by their having a significant voice in proposing amendments and by their leading the delegates in consideration of adopting the measures.

The significance of any amendments to the *Church Manual* cannot be overemphasized. The *Church Manual* is more than an advisory hand-

book. It is a rule book that claims the highest earthly credential, setting forth the fundamentals and regulations of the church with the authority of the body’s claim to heaven-sent mandate—approval by the General Conference in session.

It was not always thus. A committee of the General Conference appointed in the early 1880s to study the possibility of publishing a

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manual reported unanimously that they believed “it would seem to many like the formation of a creed or discipline other than the Bible.” General Conference President George I. Butler wrote in an 1883 *Review and Herald* article, “Better make some mistakes and learn the profitable lessons thereby, than to have our way marked up for us by others and the judgment have a small field to reason and consider.” His prediction that “it is probable that it [suggestion of a church manual] will never be brought up again” proved that Butler was no clairvoyant, for after repeated attempts the proponents of a rule book prevailed and the *Church Manual* was published in 1932.

There were then and still are dissenters from the *Church Manual* approach to church discipline. Some see in it a desire to mimic “worldly” churches. Others simply believe, as did President Butler, that rules tend to hinder the development of the divine gifts of conscience and reason.

Church Manual changes are not made lightly. The 1946 General Conference session adopted the resolution that “all changes or revisions of policy that are to be made in the *Manual* shall be authorized by a General Conference session.” That such authority is not to be frivolously disregarded is made plain by an unequivocal 1909 statement by Ellen White, quoted in the preface to the current *Church Manual*:

When, in a General Conference, the judgment of the brethren assembled from all parts of the field is exercised, private independence and private judgment must not be stubbornly maintained, but surrendered. Never should a laborer regard as a virtue the persistent maintenance of his position of independence, contrary to the decision of the general body.

It appears, then, that taking exception to the mandate of the *Church Manual* may be considered, at worst, tantamount to questioning the will of the Deity. At the very least, a challenge to the validity of a *Church Manual* provision must be regarded as an affront to the authority of the church.

The procedural handling of the proposed amendments at the Vienna session suffered from the press of time and produced what seemed to

some delegates a contradictory result. Part one, comprising the explanatory paragraphs, was referred back for another five years of study without being adopted while part two, the provision by which members can be disfellowshipped, was voted into the pages of the *Church Manual*. The minutes of the session are less than complete. Some background may be helpful.

The day after the two proposed provisions on litigation were distributed in mimeographed form to the delegates, but before either provision had been formally presented on the floor, a recommendation came from the General Conference officers that "it would not be wise to proceed with this statement because it is somewhat inadequate." Questions had arisen as to the

The Role of Men in the Church

Betty Stirling, director of research for the General Conference Board of Higher Education and professor of sociology at Loma Linda University, offers the following modest proposal:

Recent Annual Councils have recorded actions on the "Role of Women in the Church," and the Biblical Research Institute is currently conducting a special study on the subject. But there has been considerable neglect of the role of men in the church. To remedy this omission, it is

RECOMMENDED, 1. To rewrite paragraphs 4, 5 and 7 of the Annual Council 1973 action which will then read as follows:

4. That the emphasis of the report upon the priesthood of all believers, both men and women, and the necessity of involving the total resources of the Church for the rapid completion of the gospel commission be accepted.

5. That the primacy of the married man's role in the home and family, as

repeatedly emphasized in the Scriptures and the Spirit of Prophecy, begin to be recognized and emphasized at all levels of the Church, in harmony with counsel such as the following from the Spirit of Prophecy:

"The father should not excuse himself from his part in the work of educating his children for life and immortality. He must share in the responsibility. There is obligation for both father and mother. There must be love and respect manifested by the parents for one another, if they would see these qualities developed in their children."—*Adventist Home*, p. 216.

"The work of making home happy does not rest upon the mother alone. Fathers have an important part to act."—*Adventist Home*, p. 211.

