

Mr. COLEMAN. Commission Exhibit No. 943, which is a copy of the telegram from John E. Pic to Lee Oswald in care of the American Embassy in Moscow. Representative FORD. It may be admitted.

(The document referred to, previously marked as Commission Exhibit No. 943 for identification, was received in evidence.)

Mr. COLEMAN. Commission Exhibit No. 944, which is the Operations Memorandum, dated August 28, 1961.

Representative FORD. It may be admitted.

(The document referred to, previously marked as Commission Exhibit No. 944 for identification, was received in evidence.)

Mr. COLEMAN. Commission Exhibit No. 945, which is a photostatic copy of the handwritten notes which Mr. McVickar made when he interviewed Marina Oswald in the Embassy on July 10 or July 11, 1961.

Representative FORD. It may be admitted.

(The document referred to, previously marked as Commission Exhibit No. 945 for identification, was received in evidence.)

Mr. COLEMAN. Commission Exhibit No. 959, which is a copy of the petition to classify status of alien for issuance of immigrant visa filled out by Lee Oswald on behalf of Marina Oswald in July 1961.

Representative FORD. It may be admitted.

(The document referred to, previously marked as Commission Exhibit No. 959 for identification, was received in evidence.)

Mr. COLEMAN. And also Commission Exhibit No. 958, which is the memorandum of Mr. McVickar, dated April 7, 1964.

Representative FORD. It may be admitted.

(The document referred to, previously marked as Commission Exhibit No. 958 for identification, was received in evidence.)

Representative FORD. Are we going to admit as exhibits this State Department answer?

Mr. COLEMAN. Yes; I thought when we finished with Mr. Chayes then we will offer all the exhibits, and during that time I was going to identify the State Department earlier memorandum and the other documents.

Mr. DULLES. All this will then go in.

Mr. COLEMAN. Oh, yes; that is all going in.

Representative FORD. I think it is well to get that one document paraphrased, but I think from what Mr. Chayes said the other one, there shouldn't be any problem.

Unless there is something else the Commission will recess until 9 o'clock tomorrow morning.

(Whereupon, at 6:20 p.m., the President's Commission recessed.)

Wednesday, June 10, 1964

TESTIMONY OF ABRAM CHAYES, BERNICE WATERMAN, HON. DEAN RUSK, SECRETARY OF STATE, AND FRANCES G. KNIGHT

The President's Commission met at 9:10 a.m., on June 10, 1964, at 200 Maryland Avenue NE., Washington, D.C.

Present were Chief Justice Earl Warren, Chairman; Senator John Sherman Cooper, Representative Gerald Ford, and Allen W. Dulles, members.

Also present were J. Lee Rankin, general counsel; William T. Coleman, Jr., assistant counsel; W. David Slawson, assistant counsel; Thomas Ehrlich, special assistant, Department of State; Leon Jaworski, special counsel to the attorney general of Texas; Robert D. Johnson, Legal Department, Passport Division, Department of State; and Charles Murray, observer.

TESTIMONY OF ABRAM CHAYES RESUMED

The CHAIRMAN. The Commission will come to order. Mr. Chayes is on the stand. Mr. Coleman, you may continue the examination.

Mr. COLEMAN. Mr. Chayes, at the adjournment of your testimony yesterday, we were talking about section 51.136, State Department regulations dealing with the issuance of passports.

Mr. CHAYES. Yes; Mr. Coleman.

Mr. COLEMAN. Could you tell us the circumstances in which the State Department feels it can refuse a passport based upon the regulations?

Mr. CHAYES. Yes; there are some fairly regular categories of refusals under that section. The first is a violation of a travel restriction. As you know, the section has from time to time placed certain areas out of bounds for travel by U.S. citizens without a specially validated passport.

I think, yesterday, Mr. Dulles read into the record, from the Oswald passport, the then applicable area restrictions. And if a person having a passport violates these restrictions, let's say travels to Communist China without a specifically validated passport, we regard that as warranting the withdrawal of the passport under section 51.136.

Now I have to say that I think in one case, the case of William Worthy, a withdrawal of a passport under those circumstances was sustained. However, when he later traveled without a passport, and then reentered the country without a passport, which is a violation of the passport laws as they read on the books, he was indicted and prosecuted in the district court, convicted, and on appeal the conviction was reversed on the ground that it was unconstitutional to make reentry, without a passport, an offense. That case has not been appealed to the Supreme Court.

Mr. COLEMAN. Is that the case that was in the Fifth Circuit?

Mr. CHAYES. I think so.

Mr. COLEMAN. It came up from the Federal District Court in Florida?

Mr. CHAYES. New Orleans, it came up from New Orleans.

Mr. DULLES. This applies to American citizens of course?

Mr. CHAYES. American citizens. Only American citizens can get passports. When we are dealing with aliens, we are in the visa area.

Mr. DULLES. Yes.

Mr. CHAYES. Now the travel restrictions, the area restrictions are under attack in a number of other cases, that come up in different procedural ways. But we have in the past, and will continue to do so until we are told otherwise, withdrawn passports under 51.136 from people who have violated travel restrictions.

The next category is fugitives from justice. There if a person is under indictment or even if there is a warrant for his arrest, certainly if he has been convicted, we will not issue a passport to him to permit him to depart. In the Kent case, the Supreme Court recognized this as one of the well-defined categories in which the Secretary's discretion to withhold a passport was confirmed by practice and experience.

As I say, the fugitive from justice category is one that operates on the whole within the United States. If a man is abroad and is indicted, we will not ordinarily withdraw his passport abroad or mark his passport good only for direct return to the United States. We never articulated the rationale for that, but essentially it doesn't really fall within our notion of (a), (b), or (c) of 51.136, and our motion is that the remedy against persons abroad who are charged with crime is extradition rather than the use of the passport power to get them returned.

Now, a third category is passport fraud, where someone has in fact acted in one way or another to make fraudulent use of the passport itself. We have withdrawn passports under those circumstances.

Then there is a miscellaneous category, which doesn't include too many. For instance, in one case a man was convicted in the Federal Republic of Germany for attempting to acquire knowledge of state secrets. Another man had been involved in a number of fraudulent schemes in various countries, issued worth-

less checks. He was arrested in Australia for fraud and subsequently convicted and sentenced to jail there.

Another one paid for his passport renewal with a worthless check. That in itself is perhaps in the passport fraud category. Left the United States paying for his passage with a worthless check. He represented himself to be an employee of the U.S. Government on leave and continued to put out worthless checks, using his passport for identification. We have summarized these actions under these categories in a letter which I sent to Mr. Rankin, on June 6. It contains a list of the actions in these categories in the years 1962-64—through March of 1964.

Mr. COLEMAN. Can the record note that the original of that letter has been given Commission Exhibit No. 949?

Mr. CHAYES. Very good. Now it should be said that there is one category here that does not appear in the list that we have attached to the letter, although it is explained in a paragraph, the third paragraph of the letter, and that is in fact the category that Oswald himself was in, in 1961, when he wanted to come back. That is where there is a person abroad who is in some kind of trouble at the time, or who is anxious to leave where he is and come right back to the United States, as Oswald did.

We issue a passport as the regulation says, for direct and immediate return to the United States. And that action is taken under section 136. But since it is taken abroad, heretofore there has been no central list of the actions of that kind in the Department's files. As a result of the Commission's inquiry a list is being maintained from here on out, but it is not possible without going through a million passport files, to find when action of that kind was taken in the past. I know of a number of cases of my own knowledge where this happened.

For example, one or two, a man and his wife, of the students who went to Cuba last year went on to Morocco, and got into trouble with the Moroccan police and so on, and we marked their passport for immediate return. I am told that the names of those two students are listed under category (a), in 1963 on the list. Their passports were withdrawn because they had violated the travel restrictions, but also, for most of the students we didn't do anything about the passports until they got back to the United States when we withdrew them, but in their particular case, because they got in trouble with the Moroccan authorities and were pretty obstreperous about it, we marked their passport good only for direct and immediate return.

Another case that I remember, in my own experience, was a case of a notorious gun runner in the Congo, who was running guns to the Katangese rebels during the Congo operation, and he was apprehended by the Congolese authorities. We didn't want him to be tried, and the Congolese didn't want to try him if we didn't want him to be tried. On the other hand they didn't want him around there either.

