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13
14 **UNITED STATES DISTRICT COURT**
15
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
17

18 THE MARY FERRELL FOUNDATION,
19 INC.; JOSIAH THOMPSON; and GARY
20 AGUILAR,

21 Plaintiffs,

22 v.

23 JOSEPH R. BIDEN, in his official capacity as
24 President of the United States; and
25 NATIONAL ARCHIVES AND RECORDS
26 ADMINISTRATION,

27 Defendants.
28

No. 3:22-cv-06176-RS

DECLARATION OF DANIEL S. ALCORN

Date: April 30, 2023

Time: 1:30 pm

Dept: Hon. Richard Seeborg

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DECLARATION

1. My name is Daniel S. Alcorn, and I reside at 1335 Ballantrae Lane, McLean, Virginia. I received my undergraduate degree from the University of Virginia, and a Juris Doctor from the School of Law at the University of Virginia in 1980. That year I was admitted to the Virginia State Bar and began the practice of law. In 1984 I was admitted to the District of Columbia Bar. I have been in continuous practice of law since these admissions.
2. In the course of my law practice I have handled a number of federal Freedom of Information Act cases. In 1997 I represented the National Association of Criminal Defense Lawyers in their case against the U.S. Department of Justice to obtain records related to accusations of misconduct in the FBI crime laboratory. In that case we were successful in obtaining early release of an Inspector General's Report on such allegations, which resulted in significant reforms at the FBI crime lab.
3. Since 1985 I have been aware of the controversy surrounding the assassination of President Kennedy. In May 1963, when I was seven years old, my father took me to a speech by President Kennedy at Vanderbilt University in Nashville, Tennessee, which I remember to this day as an exciting event.
4. By November 22, 1963 my father's career had taken him to Wilmington, Delaware where he was assistant superintendent of the public schools. On Sunday, November 24, 1963 my father took my sister and me to Washington, DC to line the procession route as President Kennedy's body was moved from the White House to the Capitol. My father was an educator who believed we children should be exposed to the history of our country.

5. As time passed I learned that the owner of the Texas School Book Depository building from which shots are alleged to have been fired at President Kennedy was a man named David Harold Byrd. The Byrd name was familiar to me as a resident of Virginia in that the Byrd organization led by US Sen. Harry Byrd, Sr. dominated state politics for half a century, and led a nationwide “Massive Resistance” movement to the *Brown v. Board* school desegregation decision with the aim to close public schools that desegregated under *Brown v. Board*. My research revealed that David Harold Byrd was a cousin of the Virginia Byrds and financially supported the Antarctic explorations of Admiral Richard Byrd, brother of US Senator Harry Byrd, Sr. Admiral Byrd named a mountain range in Antarctica the Harold Byrd Mountains.
6. As I learned more about David Harold Byrd, I came to understand that he was a powerful political figure in Dallas. I came to understand that he was close to early advocates of military aviation such as General James Doolittle and General Carl Spaatz. Byrd’s autobiography stated that he was a close friend of Ernst Udet, number two under Herman Goering in the Luftwaffe in charge of research and development. Shortly before Pearl Harbor David Harold Byrd co-founded the Civil Air Patrol nationally and served in leadership positions in the organization thereafter. After the assassination Byrd had the “sniper’s window” removed from the Texas School Book Depository building and set up in his mansion in Dallas. Byrd financed defense contractors after World War II, in particular US Air Force and intelligence agency contractors.
7. As I continued to research David Harold Byrd I learned that on November 22, 1963 he was reported to be on Safari in the camp Safarilandia operated by Werner von Alvensleben in Portuguese East Africa. Following advice from Martha Murphy of the

Archives staff I ordered the OSS records on von Alvensleben. They revealed that von Alvensleben was a German aristocrat who had been a valued double agent for OSS in World War II. They also revealed that in 1933 von Alvensleben served under Heinrich Himmler with the Bavarian Military Police (Himmler was the head of the SS in Nazi Germany). The OSS records state that von Alvensleben in 1933 while working for Himmler undertook an assignment to assassinate an Austrian official, and was arrested and convicted by the Austrians for attempted assassination.