"Fathers . . . combine affection with authority, kindness and sympathy with firm restraint. Give some of your leisure hours to your children; become acquainted with them; associate with them in their work and in their sports, and win their confidence."—*Adventist Home*, p. 222.

capacity of the church to deal with issues such as insurance claims, in which litigation appears to be the only way to solve problems that may have begun as issues between church members. Elder Eva, relaying the wishes of the General Conference officers, addressed the chair with the suggestion "that the session refer this matter of litigation, going to law with one another, to the General Conference committee for further study and the preparation of a statement that will cover the whole area satisfactorily. It is something that will take quite a while and will have to be studied from a legal point of view as well as from the church's point of view, and I would like to move that we do this, Mr. Chairman." The minutes of the proceedings record that "there followed a discussion of other situations which might involve litigation after which the

recommendation to refer was voted."

Some delegates believed that this action put to rest the whole matter of litigation for the 1975 session. Their belief was short-lived, however, for the very next item presented for consideration was the section providing for imposition of church discipline upon members who litigate against church entities. Some delegates were perplexed to hear business meeting chairman B. E. Seton, a General Conference associate secretary, observe that the litigation provision "is new material which would be brought into harmony with some of the thinking of this morning. It does seem that we could vote on this now even though the general matter of church discipline, litigation and related topics are to be considered further for possible action at the session in 1980. The work we have done on

"In most families there are children of various ages, some of whom need not only the attention and wise discipline of the mother but also the sterner, yet affectionate, influence of the father. *Few fathers consider this matter in its due importance.* They fall into neglect of their own duty and thus heap grievous burdens upon the mother, at the same time feeling at liberty to criticize and condemn her actions according to their judgment."—*Adventist Home*, p. 224.

"The father, as the head of his own household, should understand how to train his children for usefulness and duty. This is his special work, *above every other. . . . If he is engaged in business which almost wholly closes the door of usefulness to his family, he should seek other employment which will not prevent him from devoting some time to his children.*"—*Adventist Home*, p. 221. (Italics supplied.)

7. That in areas still receptive to such action, there be continued recognition of the appropriateness of appointing such married men to pastoral-evangelistic work, and that the appropriate missionary credentials/licenses be granted them.

2. To record our opinion that because the Seventh-day Adventist Church is a world

church which includes in its fellowship peoples of all nations and cultures and both sexes, and because a survey of its various divisions reveals that the time is ripe and opportune, therefore, in the interest of the world unity of the church, a moratorium be declared on the ordaining of married men and fathers to the gospel ministry.

3. To request the new President's Executive Advisory (see below) to arrange for a continuing study of the theological and practical implications of the ordination of men, especially married men and fathers, to the gospel ministry. (Noting especially the example of Paul, who felt it much better for gospel workers to be as he was, i.e., single.)

4. To request the new President's Executive Advisory to arrange also for further study of the election of married men and fathers to local church offices which require ordination, and that division committees exercise discretion in any special cases that may arise before a definitive position has been adopted.

It is further

RECOMMENDED, To refer to a newly formed President's Executive Advisory (consisting entirely of women holding professional positions in the church) for further study, additional suggestions regarding the role of married men in the church.

these matters at this session should be helpful to the church and guide members in this important area of Christian morality. I believe that with these words the intent of the recommendation should be clear.”

The intent apparently was not so clear, however, for the minutes record that “there followed a discussion concerning the need for immediate action on the matter of litigation. It was moved to refer paragraph 7 [the litigation provision] back to the Church Manual committee but it was voted down. The recommendation as presented was voted.”

There was to be one more attempt to send the controversial ban back for more seasoning. On the last Friday afternoon of the session, business meeting chairman W. Duncan Eva agreed to give brief consideration to inclusion of five added words so that the provision would read: “Instigating or continuing legal action against another church member or against the church or any of its organizations or institutions, contrary to Biblical and Ellen G. White counsels.” Several delegates expressed renewed concern for the wisdom of the whole provision. Finally, one of them drew the issue to a head: “Since the large paragraph on litigation [the introductory section] was referred back for more study of what types of litigation are legitimate, and since this provision has some of the same weaknesses and ambiguities, I believe, Mr. Chairman, there is enough confusion here to move that it be removed from the list to be added to the *Church Manual* and be referred back for further study.” The motion lost, the five new words were added, and a refined new offense was added to the list of what the *Church Manual* calls “grievous sins for which members shall be subject to church discipline.”

