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Constitutional Law -- Right To Travel and Area Restrictions -- Foreign Relations Power

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nished by cross-examination and that no statement should be used as testimony until it has undergone that test. This seems to indicate that the Court is of the opinion that the right of confrontation and cross-examination is a basic right guaranteed under the Constitution and when the question is met it will so hold. The dissent in the principal case was of this opinion when it said: "While the Court disclaims deciding this constitutional question, no one reading the opinion will doubt that the explicit language of its broad sweep speaks in prophecy."[34]

There is much more involved than the accused employee's right to work.[35] It is submitted that there is a right not to have unchallenged and unverified suspicion and contempt with their concomitant social and economic disadvantage cast upon an individual and his family. This writer suggests that the due process clause does require the accused be given an opportunity to face his accusers and to cross-examine them, and that a decision by the Court to this effect would be fully warranted.

OLIVER W. ALPHIN

Constitutional Law—Right To Travel and Area Restrictions—Foreign Relations Power

Worthy v. Herter[1] involved a newspaperman who was denied a renewal[2] of his passport when he would not agree to comply with the area restrictions[3] stamped on it. The issue presented was whether the Secretary of State had the power to prevent the travel of a law-abiding United States citizen to certain areas of the world in a time when the nation is not at war. The federal district court dismissed the action which sought a declaratory judgment and injunctive relief against the Secretary of State. The Court of Appeals for the District of Columbia affirmed

[34] *Id.* at 524.

[35] The writer has made no distinction in his discussion between the rights of private and government employees. It is submitted that there is no valid distinction to be made. Both require security clearances; the effect of dismissal is the same; the constitutional guarantees appear to be the same. *Compare* Meyer v. Nebraska, 262 U.S. 390 (1923), and Trauax v. Raich, 239 U.S. 33 (1915), *with* Slochower v. Bd. of Educ., 350 U.S. 551 (1956), and Wieman v. Updegraff, 344 U.S. 183 (1952). The danger to national security is the same, Parker v. Lester, 112 F. Supp. 433 (N.D. Cal. 1953), and each is in fact engaged in government work, often at the same place.

[1] 270 F.2d 905 (D.C. Cir. 1959), *cert. denied,* 361 U.S. 918 (1959).

[2] It appears that Worthy had traveled to Hungary and Communist China on his previous passport. This would explain why the State Department took occasion to ask Worthy about his intended use of a renewed passport.

[3] At the present time the following inscription is stamped in U.S. passports: "This passport is not valid for travel to the following areas under control of authorities with which the United States does not have diplomatic relations: Albania, Bulgaria, and those portions of China, Korea and Viet Nam under Communist control." *Hearings Before Senate Foreign Relations Committee on Department of State Passport Policies,* 85th Cong., 1st Sess. 65 (1957) [hereinafter cited as *1957 Hearings*].

and concluded that the Secretary did have such power both statutorily and inherently within the executive control of foreign relations.[4] The Supreme Court denied petition for certiorari.[5]

The individual's freedom of movement, the right to leave one's own country and go to any other, is the interest for which the court's protection was sought in the *Worthy* case. The idea that an individual is free to move from place to place in the world, barring war or criminal indictment, has very old roots in Anglo-American jurisprudence. Magna Charta first guaranteed the right in 1215: "It shall be lawful in future for anyone . . . to leave our kingdom and to return, safe and secure by land and water, except for a short period in time of war . . . ."[6] The only limitation imposed upon this freedom by the King was the ancient writ of *ne exeat regno*[7] ("let him not leave the realm"). Apparently this writ still survives in England today, but its use in the name of the Crown seems definitely restricted to times of war.[8]

The right to travel finds expression in the Universal Declaration of Human Rights, adopted in the General Assembly of the United Nations, December 10, 1948. Article 13 provides: "1. Everyone has the right to freedom of movement and residence within the borders of each state. 2. Everyone has the right to leave any country, including his own, and to return to his country."[9]

Contemporary writers agree that freedom to travel is a natural right and that its unfettered exercise is in the best interest of a free and self-enlightening society.[10] The fact that no specific mention is made of the right in the United States Constitution has usually been interpreted by writers in this field to mean that it was regarded as unchallenged, basic, and essential.[11] Freedom to travel has been intimately associated with other American freedoms. Protection of a property in-

[4] The scope of this note in intended to extend primarily to a discussion of the foreign relations power of the United States Government and how it bears on freedom to travel. The passport problem itself is only incidental to this discussion. For a more complete treatment of the passport cases and authorities per se see Note, 37 N.C.L. REV. 172 (1958).

