Court Verdict on Pacific Press Case

by Tom Dybdahl

On December 28, 1979, nearly seven years after Merikay Silver filed a suit against the Pacific Press Publishing Association for alleged sex discrimination. a United States district judge in San Francisco ruled that the Press was indeed guilty of discrimination and that first amendment guarantees of religious freedom did not mean the Press could violate federal equal rights laws.

The story began in May 1972, when Ms. Silver, a recently hired editorial employee at the Press, went to the manager and asked for the "same compensation and benefits as a married man doing the same work." Her request was denied. She discussed the matter further with various church leaders, to no avail. So on the last day of January 1973, she filed a suit charging the Pacific Press with violation of Title VII of the Civil Rights Act of 1964, the section of the law that prohibits discrimination in hiring and payment practices.

As her case meandered through the courts, attention focused on the employment practices of the Press, and other suits followed. The Department of Labor sued for alleged violations of the Equal Pay Act in the summer of 1973, and the Equal Employment Opportunity Commission (EEOC) followed in September 1974, with a suit alleging violations of Title VII on behalf of Ms. Silver and Lorna Tobler, another Press employee. When the two women resisted church pressures to end their involvement in these legal matters, they were summarily fired by the Press on February 21, 1975, for continuing to be "at variance with the church and unresponsive to spiritual counsel."

The EEOC case was heard first, and the Press was found guilty of discrimination. But this decision was overturned by a higher court on a technicality: namely, that the EEOC had no jurisdiction over the case at the time it sued. Undaunted, the EEOC sued again, this time based on a complaint by Mrs. Tobler, charging that the Press had denied her fringe benefits paid to male employees and retaliated against her for making charges, assisting and participating in investigations under Title VII. This eventually became the case of record.

After numerous delays, the second EEOC

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suit was set for trial on February 21, 1978. Four days before the trial, however, Ms. Silver signed a settlement on her case, and in the courtroom on the morning of the trial, Mrs. Tobler orally agreed to sign a settlement as well. Under the agreements, Ms. Silver would receive $30,000, her attorneys $30,000, and Mrs. Tobler $15,000. Further, the Press would agree not to discriminate against women — though it still maintained it was not legally subject to federal employment laws.

Several weeks passed before the Press' lawyers reduced the oral agreement to writing, and when the written agreement was sent to Mrs. Tobler and the EEOC attorneys, a misunderstanding arose about the specific terms. This could not be resolved, so the case went to trial on April 27, 1978. (The Silver settlement was not affected by these events.)

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Only two witnesses testified: Mrs. Tobler and William Muir, the Press treasurer. For his information, Judge Renfrew relied primarily on the oral arguments and briefs filed by the lawyers, as well as documents from previous suits against the Press. Final oral arguments were heard on June 20.

Two matters were in dispute. The immediate question was whether Mrs. Tobler had been discriminated against because of her sex and whether her firing was a retaliatory act. But the larger question was whether or not, under the first amendment protections of religious freedom, the government had a right to apply employment laws to a church institution.

Specifically, the Press' lawyers made three constitutional arguments based on the first amendment. 1) Since every activity carried on by the Press was an exercise of religion, under the free exercise clause the Press was exempt from all federal employment laws. 2) Since the Press was a pervasively sectarian institution, any regulation of its employment practices was a governmental intrusion into religion which violated the establishment clause. 3) Since the firing of Mrs. Tobler was strictly an intrachurch matter, no court could have any jurisdiction over it without violating both religion clauses.

The trial also resurrected a previous controversy. The legal briefs submitted earlier by the Press' lawyers (a team from the prestigious San Francisco law firm of Brobeck, Phleger and Harrison, led by Malcolm Dungan) had contained a curious bit of theology. In the briefs, the Seventh-day Adventist Church was described as being of the "hierarchical variety," with "orders of ministry" having different levels of authority and a "first minister" at the top. In his affidavit, Robert Pierson, then president of the General Conference, described himself as the first minister of the church, and Neal Wilson, then president of the North American Division, called himself the "spiritual leader" of North American Adventists.

The reason advanced for this new nomenclature was that only two forms of church organization were recognized legally: congregational and hierarchical. Since local Adventist congregations were not totally autonomous and since there was in fact a multileveled structure of authority within the church, the hierarchical description was more nearly correct. And the case had already demonstrated that there was some truth to this claim; the women had been fired by the Press after a request from the General Conference Committee, the church's highest authority.

