

Neal Wilson Talks About the Lawsuits

At a May 19, 1977 meeting on the La Sierra campus of Loma Linda University, Neal Wilson, General Conference vice president for North America, answered audience questions concerning the California lawsuits and other matters of concern. What follows are slightly edited excerpts from the transcript of that session. The main body deals with the lawsuits; two boxed excerpts deal with different issues.

The Editors

John Testerman: I would like to ask you a question concerning the lawsuit which the Department of Labor is pressing against the Pacific Union and the General Conference, alleging sex discrimination in wages. In its defense, the church claimed exemption from civil law in all its religious institutions, including apparently from the labor laws, and when this particular defense was ruled out, the church then claimed that a double pay scale was a matter of church doctrine based on Paul's designation of the husband as head of the wife. It was interesting to me to find

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out that the federal judge in his denial of the appeal quoted extensively from an Ellen White statement that ironically and prophetically warned the church that it would have to face judgments if it didn't pay its women equally. The judge concluded his opinion with words to the effect that you have been condemned by your own prophet. Elder Wilson, I am embarrassed for my church. We have implicated ourselves in at least the appearance of evil in the public eye, and have brought on ourselves a great deal of very bad publicity. Since the church actually did away with double pay scales several years ago, could you explain to me why the church has vowed to continue to fight this all the way to the Supreme Court, even to never submit? Also, what is it costing us to fight this?

Wilson: I can easily understand your feeling of embarrassment in this; but it looks a little different to some of us who see it from a different perspective. First of all, the issue has never been equal pay for equal work. That is the apparent surface issue but there are issues much more controlling and ultimately dangerous to the church than what appears on the surface. When the Fair Labor Standards Act, the Civil Rights Act and the Equal Pay Equal Work Act were brought into existence there was never any intent, according to legislators and even by admission of the agencies of government, that these were to

determine the activities of a church body. These laws were brought in in order to try and bring about greater equality in businesses, in interstate commerce and trade. Even the government, as you probably know, does not adhere to these laws. They have their own system of wage scales that are not governed by some of those things which they suggest ought to govern society at large.

I think these laws are good laws. We have no great problem with the laws. Our issue is to what extent does government have the right and the jurisdiction to interfere with the internal operations of a church? That's the basic issue. If a church school is actually the exercise of religion, which we believe it is, and which has always been accepted by the state, then at what point does government become excessively entangled with the church in trying to determine the internal operation of the church?

The rulings that you referred to were the rulings of Judge Real in Los Angeles in the Federal District Court. The arguments on the case itself were never heard. The facts were never really presented and considered.

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We asked for a summary judgment or dismissal of the case on the grounds that there was sufficient evidence that the suit was in conflict with the Constitution and was, therefore, really not a case. Judge Real did not accept that. Judge Real came back and made some statements that you have interpreted just a little bit, but you are fairly close to what he said.

I don't know whether you read in his response to our request for summary judgment that he did not consider the school to be the church in carrying out its teaching ministry.

And that teachers are not necessarily religious people in the terms of the missionary or minister of the church. Now, that is diametrically opposed to the position that the Seventh-day Adventist church and most other churches have taken in the past. We consider that these professors and teachers are, in fact, a part of the exercise of religion and that they are religious persons not only in terms of a personal commitment to religion but in terms of actually being those carrying out the church's teaching ministry. Judge Real's comments in that area really frighten us because if his position stands, we're in a very difficult position. The Supreme Court, the circuit courts of appeal, and even district courts have stated that a church school is too religious to receive any federal aid. Now Judge Real comes along and says SDA schools are not religious enough to be disengaged or to avoid entanglement with government. We think that government is in trouble on this, too. Their determinations in some of these areas have been very fuzzy and very foggy. All that we are saying is that we ought to find out at this time where the church actually stands in terms of constitutional protections that we once thought we had but which are rapidly being eroded.

We have no great contention over equal pay for equal work. I think a very good theological base could be developed for a head-of-household philosophy, but we chose not to go that way. Because we think there is nothing immoral, certainly, about the laws of the government, we have told government that we are anxious to cooperate.

