

a foreign state. An act of the legislature was considered to be necessary in the beginning to permit the incorporation here of Russian churches at the instance of the envoy extraordinary and minister plenipotentiary of Russia to the United States and the consul general here (L. 1871, c. 12; Stokes: Church and State in the U.S., Vol. 3, p. 359). There can hardly be a constitutional mandate requiring that foreign states shall be allowed to administer churches in the United States. The extent of the establishment of a church by a foreign government having this result may be a matter of degree, but where the identification is as complete as it is held to be in this case, I think that the First Amendment forbids the administration in this country of a church by a foreign government in the interest of its own temporal power. Even if this be not so, the First Amendment does not stand in the way of the judicial requirement under the principles of equitable jurisdiction that the property of a religious society shall be administered according to the purposes to which it has been dedicated. Every naturalized citizen of the United States is required to take an oath of allegiance whereby he expressly renounces and abjures all allegiance to any foreign prince, potentate, or power. Native citizens are bound to the same renunciation. Can this solemn obligation be circumvented if the foreign power operates in this country through a branch of the state bearing the name of a church—even the name of a church that is old and respected? With all but unanimity the members of that church in this country have said no. It would be strange if our fundamental law, while ordering the separation of Church and State, were so awkward an instrument that in functioning it has to produce an opposite result from that at which

it aims.

One final word may be said. Our decision does not involve interference with the right of any religious organization to select or appoint its clergy. No one disputes that the Patriarchate as now constituted may appoint and dispatch an Archbishop here to minister to those in this country who may still acknowledge the administrative rule of the Patriarch of Moscow. No one disputes that such an Archbishop may establish and maintain churches here under the full protection of our constitutional guarantees of freedom of religion. What we do hold is that the appointees of the Patriarchate, by virtue of its radically changed status since 1918, may not assume control of property in this State, such as St. Nicholas Cathedral, which is dedicated to the use of the former North American Diocese and, now, the Metropolitan District.

Moreover, we do not consider our decision to be in conflict with the *Kedroff* decision of the Supreme Court, *supra*. As the Circuit Court of Appeals stated in the *Trutza* case (205 F. 2d at p. 110):

"... Here no ordinance, statute, or congressional enactment is involved. This is not a case of legislation claimed to be violative of the First Amendment to the Constitution of the United States. It is a controversy between the American and Canadian church group and the Communistic government in Romania working through the hierarchy."

The judgments appealed from should be reversed and judgment directed for plaintiff with costs.

From Rochester, N. Y., *Democrat-Chronicle*, February 7, 1955

Russia Archbishop Called Red Tool

The Soviet Union is trying to impose its rule on the Russian Orthodox Church in America, the Most Rev. Averky, bishop of the Syracuse diocese of that church, said here yesterday.

The Bishop, whose jurisdiction extends to Rochester, said that the Soviet government, which in Russia dominates the church hierarchy, sent an archbishop to the United States to take charge of the church in North and South America. This functionary, Ex-arch Boris, once headed the church in Western Europe from Berlin, the bishop said, and is a member of the Soviet-controlled church hierarchy of Russia.

Bishop Averky—like all members of the Russian Orthodox hierarchy, he has but a single name—was here for his first look at the newly-acquired church of St. Mary's Russian Orthodox parish at East Avenue and Prince Street. The specific occasion was the organization of a local chapter of St. Vladimir's Society, a young people's organization of the church.

An imposing, bearded figure robed in black, he interrupted a dinner in his honor to be interviewed through an interpreter, George Draguns of Utica, a University of Rochester student. The bishop spoke in Russian.

Archbishop Boris, the bishop explained, was appointed head of the church in North and South America by Patriarch Alexii of Moscow, top man of the church in the Soviet domain. However, he said, Russian Orthodox



EMINENT VISITOR — Bishop Averky, right, head of Russian Orthodox Diocese, listens to Valery Chernjavsky, left, and Mrs. Eleanor Popov at dinner in his honor in local church. The Rev. Avksenty Rudikov, local pastor, is at left. It was the bishop's first look at new church.

churches in America refuse to recognize the authority of Archbishop Boris who is regarded as a tool of the Kremlin.

Archbishop Boris, now in New York, is in this country on a temporary 60-day visa. He is trying to be admitted as a permanent resident, so far without success. There are a half-million Russian Orthodox communicants—mostly refugees—in the United States.

Bishop Averky emphasized that Russian Orthodox church members in America are actively hostile to communism and the Soviet regime. But he was pessimistic over the prospects of a church-led overthrow of the government in the Kremlin.

The Communists, he said, have forced their discipline on the church hierarchy in Russia and now are in firm control. For that reason, he added, the leadership of any revolution cannot come from among the clergy, although the Russian Orthodox rank and file could still become the instrument of a Russian revolution.

The current Kremlin policy of stressing freedom of religion, he said, must be interpreted as a concession to strong religious sentiment among Soviet peoples. Its second purpose, he added, is the propaganda value of such announcements in the free world.

Communications from the Russian underground, he said, indicate that the death of Stalin and subsequent upheavals among Kremlin leaders have done nothing to loosen the Communists' hold on Russia. He indicated that it is wishful thinking to believe that the Soviet government will fall because of its own weakness.