M E M O R A N D U M

TO : Howard P. Willens DATE: June 24, 1964

FROM : Richard M. Mosk

Attached is my revision of the earlier draft on the legal basis of decisions made by the State Department prepared by Mr. Ely and me. I have worked with Messrs. Slawson and Coleman in its preparation. As you know, the State Department has not yet supplied the authorities to statements in the testimony as requested by Representative Ford.

Attachment

JHE:RMM:ej

Part II

Legal Bases for the Decisions made by the Department of State and the Immigration and Naturalization Service in Connection with the Oswalds.

In the course of the Commission's investigation, there were called to its attention various decisions concerning Marina and Lee Harvey Oswald made by the Department of State and the Immigration and Naturalization Service of the Department of Justice. These decisions included: (1) whether Lee Harvey Oswald had expatriated himself by any act performed between October 16, 1959, the day he entered the Soviet Union, and August 18, 1961, the day it was determined by the Department of State that he was still a United States citizen; (2) whether Marina Oswald was eligible for entry into the United States; (3) whether the provisions of Section 243(g) of the Immigration and Nationality Act should have been waived in the case of Marina Oswald; (4) whether Lee Harvey Oswald should have been issued a passport on June 25, 1963; and (5) whether that passport should have been revoked when the Department of State received information that Oswald was making inquiries about returning to Russia at the Russian Embassy in Mexico City in late September and early October 1963.

The appropriateness of the resolution of these issues has been evaluated by the Commission in terms of the relevant statutes, regulations and practices, and their application to the facts which were available to the Department of State and the Immigration and Naturalization Service at the times the respective decisions were made.

(1) Did Lee Harvey Oswald expatriate himself by any act performed between October 16, 1959 and August 18, 1961?

Since Oswald was born in the United States, he was of course an American citizen. Fourteenth Amendment; United States v. Wong Kim Ark, 169 U.S. 649. Congress, however, has enacted statutes setting forth certain actions which serve to expatriate the person performing them. It might be suggested that Oswald lost his citizenship by virtue of the operation of any one of four sections of the Immigration and Nationality Act of 1952: Section 349 (a) (1), (obtaining naturalization in a foreign state); Section 349 (a) (6), (formal renunciation of United States nationality); Section 349 (a) (2), (taking an oath of allegiance to a foreign state), or Section 349 (a) (4), (working for the government of a foreign state). It should be noted that in expatriation cases the courts have stated that factual and legal questions should be resolved in favor of the citizen. Nishikawa v. Dulles, 356 U.S. 129, 134 (1958); Stipa v. Dulles, 233 F. 2d 551, 556 (1956); Fletes-Mora v. Rogers, 160 F. Supp. 215, 218 (1958). Also, Congress, in a recent amendment to the Immigration and Nationality Act, while providing that an expatriating act must be presumed to have been done voluntarily, confirmed judicial decisions holding that "the burden shall be upon the person or party claiming that . . . [loss of nationality] occurred, to establish such claim by a preponderance of the evidence." 75 Stat 656 (1961).

a. Section 349 (a) (1) - Obtaining Naturalization in a foreign state

Section 349 (a) (1) of the Immigration and Nationality Act of 1952 provides that a United States citizen shall lose his nationality by:

> [O]btaining naturalization in a foreign state upon his own application, upon an application filed in his behalf by a parent, guardian, or duly authorized agent, or through the naturalization of a parent having legal custody of such person.

Although Oswald applied for Soviet citizenship, see pp. , it is clear that he never received it. See pp. . Thus, Oswald did not expatriate himself under Section 349 (a) (1).

b. Section 349 (a) (6) - Making formal renunciation of United States nationality

Section 349 (a) (6) of the Act provides that a United States citizen shall lose his citizenship by:

> /M/aking a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State.

In his letter of October 31, 1959, Oswald wrote:

> I, Lee Harvey Oswald, do hereby request that my present citizenship in the United States of America, be revoked.
>
> * * *
>
> My request for the revoking of my American citizenship is made only after the longest and most serious considerations.

In his letter of November 3, 1959, he wrote:

> I, Lee Harvey Oswald, do hereby request that my present United States citizenship be revoked.
>
> I appered (sic) in person, at the Consulate Office of the United States Embassy, Moscow, on Oct 31st, for the purpose of signing the formal papers to this effect. This legal right I was refused at that time.

And he clearly stated in an interview at the American Embassy that he had come to the Embassy to renounce his United States citizenship. See pp. ____ supra.

At the time he authored these letters and made the oral statement, Oswald was not yet 21 years old. However, Section 351 of the Immigration and Nationality Act provides, with several exceptions not here relevant, that persons under 18 years of age are presumptively incompetent to perform acts expatriating themselves, thus inferring that no disability exists when one is over eighteen.

Section 349 (a) (6), however, requires the expatriating renunciation to be in "such form as may be prescribed by the Secretary of State." In accordance with this statute, the Secretary set forth the requisite form and procedure in 22 Code of Federal Regulations §§ 50.1 - 50.2 and 8 Foreign Affairs Manual § 225.6. The regulations provide, inter alia, that four copies of the renunciation form are to be executed, and the original and one copy sent to the Department. After the Department has approved the form, it advises the appropriate consular official who may then furnish a copy of the form to the person to whom it relates. The form itself requires the person to subscribe it in the presence of a consular official, and it must be signed by this official. See Comm'n Exh. 955. Snyder 6972.

Oswald did not execute the proper forms; in fact, he did not even sign his letter in the presence of a Consular official, nor was his letter signed by such an official. (Snyder 6977; Comm'n Exh. 912) Therefore, Oswald failed to comply with the appropriate procedures prescribed by the Secretary of State. Because Section 349 (9) (6) in terms requires compliance with the form prescribed by the Secretary of State, it is evident that Oswald did not expatriate himself under that Section.

c. Section 349 (a) (2) - Oath of allegiance to a foreign state

Section 349 (a) (2) of the Act provides that a United States citizen shall lose his nationality by:

> /T/aking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof.

In his letter of October 31, 1959, Oswald wrote:

> I affirm that my allegiance is to the union of Soviet Socialist Republics.

And both in this letter and in his letter of November 3, 1959, he stated that his application for citizenship in the Soviet Union was pending before the Supreme Soviet of the U.S.S.R. 238/

Many cases and articles have quoted Secretary of State Charles Evans Hughes to the effect that in order for an oath, declaration, or affirmation of allegiance to a foreign state to effect an expatriation, it must place "the person taking it in complete subjection to the State to which it is taken, at least for the period of the contract, so that it is impossible for him to perform the obligations of citizenship to his country," III Hackworth, Digest of International Law, 219-220 (1942). This test is one by which the intention of an oath in question is tested in order to determine whether its purpose is to swear an allegiance inconsistent with the individual's allegiance to the United States; it is often invoked in cases involving dual citizenship. See Jalbuena v. Dulles, 254 F. 2d 379, 381 n. 2(3d Cir. 1958); Roche, The Loss of American Nationality - The Development of Statutory Expatriation, 99 U. Pa. L. Rev. 25 (1950). Oswald's letters clearly did intend to evidence an allegiance to the Soviet Union inconsistent with continued allegiance to the United States. Indeed, they explicitly so state. If Oswald's oath to the Soviet Union is to be found not to have worked an expatriation, therefore, the imperfection must lie in the

circumstances under which it was taken rather than in its wording.

An earlier version of Section 349 (a) (2) provided:

> That any American citizen shall be deemed to have expatriated himself . . . when he has taken an oath of allegiance to any foreign state. Act of March 2, 1907, § 2, 34 Stat. 1228.

In 1940 the language of the Section that was changed so as to demand "an oath or . . . affirmation or other formal declaration of allegiance." Nationality Act of 1940, §§ 401 (b), 54 Stat. 1169.

The language of the 1940 Act has been retained in the present 1952 Act. The shift in language from the 1907 Act to the 1940 Act might be taken to indicate a demand for greater formality in expatriating oaths. Whether or not this was the legislative intent, since 1940 it has been well established that in order for an oath of allegiance to a foreign state to work an expatriation from the United States, it must be given to an official of the foreign state, and not to a party unconnected with the foreign state. See Roche, The Loss of American Nationality - The Development of Statutory Expatriation, 99 U. of Pa. L. Rev. 25, 33 (1950). This requirement can be viewed as a necessary corollary of the broader, but less clearly established principle that the oath must be taken in accord with the requirements of the foreign state.

> "The Department of State holds that for loss of nationality to result from taking an oath of allegiance to a foreign state, the oath must be one 'which is prescribed by law or by regulations having the force of law' and must be taken before a competent official of the government concerned." III Hackworth, Digest of International Law 218 (1942).

In Re Bautista's Petition, 183 F. Supp. 271 (D. C. Guam, 1960), a case construing the 1952 Act, the court held that an oath of allegiance to the Philippines taken before an official of the Philippine Government did not work an expatriation because the individual had desired to become a Philippine

citizen only in order to obtain a passport to travel to Guam. (The court relied on the "complete subjection"test.) However, the court also failed to consider as an expatriating act the taking of another oath of allegiance to the Philippines before a notary public. The court dismissed this oath with the simple statement: "It was not done before an official of the Philippines." Id. at 274. See also Dep't of State to Consul at Guadalajara, May 27, 1939, at 218.

Similarly, the Board of Immigration Appeals in The Matter of L., 1 I. & N. Dec. 317 (B.I.A. 1942), was faced with the following affirmation:

> "I do swear that I will be faithful and bear truly just to His Majesty, King George VI, his heirs and successors, according to law. So help me God."

The Board held that the declarant did not expatriate himself:

> "An oath or formal declaration mentioned by the statute must mean not only the giving of the oath by the individual but the acceptance of the oath by the foreign state. An oath of allegiance has no real significance unless the oath be made to the state and accepted by the state. Such acceptance on the part of the state must be made in accordance with the laws of that state. In the case before us an oath of allegiance was not made to the British Crown in accordance with any law or regulation of the British Government. On the contrary, the obligation is between the appellant on the one hand and a private employer on the other." Id. at 320.

Other administrative bodies have decided that an oath taken before a notary public in Great Britain [Dep't of State Consular Official in charge at Birmingham, May 10, 1938], an oath taken by a priest on ordination into the Church of England [Director of Consular Service to Counsel Glazebrooke, Oct. 30, 1914], and an oath sworn by a lawyer to obtain admission to the German Bar [Dep't of State to Counsel Gen'l in Berlin, Mar. 21, 1934] did not expatriate an American citizen. See generally Roche, The Loss of American Nationality - The Development of Statutory Expatriation, 99 U. Pa. L. Rev. 25, 33 (1950).

In all cases found by the Commission in which an individual has been held to have expatriated himself by virtue of an oath to a foreign state, although the courts have not always stressed the fact that the oath was taken before an official of the foreign state as being of determinative importance, it is the case that the oath in fact was so taken. See e.g., McCampbell v. McCampbell, 13 F. Supp. 847 (W. D. Ky. 1936); Reaume v. United States, 124 F. Supp. 851, 852 (E. D. Mich. 1954). In Savorgnan v. United States, 338 U. S. 491 (1950), the Court held that Mrs. Savorgnan had expatriated herself. Although the holding was based upon other grounds, the Court "recognized the force of the alternative ground" that she had signed an oath swearing allegiance to the King of Italy as part of an application for Italian citizenship filled out at the Italian Consulate in Chicago. Id. at 503. The Court, in detailing the factors supporting the argument that the oath expatriated Mrs. Savorgnan, did not explicitly mention that it was signed in an office of the foreign government in question and in accord with their requirements. Id. at 502. However, both these requirements in fact were met. Moreover, in the statement of facts, the Court noted: "No ceremony or formal administration of the oath accompanied her signature and apparently none was required." Id. at 494.

While Lee Harvey Oswald had written that he had taken an oath of allegiance to the Soviet Union, see e.g., Comm'n Exh. 100, there is no indication that such an oath or declaration was taken before an official of the Soviet Government. Chayes 7107. He therefore did not expatriate himself under Section 349 (a) (2).

d. Section 349 (a) (4)

Section 349 (a) (4) of the Immigration and Nationality Act provides that a United States citizen shall lose his nationality by:

> (a) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, if he has or acquires the nationality of such foreign state; or (b) accepting, serving in, or performing the duties of any office, post of employment under the government of a foreign state or a political subdivision thereof, for which office, post, or employment an oath, affirmation, or declaration of allegiance is required. . .

While Oswald was employed in a state owned factory in Minsk, see pp. _____, he did not acquire Russian nationality, see pp. _____ and there is no indication that he had to take any oath when he obtained this employment. Chayes 7107. Furthermore, cases would indicate that merely working in a government-owned factory does not result in expatriation even if an oath was required to be taken in connection with such employment. ~~See~~ Cf. Flete-Mora v. Rogers, 160 F. Supp. 215 (1958); Kenzi Kamada v. Dulles, 145 F. Supp. 457, 459 (1956) (both arising under Section 503 of the Nationality Act of 1940); Roche, "The Loss of American Nationality - The Development of Statutory Expatriation," 99 U. Pa. L. Rev. 25, 51 (1951). Thus, Oswald did not expatriate himself under Section 349 (a) (4).

The Commission therefore concludes that the Department and Embassy decision that Lee Harvey Oswald had not expatriated himself by any acts performed between October 16, 1959 and August 18, 1961, was correct.

(2) Was Marina Oswald eligible for entry into the United States?

As the wife of an American citizen, Marina Oswald was entitled to non-quota immigrant status under Section 205 of the Immigration and Nationality Act of 1952. However, under Section 212 (a) (28) of the Act, an alien will nevertheless

be excluded from admission to the United States if she is or was a member of or affiliated with a Communist organization unless:

> ". . .such alien establishes to the satisfaction of the consular officer when applying for a visa and the consular officer finds that (1) such membership or application is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes." Section 212 (a) (28) (I) (1).

At the time Marina Oswald applied for a visa she was a member of the Soviet Trade Union for Medical Workers. Comm'n Exh. 944; McVickar 7140, 7094. She said she was not nor ever had been a member of any other Communist organization. pp. _____ . Membership in the Medical Workers Union was deemed by the Department to have been necessary for obtaining employment in a hospital as a laboratory assistant. Comm'n _____. Thus, the State Department determined that her membership was involuntary, and the exemption in Section 212 (a) (28) (I) (i) was therefore applicable. This finding was consistent with "a long-standing interpretation concurred in by the State and Justice Departments that membership in a professional organization or trade union behind the Iron Curtain is considered involuntary unless the membership is accompanied by some indication of voluntariness, such as active participation in the organization's activities or holding an office in the organization." Report of the Department of State on Lee Harvey Oswald to the Commission, PT. IV., p. 3. 240/ See also McVickar 7147.

In spite of the fact that Marina Oswald declared that she was not a member of any other Communist organization, she was in fact a member of Komsomol, the Communist Youth Organization. Marina Oswald 470-471. McVickar 7093. This fact was not known to the State Department. If it had been, Marina would not

necessarily have been denied a passport, although a careful investigation into the nature of the membership would have been undertaken. McVickar 7142. The three types of situations enumerated in Section 212 (a) (28) (I) (i) may not be the only instances where membership in a Communist organization is so nominal as to preclude the issuance of a visa. Cf: Galvan v. Press, 347 U.S. 522, 527 (1954); Rowoldt v. Perfetto, 355 U.S. 115, 120 (1957) (cases arising under ss 22 of the Internal Security Act of 1950 as amended in 1951)

Had the fact concerning Marina's membership in Komsomol been known to the Department despite her denial, it is conceivable that she would have been excluded from the United States on the ground of having willfully misrepresented a material fact. Immigration and Nationality Act, Section 212 (a) (19). There is a conflict in the cases as to what constitutes a "material fact." See generally Gordon and Rosenfield, Immigration Law and Procedure, 228, 424-427 (1959); Appleman, Misrepresentation in Immigration Law: Materiality, 22 Fed. B.J. 267 (1962). In Langhammer v. Hamilton, 295 F. 2d 642, 648 (1961), the court held that a misrepresentation in an application for a visa involves a material fact even if the alien would not definitely have been excluded on the true facts. In this case, the court said that a determination made after admission to the United States that membership in a Communist organization was involuntary would not operate nunc pro tunc to render omission to reveal such fact nonmaterial; See also Chaunt v. United States, 364 U.S. 350, 355 (1960). (A case to revoke a decree of citizenship.) However, another line of cases held that in order to be material, a misstatement must refer to such facts as would have justified a consul in refusing a visa had they been disclosed. E.g., Cavillo v. Robinson, 271 F. 2d 249 (1959). The Visa Office of the Department of State has announced that it applies a "rule of probability" under which any misstatement will be deemed material only if it concealed facts which probably would have resulted in denial of a visa. Visa Off. Bull 90, March 2, 1962.

(3) Should the provisions of Section 243 (a) of the Immigration and Nationality Act have been waived in the case of Marina Oswald?

Section 243 (g) of the Immigration and Nationality Act of 1952 provides that upon notification of the Secretary of State by the Attorney General that a country has refused or unduly delayed the acceptance of a deportable alien from the United States who is a national, citizen, subject, or resident of that country, consular officers in such country are not to issue visas to citizens thereof. On May 26, 1953, the Department of State notified the United States Mission in Moscow that the Attorney General had invoked Section 243 (g) as a result of the failure of the Soviet Union to accept the return of aliens deported or sought to be deported from the United States. Consequently, consular officials were instructed to discontinue the issuance of immigrant visas until advised by the Department of State to the contrary.

It should be noted that Section 243 (g), when invoked by the Attorney General, does not make any particular alien or class of aliens ineligible to immigrate to the United States. It applies to a country, or more specifically, to United States Consular Officers stationed in such countries, and it was designed to exert pressure on countries which fail to receive deportees from the United States. Any person precluded from receiving an immigrant visa solely because of the application of Section 243 (g) may merely proceed to a United States Consulate in another country where the sanctions are not in effect and there receive an immigrant visa, if he or she is otherwise qualified.

Section 243 (g) does not contain any express provision for waiver. However, the Justice Department has concluded that such waiver powers were granted the Attorney General by the Act and, pursuant to their decision, has granted waiver in over 600 cases from the Soviet Union since 1953. The waiver procedures followed

in 1962 when Marina Oswald was granted a waiver of Section 243 (g) were prescribed by the Immigration and Naturalization Service. The relevant provision read:

> Before adjudicating a petition for an eligible beneficiary residing in the USSR, Czechoslovakia or Hungary, against which sanctions have been imposed, the district director shall obtain a report of investigation regarding the petitioner which shall include any affiliations of a subversive nature disclosed by neighborhood investigation, local agency records and responses to Form G-135a. . . . If no substantial derogatory security information is developed, the district director may waive the sanctions in an individual meritorious case for a beneficiary of a petition filed by a reputable relative to accord status under Section 101 (a) (27) (A) or Section 203 (a) (2), (3) or (4). . . . If substantial adverse security information relating to the petitioner is developed, the visa petition shall be processed on its merits and certified to the regional commissioner for determination whether the sanctions should be waived. The assistant commissioner shall endorse the petition to show whether the Waiver is granted or denied, and forward it and notify the appropriate field office of the action taken. . . . Operations Instructions of the Immigration and Naturalization Service, 205.3. /This revised instruction was effective February 15, 1962 - June 30, 1962. Other versions which may have been considered during Oswald's case were different only in irrelevant ways./

State Department regulations are much less explicit. 22 C.F.R. 42.120. The State Department's visa instructions for the guidance of consular officers /Note 2 to 22 C.F.R. 42. 120, Vol. 9, Foreign Affairs Manual/ provide, "The sanctions will be waived only in individual meritorious cases in behalf of a beneficiary of a petition filed by a reputable relative pursuant to Section 101 (a) (27) (A) or paragraph (2) (3) or (4) of Section 203 (a) of the act."

The character of Lee as well as Marina Oswald is relevant to the decision because he is the relative who signed the petition on Marina's behalf. Whether he is "reputable" therefore must be determined. His character may also have a bearing on whether "substantial derogatory security information" is developed. Thus, all of the facts bearing on the issue of Oswald's attempted expatriation were also pertinent to the issue of waiver of the sanction pursuant to Section 243 (g) of the Immigration and Nationality Act for Marina Oswald. These facts were

made available to the Immigration and Naturalization Service when it was considering whether to permit the waiver. 241/

The statutory procedure for handling petitioners for non-quota or preference status by reason of relationship calls for a determination of eligibility for such status by the Attorney General. The responsibility for making such determinations has been delegated by the Attorney General to the District Directors of the Immigration and Naturalization Service. Marina Oswald's petition was forwarded by the Embassy in Moscow through the State Department to the District Director in San Antonio, Texas, the office having jurisdiction over Oswald's domicile in the United States. In accordance with the procedure worked out between the State and Justice Departments, the District Director was to note his determination as to a waiver of Section 243 (g) at the same time as he made his determination of eligibility for non-quota status under Section 205 (a).

On February 28, 1962, the District Director of the Immigration and Naturalization Service informed the Visa Office of the State Department that while the petition for non-quota status had been approved, the waiver of Section 243 (g) was not authorized by the Service. No reason for disapproval of the waiver was stated, but it was "clear from the internal order of the Immigration and Naturalization Service that the refusal to authorize the waiver was based on Oswald's statements and attitude while in the Soviet Union." Report of the Department of State on Lee Harvey Oswald to the Commission, PT. 4, p. 7.

On March 16, the Soviet Affairs Office of the State Department advised the Visa Office of the Department as follows:

> SOV believes it is in the interest of the U. S. to get Lee Harvey Oswald and his family out of the Soviet Union and on their way to this country as soon as possible. An unstable character, whose actions are entirely unpredictable, Oswald may well refuse to leave the USSR or subsequently attempt to return there if we should make it impossible for him to be accompanied from Moscow by his wife and child.

> Such action on our part also would permit the Soviet Government to argue that, although it had issued an exit visa to Mrs. Oswald to prevent the separation of a family, the United States Government had imposed a forced separation by refusing to issue her a visa. Obviously, this would weaken our Embassy's position in encouraging positive Soviet action in other cases involving Soviet citizen relatives of U. S. citizens. 243/

On March 27, the Acting Administrator of the Bureau of Security and Consular Affairs addressed a letter to the Commissioner of the Immigration and Naturalization Service, Department of Justice, requesting reconsideration of the decision not to waive the provisions of Section 243 (g) in the case of Marina Oswald. 243a/ The State Department expressed concern about the propriety of punishing Marina and the Oswalds' baby for Lee Harvey Oswald's earlier errors. Furthermore, it was feared that refusing to permit Marina to accompany Lee out of Russia to the United States would put the Soviet Government in a position to claim that it had done all it could to prevent the separation of the family, but that our government had split the husband from his wife and child. The Department felt that this would seriously weaken our government's attempts to encourage the Soviet Government to permit other Russian wives and children to accompany their American husbands and parents back to the United States. The letter concluded that it was in the best interest of the United States to have Oswald depart from the Soviet Union as soon as possible.

