

TESTIMONY OF ABRAM CHAYES

Representative FORD. Mr. Chayes, will you take the following oath. Do you swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CHAYES. I do.

Mr. COLEMAN. The Honorable Abram Chayes is the Legal Adviser to the Department of State. Mr. Chayes will be asked to testify with respect to the files and other information and documents supplied the Commission by the Department of State dealing with Mr. Oswald.

Mr. Chayes will also be asked about the legal correctness of certain decisions made by various offices of the State Department with regard to Oswald, including whether Oswald had lost his American citizenship by his actions in 1959, whether his passport should have been returned to him in July 1961, whether his passport should have been renewed based upon the July 10, 1961, application, whether he should have been issued his 1963 passport, and whether action should have been taken to revoke it in October 1963 as a result of information received by the Passport Office, and whether the Department and the Immigration and Naturalization Service acted properly in connection with section 243(g) of the Immigration and Nationality Act with respect to Marina. Mr. Chayes will also be asked about the lookout card system in the Passport Office.

Mr. COLEMAN. Mr. Chayes, will you state for the record your full name?

Mr. CHAYES. My name is Abram Chayes. There is a middle name that I don't use. It is Joseph.

Mr. COLEMAN. Where do you presently reside?

Mr. CHAYES. At 3520 Edmunds Street NW., Washington, D.C.

Mr. COLEMAN. When did you become Legal Adviser to the State Department?

Mr. CHAYES. I think I was sworn in on February 7, 1961.

Mr. COLEMAN. So, therefore, anything that happened with respect to Mr. Oswald prior to that time you had nothing to do with and knew nothing about?

Mr. CHAYES. Well, I should say that I never heard the name Lee Harvey Oswald until November 22, 1963, so that neither before nor after the time I became Legal Adviser, before the assassination, did I have any direct knowledge about Oswald, nor do I believe I passed directly on any matters in the case, although there may have been some matters that were considered in my office. I am not sure about that, but I took no personal action in the case.

Mr. COLEMAN. Since the assassination your office has had occasion to review the various files which were in the State Department dealing with Lee Harvey Oswald, is that correct?

Mr. CHAYES. Yes; on November 22, Mr. Ball, the Under Secretary of State, directed me to take in personal charge all the files in the Department that I could find, and to review those files and be prepared with a report for the Secretary the following morning on the general relations of Mr. Oswald and the State Department.

I did take some files, the basic files into my custody at that time, and retained them in my custody, I think, until we sent them to the Commission at the Commission's request. And others than who were working on the matter in the Department had access to the files but had to work in my office on them.

Mr. COLEMAN. On or about May 28, 1964, you had occasion to reassemble the files and deliver another set to the Commission, is that correct?

Mr. CHAYES. Yes; from time to time between the first delivery, which was probably last December sometime, and just last week we have made other papers available to the Commission as they have come to our own notice. A file search of this kind in a place like the Department of State is a pretty elaborate business.

Only last week we got a whole new shipment from the Moscow Embassy in which they said, "We have sent you before everything that you didn't have duplicates of, but here is a whole bunch of duplicates."

And it turned out that some of them weren't duplicates as appeared just this morning. We made those available as soon as they came in.

Mr. COLEMAN. I take it with the covering letter of May 28, 1964, and the description you made of the file together with the other files that you delivered

to us just yesterday, that they constitute all of the files that the State Department has?

Mr. CHAYES. As I say, they constitute all that we have been able to find, all the documents we have been able to find after a most diligent search.

I myself did not personally conduct the search, but we directed responsible officers in all the various places where documents might be to give us all the documents they had, and I think we made a very intensive search, and to my knowledge there are no other documents in the Department relating to this matter in any way.

Mr. COLEMAN. Shortly after the Commission was appointed, you had prepared under your direction, and submitted to the Commission a document entitled "Report of the Department of State Lee Harvey Oswald," is that correct?

Mr. CHAYES. That is correct, sir.

Mr. COLEMAN. And this document is an examination of the various actions taken by people in the State Department, and your judgment as to the legal correctness of the various actions?

Mr. CHAYES. Well, as you see, the document consists of five subparts. It is an analysis and summary of the documents in the files. We went through the files, looked at all the documents, tried to summarize them for the Commission so as to give the Commission the fullest possible appreciation of the contacts between Oswald and the Department. Where it was necessary to elucidate policies or matters of law in order to give the Commission that appreciation, we have done so, yes.

Mr. COLEMAN. The Report has been given a number of Commission Document No. 2. (Commission Exhibit No. 950.) After that you, on May 8, 1964, sent a letter to the general counsel for the Commission in which you answered certain questions which had been proposed by the general counsel?

Mr. CHAYES. Yes; the general counsel sent us a questionnaire with two attachments, attachment A and attachment B. Attachment A referred to matters mostly concerning Russia and the Embassy in Moscow. Attachment B raised questions about matters within the Department, passport and visa offices within the Department. Each attachment contained a series of questions.

