86TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 42

EXTENSION OF ESPIONAGE LAWS

FEBRUARY 23, 1959.—Referred to the House Calendar and ordered to be printed

Mr. MOORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1992]

The Committee on the Judiciary, to whom was referred the bill (H. R. 1992) to repeal section 791 of title 18 of the United States Code, so as to extend the application of chapter 37 of title 18, relating to espionage and censorship, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to extend the application of chapter 37 of title 18, United States Code, relating to espionage and censorship, to acts committed anywhere in the world by repealing section 791 of that title. That section now provides that the provisions of chapter 37 shall apply only within the admiralty and maritime jurisdiction of the United States, on the high seas, and within the United States.

HISTORY

An identical bill (H.R. 13676, 85th Cong.) passed the House of Representatives on August 18, 1958.

STATEMENT

The limitation upon the application of existing espionage laws to acts committed either in the United States, on the high seas, or within the admiralty and maritime jurisdiction of the United States has prevented prosecution of acts of espionage committed against the United States in foreign countries. The committee has found no justification for such a limitation. On the other hand it believes

that it is imperative that the laws of this Nation protect it from acts of espionage committed abroad as well as at home.

To give our criminal laws such extraterritorial effect is not novel. In the case of *United States* v. *Bowman* (260 U.S. 94) the Supreme Court held that citizens of the United States while in a foreign country were subject to penal laws enacted to protect the United States and its property. Crimes against the United States committed abroad are triable, under section 3238 of title 18, United States Code, in the district where the offender is found, or into which he is first brought.

DEPARTMENT VIEWS

This legislation is sponsored by the Department of Justice and there follows its communication to the Speaker of the House of Representatives suggesting this bill.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., July 29, 1958.

The SPEAKER,
House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: Chapter 37 of title 18, United States Code, is entitled "Espionage and Censorship." It consists of a number of sections prohibiting certain acts prejudicial to the national security. The first section in the chapter, section 791, provides that the chapter "shall apply within the admiralty and maritime jurisdiction of the United States and on the high seas as well as within the United States." This embraces the United States and American vessels on the high seas or on navigable waters within the territorial jurisdiction of foreign sovereigns.

Because espionage knows no geographical boundaries, because U.S. military and civilian personnel are distributed widely about the globe, and because it is unreasonable to limit the Government's ability to protect itself against acts of espionage on the basis of the place where such acts are committed, the Department of Justice recommends the repeal of section 791. By the repeal of this section chapter 37 will be given extraterritorial effect within the rule expressed in *United States* v. *Bowman* (260 U.S. 94), that acts which are directly injurious to the Government and may be perpetrated without regard to locale are punishable when committed by citizens either at home or abroad. Espionage is such an offense.

We would appreciate the appropriate reference of this proposed legislation.

The Bureau of the Budget has advised that there is no objection to the submission of this recommendation.

Sincerely,

WILLIAM P. ROGERS,
Attorney General.

The committee recommends that the bill, H.R. 1992, be enacted.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed, with matter proposed to be stricken out enclosed in black brackets, and new matter proposed to be added shown in italic:

TITLE 18, UNITED STATES CODE

* * * * * * *

CHAPTER 37—ESPIONAGE AND CENSORSHIP

Sec.

[791. Scope of chapter.]

* * * * * * *

[§ 791. Scope of chapter

[This chapter shall apply within the admiralty and maritime jurisdiction of the United States and on the high seas, as well as within the United States.]

○

87TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 452

EXTENSION OF ESPIONAGE LAWS

JUNE 7, 1961.—Referred to the House Calendar and ordered to be printed.

Mr. FEIGHAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 2730]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2730) to repeal section 791 of title 18 of the United States Code so as to extend the application of chapter 37 of title 18, relating to espionage and censorship, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of the proposed legislation is to extend the application of chapter 37 of title 18, United States Code, relating to espionage and censorship, to acts committed anywhere in the world by repealing section 791 of that title. That section now provides that the provisions of chapter 37 shall apply only within the admiralty and maritime jurisdiction of the United States, on the high seas, and within the United States. Identical bills passed the House of Representatives in the 85th and 86th Congresses.

GENERAL STATEMENT

The limitation upon the application of existing espionage laws to acts committed either in the United States, on the high seas, or within the admiralty and maritime jurisdiction of the United States has prevented prosecution of acts of espionage committed against the United States in foreign countries. The committee has found no justification for such a limitation. On the other hand it believes that it is imperative that the laws of this Nation protect it from acts of espionage committed abroad as well as at home.

To give our criminal laws such extraterritorial effect is not novel. In the case of *United States* v. *Bowman* (260 U.S. 94) the Supreme Court held that citizens of the United States while in a foreign country

were subject to penal laws enacted to protect the United States and its property. Crimes against the United States committed abroad are triable, under section 3238 of title 18, United States Code, in the district where the offender is found, or into which he is first brought.

This legislation is proposed by the Attorney General of the United States who wrote to the Speaker of the House of Representatives as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., April 26, 1961.

The SPEAKER,
House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: Chapter 37 of title 18, United States Code, is entitled "Espionage and Censorship." It consists of a number of sections prohibiting certain acts prejudicial to the national security. The first section in the chapter, section 791, provides that the chapter "shall apply within the admiralty and maritime jurisdiction of the United States and on the high seas as well as within the United States." This embraces the United States and American vessels on the high seas or on navigable waters within the territorial jurisdiction of foreign sovereigns.

Because espionage knows no geographical boundaries, because U.S. military and civilian personnel are distributed widely about the globe, and because it is unreasonable to limit the Government's ability to protect itself against acts of espionage on the basis of the place where such acts are committed, the Department of Justice recommends the repeal of section 791. Chapter 37 will thus be given extraterritorial effect within the rule expressed in *United States* v. *Bowman* (260 U.S. 94), that acts which are directly injurious to the Government and may be perpetrated without regard to locale are punishable when committed by citizens either at home or abroad. The Bowman principle will likewise make chapter 37 applicable to other persons who are not citizens of, but who owe allegiance to, the United States, and to aliens who are permanent residents of the United States and who, while traveling outside the territory of the United States, commit one of the unlawful acts defined in this chapter.

Identical legislation was introduced in the 86th Congress as S. 1646 and H.R. 1992. The latter passed the House on March 2, 1959.

The Bureau of the Budget has advised that there is no objection to the submission of this recom nendation.

Sincerely,

(Signed) ROBERT F. KENNEDY,
Attorney General.

Identical legislation was recommended by the former Attorney General of the United States as per the following letter:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., July 29, 1958.

The SPEAKER,
House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: Chapter 37 of title 18, United States Code, is entitled "Espionage and Censorship." It consists of a number of sections prohibiting certain acts prejudicial to the national security. The first section in the chapter, section 791, provides that the chapter "shall apply within the admiralty and maritime jurisdiction of the

United States and on the high seas as well as within the United States." This embraces the United States and American vessels on the high seas or on navigable waters within the territorial jurisdiction of foreign sovereigns.

Because espionage knows no geographical boundaries, because U.S. military and civilian personnel are distributed widely about the globe, and because it is unreasonable to limit the Government's ability to protect itself against acts of espionage on the basis of the place where such acts are committed, the Department of Justice recommends the repeal of section 791. By the repeal of this section chapter 37 will be given extraterritorial effect within the rule expressed in *United States* v. *Bowman* (260 U.S. 94), that acts which are directly injurious to the Government and may be perpetrated without regard to locale are punishable when committed by citizens either at home or abroad. Espionage is such an offense.

We would appreciate the appropriate reference of this proposed legislation.

The Bureau of the Budget has advised that there is no objection to the submission of this recommendation.

Sincerely,

WILLIAM P. ROGERS,
Attorney General.

The committee recommends that the bill, H.R. 2730, be enacted.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed, with matter proposed to be stricken out enclosed in black brackets, and new matter proposed to be added shown in italic:

TITLE 18, UNITED STATES CODE

* * * * * * *

CHAPTER 37—ESPIONAGE AND CENSORSHIP

Sec.
[791. Scope of chapter.]

* * * * * * *

[§ 791. Scope of chapter

[This chapter shall apply within the admiralty and maritime jurisdiction of the United States and on the high seas, as well as within the United States.]

86TH CONGRESS
2d Session

SENATE

Calendar No. 1881

REPORT
No. 1811

HR 1992

INTERNAL SECURITY AMENDMENTS

JUNE 30, 1960.—Ordered to be printed

Mr. DODD, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2652]

The Committee on the Judiciary, to which was referred the bill (S. 2652) to strengthen the internal security of the United States, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

AMENDMENTS

(1) On page 4, in line 16, after the numeral "5" insert "of the Communist Control Act of 1954".

(2) On page 7, in line 18, after the numeral "5" insert "of the Communist Control Act of 1954".

(3) On page 11, after the word "proceeding" in lines 19 and 20, insert the word "in".

AREAS OF IMPACT

This bill has impact in four separate areas: (1) with respect to offenses under the Espionage Act committed outside the territorial jurisdiction of the United States; (2) with respect to the definition of a "foreign principal" under the Foreign Agents Registration Act; (3) with respect to definition of the term "organize" as used in the Smith Act; (4) with respect to the authority of the Secretary of State to deny passports to Communists, and passport procedures generally.

VENUE FOR HIGH SEAS OFFENSES

Section 1 of the bill is the same in text as the bill S. 1642 (introduced by Senator Eastland) and the bill H.R. 4154 (passed by the House of Representatives on March 16, 1959). This section would provide venue for offenses committed upon the high seas or elsewhere out of the jurisdiction of any particular State or district, by providing that the trial of any such offense so committed shall be in the district in which the offender or any one of two or more joint offenders is arrested or is first brought; or if such offender or offenders are not so arrested or brought into any district, then an indictment or informa-

tion may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or in the District of Columbia.

