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MEMORANDUM FOR: Mr. Robert Francis, Warren Report Task Force

FROM: SCA

SUBJECT: Aspects of Warren-Report Subject Matter Within
Jurisdiction of SCA

I. DISSEMINATION OF INFORMATION ON POTENTIALLY DANGEROUS PERSONS

A. FBI Requests for Information on Travel of "Subversives" Abroad

Requests by the FBI for information on the foreign travel of American "subversives" are received in the Department by INR. The INR/DDC memorandum to the Task Force dated November 4, 1964, describes as follows the routing of the FBI request to PPT and possibly also to SCA, the dispatch of an appropriate notice to the field by PPT, and the routing of any information received from the field in reply:

"Formal memo from FBI-Mr. Hoover to INR-Mr. Hughes indicates that an individual intends to travel abroad. The Bureau wants any information.

. . . .

"In the case of significant travelers, a copy is made immediately available to SCA-Mr. Schwartz and the country desk involved. (If necessary, either INR/DDC-Mr. Ekern or Mr. MacDonald should be advised of the travel notice.) SCA will note and pass to PPT/LS for action.

"If the travel is of no apparent significance, copies should go direct to PPT/LS and the desk involved.

"In any case, PPT/LS will send appropriate notice to the field, sending INR a duplicate copy.

"IPS copy should be given to country desk analyst.

"If information comes in from the field, PPT/LS will send us two copies. One copy will be given to INR/DDC for handling to the FBI, or, if urgent, hand-carried or alert telephone call will be made. The second copy will be incorporated in the individuals "39" file.

If not indicated otherwise, a copy will go to CIA/DDP/CI."

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Within SCA, the routing of the outgoing notice by which PPT asks the posts to advise concerning the "subversive" person's activities abroad, and of any incoming reports in reply, has been subject since August 27, 1964, to the following rules:

1. Two copies of any outgoing message are to be routed by the action officer in PPT/LS to INR/DDC and one copy to SCA.
2. With respect to incoming reports of this nature from posts abroad which indicate that they have not been sent to INR/DDC and SCA, PPT is to take immediate action to see that such messages are routed to INR/DDC and SCA.
3. With respect to any incoming reports from the posts, they will be transmitted to FBI by INR/DDC and not by PPT, because of the coordinating responsibility of INR/DDC with respect to this type of activity.

Under the procedure that prevailed prior to August 27, 1964, it appears that INR was generally not on distribution of such messages being dispatched or received by PPT, and that SCA was not always on distribution of them either. At present, however, the distribution for all outgoing airgrams includes SCA, INR and the FBI, and hence these same offices will normally be on distribution for the incoming replies as well. However, offices on distribution for the outgoing message will automatically be on distribution for the incoming one as well only if the incoming message refers by number to the outgoing one; where this is not done, RM/R reports that it assumes no responsibility for routing the incoming message to the same offices that saw the outgoing one. To close this loop-hole, it is recommended that PPT be instructed to include in its airgrams to the field an express statement that any replies should refer by number to the outgoing request. PPT has already been instructed to check the routing on all incoming messages of this nature and make sure that it includes INR/DDC and SCA, and PPT reports that this is being done.

B. Information Concerning Repatriation Loans

1. The Lookout File in the Passport Office

The fact that an unpaid repatriation loan is outstanding in the name of an American citizen will cause the Passport Office to deny that citizen's application for a new or renewed passport. With citizens who have unpaid repatriation loans, as also with those who have renounced or attempted to renounce their American nationality or have otherwise evidenced disaffection with the United States, and with those whose files contain other reasons

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that would cause them to be denied the routine issuance of a passport -- in all such cases, the Passport Office relies upon its "Lookout File" to bring the difficulty to light before a new passport is issued. A description of the "Lookout File" is attached to this memorandum as Attachment A.

2. Operation of the Lookout File with Respect to Repatriation Loan Notices

Volume 7 Foreign Affairs Manual, Section 423 sets forth the criteria and procedures for granting financial assistance loans for the repatriation of destitute United States nationals.

In general, Foreign Service Posts are authorized to grant such loans where (1) It is shown the national will suffer undue hardship and no other source of funds is available; or (2) he is in or is the cause of a situation damaging to the prestige of the United States.

The Office of Special Consular Services of the Department must approve or obtain the approval of all repatriation loans.

In requesting a loan the national must execute an application form, giving among other items: his name, place and date of birth, an affirmation that he will repay the loan, and his understanding that after his repatriation he will not be furnished a passport for travel abroad until his obligation to reimburse the Treasurer of the United States is liquidated.

