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A Current Problem in Freedom of Speech and Religion

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as a fact that the confidence necessarily reposed in a physician would tend to lull the patient into a feeling of security and thereby to allow what might have been a valid cause of action to become barred by the passage of time.³⁹ We have seen that a contract action provides only a small measure of relief. The treatment theory as enunciated in *Gillette v. Tucker*⁴⁰ and *Sly v. Van Lengen* is not founded so much in sound reasoning as in an indirect attempt to get around Section 50. Although it is reassuring to know that the courts realize the injustices caused by the statute, the proper remedy, nevertheless, is not with them but with the legislature that produced it.

The *Monahan*, *Rudman* and *Isenstein* cases introduced another source of criticism concerning the Statute of Limitations for malpractice. In justice to the *Monahan* opinion, it must be admitted that the statute was undoubtedly passed because of the uncertainty attending the treatment of any disease in the beginning and the difficulty of tracing the results of such treatment as time goes on. But this does not necessarily exclude a realization of the fact that Section 50 was adopted as an indulgence to a favored class. Generally speaking, those who have shown their respect for our laws have always constituted a "favored class" in the eyes of the legislature. In this instance, that class consists of licensed practitioners. It has been the avowed purpose of both the legislature and our courts to *discourage* those who disobey the law. Extending the benefit of a short period of limitation to illegal practitioners is hardly a means to this end. On the other hand, a registered nurse should be granted this indulgence. In such case, the statute would still be serving its purpose as expressed by Justice Staley, but it would be a source of protection only to those who deserve the "blessing" of the law.

It is submitted that amendment of the Statute of Limitations as to malpractice is the only solution to the problem. As long as Section 50 continues to remain on the books in its present form, our courts will be saddled with an unnecessarily ambiguous statute. An amended statute, explicit in terms and leaving no room for doubt on any point, would prevent further injustice. This section, perhaps more than any other, merits the attention of the revisers of our Civil Practice Act.

ROSE GRESS.

A CURRENT PROBLEM IN FREEDOM OF SPEECH AND OF RELIGION

Labor cases excepted, there is, perhaps, no more fruitful source of the law governing inter-group relations than the litigation which has resulted from attacks upon minority groups. Typical are the

³⁹ (1923) 37 HARV. L. REV. 272.

⁴⁰ See note 14, *supra*.

many court appearances of Jehovah's Witnesses.¹ The Witnesses² are usually looked upon as a religious group³ but they object violently to the application to them of any form of the word "religious".⁴ Instead they prefer to describe themselves as persons who have made a covenant with Jehovah, God, to do His will as outlined in the Scriptures.⁵ One of the scriptural commands upon which they place great importance is the admonition to preach the word of God from house to house.⁶ This they do literally, carrying with them books, pamphlets and periodicals as well as phonograph records which they play for all who will give them a hearing.

The literature and records are, for the most part, the products of Judge Rutherford⁷ who succeeded to the leadership of the Witnesses shortly after the death in 1916 of the founder, Charles Taze Russell.⁸ The doctrines contained therein are substantially Adventist and the Second Coming of Christ is the foundation of what might be called their theology.

Russell had calculated that the Second Coming had taken place in 1874⁹ (albeit invisibly) and that the final destruction of the world would take place in 1914.¹⁰ Rutherford, however, prefers to look upon 1914 as the "beginning of the end".¹¹ He contends that there is now taking place on earth a great battle between the World, under the leadership of Satan, and the forces of Jehovah, God, *i.e.*, His Witnesses.

¹ RUTHERFORD, JEHOVAH'S WITNESSES DEFENDED 1. Over three thousand arrests occur annually. The recorded cases are now numbered in the hundreds.

² Cf. Isaiah 43:10-12. "Ye are my witnesses, saith the Lord."

"Witnesses" is usually spelled by members of the group with a small "w". To avoid ambiguity, however, a capital "W" will be used throughout this note.

³ It is extremely difficult for the average individual to disassociate religion from the worship of God as the Witnesses attempt to do.

⁴ See note 14, *infra*.

⁵ Among their number the Witnesses include Christ (Whose Divinity they deny), Abel, Abraham and "all the faithful prophets from Moses to John the Baptist." RUTHERFORD, THEOCRACY 18, 20, as well as the contemporary Witnesses, many of whom shall never die. RUTHERFORD, HARP OF GOD 255. REV. (APOC.) 7:9-17.

