

# NEW YORK



## LAW REVIEW

CONTINUING UNITED STATES LAW REVIEW • ESTABLISHED 1929  
FORMERLY AMERICAN LAW REVIEW • ESTABLISHED 1866

---

VOLUME LXXIV

FEBRUARY, 1940

NUMBER 2

---

### Notes *and* Comment

---

#### GROUPS ARMING IN THE NAME OF RELIGION OR PATRIOTISM

IT would be easy to exaggerate the significance of the recent arrest in Brooklyn of seventeen members of the so-called "Christian Front" on the charge of seditious conspiracy. There are, however, circumstances and implications involved in the event which government authorities need not be expected to ignore.

General Hugh S. Johnson, in his column published in the *New York World-Telegram* and other papers, derides the newspaper stories describing the episode and discussing the allegedly far-flung activities of the Front, declaring it to be "both silly and contemptible", to spread "this piffling stuff out in the oceans of publicity which dignifies it as a serious plot to overthrow the government, seize the arsenals and establish a dictatorship."

On the other hand, many com-

mentators and editors appear to discern in the activities of the so-called Christian Front in different parts of the country, and in the avowed sympathy of Father Coughlin for this organization, a possibility of danger to our institutions.

Seditious conspiracy is not a recently created offense against the government. It dates back to the year 1861, the year which saw the beginning of the War Between the States. Before that time there was a federal statute which imposed a punishment for forcible opposition to the execution of an act of Congress, but a mere conspiracy for that purpose was not criminal. Since 1861, the law has provided for a fine up to \$5,000 and imprisonment up to six years, or both, for persons who conspire to overthrow or destroy by force the government of the United

States, or to oppose by force the authority of the government, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize or possess any property of the United States contrary to the authority thereof. The actual use of force is not a necessary element of the crime. The conspiracy is sufficient.

The Brooklyn "conspirators" were found to possess a few cans of cordite, a dozen Springfield rifles, 3,500 rounds of ammunition and a small miscellaneous assortment of other arms. Such an arsenal, it naturally occurred to many, would not suggest a serious or well considered undertaking to overthrow the national government. It was asserted, however, that some of the Brooklyn "conspirators" were members of the National Guard and had surreptitiously secured arms from that source, from which additional supplies might have been stolen.

Since the Brooklyn arrests, the newspapers have told us that inquiries are proceeding in Philadelphia and in Boston. We are informed that the Boston office of the Christian Front was originally called the "United Defenders of Americanism," and a member of the Boston police reported it to be a strongly organized group, though relatively small in numbers, with "vague affiliations" with other anti-communist and anti-Semitic organizations.

The head of the Boston group, one Moran, is reported to be also a member of the so-called "League for Constitutional Government," referred to as a New York organization, which, it is said, distributes literature attacking democracy as "the tool of Bolshevism, Communism and Anarchy."

In Philadelphia it was announced that the local branch of the Christian

Front and the personnel of its membership had been under the scrutiny of federal agents for some months and that, as in the recent Brooklyn arrests, National Guardsmen were among its members.

One of those arrested in Brooklyn had addressed a gathering of Christian Fronters in Pennsylvania, and one Cassidy, another of the Brooklyn "conspirators," had addressed a similar gathering in Boston. This would indicate a connection between these three groups, at any rate.

It was not shown, however, that the persons arrested in Brooklyn were racketeers or men with criminal records, though one of them had been convicted of carrying concealed weapons. For the most part, according to the news stories in the *New York Times* of January 16, the arrested men had good reputations in their neighborhoods, where storekeepers and occupants of nearby homes seemed surprised at their arrests.

They were originally held, as all know, in \$50,000 bail each, which none of them could give. Bail was later reduced although, after a consideration of the evidence, indictments were found against all by a federal grand jury in Brooklyn.

In some of the accounts, the Christian Front is described as anti-communist and anti-Semitic; others describe it as anti-communist and anti-Nazi. If it is strongly anti-Semitic, it is probably not strongly anti-Nazi, the Nazis being violently anti-Semitic.