[5] 361 U.S. 918 (1959).

[6] Clause 42 of the Magna Charta of 1215. BARRINGTON, THE MAGNA CHARTA AND OTHER GREAT CHARTERS OF ENGLAND 240 (1900). Although this clause was left out of Magna Charta after 1215, it has been argued that the broad grant of liberty contained in it represented the common law, which, according to one authority, recognized the right of everyone to leave the kingdom at his pleasure. BEAMES, NE EXEAT REGNO, A BRIEF VIEW OF THE WRIT (1st Am. ed. 1821).

[7] BEAMES, *op. cit. supra,* note 6.

[8] VII HALSBURY, LAWS OF ENGLAND 293-94 (3d ed. 1954).

[9] 3 DOCUMENTS ON FUNDAMENTAL HUMAN RIGHTS 960-61 (Chafee ed. 1952).

[10] See CHAFEE, THREE HUMAN RIGHTS IN THE CONSTITUTION (1956); McDougal and Leighton, *The Rights of Man in the World Community,* 14 LAW & CONTEMP. SOCIETY 490 (1949); Note, *Passports and Freedom of Travel,* 41 GEO. L.J. 63 (1952).

[11] Jaffe, *The Right to Travel: The Passport Problem,* 35 FOREIGN AFFAIRS 17-20 (1950).

terest, for example, may be involved where travel abroad is essential to a person's livelihood. A religious calling may require a person to travel overseas. The "right to know," to be informed about other lands and peoples, depends on the basic freedom of international mobility.

In recent history the right to travel has been recognized by two important cases, *Shactman v. Dulles*[12] and *Kent v. Dulles*.[13] In *Shactman* the appellant had been denied a passport in the "best interests of the country" because he was the head of an organization on the Attorney General's list of subversive groups. The Court of Appeals for the District of Columbia held the denial was an arbitrary restraint on the individual's liberty and ordered that the passport be issued.

> The right to travel, to go from place to place . . . is a natural right subject to the rights of others and to reasonable regulation under law. A restraint imposed by the Government of the United States upon this liberty, therefore, must conform with the provisions of the Fifth Amendment that 'no person shall be . . . deprived of . . . liberty . . . without due process of law.'[14]

In *Kent v. Dulles*[15] the Supreme Court recognized this right and stated that it is a part of the "liberty" guaranteed by the fifth amendment, and therefore it may not be infringed without due process of law.[16] In *Kent* the Court held that the Secretary has no statutory authority to deny passports on the basis of political beliefs or associations.[17]

The problem in the principal case is a new one to the courts but not to American citizens. In the 1930's the first positive area restrictions were imposed on United States citizens through passport control. Travel to Ethiopia was prohibited in 1935, and to Spain during the Civil War of 1936-39,[18] and to China in 1937.[19] Apparently these travel restrictions were never challenged, one possible explanation being that travel without a passport was still possible to some extent. Furthermore the

[12] 225 F.2d 938 (D.C. Cir. 1955).
[13] 357 U.S. 116 (1958).
[14] 225 F.2d at 941.
[15] 357 U.S. 116 (1958). Here the passport denial rested on Communist affiliation and refusal to sign the non-Communist affidavit. The Court met squarely the issue of the Secretary of State's discretion over issuance of passports under existing statutes. Since the right to travel is an element of liberty protected by the fifth amendment, the Court points out, Congress alone has the power to establish substantive grounds for denial of passports, which are now regarded as essential to travel abroad. The Court found that Congress had intended that a person might be refused a passport only if his citizenship was in question or if he was accused of a crime.
[16] 357 U.S. at 125.
[17] *Id.* at 128, 130.
[18] 2 HYDE, INTERNATIONAL LAW § 406A (2d rev. ed. 1945).
[19] 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW 532 (1942). It is interesting to note that in all three of these periods a war was in progress within the country to which travel was prohibited. At the time of the passport denial in the principal case no war was in progress on the Chinese mainland.

area restrictions, with the exception of those relating to Spain, were of short duration.

