

No. 23-

IN THE
Supreme Court of the United States

ASSASSINATION ARCHIVES AND
RESEARCH CENTER, INC.
and JAMES H. LESAR,

Petitioners,

v.

CENTRAL INTELLIGENCE AGENCY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the CIA may refuse to search and disclose its operational records that relate to the presence of a convicted Nazi assassin in the company of the owner of the Texas School Book Depository building at the time of the assassination of President Kennedy in 1963. There are conflicting decisions between the First and D.C. Circuits on this legal issue.
2. Whether the CIA may ignore executive orders which by their plain text declassify records more than 25 and 50 years of age.

PARTIES TO THE PROCEEDING

All parties are listed in the caption.

RULE 29.6 STATEMENT

Petitioner Assassination Archives and Research Center, Inc. (“AARC”) is a non-stock, non-profit Virginia corporation dedicated to the collection and dissemination of research materials related to political assassinations. AARC has no parent or subsidiary entities. As noted, as a non-stock, non-profit entity, AARC does not issue stock or other form of ownership.

RULE 14.1(b)(iii) STATEMENT

The proceedings in federal trial and appellate courts identified below are directly related to the above-captioned case in this Court.

Assassination Archives and Research Center and James H. Lesar v. Central Intelligence Agency, Case No. 21-1237 (CRC)(D.D.C.). The district court in the District of Columbia entered summary judgment on petitioners' Freedom of Information Act claims on February 22, 2023.

Assassination Archives and Research Center and James H. Lesar v. Central Intelligence Agency, Case No. 23-5064 (D.C. Cir.). The D.C. Circuit entered summary affirmance on petitioners' Freedom of Information Act claims on December 7, 2023 and denied rehearing or rehearing en banc on February 8, 2024.

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Assassination Archives and Research Center, Inc. (“AARC”) and James H. Lesar respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS AND ORDERS BELOW

The per curiam Order of the United States Court of Appeals in *Assassination Archives and Research Center and Lesar v. Central Intelligence Agency*, Docket No. 23-5064 dated December 8, 2023 granting CIA’s motion for summary affirmance is set forth in the Appendix hereto at Appendix (App.) 1.

The Memorandum Opinion of the United States District Court for the District of Columbia in *Assassination Archives and Research Center and Lesar v. Central Intelligence Agency*, Civil Action No. 21-cv-1237 (TNM), decided and filed February 23, 2024 is set forth in the Appendix hereto at App. 3.

The unpublished Orders of the United States Court of Appeals for the District of Columbia Circuit in *Assassination Archives and Research Center and Lesar v. Central Intelligence Agency*, Docket No. 23-5064, decided and filed on February 8, 2024, denying *AARC and Lesar’s* timely filed petitions for rehearing or rehearing en banc, are set forth in the Appendix hereto at Appendix, pp. 21-22.

JURISDICTION

AARC and Lesar seek review of the decision of the United States Court of Appeals for the District of Columbia Circuit entered on December 8, 2024. A timely petition for rehearing or rehearing en banc was denied on February 8, 2024. This petition for writ of certiorari is filed within the time allowed by 28 U.S.C. § 2101(c), Supreme Court Rule 13.3. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

5 U.S.C. § 552(a)(3)(A):

Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

5 U.S.C. § 552(a)(4)(B):

On complaint, the district court of the United States...has jurisdiction to enjoin the agency from withholding agency records and to order production of agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the

contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions... and the burden is on the agency to sustain its action....

5 U.S.C. § 552(b):

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and **(B)** are in fact properly classified pursuant to such Executive Order
....

(3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute—

(A)(i)

requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph....

50 U.S. Code § 3141 - Operational files of the Central Intelligence Agency

(a) EXEMPTION BY DIRECTOR OF CENTRAL INTELLIGENCE AGENCY

The Director of the Central Intelligence Agency, with the coordination of the Director of National Intelligence, may exempt operational files of the Central Intelligence Agency from the provisions of section 552 of title 5 (Freedom of Information Act) which require publication or disclosure, or search or review in connection therewith....

(c) SEARCH AND REVIEW FOR INFORMATION

Notwithstanding subsection (a) of this section, exempted operational files shall continue to be subject to search and review for information concerning—....

(3) the specific subject matter of an investigation by the congressional intelligence committees, the Intelligence Oversight Board, the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, or the Office of the Director of National Intelligence for any impropriety, or violation of law, Executive Order, or Presidential

directive, in the conduct of an intelligence activity.

**President John F. Kennedy Assassination
Records Collection Act of 1992**

44 U.S.C, 2107 note:

**SEC. 2. FINDINGS, DECLARATIONS, AND
PURPOSES.**

“(a) **FINDINGS AND DECLARATIONS.**—The Congress finds and declares that—

“(1) all Government records related to the assassination of President John F. Kennedy should be preserved for historical and governmental purposes;

“(2) all Government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure, and all records should be eventually disclosed to enable the public to become fully informed about the history surrounding the assassination;

“(3) legislation is necessary to create an enforceable, independent, and accountable process for the public disclosure of such records;

“(4) legislation is necessary because congressional records related to the assassination of President John F. Kennedy would not otherwise be subject to public disclosure until at least the year 2029;

“(5) legislation is necessary because the Freedom of Information Act [5 U.S.C. 552], as implemented by the executive branch, has prevented the timely public disclosure of records relating to the assassination of President John F. Kennedy;

“(6) legislation is necessary because [former] Executive Order No. 12356, entitled ‘National Security Information’ has eliminated the declassification and downgrading schedules relating to classified information across government and has prevented the timely public disclosure of records relating to the assassination of President John F. Kennedy; and

“(7) most of the records related to the assassination of President John F. Kennedy are almost 30 years old, and only in the rarest cases is there any legitimate need for continued protection of such records....

Section 5(g)(2):

“(D) Each assassination record shall be publicly disclosed in full, and available in the Collection no later than the date that is 25

years after the date of enactment of this Act [Oct. 26, 1992], unless the President certifies, as required by this Act, that—

“(i) continued postponement is made necessary by an identifiable harm to the military defense, intelligence operations, law enforcement, or conduct of foreign relations; and

“(ii) the identifiable harm is of such gravity that it outweighs the public interest in disclosure....

Section 11(b):

(b) FREEDOM OF INFORMATION ACT.—

Nothing in this Act shall be construed to eliminate or limit any right to file requests with any executive agency or seek judicial review of the decisions pursuant to section 552 of title 5, United States Code.

STATEMENT OF THE CASE

During pendency of this case in the court of appeals this nation passed the 60-year milestone after the brutal assassination of President Kennedy on November 22, 1963. Despite the elapse of much time, the public is aware of this assassination and many question who perpetrated such a successful violent attack on our democracy. Diligent researchers such as Petitioners have unearthed compelling new information about the

assassination, which they have tried unsuccessfully to follow up with Freedom of Information Act (“FOIA”) requests. This case involves one such request, the significance of which speaks for itself. This court can reverse the tide of doubt and suspicion of the federal government by providing the public in this case the transparency promised by FOIA and the JFK Records Act. This court should hear this case because a conflict exists between the First and D.C. Circuits as to the applicable legal standard. The D.C. Circuit has taken a broader view of the extent of operational files still subject to search and release. *Morley v. CIA* (“*Morley II*”), 508 F. 3d 1108, 1117 (D.C. Cir. 2007). The First Circuit has taken a more restrictive view of such material. *Sullivan v. CIA*, 992 F.2d 1249, 1255 (1st Cir. 1993). Such a case is appropriate for review by this court under Rule 10(a) of this court’s rules.