So we marked his passport good for direct and immediate return. In other words, those cases are cases where you can find either some form of trouble which makes the applicant, the passport holder want to go directly home, and us want to make him go directly home, or some very immediate and direct relation to our relations with that particular country. And as I said yesterday, we have taken the view that it can never be done solely, because of political activities or political associations or the exercise of speech. It has to be something beyond that.

Mr. COLEMAN. I take it that judgment is effected in part by the holding of the Supreme Court in the *Kent v. Dulles* case.

Mr. CHAYES. Yes; it derives from that. The *Kent* case said that the Secretary was not entitled without statutory authorization, at least as we have read the case, was not entitled in the absence of statute, to withhold a passport on grounds related to political association and beliefs.

Mr. COLEMAN. Yesterday you testified that you had reviewed all of the State Department files dealing with Oswald, and you paid attention to those files as they existed as of June 1963, and that it was your judgment that the Passport Office could not have refused to issue a passport to Oswald in June 1963.

Mr. CHAYES. It is my judgment that the passport was properly issued in June of 1963; yes, sir.

Mr. COLEMAN. You know that in October 1963, the Passport Office received information that Mr. Oswald had been at the Russian Embassy in Mexico. Would that information have changed the result at all, in your judgment?

Mr. CHAYES. No, sir; that information by itself could not have affected the result. As a matter of fact, as you know, the passport application itself indicated that Oswald wanted to travel to Russia, and the mere fact that he had gone to the Russian Embassy in Mexico, would not of itself have been a disqualifying event.

Representative FORD. Even despite the past history?

Mr. CHAYES. I think that is correct. In other words, by itself it doesn't disqualify the applicant because there is no suggestion here that even—first of all could I review the message that came in on October 16, to the Department. I think I may have it in my own document here.

(Discussion off the record.)

Mr. CHAYES. All that is suggested here is that he was in the Embassy and he contacted the Soviet Embassy about a telegram which had been sent. Now, there is nothing from that, I don't think, that adds anything or permits us to infer in any way that his travel abroad would be inimical to the foreign policy of the United States or otherwise harmful to the national interest, or that he was going abroad to violate U.S. law.

I think this can be said, and I don't think it should be said in criticism of the people who made the decision at the time, because I think the decision at the time and on the basis of our procedures and on the basis of our experience was proper.

Mr. DULLES. May I ask at that point—

The CHAIRMAN. May he finish? He hadn't finished that statement.

Mr. CHAYES. I was going to say looking at it in retrospect and knowing what we now know, it seems to me it would have been desirable to have had some means for triggering off a further investigation of this kind, of a passport applicant, or a passport holder, on the basis of that kind of information. If the further investigation had turned nothing else up, it seems to me clear that he was entitled to a passport on the state of the file as it then existed.

The only issue is whether the state of the file showed enough to start or to instigate a further investigation of the purpose and plans for his travel abroad. What you could have done is hard to speculate about. You might have called him in and asked him about his travel plans. You might have made inquiries among friends and relatives about his plans, and so on, and that might have turned up evidence that would have suggested that his proposed travel abroad fell within one of these categories and it would have warranted the withdrawal of his passport.

Because of our review of these procedures, in the light of what happened, as we said yesterday, we now have established a defector category in the lookout card file, and people of this kind who apply for passports now won't get them routinely, even though the state of the file as it then exists would warrant the issuance of a passport. But there will be a review of the file and any necessary further or any indicated further investigatory steps, if a defector does apply for a passport. You say why didn't you have those procedures before?

Why did it take this kind of a thing to do it? To stimulate a new procedure? The answer is simply that nothing in our past experience at all suggested anything like this kind of trouble. Of course the ultimate result, the ultimate assassination wasn't related in any way to the passport decisions. But it has drawn our attention more closely to the problem of defectors in this connection.

I should add one general point, and that is when we talk about passports in this context, we tend to emphasize the very, very few bad apples of one kind or another, and they are very few, who are not entitled to passports. But the fact is that the function of the Passport Office is not to deny passports to people. It is to get passports to people. The Passport Office puts out 1 million passports a year. The great overwhelming majority of those people are ordinary American citizens who want to get abroad for business or pleasure, and the

ability of the Passport Office to furnish them with passport facilities, in very short order, is of tremendous service, and tremendous convenience to them.

That is the primary function of the Passport Office. It has of course the duty of administering these denial and withdrawal statutes. But that is not its primary function. Its primary function is to get passport facilities to the great bulk of Americans who have legitimate business abroad. It is dealing with a million or more applications a year, and millions of bits of information, like this piece we have just been talking about. I think when you see things in that perspective it is perhaps easier to evaluate some of the decisions and some of the actions taken here.

Representative FORD. But I think you have to turn the coin over. There are millions of passport applications, or a million plus. But there are only very few such as Mr. Oswald, or people in the defector category. So the problem there I don't think is as serious an administrative one as you would tend to imply.

Mr. CHAYES. No; I am not suggesting it is, and in fact I think we have by a relatively simple administrative action taken the steps which will assure that in the future applications from this kind of person will receive a more elaborate review.

All I am saying is that if you ask why that wasn't done before, it is because the experience didn't indicate that there was a problem, and that is because that isn't the main business of the Passport Office. Its main business is not the business of a security agency which goes around focusing or is supposed to be focusing on security problems. Its main business is that of a processing agency.

Representative FORD. But we have vast resources of people in the Government who are, or who do have security as a main business, and it seems to me that it is vitally important that those people and those vast resources somehow tie into the administrative process of denying or refusing passports under unique circumstances.

Mr. CHAYES. They do. That is any of those agencies can levy a request on the Passport Office for notification when a passport is issued to any person. If the FBI or the CIA or the Secret Service or any other security or law enforcement agency is interested, or the U.S. court, the Federal district court or the district attorney's office, any agency of that kind which is interested in knowing whether a particular person has applied for passport facilities may levy a request. That request would be serviced by placing a lookout card in the file which would then automatically involve notification of that agency when that person applied for a passport.

Mr. DULLES. Isn't there a broader point than that though, because the security agencies don't know in all cases what requirements to levy. Now if in this case, for example, in the Oswald case, if there had been this lookout card, and you had notified let's say the FBI and the CIA that the former defector had applied for a passport and might be going abroad, then they can put in a card, and then they can be helpful in following that situation abroad. But they don't know, if they don't know that Oswald is going to apply, they have no way of putting in their requirements.

In certain cases they can. But in a great many cases they cannot.

Mr. CHAYES. Well, let me make two points. First, now under the new memorandum as to defectors, the FBI and CIA and other security agencies will automatically be notified whether they have made a request or not.

Second, as to most people who have lookout cards, the FBI and the other security agencies couldn't care less about whether they apply for passports. Most of the lookout cards relate to loss of nationality, not security issues at all. So that there is a problem both ways. We can't, the Department can't—it could notify the security agencies whenever a lookout card, a person as to whom there was a lookout card applied for a passport.

But in 9 out of 10 cases that would be so much waste paper for the security agency. There has to be a reciprocal effort at cooperation. There is a reciprocal effort at cooperation, and by and large it works very well. By and large when the FBI is interested in somebody, it tells the Passport Office it is interested in them and they want to know if he comes for a passport.

By and large the Passport Office knows people whom the FBI is interested in, and when they apply for a passport or something like that, there is an exchange of information. It is interesting that this CIA report got to the Passport Office. It is a matter of routine. All security reports of this kind that originate in the security agencies, copies go to the Passport Office and are put in the passport file. So that there is a great deal of coordination. But in the nature of things it can't be a perfect system when the two kinds of responsibilities are differently allocated, the security responsibility in one case and the other responsibility in another.

Representative FORD. When did the CIA report of the Mexican trip get into the passport file?

Mr. CHAYES. It is not clear to me here. It is probably about 10-11-63 is what it looks like to me from the date, October 11, 1963. But on the other hand, note that this report—we pay a great deal of attention to the fact that it got into the passport file. But the report itself originated in the CIA.

Copy of it went to the FBI. In other words, all the security agencies themselves knew of this fact. As I say, myself, I think it did not change the character of the file so as to warrant the withdrawal of a passport from the passport administration point of view. But even if we had taken steps to withdraw the passport, it is hard to see how it had any impact on the result at all.

