

MEMO: Mr. Tolson

SUBJECT:

In most jurisdictions, including Texas and the Federal courts, Marina would not be allowed to testify against her husband in a criminal prosecution. This incompetency would end with her husband's death, but the rule preventing her from testifying about privileged communication would not end with Oswald's death. While there is much conflict as to what is encompassed within the term "communication," it seems clear that after Oswald's death the Texas and the federal courts would allow Marina to testify about anything except oral and written communications from her husband.

The general rule is that evidence of prior criminal acts of the defendant is inadmissible in a criminal prosecution. However, such evidence may be introduced under a number of exceptions, such as to prove identity or to show a common scheme or plan. Many cases, particularly the older ones would indicate that the Walker incident would have been inadmissible in a trial of Oswald since it would not fit into any of the exceptions. Some modern courts might admit the evidence on any number of theories.

It is my feeling that in view of the fact that the Walker incident and the Kennedy assassination have not been shown to be in any way connected and that the means employed to commit the crimes are not unusually similar, the Walker crime would not be admissible.

All it could show is that Oswald had a propensity to commit such crimes, and courts will not allow evidence for this purpose because of its prejudicial effect. Texas and the federal courts have been stricter than other courts in admitting evidence of prior crimes.

In order for a jury to consider the Walker crime, it must be shown with substantial evidence that Oswald committed it. In Texas, it must be shown beyond a reasonable doubt. If we exclude Marina's testimony, these standards would be difficult to meet.

It is clear that evidence of Oswald's flight from the TMB, his shooting of Tippit, and his resistance to arrest would be admissible as evidence of consciousness of guilt and thus of guilt itself.