When the loan is granted the recipient executes a promissory note, which includes a statement that he understands he will not be furnished a passport for travel abroad until his obligation is liquidated. Posts have been instructed by Circular Airgram to include the date and place of birth of the recipient on both the promissory note and the application for financial assistance. This information is forwarded to the Office of Finance of the Department. See the memorandum on "United States Government's Repatriation Loan Program" dated November 4, 1964, from OF:ACD/RR to OF:ACD, which has been circulated among members of the Task Force.

As the means of notifying the Passport Office of the extension of the loan the Office of Finance hand delivers to the Clearance Section of the Passport Office an IBM (Lookout) card (Form 5081) coded and punched with all the pertinent particulars - name, date, and place of birth, etc. - placed thereon by the Department's Automatic Data Processing Office. The cards are accompanied by a listing of the particulars.

The clearance section

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The Clearance Section of the Passport Office immediately inserts the card in the Lookout File. In addition, a form (Lookout Sheet) giving all the particulars of the loan and the date the card was inserted in the Lookout File, is placed in the individual's passport folder or if none exists then in the current name file of the Passport Office.

When a repatriation loan has been repaid the Office of Finance prepares a list showing the name, date and place of birth, the amount of the loan and the date of its liquidation. This list is forwarded to the Clearance Section of the Passport Office.

This Section then removes the IBM card (Form No. 5081) from the Lookout File. A notation is made on the card that the loan has been repaid and the date the notice of such action was received in the Passport Office. This card is then incorporated into the individual's passport folder.

SCA is prepared to make available to the Task Force as supplements to this memorandum, if they should be desired, copies of the following items:

1) Instruction 2300.3, issued by the Passport Office on February 20, 1964, establishing responsibilities and prescribing procedures for the operation and maintenance of the Lookout File;

ii) Attachment 1 to Instruction 2300.3, supra, covering the preparation of Lookout Cards;

iii) Attachment 2 to Instruction 2300.3, supra, describing the manner in which a passport application is cleared against the Lookout File.

3. Deficiencies Noted in the Oswald Case Corrected

The Report of the Warren Commission states that "The operation of the 'lookout card' system in the Department of State was obviously deficient...." These deficiencies were evidenced by the facts that: (1) no lookout card was in the file during the period when Oswald's citizenship was in doubt; (2) no lookout card was in the file during the period when the repatriation loan had been granted to him and remained unpaid; and (3) a permanent lookout card should have been in the file characterizing Oswald as a 'defector'.

The correction of deficiencies (1) and (3), relating to doubtful citizenship and the "defector" characterization, will be

discussed in the next

discussed in the next section of this memorandum, relating to notice of disaffected Americans abroad. The second deficiency, with regard to the absence of a lookout card in connection with an unpaid repatriation loan, has been corrected. In the Oswald case, the Passport Office did not prepare a lookout card on the repatriation loan because Oswald's date of birth was not among the information furnished to the office by ACD/RR in the Office of Finance. On April 16, 1964, however, the Office of Finance issued instructions to all Diplomatic and Consular posts abroad to provide the complete name, date, and place of birth of an individual applying for a repatriation loan. The Office of Finance accordingly supplies this information to the Passport Office, and the Passport Office is able to prepare and post an appropriate lookout card. The information supplied to PPT by OF does not, however, include the date the loan was granted. It is thus impossible at present to determine whether there is an undue delay in getting the notice of the loan to PPT. Mr. Reeley of ACD/RR reports that it would be easy enough to include the date of the loan in the information supplied. It is recommended that this be done.

C. Information Concerning Disaffected Americans Abroad

SCA defines the category of "disaffected Americans abroad" as including those who have renounced or attempted to renounce their American citizenship, those who have defected to a Communist-dominated country, and those who have in any other manner given evidence of disaffection with or hostility to the United States.

1. Reporting of Such Cases by Posts Abroad

The Foreign Affairs Manual, apparently contains two reporting requirements applicable to cases of disaffected Americans abroad. 11 FAM 938, as revised May 15, 1964, which is attached to the memorandum submitted to the Task Force by INR, dated November 4, 1964, on the subject of "INR/DDC Procedure for the Handling of Intelligence on Disaffected U.S. Citizens Abroad," reads as follows:

"938 Federal Bureau of Investigation

"938.1 Disaffection of U.S. Citizens Abroad

The Federal Bureau of Investigation has a continuing interest in U.S. citizens who travel abroad, particularly to Sino-Soviet-Bloc countries, or Cuba or Yugoslavia, and who, by their actions and/or statements while abroad, indicate a disaffection for the United States. While the Bureau's responsibilities do not include inquiries into the activities of such persons while they are abroad, it does have an interest in certain of these individuals when they return to the U.S.