During the first few weeks following the close of the Vienna session, there was widespread expression of concern over potential enforcement of the new provision. Letters to General Conference administrators pointed out dangers inherent in seeking to deny to church members free access to judicial relief of legitimate grievances. Adventist attorneys and at least one federal Equal Employment Opportunity Commission lawyer have expressed grave concern for

what lies ahead. One gray-haired union conference departmental director wondered out loud whether “the brethren may not have caught more fish in that net than they cast it for,” and offered the irreverent opinion that Pandora’s box may be easy to shut by comparison.

Perhaps the extent of controversy over the new provision will be directly proportional to the vigor with which it is applied by local congregations, which have exclusive authority to administer the discipline it incurs. There is already ample indication that substantive differences of opinion exist as to how the provision may legitimately be applied. Interpretations of the phrase “contrary to Biblical and Ellen G. White counsels” could be widely disparate. One pastor could construe it to mean that *any* litigation against other members or church entities is contrary to the cited counsels and thus a man-

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date for discipline. Another might insist that it was meant to qualify the forbidden litigation to include only that which would be contrary to such counsel, with the implication that some kinds of litigation were not intended to fall under the church’s disfavor at all. If that construction prevails, it will open the equally difficult question of who is responsible for deciding where the dividing line shall be drawn between permissible and forbidden.

Concern of General Conference officers and others over enforcement has had one tangible result. Upon recommendation by the “Home and Overseas Officers and Union Presidents,” the 1975 Annual Council in mid-October voted to append a footnote to the controversial paragraph 7 in the printing of the *Church Manual*. Designed to avoid denominational embarrassment, the text of the footnote discourages frivolous application of the litigation provision:

At the 52nd Session of the General Conference in Vienna, Austria, when this section of the *Church Manual* was revised, the church was seeking to reaffirm its commitment to the desirability of the settlement of problems that might be taken to civil courts, within the guidelines given by Paul in 1 Cor. 6:1-7 and as appearing also in Spirit of Prophecy counsels. For this reason, it was considered necessary by the Session that this paragraph should stand as it appears here in this section on reasons for disciplining church members. However, it was also considered necessary that further study be given to the whole question of litigation between church members and between church members and the church and/or its organizations or institutions and vice versa. The Session therefore took action asking the General Conference Committee to arrange for such study with a view to the inclusion in the *Church Manual* of a fuller statement on litigation. When adopted, this statement will probably be included at a place other than this section on the reasons for disciplining church members.

It is considered that under these circumstances church boards considering discipline of members under paragraph 7, would be unwise not to seek the counsel of the conference/mission president before decisions for recommendation to the church business meeting are taken.

If answers to some perplexing problems have been thought out, they have not been given wide publication. Some such questions are these:

1. Does there exist adequate procedure within the church for the resolution of differences between one member and another, and between a member and the church organization in any of its entities?

It is conceded by General Conference leaders that *formal* adjudicative process in the church structure is absent at worst or rudimentary at best. Unlike the Jewish system out of which Paul and many other Christians in the first century had only recently come, modern Christendom does not lay militant claim to the right of settling secular differences among its members. It lays only passive claim to meaningful resolution of disputes without recourse to secular courts. Even conferences and denominational institutions have been known to instigate

legal action against church members, demonstrating that if there is adequate redress procedure within the church, it is either not widely known or simply ignored. It should not be surprising, then, that church members have occasionally brought lawsuits against the church in one form or another without realizing the gravity of their offense.

2. What, if any, is the legitimate forum for challenge to the validity of the newly adopted provision concerning litigation by church members?

