

Our Firm's

Foundations

By Brent G.T. Geraty

In the wake of events and revelations that led to the resignation of Robert S. Folkenberg as president of the General Conference of Seventh-day Adventists (GC), the General Conference has faced questions from within and outside the Church about the ethical conduct of its top officials. Although the institution remains flawed, like all human organizations, the GC has taken legitimate steps to address these questions and, to its credit, began taking those steps before subsequent events forced it to do so. On September 15, 1998—approximately one month before most leaders at the GC had ever heard of James E. Moore, the California businessman whose lawsuit revealed evidence of improper conduct at the highest levels of the Church—the Administrative Committee of the General Conference (ADCOM) adopted a “Statement of Ethical Foundations for the General Conference and its Employees.” That document, which sets forth the mission, responsibilities, and values of the General Conference and identifies the ethical responsibilities of GC employees, includes the following statement:

We value *ethical and moral conduct* at all times and in all relationships.

We value *honesty, integrity, and courage* as the foundation of all our actions.

We value the *trust* placed in us by colleagues and by the world Church membership.

It could be argued that a positive, and ironic, legacy of Folkenberg's presidency is likely to be the Church's increased attention and commitment to ethical decision making. This article attempts to provide a context for that potential legacy. It does so first by introducing the reader to Walter E. Carson, a staff lawyer in the GC's Office of General Counsel (OGC), who was named as a defendant in Moore's lawsuit. It next describes some of the activities in which Carson was involved on behalf of his friend, associate, and some-time client, Robert Folkenberg. The article then describes the OGC and provides a basis for understanding why Carson's actions, while not illegal, were inconsistent with his obligations to the Church. Finally, the article deals with the GC's discipline of Carson and its attempts to establish an ethical foundation to carry out its mission.

Who is Walter Carson?


Walter Carson is one of the Church's most valuable and visible attorneys. He is valuable because of his long service to the General Conference, his skills as one of the Church's most effective litigators, and his expertise in the

increasingly important and complex legal subject area of intellectual property. His visibility can be attributed primarily to two factors. First, Carson is the point man in the GC's concerted effort to maintain control of its name. Using trademark law, the GC has fought, typically with success, to prevent a number of independent churches and other organizations from using the term "Seventh-day Adventist" or "Adventist." The GC argues that unauthorized use of those names causes confusion in the public mind. Second, Carson has had the unwelcome distinction of joining Folkenberg as a named defendant in high profile cases. Most recently, Folkenberg and Carson were codefendants in the Moore suit.

Carson first joined the OGC in 1976. His approximately twenty-two years at the OGC (Carson left for private practice in Ohio from November 1992 through December 1993) make him the attorney with the most seniority in the office. In many respects, Carson—who earned his undergraduate degree from Columbia Union College in 1965 and his law degree from Catholic University in 1968—is a throwback lawyer. He is not the narrow specialist that characterizes so many legal practitioners today. He is a skilled litigator and orator, having successfully argued before the United States Supreme Court.¹ He is one of the Church's foremost experts on trademark and intellectual property matters. And he is a counselor, providing guidance and advice to his clients in a variety of contexts. Carson is admired by the other attorneys on the OGC staff and he maintains personal friendships with many of his colleagues.

A feature entitled, "Meet the OGC Lawyers," was printed in the 1996 edition of *J.D.*, a journal published by the OGC every two years and distributed to Seventh-day Adventist lawyers and law students. For that feature, Carson was asked if there was "something he does not want you to know." Carson replied, "There's really nothing. Just ask." *Spectrum* did ask, but Carson declined to be interviewed for this article.

Following the publication of the spring 1999 issue of *Spectrum*, the staff of the journal received a package of materials relating to the Folkenberg/Moore case. After verifying the authenticity of the documents, the author used the information in them in the preparation of this report.



OFFICE OF THE PRESIDENT, General Conference of
Seventh-day Adventists
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August 1, 1994

Archbishop Desmond Tutu
 St. Georges Cathedral
 16 Bishops Court Drive
 Claremont, Cape Town, RSA 7700

TO: Archbishop Desmond Tutu
 DATE: August 1, 1994
 RE: Shareholders of Geometra Engie & Fuel S3
 Nicholas B. LaPolla, Secretary
 January 30, 1994

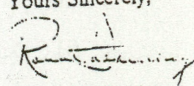
Dear Dr. Tutu:

MEMORANDUM

That the hand of God has been manifest in recent months in the Republic of South Africa is abundantly clear. The soil of Africa records the blood of many who gave their lives in other transitions to democracy. The birth of the new South Africa was not the bloodbath, forecast by many, is a tribute to the influence of dedicated servants of God, such as yourself.