The "cold war" following World War II and the emergence of Red China have presented the United States government with difficult problems in the conduct of foreign relations. While trying to establish an equilibrium and to normalize its relations with the older part of the Communist world, *i.e.,* Soviet Russia, the government has officially ignored the newer Communist countries. Out of this situation has arisen the latest governmental policy of forbidding travel in countries whose governments are not recognized by the United States.[20] In May 1952 the Department of State began stamping passports invalid for the U.S.S.R., China, and the Soviet satellite states except on special application to the Department.[21] Then in October 1955 Russia and most of her satellites[22] were opened to travel; but all passports were stamped with the statement that they were not valid for travel to Albania, Bulgaria, and those portions of China, Korea, and Viet Nam under Communist control.[23]

Recently a Congressman interested in traveling in the Far East to obtain information regarding United States relations and policies in that area was denied a passport for Red China.[24] In the State Department letter denying the Congressman's request several basic tenets underlying the China travel ban were revealed—namely, the existence of "a state of unresolved conflict" stemming from the Korean action, lack of diplomatic relations, inability "to provide the customary protection," and the maltreatment of Americans on the mainland. More significant, however, is the statement that the Congressman's presence in China might be taken for a change in policy.[25]

The rationale of area retrictions has most often been stated in terms of the local dangers to the traveler and the lack of diplomatic channels through which to extricate him from detention.[26] These criteria have not been applied uniformly. In 1957, for example, the ban was lifted for

[20] In the case of Soviet Russia after 1923 and before United States recognition, there was no travel ban. *1957 Hearings, op. cit. supra* note 3, at 65.

[21] *1957 Hearings, op. cit. supra* note 3, at 65.

[22] Czechoslovakia, Hungary, Poland, and Rumania.

[23] See note 3 *supra.*

[24] The district court in dismissing Porter v. Herter, — F. Supp. — (D.D.C. 1959), cited *Worthy* and refused to find a difference between an ordinary citizen and a Congressman travelling in an unofficial capacity. A petition for writ of certiorari has been denied. 361 U.S. 918 (1959).

[25] Letter from William B. Macomber, Jr., Assistant Secretary, to the Hon. Charles O. Porter, House of Representatives, July 2, 1959. (Exhibit B in the complaint of Porter v. Herter, — F. Supp. — (D.D.C. 1959).)

[26] SPECIAL COMMITTEE TO STUDY PASSPORT PROCEDURES OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, FREEDOM TO TRAVEL 53 (1959) [hereinafter cited as FREEDOM TO TRAVEL].

short visits to Albania[27] and Bulgaria[28] by persons with compelling professional reasons. In the case of Red China, three classes of persons have been granted passports valid for travel to that country. The first group consisted of the mothers and one brother of three Americans held prisoners there.[29] Also a lawyer representing defendants charged with sedition was permitted to go to China in order to gather data for their defense.[30] The largest group receiving the Secretary's approval consisted of twenty-four newsmen, specially selected on the basis of their papers' foreign news coverage,[31] who were authorized to stay in Red China for six months. These exceptions indicate that the State Department's prime object is the success of its foreign policy and not the safety of individual Americans.

This rationale finds expression in the *Worthy* opinion, where the court approves another reason for imposing area restrictions, namely the prevention of possible "clashes" caused by Americans in "trouble spots" of the world.[32] The decision rests on statutory authority and on the President's executive power in the foreign relations field. "It is settled that in respect to foreign affairs the President has the power of action and the courts will not attempt to review the merits of what he does. The President is the nation's organ in and for foreign affairs."[33] "We think the designation of certain areas of the world as forbidden to American travelers falls within the power to conduct foreign affairs."[34] This language of the court suggests two inter-related concepts of American constitutional law, the foreign relations power and the political question doctrine.