Petitioners Assassination Archives and Lesar uncovered evidence that a convicted Nazi assassin and one-time U.S. intelligence asset was in the company of the owner of the Texas School Book Depository building at the time of the assassination of President Kennedy, and was the guest of the owner of the building in Dallas in late 1963 and early 1964. (R.21-10- *Dallas Morning News* articles from January 9 (Sec. 3, p.1) and January 19th 1964 reporting Werner von Alvensleben’s visit to Dallas as guest of D. Harold Byrd, App. p. 31. (“R.” refers to the docket entries in this case, Civil No. 21-1237 in the District Court for the District of Columbia.) In 1933 this assassin had acted on the orders of Heinrich Himmler, a leading official in the Nazi government of Germany. Office of Strategic Services (“OSS”) Documents Released by the National Archives, App. p. 24; R.21-2, p. 1. And in addition to

his service to the U.S. as a double agent, this convicted assassin came from a family in which his father was reported to U.S. intelligence to be a specialist in political assassinations after World War I in Germany. App. at 27; R.21-2, p.2. Thus Petitioners' FOIA request relates to a matter of high public importance- new compelling information about the circumstances of the assassination of President Kennedy.

Petitioner Assassination Archives and Research Center, Inc. ("AARC") is a non-profit, non-stock corporation, organized in 1984 for the purposes of collecting, preserving and making available to the public research materials relating to political assassinations and related subjects, and conducting research in the field. As part of its research and public information functions, AARC uses government records made available to it under the Freedom of Information Act ("FOIA"). AARC's archive contains the largest collection of materials on the assassination of President John F. Kennedy in private hands.¹ R.1, p. 2. Petitioner Lesar served as President of the organization from 1991 to 2023, when he stepped down as the result of serious health problems.

Specifically, Petitioners AARC and Lesar's FOIA request dated July 4, 2020, attached to the complaint (R #1-1) asks for the following records or information:

1. Search for and release all records or information in any format related to David Harold Byrd (deceased) of Dallas, Texas. Mr. Byrd died on

1. AARC does not espouse or support any particular theory about the assassination of President Kennedy.

September 14, 1986 (see attached obituary from the Dallas Times-Herald). Mr. Byrd owned the Texas School Book Depository Building at the time of the assassination of President Kennedy in 1963, and reportedly removed the “sniper’s window” from the building after the assassination and displayed it in his mansion. Mr. Byrd was an owner and financier of government contracting companies including Texas Engineering Manufacturing Company (TEMCO), E-Systems, and Ling-TEMCO-Vaught (LTV). E-Systems was well known as a CIA contractor, so much so that in 1975 CIA solicited E-Systems to purchase its proprietary airline, Air America. David Harold Byrd was also active in the oil business and varied other business enterprises. David Harold Byrd co-founded the Civil Air Patrol (CAP) in 1941 and served in command capacities in CAP until the early 1960’s. The Civil Air Patrol is the official auxiliary of the U.S. Air Force. In the 1950’s Mr. Byrd served with Cord Meyer, Sr. on the national executive board of CAP (Cord Meyer, Jr. was a ranking CIA executive).

2. Search for and release all records and information in any format related to Werner von Alvensleben, Jr. (died 1998), of Mozambique (formerly Portuguese East Africa). Mr. Alvensleben owned and operated the big game hunting company named Safarilandia in Portuguese East Africa, later Mozambique. According to released Office of Strategic

Services (OSS) records, Mr. Alvensleben served as a valued double agent for OSS during World War II in Portuguese East Africa. OSS records state that Mr. Alvensleben was a member of the Bavarian Military Police in 1933, headed by Heinrich Himmler (the Bavarian Military Police became the Nazi SS, according to OSS records). In 1933 Mr. Alvensleben was sent to Austria to participate in the assassination of an Austrian official. Mr. Alvensleben was arrested by the Austrians and imprisoned for this activity. According to reports in the *Dallas Morning News*, Mr. Alvensleben was in Dallas, Texas as a guest of David Harold Byrd in late 1963. Further, David Harold Byrd was reported to be present at Mr. Alvensleben's Safarilandia on November 22, 1963, the day of President Kennedy's murder. Due to Mr. Alvensleben's service as a valued double agent for OSS in World War II, it is likely that Mr. Alvensleben served as an asset of the CIA after the war, or had contact with the CIA.

3. Search for and release all records and information in any format related to the Doolittle Report of 1954 and its appendices A-D. The Doolittle Report was the result of a commission established by President Eisenhower to study the activities of the CIA and headed by General James Doolittle. The Doolittle Report called for more aggressive CIA covert activities that had previously been believed to be repugnant and contrary to American values. Requesters seek full

release of the requested materials. As shown in the attached obituary of David Harold Byrd, General Doolittle and Mr. Byrd were substantial friends who shared an interest in aviation from the early years. Mr. Byrd and General Doolittle were Safari hunting partners on several occasions.

AARC and Lesar received no response or determination on their request even though the U.S. Postal Service tracking system showed that the request had been delivered to CIA on July 9, 2020. After receiving no response for over nine months AARC filed its action in the district court on May 6, 2021.

CIA initially contended that it had not received AARC's FOIA request. R.9, para. 2. AARC's counsel sought information from the post office where the request had been mailed, McLean, Virginia 22101. That post office provided him with a document from the U.S. Postal service intranet showing that a CIA representative signed for receipt of AARC's request including a scan of his signature. AARC's counsel provided this information to government counsel, and as a result CIA reversed its position and admitted that it had received AARC's request. R. 10, para. 17, CIA Answer.

Subsequently CIA released records to AARC and Lesar responsive to their request, referred other documents to other agencies for response, and withheld a large quantity of records related to the Doolittle Report. CIA has refused to search its operational files in response to AARC's request even though these files

are the most likely to contain records that will shine light on the circumstances of the assassination of President Kennedy.

Through its FOIA requests, AARC is attempting to find and reveal additional information to fill out the public record. This Court has properly recognized the high public interest in the subject of the Kennedy assassination, stating, “(w)here that subject is the Kennedy assassination — an event with few rivals in national trauma and in the array of passionately held conflicting explanations — showing potential public value is relatively easy.” *Morley v. Central Intelligence Agency* (“*Morley IX*”), 810 F.3d 841, 844 (D.C. Cir. 2016). Justice White of this Court in the seminal FOIA case *EPA v. Mink* recognized the broad pro-public disclosure purpose of the Freedom of Information Act. 410 U.S. 73, 80 (1973). He wrote for the Court, “(w)ithout question, the Act is broadly conceived. It seeks to permit access to official information long shielded unnecessarily from public view and attempts to create a judicially enforceable public right to secure such information from possibly unwilling official hands.” *Id.*

Justice White further explained in a later case, “It is sufficient to note for present purposes that the Act seeks ‘to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.’” S.Rep. No. 813, 89th Cong., 1st Sess., 3 (1965) (hereinafter S.Rep. No. 813); *EPA v. Mink*, *supra* at 410 U. S. 80. As the Act is structured, virtually every document generated by an agency is available to the public in one form or another unless it falls within one of the Act’s

nine exemptions.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 136 (1975).

This court has repeated these pro-disclosure requirements of FOIA in subsequent cases, stating that the FOIA “requires federal agencies to make Government records available to the public, subject to nine exemptions for categories of material.” *Milner v. Dep’t of Navy*, 562 U.S. 562, 565 (2011). Ultimately, “disclosure, not secrecy, is the dominant objective of the act.” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1976). “For this reason, the ‘exemptions are explicitly made exclusive... and must be ‘narrowly construed.’” *Milner* at 565 (citations omitted).