⁶ Cf. Luke 9:1-4; RUTHERFORD, THEOCRACY 29.

⁷ Joseph F. Rutherford served as a judge on four separate days in the Circuit Court, Boonville, Mo., in accordance with the Missouri statutes of that time which permitted members of the local bar to select one of their members as a substitute in the absence of the regular judge. Cir. Ct. Rec., Cooper County, Mo. Book 20, p. 576, Feb. 7, 1899; Book 22, p. 73, July 23, 1899; Book 25, p. 213, March 15, 1905; Book 25, p. 239, March 29, 1905.

⁸ The first corporation with which the Witnesses were connected was formed in Pennsylvania in 1884 under the direction of Russell. RUTHERFORD, THEOCRACY 16, 17.

⁹ 2, 3 RUSSELL, STUDIES IN THE SCRIPTURES; RUTHERFORD, HARP OF GOD 251; RUTHERFORD, THEOCRACY 29, 33.

¹⁰ (1939) 37 THE CATHOLIC MIND 771, 772, citing 2 RUSSELL, STUDIES IN THE SCRIPTURES, *passim*.

¹¹ RUTHERFORD, HARP OF GOD 251. Cf. also *id.* at 234.

The World according to Rutherford's use of the term¹² is another name for a combination of religion, commerce and government.¹³ Religion,¹⁴ he states, is a "Snare and a Delusion",¹⁵ invented by Satan to draw mankind away from the knowledge and worship of God.¹⁶ Chief offender in this regard is the Roman Catholic Church¹⁷ whose hierarchy¹⁸ is plotting to rule the world. According to the Witnesses, the Protestant¹⁹ and Jewish²⁰ religions have joined forces with Catholicism²¹ to "carry forward their political and commercial schemes."²² The links between the government, commerce and religion are "demonstrated" in the appointment by the President of the United States of the former head of the U. S. Steel Corporation as ambassador to the Vatican.²³ Finally, it is predicted by this group that this "unholy alliance" will be destroyed in the imminent battle of Armageddon,²⁴ after which the Witnesses will reign triumphant during the Millennium.²⁵

Rutherford's diatribes against the Catholic Church are not particularly new²⁶ and his charges against the Jews have been echoed for centuries. But his vitriolic attack upon these two groups plus his inclusion of Protestants among the cohorts of Satan, his condemnation of commerce and government and his characterization of the salute to the American flag as an idolatrous ceremony²⁷ have not been conducive to an altogether favorable reception of his message.

¹² Cf. *id.* at 249.

¹³ RUTHERFORD, RELIGION 22. Cf. RUTHERFORD, HARP OF GOD 234.

¹⁴ "Religion" is defined by the Witnesses as "doing anything contrary [*sic*] to the will of Almighty God." RUTHERFORD, THEOCRACY 18.

¹⁵ *Cox v. State of N. H.*, 312 U. S. 569, 61 Sup. Ct. 762 (1941).

¹⁶ RUTHERFORD, GOD AND THE STATE 13.

¹⁷ "All religions are against God and against His kingdom under Christ." RUTHERFORD, CURE 17.

¹⁸ 21 CONSOLATION, March 6, 1940, pp. 5, 10; RUTHERFORD, RELIGION 10.

¹⁹ RUTHERFORD, CURE 17; 22 CONSOLATION, Sept. 17, 1941, p. 3.

²⁰ RUTHERFORD, RELIGION 23; RUTHERFORD, THEOCRACY 48; RUTHERFORD, CURE 8.

²¹ RUTHERFORD, CURE 6. Cf. also *id.* at 8, 9.

²² *Id.* at 18.

²³ *Id.* at 8.

²⁴ RUTHERFORD, RELIGION 91.

²⁵ RUTHERFORD, THEOCRACY 52; 21 CONSOLATION, Mar. 6, 1940, p. 30. "Armageddon. The place of a great battle to be fought out on 'the great day of God' between the powers of good and evil." (Rev. [A.POC.] 16:16.) WEBSTER'S COLLEGIATE DICTIONARY (3d ed. 1930) 58.