The "foreign relations power" refers to the ability of the United States government to carry on official intercourse with other nations.[35] The Constitution makes no specific grant of a "foreign relations power." Rather it allocates to the President the treaty-making function, the power to appoint and receive diplomatic agents, and the command of the army and navy.[36] The Constitution grants to Congress the power (1) to establish and collect customs and duties, (2) to regulate foreign commerce, (3) to establish naturalization laws, (4) to declare war, and (5) to define and punish piracies and felonies committed on the high

[27] Washington Post and Times Herald, Nov. 15, 1957, § A, p. 12, col. 4.
[28] N.Y. Times, Sept. 6, 1957, p. 1, col. 3 (city ed.).
[29] N.Y. Times, Dec. 7, 1957, p. 1, col. 1 (city ed.).
[30] The lawyer was Mr. A. L. Wirin. N.Y. Times, Nov. 21, 1957, p. 17, col. 1 (city ed.).
[31] N.Y. Times, Aug. 23, 1957, p. 1, col. 8 (city ed.).
[32] 270 F.2d at 910.
[33] *Id.* at 911.
[34] *Id.* at 910.
[35] United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936).
[36] U.S. CONST. art. II, § 2.

seas and offenses against the law of nations.[37] These powers collectively make up the constitutional authority for the regulation of the country's conduct in respect to other nations.

In 1829 to the Supreme Court in *Foster v. Neilson*[38] first announced the "political question" doctrine which precludes judicial interference with governmental action concerning foreign policy. The case dealt with Spanish lands in the southeastern part of the country. Chief Justice Marshall, speaking for the Court, declared:

> If those departments which are entrusted with the foreign intercourse of the nation . . . have unequivocally asserted its rights over a country . . . which it claims under a treaty; if the legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied. A question like this respecting the boundaries of nations is . . . more a political than a legal question, and in its discussion, the courts . . . must respect the pronounced will of the legislature.[39]

Labelling presidential or congressional action concerning foreign relations as a "political question," however, does not prevent the court's looking behind the label, as was done in *Worthy*.[40] The court may examine what was done in the name of foreign relations or foreign policy, particularly where the claim is made that constitutional rights have been infringed.[41]

When some action of the federal government is under consideration, the problem before the court is determining what is properly within the field of foreign relations. It is not an easy determination to make, because the limits of this power are nowhere defined. The Constitution in broad terms mentions a few specific powers in the field; significantly, these constituitonal grants are made both to the President and to Congress. One writer has suggested that the co-existence of these affirmative constitutional grants has assured a struggle between the President and Congress for the privilege of directing the country's foreign policy.[42] Undoubtedly the President has won the lion's share of the privilege,[43]

[37] U.S. CONST. art. I, § 8.
[38] 27 U.S. (2 Pet.) 253 (1829).
[39] *Id.* at 309.
[40] 270 F.2d at 909.
[41] Although there are no decided cases having to do with an executive invasion of personal rights as a by-product of the foreign relations power, the point is made by one writer that the President's acts should be no less subject to judicial review than are acts of Congress. Carrington, *Political Questions: The Judicial Check on the Executive,* 42 VA. L. REV. 175, 184 (1956).
[42] CORWIN, THE PRESIDENT: OFFICE AND POWERS 171 (4th ed. 1957).
[43] The Senate was intended to exercise a special role in the conduct of our foreign relations, acting like a council in which the "President in Council" could work out policies and have diplomatic appointments approved. Subsequent events did not develop this role, and the words "with the advice and consent of the Senate" have come to mean little more than the power of ratification or veto of presidential treaty proposals. If, however, the Senate has lost power, certainly

and it is the presidential exercise of the foreign relations power which is most often the object of complaint before the courts. The subjects dealt with in the cases can be classified as follows: (1) recognition of foreign governments,[44] (2) assessment of treaty obligations,[45] (3) resolution of disputed sovereigns,[46] (4) acquisition of new lands,[47] (5) participation in *ad hoc* international bodies,[48] (6) the making of international executive agreements,[49] and (7) the licensing of domestic carriers for foreign air routes.[50] Not all of these situations involve purely executive functions; for example, congressional involvement was necessary in the new lands and international organization cases. Furthermore an act of Congress underlay the situation in the foreign air routes case. It would seem that the plenary power of the President in the field of foreign relations, so far as the cases are concerned, is fairly limited to recognition, executive agreements with other governments, and treaty interpretation. None of these traditional subjects was at issue in the principal case, yet the court has found that the Secretary of State's action in imposing area controls is protected by the presidential "power to conduct foreign affairs."