Representative FORD. Leave aside the tragic result. Under your current procedures if such a situation developed, would there be an administrative step taken to try and retrieve the passport?

Mr. CHAYES. Under current procedures what would have happened in June, when he first made application, was that there would have been a lookout card in the file, and before automatically issuing a passport there would have been a review of the file and some further investigative steps. Now that investigation would have inquired into the purpose of travel abroad, and a determination would then have been made whether the purpose of travel on the basis of the file—and remember when we do deny a passport we are then subject to hearing, administrative hearing and judicial review, and we have got to make the denial and the evidence on which it is based stand up in those circumstances—but if we determined that there was a basis then for denial we would have denied it then. So the question wouldn't have arisen later in October. If at the time in June we had determined after investigation that there was no basis for denial, then the passport would have been issued, and if a matter of this kind had come in, there would have been, I suppose, an administrative determination to decide whether, in the light of the earlier investigation, whether this new information warranted any further action or further investigation.

Representative FORD. Would it be your judgment that the June determination, using your new criteria, would have resulted in a refusal of this passport?

Mr. CHAYES. Not on the basis of the file as then existed. It is hard to answer your hypothetical question because under our new procedures there would have been a further investigation that would either have turned up some additional material, or would have left the file in its present state. If there was no additional material suggesting the evil purposes or improper purposes for travel, the decision to give a passport would have been the same as it was on the file. On the basis of the file, the decision was properly made.

Representative FORD. Would you in the June determination have had the files from the Department of State which showed that on October 31 Oswald walked into the American Embassy.

Mr. CHAYES. Oh, yes.

Representative FORD. And said "I, Lee Harvey Oswald, do hereby request that my present citizenship in the United States of America be revoked."

Mr. CHAYES. Oh, yes; the entire file.

Representative FORD. And would it also have had the one of November 3d where he said "I, Lee Harvey Oswald, do hereby request that my present United States citizenship be revoked"?

Mr. CHAYES. Yes; it would have had all of that.

Representative FORD. It would have had all of that?

Mr. CHAYES. Yes.

Representative FORD. And it would have had the —

Mr. CHAYES. But it would also have had the determination that he had failed to expatriate himself and that he was an American citizen. I, myself, doubt that an abortive attempt at expatriation would, certainly without more, warrant the denial of a passport to a person who was in fact a citizen.

Representative FORD. And a person who in his application in June of 1963, indicated he wanted to return to the Soviet Union?

Mr. CHAYES. One of the places he wanted to travel to was Russia. I think if you add those two together, and all you have is his intention to travel to Russia, and the fact that he made an abortive attempt to expatriate himself in Russia sometime before, I don't think you have the basis for a finding in terms of the regulation that persons, activities abroad would "violate the laws of the United States, be prejudicial to the orderly conduct of foreign relations or otherwise be prejudicial to the interests of the United States."

I think you have got the basis for a finding that this is not a very attractive fellow, but I don't see how you can bring him within any of those categories on the basis of the evidence in the file.

Mr. DULLES. Is it not correct though that when you were trying to get the visa for Mrs. Oswald, you made a very strong case that his continued residence in the Soviet Union was harmful to the foreign policy of the United States, or words to that effect?

Mr. CHAYES. Well, we were very anxious to get him back and I think that is right. In a sense we had him on our hands then. We were in discussion with him. He was in the Embassy and he was very directly our responsibility, so that anything that he did or that went wrong during that period, he was under our protection and we were necessarily involved.

If he went back as a tourist and got into some trouble of some kind or another, we would then have the choice I think to get involved, and we might or might not. The situation it seems to me is different when a fellow is already in trouble and you have taken steps to put the U.S. Embassy in the picture. Then you have a special responsibility if anything goes off the track and you want to take whatever steps you can to shorten the time in which you are bearing that special responsibility.

Representative FORD. I think, Mr. Chayes, however, you are saying or you are inferring that it was a clear-cut decision back when it was determined that he had not given up his United States citizenship.

Mr. CHAYES. It was in July of 1961, when his passport was renewed. We couldn't have had a passport renewal if there weren't such a determination, and in fact there was such a determination.

Representative FORD. There was such a determination?

Mr. CHAYES. Yes, sir.

Representative FORD. That is correct, but it was not a clear-cut case when you look at the steps that he, Lee Harvey Oswald, tried to take.

Mr. CHAYES. Well, I don't know—

Representative FORD. It was a determination, but it was not one that was absolutely all black or white.

Mr. CHAYES. No, but once you make the decision on the basis of whatever is before you, he is either a citizen or he is not a citizen, and I think he is a citizen, or was a citizen.

Representative FORD. But the fact that the matter was administratively investigated ought to, I would think under your new regulations, when he applies to go back to the country where he originally sought citizenship, there ought to be some real investigation, and I am surprised that you say that under those regulations, under these facts, he probably would still be given a passport.

Mr. CHAYES. I agree with the first part of your statement, that under the new regulations, as we have developed them in the light of hindsight, there would be a further investigation.

Representative FORD. But you also said—

Mr. CHAYES. And I think there should.

Representative FORD. He would then be given his passport again despite the new regulation,

Mr. CHAYES. But if the investigation turned up no more than what was in the file with respect to his purposes for travel abroad, if we didn't have some hard

factual evidence to support a finding that his travel would fall within one of these three categories in 51.136, then the passport would be issued. We have to start from the proposition that the Supreme Court has said that the right to travel is a part of the liberty protected by the fifth amendment, and that the Secretary cannot withhold a passport arbitrarily. Now we have taken the position, I think properly so, that in order to justify withholding under one of these three subsections of 51.136, there has to be a real and concrete showing that the travel either would violate the laws of the United States, be prejudicial to the orderly conduct of foreign relations, or otherwise be prejudicial to the interests of the United States.

Add to that that you can't make that finding on the basis of, let's say, political activity abroad. Suppose we could show, for example, that Oswald was going to the Soviet Union to make a speech before the Supreme Soviet telling how terrible things were in the United States and how bad the U.S. policies toward Cuba were, for example.

Representative FORD. Would that preclude him from getting a passport?

Mr. CHAYES. No. We have people abroad who are doing that all the time. We have got Malcolm X traveling across Africa making one speech after the other about how terrible our policies on the race question are. And it is perfectly clear to me on the basis of the cases—although we might get a little more information in the next couple of weeks, we have a case before the Chief Justice now—but it is clear to me on the basis of the cases so far that if what is involved is speech, no matter how hostile it is to our policies or our objectives, you can't deny a passport for that.

Representative FORD. What about Oswald's statements to either Mr. Snyder or Mr. McVickar that he as a former Marine was going to give information he had acquired as a former Marine to the Soviet authorities.

Mr. CHAYES. That is, of course, a more difficult one. Of course we know he didn't have very much information.

Representative FORD. No, but he was a Marine and he had been trained as an electronics radar specialist. He said he was going to give this information.

Mr. CHAYES. But the second point is that on the whole these criteria look to the future. They look to the purpose of this travel. Now if he had committed an offense against the espionage laws or whatever it was abroad on his past performance—

Representative FORD. This isn't a question of freedom of speech.

Mr. CHAYES. No; I understand.

Representative FORD. This is a question of giving away Government secrets.

Mr. CHAYES. No, no; I don't equate the two at all. But that kind of thing I think would have been the subject of investigation under our new procedures, and might have turned up something. I think if you could have found, for example, that he did in the past give information of this kind, you might be in a different position.

Representative FORD. Was any investigation of that aspect made at the time?

Mr. CHAYES. Yes.

Representative FORD. When he came back and asked for the renewal of his passport?

Mr. CHAYES. No; but what happened was when he returned to the United States—first of all the FBI was kept constantly informed, and as you know kept looking into the Oswald situation periodically from the time he came back.

Mr. COLEMAN. And those reports were in the passport file.

Mr. CHAYES. They were in the passport file, and immediately after he came back, he was interviewed very fully by the FBI, and I think as I recall the file—I haven't reviewed it recently—I think he was questioned on this very point by the FBI, and he said he hadn't given any and they weren't very much interested in it. And the FBI apparently was satisfied with that. They made no further move against him on that basis.

So that we did have whatever information there was.