As further background to Petitioners’ FOIA request, in 2012 Appellant AARC became aware of a formerly Top Secret document released under the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 note, containing important new information. See docket no. 19-1273 in this court. This document consisted of a memorandum of a briefing of the Joint Chiefs of Staff by the head of Central Intelligence Agency (“CIA”) Cuban operations Desmond Fitzgerald on September 25, 1963. During this briefing, Mr. Fitzgerald informed the Joint Chiefs that CIA was attempting to recruit individuals in the Cuban military to join in an effort to overthrow the Castro regime. Mr. Fitzgerald stated that CIA saw a parallel in history, the plot to assassinate Adolf Hitler during World War II, and that the Hitler plot was being studied by CIA in detail to develop an approach to dealing with Castro. R. cv.17-0160(D.D.C.) 1-1, page 7, para. 13. Werner von Alvensleben, a subject

of the request in this case, participated in advocating the assassination of Hitler in 1944 as a double agent for OSS. OSS Document Released by the National Archives, App. p. 29; R.21-2, p.3.

Former CIA Director Allen Dulles wrote extensively about the July 20, 1944 plot to kill Hitler in his book *Germany's Underground, the Anti-Nazi Resistance*, 1947, 2000 Da Capo Press, pp. 1-11. Dulles had personal involvement with the July 20 plotters from his position in Bern, Switzerland as a principal officer of the Office of Strategic Services ("OSS"), forerunner of the CIA. *Id.* at xi-xii.² Dulles served as CIA Director in the Kennedy administration until the failure of the Bay of Pigs operation after which Kennedy replaced Dulles. Dulles served as an active member of the Warren Commission that investigated President Kennedy's assassination.

Despite Dulles' membership on the Warren Commission and personal knowledge of the facts of CIA plots to assassinate Castro from his service as

2. The plot to assassinate Hitler was attempted unsuccessfully on July 20, 1944, and is known as the "July 20 plot" or "Valkyrie plot". Valkyrie was the codename for a Nazi Germany secret plan to suppress internal rebellion by 'foreign workers'. The July 20 plot planners attempted to use the Valkyrie operation to overthrow Hitler's regime, however Hitler was only slightly wounded and quickly reasserted his authority. Dulles, Allen Welsh, *Germany's Underground*, Da Capo Press (2000), p. 1; Casey, William, *The Secret War Against Hitler*, The Berkley Publishing Group, (1989), p. 138. As noted, Allen Dulles was a Director of the CIA and a member of the Warren Commission that investigated President Kennedy's assassination.

CIA Director, information concerning CIA plots to assassinate and overthrow Fidel Castro was withheld from the Warren Commission that investigated President Kennedy's murder. R. cv.17-0160(D.D.C.) 8-5 (President Gerald Ford foreword). Although subsequent investigations of President Kennedy's assassination included plots to assassinate and overthrow Castro, information was not provided about CIA's detailed study of the plot to assassinate Hitler. cv.17-0160(D.D.C.) R. 8-3 (Church Committee excerpt); 17-0160(D.D.C.); R.8-4 (CIA Inspector General's Report on plots to assassinate Castro); 17-0160(D.D.C.) R. 26-1, *Politico* article on Castro plots; 17-0160(D.D.C.) R.30-3 (Church Committee excerpt). Information about U.S. plots to assassinate Castro was believed significant because of the possibility of retaliation against U.S. leaders, or that these plots themselves may have been turned against President Kennedy.

The current case before this court also involves historic and unprecedented facts in which the former President of the United States has been indicted for removing highly classified documents from government custody. Former President Trump is known to be keenly interested in the John F. Kennedy assassination. Petitioners seek a search of the Trump records for records responsive to their request. The investigation of the former President's actions and the indictment all occurred after the cutoff date for CIA's search, June 11, 2021. R.24-1 p.2 of 7. (As noted CIA misstates the cutoff date in its Motion for Summary Affirmance, D.C. Circuit Document #2003214. In that pleading CIA gives an incorrect cutoff date of June 11, 2022). Such unusual facts call for more than the

government's standard minimal search. An agency may limit its search to documents in its possession as of a certain date, but its decision must be reasonable and designed to further FOIA's goal of releasing requested records. *McGehee v. CIA*, 697 F.2d 1095, 1100-02 (D.C. Cir. 1983). The agency's search must be designed to meet the facts of the case.

Since removal of Trump records may involve illegality and even criminality, the government should search the removed records for records responsive to AARC's request. As noted there is a well known strong interest by former President Trump in the subject matter of the John Kennedy assassination. It is logical that Mr. Trump may have secreted such records, and it is known that he dealt with such records through the President Kennedy Assassination Records Collection Act of 1992.

As noted, the Court of Appeals has properly recognized the high public interest in the subject of the Kennedy assassination, stating, "(w)here that subject is the Kennedy assassination — an event with few rivals in national trauma and in the array of passionately held conflicting explanations — showing potential public value is relatively easy." *Morley v. Central Intelligence Agency* ("*Morley IX*"), 810 F.3d 841, 844 (D.C. Cir. 2016). The Congress has stated the clear intent that records such as these be released in the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 note, Section 2, Findings, Declarations and Purposes. Yet CIA continues to obstruct disclosure and refuses to search for the requested records. The government

is still struggling with providing full release of JFK Assassination records more than six years after the deadline of October 2017 contained in Section 5(g)(2) (D) of the President John F. Kennedy Assassination Records Collection Act of 1992. The government's non-compliance is the subject of an ongoing case in the U.S. District Court for the Northern District of California, *Mary Ferrell Foundation v. Biden*, Civil No. 22-6176, and in the Ninth Circuit Court of Appeals, case no. 24-1606.

As previously stated, this court can reverse the tide of doubt and suspicion of the federal government by providing the public in this case the transparency promised by FOIA and the JFK Records Act.

REASONS FOR GRANTING THE WRIT

- I. CIA's operational files requested in this case are not exempt from search and disclosure under 50 U.S.C. § 3141. The First and D.C. Circuits have conflicting case authority over this issue.**

The subject matter of AARC and Lesar's request, the assassination of President Kennedy, is not exempt from search of operational files under FOIA due to the CIA Information Act of 1984 (50 U.S.C. § 3141(c) (3)). Contrary to the court of appeals panel's ruling, Petitioners' request satisfies the statutory text and the case law that requires CIA to search its operational files. In addition the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 note, requires search and release of the

records. Section 11(b) of that Act makes clear that nothing in the JFK Records Act limits or restricts a requester's right to make requests under the FOIA, nor the right to pursue them pursuant to 5 U.S.C. Section 552. The D.C. Circuit has held that the (c)(3) exemption from 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. Church Committee, *The Investigation of the Assassination of President John F. Kennedy: Performance of the Intelligence Agencies*, S.Rep. No. 94-755, Book V, at 1 (1976), R. 21-7; *Morley v. CIA* ("*Morley II*")₂ 508 F. 3d 1108, 1117 (D.C. Cir. 2007).

In *Morley II* the D.C. Circuit distinguished a First Circuit decision on the same issue, *Sullivan v. CIA*, 992 F.2d 1249, 1255 (1st Cir. 1993). The two circuits took conflicting approaches on the breadth of the CIA Act exemption, with the D.C. Circuit narrowing the exception and the First Circuit expanding it. The D.C. Circuit held that the requirement of (c)(3) that a FOIA request concern "the specific subject matter of an investigation" is satisfied where the investigating committee would have deemed the records at issue to be central to its inquiry. " *Morley v. Central Intelligence Agency*, 508 F.3d 1108, 1118 (D.C. Cir. 2007). The First Circuit held that "neither the Church Committee's investigation nor HSCA's probe is sufficiently sturdy a bootstrap to lift appellant's FOIA request over the hurdles erected by the congressional investigation

exception to the Information Act.” *Sullivan v. C.I.A.*, 992 F.2d 1249, 1255 (1st Cir. 1993). Under Rule 10(a) of this court’s rules, this conflict in circuit court decisions makes this case one that the court should take to resolve conflicting authority between the circuits.

Further, the assassination of President Kennedy was the specific subject of an investigation by the Department of Justice at the time and a Presidential Commission, the Warren Commission, which was assisted by the Department of Justice. The operational files search exemption does not extend to investigations by the Department of Justice by the textual language of 50 U.S.C. § 3141(c)(3), and such investigations remain subject to search and processing for release.