"938.2 Reporting Requirement

Overseas posts shall submit the following information to the

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Department by airgram on U.S. citizens abroad;

a. Information concerning U.S. citizens who are approached by foreign intelligence agencies while abroad;

b. Information on U.S. citizens described in section 938.1 who might constitute a threat to the internal security if and when they return to the U.S.;

c. Information concerning the return or intent to return to the U.S. of persons who, by their statements and/or actions while abroad, indicate:

- (1) A desire to renounce U.S. citizenship;
- (2) A desire to seek citizenship in any of the countries mentioned in section 938.1;
- (3) A repudiation of or antipathy for the United States; or
- (4) An intent to remain in any of the countries mentioned in section 938.1 for an extended period because of a preference for the communist system."

is amending

The Passport Office, meanwhile, ~~proposes to amend~~ 8 FAM 225.6, dealing with "Renunciation of Nationality," ~~to include a reporting requirement to the effect that, when a U.S. citizen has completed the procedure required to renounce his nationality, "the officer executing the oath shall submit a statement that the seriousness and consequences of the act were explained to the renunciant before the oath was administered. Any pertinent facts or circumstances having a bearing on the renunciation and reasons therefore should also be reported."~~ A copy of the text of the proposed amendment is attached to this memorandum as Attachment B.

SCA believes that both these reporting requirements are inadequate and should be revised, and SCA is taking steps to have that done in the case of 8 FAM 225.6. The difficulty with INR's requirement in 11 FAM 938 is that it does not cover all disaffected Americans abroad as such. While 938.1 states that the FBI is interested in all such cases, the actual reporting requirement, embodied in 938.2, is applicable to disaffected Americans in only two circumstances: if they are persons "who might constitute a threat to the internal security if and when they return to the U.S.," and if the possibility has arisen of their "return or intent to return to the U.S." SCA believes the reporting requirement should be applicable to all Americans abroad who fall within 938.1 or, more specifically, within categories (1), (2), (3), or (4) of 938.2(c), whether or not the reporting officer judges that they might constitute a threat to the internal security/and when they return to the United States, and whether or not they have indicated an intention to return. It would seem obvious that/a comprehensive, unqualified, and unequivocal requirement of the type suggested is more consistent with the Task Force's objective of closing all loopholes than is the requirement as presently worded. Moreover,

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while the interest of the FBI in disaffected Americans abroad may be limited by the FBI's jurisdiction to the possibility of a threat to the nation's internal security, this is not true of such agencies as the CIA. Indeed, Director McCone is said to have testified to the Warren Commission, in testimony not yet officially released but leaked to the press, that the CIA is definitely interested in all reports concerning disaffected Americans abroad, and that it relies upon the State Department to report such information as it has on such cases. So far as SCA is concerned, it might be argued that our interest is satisfied by the reporting requirement which becomes applicable as soon as the "disaffected" citizen indicates an intent to return to the United States, since he will not be applying for a passport again until after he does return. But, in the interest of closing all loopholes and minimizing the possible effect of human error, we believe it desirable that a report be required from the field, so that the Passport Office may post a lookout card and other appropriate action may be taken, as soon as it comes to the attention of a post abroad that the citizen is in fact "disaffected." Also, failure to report at the actual time of "disaffection" may mean that the citizen's disaffection is unknown to the acting officials at a time when he subsequently applies for a repatriation loan; he may, for example, apply for such a loan at a different post, or to a different official, from the one who originally became aware of his disaffection. SCA recommends, then, that the reporting requirement in 11 FAM 938.2 be expanded to apply whenever a U.S. citizen has evidenced "disaffection" within any of the categories of 938.2(c), or in any other way.

There then arises the question of distribution of the information on disaffected Americans abroad after it comes in to the Department. SCA believes that it should be on distribution for such material, both for the purpose of having a lookout card posted in the Passport Office, and for the purpose of initiating a file in the Office of Special Consular Services in case the disaffected person should subsequently change his mind and apply for a repatriation loan. SCA is accordingly concerned that the November 4, 1964 memorandum submitted to the Task Force by INR, and referred to above, does not indicate that SCA is included among the "appropriate offices and agencies" that are on distribution for such incoming information.