As I say, although this regulation looks to the purpose of the forthcoming travel and not to the past travel, nonetheless I think it is perfectly appropriate to make inferences on the basis of what he did before. We refused to issue a passport to Worthy when he would not give us assurances that he would observe

the restrictions, because on the basis of his past conduct, we were prepared to infer that in the absence of such assurances, he might well disobey the restrictions.

Mr. Ehrlich points out to me that on May 16, 1962—this is one of several such memorandums—our security office sent to the FBI with copies to the other security agencies a memorandum on the subject of American defectors, and their status in the U.S.S.R., and there is a summary of that which covers Oswald. This was just before he came home, I guess.

Mr. COLEMAN. Will you indicate what file that is by the number?

Mr. CHAYES. This is the folder II in the numbering that we gave you, and it is document No. II-6(4), in our number system.

Mr. DULLES. Could you read or indicate what that says about Oswald?

Mr. CHAYES. Oh, yes; it just summarizes his status as of that date and it says:

"Lee Oswald: It has been determined that Oswald the ex-Marine is still an American citizen. Both he and his Soviet wife now have exit permits and the Department has given approval for their travel with their infant child to the U.S.A. There is a problem with his wife, however, in that SOV in the Department is trying to get a waiver of 243(g), which requires that Oswald's wife pick up her visa for entry into the U.S.A. in Western Europe. As soon as this question has been settled, they will be free to travel."

Mr. DULLES. May I clarify one other point?

Mr. COLEMAN. May I ask him a question about that? In that file Mr. Chayes isn't there also another FBI report dated August 30, 1962, which indicates that Lee Harvey Oswald was reinterviewed by the Bureau agents on August 16, 1962, with respect to contacts he had made at the Soviet Embassy in Washington?

Mr. CHAYES. I would have to review the file itself, for the specific details as to dates and so on. I do remember that the FBI in its subsequent inquiries talked to him about his contacts with the Soviet Embassy. He had some, of course, in connection with his wife. They asked him whether he had had any other contacts with the Soviets and so on.

Mr. COLEMAN. Mr. Dulles, you had a question.

Mr. DULLES. This apparently just went to the Bureau, did it not? Did it go to the other agencies?

Mr. CHAYES. I think the——

Mr. DULLES. Yes; it went to the CIA. Copy went to the CIA. I would like to clarify one point. It is not quite clear to me what information about Oswald was in the passport files as distinct from the Department files. I didn't realize that there was much about Oswald in the passport file itself in the absence of, what do you call it, a check——

Mr. COLEMAN. A lookout card.

Mr. DULLES. A lookout card.

Mr. CHAYES. No; the passport file, I am holding it up.

Mr. DULLES. It is a big file.

Mr. CHAYES. It is roman numeral X and it contains in our numbering system 80 documents or something like that.

Mr. DULLES. That was in the passport file itself?

Mr. CHAYES. In the passport file itself. A large amount of the security material is there, and of course the security file would have been pulled too whenever the passport file was reviewed.

Mr. DULLES. Do you know whether that file was reviewed before the issuance of the passport in June 1963 or not?

Mr. CHAYES. 1963.

Mr. DULLES. I mean 1963?

Mr. CHAYES. It was not.

Mr. DULLES. It was not?

Mr. CHAYES. It was not, because what happened then was that the Telex came in from New Orleans. The only thing that you do is go to the lookout card file. There was no lookout card. In the absence of a lookout card, routine approval goes out and the passport was issued from the New Orleans office. If there had been a lookout card, then the lookout card would have sent them back to the file. There was no lookout card because the file as it then stood didn't have anything in it that warranted the denial of a passport, and under our then

procedures we didn't have a flag for people of this kind to stimulate a further inquiry or investigation.

Mr. DULLES. Isn't it usual in issuing a passport though to look, in addition to the lookout card, to look at the file you have on the individual?

Mr. CHAYES. No, sir; unless there is a lookout card, the passport is issued automatically on the basis of the local agency's determination of citizenship. There has to be evidence of citizenship.

Now let me say there are different ways in which this can come up, because for example a man may apply for a passport before a clerk of the court and that application would be forwarded to the Department. But even then the Department adjudicator would first look at the lookout file. If there is no card in the lookout file, all he would do is determine whether the application was complete, and whether satisfactory evidence of citizenship was presented, and whether on the face of it, you know, the oath was properly taken or any supplementary questionnaire resolved doubts.

And then would issue the passport. If there were a supplemental questionnaire or something like that, then he would probably go to the file.

In our agency there are special passport issuing offices, New Orleans is one of the big ones, we have one in New York, we have some others, there the system is very routinized.

Daily, and sometimes more than once daily, the agency will telegraph by Telex the name, date, and place of birth of its applicants, the people who have come in that day to make an application.

Mr. COLEMAN. Could we mark as Exhibit No. 952 the teletype that came in on Oswald. I think that would help the Commission to indicate how it comes in.

(Commission Exhibit No. 952 was marked for identification and received in evidence.)

Mr. CHAYES. Yes.

Mr. COLEMAN. You had better explain the "NO" which is beside Oswald's name.

Mr. CHAYES. Yes; well here you see the Telex coming in from New Orleans, and there are 25 names on it with date of birth beside each name, and it is interesting that opposite Lee Harvey Oswald is capital letters "NO" which might be rather interesting except that it stands for New Orleans, and every Telex that comes from New Orleans has that mark on it. It is covered by our abbreviations manual, and one of your investigators made, of course with our knowledge in our office, but not in the Passport Office, a surprise visit to the Passport Office to make sure that they were, in fact, putting NO on these things, and they are.

That is the designation of the office.

What happens is when these 25 names come in, the lookout file is searched for those names, and if there is no lookout card, then a responding Telex is sent back. It says here 561, OW561. That is this one, "All okay." OW is office to Washington. WO is Washington to office. So the control number of the outgoing from Washington is WO38, and it says that on your OW561, all the names were okay.

Now it is interesting, the Telex came in and it is stamped June 24, 4:19 p.m.—June 24, 1963. It went out June 25, 10:57 a.m. and these 25 people all got the passports.

Now it is only on the basis of that kind of a system that you can get out a million passports in a way that really provides first class service to the American people. Miss Knight in her administration of the office, which extends back into the previous administration, has cut down the time from something like 2 weeks to 24 hours in most of the cases.

Mr. DULLES. Could the Passport Office itself prepare a lookout card on its own initiative on the basis let's say of a file like the Oswald file?

Mr. CHAYES. It would have prepared a lookout card on any person as to whom the file suggested that there were grounds for withdrawal, or denial of the passport.

Mr. COLEMAN. Mr. Chayes, at this point could we mark as Commission Exhibit No. 951 the existing standard operating notice which was in effect on February 28, 1962, of the Department with respect to the lookout card system?

(Commission Exhibit No. 951 was marked for identification and received in evidence.)

Mr. CHAYES. Yes.

Mr. COLEMAN. Would you describe Commission Exhibit No. 951?

Mr. CHAYES. This is the standard operating notice which covers the categories, and if you look at them they relate each category to a ground of potential disqualification.

Mr. DULLES. As of what date does this read?

Mr. COLEMAN. February 1962.

Mr. CHAYES. Now we have added by the Schwartz to Knight memorandum of recent date a defector category which differs slightly from the others in that in all of the other categories something in the file already suggests that the person may be ineligible for a passport. The defector category would simply stimulate further investigation in the case of application by such a person, and would automatically trigger notification of the other security agencies.

Mr. DULLES. How do you define the defector category, do you know?

Mr. CHAYES. I think we have the——

Mr. DULLES. Would that have covered Oswald? That is what I am interested in.

Mr. CHAYES. Yes; well, it was in fact designed to cover Oswald, so that——

Mr. DULLES. It probably would have.

Mr. CHAYES. It would, but defector is not a statutory term or one that has real technical significance. I have said in my own discussions with people who have asked for guidance in administering this memorandum and others that it is not necessarily related to an attempted renunciation of citizenship or anything else. It involves the kind of thing that if there were a war on would be treason.

In other words, it involves something like aid and comfort to the enemy or attempted aid and comfort to the enemy. The only thing is the enemy isn't technically an enemy because we are not at war. But that requires some judgment to decide which ones you put in and which ones you wouldn't.