Coincidentally, I was reminded of my desire to write you during a recent visit of a certain James E. Moore (who recently visited your office) in which he told me his plans to offer a heat/light generating device for manufacture in South Africa. The humanitarian potential of such an initiative caught my attention.

Again, please accept my warmest regards and desire for God's blessings in your ministry. Hopefully I will have the privilege of making your acquaintance personally during a future visit to South Africa, or during one of your trips to Washington, D.C.

Yours Sincerely,

 Robert Folkenberg
 President

SHARING INTERNATIONAL
 SONNENSCHN NATH & ROSENTHAL
 8000 SEARS TOWER
 CHICAGO, ILLINOIS 60606-6404
 LOS ANGELES
 NEW YORK
 SAN FRANCISCO
 ST. LOUIS
 WASHINGTON, D.C.

December 20, 1992
 Msgr. Giulio Levi
 Via Belle Grazie 3
 00193 Roma, Italia
 Thomas G. Oplerman
 (312) 876-7481
 June 24, 1992

VIA FEDERAL EXPRESS
 PERSONAL AND CONFIDENTIAL

Walter E. Carson, Esq.
 917 Daleview Drive
 Silver Spring, MD 20901

Re: Elder and Mrs. Robert S. Folkenberg Trust

Dear Wally:

Thank you for your letter of June 19, 1992, in which you inquire about the sequence of events to finalize this matter. At forth below is a list of how I suggest we proceed on this matter.

With Assistance from Carson and Moore, Folkenberg Seeks to Secure Additional Income

Folkenberg was elected president of the General Conference in July 1990. As previously reported in *Spectrum*,² at the 1990 GC session in Indianapolis two "anonymous donors" approached Ron M. Wisbey, then president of the Columbia Union Conference, with an offer to provide funds for the wives of Folkenberg and Alfred C. McClure, the newly elected president of the North American Division (NAD), so that the wives could assist in their husbands' ministries without needing to secure other employment. After Donald F. Gilbert, then GC treasurer, indicated that he did not see how the GC could accept such funds, Wisbey arranged for the "courtesy payroll" to be distributed through the Columbia Union, and each of the two wives eventually received \$20,520. The payments ended in June 1991 after public dissemination of a report from the General Conference Auditing Service suggested that the payments to the presidents' wives did not conform to denominational policy.

In a June 19, 1991, letter to Gilbert, Folkenberg wrote that he had asked the Columbia Union to discontinue the assistance to his wife and stated: "I only know that it is vital that my integrity be unsullied." One month later, in a July 23, 1991, letter to McClure written for distribution to NAD leaders, Folkenberg acknowledged that in hindsight he should not have accepted the anonymous offer of assistance to his wife and stated: "Certainly, I now wish I had sought wider counsel."

With Carson's assistance, however, Folkenberg continued a confidential search for other ways to supplement his General Conference salary. In mid-1992, at Carson's request, the Chicago law firm of Sonnenschein, Nath & Rosenthal (SN&R) set up the Elder and Mrs. Robert S. Folkenberg Trust (the Folkenberg Trust or Trust). Carson and Folkenberg were keenly aware that the existence of the Trust put Folkenberg on thin ice politically. That did not stop them from pursuing the creation and funding of the Trust, it simply made them more secretive. Instrumental in the creation of the Folkenberg Trust was . . . James Moore. On June 15, 1992, Thomas Opferman, an attorney at SN&R, sent to Carson and Moore a draft of the Trust agreement and a Ruling Request. After receiving the Trust documents, Moore informed Opferman that he would send the

documents to his Channel Islands counsel, who was expected to draft necessary documents for the creation of a new foundation that would become the donor of the Folkenberg Trust. All Trust documents were then to be sent to the U.S. Internal Revenue Service with a Ruling Request for determination of the Trust's tax status. According to a letter from Opferman to Carson dated June 24, 1992: "Since the donor of the trust is a newly formed Channel Islands charitable foundation and the Channel Islands are regarded as a tax haven, it is not unlikely that this Ruling Request will receive careful scrutiny and may involve extensive negotiation with the Internal Revenue Service." According to that same letter, if the IRS granted a favorable ruling the Folkenberg Trust would then be funded with \$700 thousand. Carson, as trustee of the Folkenberg Trust, would be responsible for investing the Trust's funds and for making "distributions at least quarterly to Elder Folkenberg."