In the principal case statutory authority, quite apart from the President's inherent power, was held to be equally decisive of the question of the power of the Secretary of State. Two statutes were found by the court to be controlling. First, section 211(a) of the basic passport act of 1926 gives the Secretary of State authority to "grant and issue pass-

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the President and to a lesser extent Congress as a whole have gained power. The task of the President is to formulate and propose the nation's plans for dealing officially with other nations. The Congress is in a position to support or modify these plans through control of appropriations and through passage of statutes governing United States participation in international organizations. See CORWIN, *op. cit. supra* note 42, at 170-226. The recently proposed Bricker Amendment was an attempt to invest Congress with a larger role in the actual conduct of the country's international relations. Specifically the proposed amendment was aimed at the treaty making power and would require action by both houses of Congress, just as in the case of any other legislation, before a treaty would become binding as law. The effect of such a provision would undoubtedly be to reverse the trend of concentrating the direction of the nation's foreign affairs in the hands of the President. Congress, however, wisely refused to pass the proposal. See Whitton and Fowler, *Bricker Amendment—Fallacies and Dangers,* 48 AM. J. INT. L. 23 (1953); Henkin, *The Law of the Land and Foreign Relations,* 107 U. PA. L. REV. 403 (1959).

[44] United States v. Pink, 315 U.S. 203 (1942).

[45] *In re* Cooper, 143 U.S. 472 (1892); Williams v. Suffolk Ins. Co., 38 U.S. (13 Pet.) 415 (1839); Foster v. Neilson, 27 U.S. (2 Pet.) 253 (1829).

[46] Terlinden v. Ames, 184 U.S. 270 (1902); Ware v. Hylton, 3 U.S. (3 Dall.) 199 (1796).

[47] Wilson v. Shaw, 204 U.S. 24 (1907).

[48] Koki v. MacArthur, 338 U.S. 197 (1949) (establishment of war crimes tribunal); Z. & F. Assets Realization Corp. v. Hull, 114 F.2d 464 (D.C. Cir.), *aff'd,* 311 U.S. 740 (1941) (Mixed Claims Commission, United States and Germany).

[49] United States v. Belmont, 301 U.S. 382 (1950).

[50] Chicago & So. Airlines v. Waterman Corp., 333 U.S. 103 (1948).

ports . . . under such rules as the President shall designate and prescribe . . . ."[51] Secondly, section 1185(b) of the Immigration and Nationality Act of 1952[52] provides the President with power to declare a national emergency and makes it unlawful during the declared emergency for American citizens to depart or enter the country without a valid passport. Under authority of section 211(a) the President in 1938 issued an executive order[53] enabling the Secretary of State in his discretion to restrict the use of passports on a geographic basis.[54] A national emergency now exists by virtue of the President's 1953 proclamation,[55] thus activating section 1185(b). The court held that the effect of these statutes and orders is to grant the Secretary of State a discretionary power to prohibit travel of Americans to certain areas of the world by making the passport invalid for use in those areas.

The statutes relied on would appear to be insufficient to sustain so broad a discretion in the Secretary of State in the issuance of passports. Both section 211(a) and the executive order issued pursuant to it and section 1185(b) were strictly construed in *Kent v. Dulles*[56] as not giving the Secretary "unbridled discretion to grant or withhold a passport from a citizen for any substantive reason he may choose." In *Kent* passport denial by the Secretary was based on the applicant's political associations and beliefs, and this was held to be a substantive ground not available to the Secretary under existing statutes. An area restriction would certainly be a substantive ground for denial equally unavailable without statutory authority.

The language of the *Worthy* opinion indicates that the existence of a national emergency extended the scope of section 211(a) to include area restrictions under the power of the President to prescribe rules and regulations governing passport issuance.[57] The Supreme Court in *Kent,* however, was not constrained to expand the Secretary's 211(a) authority, implemented by executive order, on account of an emergency falling short of war.[58] It is submitted that the government's power was overreached in *Worthy* because: (1) section 211(a) and section 1185(b) do not provide the substantive rules on which passport denial can be based, and clearly to restrain citizens from going to certain areas of the

[51] 44 Stat. 87 (1926), 22 U.S.C. § 211(a) (1952).
[52] 66 Stat. 190 (1952), 8 U.S.C. § 1185(b) (1952).
[53] Exec. Order No. 7856 (1938), 3 Fed. Reg. 681 (1938).
[54] "§ 51.75. *Refusal to issue passport.* The Secretary of State is authorized in his discretion to refuse to issue a passport, to restrict a passport for use only in certain countries, to withdraw or cancel a passport already issued, and to withdraw a passport for the purpose of restricting its validity or use in certain countries." *Ibid.*
[55] Proclamation No. 3004, 67 Stat. c.31 (1953).
[56] 357 U.S. 116 (1958).
[57] 270 F.2d at 912.
[58] 357 U.S. at 128.

world is to impose a substantive regulation; (2) the issue of whether the foreign relations power includes the power in the President to impose area restrictions on individual travel has never been passed upon by the courts. Furthermore the exercise of the foreign relations power by the President where it touches personal liberties is subject to the due process clause of the fifth amendment.[59] Under the *Kent* decision due process requires an act of Congress to circumscribe the right to travel.

