# Why Did Church Lawyers Use Hierarchy Language?

by John Van Horne

The Pacific Press Publishing Association's recent involvement in lawsuits with some of its employees and the Equal Employment Opportunity Commission has generated great interest among Seventh-day Adventists. Only the central issue of the Press's treatment of its female employees has captured as much attention as the argument made by PPPA's attorneys that the Adventist Church is "hierarchical."[1] The attorneys went so far as to say that holding otherwise is "false doctrine."[2] This assertion does not sit well with many Adventists. My own reaction as an amateur theology buff is of no moment here. The following is a legal analysis of the attorneys' argument. In carrying out the analysis, I will consider 1) why such an argument was made; 2) whether it is a good legal argument; and 3) whether the argument could have been made in a less abrasive way. Let me repeat that I have no desire to comment on the theological or sociological correctness of the "hierarchy" argument. Similarly, I have no intention of expressing opinions on the merits of the lawsuits or on the actions of PPPA; however, the reader should not infer from arguments made for PPPA's position in this article any agreement with PPPA's overall position in the lawsuits. I must emphasize that this is simply a *legal* analysis of the "hierarchy" argument.

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To understand why the "hierarchy" argument was made, we should review the basic elements of the litigation.[3] The initial lawsuit, *Silver* v. *PPPA,* filed January 31, 1973, resulted from an inability of the Press and one of its employees, Merikay Silver, to resolve a dispute over whether Mrs. Silver was entitled to the pay and benefits of a male employee performing similar work. *Silver* v. *PPPA* is a class action charging the Press with violating Title VII of the Civil Rights Act. The issue in *Silver* v. *PPPA* is whether the Press discriminated against its female employees in its wage and benefits policies.

A second lawsuit, charging violations of the Equal Pay Act, was filed against the Press in the summer of 1973 by the Department of Labor. A third suit against the Press was filed by the EEOC on September 20, 1974. This suit charged the Press with engaging in acts of retaliation against Mrs. Silver and a fellow employee, Mrs. Tobler, because they had

filed complaints with the EEOC against the Press. The purpose of this suit, *EEOC* v. *PPPA,* was to maintain the status quo until the basic discrimination issue was resolved. Before *EEOC* v. *PPPA* came to trial, the Press, acting on the recommendation of the General Conference Committee, terminated the employment of Mrs. Silver and Mrs Tobler. The dismissals became, of course, additional instances of the alleged retaliation at issue in the lawsuit.

The Press's opening brief in *EEOC* v. *PPPA* does not clearly explain why it was necessary to call the Seventh-day Adventist Church "hierarchical." The brief states:

> If the church is a hierarchical one, as the Seventh-day Adventist Church is. . . , the resolution of the matter by whatever body in which the church reposes determination of ecclesiastical issues is conclusive. . . . In this case, that is the General Conference.[4]

This statement appears in an argument that the Establishment Clause of the First Amendment protects the defendant's conduct, even if it would otherwise be considered "retaliation." There are other isolated references to hierarchy or related notions.

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The brief speaks of the emergence of the General Conference in 1863 as a unification of local churches into "a central and representative (hierarchical) organization."[5] It refers to "the hierarchical structure" of the church,[6] to Mrs. Silver's "ecclesiastical superior,"[7] to the Press as "an ecclesiastical organization,"[8] to Robert Pierson as "the Church's First Minister."[9] A quotation from Elder Pierson's affidavit refers to "the leadership of the Church, including myself as its first minister for the time being."[10] Neal Wilson, president of the North American Division, is described as having "ultimate responsibility for all Churches, institutions and church members" in North America.[11] The Press's Reply Brief contains the following argument:

> A "hierarchy" simply means any system of persons or things ranked one above the other. While etymologically it meant government by priests, since the Greek compound "hierarchon" means a "holy leader," it today means no more than the body of officials or organizations in a church, considered as forming an ascending series of ranks or degrees of power and authority. . . . A "hierarchical" church is one in which final decisions are made at the top of the organizational ladder, in contrast to a "congregational" church organization in which every local group, like the Baptists and Unitarians, is free to go its own way.[12]