This provision is supported by the Department of Justice and so far as the committee is aware, is not opposed in any quarter.

The committee specifically endorses the statement of the House committee, in reporting H.R. 4154 (H. Rept. 199, 86th Cong., 1st. sess.) that the legislation proposed in section 1 of S. 2652 has as its purpose—

> to (1) permit the indictment and trial of an offender or joint offenders who commit abroad offenses against the United States, in the district where any of the offenders is arrested or first brought; (2) to prevent the statute of limitations from tolling in cases where an offender or any of the joint offenders remain beyond the bounds of the United States by permitting the filing of information or indictment in the last known residence of any of the offenders. The amendment permits the filing of indictment or information in the District of Columbia in the event that the residence of any of the offenders in the United States is not known.

ATTORNEY GENERAL'S STATEMENT

In recommending enactment of legislation of this nature, the Attorney General of the United States declared:

> Section 3238 (of title 18, United States Code) now provides that "The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought." This quoted language results in a most awkward situation in certain instances when two or more joint offenders are involved.
>
> If two or more individuals jointly commit acts of treason abroad and are thereafter located in different districts within the United States, they must, under the present statute, be indicted and tried in different jurisdictions. To avoid situations such as those indicated, it is recommended that section 3238 be amended to provide that the trial of offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of a State or district, may be held in any district in which one of two or more joint offenders is arrested or first brought.
>
> The proposed bill would also provide that if such offenders are not arrested or brought into any district an indictment or information may be filed in the district of the last known residence of any of them or in the District of Columbia. This change is desirable because under existing law there is a question as to whether an offender who commits an offense beyond the bounds of the United States and remains beyond those bounds can be indicted. The appellate decisions indicate that such a person is not a "person fleeing from justice" under section 3290 of title 18, United States Code, and that the statute of limitations continues to run during his absence.
>
> I would appreciate the prompt referral and early introduction of this corrective legislation.

The Bureau of the Budget has advised that there is no objection to the submission of this recommendation.

Sincerely,

WILLIAM P. ROGERS,
Attorney General.

DEFINITION OF "FOREIGN PRINCIPAL" CLARIFIED

Section 2 of the bill is the same in text as S. 2350 (by Senator Dodd) and H.R. 6817 (approved by the House of Representatives, August 31, 1959).

The purpose of this provision is to amend the Foreign Agents Registration Act so as to include within the definition of "foreign principal" domestic organizations which are substantially "supervised, directed, controlled, or financed" by a foreign government or foreign political party.

This section also seeks to clarify the so-called commercial exemptions of the Foreign Agents Registration Act by providing that a foreign principal, in order for its agents to be eligible for exemption from registering under the act, must be engaged in activities which are either private *and* nonpolitical *and* financial or private *and* nonpolitical *and* mercantile.

At the present time, the term "foreign principal" as used in the Foreign Agents Registration Act is defined to include a domestic organization which is "subsidized" by a foreign government or a foreign political party. The Department of Justice has informed the Congress that experience in the administration of the Foreign Agents Registration Act shows a need for the inclusion within the term "foreign principal" of domestic organizations which, while perhaps not subsidized by a foreign government or political party, are substantially controlled, directed, or financed by a foreign government or foreign political party. Proof of such control, direction, or financing often is available where proof of "subsidy" is difficult or impossible.

The present commercial exemption has proved in experience to be ambiguous. Argument often has been made that if a foreign principal can meet any one of the several stated criteria, its agents may be exempted from registration. It is the view of the committee that all such criteria, as stated in series, must be met; and the amendment contained in section 2 will make this interpretation uniform.

ENFORCEABILITY RESTORED TO SMITH ACT SECTION

Section 3 of the bill will restore the enforcibility of the "organizing" section of the Smith Act. This section was rendered unenforcible against current Communist activity by the Supreme Court decision in the case of *Yates and Schneiderman, et al.* v. *U.S.* (354 U.S. 298), wherein "organize" was held to be applicable only to the original organization or complete reorganization of the Communist Party.

ABA RECOMMENDATION

Enactment of section 3 would carry out the recommendation of the American Bar Association that the Congress—

> amend the Smith Act to define the word "organize" to include the recruitment of new party members, the formation of new

party units, and the regrouping, expansion, or other activities of an organizational nature performed by members of existing clubs, cells, classes, and other units so as to insure the applicability of this section of the act to Communist actionists, agents, organizers, colonists, or members currently performing organizational work.

TESTIMONY ON SECTION 3

Section 3 is a combination of S. 1300, S. 527, and H.R. 2369. It follows the wording of S. 1300, except for elimination of the phrase, "encouraging recruitment of," which Deputy Attorney General Lawrence E. Walsh said might pose problems because of the broader definition it gives of the term "organize." Roger Fisher, faculty, Harvard Law School, agreed with that viewpoint, and said he believes "the act of recruiting can be made criminal without interfering with freedom of speech."

Other witnesses favorable to the strengthened definition of "organize" in the Smith Act were Ross L. Malone, president of the American Bar Association; Loyd Wright, former Chairman of the Commission on Government Security (who favored S. 527 and S. 1300); Senator Keating (who favored S. 527); Attorney General Louis Wyman of New Hampshire (who favored S. 527); Francis W. Stover, assistant director, National Legislative Service, Veterans of Foreign Wars; Matt Triggs, assistant legislative director, American Farm Bureau Federation; John S. Mears, legislative representative, the American Legion; Robert Morris, attorney of Point Pleasant, N.J.; and Roy Cohn, vice president of American Jewish League Against Communism, Inc.

Witnesses opposed to the enactment of any bill to redefine the term "organize" in the Smith Act were Irvin Lechliter, executive director, American Veterans Committee; Clark Foreman, director, Emergency Civil Liberties Committee (who opposed any amendments to strengthen the Smith Act and favored repeal of the Smith Act itself); Joseph L. Rauh, Jr., vice chairman, Americans for Democratic Action (who also said he opposed the Smith Act as well as any amendments to strengthen it); Edward J. Ennis, general counsel of the American Civil Liberties Union (who said that if the Smith Act is to be used to prosecute, then "organize" should be defined, but stated that his organization is opposed to the Smith Act and any amendments which would strengthen it).

In addition to witnesses who opposed S. 527, the National Lawyers Guild submitted a statement through Royal W. France, executive secretary, which said the bill "abridges first amendment guarantees of freedom of association and political activities." The guild also said the Smith Act should be repealed.

PASSPORT FUNCTIONS

Section 4 and the succeeding sections of S. 2652 deal generally with the passport function of the State Department.

Section 4(a) would strengthen the hand of the Immigration and Naturalization Service by granting authority to delay the departure of a vehicle, vessel, or aircraft pending determination of liability for an immigration violation.

Subsection 4(c) and section 5, respectively, would write into the Immigration and Nationality Act and the existing passport law, respectively, specific authority for denial, limitation, or revocation of a passport in the case of any person where there exists adequate grounds for believing that such person is, or has been since January 1, 1951, a member, of or affiliated with, the Communisty Party, or knowingly engages or has knowingly engaged, since January 1, 1951, in activities intended to further the international Communist movement, and where it is also determined that the activities or presence of such person abroad would be harmful to the security of the United States.

Section 5 of S. 2652 also authorizes the Secretary of State to require each passport applicant to submit a verified written statement respecting any Communist Party membership or affiliation since January 1, 1951.

TRAVEL RESTRICTIONS

Section 5 provides further authority for the Secretary of State to limit travel under passports in countries or areas where the Secretary has determined that the U.S. Government is unable to provide adequate protection to persons traveling, due to the lack of diplomatic relations or due to disturbances within such countries or areas, or where the Secretary has determined that travel of U.S. nationals to or in such countries or areas would seriously impair the foreign relations or foreign policy of the United States.

REVIEW PROCEDURE

Section 6 of S. 2652 provides in detail for passport review procedure. It authorizes review of the case of any applicant who petitions for such review within 6 months after his passport has been withdrawn, canceled, or revoked, or his passport application has been denied.

The review provisions include requirements that the applicant shall be given reasonable notice of the reasons for the original action; that the applicant shall have the privilege of being advised, assisted, or represented by counsel; that the applicant shall have a reasonable opportunity to present all information relevant and material to the formulation of a recommendation in his case; that the applicant may testify in his own behalf; that the applicant may present witnesses and offer other evidence; and that a complete verbatim stenographic transcript shall be made of the proceedings on review, which transcript shall be available to the applicant or his counsel.

It is specifically provided that review proceedings shall be conducted in such a manner as to protect from disclosure information which in the opinion of the Secretary of State would affect the national security, safety, and public interest or would tend to compromise investigative sources or investigative methods; but this provision is modified by a proviso that no such information shall be the basis for the denial, withdrawal, cancellation, or revocation of a passport in the case of any applicant unless such applicant has been furnished a statement summarizing such information in as much detail as possible without jeopardizing the national security, safety, and public interest, or compromising investigative sources or methods.

It is further specifically provided that in connection with the review, consideration shall be given to the inability of the applicant to challenge such information, if any, concerning which he has not been ad-

vised in full or in detail, or to attack the credibility of information which has not been disclosed to him.