²⁶ "Millennium. A thousand years. Specif., the thousand years mentioned in Rev. (Apoc.) xx, during which holiness is to be triumphant in the world." WEBSTER'S COLLEGIATE DICTIONARY (3d ed. 1930) 620.

²⁷ Cf. BILLINGTON, THE PROTESTANT CRUSADE 1800-1860, a scholarly and minutely annotated study, by a non-Catholic, of anti-Catholic prejudice in the United States; WILLIAMS, THE SHADOW OF THE POPE, an account of the anti-Catholic propaganda which was especially prevalent in this country about the year 1928.

²⁸ "Flag saluting is in direct violation of God's law," RUTHERFORD, UNCOVERED 44; cf. *Minersville School Dist. v. Gobitis*, 310 U. S. 586, 60 Sup. Ct. 1010 (1940).

Moreover, the Witnesses who believe it is their duty²⁸ to warn the peoples of the world of the imminence of Armageddon and the Theocratic Kingdom,²⁹ are sometimes so overzealous as to utilize methods which constitute a breach of the peace. An instance of these methods is contained in the report of the *Palms* case.³⁰

"At 8:30 o'clock in the morning of Sunday, October 29, 1939, a crowd numbering well over one hundred calling themselves Jehovah's Witnesses, came to Kutztown,³¹ a borough having less than 3,000 inhabitants. They had come there on prior occasions and the police had received complaints of their annoying the people of the borough. On this occasion they staged a parade on the sidewalk of the principal street carrying placards and sandwich boards bearing the words, 'Religion is a Snare and a Racket', and were accompanied by a truck with a sound device and magnifier (amplifier) which caused an unseemly racket. They rang doorbells, and when denied admittance at the front door, went around to the back and entered there; in some instances, they forced their way into houses and would not leave although requested to do so, and at one home a young woman had to call her father before the intruder would leave. They were trying to sell literature of the Watch Tower Bible and Tract Society and to play phonograph records attacking other religious beliefs. They came around as many as five times to certain homes."

It was inevitable that doctrines and methods of propaganda such as these would soon lead their protagonists into court. Litigation was nothing new for the Witnesses since Rutherford and several other Witnesses had been convicted of obstructing the administration of the Selective Service Act of 1917 and had served nine months in the Federal Prison at Atlanta, Georgia.³² About 1935, however, the number of prosecutions against Jehovah's Witnesses began to increase not only in America but in several foreign countries.³³ The controversies³⁴ over the expulsion from school of several Witnesses who refused to salute the American flag were then before the lower courts and the accusations of lack of patriotism to which the Jehovah's Witnesses were subjected, increased almost daily, in frequency and in-

²⁸ RUTHERFORD, THEOCRACY 39.

²⁹ *Id.* at 49.

³⁰ Commonwealth v. Palms, 141 Pa. Super. 450, 15 A. (2d) 481, 484 (1940).

³¹ The Witnesses make a practice of working away from home. See *Bevins v. Prindable*, 39 F. Supp. 708, 711 (D. C. E. D. Ill. 1941).

³² N. Y. Times, May 9, 1918; June 7, 1918; June 22, 1918; May 17, 1919.

³³ Pamphlets of Jehovah's Witnesses were banned in Germany. N. Y. Times, June 19, 1935, p. 1, col. 2. The organization was suppressed in Saxony. N. Y. Times, July 26, 1935, p. 8, col. 4. A British commission investigating labor troubles in the Northern Rhodesia copper belt, called the movement "dangerously subversive". N. Y. Times, Nov. 17, 1935, p. 32, col. 4. The organization was likewise banned in Hungary, N. Y. Times, Dec. 14, 1939, p. 4, col. 4; New Zealand, N. Y. Times, Oct. 26, 1940, p. 5, col. 3; and Australia, N. Y. Times, Jan. 17, 1941, p. 3, c. 3.