Again I think it is more accurate to state that the responses were prepared under my supervision and direction. I, of course, reviewed every response and and none were sent out without my approval. But I was not the draftsman or didn't do all of the work.

Mr. COLEMAN. The first question that the Commission would like to know about and be given some advice on is the question of whether the acts which Oswald performed in October 1959, and shortly thereafter, would in your opinion result in his loss of citizenship.

Mr. CHAYES. In my judgment they would not amount to expatriating acts. The basic analysis is covered in the third part of Commission Document No. 2, entitled "Lee Harvey Oswald—Expatriation."

Representative FORD. On what page is that, Mr. Chayes?

Mr. CHAYES. Well, I am sorry, each of the parts begin at No. 1, so it is not very convenient, but it is about halfway through. There is a memorandum entitled "Memorandum Lee Harvey Oswald—Expatriation."

Now, in that memorandum we analyze three sections of the act under which it might be argued that an expatriation took place.

Mr. COLEMAN. Yes?

Mr. CHAYES. I say in that memorandum we analyzed the three possible sections of the act under which it might be argued that an expatriation took place, and in each case we conclude, and I think properly, that there was no expatriation. The first section is section—

Mr. DULLES. May I ask one question? This is a formal opinion of your office as Legal Adviser to the State Department?

Mr. CHAYES. I take responsibility for this as my present opinion, yes, sir, and it goes out over my signature. We are not quite like the Attorney General. We don't have opinions that get bound up in volumes.

Mr. DULLES. I realize that it is not a formalized opinion from that angle. Was this ever submitted to the Department of Justice for consideration?

Mr. CHAYES. No; it was not.

Mr. EHRlich. Actually this report did go to the Department of Justice because it was submitted before the Commission was formed.

Mr. CHAYES. Yes; but it wasn't submitted to the Department of Justice for consideration.

Mr. DULLES. For concurrence or anything of that kind.

Mr. CHAYES. For concurrence, no.

Mr. COLEMAN. Now, the first section which I assume you address your attention to was section 349(a)(1).

Mr. CHAYES. We could do it that way.

Mr. COLEMAN. Do you want to start with 349(a)(6)?

Mr. CHAYES. We started with (a)(6) in the memorandum because there was likely to be a better case under (a)(6) than almost anything else. The reason why one might argue more about (a)(6) than anything else, is that there were written statements by Oswald saying, "I renounce my citizenship" or words to that effect, and they were made in writing, and in a way that appeared to be intended as a formal, considered statement.

But (a)(6) says that a U.S. national may lose his nationality by "making 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."

Now, even if you resolve every other issue in favor of expatriation, that is if you say handing a fellow a letter of the kind that Oswald handed to Mr. Snyder was a formal renunciation of nationality before a diplomatic or consular officer, it was clearly not on the form prescribed by the Secretary of State, and the courts have been very precise on that.

Representative FORD. Do you have those citations, Mr. Chayes?

Mr. CHAYES. The form we have here, it is called "Form of Oath of Renunciation." It is volume 8 of the Foreign Affairs Manual of the Department of State, and it is an exhibit to section 225.6, and you can see here that it is a fully prescribed form.

Mr. COLEMAN. Do you have any case where (a) it was a written statement, and (b) it was given to a consul and yet because it was not on the form prescribed by the Secretary of State, a court has held that it was not a renunciation?

Mr. CHAYES. No case has been decided under 349(a)(6), but the general line of cases under 349 is to resolve every doubt in favor of the citizen, and there are innumerable citations to that effect. I feel quite confident when the statute itself prescribes that the form should be one established by the Secretary, and where the Secretary has in fact prescribed such a form, that one cannot bring himself under (a)(6) unless he uses the form.

Mr. COLEMAN. Wouldn't the two letters that Oswald delivered be considered as making an affirmation or other formal declaration of allegiance to a foreign state or political subdivision thereof, which is an act under (a)(2)?

Mr. CHAYES. That would be (a)(2), and we consider that at page 7 of the memorandum, subsection C.

Mr. DULLES. Are we through with all pages up to 7?

Mr. CHAYES. No; we probably go back to 1. But there we do have cases, and the cases are clear, that the oath or affirmation or formal declaration under section (a)(2) has to be to an official entitled to receive it on behalf of the foreign state, and even then the courts have been very sticky about holding people to that.

For example, there is one case where a dual national, a Philippine and U.S. national, made an oath of allegiance to the Philippines in the usual form in order to get a Philippine passport, and it was asserted that this was an expatriating act, and the court held no, it wasn't. In *re Bautista's Petition*, 183 F. Supp. 271 (D.C. Guam, 1960). There is a case where a man took an oath of allegiance to the British Crown, but the recipient of the oath was his employer, private employer, and it was held that that was not the kind of oath that is involved. In *The Matter of L*, 1 I. & N. Dec. 317 (B.I.A. 1942).