PASSPORT DENIAL CRITERIA MODIFIED

The passport provisions of S. 2652 (from sec. 4 on) are based on the provisions of S. 1303, introduced by Senator Eastland, and on which the committee conducted hearings, modified as recommended by the Department of State, and further modified so as to substitute, as the criteria for denial, revocation, or withdrawal of passports, the criteria contained in the House bill H.R. 9069, as reported favorably from the House Committee on Foreign Affairs on September 3, 1959. These criteria are much more favorable to passport applicants than the criteria contained in the original Senate bill. With the exception of this change in criteria, all recommendations of the State Department have been adopted.

STATE DEPARTMENT RECOMMENDATIONS

The full text of the State Department letter recommending specific changes in S. 1303 is appended as a part of this report.

DEPARTMENT OF STATE,
May 6, 1959.

DEAR SENATOR EASTLAND: I refer to your request of March 26, 1959, for the comments of the Department of State on S. 1303, to amend the Immigration and Nationality Act with respect to travel in time of war or national emergency and passport procedures. The receipt of your letter was acknowledged on March 30, 1959.

For reasons of clarity and ease of reference, the Department's comments hereunder are grouped by subjects rather than in accordance with the numerical order of sections of the bill.

I. PROVISIONS RELATING TO THE PASSPORT FUNCTION

A. Authority to deny passports to supporters of the international Communist movement

A principal objective of S. 1303 would appear to be to furnish statutory authority for a policy which the executive branch followed over a period of many years. As you will recall, the Supreme Court ruled in June 1958 that the Secretary's regulations embodying the executive policy of denying passports to supporters of the world Communist movement were invalid because of a lack of specific legislative authority. The Department is convinced that this policy is both necessary and correct, and therefore wishes to support legislation which is deemed adequate to achieve this objective.

Promptly after the Supreme Court decision, the administration submitted a draft bill to the 85th Congress which, if enacted, would have authorized the denial of passports to certain persons who knowingly support the Communist movement. The administration bill, introduced in the Senate as S. 4110, did not confine itself solely to this problem, however, but represented a substantial revision of existing passport laws and regulations and specified grounds for individual

passport denials in addition to those pertaining to Communist activities.

As a result of hearings held by the congressional committees to which the administration bill had been referred, it became apparent that those committees would not act favorably on the administration bill. A narrower bill, limited in scope to the denial of passports to members of the Communist Party and others engaged in activities in furtherance of the Communist movement (H.R. 13760), was subsequently introduced in the House, reported unanimously by the Committee on Foreign Affairs and, as amended, passed by the House on August 23, 1958. On the same day, it was transmitted to the Senate and referred to the Committee on Foreign Relations, which had taken no action on the bill when the 85th Congress adjourned the following day.

The Department still considers that the enactment of legislation along the broader lines of the administration bill introduced in the last Congress would be in the public interest. Nevertheless, the Department agrees that the lack of legislative authority for the denial of passports to supporters of the Communist movement continues to be the most urgent current problem in the passport field.

Former Secretary Dulles said in his letter of July 7, 1958, when transmitting the administration's bill to the 85th Congress: "I think there can be no doubt in anyone's mind that we are today engaged for survival in a bitter struggle against the international Communist movement. Congress itself has so concluded in numerous statutory findings and congressional reports. The international Communist movement seeks everywhere to thwart U.S. foreign policy. It seeks on every front to influence foreign governments and peoples against the United States and eventually by every means, including violence, to encircle the United States and subordinate us to its will. The issuance of U.S. passports to supporters of that movement facilitates their travel to and in foreign countries. It clothes them when abroad with all the dignity and protection that our Government affords. Surely our Government should be in a position to deny passports to such persons."

These words are just as valid today as when first uttered. Indeed, the prediction made in July 1958 by officers of the Department that such persons would hasten to take advantage of the breach in our defenses by promptly obtaining passports has proved accurate.

The Department is therefore in complete agreement with the apparent objective of S. 1303 to fill the legislative gap found by the Supreme Court in the executive policy of denying passports to supporters of the Communist movement and supports subsection (e) of section 1 of the bill (line 9, p. 3, to and including line 16, p. 6). The Department would make a suggestion, however, with reference to the language of this part of the bill. The Department believes that it would not be in the public interest to deny passports to persons who have in fact ceased supporting the Communist movement, and therefore recommends striking the words "or has been engaged" in line 24 on page 5, and substituting "adheres" for the words "has adhered" in line 4 on page 6.

Section 5 of S. 1303, would prohibit, under criminal penalty, the issuance, renewal, or extension of any passport to Communist Party members, other supporters of the Communist movement and certain

former supporters of the Communist movement. The apparent purpose of section 5 is to overcome the fact that section 6 of the Subversive Activities Control Act of 1950 (64 Stat. 993, 50 U.S.C. 785) has not yet become effective because no organization has yet registered with, or been finally ordered to register by, the Subversive Activities Control Board owing to protracted litigation.

In view of the provisions of section 1(e) of S. 1303, it appears to the Department that, if section 1(e) is enacted, then section 5 would be superfluous because both are directed at preventing the travel of supporters of the international Communist movement, and section 1(e), with the revision suggested earlier in this letter, would appear to be more adequate from the administrative and legal viewpoints for accomplishment of the legislative purpose.

Moreover, it would not seem appropriate to provide criminal penalties for any U.S. officer or employee who may issue or renew a passport to a person under Communist discipline. Officials administering the law would of course be under obligation to carry out the intent of Congress, and there are disciplinary measures adequate to insure fulfillment of that obligation. There might also exist the possibility that an official would be under judicial decree in a civil action to issue a passport which could cause him to incur criminal prosecution under the language of proposed section 5.

Simply stated, the Department of State needs legislative authority which will allow the Secretary of State to deny passports to hard-core supporters of the international Communist movement. The Department believes, moreover, that such denials should take place only in accordance with due process of law. We do not seek this statutory authority in order to stifle criticism abroad of this Government or its policies. The Department seeks only the capacity to protect the United States by denying passports to those relatively few hard-core, active supporters of communism whose travel abroad would constitute an actual danger to our national security.

B. Authority for travel controls in absence of war or national emergency

The Department opposes section 1(a) of S. 1303, which would amend section 215 of the Immigration and Nationality Act in order to permit the imposition by the President of controls on the travel of American citizens outside the United States even though there may be no state of war or of national emergency. The Department believes that it would be contrary to the traditional American dedication to the ideal of free travel to institute such controls in the absence of war or of any other national emergency which would justify the requirement of a passport for exit from the United States.

C. Geographic restrictions of general applicability

The Department supports the apparent intent of section 1(b) of S. 1303 to the extent that it would prohibit, under penal sanction, travel to any country with respect to which passports have been declared to be invalid. However, there would seem to be no reason to limit this prohibition only to periods when there is in force a Presidential proclamation relating to restrictions on the departure from and entry into the United States of aliens and citizens. Violation of general area restrictions contained in passports is considered serious whether or not there is in effect any requirement under American law for the possession of a passport in order to leave the United States.

This same comment is applicable to the refusal to surrender a passport which has been revoked (sec. 1(b)(3) of S. 1303).

The Department suggests that section 1(b) be stricken from the bill, leaving section 215(b) of the Immigration and Nationality Act as it now reads. In order to provide adequately both for general geographic restrictions and for failure to surrender a revoked passport, the following language is proposed, possibly as an amendment to the act of July 3, 1926 (44 Stat. 887; 22 U.S.C. 211(a)):

"(a) In the event that the Secretary of State makes a determination that the U.S. Government is unable to provide adequate protection to persons traveling in particular countries or areas, due to the lack of diplomatic relations or due to disturbances within such countries or areas, or that travel of U.S. nationals to or in such countries or areas would seriously impair the foreign relations or foreign policy of the United States, he may publish such determination and may cause notice thereof to be stamped on each passport thereafter issued, renewed, or amended.

"(b) No U.S. citizen or national shall travel to or in any country or area which has been designated by the Secretary of State in a determination made and published under section (a), except that in the national interest the Secretary may make exceptions to geographical limitations of general applicability for particular categories of persons.

"(c) It shall be unlawful for any holder of a passport to refuse to surrender it upon proper demand by the Secretary of State or his authorized agent.

"(d) Any person who violates the provisions of subsection (b) or (c) of this section shall be guilty of a misdemeanor and upon conviction be punished by imprisonment for a period not exceeding 1 year or by a fine not exceeding $1,000, or both."

D. Rulemaking authority and general grounds for denial

Section 3 of S. 1303 would amend the Passport Act of 1926 for the purpose of accomplishing two objectives: first, to authorize the President to delegate rulemaking powers concerning passports to the Secretary of State, and, secondly, to prohibit the Secretary from issuing passports to persons on a number of broad grounds not necessarily related to Communist activities.

Although the President has already delegated to the Secretary the rulemaking authority concerning passports granted to the President by section 1 of the act of July 3, 1926 (44 Stat. 887; 22 U.S.C. 211a) (see Executive Order No. 7856, 3 Fed. Reg. 681, 687, 22 CFR 51.75 (1958)), the Department has no objection to statutory confirmation or establishment of this delegation of power.

With regard to the second objective of section 3 of S. 1303, the Department believes it desirable that there be statutory confirmation of the Secretary's traditional authority to deny, limit, or revoke passports when the person's activities or travel abroad would constitute an evasion of justice or would be inimical to the national security or seriously impair the conduct of the foreign relations of the United States. However, the proposed language of section 3(c) would appear to require the Secretary of State to investigate and affirmatively determine that each passport applicant or holder is not going abroad to violate U.S. law or engage in activities prejudicial to the interests of the United States. Such a prohibition against the

issuance of passports would create an impossible administrative burden and it is therefore suggested that the subsection be revised to provide simply that the Secretary is authorized to deny, limit, or revoke passports in those cases where adequate grounds exist to show that an individual would fall within one of the specified categories.