³⁴ See (1940) 15 ST. JOHN'S L. REV. 96, n.7 for a list of the flag salute cases.

tensity. The outbreak of war in Europe heightened public feeling and on May 23, 1940 three Witnesses were forced to leave Del Rio, Texas, because of a suspicion that they were Nazi agents.³⁵ During the following weeks serious disorders broke out in Maine,³⁶ Illinois,³⁷ California³⁸ and Texas³⁹ and the cause of the Witnesses was not improved by the decision in the *Gobitis* case⁴⁰ which upheld the action of the Minersville, Pa., school board in expelling the children of several Witnesses who had refused to take part in the flag salute exercises. The extent to which feeling was aroused was evidenced by the forcible "induction" into the army of a Witness who claimed to be a conscientious objector.⁴¹

Naturally the local police throughout the country were fearful of a repetition in their respective communities of the riots which had occurred elsewhere. When breaches of the peace actually occurred, of course, the disorderly conduct statutes⁴² were available⁴³ but in no event could the Witnesses be denied all freedom of speech, press or assembly under the guise of foreseeing and preventing riots.⁴³ Nevertheless almost every conceivable method under the existing statutes and ordinances was utilized to silence or at least to regulate the conduct of the Witnesses.⁴⁴ Convictions in lower courts were followed by

³⁵ N. Y. Times, May 23, 1940, p. 15, col. 3; May 24, 1940, p. 13, col. 2.

³⁶ Six Witnesses were held in connection with the shooting of two people in Kennebunk, Me. During the demonstration which followed, the headquarters of the organization were burned. N. Y. Times, June 10, 1940, p. 19, col. 4.

³⁷ Sixty of Jehovah's Witnesses were attacked in Litchfield, Ill., for refusal to salute the flag. Thirty other members were escorted out of town after a riot in Elsinore, Cal. N. Y. Times, June 17, 1940, p. 17, col. 5.

³⁸ *Ibid.*

³⁹ Fifty Witnesses of Jehovah were besieged by a mob in Odessa, Tex., for refusing to salute the flag. Rescued by the sheriff they were jailed and on the next morning escorted out of town. N. Y. Times, June 2, 1940, p. 14, col. 1; June 3, 1940, p. 9, col. 6.

⁴⁰ *Minersville School Dist. v. Gobitis*, 310 U. S. 586, 60 Sup. Ct. 1010 (1940); discussed (1940) 15 ST. JOHN'S L. REV. 96.

⁴¹ N. Y. Times, March 20, 1941, p. 16, col. 3. He was honorably discharged July 15, 1941. Cf. 22 CONSOLATION, Sept. 17, 1941, p. 18; also Note (1941) 15 ST. JOHN'S L. REV. 235.

⁴² In New York City a magazine salesman, a Witness of Jehovah, who caused a crowd to congregate at Broadway and 44th Street, at 7:45 P. M., and refused to move on when ordered to do so by the police, was found guilty of a breach of the peace. *People v. Hussock*, 23 N. Y. S. (2d) 520 (Spec. Sess. 1940), *cert. denied*, — U. S. —, 61 Sup. Ct. 733 (1941). In *State v. Chaplinsky*, 18 A. (2d) 754 (N. H. 1941), the defendant was convicted of violating a statute which prohibited the addressing of an offensive or derisive name to another in a public street, and in *State v. Langston*, 195 S. C. 190, 11 S. E. (2d) 1 (1940), a breach of the peace was likewise held to have been effected by going on the premises of private homes and playing records on the piazza, causing crowds to gather and broadcasting religious beliefs to the public generally by means of a loud speaker on an auto.

⁴³ *Hague v. C. I. O.*, 307 U. S. 496, 59 Sup. Ct. 954 (1939).

⁴⁴ The Witnesses have been charged with sedition, disrespect to the flag, riot, breach of the peace, disorderly conduct, conspiracy against the government, trespassing, offending and annoying people, vagrancy, soliciting and canvassing

appeals and soon the United States Supreme Court in the *Lovell*, *Schneider* and *Cantwell*⁴⁵ cases defined the limits beyond which the police authorities might not operate. Reduced to their lowest terms these cases held that it is unconstitutional to vest in a public official *discretionary* power:

1. To prohibit *all* distribution of printed matter in the public streets;

2. To prohibit *all* house to house canvassing;

3. To prohibit the solicitation of money for a religious purpose because a licensing official is not convinced of the *bona fide* religious character of that purpose.