Investigation of the Christian Front has brought to light names of many organizations, with which the general public is unfamiliar, most of them claiming patriotic objectives and operating under titles appropriate to such purposes.

But there is a sinister suggestiveness in the thought that groups of citizens, however small, are organizing throughout the country and arming, for the avowed purpose of protecting their personal liberties from destruction, and the nation from the intrusion of alien and hostile ideologies. The public authorities, national and state, are fully competent for all such purposes and will not fail to act promptly and efficiently, when information is furnished. History has shown that organizations of citizens formed for the alleged purpose of sustaining the public authority have sometimes been turned into disloyal and even revolutionary groups, by demagogues and agitators.

A well-known newspaper commentator has called attention to the fact that during the 1936 presidential campaign Father Coughlin spoke with "ominous insinuation" of a resort to bullets instead of ballots. More recently "Social Justice," Coughlin's weekly, contained a paragraph reading:

Nevertheless, the Christian way is the peaceful way until — until — until all argument having failed, all civil authority having failed, there is left no other way but the way of defending ourselves against the invaders of our spiritual and national rights, the Franco way. And when your rights have been challenged, when all civil authority has succumbed before the invaders, then and only then may Christians meet force with force.

The danger to democratic institutions from unscrupulous agitators is probably as great today as it was when the intelligence quotient of the masses was far lower. Mankind is as much ruled by instinct and impulse in 1940 as it was many centuries ago. And today the mechanics of inflammatory appeals are far more

efficient than at any time in the past.

Of course, "the right of the people to keep and bear arms" is assured by the Constitution of the United States; but this has been construed as a limitation on the national government to prevent interference with the organization of militia by the states. (*United States v. Cruikshank*, 92 U. S. 542; *English v. State*, 35 Tex. 473; *State v. Workman*, 35 W. Va. 367.)

Groups of citizens organizing and arming without state authority, or organizing on "military lines" without actually arming, for the purpose of employing force in the protection of rights which it is the duty of government to protect, may justly be regarded with suspicion and kept under the surveillance of the public authorities, ready to act if any violation of law should be shown. Nor need this conclusion be affected by the fact that the organizations bear such names as "Christian Front," or "United Defenders of Americanism," or the "League for Constitutional Government," or any similar title that such an organization may assume.

#### EARLY DAYS OF THE NEW YORK STATE BAR ASSOCIATION

NEW YORK Bar Association, which has just held an unusually well-attended meeting in New York City, was organized in November, 1876, and incorporated by the New York Legislature the next year.

The New York State Bar Association is one year older than the American Bar Association, but is six years younger than the Association of the Bar of the City of New York, according to an interesting note recently published in our esteemed

contemporary, the *New York Law Journal*.

The State Bar Association was, in fact, according to the note in the *Law Journal*, organized as a result of initiative taken by the older association, the Association of the Bar of the City of New York, which, in October, 1875, adopted a resolution to appoint a committee to inquire into the propriety of the formation of a State Bar Association. This committee consisted of Elliott F. Shepard, Albert Mathews, Clifford A. Hand, Hamilton Odell, and Robert W. DeForest. After a few months of service, Mr. DeForest resigned from the committee and Mr. Cadwalader E. Ogden was appointed in his place.

Accordingly, the committee of the City Bar Association, in November, 1875, sent a circular to members of the bar throughout the state, the purpose of which was to elicit the sentiment concerning the formation of a state association. To this circular there was a very favorable response. The result was that the City Association issued a recommendation that the bar should appoint 20 delegates and 20 alternates from each of the eight judicial districts (as then constituted) to a convention to be held at Albany for the purpose of organizing a state association.

When the convention assembled, the sentiment for the organization of a state bar association appeared to be strong. The State Bar Association was thereupon organized and a membership was enrolled of approximately 650 members. In the first published list of members are names still cherished in revered memory. These include: Austin Abbott, Mortimer C. Addoms, Ellery E. Anderson, William Waldorf Astor, Edward T. Bartlett, Franklin Bartlett, Clark Bell, Albert B.