E. Review procedures

Section 4 of S. 1303 would add a new section to the Administrative Procedure Act establishing detailed procedures for administrative review of any adverse action taken against an individual passport applicant or holder. The Department favors the establishment of such procedures by statute, although the Department questions whether this can best be accomplished by amending the Administrative Procedure Act. There are certain details of the proposed provisions, however, which the Department believes should be revised or eliminated.

First, although the term "applicant" would appear to be defined so as to exclude anyone not a citizen or national of the United States (sec. 13(a)), the language of the succeeding subsection (13(b)) might be interpreted to include the right of administrative review of adverse passport action based on an applicant's failure to establish his citizenship or nationality. There are already in existence other effective remedies, administrative and judicial, for testing citizenship, and the Department would not favor using the passport review procedure proposed by section 4 of S. 1303 for that purpose. It is therefore suggested that the words "on any grounds other than those relating to citizenship or nationality" be inserted after the words "any applicant who" on line 3 of page 9.

Secondly, proposed section 13(f)(2) would give the applicant during proceedings before the special review officer the privilege of having "counsel *authorized to practice in such proceedings*" (lines 17–18, p. 11; emphasis added). The Department suggests that the italicized words be striken, because it has never been the practice of the Department to require special authorization for attorneys at law to represent private individuals in matters concerning the Department. Passport applicants, it is felt, should enjoy the widest possible choice of counsel to represent them in the event of any adverse action by the Department.

Thirdly, while the Department strongly supports the objective of subsection (g) of proposed section 13 (p. 12 of S. 1303) to protect confidential information or sources thereof from harmful disclosure, it is suggested that procedural protection of the individual would be strengthened by a provision requiring the Secretary of State to furnish to the passport applicant a fair resume of whatever confidential information on which it may be necessary to rely in substantiating the denial of the passport. Such a summary would give the applicant the data he would need in order to prepare his rebuttal without, however, compromising the Government's legitimate interest in protecting investigative sources and intelligence relations.

Finally, it is noted that subsection (j) would provide that the procedure prescribed by section 13 would be the sole and exclusive procedure for review of passport action adverse to an individual citizen or national. While the intent of this provision may be to refer only to administrative review procedure, the language would seem open to the interpretation that review by the judicial system is

thereby excluded. The Department believes that the possibility of any such undesirable interpretation could be avoided easily by inserting the word "administrative" before the word "procedure" in line 1 on page 14 of S. 1303.

F. Obligation to report places visited abroad

Section 6 of S. 1303, would require any passport applicant to promise under oath to report subsequently, upon request, on the places outside the United States visited during the period of validity of the passport. The provision appears to be of dubious utility, because the passport itself normally shows entry and exit stamps affixed by the authorities of foreign countries and, in cases where a passport holder succeeds in attempts to avoid the placing of such stamps on his passport, for his own reasons, he would presumably not furnish the information voluntarily and would incur no sanction if he refused.

II. PROVISIONS NOT DIRECTLY RELATED TO THE PASSPORT FUNCTION

A. Mandatory registration of births abroad

Section 2 of S. 1303 would raise a presumption of expatriation of an American citizen hereafter born abroad whose birth is not registered at an American consular office within a period of time to be determined by the Secretary of State.

It seems undesirable to raise a presumption of expatriation against a child for no fault of his own. Either the parents' negligence or the inaccessibility of an American consular officer might prevent the timely registration of the birth.

While the Department appreciates fully that the apparent purpose of section 2 is to reduce the number of fraudulent claims to American citizenship, it is of the opinion that the present permissive registration of American births abroad should not be made practically mandatory in connection with the acquisition or loss of U.S. nationality. Every foreign country has its own laws concerning the recording of births, deaths, and other vital statistics, as well as the legal effects of those events within the country. The recording of births is traditionally an exclusive function of the sovereign exercising jurisdiction over the place of the birth, and the Department's regulations concerning the voluntary registration of American birtns abroad take full cognizance of that fact. To make Foreign Service posts primary recording offices for vital statistics data would give rise to confusion in the minds of Americans residing abroad and might ultimately lead to proposals for making mandatory the registration at Foreign Service posts of deaths, marriages, divorces, and adoptions affecting American citizens in foreign countries, whether military or civilian, resident or transient. The organizational, enforcement, and staffing problems connected with the collection and custody of such vital statistics data would require considerable additional study.

B. Detention of carriers for travel control violations

Section 1(c) of S. 1303 would appear to authorize the detention of any vehicle, vessel, or aircraft purporting to depart from a port of the United States whenever section 215 of the Immigration and Nationality Act is being or has been violated by or upon the carrier. The Department of State expresses no opinion regarding the desirability

of this proposal, inasmuch as it would seem that other Federal agencies, including the Department of Commerce, are more concerned with the matters covered therein. However, the Department of State does believe that the enactment of this section would strengthen the enforcibility of travel control provisions.

* * * * * * *

I hope the foregoing comments will be of assistance in the committee's consideration of S. 1303. Should your committee desire further explanation of any of the foregoing matters, either by letter or orally, the Department would be glad to cooperate to the maximum extent.

The Bureau of the Budget has advised that it has no objection to the submission of this report.

Sincerely yours,

WILLIAM B. MACOMBER, Jr.,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

SEC. 3238. Offenses not committed in any district.

The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district [where the offender is found, or into which he is first brought.] *in which the offender, or any one of two or more joint offenders, is arrested or is first brought; but if such offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or if no such residence is known the indictment or information may be filed in the District of Columbia.*

FOREIGN AGENTS REGISTRATION ACT (56 STAT. 248)

* * * * * * *

DEFINITIONS

SECTION 1. As used in and for the purposes of this Act—

* * * * * * *

(b) The term "foreign principal" includes—

* * * * * *

(6) A domestic partnership, association, corporation, organization, or other combination of individuals, supervised, directed, controlled, or financed, in whole or in substantial part, by any foreign government or foreign political party;

* * * * * * *

EXEMPTIONS

SEC. 3. The requirements of seetion 2(a) hereof shall not apply to the following agents of foreign principals:

* * * * * * *

(d) Any person engaging or agreeing to engage only in private[,] *and* nonpolitical[,] financial[,] *or* merchantile[, or other] activities in furtherance of the bona fide trade or commerce of such foreign principal or in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of the Act of November 4, 1939, as amended (54 Stat. 48), and *any* such rules and regulations as may be prescribed thereunder;

* * * * * * *

TITLE 181, UNITED STATES CODE

SEC. 2385. Advocating overthrow of Government.

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District of Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than $20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

If two or more persons conspire to commit any offense named in this section, each shall be fined not more than $20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

As used in this section, the term "organize" with respect to any society, group, or assembly of persons, includes the recruiting of new or additional members, and the forming, regrouping, or expansion of new or existing cells, clubs, classes, sections, or other units of such society, group, or assembly of persons.

TITLE 8. UNITED STATES CODE

* * * * * * *

SEC. 1185. Travel control of citizens and aliens during war or national emergency.

* * * * * * *

(c) If there is in effect any requirement, prescribed or authorized by law, for the procurement of a passport for any travel, no application made by any individual for the issuance of such passport may be granted, and each passport previously issued shall be revoked, unless the issuance or use of such passport is authorized under subsection (e), whenever there is reasonable ground to believe that the applicant, or holder of a previously issued passport, is, or has been since January 1, 1951, a member of, or affiliated with, the Communist Party, or knowingly engages or has knowingly engaged, since January 1, 1951, in activities intended to further the international Communist movement, as to whom it is determined that his or her activities or presence abroad would under the findings made in section 5 be harmful to the security of the United States. The Secretary of State may require, as a prerequisite to the issuance of a passport, that the applicant subscribe to and submit a written statement duly verified by his oath or affirmation whether he is presently, or has been since January 1, 1951, a member of the Communist Party or a supporter of the international Communist movement, and to state the circumstances of any such membership or to state his activities in support of the international Communist movement. Nothing in this subsection shall alter or limit the authority of the Secretary of State to deny any application for the issuance of a passport, or to revoke a previously issued passport, on any ground other than the ground described in this subsection. The Secretary may withhold a passport in the national interest on the basis of confidential information where he shall certify that it is contrary to the interests of this Nation that a passport be issued to the applicant. The Secretary of State shall not deny a passport to any person solely on the basis of membership in any organization, association with any individual or group, adherence to unpopular views, or criticisms of the United States or its domestic or foreign policies.

(d) In determining, for the purposes of subsection (c), whether there is reasonable ground for belief that any individual is within the class there defined, consideration may be given to activities and associations of that individual of one or more of the following categories:

(1) Membership in any party, group, or association described in subsection (c); or

(2) Prior membership in any party, group, or association described in subsection (c), if the termination of such membership was under circumstances warranting the conclusion that the applicant continues to act in furtherance of the interests of such party, group, or association; or

(3) Present or past activities which further the aims and objectives of any such party, group, or association, under circumstances warranting the conclusion that he engages in such activities as a result of direction, domination, or control exercised over him by such party, group, or association, or otherwise continues to act in furtherance of the interests of such party, group, or association; or

(4) Activities continued consistently over a prolonged period of time which indicate that he adheres to the doctrine of any such party,

group, or association, as such doctrine is expressed in the actions and writings of such party, group, or association on a variety of issues, including shifts and changes in the doctrinal line of such party, group, or association; or

(5) Any other conduct which tends to support the belief that the applicant is going abroad or traveling abroad for such purpose.

(e) A passport may be issued to or held by any individual, notwithstanding the provisions of subsection (c), whenever personally directed by the Secretary of State for reasons deemed by him to be strictly in the public interest.

[(c)](*f*) Penalties.