In addition, former CIA Director Richard Helms has publicly stated that CIA initiated an investigation of the assassination of President Kennedy that began with an effort to find out if CIA operatives were in Dallas at the time of the assassination. <https://www.youtube.com/watch?v=e3nDUEgh05o>

Government investigative agencies, and in particular the CIA, did not inform the Warren Commission about plots to kill Fidel Castro undertaken or developed by U.S. government agencies. R. 21-8, Foreword by former President Gerald R. Ford (member of the Warren Commission), “A Presidential Legacy and The Warren Commission”, FlatSigned Press, Nashville, TN, 2007, p. XXII. All of these matters are subject to FOIA search under the terms of 50 U.S.C. § 3141(c)(3).

In addition, CIA plots to assassinate Fidel Castro that may have been related to the assassination of

President Kennedy were the specific subject of an investigation by the Inspector General (“IG”) of the CIA ordered by President Johnson in 1967. CIA IG Report on Plots to Assassinate Fidel Castro dated May 23 1967 R.21-9. Such Inspector General investigations are also exceptions from the FOIA search exemption of 50 U.S.C. § 3141(c)(3) and by language of that statute FOIA searches must be conducted for such records or information.

As noted, the Court of Appeals held in *Morley II* that the requirement of 50 U.S.C. § 3141(c)(3) that a FOIA request concern “the specific subject matter of an investigation” is satisfied where the investigating committee would have deemed the records at issue to be central to its inquiry. 508 F.3d 1108, 1118. All of the investigations cited above considered the specific subject matter of who may have assassinated President Kennedy as central to their inquiries as well as whether government intelligence agencies committed any impropriety, or violation of law, executive order, or Presidential directive, in the conduct of an intelligence activity.

Further as a valuable double agent for OSS during World War II, Werner von Alvensleben would have been a prime candidate to serve as a CIA asset in Portuguese East Africa (Mozambique) after the war. R. 21-2, p.3. OSS Documents Released by the National Archives, App. pp. 24-30. The Doolittle Report describes OSS World War II veterans as CIA’s invaluable asset in forming a hard core of capable men from World War II to build the Cold War CIA. Doolittle Report, R.21-5, p. 77, doc.# C03066212 (pagination added in lower right corner of pages).

D. Harold Byrd, in addition to owning the Texas School Book Depository building, was a defense contractor who was a principal of the Ling-Temco-Vaught conglomerate (“LTV”) in the 1960’s. LTV and its subcomponent E-Systems were large scale defense contractors that had CIA contracts as part of their business portfolios. Byrd was a substantial personal friend and safari partner of General Jimmy Doolittle,³ who was called upon in 1954 by President Eisenhower to conduct a Top Secret study of CIA covert operations with a purpose to strengthening them. The Doolittle Report called for increased CIA covert operations and warned that the American public might have to be educated that American values of fair play needed to be dispensed with in the Cold War (“(t)here are no rules in such a game”). The Doolittle Report called for a CIA “if necessary, more ruthless than that employed by the enemy.” Doolittle Report, R.21-5, pp. 61-62 Doc. #C03066212. Thus Byrd and von Alvensleben had a history of intelligence activities and are prime subjects for government investigation for improprieties or violations of law, Executive Order or Presidential directive during intelligence activities related to the Kennedy assassination.

Further, the House of Representatives Select Committee on Assassinations investigated performance of the intelligence agencies as part of its investigation of the assassination of President Kennedy. And the Congress of the United States unanimously passed a law in 1992, enacted by the President, requiring the

3. “I’m an Endangered Species: The Autobiography of a Free Enterpriser”, David Harold Byrd, Pacesetter Press, Houston, Texas, 1978, page 40.

expeditious release to the public of all government records related to the assassination of President Kennedy and investigations of the assassination. President John F. Kennedy Assassination Records Collection Act of 1992, codified at 44 U.S.C. § 2107 notes (“JFK Records Act”). There can be no doubt that all of these investigations would have deemed the requested records central to their inquiry and thus searchable. *Morley II*, 508 F.3d 1108, 1118.

Yet despite the case law requiring CIA to search its operational files and the JFK Act the government in this case studiously avoids searching for the information requested by Petitioners. That information is that a convicted Nazi assassin and one time U.S. intelligence asset was in the company of the owner of the Texas School Book Depository building at the time of the assassination of President Kennedy, and was the guest of the owner of the building in Dallas in late 1963 and early 1964 (R.21-10- *Dallas Morning News* articles from January 9 and 19th 1964 reporting Werner von Alvensleben’s visit to Dallas as guest of D. Harold Byrd, Appendix p. 31). And in addition to his service to the U.S. as a double agent, this convicted assassin came from a family in which his father was reported to U.S. intelligence to be a specialist in political assassinations after World War I in Germany.⁴

4. The father, also named Werner von Alvensleben, appears in the authoritative work on Nazi Germany, “The Rise and Fall of the Third Reich” by William L. Shirer. This Werner von Alvensleben (father) was present with Adolf Hitler in Berlin the night in 1933 when Hitler was informed he would be named Chancellor of Germany. Von Alvensleben precipitated a crisis by inaccurately informing Hitler that a coup was being undertaken to prevent Hitler from coming to

Further the owner of the Texas School Book Depository building was deeply involved with secret defense and intelligence activities through the Temco, Ling-Temco-Vaught, and E-Systems companies, and his relationship with General Doolittle. The government adopts the evasion that because these facts were alleged to be unknown to investigators in 1963 and the leads were developed later by private citizens, the matter is not one for exploration by FOIA. The government's position ignores the purpose of all the investigations of the assassination- to find the assassin or assassins of President Kennedy and any who assisted them.

The government has access to the records needed to search for this information, such as CIA operational files and visa information from 1963-64, and CIA contracting information for these companies. Werner von Alvensleben and D. Harold Byrd's CIA records should be reviewed, as well as contracting files for the Byrd related companies.

In 1963 Werner von Alvensleben, convicted in 1933 of attempted assassination on behalf of the Nazis in Austria, headed a large hunting preserve in Portuguese East Africa (Mozambique) called

power. Hitler called out the SA Brown Shirts and the police to prevent such a coup, according to Shirer, and Hitler then took power as Chancellor the next day. Page 182, "The Rise and Fall of the Third Reich", William L. Shirer, Simon and Shuster, New York 1960. Werner von Alvensleben, Jr. was not a titled Baron despite frequent references to him using that title. Publisher's Note, *Baron in Africa*, Brian Marsh, Safari Press, Inc. 2001 page xv.

Safarilandia. Multiple reports in hunting and gun publications state that Werner von Alvensleben was legendary for using a 6.5 mm Mannlicher-Schoenauer rifle for his hunting activities.⁵ The rifle found on the sixth floor of the TSBD and alleged to be connected to the assassination of President Kennedy was a 6.5 mm Mannlicher-Carcano. Warren Commissioner John McCloy questioned the FBI firearms expert who testified before the Warren Commission in 1964 as to whether the ammunition found in the Mannlicher-Carcano and on the floor at the TSBD could be fired from a Mannlicher-Schoenauer rifle (ammunition for the Mannlicher-Carcano and Mannlicher-Schoenauer are said to be virtually identical). The FBI firearms expert said he did not know the answer to the question. Warren Commissioner McCloy stated that he was familiar with the Mannlicher-Schoenauer rifle in that it was the preferred sporting rifle in Austria and that he owned one.⁶ Further, Commissioner McCloy specifically questioned the FBI firearms expert as to the diameter of the bullet found in the TSBD building. FBI expert Frazier gave McCloy a diameter of 6.65 millimeters, which is too small a diameter for a

5. The Daily Caller, 8-12-2015, <http://dailycaller.com/2015/08/12/gun-test-alexander-arms-6-5-grendel-hunter/> (“Hunting history is rife with the tales of derring-do with 6.5mm cartridges. W.D.M. Bell whacked many elephants and Werner von Alvensleben slew hundreds of buffalo with what they termed a “small-bore rifle,” namely, the 6.5×54 Mannlicher-Schönauer”). Read more: <http://dailycaller.com/2015/08/12/gun-test-alexander-arms-6-5-grendel-hunter/#ixzz49IeXGBzJ>

6. Warren Commission Testimony of FBI Firearms expert Frazier, R. 21-11: Vol. 3 Warren Commission documents, page 399.

Mannlicher-Carcano bullet, but is consistent with the reportedly slightly smaller Mannlicher-Schoenauer bullet.

