

the merikay silver case

part one of three

It is well-known that the Merikay Silver case represented a turning point in our modern church.

It was the first time that, on a large scale, many of our church members awoke to an intransigent situation imposed by part of church leadership.

Later would come the 1980s—and the new theology inroads, the Davenport debacle, the AHS \$2 billion debt, the approval of exorbitant wages for certain workers, the Celebration worship, hypnosis retreats, and much more.

But it was the Merikay Silver case which first aroused widespread controversy—something which not even the Evangelical Conferences, of the 1950s, or the Daniel Committee conclusions, of the 1960s, had done.

Here, briefly, is the story of the Merikay Silver case—viewed from over twenty years after it began.

Merikay was born into the McCleod family in 1946. While a student at Grand Ledge Academy in Michigan, Merikay McCleod studied the book, *Great Controversy*, in class one semester. Apparently she had not previously come in contact with it. She was an imaginative type, and the gripping scenes and suspense in that book caught her imagination. So, when her teacher asked the class to write a story about the time of trouble, she set to work in her dormitory room—and completed a 45-page story in less than two days, which she titled *Now!*

Classmates and friends mim-

eographed and distributed copies of it. Eventually, Fordyce Detamore, our leading evangelist in the early 1950s, was so impressed with it that his family had it printed as a small booklet. Soon it had an even wider circulation. Within five years, over 100,000 copies were sold.

There is always danger in writing a fiction story on closing events, since subtle errors can creep in and be accepted by the mind. But no matter; people liked the excitement and drama in Merikay's little book.

Kim Silver was one of the hundreds of people who wrote to thank her for writing that vivid story. But he was different than the others: He kept writing and calling, and in 1968 they were married.

1971

While she was a freshman at Andrews University, Max Phillips, working at the time on the student newspaper at Andrews University, encouraged her to write a guest column for the campus paper. Several years later (June 1971), Max phoned to the Silver home in Seattle, Washington, and told Merikay he was now working in the editorial offices of the Pacific Press at Mountain View, California. He said they had an opening for an assistant book editor; would she be interested in applying for the job?

Of those being considered for the position, most had a college degree. But the editors, quite impressed with Merikay's little book and her other published articles, decided to hire her.

Little had been said at the time about what her salary would be,

but she had been told it would be near that of a book editor. The woman she replaced had been receiving approximately \$600 a month. But, upon her arrival at the Press in June 1971, Merikay found that she would only be receiving about \$400 a month. (By way of comparison, clerk-typists in central California at that time were receiving \$300-400 a month.) She was told that only a book editor with a college degree could receive \$600. If they had told her this while the couple were still in Seattle, the following story would not have been told.

Upon their arrival, Kim and Merikay were thrilled with her opportunity to help prepare books at Pacific Press. But Kim had a difficult time finding work in the area, and living costs were quite high throughout the greater San Jose area.

Then Kim lost his job, and, try as he might, was unable to find another. The couple were in a financial crunch and something had to be done. Their apartment alone was \$200 a month.

Dramatic changes can begin in such little ways. On May 22, 1972, Merikay went to her boss to ask for a raise. The Adventist world in North America would never be the same again.

The Pacific Press was an unlikely place for the earthquake to take place. It was such a conservative place. Most of the workers were middle-aged or older, and many were returned overseas missionaries nearing retirement.

Here is the story of what happened:

Early on, Merikay met Lorna

Tobler, who became one of her closest friends. Lorna was secretary to Lawrence Maxwell, the editor of *Signs of the Times*. She had worked all her adult life (20 years) as an office secretary in the church. Married to Gustov Tobler, a minister, they were now at Pacific Press, because he was a foreign language editor.

Frequently, Merikay would listen as Lorna discussed her pet peeve: the need for equal work opportunities for women in the denomination. Lorna was a remarkably strong-minded individual and complemented Merikay, who, in contrast, tried to please her superiors in order to avoid confrontations.

1972

In January 1972, Merikay learned that her co-worker, Max Phillips, was receiving 60 percent more in wages than she was. — Yet they were doing the very same work! Astounded, she went to her supervisor, Richard Utt (English language book editor at the Press), and asked why she was paid so little, when she was doing equal work with Max.

Utt explained that the Pacific Press was on the “head-of-household” plan, and Max had a family to support, while she didn’t. That sounded reasonable.

Time passed. But then, in March 1972, Kim lost his job. Unable to obtain another one, the two talked it over and Merikay came up with a bright idea: She would ask the Press for head-of-household status, and that would bring enough of a pay raise to tide them over until Kim could complete studies for a better paying job. She mentioned it to Max, and he thought it was a good idea. He had just finished putting his wife through her bachelor’s degree; so why could not Merikay do the

same for her husband?

But when Merikay mentioned the idea to Lorna Tobler, she had an odd smile and was not so sure. Although a strong advocate of “equal pay for equal work,” Lorna doubted that Merikay would be given the raise.

Shortly afterward, Lorna found a copy of the new *Wage Scale*, published by the General Conference. Slated to go into effect on July 1, it said this:

“The wage scale provides one basic salary scale for each job classification based on education and experience to all employees without discrimination on the basis of race, religion, sex, age, national origin or color, with minimums and maximums expressed in percentages as well as in dollar amounts per month.

“While no recognition of the difference in financial responsibilities between those who are heads of families and those who are not is given in the basic wage scale, it is recognized that the differences are to be provided in the living allowance granted.

