

1944

Report of Committee on American Citizenship and Bill of Rights

Minn. L. Rev. Editorial Board

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Recommended Citation

Editorial Board, Minn. L. Rev., "Report of Committee on American Citizenship and Bill of Rights" (1944). *Minnesota Law Review*. 2602.

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In correspondence with members of the committee relative to this report, the chairman received a letter from Mr. J. Neil Morton of St. Paul, a member of the committee. We quote from the letter:

"I am sympathetic to the revisions suggested by Mr. Green, but I consider that there is merit in most of the provisions of the Lea bill. We all recognize the necessity of federal regulation in this field, but the problem is to determine the proper boundaries of federal and state jurisdiction. This is a mixed question of public policy and administrative detail, regarding which there may be substantial differences of opinion, both among lawyers and the public at large. "I believe that the Association has been most useful and effective in such strictly legal matters as the drafting of the Probate Code, the Business Corporations Act, etc., whereas when the Association speaks on matters lying within the area of political controversy, it is generally ineffective for the reason that there is no unanimity of opinion on the part of lawyers, and the further reason that in this area the statement of lawyers has no greater weight than the statement of other informed members of the public. Therefore, I think it wise for the Association in its collective expressions to limit itself rather strictly to matters which are either of direct concern to lawyers or are within the special competence of lawyers to decide. "In the present case we may be dealing with a borderline situation, but I am inclined to think that it falls on that side of the line where we should not be formally committed either for or against the bill. I believe, however, that the various considerations which have been urged in support of or in criticism of the bill should be brought to the attention of the Association as an aid to the formation of an informed public opinion."

There has not been time to get the opinion of the members of the committee on the important question raised by Mr. Morton. We are therefore in Recommendation No. 2 asking the annual meeting to determine the limits within which this committee should work.

Mr. Welch, a member of the committee, wishes to express his personal opinion based on his legislative experience to the effect that the question herein involved is of such importance that the Association should instruct the committee to take definite action.

Respectfully submitted,

PAUL J. THOMPSON, Chairman
 RUSSELL L. FRAZEE, Secretary
 GEORGE W. ATMORE
 LOWELL W. BENSHOOF
 EDWARD C. FARMER
 R. H. FRYBERGER
 W. B. FRYBERGER
 LINUS GLOTZBACH

SYLVAN E. HESS
 LLOYD P. JOHNSON
 BENNETT O. KNUDSON
 RICHARD J. LEONARD
 J. NEIL MORTON
 JAMES J. QUIGLEY
 JOHN WALBRAN
 VERNON S. WELCH

REPORT OF COMMITTEE ON AMERICAN CITIZENSHIP AND BILL OF RIGHTS

The Bill of Rights Committee of the Minnesota State Bar Association was created in 1939 for the purpose of cooperating with a similar committee of the American Bar Association. The American Citizenship Committee of the Association has been in existence for many years. In 1942 it was combined with a Bill of Rights committee to reduce the number of committees.

The Bill of Rights Committee of the American Bar Association was

created in 1938 to "make public what it believes to be the facts whenever there appears to have been any substantial violation of rights vouchsafed by the Bill of Rights, and to take such steps as it may deem proper in the defense of such rights in instances which otherwise might go undefended or lack adequate public representation." Later the scope and functions of the committee were somewhat enlarged. Soon after the committee was formed, complaints of violations of civil rights began to come in. It was found that most of them were of a local character which should be handled by local committees. A request was sent to the state and local bar associations to appoint Bill of Rights Committees. In compliance with this request, the Bill of Rights Committee of the Minnesota State Bar Association was appointed.

The ABA Committee has engaged in three principal activities. It has supervised the publication of the Bill of Rights Review. It has furnished speakers on the subject of the Bill of Rights when called upon. It has filed briefs amicus curiae in several cases, involving a denial of civil rights and liberties. Because of lack of funds, the publication of the Bill of Rights Review has been discontinued, and because of the difficulties brought about by the war the meetings of the committee have lately been less frequent and its activities somewhat restricted.

No matters have been referred by the American Bar Association to your committee, nor have any specific substantial violations of rights vouchsafed by the bill of rights in cases where it may be deemed proper for your committee to take action, come to the attention of your committee.

Your committee, however, in its observation of the scene would deem itself delinquent if it did not take this opportunity to emphasize to the Bar the threat to the freedom of our people and their rights and immunities secured to them by the Constitution, in the methods of our ever growing Federal bureaucracy and the expanding authority assumed by the executive branch of the Government. We recognize that bureaucracy can not be eliminated. Many functions of Government can not be accomplished or administered except by bureaus. But the evils of bureaucracy as now practiced are not all inherent in the system and may be controlled and improved. It is the function of lawyers as alert leaders of public opinion to point out the evils and dangers, of which the following are some:

1. Actual law-making by the bureaus under the guise of regulations.
2. Lack of clear definitions of authority as between bureaus with resultant overlapping and confusion.
3. Resistance by bureaus of the right to judicial review of their decisions and decrees.
4. Establishment by bureaus of mock courts where the same agency exercises all three functions: legislative, administrative, and judicial.

and to point out possible improvements and safeguards, of which the following are some:

1. Permit existence of bureaus only under specific congressional mandate and only on a statutory basis precisely defining the area of authority and means of its exercise.
2. Stop the practice of putting administration and enforcement into hands of the agencies so that they are both judges and prosecutors in cases involving alleged violations of their own decrees.
3. Provide specifically for appeals to the courts and judicial review of administrative orders and decrees which affect personal or property rights.

We are all of a mind to yield such rights temporarily as may be necessary for the prosecution of the war, but it is not too early to raise our voices ever higher to remind the people and ourselves that we are fighting to preserve government by laws and not by the capricious wills of the people in government positions, and that we need to keep up this fight diligently on the home front as well as on the battle fronts in order that the victory in battle may not be an empty one.

We make no specific recommendations requiring action by the State