When the President needs additional powers to carry out the legitimate policies of the government, the customary approach is through the use of special purpose legislation.[60] Where the powers asked for will infringe basic individual rights, the Congress of course should be certain the powers are essential and reasonable and that the grant of power is limited in scope and duration. The current need arises from the difficulties of carrying out the government's over-all "cold war" policies. These policies include non-recognition of China, limiting socio-economic intercourse with the Soviet world, and the military objective of containing Communist influences throughout the world.[61] The President has said that if these policies are to be successful, then the Secretary of State must have authority to impose area restrictions on United States citizens abroad.[62] He asked Congress to provide the needed legislation. Such legislation has been recommended by a special committee of the New York Bar studying passport procedures.[63] Whether area restric-

[59] United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936); Shactman v. Dulles, 225 F.2d 938 (D.C. Cir. 1955).

[60] CORWIN, *op. cit. supra* note 42, at 191-92.

[61] Statement by Under Secretary of State Murphy before the Senate Foreign Relations Committee, April 2, 1957, *1957 Hearings, op. cit. supra* note 3, at 69; President's Special Message to Congress, July 7, 1958, 104 CONG. REC. 1832-33 (1958); see generally Rostow, *American Foreign Policy and International Law*, 17 LA. L. REV. 552 (1957).

[62] President's Special Message to Congress of July 7, 1958, 104 CONG. REC. 1832-33 (1958). "[T]he secretary should have clear statutory authority to prevent Americans from using passports for travel to areas where there is no means of protecting them, or where their presence would conflict with our foreign policy objectives or be inimical to the security of the United States."

[63] "[W]ithin the area of foreign affairs, the United States has the powers of a sovereign State and these powers, no matter how divided between them, are vested in total in the Congress and the President, subject of course to the provisions of the Constitution. Leaving aside the question of whether or not Congress in 22 U.S.C. § 211a . . . has provided a legislative foundation for executive action, it is clear that the Congress and the President, acting in concert, may restrict the travel of Americans to certain areas of the world . . . . The present national emergency becomes the reason and the occasion for the imposition of restrictions on the travel of Americans into specified areas, as an instrument in the conduct of the cold war. The Committee adopts this view in full consciousness that it may result in restricting the travel of all Americans to certain countries in the national interest of the United States . . . . Because of its nature, the restriction on travel to certain countries or areas should be employed only in situations of gravity and seriousness.

"[T]he Committee has concluded, on balance, that the authority to prohibit travel by all United States citizens in areas designated by the Secretary of State

tion as a policy is advisable or not,[64] it is clear that statutory limits should be imposed in pursuing these "cold war" policies as they impinge on the right to travel.

Several bills were introduced in the Eighty-fifth Congress, but no statute was passed. The Eighty-sixth Congress now has before it some of the same proposals as well as new ones. There is considerable difference among them as to the limits of the discretion to be given the President or the Secretary.[65]

> A two point statute is recommended which would read as follows: Area restrictions may be imposed on United States citizens traveling abroad by the President through a directive to the Secretary of State:
>
> (1) When a state of war exists between this country and the one to be restricted;
>
> (2) In countries where United States forces are actually engaged in hostilities.[66]

There is in such a statute no unbridled discretion "to protect the nation's best interests" nor power to insure the "orderly conduct of foreign relations," at the expense of the individual's right to travel, nor

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is a necessary instrument to advance the national interest, and it recommends legislation to clear up any doubts as to the possession by the Secretary of State of such authority . . . ." FREEDOM TO TRAVEL, *op. cit. supra* note 46, at 52-53, 55.

[64] The point is made by the authors of the bar committee report that such restrictions often impose greater penalty on this country than the one against which it is directed. *Id.* at 54.