The courts have said that this is a reciprocal relationship in which in order

to come under this section, the citizen or the U.S. citizen must offer his allegiance to the foreign state and the foreign state must accept it.

Mr. DULLES. There has to be action on both sides. Unilateral action is not enough if the affirmation is not accepted.

Mr. CHAYES. That is the way I read the cases. Now, of course, if it comes before, if the oath is taken before an official of the foreign state that is authorized to take oaths of allegiance, why then nothing more is needed than that. But making an oath or statement of allegiance to another American or to a private party, whatever his nationality, has been held not to fall within 349 (a) (2).

Mr. COLEMAN. Do you know whether Oswald had to make any statement or take any oath when he got employment in the Soviet Union?

Mr. CHAYES. I don't personally, but it may have been inquired into by the consul when Oswald came back for a renewal passport.

I think the record shows that it was concluded that there was no evidence that he became a naturalized Soviet citizen, and so far as I know, there is no evidence that he in any other way took an oath of allegiance of the kind that would bring him under 349 (a) (2).

Even if he had had to do so, for example, in connection with his employment, there are cases which may say that that is not a voluntary oath if it is done out of economic necessity and it will not, therefore, serve to expatriate. See *Insogna v. Dulles*, 116 F. Supp. 473 (D.D.C. 1953); *Stipa v. Dulles*, 233 F. 2d 551 (3d Cir. 1956); and *Bruni v. Dulles*, 235 F. 2d 855 (D.C. Cir. 1956). In at least one other case, *Mendelsohn v. Dulles*, 207 F. 2d 37 (D.D.C. 1953), a court held that the plaintiff had not expatriated himself by residing abroad for more than 5 years since he had remained abroad to care for his sick wife, who was too ill to travel.

Representative FORD. I think it would be helpful wherever you say, Mr. Chayes, there are cases, that the record show the citation of the cases.

Mr. CHAYES. I think most of the cases that I am relying on are cited in the memorandum to which I am referring. But there may be others that I am recollecting. If I could have a chance to review the transcript, I will submit exact citations in each case.

Representative FORD. I think that would be very helpful. Otherwise I think the record is—

Mr. CHAYES. Yes; I agree.

Representative FORD. Is not clear or not complete, and as far as I am concerned, and I think the Commission would agree, that you should review the transcript to supply those citations for those particular categories of cases.

Mr. CHAYES. I will be very glad to do so, Mr. Chairman.

Mr. COLEMAN. Now do you want to address yourself to section 349 (a) (1)?

Mr. CHAYES. Well (a) (1) is obtaining naturalization, and there just wasn't any indication, there wasn't any evidence at all that he had become a naturalized Soviet citizen.

We knew that he applied for naturalization, but even on the basis of his Soviet documents he had not been given Soviet citizenship.

Mr. COLEMAN. I take it your testimony is that after reviewing all of the files, your office has determined that Oswald committed no act which would justify the Department stating that he had expatriated himself.

Mr. CHAYES. I think that is right. I more than think that is right. I know that is right. We have reached the conclusion, and I personally have reached the conclusion, that Oswald's actions in the Soviet Union, although he may very well have wanted to expatriate himself at one time or another, did not succeed in doing that.

I think for the record I would like to read here a citation from the case of *Stipa v. Dulles* decided by the Court of Appeals for the Third Circuit—the citation is at 233 F. 2d. 551—which gives some idea of the general attitude with which the courts approach expatriation cases. In that case it said:

The burden of proving expatriation generally is upon the defendant who affirmatively alleges it [that is the Secretary of State] and the burden is a heavy one. Factual doubts are to be resolved in favor of citizenship. The burden of proof on the Government in an expatriation case is like that in denaturalization. The evidence must be clear, unequivocal and convince-

ing. The rule prevailing in denaturalization cases that the facts and the law should be construed as far as is reasonably possible in favor of the citizen equally applies to expatriation cases. American citizenship is not to be lightly taken away.

This is the dominating attitude of the courts in all of these cases. We find, for example, that a group of Japanese Americans, who during the war under the stress of the relocation program, did all of the business of renouncing their citizenship and did it in the most formal kind of a way, and it was clear that they had done it and they had meant to do it and all that sort of thing. When after the war they raised the question of their citizenship status, the court held well, that the emotional stress and strain of the relocation and shock under those circumstances was such that this shouldn't be held against them. *Acheson v. Murakami*, 176 F. 2d 953 (9th Cir. 1949).

So the courts have gone very, very far to uphold the notion that American citizenship is not to be lightly taken away, see e.g., *Schneiderman v. United States*, 320 U.S. 118 (1943), and that has affected not only our legal judgment in the particular case, but our general policy which you have heard explained by Mr. Snyder and Mr. McVickar.

