re restrictions on our citizens’ freedom of travel?

Essentially, the answer to this question belongs in the recesses of our national psychology, belongs, that is, with those unworthy phenomena which have resulted from our obsessive concern with absolute security. We have permitted a precious freedom to become weakened because we have failed to challenge adequately the proposition that travel by an individual is so significant from the standpoint of national safety that the Federal government should control it by the passport device. Actually, most informed opinion scoffs at the possibility that the passport device can prove effective in halting international conspiracy. In the January 11 issue of the Saturday Review, Joseph Welch observes that a much better way of stopping a spy from going abroad “is to arrest the man and try him in a court for treason.” Professor Henry Steele Commager, who writes in the same issue of the magazine, comments:

The allegation that those who go over on legitimate errands might perhaps engage surreptitiously in illegitimate activities does not rise to the dignity of an argument. If it is a matter of conferring with dangerous men abroad, the mails are still open and functioning, and denial of the right to travel is pretty futile. If it is a matter of illegal activities, it is time enough to deal with those when they have occurred, or when there is evidence that they will shortly occur. No such danger has ever been cited.

Whether the Secretary of State has the legal right to withhold passports will be determined by the Supreme Court, but it is proper to observe that the present absolute power of the Secretary to decide who may travel abroad is not explicitly given to him by any statute. Basically, the policy of peacetime restriction dates from 1952, when regulations were crystallized authorizing denial of passports to Communists, those under Communist discipline, and those whom “there is reason to believe are going abroad to engage in activities which will advance the Communist movement.” But in practice the State Department relies not on these provisions but on the nebulous phrase “in the best interests of the U.S.,” which subjects American travel to the Department’s vagaries—a prospect that is hardly reassuring in the light of its aberrant determinations in a number of instances in this area.

We will not in all likelihood return to those halcyon days when a passport was only a letter of introduction from a chief of state requesting the authorities of one state to give consideration to a citizen traveling from another state. A half a century ago, no American would have believed it possible that an American government could prevent an American from traveling abroad. We have moved a lamentable distance from the policy of trust in the integrity of our citizens, and as Prof. Commager writes, “it is unworthy of the State Department to avow a policy [of distrust]; it is unworthy of the American people to tolerate such an avowal.”

The Kastner Case Closed

RUTH CALE (Jerusalem)

The stormiest trial in Israel’s legal history came to an end last month when the Supreme Court reversed the verdict of a lower court and found that Dr. Israel (Rudolph) Kastner, wartime leader of Hungarian Jewry, had not “sold his soul to the devil” by collaborating with the Nazis and had not prepared the ground for the mass murder of Jews.

Dr. Kastner was not present to hear his name vindicated after five long years of litigation. He was murdered last March by three young terrorists who have since been sentenced to life imprisonment. But 75-year-old Malkiel Greenwald, who had initiated the “Kastner affair” by distributing a newsletter in which he accused Dr. Kastner of collaboration in the annihilation of Hungarian Jewry, was present in the courtroom. Greenwald saw his former victory turn to defeat as the Supreme Court, by a majority of four to one, reversed the verdict of the lower court. Because of his age he received a suspended prison term and a small fine.

The controversy over Kastner centered on the fateful year between the Nazi conquest of Hungary in March, 1944, and the defeat of the Third Reich. At that time, Dr. Kastner headed the Jewish Rescue Committee in Budapest, which was in touch with the Jewish Agency’s rescue authorities in Turkey and the American Joint in Switzerland. The following facts emerged during the trial: the Nazi occupation forces in Hungary had appointed a special “Jewish Command,” headed by a man named Crumei who was charged by Eichmann, Himmler’s “exterminator of Jews,” to liquidate Hungarian Jewry as unobtrusively as possible. Kastner negotiated an agreement with Crumei whereby 600 Jews were to be taken to Switzerland against the payment of $2 million. A similar number of immigration certificates into Palestine were to be made available. For this cruel bargain Crumei exacted a promise of strict secrecy, warning that otherwise the 600 would not be spared.