On May 8, 1962, the Immigration and Naturalization Service agreed to waive the sanction of Section 243 (g) "in view of strong representations made" by the State Department. 244/ Consequently, the Embassy was informed that the Section 243 (g) sanction had been waived by the Immigration and Naturalization Service. 245/ Thus, while derogatory information was in the file, the ultimate decision was made by the official designated by the Regulation to act in such a case.

Waivers of Section 243 (g) are not unusual. Thus, in spite of Section 243 (g), 661 Immigrant visas were issued in Moscow in the ten-year period ending

June 30, 1963. In 1962, 97 immigrant visas were issued in Moscow. Moreover, prevention of the separation of families numbers among the policies most frequently underlying waiver of Section 243 (g). Report of the Department of State on Lee Harvey Oswald to Commission, PT. 4, pp. 4-5. 246/ James 34-35. The Commission therefore concludes that the Immigration and Naturalization Service did not misuse its discretion in responding in accord with the State Department's recommendation that they waive Section 243 (g) for Marina Oswald.

(4) Should Lee Harvey Oswald have been issued a passport on June 25, 1963?

On June 25, 1963, the State Department issued Lee Harvey Oswald a passport. In his application he had said that he intended to visit France, Germany, Holland, Finland, Italy, Poland, and the Soviet Union. Travel to none of these countries was then or is now proscribed by statute or State Department regulations. The passport was issued routinely. pp. _____.

The major question is whether a passport could have been refused Oswald on the ground that when he was abroad in 1959 he had attempted to expatriate himself, had made strongly anti-American statements, and had offered to give the Russians technical information he had acquired while he was a Marine. Snyder 6973-4.

Unless an applicant comes within one of the statutory sections authorizing the Secretary of State to refuse to issue a passport, the Secretary has no authority to do so. Kent v. Dulles, 357 U.S. 116 (1958).

Section 6 of the Subversive Activities Control Act of 1950, which has recently been declared unconstitutional, Aptheker v. Secretary of State (1964), provided: -

> /It shall be unlawful for any member of /an organization required to register/, with knowledge or notice that such organization is so registered and that such order has become final - (1) to make application for passport, or the renewal of a passport, to be issued or renewed or under the authority of the United States; (2) to use or attempt to use any such passport.

Pursuant to Section 6, the State Department promulgated a regulation which denied passports to members of Communist Organizations:

> /A/ passport shall not be issued to or renewed for any individual who the issuing office knows or has reason to believe is a member of a Communist Organization registered or required to be registered under Section 7 of the Subversive Activities Control Act of 1950 as amended. 22 C.F.R. 51.135.

The Department had no information that Lee Harvey Oswald was a member of the American Communist Party or any other organization which had been required to register under Section 7 of the Subversive Activities Control Act. Knight 7326-7. A passport therefore could not have been denied him under Section 6.

8 U.S.C. §§ 1185b provides that, while a presidential proclamation of national emergency is in force,

> /I/t shall, except as otherwise prescribed by the President, . . . be unlawful for any citizen of the United States to depart or enter . . . the United States unless he bears a valid passport."

This provision, originally enacted in 1918, was reenacted as Section 215 of the Immigration and Nationality Act of 1952. The amendment specified that the provisions of the section were subject to invocation only during "any national emergency proclaimed by the President. . . ." 66 Stat. 190 (1952). Because a proclamation of national emergency issued by President Truman during the Korean War has never been revoked, the government has taken the position that the statute remains in force. Proclamation No. 2915 (Dec. 16, 1950), 60 Stat. A 454; Proclamation No. 2974 (Apr. 18, 1952), set out preceding 50 U.S.C. Appendix 1; Proclamation No. 3084 (Jan 17, 1953), 18 Fed. Reg. 489.

Pursuant to 8 U.S.C. 1185b, the State Department had issued regulations setting forth the circumstances under which it would refuse a passport:

> In order to promote and safeguard the interests of the United States' passport facilities, except for direct and immediate return to the United States, shall be refused to a person when it appears to the satisfaction of the Secretary of State that the person's activity abroad would (a) violate the laws of the United States, (b) be prejudicial to the orderly conduct of foreign affairs; or (c) otherwise be prejudicial to the interests of the United States. 22 C.F.R. § 51.136.

There has apparently been no judicial evaluation or interpretation of Section 51.136. However, the State Department takes the position that its authority under Section 51.136 is severely limited. In a report submitted to the Commission dated May 8, 1964, it concluded that "there were no grounds consonant with the passport regulations to take adverse passport action against Oswald prior to November 22, 1963." 248/

The Department of State informed the Federal Bureau of Investigation of Oswald's offer in 1959 to furnish the Russians with classified military information. The Bureau questioned Oswald about this matter after he returned to the United States in 1962, but no legal action against him was ever initiated, _____; Chayes 7178: While it might be possible to infer from his conduct in 1959 that Oswald would disclose classified information in 1963, if he possessed any such information, Chayes 7178, there was no indication that he had any valuable information in 1963, and the Federal Bureau of Investigation gave the State Department no information which would indicate that Oswald was capable of disclosing classified information. Id.

The State Department's files contained no other information which might have led it to expect that Oswald would violate the laws of the United States when he went abroad. Subsection (a) of 22 C.F.R. §§ 51.136, therefore, could not have provided a basis for refusing Oswald a passport in 1963.

The most likely ground for having denied Oswald a passport in 1963 seems to be provided by subsection (c) of 22 C.F.R. § 51.136, the broad provision allowing the denial of a passport when the Secretary of State is satisfied that the applicant's "activity abroad would . . . otherwise be prejudicial to the interests of the United States."

In 1957 the State Department described to the Senate Foreign Relations Committee one category of persons to whom it denied passports under Section 51.136:

> Persons whose previous conduct abroad has been such as to bring discredit on the United States and cause difficulty for other Americans (gave bad checks, left unpaid debts, had difficulties with police, etc.). Hearings before the Sen. For. Rel. Comm. on Dep't State Passport Policies, 85th Cong., 1st Sess., pp. 338-39 (1957).

Since Oswald's prior attempt to defect to the Soviet Union had caused the United States a certain amount of adverse publicity, it is at least arguable that he was a person "whose previous conduct abroad had been such as to bring discredit on the United States." See Comment, "Passport Refusals for Political Reasons: Constitutional Issues and Judicial Review," 61 Yale L. J. 171, 174-178, for examples of passport refusals prior to Kent v. Dulles.

However, the decisions in Kent v. Dulles, 357 U.S. 116 (1958) and Dayton v. Dulles, 357 U.S. 144 (1958) may be read to have greatly restricted the Secretary of State's authority to deny passports. In these cases the Supreme Court invalidated a State Department regulation permitting the denial of passports to Communists and to those "who are going abroad to engage in activities which will advance the Communist movement for the purpose, knowingly and wilfully of advancing that movement," on the ground that the regulation exceeded the authority Congress had granted the Secretary. The Kent opinion suggests that the Court did not intend to restrict its pronouncement to this narrow issue. The Court stated:

> "The right to travel 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." Id. at 125-26.

After noting that historically "cases of refusal generally fell into two categories": (a) citizenship and allegiance, and (b) illegal conduct, the court stated that the "grounds for refusal asserted here do not relate to citizenship or allegiance on the one hand or to criminal or unlawful conduct on the other. Yet, so far as relevant here, those two are the only ones which it could fairly be argued were adopted by Congress in light of prior administrative practice." Id. at 127-28. But see Worthy v. Herter, 270 F. 2d 905 (D.C. Cir.), cert. den. 361 U.S. 918 (1959) in which it was held that the right to impose area restrictions reasonably related to the control of foreign relations is inherent in the President's plenary power over foreign affairs and alternatively the same statute at issue in Kent had by implication authorized the restrictions.

In response to the Supreme Court cases, the State Department has denied passports only to those who violate the Department's travel restrictions, to fugitives from justice, to those who are involved in using passports fraudulently, and to a few individuals engaged in illegal activity abroad or in conduct affecting our relations with a particular country. Comm'n Exh. 949; Chayes 7158-7163; Knight 7315. Passports have been granted to people who the Department anticipates will go abroad to denounce the United States, Chayes 7158-7163, 7176, and a passport was even routinely granted to a prior defector. Id. at 7193; Seeley 34-35. State Department officials apparently have felt that in view of the Supreme Court decisions, the State Department was not empowered to deny anyone a passport on grounds related to political association and beliefs. Chayes 7163.

However, State Department actions and pronouncements have not always been consistent with this practice of restraint. In 1958, immediately after Kent, State Department officials indicated to Congressional committees conducting

hearings on proposed passport legislation that Kent was limited to prohibiting denial of passports because of Communist belief and that it was not a decision which restricted the power to deny passports to instances of only either non-citizenship or illegal conduct. Loftus Becker, Legal Adviser to the Department of State, stated:

> "The Supreme Court decision /Kent/ does not pass on anything beyond the specific issue there that we did not have the power to require a non-Communist affidavit on the part of the applicant. It does not give us any guidance as to where we go from there . . ." Hearings before the Senate Committee on Foreign Relations on S. 2770, et al., 85th Cong., 2d Sess. p. 35 (1958).

Another State Department official stated:

> "As a result of the recent Supreme Court decision, we have not been able to process for the purpose of holding up any passports with information available that the applicant would fall under the so-called Communist part of our regulations. If he fell under some other portions of the regulations we would process him as we have in the past, but if he falls under the Communist part of the regulations, we must go ahead as though that information did not exist." Roderic O'Connor, Administrator, Bureau of Security and Consular Affairs of the Department of State, Hearings before the Senate Committee on Foreign Relations on S. 2770, 85th Cong. 2d Sess., p. 41 (1958).

At the same hearing, Robert Murphy, then Under Secretary of State, when commenting on the proposed legislation stated:

> /T/here are two additional categories of the bill before you . . . under those provisions, the Secretary of State is authorized not to issue passports to persons as to whom it is determined upon substantial grounds that their activities or presence abroad, or their possession of a passport, first, seriously impairs the conduct of foreign relations of the United States, or second, be inimical to the security of the United States. These two provisions clearly allow to the Secretary broad discretionary powers. It is our belief, however, that they do not allow him as the principal delegate of the President in the field of foreign affairs any broader discretionary power than the Secretary already had by virtue of existing Congressional enactments and the President's constitutional prerogative to conduct our foreign relations and to protect our national security. We are in fact maintaining that position in the courts today. Id. at 22.

In 1959 Mr. Murphy stated before a Congressional Committee:

> "Since commenting on S. 2770 in the 85th Congress, there have been no developments that have in any way lessened the Department's conviction that the Secretary of State may deny passports on the basis of anticipated harm to the foreign relations of the United States . . . in fact, the United States Court of Appeals for the District of Columbia in the case of Worthy v. Herter, recently upheld the Secretary of State's denial of a passport to an individual on the basis of the belief that he would travel to areas for which his passport was not valid and thereby prejudice the conduct of our foreign relations." Hearings before the Sen. Committee on For. Rel. on S. 806, et al., 86th Cong., 1st Sess., p. 58 (1959); See also testimony of John W. Hanes, Jr., Administrator, Bureau of Security and Consular Affairs, Department of State, Hearings before a Special Subcommittee of the Senate Committee on Government Operations on S. 2095, 86th Cong., 1st Sess. 157 (1959).

Furthermore, the Department made no moves to take 22 C.F.R. § 51.136 off the books or to revise it; in fact, it was reissued in 1962. Finally, it should be noted that the passport Oswald received in Russia, prior to his request for a repatriation loan, was limited for direct and immediate return to the United States _____, Chayes 7114, 7191. Apparently the only authority the State Department has for so limiting passports is 22 C.F.R. §§ 51.136. Comm'n Exh. 949 (letter from Mr. Chayes to Mr. Rankin, June 6, 1964). If the State Department was authorized to limit a passport for direct return to the United States in Oswald's case, it is difficult to see why there was not similar authorization to deny Oswald a passport to travel abroad when he returned to this country. See Knight 7316-7.

In spite of these inconsistencies, the State Department has generally applied a broad interpretation of the Kent decision and thus has limited the situations in which passports may be denied. The State Department was certainly justified in so construing the Kent decision since in that case the Supreme Court said that serious constitutional doubts were raised by the imposition of restrictions on personal liberty that were based upon criteria of political belief and association. Kent v. Dulles, at p._____. It has become quite clear that the State Department was correct in considering Kent as guaranteeing a constitutional right to travel. See Aptheker v. Secretary of State (1964).

Since Oswald has a right to expatriate himself and since there was no indication that he would be involved in illegal activity abroad, the only grounds upon which a passport might have been denied Oswald would fall within this area of political belief and association. Therefore, the State Department, in following its general practice, was not unjustified in issuing Oswald a passport. The Commission concludes that the Department was justified in maintaining that it had no authority to deny a passport to Oswald based upon the evidence in the file as of June 25, 1963.

(5) Should Lee Harvey Oswald's passport have been revoked when the State Department received information that he was making inquiries about returning to Russia at the Russian Embassy in Mexico City in late September and early October 1963?

On October 16, 1963, the passport office of the State Department received a report from an intelligence source to the effect that Oswald in early October 1963 had made contact with the Soviet Embassy in Mexico City. The report, however, said nothing about a Russian visa or that Oswald had also visited the Cuban Embassy in Mexico City. See Knight 7327.

Travel to Russia was not proscribed in 1963. Moreover, the Soviet Union was one of the countries Oswald had listed on his passport application. Once the passport was granted, there would be no reason to revoke it simply because Oswald had begun to take steps to get to the Soviet Union.

M E M O R A N D U M

TO : J. Lee Rankin
General Counsel

DATE: July 11, 1964

FROM : Richard M. Mosk

Attached is a further revision of the section dealing with the legality of State Department decisions. I just added a short section dealing with the repatriation loan, and I added a few sentences in light of the recent State Department memorandum supplementing the testimony of Mr. Chayes. Mr. Slawson has reviewed the additions.

Attachment

RMM:ej

Part II

Legal Bases for the Decisions made by the Department of State and the Immigration and Naturalization Service in Connection with the Oswalds.

In the course of the Commission's investigation, there were called to its attention various decisions concerning Marina and Lee Harvey Oswald made by the Department of State and the Immigration and Naturalization Service of the Department of Justice. These decisions included: (1) whether Lee Harvey Oswald had expatriated himself by any act performed between October 16, 1959, the day he entered the Soviet Union, and August 18, 1961, the day it was determined by the Department of State that he was still a United States citizen; (2) whether Marina Oswald was eligible for entry into the United States; (3) whether the provisions of Section 243(g) of the Immigration and Nationality Act should have been waived in the case of Marina Oswald; (4) whether Lee Harvey Oswald should have been granted a repatriation loan; (5) whether Lee Harvey Oswald should have been issued a passport on June 25, 1963; and (6) whether that passport should have been revoked when the Department of State received information that Oswald was making inquiries about returning to Russia at the Russian Embassy in Mexico City in late September and early October 1963.

The appropriateness of the resolution of these issues has been evaluated by the Commission in terms of the relevant statutes, regulations and practices, and their application to the facts which were available to the Department of State and the Immigration and Naturalization Service at the times the respective decisions were made.

(1) Did Lee Harvey Oswald expatriate himself by any act performed between October 16, 1959 and August 18, 1961?

Since Oswald was born in the United States, he was of course an American citizen. Fourteenth Amendment; United States v. Wong Kim Ark, 169 U.S. 649. Congress, however, has enacted statutes setting forth certain actions which serve to expatriate the person performing them. It might be suggested that Oswald lost his citizenship by virtue of the operation of any one of four sections of the Immigration and Nationality Act of 1952: Section 349 (a) (1), (obtaining naturalization in a foreign state); Section 349 (a) (6), (formal renunciation of United States nationality); Section 349 (a) (2), (taking an oath of allegiance to a foreign state), or Section 349 (a) (4), (working for the government of a foreign state). It should be noted that in expatriation cases the courts have stated that factual and legal questions should be resolved in favor of the citizen. Nishikawa v. Dulles, 356 U.S. 129, 134 (1958); Stipa v. Dulles, 233 F. 2d 551, 556 (1956); Fletes-Mora v. Rogers, 160 F. Supp. 215, 218 (1958). Also, Congress, in a recent amendment to the Immigration and Nationality Act, while providing that an expatriating act must be presumed to have been done voluntarily, confirmed judicial decisions holding that "the burden shall be upon the person or party claiming that . . . /loss of nationality/ occurred, to establish such claim by a preponderance of the evidence." 75 Stat 656 (1961).

a. Section 349 (a) (1) - Obtaining Naturalization in a foreign state

Section 349 (a) (1) of the Immigration and Nationality Act of 1952 provides that a United States citizen shall lose his nationality by:

> /O/btaining naturalization in a foreign state upon his own application, upon an application filed in his behalf by a parent, guardian, or duly authorized agent, or through the naturalization of a parent having legal custody of such person.

Although Oswald applied for Soviet citizenship, see pp. , it is clear that he never received it. See pp. . Thus, Oswald did not expatriate himself under Section 349 (a) (1).

b. Section 349 (a) (6) - Making formal renunciation of United States nationality

Section 349 (a) (6) of the Act provides that a United States citizen shall lose his citizenship by:

> /M/aking a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State.

In his letter of October 31, 1959, Oswald wrote:

> I, Lee Harvey Oswald, do hereby request that my present citizenship in the United States of America, be revoked.
>
> * * *
>
> My request for the revoking of my American citizenship is made only after the longest and most serious considerations.

In his letter of November 3, 1959, he wrote:

> I, Lee Harvey Oswald, do hereby request that my present United States citizenship be revoked.
>
> I appered (sic) in person, at the Consulate Office of the United States Embassy, Moscow, on Oct 31st, for the purpose of signing the formal papers to this effect. This legal right I was refused at that time.

And he clearly stated in an interview at the American Embassy that he had come to the Embassy to renounce his United States citizenship. See pp. _____ supra.

At the time he authored these letters and made the oral statement, Oswald was not yet 21 years old. However, Section 351 of the Immigration and Nationality Act provides, with several exceptions not here relevant, that persons under 18 years of age are presumptively incompetent to perform acts expatriating themselves, thus inferring that no disability exists when one is over eighteen.

Section 349 (a) (6), however, requires the expatriating renunciation to be in "such form as may be prescribed by the Secretary of State." In accordance with this statute, the Secretary set forth the requisite form and procedure in 22 Code of Federal Regulations §§ 50.1 - 50.2 and 8 Foreign Affairs Manual § 225.6. The regulations provide, inter alia, that four copies of the renunciation form are to be executed, and the original and one copy sent to the Department. After the Department has approved the form, it advises the appropriate consular official who may then furnish a copy of the form to the person to whom it relates. The form itself requires the person to subscribe it in the presence of a consular official, and it must be signed by this official. See Comm'n Exh. 955. Snyder 6972.

Oswald did not execute the proper forms; in fact, he did not even sign his letter in the presence of a Consular official, nor was his letter signed by such an official. (Snyder 6977; Comm'n Exh. 912) Therefore, Oswald failed to comply with the appropriate procedures prescribed by the Secretary of State. Because Section 349 (9) (6) in terms requires compliance with the form prescribed by the Secretary of State, it is evident that Oswald did not expatriate himself under that Section.

c. Section 349 (a) (2) - Oath of allegiance to a foreign state

Section 349 (a) (2) of the Act provides that a United States citizen shall lose his nationality by:

> /T/aking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof.

In his letter of October 31, 1959, Oswald wrote:

> I affirm that my allegiance is to the union of Soviet Socialist Republics.

And both in this letter and in his letter of November 3, 1959, he stated that his application for citizenship in the Soviet Union was pending before the Supreme Soviet of the U.S.S.R. 238/

Many cases and articles have quoted Secretary of State Charles Evans Hughes to the effect that in order for an oath, declaration, or affirmation of allegiance to a foreign state to effect an expatriation, it must place "the person taking it in complete subjection to the State to which it is taken, at least for the period of the contract, so that it is impossible for him to perform the obligations of citizenship to his country," III Hackworth, Digest of International Law, 219-220 (1942). This test is one by which the intention of an oath in question is tested in order to determine whether its purpose is to swear an allegiance inconsistent with the individual's allegiance to the United States; it is often invoked in cases involving dual citizenship. See Jalbuena v. Dulles, 254 F. 2d 379, 381 n. 2(3d Cir. 1958); Roche, The Loss of American Nationality - The Development of Statutory Expatriation, 99 U. Pa. L. Rev. 25 (1950). Oswald's letters clearly did intend to evidence an allegiance to the Soviet Union inconsistent with continued allegiance to the United States. Indeed, they explicitly so state. If Oswald's oath to the Soviet Union is to be found not to have worked an expatriation, therefore, the imperfection must lie in the

circumstances under which it was taken rather than in its wording.

An earlier version of Section 349 (a) (2) provided:

> That any American citizen shall be deemed to have expatriated himself . . . when he has taken an oath of allegiance to any foreign state. Act of March 2, 1907, § 2, 34 Stat. 1228.

In 1940 the language of the Section was changed so as to demand "an oath or . . . affirmation or other formal declaration of allegiance." Nationality Act of 1940, § 401 (b), 54 Stat. 1169.

The language of the 1940 Act has been retained in the present 1952 Act. The shift in language from the 1907 Act to the 1940 Act might be taken to indicate a demand for greater formality in expatriating oaths. Whether or not this was the legislative intent, since 1940 it has been well established that in order for an oath of allegiance to a foreign state to work an expatriation from the United States, it must be given to an official of the foreign state, and not to a party unconnected with the foreign state. See Roche, The Loss of American Nationality - The Development of Statutory Expatriation, 99 U. of Pa. L. Rev. 25, 33 (1950). This requirement can be viewed as a necessary corollary of the broader, but less clearly established principle that the oath must be taken in accord with the requirements of the foreign state.

> The Department of State holds that for loss of nationality to result from taking an oath of allegiance to a foreign state, the oath must be one 'which is prescribed by law or by regulations having the force of law' and must be taken before a competent official of the government concerned." III Hackworth, Digest of International Law 218 (1942).

In Re Bautista's Petition, 183 F. Supp. 271 (D. C. Guam, 1960), a case construing the 1952 Act, the court held that an oath of allegiance to the Philippines taken before an official of the Philippine Government did not work an expatriation because the individual had desired to become a Philippine

citizen only in order to obtain a passport to travel to Guam. (The court relied on the "complete subjection"test.) However, the court also failed to consider as an expatriating act the taking of another oath of allegiance to the Philippines before a notary public. The court dismissed this oath with the simple statement: "It was not done before an official of the Philippines." Id. at 274. See also Dep't of State to Consul at Guadalajara, May 27, 1939, at 218.

Similarly, the Board of Immigration Appeals in The Matter of L., 1 I. & N. Dec. 317 (B.I.A. 1942), was faced with the following affirmation:

> "I do swear that I will be faithful and bear truly just to His Majesty, King George VI, his heirs and successors, according to law. So help me God."