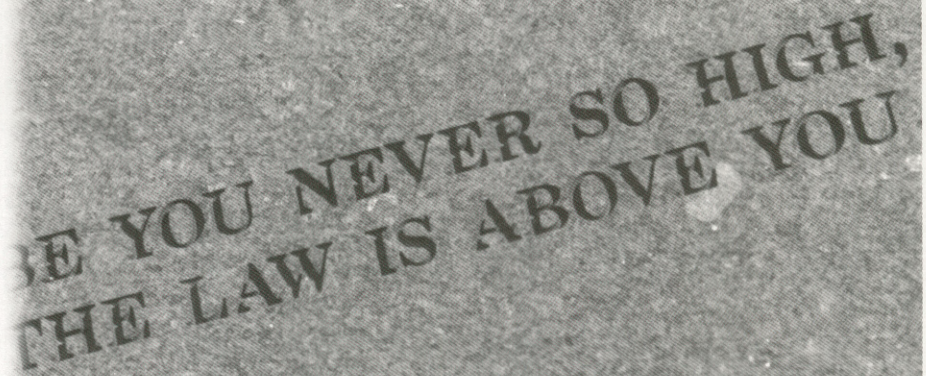
Two years later, Carson was still at work on this project. Whether, a lack of funds or an unfavorable ruling from the IRS left work still to be done is unclear. It is clear, however, that Moore's proposed Channel Islands foundation never fully funded the Trust because in 1994 Carson submitted a Trust funding proposal to the board of Geometra, Inc., another of Moore's business interests. In a memorandum dated September 8, 1994, and addressed to Moore as an executive committee member of Geometra, Carson proposed opening three foreign bank accounts in the name of "Foreign Geometra, Inc."³ According to the memorandum, those accounts were to be "located in one of 57 countries which are signatory to the Patent Cooperation Treaty. The Country chosen will exercise national sovereignty vis-à-vis other countries, thus providing confidentiality on banking matters and financial affairs." Carson's memorandum further proposed that designated directors of Sharing International Tennessee would have authority to access these foreign accounts "to (1) pay outstanding legal and administrative expenses of Sharing International Tennessee; (2) to pay outstanding legal fees of the Chicago, Illinois firm for setting up a trust for the benefit of ____; (3) to fund incidental expenses related to the continued operation of Sharing International Tennessee and such additional expenses incurred in joint ventures or business dealings with or on behalf of Geometra, Inc., USA; and (4) to provide funding of the ____ Trust."* In leaving blank lines in place of Folkenberg's name, Carson clearly demonstrated sensitivity to the fact that the discovery of the Trust would be politically damaging to Folkenberg.

The proposed existence of the Trust and efforts to fund it call into question Folkenberg's public claims that his association with Moore was unaccompanied by "any expectation of any personal profit" and was motivated by "the best motives."⁵

Moore's efforts to help Folkenberg fund the Trust also calls into question the motives of Folkenberg in using the office of GC president to introduce Moore to world leaders. For

example, in an August 1, 1994, letter to Desmond Tutu (see illustration on p. 59), Folkenberg attempted to use the GC president's office to legitimize Moore and the "humanitarian potential" of his initiatives. Folkenberg also set up appointments for Moore and his business associates to meet with foreign dignitaries. According to a memorandum to Shareholders of Geometra Engine and Fuel System, Inc. from Nicholas LaPolla, secretary of Geometra, Inc., LaPolla was sitting in Moore's office on January 30, 1995, when Moore received a telephone call from Folkenberg. LaPolla stated that he overheard Folkenberg tell Moore that he (Folkenberg) had set tentative appointments for Geometra to show its Engine and Fuel System to the presidents of Malawi, Tanzania, and Uganda. According to LaPolla, Folkenberg also represented to Moore that he (Folkenberg) would try to secure appointments for Geometra with the presidents of Pakistan and Egypt when he met with each of them in the following few weeks.