“On the basis of need determined by marital status, dependents and financial responsibility, an additional amount of money may be paid to employees without discrimination on the basis of race, religion, sex, age, national origin or color.”—*General Conference Wage Scale, July 1, 1972 revision*.

The new wage scale had been prompted by a change in government laws. Would Pacific Press abide by those laws? Surely, they would.

When Richard Utt heard about it, he sent a letter to Bohner requesting an appointment for Merikay to meet with him to discuss the matter. In his letter, he

rather completely outlined what her request would be.

In the interim, Kim worried about the forthcoming interview. The more he thought about it, the more worried he became. Then he recalled a lecture he attended earlier. It had been given by an attorney, Joan Kirt Bradford. At his urging, the couple stopped by her office. Bradford was a decisive, hard-hitting attorney. As soon as they explained their situation, she snapped that Pacific Press had an illegal wage standard, and did they want her to start a lawsuit?

They quickly said No. They just wanted to know if it was legal for Merikay to ask for a raise.

As they drove home, Kim felt even worse. He told Merikay that, although he felt she should ask for the raise, the request would only bring trouble.

May 22, 1972, dawned. It was a big day for them. In later years everyone would agree it was a big day for the church.

Kim had registered for summer school at San Jose State University. It also began that day. Before leaving for school, he told Merikay to be sure to take Max with her, when she asked Bohner for the pay raise.

Arriving at work, Merikay told Lorna she ought to get the raise, since both the General Conference and the government agreed. But Lorna was not so sure. Then Max said it was time to go to Bohner’s office.

After some hems and haws, specifically she asked for the “same compensation and benefits as a married man doing the same work.” Merikay was married, and her husband was out of work and needed to take a job retraining course.

In response to her request, El-

der Bohner said Max had an advanced degree, and six years' experience. In contrast, he said that she had no degree and had done editorial work less than one year.

After this, the conversation rambled back and forth for a time. Bohner did not appreciate being reminded by Max that there were men working at the Press, receiving head-of-household status, whose wives were earning \$500 to \$800 a month.

Finally, when Merikay kept pressing the matter, Bohner hinted that her employment could be terminated if she did not drop it.

Bohner repeated it the next day, when he sent word to Merikay via Richard Utt that, if she kept urging the matter, he would tell Utt to look for a replacement.

On the 24rd, the Executive Committee met, and Bohner angrily told them about Merikay's request. During the meeting, the *1964 Civil Rights Act* came up in the discussion, but hardly anyone knew anything about it.

Always helpful and always remarkably bold, later that day Lorna stopped by Bohner's office and told him about *Title VII* of that *1964 Civil Rights Act* (which speaks about equal pay for equal work). Bohner responded by saying he felt certain that a company could pay anything it wants, regardless of what any outside agency—including the government—might say.

Although Bohner was still living in the clouds, Max thought best to wake him up if possible. A growing number of people at the Press realized that a thundercloud was ready to burst if something was not done. On the 26th, Max wrote Bohner an inner-office memo, giving him the names, addresses, and phone numbers of

SHOULD OUR CHURCH OBEY THE LAWS OF THE LAND?

In view of the predictions in *Great Controversy* about the severity of coming events, should we obey the laws that government imposes on us?

1 - We should obey the laws of the government when they do not run counter to the laws of God.

But in the Merikay Silver case, that which was at issue was whether or not the church would have to pay its workers a higher wage. Although the Spirit of Prophecy warns us not to ask for or pay exorbitant wages, that was not an issue here.

The desire on the part of our leaders to practice strict economy, and provide sacrificial wages to all was commendable. But if the gov-

ernment required them to pay a little more than that, it would not be a violation of the Ten Commandments to do so.

2 - We should not obey the laws of the government, when that obedience would cause us to violate the laws of God.

This brings us to the astounding part of this matter: The information is available (although we do not have space here to include it) that, for decades, our church leaders have acquiesced to government demands that our members break the Decalogue,—yet, in certain cases in which no moral issues were involved, our leaders have vigorously fought obedience to government regulations!

Why do we always seem to get everything backwards?

the Equal Employment Opportunities Commission—so he could learn some things he needed to know.

The weeks passed, and gradually, as nothing was done, problems escalated. On May 31, Merikay confided by phone in that attorney, Joan Bradford. She told her that Bohner might call her into his office and yell at her, and she was worried.

In response, Bradford offered to write Bohner a letter and offer to help legalize the Press's employment practices. That sounded good, but little did she realize what was coming.

The next day, she drove with Kim to Bradford's office. Once again, Bradford offered to sue the Press. Merikay did not think that would be necessary.

But when, on June 1, 1972, Joan Bradford wrote Bohner, her letter was very official in its presentation of government regulations. The letter concluded by

stating that all further communication to Mrs. Silver regarding these matters must be made through Bradford's office.

As you might imagine, that sent a shock wave through the Press management. Bohner was in a rage. Richard Utt was furious.

In the days that followed, Lorna, her husband Gus, and Max all visited Elder Bohner's office and tried to explain the gravity of the situation to him.

But Bohner told Lorna that Merikay would never receive equal pay with men, since women were not worth as much as men.

Weeks passed, and Bradford was amazed that the Press had sent no response to her letter.

In the middle of the next month (July), Bradford finally received a response. The Press had hired an attorney, Don McNeil, to represent them. In his letter to Bradford, McNeil stated that the Press was breaking no laws, and

that there was “no discrimination.” This implied that women and men at the Press were being paid equally, in accordance with their job descriptions. As Bradford told Merikay about it, she urged her to file suit. But again Merikay said No.