The Board held that the declarant did not expatriate himself:

> "An oath or formal declaration mentioned by the statute must mean not only the giving of the oath by the individual but the acceptance of the oath by the foreign state. An oath of allegiance has no real significance unless the oath be made to the state and accepted by the state. Such acceptance on the part of the state must be made in accordance with the laws of that state. In the case before us an oath of allegiance was not made to the British Crown in accordance with any law or regulation of the British Government. On the contrary, the obligation is between the appellant on the one hand and a private employer on the other." Id. at 320.

Other administrative bodies have decided that an oath taken before a notary public in Great Britain [Dep't of State Consular Official in charge at Birmingham, May 10, 1938], an oath taken by a priest on ordination into the Church of England [Director of Consular Service to Counsel Glazebrooke, Oct. 30, 1914], and an oath sworn by a lawyer to obtain admission to the German Bar [Dep't of State to Counsel Gen'l in Berlin, Mar. 21, 1934] did not expatriate an American citizen. See generally Roche, The Loss of American Nationality - The Development of Statutory Expatriation, 99 U. Pa. L. Rev. 25, 33 (1950).

In all cases found by the Commission in which an individual has been held to have expatriated himself by virtue of an oath to a foreign state, although the courts have not always stressed the fact that the oath was taken before an official of the foreign state, the oath was in fact so taken. See e.g., McCampbell v. McCampbell, 13 F. Supp. 847 (W. D. Ky. 1936); Reaume v. United States, 124 F. Supp. 851, 852 (E. D. Mich. 1954). In Savorgnan v. United States, 338 U. S. 491 (1950), the Court held that Mrs. Savorgnan had expatriated herself. Although the holding was based upon other grounds, the Court "recognized the force of the alternative ground" that she had signed an oath swearing allegiance to the King of Italy as part of an application for Italian citizenship filled out at the Italian Consulate in Chicago. Id. at 503. The Court, in detailing the factors supporting the argument that the oath expatriated Mrs. Savorgnan, did not explicitly mention that it was signed in an office of the foreign government in question and in accord with their requirements. Id. at 502. However, both these requirements in fact were met. Moreover, in the statement of facts, the Court noted: "No ceremony or formal administration of the oath accompanied her signature and apparently none was required." Id. at 494.

While Lee Harvey Oswald had written that he had taken an oath of allegiance to the Soviet Union, see e.g., Comm'n Exh. 100, there is no indication that such an oath or declaration was taken before an official of the Soviet Government. Chayes 7107. He therefore did not expatriate himself under Section 349 (a) (2).

3. Section 349 (a) (4)

Section 349 (a) (4) of the Immigration and Nationality Act provides that a United States citizen shall lose his nationality by:

> (a) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, if he has or acquires the nationality of such foreign state; or (b) accepting, serving in, or performing the duties of any office, post of employment under the government of a foreign state or a political subdivision thereof, for which office, post, or employment an oath, affirmation, or declaration of allegiance is required. . .

While Oswald was employed in a state owned factory in Minsk, see pp. _____, he did not acquire Russian nationality, see pp. _____ and there is no indication that he had to take any oath when he obtained this employment. Chayes 7107. Furthermore, cases would indicate that merely working in a government-owned factory does not result in expatriation even if an oath was required to be taken in connection with such employment. See Cf. Flete-Mora v. Rogers, 160 F. Supp. 215 (1958); Kenzi Kamada v. Dulles, 145 F. Supp. 457, 459 (1956) (both arising under Section 503 of the Nationality Act of 1940); Roche, "The Loss of American Nationality - The Development of Statutory Expatriation," 99 U. Pa. L. Rev. 25, 51 (1951). Several cases, all decided under the 1940 Act, held that where a person took a government job in order to subsist, such employment was considered involuntary since it was based on economic duress, and thus it did not result in expatriation. Insogna v. Dulles, 116 F. Supp. 473 (1953); Stipa v. Dulles, 233 F. 2d 511 (1956). It seems clear that in order to subsist in the Soviet Union, one must accept employment with the government. Thus, Oswald did not expatriate himself under Section 349 (a)(4).

The Commission therefore concludes that the Department and Embassy decision that Lee Harvey Oswald had not expatriated himself by any acts performed between October 16, 1959 and August 18, 1961, was correct.

(2) Was Marina Oswald eligible for entry into the United States?

As the wife of an American citizen, Marina Oswald was entitled to non-quota immigrant status under Section 205 of the Immigration and Nationality Act

of 1952. However, under Section 212 (a) (28) of the Act, an alien will nevertheless

be excluded from admission to the United States if she is or was a member of or affiliated with a Communist organization unless:

> ". . .such alien establishes to the satisfaction of the consular officer when applying for a visa and the consular officer finds that (1) such membership or application is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes." Section 212 (a) (28) (I) (1).

At the time Marina Oswald applied for a visa she was a member of the Soviet Trade Union for Medical Workers. Comm'n Exh. 944; McVickar 7140, 7094. She said she was not nor ever had been a member of any other Communist organization. pp. _____ . Membership in the Medical Workers Union was deemed by the Department to have been necessary for obtaining employment in a hospital as a laboratory assistant. Comm'n _____. Thus, the State Department determined that her membership was involuntary, and the exemption in Section 212 (a) (28) (I) (i) was therefore applicable. This finding was consistent with "a long-standing interpretation concurred in by the State and Justice Departments that membership in a professional organization or trade union behind the Iron Curtain is considered involuntary unless the membership is accompanied by some indication of voluntariness, such as active participation in the organization's activities or holding an office in the organization." Report of the Department of State on Lee Harvey Oswald to the Commission, PT. IV., p. 3. 240/ See also McVickar 7147.

In spite of the fact that Marina Oswald declared that she was not a member of any other Communist organization, she was in fact a member of Komsomol, the Communist Youth Organization. Marina Oswald 470-471. McVickar 7093. This fact was not known to the State Department. If it had been, Marina would not

necessarily have been denied a passport, although a careful investigation into the nature of the membership would have been undertaken. McVickar 7142. The three types of situations enumerated in Section 212 (a) (28) (I) (i) may not be the only instances where membership in a Communist organization is so nominal as to preclude the issuance of a visa. Cf: Galvan v. Press, 347 U.S. 522, 527 (1954); Rowoldt v. Perfetto, 355 U.S. 115, 120 (1957) (cases arising under §§ 22 of the Internal Security Act of 1950 as amended in 1951)

Had the fact concerning Marina's membership in Komsomol been known to the Department despite her denial, it is conceivable that she would have been excluded from the United States on the ground of having willfully misrepresented a material fact. Immigration and Nationality Act, Section 212 (a) (19). There is a conflict in the cases as to what constitutes a "material fact." See generally Gordon and Rosenfield, Immigration Law and Procedure, 228, 424-427 (1959); Appleman, Misrepresentation in Immigration Law: Materiality, 22 Fed. B.J. 267 (1962). In Langhammer v. Hamilton, 295 F. 2d 642, 648 (1961), the court held that a misrepresentation in an application for a visa involves a material fact even if the alien would not definitely have been excluded on the true facts. In this case, the court said that a determination made after admission to the United States that membership in a Communist organization was involuntary would not operate nunc pro tunc to render omission to reveal such fact nonmaterial; See also Chaunt v. United States, 364 U.S. 350, 355 (1960). (A case to revoke a decree of citizenship.) However, another line of cases held that in order to be material, a misstatement must refer to such facts as would have justified a consul in refusing a visa had they been disclosed. E.g., Cavillo v. Robinson, 271 F. 2d 249 (1959). The Visa Office of the Department of State has announced that it applies a "rule of probability" under which any misstatement will be deemed material only if it concealed facts which probably would have resulted in denial of a visa. Visa Off. Bull 90, March 2, 1962.

(3) Should the provisions of Section 243 (a) of the Immigration and Nationality Act have been waived in the case of Marina Oswald?

Section 243 (g) of the Immigration and Nationality Act of 1952 provides that upon notification of the Secretary of State by the Attorney General that a country has refused or unduly delayed the acceptance of a deportable alien from the United States who is a national, citizen, subject, or resident of that country, consular officers in such country are not to issue visas to citizens thereof. On May 26, 1953, the Department of State notified the United States Mission in Moscow that the Attorney General had invoked Section 243 (g) as a result of the failure of the Soviet Union to accept the return of aliens deported or sought to be deported from the United States. Consequently, consular officials were instructed to discontinue the issuance of immigrant visas until advised by the Department of State to the contrary.

It should be noted that Section 243 (g), when invoked by the Attorney General, does not make any particular alien or class of aliens ineligible to immigrate to the United States. It applies to a country, or more specifically, to United States Consular Officers stationed in such countries, and it was designed to exert pressure on countries which fail to receive deportees from the United States. Any person precluded from receiving an immigrant visa solely because of the application of Section 243 (g) may merely proceed to a United States Consulate in another country where the sanctions are not in effect and there receive an immigrant visa, if he or she is otherwise qualified.

Section 243 (g) does not contain any express provision for waiver. However, the Justice Department has concluded that such waiver powers were granted the Attorney General by the Act and, pursuant to their decision, has granted waiver in over 600 cases from the Soviet Union since 1953. The waiver procedures followed

in 1962 when Marina Oswald was granted a waiver of Section 243 (g) were prescribed by the Immigration and Naturalization Service. The relevant provision read:

> Before adjudicating a petition for an eligible beneficiary residing in the USSR, Czechoslovakia or Hungary, against which sanctions have been imposed, the district director shall obtain a report of investigation regarding the petitioner which shall include any affiliations of a subversive nature disclosed by neighborhood investigation, local agency records and responses to Form G-135a. . . . If no substantial derogatory security information is developed, the district director may waive the sanctions in an individual meritorious case for a beneficiary of a petition filed by a reputable relative to accord status under Section 101 (a) (27) (A) or Section 203 (a) (2), (3) or (4). . . . If substantial adverse security information relating to the petitioner is developed, the visa petition shall be processed on its merits and certified to the regional commissioner for determination whether the sanctions should be waived. The assistant commissioner shall endorse the petition to show whether the Waiver is granted or denied, and forward it and notify the appropriate field office of the action taken. . . . Operations Instructions of the Immigration and Naturalization Service, 205.3. [This revised instruction was effective February 15, 1962 - June 30, 1962. Other versions which may have been considered during Oswald's case were different only in irrelevant ways.]

State Department regulations are much less explicit. 22 C.F.R. 42.120. The State Department's visa instructions for the guidance of consular officers [Note 2 to 22 C.F.R. 42. 120, Vol. 9, Foreign Affairs Manual] provide, "The sanctions will be waived only in individual meritorious cases in behalf of a beneficiary of a petition filed by a reputable relative pursuant to Section 101 (a) (27) (A) or paragraph (2) (3) or (4) of Section 203 (a) of the act."

The character of Lee as well as Marina Oswald is relevant to the decision because he is the relative who signed the petition on Marina's behalf. Whether he is "reputable" therefore must be determined. His character may also have a bearing on whether "substantial derogatory security information" is developed. Thus, all of the facts bearing on the issue of Oswald's attempted expatriation were also pertinent to the issue of waiver of the sanction pursuant to Section 243 (g) of the Immigration and Nationality Act for Marina Oswald. These facts were

made available to the Immigration and Naturalization Service when it was considering whether to permit the waiver. 241/

The statutory procedure for handling petitioners for non-quota or preference status by reason of relationship calls for a determination of eligibility for such status by the Attorney General. The responsibility for making such determinations has been delegated by the Attorney General to the District Directors of the Immigration and Naturalization Service. Marina Oswald's petition was forwarded by the Embassy in Moscow through the State Department to the District Director in San Antonio, Texas, the office having jurisdiction over Oswald's domicile in the United States. In accordance with the procedure worked out between the State and Justice Departments, the District Director was to note his determination as to a waiver of Section 243 (g) at the same time as he made his determination of eligibility for non-quota status under Section 205 (a).

On February 28, 1962, the District Director of the Immigration and Naturalization Service informed the Visa Office of the State Department that while the petition for non-quota status had been approved, the waiver of Section 243 (g) was not authorized by the Service. No reason for disapproval of the waiver was stated, but it was "clear from the internal order of the Immigration and Naturalization Service that the refusal to authorize the waiver was based on Oswald's statements and attitude while in the Soviet Union." Report of the Department of State on Lee Harvey Oswald to the Commission, PT. 4, p. 7.

On March 16, the Soviet Affairs Office of the State Department advised the Visa Office of the Department as follows:

> SOV believes it is in the interest of the U. S. to get Lee Harvey Oswald and his family out of the Soviet Union and on their way to this country as soon as possible. An unstable character, whose actions are entirely unpredictable, Oswald may well refuse to leave the USSR or subsequently attempt to return there if we should make it impossible for him to be accompanied from Moscow by his wife and child.

> Such action on our part also would permit the Soviet Government to argue that, although it had issued an exit visa to Mrs. Oswald to prevent the separation of a family, the United States Government had imposed a forced separation by refusing to issue her a visa. Obviously, this would weaken our Embassy's position in encouraging positive Soviet action in other cases involving Soviet citizen relatives of U. S. citizens. 243/

On March 27, the Acting Administrator of the Bureau of Security and Consular Affairs addressed a letter to the Commissioner of the Immigration and Naturalization Service, Department of Justice, requesting reconsideration of the decision not to waive the provisions of Section 243 (g) in the case of Marina Oswald. 243a/ The State Department expressed concern about the propriety of punishing Marina and the Oswalds' baby for Lee Harvey Oswald's earlier errors. Furthermore, it was feared that refusing to permit Marina to accompany Lee out of Russia to the United States would put the Soviet Government in a position to claim that it had done all it could to prevent the separation of the family, but that our government had split the husband from his wife and child. The Department felt that this would seriously weaken our government's attempts to encourage the Soviet Government to permit other Russian wives and children to accompany their American husbands and parents back to the United States. The letter concluded that it was in the best interest of the United States to have Oswald depart from the Soviet Union as soon as possible.

On May 8, 1962, the Immigration and Naturalization Service agreed to waive the sanction of Section 243 (g) "in view of strong representations made" by the State Department. 244/ Consequently, the Embassy was informed that the Section 243 (g) sanction had been waived by the Immigration and Naturalization Service. 245/ Thus, while derogatory information was in the file, the ultimate decision was made by the official designated by the Regulation to act in such a case.

Waivers of Section 243 (g) are not unusual. Thus, in spite of Section 243 (g), 661 Immigrant visas were issued in Moscow in the ten-year period ending

June 30, 1963. In 1962, 97 immigrant visas were issued in Moscow. Moreover, prevention of the separation of families numbers among the policies most frequently underlying waiver of Section 243(g). Report of the Department of State on Lee Harvey Oswald to Commission, PT. 4, pp. 4-5.[246/] James 34-35. The Commission therefore concludes that the Immigration and Naturalization Service did not misuse its discretion in responding in accord with the State Department's recommendation that they waive Section 243(g) for Marina Oswald.

(4) Should Lee Harvey Oswald been granted a repatriation loan?

On June 1, 1962, Lee Harvey Oswald received a repatriation loan from the American Embassy in Moscow to enable him and his family to return to the United States. The amount of Oswald's loan was $435.71, and it consisted of three steamship tickets from Rotterdam to New York, plus a small portion of the cost of railway tickets from Moscow to Rotterdam.

Title 5 U.S.C. § 170 authorizes the Secretary of State to:

> "(a) make expenditures, from such amounts as may be specifically appropriated therefor, for unforseen emergencies arising in the diplomatic and consular service and, to the extent authorized in appropriation acts, funds expended for such purposes may be accounted for in accordance with Section 107 of Title 31. . ."

For a number of years the Department of State's annual Appropriation Act has included a sum "for expenses necessary to enable the Secretary of State to meet unforseen emergencies arising in the Diplomatic and Consular Service, to be expended pursuant to the requirement of Section 291 of the Revised Statute (31 U.S.C. 107)" E.g. 60 Stat. 452, 79th Cong. 2nd Sess. (1946); 75 Stat. 546, 87th Cong. 1st Sess. (1961). House Reports on recent Department

of State appropriation bills have stated that the funds allocated to this section of the appropriation are to be "used for relief and repatriation loans to the United States citizens abroad and for other emergencies of the Department." E.g. H. Rept. 442, 87th Cong. 1st Sess. (1961) 4; H. Rept. 1996, 87th Cong. 2d Sess. (1962) 4; H. Rept. 388, 88th Cong. 1st Sess. (1963) 4.

Out of the amount appropriated "to meet unforseen emergencies arising in the Diplomatic and Consular Service," the Secretary of State has annually alloted approximately $100,000 to meet the expenses of repatriation of indigent United States nationals who request repatriation loans. From 1959 to 1963, 2343 such loans were granted. In 1962, the average amount loaned was about $173.00. There have been relief and repatriation loans to American citizens in the Soviet Union. Report of Department of State, PT. 5.

Under the Department's regulations, repatriation loans to destitute United States nationals are authorized by the Department only when:

> "a. Investigation shows that the United States national will suffer undue hardship if he does not return to the United States on funds either abroad or in the United States, that he is without relatives or friends either abroad or in the United States who are able and willing to assist him financially, and that he is unable, through employment or otherwise, to obtain funds for support or for return passage (an initial telegram may be sent to relatives or friends in the United States through the Department at Government expense); or
>
> b. The United States national is in or in the cause of a situation which is damaging to the prestige of the United States Government or which constitutes a compelling reason for extending assistance to effect his return." 7 Foreign Affairs Manual [Hereinafter F.A.M.] § 423, 1-2.

The Department decided that the provisions of subsection (b) were applicable to Oswald because "his unstable character and prior criticism of the United States" would make his continued presence in Russia damaging to the prestige of the United States. Report of the Department of State - Lee Harvey Oswald, PT. 5, p. 3. The Department sought, however, in accordance with

subsection "a", to obtain funds for the Oswalds' repatriation from Lee Oswald's mother and from the International Rescue Committee. Neither effort was successful. Comm'n Exh. _____; C. D. 49, p. 10; C. D. 883; Marguerite Oswald _____.

Another regulation provides that repatriation loans may be granted only to United States nationals:

> "a. Who are in complete and unquestional possession of their citizenship rights;
>
> b. Who are entitled to receive United States passports;
>
> c. Whose loyalty to the United States Government is beyond question, or to whom the provisions of Section 423, 1-2 (b) apply" 7 F.A.M. § 423, 2-1.

It had been determined that Oswald was still a United States citizen, and he had been issued a passport for return to the United States. Since Section 423, 1-2 (b) had been applied, Oswald met the requirements of subsection (c).

The amount of the repatriation loan covering the transportation costs of Marina and the Oswald child is authorized by 7 F.A.M. § 423, 3-5, which provides that repatriation loans are authorized for the alien, wife and children of the United States national receiving a repatriation loan in order to avoid the division of families.

Oswald filled out the required application and signed the required affirmation that he is a loyal American citizen, that he is destitute, and that he promises to repay the funds. Comm'n Exh's. _____; 7 F.A.M. § 8 423, 5. He also signed a promissory note. Comm'n Exh. _____; 7 F.A.M. § 423-6. "This note together with the application for the loan, constitutes the agreement for the repayment of the loan." 7 F.A.M. 423. 6-1.

Loans are limited:

> "to the minimum amount required to cover transportation and subsistence while enroute to the nearest continental United States port . . . When necessary, loans may include

> expenses incident to embarkation, such as fees for documentation and minimum subsistence from the date of application for a loan to the date of departure by the first available ship . . . the cost of transportation shall be limited to third-class passage by ship." 7 F.A.M. § 423. 3-3.

Oswald's loan was sufficient to cover only the least expensive transportation from Moscow to New York. Report of Department of State - Lee Harvey Oswald, PT. 5, p. 4. Oswald's passport was stamped as valid only for return to the United States as required by 7 F.A.M. §§ 423. 7-1. Comm'n Exh. _____.

The Commission finds that the State Department was authorized to grant Oswald a repatriation loan, followed the correct procedures for granting such a loan, and was in the area of proper discretion in granting the loan in Oswald's case.

(5) Should Lee Harvey Oswald have been issued a passport on June 25, 1963?

On June 25, 1963, the State Department issued Lee Harvey Oswald a passport. In his application he had said that he intended to visit France, Germany, Holland, Finland, Italy, Poland, and the Soviet Union. Travel to none of these countries was then or is now proscribed by statute or State Department regulations. The passport was issued routinely. pp. _____.

The major question is whether a passport could have been refused Oswald on the ground that when he was abroad in 1959 he had attempted to expatriate himself, had made strongly anti-American statements, and had offered to give the Russians technical information he had acquired while he was a Marine. Snyder 6973-4.

Unless an applicant comes within one of the statutory sections authorizing the Secretary of State to refuse to issue a passport, the Secretary has no authority to do so. Kent v. Dulles, 357 U.S. 116 (1958)

Section 6 of the Subversive Activities Control Act of 1950, which has recently been declared unconsitutional, Aptheker v. Secretary of State (1964), provided:

[I]t shall be unlawful for any member of [an organization required to register], with knowledge or notice that such organization is so registered and that such order has become final - (1) to make application for passport, or the renewal of a passport, to be issued or renewed or under the authority of the United States; (2) to use or attempt to use any such passport.

Pursuant to Section 6, the State Department promulgated a regulation which denied passports to members of Communist Organizations:

> "A passport shall not be issued to or renewed for any individual who the issuing office knows or has reason to believe is a member of a Communist Organization registered or required to be registered under Section 7 of the Subversive Activities Control Act of 1950 as amended. 22 C.F.R. 51.135.

The Department had no information that Lee Harvey Oswald was a member of the American Communist Party or any other organization which had been required to register under Section 7 of the Subversive Activities Control Act. Knight 7326-7. A passport therefore could not have been denied him under Section 6.

8 U.S.C. § 1185b provides that, while a presidential proclamation of national emergency is in force,

> "It shall, except as otherwise prescribed by the President, . . . be unlawful for any citizen of the United States to depart or enter . . . the United States unless he bears a valid passport."

This provision, originally enacted in 1918, was reenacted as Section 215 of the Immigration and Nationality Act of 1952. The amendment specified that the provisions of the section were subject to invocation only during "any national emergency proclaimed by the President. . . ." 66 Stat. 190 (1952). Because a proclamation of national emergency issued by President Truman during the Korean War has never been revoked, the government has taken the position that the statute remains in force. Proclamation No. 2915 (Dec. 16, 1950), 60 Stat. A 454; Proclamation No. 2974 (Apr. 18, 1952), set out preceding 50 U.S.C. Appendix 1; Proclamation No. 3084 (Jan 17, 1953), 18 Fed. Reg. 489.

Pursuant to 8 U.S.C. 1185b, the State Department had issued regulations setting forth the circumstances under which it would refuse a passport:

> In order to promote and safeguard the interests of the United States' passport facilities, except for direct and immediate return to the United States, shall be refused to a person when it appears to the satisfaction of the Secretary of State that the person's activity abroad would (a) violate the laws of the United States, (b) be prejudicial to the orderly conduct of foreign affairs; or (c) otherwise be prejudicial to the interests of the United States. 22 C.F.R. § 51.136.

