

Court Implies State Dept. May Put Iron Curtain Around "Sensitive" Areas

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passports under its specific power to regulate commerce with foreign nations." Congress also has power to regulate interstate commerce. Would that give it power to require passports between one State and another?

There were three passport decisions.* Two non-Communists, who refused to take a non-Communist oath on principle, had been denied passports. The denials had been upheld in the Courts of Appeals. Without opinion and with only Clark, Harlan and White dissenting, the Court ordered these lower court orders vacated in the cases of Milton S. Mayer and of Vincent Copeland, the former a well-known writer and lecturer of pacifist inclination; the latter, editor of *Workers' World*.

No Dodges Available

The Court's opinion was handed down in appeals refreshingly free from subterfuge. They were brought by Elizabeth Gurley Flynn, chairman of the Communist Party, U.S.A., and Herbert Aptheker, editor of its theoretical organ, *Political Affairs*. The Court could not dodge the issue by declaring party membership unproven. It had to decide the right of indubitable Communists to travel. This eliminated the familiar question-begging procedural and evidentiary detours. The advantage of a decision upholding the right of known party members to travel is that it lifts from other radicals and liberals the onus of proving themselves politically antiseptic to get a passport.

But the majority's reasoning was not as clear-cut as the cases. No doubt this was due to the difficulty of finding a common denominator for agreement, but this only shows how few members of the Court are willing to uphold the right to travel with no strings attached. Mr. Justice Goldberg for the majority objected to Section 6, the passport section, of the Internal Security Act on the ground that it applies to travel by a member of a registered organization "regardless of the security-sensitivity of the area in which he wishes to travel." Even were he to apply for a passport "to visit a relative in

* The Court in another Internal Security Act case also granted an appeal by the Veterans of the Abraham Lincoln Brigade from a Subversive Activities Control Board registration order.

How "Security" is Best Safeguarded

"The Subversive Activities Control Act is supposed to be designed to protect this Nation's 'internal security.' This case offers another appropriate occasion to point out that the Framers thought (and I agree) that the best way to promote the internal security of our people is to protect their First Amendment freedoms of speech, press, religion and assembly, and that we cannot take away the liberty of groups whose views most people detest without jeopardizing the liberty of all others whose views, though popular today, may themselves be detested tomorrow."

—Mr. Justice Black concurring in the passport case.

Ireland, or to read rare manuscripts in the Bodleian Library of Oxford University, the applicant would be guilty of a crime." (The Act makes it a crime merely to *apply* for a passport, if a member of a proscribed organization).

We don't like the implications. It implies that to travel one must explain one's purposes, to say one is only going to visit a maiden aunt in Killarney or to check Chaucer's spelling. The right to travel is not secure if one's motives and journeys have to be explained. Above all, we dislike the reference to "the security-sensitivity of the area" in which one wishes to travel. This plays directly into the State Department's hands. It can no longer deny passports to individuals. But it still shuts off travel to whole countries and areas in its own "Papa knows best" fashion.

Travel has become a weapon in its hands, of reprisal against the tourist trade of countries like Cuba and of an Iron Curtain against countries it does not wish to recognize. North Korea, China, North Vietnam and Albania—all accessible to visitors and journalists from every other Western country, are off-bounds to us. The dangerous ignorance this may develop is all too apparent in the current Far Eastern crisis. In two obscenity cases, one involving a movie, the other sexy books, Black joined Douglas in asserting that under the First Amendment there is no right to censor in this country. By doing so he cut through a lot of nonsense which is turning the Nine Old Men (as we used to call them in the 30's) into a general board of censorship over pictures and books unfit for their venerable eyes. Why can't Black be as forthright about the right to travel?

Douglas Calls Freedom of Travel Essential to Free Society

"I would not suppose that a Communist, any more than an indigent, could be barred from traveling interstate. I think that a Communist, the same as anyone else, has this right. Being a Communist certainly is not a crime; and while traveling may increase the likelihood of illegal events happening, so does being alive. If, as I think, the right to move freely from State to State is a privilege and immunity of national citizenship (see *Edwards v. California*, 314 U.S. 160, 178), none can be barred from exercising it, though anyone who uses it as an occasion to commit a crime can of course be punished.

"Free movement by the citizen is of course as dangerous to a tyrant as free expression of ideas or the right of assembly and it is therefore controlled in most countries in the interests of security. That is why riding box cars carries extreme penalties in Communist lands. . . .

"Those with the right of free movement use it at times for mischievous purposes. But that is true of many liberties

we enjoy. We nevertheless place our faith in them, and against restraint, knowing that the risk of abusing liberty so as to give rise to punishable conduct is part of the price we pay for this free society.