Mr. DULLES. There is a definition we could get though and put it in the record.

Mr. CHAYES. No, no.

Mr. DULLES. There is no definition?

Mr. CHAYES. If you look at the Schwartz memorandum, it says that the Oswald case highlights the necessity of maintaining up-to-date lookout cards in the files of the Passport Office, "for persons who may have defected to Communist countries or areas or redefected. Subsequent to the Oswald incident, I requested the Department of Defense to furnish this office with identifying information on military personnel in this category. Information with respect to these military personnel has now been received from all three services and copies are attached.

"On the basis of the attached information, please bring up to date the lookout cards of the Passport Office."

And then it simply lists the names of the people that came over from the military.

Mr. COLEMAN. Mr. Chayes, is the document we have marked Exhibit No. 951, the standard operating notice as of February 28, 1962?

Mr. CHAYES. Yes.

Mr. COLEMAN. In the attachment in category K you have "Known or suspected Communists or subversives" as a category on which there should be a lookout card.

Mr. CHAYES. Yes.

Mr. COLEMAN. Wouldn't Mr. Oswald have fallen in that category, based upon the passport file?

Mr. CHAYES. I don't think so. There is nothing to indicate that he had ever been a member of the Communist Party. Maybe you would have regarded his Fair Play for Cuba activities as falling within the notion subversive. I have to say that I think K dates from an earlier period before the Kent case, in which we were denying passports very broadly to a category of people who might be called subversive. Rockwell Kent himself, Brehl, the other defendant, people as to whom there was no real membership information, but who had generally, what had been thought of as having subversive views or connections.

With the Kent and Brehl cases, it may well have been that that category fell into some desuetude. I think it is worth inquiring of Miss Knight whether that category was maintained after the Kent case, or whether we simply took those out.

Mr. COLEMAN. In the Commission Exhibit No. 951 you also have another category, category R, which reads: "Individual's actions do not reflect to credit of U.S. abroad." Would you say that based upon the Oswald file as it existed in the Passport Office as of June 1963, that he would not fall in that category?

Mr. CHAYES. I don't think so when you are thinking about what this means. I don't think one person in a billion abroad knew Oswald or had any such experience with him or anything else. This isn't really a reflection on the United States. I suppose if you construed it that way, if somebody got drunk on the Champs Elysees he ought to be in that category. I don't think you can really construe it that broadly. It has to mean I am sure someone who has a really notorious course of conduct like the kind of thing that I summarized for you on the three people in the so-called other category when we were talking to earlier—my letter of June 6.

Representative FORD. If you really are equating someone who is intoxicated in Paris with Oswald—

Mr. CHAYES. No; I am not equating them in the quality of their conduct, but for the purposes of this category "Do not reflect credit on the United States abroad" I think what that must involve is some very notorious course of conduct which a lot of people have had a chance to see, which has somewhat serious consequences of the kind that I summarized here "convicted for attempting to acquire knowledge of state secrets in Germany, fraudulent schemes, convicted for fraud," that kind of thing.

Here is a fellow who left a trail of bad checks, using his passport as identification and claiming to be a U.S. employee. All I am saying is that category R, although it is a catchall category, I would conceive is construed or should be construed narrowly.

Let me say further, I probably should not be testifying to this so much anyway because these categories are guidelines, are operational guidelines. They don't have legal consequences. And I think you ought to ask Miss Knight, who has the operational responsibility, whether the way I conceive this is correct. I may misconceive it, but I think in essence these categories are related to grounds of disqualification, and unless the conduct specified comes within the range of being a ground, a basis for disqualification, I don't think the lookout card would be made up.

Mr. COLEMAN. Don't you have a category X, which is called "catch card," denotes limited lookout validity, not necessarily refusal situation?

Mr. CHAYES. Yes.

Mr. COLEMAN. So perhaps Oswald could have been put in there, couldn't he, in that category, based upon the file?

Mr. CHAYES. It is possible, and I suppose that is exactly what we are now doing with defectors.

Mr. COLEMAN. Do you know what category—

Mr. CHAYES. I think you ought to inquire from Miss Knight about that.

Mr. COLEMAN. I also take it you wouldn't know what goes in categories O and P, O being "orange card, includes recent master list" and P being "project Carry."

Mr. CHAYES. I don't personally know at all.

(Discussion off the record.)

Representative FORD. Let me ask you this, Mr. Chayes. Were Oswald's various applications and various approvals ever handled as a special case as far as you know?

Mr. CHAYES. The only applications that were handled as a special case were the ones made in Russia for the return of his passport in the first instance, and then the renewal of his passport. Those were handled as a special case, both in the Embassy and in the Department.

Although I don't think very high ranking officers passed on them in the sense of Assistant Secretaries or something like that, nonetheless they were handled at very responsible levels in the Department. The political desk was consulted

as well as the Bureau of Security and Consular Affairs, and a very deliberate and special decision was made.

The subsequent application, the June 1963 application, was handled as a matter of routine.

Representative FORD. The application in the Embassy for renewal or reissuance, was that handled more expeditiously or less expeditiously than other defector or attempted defector cases?

Mr. CHAYES. I couldn't say. I couldn't say because I don't have any experience in it against which to measure it. As I reviewed the file it seemed to me to be a fairly normal kind of a file for a matter of this kind. When I say "this kind" I don't mean other defectors because I have never seen any of that.

But the reporting seemed full enough, and the response came back in time. But they didn't seem to be accelerated. There were always adequate supporting memorandums indicating consultation within the Department on broad enough basis.

Representative FORD. How long did it take from the actual time that he made the application in Moscow until it was finally approved?

Mr. CHAYES. He made the application on—

Mr. COLEMAN. This is the passport?

Representative FORD. Yes; in Moscow.

Mr. COLEMAN. He made it July 11, 1961. At that time Mr. Snyder returned to him his existing passport. The new passport, namely the one he got to travel back to the United States, was not issued until May 1962.

Mr. CHAYES. Yes.

Mr. COLEMAN. Though the instruction that it could be issued was submitted, sent forward to the Embassy, certainly by the end of 1961.

Mr. CHAYES. Yes; they were submitted subject to the Embassy being satisfied on certain points.

It ought to be stated also that, according to the record at least, the passport was returned to him, in July, July 11. It was marked at that time "good for travel only for direct return to the United States." But the purpose of returning it to him was so that he could apply to the Soviet authorities for an exit document, because he believed and our people in Moscow concurred, that he couldn't get an exit document unless he had a U.S. passport.

Representative FORD. An exit document for himself?

Mr. CHAYES. For himself.

Mr. DULLES. I note in this file, looking at your passport file which is very complete, that in his passport application of June 1963 he gives as his approximate date of departure, I assume departure from the United States, as October-December 1963. Is it the practice of the Department to issue passports for persons who are not leaving for 3 or 4 months?

Mr. CHAYES. Oh, yes.

Mr. DULLES. Anytime?

Mr. CHAYES. Anytime you want a passport, if you are entitled to one, you get it. And you keep it even after you return. I mean if he had used it, gone out of the country and returned, if it is still within what is it, the 3-year period now, the passport is a valid passport and he can depart again in the absence of some action taken looking towards withdrawal. So that these are ambulatory documents, and there are many people who just automatically—I don't say Oswald did this, obviously he didn't, but there are many people who automatically renew their passport when it runs out so that they always have travel documentation.

Representative FORD. Are there any other defector or attempted defector cases where the person came back and tried to get his passport? How long did it take in those cases to go through this process?

Mr. CHAYES. You mean comparable to the June application?

Representative FORD. No; I am talking of the Moscow application.

Mr. CHAYES. I think we did submit a report on that. Well, I am sorry, we didn't. We did inquire whether there were any defectors who were in the situation of the June application. We found that there was one, and he

was also issued a passport routinely. But I can supply for the record the information as to the others.

Representative FORD. I think it would be helpful.

Mr. CHAYES. You would like to know the time from application to grant of passport in the Soviet Union for defectors or attempted defectors who were trying to get back then to the United States?

Representative FORD. Yes; if we could have that for the record.

Mr. CHAYES. We will be very glad to submit it.