It was precisely this access to foreign leaders that Moore wanted from Folkenberg. In a letter from Moore to Folkenberg dated July 4, 1998 (the month before Moore filed his lawsuit), Moore wrote that "you, because of your many contacts, personal relationships—will within the church be of benefit to me. Your worldwide background, curriculum verte [*sic*], and abilities can help my life long dream, if you bring the Adventist organization under an appropriate umbrella. . . ." While Moore gained access to world leaders from Folkenberg, what did Folkenberg get from Moore? Well, one month after Folkenberg wrote to Tutu, Carson submitted a proposal to Moore for funding the Folkenberg Trust through foreign bank accounts that would provide the desired confidentiality. At the very least, there is an appearance of impropriety.



BE YOU NEVER SO HIGH,
THE LAW IS ABOVE YOU

Law Firm for the General Conference

The Office of General Counsel, located at the Seventh-day Adventist world headquarters in Silver Spring, Maryland, functions as an in-house law firm. In contrast to the mobility of lawyers so characteristic in today's legal market, the OGC's staff has remained remarkably stable. Six attorneys work full-time for the OGC. Robert W. Nixon is the general counsel and oversees office administration. Serving as associate general counsel are Lisa Saveikis Burrow, O. Richard Caldwell, Mitchell A. Tyner, Thomas E. Wetmore, and Carson. Disregarding Carson's thirteen-month absence from the OGC, the two newest members of the OGC are Tyner and Caldwell, both of whom left other departments at the General Conference to join the OGC on January 1, 1993. Burrow, hired in 1990, is the newest attorney at GC headquarters.

Effective January 1, 1993, the OGC was reorganized to more efficiently and effectively serve the Church's interests. The reorganization came on the heels of the retirement of Warren Johns, the Church's general counsel from 1972 to 1992. In February 1992, the GC Administrative Committee appointed a group of three attorneys—Derrill Yaeger, James Balkins, and Lee Boothby—to advise the GC on the appointment of a new general counsel and the possible restructuring of the OGC. Acting on the recommendation of this panel, the GC appointed Nixon general counsel and, on December 8, 1992, the GC Executive Committee voted to approve new guidelines for the operation of the OGC. Among those guidelines were stipulations that the OGC staff "will provide or coordinate all legal services to the General Conference entities operating within the General Conference complex (Risk Management Services excepted, unless requested otherwise by the Risk Management Services Board) and will provide legal services, as requested, to General Conference institutions

and world divisions. Additional legal work will be limited to other constituent church organizations and institutions. Staff lawyers shall not have private legal practices.”⁶

The last sentence from the Executive Committee’s action that—“staff lawyers shall not have private legal practices”—resulted from an acknowledgment that there was a potential, an unacceptable potential, for conflicts of interest due to the GC’s past practice of permitting OGC lawyers to conduct private practice while working for the GC. According to Nixon, no particular “conflicts” precipitated the change, but there was general discomfort with the old system and an awareness that conflicts could arise. Permitting OGC lawyers to carry on private practice had been a concession to the fact that the denominational salary scale—which governed pay for OGC lawyers—deprived the Church’s lawyers of income that attorneys could typically expect. If lawyers were able to carry on outside private practices, they could earn at least a portion of the income that they gave up by working for the Church. While the concession may have worked to the advantage of the OGC’s attorneys, their diverted attention was costing the GC money. During the years immediately prior to 1993, the OGC annually spent from \$500 thousand to \$1 million on outside legal fees. Many of those fees were spent on matters that a fully devoted staff could handle. Since the reorganization and recommitment of OGC lawyers to serve the Church, the whole Church, and nothing but the Church, the OGC’s annual expenditures on outside legal fees have dropped to approximately \$50 thousand.

Acting on the December 1992 action of the Executive Committee, the OGC drafted a set of “Operational Guidelines” that the GC’s Legal Affairs Committee, the committee that oversees OGC operations, adopted in March 1993. Those guidelines, which remain in effect today, include a provision that clarifies the meaning of “client.” The OGC lawyers

represent the legal interests of the Seventh-day Adventist Church and specifically its unincorporated association, the General Conference of Seventh-day Adventists, and its constituents. “Constituents” is defined as follows: officers, members of the General Conference Executive Committee, departments and services, subordinate entities and corporations, and employees and church members when they are serving or functioning within their proper scope of employment, roles, or membership within the church.