There has apparently been no judicial evaluation or interpretation of Section 51.136. However, the State Department takes the position that its authority under Section 51.136 is severely limited. In a report submitted to the Commission dated May 8, 1964, it concluded that "there were no grounds consonant with the passport regulations to take adverse passport action against Oswald prior to November 22, 1963." 248/

The Department of State informed the Federal Bureau of Investigation of Oswald's offer in 1959 to furnish the Russians with classified military information. The Bureau questioned Oswald about this matter after he returned to the United States in 1962, but no legal action against him was ever initiated, _____; Chayes 7178: While it might be possible to infer from his conduct in 1959 that Oswald would disclose classified information in 1963, if he possessed any such information, Chayes 7178, there was no indication that he had any valuable information in 1963, and the Federal Bureau of Investigation gave the State Department no information which would indicate that Oswald was capable of disclosing classified information. Id.

The State Department's files contained no other information which might have led it to expect that Oswald would violate the laws of the United States when he went abroad. Subsection (a) of 22 C.F.R. § 51.136, therefore, could not have provided a basis for refusing Oswald a passport in 1963.

The most likely ground for having denied Oswald a passport in 1963 seems to be provided by subsection (c) of 22 C.F.R. § 51.136, the broad provision allowing the denial of a passport when the Secretary of State is satisfied that the applicant's "activity abroad would . . . otherwise be prejudicial to the interests of the United States."

In 1957 the State Department described to the Senate Foreign Relations Committee one category of persons to whom it denied passports under Section 51.136:

> Persons whose previous conduct abroad has been such as to bring discredit on the United States and cause difficulty for other Americans (gave bad checks, left unpaid debts, had difficulties with police, etc.). Hearings before the Sen. For. Rel. Comm. on Dep't State Passport Policies, 85th Cong., 1st. Sess., pp. 338-39 (1957).

Since Oswald's prior attempt to defect to the Soviet Union had caused the United States a certain amount of adverse publicity, it is at least arguable that he was a person "whose previous conduct abroad had been such as to bring discredit on the United States." In fact, the State Department, in granting Oswald a repatriation loan, found that Oswald's continued presence in Russia was "damaging to the prestige of the United States because of his unstable character and prior criticisms of the United States." Report of Department of State, p. 15, p. 3. See comment, "Passport Refusals for Political Reasons: Constitutional Issues and Judicial Review," 61 Yale L. J. 171, 174-178, for examples of passport refusals prior to Kent v. Dulles.

However, the decisions in Kent v. Dulles, 357 U.S. 116 (1958) and Dayton v. Dulles, 357 U.S. 144 (1958) may be read to have greatly restricted the Secretary of State's authority to deny passports. In these cases the Supreme Court invalidated a State Department regulation permitting the denial of passports to Communists and to those "who are going abroad to engage in activities which will advance the Communist movement for the purpose, knowingly and wilfully of advancing that movement," on the ground that the regulation exceeded the authority Congress had granted the Secretary. The Kent opinion suggests that the Court did not intend to restrict its pronouncement to this narrow issue. The Court stated:

> "The right to travel 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." Id. at 125-26.

After noting that historically "cases of refusal generally fell into two categories": (a) citizenship and allegiance, and (b) illegal conduct, the court stated that the "grounds for refusal asserted here do not relate to citizenship or allegiance on the one hand or to criminal or unlawful conduct on the other. Yet, so far as relevant here, those two are the only ones which it could fairly be argued were adopted by Congress in light of prior administrative practice." Id. at 127-28. But see Worthy v. Herter, 270 F. 2d 905 (D.C. Cir.), cert. den. 361 U.S. 918 (1959) in which it was held that the right to impose area restrictions reasonably related to the control of foreign relations is inherent in the President's plenary power over foreign affairs and alternatively the same statute at issue in Kent had by implication authorized the restrictions.

In response to the Supreme Court cases, the State Department has denied passports only to those who violate the Department's travel restrictions, to fugitives from justice, to those who are involved in using passports fraudulently and to a few individuals engaged in illegal activity abroad or in conduct affecting our relations with a particular country. Comm'n Exh. 949; Chayes 7158-7163; Knight 7315. Passports have been granted to people who the Department anticipates will go abroad to denounce the United States, Chayes 7158-7163, 7176, and a passport was even routinely granted to a prior defector. Id. at 7193; Seeley 34-35. State Department officials apparently have felt that in view of the Supreme Court decisions, the State Department was not empowered to deny anyone a passport on grounds related to political association and beliefs. Chayes 7163.

However, State Department actions and pronouncements have not always been consistent with this practice of restraint. In 1958, immediately after Kent, State Department officials indicated to Congressional committees conducting

hearings on proposed passport legislation that Kent was limited to prohibiting denial of passports because of Communist belief and that it was not a decision which restricted the power to deny passports to instances of only either non-citizenship or illegal conduct. Loftus Becker, Legal Adviser to the Department of State, stated:

> "The Supreme Court decision /Kent/ does not pass on anything beyond the specific issue there that we did not have the power to require a non-Communist affidavit on the part of the applicant. It does not give us any guidance as to where we go from there . . ." Hearings before the Senate Committee on Foreign Relations on S. 2770, et al., 85th Cong., 2d Sess. p. 35 (1958).

Another State Department official stated:

> "As a result of the recent Supreme Court decision, we have not been able to process for the purpose of holding up any passports with information available that the applicant would fall under the so-called Communist part of our regulations. If he fell under some other portions of the regulations we would process him as we have in the past, but if he falls under the Communist part of the regulations, we must go ahead as though that information did not exist." Roderic O'Connor, Administrator, Bureau of Security and Consular Affairs of the Department of State, Hearings before the Senate Committee on Foreign Relations on S. 2770, 85th Cong. 2d Sess., p. 41 (1958).

At the same hearing, Robert Murphy, then Under Secretary of State, when commenting on the proposed legislation stated:

> /T/here are two additional categories of the bill before you . . . under those provisions, the Secretary of State is authorized not to issue passports to persons as to whom it is determined upon substantial grounds that their activities or presence abroad, or their possession of a passport, first, seriously impairs the conduct of foreign relations of the United States, or second, be inimical to the security of the United States. These two provisions clearly allow to the Secretary broad discretionary powers. It is our belief, however, that they do not allow him as the principal delegate of the President in the field of foreign affairs any broader discretionary power than the Secretary already had by virtue of existing Congressional enactments and the President's constitutional prerogative to conduct our foreign relations and to protect our national security. We are in fact maintaining that position in the courts today. Id. at 22.

In 1959 Mr. Murphy stated before a Congressional Committee:

> "Since commenting on S. 2770 in the 85th Congress, there have been no developments that have in any way lessened the Department's conviction that the Secretary of State may deny passports on the basis of anticipated harm to the foreign relations of the United States . . . in fact, the United States Court of Appeals for the District of Columbia in the case of Worthy v. Herter, recently upheld the Secretary of State's denial of a passport to an individual on the basis of the belief that he would travel to areas for which his passport was not valid and thereby prejudice the conduct of our foreign relations." Hearings before the Sen. Committee on For. Rel. on S. 806, et al., 86th Cong., 1st Sess., p. 58 (1959); See also testimony of John W. Hanes, Jr., Administrator, Bureau of Security and Consular Affairs, Department of State, Hearings before a Special Subcommittee of the Senate Committee on Government Operations on S. 2095, 86th Cong., 1st Sess. 157 (1959).

Furthermore, the Department made no moves to take 22 C.F.R. §§ 51.136 off the books or to revise it; in fact, it was reissued in 1962. Finally it should be noted that the passport Oswald received in Russia, prior to his request for a repatriation loan, was limited for direct and immediate return to the United States _____, Chayes 7114, 7191. Apparently the only authority the State Department has for so limiting passports is 22 C.F.R. §§ 51.136. Comm'n Exh. 949 (letter from Mr. Chayes to Mr. Rankin, June 6, 1964).

In spite of these inconsistencies, the State Department has generally applied a broad interpretation of the Kent decision and thus has limited the situations in which passports may be denied. The State Department was certainly justified in so construing the Kent decision since in that case the Supreme Court said that serious constitutional doubts were raised by the imposition of restrictions on personal liberty that were based upon criteria of political belief and association. Kent v. Dulles, at p._____. It has become quite clear that the State Department was correct in considering Kent as guaranteeing a constitutional right to travel. See Aptheker v. Secretary of State (1964).

Since Oswald has a right to expatriate himself and since there was no indication that he would be involved in illegal activity abroad, the only grounds upon which a passport might have been denied Oswald would fall within this area of political belief and association. The Commission therefore concludes that the Department was justified in maintaining that it had no authority to deny a passport to Oswald based upon the evidence in the file as of June 25, 1963.

(6) Should Lee Harvey Oswald's passport have been revoked when the State Department received information that he was making inquiries about returning to Russia at the Russian Embassy in Mexico City in late September and early October 1963?

On October 16, 1963, the passport office of the State Department received a report from an intelligence source to the effect that Oswald in early October 1963 had made contact with the Soviet Embassy in Mexico City. The report, however, said nothing about a Russian visa or that Oswald had also visited the Cuban Embassy in Mexico City. See Knight 7327.

Travel to Russia was not proscribed in 1963. Moreover, the Soviet Union was one of the countries Oswald had listed on his passport application. Once the passport was granted, there would be no reason to revoke it simply because Oswald had begun to take steps to get to the Soviet Union.

Part II

Legal Bases for the Decisions made by the Department of State and the Immigration and Naturalization Service in Connection with the Oswalds.

In the course of the Commission's investigation, there were called to its attention various decisions concerning Marina and Lee Harvey Oswald made by the Department of State and the Immigration and Naturalization Service of the Department of Justice. These decisions included: (1) whether Lee Harvey Oswald had expatriated himself by any act performed between October 16, 1959, the day he entered the Soviet Union, and August 18, 1961, the day it was determined by the Department of State that he was still a United States citizen; (2) whether Marina Oswald was eligible for entry into the United States; (3) whether the provisions of Section 243(g) of the Immigration and Nationality Act should have been waived in the case of Marina Oswald; (4) whether Lee Harvey Oswald should have been issued a passport on June 25, 1963; and (5) whether that passport should have been revoked when the Department of State received information that Oswald was making inquiries about returning to Russia at the Russian Embassy in Mexico City in late September and early October 1963.

The appropriateness of the resolution of these issues has been evaluated by the Commission in terms of the relevant statutes, regulations and practices, and their application to the facts which were available to the Department of State and the Immigration and Naturalization Service at the times the respective decisions were made.

(1) Did Lee Harvey Oswald expatriate himself by any act performed between October 16, 1959 and August 18, 1961?

Since Oswald was born in the United States, he was of course an American citizen. Fourteenth Amendment; United States v. Wong Kim Ark, 169 U.S. 649. Congress, however, has enacted statutes setting forth certain actions which serve to expatriate the person performing them. It might be suggested that Oswald lost his citizenship by virtue of the operation of any one of four sections of the Immigration and Nationality Act of 1952: Section 349 (a) (1), (obtaining naturalization in a foreign state); Section 349 (a) (6), (formal renunciation of United States nationality); Section 349 (a) (2), (taking an oath of allegiance to a foreign state), or Section 349 (a) (4), (working for the government of a foreign state). It should be noted that in expatriation cases the courts have stated that factual and legal questions should be resolved in favor of the citizen. Nishikawa v. Dulles, 356 U.S. 129, 134 (1958); Stipa v. Dulles, 233 F. 2d 551, 556 (1956); Fletes-Mora v. Rogers, 160 F. Supp. 215, 218 (1958). Also, Congress, in a recent amendment to the Immigration and Nationality Act, while providing that an expatriating act must be presumed to have been done voluntarily, confirmed judicial decisions holding that "the burden shall be upon the person or party claiming that . . . /loss of nationality/ occurred, to establish such claim by a preponderance of the evidence." 75 Stat 656 (1961).

a. Section 349 (a) (1) - Obtaining Naturalization in a foreign state

Section 349 (a) (1) of the Immigration and Nationality Act of 1952 provides that a United States citizen shall lose his nationality by:

> /O/btaining naturalization in a foreign state upon his own application, upon an application filed in his behalf by a parent, guardian, or duly authorized agent, or through the naturalization of a parent having legal custody of such person.

Although Oswald applied for Soviet citizenship, see pp. , it is clear that he never received it. See pp. . Thus, Oswald did not expatriate himself under Section 349 (a) (1).

b. Section 349 (a) (6) - Making formal renunciation of United States nationality

Section 349 (a) (6) of the Act provides that a United States citizen shall lose his citizenship by:

> /M/aking a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State.

In his letter of October 31, 1959, Oswald wrote:

> I, Lee Harvey Oswald, do hereby request that my present citizenship in the United States of America, be revoked.
>
> * * *
>
> My request for the revoking of my American citizenship is made only after the longest and most serious considerations.

In his letter of November 3, 1959, he wrote:

> I, Lee Harvey Oswald, do hereby request that my present United States citizenship be revoked.
>
> I appered (sic) in person, at the Consulate Office of the United States Embassy, Moscow, on Oct 31st, for the purpose of signing the formal papers to this effect. This legal right I was refused at that time.

And he clearly stated in an interview at the American Embassy that he had come to the Embassy to renounce his United States citizenship. See pp. ____ supra.

At the time he authored these letters and made the oral statement, Oswald was not yet 21 years old. However, Section 351 of the Immigration and Nationality Act provides, with several exceptions not here relevant, that persons under 18 years of age are presumptively incompetent to perform acts expatriating themselves, thus inferring that no disability exists when one is over eighteen.

Section 349 (a) (6), however, requires the expatriating renunciation to be in "such form as may be prescribed by the Secretary of State." In accordance with this statute, the Secretary set forth the requisite form and procedure in 22 Code of Federal Regulations §§ 50.1 - 50.2 and 8 Foreign Affairs Manual § 225.6. The regulations provide, inter alia, that four copies of the renunciation form are to be executed, and the original and one copy sent to the Department. After the Department has approved the form, it advises the appropriate consular official who may then furnish a copy of the form to the person to whom it relates. The form itself requires the person to subscribe it in the presence of a consular official, and it must be signed by this official. See Comm'n Exh. 955. Snyder 6972.

Oswald did not execute the proper forms; in fact, he did not even sign his letter in the presence of a Consular official, nor was his letter signed by such an official. (Snyder 6977; Comm'n Exh. 912) Therefore, Oswald failed to comply with the appropriate procedures prescribed by the Secretary of State. Because Section 349 (9) (6) in terms requires compliance with the form prescribed by the Secretary of State, it is evident that Oswald did not expatriate himself under that Section.

c. Section 349 (a) (2) - Oath of allegiance to a foreign state

Section 349 (a) (2) of the Act provides that a United States citizen shall lose his nationality by:

> /T/aking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof.

In his letter of October 31, 1959, Oswald wrote:

> I affirm that my allegiance is to the union of Soviet Socialist Republics.

And both in this letter and in his letter of November 3, 1959, he stated that his application for citizenship in the Soviet Union was pending before the Supreme Soviet of the U.S.S.R. 238/

Many cases and articles have quoted Secretary of State Charles Evans Hughes to the effect that in order for an oath, declaration, or affirmation of allegiance to a foreign state to effect an expatriation, it must place "the person taking it in complete subjection to the State to which it is taken, at least for the period of the contract, so that it is impossible for him to perform the obligations of citizenship to his country," III Hackworth, Digest of International Law, 219-220 (1942). This test is one by which the intention of an oath in question is tested in order to determine whether its purpose is to swear an allegiance inconsistent with the individual's allegiance to the United States; it is often invoked in cases involving dual citizenship. See Jalbuena v. Dulles, 254 F. 2d 379, 381 n. 2(3d Cir. 1958); Roche, The Loss of American Nationality - The Development of Statutory Expatriation, 99 U. Pa. L. Rev. 25 (1950). Oswald's letters clearly did intend to evidence an allegiance to the Soviet Union inconsistent with continued allegiance to the United States. Indeed, they explicitly so state. If Oswald's oath to the Soviet Union is to be found not to have worked an expatriation, therefore, the imperfection must lie in the

circumstances under which it was taken rather than in its wording.

An earlier version of Section 349 (a) (2) provided:

> That any American citizen shall be deemed to have expatriated himself . . . when he has taken an oath of allegiance to any foreign state. Act of March 2, 1907, § 2, 34 Stat. 1228.

In 1940 the language of the Section was changed so as to demand "an oath or . . . affirmation or other formal declaration of allegiance." Nationality Act of 1940, §§ 401 (b), 54 Stat. 1169.

The language of the 1940 Act has been retained in the present 1952 Act. The shift in language from the 1907 Act to the 1940 Act might be taken to indicate a demand for greater formality in expatriating oaths. Whether or not this was the legislative intent, since 1940 it has been well established that in order for an oath of allegiance to a foreign state to work an expatriation from the United States, it must be given to an official of the foreign state, and not to a party unconnected with the foreign state. See Roche, The Loss of American Nationality - The Development of Statutory Expatriation, 99 U. of Pa. L. Rev. 25, 33 (1950). This requirement can be viewed as a necessary corollary of the broader, but less clearly established principle that the oath must be taken in accord with the requirements of the foreign state.

> The Department of State holds that for loss of nationality to result from taking an oath of allegiance to a foreign state, the oath must be one 'which is prescribed by law or by regulations having the force of law' and must be taken before a competent official of the government concerned." III Hackworth, Digest of International Law 218 (1942).

In Re Bautista's Petition, 183 F. Supp. 271 (D. C. Guam, 1960), a case construing the 1952 Act, the court held that an oath of allegiance to the Philippines taken before an official of the Philippine Government did not work an expatriation because the individual had desired to become a Philippine

citizen only in order to obtain a passport to travel to Guam. (The court relied on the "complete subjection"test.) However, the court also failed to consider as an expatriating act the taking of another oath of allegiance to the Philippines before a notary public. The court dismissed this oath with the simple statement: "It was not done before an official of the Philippines." Id. at 274. See also Dep't of State to Consul at Guadalajara, May 27, 1939, at 218.

Similarly, the Board of Immigration Appeals in The Matter of L., 1 I. & N. Dec. 317 (B.I.A. 1942), was faced with the following affirmation:

> "I do swear that I will be faithful and bear truly just to His Majesty, King George VI, his heirs and successors, according to law. So help me God."

The Board held that the declarant did not expatriate himself:

> "An oath or formal declaration mentioned by the statute must mean not only the giving of the oath by the individual but the acceptance of the oath by the foreign state. An oath of allegiance has no real significance unless the oath be made to the state and accepted by the state. Such acceptance on the part of the state must be made in accordance with the laws of that state. In the case before us an oath of allegiance was not made to the British Crown in accordance with any law or regulation of the British Government. On the contrary, the obligation is between the appellant on the one hand and a private employer on the other." Id. at 320.

Other administrative bodies have decided that an oath taken before a notary public in Great Britain [Dep't of State Consular Official in charge at Birmingham, May 10, 1938], an oath taken by a priest on ordination into the Church of England [Director of Consular Service to Counsel Glazebrooke, Oct. 30, 1914], and an oath sworn by a lawyer to obtain admission to the German Bar [Dep't of State to Counsel Gen'l in Berlin, Mar. 21, 1934] did not expatriate an American citizen. See generally Roche, The Loss of American Nationality - The Development of Statutory Expatriation, 99 U. Pa. L. Rev. 25, 33 (1950).

In all cases found by the Commission in which an individual has been held to have expatriated himself by virtue of an oath to a foreign state, although the courts have not always stressed the fact that the oath was taken before an official of the foreign state, the oath was in fact so taken. See e.g., McCampbell v. McCampbell, 13 F. Supp. 847 (W. D. Ky. 1936); Reaume v. United States, 124 F. Supp. 851, 852 (E. D. Mich. 1954). In Savorgnan v. United States, 338 U. S. 491 (1950), the Court held that Mrs. Savorgnan had expatriated herself. Although the holding was based upon other grounds, the Court "recognized the force of the alternative ground" that she had signed an oath swearing allegiance to the King of Italy as part of an application for Italian citizenship filled out at the Italian Consulate in Chicago. Id. at 503. The Court, in detailing the factors supporting the argument that the oath expatriated Mrs. Savorgnan, did not explicitly mention that it was signed in an office of the foreign government in question and in accord with their requirements. Id. at 502. However, both these requirements in fact were met. Moreover, in the statement of facts, the Court noted: "No ceremony or formal administration of the oath accompanied her signature and apparently none was required." Id. at 494.

While Lee Harvey Oswald had written that he had taken an oath of allegiance to the Soviet Union, see e.g., Comm'n Exh. 100, there is no indication that such an oath or declaration was taken before an official of the Soviet Government. Chayes 7107. He therefore did not expatriate himself under Section 349 (a) (2).

d. Section 349 (a) (4)

Section 349 (a) (4) of the Immigration and Nationality Act provides that a United States citizen shall lose his nationality by:

> (a) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, if he has or acquires the nationality of such foreign state; or (b) accepting, serving in, or performing the duties of any office, post of employment under the government of a foreign state or a political subdivision thereof, for which office, post, or employment an oath, affirmation, or declaration of allegiance is required. . .

While Oswald was employed in a state owned factory in Minsk, see pp. _____, he did not acquire Russian nationality, see pp. _____ and there is no indication that he had to take any oath when he obtained this employment. Chayes 7107. Furthermore, cases would indicate that merely working in a government-owned factory does not result in expatriation even if an oath was required to be taken in connection with such employment. See Cf. Flete-Mora v. Rogers, 160 F. Supp. 215 (1958); Kenzi Kamada v. Dulles, 145 F. Supp. 457, 459 (1956) (both arising under Section 503 of the Nationality Act of 1940); Roche, "The Loss of American Nationality - The Development of Statutory Expatriation," 99 U. Pa. L. Rev. 25, 51 (1951). Thus, Oswald did not expatriate himself under Section 349 (a) (4).

The Commission therefore concludes that the Department and Embassy decision that Lee Harvey Oswald had not expatriated himself by any acts performed between October 16, 1959 and August 18, 1961, was correct.

(2) Was Marina Oswald eligible for entry into the United States?

As the wife of an American citizen, Marina Oswald was entitled to non-quota immigrant status under Section 205 of the Immigration and Nationality Act of 1952. However, under Section 212 (a) (28) of the Act, an alien will nevertheless

be excluded from admission to the United States if she is or was a member of or affiliated with a Communist organization unless:

> ". . .such alien establishes to the satisfaction of the consular officer when applying for a visa and the consular officer finds that (1) such membership or application is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes." Section 212 (a) (28) (I) (1).

At the time Marina Oswald applied for a visa she was a member of the Soviet Trade Union for Medical Workers. Comm'n Exh. 944; McVickar 7140, 7094. She said she was not nor ever had been a member of any other Communist organization. pp. _____ . Membership in the Medical Workers Union was deemed by the Department to have been necessary for obtaining employment in a hospital as a laboratory assistant. Comm'n _____. Thus, the State Department determined that her membership was involuntary, and the exemption in Section 212 (a) (28) (I) (i) was therefore applicable. This finding was consistent with "a long-standing interpretation concurred in by the State and Justice Departments that membership in a professional organization or trade union behind the Iron Curtain is considered involuntary unless the membership is accompanied by some indication of voluntariness, such as active participation in the organization's activities or holding an office in the organization." Report of the Department of State on Lee Harvey Oswald to the Commission, PT. IV., p. 3. 240/ See also McVickar 7147.