"War may be the occasion for serious curtailment of liberty. Absent war, I see no way to keep a citizen from traveling within or without the country, unless there is power to detain him. Ex parte Endo, 323 U.S. 283. And no authority to detain exists except under extreme conditions, e.g., unless he has been convicted of a crime or unless there is probable cause for issuing a warrant of arrest by standards of the Fourth Amendment. This freedom of movement is the very essence of our free society, setting us apart. Like the right of assembly and the right of association, it often makes all other rights meaningful—knowing, studying, arguing, exploring, conversing, observing, and even thinking."

—Mr. Justice Douglas concurring in the passport case.

How Does A Nation Take A Firm Stand, When It Has Nothing Firm to Stand On?

Those Parallels Between Vietnam and Cuba—or Berlin—Are Delusions

Some silly parallels are making headlines and creating new illusions in the Far Eastern crisis. The favorite is with Cuba. The two situations are quite different. In the Cuban crisis, the U.S. threatened war unless the Soviet Union removed its intermediate range nuclear missiles. Khrushchev backed down and took them out. But even if he wanted to, Mao Tse-tung couldn't take the guerrillas out of South Vietnam. He might shut off aid but that wouldn't end the war. The unnamed senior American military adviser who gave that pessimistic off-the-record briefing to the press the day Gen. Harkins left Saigon "said 90% of the guerrillas' weapons" came from the supplies we sent South Vietnam (Reuters in *New York Times*, June 18). It's not the Mao Tse-tung trail; it's the LBJ pipeline that keeps the war going.

Made to Order for Miscalculation

Kennedy's success in the missile crisis was due not only to a limited aim but to his close relations with Moscow. He had met and sized up Khrushchev personally. The two capitals were in touch through normal diplomatic relations. The two heads of State were engaged in a private correspondence which facilitated settlement. But in the Far East we have no listening posts in either Peking or Hanoi, no diplomatic relations, no personal contact between Johnson on the one hand and Mao or Ho on the other. On both sides decisions are being made in considerable ignorance of the other. This is a situation made to order for miscalculation.

The parallel with West Berlin is equally deceptive. When a nation takes a stand, it has to know where it's standing. In West Berlin we defend a geographical and political entity. Its people don't want to be swallowed up by the East. Their supply lines to the West were established by agreement of both sides and are clearly marked. The line the Communists cannot cross is unmistakable.

But where is the line in South Vietnam? A substantial part of its people support the rebellion, and see it simply as a continuation of their struggle against the French. Another large portion undoubtedly wish the Americans and the Communists, home-grown or otherwise, would go fight somewhere

Another Senator Questions the War

"One of the most important assumptions of all which still needs to be tested concerns the very nature of the war itself. Is it indeed a war supplied and directed from Hanoi as our government insists or is it a civil war as many critics have suggested? . . . If we are in fact confronted with a civil war fought under self-contained direction and only incidental outside encouragement, we must start again to ask new questions and test new assumptions. We will need to know if the Viet Cong has a coherent set of political objectives. We will need to know the probable limits of endurance to which the Viet Cong must be pushed before its political objectives can be modified. And we will need to know what possible accommodations can be reached, short of total annihilation of the Viet Cong forces, to resolve the internal conflict. The important thing is that there be no further delay in bringing the tools of diplomacy into full play."

—Sen. Claiborne Pell (D. R.I.), in a speech at a public meeting in Wash., D.C., June 17.

else. Those who support the Khanh government are few; a Saigon dispatch in the *New York Herald-Tribune* June 21 reports that the Vietcong even collects taxes inside Saigon from contractors working for the U.S. Of all the troubles we don't talk about in Vietnam, the foremost is our fear lest Khanh's government fall to a new neutralist coup from within and expose our political nakedness. We can threaten to bomb Peking and Hanoi all we want to but nothing they (or we) can do will turn Khanh into an Asian Willy Brandt.

As for Laos, that's not a war, it's a chess match, punctuated by occasional artillery blasts. Whichever side blows noisier, the other retreats. Our favorite General, Phoumi Nosavan, seems to be the world's No. 1 military pacifist. We keep his large army (the numbers range up to 70,000) on our payroll but in all the recent fighting on the Plain of Jars, they haven't fired a shot. They've left the fighting if any to Kong Le's split neutralists. The only outcome we can see in Laos is an ultimatum to Ho. Either he puts some fighting men on our side, too, or we bomb Hanoi.

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I. F. Stone's Weekly. Second Class Postage Paid at Washington, D. C. Published every Monday except the last week in December and the first week in January and Bi-Weekly during July and August at 5618 Nebraska Ave., N.W., Washington, D. C. An independent weekly published and edited by I. F. Stone; Circulation Manager, Esther M. Stone. Subscription: \$5 in the U.S.; \$6 in Canada; \$10 elsewhere. Air Mail rates: \$15 to Europe; \$20 to Israel, Asia and Africa.