8. Safari hunter von Alvensleben was known in big game hunting circles for using the Mannlicher-Schoenauer rifle, the finest hunting rifle of its era (a different rifle to the Mannlicher-Carcano that was allegedly the rifle used in the assassination). I learned that during the Warren Commission investigation Commission member John McCloy questioned the FBI ballistics expert as to whether the spent hulls found on the sixth floor of the book depository building could have been fired from a Mannlicher-Schoenauer rifle. The ammunition for the two rifles is virtually identical in appearance and dimensions. The FBI expert said he know nothing of the Mannlicher-Schoenauer rifle.
9. I have worked with the Assassination Archives and Research Center since 1985. During 2012, the Assassination Archives and Research Center and its President James H. Lesar wrote a letter to NARA general counsel asking for the CIA assassination records in the JFK Collection to be released in 2013; Mr. Stern informed us that due to logistical reasons, the CIA and NARA could not release the records before 2017. See the attached letter, marked as Exhibit A.
10. In June 2016, I asked Martha Murphy from the Archives for records on Byrd and von Alvensleben under the JFK Act. She responded that since the JFK Act index does not

show records for these individuals, she did not consider these records to be “assassination records” under the JFK Act. She suggested that I file a FOIA request.

See attached emails between us, marked as Exhibit B.

11. On July 4, 2020 the Assassination Archives and Research Center and its President James H. Lesar filed a FOIA request to CIA for information on Byrd and von Alvensleben and the Doolittle Report. In May 2021, having not heard a response from CIA, the requesters filed suit in the US District Court for the District of Columbia, Civil No. 21-1237.
12. On November 23, 2022, having seen discussion that the Archives might be willing to expand its search for JFK Act records, I contacted Gary Stern, General Counsel of NARA to request a search under the JFK Act for records requested in the lawsuit related to Byrd, von Alvensleben and the Doolittle Report. Mr. Stern has not responded to my request, attached as Exhibit C.
13. In AARC and Lesar’s case for the records, the CIA has refused to search its operational files despite the requirement that such files be searched for material that has been the subject of investigation by executive agencies or the Congressional intelligence committees. CIA Information Act of 1984 (50 USC §3141(c)(3)). The John F. Kennedy assassination has been investigated by executive agencies and the Congressional intelligence committees. The D.C. Circuit has held that the exemption from an FOIA search does not apply to matters investigated by the Senate Select Committee on Government Operations With Respect to Intelligence Activities (“Church Committee”) and that the scope of the Church Committee investigation specifically encompassed operations of the CIA and other federal agencies in investigating the assassination of President Kennedy. *Morley v. CIA*, 508 F. 3d 1108, 1117 (D.C. Cir. 2007). On February

22, 2023 Judge Cooper of the US District Court for the District of Columbia granted summary judgment to the CIA in the case stating that the association of the owner of the Texas School Book Depository building with a convicted assassin at the time of the assassination was not the specific subject of prior investigation. Plaintiffs are considering their options for an appeal to the D.C. Circuit. Civil No. 21-1237 (DDC Feb. 22,2023)

14. I have a serious concern that if relevant government files, including CIA operational files, are not searched and released under the JFK Act, the widespread doubt and confusion about the government's investigation of the Kennedy assassination will continue. To me, the better and perhaps necessary approach by the government would be to search and release any matters of concern over the assassination as assassination records, such as the records requested by AARC and Lesar described above, to restore public trust.

I declare under penalty of perjury ^{under the laws of the United States of America} that the forgoing is true and correct and of my own personal knowledge. Executed on March 4, 2023 ~~in~~ at sea near Cape Horn.



Daniel S. Alcorn

Exhibit A



NATIONAL
ARCHIVES

June 12, 2012

Jim Lesar, President
Assassination Archives and Research Center
1003 K Street, NW, Suite 640
Washington, DC 20001
jhlesar@gmail.com

By Email and First Class Mail

Dear Mr. Lesar:

I write in response to the letter of January 20, 2012, from you and five colleagues to David S. Ferriero, Archivist of the United States, requesting that the National Archives and Records Administration review the remaining classified documents that were “postponed” from public disclosure in accordance with the John F. Kennedy Assassination Records Collection Act of 1992 in time for the 50th anniversary of the assassination in November 2013.

We share your passion and commitment to providing access to JFK assassination records as quickly as possible. As your letter recounts, the JFK Act established a rigorous process for declassification review and release that was administered by the Assassination Records Review Board until 1998. For any assassination records that were not released by the ARRB, subsequent release could be postponed until a date certain not to exceed 25 years from the enactment of the JFK Act, i.e., no later than 2017.

The JFK Act Collection consists of a total of approximately 5 million pages, and less than 1% of the documents in the Collection are “postponed in full” until 2017. I note that your letter states that in 2010, Assistant Archivist “Michael Kurtz revealed that the CIA continues to withhold approximately 50,000 pages of JFK assassination-related records.” I would like to clarify that NARA has never counted, and thus does not know, the actual number of pages that are postponed in full. Dr. Kurtz accurately stated that “less than one percent” of the total volume of assassination records was still being withheld; he also provided our rough estimate that the collection totals approximately five million pages. Thus, it appears that the 50,000 page number in your letter may have been derived by incorrectly calculating a full one percent of five million pages. All we do know is that the CIA withheld in full a total of 1,171 documents as national security classified (there is a small number of other agency documents also postponed in full, principally for law enforcement).