Replying to McNeil’s letter on the 20th, Bradford notified him that the Press was not in harmony with government regulations, nor with the July 1 General Conference wage provisions.

All the while, in an effort to avert the coming storm, Lorna, Max, and Gus kept writing letters to Len Bohner, the Press manager, and R.R. Bietz, the board chairman of Pacific Press and president of the Pacific Union.

At the same time, Lorna was busy gathering information. She had worked at the Press for years, and was well-liked. Sympathetic women employees provided her with photocopies of all their pay scale records. Lorna put the data

into orderly charts for comparison, which revealed that women were consistently paid less than men.

In the weeks that passed, more letters and confrontations occurred.

One day in August, Bietz arrived at the Press, spoke with Lorna, and then asked to speak alone with Merikay. But she feared he would erupt with fury as Bohner had done. Frightened, she called Bradford, who told her to refuse to meet with him. Bradford then wrote McNeil a letter, declaring that Press management could no longer meet alone with Merikay.

That, of course, only added to the imponderable wall that was building, brick by brick.

In August, Lorna met with both Elder R.R. Bietz, president of the Pacific Union, and Elder Robert Pierson, president of the General Conference. Both assured her that everything would

be worked out. When Lorna asked to address the October 13 board meeting, Bietz said the agenda was already full.

But after the board met, Lorna learned that about all on its agenda was discussions about Merikay and Lorna.

In November the Annual Council convened, and also discussed the problem. But nothing happened—except that Gus was transferred to the German publishing house. Merikay was terrified; for, without Lorna, she could not make it. Lorna assured her she would not leave.

By this time, the matter had become a grand crusade to free women from the shackles of a male-imposed wage structure. Many women workers throughout the nation were secretly encouraging the two women to continue waging the war on their behalf.

On November 7, both women filed complaints with the Equal Employment Opportunities Commission (EEOC).

About this time, an investigator (Guy Guerrero) from the Wage and Hour Division of the Department of Labor came to inspect Press employment records. But later checking revealed that incorrect data had been supplied to that government investigator. Upon seeing copies of the records which confirmed the deception, Guerrero was astonished, and strode down the hall to the office of Elder Bohner to ask him about this matter. Surely, there must be a misunderstanding!

But that which followed was more surprising than learning the data was fallacious. Upon entering Bohner’s office, the Press manager flew into a rage—and ordered

WAS OUR HEAD-OF-HOUSEHOLD RULE REALLY GOOD?

The basic issue, in the Merikay Silver case, was whether women should receive a smaller salary than men doing the very same classification and level of work.

But also involved was our church’s head-of-household rule: When a person has a family to support, he should receive extra pay.

Was that a bad rule? It was actually a very good one.

One problem with head-of-household was that it was made applicable by leadership to men workers, and not women. That was unfortunate, and should not have occurred.

A second problem was that, according to the government regu-

lations, workers doing the same work should receive the same pay, yet head-of-household would grant one worker a higher pay than another working beside him.

Yet, in itself, the head-of-household rule was a good one. It is very unfortunate that the Silver and Tobler cases eliminated it.

Head-of-household helped a wage earner support his family, so his wife could stay home and care for the children—and not have to go to work and leave them in the care of another! As such, it was extremely beneficial in its moral effect on the home as a whole, and especially on the training and nurture of the children in that home.

In the view of the present writer, head-of-household should be practiced everywhere.

Continued on the next tract

More WAYMARKS - from —
PILGRIMS REST

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the merikay silver case

part two of three

Continued from the preceding tract in this series

Guerrero ousted!

After lunch, Guerrero phoned Merikay. Thoroughly upset, he told her that Bohner had thrown him out of his office, and yelled that the next time they see him would be in court. The investigator then asked Merikay if she wanted EEOC to file suit for her. She said she could not decide that just then. Guerrero replied that if she did not do so, they were going to sue the Press on their own. Bohner had made a grave mistake in not calmly talking to the man.

When Kim heard what had happened, he encouraged his wife, Merikay, to sue.

The next month (December), Gus left for the Hamburg Publishing House in Germany. Lorna did not go with him. More time passed.

1973

Then, on January 31, 1973, eight months after her original request for a raise, Merikay Silver filed a civil action against the Pacific Press. It was entered as a class action suit on behalf of herself and the other women who worked there. Merikay was 26 years old.

When it began, Civil Action #C-73 0168 CBR was a simple discrimination case, in violation of the Title VII section of the Civil Rights Act.

Pacific Press responded to the suit by filing a statement through its attorney, Donald McNeil, on March 26, 1973. While admitting that, during a portion of the time, it had not paid Merikay the funds

as head-of-household to which she was entitled,—all other discriminatory practices were denied.

In mid-June 1973, Merikay mailed an information sheet to every woman at the Press, explaining what was happening. At the time, only a few of the women workers supported Merikay's action. In addition to a brief explanation about the federal law, she invited the women workers to attend a meeting on the evening of June 25, at a nearby meeting hall. Nearly 50 women came and sat quietly as Joan Bradford spoke and discussed the situation, and then asked for questions. The next day, management was trying to find out who had attended the meeting.

On August 17, Joan Bradford took a law clerk and went to the Press and examined its wage and hour records, books, and files. Eight hours of research revealed that not one woman in the entire publishing house was paid on the salary scale; all were hourly workers. In contrast, all the men in the editorial department were salaried on the administrative level. It was noted that Merikay was being paid at the clerk-typist level.