Any person who shall willfully violate any of the provisions of this section, or of any order or proclamation of the President promulgated, or of any permit, rule, or regulation issued thereunder, shall, upon conviction, be fined not more than $5,000, or, if a natural person, imprisoned for not more than five years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by like fine or imprisonment, or both; and any vehicle, vessel, or aircraft together with its appurtenances, equipment, tackle, apparel, and furniture, concerned in any such violation, shall be forfeited to the United States. *No vehicle, vessel or aircraft, by or upon which there is reasonable cause to believe that a breach or violation of this section is being or has been committed, shall be permitted to depart from any port of the United States pending the determination of liability to forfeiture fo such vehicle, vessel or aircraft.*

[(d)] (*g*) Definitions.

The term "United States" as used in this section includes the Canal Zone, and all territory and waters, continental or insular, subject to the jurisdiction of the United States. The term "person" as used in this section shall be deemed to mean any individual, partnership, association, company, or other incorporated body of individuals, or corporation, or body politic.

[(e)] (*h*) Nonadmission of certain aliens.

Nothing in this section shall be construed to entitle an alien to whom a permit to enter the United States has been issued to enter the United States, if, upon arrival in the United States, he is found to be inadmissible under any of the provisions of this chapter, or any other law, relative to the entry of aliens into the United States.

[(f)] (*i*) Revocation of proclamation as affecting penalties.

The revocation of any proclamation, rule, regulation, or order issued in pursuance of this section shall not prevent prosecution for any offense committed, or the imposition of any penalties or forfeitures, liability for which was incurred under this section prior to the revocation of such proclamation, rule, regulation, or order.

[(g)] (*j*) Permits to enter.

Passports, visas, reentry permits, and other documents required for entry under this chapter may be considered as permits to enter for the purposes of this section.

SECTION 22, UNITED STATES CODE

* * * * * * *

SEC. 211a. (*a*) **Authority to grant, issue, and verify passports.**

The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by diplomatic representatives of the United States, and by such consul generals, consuls, or vice consuls when in charge, as the Secretary of State may designate, and by the chief or other executive officer of the insular possessions of the United States, under such rules as the President shall designate and prescribe for and on behalf of the United States, and no other person shall grant, issue, or verify such passports.

(b) In the exercise of his authority under subsection (a) of this section the President may confer upon and delegate to the Secretary of State the power and authority to prescribe rules and regulations relating to the issuance, refusal, extension, renewal, restriction, limitation, revocation, withdrawal, and cancellation of passports.

(c) The Secretary of State is authorized to deny, limit, or revoke a passport in the case of any person where there exist adequate grounds for believing that such person is, or has been since January 1, 1951, a member of, or affiliated with, the Communist Party, or knowingly engages or has knowingly engaged, since January 1, 1951, in activities intended to further the international Communist movement, as to whom it is determined that his or her activities or prescence abroad would under the findings made in section 5 be harmful to the security of the United States. The Secretary of State may require, as a prerequisite to the issuance of a passport, that the applicant subscribe to and submit a written statement duly verified by his oath or affirmation whether he is presently, or has been since January 1, 1951, a member of the Communist Party or a supporter of the international Communist movement, and to state the circumstances of any such membership or to state his activities in support of the international Communist movement.

(d)(1) In the event that the Secretary of State makes a determination that the United States Government is unable to provide adequate protection to persons traveling in particular countries or areas, due to the lack of diplomatic relations or due to disturbances within such countries or areas, or that travel of United States nationals to or in such countries or areas would seriously impair the foreign relations or foreign policy of the United States, he may publish such determination and may cause notice thereof to be stamped on each passport thereafter issued, renewed, or amended.

(2) No United States citizen or national shall travel to or in any country or area which has been designated by the Secretary of State in a determination made and published under paragraph (1), except that in the national interest the Secretary may make exceptions to geographical limitations of general applicability for particular categories of persons.

(3) It shall be unlawful for any holder of a passport to refuse to surrender it upon proper demand by the Secretary of State or his authorized agent.

(4) Any person who violates the provisions of this subsection shall be guilty of a misdemeanor and upon conviction be punished by imprisonment for a period not exceeding one year or by a fine not exceeding $1,000 or both.

THE ADMINISTRATIVE PROCEDURE ACT (60 STAT. 237)

* * * * * * *

PASSPORT REVIEW PROCEDURE

SEC. 13. (a) As used in this section—

(1) The term "applicant" means a citizen or national of the United States who has made application for a passport in accordance with section 1 of title IX of the Act of June 15, 1917 (40 Stat. 227; 22 U.S.C. 213), section 215 of the Immigration and Nationality Act, as amended (66 Stat. 190; 8 U.S.C. 1185), and such regulations as the Secretary of State shall prescribe to carry out his authority under this section.

(2) The term "special review officer" means any officer of the Department of State or of the United States whom the Secretary of State deems specifically qualified to conduct proceedings prescribed by this section and who is selected and designated by the Secretary of State, individually or by regulation, to conduct such proceedings. Such special review officer shall be subject to such supervision and shall perform such duties, not inconsistent with this section, as the Secretary of State shall prescribe.

(b) Any applicant who, on any grounds other than those relating to citizenship or nationality, has been refused a passport or the renewal or extension thereof, has a passport withdrawn, canceled or revoked, or has a passport restricted or limited, except in a manner applicable to all applicants, and who has complied with all regulations promulgated by the Secretary of State pursuant to this or any other Act, may within six months after notification of such action by the Secretary of State submit to the Secretary of State a timely motion in writing for a review before a special review officer, and any such applicant shall be advised of his right to make such motion.

(c) A motion for a review made under subsection (b) of this section shall be referred to a special review officer. In any case in which the Secretary of State believes that such procedure would be of aid in making a determination, he may direct specifically or by regulation that an additional officer of the Department of State or of the United States shall be assigned to present the evidence on behalf of the Government and in such case such additional officer shall have authority to present evidence, and to interrogate, examine, and cross-examine the applicant or the witnesses. Nothing in the preceding sentence shall be construed to diminish the authority conferred upon the special review officer conducting proceedings under this section.

(d) A special review officer shall conduct proceedings under this section for the purpose of submitting to the Secretary of State a recommendation as to what action should be taken. In proceedings conducted under this section all testimony shall be given under oath or affirmation. The special review officer may administer oaths, present and receive evidence, interrogate, examine, and cross-examine the applicant or witness. The special review officer shall communicate his recommendation to the Secretary of State, who may approve, or reject, in whole or in part, such recommendation, reopen the proceedings, or make his own determination in lieu of the recommendation of the special review officer. The decision of the Secretary of State shall be final. The applicant shall be notified of such decision by the Secretary of State in writing.

(e) No special review officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated in the original refusal to issue, review, or extend a passport, or in the original action of withdrawal, cancellation, revocation, limitation, or restriction of a passport.

(f) Proceedings before a special review officer acting under the provisions of this section shall be in accordance with such regulations, not inconsistent with this section, as the Secretary of State shall prescribe, which regulations shall include requirements that—

(1) the applicant shall be given notice, reasonable under all the circumstances, of the reasons for the original action taken on his application and of the time and place at which the review proceedings will be held;

(2) the applicant shall have the privilege of being advised, assisted, or represented (at no expense to the Government) by counsel;

(3) the applicant shall have a reasonable opportunity to present all information relevant and material to the formulation of the special review officer's recommendation in his case;

(4) the applicant may testify in his own behalf, present witnesses and offer other evidence. If any witness whom the applicant wishes to call is unable to appear personally, the special review officer may, in his discretion, accept an affidavit by him or order that his testimony be taken by deposition. Such deposition may be taken by any person designated by the special review officer and such designee shall be authorized to administer oaths for the purpose of the depositions;

(5) a complete verbatim stenographic transcript shall be made of proceedings conducted under this section by qualified reporters, and such transcript shall constitute a permanent part of the record. Upon request the applicant or his counsel shall have the right to inspect the transcript, and each witness shall have the right to inspect the transcript of his own testimony; and

(6) attendance at hearings under this section shall be restricted to such officers of the Department of State as may be concerned with the case under consideration, the applicant, his counsel, the witnesses, and the official stenographer. Witnesses shall be present at the hearing only while actually giving testimony, unless otherwise directed by the special review officer.

(g) Proceedings under this section shall be conducted in such manner as to protect from disclosure all information which, in the opinion of the Secretary of State or special review officer, would affect the national security, safety, and public interest, or would tend to compromise investigative sources or investigative methods: Provided, That no such information shall be the basis for the denial, withdrawal, cancellation, or revocation of a passport in the case of any applicant in proceedings under this section unless such applicant has been furnished a statement summarizing such information in as much detail as the Secretary or such special review officer determines is possible without jeopardizing the national security, safety, and public interest, or compromising investigative sources or methods.

(h) The files maintained by the Department of State and any other pertinent Government files submitted to the special review officer shall be considered as part of the evidence in each case without testimony or a

ruling as to admissibility. Such files may not be examined by the applicant.

(i) The special review officer shall insure the applicant of complete and fair consideration of his case. In making his recommendation the special review officer shall consider the entire record, including the transcript of the proceedings and any files and confidential information as he may have received. The special review officer shall take into consideration the inability of the applicant to challenge information of which he has not been advised in full or in detail, or to attack the creditability of information which has not been disclosed to him. Judicial rules of evidence shall not apply in proceedings under this section except that reasonable restrictions shall be imposed by the special review officer as to the relevancy, competency, and materiality of evidence introduced in the proceedings.