In spite of the fact that Marina Oswald declared that she was not a member of any other Communist organization, she was in fact a member of Komsomol, the Communist Youth Organization. Marina Oswald 470-471. McVickar 7093. This fact was not known to the State Department. If it had been, Marina would not

necessarily have been denied a passport, although a careful investigation into the nature of the membership would have been undertaken. McVickar 7142. The three types of situations enumerated in Section 212 (a) (28) (I) (i) may not be the only instances where membership in a Communist organization is so nominal as to preclude the issuance of a visa. Cf: Galvan v. Press, 347 U.S. 522, 527 (1954); Rowoldt v. Perfetto, 355 U.S. 115, 120 (1957) (cases arising under §§ 22 of the Internal Security Act of 1950 as amended in 1951)

Had the fact concerning Marina's membership in Komsomol been known to the Department despite her denial, it is conceivable that she would have been excluded from the United States on the ground of having willfully misrepresented a material fact. Immigration and Nationality Act, Section 212 (a) (19). There is a conflict in the cases as to what constitutes a "material fact." See generally Gordon and Rosenfield, Immigration Law and Procedure, 228, 424-427 (1959); Appleman, Misrepresentation in Immigration Law: Materiality, 22 Fed. B.J. 267 (1962). In Langhammer v. Hamilton, 295 F. 2d 642, 648 (1961), the court held that a misrepresentation in an application for a visa involves a material fact even if the alien would not definitely have been excluded on the true facts. In this case, the court said that a determination made after admission to the United States that membership in a Communist organization was involuntary would not operate nunc pro tunc to render omission to reveal such fact nonmaterial; See also Chaunt v. United States, 364 U.S. 350, 355 (1960). (A case to revoke a decree of citizenship.) However, another line of cases held that in order to be material, a misstatement must refer to such facts as would have justified a consul in refusing a visa had they been disclosed. E.g., Cavillo v. Robinson, 271 F. 2d 249 (1959). The Visa Office of the Department of State has announced that it applie a "rule of probability" under which any misstatement will be deemed material only if it concealed facts which probably would have resulted in denial of a visa. Visa Off. Bull 90, March 2, 1962.

(3) Should the provisions of Section 243 (a) of the Immigration and Nationality Act have been waived in the case of Marina Oswald?

Section 243 (g) of the Immigration and Nationality Act of 1952 provides that upon notification of the Secretary of State by the Attorney General that a country has refused or unduly delayed the acceptance of a deportable alien from the United States who is a national, citizen, subject, or resident of that country, consular officers in such country are not to issue visas to citizens thereof. On May 26, 1953, the Department of State notified the United States Mission in Moscow that the Attorney General had invoked Section 243 (g) as a result of the failure of the Soviet Union to accept the return of aliens deported or sought to be deported from the United States. Consequently, consular officials were instructed to discontinue the issuance of immigrant visas until advised by the Department of State to the contrary.

It should be noted that Section 243 (g), when invoked by the Attorney General, does not make any particular alien or class of aliens ineligible to immigrate to the United States. It applies to a country, or more specifically, to United States Consular Officers stationed in such countries, and it was designed to exert pressure on countries which fail to receive deportees from the United States. Any person precluded from receiving an immigrant visa solely because of the application of Section 243 (g) may merely proceed to a United States Consulate in another country where the sanctions are not in effect and ther receive an immigrant visa, if he or she is otherwise qualified.

Section 243 (g) does not contain any express provision for waiver. However, the Justice Department has concluded that such waiver powers were granted the Attorney General by the Act and, pursuant to their decision, has granted waive in over 600 cases from the Soviet Union since 1953. The waiver procedures followe

in 1962 when Marina Oswald was granted a waiver of Section 243 (g) were prescribed by the Immigration and Naturalization Service. The relevant provision read:

> Before adjudicating a petition for an eligible beneficiary residing in the USSR, Czechoslovakia or Hungary, against which sanctions have been imposed, the district director shall obtain a report of investigation regarding the petitioner which shall include any affiliations of a subversive nature disclosed by neighborhood investigation, local agency records and responses to Form G-135a. . . . If no substantial derogatory security information is developed, the district director may waive the sanctions in an individual meritorious case for a beneficiary of a petition filed by a reputable relative to accord status under Section 101 (a) (27) (A) or Section 203 (a) (2), (3) or (4). . . . If substantial adverse security information relating to the petitioner is developed, the visa petition shall be processed on its merits and certified to the regional commissioner for determination whether the sanctions should be waived. The assistant commissioner shall endorse the petition to show whether the Waiver is granted or denied, and forward it and notify the appropriate field office of the action taken. . . . Operations Instructions of the Immigration and Naturalization Service, 205.3. [This revised instruction was effective February 15, 1962 - June 30, 1962. Other versions which may have been considered during Oswald's case were different only in irrelevant ways.]

State Department regulations are much less explicit. 22 C.F.R. 42.120. The State Department's visa instructions for the guidance of consular officers [Note 2 to 22 C.F.R. 42. 120, Vol. 9, Foreign Affairs Manual] provide, "The sanctions will be waived only in individual meritorious cases in behalf of a beneficiary of a petition filed by a reputable relative pursuant to Section 101 (a) (27) (A) or paragraph (2) (3) or (4) of Section 203 (a) of the act."

The character of Lee as well as Marina Oswald is relevant to the decision because he is the relative who signed the petition on Marina's behalf. Whether he is "reputable" therefore must be determined. His character may also have a bearing on whether "substantial derogatory security information" is develop Thus, all of the facts bearing on the issue of Oswald's attempted expatriation were also pertinent to the issue of waiver of the sanction pursuant to Section 243 (g) of the Immigration and Nationality Act for Marina Oswald. These facts were

made available to the Immigration and Naturalization Service when it was considering whether to permit the waiver. 241/

The statutory procedure for handling petitioners for non-quota or preference status by reason of relationship calls for a determination of eligibility for such status by the Attorney General. The responsibility for making such determinations has been delegated by the Attorney General to the District Directors of the Immigration and Naturalization Service. Marina Oswald's petition was forwarded by the Embassy in Moscow through the State Department to the District Director in San Antonio, Texas, the office having jurisdiction over Oswald's domicile in the United States. In accordance with the procedure worked out between the State and Justice Departments, the District Director was to note his determination as to a waiver of Section 243 (g) at the same time as he made his determination of eligibility for non-quota status under Section 205 (a).

On February 28, 1962, the District Director of the Immigration and Naturalization Service informed the Visa Office of the State Department that while the petition for non-quota status had been approved, the waiver of Section 243 (g) was not authorized by the Service. No reason for disapproval of the waiver was stated, but it was "clear from the internal order of the Immigration and Naturalization Service that the refusal to authorize the waiver was based on Oswald's statements and attitude while in the Soviet Union." Report of the Department of State on Lee Harvey Oswald to the Commission, PT. 4, p. 7.

On March 16, the Soviet Affairs Office of the State Department advised the Visa Office of the Department as follows:

> SOV believes it is in the interest of the U. S. to get Lee Harvey Oswald and his family out of the Soviet Union and on their way to this country as soon as possible. An unstable character, whose actions are entirely unpredictable, Oswald may well refuse to leave the USSR or subsequently attempt to return there if we should make it impossible for him to be accompanied from Moscow by his wife and child.

> Such action on our part also would permit the Soviet Government to argue that, although it had issued an exit visa to Mrs. Oswald to prevent the separation of a family, the United States Government had imposed a forced separation by refusing to issue her a visa. Obviously, this would weaken our Embassy's position in encouraging positive Soviet action in other cases involving Soviet citizen relatives of U. S. citizens. 243/

On March 27, the Acting Administrator of the Bureau of Security and Consular Affairs addressed a letter to the Commissioner of the Immigration and Naturalization Service, Department of Justice, requesting reconsideration of the decision not to waive the provisions of Section 243 (g) in the case of Marina Oswald. 243a/ The State Department expressed concern about the propriety of punishing Marina and the Oswalds' baby for Lee Harvey Oswald's earlier errors. Furthermore, it was feared that refusing to permit Marina to accompany Lee out of Russia to the United States would put the Soviet Government in a position to claim that it had done all it could to prevent the separation of the family, but that our government had split the husband from his wife and child. The Department felt that this would seriously weaken our government's attempts to encourage the Soviet Government to permit other Russian wives and children to accompany their American husbands and parents back to the United States. The letter concluded that it was in the best interest of the United States to have Oswald depart from the Soviet Union as soon as possible.

On May 8, 1962, the Immigration and Naturalization Service agreed to waive the sanction of Section 243 (g) "in view of strong representations made" by the State Department. 244/ Consequently, the Embassy was informed that the Section 243 (g) sanction had been waived by the Immigration and Naturalization Service. 245/ Thus, while derogatory information was in the file, the ultimate decision was made by the official designated by the Regulation to act in such a case.

Waivers of Section 243 (g) are not unusual. Thus, in spite of Section 243 (g), 661 Immigrant visas were issued in Moscow in the ten-year period ending

June 30, 1963. In 1962, 97 immigrant visas were issued in Moscow. Moreover, prevention of the separation of families numbers among the policies most frequently underlying waiver of Section 243 (g). Report of the Department of State on Lee Harvey Oswald to Commission, PT. 4, pp. 4-5. 246/ James 34-35. The Commission therefore concludes that the Immigration and Naturalization Service did not misuse its discretion in responding in accord with the State Department's recommendation that they waive Section 243 (g) for Marina Oswald.

(4) Should Lee Harvey Oswald have been issued a passport on June 25, 1963?

On June 25, 1963, the State Department issued Lee Harvey Oswald a passport. In his application he had said that he intended to visit France, Germany, Holland, Finland, Italy, Poland, and the Soviet Union. Travel to none of these countries was then or is now proscribed by statute or State Department regulations. The passport was issued routinely. pp. _____.

The major question is whether a passport could have been refused Oswald on the ground that when he was abroad in 1959 he had attempted to expatriate himself, had made strongly anti-American statements, and had offered to give the Russians technical information he had acquired while he was a Marine. Snyder 6973-4.

Unless an applicant comes within one of the statutory sections authorizing the Secretary of State to refuse to issue a passport, the Secretary has no authority to do so. Kent v. Dulles, 357 U.S. 116 (1958).

Section 6 of the Subversive Activities Control Act of 1950, which has recently been declared unconstitutional, Aptheker v. Secretary of State (1964), provided:

> /It shall be unlawful for any member of /an organization required to register/, with knowledge or notice that such organization is so registered and that such order has become final - (1) to make application for passport, or the renewal of a passport, to be issued or renewed or under the authority of the United States; (2) to use or attempt to use any such passport.

Pursuant to Section 6, the State Department promulgated a regulation which denied passports to members of Communist Organizations:

> /A/ passport shall not be issued to or renewed for any individual who the issuing office knows or has reason to believe is a member of a Communist Organization registered or required to be registered under Section 7 of the Subversive Activities Control Act of 1950 as amended. 22 C.F.R. 51.135.

The Department had no information that Lee Harvey Oswald was a member of the American Communist Party or any other organization which had been required to register under Section 7 of the Subversive Activities Control Act. Knight 7326-7. A passport therefore could not have been denied him under Section 6.

8 U.S.C. § 1185b provides that, while a presidential proclamation of national emergency is in force,

> /I/t shall, except as otherwise prescribed by the President, . . . be unlawful for any citizen of the United States to depart or enter . . . the United States unless he bears a valid passport."

This provision, originally enacted in 1918, was reenacted as Section 215 of the Immigration and Nationality Act of 1952. The amendment specified that the provisio of the section were subject to invocation only during "any national emergency proclaimed by the President. . . ." 66 Stat. 190 (1952). Because a proclamation of national emergency issued by President Truman during the Korean War has never been revoked, the government has taken the position that the statute remains in force. Proclamation No. 2915 (Dec. 16, 1950), 60 Stat. A 454; Proclamation No. 297 (Apr. 18, 1952), set out preceding 50 U.S.C. Appendix 1; Proclamation No. 3084 (Jan 17, 1953), 18 Fed. Reg. 489.

Pursuant to 8 U.S.C. 1185b, the State Department had issued regulations setting forth the circumstances under which it would refuse a passport:

> In order to promote and safeguard the interests of the United States' passport facilities, except for direct and immediate return to the United States, shall be refused to a person when it appears to the satisfaction of the Secretary of State that the person's activity abroad would (a) violate the laws of the United States, (b) be prejudicial to the orderly conduct of foreign affairs; or (c) otherwise be prejudicial to the interests of the United States. 22 C.F.R. § 51.136.

There has apparently been no judicial evaluation or interpretation of Section 51.136. However, the State Department takes the position that its authority under Section 51.136 is severely limited. In a report submitted to the Commission dated May 8, 1964, it concluded that "there were no grounds consonant with the passport regulations to take adverse passport action against Oswald prior to November 22, 1963." 248/

The Department of State informed the Federal Bureau of Investigation of Oswald's offer in 1959 to furnish the Russians with classified military information. The Bureau questioned Oswald about this matter after he returned to the United States in 1962, but no legal action against him was ever initiated, _____; Chayes 7178: While it might be possible to infer from his conduct in 1959 that Oswald would disclose classified information in 1963, if he possessed any such information, Chayes 7178, there was no indication that he had any valuable information in 1963, and the Federal Bureau of Investigation gave the State Department no information which would indicate that Oswald was capable of disclosing classified information. Id.

The State Department's files contained no other information which might have led it to expect that Oswald would violate the laws of the United States when he went abroad. Subsection (a) of 22 C.F.R. § 51.136, therefore, could not have provided a basis for refusing Oswald a passport in 1963.

The most likely ground for having denied Oswald a passport in 1963 seems to be provided by subsection (c) of 22 C.F.R. § 51.136, the broad provision allowing the denial of a passport when the Secretary of State is satisfied that the applicant's "activity abroad would . . . otherwise be prejudicial to the interests of the United States."

In 1957 the State Department described to the Senate Foreign Relations Committee one category of persons to whom it denied passports under Section 51.136:

> Persons whose previous conduct abroad has been such as to bring discredit on the United States and cause difficulty for other Americans (gave bad checks, left unpaid debts, had difficulties with police, etc.). Hearings before the Sen. For. Rel. Comm. on Dep't State Passport Policies, 85th Cong., 1st Sess., pp. 338-39 (1957).

Since Oswald's prior attempt to defect to the Soviet Union had caused the United States a certain amount of adverse publicity, it is at least arguable that he was a person "whose previous conduct abroad had been such as to bring discredit on the United States." See Comment, "Passport Refusals for Political Reasons: Constitutional Issues and Judicial Review," 61 Yale L. J. 171, 174-178, for examples of passport refusals prior to Kent v. Dulles.

However, the decisions in Kent v. Dulles, 357 U.S. 116 (1958) and Dayton v. Dulles, 357 U.S. 144 (1958) may be read to have greatly restricted the Secretary of State's authority to deny passports. In these cases the Supreme Court invalidated a State Department regulation permitting the denial of passports to Communists and to those "who are going abroad to engage in activities which will advance the Communist movement for the purpose, knowingly and wilfully of advancing that movement," on the ground that the regulation exceeded the authority Congress had granted the Secretary. The Kent opinion suggests that the Court did not intend to restrict its pronouncement to this narrow issue. The Court stated:

> "The right to travel 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." Id. at 125-26.

After noting that historically "cases of refusal generally fell into two categories": (a) citizenship and allegiance, and (b) illegal conduct, the court stated that the "grounds for refusal asserted here do not relate to citizenship or allegiance on the one hand or to criminal or unlawful conduct on the other. Yet, so far as relevant here, those two are the only ones which it could fairly be argued were adopted by Congress in light of prior administrative practice." Id. at 127-28. But see Worthy v. Herter, 270 F. 2d 905 (D.C. Cir.), cert. den. 361 U.S. 918 (1959) in which it was held that the right to impose area restrictions reasonably related to the control of foreign relations is inherent in the President's plenary power over foreign affairs and alternatively the same statute at issue in Kent had by implication authorized the restrictions.

In response to the Supreme Court cases, the State Department has denied passports only to those who violate the Department's travel restrictions, to fugitives from justice, to those who are involved in using passports fraudulently and to a few individuals engaged in illegal activity abroad or in conduct affecting our relations with a particular country. Comm'n Exh. 949; Chayes 7158-7163; Knight 7315. Passports have been granted to people who the Department anticipates will go abroad to denounce the United States, Chayes 7158-7163, 7176, and a passport was even routinely granted to a prior defector. Id. at 7193; Seeley 34-35. State Department officials apparently have felt that in view of the Supreme Court decisions, the State Department was not empowered to deny anyone a passport on grounds related to political association and beliefs. Chayes 7163.

However, State Department actions and pronouncements have not always been consistent with this practice of restraint. In 1958, immediately after Kent, State Department officials indicated to Congressional committees conducting

hearings on proposed passport legislation that Kent was limited to prohibiting denial of passports because of Communist belief and that it was not a decision which restricted the power to deny passports to instances of only either non-citizenship or illegal conduct. Loftus Becker, Legal Adviser to the Department of State, stated:

> "The Supreme Court decision /Kent/ does not pass on anything beyond the specific issue there that we did not have the power to require a non-Communist affidavit on the part of the applicant. It does not give us any guidance as to where we go from there . . ." Hearings before the Senate Committee on Foreign Relations on S. 2770, et al., 85th Cong., 2d Sess. p. 35 (1958).

Another State Department official stated:

> "As a result of the recent Supreme Court decision, we have not been able to process for the purpose of holding up any passports with information available that the applicant would fall under the so-called Communist part of our regulations. If he fell under some other portions of the regulations we would process him as we have in the past, but if he falls under the Communist part of the regulations, we must go ahead as though that information did not exist." Roderic O'Connor, Administrator, Bureau of Security and Consular Affairs of the Department of State, Hearings before the Senate Committee on Foreign Relations on S. 2770, 85th Cong. 2d Sess., p. 41 (1958).

At the same hearing, Robert Murphy, then Under Secretary of State, when commenting on the proposed legislation stated:

> /T/here are two additional categories of the bill before you . . . under those provisions, the Secretary of State is authorized not to issue passports to persons as to whom it is determined upon substantial grounds that their activities or presence abroad, or their possession of a passport, first, seriously impairs the conduct of foreign relations of the United States, or second, be inimical to the security of the United States. These two provisions clearly allow to the Secretary broad discretionary powers. It is our belief, however, that they do not allow him as the principal delegate of the President in the field of foreign affairs any broader discretionary power than the Secretary already had by virtue of existing Congressional enactments and the President's constitutional prerogative to conduct our foreign relations and to protect our national security. We are in fact maintaining that position in the courts today. Id. at 22.

In 1959 Mr. Murphy stated before a Congressional Committee:

> "Since commenting on S. 2770 in the 85th Congress, there have been no developments that have in any way lessened the Department's conviction that the Secretary of State may deny passports on the basis of anticipated harm to the foreign relations of the United States . . . in fact, the United States Court of Appeals for the District of Columbia in the case of Worthy v. Herter, recently upheld the Secretary of State's denial of a passport to an individual on the basis of the belief that he would travel to areas for which his passport was not valid and thereby prejudice the conduct of our foreign relations." Hearings before the Sen. Committee on For. Rel. on S. 806, et al., 86th Cong., 1st Sess., p. 58 (1959); See also testimony of John W. Hanes, Jr., Administrator, Bureau of Security and Consular Affairs, Department of State, Hearings before a Special Subcommittee of the Senate Committee on Government Operations on S. 2095, 86th Cong., 1st Sess. 157 (1959).

Furthermore, the Department made no moves to take 22 C.F.R. §§ 51.136 off the books or to revise it; in fact, it was reissued in 1962. Finally it should be noted that the passport Oswald received in Russia, prior to his request for a repatriation loan, was limited for direct and immediate return to the United States _____, Chayes 7114, 7191. Apparently the only authority the State Department has for so limiting passports is 22 C.F.R. §§ 51.136. Comm'n Exh. 949 (letter from Mr. Chayes to Mr. Rankin, June 6, 1964).

M E M O R A N D U M

TO: Professor Redlich DATE: June 7, 1964

FROM: Richard Mosk

Attached is a partial draft of the section on Oswald's marksmanship ability. The part beginning with Oswald's alleged practice after his return from Mexico is in the nature of a memorandum. Mr. Liebeler, who took all of the testimony in this area, feels there is something to this Sports Drome material. Just on the basis of what I have read, I would tend to disagree with him. However, he was in a position to view the demeanor of these witnesses, and thus he should probably be consulted. I have provided you with, what I consider, the material facts on the issue. If I were to write a draft on this subject I would merely say that we do not know if Oswald practiced at this time or not and that although people claim they saw him at the Sports Drome, the evidence seems to indicate that he was not there; etc.

As for Marina's testimony, which is all we have on Oswald's pre-New Orleans and New Orleans rifle practice, it is hardly convincing in view of all of all of the false and ambiguous statements that she has given in this area. I have indicated these false statements in the footnotes.

Having fired a rifle very infrequently, my use of rifle terms should be reviewed with some care.

The citations are to the old transcripts.

OSWALD'S CAPABILITY AND EXPERIENCE
WITH RIFLE

Marine Training

As a boy, Lee never owned a gun, nor did he go hunting with his older brothers. In fact, there were never any rifles around the house during Lee's boyhood.[1] While not recalling any specific instances, Robert Oswald has indicated that Lee probably did do some hunting prior to joining the Marines.[2] In 1955 when Lee was in New Orleans, he purchased a .22 calibre rifle in order to hunt squirrels and rabbits; however, it did not work, so his brother Robert purchased it from him for $10.00.[3]

During December, 1956, while Oswald was in bootcamp at the San Diego Depot in San Diego, California, he was trained for about three weeks in the use of the .30 M-1 rifle, during which time he probably fired close to four hundred rounds of ammunition.[4] Oswald's self-graded score-book, which is used to provide the individual with a record of the idiosyncrasies of his weapon prior to his firing for record so that he can make the proper adjustments, indicates that Oswald was not a particularly

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1/ John Pic 168; Robert Oswald 1084, 1087, 1088; 1176.

2/ Robt. 1181.

3/ Robert Oswald 1384; Marguerite Oswald 907.