A few days after the agreement, Kastner visited his native Cluj, where 18,000 Jews had been herded into a ghetto, prior to their deportation. There seems little doubt that Kastner knew their destination was to be
the gas chambers of Auschwitz. The Jews of Cluj, however, were certain they were to be sent to a labor camp, convinced that “it can’t happen to us.” Kastner did not warn them of their impending fate. Instead he persuaded a few of the Jews of Cluj, whom he had included in his list of 600, to leave the city without arousing attention and come to Budapest. When the 18,000 Jews of Cluj boarded the transports for Auschwitz—according to evidence taken by the lower court—they were unaware of the fate that awaited them.

W hy had Kastner not warned them? Greenwald insisted—and Judge Benjamin Halevi of the lower court and one of the Supreme Court justices concurred—that Kastner had bargained away the majority against the “select few” that included twenty of his relatives (he left another 100 behind), some friends and Jewish community leaders from all over the country. He had remained silent to keep his side of the bargain with the Nazis. If the Jews of Cluj had revolted, the rescue train to Switzerland would have been cancelled.

“There can be no escape from the conclusion that the ‘notables’ were saved in order to massacre the others,” Justice M. Silberg, who wrote the minority decision, declared. Kastner had no right to keep quiet about the impending mass extermination, even if he despised the future. He had no moral right to “despair for 800,000 others,” for surely if they had known of their fate, many would have revolted and thousands might have saved themselves, as had been the case elsewhere in Nazi-occupied Europe. Hence, concluded the Justice, though the charge of “preparing the ground for the mass murder of Jews” was absurd, Kastner was clearly guilty of collaboration with the Nazis.

The majority of the Supreme Court held otherwise. If Kastner had failed to prevent the deportation, they argued, that did not mean that he had aided the Nazis but simply that he had failed in his task. Kastner had believed he could buy the lives of these Jews too and to that end had begun negotiations with the Nazis. Moreover, there was proof that Kastner had warned the leaders of Cluj of their dire situation and had even given them money for escape.

The president of the Supreme Court, Justice Y. Olshan, held that there was “not one iota of proof” that Kastner had sold out the majority to save the “chosen few.” It was possible, he noted, to interpret Kastner’s silence at Cluj as issuing from the hope that he could save many more Hungarian Jews. Similarly, Justice S. Chesin argued that it was possible that Kastner did not warn the Jews of Cluj “because he saw no benefit from such a warning,” or “perhaps his silence was the result of despair.” Also, “he did not tell them of the danger. . . . because he believed that they might commit acts, after hearing the news, which would do more harm than good.” (Kastner had written, “They surrendered to their fate. The generation of heroes had not yet risen. Parents did not want to leave their children, nor children their parents.”)

However, Justice Chesin commented, by not encouraging them to revolt “he showed the world that he lacked the qualities of a great leader.” But this did not mean that he had betrayed the Jews and had handed them over to the Nazis.

The Supreme Court also rejected Judge Halevi’s finding that Kastner had persuaded two of three Palestinian parachutists, including the legendary Hanna Senesh, who in 1944 were dropped by the Allies into Hungary, to give themselves up to the Gestapo. The lower court had found that Kastner had deliberately handed them over to placate the Nazis. Justice Agnati held that the worst that could be said of Kastner was that he did too little to obtain the release of Hanna Senesh. Justice Silberg stated that though Kastner had done next to nothing to save the girl, this did not necessarily prove collaboration with the Nazis. Nor was there sufficient evidence, the Supreme Court held, that Kastner had handed over to the Gestapo the other two parachutists—Joel Palgi, who survived, and Peretz Goldstein who was sent to a death camp.

O ne question remained unresolved — why two years after the war Kastner had testified at the Nuremberg trials to the good character of Standartenführer Kurt Becher? During 1944, Becher headed the S.S. economic department in Hungary; his main task was to extort money from Jews. Since those who could not pay enough were sent to the gas chambers, Becher was as guilty of the mass murder of the Jews of Hungary as the actual killers. While toward the end of the war Becher saved some Jews from the gas chambers he had clearly done so to provide himself with insurance against any post-war penalties for his actions.

His chief exhibit was to be Dr. Moshe Bar-Zvi, a member of the Rescue Committee and a friend of Kastner’s. Bar-Zvi had been sent by the Gestapo to the Mathausen death camp where Becher ordered the authorities to give him preferential treatment. Shortly before the Nazis surrendered to the Allies, Becher took Bar-Zvi along with him and proceeded to the U. S. army lines where he planned to give himself up. The two men spent three nights together in the woods, where Becher told Dr. Bar-Zvi that he had promised Dr. Kastner that he would free him. He handed Bar-Zvi a suitcase containing valuables which, he said, had been collected as ransom money from those sent to safety in the rescue train, and which he was thus restoring to “the Jewish people.” Shortly after, Becher was arrested and imprisoned by the Americans. He
was detained and not released till 1947.