With respect to the reporting requirement in 8 FAM 225.6, SCA is similarly concerned that this appears to apply only to an actually completed renunciation of citizenship. SCA believes that it should be amended to apply clearly to any attempted renunciation and to any indication that the person is contemplating or desires to renounce his citizenship. (This is the language used by PPT in Instruction 2560.2, the purpose of which is "to establish procedures for the processing of cases of persons who have renounced United States nationality or who have expressed a desire

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a desire to renounce such nationality" (italics added).

2. Receipt and Treatment within SCA of Information on Disaffected Americans Abroad

As stated in the preceding section, SCA believes that it should be on distribution for all incoming information as to disaffected Americans abroad, so that lookout cards may be posted in the Passport Office and file initiated in the Office of Special Consular Services looking toward a possible application for a repatriation loan.

With regard to persons who have renounced their citizenship or indicated an intention of doing so, the Passport Office's procedure for preparing a lookout card and otherwise processing the case is governed by Instruction 2560.2, issued by the Office on November 6, 1964, which is attached to this memorandum as Attachment C.

In accordance with the remarks made above with respect to the reporting requirements, SCA believes that this Instruction is similarly inadequate in scope and is taking steps to have it revised. It should cover, and should require the preparation of lookout cards with respect to, not only "persons who have renounced United States nationality or who have expressed a desire to renounce such nationality," but also persons who have become defectors, or have otherwise indicated disaffection with the United States, without formally renouncing their nationality or indicating any intention to do so. However, with respect to the deficiency in the Oswald case of failure to have a lookout card in the file during the period when Oswald's citizenship was in doubt, the Instruction would seem even in its present form to close that loophole, for it does require the preparation of a card in any case where an American has renounced his citizenship or attempted to do so.

The third deficiency, involving the absence of a permanent lookout card on Oswald as a "defector," has also been remedied. At the time of the Oswald case the Passport Office did not maintain a separate classification within the lookout file of "defectors." Now, however, pursuant to direction by the Administrator of SCA in March of 1964, the Passport Office does keep current lookout cards on "defectors." To assure that the file is complete, the names of all defectors and re-defectors known to the Military have been obtained and furnished to the Passport Office and are now covered by lookout cards, as are non-military defectors, and the Passport Office has been instructed to keep the cards current on the basis of information furnished SCA by the military and the intelligence agencies. Again, however, it appears that Instruction

2560.2 is inadequate

2560.2 is inadequate to cover this function of the Passport Office, for not only does it not apply to defectors as such, but it speaks only of "receipt of information from a Foreign Service post," with no indication that the information may come through SCA from the military or intelligence agencies -- or that it may come through INR under the expanded reporting requirement of 11 FAM 938 as proposed above.

Finally, it should be noted that, as the Administrator of SCA informed the Secretary on September 28, 1964, dissemination of information to the intelligence agencies during the period of the Oswald case -- information on Oswald's citizenship status, return to the United States, etc, -- was performed by the Passport Office. Early in 1963 the Deputy Under Secretary for Administration and the Administrator, SCA, determined that all liaison with the intelligence agencies should be conducted through INR. Since then all information concerning defectors which comes to the attention of the Passport Office, is brought to the attention of the Administrator, SCA, whose office forwards it to the Director of INR for appropriate dissemination.

II. LAW AND POLICY AS TO EXPATRIATION AND REPATRIATION OF DISAFFECTED AMERICAN CITIZENS

A. Expatriation

A United States citizen may lose his nationality by performing any one of the expatriating acts described in the subsections to Section 349(a) of the Immigration and Nationality Act of 1952 (to the extent that these provisions have not been held unconstitutional by the Supreme Court). It would appear that only two of those acts -- formal renunciation of nationality under sec. 349(a)(6) and oath of allegiance to a foreign state under sec. 349(a)(2) -- are relevant here, however, for they are the only two that were even arguably involved in the Oswald case, and they are also the only two that involve a substantial scope for interpretation of the law by the Department.

The second of the two may be disposed of quickly. Sec. 349(a)(2) states that an American citizen shall lose his nationality by "taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof." Oswald delivered to the American Embassy in Moscow on October 31, 1959, a signed statement reading: "I affirm that my allegiance is to the Union of Soviet Socialist Republics." The Department has taken the position that this statement and conduct by Oswald did not have the effect of depriving him of his American nationality under sec. 349(a)(2). This determination was based on a number of cases in which the Department and other tribunals have consistently

held that

