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Freedom to Travel. By Association of the Bar of the City of New York; Special Committee to Study Passport Procedures. New York: Dodd, Mead & Co. 1958. Pp. xxv, 144. $4.00.

Freedom to travel, like freedom of speech, is a fundamental Anglo-American right. Nevertheless, just as freedom of speech does not permit shouting "Fire!" in a crowded theatre, freedom to travel does not permit foreign travel calculated to endanger the national security.

The right to travel, thus, is "a natural right subject to the rights of others and to reasonable regulation under law."[1] But what are "reasonable regulations" and how are they to be made and applied?

Because of the special interest which the legal profession has in this important field of law and governmental policy, the Association of the Bar of the City of New York has reviewed travel freedoms and restraints from the Magna Carta to the 1958 decisions of the United States Supreme Court and added its own recommendations of "Principles which should control Travel Restraints" and "Major Recommendations for Revised Legislation and Regulations."

Professors Cecil J. Olmstead and Robert B. McKay of the law faculty of New York University served as staff members for the Committee under the chairmanship of Fifield Workum.

In the American Colonies, one of the complaints against George III was that he tried to prevent the emigration of English citizens to the new land, and Article IV of the Articles of Confederation guaranteed to the people of each state "free ingress and egress to and from any other states . . . ."

Neither the Articles nor the Constitution, however, specifically guarantee the right of travel into and out of the Nation itself.

Not until 1856 was there any statute of general application which either authorized or restricted the issuance of passports.

In August 18, 1856, Congress authorized the Secretary of State to grant and issue passports and prohibited others from doing so. This statute is still in effect as Section 211(a) of Title 22 of the United States Code and remains the basic enabling statute for the issuance of passports by the Secretary of State.

Prior to the conclusion of World War II, the only significant limitations imposed upon travel by American citizens were during periods of national emergency or war.

[1] Shachtman v. Dulles, 225 F.2d 938 (D.C. Cir. 1956).

During World War I Congress enacted a statute of general application during time of war which, as amended in 1941, was in effect throughout World War II. This statute was repealed by the Immigration and Nationality Act in 1952 requiring passports for departure from or entry into this country "when the United States is at war or during the existence of any National emergency proclaimed by the President . . . ." This statute is still in effect today, having been made operative by President Truman's Proclamation of January 17, 1953.

The Department of State has until recently viewed the issuance or denial of a passport as a matter within its absolute discretion.

Thus, in 1952, the Secretary maintained, following historic precedent, that the issuance and revocation of passports were by statute matters within the area of foreign affairs and thus not subject to judicial review. While the court agreed in part, it also held that the regulation of passports had to be carried out in accordance with the Constitution, and concluded that revocation without notice and hearing and refusal to renew without an opportunity to be heard was without authority of law.[2]

In *Dulles v. Nathan*,[3] the United States Court of Appeals for the District of Columbia reinforced the earlier requirement that passport applicants be accorded procedural due process of law, described in some detail the kind of hearing that a department should afford, and specified further that the hearing officer's report and recommendation were required to be based on the record of the hearing.

In *Shachtman v. Dulles*,[4] the issue of substantive due process of law was raised when Shachtman, chairman of the Independent Socialist League, was denied a passport because that organization was listed as subversive by the Attorney General. The district court upheld the action by the Secretary in denying a passport as a proper exercise of discretion, but the court of appeals reversed, holding that the denial of a passport for the assigned reason was arbitrary and a denial of substantive due process of law.

Prior to 1958, no case in the Supreme Court presented squarely the issue of a citizen's rights, if any, to travel outside the United States free of his government's control. In two recent Supreme Court decisions, it was held that the Secretary of State lacked authority to deny passports for the reasons assigned. In these two cases the District Court and the Court of Appeals for the District of Columbia both held that denials of passports to the classes of persons set forth in section 51.135 of the Passport Regulations to be valid restrictions when balanced against the dangers of the Communist movement in the United States,

[2] Bauer v. Acheson, 106 F. Supp. 445 (D.D.C. 1952).
[3] 225 F.2d 29 (D.C. Cir. 1955).
[4] 225 F.2d 938 (D.C. Cir. 1956).

and where an applicant is alleged to be in such class and refuses to admit or deny the allegation, as in these cases, the passport may be denied. However by five to four decisions, the Supreme Court reversed the decisions of the court of appeals.[5]

The Court did not decide the cases on constitutional grounds but rather on the ground that Congress has not authorized the Secretary of State to deny passports pursuant to the reasons specified in section 51.135.

These and other cases leave unresolved constitutional questions: the constitutional power of the government to deny a passport to and prohibit travel of American nationals, and the nature of the hearing required in order to satisfy procedural due process. In its recommendations of "Principles which should control Travel Restraints," the Committee believes it has suggested standards for the denial of passports to individuals which are descriptive of conduct rather than beliefs, associations, or ideological matters and are sufficiently definite so that when coupled with hearing procedures affording due process of law they will meet the Court's tests of constitutionality.