[65] While the 85th Congress failed to enact any legislation in this field, there is prospect of a statute forthcoming from the 86th Congress. As of this writing the House has passed H.R. 9069, 86th Cong., 1st Sess. (1959), which would give the President wide discretion in restricting areas of the world to entry by United States citizens. Essentially the bill provides three criteria for area control: first, where the United States is at war; second, where actual hostilities are in progress; and third, where the President finds the national interest at stake either because of inability to provide protection or because the travel would "seriously impair the foreign relations of the United States." The Senate Foreign Relations Committee has under study at least three different bills, one of which is the Humphrey Bill (S. 806, 86th Cong., 1st Sss. (1959)) which would restrict the American traveler overseas only when war has been declared or in areas where United States troops are fighting without a declaration of war. Another bill (S. 2287, 86th Cong., 1st Sess. (1959)) introduced by Senator Fulbright adopts the geographical limitations of H.R. 9069, *supra,* but adds a provision to prevent travel abroad of any U.S. citizen who in the opinion of the Secretary would incite international conflicts involving the United States. Senator Wiley's bill (S. 2315, 86th Cong., 1st Sess. (1959)) also follows the House bill in the area limitations and provides a unique provision by which the President may make exceptions to any general geographical restraints for such persons as newsmen, legislators, doctors and missionaries. Another interesting feature in every bill here discussed except S. 806 is a penalty section which makes it a misdemeanor punishable by $1,000 fine or one year's imprisonment to violate travel bans.

[66] Such a statute is essentially like that introduced by Senator Humphrey. S. 806, 86th Cong., 1st Sess. (1959).

any other device by which individual Americans become the unwilling instruments of foreign policy.[67]

KENNETH L. PENEGAR

Corporations—Constitutional Law—Retroactive Application of Curative Statute Affecting Corporate Existence

The case of *Lester Bros. v. Pope Realty & Ins. Co.*[1] affirmed the doctrine of *Park Terrace, Inc. v. Phoenix Indem. Co.*[2] that a corporation became dormant when the number of stockholders was reduced to less than the statutory requirement of three. The court in the *Lester* case held that the North Carolina legislature's curative act,[3] passed in an attempt to obviate the *Park Terrace* doctrine, was of no aid to the defendant Pope because the statute could not operate retroactively to defeat vested rights. In *Park Terrace* the result of dormancy was that the sole stockholder became the real party in interest in a breach of contract suit brought in the name of the corporation.[4] In *Lester* one of two stockholders was made a defendant and was held individually liable for an extension of credit which had ostensibly been made to the corporation only.

The plaintiff in *Lester* had sought to hold defendant Pope individually liable for certain sales of package houses made to defendant corporation Pope Realty and Insurance Company. The corporation had been formed with three stockholders. Between January 12 and June 20, 1955, the plaintiff delivered three bills of merchandise to the Company which during this time had only two stockholders. These bills were unpaid, and this indebtedness comprised part of the claim for which suit was brought.[5] At trial the Superior Court denied plaintiff's motion for judgment against Pope individually.

On appeal the Supreme Court cited *Park Terrace* and stated that when a corporation had less than three stockholders the stockholders

[67] There is nothing in the proposed statute which would preclude travel to areas where the individual's safety might be in doubt. It should be government's function to forewarn the traveler of the dangers and not to prevent him from assuming the risk.

[1] 250 N.C. 565, 109 S.E.2d 263 (1959).

[2] 243 N.C. 595, 91 S.E.2d 584 (1956). For an extensive discussion of this case see Note, 34 N.C.L. REV. 531 (1956).

[3] N.C. GEN. STAT. § 55-3.1 (Supp. 1959).

[4] The decision caused much adverse comment. Latty, *A Conceptualistic Tangle and the One- or Two-Man Corporation*, 34 N.C.L. REV. 471 (1956); Latty, *The Close Corporation and the New North Carolina Business Corporation Act*, 34 N.C.L. REV. 432, 441-44 (1956); Comment, 14 WASH. & LEE L. REV. 72 (1957).

[5] The plaintiff alleged fraud on the part of Pope and sought to hold him liable on all other deliveries made to the corporation, as well as these three. The Supreme Court upheld a finding that there was no reliance on his false statements and therefore no liability on the basis of fraud.