Mr. COLEMAN. Could you describe for the record what the policy of the Department is when a person appears at a foreign embassy and attempts to expatriate himself?

Mr. DULLES. Before you answer that question may I ask a question. In your memorandum here, relating to the paragraph we have been discussing, there is a footnote that interests me. It says:

"After the assassination of President Kennedy, an official of the Soviet Ministry of Foreign Affairs stated to an officer of the American Embassy in Moscow that Soviet authorities had considered Oswald's application for Soviet citizenship but had decided not to approve it because Oswald seemed unstable."

Mr. Coleman, do we have that in our files?

Mr. COLEMAN. Yes.

Mr. CHAYES. Yes; I think also the American Embassy officer was Ambassador Kohler?

Mr. COLEMAN. It was Stoessel.

Mr. CHAYES. Oh, Stoessel, Deputy Chief of Mission.

Mr. DULLES. The statement was made to him by an official of the Foreign Office?

Mr. CHAYES. I think he is identified in the telegram; yes.

Mr. COLEMAN. Also when the Secretary appears tomorrow I think he will impart some information on what the Soviet Ambassador told him as to the reason why they refused Oswald citizenship.

Mr. DULLES. Yes; I would rather like to put that in the record unless there is some similar reason to the one we had before.

Mr. CHAYES. Could I go off the record for just a moment?

(Discussion off the record.)

(Mr. Coleman's last question was read back by the reporter.)

Mr. CHAYES. Well, I think the basic policy of the Department is a recognition that this is a very grave and serious and irrevocable act that can affect a person's life and does affect a person's life very fundamentally. And so the policy of the Department is to make sure that the person making the renunciation does so with full recognition of the consequences of his action, of the fact that it is a very grave act, and in such a way as to make sure that it is a completely voluntary act in every sense of the word, so that it can be shown not only to be free of any physical duress or coercion, but mental stress and things of that kind.

This is not only true because of the recognition of what it means to the individual, but also because in order to support the denaturalization in court. You have got to be able to show those things under the standards and the general attitude that I have set forth.

Mr. COLEMAN. I take it your testimony is that you reviewed all of the files and looked at all of the memorandums or had it done under your direction, and your judgment is that Oswald had not expatriated himself in 1959?

Mr. CHAYES. Yes; on the basis of the record that I have in the file.

Mr. COLEMAN. And with that determination made, then I take it that when Oswald appeared at the Embassy in July 1961, and requested that his passport be returned to him, that Mr. Snyder had no other alternative but to return his passport to him, is that correct?

Mr. CHAYES. In the absence of any other disqualifying ground, and there wasn't any other disqualifying ground either known to the Embassy in Moscow or available in our own files back home. If Mr. Oswald was a citizen, and was not disqualified in some other way, he was entitled to the passport.

Mr. DULLES. Do you know from studying the records, or otherwise, whether when that request was made by Lee Harvey Oswald, it was referred back to the State Department and reconsidered again?

Mr. CHAYES. Oh, yes; it was. In the first place, the expatriation issue wasn't decided until that time. That is the expatriation issue was open until he came back in and applied for the passport.

The expatriation issue was decided in the first instance by the officer in the field, and then the tentative decision was reported by him back to the Passport Office and the expatriation decision was reviewed in the Passport Office at that time. The file was reviewed for other possible disqualifications, and an instruction went out with respect to the return of the passport.

The field was instructed that when the passport was returned, it should be marked for travel to the United States only, and then when the passport was finally renewed some weeks later, that was also pursuant to a departmental instruction.

Mr. DULLES. Was that reviewed in your office at that time?

Mr. CHAYES. No; it wasn't.

Mr. DULLES. Shouldn't it have been?

Mr. CHAYES. I don't think so, Mr. Dulles. The Passport Office has to make nationality determinations on thousands and thousands of people.

Mr. DULLES. But this is a legal question, isn't it?

Mr. CHAYES. But they have adjudicators in the Passport Office.

Mr. DULLES. They have legal officers.

Mr. CHAYES. Thirty lawyers or something.

Mr. DULLES. They have?

Mr. CHAYES. And two lawyers reviewed this case. There are just thousands of nationality or loss of nationality determinations.

Mr. DULLES. And those are generally all settled in the Passport Office?

Mr. CHAYES. In almost every case.

Mr. DULLES. Some of them may be presented to your office.

Mr. CHAYES. Where they present especially difficult questions of law or general policy of administration; yes, sir.

Mr. DULLES. And this wasn't considered as a case involving particularly difficult questions of law?

Mr. CHAYES. No; I don't think it did then or does now.

Representative FORD. Did the people in Washington who made this review know that on this one particular form, I don't recall the Commission Exhibit, that Oswald said, "I have done this, that," one or the other?

Mr. CHAYES. They would have had that before them. I think that is the form that was sent back to the Department, the one that had "have not" crossed out and "have" was left standing. So they made the determination on the basis of a form—

Mr. COLEMAN. Commission Exhibit No. 938, for the record.