4/ See Comm'n Exh. 239; Folsom Exh. 1, p. 6. The minimum time required was two weeks, C. D. 1055.

good shot.[5] After firing for familiarization on December 11 and on December 17, on December 21, Oswald's company fired for record on the "A" course, which is the standard marksmanship qualification course used by the Marine Corps for the M-1 rifle and has a maximum range of 500 yards.[6] The test involves various positions and a time limitation. The scale for marksmanship is divided into three categories: Marksman (190-209), Sharpshooter (210-219), and Expert (220 and above). All members of the Marine Corp were expected to become qualified at least to the extent of having obtained a "Marksman" rating. A low Marksman qualification indicates a "rather 'poor' shot." To become qualified as a Sharpshooter, most "Marines with a reasonable amount of adaptability to weapons firing can become so qualified." A Sharpshooter qualification "indicates a fairly good 'shot'."[7]

Oswald fired 212, thus qualifying as a Sharpshooter by two points.[8] In view of his earlier performances as indicated by his scorebook, he must have had a good day to obtain the score he fired.[9] Apparently, Oswald's platoon excelled that day since they won an award.[10]

5/ Comm'n Exh. 239; Folsom 24-25.

6/ Folsom 11; Folsom Exh. 1, p. 6; C. D. 1055.

7/ C. D. 1055; Thornley 65-69.

8/ Folsom Exh. 1, p. 6; C. D. 1055; Folsom, p. 12; See C. D. 6, p. 297.

9/ Folsom 26.

10/ Marguerite Oswald, 903, 925.

The next time Oswald fired the M-1 rifle for record during this period was on May 6, 1959, at the Marine base in El Toro, California. Two hundred rounds of ammunition were authorized to be fired for practice and for record.[11] Oswald fired on the "B" course, which has a maximum range of 200 yards and therefore is shorter than the "A" course. Also, fewer rounds of ammunition are fired on the "B" course.[12] On a "B" course, the scale is slightly different than the "A" course; the Marksman is 190-214 and the Sharpshooter score is 215-224. Oswald scored a 191 which barely qualified him as a Marksman and would be considered a poor score.[13] While the fact that Oswald so narrowly qualified as a marksman might suggest that the score was falsified, such falsification is highly improbable.[14]

While there was testimony that Oswald had qualified as an "expert" and that he enjoyed firing a rifle,[15] this has not been borne out either by Oswald's scores or other testimony. Oswald did not appear to be proficient with a rifle. In 1959, he indicated that unlike most of the members of his unit, he had little or no interest in his rifle or in how well he scored on the range. He treated his poor performance as a joke.[16]

11/ Folsom Exhibit No. 1, p. 6; C. D. 1050.

12/ Folsom 11.

13/ Folsom Exhibit No. 1, p. 6; C. D. 1050; Folsom, p. 26.

14/ Donovan 22-24; Delgado 22-36.

15/ Graf affidavit; Connor affidavit.

16/ Delgado 18-28.

Possibly, his apathetic attitude was responsible for his low score at El Toro.

Oswald also fired a riot gun and a .45 caliber pistol during his Marine career, but only for familiarization; no scores were recorded.[17] While in Japan, Oswald was court-martialed for owning a .22 caliber pistol which was a violation of regulations.[18]

Russian Hunting Club

On one of his leaves from the Marines, Lee Harvey Oswald hunted with his brother Robert. He used Robert's bolt action, .22 caliber rifle.[19] When Oswald returned from the Marines in 1959, and just prior to his trip to Russia, he, Robert, and S. R. Mercer, Jr., who is Robert's brother-in-law, went hunting for squirrels and rabbits. Lee Oswald again used a bolt action .22 caliber rifle. Robert indicated that Lee exhibited an average amount of proficiency with the rifle.[20]

When Oswald was in Russia, he obtained a hunting license,[21] and he was a member of a hunting club that was connected with the factory

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17/ Folsom Exhibit 1, p. 6; Folsom 12-13.

18/ Folsom Exhibit 1. See infra at _____ (Ely's Biography)

19/ Robert Oswald 1180.

20/ Id. at 1178-1181 (although Robert, in an FBI interview, had previously said he did not recall if Lee used a single bolt action rifle or an automatic rifle. C. D. 205, p. 577.

21/ FBI item ____ (cited in C. D. 206, p. 359).

where he worked.[22] It has been stated that one cannot obtain any kind of weapon unless a permit is issued by a hunting club.[23] Oswald went hunting about six times,[24] and generally hunted squirrels, rabbits and ducks.[25] Marina testified that on the one hunting trip in which she accompanied Lee, nobody killed anything.[26] Apparently, Oswald enjoyed the hunting trips,[27] although it is possible that he enjoyed them[28] without caring much about the hunting aspects.

22/ FBI item ___ (cited in C. D. 206, p. 359; C. D. 329, p. 44). C. D. 205, p. 731.

23/ Marina Oswald, 7399.

24/ Robert Oswald 1182; Marina Oswald 490; Ruth Paine 2981-2982.

25/ Robert Oswald 1182; Marina Oswald 490; Bouhe 23; C. D. 205, p. 732; Marina Oswald 7396.

26/ Marina Oswald 490.

27/ Michael Paine 2770.

28/ Marina Oswald 490, 7399; See C. D. 24, p. 14; C. D. 380.

Oswald owned and used a .16 gauge single barrel "shotgun."[29] While there is some testimony to the effect that he used a rifle or belonged to a rifle club,[30] it seems clear that the witnesses confused a rifle with a shotgun,[31] and a rifle club with a hunting club. He was registered for a .16 gauge single barrel shotgun, and there is no indication that he was registered for a rifle.[32] Also, it is reported that Oswald said that he had a shotgun and not a rifle since one is not allowed to own a rifle in Russia.[33] Furthermore, it would be very unusual for people in the Soviet Union to belong to a rifle club where they could practice target shooting.[34]

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[29] FBI item ____ (cited in C. D. 206, p. 359; C. D. 329, p. 44). C. D. 1182.

[30] Marina Oswald 7396; Michael Paine 2770. McVickar 7090; 7194.

[31] See e.g., C. D. 205, p. 731-732 (FBI concluded Marina did not know the difference between a rifle and a shotgun); Marina Oswald 250 - (Marina said she did not know the difference). Marina Oswald 7398.

[32] FBI item ____(cited in C. D. 206, p. 359; C. D. 329, p. 44); see C. D. 1182.

[33] Robert Oswald 1182; C. D. 24, p. 14; C. D. 380; see also Ruth Paine 2981.

[34] McVickar 7090.

Practice After Return to the United States

Upon leaving the Soviet Union, Oswald sold his "shot gun."[35] Soon after Oswald arrived in the United States, he again went hunting with his brother, Robert, and again used somebody else's bolt action .22 caliber rifle.[36] This was the last reported time that Lee Harvey Oswald went hunting.

There is no evidence that after this hunting trip Oswald fired a weapon prior to his having obtained the Mannlicher-Carcano 6.5 Italian carbine in March of 1963.[37] When Oswald received the rifle, he told Marina that he intended to use it for hunting.[38]

Marina stated that she saw Oswald clean the rifle several times prior to the Walker incident.[39] He kept the rifle in a small storeroom at the Neeley Street apartment. Sometimes he would go into this room and remain there for long periods of time, although he forbad Marina to go into the room.[40]

35/ Comm'n Exh. 105; Marina Oswald 250; Marina had told the FBI that she did not know that he sold it, C. D. 5, p. 104, but in her testimony, she admitted that her previous statement was false.

36/ Robert Oswald 1180.

37/ Marina Oswald 249, supra at Ball-Belin, p. 2.

38/ Marina Oswald, p. 249.

39/ Id. at 251, 7376; C. D. 778, p. 7.

40/ Marina Oswald 7371.

Marina also testified that Lee told her once or twice that he practiced with the rifle.[41] The deMohrenschildts both testified that when they were over at the Oswald's apartment, Jeanne deMohrenschildt noticed the rifle and asked Marina about it. Marina said something to the effect that Lee practiced shooting with it. When asked about this, Lee replied that he went target shooting and enjoyed it.[42] Marina, at one time said that Oswald was boastful about being a good shot and that he learned how to shoot while in the Marines;[43] however, she has also said at another time that he never told her that he was a good shot with a rifle.[44]

41/ Id. at 253; 7376; C. D. 735, p. 442. Marina previously told the FBI that she did not know about Lee having practiced, C. D. 6, pp. 285, 297; however, in her testimony she admitted that her earlier statements were false.

42/ Geroge deMohrenschildt 242-246; Jeanne deMohrenschildt 95-98; See Marina Oswald 251, 302, who was not clear on whether such an incident took place.

43/ C. D. 79, p. 319.

44/ C. D. 6, p. 297.

Marina related that shortly before the Walker incident, she told Oswald that she was going to take a walk and go to the store. Oswald told her to take the baby in the carriage and he would catch up with them. At about 6:00 p.m., Marina left the house with June and began walking towards the store. Shortly thereafter, Lee caught up with them. He had his rifle wrapped in a raincoat, and he told Marina that he was going to practice firing with the rifle. Although Marina urged him not to, he insisted that he was going to practice. He did not indicate where he was going to practice, except to say he was going to a vacant spot. After walking several blocks, Oswald boarded a bus, which Marina has said she thought was the "Love Field" bus since that bus stops at that particular stop, since Oswald at one time translated the words for her, and since he told her that he practiced in a "field." 45/ Investigation has shown that there is at least one place in the neighborhood of the Love Field Airport where rifles are fired. 46/ There are now two gun shops in the Love Field area, Mason's Gun Shop and the Gun Shop. Only Mason's Gun Shop was located in this area in the Spring of 1963. These gun shops were the only two located in the Dallas-Irving, Texas, area that handled 6.5 M/M Mannlicher-Carcano, Western Cartridge Company ammunition.

45/ C. D. 778, p. 8; C. D. 735, p. 442; C. D. 897, p. 108. Marina Oswald 254, 483; 7373-7375; In her initial testimony, Marina did not relate this incident.

46/ C. D. 778; C. D. 379; C. D. 897, p. 108-112, Floyd Davis 49.

Mason's Gun Shop had purchased about ten boxes of this type of ammunition in early 1963 from the Gun Shop.[47]

Nobody has been found who can identify Oswald as having fired in the Love Field area or at gun clubs in the area.[48] Oswald has not been identified as having purchased any ammunition at the above-mentioned gun shops, and examination of the cartridges in boxes of ammunition taken from these gun shops do not indicate whether or not the ammunition used in the assassination came from either of these possible sources.[49]

Oswald displayed some marksmanship ability when he fired at General Walker. Apparently, he had taken good aim, but only a last-minute movement by General Walker prevented the latter from being hit.[50]

Marina Oswald testified that as soon as she reached New Orleans in May of 1963, she observed the rifle, which Lee again kept in a closet-like-room. She stated that she was certain that he never took the rifle away from the apartment. However, he would sometimes sit with the rifle in their screened porch at night. Marina indicated, although not clearly, that she thought he may have practiced sighting with the telescopic lens

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47/ C. D. 778; C. D. 897, p. 118-124.

48/ C. D. 778; C. D. 379; C. D. 897, p. 112-114.

49/ C. D. 778.

50/ Marina Oswald 262; See at p. ___ supra.

and that he worked the bolt of the rifle. She also saw him clean the rifle twice.[51] While it would be possible, although difficult, for someone to see anyone drysighting on the porch from outside,[52] there is no evidence that neighbors or anyone saw him with a rifle from the street or adjoining buildings.[53] Furthermore, Marina stated that these incidents occurred at night when it was so dark that neighbors could not see him.[54]

While in New Orleans, Oswald showed a great interest in rifles. When Oswald was working at the Reily Coffee Company, he would frequently absent himself in order to go next door to the Crescent City Garage and there talk about rifles with a part-owner of the garage, and weapon enthusiast, Adrian Alba. He would also read and borrow gun magazines. According to Alba, Oswald had a fairly good knowledge of only the M-1 and the Garrand M-1. Oswald asked Alba if he knew of a place close-by where one could fire weapons. Alba told him of a place, but said that he must be a member of the National Rifle Association in order to shoot there.[55]

51/ Marina Oswald 272-273; 365, 398-399, contra. C. D. 205, p. 736.

52/ Ruth Paine 3014-3018; Comm'n Exh.'s _____.

53/ Mrs. Jesse Garner; Garner affidavit; C. D. 75, pp. 95-106.

54/ Marina Oswald 399.

55/ Alba 1-19.

There has been testimony to the effect that Oswald practiced shooting at the Sports Drome Rifle Range in Dallas, Texas, on the weekends preceding the assassination. One of the helpers at the range, Malcolm Price, Jr., stated that he saw a person who he said was Oswald at the range on September 28, on October 13, and on November 17. Price said that the first time he saw Oswald, the latter drove up in an old model car by himself and asked if somebody could set a telescopic sight on a rifle which was similar to the rifle found in the Texas School Book Depository except that it had no sling (although it did have mounts on the side for a sling) and no forepiece.[56] Price also said that Oswald said he paid $18 for the scope.[57] (The scope ordered from Klein's cost only about $4.00). According to Price, the man he identified as Oswald said he had the scope mounted by a gunsmith in Cedar Hill. Oswald said he also had purchased the rifle there.[58] I found no investigation to follow up on this point. Price noticed a man with a long black beard at the range on the second and third times he, Price, saw Oswald at the range, but he did not know if they were together.[59] Price said a doctor and his son were at the range on the 17th; however, the description of them and the fact that the Woods were not there on the 17th indicate that he was not referring to the Woods. This should be checked.[60]

56/ Price 7, 23; 29-30, Davis said Price told him that Oswald had been at the range on the 9th, 10th, and 17th of November. Davis 30, Also Price said the second date was the day of the turkey shoot. Slack said this took place on the 10th or on the 17th. His testimony is not clear. Slack 8, Davis said it took place on the 17th. Davis 31; thus Price may be confused as to his dates. See Comm'n Doc. No. 7, p. 239 where Price describes the man as wearing a Texas-style hat and chewing bubble gun or chewing tobacco.

57/ Id. at 15; but see Comm'n Doc. No. 7, p.239 (Price said the gunsmith gave Oswald the rifle and the scope for $25.)

58/ Id. at 17.

59/ Id. at 19.

60/ Id. at 35.

The owner of the range, Floyd Guy Davis, while not being able to positively identify Oswald as the man he saw at the range, noted a resemblance and said that Price had told him about seeing Oswald.[61] The man who resembled Oswald was with another individual.[62] Davis said he saw the man with the beard at the range the same day he saw the man others have said was Oswald. He has since seen this bearded man and has turned his license number over to the FBI.[63] A man was located who fit the descriptions and admitted being at the range on either the 3rd or the 10th of November. However, he did not remember seeing Oswald there and did not know Oswald.[64]

Garland Slack insisted that he saw a man whom he identified as Oswald at the range on the 10th and on the 17th of November.[65] On the 17th, Slack said he argued with this individual because he had shot at Slack's target.[66] Slack said Oswald was driven to the Range on the 17th in an old model car by a tall boy who, he read, had been located [I have found no reference to the fact that this boy had been located.][67] Slack said they had 3 rifles and one was wrapped in a blanket. He said that the rifle he saw was not the same as the assassination weapon although the others, while not having scopes, might have been. Also, the scope on Oswald's weapon was different than the one on the assassination weapon.

Dr. Homer Wood and his thirteen year old son, Sterling Wood, have testified that they saw a man whom they identified as Oswald at the Drome Rifle Range on Saturday, November 16th.[68] Sterling Wood, an avid gun enthusiast,

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61/ Floyd Davis, 34-38
62/ Id. at 33
63/ Id. at 31-32
64/ C. D. 909; C. D. 897, pp. 116-117
65/ Slack 8; Although in an F.B.I. interview he said he thought the man had blond hair. C. D. 7, p. 238.
66/ Id. at 8-7
67/ Id. at 14. In an FBI interview Slack said the fellow had a beard. C. D. 7, p.237
68/ Homer Wood, Sterling Wood.

stated that he asked Oswald if he was using a 6.5 Italian Carbine, and Oswald replied that he was.[69] Wood said that the rifle resembled the assassination weapon except that the scope was different.[70] Wood said that the man whom he described as Oswald drove off with another man in a newer model car.[71] Another individual, Kenneth Longley, who was at the Range at the same time as the Woods, declared that he did not think the person in question was Oswald.[72] While shell casings from the range were given to the FBI for analysis,[73] most of the above witnesses said that Oswald took his casings with him.[74]

There is a good deal of evidence indicating that Oswald did not fire at the Drome Rifle Range on the above mentioned dates. Oswald stayed at the Paine's house on all of the weekends after his arrival in Dallas from Mexico, with the exception of the weekend of November 16th and 17th. Both Ruth Paine and Marina have testified that Oswald stayed at the Paine house on those weekends.[75] Marina said that there was no

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69/ Sterling Wood, 167.

70/ Id. at 178; but see C. D. 7, p. 246; the testimony on this is somewhat cloudy.

71/ Id. at 170-175.

72/ C. D. 7, p. 247.

73/ Davis 29.

74/ E.g. Price 9; Sterling Wood 167.

75/ Ruth Paine 3471-2; Ruth Paine affidavit 6, 7; Marina Oswald 365.

opportunity for Lee to practice with a rifle on those weekends, and she doubted he would go to a public place even if he did practice.[76] Ruth Paine said there was no period of time when she was away long enough from the house so as to allow him to go rifle shooting unnoticed.[77] Furthermore, the bus station was a long walk from the Paines,[78] and it seems probable that Oswald could not drive.[79]

On the weekend of November 16th and 17th, Oswald did not stay at the Paine house. He told Marina that on Saturday he had gone out to the Texas Driver's License Bureau in order to obtain a license, but since the line was so long he did not stay to obtain a license.[80] [Possibly we could check to see if many people applied that day.] Earlene Roberts, the housekeeper at the Beckley Avenue rooming house said that Oswald stayed in his room the entire weekend.[81] However, if he went to the Driver's License

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76/ Marina Oswald 365; C. D. 375, p. 442.

77/ Ruth Paine 396 (new page proof).

78/ Ruth Paine 3167.

79/ Marina Oswald 7384; See Ruth Paine 3120-3126.

80/ Ruth Paine 3129; Comm'n Exh. 112 (which had to be filled out after October 18th, since that was Oswald's 24th birthday.)

81/ Roberts 182, 189.

Bureau, then Earlene Roberts would be mistaken. The landlady, Mrs. A. C. Johnson,said she did not see Oswald go out that weekend, but she could not really tell since the house is large, and she stayed in the back of the house much of the time.[82] Checks were made of bus transportation between Oswald's Beckley Avenue room and the Drome Gun Range, but he could not be identified as having used any bus transportation on this route.[83] It is of course possible that someone drove Oswald to the Range, or he hitchhiked out there. According to Marina, the rifle in the Paine garage was not removed until November 22[84] and Ruth Paine never saw the rifle at all.[85] It is very unlikely that Oswald could have practiced with the rifle he kept in the garage.[86] Mrs. A. C. Johnson testified that she was certain that Oswald never had a rifle at his Beckley Avenue room.[87]

82/ Mrs. A. C. Johnson 81.

83/ S. S. 582.

84/ Marina Oswald _____ See surpa pp. 21-23.

85/ Ruth Paine 2984; 3206.

86/ See pp. 21-23.

87/ Mrs. A. C. Johnson 82.

If we are to believe Marina Oswald and Ruth Paine, it would be very unlikely that Oswald could have appeared at the Sports Drome Range on any weekend other than the weekend of November 16th and 17th Thus, since Price and Slack saw the same individual who they thought was Oswald on days other than the 16th and the 17th, it would seem that they did not see Oswald. This would leave only the testimony of Dr. Wood and Sterling Wood, since they claim they saw Oswald at this range on Saturday the 16th. It should also be noted that other people have stated that they have seen people resembling Oswald at the rifle range at times when Oswald could not possibly have been there. 88/

The assassination rifle has been determined to be a very accurate weapon. 89/ Apparently, once the scope had been sighted in, no further adjustments were necessary, even though the rifle had been transported to New Orleans and back. 90/ There is expert testimony to the effect that the three shots from the sixth floor window of the Texas School Book Depository Building to the President were not difficult shots. 91/

88/ E. g., C. D. 7, p. 249; C. D. 7, p. 254.

89/ Frazier 4354; Simmons 4449.

90/ Prof. Redlich & cites acquired in the future.

91/ Frazier 4362.

The movement of the target in this case would have practically no effect on the accuracy of fire since the movement was primarily away from the firer.[92] Also, a rest or a sling would materially enhance the speed and accuracy of the rifleman.[93] However, it would be difficult to fire three accurate shots in 5½ seconds without some familiarity with this particular weapon because of the difficulty in opening the bolt and the difference in the trigger pull.[94]

In order to achieve three hits under the circumstances of the assassination, it was stated that the man must be proficient with this weapon, although not an exceptional shot, and the man must have an opportunity to use and get familiar with it.[95] Familiarity with the bolt could be acquired in dry practice, but familiarity with the trigger would be better achieved with some firing.[96]

It appears that Oswald had had experience with weapons. He had hunted, and he had been trained in the use of a rifle in the Marine Corps. Even if he did not practice after coming back from Mexico, it seems that he had handled the particular weapon enough so as to become familiar with it.

92/ Simmons 4470.

93/ Frazier 4344.

94/ Simmons 4462; 4468.

95/ Simmons 4472; 4468; Frazier 4363.

96/ Simmons 4473; Frazier 4343.

R.M.MOSK

M E M O R A N D U M

TO: Professor Redlich DATE: June 7, 1964

FROM: Richard Mosk

Attached is a partial draft of the section on Oswald's marksmanship ability. The part beginning with Oswald's alleged practice after his return from Mexico is in the nature of a memorandum. Mr. Liebeler, who took all of the testimony in this area, feels there is something to this Sports Drome material. Just on the basis of what I have read, I would tend to disagree with him. However, he was in a position to view the demeanor of these witnesses, and thus he should probably be consulted. I have provided you with, what I consider, the material facts on the issue. If I were to write a draft on this subject I would merely say that we do not know if Oswald practiced at this time or not and that although people claim they saw him at the Sports Drome, the evidence seems to indicate that he was not there; etc.

As for Marina's testimony, which is all we have on Oswald's pre-New Orleans and New Orleans rifle practice, it is hardly convincing in view of all of all of the false and ambiguous statements that she has given in this area. I have indicated these false statements in the footnotes.

Having fired a rifle very infrequently, my use of rifle terms should be reviewed with some care.

The citations are to the old transcripts.

The portion on Novinds was left out.

OSWALD'S CAPABILITY AND EXPERIENCE
WITH RIFLE

Marine Training

As a boy, Lee never owned a gun, nor did he go hunting with his older brothers. In fact, there were never any rifles around the house during Lee's boyhood.[1] While not recalling any specific instances, Robert Oswald has indicated that Lee probably did do some hunting prior to joiningthe Marines.[2] In 1955 when Lee was in New Orleans, he purchased a .22 calibre rifle in order to hunt squirrels and rabbits; however, it did not work, so his brother Robert purchased it from him for $10.00.[3]

During December, 1956, while Oswald was in bootcamp at the San Diego Depot in San Diego, California, he was trained for about three weeks in the use of the .30 M-1 rifle, during which time he probably fired close to four hundred rounds of ammunition.[4] Oswald's self-graded score-book, which is used to provide the individual with a record of the idiosyncrasies of his weapon prior to his firing for record so that he can make the proper adjustments, indicates that Oswald was not a particularly

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1/ John Pic 168; Robert Oswald 1084, 1087, 1088; 1176.