These isolated assertions about church structure are not tied to other points in the brief so as to lead to some logical conclusion. Consequently, I must hypothesize that PPPA's attorney had something like the following argument in mind; at least, if I had been arguing for the defendant, my reasoning would have gone something like this:

To avoid the retaliation charge for terminating employees engaged in a discrimination complaint, the Press must show that there were valid reasons, unrelated to the discrimination complaint, for the terminations. A 1972 amendment to the Civil Rights Act in effect permits a religious organization to discontinue employment of anyone not in good standing with that organization.[13] So, if the Press can show that the employees are no longer in good standing with the church, there is a valid basis for the dismissal that does not involve retaliation.

If such a train of thought may be assumed, the question becomes, How can the Press show that the employees are not in good standing with the church? In *EEOC* v. *PPPA* evidence produced to show this was limited to statements issued by the General Conference Committee.[14] But, the employees could attack this evidence on the grounds that

under the church's procedural rules, persons remain in good standing until disfellowshipped by their local congregations. How, then, can the court be made to accept the General Conference Committee action as determining the employees' status in the church without going into the question of internal church procedures? The Press's attorneys must have discovered the Supreme Court decision in *Kedroff* v. *Saint Nicholas Cathedral*[15] which held that a court may not question the resolution, by the highest body in a *hierarchical* church, of an issue of doctrine or discipline arising in an intrachurch dispute. This discovery, as I imagine, led the attorneys to argue that the Seventh-day Adventist Church is, in fact, a "hierarchical" church. Selling the court on this argument would keep it from going into the procedural correctness of the decision about the employees' status in the church and thus aid the Press in fending off the retaliation charges.

Now, we can turn to the question of whether the argument is legally sound. The two key steps in this argument are: 1) To what extent a court will go behind a church's resolution of an intrachurch dispute, whether of doctrine or discipline, and 2) from the legal viewpoint, what kind of organization the Seventh-day Adventist Church has. Before going into these issues, we need to review the cases relied on in *EEOC* v. *PPPA,* as well as other similar cases.

*The Russian Orthodox Church cases:* PPPA relies primarily on *Kedroff* v. *Saint Nicholas Cathedral*[16] which, along with a later related case *Kreshik* v. *Saint Nicholas Cathedral*[17], tells a story of years of litigation over the rights of competing Russian Orthodox archbishops to occupy and enjoy the use of Saint Nicholas Cathedral in New York City. In the political turmoil that followed the Russian Revolution, the patriarch of the church in Moscow granted considerable autonomy to the dioceses until normal conditions returned. These circumstances generated an American separatist movement which, in 1945, asked the patriarch and the members of his Synod in Moscow for autonomy.

The patriarch's response required, among other things, that the North American churches declare their agreement to abstain "from political activities against the U.S.S.R." The American churches rejected the proposal and later sued for the recovery of the "use and occupancy" of Saint Nicholas Cathedral from the archbishop appointed by the Russian religious authorities, in order to give it over to the archbishop elected by the American churches. In other words, they sued to get a civil court ruling on who was to be the archbishop. The American churches relied on a 1945 New York statute which purported to take all the New York church property of the Russian Orthodox Church out from under the control of the patriarch in Moscow and transfer it to the jurisdiction of the autonomous American diocese. After ruling as unconstitutional the New York legislature's attempt to determine by statutory fiat who should use Saint Nicholas Cathedral, the Supreme Court awarded the use of the cathedral to the archbishop whose appointment came from the highest church authorities in Moscow.

*The Presbyterian Church case.* The other case PPPA relies on is *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Church.*[18] Mr. Justice Brennan describes the Presbyterian church as

> an association of local Presbyterian churches governed by a hierarchical structure of tribunals which consists of, in ascending order, 1) the Church Session, composed of the elders of the local church; 2) the Presbytery, composed of several churches in a geographical area; 3) the Synod, generally composed of all Presbyteries within a State; and 4) the General Assembly, the highest governing body.[19]

