

THE STATE DEPARTMENT'S CASE AGAINST

PATRICIA COATSWORTH

Prepared for the

PATRICIA COATSWORTH DEFENSE COMMITTEE

Mrs. Patricia Coatsworth has been indicted for conspiracy to violate the McCarran-Walter Immigration and Naturalization Act of 1952 (Title 8, Section 1185(b) of the U. S. Code). The part of the McCarran-Walter Act Mrs. Coatsworth is accused of conspiring to violate reads as follows:

After such proclamation ^{of} war or national emergency as is provided for in subsection (a) of this section has been made and published and while such proclamation is in force, 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 or enter, or attempt to depart or enter, the United States unless he bears a valid passport.

All of the students who made the trip to Cuba which Mrs. Coatsworth helped to organize carried ordinary valid United States passports. From this fact alone, it would appear that they did not violate the McCarran-Walter Act in going and that those who helped to organize their trip did not conspire illegally when they did so. The Department of State claims however, that the students should have carried specially validated passports for travel to Cuba. On January 18, 1961, the Department of State issued Public Notice #179 in which it declared that United States passports were no longer "valid for travel to or in Cuba unless specifically endorsed for such travel under authority of the Secretary of State..." On the basis of this public notice, the Department of State claims that while the students were not breaking the law when they first left the country (because they traveled first to France, a country for which no special validation is required), their departure became a crime at the moment they set feet in Cuba because their ordinary passports were not valid for travel to that country. Thus also, their return to this country was a crime because they did not have passports valid to return from Cuba.

There are a number of weaknesses in the State Department's case. First, the law itself makes no mention of the need for "specific endorsement" of the passports of individuals who intend to travel in special countries. The law merely requires citizens to have passports at the time of their entry and exit. It does not authorize the Department of State to apply "area restrictions," or bans

on travel to certain countries. The State Department's interpretation of the law appears almost bizarre when compared to the language of the law itself.

Second, the law was intended by its legislators merely to give the President power, under clearly defined emergency conditions, to require that United States citizens bear passports when leaving or entering the country. Not once during the Congressional debates which preceded passage of the Act was the possibility that the law could be used to restrict travel ever raised. Not one member of Congress ever publicly anticipated this use of the law.

Third, the Department of State delayed for three years after the law was passed before it issued its warning that travel to certain countries without special permission might be a crime. Traditionally in peacetime, passports have been provided by the federal government as a service to citizens who needed some uniform document to identify themselves as United States citizens to immigration officials in foreign countries. Passports were issued somewhat as birth certificates are issued by public health authorities in most United States cities. October 31, 1955 marks the first time in the history of the United States that the government has claimed that citizens might be liable to criminal prosecution for traveling in certain countries in time of peace. The first peacetime travel ban in the nation's history was announced on that date. The State Department's 1955 announcement marked the first attempt by any American government to use its routine authority to issue passports as a device to control and restrict travel in peacetime. A large number of recent United States federal court decisions, as well as legal precedents going back as far as Chapter 42 of the Magna Charter have buttressed the citizens right to travel freely abroad in time of peace. The courts have not yet forced the State Department to abandon its present travel restrictions. At this time, Albania, China, North Korea and North Vietnam are on the State Department's proscribed list along with Cuba.

Fourth, the basis of the State Department's contention that this part of the McCarran-Walter Act is operative rests upon the fact that President Truman declared a state of national emergency at the beginning of the Korean War, and no subsequent President has seen fit to declare that emergency at an end. A number of court decisions in recent years have tended to strike down the exercise of emergency powers by the executive branch of the government during the period following the Korean conflict.

Fifth, the Department of State must argue that the McCarran-Walter Act makes it a crime for citizens to "depart...or attempt to depart" from the United States if they plan to travel in countries the Department does not wish them to visit. A number of court decisions in recent years have held that the "right" or "freedom" to travel is guaranteed by the first and fifth amendments to the

Constitution. Freedom to travel has thus been placed on the same level as the freedoms of press, assembly, speech and so forth. The State Department, by claiming that citizens need its special permission before traveling in certain countries, may be claiming authority tantamount to the authority it would require should it decide to require citizens to obtain "specific endorsement" of their passports before speaking on certain subjects, meeting in certain groups or publishing certain books abroad. The State Department could claim, for instance, that citizens traveling abroad who plan to talk about civil rights in the United States must obtain the Department's permission or else be subject to prosecution under the McCarran-Walter Act for illegal exit and entry. Such authority would be clearly unconstitutional, for it would give the Department of State power to exercise restraints upon the citizen's constitutional liberties. The Department may be claiming a similar authority by attempting to restrict travel, since the right to travel freely abroad has been judged to be on the same plane as other constitutional rights.

Sixth, the law itself makes it a crime for United States citizens to return to this country without a valid passport. In the only court test of this part of the McCarran-Walter Act yet concluded, a Federal Circuit Court of Appeals in Florida held it to be unconstitutional. William Werthy, a Negro journalist, returned from a trip to Cuba in 1962 without any passport at all. The Appeals Court held that he could not be prosecuted, because the law sanctioned banishment by making it a crime for citizens to return to their own country. Such a law deprives the citizen, without a trial, of his right to enjoy the freedoms guaranteed by the Constitution, the court ruled. The State Department's contention that it is a crime to return from Cuba without a specially validated passport was thus overturned, for the court ruled that Mr. Werthy could not be prosecuted for returning without any passport at all. The government declined to appeal this case to the Supreme Court.

Half of the State Department's interpretation of the McCarran-Walter Act has already been nullified in the Werthy case. It remains to test the State Department's contention that it is a crime to depart the country without a specially validated passport. A number of cases now before lower courts may be expected to elicit a Supreme Court ruling on this issue within another year or two. One of these test cases is that of three students who traveled to Cuba with Mrs. Coatsworth in 1963. They have been indicted for violating the McCarran-Walter Act by traveling to Cuba. It is expected that they will come to trial in the Federal District Court of Eastern New York within several weeks. The other case testing the McCarran-Walter Act and the State Department's interpretation of it is that of Mrs. Coatsworth and her eight co-defendants. They are charged with conspiracy to violate the McCarran-Walter Act. Arraigned October 1, 1964, date for trial has not yet been set.