2/ Robt. 1181.

3/ Robert Oswald 1384; Marguerite Oswald 907.

4/ See Comm'n Exh. 239; Folsom Exh. 1, p. 6. The minimum time required was two weeks, C. D. 1055.

good shot. [5] After firing for familiarization on December 11 and on December 17, on December 21, Oswald's company fired for record on the "A" course, which is the standard marksmanship qualification course used by the Marine Corps for the M-1 rifle and has a maximum range of 500 yards. [6] The test involves various positions and a time limitation. The scale for marksmanship is divided into three categories: Marksman (190-209), Sharpshooter (210-219), and Expert (220 and above). All members of the Marine Corp were expected to become qualified at least to the extent of having obtained a "Marksman" rating. A low Marksman qualification indicates a "rather 'poor' shot." To become qualified as a Sharpshooter, most "Marines with a reasonable amount of adaptability to weapons firing can become so qualified." A Sharpshooter qualification "indicates a fairly good 'shot'." [7]

Oswald fired 212, thus qualifying as a Sharpshooter by two points. [8] In view of his earlier performances as indicated by his scorebook, he must have had a good day to obtain the score he fired. [9] Apparently, Oswald's platoon excelled that day since they won an award. [10]

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[5] Comm'n Exh. 239; Folsom 24-25.

[6] Folsom 11; Folsom Exh. 1, p. 6; C. D. 1055.

[7] C. D. 1055; Thornley 65-69.

[8] Folsom Exh. 1, p. 6; C. D. 1055; Folsom, p. 12; See C. D. 6, p. 297.

[9] Folsom 26.

[10] Marguerite Oswald, 903, 925.

The next time Oswald fired the M-1 rifle for record during this period was on May 6, 1959, at the Marine base in El Toro, California. Two hundred rounds of ammunition were authorized to be fired for practice and for record.[11] Oswald fired on the "B" course, which has a maximum range of 200 yards and therefore is shorter than the "A" course. Also, fewer rounds of ammunition are fired on the "B" course.[12] On a "B" course, the scale is slightly different than the "A" course; the Marksman is 190-214 and the Sharpshooter score is 215-224. Oswald scored a 191 which barely qualified him as a Marksman and would be considered a poor score.[13] While the fact that Oswald so narrowly qualified as a marksman might suggest that the score was falsified, such falsification is highly improbable.[14]

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11/ Folsom Exhibit No. 1, p. 6; C. D. 1050.

12/ Folsom 11.

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14/ Donovan 22-24; Delgado 22-36.

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16/ Delgado 18-28.

Possibly, his apathetic attitude was responsible for his low score at El Toro.

Oswald also fired a riot gun and a .45 caliber pistol during his Marine career, but only for familiarization; no scores were recorded.[17] While in Japan, Oswald was court-martialed for owning a .22 caliber pistol which was a violation of regulations.[18]

Russian Hunting Club

On one of his leaves from the Marines, Lee Harvey Oswald hunted with his brother Robert. He used Robert's bolt action, .22 caliber rifle.[19] When Oswald returned from the Marines in 1959, and just prior to his trip to Russia, he, Robert, and S. R. Mercer, Jr., who is Robert's brother-in-law, went hunting for squirrels and rabbits. Lee Oswald again used a bolt action .22 caliber rifle. Robert indicated that Lee exhibited an average amount of proficiency with the rifle.[20]

When Oswald was in Russia, he obtained a hunting license,[21] and he was a member of a hunting club that was connected with the factory

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18/ Folsom Exhibit 1. See infra at ____ (Ely's Biography)

19/ Robert Oswald 1180.

20/ Id. at 1178-1181 (although Robert, in an FBI interview, had previously said he did not recall if Lee used a single bolt action rifle or an automatic rifle. C. D. 205, p. 577.

21/ FBI item ____ (cited in C. D. 206, p. 359).

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[22] FBI item ___ (cited in C. D. 206, p. 359; C. D. 329, p. 44). C. D. 205, p. 731.

[23] Marina Oswald, 7399.

[24] Robert Oswald 1182; Marina Oswald 490; Ruth Paine 2981-2982.

[25] Robert Oswald 1182; Marina Oswald 490; Bouhe 23; C. D. 205, p. 732; Marina Oswald 7396.

[26] Marina Oswald 490.

[27] Michael Paine 2770.

[28] Marina Oswald 490, 7399; See C. D. 24, p. 14; C. D. 380.

Oswald owned and used a .16 gauge single barrel "shotgun."[29] While there is some testimony to the effect that he used a rifle or belonged to a rifle club,[30] it seems clear that the witnesses confused a rifle with a shotgun,[31] and a rifle club with a hunting club. He was registered for a .16 gauge single barrel shotgun, and there is no indication that he was registered for a rifle.[32] Also, it is reported that Oswald said that he had a shotgun and not a rifle since one is not allowed to own a rifle in Russia.[33] Furthermore, it would be very unusual for people in the Soviet Union to belong to a rifle club where they could practice target shooting.[34]

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[29] FBI item ____ (cited in C. D. 206, p. 359; C. D. 329, p. 44). C. D. 1182.

[30] Marina Oswald 7396; Michael Paine 2770. McVickar 7090; 7194.

[31] See e.g., C. D. 205, p. 731-732 (FBI concluded Marina did not know the difference between a rifle and a shotgun); Marina Oswald 250 - (Marina said she did not know the difference); Marina Oswald 7398.

[32] FBI item ____(cited in C. D. 206, p. 359; C. D. 329, p. 44); see C. D. 1182.

[33] Robert Oswald 1182; C. D. 24, p. 14; C. D. 380; see also Ruth Paine 2981.

[34] McVickar 7090.

Practice After Return to the United States

Upon leaving the Soviet Union, Oswald sold his "shot gun."[35] Soon after Oswald arrived in the United States, he again went hunting with his brother, Robert, and again used somebody else's bolt action .22 caliber rifle.[36] This was the last reported time that Lee Harvey Oswald went hunting.

There is no evidence that after this hunting trip Oswald fired a weapon prior to his having obtained the Mannlicher-Carcano 6.5 Italian carbine in March of 1963.[37] When Oswald received the rifle, he told Marina that he intended to use it for hunting.[38]

Marina stated that she saw Oswald clean the rifle several times prior to the Walker incident.[39] He kept the rifle in a small storeroom at the Neeley Street apartment. Sometimes he would go into this room and remain there for long periods of time, although he forbad Marina to go into the room.[40]

35/ Comm'n Exh. 105; Marina Oswald 250; Marina had told the FBI that she did not know that he sold it, C. D. 5, p. 104, but in her testimony, she admitted that her previous statement was false.

36/ Robert Oswald 1180.

37/ Marina Oswald 249, supra at Ball-Belin, p. 2.

38/ Marina Oswald, p. 249.

39/ Id. at 251, 7376; C. D. 778, p. 7.

40/ Marina Oswald 7371.

Marina also testified that Lee told her once or twice that he practiced with the rifle.[41] The deMohrenschildts both testified that when they were over at the Oswald's apartment, Jeanne deMohrenschildt noticed the rifle and asked Marina about it. Marina said something to the effect that Lee practiced shooting with it. When asked about this, Lee replied that he went target shooting and enjoyed it.[42] Marina, at one time said that Oswald was boastful about being a good shot and that he learned how to shoot while in the Marines;[43] however, she has also said at another time that he never told her that he was a good shot with a rifle.[44]

41/ Id. at 253; 7376; C. D. 735, p. 442. Marina previously told the FBI that she did not know about Lee having practiced, C. D. 6, pp. 285, 297; however, in her testimony she admitted that her earlier statements were false.

42/ Geroge deMohrenschildt 242-246; Jeanne deMohrenschildt 95-98; See Marina Oswald 251, 302, who was not clear on whether such an incident took place.

43/ C. D. 79, p. 319.

44/ C. D. 6, p. 297.

Marina related that shortly before the Walker incident, she told Oswald that she was going to take a walk and go to the store. Oswald told her to take the baby in the carriage and he would catch up with them. At about 6:00 p.m., Marina left the house with June and began walking towards the store. Shortly thereafter, Lee caught up with them. He had his rifle wrapped in a raincoat, and he told Marina that he was going to practice firing with the rifle. Although Marina urged him not to, he insisted that he was going to practice. He did not indicate where he was going to practice, except to say he was going to a vacant spot. After walking several blocks, Oswald boarded a bus, which Marina has said she thought was the "Love Field" bus since that bus stops at that particular stop, since Oswald at one time translated the words for her, and since he told her that he practiced in a "field." 45/ Investigation has shown that there is at least one place in the neighborhood of the Love Field Airport where rifles are fired. 46/ There are now two gun shops in the Love Field area, Mason's Gun Shop and the Gun Shop. Only Mason's Gun Shop was located in this area in the Spring of 1963. These gun shops were the only two located in the Dallas-Irving, Texas, area that handled 6.5 M/M Mannlicher-Carcano, Western Cartridge Company ammunition.

45/ C. D. 778, p. 8; C. D. 735, p. 442; C. D. 897, p. 108. Marina Oswald 254, 483; 7373-7375; In her initial testimony, Marina did not relate this incident.

46/ C. D. 778; C. D. 379; C. D. 897, p. 108-112, Floyd Davis 49.

Mason's Gun Shop had purchased about ten boxes of this type of ammunition in early 1963 from the Gun Shop.[47]

Nobody has been found who can identify Oswald as having fired in the Love Field area or at gun clubs in the area.[48] Oswald has not been identified as having purchased any ammunition at the above-mentioned gun shops, and examination of the cartridges in boxes of ammunition taken from these gun shops do not indicate whether or not the ammunition used in the assassination came from either of these possible sources.[49]

Oswald displayed some marksmanship ability when he fired at General Walker. Apparently, he had taken good aim, but only a last-minute movement by General Walker prevented the latter from being hit.[50]

Marina Oswald testified that as soon as she reached New Orleans in May of 1963, she observed the rifle, which Lee again kept in a closet-like-room. She stated that she was certain that he never took the rifle away from the apartment. However, he would sometimes sit with the rifle in their screened porch at night. Marina indicated, although not clearly, that she thought he may have practiced sighting with the telescopic lens

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47/ C. D. 778; C. D. 897, p. 118-124.

48/ C. D. 778; C. D. 379; C. D. 897, p. 112-114.

49/ C. D. 778.

50/ Marina Oswald 262; See at p. ___ supra.

and that he worked the bolt of the rifle. She also saw him clean the rifle twice.[51] While it would be possible, although difficult, for someone to see anyone drysighting on the porch from outside,[52] there is no evidence that neighbors or anyone saw him with a rifle from the street or adjoining buildings.[53] Furthermore, Marina stated that these incidents occurred at night when it was so dark that neighbors could not see him.[54]

While in New Orleans, Oswald showed a great interest in rifles. When Oswald was working at the Reily Coffee Company, he would frequently absent himself in order to go next door to the Crescent City Garage and there talk about rifles with a part-owner of the garage, and weapon enthusiast, Adrian Alba. He would also read and borrow gun magazines. According to Alba, Oswald had a fairly good knowledge of only the M-1 and the Garrand M-1. Oswald asked Alba if he knew of a place close-by where one could fire weapons. Alba told him of a place, but said that he must be a member of the National Rifle Association in order to shoot there.[55]

51/ Marina Oswald 272-273; 365, 398-399, contra. C. D. 205, p. 736.

52/ Ruth Paine 3014-3018; Comm'n Exh.'s _____.

53/ Mrs. Jesse Garner; Garner affidavit; C. D. 75, pp. 95-106.

54/ Marina Oswald 399.

55/ Alba 1-19.

There has been testimony to the effect that Oswald practiced shooting at the Sports Drome Rifle Range in Dallas, Texas, on the weekends preceding the assassination...One of the helpers at the range, Malcolm Price, Jr., stated that he saw a person who he said was Oswald at the range on September 28, on October 13, and on November 17. Price said that the first time he saw Oswald, the latter drove up in an old model car by himself and asked if somebody could set a telescopic sight on a rifle which was similar to the rifle found in the Texas School Book Depository except that it had no sling (although it did have mounts on the side for a sling) and no forepiece.[56] Price also said that Oswald said he paid $18 for the scope.[57] (The scope ordered from Klein's cost only about $4.00). According to Price, the man he identified as Oswald said he had the scope mounted by a gunsmith in Cedar Hill. Oswald said he also had purchased the rifle there.[58] I found no investigation to follow up on this point. Price noticed a man with a long black beard at the range on the second and third times he, Price, saw Oswald at the range, but he did not know if they were together.[59] Price said a doctor and his son were at the range on the 17th; however, the description of them and the fact that the Woods were not there on the 17th indicate that he was not referring to the Woods. This should be checked.[60]

56/ Price 7, 23; 29-30, Davis said Price told him that Oswald had been at the range on the 9th, 10th, and 17th of November. Davis 30, Also Price said the second date was the day of the turkey shoot. Slack said this took place on the 10th or on the 17th. His testimony is not clear. Slack 8, Davis said it took place on the 17th. Davis 31; thus Price may be confused as to his dates. See Comm'n Doc. No. 7, p. 239 where Price describes the man as wearing a Texas-style hat and chewing bubble gun or chewing tobacco.

57/ Id. at 15; but see Comm'n Doc. No. 7, p.239 (Price said the gunsmith gave Oswald the rifle and the scope for $25.)

58/ Id. at 17.

59/ Id. at 19.

60/ Id. at 35.

The owner of the range, Floyd Guy Davis, while not being able to positively identify Oswald as the man he saw at the range, noted a resemblance and said that Price had told him about seeing Oswald.[61] The man who resembled Oswald was with another individual.[62] Davis said he saw the man with the beard at the range the same day he saw the man others have said was Oswald. He has since seen this bearded man and has turned his license number over to the FBI.[63] A man was located who fit the descriptions and admitted being at the range on either the 3rd or the 10th of November. However, he did not remember seeing Oswald there and did not know Oswald.[64]

Garland Slack insisted that he saw a man whom he identified as Oswald at the range on the 10th and on the 17th of November.[65] On the 17th, Slack said he argued with this individual because he had shot at Slack's target.[66] Slack said Oswald was driven to the Range on the 17th in an old model car by a tall boy who, he read, had been located [I have found no reference to the fact that this boy had been located.][67] Slack said they had 3 rifles and one was wrapped in a blanket. He said that the rifle he saw was not the same as the assassination weapon although the others, while not having scopes, might have been. Also, the scope on Oswald's weapon was different than the one on the assassination weapon.

Dr. Homer Wood and his thirteen year old son, Sterling Wood, have testified that they saw a man whom they identified as Oswald at the Drome Rifle Range on Saturday, November 16th.[68] Sterling Wood, an avid gun enthusiast,

61/ Floyd Davis, 34-38
62/ Id. at 33
63/ Id. at 31-32
64/ C. D. 909; C. D. 897, pp. 116-117
65/ Slack 8; Although in an F.B.I. interview he said he thought the man had blond hair. C. D. 7, p. 238.
66/ Id. at 8-7
67/ Id. at 14. In an FBI interview Slack said the fellow had a beard. C. D. 7, p.237
68/ Homer Wood, [illegible] Sterling Wood.

stated that he asked Oswald if he was using a 6.5 Italian Carbine, and Oswald replied that he was.[69] Wood said that the rifle resembled the assassination weapon except that the scope was different.[70] Wood said that the man whom he described as Oswald drove off with another man in a newer model car.[71] Another individual, Kenneth Longley, who was at the Range at the same time as the Woods, declared that he did not think the person in question was Oswald.[72] While shell casings from the range were given to the FBI for analysis,[73] most of the above witnesses said that Oswald took his casings with him.[74]

There is a good deal of evidence indicating that Oswald did not fire at the Drome Rifle Range on the above mentioned dates. Oswald stayed at the Paine's house on all of the weekends after his arrival in Dallas from Mexico, with the exception of the weekend of November 16th and 17th. Both Ruth Paine and Marina have testified that Oswald stayed at the Paine house on those weekends.[75] Marina said that there was no

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69/ Sterling Wood, 167.

70/ Id. at 178; but see C. D. 7, p. 246; the testimony on this is somewhat cloudy.

71/ Id. at 170-175.

72/ C. D. 7, p. 247.

73/ Davis 29.

74/ E.g. Price 9; Sterling Wood 167.

75/ Ruth Paine 3471-2; Ruth Paine affidavit 6, 7; Marina Oswald 365.

opportunity for Lee to practice with a rifle on those weekends, and she doubted he would go to a public place even if he did practice.[76] Ruth Paine said there was no period of time when she was away long enough from the house so as to allow him to go rifle shooting unnoticed.[77] Furthermore, the bus station was a long walk from the Paines,[78] and it seems probable that Oswald could not drive.[79]

On the weekend of November 16th and 17th, Oswald did not stay at the Paine house. He told Marina that on Saturday he had gone out to the Texas Driver's License Bureau in order to obtain a license, but since the line was so long he did not stay to obtain a license.[80] [Possibly we could check to see if many people applied that day.] Earlene Roberts, the housekeeper at the Beckley Avenue rooming house said that Oswald stayed in his room the entire weekend.[81] However, if he went to the Driver's License

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76/ Marina Oswald 365; C. D. 375, p. 442.

77/ Ruth Paine 396 (new page proof).

78/ Ruth Paine 3167.

79/ Marina Oswald 7384; See Ruth Paine 3120-3126.

80/ Ruth Paine 3129; Comm'n Exh. 112 (which had to be filled out after October 18th, since that was Oswald's 24th birthday.)

81/ Roberts 182, 189.

Bureau, then Earlene Roberts would be mistaken. The landlady, Mrs. A. C. Johnson,said she did not see Oswald go out that weekend, but she could not really tell since the house is large, and she stayed in the back of the house much of the time.[82] Checks were made of bus transportation between Oswald's Beckley Avenue room and the Drome Gun Range, but he could not be identified as having used any bus transportation on this route.[83] It is of course possible that someone drove Oswald to the Range, or he hitchhiked out there. According to Marina, the rifle in the Paine garage was not removed until November 22[84] and Ruth Paine never saw the rifle at all.[85] It is very unlikely that Oswald could have practiced with the rifle he kept in the garage.[86] Mrs. A. C. Johnson testified that she was certain that Oswald never had a rifle at his Beckley Avenue room.[87]

82/ Mrs. A. C. Johnson 81.

83/ S. S. 582.

84/ Marina Oswald _____ See surpa pp. 21-23.

85/ Ruth Paine 2984; 3206.

86/ See pp. 21-23.

87/ Mrs. A. C. Johnson 82.
Earlene Roberts 192

If we are to believe Marina Oswald and Ruth Paine, it would be very unlikely that Oswald could have appeared at the Sports Drome Range on any weekend other than the weekend of November 16th and 17th Thus, since Price and Slack saw the same individual who they thought was Oswald on days other than the 16th and the 17th, it would seem that they did not see Oswald. This would leave only the testimony of Dr. Wood and Sterling Wood, since they claim they saw Oswald at this range on Saturday the 16th. It should also be noted that other people have stated that they have seen people resembling Oswald at the rifle range at times when Oswald could not possibly have been there.[88]

The assassination rifle has been determined to be a very accurate weapon.[89] Apparently, once the scope had been sighted in, no further adjustments were necessary, even though the rifle had been transported to New Orleans and back.[90] There is expert testimony to the effect that the three shots from the sixth floor window of the Texas School Book Depository Building to the President were not difficult shots.[91]

88/ E. g., C. D. 7, p. 249; C. D. 7, p. 254.

89/ Frazier 4354; Simmons 4449.

90/ Prof. Redlich & cites acquired in the future.

91/ Frazier 4362.

The movement of the target in this case would have practically no effect on the accuracy of fire since the movement was primarily away from the firer.[92] Also, a rest or a sling would materially enhance the speed and accuracy of the rifleman.[93] However, it would be difficult to fire three accurate shots in 5½ seconds without some familiarity with this particular weapon because of the difficulty in opening the bolt and the difference in the trigger pull.[94]

In order to achieve three hits under the circumstances of the assassination, it was stated that the man must be proficient with this weapon, although not an exceptional shot, and the man must have an opportunity to use and get familiar with it.[95] Familiarity with the bolt could be acquired in dry practice, but familiarity with the trigger would be better achieved with some firing.[96]

It appears that Oswald had had experience with weapons. He had hunted, and he had been trained in the use of a rifle in the Marine Corps. Even if he did not practice after coming back from Mexico, it seems that he had handled the particular weapon enough so as to become familiar with it.

92/ Simmons 4470.

93/ Frazier 4344.

94/ Simmons 4462; 4468.

95/ Simmons 4472; 4468; Frazier 4363.

96/ Simmons 4473; Frazier 4343.

July 7, 1964

MEMORANDUM

TO: Norman Redlich

FROM: Richard M. Mosk

SUBJECT: Post-New Orleans Rifle Practice

A couple of additional points have recently occurred to me concerning Oswald's possible rifle practice. Young Sterling Wood testified that the fellow with whom Oswald drove away from the Drome range actually drove the car. Sterling said that he, Sterling, was not aware of the possibility that Oswald could not drive. It might also be noteworthy that the TSBD records show that Oswald worked 8 hours on November 22. If they are this sloppy, we certainly have no guarantee that Oswald did not slip away during the afternoon; although I do not recall any complaints by his superiors on this account.

M E M O R A N D U M

TO : J. Lee Rankin

DATE: July 9, 1964

FROM : Philip Barson
Richard Mosk

Attached is a revision and condensation of the earlier Barson Report into a form which we think can be printed as an appendix to the Report. The conclusions reached should be helpful in other areas of the Report.

In the event additional evidence of expenditures or receipts are uncovered, the figures should be revised accordingly.

The citations are to the old transcripts. Some of the footnotes are incomplete since certain items have not yet been made Commission Documents or Exhibits.

Mr. Barson will continue to be available for further consultation on this area.