The “Operational Guidelines” also explicitly adopted Rule 1.13(e) of the Maryland Rules of Professional Conduct. Rule 1.13(e) provides, in relevant part,

that “[a] lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7.” Rule 1.7 deals with conflicts of interest and provides, in relevant part, that “[a] lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer’s responsibilities to another client or to a third person, or by the lawyer’s own interests, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents after consultation.”

The OGC, however, requires more from its attorneys than mere compliance with a professional code. In particular, with respect to conflicts of interest, the OGC’s “Operational Guidelines” attempt to remove the discretion that Rules 1.13(e) and 1.7 permit. The guidelines state: “As the December 8, 1992, action of the General Conference Executive Committee action on the operation of the Office of General Counsel indicates, staff lawyers will not engage in the private practice of law, but envisions that staff lawyers will devote all their professional work time to providing legal services for their church client.”

The OGC does not have a formal procedure for dealing with its attorneys’ ethical concerns, including conflicts of interest. In that respect, the OGC is similar to most other law firms with six or fewer attorneys. The OGC does, however, conduct staff meetings at least once each month in which staff lawyers are encouraged to bring to the rest of the group matters for which the assistance and advice of colleagues can be invaluable. Among other things, these matters can deal with litigation strategy, statutory or regulatory interpretation, or ethical concerns. Staff consultation is only useful, of course, if attorneys utilize it. Carson did not speak with his OGC colleagues about his work on behalf of Folkenberg.

Deciding to Discipline Carson

The GC’s review process that led to Folkenberg’s decision to resign his position in February 1999 also raised questions in the minds of many GC leaders about Carson’s involvement. Following Jan Paulsen’s election as GC president in March 1999, he appointed an Ad Hoc Group to look into Carson’s conduct and make a recommendation as to what, if any, action was appropriate. This group consisted of Ralph Thompson, chair of the group and secretary of the General Conference, Matthew Bediako, a vice president of the General Conference, and B. J. Christiansen,

assistant to the president of the North American Division. The group, which reported directly to Paulsen, asked Nixon informally to survey denominational leaders—including Carson's OGC colleagues—to determine if Carson still had their trust. Nixon then engaged in what one OGC attorney has described as "shuttle diplomacy," finding out what individual concerns denominational leaders had and then working to determine if their concerns were satisfied. Most individuals to whom Nixon spoke told him that it was still possible for Carson to serve effectively in the OGC. Their primary concerns were that Carson had genuine remorse for his involvement and that he had learned from his lessons.

After the Ad Hoc Group reported to Paulsen, he made a report to ADCOM, which on May 18, 1999, took the following action:

As a result of Walter E. Carson's role in the dealings with James E. Moore and the Moore/Folkenberg connection while in the employ of the General Conference Office of General Counsel, it was VOTED, To stipulate that Walter E. Carson's continuing employment in the Office of General Counsel will be contingent on the following:

1. A letter of reprimand placed in his file.
2. A six-month probationary period for his employment, at the end of which his standing will be reviewed by the Legal Affairs Committee.
3. An acknowledgment of his mistakes and poor judgment in dealing with James E. Moore.

Many of Carson's colleagues have welcomed the news that Carson will remain employed at the OGC. OGC leader Nixon stated that he is satisfied with the disciplinary measures and pleased that Carson will continue to serve the Church in the OGC. As for ADCOM's conditions, one has been met, one is in the process of being met, and one remains to be met.

ADCOM's third condition was satisfied by a "letter of regret" that Carson

Discerning Breezes

By gail erica catlin

The devil can look like heaven.

He can blow through your heart like a warm spring breeze,
softly lifting the chiffon drapes and dropping them like a kiss.
He can feel like the nest of embrace,
holding your deepest pain,
his voice like water.

And you breathe again,
from the stomach this time, your chest full,
not like the half breaths and gasps you've taken so long
because of the ache it would touch if you breathed deep,
and the wail that would rip out if you really exhaled.

He can invite all that in and cup it in his place and,
because you're not looking far and wide,
you believe you've found the place where you can finally rest.

And you do.