(j) Notwithstanding the provisions of any other law, the procedure prescribed in this section shall be the sole and exclusive administrative procedure for the review of the refusal to issue, renew, or extend a passport, or of the withdrawal, cancellation, restriction, limitation, or revocation of a passport.

○

Calendar No. 1881

86TH CONGRESS, 2d Session — SENATE — REPT. 1811, Part 2

INTERNAL SECURITY AMENDMENTS

AUGUST 26 (legislative day, AUGUST 24), 1960.—Ordered to be printed

---

Mr. KEFAUVER, from the Committee on the Judiciary, submitted the following

MINORITY AND SEPARATE VIEWS

[To accompany S. 2652]

MINORITY VIEWS

THE PASSPORT SECTIONS

Our opposition to S. 2652 rests principally upon our firm belief that this bill represents a grave and unwarranted infringement of the American citizen's liberty to travel. Sections 4–13 of the bill lay down the criteria and procedures to be used by the State Department in denying, revoking, and limiting passports. We believe that the proposed criteria are vague and self-contradictory, and that the proposed procedures clearly violate the due process of law vouchsafed every citizen by the fifth amendment. Under cover of complicated legal language, S. 2652 would grant the State Department a discretion in the matter of withholding and limiting passports which is virtually absolute. We cannot approve of such a lack of faith in our historic belief in the rule of law, nor can we agree to legislation which attempts to remove important constitutional issues from the jurisdiction of the Federal courts. The Department of State's primary function is the conduct of foreign affairs, not the determination of the legal rights and responsibilities of American citizens, and it would be unfair to the Department, as well as unwise, to make it the final arbiter of the right to travel.

"The right to travel," said the Supreme Court in the recent case of *Kent* v. *Dulles* (357 U.S. 116 (1958))—

> is a part of the "liberty" of which the citizen cannot be deprived without due process of law under the fifth amendment * * * Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country,

> may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.

Today the power to grant or to withhold passports is the power to grant or to withhold the right to travel. This was not always so, for until 1914 it was possible to travel extensively without a passport. Although the Secretary of State from 1856 onward had the authority to "grant and issue passports" (11 Stat. 60), this discretionary power did not involve the right to travel, since passports were generally required neither by foreign governments nor by the United States. From the time of the First World War, however, to the present, Congress has enacted a series of compulsory passport laws to have effect during time of war or national emergency. The latest of these is section 1185(b) of the Immigration and Nationality Act of 1952 (66 Stat. 163 (1952); 8 U.S.C. 1101–1503), which provides that in time of war or national emergency—

> * * * it shall, except as otherwise provided by the President, and subject to such limitations and exceptions as the President may authorize and prescribe, be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid passport.

The compulsory passport is still in effect because the national emergency proclaimed by President Truman on January 17, 1953 (Proclamation No. 3004, Jan. 17, 1953; 18 Fed. Reg. 489), has not been terminated.

Although the citizen's right to travel has become dependent upon his obtaining a compulsory passport, the Department of State nevertheless insists that its old formal discretion over the granting and withholding of passports should apply in this new situation. The source of this discretion in statutory law is the present Passport Act (22 U.S.C. 211a–222, 44 Stat. 887–1926) which reads in part:

> The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and certified in foreign countries by diplomatic representatives of the United States * * * under such rules as the President shall designate and prescribe for and on behalf of the United States, and no other person shall grant, issue, or verify such passports" (sec. 211a).

Basing its claim partly upon this statute and the Presidential regulations made pursuant to it, and partly upon its constitutional function of conducting the Nation's foreign policy, the State Department has since 1950 claimed the power to deny passports to anyone whose travel would, in its opinion, be contrary to the national interest. Thus, State Department Regulation 51.135 denied passports to Communists, while regulation 51.136 purported to restrict the movement of others whose activities abroad would "be prejudicial to the interests of the United States." The opinion of the State Department, repeatedly stated, has been that the question of who may travel and who may not must be decided entirely by reference to U.S. foreign policy—in other words, by the State Department.

A series of decisions in the Federal courts have challenged this assumption of unlimited administrative discretion. In *Bauer* v. *Acheson* (106 F. Supp. 445 (D.D.C. 1952)) the court held that passport administration is not merely a matter of foreign affairs because it involves important constitutional rights:

> This court is not willing to subscribe to the view that the executive power includes any absolute discretion which may encroach on the individual's constitutional rights, or that the Congress has power to confer such absolute discretion. We hold that, like other curtailments of personal liberty for the public good, the regulation of passports must be administered, not arbitrarily or capriciously, but fairly, applying the law equally to all citizens without discrimination, and with due process adapted to the exigencies of the situation.

Less than 2 months after this decision, the State Department created a Board of Passport Appeals and provided rules of procedure for the Board (C.F.R. 22: 51.135–51.170) further court decisions made it clear that the courts would be satisfied with nothing less than genuine due process of law in the administration of passports. *Clark* v. *Dulles* (D.C.D. 1955, 129-F. Supp. 950) and *Nathan* v. *Dulles* (D.C.D. 1955, 129 F. Supp.). denied that private talks with applicants or informal interrogation constitute adequate hearings, while *Boudin* v. *Dulles* (D.C.D. 1955, 136 F. Supp. 218) decided that the Secretary may not deny a passport on the basis of evidence which does not appear upon the record and which the applicant has had no opportunity to meet. The cases of *Kent* v. *Dulles* (246 F. 2d 600 (D.C. Cir. 1957)), *Briehl* v. *Dulles* (248 F. 2d 561 (D.C. Cir. 1957)) and *Dayton* v. *Dulles* (237 F. 2d 43 (D.C. Cir. 1956)) decided that the Secretary does not have statutory authority to withhold passports from citizens on the ground of alleged political affiliations and specifically reserved opinion on the question of whether such statutory authority would be constitutional. . .However, the Supreme Court suggested that it would entertain grave doubts about the constitutionality of such a statute. The Court in the *Kent* case concluded:

> We deal here with a constitutional right of the citizen, a right which we must assume Congress will be faithful to respect. We would be faced with important constitutional questions were we to hold that Congress by section 1185 and section 211a had given the Secretary authority to withhold passports to citizens because of their beliefs or associations. Congress has made no such provision in explicit terms; and absent one, the Secretary may not employ that standard to restrict the citizens' right of free movement.

I. PASSPORT DENIAL

Sections 4 and 5 of S. 2652 grant the Secretary of State the right to deny, limit, or revoke passports in the case of any applicant—

> whenever there is reasonable ground to believe that the applicant or holder of a previously issued passport, is, or has been since January 1, 1951, a member of, or affiliated with, the Communist Party, or knowingly engages or has knowingly engaged, since January 1, 1951, in activities intended

to further the international Communist movement, as to whom it is determined that his or her activities or presence abroad would under the findings made in section 5 of the Communist Control Act of 1954 be harmful to the security of the United States.

Does this mean that the Secretary of State may deny passports to applicants merely because they are Communists or people whose activities the Secretary thinks might further the Communist movement? On the surface it does not, because the same section states:

> The Secretary of State shall not deny a passport to any person solely on the basis of membership in an organization, association with any individual or group adherence to unpopular views, or criticisms of the United States or its domestic or foreign policies.

The committee report on this bill expresses the view that this section has substance and that passports will only be denied where, in addition to evidence of Communist associations—

> it is also determined that the activities or presence of such person abroad would be harmful to the security of the United States (S. Rept. 1811, 86th Cong., 2d sess., p. 5).

However, the bill does not justify this interpretation. The key words in section 4(c) and section 5(c) are:

> as to whom it is determined that his or her activities or presence abroad would under the findings made in section 5 of the Communist Control Act of 1954 be harmful to the security of the United States.

But, when we look at the fifth section of the Communist Control Act we find a series of 14 tests for determining membership or participation in the Communist Party or any other organization defined in the act. Thus, the two tests for the denial or revocation of a passport in this bill are membership in the Communist Party, and "activities intended to further the international Communist movement."

In other words, the bill does not make a denial of a citizen's passport application dependent upon the production of substantive evidence that he has acted contrary to national security. The vague criteria of membership in an organization and of personal beliefs pose a clear danger to the rights of American citizens to think and associate as they please. What, then, should the criteria be? One example of constructive thinking on this subject is the report of the Special Committee To Study Passport Procedures of the Association of the Bar of the City of New York, entitled "Freedom to Travel." It contains the following recommendation:

> Travel abroad by individual U.S. citizens may be restrained and passports may be denied to citizens as to whom the Secretary finds reasonable grounds to believe that their activities abroad would endanger the national security of the United States by (1) transmitting without proper authority, security information of the United States; (2) inciting hostilities or conflicts which might involve the United States; or (3) inciting attacks by force upon the United

States or attempts to overthrow its Government by force and violence.

Travel should not be restrained and passports should not be denied solely on the basis of membership in any organization, even the Communist Party, association with any individual or group, adherence to unpopular views, or criticism of the United States or its domestic or foreign policies. Thus, action hostile to the national security of the United States must be reasonably anticipated, as opposed to mere speech or the holding of opinions; and, there must be an evidentiary showing that travel of a particular individual will constitute a definable danger to the national security of the United States (p. XXII).

Sections 4(c) and 5(c) of S. 2652, however, are so worded that they do not protect the rights of law-abiding citizens. The end result of the vague wording and confusing cross-references of these sections is that the Secretary of State is empowered to deny, limit, or revoke the passport of non-Communists as well as Communists where "there is reasonable ground to believe" that they are dangerous. Since the Secretary alone may decide when reasonable ground for such belief exists, the Secretary may deny passports to anyone whom he considers suspicious. The ultimate effect of the bill is made clear by subsection (d) of section (4), which states the considerations which may be used as evidence that the applicant falls into the class defined in subsection (c). These considerations are membership in any group described in subsection (c), prior membership in such a group if the applicant continues to act as a member, activities which warrant the conclusion that the applicant is controlled by such a group, and activities which indicate that he adheres to the doctrine of such a group. Once again the bill refuses to lay down substantive criteria which define activities contrary to the national security, thus giving the State Department a free hand to decide what constitutes such a threat. This is exactly the kind of unfettered discretion which our system of government was created to limit and control.