The government does not contest plaintiff's statement in their request that the owner of the Texas School Book Depository building Byrd had the "sniper's window" removed from the building after the assassination and displayed in his Dallas mansion where it became the focus of high-powered Dallas social events.⁷

In addition the government does not deny that there has been no investigation or search for relevant records of the presence of a convicted Nazi assassin in Dallas in late 1963 and early 1964 in the company of the owner of the TSBD building in the circumstances described above, despite several attempts to investigate the assassination. Summary disposition of Petitioners' case was inappropriate given this state of affairs.

Agency affidavits regarding the search for responsive records are inadequate to support summary judgment where they "do not note which files were searched or by whom, do not reflect any systematic document location, and do not provide information specific enough to enable [the plaintiff] to challenge the procedures utilized." *Weisberg v. United States Dep't of Justice (Weisberg)*, 627 F.2d 365, 371 (D.C. Cir. 1980). D.C. Circuit decisions have long held that agency

7. "Famed Oswald Window" *Washington Times*, May 2, 2006, <https://www.washingtontimes.com/news/2006/may/02/20060502-103326-3519r/>

declarations must describe in detail how searches were conducted, including search terms that were used, and results yielded in the search of each component of an agency. *Reporter's Committee for Freedom of the Press v. FBI (Reporter's Committee)*, 877 F.3d 399, 403-4 (D.C. Cir. 2017).

The D.C. Circuit emphasized that summary judgment is inappropriate if “a review of the record raises substantial doubt” as to the search’s adequacy, “particularly in view of ‘well defined requests and positive indications of overlooked materials.’” *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999)(quoting *Founding Church of Scientology v. NSA*, 610 F.2d 824, 837 (D.C. Cir. 1979)). “We review *de novo* the adequacy of the [agency’s] search.” *DiBacco v. U.S. Army*, 795 F.3d 178, 188 (D.C. Cir. 2015). *Reporter's Committee* at 402. Agency actions under the FOIA are subject to *de novo* review. 5 U.S.C. § 552(a)(4)(B). “This requires the court to ‘ascertain whether the agency has sustained its burden of demonstrating that the documents requested ... are exempt from disclosure under the FOIA.’” *MultiAg Media LLC v. Dep’t of Agriculture*, 515 F.3d 1224, 1227 (D.C. Cir. 2008) (citations omitted).

As previously noted, the Court of Appeals has properly recognized the high public interest in the subject of the Kennedy assassination, stating, “(w)here that subject is the Kennedy assassination — an event with few rivals in national trauma and in the array of passionately held conflicting explanations — showing potential public value is relatively easy.” *Morley v. Central Intelligence Agency (“Morley IX”)*, 810 F.3d

841, 844 (D.C. Cir. 2016). The Congress has stated the clear intent that records such as these be released in the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 note. Yet CIA continues to obstruct disclosure and refuses to search for the requested records.

This court can reverse the tide of doubt and suspicion of the federal government by providing the public in this case the transparency promised by FOIA and the JFK Records Act.

II. CIA's Exemption 1 and 3 claims fail.

The district court was not convinced that CIA's Exemption (b)(1) claims should be upheld. Page 8, Memorandum opinion Appendix. In the Court of Appeals CIA appears to have abandoned its 5 U.S.C. § 552(b)(1) arguments. CIA had claimed a (b)(1) national security exemption for records that are in excess of 50 years old, despite the provisions of Executive Order 13526 Sec. 3.3 that mandate automatic declassification for material over 50 years in age. CIA now shifts to an Exemption (b)(3) argument, thus demonstrating in its handling of its (b)(1) claim CIA's propensity to claim national security exemptions to which it is not entitled.

Because the aged records at issue under exemption b(3) are properly automatically declassified under EO 13526, Sec. 3.3, CIA's(b)(3) exemption claims also fail. The executive order reflects Presidential authority over the CIA on matters of classification and declassification. Records automatically declassified under the executive order are properly authorized for

release and not subject to a (b)(3) exemption claim. This is pursuant to the *National Security Act of 1947* (“NSA Act”) 50 U.S.C. § 3024(i), which by its text guards against unauthorized disclosure (emphasis added).

EO 13526 was signed by President Obama in 2009, well after the 1985 *CIA v. Sims* case relied upon by the CIA. 471 U.S. 159(1985). The later promulgated Executive Order can be assumed to have been issued in full knowledge of *Sims*. In any event the *Sims* case did not decide the automatic declassification issues raised by the later Executive Order 13526 which applied automatic declassification to records 25 and 50 years old. Automatic declassification was not part Executive Order 12356 that was in effect when *Sims* was argued and decided in 1985. EO 12356 had been signed in 1982. Rather automatic declassification at 25 and 50 years was first ordered by President Clinton in 1995 in Executive Order 12958, and its implementation was delayed by Clinton and then by President George W. Bush in 2003 in Executive Order 13292. President Obama implemented automatic declassification in 2009 when he signed EO 13526.

To uphold CIA’s position would require deciding that Executive Order 13526 was meaningless and did not intend to achieve what it said by its textual terms. CIA’s position argues that automatic declassification was an empty gesture by the Executive. Given that the Executive Order is in the field of national defense and foreign relations where the court has given considerable deference to the Executive, it would be wrong for a court to decide that the Executive Order did not mean what its text says in creating an automatic declassification

system, resulting in authorized disclosure. *Biden v. Texas*, 597 U.S. ___ (2022) pp. 16, 17.

If CIA were to fail to follow the provisions of Executive Order 13526 on automatic classification, profound issues of democratic civilian control of the military and intelligence would be implicated.

CONCLUSION

For all these reasons, this Court should grant the petition.

Respectfully submitted

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APPENDIX

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**United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 23-5064

September Term, 2023

1:21-cv-01237-CRC

Filed On: December 7, 2023

Assassination Archives and Research Center
and James H. Lesar, I,

Appellants

v.

Central Intelligence Agency,

Appellee

BEFORE: Millett, Pillard, and Garcia, Circuit
Judges

ORDER

Upon consideration of the motion for summary affirmance, the opposition thereto, and the reply; and the motion for summary reversal, the opposition thereto, and the reply, it is

ORDERED that the motion for summary affirmance be granted and the motion for summary reversal be denied. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). The district court did not err by concluding that appellee's search for records responsive to appellants' Freedom of Information Act ("FOIA")

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request was adequate, or by refusing to order appellee to conduct a supplemental search of the files the government recovered from former President Donald Trump's personal residence. See Mobley v. CIA, 806 F.3d 568, 581 (D.C. Cir. 2015); Morley v. CIA, 508 F.3d 1108, 1118 (D.C. Cir. 2007). In addition, the district court did not err by concluding that appellee properly justified its decision to withhold records under FOIA Exemption 3, see, e.g., CIA v. Sims, 471 U.S. 159, 167–69 (1985), or by concluding that appellee sufficiently attested to having released all reasonably segregable material, see Porup v. CIA, 997 F.3d 1224, 1239 (D.C. Cir. 2021). Finally, the district court did not abuse its discretion by rejecting appellants' requests for in camera review, see Larson v. Department of State, 565 F.3d 857, 869–70 (D.C. Cir. 2009), and for discovery, see SafeCard Services, Inc. v. SEC, 926 F.2d 1197, 1200 (D.C. Cir. 1991).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**ASSASSINATION ARCHIVES
AND RESEARCH CENTER**
et al.,

Plaintiffs,

v.