The attitude of the Seventh-day Adventist church must always be one of cooperation with government and even submission to government and that is our position around the world. In the United States, however, it's different from any other part of the world because in the United States there have been certain constitutional protections, with a separation of church and state. The first amendment has developed a neutrality between government and the church, in which each has said it will not interfere with the other's affairs, nor enter into the other's arena of activity. So in the United States, we have

added an ingredient that we do not find in other parts of the world. When a government in another part of the world says this is the law, the Seventh-day Adventist church makes no contest of it. In the United States, we believe that we ought to contest these matters to find out where we are.

Now, somebody says, "Well, this is a stupid case on which to make a test. There are lots of blemishes in it." We admit that there are some blemishes in it. But let me tell you no case in religious liberty has ever been won on a perfect case. And if we wait for the perfect case, we may wait until there will be nothing to defend.

Incidentally, it has not been determined whether this is going to the Supreme Court,

and we are in transit on this thing. We have not taken an inflexible position. We are at the present time in serious discussion with the Department of Labor regarding this matter. They are not quite sure what they want at this point. We did appeal it to Judge Real as you probably know. We asked for a review of it. Most judges will not review a decision that they have already made, but sometimes they do. We also then asked for an interlocutory judgment which said, "Please save time and just allow this thing to go directly to the U.S. Circuit Court of Appeals." Judge Real said, "No, I don't want that; I want to keep it in my court." So we're in his court for the time being. Now we may settle this case with the Department of Labor; but if we do, we will

Wilson Answers Questions

Sylvia Foster: The student newspaper on our campus has reported on documents now being circulated by church administrators concerning creation and revelation. If such documents should exist, and I have my definite doubts about that, I was just wondering if it would be the natural work of theologians and scientists to take responsibility for drafting such statements, and then sharing them with administrators, and not vice versa?

Wilson: Some people have been quite distressed over the fact that these documents exist. They thought somebody was going to extract loyalty oaths from somebody and say, "If you don't accept exactly the way this is worded, you don't deserve to be a part of the teaching staff of a college or university or a leader in the church." But that is far from the intent of these particular documents.

Now as to who should draft this kind of document. I think that this is going to have to be a cooperative endeavor. I do not believe that documents of this nature can be left entirely to theologians or scientists, because in the final analysis, this church

works as a cooperative partnership. Leadership—elected leadership—ultimately has to take responsibility for whatever is declared and whatever happens in this church. And leadership needs to be sensitive. It needs to draw upon the strength and upon the areas of expertise of those who are in the church, those to whom God has given certain gifts of the Spirit, and those who have acquired, through study and through academic pursuits, excellence in certain areas. It does become a cooperative matter. But doctrine is never determined by popular vote or necessarily by a majority vote.

These statements are not dogma. The church does not have dogma; but we do arrive at a consensus opinion in this church of what we think ought to be contained in documents of this kind.

Norman Mitchell: In responding to the last question, I don't think you directly stated what the church is trying to do?

Wilson: Help me a little, then.

Mitchell: And that is, What are we going to do with the statement? The question is bothering a number of us as teachers because I think we were made to under-

want some kind of statement clarifying the position that Judge Real has taken, where he says that the institutions of the church of the Seventh-day Adventist denomination really are not church institutions as such and that the teachers really are not church representatives as such. They are independent lay people teaching in the system.

Karen Hamer: The report by Elder Pierson in the *Review and Herald* of March 24, regarding the church and litigation, has raised some serious questions in my mind. Is it truthful to give a deposition to an attorney asserting the hierarchical nature of our church policy and, in turn, to say to the

membership—my non-Adventist attorney made me do it? In fact, did not the General Conference Committee expressly vote in favor of the hierarchical and first minister concept and was not our own SDA counsel involved in writing that language?

Wilson: We have had a number of letters come since that article appeared by Elder Pierson. It has raised questions in the minds of quite a number of people. Elder Pierson was endeavoring to explain some things, to share some things with the church. Whether it was an Adventist or a non-Adventist attorney, I don't think it is proper at any time for a leader of the church to hide behind a statement by saying, "My lawyer told me to do this or to say that." I think that if a person has

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stand that it could be used as a screening factor for teachers to be employed. Is this a possibility?