The dispute in question began in 1966 when the membership of two local Presbyterian churches in Savannah, Georgia — Hull Memorial Presbyterian Church and Eastern Heights Presbyterian Church — voted to withdraw from the general church because they believed that certain actions and pronouncements of the general church violated its own constitution and doctrine. After attempts at conciliation failed, the general church acknowledged the withdrawal of the local leadership and proceeded to take over

the property of the two churches. The local churches responded by suing in the state courts, seeking to enjoin the general church from trespassing on the disputed property. The case went to the jury on the theory that Georgia law allows the general church to control local church property only so long as the general church adheres to the tenets of faith and practice existing at the time of the

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affiliation of the local churches. The jury was asked to decide whether the Presbyterian Church had abandoned its original tenets and doctrines. The local jury decided, curiously enough, in favor of the local churches. Upon review, the Supreme Court overturned this decision, ruling against the local churches and in favor of the General Assembly.

Although both the *Kedroff* case and the *Presbyterian Church* case involve First Amendment issues, they both cite and rely on the leading case of *Watson* v. *Jones*[20] which was decided in 1872 without specific reference to the First Amendment.

In *Watson,* certain members of the Walnut Street Presbyterian Church of Louisville had objected to the Presbyterian General Assembly's antislavery and pro-Union attitudes. This finally split the Walnut Street Church, with each side claiming to constitute, in fact, the church. Most members sided with the General Assembly and they decided to elect additional elders to the local church session to reverse its existing majority of proslavery dissidents, among whom were Watson. However, when the antislavery faction arrived at the church to hold the election, Watson and another elder locked them out. Undeterred, the antislavery members held their meeting on the sidewalk in front of the church and elected three additional elders. The dispute dragged on until the parties went to court over the question of who was to get the property, the church building.

The Supreme Court's analysis in *Watson* divides cases involving church property disputes into three categories. The first concerns property donated or bequeathed for the purpose of furthering a particular doctrine, and is of little interest here. The second category relates to property held by a religious organization that is "strictly independent" and "so far as church government is concerned, owes no fealty or obligation to any higher authority."[21] In these cases, the courts will apply "the ordinary principles which govern voluntary associations."[22]

The third and final category of cases is pertinent here and must be described in some detail:

> 3. The third is where the religious congregation of the ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over the whole membership of that general organization.[23]

The court noted that this third category is the most common and most difficult to deal with of the three. The rule the court followed is stated as follows:

> Whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decision as final, and as binding on them, in their application to the case before them.[24]

The civil courts are not to look behind ecclesiastical decisions; they are to take these decisions "as it finds them."[25] The court spelled out the reason for this rule in memorable and oft-quoted language:

> In this country the full and free right to entertain any religious belief, to practice

> any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. *The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.* The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.[26]

Given this rule, the Supreme Court in *Watson* awarded the use of the Walnut Street Church to the group recognized by the General Assembly. The rule in *Watson* was followed in both the *Russian Orthodox Church* and *Presbyterian Church* cases. In the *Presbyterian Church* case, however, the court did raise the possibility that civil courts might refuse to honor an ecclesiastical decision if it could be shown to have "resulted from fraud, collusion or arbitrariness."[27] Only recently has the Supreme Court heard a case, *Serbian Eastern Orthodox* v. *Milivojevich,* which sought to make use of these exceptions—specifically, of the "arbitrariness" exception. It wiped out this exception, affirming that

> whether or not there is room for "marginal civil court review" under the narrow rubrics of "fraud" or "collusion" when church tribunals act in bad faith for secular purposes, no "arbitrariness" exception — in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations — is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law.[28]

From this review of the relevant Supreme Court cases, we must conclude that in intrachurch disputes the civil courts will not as a general rule go behind a church's determination of a question of doctrine or discipline. This is clearly the rule that applies to churches described in the *EEOC* v. *PPPA* briefs as "hierarchical," and the only possible exception may be where a church tribunal "acts in bad faith for a secular purpose."

We turn now to the question of the type of structure the courts would attribute to the Seventh-day Adventist Church. From *Watson,* we have seen that the courts see only two types of church organization. One is the "strictly independent" local congregation. Clearly, this does not accurately describe the Seventh-day Adventist Church. The court in *Watson* describes a church in the other category as

> a religious congregation which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and ecclesiastical government.[29]

It seems clear that the Seventh-day Adventist Church is an organization such as the court is describing.