Several subsequent cases⁴⁶ followed the doctrines of these leading cases but in *Pittsburgh v. Ruffner*⁴⁷ the court distinguished the *Lovell* case and upheld an ordinance which prohibited the *selling* of articles from door to door without a license on the grounds that it was a valid exercise of the police power for the prevention of fraud such as was uncovered in *Federal Trade Commission v. Standard Education Society*.⁴⁸ Substantially the same reason was given for the validation of an ordinance of Southampton, L. I., which prohibited anyone from going from house to house unless they had a residence or business address in the village for at least six months immediately prior thereto.⁴⁹ The limitation of the prohibition to six months was held to take the case out of the rule of the *Schneider* case.

Another attempt to regulate the street activities of the Witnesses was apparently successful in the *Pascone* case⁵⁰ in which an ordinance

without a license, inciting riot, assault and battery, distributing of obscene literature, blasphemy, violating the Sabbath laws and distributing circulars without a permit. 1 KINGDOM NEWS, August, 1941, no. 9, p. 1, col. 1.

⁴⁵ *Lovell v. City of Griffin*, 303 U. S. 444, 58 Sup. Ct. 666 (1933); *Schneider v. State of New Jersey*, 308 U. S. 147, 60 Sup. Ct. 146 (1939); *Cantwell v. Connecticut*, 310 U. S. 296, 60 Sup. Ct. 900 (1940).

⁴⁶ *Village of South Holland v. Stein*, 373 Ill. 472, 26 N. E. (2d) 868 (1940), following the *Schneider* case, held that an ordinance prohibiting all canvassing for goods, wares and merchandise without a license was invalid. *Jones v. City of Opelika*, 3 So. (2d) 74 (Ala. 1941), extended this doctrine so as to make unconstitutional the prohibition on the unlicensed selling of religious articles even though the prohibition be limited to the public streets. *State v. Woodruff*, 2 So. (2d) 577 (Fla. 1941), following *Wilson v. Russell*, 1 So. (2d) 569 (Fla. 1941), held substantially the same as the *Jones* case. *Zimmerman v. Village of London*, 38 F. Supp. 582 (D. C. S. D. Ohio E. D. 1941), extended the doctrine to an ordinance prohibiting house-to-house canvassing. Cf. also *Commonwealth v. Pascone*, 308 Mass. 591, 33 N. E. (2d) 522 (1941); *Commonwealth v. Anderson*, — Mass. —, 32 N.E. (2d) 684 (1941); *McLean v. Mackay*, 124 N. J. L. 91, 10 A. (2d) 733 (1940); *Tucker v. Randall*, 18 N. J. Misc. 675, 15 A. (2d) 324 (1940).

⁴⁷ 134 Pa. Super. 192, 4 A. (2d) 224 (1939).

⁴⁸ 302 U. S. 112, 58 Sup. Ct. 113 (1937).

⁴⁹ *People v. Brown and Bohnke*, 175 Misc. 989, 27 N. Y. S. (2d) 241 (1941).

⁵⁰ *Commonwealth v. Pascone*, 308 Mass. 591, 33 N. E. (2d) 522 (1941).

prohibiting the sale of newspapers in *certain designated* public streets without a license was held constitutional. Strengthening this decision was the case of *City of Manchester v. Leiby*⁵¹ which distinguished the *Lovell*, *Schneider*, *Hague* and *Cantwell* cases and ruled that a badge of identification for news distributors, for which no charge was made but only a \$.50 deposit required, was valid and imposed no substantial burden upon freedom of press or religion. The *Leiby* case placed great stress upon the case of *Shapiro v. Lyle*⁵² which upheld the constitutionality of a regulation of the sale of wine for sacramental purposes.

Finally the Witnesses' "demonstration" or "information" parades were declared subject to regulation by the ruling in *Cox v. State of N. H.*⁵³ which upheld the constitutionality of a conviction for parading without a license in violation of a local ordinance.

A solution of some of these problems seems already to have been worked out, in part at least, by the cases in which certain reasonable restrictions and regulations regarding the Witnesses' parades, canvassing, use of amplifiers, etc., have been held constitutional.⁵⁴ In the light of these cases, it is possible that defective statutes may be amended.

Until war has actually been declared, it is not likely that the refusal of the Witnesses on grounds of conscience to render military service will be a very serious source of trouble—to the public at least. The refusal of the Witnesses to salute the flag may still be an occasion of some disorder. But the disinclination of the courts to declare delinquent, children who have been suspended from school for refusing to take part in flag salute exercises,⁵⁵ has apparently lessened the danger which the decision in the *Gobitis* case⁵⁶ seemed to forebode.

