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Book Review

Donald F. Harrington

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The fine expressions of those who have delved into this topic, and disagree, merit closer examination than a mere book review can give. It is intriguing that a problem which, in essence, is not a very major one as far as society is concerned, can arouse such violence of feelings, bitterness, and antagonisms. Perhaps it reflects our own feelings of discomfort in accepting responsibility for our own actions.

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*Reviewed by Donald F. Harrington**

FREEDOM TO TRAVEL—Report of the Special Committee to Study Passport Procedures of the Association of the Bar of the City of New York. Published by Dodd, Mead & Company, New York, N. Y.; 144 pp.; 1958.

The Bar Association of the City of New York appointed a Special Committee of distinguished lawyers to examine passport controls, State Department procedures, and the various grounds for denial of passport. This book sets forth in clear and concise language their findings, conclusions and recommendations. Well-sprinkled with footnotes and case comment, it is excellent as a ready reference.

The majority of the court decisions relating to the issuance or denial of passports on an individual basis date from 1952 and can be considered of "cold war" origin. Most of these cases were decided on procedural points. From the general tone and synthesis of the cases, the Committee found that the courts agree that the issuance and revocation of passports to individuals are in the area of foreign affairs by statute and thus not subject to judicial review, *but* that refusal to issue or revocation, without adequate review, violates the due process clause of the Fifth Amendment.

As to the general freedom to travel, the Committee recognizes the necessity for some restrictions upon the absolute freedom to travel. Nevertheless, they believe that the right to travel is closely related to the First Amendment freedoms and that the

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right to travel should only be denied when it would dangerously impair our national interest or security. It is the contention of the Committee that each inroad upon the freedom of an individual to travel weakens the base upon which a free society necessarily depends.

A great deal of attention in the Report is given to the question of the discretionary power exercised by the State Department in restricting all American citizens from travel to a certain country or area during peacetime. The discretionary power is sometimes used as an instrument in the conduct of foreign policy. Occasionally, this power is used as a punishment or international chastisement aimed toward a foreign power. In many instances, it is felt the real penalty is not imposed on the foreign government but the United States and her citizens in the form of propaganda and ridicule. The Committee feels that certain area restrictions and prohibitions are more than justified, but that normal diplomatic practices should be exhausted prior to placing any restrictions against a foreign country for misconduct toward the United States or any of its citizens. It is the Committee's firm recommendation that area restrictions are sometimes necessary for the protection of our citizens, but that the action should not be so arbitrary as to be wholly capricious. In the words of the Committee: "Because of its nature, the restriction on travel to countries or areas should be employed only in situations of gravity and seriousness."

Another vital part of the passport problem discussed at length is the type and kind of hearing a citizen should be entitled to, and has a right to expect, when his application for passport is denied. Most important, a procedure must be available to such person and he should have a hearing on whether or not the ground for denial is applicable to him. To travel abroad is a Constitutional right and the type of review board selected must afford the unsuccessful applicant due process of law.

One of the most important points of this system should be the prompt notice of tentative denial. Too often, if prompt notice is not given, the purpose for which the trip is contemplated is frustrated by substantial delay. The Committee also feels that the applicant should be informed in what manner his travel abroad would endanger national security and upon what information and sources the conclusion was based. There was disagreement among the Committee on whether or not this board of passport appeals should be allowed to consider evidence and hear

witnesses that are not disclosed to the applicant. Some members believe that new legislation should cover this point, while other members believe that the unsuccessful applicant should have the right to rebuttal or else the evidence should not be considered. This section on confrontation and cross-examination are some of the most important in the report.

Perhaps the most publicized question and the greatest area of public interest arises from the requirement that each applicant for a passport must sign an oath of allegiance. It was indeed gratifying to note that the Committee made short work of any objection to this requirement. In their own words: "This is unobjectionable because of its close relation to citizenship, an essential for every passport applicant. A citizen should never object to his government's calling upon him to reaffirm his loyalty in general terms which indicate his willingness to support the Constitution."

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*Reviewed by William Samore**

LIVING THE LAW, by Frank E. Cooper. Published by The Bobbs-Merrill Company, Inc., Indianapolis, Indiana; 184 pp.; 1958.

Frank E. Cooper, Professor of Law at Michigan Law School, has written his latest book especially for the entering law student. But graduates should not make the mistake of setting the book aside unopened.

Professor Cooper uses a wide brush to paint his law canvas. Although of necessity not a treatise on each of many topics covered, still there is sufficient depth. Some of the matters discussed no law student is formally taught. A sampling of the topics covered: questions of fact, the rule of law, legislation, administrative law, the practitioner's skills (investigation, negotiation, advocacy), and drafting.

One point mentioned by the author should have been expanded. The point, evident to professors, but not to students: law school study and undergraduate study simply are not the same. Too many students expect merely a continuation. Many who cannot adjust become an attrition statistic.

Professor Cooper grandly predicts for the successful law stu-

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