If this is the case, then it is evident that the civil courts will not go behind any decision of doctrine or discipline — even to see if the church has complied with its own internal procedures in reaching that decision — when deciding a case arising out of an intrachurch dispute. The only exception to this rule might come "under the narrow rubrics of 'fraud' or 'collusion' when church tribunals act in bad faith for secular purposes."[30]

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put forth by the Pacific Press, we have concluded that there was a legitimate reason for making the argument and that the argument is based on sound legal theory. We should now consider whether PPPA attorneys were forced to choose between the "hierarchy" argument on the one hand and honoring the sensibilities of many Adventists on the other. Note that in the above description of the legally significant aspects of Seventh-day Adventist church organization the word "hierarchical" was not used once. In fact, the *Watson* case even suggested another, more emotionally neutral word: "associated."[31] The term "hierarchical" became associated with the rule of judicial restraint being considered here during the lengthy litigation over the Russian Orthodox Church, clearly a hierarchical church. It subsequently was applied to the Presbyterian Church, not, I suspect, because the law required it but because the term had been bandied about so extensively in the *Russian Orthodox* case. Thus, if the Press's attorneys had been sensitive to the semantic problem connected with the word "hierarchical," they could have found an alternative formulation that would not only have avoided controversy within the church but would also have greatly simplified the task of fitting the Seventh-day Adventist Church within the rule. Perhaps if their clients had objected to the word they would have gone looking.

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After I completed this article, a document came to my attention which requires comment. This document was filed in the case of *Marshall* v. *Pacific Union Conference of Seventh-day Adventists, et al.*[32] This case is a suit by the Department of Labor against all of the Seventh-day Adventist educational institutions and organizations controlling such institutions in California, charging violations of the Fair Labor Standards Act in the use of wage scales providing among other things for a "Head of Family" allowance. The defendants moved for summary judgment claiming that because of the First Amendment the Fair Labor Standards Act was not applicable to the church's educational institutions. In an opinion filed on March 23, 1977, the District Court denied the motion for summary judgment. On April 15, 1977, defendants filed a motion for reconsideration. In their supporting memorandum, defendants argued that three cases decided by the Supreme Court while the motion for summary judgment was under consideration required granting their motion for summary judgment.

One of these cases is the *Serbian Eastern Orthodox* case discussed above. In arguing that the *Serbian Eastern Orthodox* case is applicable, the statement is made that the Seventh-day Adventist church's organization is "representative or 'hierarchical,' as opposed to 'congregational.' "[33] The defendants also argue that the *Serbian Eastern Orthodox* case stands for the proposition that

> when the governing body of a hierarchical church has made a decision involving ecclesiastical principles, a civil court may not overrule that decision. . . . [T]he civil courts *may not even examine* church law and church decisions to determine whether they are correct or consistent; indeed it [sic] may not examine them at all.[34]

Defendants go on to argue that the "Head of Family" allowance was prescribed by "the governing body of the church" and for "biblical reasons." A reference is also made in passing to "the church's first minister, Elder Pierson."[35]

Two comments come to mind. First, it is clear that the use of the "hierarchy" argument with its references to "the church's first minister" will continue notwithstanding Elder Pierson's apologetic remarks in the *Review and Herald.*[36] Secondly, the *Serbian Eastern Orthodox* case is simply inapplicable to *Marshall* v. *Pacific Union Conference. Serbian Eastern Orthodox* and the other cases discussed above deal specifically with intrachurch disputes that have escalated to the civil courts. There is no such dispute in *Marshall* v. *Pacific Union Conference.* A dispute was at least theoretically in existence in *EEOC* v. *PPPA* in that there was a question of a member's standing within the church, clearly a matter of intrachurch discipline, and the plaintiff was joined by two church members as intervenor-plaintiffs in the suit against

a church institution. All there is in *Marshall* v. *Pacific Union Conference* is a now abandoned, "Bible-based determination" regarding wage policies. Defendants try to assert an intrachurch dispute by saying that the Secretary of Labor was acting on behalf of the church's employees. That is, in my opinion, completely unpersuasive; there is no *intrachurch* dispute and *Serbian Eastern Orthodox* is simply irrelevant. The "hierarchy" argument is being perpetuated and all for naught; it doesn't even apply to the case in point.