Perhaps the sort of person who could foresee the possible consequences to everyone of an abuse of freedom on the part of the Witnesses, would not be likely to allow such possibilities to arouse him to violent and illegal action.

But the religious issue is a very real, serious and extremely delicate problem. Everyone has a right to point out the errors which he believes he sees in the tenets of another—religious or otherwise—and it would be unconstitutional to forbid him to do so merely because the one whose alleged errors are exposed might be unduly disturbed.⁵⁷ But the use of vilification and invective instead of argument, the ir-

⁵¹ *City of Manchester v. Leiby*, 117 F. (2d) 661 (C. C. A. 1st, 1941).

⁵² 30 F. (2d) 971 (D. C. W. D. Wash. N. D. 1929).

⁵³ 312 U. S. 569, 61 Sup. Ct. 762 (1941).

⁵⁴ See notes 46-53, *supra*.

⁵⁵ *State v. Roland Lefevre*, — N. H. — (1941); *In re Jones*, 175 Misc. 451, 24 N. Y. S. (2d) 10 (1940).

⁵⁶ *Cf.* note 40, *supra*. Upheld school board in suspension of children for refusal to take part in flag salute exercises.

⁵⁷ *Cf.* *Schneider v. State of New Jersey*, 308 U. S. 147, 60 Sup. Ct. 146 (1939).

responsible assertion of serious charges without adequate substantiation and the anarchical attempt to weaken and destroy the foundations of our present civilization without offering an immediate and adequate substitute—these, it is submitted, constitute not a mere exercise but an abuse of free speech.⁵⁸ This is a reality which the legislature must face, for if it fails to do so, the disorders which have occurred in the past are almost certain to continue.

Of course the best solution for all concerned would be the exercise of more circumspection and caution by the Witnesses when it is evident that their message is not being well received. Since they regard their propaganda activities as forms of worship,⁵⁹ however, they are not likely to let the susceptibilities of others interfere with what they regard as their God-given duty. Hence it may be necessary to revise some of our statutes in the interests of the general welfare.

The Witnesses are usually careful to make their accusations general enough to avoid a civil action for libel.⁶⁰ Until recently, however, it was thought that an indictment for criminal libel of a group might lie in New York because of the similarity of our statute with the common law definition of libel and with the statutes in other jurisdictions.⁶¹ Since the *Edmondson*⁶² case, however, it seems as though an amendment to our statute will be necessary in order for libel of a group to be punishable criminally. If such an extension is proposed it should be limited to well ascertainable racial or religious groups, however, since a broader statute would meet almost insurmountable opposition in the legislature⁶³ and would, possibly, in the event of

⁵⁸ Cf. *State v. Chaplinsky*, 18 A. (2d) 754 (N. H. 1941).

⁵⁹ *Cox v. State of New Hampshire*, 312 U. S. 569, 61 Sup. Ct. 762 (1941).

⁶⁰ An action will not lie for the civil libel of a group. *Comes v. Cruce*, 85 Ark. 79, 107 S. W. 185 (1908). Moreover, the damages would usually be nominal unless punitive and the defendants would all too often be found judgment-proof.

⁶¹ Cf. prosecutor's brief in *People v. Edmondson*, 168 Misc. 142, 4 N. Y. S. (2d) 257 (1938). As recently as 1936 and while the *Edmondson* case was pending, A. S. Leese and W. Whitehead were convicted in England on a charge of libeling the Jews, accusing them of ritual murders. In imposing sentence the court said, "That the public well-being can be served by the publication of stuff of this kind—and I call it stuff advisedly—I cannot imagine. Nothing can be more harmful to the public weal than that." *N. Y. Times*, Sept. 22, 1936, p. 20, col. 6.