**CENTRAL INTELLIGENCE
AGENCY,**

Defendant.

Case No. 21-cv-1237
(CRC)

MEMORANDUM OPINION

It has been nearly 60 years since President Kennedy’s assassination, yet curiosity about the event—and speculation as to who was responsible—persist to this day. The Assassination Archives and Research Center, a non-profit organization dedicated to publicizing materials related to political assassinations, and its President, James Lesar (collectively, “AARC”), believe that the Central Intelligence Agency is keeping secrets about the assassination. In hopes of learning more, AARC filed a Freedom Of Information Act (“FOIA”) request with the CIA for records related to two individuals they speculate were associated with the CIA and may have been involved in the assassination, as well as documents related to a formerly classified assessment of the agency’s operational effectiveness.

At issue is whether the CIA conducted an adequate search and properly invoked FOIA exemptions to withhold records responsive to AARC's request. Both parties seek summary judgment. For the reasons explained below, the Court will grant summary judgment for the CIA and deny summary judgment for AARC.

I. Background

AARC is committed to publishing materials related to political assassinations and possesses the “largest collection of materials on the assassination of President John F. Kennedy in private hands.” Compl. ¶ 4. The organization is led by James Lesar, who “has devoted decades of study” to President Kennedy’s assassination. *Id.* ¶ 5.

In July 2020, AARC submitted a FOIA request to the CIA for documents related to two individuals and one previously classified study of the CIA. *Id.* Ex. 1 at 1–2. Specifically, AARC sought “all records or information” related to (1) David Harold Byrd, who AARC says owned the Texas School Book Depository Building where the fatal shot was taken; (2) Werner von Alvensleben, Jr., who AARC asserts was a Nazi assassin and “valued double agent” for the United States during World War II, and a friend of David Byrd; and (3) the Doolittle Report, a 1950s report on CIA operations commissioned by President Eisenhower and headed by General James Doolittle. *Id.*

After the CIA delayed in responding to the request, AARC filed suit. *Id.* ¶¶ 18-20. The CIA first indicated it did not receive the request, Def.'s Mot. for Extension at 2, ECF No. 9, but ultimately conducted searches and produced responsive documents, Joint Status Report at 1, ECF No. 17. As part of that production, the CIA released seventeen documents in full and invoked FOIA Exemptions 1, 3, and 6 to redact sixteen documents in part and withhold four others completely. Def.'s Statement of Undisputed Material Facts ¶ 2 ("Def.'s SMF"); Def.'s Mot. Summ. J., Ex. 2 ¶ 1 ("Blaine Decl.").¹

After production was completed, both parties filed a motion for summary judgment, with AARC challenging the adequacy of the CIA's search and its claimed exemptions.

II. Standard of Review

Summary judgment may be granted when the moving party establishes that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Summary judgment is the typical mechanism to determine whether an agency has met its FOIA obligations. *See, e.g.,*

¹ The CIA also referred documents to the Federal Bureau of Investigation and the State Department for review; the FBI made redactions to four of the twenty-five pages it was referred, and the State Department made no redactions to the four pages it was referred. *Id.* ¶¶ 2, 56.

Judicial Watch, Inc. v. CFPB, 60 F. Supp. 3d 1, 6 (D.D.C. 2014).

Under FOIA, an agency is first required to make an adequate search for any responsive records. See Rodriguez v. U.S. Dep't of Def., 236 F. Supp. 3d 26, 34 (D.D.C. 2017). In reviewing an agency's search, courts apply a "reasonableness" test that looks to the methods and not the fruits of a search. Id. To prove its search was reasonable, the agency "must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." Oglesby v. U.S. Dep't of Army, 920 F.2d 57, 68 (D.C. Cir. 1990). The agency may rely on affidavits that detail "what records were searched, by whom, and through what process" to make this showing. Steinberg v. DOJ, 23 F.3d 548, 552 (D.C. Cir. 1994). Agency affidavits are "accorded a presumption of good faith." SafeCard Servs., Inc. v. SEC, 926 F.2d 1197, 1200 (D.C. Cir. 1991).

In addition to demonstrating that it conducted an adequate search, the agency must also justify any withholdings it has made pursuant to a FOIA exemption. See, e.g., Larson v. Dep't of State, 565 F.3d 857, 862 (D.C. Cir. 2009). Justification can be provided by sufficiently detailed agency affidavits. See, e.g., id. Because the primary purpose of FOIA is disclosure, exemptions are construed narrowly. See, e.g., DiBacco v. U.S. Army, 795 F.3d 178, 183 (D.C. Cir. 2015).

III. Analysis

AARC first contends that the CIA failed to perform an adequate search. It next challenges the CIA's reliance on FOIA Exemption 1, (5 U.S.C. § 552(b)(1)), which shields classified information from disclosure, and Exemption 3, (5 U.S.C. § 552(b)(3)), which protects records that are prohibited from disclosure by statute. AARC also argues that the CIA failed to properly segregate non-exempt material from the withheld records. Finally, AARC raises an assortment of miscellaneous complaints. The Court will consider each objection in turn.

A. Adequacy of the Search

The CIA defends the adequacy of its search with a declaration submitted by its Information Review Officer, Vanna Blaine. Ms. Blaine explains that experienced professionals knowledgeable about the agency's record holdings tailored searches in the two records systems where they believed responsive records likely resided: "(1) indices of all hard-copy archived Agency records" and "(2) electronic versions of Agency records that have been previously reviewed and/or compiled for potential public release." Blaine Decl. ¶¶ 13–14. For each system, searches were conducted using key terms, such as "David H Byrd/David Harold Byrd," "Werner von Alvensleben Jr.," "Doolittle Report," "Report on the Covert Activities of the Central Intelligence Agency," and "Study Group." *Id.* at ¶ 15. Hard-copy files

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suspected of containing responsive information were searched “line-by-line, page-by-page.” Id.

AARC nonetheless claims the search was inadequate because it excluded the agency’s operational files and revealed fewer documents than AARC expected. Neither dog will hunt.

1. Search of the CIA’s Operational Records

The CIA Information Act generally exempts CIA operational files from the search, review, publication, and disclosure requirements of FOIA. See 50 U.S.C. § 3141(a); Talbot v. U.S. Dep’t of State, 315 F. Supp. 3d 355, 369 (D.D.C. 2018) (Cooper, J.). The Act defines “operational files” to include “files of the National Clandestine Service which document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services.” 50 U.S.C. § 3141(b)(1). However, “exempted operational files shall continue to be subject to search and review for information concerning . . . the specific subject matter of an investigation by the congressional intelligence committees,” or other specifically enumerated investigative offices, “for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.” Id. § 3141(c).² For that exemption-to-the-exemption to

² These specific offices are: the Intelligence Oversight Board, the Department of Justice, the Office of the General Counsel of

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apply, three elements must be satisfied: (1) the statute must cover the investigating entity; (2) the information requested must be the “specific subject matter of [the] investigation;” and (3) the investigation must concern “impropriety” or “misconduct” by intelligence agencies. Morley v. CIA, 508 F.3d 1108, 1116–19 (D.C. Cir. 2007).

