

TRANSMITTAL SLIP		DATE <i>14 July 1958</i>
TO: <i>Mr. Karnes</i>		
ROOM NO.	BUILDING	
REMARKS: <i>You indicated this morning that you wanted to see the payget bill. Copies are attached for your review. (Identical bills). Also, I am attaching an article on these bills dealing with the Constitutionality of the proposals which I thought would be of interest to you.</i>		
STAT ROOM:		
ROOM NO.	BUILDING	EXTENSION

Passport Bill Bucks Basic American Rights

By Joseph Paull

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WHEN PRESIDENT EISENHOWER asked for new passport legislation last week, by implication he was inviting Congress to attempt an extremely delicate legal operation.

In effect, his request was that Congress give the State Department authority to limit the traditional liberty of Americans to travel abroad. To write such a law that will be declared constitutional is a formidable task.

Involved on the one hand is the Nation's right to protect its security and to conduct its foreign affairs without interference. On the other is the citizen's right to go as a free man wherever he pleases.

Anglo-Saxon Roots

THE STATE DEPARTMENT has long contended that it possesses the broadest powers over the issuance of passports. Its view is supported by many statements of Presidents, Attorneys General, Secretaries of State, judges and legal scholars.

But of late, in case after case, the Department's passport policy has been buffeted and criticized severely in the courts. Only last month the Supreme Court ended all hope that without an authorizing statute the State Department could act as sole judge of the fitness of an applicant for a passport.

The right of an orderly citizen not involved in crime to travel in peacetime where he will be basic in Anglo-Saxon law. It was set out fully in the Magna Carta, which states:

"It shall be lawful to any person, for the future, to go out of our kingdom, and to return, safely and securely, by land or by water, saving his allegiance to us, unless it be in time of war, for some short space, for the common good of the kingdom; excepting prisoners and outlaws, according to the laws of the land, and of the people of the nation at war against us . . ."

Still an Emergency

THIS WAS, in substance, our law, at least until 1941. Since then, travel-abroad has required official permission based on the principle that the citizen may be required to give up some of his peacetime rights in time of national emergency.

For passport purposes, the presiden-

tial proclamation of a national emergency is still in force. It is illegal for Americans to travel overseas without a passport. The State Department contends that it must have discretion whether to issue any passport.

In his recent message on the subject to Congress, President Eisenhower set out the broad reasons. He said the Government needs power to deny passports where "their possession would seriously impair the conduct of foreign relations of the United States or would be inimical to the security of the United States."

Sweeping Affirmation

THE DIFFICULTY arises when the general principle of national security is pitted against the Bill of Rights in a specific case.

The most recent and decisive case involved Rockwell Kent, the artist, and Walter Briebl, a psychiatrist. Both had been denied passports after they refused to tell the State Department whether they had ever been Communists. They said the inquiry was an irrelevant intrusion into their political beliefs and associations.

In a 5-to-4 decision, the Supreme Court agreed with Kent and Briebl. Writing the majority opinion, Justice William O. Douglas concluded:

"To repeat, 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 . . . had given the Secretary (of State) 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."

Not Only Communists

THE DECISION'S SCOPE was so sweeping that the State Department decided to try to do with legislation what the court had said surely could not be done without it.

The bill which the Administration drafted and sent to the House and Senate is designed to validate the principles behind the regulations and procedures which the State Department has used largely in the absence of statute. After setting forth the power to deny passports to those involved in criminal cases, the bill declares ineligible those "as to whom it is determined upon substantial grounds" that

their activities abroad would impair our foreign relations or security.

The bill makes a finding that the "international Communist movement seeks everywhere to thwart United States policy" and is a "grave peril." Eligibility may be denied to anyone, Communist or not, who "knowingly engages in or has engaged, within 10 years prior to filing the passport application, in activities in furtherance of the international Communist movement."

If there is evidence warranting the conclusion of knowing engagement in these activities, the burden is on the applicant to disprove it.

The applicant must state whether he has been a Communist Party member in the past 10 years or a supporter of the international Communist movement.

A disappointed applicant has the right of review before the Passport Hearing Board. But he cannot require the State Department to produce any information which is deemed likely to have a "substantially" adverse effect upon security or foreign affairs. He gets what the Board certifies is a "fair resume" of the evidence. The Secretary of State makes the final departmental determination.

There is provision for a review by the United States District Court for the District of Columbia, but the reviewing judge there will not be given any secret information and must rely on the "fair resume" of the Board.

Safeguards Are Scant

PERHAPS THIS LAW can work without injustice, but there is no assurance that it will. There are scant safeguards against actions of State Department officials who someday might think their personal ambitions called for an excessive zeal for security and a disregard of citizens' rights.

There is little in the way of a standard of conduct which will deprive an applicant of a passport. No guides indicate what is or is not "inimical to the security" or what might "seriously impair" the foreign relations of the Nation.

Supposing the appointment of a venal Secretary, there is nothing to prevent him from finding on the basis of secret evidence that an innocent action in accord with similar action by the Communists constituted the basis for denial of a passport. Subsequent history often changes the judgment we make upon the actions of men



Frances C. Knight, director of the Passport Office, is shown at her desk in the group's relatively new quarters. She inherited many of the present passport difficulties from as far back as the 19th century.

The Senate Foreign Relations Committee has scheduled hearings on the bill Wednesday. Any legislation permitting undisclosed informants and synopsized evidence is due to get close scrutiny.

Frances G. Knight, the present director of the Passport Office, inherited many of the "problems involved. Although not nearly as frequently as in the past five years, the protocol-sensitive State Department has periodically found sticky situations when it came to passports."

For example, Prof. Louis Jaffe notes in the quarterly Foreign Affairs that near the end of the 19th century the consul at Cherfoo refused passports to two "doubtful ladies" who described their purpose as "tourists, stay in Port Arthur indefinite." The State Department reversed him, stating without gallantry that the ladies were regulatable by the laws of Port Arthur. A bit earlier there was a problem whether Mormons preaching the benefits of

polygamy should be permitted to spread the good word abroad.

In recent years, Arthur Miller ended his passport difficulties when in recent years, Arthur Miller to London was his quite-American desire to spend his honeymoon, with Marilyn Monroe. The State Department let him go overseas to accept it.

Linus Pauling, the scientist, was twice denied a passport, but when he won the Nobel Prize the State Department let him go overseas to accept it.

Otto Nathan, Einstein's executor, got his passport, but only after a Federal judge severely rebuked the State Department for its conduct in having denied it to him.

These have been embarrassing lessons for the Nation. Conceding the necessity of some passport legislation during emergency periods, the question remains as to what the proposed law would accomplish. Communist couriers need no passports if they have diplomatic

secrets are screened intensively in security checks and thus would hardly be denied passports. Noisy troublemakers can attract as much international attention with a speech in Chicago as they can in Warsaw.

Nonetheless, disloyal Americans with passports could harm the Nation. The Secretary of State has an obvious duty to try to prevent this. But can he, without trampling on constitutional rights? The courts cannot accept anything less.

From its wording, Justice Douglas' opinion was surely not a cordial invitation to the Administration to seek legislation to maintain the State Department's position. It may well have been a warning not to try it.

The department lawyers might get encouragement, however, from the fact that four justices voted to uphold the Kent and Briebl passport denials. Only one more justice need be persuaded once the constitutional issue is properly before the court.