The Commission has carefully examined the testimony of all of the witnesses and the evidence concerning the finances of Lee Harvey Oswald and his family for the period June 13, 1962, when he returned from Russia, through November 22, 1963, the day of the assassination. In addition to the testimony, a thorough investigation into Oswald's financial affairs was conducted. At banks in the New Orleans, Fort Worth, Dallas, Houston and Laredo areas, checks were made for any record of a checking, savings, or loan account or a safe deposit box rented in the names of Lee Oswald, any of his known or possible aliases, or members of his immediate family. In many cases a photograph of Oswald was exhibited to bank officials who were in a position to see someone in the safe deposit box area of their banks. Telegraph companies were checked for the possibility of money orders that may have been sent to Oswald. All known places where Oswald cashed checks were queried as to the possibility of his having cashed other checks there. A thorough investigation was conducted into Oswald's known and possible receipts and expenditures in connection with his Mexican trip. In the areas where Oswald lived, Fort Worth, Dallas, and New Orleans, inquiries about Oswald were made at his places of employment, his residences, credit association, hospitals, utility companies, state and local government offices, post offices, periodicals, newspapers, and employment agencies. Inquiries were also made of any other individual, place or organization that Oswald may have had some contact with. 1/

The evidence indicates that Lee Harvey Oswald and his family lived frugally, 1a/ did not own a car or any major household applicance, 2/ and used health or hospital clinics for medical and dental care. 3/

Upon his return to the United States, Oswald did not smoke or drink liquor and he discouraged his wife from so doing.4/ He spent much of his free time reading books that he obtained from the public library and periodicals to which he subscribed.5/ He generally resided near his place of employment, and thereby saved on transportation costs, and arranged whenever possible to obtain rides from acquaintances or hitch-hiked. 6/

The Oswalds received financial assistance from members of his family and acquaintances. When the Oswalds came to this country they were supported for sometime by his brother, Robert, and by his mother, Marguerite Oswald.7/ Shortly after Lee and Marina moved into their apartment, on Mercedes Avenue in Fort Worth, a number of Russian speaking people in the Dallas--Fort Worth area gave them money, groceries, clothing, and furniture.8/

In addition to the many gifts that they received, the Oswalds, particularly Marina, lived a great deal of the time with relatives and acquaintances at no cost.8a/ Lee Oswald and his family lived with Robert Oswald and with Marguerite Oswald until sometime in August, 1962.9/ Marina lived with Elena Hall and spent a few nights at the Taylor's house during October of 1962.10/ In November of that same year, Marina lived with several families.11/ During late April and early May, 1963, Oswald lived with his relatives, the Murrets, in New Orleans,11a/ while Marina lived with Ruth Paine.12/ Charles Murret also paid for the short trip taken by Lee and his family to Mobile, Alabama where Lee visited Eugene Murret at a Jesuit Seminary and gave a speech there.12a/ From September of 1963 until November 22, Marina stayed with Ruth Paine,

while Lee lived in Dallas. Lee, however, did stay at the Paine house on weekends.[13]

During the period June 13, 1962 through November 22, 1963, the Oswalds received a total of $3665.89 in cash from wages, unemployment compensation benefits, loans and gifts from acquaintances. Marina Oswald has testified that she knew of no sources of Oswald's income other than his wages and his unemployment compensation.[13a] An estimate of his cash disbursements total $3497.79, leaving him a balance of $168.10, which comes close to the $183.87 in cash found among his possessions at the time of his arrest. $13.87 was taken off Oswald at the time of his arrest[14] and $170 was found in his wallet which he left at the Paine house.[15]

Table 1 shows Oswald's monthly receipts and expenditures. "Incidental expenses" includes telephone calls, money order and check cashing fees, postage, local transportation costs, personal care goods and services, and other such small items. The estimated expenditures for food, clothing and incidental expenses were a little higher than would be normal for a family of his income[16] and probably higher than the Oswalds actually spent on such items.[17] Such a higher estimate was taken and used in order to show that even if some of Oswald's expenditures are not known, it is clear that he had adequate finances from known sources to purchase the items he did purchase and to engage in the activities in which he did engage. In Table 1 special attention has been given to Oswald's financial situation at the time of his Mexican trip.

The Commission concludes that the funds known to have been available to Oswald and here accounted for, during the period June 13, 1962 through November 22, 1963, were sufficient to cover all of his known expenditures during this period.

Footnotes

1. See generally C.D. 205,pp. 659-670; C.D. 75, pp. 399-471; C.D. 7, pp. 175-176; C.D. 206, pp. 221-223; C.D. 884; C.D. 905; C.D. 87; C.D. 838; C.D. 839; C.D. 840; C.D. 7846; C.D. 761; C.D. 701; C.D. 372; C.D. 1066, pp. 462-520; C.D. _____; and other citations to Table 1.

1a. See e.g., Ruth Paine 3403; Marina Oswald 391, 412, 413; Marguerite Oswald 610; George deMohrenschildt 175-176.

2. See e.g., Marguerite Oswald 610; Oswald purchased a television set on credit but it was returned without any payment having been made on it. C.D. 884, p. 15; C.D. 641.

3. See e.g., Staples affidavit; C.D. 884, p. 16; Ruth Paine Depos. 89-99.

4. Marina Oswald 313; George deMohrenschildt 230; Jeanne deMohrenschildt 80-81; John Pic 156, 158.

5. See e.g., Marina Oswald 228; Reading list prepared by Mosk.

6. See e.g., Marguerite Oswald 610; Frazier 2239-2249; Ruth Paine 3212, 3218.

7. Robert Oswald _____; Marguerite Oswald _____.

8. Ford 2472; Miller 18-23; Burke 61-64; Clark 114-117; Elena Hall 261-263; John Hall 240, 241, 246; George deMohrenschildt 191-192; Jeanne deMohrenschildt _____; Marina Oswald 232, 391, 437. Kleinlerer affidavit; Marguerite Oswald 605.

8a. See e.g., Ruth Paine 3159, 3403-4, 3510; Marina Oswald 233.

9. Marguerite Oswald _____; Robert Oswald _____.

10. Marina Oswald 233, 301.

11. Ford 2492; Miller 2735; Mrs. Frank Ray 155-157; Marina Oswald 242-243.

11a. Lillian Murret 134-139, 153-155.

12. Ruth Paine 2956-2970.

12a. Charles Murret _____. See

13. Ruth Paine _____; Marina Oswald _____.

13a. Marina Oswald 450, 451, 7436.

14. C.D. 205, p. 195.

15. C.D. 385, p. 289-290.

16. C.D. 1198.

17. See e.g., Marina Oswald 391.

LEE HARVEY OSWALD

RECEIPTS AND EXPENDITURES

JUNE 13, 1962 to NOVEMBER 22, 1963

	Receipts	Expenditures	Balance
June 1962			
1/ On hand on arrival, New York City	$ 63.00		
2/ Received from Robert Oswald	200.00		
3/ Received from Marguerite Oswald	10.00		
4/ Transportation New York City		$ 10.35	
5/ Plane fare New York City to Dallas including luggage		201.04	
6/ Hotel bill New York City		15.21	
7/ Estimated cost of food, clothing and incidental expenses		5.00	
8/ Public stenographer		10.00	
9/ Repayment Robert Oswald		30.00	
6-30-62 Totals	$ 273.00	$ 271.60	$ 1.40
July 1962			
10/ Net salary	$ 46.82		
11/ Repayment Robert Oswald		$ 10.00	
11a/ Subscription Time Magazine		3.87	
7-31-62 Totals	$ 46.82	$ 13.87	$ 34.35
August 1962			
12/ Net salary	$ 207.31		
13/ Repayment State Department loan		$ 10.00	
14/ Repayment Robert Oswald		50.00	
15/ Rent and utilities		71.50	
16/ Estimated cost of food, clothing and incidental expenses		75.00	
8-31-62 Totals	$ 207.31	$ 206.50	$ 35.16

	Receipts	Expenditures	Balance
September 1962			
17/ Net salary	$ 187.59		
18/ Received from Paul Gregory	35.00		
19/ Rent		$ 71.50	
20/ Repayment State Department		9.71	
21/ Repayment Robert Oswald		50.00	
22/ Subscription to Russian Humor Magazine "Krokodil"		2.20	
23/ Estimated cost of food, clothing and incidental expenses		100.00	
9-30-62 Totals	$ 222.59	$ 233.41	$ 24.34
October 1962			
24/ Net salary	$ 228.22		
25/ Received from George Bouhe	5.00		
26/ Repayment State Department loan		10.00	
27/ Rent - room YMCA		9.00	
28/ Post Office box rental		4.50	
29/ Repayment Robert Oswald		60.00	
30/ Estimated cost of food, clothing and incidental expenses		50.00	
10-31-62 Totals	$ 233.22	$ 133.50	$ 124.06
November 1962			
31/ Net salary	$ 315.71		
32/ Rent		$ 73.00	
33/ Repayment State Department loan		10.00	
34/ Bus fare Dallas to Fort Worth and return		4.60	
35/ Estimated cost of food, clothing and incidental expenses		50.00	
11-30-62 Totals	$ 315.71	$ 137.60	$ 302.17

December 1962	Receipts	Expenditures	Balance
[36] Net salary	$ 243.13		
[37] Rent - residence		$ 68.00	
[38] Rent - post office box 2915		4.50	
[39] Repayment State Department loan		190.00	
[40] Subscription to Militant		1.00	
[41] Estimated cost of food, clothing and incidental expenses		100.00	
12-31-62 Totals	$ 243.13	$ 363.50	$ 181.80
January 1963			
[42] Net salary	$ 247.12		
[43] Rent and utilities		$ 75.13	
[44] Repayment State Department loan		206.00	
[45] Deposit Smith and Wesson revolver		10.00	
[46] Fee paid Crozier High School		9.00	
[47] Subscription Russian magazines		13.20	
[48] Estimated cost of food, clothing and incidental expenses		100.00	
1-31-63 Totals	$ 247.12	$ 413.33	$ 15.59
February 1963			
[49] Net salary	$ 256.95		
[50] Rent and utilities		$ 71.64	
[51] Subscription - newspaper		7.00	
[52] Estimated cost of food, clothing and incidental expenses		100.00	
2-29-63 Totals	$ 256.95	$ 178.64	$ 93.90

March 1963	Receipts	Expenditures	Balance
53/ Net salary	$ 327.55		
54/ Rent and utilities		$ 78.76	
55/ Rent Post Office Box #2915		4.50	
56/ Cost of rifle		21.45	
56a/ Subscription Time Magazine		3.82	
57/ Balance due on revolver and freight charge		21.22	
58/ Estimated cost of food, clothing and incidental expenses		100.00	
3-31-63 Totals	$ 327.55	$229.75	$ 191.70
April 1963			
59/ Net salary	$ 118.86		
60/ Income Tax refund	57.40		
61/ Rent and utilities		$ 62.97	
62/ Bus fare		13.85	
63/ Estimated Cost of food, clothing and incidental expenses		100.00	
4-30-63 Totals	$ 166.26	$176.82	$ 181.14
May 1963			
64/ Net salary	$ 107.44		
65/ Unemployment compensation check	33.00		
66/ Rent and utilities		$ 75.00	
66a/ Subscription Militant		1.00	
67/ Dues and printing - Fair Play for Cuba		9.00	
68/ Estimated Cost of food, clothing and incidental expenses		100.00	
5-31-63 Totals	$ 140.44	$185.00	$ 136.58

June 1963	Receipts	Expenditures	Balance
Net salary [69]	$ 216.00		
Rent and utilities [70]		$ 67.85	
Post office box rental [71]		4.00	
Printing - Fair Play for Cuba [72]		15.23	
New alien registration card [73]		5.00	
Estimated cost of food, clothing and incidental expenses [74]		100.00	
6-30-63 Totals	$ 216.00	$192.08	$ 160.50
July 1963			
Net salary [75]	$ 224.97		
Rent and utilities [76]		$ 72.22	
Printing-Fair Play for Cuba [77]		3.50	
Estimated cost of food, clothing and incidental expenses [78]		100.00	
7-31-63 Totals	$ 224.97	$175.72	$ 209.75
August 1963			
Unemployment compensation payments [79]	$165.00		
Rent and utilities [80]		$ 73.54	
Fine [81]		10.00	
Distribution Fair Play for Cuba circulars [82]		2.00	
Estimated cost of food, clothing and incidental expenses [83]		100.00	
8-31-63	$165.00	$ 185.54	$ 189.21
Sept. 1, 1963 to Sept. 24, 1963			
Unemployment compensation payments [84]	$ 132.00		
Mexican tourist card [85]		$ 3.00	
Estimated Cost of food, clothing and incidental expenses [86]		100.00	
9-24-63 Totals	$ 132.00	$103.00	$ 218.21 [86a]

Sept. 25, 1963 to Oct. 2, 1963	Receipts	Expenditures	Balance
Mexican trip [87]			
Estimated transportation cost		$ 50.55	
Hotel plus estimated food cost [88]		18.70	
Estimated cost of entertainment and miscellaneous items [89]		15.20	
10-2-63 Totals		$ 84.45	$ 133.76 [90]
October 3, 1963 to October 31, 1963			
Unemployment compensation checks [91]	$ 39.00		
Net salary [92]	104.41		
Rent [93]		$ 33.25	
Estimated cost of food, clothing and incidental expenses [94]		75.00	
10-31-63 Totals	$ 143.41	$108.25	$ 168.92
November 1, 1963 to November 22, 1963			
Net salary [95]	$ 104.41		
Rent [96]		$ 24.00	
Rent Post office box [97]		3.00	
Dues American Civil Liberties Union [98]		2.00	
Bus and taxi fares 11/22/63 [99]		1.23	
Estimated cost of food, clothing and incidental expenses [100]		75.00	
11-22-63 Totals	$ 104.41	$105.23	$ 168.10
Grand total 6/13/62 to 11/22/63	$3665.89	$3497.79	$ 168.10
Contents of Oswald's wallet	$ 170.00		
Cash taken from Oswald when arrested	13.87		
Total [101]	$ 183.87		

Footnotes

1. Isaacs Exhibit 1; but see note 9 infra.

2. Id.; Robert Oswald 1156.

3. Marguerite Oswald 605.

4. Isaacs Exhibit 1; C. D. 839.

5. Isaacs Exhibit 1; C. D. 839, p. 3.

6. C. D. 839, p. 4; Marina Oswald 221.

7. Isaacs Exhibit 1.

8. Bates 220.

9. Robert Oswald 1156 (Robert Oswald testified that Lee paid him back a little less that $100 upon Lee's arrival. If this is so, Lee Harvey Oswald had more money than he reported to the Welfare Department when he arrived in New York. See note 1, supra. The $30 figure is an estimate based upon reported funds available to Lee when he arrived in Fort Worth and upon Robert's statement as to later payments).

10. Leslie Welding Co. cancelled checks, S. S. 641 attch./; C. D. 87 C. D. 884, p.1.

11. Robert Oswald 1156.

11a C. D. _____ See infra at n. 56a. There is no record of the initial subscription. This represents an estimate of the cost.

12. Leslie Welding Co. cancelled checks, S. S. 641 attch; (C. D. 87) C. D. 884, p. 1.

13. Comm'n Exh. _____ (C. D. 1114 XII-22); C. D. 49, p. 11.

14. Robert Oswald 1156.

15. Riggs Affidavit; C. D. 840, p. 1.

16. Estimate based on approximate time he lived on Mercedes Street in August. Fain 5943; Marguerite Oswald 610; See how estimates ascertained supra at _____.

17. Leslie Welding cancelled checks, S. S. 641 attch.;(C. D. 87) C. D. 884, p. 1.

18. Paul Gregory 87; Peter Gregory 2600; Marina Oswald 7437.

19. Riggs affidavit; C. D. 840, p. 1.

20. Comm'n Exh. _____ (C. D. 1114, XII-22); C. D. 49, p. 11.

21. Robert Oswald 1156.

22. C. D. 201, p. 2.

23. See at p. _____ supra.

24. Leslie Welding cancelled checks, S. S. 641 attch: (C. D. 87) C. D. 884, p. 1.; Jaggars-Chiles-Stovall, Inc. cancelled checks (FBI 11); C. D. 1066, p. 474, pp. 481-488.

25. Bouhe 62.

26. Comm'n Exh. _____ (C. D. 1114 XII-22); C. D. 49, p. 11.

27. Barnhorst 116; Hulen 83; C. D. 840, p. 3.

28. C. D. 840, p. 4.

29. Robert Oswald 1156.

30. See at p. _____ supra. Marina Oswald lived at the Hall's for part of the month. Marina Oswald 232, 303. She also received assistance from other people. See e.g. Kleinlerer Affidavit; Clark 114, 117; Oswald had a room in Dallas. Marina Oswald 233, 303.

31. Jaggars-Chiles-Stovall, inc. cancelled checks (FBI 11); C. D. 1066, p. 474, pp. 4810488. S. S. 641 Attch: (C. D. 87)

32. Mr. Tobias 84, 95; Mr. Tobias 159-160; FBI D-7. (included $5.00 key deposit which was never returned)

33. Comm'n Exh. _____ (C. D. 1114 XII-22); C. D. 49, p. 11.

34. C. D. 1195 Paul Gregory 86; Comm'n Exh. 320; Robert Oswald 1356; John Pic 150, 170.

35. Marina lived with the Mellers, the Fords and the Rays during part of this month. Ford 2492; Meller 27-35; Mrs. Frank Ray 155-157; Marina Oswald 242-243.

36. Jaggars-Chiles-Stovall, inc. cancelled checks (FBI 11); C. D. 1066 p. 474, pp. 481-488. S. S. 641 Attch: (C. D. 87)

37. Mrs. Tobias 95; FBI D-7.

38. C. D. 840, p. 4.

39. Comm'n Exh. _____ (C. D. 1114 XII-22); C. D. 49, p. 11.

40. Watts Exh. 1 _____; Ruth Paine 3477.

41. See at p. _____ supra.

42. Jaggars-Chiles-Stovall, Inc. cancelled checks (FBI 11); C. D. 1066, p. 474, pp. 481-488. S. S. 641 Attch: (C. D. 87)

43. Mrs. Tobias 95; FBI D-7; C. D. 840, p. 2.

44. Comm'n Exh. _____ (C. D. 1114 XII-22); C. D. 49, pp. 11-12.

45. Michaelis _____; Michaelis Exh's. _____; C. D. 7, p. 229.

46. C. D. 6, p. 92.

47. C. D. 201, p. 2,; Comm'n Exh. _____ (Oswald's autobiography)

48. See at p. _____ supra.

49. Jaggars-Chiles-Stovall, Inc. cancelled checks (FBI 11); C. D. 1066, p. 474, pp. 481-488. S. S. 641 Attch: (C. D. 87)

50. Mrs. Tobias 95; FBI D-7; C. D. 840, p. 2.

51. C. D. 127, p. 1; but see Comm'n Exh. _____ (Oswald autobiography, which says he received Worker in 1962); C. D. 11, p. 2.

52. See at p. _____ supra.

53. Jaggars-Chiles-Stovall, Inc. cancelled checks (FBI 11); C. D. 1066, p. 474, pp. 481-488. S. S. 641 Attch: (C. D. 87)

54. George affidavit; C. D. 840, p. 2; C. D. 7; p. 109,112.

55. C. D. 840, p. 4.

56. Comm'n Exh. 788; Waldman Exh. 7. C. D. 7, p. 194.

56a. C. D. _____ (letter from Time); C. D. 206, p. 221.

57. Michaelis-; Michaelis Exh's. 2-5. C. D. 7, p. 230.

58. See at p. _____ supra.

59. Jaggars-Chiles-Stovall, Inc. cancelled checks (FBI 11); C. D. 1066, p. 474, pp. 481-488. S. S. 641 Attch: (C. D. 87)

60. C. D. 884, p. 4; FBI Item _____.

61. George affidavit; C. D. 7, p. 112.

62. Ruth Paine 2961; C. D. 1195.

63. See at p. _____ supra. Although Oswald spent part of this month at the Murrets, Lillian Murret 134-137, 153-155; and Marina spent part of it at Ruth Paine's, Ruth Paine 2956-2970; he left money with Marina. Ruth Paine 3159.

64. Wm. B. Reily and Co. cancelled checks (FBI D-8); C. D. 841, p. 1.

65. Burcham Exhibit 1; FBI D-51; C. D. 841.

66. Jesse Garner affidavit; Mrs. Garner 6; FBI 170; C. D. 75, p. 133.

66a. Watts Exh. 2.

67. V. T. Lee 27-28; V. T. Lee Exh's. 3, 4; C. D. 75, p. 359; FBI 415. (Membership card)

68. See at p. _____ supra. Although Oswald spent part of the time at the Murret's, Lillian Murret _____; and Marina spent part of the time at Ruth Paine's, Ruth Paine _____, this would be offset by the fact that Ruth Paine and her children spent time at the Oswald apartment, Ruth Paine Depos. 34 and the expenses involved in moving into an apartment in another city.

69. Wm. B. Reily and Co. cancelled checks (FBI D-8); C. D. 841, p. 1.

70. Jesse Garner affidavit; Mrs. Garner 6; C. D. 75, p. 133.

71. C. D. 838.

72. C. D. 6, pp. 394, 399; FBI Item 415.

73. FBI 172.

74. See at p. _____ supra.

75. Wm. B. Reily and Co. cancelled checks (FBI D-8); C. D. 841, p. 1.

76. Jesse Garner affidavit; Mrs. Garner 6; C. D. 75, p. 133.

77. C. D. 6, p. 400.

78. See at p. _____ supra.

79. Burcham Exh. 1; Checks FBI Item D-51; C. D. 841, pp. 1-4.

80. Jesse Garner affidavit; Mrs. Garner 8; C. D. 75; p. 133; FBI Item 171.

81. V. T. Lee Exh. 6; FBI Item 98.

82. Chas. Steele, Jr., 7; S. S. 703, p. 3. (C. D. 320) There is evidence that two people were handing out literature, but it is not known if both were paid $2.00.

83. See at p. _____ supra.

84. Burcham Exh. 1; Checks FBI Item D-51; C. D. 841, pp. 1-4.

85. C. D. 75, 571; C. D. 78, p. 1; FBI Item D-52; C. D. 1084, p. 3.

86. See at p. _____ supra. Although Oswald left for Mexico and Marina stayed with Ruth Paine during the latter part of the month, this is offset by additional expenses incurred in preparing for the Mexican trip.

86a. Marina testified that just before she left for New Orleans, Lee had told her he had a little over $100, which would be sufficient for his Mexican trip. Marina Oswald 287. Later Marina has said, he said he had $160-180. C. D. 735, p. 444. Oswald received $33 in unemployment compensation after Marina left New Orleans; Oswald failed to pay for his rent from September 9, Mrs. Garner 32-33.

87. C. D. 183, p. 22; C. D. 905b, p. 3; Marina Oswald 288.

88. C. D. 905b, pp. 3, 5, 6.

89. C. D. 735, p. 445; Marina Oswald 289; C. D. 905b, pp. 5, 6, 9-13.

90. Marina testified that Lee returned from Mexico with about $50 or $70. Marina Oswald 356. C. D. 735, p. 444. She later said he had about $70.

91. Burcham Exh. 1; FBI Item D-51; C. D. 884, pp. 6, 8.

92. C. D. 5, p. 220.

93. Hulen _____; Barnhorst 120; Bledsoe _____; Mrs. A. C. Johnson 72, 77.

94. See at p. _____ supra. During this time, Marina was living with Ruth Paine _____. Oswald spent weekends there also _____; however, Oswald sometimes ate at restaurants. Marina Oswald 412.

95. C. D. 5, p. 220.

96. Mrs. A. C. Johson 72, 77.

97. FBI Item 432; C. D. 206, p. 221.

98. C. D. 205, p. 703; C. D. 176, p. _____; Form _____.

99. Whaley _____; Bledsoe _____ McWatters; C. D. 1195.

100. See at p. _____ supra. and n 94.

101. C. D. 385, p. 289; C. D. 205, p. 195; FBI items _____ (receipts).