Shortly after, Gus wrote from the Hamburg Publishing House, that he was under terrific pressure to get her over there—or else he might be fired. But Lorna decided she must stay in Mountain View.

By September, Kim was becoming disgusted with the endless waiting for a resolution to the legal process. The tension was getting him down.

On November 1, Elder Bietz

filed an affidavit with the court, stating that “virtually all” the women at the Press did not wish to be part of the suit. Nine pages of petitions with 188 names were affixed.

In response, Bradford filed three affidavits: one from Lorna and the other two from other Press employees. One woman wrote that many others were sympathetic to the suit but feared to go public, lest they be fired.

On the basis of this, the judge certified the case to proceed as a class action suit.

(Later, when the court sent out notices about the suit, 46 women at the Press directly or indirectly joined the action.)

On October 12, 1973, the Press treasurer, William L. Muir, handed Lorna a note informing her that her employment would be terminated on or before October 31, “in order that you may return to Germany to be with your husband” who had arrived there ten months earlier. The reason given was that the Euro-Africa Division was “insistent” that she be with her husband.

On the 19th, Lorna wrote the Press that it would “certainly be viewed by the law as a reprisal, and I myself can explain it in no other way.” She also noted that she and her husband were as united in spirit as ever; there was no family problem of any kind.

Did Lorna wait for a reply? We know that the same day she filed charges with the EEOC that she had been discharged as an act of retaliation for her support of Mrs. Silver.

At this, the Press backed

down, and said the word “terminated,” in its letter, had been misinterpreted, and that she was still an employee at the Press and could continue to work there.

On December 1, the president of the Pacific Union, W.J. (Jack) Blacker, replaced Bohner as manager of the Press. Blacker was highly experienced in church management, and church leadership hoped he could help resolve the problem.

On December 10, a new development occurred. Bruce Wickwire, head of the General Conference Publishing Department, sent word to the manager of all three North American publishing houses that they should accept no more book or article manuscripts from Merikay Silver, without first counseling with his office. And no copy was sent to Merikay.

1974

By this time, the two ladies were in the habit of starting new legal actions. So, on January 17, 1974, she filed retaliation charges with the EEOC.

What had once been a small dispute, was rapidly becoming a great mountain of law suits.

Shortly afterward, Merikay received a phone call from Neal C. Wilson. He said he wanted to visit with her on February 22.

About 9:30 a.m. on the 22nd, Wilson arrived at her home. He appeared remarkably friendly, and they spoke together for hours. The entire morning is spent happily discussing a variety of pleasant topics.

Eventually he switched the conversation to the Press, and they began talking more seriously. Several more hours passed, but Wilson appeared to be trying to remain understanding in all that was discussed. Merikay was an

emotionally driven individual, and Wilson’s intention appeared to be to establish a warm friendship, in the hope that he might later be able to sway her at some later time.

Amid assurances that the brethren were easy to work with, and that everything would work out, he finally left.

In mid-March, Wilson phoned Merikay twice, and said the brethren were willing to discuss the problems with her and try to resolve them. But when she went to an April meeting with Blacker, he was sullen and refused to say much.

Afterward, Max told Merikay that Utt was preparing to fire her.

Early the next month, the court decided to rule on whether to accept the Press’s petition to cancel the class action suit—and only make it Merikay’s own suit. Judge Renfrew ruled that the women would decide the matter.

In order to influence that decision, Blacker read a letter, from Attorney McNeil at the April 8 chapel period at the Press, that the names of all women, and how they voted, would be made public by the Press. So everyone would know who had chosen to be part of the class action suit.

Many women immediately phoned Lorna to tell her they dared not be in the class suit, since their names would be revealed. But, ultimately, the judge still ruled that the suit would remain class action.

About this time, Gus phoned Lorna, saying that the dream of his life was being offered to him: He had grown up in the Swiss Alps, and now he was being offered managership of the Swiss publishing house (Advent Publishers [Advent Verlag], in Krattigen, Switzerland)—but only

if Lorna would return to Europe to be with him.

Once again Lorna eased Merikay’s fears, by telling her that she would remain at Pacific Press.

On August 31, Kim packed his belongings and left. He went back to Seattle to work with his brother. Merikay admitted she had become hard to live with, but deeply loved Kim and was heartbroken to see him go. They would never be successfully reunited.

In September, the EEOC started its own lawsuit against the Press, by filing a preliminary injunction. This was the third suit against Pacific Press. Its objective was to stop the alleged retaliatory actions against Merikay and Lorna.

A major turning point in the litigation occurred in November 1974. The Press hired Malcolm T. Dungan, a constitutional lawyer with the San Francisco Firm of Brobeck, Phleger, and Harrison, as the head attorney instead of Donald McNeil.

It was his assignment to define the position of the Press and the church in the matter. Working closely with church leaders, he devised a new approach to the matter: The defense would no longer be a matter of whether the church had obeyed employment and salaries regulations; instead, the matter would be one of religious liberty! In other words, the church did not have to obey any such laws, since there was a separation of church and state!

Obviously, such a position, relating as it did to non-religious matters—if approved by the courts—would set the church above the laws of the land!

We all fully agree with not obeying the laws of man, *when they run counter to the laws of*

God. But regulations regarding wage differentials are in a different category.

According to Dungan, the government had no right to become involved in the internal affairs of the church—regardless of what those affairs might be. It was stated that the entire matter was “a church controversy which ought to be resolved within the church and according to the doctrine of the church.”