Mr. CHAYES. Commission Exhibit No. 938, in which Oswald indicated that he had done one of these acts, and then supplied a supplementary questionnaire explaining in fuller detail what he meant.

Mr. DULLES. Do you happen to know who the lawyers were who did this in the Passport Office, and whether they would be available if we should want to see them?

Mr. CHAYES. I think they are on the list to testify.

Mr. COLEMAN. Mr. Chayes, those lawyers didn't review the file in 1961. They are the two lawyers that reviewed it in October 1963.

Mr. CHAYES. I see. Well, I can find out if we haven't supplied the names already.

Mr. COLEMAN. I don't think any lawyer reviewed the file in 1961.

Mr. CHAYES. Well, an adjudicator did.

Mr. COLEMAN. It was Miss Waterman. She is not a lawyer.

Mr. CHAYES. I see.

Mr. DULLES. She is coming before us?

Mr. COLEMAN. Yes.

Mr. CHAYES. She is a passport adjudicator.

Mr. COLEMAN. Now, were have marked as Commission Exhibit No. 929 an Operations Memorandum from the Department of State to the Embassy in Moscow, dated March 28, 1960, which stated that:

"An appropriate notice had been placed in the Lookout Card Section of the Passport Office in the event that Mr. Oswald should apply for documentation at a point outside the Soviet Union."

I would like to show you this Commission exhibit and ask you are you familiar with that memorandum?

Mr. CHAYES. I have seen this, but only since the assassination in my general review of the files.

Mr. COLEMAN. Now, has your office made a check to determine whether a lookout card was prepared?

Mr. CHAYES. Yes; Mr. Coleman. In connection with the preparation of this memorandum, and the responses to the supplemental questions for the Commission, we did examine the question of whether a lookout card was prepared. I should say again that the matter of preparation of lookout cards is not under my jurisdiction, and my knowledge of this is only from a subsequent investigation.

Mr. COLEMAN. Your examination revealed that a lookout card actually was never prepared, is that correct?

Mr. CHAYES. I think we have to say that our examination does not reveal that a lookout card was prepared, and that on balance examining all the relevant considerations, it appears more likely than not that no lookout card was prepared.

Representative FORD. But there was none in the file.

Mr. CHAYES. There was none in the file, but there wouldn't have been anyway, because this lookout card was ordered prepared because there was a doubt as to whether Oswald had expatriated himself. Once that doubt had been removed by an adjudication as it was in July of 1961, the lookout card based on the possibility of expatriation would have been removed.

It might be worth a moment if I could give you some general picture of the lookout card system. Miss Knight will be able to testify in much greater detail than I as to the actual operating—

Mr. DULLES. So that when 1963 came around and there was a further application for a passport, there was no lookout card then found in 1963?

Mr. CHAYES. Nor should there have been.

Mr. DULLES. That is the issue under your procedure.

Mr. COLEMAN. Let me refer back to 1961 when you determined or the Department determined to renew the passport. Now, as I understand it, there was a search made of the Lookout Card Section, and the records that we have reveal that no lookout card was found.

Mr. DULLES. Even in 1961?

Mr. COLEMAN. In 1961.

Mr. CHAYES. I don't think that that can be said that categorically. I think it appears probable that there was no lookout card in 1961 at that time, yes; that is correct.

Mr. DULLES. But in 1961 all of these facts with regard to Oswald were before you, were they not?

Mr. CHAYES. If I could just give some notion of what this system is like.

Mr. DULLES. Yes.

Mr. CHAYES. The lookout card is an IBM card, an ordinary IBM card, and it should be prepared on anyone as to whom some evidence of disqualification for a passport exists in our files. If the system worked perfectly, anytime there was an unresolved question about the eligibility of a person for a passport—

Representative FORD. Does a defector or an attempted defector fall in that category?

Mr. CHAYES. No; the problem here was that this man had attempted to expatriate himself, and said he was going to naturalize himself as a Soviet citizen, and if he had done either of those things effectively, he would have disqualified himself for a passport.

So there was an unresolved question on the facts known in 1959, or January 1960, whenever it was. And at that point a lookout card should have been prepared for him.

Then in July of 1961, when he came back in in Moscow, and asked for the renewal of his passport, that question of expatriation was then determined, both in Moscow and at home, and it was determined in favor of the applicant. So that the outstanding question was then removed, and if the procedures had gone right, the lookout card also, if it had been prepared, would have been taken out of the lookout file and torn up and thrown away.

Representative FORD. Don't you keep records of what you put in and what you take out?

Mr. CHAYES. Yes, the refusal slip which formed the basis on which this memorandum that we are talking about was made. There was a refusal slip which was a direction to the person in the lookout card office to make a lookout card, and also probably whoever made the refusal slip also sent this memorandum to Moscow saying that a lookout card had been prepared.

