BOOK REVIEWS

FREEDOM TO TRAVEL: REPORT OF THE SPECIAL COMMITTEE TO STUDY PASSPORT PROCEDURES OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK. New York: Dodd, Mead & Company, 1958. Pp. xxv, 144.

The right of a citizen of the United States to go abroad has suffered from the lack of definition, mostly because of inattention. *Freedom to Travel* contributes the results of serious, responsible, and intelligent consideration of this subject by the Special Committee. That the subject deserves careful attention is well argued by the Committee, which did not confine its study to procedures, but necessarily equipped itself with an estimate of the values of travel. Among them it counts the public interest in information about foreign policy, based upon "free and independent examination of its operation," private interest in travel for livelihood, to fulfill a religious calling, to disseminate secular views, and for study, information, or pleasure. It concludes: "Even limited deviations from the norm of full freedom of travel should be permitted with reluctance and only in the face of a demonstration of overwhelming necessity."

Although this canon sounds in procedure, the recommendations of the Committee grasp the thorns of substance and assert what is important and what is not, no matter how demonstrated. On one side it puts fugitives from justice, and on the other, members and consistent supporters of the Communist Party. Along with fugitives from justice it classifies as liable to restriction persons under court restraining orders, persons who have not repaid governmental advances to repatriate them from a former sojourn abroad, persons making fraudulent applications for passports, persons who are mentally ill, and children whose parents object to the travel. Communists and their fellows would be free to travel, along with convicts who have served their punishment, persons likely to become public charges (unless they have failed to pay the costs of return from a previous trip, as above), and two classes vaguely described as "participants in political affairs abroad whose activities were deemed harmful to good relations" and "persons whose conduct abroad has been such as to bring discredit on the United States and cause difficulty for other Americans (gave bad checks, left unpaid debts, had difficulties with police, etc.)."

The Committee does, however, seek to identify travel that threatens national security in more specific terms than those employed in present State Department policy: travel to transmit United States secrets, to incite hostilities which might involve the United States, or to incite

attacks by force upon the United States or its government. It relies upon the distinction between membership or advocacy on the one hand and incitement or action on the other. This is the point at which, in the opinion of the Committee, it becomes necessary and appropriate to confront the task of balancing the interests of national security and individual interests in freedom to travel. Under these standards, then, the Department of State must be authorized to impose individual restraints.

The Committee also concludes that the Department of State should be authorized by statute to impose travel bans by designation of forbidden zones, but that a statement of reasons should accompany area prohibitions. Exceptions could be made without a statement of reasons. Standards for the exercise of this discretion are adumbrated by a series of illustrations.

Finally, the report lays down procedural principles that should govern the disposition of individual passport applications: prompt notice of tentative denial, continuation of the Board of Passport Appeals as the hearing body, with representation from the Office of Legal Adviser, separation of prosecuting and adjudicating through designation of counsel by the Secretary to represent the Department in strictly adversary fashion before the Board, opportunity for the applicant to be represented by counsel, detailed statement of the cas against the applicant, and privacy of hearings unless waived by the applicant.

Disagreement among members of the Committee developed on two subjects. A majority favor issuance of the passport on the order of the Board, but two members would have a favorable Board decision take the form of a mere recommendation to the Secretary. (All of the members favor review by the Secretary of an adverse Board decision, and judicial review of an adverse Departmental decision.) The Committee also divided on the issue of use of confidential information, although there is basic agreement that departures from the trial type of hearing and judicial review should be exceptional, if permitted at all. Four members argue for full disclosure and decision based on the record, without qualifications. One member would permit the Secretary to suspend issuance for not to exceed six months on his personal certificate that a hearing would jeopardize national security. Three members would allow the hearing to proceed without full disclosure in exceptional cases. One of these would place reliance upon the Secretary of State or the Attorney General, as the case might require, to determine when disclosure would be against the best interests of the United States. The other two would charge the Board with the responsibility of deciding when an applicant has access to information of a *highly* classified security nature (not the classification regularly given for other purposes).