The reasoning went like this: The Pacific Press is part of the church, and all church workers are “ministers.” The case was, therefore, a controversy between the church and one of its ministers, Merikay Silver. As the Press’s legal brief said:

“Just as the initial freedom of selecting a minister is a matter of church administration and government, so are the functions which accompany such a selection . . . Matters of church government and administration are beyond the purview of civil authorities.”

In order to strengthen this position, the church’s leaders, together with their lawyers, went a step further: They stated that the authority of the Seventh-day Adventist Church was entirely from the top down! The term used to describe it was “hierarchical.”

The church was described as having “orders of ministers,” with different levels of authority, and a “first minister” at the top: Elder Pierson.

To counter this, Merikay’s attorney charged that this represented a major change in the traditional Adventist view. It was said that church leaders were taking on themselves powers which they did not properly possess. Even the *Church Manual*, it was stated, ran contrary to this “hierarchical” view.

Because the trial judge (Renfrew) was Episcopalian, a member of a church with a very different church structure, these presentations, by church leaders, tended to liken the Adventist Church to that of the Catholic; the implication was that all the men employees were priests, and all the women were nuns—and the church was a vast cloistered house.

In response, Merikay’s attorney noted that the Adventist Church was anti-Catholic. Far from having any similarity to the Catholic governmental system, it actually abhorred popery and all that it stood for!

In order to counter that fact, our leadership went on record, in a U.S. federal court of law, as saying that the Seventh-day Adventist Church no longer was “anti-Roman Catholic” in its beliefs!

Reprinted below is the single, most astounding paragraph in all the Pacific Press legal statements. It appears as an added comment over the name of Neal C. Wilson, who, at that time, was vice-president of the North American Division:

“Although it is true that there was a period in the life of the Seventh-day Adventist Church when the denomination took a distinctly anti-Roman Catholic viewpoint, and the term ‘hierarchy’ was used in a pejorative [derogatory, disparaging] sense to refer to the papal form of church government, that attitude on the church’s part was nothing more than a manifestation of widespread anti-popery among conservative Protestant denominations in the early part of this century and the latter part of the last, and which has now been consigned to the historical trash heap so far as the Seventh-day Adventist Church is con-

cerned.”

Truly, that statement is nothing less than sensational in its implications! (1) Our denomination once considered “hierarchy” to be a terrible form of government, since it was the form used by the papacy. But we no longer consider a “top controlling everything below it” form of church government to be bad. (2) Although earlier in our history our church held to a definite anti-Catholic position, we are no longer in any sense “anti-Catholic.”

Therefore we must now be pro-Catholic!

Notice that the anti-Catholic positions and beliefs have been “consigned to the historical trash heap.” First, what is it you put on a trash heap? It is not merely ideas or words; it is writings! Second, what is the special writing which defines our anti-Catholic positions—more clearly than any other? It is the book, *Great Controversy!*

The implications of this are fantastic.

But, say some, that was just a statement by the lawyers. (Our leaders, in an attempt to excuse it away, later said just that.) Not so. First, you can know that every word in those papers, submitted to the court by the Pacific Press, was inspected and OK’d by upper leadership. Second, that particular statement was over the name of N.C. Wilson, as author.

On May 13, 1974, the annual meeting of the constituency of the Pacific Press met. The workers at the Press constituted the constituency, and each year they routinely voted in, as new members, all those workers who had been hired in the previous 12 months.

But at this meeting, a secret ballot was used on each name

separately—and Merikay’s name was not approved. Because it was not, Merikay filed retaliation charges with the EEOC.

On November 21, Judge Renfrew ruled that the Press should stop harassing the two women. Over lunch that day, Bradford told Merikay that she should sue Wickwire for writing that letter. But Merikay says she cannot do it, knowing he was just a pawn writing a letter he was told to write.

The *Opening Brief for the Defendants* (the Press) was filed on December 4. Here are a few of its intriguing statements:

3:26-29 - “The only proper disposition is to get this controversy out of the courthouse at once, and back into the Church where it belongs, where it can be dealt with by the ecclesiastical authorities.”

29:13-18 - “Just as the initial freedom of selecting a minister is a matter of church administration and government, so are the functions which accompany such a selection. It is unavoidably true that these functions, among others, include the determination of a minister’s salary.”

29:28-29 - “What the church cannot tolerate is for members to bring church disputes into civil courts.”

73:12-14 - “It follows that the Church, including the General Conference, the departments, and the institutions, are entitled to the protections of the first Amendment.”

73:15-21 - “At bottom, this is simply a case of schism. Mrs. Silver and Mrs. Tobler have decided that they know better than do the Elders of the Church how the Church should behave itself in relation to anti-discrimination laws.

The Church *per contra* has exercised its authority to declare that Mrs. Silver is at variance and has a tendency to ignore Christian counsel. Such disputes are not for judicial arbitrament.”

89:9-11 - “Laws designed to enforce fairness to workers in a commercial setting are not designed to operate in an ecclesiastical one.”

89:27-28 - “The wage policy of a church cannot be determined by the government.”

The above positions may seem remarkable, but it should be kept in mind that church leaders were trying to identify our church as essentially identical in structure and function to that of the Roman Catholic Church. A Catholic priest has no say over the salary he will receive; a nun would not dare ask for a raise.