⁶² Robert E. Edmondson was indicted on June 8, 1936 for an alleged libel of the Jewish religion. Various organizations, among them the American-Jewish Committee, the American-Jewish Congress and the American Civil Liberties Union, while denouncing the act of the defendant in publishing the matter complained of, stated their belief that sound public policy looking to the safeguarding of the rights of free speech and religious liberty made it desirable that the indictment be dismissed. This was possibly the result of a desire to avoid the martyrdom issue which was raised. Cf. *N. Y. Times*, April 19, 1938, p. 44, col. 3. The indictment was dismissed by the court on its own motion in furtherance of justice on the ground that the indictment would not lie for a publication of defamatory matter directed against so extensive and indefinable a group. *People v. Edmondson*, 168 Misc. 142, 4 N. Y. S. (2d) 257 (1938).

⁶³ It is probably premature at present to suggest that slander and libel be

its passage, be subjected to uses which were not foreseen, intended or desired by the legislature.

A statute along these lines has been enacted in the State of New Jersey.⁶⁴ Several of Jehovah's Witnesses have been charged with its violation but thus far the cases have been dismissed in every instance.⁶⁵ The constitutionality of the statute is now being tested in the Supreme Court of New Jersey.⁶⁶ A bill, identical in language with the New Jersey statute except for the preamble clause, was introduced into the New York State Legislature last year⁶⁷ but it was opposed by the New York Bar Association⁶⁸ because of its allegedly loose drafting and failed to reach the floor of the Assembly or Senate.

In the event that it is thought inadvisable to extend the criminal law to include libel of groups, it may be possible to amend Penal Law § 43 so as to include inter-group conflicts within its scope.⁶⁹

But whatever course the legislature may see fit to follow, it is submitted that action of some sort is urgent for the protection of domestic peace and unity. The Witnesses cannot be left to the mercy of mob violence;⁷⁰ nor is a legislative persecution proposed. But in

dispensed with in our political campaigns. But *cf.* George E. Sokolsky, *These Days*, N. Y. Sun, Nov. 8, 1941, p. 8, col. 6. "Some day [Americans] will wonder why they have to vote for the queer folks who are the only ones who will submit to the brutality of a campaign."

⁶⁴ N. J. REV. STAT. 2:157B-1 to 8, incl.. Jehovah's Witnesses feel that this statute was directed specifically against them and "rushed through the legislature at Trenton under the lash of an agent of the Roman Catholic hierarchy." Under this bill they declare "a chance remark, a grin, or even a look, may arouse some fanatical Catholic's ire, 'incite' the animosity of a straight-laced Protestant, or awaken the hostility of a so-called Jew who is subject to illusions of grandeur. And before you know it, you are in the hoosegow or minus your roll, or both." 16 THE GOLDEN AGE, June 5, 1935, p. 554.

⁶⁵ *E.g.*, State v. Goux, N. J. 2d Cr. Jud. Dist. Ct., Bergen County (July, 1938), Judge Leland F. Ferry presiding.

⁶⁶ State of New Jersey v. Klapprott. Defendants were indicted under the so-called Propaganda statute. (*Supra* note 64.) "They filed Demurrers to the indictment and the Court having ruled against the Demurrers found the defendants guilty. Cases now being considered by the New Jersey Supreme Court." (From letter written by Prosecutor of the Pleas of Sussex County, N. J., Sept. 9, 1941.)

⁶⁷ INT. A. 474, PR. A. 483; INT. S. 311, PR. S. 323. Jan. 23, 1941.

⁶⁸ ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, COMMITTEE ON CRIMINAL COURTS, LAW AND PROCEDURE: BULLETIN 1, 1941, memo. 2.

⁶⁹ PENAL LAW § 43, prescribes a penalty for acts for which no punishment is expressly prescribed. It is a drag-net statute, designed to cover acts inimical to the welfare of the state which are difficult of definition. The very broadness of its scope suggests the extreme caution and painstaking care with which any proposed amendment to this statute ought to be drafted. Otherwise it might easily be used as an instrument of injustice.

⁷⁰ In drawing up legislation it would be well to keep in mind that in the usual criminal libel cases, the violence is committed or threatened by a third party *against the libeled party*. In the Witness' cases the violence is usually committed *against the party* (the Witnesses) *uttering* the statement which the legislature might see fit to declare libelous.

the light of European experience as to the frightful but logical results of an unrestrained outpouring of intolerant and bigoted hatred—racial or religious—it is time for Americans to re-examine this question in its entirety and provide a remedy which will be effective as well as just and constitutional.

REV. JOSEPH T. TINNELLY, C.M.