The CIA did not search its operational files because, in its view, “the requested information does not fall within the scope of any exception that would warrant a search of the CIA’s exempted operational files.” Blaine Decl. ¶¶ 16–17. AARC responds that the agency should have searched its operational records for information about Byrd and von Alvensleben because the JFK assassination has been thoroughly investigated by the Senate Select Committee on Government Operation with Respect to Intelligence Activities (“Church Committee”) and has also been the subject of investigations by the Department of Justice, the Warren Commission, and the House Select Committee on Assassinations. Pls.’ Mot. Summ. J. at 11-13, 18. But AARC has not offered any evidence that those investigations concerned the specific subjects of its FOIA request.³

As the D.C. Circuit explained in another FOIA case seeking records from the CIA about the JFK

the CIA, the Office of Inspector General of the CIA, and the Office of the Director of National Intelligence. 50 U.S.C. § 3141(c)(3).

³ Because AARC failed to satisfy the “specific subject matter” requirement, the Court need not determine whether the other requirements for searching the CIA’s operational records are met.

assassination, a FOIA request concerns “the specific subject matter of an investigation” when “the investigating committee would have deemed the records at issue to be central to its inquiry.” Morley, 508 F.3d at 1118; see also Sullivan v. CIA, 992 F.2d 1249, 1255 (1st Cir. 1993) (“[A] pivotal requirement of [50 U.S.C. § 3141(c)(3)] is that, to be extractable, the information requested must concern the specific subject matter of the official investigation.”). Thus, “information that merely ‘surfaced in the course of the investigation’ should not trigger the . . . exception.” Morley, 508 F.3d at 1118 (quoting H.R. Rep. No. 98-726, at 31, reprinted in 1984 U.S.C.C.A.N. 3741, 3769).

The fact that President Kennedy’s assassination has been investigated by numerous official bodies does not mean that David Byrd or Werner von Alvensleben Jr. were the “specific subject” of any investigation. Nor does AARC provide evidence to support such a conclusion. At most, AARC asserts that the investigations *should have* touched on the fact that “a convicted Nazi assassin was in the company of the owner of the Texas School Book Depository building.” Pls.’ Mot. Summ. J. at 13. But this begs the question by requiring the Court to believe the speculative theory that AARC hopes to investigate. Speculation is not enough to demand the CIA search its operational files. And even if one of those men did tangentially appear in a relevant investigation, that alone would not justify searching all of the CIA’s documents. See Davy v. CIA, 357 F. Supp. 2d 76, 83 (D.D.C. 2004) (quoting Sullivan, 992 F.2d at 1255) (rejecting assertion that the CIA must search its

operational files because committees investigating the JFK assassination may have touched on plaintiff's requested subject of information). The CIA's operational files will remain off limits.⁴

2. Failure to Locate Expected Records

AARC also contends that “the inadequacy of the CIA's search is evidenced by the absence of records pertaining to known operations, events and activities.” Pls.' Mot. Summ. J. at 21. Specifically, AARC posits that “[t]he scale of Byrd's government contracting and the valued nature of von Alvensleben's assistance to U.S. intelligence in World War II support the conclusion that considerable material would be memorialized.” *Id.* at 22. In AARC's view, the search was not “commensurate with the important issues raised in the case” and failed to locate enough responsive records. *Id.* at 21. These arguments are unpersuasive.

First, the claimed importance of AARC's request has no bearing on the adequacy of the CIA's search. FOIA does not set different standards for searches based on the perceived importance of the requested

⁴ In support of its view that the CIA's operational records must be searched, AARC also notes that Congress passed the President John F. Kennedy Records Collection Act of 1992, 44 U.S.C. § 2107 notes (“JFK Act”), which created a procedure for releasing government records related to the assassination. Pls.' Mot. Summ. J. at 13. But the D.C. Circuit has made clear—in a case involving AARC—that the JFK Act does not alter FOIA's application to documents that may pertain to the assassination of President Kennedy. See Assassination Archives and Research Ctr. v. DOJ, 43 F.3d 1542, 1544 (D.C. Cir. 1995).

documents. Indeed, in the Court's experience, most FOIA requesters view their requests with paramount importance. It is well-settled, moreover, that the adequacy of a search "is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search." Iturralde v. Comptroller of Currency, 315 F.3d 311, 315 (D.C. Cir. 2003). Records, especially ones that are nearly six decades old, "may have been accidentally lost or destroyed, or a reasonable and thorough search may have missed them." Id. Or such records may never have existed at all. Either way, the CIA has detailed the tailored search it conducted to locate responsive records. That is enough. See Perry v. Block, 684 F.2d 121, 127 (D.C. Cir. 1982) (the agency need not "set forth with meticulous documentation the details of an epic search for the requested records"). AARC cannot rely on mere speculation that records likely exist to contest the search's adequacy. See SafeCard Servs., Inc. v. SEC, 926 F.2d 1197, 1200 (D.C. Cir. 1991) ("Agency affidavits are accorded a presumption of good faith, which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents.")

B. The CIA's FOIA Withholdings

Next, AARC challenges the CIA's withholding of some responsive information. The CIA asserted its withholdings, some in part and some in full, under three FOIA exemptions: Exemption 1 (for classified information), Exemption 3 (for records exempt from disclosure by statute), and Exemption 6 (for personnel

information).⁵ AARC challenges the CIA’s reliance on Exemptions 1 and 3. While the record leaves some doubt as to whether the CIA properly applied Exemption 1, the Court will grant summary judgment for the CIA because the same information was properly withheld under Exemption 3.

AARC also maintains that the CIA failed to segregate exempted material and requests the Court conduct an in camera review to double-check the agency’s work. AARC has not produced sufficient evidence to merit such relief.

The Court will start with the claimed exemptions before turning to AARC’s segregability argument.

1. Exemption 3

The CIA withheld several documents in part or in full under Exemption 3, which applies to records exempted from release under FOIA by another statute, see 5 U.S.C. § 552(b)(3). The CIA bases its withholdings on two specific statutes: the National Security Act, 50 U.S.C. § 3024(i)(1), and the Central Intelligence Agency Act, 50 U.S.C. § 3507 (“CIA Act”). Def.’s Mot. Summ. J. at 13. The National Security Act broadly directs the Director of National Intelligence to “protect

⁵ According to the declaration of Michael G. Seidel, Chief of the Record/Information Dissemination Section of the FBI’s Information Management Division, the FBI invoked Exceptions 6 and 7 (law enforcement records) to withhold some information from documents referred to it by the CIA. Def.’s Mot. Summ. J., Ex. 3 ¶ 4 (“Seidel Decl.”). Those withholdings are uncontested.

intelligence sources and methods from unauthorized disclosure.” 50 U.S.C. § 3024(i)(1). The CIA Act prevents the disclosure of “the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency.” 50 U.S.C. § 3507. Both statutes have been recognized as Exemption 3 withholding statutes. See CIA v. Sims, 471 U.S. 159, 168 (1985) (National Security Act); DiBacco v. U.S. Dep’t of the Army, 234 F. Supp. 3d 255, 275 (D.D.C. 2017) (CIA Act).

Ms. Blaine attests in her declaration that the CIA invoked the National Security Act to withhold “information that would reveal intelligence sources and methods.” Blaine Decl. ¶ 25–26. She elaborates that the intelligence methods at issue are still in use or could be used, and that disclosure of these methods would “undermine U.S. intelligence capabilities and render collection efforts ineffective.” Id. ¶ 20.⁶ Specifically, Ms. Blaine notes that the CIA redacted “locations of specific overseas facilities and classified internal CIA polices,” “a comprehensive inspection of intelligence activities, sources, and methods of the Psychological and Paramilitary Operations Staff,” and “unclassified intelligence methods . . . such as dissemination controls.” Id. ¶¶ 22, 26. In addition, Ms. Blaine asserts that she relied on the CIA Act to withhold “officers’ names and other identifying information as well

⁶ The Court cites to some sections of Ms. Blaine’s declaration that relate to Exemption 1 to support its ruling on the use of Exemption 3 because the CIA’s withholdings under Exemption 3 cover the same materials. Blaine Decl. ¶ 26

as functional and organizational information, among other items.” Id. ¶ 27.