If you look at the refusal slip, which is retained in the main passport file of Oswald, it doesn't have the notations that it would have had or should have had if a card had been made. So that on the general basis of the evidence, we conclude that it is probable that no card was made. But you can't say that for sure because even if one had been made, it would have been removed when the issue was resolved.

Representative FORD. If it is probable one wasn't made, but there is a possibility, remote as it might be, don't you have some means of recording when a lookout card is removed?

Mr. CHAYES. That notation also does not appear.

Representative FORD. So the probability is increased.

Mr. CHAYES. That is correct.

Representative FORD. That there was no lookout card ever made and put into the file.

Mr. CHAYES. That is correct, sir. All of this is covered in some detail in our response, our written response to the questionnaire, and comes to the same conclusion, and all of these points are enumerated.

Mr. COLEMAN. There is a Commission Exhibit No. 948 where Mr. Chayes under date of May 8, 1964, addressed himself to these problems.

Representative FORD. Is this that which I have here?

Mr. COLEMAN. Yes.

Representative FORD. And that is to be in the record?

Mr. CHAYES. Yes.

Mr. COLEMAN. We will give it an exhibit number.

(Discussion off the record.)

Mr. COLEMAN. Back on the record.

I would like to mark as Commission Exhibit No. 948 a letter from the Legal Adviser to the Department of State to Mr. Rankin dated May 8, 1964.

(The document referred to was marked Commission Exhibit No. 948 for identification.)

Mr. COLEMAN. I would like to ask the witness whether this letter was prepared under his direction together with the attachments.

Mr. CHAYES. Yes; the letter and attachments are those which were prepared—I haven't had a chance to examine each right now, but appear to be those which were prepared in my office and under my personal supervision in response to the request of the Commission.

Mr. COLEMAN. In Commission Exhibit No. 948 you explain the lookout card situation.

Mr. CHAYES. Yes.

Mr. COLEMAN. You treat with the question of whether a lookout card was in the State Department file on Oswald in 1961.

Mr. CHAYES. Yes, sir; I think it is covered in the answers to questions 12 and

13. In particular the answer to question 13 shows the evaluation on which we reached the conclusion that it is probable that a lookout card was not prepared.

Mr. COLEMAN. Was there any other occasion as a result of acts by Oswald that you felt that a lookout card should have been prepared?

Mr. CHAYES. Yes.

Mr. COLEMAN. What were those?

Mr. CHAYES. Under the procedures of the Department, once Oswald was given a repatriation loan, as he was on his return to this country in, what was it, May of 1962, a lookout card should have been prepared and should have been maintained in the lookout file during the period when there was an unpaid balance on his repatriation loan, and in that case it appears pretty certainly that no card was prepared. We don't even have in that case a refusal slip indicating a direction to prepare a card.

Mr. DULLES. Can you refuse issuance of a passport when there is an unpaid balance due?

Mr. CHAYES. I don't know what the courts would say, but a person who accepts a repatriation loan now signs an agreement that he will not apply for a passport until he has paid the loan.

At the time that Oswald got his loan, the form was a little different, but even then he signed a statement saying that he understood that passport facilities would not be furnished to him while an outstanding balance was—

Representative FORB. Could we have in the record the form that was in existence before and that which is now the form?

Mr. CHAYES. I think you do have it in the report. Again it is in the answer to question 13, page 3 of that answer, if you see there it says, "In the promissory note"—it is about the middle of the page—"which he signed for the loan he stated, section 423.6-5 that 'I further understand and agree that after my repatriation I will not be furnished a passport for travel abroad until my obligation to reimburse the Treasurer of the United States is liquidated.'"

Mr. COLEMAN. You testified that you made a search of the records or you had a search made of the records of the Department, and you conclude that no lookout card was ever prepared.

Mr. CHAYES. Yes; we can't find any evidence that a lookout card might have been prepared.

Mr. COLEMAN. Do you know why one was not prepared?

Mr. CHAYES. There could have been more than one reason. It could have been simply a bureaucratic oversight. It could have been that they didn't have date and place of birth information on Oswald.

Because of the possibility of identical names, the practice of the Passport Office is not to prepare a lookout card on any individual on the basis of his name alone. They need both name and date and place of birth.

Now, it may have been either that the Finance Office failed to notify the Passport Office because it did not have date and place of birth information, or that it did notify the Passport Office, and because there was no date and place of birth information, the Passport Office did not make a card.

Mr. DULLES. But the Passport Office had that information.

Mr. CHAYES. The Passport Office had the date and place of birth information on Lee Harvey Oswald; yes.

Mr. DULLES. But not on Marina?

Mr. CHAYES. Marina wouldn't have gotten into the Passport Office at all. She is an alien. But they didn't know whether the Lee Harvey Oswald, or they might not have known that the Lee Harvey Oswald that came down from the Finance Office, if indeed it did come down, was the same Lee Harvey Oswald as to whom they had date and place of birth information.