Wilson: I would say it's a possibility but it is like many other things. I think it would become the basis of saying, "Are you anywhere within range here? Do you totally reject these concepts?" If you are nowhere near what this document might ultimately become when it has been refined and you say, "No, as far as I am concerned, it is irrelevant," it is very possible that the church would say, "Fine, you can be a member of the church, we have no qualms about that. The church does allow certain latitude in individual interpretation and the church is pretty broad in its understanding of individual interpretation of prophecy, or even certain theological aspects so long as it does not become a matter which a person uses to try to divide the church." But the church might go on to say, "You know, we don't believe that you ought to be a professor in the Seventh-day Adventist system of higher education." It could become that, but it will not become what some people have thought it would: a test or a loyalty oath — that kind of thing.

Gary Ross: I just wanted to be sure I could summarize what you have just said. The six-thousand year notion, then, as I understand you, would not be a test of membership but it could be a test of employment. Do I understand you correctly?

Wilson: Yes. Gary, I would want to make a little reservation on that because the document has not yet been refined. And what finally comes out of the consultations that are being held, I think, will somewhat determine that. If someone said he needed eight or nine thousand years, I think that individual conscience would be given some latitude at that point. Ellen White says it was not tens of thousands, therefore, I believe that gives an individual sufficient latitude beyond "about 6,000 years" to fit in some of the factors in history, such as in Egyptology and that kind of thing, where we need a little more room to fit in all the dynasties, the flood and the population density to be able to bring about what we find in the earth. I'm not talking about tens of thousands of millions of years. Of course, it's possible that the statement might become ultimately even more strict than that, but I hope it doesn't.

a conscientious conviction, regardless of what an attorney says, it is better to say I can't make this statement because it is really not in harmony with my thinking.

You know when you are making an interrogatory or are under deposition, sometimes you are not under quite as much tension or strain as you are when you are actually in court and you are either under direct or cross-questioning. I made a statement in court, for instance, that as the vice-president of the General Conference for North America, I was administratively responsible for the work in North America organizationally speaking; and that I was also the spiritual leader of a half a million plus Seventh-day Adventists. Now we have had people who have taken serious exception to my statement that I was the spiritual leader. They said you might be the president of the North American Division or the vice-president of the General Conference, but we don't accept you as our spiritual leader. I said fine. I made a mistake. You know, I'm not going to say that again if it was offensive to someone. I said it without trying to feel that I was some kind of superior person or had some kind of additional holiness, that something had been conferred on me of a spiritual nature by my appointment as a servant of the church in the structure of the church.

Elder Pierson did use the words first minister of the church. I think he would be well advised not to use that term again. People take it offensively. They stumble over it. It is not a good term to use. But that term has never been designated by the General Conference Committee; it's a term that was simply plucked out of the air. The attorney did say to Elder Pierson, if they ask you what your work is, tell them you are the first minister of the church. He thought that sounded all right. He *is* our leader, our elected world leader. But some people might question the use of the word or the phrase first minister because that has hierarchical implications, and we don't think in terms of a papal system as such. Some might infer that he is the first minister and everybody else is subservient to him. But we are co-equals in the ministry of the Gospel. Whether we are an ordained minister of the Gospel or a lay

member of the church, we are all ministers of the Gospel. So I'm sorry that some of us may have embarrassed some of you by using some of those terms. We learn out of these things. I doubt you will hear them used again.

Fred Harder: Could you answer Dr. Testerman's question about the cost of the litigation?

Wilson: The cost of litigation is about \$30,000, plus or minus.*

Bonnie Dwyer: Have any other churches supported our case by filing friend in court briefs on this or will there be any such briefs filed?