Mr. COLEMAN. Mr. Chayes, turning your attention to the question of the admission of Marina Oswald to the United States as a nonquota immigrant, I take it that since she was the wife of an American citizen, she would be entitled to nonquota immigrant status unless she was disqualified because she was a member of a Communist organization, is that correct?

Mr. CHAYES. Yes; unless she was subject to one of those disqualifications in 212(a) (28).

Mr. COLEMAN. Now the first decision that was made by the Embassy was that her membership in the particular trade union was involuntary, and therefore she was not disqualified?

Mr. CHAYES. That is correct.

Mr. COLEMAN. I take it you reviewed the record and you concur in that judgment?

Mr. CHAYNES. That is correct. It would also be made, and be made automatically in the case of persons belonging to trade unions not in leadership positions in the trade union, and where there is no external evidence of active participation, because membership in the union is a condition of employment in those places in the Soviet Union, and our regulations cover the point precisely.

Mr. COLEMAN. Now the other decision that was made was that the Department and the Immigration and Naturalization Service would waive the provisions of section 243(g) of the Immigration and Nationality Act which provision says that a visa could not be issued from Moscow because the Attorney General in 1953 had placed Russia among those countries that refused to accept Russian citizens that we wanted to send back to Russia.

Mr. CHAYES. Yes; 243(g) is a sanction which the act provides against countries, not against people. It is not a disqualification for a person. If 243(g) had not been waived, Mrs. Oswald would simply have gone to Rotterdam and gotten the same visa from our consulate in Rotterdam. It is a sanction against the country which is levied when, as you say, the Attorney General determines that the country refuses to accept people whom we deport who are their nationals. It gets back a little to the point you were making yesterday about what obligation one has to accept his own nationals back from another country.

Mr. DULLES. That is a general rule of international law, isn't it, you are supposed to do it.

Mr. CHAYES. Yes; as a general rule of international law I suppose one should accept his own nationals, but people who have expatriated themselves wouldn't be nationals and therefore we wouldn't have to take them back.

In any event—that is a little digression—but this sanction is a sanction designed to penalize a country which has refused to receive back its own nationals when they are deported from the United States. That sanction was brought into play by the determination of the Attorney General made on May 26, 1953.

Mr. DULLES. I wonder whether in addition to the information that Mr. Ford has requested, you could give us information, oh, say covering the last 5 or 10 years—

Mr. CHAYES. I think we have already.

Mr. DULLES. I haven't said what I want it on. With regard to the time that has elapsed between the application of a Soviet woman married to an American citizen, the time that is taken from her application to the time that that application has been favorably acted upon by the Soviet Union. In this case as far as I understand it, the Soviet Union gave permission for Mrs. Oswald to come either in December 1961 or January 1962, and that because of this particular

sanction you have just been discussing, it wasn't really cleared up until May. And therefore that the delay was in part a delay due to American regulations rather than to Soviet regulations.

Mr. CHAYES. Well, her processing in the Soviet Union from the time she first started to try to get back—

Mr. DULLES. That is it.

Mr. CHAYES. Until she got an exit visa was about 6 months. It was just under 6 months.

Mr. DULLES. Yes.

Mr. CHAYES. We have answered in our answers to your—

Mr. COLEMAN. It is a Commission Exhibit No. 960 which was just marked, where Mr. Chayes, under date of May 26, 1964, answered various questions which were asked, to determine whether there was anything unusual in the way that Marina and the Oswald applications were handled by the Soviet Union and we will make that part of the record.

(Commission Exhibit No. 960 was marked for identification and received in evidence.)

Mr. DULLES. Does that cover this particular point?

Mr. COLEMAN. It covers the point not for 10 years but for 3 or 4 years.

Mr. CHAYES. If I can read into the record this answer, it says—

Mr. DULLES. Which answer is that?

Mr. CHAYES. Question 3, attachment A.

The relevant part is "In the immediate post-war period there were about 15 marriages in which the wife had been waiting for many years for a Soviet exit permit. After the death of Stalin the Soviet Government showed a disposition to settle these cases. In the summer of 1953 permission was given for all of this group of Soviet citizen wives to accompany their American citizen husbands to the United States. Since this group was given permission to leave the Soviet Union, there have been from time to time marriages in the Soviet Union of American citizens and Soviet citizens.

"With one exception it is our understanding that all of the Soviet citizens involved have been given permission to immigrate to the United States after waiting periods which were in some cases from 3 to 6 months and in others much longer."

So that I think what Mr. Snyder said yesterday was that 6 months was par for the course. It wasn't an unusual delay, and it was fairly low as those things went, but not something that would give you any surprise. There were a number of other 6-month ones and there were some less.

Mr. DULLES. For our records I wonder if it would be possible to be a little more specific, I mean to furnish us information that would be a little more specific on this point, because it is very hard for us to tell of the numbers how many had less than 6 months and how many had more than 6 months.

That is the point that has been raised often you know in the press, and the charge has been made that this is very suspicious, that this was done so soon. I think our records ought to show a good deal of specification what that record is. I mean this is very helpful in a general way but it is not very specific.

Mr. CHAYES. We can do that. The further answer farther down on the next page, page 2, says for example that "In a most recent case of this type a Soviet woman married an American citizen in December of 1963 and received an exit visa about 2 months later."

Mr. DULLES. That is very helpful.

Mr. CHAYES. But we will get a detailed account for the Commission.

Mr. COLEMAN. Mr. Chayes, as I understand it, section 243(g) itself says nothing about the power of the State Department or Immigration and Naturalization Service to waive its provisions.

Mr. CHAYES. The State Department doesn't waive the provisions. I should start by saying that 243(g) is a section administered by the Justice Department and the Attorney General has primary responsibility for interpretation and administration. The Attorney General has from the beginning interpreted 243(g) as involving waiver power. I had never had occasion to examine the question at all until this matter came up, and I have made only a cursory examination, but I think the judgment is sound that there is waiver power under 243(g).

Mr. DULLES. May I just ask one question there. Our file that I have before me, and your very helpful paper—

Mr. COLEMAN. Commission Document No. 2.

Mr. DULLES. Commission Document No. 2 doesn't indicate really the basis on which the Texas authorities were holding up the visa. Does that appear anywhere in the record?

Mr. CHAYES. I don't know. It may appear in our attachment B answers. In essence it was that they thought this fellow had behaved pretty badly and he wasn't entitled to any special consideration.

Mr. COLEMAN. That is why at this time I would like to read into the record part of the regulation under which they will waive. It says:

"If substantial adverse security information related to the petitioner is developed, the visa petition shall be processed on its merits and certified to the regional commissioner for determination whether the sanction 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."

In other words, that since some derogatory information was in the file, and since Oswald was the petitioner, the initial decision made by the field officer of the Immigration Service was that the waiver should not be granted.

Mr. CHAYES. That is correct.

Mr. DULLES. I assume that that was motivated probably in one of the letters from the Texas immigration office to the Department of Justice or the Immigration Service here.

Mr. COLEMAN. Yes; well what happened, the record was referred to the immigration field officer in Texas, and the record was the history of the fact that Oswald had defected or attempted to defect, and the statements he had made. So they, therefore, made the determination on the field level that they would not waive the sanction.

Mr. CHAYES. That is right. The sanction was waived only after urging from the Department.

Mr. DULLES. Yes, that appears in this Commission Exhibit, this document that I have referred to. But we do not have in our files the letter of the Texas immigration authorities first refusing as far as I know.

Mr. COLEMAN. We will have that. That testimony will be put in through Miss James and Miss Waterman.

Mr. DULLES. They have that. All right, if they supply that, that will be adequate.

Mr. COLEMAN. So I take it that, in your judgment after reviewing the file, you think that the waiver should have been granted?

Mr. CHAYES. Well, I think there that it was not an improper exercise of discretion. That is correct.

Mr. COLEMAN. Just one other question. Is there any policy in the Department to delay the acceptance of attempted renunciation of citizenship?

Mr. CHAYES. Well, delay, I don't know that there is a stated policy that you put the person off. The general policy of the Department is first I think to discourage renunciations, to make it clear that the person has a right to renounce, but nonetheless to discourage them.