And you're thankful for that . . . until you look back,
mostly after too much time,
and you see how needing that space like a tonic
has altered your course and made you want more and only that.
It is honey and you make a compromise for a drip of it,
and you don't realize it's still your pain,
but this time the pain is a hunger that you've learned to enjoy satiating.
The first drink like a rush of sensation.

And you wish this were God because it's so luscious and sensuous,
but instead, it's only through the grace of God
that one day you notice the potion has taken you out.
You haven't rescued yourself;
you're actually in the opium den, waiting for the rush,
when God says this thing that feels hard.

But, hearing it, you flee into the wet streets,
feeling real air for the first time after months of smoke,
and you know it's true.
That the devil, wanting your soul so very much,
delivered exactly what you longed and ached for.
And you reached for the salve,
forgetting that it is in the pain and reality of it
that your life had been born,
and taking yourself out
only denied you
and all you'd seen.

gail erica catlin is a writer and teacher living with her husband and two children in northern California. She holds a masters degree in both public administration, and cultural anthropology and social transformation. She instructs in Chapman University's organizational leadership masters degree program.

wrote to Paulsen on May 17, 1999. According to a source who has read the letter, Carson listed specific regrets regarding his involvement in the Folkenberg/Moore relationship. According to a number of individuals who count Carson as a friend, Carson's remorse is genuine and deep. Several GC employees to whom *Spectrum* spoke contrasted Carson's attitude with a defiant and innocence-professing Folkenberg. One noted that there was a qualitative difference between Carson's and Folkenberg's involvement with Moore. Carson's position as an employee was also mentioned by another GC official as "excessively deferential to Folkenberg's authority."

ADCOM's second condition is in the process of being satisfied, since Carson's employment status is presently labeled "probationary." As with other members of OGC, Carson does not have a written employment contract with the Church and is an at-will employee under Maryland law. In other words, the GC could terminate Carson's employment at any time and for any reason (or no reason), as long as the reason is not unlawful (e.g., in violation of antidiscrimination statutes). Thus, Carson is always on "probation" and the fact that he must serve a six-month probationary period has no legal significance. This is probably the reason that one OGC

attorney characterized Carson's discipline as a "slap on the wrist," given Carson's demonstrated lapse in judgment. According to Raymond Dabrowski, communication director for the GC, in cases such as this, church leaders wrestle with an apparent tension between justice and mercy. Said Dabrowski: "Erring on the side of mercy is a part of our Christian pedigree." He then added, "At the same time, there is an issue of trust."

As for ADCOM's first condition, as of the writing of this article, no letter of reprimand has been written. Dabrowski, citing concerns for employee privacy, would only comment that "this matter grew out of a committee action."

What, specifically, did Carson do to merit the discipline of his employer? Dabrowski has noted that ADCOM's action did not pinpoint Carson's inappropriate conduct other than to specify his connection to Moore and Folkenberg. In fairness to Carson, it should

be pointed out what he did not do. Based on information available to *Spectrum*, it does not appear that Carson did anything illegal. What Carson did was to violate the OGC's internal policies through his representation of Folkenberg in the former president's individual, as opposed to church-related, capacity. This representation violated the OGC's prohibition on a staff attorney's private practice.

The conflict that developed between Folkenberg and the General Conference was precisely the reason that the OGC made clear in 1993 that its attorneys were

not to carry on private practice outside of their work for the Church and its officers when such officers "are serving or functioning within their proper scope of employment." There is no question that Carson's representation of Folkenberg was in Folkenberg's individual capacity. Indeed, when Folkenberg first came forward to the OGC to let the office know that Moore had threatened litigation against the Church, Folkenberg assured the OGC that it was a private matter that did not involve the Church.

It also appears as though Carson may have violated the Maryland Code of Professional Responsibility. According to that code, Carson could only have properly represented Folkenberg if (a)

Carson reasonably believed that his representation of Folkenberg would not be adversely affected by his responsibilities to the General Conference and (b) Folkenberg consented to the representation after consultation. According to a source knowledgeable about Folkenberg's and Carson's dealings, the two never discussed potential conflicts of interest. Thus, it does not appear that the required consultation took place.