NATIONAL ARCHIVES *and*
RECORDS ADMINISTRATION

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www.archives.gov

GARY M. STERN
GENERAL COUNSEL

SUITE 3110
T 301 837 3026
garym.stern@nara.gov

Your letter asks NARA to submit these remaining 1171 documents “currently withheld by the CIA” for declassification review as part of the National Declassification Center’s (NDC) project to complete the declassification of the “400 million page backlog” identified in the President’s December 29, 2009, Memorandum Implementing Executive Order 13526, by December 31, 2013. We recognize that, in a 2010 public forum, Dr. Kurtz stated that the postponed JFK assassination records would be included as part of the NDC project. However, as we have tried to explain before, Dr. Kurtz misspoke. Rather, because the postponed JFK assassination records have already been subject to a full and complete government-wide declassification review, they are not part of the 400 million page backlog of records that have yet to receive a final review.

Because of the mandated December 31, 2013 deadline for our review and processing of the extremely large set of backlogged records, the NDC must target its efforts exclusively on records contained within that backlog. In addition, because we are limited in the resources we can assign to these special reviews, we try to balance historical impact, public interest, and extent of other government agency involvement in order to manage government-wide declassification resource constraints as efficiently and effectively as possible.

As you know, the JFK Act authorized unprecedented powers for the ARRB, including the ability to overturn an agency decision on declassification, with the President as the only appeal authority. Although agencies did appeal ARRB decisions, President Clinton did not overturn any access determinations on appeal. The power wielded by the ARRB meant that more records were declassified and made available under the JFK Act than would have been released under the Freedom of Information Act (FOIA) or any currently applicable review provision of the prior or current Executive Order on Classified National Security Information.

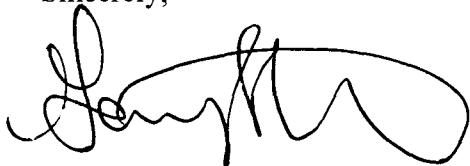
As previously mentioned, the 1171 remaining postponed documents will be released in 2017, unless the President personally certifies on a document by document basis that continued postponement is necessary and that the harm from disclosure is of such gravity that it outweighs the public interest in disclosure. Moreover, as you point out, the JFK Act clearly intended for periodic releases prior to the 2017 date. To date all of the periodic release dates have been met, including in 2006, when the CIA made preemptory releases of all documents that were postponed from release until 2010. Thus, the only documents in the Collection that are still withheld in full for classification reasons are the 1171 CIA documents that the ARRB agreed should not be released until 2017.

We recognize that the remaining records are of high public interest and historical value, and we appreciate your stated desire not to have to wait five more years to obtain access to these records. Given this public interest, we have been consulting with the CIA to see if it would be possible to review and release any of these remaining documents in time for the 50th anniversary of President Kennedy’s assassination in 2013. Although the CIA shares NARA’s interest in wanting to be responsive to your request, they have concluded there are substantial logistical requirements that must take place prior to the release of these remaining records and there is

simply not sufficient time or resources to complete these tasks prior to 2017. Accordingly, we will not be able to accommodate your request.

Thank you for your interest in this matter. Please share this letter with the co-signatories to your letter, and let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary M. Stern". The signature is fluid and cursive, with a large initial "G" and "S".

GARY M. STERN
General Counsel

Exhibit B

----- Forwarded Message -----

Subject:Re: JFK Assassination Records Collection Act

Date:Thu, 30 Jun 2016 15:16:06 -0400

From:Daniel Alcorn <dalcorn@rcn.com>

To:Martha Murphy <martha.murphy@nara.gov>

Okay. I am not sure I agree as the ARRB definition was meant to be broad in scope, and cover issues brought up by researchers. What we have in this situation is a convicted assassin in the company of the owner of the TSBD building at the time of the JFK assassination. A professional shooter using a rifle that shoots ammunition almost identical to the Mannlicher-Carcano. Researchers I have talked to about this have been intensely interested. It would be a shame if we missed something significant. Thank you for your consideration of these concerns.

On 6/30/2016 2:31 PM, Martha Murphy wrote:

At this point, I think these fall under the FOIA, rather than the JFK Act, using the definition of an assassination record as stipulated by the ARRB in their Report.

<http://www.archives.gov/research/jfk/review-board/report/>

On Thu, Jun 30, 2016 at 2:28 PM, Daniel Alcorn <dalcorn@rcn.com> wrote:

Right. The documents I would be interested in would be CIA records on both men, for example, and I am assuming those are probably still at CIA. Also Department of State. I was hoping you might seek the records and add to the JFK Collection under the authority of the JFK Act to seek and release such records, to avoid having to use FOIA.