Secondly, the policy is that the consular officer should assure himself that the person seeking to renounce his citizenship is acting soberly, rationally, and with full awareness of the meaning and consequences of his act. And for that purpose the consular officer can use any means within his judgment. He can talk to the person. He could invoke a cooling-off period or ask a person to sleep on it or something of that kind. It seems to me how the policy is implemented is something for the particular case. If somebody came up in England and had just married an earl or something like that and said "I want to be an English citizen now" and was in full possession of her faculties apparently there probably wouldn't be much worry about it, although even then the consul would go through a routine of trying to assure that the person knew and understood fully what she was doing.

Mr. DULLES. Is that routine prescribed, should it be prescribed do you think now in the light of hindsight in this situation?

Mr. CHAYES. No; I think in each case it will depend so much on the situation with the particular person. If a person comes in and he is very agitated or something of that kind, it might dictate a totally different approach than a different kind of thing.

Mr. DULLES. Wouldn't it be useful though to give—I don't want to suggest what the Secretary of State should do in this, but in the light of this experience, would there not be some benefit possibly in giving people in the field the result of the experience gained in this particular case?

Mr. CHAYES. Well, the general approach, and other matters related to it, are touched on in orientation courses for consular officers and so on. I think as I look on Consul Snyder's actions, that he behaved very much like a responsible Foreign Service officer.

That happened long before I was in the Department, so I can say that without any involvement. But it seemed to me that he did just what he should have done, despite the unfortunate aftermath. And it shows to me, at least, that the training and orientation that these people are getting is right, is serviceable, and they are able to handle these situations as they come in.

Mr. DULLES. I realize that you ought not to prescribe hard and fast rules, that there is a broad range of discretion that should be exercised here. But I just raise the question as to whether a good deal of experience hasn't been gained in this case in that very field.

Mr. CHAYES. Well, it may very well be that more attention to that particular aspect should be given in the orientation courses and so on. Those things tend to reflect what is hot at the moment you know, and if you haven't had trouble with something for a pretty long time, it tends maybe not to get mentioned.

Representative FORD. If Oswald had persisted that day, October 31, in demanding the form that is a prerequisite under your definition for renunciation, would Snyder have been required to give it to him and permit him to sign it?

Mr. CHAYES. I think if it had been in ordinary office hours when the consulate was open for business, and if Snyder was satisfied that he was competent, that Oswald was competent, he would have to give him the form, yes, sir.

Representative FORD. Does Snyder have the authority to make a determination of competency?

Mr. CHAYES. No; he doesn't have the authority to make a determination of competence, and I suppose it is possible at some point to get the issue tried in court. But I think a consular officer would probably be acting within his discretion if he saw somebody who was drunk or raving or something and just said, "Well, I am not going to give you this until I am sure that your action is your act." After all, when the consul accepts the oath, he is certifying that it is the act of the person in a meaningful sense, and so if he thought that the person was incompetent, I think he would have discretion not to give the oath. But I put that far aside because in the particular case here, Mr. Snyder made it perfectly clear that he had no reason to doubt that Oswald was fully competent.

And so if Oswald had been there at a time when the office was open, or had returned at a time when the office was open, and had persisted in his demand, I think Snyder would have been under an obligation to give him the form.

Representative FORD. The only technical reason or basis upon which Snyder could have denied Oswald the right that day was the fact that it was on a Saturday, a non-working-hour period of the Embassy.

Mr. CHAYES. Yes; I think he had every right to try to dissuade him, or persuade him not to act or persuade him to think it over and come back the next day. But if after all of that Oswald still had said "But I want to do it now" and if the office was open for business, then I think he would have had to do it.

Mr. DULLES. I think it might be useful if it has not been done to introduce at this point as an exhibit the form of oath of renunciation. Here is the formalized oath and I think it would be well to have this in our records unless it is already in our records.

Representative FORD. I agree.

Mr. COLEMAN. No; it isn't. Could we say it will be marked as Commission Exhibit No. 955 and place this sticker on that page, photostat it and then just send it back?

(Commission Exhibit No. 955 was marked for identification and received in evidence.)

Representative FORD. When Oswald came back on November 3, I believe, which was a regular working day—

Mr. COLEMAN. Mr. Commissioner, he did not come back on November 3. He merely wrote a letter.

Mr. CHAYES. Wrote a letter. He never came back.

Representative FORD. Are all of the employees, Mr. Snyder, Mr. McVickar, and the others who had any firsthand contact with the Oswald case in this area, were they State Department employees?

Mr. CHAYES. Yes, sir; these two men who were the only ones who did see him directly, I think the secretary, their secretary also saw him, but had nothing to do with him except as a receptionist. These two men were Foreign Service officers and are now Foreign Service officers.

Representative FORD. In the strictest term.

Mr. CHAYES. Yes, sir; members of the Foreign Service, appointed by the President with the advice and consent of the Senate.

Representative FORD. Could you tell us in a bit more detail the process that you followed or the procedure that you carried out when you first got into the Oswald case.

You mentioned yesterday you got a call or you were directed by I believe the Secretary of State or by somebody in higher authority to take certain steps. Will you tell us who called you, what you did in the first 3 or 4 days?

Mr. CHAYES. It was the evening of the day, perhaps about 5 o'clock on the day of the assassination. It may have been somewhat earlier, because I think I remember I went home for an hour and then came back to carry out this assignment. Mr. Ball, once it became known that Oswald had some history as a defector—

Mr. DULLES. Ball is the Under Secretary of State.

Mr. CHAYES. He was then the Acting Secretary because the Secretary of State as you recall was on a plane over the Pacific. So he was the Acting Secretary. But even if he had been the Under Secretary he is my client.

Representative FORD. He still had some authority.

Mr. CHAYES. Yes; he directed me to gather together the files in the Department on Oswald, and to prepare a report to be available for him the first thing in the morning covering as best we could within that time span the contacts that Oswald had with the Department.

We got the passport file. We got the security office file. We got the special consular services file which covered Mrs. Oswald's visa and the repatriation loan. I think those three files were the ones that we had. It may have been there was a smaller fourth file, but I think those three were the ones.

Representative FORD. What would that smaller fourth file be?

Mr. CHAYES. I can't remember. It was duplicates if it was anything. Oh, that is right, we had a visa file and an SCS file so those were the four. The SCS file, that is Special Consular Services in the office, in the Bureau of Security and Consular Affairs.

Representative FORD. You got this order on or about 5 o'clock the 22d of November?

Mr. CHAYES. The 22d; yes, sir.

Representative FORD. And you issued orders to have these files brought in, or did you go and get them yourself?

Mr. CHAYES. No.

Representative FORD. Or what happened?

Mr. CHAYES. I issued orders to have them brought in. I called—I am trying to think how we got them. [Turning to Mr. Ehrlich.] Did you go down and get them? Mr. Ehrlich and Mr. Lowenfeld, another of my people, we worked through the night on this, the three of us all together and it may be that the two of them went down to get them. I don't think we just called over the telephone and asked them to be brought up.

(Discussion off the record.)

Mr. CHAYES. It is my recollection that one of these two gentlemen, either Mr. Ehrlich or Mr. Lowenfeld acting for me, went down to pick up the file.

Mr. Ehrlich thinks he recalls that one of the files was already being examined by the Secret Service or the FBI, the passport file. My own recollection, which I am sure of, is that later on in the evening, about 8 o'clock or 9 o'clock, we established contact with the FBI and they came over and read the files in our office at the same time we were reading them. Now actually there was nothing in any of the files that wasn't duplicated in the others in essence. I mean much of our files consisted of FBI or CIA reports.

Much of their files consisted of these letters and documents that you have seen that we had come into possession of when Oswald attempted to renounce.

We worked, as I say, through the night. One thing that we did other than go through the files was to go down to the lookout card file to see whether there was a lookout card for Oswald. We got Mr. Johnson, who is the General Counsel of the Passport Office, to open up the lookout card file which is a large room that has a combination lock on the door, and is also plugged into a general alarm system, got into the room and examined the lookout card file and found that there was no card for Oswald.

This was the first experience I had ever had with the lookout card file, and I said all the things that you have said here, why wasn't there a card. But we were very careful in doing that to record, Mr. Lowenfeld, Mr. Ehrlich and I and Mr. Johnson and Mr. Schwartz all went in and we all mutually recorded what steps we took. I think there are notes of that, if anybody is interested in them, but I don't think there is any need to see them.