That is the problem. The problem is avoiding the difficulties that would arise if duplicated names put you into the lookout card system.

Mr. COLEMAN. Once the loan had been repaid, would the card have been taken out?

Mr. CHAYES. Yes.

Mr. COLEMAN. So, therefore, by the time he applied for the passport in June 1963, the loan had been paid so there wouldn't have been a lookout card in any event.

Mr. CHAYES. That is correct. The lookout card would have been removed, had it been made, on January 29, 1963, 6 months before the passport application, when Oswald finally paid the last of his outstanding loan balance.

Mr. DULLES. Can I ask a question there? Is the lookout card then only prepared in those cases where a passport should be refused irrespective of the moral turpitude or idiosyncracies or whatever else may be the case with regard to the individual?

Mr. CHAYES. There are three cases in which a lookout card is prepared. One is the case you have just mentioned, where a passport should be refused or there is evidence that might warrant refusal that you have to look into further.

The second is if you are a very important person and your passport is supposed to be given specially expeditious treatment.

And the third, if another agency, for example, your old agency or the FBI or any other agency has asked the Department to inform them in case of the passport application by a particular individual, a lookout card will be made. So those are the three categories.

Now, the first category is by far the biggest. There are 250,000 lookout cards, and by far the overwhelming majority of those is in the first category, that is people as to whom there is evidence which would warrant a determination that they should not be issued a passport.

Mr. COLEMAN. Does the State Department have any regulations which set forth the circumstances under which they will refuse a person a passport?

Mr. CHAYES. Yes; we have regulations which are set forth, a copy of which is attached to question 17. They appear in volume 22 of the Federal Register.

Mr. COLEMAN. Volume 22, title 22?

Mr. CHAYES. Yes; title 22, part 51 of the Code of Federal Regulations.

Mr. COLEMAN. I take it then that in 51.135 you have the regulation which says that you can deny a passport to a member of a Communist organization, is that correct?

Mr. CHAYES. Well, I think you have to be careful how you read that. It 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.

This 51.135 is a regulation which implements section 6 of the Subversive Activities Control Act, which denies passports to members of organizations required to register.

The only such organization so far against which a final order of registration is outstanding, is the Communist Party of the United States. So, not only technically but actually, membership in the Communist Party of the Soviet Union would not bring you within this paragraph of the regulation.

Mr. DULLES. Or the Communist Party of any other country.

Mr. CHAYES. Of any other country.

Mr. COLEMAN. Is there any other regulation, which the State Department has, dealing with the circumstances under which they can refuse to issue a passport?

Mr. CHAYES. The other regulation covering substantive grounds of refusal is 51.136.

Mr. COLEMAN. Could you read into the record the regulation?

Mr. CHAYES. Yes; the regulation says:

"In order to promote"—

Well, it is entitled "Limitations on Issuance of Passports to Certain Other Persons."

It reads:

"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 activities abroad would (a) violate the laws of the United States, and (b) be prejudicial to the orderly conduct of foreign relations, or (c) otherwise be prejudicial to the interests of the United States."

Mr. COLEMAN. In 1963, on June 24 when Oswald applied for a passport, he was issued the passport within 24 hours after the application; is that correct?

Mr. CHAYES. Yes, sir.

Mr. COLEMAN. Is there any record in the Department that anyone ever

examined Oswald's file to make a determination of whether he should have been issued a passport?

Mr. CHAYES. In 1963?

Mr. COLEMAN. 1963.

Mr. CHAYES. In 1963 the passport was issued on the basis of a simple check of the lookout file under the normal procedures of the Department.

What happens is that when a field office, in this case it was the New Orleans field office, get a series of passport applications, they Telex the names of the applicants and their place and date of birth to the Department, and the Department makes a name check through the lookout card file. That is all. And if there isn't a lookout card in the lookout card file, they authorize the issuance of the passport by the field agency. The field agency has to make a determination of citizenship, of course. But no further action is taken in Washington unless for some reason or other the field agency would wish to send a particular case forward.

Mr. COLEMAN. Since there was no lookout card, I take it we can assume that the June 25, 1963, passport was issued without any—

Mr. CHAYES. Without any examination.

Mr. COLEMAN. Without any consultation of the files on Oswald—

Mr. CHAYES. Exactly.

Mr. COLEMAN. That were in the Department.

Mr. CHAYES. I am confident that that was the case.

Mr. DULLES. May I ask whether there are any lookout cards to your knowledge that are filed under that third section there?

Mr. CHAYES. "Violate the laws or be prejudicial"?

Mr. DULLES. That is it; yes.

Mr. CHAYES. Well, I don't know for a fact that there are, but if we would make such a determination with respect to some person or group, I suppose lookout cards would be prepared for such a group.