The work of the Committee is thorough, in that it carefully identifies the constitutional, operational, and formal defects of existing statutes and regulations, and shows how they should be remedied in light of its proposals. This study, admirable as it is, lacks the kind of completeness that might be expected of a more ambitious project. It appears tacitly to assume that the courts will provide remedies for delay in hearing and decision after the tentative denial. Since the Administrative Procedure Act is not to apply, the recommendations fail to cover the subject of judicial review, except to say that the review is to determine whether the findings are reasonable in light of the evidence and that the evidence is to be transcribed and a copy of the transcript made available to the applicant.

The study does not consider radical departures, in the field of individual restraints, from the system of travel control by passport that have developed. The recommendations assume that the present passport system is an apt instrument for this control, with the consequent hapless condition of stateless persons. If there is a case for transferring all or a part of the program of individual restraints to the Department of Justice, or the Department of Defense, for example, it is not explored. Nor is any consideration given to restraints imposed in advance of application for a passport, or unrelated in time thereto, whereby a person would waive his right to travel for a specified period as an incident of assuming duties in connection with war secrets, for example, or whereby a person would be liable to suspension of this right for a specified period as punishment for certain types of criminal activity. There may be reason to doubt whether in addition to its responsibilities for foreign affairs the Department of State should have to assume any responsibility for the conduct of Americans abroad, when they are not part of the Departmental establishment. As the report points out, the international right of a state to protect its nationals abroad from a denial of justice carries with it no duties to the nationals.

The proposals for area restraints do seem to involve policy unquestionably within State Department competence, although certain postures of cold war developments may make apparent the need for similar authority, such as has been exercised in connection with armaments testing, on the part of the Department of Defense. However, among possible procedural checks, only the recommended statement of reasons seems to have been considered. Perhaps consideration could have been given to preliminary promulgation pending rule-making hearing procedures, or to a statutory limitation on the duration of area prohibitions, subject to renewal.

The ancient question of who shall guard the guardians was the rock upon which unanimity foundered. Classification of secrets by the

federal government is subject to no independent review except the unwieldy one of Congressional investigation. But the unanimous preference for governmental restraint based upon conduct rather than character or affiliation, the unanimously manifested desire to minimize the scope of such restraints when based upon prediction of conduct, and the generally professed aversion to decisions based upon ex parte contributions of casual informers raise a reasonable standard for public policy even in crisis. This position endorses conservative values against the fears of the moment, and with stouthearted faith in the republic refuses to permit the pressures of the enemy to convert us into his likeness.

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DICTIONARY OF PERSONNEL AND INDUSTRIAL RELATIONS. By Esther L. Becker. New York: Philosophical Library. 1958. Pp. 366.

Each field of human endeavor develops its own jargon, its own cant. This is as true of the field of personnel and industrial relations as it is of law. Today a great many lawyers become involved in industrial relations matters and they must become familiar with the terminology of that field. A good dictionary of personnel and industrial relations terminology could be of invaluable service to lawyers. This book is not a good dictionary. Actually, it is a very poor dictionary.

The jacket of the book states there are 2,468 entries. Indeed, there are a lot of entries. Many of the definitions are inaccurate. A great many more of the definitions are incomplete and vague and of no value to one seeking an understanding of a particular word or term. There are significant omissions. The author has obviously scanned many books, studies, and magazine articles to pick up words and various definitions. Sometimes in lifting a word out of text, she entirely misses the real significance of the word. She includes many esoteric meanings while ignoring many generally accepted meanings.

A few illustrations will suffice:

"Bargaining unit" is defined as:

> "A group of employees accepted or designated by an authorized agency or an employer as appropriate for representation by one union."

Any employer who relied on this definition and insisted on designating the appropriate bargaining unit would soon find himself facing an unfair labor practice charge if he were covered by the Labor-Management Relations Act.

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