Beyond the requirements of policies and guidelines, it is clear that Carson had first-hand knowledge of Folkenberg's activities and that Carson knew, or should have known, that such activities were not in the best interests of the Church. Given Carson's active involvement on behalf of the Church to prevent fringe groups from using the name "Seventh-day Adventist" it is clear that Carson was, and is, aware of the importance of a "good name" to the mission of the Church. Indeed, in an interview with the *Adventist Review* (June 25, 1998),

"We value the Bible as the primary reference for life's direction and qualities.

We value excellence in all that we do.

We value ethical and moral conduct at all times and in all relationships.

We value creativity and innovation in the completion of our mission.

We value honesty, integrity, and courage as the foundation of all our actions.

We value the trust placed in us by colleagues and by the world Church membership.

We value people as children of God and therefore brothers and sisters of one family."

—from "Statement of Ethical Foundations for the General Conference and its Employees"

Carson stated: "A name, particularly the name of a faith community, identifies it and its value system as distinct from all others. Those who could co-opt that name or trade on its potential for goodwill are acting unethically and illegally. They confuse the public, the media, and at times, even our own members." Carson's statement amounts to an indictment of Folkenberg.

How did Carson justify his continued work on behalf of Folkenberg, whose use of the President's Office arguably did more to besmirch the name of the Seventh-day Adventist Church than the groups Carson prosecuted on behalf of the Church? One possible reason is that he may have felt restrained from making a report because of the duty he owed to Folkenberg by virtue of their attorney-client relationship. But, again, that is precisely the reason why the OGC—supported and encouraged by the GC Executive Committee—made clear in 1992-93 that OGC lawyers were not to carry on private practices but were to devote their full attention to representing the Church's interests. And the Church's interests include ecclesiastical, ethical, and leadership concerns, not just legal concerns.

Although Carson did not reveal his dilemma to

his colleagues or employer, he cannot be criticized for doing nothing to protect the Church from the problems created by Folkenberg's relationship with Moore. In 1996, Carson secured from the bankruptcy estate of Robert Dolan a release of threatened claims against both Folkenberg and the General Conference in exchange for Sharing International's assignment to the estate of its rights in the Kanaka Valley development.⁷ In a letter to the bankruptcy trustee dated September 6, 1996, Carson even expressed personal frustration: "I want nothing further to do with Kanaka Valley and have executed the Settlement Agreement accordingly." It must be a cruel paradox to Carson that his effort to extract Folkenberg and the GC from the Kanaka Valley complications apparently precipitated Moore's lawsuit. In a letter from Moore to Folkenberg dated October 31, 1997—a letter in which Moore pressured Folkenberg to mandate the involvement of the Adventist Disaster Relief Association (ADRA) in one of Moore's business ventures—Moore wrote: "I want some income stream Robert and I want it now. I don't want to be made [to] feel like a heel [*sic*] with my business associates due to non timely payments when in fact it is *not* due to my doing rather to mishandling on the part of Carson through the settlement agreement for your benefit."⁸

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Building on the Foundations

As mentioned above, the General Conference has adopted a "Statement of Ethical Foundations." One of seven responsibilities of GC employees identified in that document is captioned, "Maintaining an ethical environment in the workplace:"

We accept the obligation of maintaining ethical standards in personal life and in the workplace. We believe it is our personal responsibility to report, through established confidential channels, any behavior that is inappropriate or which undermines the ethical environment in the office complex. We are prepared to be held accountable by our supervisors and peers for professional conduct representing the moral and ethical values of the Seventh-day Adventist Church.

In the eyes of many observers, a number of GC leaders lived up to this responsibility in the process of investigating Folkenberg's involvement with Moore. Nixon, in particular, has been singled out for exercising courage. In an April 24, 1999, speech to the East Bay (Pleasant Hill, California) chapter of the Association of Adventist Forums, Philip Hiroshima, the outside counsel retained by the OGC to assist the General Conference

Corporation in its defense against Moore's suit, lauded "brave leaders" of the GC who risked personal welfare in an effort to assure the credibility of the Church. The GC's examination and assessment of Carson's involvement similarly suggests an effort by the GC to maintain or regain a high ethical tone in its workplace.