90:2-5 - “Those who work for the Seventh-day Adventist Church respond to a religious vocation in exactly the same sense as does a cloistered nun. Man’s law is by its very nature not applicable. *Cessante legis, cessat ipsa lex.*”

1975

Then, on February 14, 1975, the General Conference Executive Committee met in a special Friday morning session and voted to recommend to Pacific Press that it “discontinue the employment” of Merikay and Lorna. The reason given was that Merikay Silver and Lorna Tobler should not have sued the church.

We are not recommending lawsuits; they are never good. The point here is that church leaders were decrying member lawsuits against the denomination, when the denomination had filed many suits against members! More on this later in this study.

“Whereas Merikay Silver and

Lorna Tobler have sued the Seventh-day Adventist Church . . . Voted, that the General Conference Committee . . . reluctantly recommends to the PPPA board that Merikay Silver and Lorna Tobler be discontinued from church employment.”

The action also recommended that their local church boards be notified of the matter.

On the evening of February 16, Blacker initiated action at the Mountain View Church to have Lorna disfellowshipped. It was postponed till the next board meeting.

The next day, Max contacted Merikay and asked her to stop speaking to him at work. He said Blacker had called him into his office—and threatened to fire him if spoke again to Merikay. He said he and his wife, Jeanette, would be in a terrible situation if he lost his job.

On Wednesday, February 19, the Press board voted to discharge the two women, as of the next day.

On Thursday, a friend told Merikay and Lorna about the General Conference action. If they could be terminated from employment, this would effectively stop the class-action suit.

Immediately afterward, Merikay received a startling phone call.

A friend from college days, Bob Ruskjer, phoned from southern California and told Merikay he had collected an 18-inch thick stack of papers—dozens of documents, and all of them lawsuits initiated by the church against its members. Ruskjer promised to fly up to the Bay Area and bring them. These documents, presented in court, would disprove a

Continued on the next tract

More WAYMARKS - from —

PILGRIMS REST

HCR 77, BOX 38A - BEERSHEBA SPRINGS, TN 37305

the merikay silver case

part three of three

Continued from the preceding tract in this series

key argument by the Press in its filed court papers.

On Friday, February 21, the EEOC immediately applied for a temporary restraining order against the firing of the two women until the *EEOC vs. Pacific Press* trial was concluded. An immediate hearing at the federal building in San Francisco was arranged to decide the matter.

As the hearing began, Malcolm Dungan strode to a position before the judge and said, "Your Honor, we are here today to discuss the religious discipline a church has seen fit to administer to its erring ministers. The termination of Lorna Tobler and Merikay Silver is religious discipline against two very schismatic ministers of the church."

After hearing Dungan for a time, Judge Renfrew interrupted him: "Pacific Press has interfered with the court's decision-making ability by taking upon itself the decision to change the status quo and fire these women."

Renfrew then ordered that the women be back to work at the Press by Tuesday.

Sabbath morning, the 22nd, Merikay learned that the conference had removed Elder Leonard Mills from the pastorate of her church (the Milpitas SDA Church), because of a child-molestation charge by a parent. Mills had consistently refused to disfellowship Merikay. With him gone, leadership would be in a better position to take her membership.

Early in March, Bob Ruskjer brought the court cases to Joan

Bradford. Included were over a hundred cases that the church and N.C. Wilson had taken part in.

On the evening of March 3, the Mountain View Church board met. It was well-known that Blacker fully intended to get Lorna disfellowshipped at that meeting. But the local church was split over the issue and, during an intermission, Blacker was quietly told that papers were in hand about a lawsuit by a member against the church which he had encouraged. He was told that if he called for Lorna's disfellowshipping, a call for his own would probably follow.

The rest of the evening passed uneventfully. No further mention was made of Lorna's membership status.

On March 13, 1975, a hearing was begun to consider the request of Silver and Tobler to remain in their Press jobs until the *Silver vs. PPPA* trial began. It lasted several days.

All of the following (from March 13 through 21) can be read in the trial transcripts of case C-74-2025 CBR, Volume I:

In his opening statement, Dungan said, "The Pacific Press Publishing Association is owned and operated by the General Conference of the Seventh-day Adventists, which is the Seventh-day Adventist Church." Gasps went up from many of the Adventists in the courtroom at that audacious claim.

John Glenn, representing the EEOC, replied that the Press was not a church. Using a church-

owned hospital as an example, he said: "The true test of that is not the individual affiliation of the members . . . [if] all are Catholics or if it is controlled by Catholics, the hospital does not, therefore, become a Catholic Church."

Both sides knew that an important factor would be Elder Mills' testimony that Merikay was in good and regular standing at his church. This was important, since only church members could work at the Press. But, during the noon break, Bradford overheard N.C. Wilson threatening Mills with firing and disfellowshipment, if he testified in Merikay's behalf!

But to the surprise of everyone who knew about the threat, under oath, Elder Mills said not one negative word against Merikay. Joan Bradford asked him straight-forward questions and he replied with simple, truthful answers. Only by lying could he avoid the threatened doom.

The first afternoon was filled with Dungan trying to prove the court had no jurisdiction in the case, and John Rea (from EEOC) and Bradford trying to prove that the General Conference had no jurisdiction over the local congregation.

The next day at the hearing, Dungan asserted that our church structure is "hierarchical," and the General Conference has the authority to order any member fired from employment or disfellowshipped from his or her local church.

Bradford then called Floyd Rittenhouse, a retired Adventist college president, to the witness stand to refute that notion.