In August 1947, Dr. Kastner presented an affidavit to the International War Crimes Court at Nuremberg in which he enumerated Becher’s activities for the rescue of Jews and commended his good intentions. On the basis of this affidavit, Becher was first cleared by the War Crimes Court and later by a denazification court.

Judge Halevi had held that Becher rescued Dr. Bar-Zvi and returned some of the loot—a very small part of it—merely to arm himself with an alibi. All five Supreme Court Justices upheld the charge against Kastner that he had wrongly whitewashed Becher, but the majority of four again emphasized that this did not prove collaboration.

In sum, all the members of the Supreme Court agreed with Greenwald’s counsel that this case should never have been taken before the courts but should have been investigated by a public inquiry commission. The case, in fact, would never have reached the courts had not the then Minister of Trade and Industry, Dr. Dov Joseph, in whose offices Kastner worked as public relations chief, urged the Attorney General to indict Greenwald for criminal libel.

It is generally agreed that nothing has been gained by the court’s digging into the tragedy of European Jewry. The judges were compelled, willy-nilly, to become historians, a role for which they were professionally not qualified. And the dragging of the unspeakable horror of the Nazi epoch and the human failings of the Jewish leaders through the courts, the press, and the public platform has not been an edifying spectacle. The Kastner case is now virtually closed. The judicial processes which occasioned such high feeling are over. However, the entire episode leaves an aura of tragedy that only time will dispel.

A Victory for Religious Liberty

SPENCER RICH

A YEAR OF CONTROVERSY CAME TO AN END ON December 12, 1957, when the United States Census Bureau announced that it would not include the question, “What is your religion?” in the 1960 national census. The Bureau’s cryptic admission that “a considerable number of persons would be reluctant to answer such a question,” and its oblique reference to “cost factors” as a reason for its decision glossed over the real extent of the opposition to the proposed inquiry and failed completely to reveal the constitutional and religious basis of that opposition. Actually, civic and religious groups had been waging a strenuous campaign for many months to make the Census Bureau drop the question on religion. In that struggle, the leading role was played by the American Jewish Congress. Now that its efforts have succeeded, the full story can be told.

Over the years, the Census Bureau has asked churches and synagogues about the size of their congregations and property holdings, but no question involving personal religious belief or affiliation has ever been put to individual citizens in any federal census. There are good reasons for this: throughout its history, the United States has maintained a tradition of government non-interference in religious matters, in accordance with the First Amendment to the Constitution. For the government to ask individuals about their religion (under census law, answers are compulsory), and then to classify and record this information would bring the state directly into religious matters.

Thus the Census Bureau’s announcement in the summer of 1956 that it was “considering” asking personal religious questions in the 1960 census caused apprehension—a feeling not allayed by the justifications advanced for this radical departure from tradition. Robert W. Burgess, Census Bureau director, reportedly stated that there were three major reasons for undertaking a religious census: “It would show the world that the United States democracy has a strong spiritual base; it could be used commercially by manufacturers of religious items in marketing their products; it would be a guide for the various denominations in determining how much of a following they have, and in what areas.”

In November 1956, the Census Bureau moved to implement its plans by conducting the first of two test surveys. It polled 431 persons in four Wisconsin counties and reported that “only a few” persons had objected to queries about their religious affiliations. Five months later it undertook a second survey, this one of 35,000 persons all over the country, and again reported that “very few persons” opposed the religious inquiry.

It is interesting to note that a 1957 Minneapolis Tribune poll on the question arrived at a substantially different conclusion. Twenty-two percent of the respondents said that the inclusion of a question on religious affiliation in the census was “a poor idea.” The discrepancy between the Bureau’s conclusions and those of the Tribune is most readily explained by the fact that the Bureau’s survey had the prestige of the federal government behind it. The persons polled by the Bureau, it seems obvious, were afraid to reveal their true feelings since they had an uneasy sense “that somehow they might get into trouble” if