The Committee, while retaining the belief that "the ideal of complete freedom of international mobility of peoples among nations is a proper goal earnestly to be sought," nevertheless concludes that geographic restrictions may be imposed "to prevent all United States citizens from traveling to certain proscribed areas, and that freedom of individual travel may be circumscribed when its free exercise would dangerously impinge upon national security."

Toward both this ideal and the appropriate means of restrictions, the Committee points to the need for congressional clarifications of present policies.

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Opinions of the Committee on Professional Ethics and Grievances. By American Bar Association; Committee on Professional Ethics and Grievances. Chicago: American Bar Association. 1957. Pp. 690. $4.75.

Some months ago the Committee on Professional Ethics and Grievances of the American Bar Association made available in compiled form their ethics opinions issued prior to January 1, 1957. The Canons of Professional Ethics were first adopted by the American Bar Association on August 27, 1908. This Committee has been authorized to ex-

[5] Kent v. Dulles, 357 U.S. 116 (1958); Dayton v. Dulles, 357 U.S. 144 (1958).

press its opinions concerning proper professional conduct since August 10, 1922. The Canons of Judicial Ethics were adopted by the American Bar Association on July 9, 1924. This same Committee is now also authorized to express its opinions concerning proper judicial conduct.

The opinions of the Committee are rendered in response to inquiry by any member of the American Bar Association or upon the request of a local or state Bar Association. Formal opinions of the Committee are published in the *American Bar Association Journal.* This single volume was prepared so the legal profession "may have easy access" to the Canons and to the opinions of the Committee. This current volume covers the work of the Committee since its inception; however, it is a successor to a similar volume issued by the Committee in 1946.

This Committee of the American Bar Association, among its other duties, is to hear complaints against members of the American Bar Association and has the power, after a hearing, to recommend to the Board of Governors of the Association the expulsion, suspension, or censure of any member of the Association.

The various opinions of the Committee represent some of the best thought of a number of leaders of the American Bar as to the proper standards of professional conduct by lawyers and of judicial conduct. You cannot read the opinions without being impressed with the basic duty imposed on a lawyer to be fair and candid with his adversary as well as with the court and his client and without feeling proud to be a member of the legal profession.

This volume begins with an explanation of the history and functions of the Committee, contains a text of the Canons of Professional Ethics and of the Canons of Judicial Ethics with a summary of each opinion of the Committee dealing with each Canon, and also contains a complete text of the 291 published opinions of the Committee from 1922 to 1957. In addition, this volume contains in brief, summary form 383 previously unpublished opinions of the Committee as well as a very complete index to the various opinions.

Of more immediate concern to the North Carolina lawyer, of course, are the Canons of Ethics adopted by the Council of the North Carolina State Bar and the opinions issued by the Committee on Legal Ethics and Professional Conduct of the Council of the North Carolina State Bar. By statute a North Carolina lawyer can be reprimanded, suspended, or disbarred for a violation of the Canons of Ethics adopted by our State Bar. The opinions of this Committee have been issued since October 22, 1942. They previously were not readily available to the Bar. However, since 1954 the current opinions have been published in the *North Carolina Bar,* issued four times a year by the Council of the North Carolina State Bar. In addition, the first 144 opinions of this Committee

were published and indexed as an appendix to Volume 241 of the North Carolina Reports; subsequent opinions of this Committee through Opinion No. 197 were published and indexed in Volume 245 of the North Carolina Reports.

The Canons of the American Bar Association and of the North Carolina State Bar are the same with a few minor exceptions. In addition to providing interesting reading, the compiled volume by the ABA Committee can furnish as a handy reference and guide to the North Carolina practitioner, as ethical questions arise in his practice. Also, this volume should be very useful to the law student who must be prepared to answer a required portion of his bar examination on Legal Ethics and to the young practitioner who is anxious to learn the customs and proprieties of the profession which he has entered. Furthermore, this volume should make the work of the Committee on Legal Ethics of the North Carolina State Bar easier by providing precedents on difficult inquiries.

The field of legal ethics has been of concern to the members of the North Carolina Bar for many years; as early as 1900 the Committee on Legal Education of the North Carolina Bar Association recommended that applicants to the profession be required to study in the field of legal ethics. On reading the ABA volume you are struck by the number of dissents and opinions which are later changed or overruled, indicating that the area is somewhat fluid. It is readily apparent that the subject should be one of concern for all of us if we are to attain the high ideals of service held out by our profession.

This volume was furnished to its members by the American Bar Association. It is available from the American Bar Association, American Bar Center, 1155 East Sixtieth Street, Chicago 37, Illinois. It could become a useful part of the office library of each lawyer in the state.

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