Boardman, John M. Bowers, William Allen Butler, William G. Choate, Frederic R. Coudert, Sr., Joseph F. Daly, Julien T. Davies, Lewis L. Delafield, John R. DosPassos, Paul Fuller, Sr., Elbridge T. Gerry, Joseph Larocque, Charles O'Connor, John E. Parsons, Wheeler G. Peckham, Jr., William Walter Phelps, Edwards Pierrepont, Elihu Root, Elliott F. Shepard, William Rhinelanders Stewart, Algernon S. Sullivan, Edmund Wetmore, and Stewart L. Woodford none of whom now survives.

John K. Porter, of New York, was the first president of the State Bar Association and at its first meeting made an address of exceptional earnestness and dignity, in which the purposes and aims of the association were discussed. In the course of this address, President Porter said, in part:

If, as we trust, this Association shall be permanent, each of us, who are concerned in its organization, will have in its record a place of honor, to which our descendants may refer with no unworthy pride; and we may all claim a title to the remembrance of our brethren in after times, as among the founders of an institution identified with the development of jurisprudence, and with the permanent interests and prosperity of the State. . . .

Men die, but the institutions they unite in founding often live after them. Let us trust that this association may endure, and that it may exercise a collective and permanent influence. We are strengthened by association with each other. The standard of professional integrity and honor is elevated by mutual intercourse, and by the consciousness that our own status is determined by the enlightened judgment of our brethren. The weight of the profession in the community, and its influence upon public affairs are greatly increased when it is known that the ends they aim to promote are not those of personal ambition,

or individual rivalry, but such as are identified with the general good, the advancement of the highest interests of society, the perfecting of our system of jurisprudence, the maintenance of public order and the stability of private rights.

The standing committees of the state bar association, as then appointed, were not so numerous as the committees of today, but most of them have been continued and others added. They included an Executive Committee, a Committee on Admissions, a Committee on Grievances, a Committee on Law Reform, a Committee on Legal Biography, and a Committee on Prizes.

It is especially interesting to note that the State Bar Association even then recognized the importance of post-admission education and that the purpose of the Committee on Prizes was to establish a post-graduate prize to be contested for by members of the bar of five or more years standing. The prize was generous in amount — \$250 (the amount being made up by voluntary subscriptions). It was awarded annually to the contestant preparing the best essay on the subject selected. It is also interesting to note that the first subject selected was "The Legal Relations of Capital and Labor, the Right of the State to Interfere between Employer and Employee; and What Legislation, if any, Should be had on this Subject."

Of the first committee on Prizes, Elliott F. Shepard was chairman and Chauncey M. Depew was one of the members.

The prayer of John K. Porter, the first president of New York State Bar Association, that the association might endure and might exercise a collective and permanent influence has been answered.

From 1877 onward, New York

State Bar Association has shown steady growth, not only in increases of membership, but in influence and prestige. The 1939 Annual Report of the Association shows a membership of 4,606. The list of presidents of the association, of whom there have been forty-four in all, is a roster of names of great distinction. War-nick J. Kernan, of Utica, the recently elected president, is recognized by the bar of the state as one of its leading members, justly deserving of the honor which has come to him and one who can be relied upon to maintain the high standards and traditions of his predecessors.

The living ex-presidents of New York State Bar Association are: Henry W. Taft, former Governor Nathan L. Miller, former Justice Arthur E. Sutherland, of Rochester, William C. Breed, former chief Judge Frank H. Hiscock, former Judge Samuel Seabury, former Justice Daniel J. Kenefick, of Buffalo, John Godfrey Saxe, George H. Bond, former Justice Joseph Rosch, of Albany, and Fred L. Gross.

#### ATTORNEY GENERAL JACKSON

"ALMOST exactly six years ago," said Robert H. Jackson in a recent address, "I arrived in Washington to become General Counsel for the Bureau of Internal Revenue. Promising myself and my clients that it was for a year only, a good deal bewildered at the size and complexity of the government machine, I joined the ranks of government counsel."

Mr. Jackson was mistaken in his belief that he would return in a year to his home at Jamestown, in western New York, and to his practice. Actually, he was entering on a rigorous six-year period of training which was to qualify him in unusual degree