On Monday, March 17, Bob Ruskjer testified regarding the

lawsuits instigated by the denomination against its members.

At issue was the right of church members to bring church problems into the civil courts. But Merikay's attorney, Joan Bradford, noted that not long before an Adventist dentist had leased offices in a building owned by the Central California Conference (the conference where the Pacific Press was situated). When a misunderstanding arose over the terms of the lease, instead of resolving the matter privately with their church member—the conference sued him in the public courts! The dentist, Earl E. Brenneise, D.D.S., brought a cross-action for declaratory relief, and won.

To make matters worse, before the conference filed suit against him, Brenneise had pled with them not to initiate it, but instead to amicably settle it in an internal church hearing. To top it off, that plea was submitted in a letter addressed to Elder Blacker, at that time union president, and at the time of the EEOC trial, Pacific Press manager!

Other incidents of church vs. member court trials were also noted. All in all, Bradford placed into evidence 124 lawsuits between Adventists and Adventist institutions in San Bernardino Superior Court alone. She pointed out that 98 of those cases had been filed against Adventist institutions, and that all the plaintiffs in all those cases were still employees of the denomination, and many were still writing for denominational publications.

On Wednesday, March 19, Judge Renfrew issued his decision, regarding the motion of the defense, to throw out the case. He denied that motion, which would have permitted the Press to immediately fire the two women.

This meant the preliminary hearing would continue.

On Wednesday, the 20th, N.C. Wilson, at that time vice president for the North American Division, testified. Under oath he said:

“ ‘Hierarchical,’ to some, would indicate that the authority emanates from the top and flows through . . . The General Conference Committee is the highest authority in the Seventh-day Adventist Church.”

On paper, the General Conference Session is the highest authority, not a group of men at world headquarters. Every church member knows that. But, in reality, the highest authority in the Seventh-day Adventist Church ought to be God and His Inspired Word, not the opinions or decisions of any uninspired men.

In his testimony, repeatedly Wilson said “the church says this,” when he should say, “the General Conference says this.”

On March 21, after five days of hearings, the concluding arguments were presented by the attorneys, and the judge handed down his decision. He ruled that the women must be reinstated in their jobs under the same conditions that had prevailed during the two weeks prior to their firing, but that they need not be given editorial work.

He also ruled that the Press was not exempt, by taking refuge in the First Amendment, from complying with Title VII provisions of the Civil Rights Act. The trial itself was set for October.

But after the hearing was over, the Press immediately appealed the decision and applied for a stay of injunction pending appeal. We will learn below that, on May 26, it was granted by an appeals court. This action effectively reversed Judge Renfrew's decision, and permitted the Press to go

ahead and terminate the employment of both women. This reversal meant that, by firing the two women, they would no longer be Press employees and Merikay's suit could no longer be a class-action suit. It would have to be refiled as an individual suit.

On April 3, Elder Mills phoned Merikay and told her that his trial had been thrown out because the woman's child refused to say what the mother said the child had said.

Mills then said he went to the police station and saw the records of his case. Within those pages, he learned that his Central California Conference president had told the police that both he and his conference office would cooperate in any way necessary to secure Mills' conviction and imprisonment.

He told Merikay that, because of his honest testimony on the witness stand, he doubted that the conference would permit him to continue in the ministry.

On April 3, Blacker wrote Merikay, informing her that she had been stripped from participation on all editorial committees.

On April 10, all work was taken from her, and she sat in an empty office room.

On May 26, the appeals court issued a stay of injunctive relief, which meant the Press could fire the two women.

On Thursday, May 29, Merikay received her termination notice and severance pay (about \$1,000). She drove home and learned that Lorna, also fired, was going to Germany to be with Gus.

Because Merikay was no longer a Press employee, the class action suit could no longer continue, so, in July, Judge Renfrew

decertified it. By this action, Merikay could no longer represent a group of women. Henceforth, she could only represent herself and only those women who would individually enter the suit with her as plaintiff interveners.

1976 - 1983

Ten months later, in May 1976, the Ninth Circuit Court of Appeals reversed Renfrew's decision for EEOC on technical, procedural grounds. The case was remanded to Renfrew who dismissed it. That ended the first EEOC suit (on behalf of Silver).

Two months later, in July, after nearly two years of separation, Merikay and Kim were divorced. They loved one another, but the seemingly endless round of litigation had shattered it. (It would be nearly two more years before it finally ended.) To our knowledge, Merikay never remarried.

Thirteen months later, in August 1977, EEOC filed suit on behalf of Lorna Tobler. The suit was filed on retaliation charges (her firing, etc.), and to recover head-of-household benefits. Thus began the second EEOC suit (on behalf of Tobler).

Half a year later, in April 1978, the *Silver vs. PPPA* case finally came up for trial. (Keep in mind that this was the first suit, and not an EEOC case.) That morning, before it began, she and her attorney, Joan Bradford, agreed to settle out of court. The amount she received was \$60,000, half of which went to Bradford (who had worked on the case without payment since January 1973). They probably settled, because they thought it likely they would lose in court or on appeal. The class action part of this suit had already been eliminated, and that was the point Merikay was interested in. Also Bradford probably knew that

EEOC planned to file a new class action suit soon after.

The next month (May), another class action suit was filed; this one by EEOC. It was based on the evidence gathered by Bradford during the *Silver vs. PPPA* case.

In June 1978, Lorna Tobler's EEOC case came to trial, and both sides presented their briefs all over again. Once again, it was Judge Renfrew who presided. By this time, he had learned a lot about us.