## NOTES AND REFERENCES

1. See Opening Brief for Defendants in Support of their Motion for Summary Judgment (hereinafter referred to as Defendants' Opening Brief), pp. 14, 15, 44, 47, 73, 74, 97; Reply Brief for Defendants in Support of their Motion for Summary Judgment (hereinafter referred to as Defendants' Reply Brief), pp. 27-32. For an indication of the magnitude of the response, see Pierson, "When the Church Is Taken to Court," *Review and Herald,* March 24, 1977, p. 6. The paramount legal issue in *EEOC* v. *PPPA* is the extent to which the Establishment Clause of the First Amendment — "Congress shall make no law respecting an establishment of religion...."—exempts a church's business-related activities from civil regulation of similar secular business activities. For example, should a church's food processing plant have to comply with FDA food labeling regulations; should a church-owned radio station have to comply with FCC regulations; or should a church-owned publishing house have to comply with the Equal Pay Act or Title VII of the Civil Rights Act of 1964? Such questions are unavoidable if the following statements made by the Press in *EEOC* v. *PPPA* are to be taken seriously:

> And so, we repeat, the true rule is that where an activity on any view is fairly to be deemed religious, it is absolutely and fully protected by the First Amendment, and it is unconstitutional to "balance" it against something else (Defendants' Opening Brief, p. 87).
>
> If our analysis of the Free Exercise Clause is correct—as we submit it is—defendants are obviously entitled to judgment. Everything they do is sacramental, and the Constitution forbids government to interfere (Defendants' Opening Brief, p. 88).
>
> When a Christian says "Credo!" the Government whether acting through its judges or its myrmidons must call a halt (Defendants' Opening Brief, p. 92).

Volumes have been and will continue to be written on this topic. I can do no more here than apprise the reader of its existence in this litigation and suggest its grave importance.

2. Defendants' Reply Brief, pp. 28, 29.
3. For a more complete description of the litigation, see SPECTRUM, Vol. 7, No. 2, pp. 44-53; *Ibid.,* Vol. 7, No. 3, p. 2; *Ibid.,* Vol. 8, No. 1, pp. 44-45.
4. Defendants' Opening Brief, p. 97.
5. *Ibid.,* pp. 14-15.
6. *Ibid.,* p. 44.
7. *Ibid.,* p. 47.
8. *Ibid.,* p. 63.
9. *Ibid.,* pp. 15, 17, 45.
10. *Ibid.,* p. 38.
11. *Ibid.,* p. 60.
12. Defendants' Reply Brief, pp. 27-28.
13. 42 U.S.C. 2000e-1
14. Defendants' Reply Brief, pp. 36, 37. The brief refers to an action taken by the General Conference Committee on February 14, 1975 which determined among other things that "Merikay Silver and Lorna Tobler have continued at variance with the church and unresponsive to spiritual counsel." See Exhibit A to Affidavit of W. J. Blacker filed February 21, 1975.
15. 344 U.S. 94 (1952).
16. *Ibid.*
17. 363 U.S. 190 (1960).
18. 393 U.S. 440 (1969).
19. 393 U.S. at 441, 442.
20. 80 U.S. (13 Wall.) 666 (1872).
21. 80 U.S. at 674.
22. 80 U.S. at 675.
23. 80 U.S. at 677.
24. 80 U.S. at 676.
25. 80 U.S. at 677.
26. 80 U.S. at 676-677 (Emphasis supplied).
27. 393 U.S. at 451.
28. 426 U.S. at 713. This case was decided in 1976 and involved the defrocking of a bishop.
29. 80 U.S. at 676.
30. 426 U.S. at 713.
31. 80 U.S. at 675.
32. Civ. No. 75-3032-R, U.S. District Court, Central District of California, filed September 5, 1974.
33. Defendants' Supporting Memorandum, p. 12.
34. *Ibid.,* pp. 13-14
35. *Ibid.,* p. 15.
36. See footnote 1 above.