II. DUE PROCESS OF LAW

Wide discretionary power may be granted to administrators only when the standards of due process of law are carefully maintained. It might be possible to allow the Secretary of State wide discretionary powers if the individual denied a passport were granted a hearing in which he was permitted the traditional rights of confrontation of witnesses, cross-examination, presentation with the complete evidence against him, appeal to an impartial body, and the review of his case by the courts of the land. However, all of these safeguards are denied to the applicant for a passport under the hearing procedures established by S. 2652. On the contrary, the bill authorizes the Department of State to withhold evidence, to keep witnesses hidden, and to refuse to let the applicant know the full nature of the charge against him, if it considers such action in the interests of national security. A ruling to this effect by the Secretary of State is final,

according to the bill, and hence is not subject to judicial review. Section 4, subsection (c) states:

> The Secretary may withhold a passport in the national interest on the basis of confidential information where he shall certify that it is contrary to the interests of this Nation that a passport be issued to the applicant.

The requirement of certification is significant, because it is a subtle method of avoiding judicial review. As long as the bill merely said that the Secretary could withhold information "where it is contrary to the interests of this Nation," the courts might have had jurisdiction to decide that a specific denial of a passport was not justified by the statute. But, according to this section, mere certification is to be taken as conclusive; the Secretary certifies, the case is closed. Moreover, it will be noted that this phrase enables the Secretary to deny passports for any reason whatsoever, whether or not that reason is relevant to the issue of subversion and the national security. If the Secretary decides that John Jones should not have a passport, he may deny the passport without stating his reasons for so doing, if such statement, in his opinion, ought not to be released.

Section 6 of the bill amends the Administrative Procedure Act (60 Stat. 237; 5 U.S.C. 1001) in order to provide for a process of review of passport decisions. Step by step, as we follow the subsections of this important section of the bill, we see the principles of due process being whittled away. "The applicant shall be given notice, *reasonable under all the circumstances*, of the reasons for the original action taken on his application * * *" (sec. 6(f)(1)). Why this addition of the words italicized? The reasons are not far to seek; just as the Secretary may deny a passport on the basis of confidential information, so he may decide that it is not "reasonable" to give the applicant full notice of the reasons for such denial. Paragraph (2) continues, "the applicant shall have the *privilege* of being advised, assisted, or represented (at no expense to the Government) by counsel." We are convinced, on the contrary, that representation by counsel is a right, not a privilege.

Reading further, we find (3): "the applicant shall have a reasonable opportunity to present all information relevant and material to the formulation of the special review officer's recommendation in his case." The special review officer is thus to decide what information is "relevant and material," to the formulation of his own recommendation. When we add the effect of this paragraph to that of paragraph (1), it becomes evident that the special review officer may first inform the applicant of only a small part of the genuine reasons for the denial of his application, and may then rule out any evidence which the applicant offers to refute the hidden reasons as immaterial to the stated charge. A hypothetical case in which these restrictions on the applicant's rights would operate to his great injustice is not difficult to imagine. Thus, John Jones is denied a passport because the State Department suspects that he intends to make a speech in West Berlin, attacking our West German allies. However, since this charge cannot be proved, and would not look good in print if it could, the Secretary's special review officer denies the passport on the basis of "confidential information." Jones testifies at his hearing that he is now a great friend of West Germany, but since the Department still

considers him a suspicious character, his testimony is declared immaterial by the special review officer, and Mr. Jones is left without a remedy.

It may be argued that State Department administration is honorable and conscientious and would not resort to such devious and objectionable devices to limit an American citizen's right to travel. But we should not write into law procedures which could so easily be abused by administrators, and which tempt the most well-meaning review officer to excesses of power.

Paragraphs (5) and (6) of this subsection give the applicant the right to testify in his own behalf, present witnesses, and offer evidence, as well as the right to inspect the transcript of his proceedings. These "rights," however, are seen for what they are—a weak excuse for due process of law, when we read subsection (g) of section 6.

> (g) Proceedings under this section shall be conducted in such manner as to protect from disclosure all information which, in the opinion of the Secretary of State or special review officer, would affect the national security, safety, and public interest, or would tend to compromise investigative sources or investigative methods: *Provided*, That no such information shall be the basis for the denial, withdrawal, cancellation, or revocation of a passport in the case of any applicant in proceedings under this section unless such applicant has been furnished a statement summarizing such information in as much detail as the Secretary or such special review officer determines is possible without jeopardizing the national security, safety, and public interest, or compromising investigative sources or methods.

Subsection (h) then provides that files used by the special review officer in arriving at his decision may not be inspected by the applicant. The purpose of these sections is clear. The Secretary of State is here given the unqualified right of withholding such evidence and suppressing such information as he considers in the national interest. There is no provision for judicial review of his decision, no way of checking up on whether he is abusing his power, or using it in the national interest, and in the interest of the rights of the applicant as well. In addition, not only the Secretary of State, who is ultimately responsible for all State Department decisions, but the special review officer, who might be almost any official in the Department, is given the power to keep evidence, witnesses, and the reasons for action against the applicant secret.

This bill would give legislative sanction to the practice of secret accusations made by men who have nothing to fear should their accusations prove false. It would deny one whose passport has been denied on grounds dangerous to his standing in the community the right to confront his accusers, to know the evidence against him, and to have a chance to refute it. The proviso to section 6(g), which purports to let the applicant know the grounds for the Secretary's decision in summary form, is of no effect whatsoever in protecting the aforementioned rights of passport applicants and passport holders, since once again the Secretary, on his own judgment, is permitted to withhold some or all of the evidence against the applicant. The District Court of the District of Columbia summed up our feelings on

this subject (*Boudin* v. *Dulles,* 136 F. Supp. 218 (D.D.C. 1955)) when it said:

> How can an applicant refute charges which arise from sources, or are based upon evidence, which is closed to him? What good does it do him to be apprised that a passport is denied him due to associations or activities disclosed or inferred from State Department files even if he is told of the associations and activities in a general way? * * * The right to a quasi-judicial hearing must mean more than the right to permit an applicant to testify and present evidence. It must include the right to know that the decision will be reached upon evidence of which he is aware and can refute directly.

The Court of Appeals (235 F. 2d 532 (D.C. Cir. 1956)) held in this case that if the Secretary should again refuse a passport to the plaintiff, he must state his grounds for withholding witnesses and evidence. The district court would then have jurisdiction to decide—

> whether the Secretary has given reasons valid in law for keeping confidential any information—not disclosed to the applicant—upon which he states he has relied.

In direct contrast to these decisions of the Federal courts, S. 2652 not only denies the applicant the right to know the evidence against him, but attempts to oust the jurisdiction of the courts, which the court of appeals in *Boudin* v. *Dulles* expressly provided for.

III. TRAVELERS REPORT

Section 7 is such an extreme interference in the liberty of American citizens that the State Department, as quoted in the report on the bill, rejected it. Section 7 provides that each applicant for a passport must declare under oath to provide upon request of the Department of State—

> a full and accurate report concerning the places outside the United States which were visited by such applicant subsequent to the issuance of any such passport and prior to its final expiration.

This section was taken from another proposed bill, S. 1303; the State Department had this to say about it:

> Section 6 of S. 1303 would require any passport applicant to promise under oath to report subsequently, upon request, on the places outside the United States visited during the period of validity of the passport. The provision appears to be of dubious utility, because the passport itself normally shows entry and exit stamps affixed by the authorities of foreign countries and, in cases where a passport holder succeeds in attempts to avoid the placing of such stamps on his passport, for his own reasons, he would presumably not furnish the information voluntarily and would incur no sanction if he refused (p. 11 of S. Rept. 1811, 86th Cong., 2d sess.).

Even after the State Department condemned this section as unnecessary and unworkable, it nevertheless remains in S. 2652. Section

7 is not only unworkable—it is an affront in its demand that American citizens hand in reports on their travels abroad.

IV. JURISDICTION

A further ground on which we may urge the rejection of this bill is the fundamental procedural ground of the primary jurisdiction over passport legislation of the Foreign Relations Committee. Senator Fulbright, chairman of the Senate Committee on Foreign Relations, made this point most strongly in a recent speech on the floor of the Senate (Congressional Record, July 1, 1960, vol. 106, No. 123, daily edition, p. 14416). [Copy attached.]

It is clear that the Foreign Relations Committee, and not the Judiciary Committee, has primary jurisdiction over passport legislation. We vigorously support the Senator in his belief that the Senate should not act on any bill concerning passports without first referring such bill to the Foreign Relations Committee for its consideration and recommendations. Only three short sections of S. 2652 deal with other matters. The five sections which make up the bulk of the bill concern passports, and should be referred to the Committee on Foreign Relations.