Nothing of significance happened. We did find——

Mr. DULLES. May I ask is the passport office under you as Assistant Secretary and Legal Adviser?

Mr. CHAYES. No, sir; the passport office is under Mr. Schwartz.

Mr. DULLES. Under Mr. Schwartz?

Mr. CHAYES. It is Bureau of Security and Consular Affairs.

Mr. DULLES. And he is directly under the Secretary of State.

Mr. CHAYES. Yes; he is Assistant Secretary. His chain of command goes through the Deputy Under Secretary for Administration, but he like I has the rank of Assistant Secretary and he operates a bureau just as I do. The Legal Adviser's office is a separate bureau.

We did prepare a 10- or 12-page document by dawn the next day which in fact is the basis of this report, the Commission Document No. 2.

Mr. COLEMAN. We will give that Commission Exhibit No. 950, your first report.

Mr. CHAYES. The one we did overnight?

Mr. COLEMAN. No; the one that you sent us. It is Commission Exhibit No. 950. It has been given a number.

Mr. DULLES. I wonder if the witness would identify this and verify the circumstances under which it was prepared?

Mr. CHAYES. This report, Commission Exhibit No. 950, is not the one that we prepared overnight. This is the report we prepared for the Department of Justice before the Commission was appointed when the Department of Justice itself was looking into the matter.

What I say is that Commission Exhibit No. 950 is essentially an expansion and elaboration of the document that we prepared that night.

Representative FORD. There have been fears expressed by some that somehow we don't have before the Commission all of the documents that are in the hands of the Department of State or any other agency pertaining to Oswald. You can only testify as to the Department of State. Do you testify that we have been given everything that was at any time in the files of Lee Harvey Oswald?

Mr. CHAYES. To my knowledge that is the case. However, let me say again what I said at the beginning of the testimony. We have constantly and persistently gone around to all the places in the Department, and that has been done under my supervision, and we have made very aggressive efforts to assure that every office or subdivision of the Department that might have documents pertaining to Oswald should give them to the Commission, through me to the Commission.

I think there was one stage where perhaps that wasn't understood, but we got

that corrected. Then later on, as I say, there was the Moscow Embassy just sent us a whole load of documents. They said "We think you have got duplicates of all of these so we didn't send them in earlier" and it turned out that some of them we didn't have duplicates of. I now think—as I say, it is very hard to prove a negative, but we have made all the efforts that I think are humanly possible to get these documents out of the files, and I think you have them all, with the exception of some documents originating in other agencies where by arrangement with the staff they are getting those documents from the originating agency.

Mr. COLEMAN. Mr. Chayes, at this point could we mark as Commission Exhibit No. 956, a letter from you to Mr. Rankin under date of May 28, 1964, in which you sent us a complete copy of the files, and in which you numbered each one of the files from file I through XII, and then within each file, each document was numbered and there was also indicated the number of pages which would be in each particular document? Will you identify that?

(Commission Exhibit No. 956 was marked for identification and received in evidence.)

Mr. CHAYES. Yes; we sent that letter, a copy of which is Commission Exhibit No. 956, in response to the request of the staff in order that we would be able exactly to answer this kind of question.

I should add that I think we sent some additional documents since then, those that came back from Moscow in response to our last request.

Mr. COLEMAN. I would next like to mark as Commission Exhibit No. 954, a letter from Mr. Chayes to Mr. Rankin under date of June 4, 1964, in which you sent us the file which you recently received from the Moscow Embassy and indicated that that file would be marked file XIII.

(Commission Exhibit No. 954 was marked for identification and received in evidence.)

Mr. CHAYES. Yes; that is the letter and it contains also the text of the Moscow telegram explaining that they thought all the documents they were pouching were duplicates.

Mr. COLEMAN. With the files you gave us or sent us along with Commission Exhibits Nos. 956 and 954, as far as you know you have sent the Commission every file which the State Department has, referring to Oswald?

Mr. CHAYES. That is correct.

Mr. DULLES. Were you in general charge, under the Secretary, of the correspondence which has been carried on with the Soviet Union inquiring as to Oswald and to obtain such information as we could from the Soviet Union with respect to the Oswald case?

Mr. CHAYES. Well, I talked with the Secretary about the Commission's interest in making an approach to the Soviet Union, and then he made the decision that the Department was willing to proceed with that approach. I participated in the drafting of the documents, and I participated in the transmissions to the Commission. But the approach was made by the Secretary himself, and I did not observe the approach.

Mr. DULLES. Was that made orally as well as in writing or should we ask that of the Secretary of State?

Mr. CHAYES. You can ask it of the Secretary and I think you would get a fuller answer from him, but he did make an oral presentation at the time that he handed the note, and the Chief Justice's letter, to the Russian Ambassador.

Mr. DULLES. In view of your knowledge of this situation, do you think that we have got all we can get from the Soviet Union or is there any other way in which we could get anything additional?

Mr. CHAYES. Well, I think probably, the best respondent to that question would also be the Secretary. I think it probably has to be recognized that the decision to give what documents were given was a carefully considered decision, probably made at very high levels within the Soviet Government, and not done lightly or without an examination of alternatives, and therefore, it seems to me unlikely that one would be able to change any such decision.

But again I say I am really not the best man to ask that.

Mr. COLEMAN. Mr. Chayes, just two other documents I would like you to identify for the record. One is your letter of May 8, 1964, which has been marked Commission Exhibit No. 948, which answers certain questions directed to you by Mr. Rankin, and it is the document that you referred to several times in your testimony.

Mr. CHAYES. Yes; this is my letter, Commission Exhibit No. 948. It contains the answers to the questions which were in attachment B to Mr. Rankin's letter, and concern essentially matters within the United States and within the State Department here.

Mr. COLEMAN. Your answers to attachment A were in Commission Exhibit No. 960. We have already identified that in the record.

Mr. CHAYES. Yes; that is correct. There was a delay between the two letters because attachment A involved questions about activities in Russia, and some questions about the Soviet Union, and although we prepared the answers in the first instance in the United States in the Department, we wanted to send the replies to the Soviet Union for review by our Embassy there. And that accounted for the time discrepancy in the answer to the two attachments.

Mr. COLEMAN. Then in the attachment A we also asked you a question in reference to a memorandum from Mr. McVickar and you under date of April 24, 1964, sent us Mr. McVickar's memorandum which has been marked as Commission Exhibit No. 958. But I would like to mark as Commission Exhibit No. 953 your covering letter.

(Commission Exhibit No. 953 was marked for identification and received in evidence.)

Mr. CHAYES. Yes; this is my letter. It is dated April 24, 1964, and it is marked Commission Exhibit No. 953, and it clears up a factual question that was left at large in Mr. McVickar's memorandum.

Mr. COLEMAN. Mr. Chairman, at this time I would like to offer for admission into evidence Commission Exhibits Nos. 948, 950, and 949. I would also like to note that the attachment to Commission Exhibit No. 952 was marked as Commission Exhibit No. 958 and has already been admitted into evidence.

Mr. DULLES. They shall be admitted.

(Commission Exhibits Nos. 948, 950, and 949 were marked for identification and received in evidence.)

Mr. DULLES. May I ask this question? Have all of these been previously identified in the testimony.

Mr. COLEMAN. Yes, sir; they have been identified and marked.

(Discussion off the record.)

Mr. COLEMAN. Back on the record. That is all the examination I have of Mr. Chayes. I do want to express my appreciation and thanks for the detail in which he gave us information and the method in which he answered all the questions.

Representative FORD. I have no further questions.

Mr. DULLES. I have no further questions. Thank you very much. You have been very full, very frank, very helpful.

Mr. CHAYES. I am glad to do what I can.

TESTIMONY OF BERNICE WATERMAN

Mr. DULLES. Would you kindly rise and raise your right hand.

Do you swear the testimony you will give before this Commission is the truth, the whole truth, and nothing but the truth so help you God?

Miss WATERMAN. I do.

Mr. DULLES. Would you please advise Miss Waterman of the general purpose of the testimony we will ask of her.

Mr. COLEMAN. Miss Waterman was with the Department of State until 1962, at which time she retired. Miss Waterman was the adjudicator in the Oswald case, and she is being called to testify with respect to certain memorandums and actions she took in connection with Lee Harvey Oswald. These actions dealt