In their court testimony, however, the two women vigorously disputed this description. Many members wondered aloud if the Adventist Church was exchanging its democratic form for a "papal" one. Responding to this unease in a subsequent *Review* article, President Pierson apologized for any misun-

derstanding and suggested he had used the first minister term because a lawyer had recommended it. Speaking to students at Loma Linda University, Wilson said that President Pierson "would be well advised not to use that term again." He also apologized for his use of the term "spiritual leader" and said: "You know I am not going to use that term again." Nevertheless, when the second EEOC case came to court, the same affidavits — with these terms intact — had been introduced.

When Judge Renfrew announced his decision last December, he ruled in favor of the EEOC on virtually every point. He agreed that *prima facie* sex discrimination was plainly established, since the Press admitted that from November 30, 1970, to July 1, 1973, Mrs. Tobler, as a married female employee, was paid a lesser rental allowance than if she had been a married male employee. As for retaliation, he said that "it is manifestly clear that Press terminated Tobler employment as retaliation for her opposition to practices she believed unlawful under Title VII." But the bulk of the Memorandum of Opinion was Renfrew's rejection of the Press' claims that it was not subject to civil employment laws in general and Title VII laws in particular.

The Judge denied the Press any broad immunity from government employment laws on two grounds. First, he stated that the constitution which guarantees religious freedom is a secular document, and the courts — not the church involved — must decide how to construe its principles. The Press, he said, "has misconceived who it is that must make the decisions regarding any conflict between government regulation and the free exercise of religion." The courts must interpret the law, not the person or institution accused of breaking it.

Second, Judge Renfrew pointed out that even workers in religiously affiliated organizations have a legal right to employment free from sexual, racial or ethnic discrimination. To allow a free exercise defense would mean all Seventh-day Adventist institutions — even those with primarily secular functions — could discriminate against their employees at will, exempt from any government regulation.

Renfrew also rejected any specific immunity to Title VII. The title, he said, contained nothing contrary to church beliefs, since the church supported "equal employment opportunity and equal compensation for men and women." In addition, he established that it was the clear intent of Congress, when passing Title VII, to apply it to religious organizations and that the only discrimination they would be permitted was in hiring only church members.

As for the Press' claim that this was an intrachurch matter over purely doctrinal issues, the judge ruled that "despite the overarching religious atmosphere" the Press ascribed to itself, secular job responsibilities were performed and that Mrs. Tobler's pay difference was not based on the nature of her duties or any contribution she made to the church, but solely on her sex. The pay difference and the retaliation could not be considered as purely a church matter, because the Press had a right to discriminate only on the basis of religion. And as long as Tobler remained a church member, she could not properly be fired.

The Press' lawyers had argued that since the church was hierarchical, the discipline administered by the Press in firing Mrs. Tobler was a valid action. Judge Renfrew had as much trouble with this argument as many church members did. He ruled that the church was not truly hierarchical, despite the lawyers' claims. He based this on testimony of witnesses from the previous trial that they had never heard the Seventh-day Adventist denomination characterized as a hierarchical one, as well as statements in the *Church Manual* and *Seventh-day Adventist Encyclopedia* that only the local church has the right to censure or disfellowship a member. "The action taken here," he said, "was not even one of the recognized forms of church discipline."

Consequently, Renfrew ordered that Mrs. Tobler be paid all back wages from June 20, 1973 — the date she was fired — until the time she had found other employment. She was also awarded six months "front pay" in lieu of reinstatement at her former job and

was allowed to keep the severance pay she had received when she was fired.

Shortly after the judgment was announced, the Press decided to appeal Judge Renfrew's decision. The lawyers felt that if they did not appeal, the constitutional arguments they had used would not be available to them in any similar suit. In addition, the EEOC had filed another suit against the Pacific Press in May 1978, and the Press lawyers believed that if they did not appeal the current case, they would be almost certain to lose the companion case.

The companion case is a class action on behalf of the women who were employed at the Press during the time it maintained the unequal pay practices that were the basis of the EEOC's suit on behalf of Mrs. Tobler. If the Press loses this suit, it could mean a total settlement as high as $650,000. Since Judge Renfrew was recently appointed a Deputy United States Attorney, the case will be heard by a different judge, probably later this summer.

So at least one more year is likely to pass before the matter comes to rest. So far, it has cost the church a great deal of money in legal fees and cast it in the role of arguing for the right to discriminate. One hopes we have learned by now that if we want the government to keep out of church affairs, the best way to do that is to keep the law.