And I would go further and say that probably the authority, you don't need authority to do it, but the theory of preparing cards for defectors which we are now doing under the Schwartz to Knight memorandum, that we referred to a moment ago, is that it is possible that a defector, upon examination of his file, will be shown to fall within one of these categories.

Mr. DULLES. Would Oswald now be considered a defector, or should he have been at that time if the regulations that you now have in effect were then in effect?

Mr. CHAYES. If we had the instruction in the Schwartz to Knight memorandum, yes; there would have been a lookout card on Oswald.

Mr. COLEMAN. Mr. Chayes, assuming on June 25, 1963, a person in the Passport Office had examined all of the files that the State Department had on Oswald from 1959 through June 25, 1963, in your opinion could the Department have refused Oswald a passport based upon section 51.136 of the regulation?

Mr. CHAYES. In my opinion, they could not. They could not have refused a passport based on the information in the Oswald file.

Representative FORD. If that is true, how could you have a lookout card now that would have resulted, that would result in a passport being refused?

Mr. CHAYES. I don't think we could. What the lookout card would do would be to refer you to the file. You would look into the file. You might then want some further investigation as to this fellow.

You might, having seen that you were dealing with this kind of a person, want to examine him more fully on his travel plans and so on and so on. That further investigation might turn up some information which would warrant a determination under one of these subsections. But if it turned up nothing but what was in the file, you would have to issue the passport, in my judgment.

Mr. DULLES. That is, lookout cards might well be put in in borderline cases, but when you came to consider the case on all the facts, you would decide in favor of issuance of the passport rather than refusal?

Mr. CHAYES. Yes; that is the same thing with the expatriation card which should have been made out for Oswald in 1960. It should have been made out because there was a possibility that he had expatriated himself. But then when he came to apply for the passport, all the lookout card would do is say, "Investigate this carefully and determine this issue."

And as you say, when you got all the facts as in the expatriation situation, you might determine that he had not expatriated himself.

Representative FORD. At least in this case if there had been a lookout card, there would have been a delay.

Mr. CHAYES. Yes.

Representative FORD. That is the very least that would have happened.

Mr. CHAYES. There would have been a delay of a couple of days probably.

Representative FORD. And in this case time might have been important.

Mr. CHAYES. No; if you are talking about this case as it actually happened, time wasn't important at all. He applied for the passport in June of 1963. He got it in June of 1963, and he made no effort to use the passport, nor did he have any occasion to use it, until he died.

Mr. DULLES. It would have been a blessing for us if he had used it, say, in the sense that the assassination might not have taken place, if he had taken the passport and gone to China as he may have contemplated.

Mr. COLEMAN. Mr. Chayes, is it your testimony that when the Department knows a person went abroad in 1959, attempted to defect to the Soviet Union, stated that he had information on radar which he was going to turn over to the Soviet, and the difficulty that we had to get him back, it is your opinion that it would not be prejudicial to the interests of the United States for him to be given a passport to go abroad the second time?

Mr. CHAYES. Well, I think that is correct without knowing any more about what he intended to do this time on his travels abroad.

You have got to remember that the discretion that the Secretary can exercise under 51.136, is as the Supreme Court said in the Kent case, a limited discretion, although it is phrased in very broad terms.

For example, we have people who are going abroad all the time and making the nastiest kinds of speeches about the United States, or who go abroad for political activity that is completely at odds with the policy of the United States, and may be even directed against our policy. But we could not deny a passport on the grounds of political activities, political associations, speech, things of that kind. So the Kent case says, as I read it and as most others do. I think you have to, in order to apply this section, there are some fairly regular categories, fugitives from justice.

Mr. DULLES. Just one question. If there had been a lookout card in, and then you would reconsider the case in June 1963, when he applied, would you not then normally have notified the FBI and the CIA that here was a returned defector?

Mr. CHAYES. No.

Mr. DULLES. Who was going abroad again?

Mr. CHAYES. No; not unless the FBI and the CIA had asked us to notify them. However, what we might have done would be to use FBI facilities to make a further investigation of the situation. That is possible.

Mr. COLEMAN. Mr. Chayes informed us prior to the commencement of his testimony that he would have to leave at 4 p.m., but would return tomorrow morning to complete it. He will now be excused. Thank you, sir.

Mr. DULLES. Thank you very much.

TESTIMONY OF JOHN A. McVICKAR RESUMED

Mr. COLEMAN. Do you recall, Mr. McVickar, we were trying to determine whether Mrs. Oswald came into the Embassy in July or in August 1961, and you said that if you had an opportunity to look at the State Department file that you might find something which would aid you in recollecting.

Have you had such opportunity.

Mr. McVICKAR. Yes; I have. I observe two items in here. There is a despatch prepared by Mr. Snyder which says that Mrs. Oswald was expected to come in very shortly. This despatch was prepared I believe on the same day that Mr. Oswald was in the office.

Mr. COLEMAN. Is that despatch dated July 11, 1961?

Mr. McVICKAR. Yes.