Although ADCOM adopted the "Statement of Ethical Foundations" in September 1998, the General Conference did not distribute the document to all GC and NAD employees until June 6, 1999, when it also asked them to familiarize themselves with the document and to "personally adopt" the statement. Employees have not, however, been given much assistance in adopting the foundations. In the absence of any formal channels or procedures available to GC employees,⁹ what should individuals do when confronted with, for example, issues related to conflict of interest? Michael McDonald, director of the Centre for Applied Ethics at the University of British Columbia, suggests that individuals who face a conflict of interest—whether actual, apparent, or potential—should do one of two things. First, they should reveal all the interests to relevant parties. Second, they should absent themselves from decision making or advice giving. McDonald recommends that the best question individuals can ask themselves in such circumstances is what he refers to as the "trust test": Would relevant others trust my judgment if they knew I was in this situation? According to McDonald, "trust is at the ethical heart or core of this issue."

McDonald further suggests that individuals should not rely on their own judgment when dealing with conflicts of interest. Indeed, "conflicts of interest interfere with professional responsibilities in a specific way, namely, by interfering with objective professional judgment." Accordingly, talking to trusted colleagues and friends can be a valuable tool for those individuals committed to ethical conduct.

The adoption and distribution of the "Statement of Ethical Foundations" is an encouraging development for those who would like to see the General Conference commit itself to the highest ethical standards. It remains to be seen how the GC builds on its foundations.

Notes and References

1. Carson made the oral argument to the Supreme Court on behalf of Paula Hobbie, an assistant manager of a retail jewelry store who became a Seventh-day Adventist and was discharged because she refused to work from sundown Friday to sundown Saturday. When Hobbie applied for unemployment compensation benefits, the state of Florida denied her request. The Supreme Court, in an eight-to-one vote, held that denying unemployment compensation benefits to Hobbie violated the

Free Exercise Clause of the First Amendment. See *Hobbie v. Unemployment Appeals Commission*, 480 U.S. 136, 107 S.Ct. 1046, 94 L.Ed. 2d 190 (1987). In addition, Carson has participated in the preparation of amicus curiae briefs (also known as "friend of the court" briefs) in the following Supreme Court cases: *Zobrest v. Catalina Foothills School District*, 509 U.S. 1 (1993); *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993); *Lee v. Weisman*, 505 U.S. 577 (1992); *Corporation of Presiding Bishop v. Amos*, 483 U.S. 327 (1987); *Ansonia Board of Education v. Philbrook*, 479 U.S. 60 (1986); *Ohio Civil Rights Commission v. Dayton Schools*, 477 U.S. 619 (1986); *Witters v. Washington Department of Services for Blind*, 474 U.S. 481 (1986); *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). Carson's participation in *Amos*, *Philbrook*, *Dayton Schools*, and *Catholic Bishop of Chicago* was on behalf of the General Conference; his participation in *Zobrest*, *Church of Lukumi Babalu Aye*, and *Weisman* was on behalf of the Council on Religious Freedom; and his participation in *Witters* was on behalf of Americans United for Separation of Church and State.

2. "The Presidents and Anonymous Donors," *Spectrum* 21 (Aug. 1991): 24.

3. Carson's memorandum was sent on letterhead using his own name, but using the GC's address and telephone number.

4. The second point, paying SN&R's legal fees, apparently was a point of contention between Carson and Moore. Carson had made the arrangements with SN&R with either a belief or understanding that Moore would pay the bill, but Moore refused to pay.

5. Quotations taken from postings on Robert S. Folkenberg's website: March 1 speech to the GC Executive Committee and "From the President" newsletter February 25. In January 1999, Folkenberg admitted to his fellow GC officers that he received approximately \$30 thousand in gifts from Moore, including an automobile valued at approximately \$10 thousand.

6. Many Seventh-day Adventist institutions, including the General Conference, have insurance coverage through Adventist Risk Management, Inc. (prior to 1995, known as "General Conference Risk Management Services"). As a result, much of the legal work done on behalf of the Church is conducted through Adventist Risk Management rather than through the OGC.

7. "The Kanaka Valley Tragedy," *Spectrum* 27 (spring 1999): 58-66.

8. Although Folkenberg could not "mandate" ADRA's involvement, he did assert considerable pressure on ADRA to enter into the venture with Moore. ADRA nevertheless declined to participate.

9. At a 1991 GC Executive Committee meeting dealing with the Folkenberg/McClure "courtesy payroll," Tyner, then an associate director of the GC's Public Affairs and Religious Liberty department, recommended establishing an ethics committee to review difficult questions brought by GC employees. No such committee has been established.

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