Wilson: Several church organizations have inquired as to whether we would welcome participation or whether we would in any way feel reluctant or embarrassed about their coming in as a friend of the court. We have stated that really we wouldn't be embarrassed but we felt it might be better for us to test the case at the first judicial level and see where we are, because we might not want to press it beyond that, though there are many reasons that impel us to go beyond that. At a later date, we would welcome some support if we seem to be coming into greater conflict with the government. So we are thankful for at least the fact that some people are willing to identify themselves with us, but we have said, "Hold just a little until we see where we are."

Gene Daffern: I am also interested in why the unfortunate term first minister was used and also, why the sudden interest in irregularizing the membership of members who sue. [See box on "Lawsuits and Disfellowshipping."—Eds.] Is it possible that the term first minister was used to support in court the leadership position that the Executive Committee was hierarchical and thus had power to change church doctrine? Was the term used so that the Executive Committee could call membership of any member irregular if he or she brought suit in court, as the Executive Committee did in the case of Merikay Silver in order to support the Pacific Press's firing of Mrs. Silver?

*In August, Wilson estimated that the cost had risen to about \$45,000.—The Eds.

Wilson: The Seventh-day Adventist church is in one sense hierarchical because it is not congregational. It has levels of church authority and in the terms of the court, and in most legal minds, it would, therefore, be considered a hierarchical structure. But that does not mean that there is one person at the top who commands everything else in the church. And if the term first minister of the

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church denotes that, then it certainly is misleading and that’s why I think out of this we have learned some lessons not to use such terms as that.

Unidentified Questioner: In *The Great Controversy*, page 382, there is a comment referring to the Roman Catholic Church saying that no other power could be so truly declared drunken with the blood of the saints as that church which has so cruelly persecuted the followers of Christ. There are other comments to roughly the same effect. In a reply brief in the Merikay Silver case, page 30, we say it is not good Seventh-day Adventism to characterize Roman Catholicism in such terms. Do you see these as being in contradiction and if so what is our current position on Roman Catholicism?

Wilson: On reflection, one can always say things better: I’ll tell you why the statement on Roman Catholicism was made, and while I do not wish to belabor the point nor to defend the exact wording, I’ll tell you what the intent was.

Unfortunately, many times we don’t read carefully enough reply briefs that are drafted by attorneys. I might say that Attorney Dungan, in my estimation, has an enormous grasp of Seventh-day Adventist beliefs and

theology. He can quote voluminously from Ellen White; but he is an Episcopalian and naturally has studied these things for one purpose and that is because he is a defense lawyer. Sometimes in developing these briefs, while we go over them, we don’t pick up every little nuance that comes through and some of those things really should have been refined. The intent was this: We do not believe that the work of Seventh-day Adventists is to fight Roman Catholics or to denounce Roman Catholicism, per se, as being the tool of the devil. That’s not the business of the Seventh-day Adventist church. The business of the Seventh-day Adventist church is to give a loving witness to the people of this world and to let them know that there is a Gospel of Salvation, of righteousness by faith, that the Lord loves individuals no matter where they are or what their beliefs are.

Our message ought to be positive. In fact, Ellen White tells us that our message is not to denounce other religions or other beliefs. Our message is to preach a positive Gospel based in Jesus Christ and His saving power. There have been times when the Seventh-day Adventist church has felt it necessary to expose evil or a deceptive theological position. And there are those who have taken great delight in using prophecy to really lash out and to club the Roman Catholic Church and other church bodies and non-Christian religions. Frankly, we feel that that brings reproach upon the name of our Lord.

In August, Vice-President Wilson sent SPECTRUM the following update on the labor suit in California.

The Editors

Since the question-answer session at Loma Linda University, attorneys for the church have appealed the Department of Labor case concerning our teachers in the State of California to the United States Court of Appeals for the Ninth Circuit and to the Supreme Court Justice with jurisdiction over the territory of the Ninth Circuit. The church requested a writ of certiorari and a dismissal of the case on the basis that the

intrusion of the Department of Labor into the affairs of the church involved excessive entanglement and was prohibited by the First Amendment of the Constitution.

Both of these appeals were denied. While such denials may be indicators, legal history reveals that many cases are won when fully argued before the courts. It must be under-

Lawsuits and Church Discipline

Hamilton Avila: At the last General Conference session, it was made clear that people who filed suit against the church in civil courts would be open to disfellowshipping. Do you think that was a wise thing for the church to do?