Time dragged by, until December 1979, when Renfrew received an appointment to the Justice Department in Washington D.C. Prior to departure, he had to settle all his outstanding cases. So, in the Tobler (EEOC) suit, he rejected the Press's claim that the government had no right to interfere with employment practices. His ruling was against the Press.

Four months later, in April 1978, the Press appealed Renfrew's decision.

Over a year later, in August 1981, Spencer Williams (the judge who replaced Renfrew) ruled in favor of EEOC's class action suit. This meant that the women at the Press could receive equal pay for equal work.

In May 1982, the appeals court upheld Renfrew's ruling in the Lorna Tobler (EEOC) suit.

That same year, church leaders decided not to appeal *EEOC (Tobler) vs. PPPA* to the Supreme Court.

Four months later, in September, the Press dropped 22 employees (probably because of belt-tightening, since they were having to pay higher salaries to some workers). Max Phillips was called in and given six-months salary settlement. He had been dropped

WHERE ARE THEY TODAY?

At the time of the writing of her 1985 book, *Betrayal*, Merikay was no longer a church member, but in a recent 1995 article, it was noted that she again is a member. Merikay has completed a master's degree in religious studies, and is a communications consultant for the California State University system.

Lorna and Gus Tobler now live in the San Jose area, where she works as a legal assistant in a San Jose law firm. She holds several offices in the Mountain View Church (including head deacon and chair of the personal ministries committee), where both she and Gus have their church membership.

also.

In December, the Ninth Circuit Court of Appeals decreed that Pacific Press would have to pay the judgment in the Tobler (EEOC) case. In the settlement, which took place in February 1983, Lorna was given \$77,000 by the Press.

The only item yet remaining was to pay the other women (140 of them) who had been represented in Tobler's class action suit against the Press. In October 1983, Judge Williams handed down a judgment, requiring the Press to deposit over \$600,000 in a bank, to be disbursed in nontraceable checks to the women workers at the Press. In December, the money was distributed.

The last Silver/Tobler case had ended.

CONCLUSION

As we look over the accomplishments, and the wreckage, we ask ourselves: What were the re-

HOW MANY COURT CASES WERE THERE?

SILVER VS. PPPA — January 31, 1973 to April 1978

It was filed as a class action suit to recover equal pay for equal work on behalf of the women working at PPPA. The class action aspect was later thrown out, and Silver settled on the day of the trial.

EEOC VS. PPPA, et. al. — August 1974 to March 21, 1975

It was filed to stop illegal harassment and firing of the two women by PPPA. EEOC won.

EEOC (Tobler) VS. PPPA — August 1977 to December 1979

It was filed because of PPPA "retaliation," and designed to recover head-of-household benefits for Tobler. EEOC won on her behalf.

EEOC VS. PPPA — May 1978 to December 1983

Based on data acquired during Silver vs. PPPA suit, it was filed as a class action suit against PPPA, on behalf of the women workers. EEOC won.

sults?

Most obvious of all was the fact that, during the decade of the litigation, the church changed its salary policies. First, single men were paid the same as married men (head-of-household was eliminated). Then married female employees received the same health and maternity benefits previously given to wives of male employees. Finally, single women received the same salaries and benefits as male employees.

In 1985, Merikay wrote a book, entitled *Betrayal*. An interesting title. What and who was betrayed?

Merikay betrayed the Press, and exposed it to government interference. The Press betrayed the women workers by not paying them an equal amount for equal time. The excellent head-of-household plan, which enabled mothers to stay at home with the children was betrayed. All the workers at the Press were betrayed, for seeking to grasp more, many were laid off. Pacific Press only took in a certain amount of money, and could only pay out a certain amount of total wages.

The betrayals at Pacific Press soon spread throughout the

church in the United States.

One effect was layoffs. For example, because of the Silver/Tobler suits, the church work force throughout America was reduced. The reason: The women workers had to be paid more. Many small church schools closed their doors; other workers were laid off.

Another effect added momentum to the women's lib movement. It had effectively started in September 1973, when Dr. Josephine Benton joined the Sligo Church in Takoma Park, Maryland, as the first female associate pastor of an American Adventist congregation. In 1980, she became the first American in recent history to serve as senior pastor of a church: the Rockville, Maryland, church.

Winning the war on women's wages (what began as a petition, ended, because of leadership opposition, as a war) gave great impetus to the "women's rights" issues in the church. Every year the larger battle—to make women as full-fledged pastors as the men—increases.

But there were also other losses.

One was the shattering of Merikay's marriage. Another was Merikay's loss of her church membership.

In the mind of the present

writer, the willingness of church leadership to destroy people in order to accomplish their objectives stands paramount. Especially in mind is the case of Elder Leonard Mills, pastor of the Milpitas Seventh-day Adventist Church. It was a small church, with only about a hundred members at the time of the Merikay lawsuit. Early on, Merikay and Kim had transferred their membership from the large Mountain View Church to the little Milpitas Church.

Both the church members and Elder Mills recognized they were Christians, and respected their concern to improve the wages of women in the church. In spite of mounting conference pressures, the little church refused to disfel-lowship Merikay.

So, in order to obtain their objective, church leadership was willing to put Elder Mills away behind bars for fifteen years, if it might help them win a lawsuit! He spoke the truth; he did the truth. And they were going to try and put him in prison to eliminate him.

What a horror! What a revelation of motives and character! Betrayal! Yes, but what a betrayal!