While actions of the General Conference in session enjoy a strong presumption of validity, asserted in the 1909 Ellen White statement quoted earlier, the door to challenge appears to be left open a small crack by an action of the General Conference session of 1877:

Resolved, that the highest authority under God among Seventh-day Adventists is found in the will of the body of that people, as expressed in the decisions of the General Conference when acting within its proper jurisdiction, and that such decisions should be submitted to by all without exception, unless they can be shown to conflict with the word of God and the rights of individual conscience. (Emphasis added)

Without asserting or implying that the provision on litigation “conflict[s] with the word of God and the rights of individual conscience” or that anyone should try to show that it does, it is probably fair to assume that the volume of hostile response to its adoption suggests the possibility of such a challenge. A church member who honestly believes that even the General Conference in session has made a mistake should not, it appears, be summarily turned away for lack of a forum before which to present, in an orderly way, evidence relevant to the validity of the session’s action. Inquiry to several denominational administrators regarding mechanisms for challenge brought only the generalized recommendations that to “bring the matter to the attention of the leading brethren” or “talk to the leadership of the church” would be an appropriate approach. Certainly, as in the matter of settling differences that might otherwise lead to litigation, an available orderly process for being heard

would reduce the temptation to destructive criticism or disorderly caviling.

3. How should the new litigation provision be applied to those members who have already instigated litigation which could be considered “contrary to Biblical and Ellen G. White counsels?”

Elder W. Duncan Eva’s response to that question called for application of fairness. “A law made after I have committed a certain act should not be used to condemn me for that act,” Elder Eva asserted. “I think this principle ought to be recognized by us.” Attorney Warren L. Johns, recently appointed general counsel for the General Conference, concurred with Elder Eva’s belief that to apply a new regulation to an old offense would have too much of an *ex post facto* connotation to be fair.

4. How does the rule discouraging litigation relate to other teachings of the church in relation to suits among brethren?

It is fair to say that the formal and informal tenets of the church discourage recourse to law—even church law—for the resolution of disputes. The Seventh-day Adventist *Bible Commentary’s* illumination of I Cor. 6:6 observes that “it was bad enough for brethren to quarrel to the extent that they could not be reconciled to one another and must take their troubles to court, but it was much worse to go to a court composed of ‘unbelievers.’” The *Commentary* recognizes, however, as apparently did the Apostle Paul, that the church had at least a limited duty to provide adjudication for its members’ disputes. If the church fails to provide such a process or abstains from executing it, the *Commentary*, still on 1 Cor. 6:6, asserts directly that litigation may not be out of order:

If a member has brought a matter to the church, and the church declines to exercise its judicial duty, then he has exhausted the possibilities of the procedure Paul here outlines. What he shall do beyond that point is a matter for his individual conscience. Christian leadership through the centuries has never felt clear to declare that a member is a sinner before God, because, under these circumstances, he seeks adjudication of his case before a secular tribunal.

Until a well-defined process of adjudication is set up within the church, it may be difficult

to know whether or not one has “exhausted the possibilities of the procedure.” In the case of *Silver v. Pacific Press*, for example, the parties differed as to whether or not Press employees had exhausted those possibilities when they had taken their grievances over wages to the manager of the publishing house and the chairman of its board of directors.

In conclusion, it does not appear inappropriate to suggest that the church, by adopting a provision for discipline of those who take their disputes to secular courts, has assumed a strongly implied obligation to provide, promptly, intrachurch processes whereby disagreements between members, and grievances of members against the church organization and its institutions, may be settled.

A forum for the hearing of differences between members should be readily available and composed of competent, fair-minded persons without vested interest in the outcome of the cases being decided. Adventist attorneys could be very useful in the resolution of such differences.

Adjudication of grievances of members against church entities is more complicated and calls for great discretion in the choice of those empowered to make decisions. A common complaint in such cases is that often the final decision is in the hands of one of the parties to the disagreement—sometimes as administrator or administrators of the very church entity against which the complaint is pending. While it is not inherently impossible for such an administrator to attain sufficient objectivity to make a fair decision, it is without question less than the ideal matrix for impartiality.

If the Apostle Paul were writing to Adventists after 19 centuries, it is easy to imagine that he might take us to task, not only for our bellicose and litigious propensities, but also for our slowness to recognize what we can do about it. It may be that the “fault among us” can be corrected more equitably by providing a forum for the calm and deliberate resolution of differences than by disfellowshipping those who, their Christianity notwithstanding, are faced with conflicts that seem to demand disinterested adjudication.