Wilson: Specifically to your question, I don't think that was a wise action in the form that it was and undefined as it was, with no explanatory note at the time of the General Conference session. Unfortunately, that particular action came on the floor when many of us were involved in other activities. It was debated to some degree, it was turned down at first, it came back again and was ultimately voted.

I think we have to determine what we mean by litigation against the church. I think it is well established in the thinking of the Seventh-day Adventist church that there are areas in which the church has no jurisdiction. We have no jurisdiction in legal matters. God very clearly said to us, "Stay out of that area." When it comes to a legal determination, the church should not even venture into that area. In other words, if there is a quarrel between two parties as to where their property goes—the church can't settle that. There is no way for the church to settle it. Now we might try to bring them together in some kind of conciliation and say, "Can't you work it out in a more peaceful way rather than going to court? Can't we get a surveyor out here and see if we can settle it?" And if we couldn't solve it in an amiable Christian way and a party who had property adjacent, say, to ours here at the university were to say, "I want this thing cleared up," and goes to court, I would think that party had done the only thing it could, because the church doesn't have jurisdiction.

On the other hand, on matters of morality, ethics, doctrine, church policy and the like, the church has jurisdiction and the state has no jurisdiction. In those areas, if a person becomes antagonistic towards the church and is unwilling to accept the governance of the church, whether that of his or her own fellow believers within a church body or the church at large, I think such a person could go to the point where he really would have disqualified himself or herself from being a part of the Seventh-day Adventist Church. After all, Seventh-day Adventists are a brotherhood, a fellowship where things of a certain kind should be settled within the church and not by exposing ourselves to others who may be unbelievers.

So I think it was unfortunate that the action at General Conference Session came out the way it did. Since that time, a statement has been developed saying what we mean by litigation. We're also saying that the action ought to be reworded so that it proscribes not simply a member entering into litigation against the church, but also prohibits the church from entering into litigation against the member. It is unfortunate that the statement of the General Conference Session came out in such an undefined form. Frankly, the statement shouldn't have appeared in that setting. Now it has been tidied up. The problem now is that we can't get the qualifications back into the church manual without their being approved at another General Conference session. We have accompanied the statement with a footnote which is fairly adequate and well stated. I think it would be well if you were to read the footnote because I think it will probably clear up most of the questions you have about it.

stood that the facts of law in the case under consideration have not been defended and argued before any court. Since early July of this year, extensive discussions with the Department of Labor have explored the possibility of an amicable settlement of this problem. What the final result of these negotiations will be is yet to be determined.

During this same period, that is, from the middle of May to the middle of August, there have been several interesting and significant court decisions based upon essentially the same legal issues as we have discussed. These decisions shed new light on the issue as to whether a government agency has the constitutional right to intervene in church affairs and to attempt to force a church institution to comply with legislation originally designed to regulate commerce and industry.

First, the three-judge Seventh U.S. Circuit Court of Appeals overturned a decision of the National Labor Relations Board and ruled on August 4 in Chicago that the National Labor Relations Act and the Board have no jurisdiction in teacher-employee relationships in parochial schools because such an involvement by a government agency

would violate First Amendment guarantees of church-state separation. This case involved the order of the National Labor Relations Board demanding that the Catholic bishops in Chicago and northern Indiana be willing to bargain with an agency representing lay teachers in Catholic high schools and seeking to unionize these employees of the Catholic schools. The unanimous opinion of the Seventh Circuit pointed out the danger and reasonable likelihood of entanglement by a government agency in affairs of the church. Further, the court pointed out the potential threat that the government might become entangled in doctrinal matters, lifestyle patterns and the religious mission of the church.

Second, on July 7, 1977 the United States District Court for Eastern Pennsylvania in Philadelphia upheld the Catholic Archdiocese of Philadelphia in declaring that the National Labor Relations Act and the powers delegated to the National Labor Relations Board are "unconstitutional as applied to the employment relationships between the lay teachers and the parish elementary schools within the archdiocese of Philadelphia."