On 6/30/2016 2:22 PM, Martha Murphy wrote:

You certainly have the right to file a FOIA. I have conducted a search in the JFK Assassination Records Collection and could find no records relating this gentleman. You have already received documents that are in NARA's holdings outside of the Collection, as you mention in your email.

On Thu, Jun 30, 2016 at 2:19 PM, Daniel Alcorn <dalcorn@rcn.com> wrote:

Thank you for your response. Should I do FOIA's on these?

-- Dan Alcorn

On 6/30/2016 2:07 PM, Martha Murphy wrote:

Dear Mr. Alcorn,

I have received your email and we will take your comments into consideration. Thank you for your interest in this topic,

Sincerely

Martha Wagner Murphy
Chief, Special Access and FOIA Staff
National Archives at College Park

On Wed, Jun 29, 2016 at 2:21 PM, Daniel Alcorn <dalcorn@rcn.com> wrote:

Dear Ms. Murphy,

You were helpful to me in 2014 in obtaining OSS records on Werner von Alvensleben, who served as a valuable double agent for OSS codenamed "DRAM" in Africa in World War II. The OSS records I obtained from NARA included the attached OSS X-2 report on von Alvensleben, stating that he had served in 1933 as an assassin for Nazi leader Heinrich Himmler and had been convicted of attempted assassination by the Austrians. The report further states that a reliable source said that von Alvensleben's father was known as a specialist in political assassination in Germany after World War I.

Werner von Alvensleben was in Dallas in late 1963 as the guest of the owner of the Texas School Book Depository ("TSBD") building, D. Harold Byrd (see attached Dallas Morning News articles). It is said that Byrd was on African safari at von Alvensleben's hunting preserve at the time of the assassination and later returned to Dallas. Von Alvensleben is reported to have favored a Mannlicher-Schoenauer rifle for hunting, which uses ammunition virtually indistinguishable from Mannlicher-Carcano ammunition. After the assassination, Byrd had the "sniper's window" removed from the TSBD building and installed for display in his home in Dallas, where it reportedly became the focus of high-powered social events (see attached Washington Times article).

The purpose of this e-mail is to urge you to designate government records related to Werner von Alvensleben and D. Harold Byrd as assassination-related records under the JFK Assassination Records Collection Act and release them to the public. Neither of these persons was the focus of much official attention during the investigations of the assassination, rather information that has become known recently has made them of interest to researchers. Government agencies that would likely have records on von Alvensleben would be: CIA and forerunners, and Department of State as to visa records and records from the U.S. Embassy in Mozambique. Agencies that would likely have records on D. Harold Byrd would include CIA, Department of State, Air Force, Civil Air Patrol and others.

I would be pleased to provide you with such additional information as I might have.

Sincerely,

Dan Alcorn
McLean, Virginia
[\(703\) 442-0704](tel:(703)442-0704)

--

Martha Wagner Murphy
Chief, Special Access and FOIA Staff
National Archives at College Park

--

Martha Wagner Murphy
Chief, Special Access and FOIA Staff
National Archives at College Park

Exhibit C

----- Forwarded Message -----

Subject:JFK Assassination Records

Date:Wed, 23 Nov 2022 12:28:19 -0500

From:Daniel Alcorn <dalcorn@rcn.com>

To:garym.stern@nara.gov

Dear Mr. Stern:

The purpose of this email is to call to your attention government records that should be part of the President John F. Kennedy Assassination Collection. I attach a Freedom of Information request filed on behalf of the Assassination Archives and Research Center on July 4, 2020. The request is for CIA records related to David Harold Byrd, owner of the Texas School Book Depository building on November 22, 1963; Werner von Alvensleben, an associate of Mr. Byrd who served as a valued double agent for the OSS in World War II and previously was convicted of participating in an assassination attempt against an Austrian official at the behest of Heinrich Himmler, head of the Nazi SS; and CIA records on the Doolittle report of 1954 that proposed allowing the CIA to act ruthlessly and beyond norms of human conduct in pursuit of Cold War aims. Mr. Doolittle was a substantial friend of Mr. Byrd. The FOIA request gives additional background information.

This request is currently in litigation in the US District Court for the District of Columbia, civil case no. 21-1237. The purpose of this email is to alert you to the existence of these JFK assassination related records as NARA works on updating the collection. Please feel free to contact me for any further information.

Regards,

Daniel S. Alcorn, Esq.

Counsel for Assassination Archives and Research Center

Te. (703) 442-0704

email: dalcorn@rcn.com