

U.S. COURT UPSETS CURB ON PASSPORT

Clears Three Who Arranged Student Tour to Cuba

By **DAVID ANDERSON**

A United States District judge ruled here yesterday that the State Department had no right to restrict the travel of an American citizen holding a valid passport.

The decision handed down by Chief Judge Joseph C. Zavatt in Brooklyn in an 81-page document set free three young men indicted on a criminal charge of organizing a trip to Cuba by 58 students in 1963, despite a State Department order prohibiting it.

The defendants, Lee Levi Laub, 27 years old of 104 Second Avenue; Stefan Martinot, 26, of 14 West 121st Street; and Anatol Schlosser, 28, of 42 St. Marks Place, were defended by Leonard S. Boudin. The 12-day trial was held last October without a jury.

Judge Zavatt wrote that this was the first case in which the Government had prosecuted citizens of the United States criminally for having left the country with valid passports, visited a forbidden area, and then returned home.

Mr. Laub and Mr. Martinot

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had the Government introduced evidence of false statements allegedly made in their passport applications and with conspiring to induce others to do the same.

The court made no attempt to justify the Laub expedition. Indeed, the judge said, the sponsors adopted an approach calculated to suggest "a group of curious, inquisitive, open-minded college youths eager to make an objective, on-the-spot study of conditions in Cuba" whereas, in fact, the defendants "embarked upon this project with a preconceived conviction that the American press was not giving Cuba a fair shake, with all that that implies. There was an absence of the yearning to learn by travel."

Judge Zavatt continued: "Considering the intensive campaign waged by the defendants, the tempting lure of an all-expense trip to and vacation in Cuba, it is significant that they were able to corral such a small group. From the known composition of the majority, it would appear that few, if any, were typical American students."

The heart of this case, the judge concluded, lay in determining whether Mr. Laub and

Mr. Martinot had conspired, whether their acts constituted a criminal conspiracy, and finally whether they had committed substantive crimes when they departed and returned to the United States. He decided that they had not done so.

Chief Assistant United States Attorney Vincent T. McCarthy, who handled the case, said the possibility of an appeal was being studied.

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actually made the trip, a round-about journey via Amsterdam, Paris, Prague, Ireland and Newfoundland to Havana. They came back by way of Bermuda and Madrid. Mr. Schlosser withdrew at the last minute after working as an organizer for the junket.

"The court finds that Laub and Martinot departed from and entered the United States bearing valid passports within the meaning of "depart," "enter" and "valid passport," Judge Zavatt said.

"Although they and Schlosser agreed among themselves to induce others to do likewise, the agreement and acts do not constitute a crime. If, as the court concludes, there is a gap in the law, the right and the duty, if any, to fill it devolves upon the Legislative, not the Executive or Judicial branch of the Government."

The opinion contended that Congressional history contained nothing from which one might reasonably infer that Congress intended to grant the State Department power to inflict criminal penalties on citizens with valid passports who visited banned countries.

No Express Provision

"If the Congress intended to prohibit travel to proscribed areas as well as prohibit departure and entry without passports, one may reasonable wonder why it did not expressly provide for that," the judge wrote.

He pointed out that the trial record had shown that from 1952 to 1965 about 600 Americans had visited restricted countries with impunity. In each instance the traveler held a valid passport that had not been validated for the forbidden zone.

The decision touched upon the cases of William Worthy, who went to Cuba without any passport in 1961, and Mrs. Helen Maxine Levi Travis, who entered Cuba twice the next year without a valid passport. Mr. Worthy won a Circuit Court of Appeals verdict holding the prohibition against entering Cuba was unconstitutional. Mrs. Travis's case, where a conviction was sustained, is expected to be the first to reach the United States Supreme Court.

Judge Zavatt suggested that a grand jury "might well have handed up indictments" naming Mr. Laub and Mr. Martinot