V. CONCLUSION

The passport provisions of S. 2652 do not give proper consideration to the American citizen's right to travel. The vague criteria for revocation or refusal of passports enable administrators to deny the right to travel on the basis of beliefs and associations. The review procedures which follow revocation or refusal do not protect the citizen's birthright: the guarantee that he shall not be deprived of his constitutional rights without due process of law. In each case, the Secretary of State is granted a discretion which is virtually absolute: in the case of the criteria, a discretion to determine what activities are not in the national interest; in the case of procedure, a discretion to suppress information which in his opinion ought to be suppressed. As the Wall Street Journal said in its editorial of July 6, 1960, on the passport provisions of S. 2652:

> It's probably old-fashioned of us, or even reactionary, but we have always clung to the idea that one of the liberties of a free people is the right to go from one place to another.
>
> * * * This bill not only gives the Government the authority to deny a passport; it rests that authority entirely in the hands of an appointed official, the Secretary of State, and says that he may exercise it on the basis of "confidential information" which he does not have to explain to anybody.
>
> So let's suppose the Secretary of State doesn't like somebody's political opinions—today a Communist's opinion, tomorrow yours perhaps. He denies a passport, and the matter is appealed to the courts. Under this proposed law he can refuse to say why he denied the passport; he merely explains to the court that explaining why he acted would "affect the national security, safety, and public interest," as he alone defines them. And there you are.

Nowhere, moreover, do we find substantial evidence of any instance in which the granting of a passport has had a significant detrimental

effect on the national security. We are fully aware that the issuance of a passport to a "suspicious person" might conceivably result in the misuse of that passport to the detriment of U.S. foreign policy, but in balancing that possibility against the wholesale deprivation of the right to travel which S. 2652 would allow, we conclude that even were there evidence of past abuses of the passport, we would not be justified in denying Americans the right to travel otherwise than by due process of law. Considering that no such evidence has been adduced, and, further, that most of the court cases on the subject have dealt with the denial of passports to dissenters, or at most suspected Communist sympathizers, we reject the assumption that the danger of permitting a general right to travel is so great as to warrant a vast restriction of liberty. S. 2652 is a vast restriction of liberty. Its true effects are hidden behind confusing and vague language, and involved references to other statutes. For these reasons we cannot concur in the majority report and strongly urge rejection of this bill.

S. 2652: OTHER SECTIONS

The purpose of section 1 of S. 2652, as summarized in the report of the Judiciary Committee (S. Rept. 1811, p. 2) is—

> to (1) permit the indictment and trial of an offender or joint offenders who commit abroad offenses against the United States, in the district where any of the offenders is arrested or first brought; (2) to prevent the statute of limitations from tolling in cases where an offender or any of the joint offenders remain beyond the bounds of the United States by permitting the filing of information or indictment in the last known residence of any of the offenders * * *

While we do not doubt that the Government of the United States has the power to legislate against offenses committed outside its territorial jurisdiction, we wish to point out that this power has been exercised with the greatest hesitation in the past. Because of the prima facie jurisdiction of all nations over citizens and aliens within their territorial limits, the habit of legislating to exercise authority over people abroad could lead to grave conflicts of jurisdiction between friendly nations. Had hearings been held on this legislation, had reports on its necessity been produced, had evidence on its behalf been submitted by the Department of Justice, we would be in a position to determine the need for such legislation. We find no such hearings, no specific evidence, no details from the Justice Department. We cannot support legislation which affects the acts of persons inside other countries without being shown specific evidence of its necessity and worth. Therefore, we ask for more information and study before we pass judgment on this section.

Section 2 expands the definition of "foreign principal" in the Foreign Agents Registration Act to include domestic organizations which are not only subsidized, but substantially "supervised, directed, controlled, or financed" by a foreign government or foreign political party. Subsection (2) of this section limits the commercial exemptions to the act by providing that a foreign principal, in order for its agents to be eligible for exemption from registering under the act, must be engaged in activities which are private, nonpolitical, and

financial or mercantile, instead of either private, nonpolitical, or financial-mercantile.

Mr. Rogers of Colorado, speaking of an identical bill in the House, summed up the practical purpose of this legislation:

> This bill is proposed to broaden and clarify present law. There is a question as to whether or not an individual working for an organization engaged in legitimate business financed or partly financed by a foreign country, should come under this act. This bill makes it certain that they do (Congressional Record, Aug. 29, 1959, vol. 105, No. 150, p. 15985).

The parties at whom this bill is aimed are thus not the spreaders of foreign propaganda, not conspirators seeking to overthrow the Government of the United States, but businessmen with connections abroad. We must, therefore, inquire further why the Justice Department is so concerned about businesses with foreign connections.

The answer to this inquiry may be found in the unpublished testimony of Mr. Nathan Lenvin, Chief of the Registration Section of the Internal Security Section of the Department of Justice, in hearings held before the House Committee on the Judiciary on August 13, 1959. Mr. Lenvin there revealed that the purpose of this legislation was to obtain information about certain domestic corporations which, while not "subsidized," or continually supported by foreign governments under the Foreign Agents Registration Act, were substantially controlled from abroad. He cited the Amtorg-Trading Corp. (New York) as an organization which, although not subsidized by the Soviet Union, was "staffed and directed and controlled by the Soviet Government." Thus, in order to obtain information about a few business corporations, we are presented with a bill whose wording is so sweeping that almost any businessman engaged in international trade could be required to file a detailed registration statement. Moreover, the words "supervised, directed, controlled, or financed" are capable of being interpreted to give the Department of Justice the power to demand information from a vast number of citizens whose dealings abroad are personal, rather than commercial. Mr. Lenvin admitted this in an exchange with Representative Libonati at the hearings before the House Judiciary Committee. Having expressed some doubts as to the undue scope of the language of H.R. 6817, the Representative was assured by Mr. Lenvin that the Justice Department would apply the statute wisely:

Libonati: "You would apply it practically, in other words; is that it?"

Lenvin: "Yes, we have to. This statute, unless applied practically, could lead you into all sorts of difficulty."

Libonati: "Yes."

Lenvin: "Any person who within the United States collects information and/or reports information to a foreign principal. Suppose you were a foreigner living here and were writing to your mother in England on the conditions here in this country, you would be an agent unless you took a commonsense approach to the thing."

Libonati: "Thank you very much."

The hearing closed quickly after this statement.

The representative of the Department of Justice, which asked for this legislation, has so well condemned it that we have little to add to

his observation that it could "lead you into all sorts of difficulty." We believe that any bill which puts the entire responsibility for protecting the rights of individuals in the hands of an administrative department is a bad bill. Like any other interference in the private affairs of individuals, the requirement of registration and the filing of reports with the Department of Justice must be limited to those cases in which it is shown to be necessary. We are not convinced that legislation which gives the Justice Department the power to demand a registration statement from a businessman or a lawyer representing, let us say, the British Overseas Airways Corp., is either desirable or necessary. Since no proof of danger to our internal security has been adduced in support of this section of the bill, we firmly oppose this unwarranted intrusion into the privacy of the American citizen.

CONCLUSION

Other sections of S. 2652 are thus marred by many of the same difficulties which have aroused our disapproval of the passport sections. They make important changes in delicate areas of the law without demonstrating that such changes are in any way necessary to the national security. We therefore urge the rejection of S. 2652.

THOMAS C. HENNINGS, Jr.
ESTES KEFAUVER.
PHILIP A. HART.
JOHN A. CARROLL.

ADDITIONAL VIEWS OF SENATOR CARROLL

In view of the thoughtful and compelling minority report filed herein—to most of which I heartily subscribe—I am opposed to the consideration of this bill during the closing days of this session for the important reason that grave and serious constitutional questions are raised in this type of legislation which require careful study and thorough debate.

In brief, this legislation should not be rushed through in the short time remaining to this session of the Congress.

JOHN A. CARROLL.

ADDITIONAL VIEWS OF SENATOR HART

S. 2652 does many things, and the full dissenting report signed by Senators Kefauver, Hennings, Carroll, and myself sets forth in detail the defects of the bill as it emerges from committee. I wish to add a comment only on the passport legislation provisions.

Men differ in their understanding of the essentials of liberty, but most agree with our judges that freedom includes the right to go from one place to another without the permission of the State, just as it includes the right to speak, the right to print, and the right to assemble peaceably. None of these rights is unqualified, to be sure, and from the beginnings of this Nation there have always been well-meaning men anxious to engraft qualifications on the rights guaranteed so simply and starkly in our Constitution.

Liberty is a fragile flower. It blossoms hardly anywhere in the world. We have it in the United States, but only because we have defended it with our lives in the past, and only because we nurture it in the present through extraordinary devotion. An expression of that devotion is to require those among us who would limit our liberties to carry—conclusively—the burden of showing that all liberty is imperiled if some one of the rights of freemen is not qualified.

In my judgment that burden has not been carried by the authors of S. 2652. The wording used is muddy and, for me, difficult to grasp, but the thrust of the bill is to deny passports to Communist Party members and to those who engage "in activities intended to further the international Communist movement," if the Secretary of State thinks the presence of such persons abroad would be harmful to the security of the United States.

The Secretary of State is relieved of any requirement, in the final analysis, of disclosing to the unsuccessful passport applicant the reason why he cannot leave the country.

Furthermore, the Secretary of State is by this bill given no, and required to observe no, particular standards in arriving at his conclusion that the passport applicant's presence abroad would be harmful to this country's security. There is a cross-reference to the Communist Control Act of 1954, but the standards contained in that act are for determining membership in the Communist Party, and by this bill such membership is not in itself sufficient to justify denial of a passport. What is sufficient, then? It's whatever the Secretary of State thinks is sufficient.

Granted that there are citizens who would use their right to travel abroad in a manner deadly to our national security, and that these we must contain within our shores where they can be observed, nevertheless the strictures to be applied should accord with due process of law.

As I understand S. 2652, within its sweep would be not only the deadly but the harmless, the hapless, the foolish, the eccentric, and the innocent—and as to none of these would we extend the full measure of due process. I doubt very much if this bill is constitutional, and I am sure it is not wise.

PHILIP A. HART.