AARC contests the CIA’s use of Exemption 3, arguing that the withholdings were applied to materials that are over 50 years old and, thus, should be automatically declassified. Pls.’ Mot. Summ. J. at 25. According to AARC, Exemption 3 only applies to “unauthorized disclosure[s]” and publishing information that should be automatically declassified cannot be considered unauthorized. Id. But that argument runs contrary to Supreme Court precedent. Sims, 471 U.S. at 169 (“Congress [did not] state that only confidential or nonpublic intelligence sources are protected. [The National Security Act] contains no such limiting language.”); see also Talbot v. U.S. Dep’t of State, 315 F. Supp. 3d 355, 373-74 (D.D.C. 2018) (Cooper, J.) (rejecting the argument that “declassification automatically makes any disclosure authorized” under the National Security Act).⁷

⁷ AARC’s automatic declassification argument carries more force in response to the CIA’s use of Exemption 1 to withhold classified information pursuant to Exec. Order No. 13,526, 75 Fed. Reg. 707 (Dec. 29, 2009) (“EO”). That executive order requires automatic declassification of materials older than 25 years, but permits continued withholding in some circumstances, including if disclosure would “reveal the identity of a confidential human source, a human intelligence source, . . . or impair the effectiveness of an intelligence method currently in use, available for use, or under development.” EO § 3.3(b)(1). For documents older than 50 years, like many at issue in this case, continued withholding is permitted in a more limited set of circumstances, including if the materials would reveal “the identity of a confidential human source or a human intelligence source.” EO § 3.3(h)(1)(A). The

AARC also contests the CIA's reliance on the CIA Act, but fails to specify any particular objection to the CIA's conduct in this case. AARC notes that "the agency has recently asserted the CIA Act in several cases to exclude information regarding the organization and functions of the agency generally," Pls.' Mot. Summ. J. at 27, but the CIA does not appear to be raising that justification here. And while the agency's Vaughn index does include citations to the CIA Act as one of a number of exemptions applied to fully-withheld documents, the Court does not interpret that as meaning the CIA is using the CIA Act to justify withholding the whole document. Def.'s Mot. Summ. J., Ex. 2 at 1. Instead, the Court credits the agency's justifications detailed in Ms. Blaine's declaration, which it presumes were made in good faith. See SafeCard Servs., 926 F.2d at 1200 ("Agency affidavits are accorded a presumption of good faith[.]")

Because AARC has not raised any genuine issues of material fact regarding the withheld information, the Court will grant summary judgment for the agency as to the validity of those exemptions.

Court harbors some doubt that the CIA's Exemption 1 claim is sufficient, as Ms. Blaine's declaration centers on concerns about impairing intelligence methods, as opposed to intelligence sources, and much of the material appears to be at least 50 years old. Given that the same withholdings are appropriately justified by the CIA's reliance on Exemption 3, however, the Court need not resolve those distinctions. See Def.'s Mot. Summ. J. at 14 ("[T]he CIA asserted Exemption 3 in conjunction with [the National Security Act] to protect all the same information for which Exemption 1 was asserted[.]")

2. *Segregability*

AARC also challenges the CIA's compliance with FOIA's requirement to release any "reasonably segregable portion of a record." 5 U.S.C. § 552(b)(9). AARC asserts that it is unreasonable for the CIA to withhold 50-year-old documents in full, and asks the Court to review the withheld documents in camera to determine if the CIA complied with its obligations. Pls.' Mot. Summ. J. at 28–29. The Court will deny this request.

"Agencies are entitled to a presumption that they complied with the obligation to disclose reasonably segregable material." Sussman v. U.S. Marshals Serv., 494 F.3d 1106, 1117 (D.C. Cir. 2007). Ms. Blaine explained that the CIA conducted a line-by-line review and released all reasonably segregable records. Blaine Decl. ¶ 33. The burden is on AARC to proffer contrary evidence to rebut the applicable presumption, see Sussman, 494 F.3d at 1117, and it has not done so. Nor has it provided evidence to justify in camera review. See Ray v. Turner, 587 F.2d 1187, 1195 (D.C. Cir. 1978) ("[T]he government's burden does not mean that all assertions in a government affidavit must routinely be verified by audit."). Accordingly, AARC's segregability challenge fails.

C. Miscellaneous Challenges

AARC also raises a grab-bag of other issues, which the Court will address briefly.

1. *Former President Trump's Files*

AARC requests that the Court order the CIA to search “classified files retrieved from former President Trump” because “President Trump has expressed strong interest in the assassination of President Kennedy and may have had possession of government files on the topic.” Pls.’ Mot. Summ. J. at 14. But AARC offers nothing but speculation to support that the collection of recovered documents were “likely” to contain responsive documents.

Further, even if AARC had more than speculation to support its request, it is not entitled to additional searches after the date the search was “tasked.” An agency may limit its search to documents in its possession as of a certain date, but its decision must be reasonable. McGehee v. CIA, 697 F.2d 1095, 1100–02 (D.C. Cir. 1983). Cut-off dates set for the “date-of-search” have been “implicitly sanctioned” as reasonable. McClanahan v. DOJ, 204 F. Supp. 3d 30, 47 (D.D.C. 2016) (citing Pub. Citizen v. Dep’t of State, 276 F.3d 634, 642–43 (D.C. Cir. 2002)). Further, the D.C. Circuit has suggested that whenever an agency determines which components to “task” with the search is a reasonable cut-off date. See Pub. Citizen, 276 F.3d at 643. According to a supplemental declaration from Ms. Blaine, the CIA set a cut-off date for AARC’s FOIA request based on when “the search was tasked,” which Ms. Blaine avers was “11 June 2021.” Def.’s Reply and Opp’n to Pls.’ Mot. Summ. J., Ex. 1 ¶ 4 (“Blaine Supp. Decl.”). Because any classified files that may have been found in Mr. Trump’s possession were identified and

recovered after the cut-off date, the CIA need not redo its search.

2. Discovery

Asserting that the CIA has undermined its credibility by initially denying receipt of the request, AARC insists that discovery is necessary to clarify the issue. Pls.' Mot. Summ. J. at 23–24. The Court disagrees. “[D]iscovery is rarely appropriate in FOIA cases.” Pavement Coatings Tech. Council v. U.S. Geological Surv., 995 F.3d 1014, 1024 (D.C. Cir. 2021). Given that the CIA subsequently responded to AARC’s request, there is no controversy requiring the extraordinary relief of permitting discovery in a FOIA case.

3. Documents C01270964 & C01270967

Lastly, AARC lodges objections concerning two documents that were referred to the FBI for direct response to AARC. Pls.' Mot. Summ. J. at 25. Specifically, it says that the document numbered C01270964 “is largely illegible” and the document numbered C01270967 contains two redactions that the FBI did not explain. Id. AARC requests that legible and unredacted versions of these documents “must be located and released.” Id. While the document numbered C01270964 does contain handwritten marks and some unreadable portions, it appears to the Court that it is the version the CIA had in its possession. To the extent AARC would like the FBI to look for an unblemished version of the document, it must direct a FOIA

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request to the FBI. And as to the document numbered C01270967, the redactions described by AARC appear to be preexisting marks, and not exemptions made by either the CIA or FBI in response to this FOIA request. The Court sees no issues requiring resolution.

IV. Conclusion

For these reasons, the Court will grant Defendant's Motion for Summary Judgment and deny AARC's Motion for Summary Judgment

A separate Order shall accompany this opinion.

[SEAL]

/s/ Christopher R. Cooper
CHRISTOPHER R. COOPER
United States District Judge

Date: February 22, 2023

App. 21

**United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 23-5064

September Term, 2023

1:21-cv-01237-CRC

Filed On: February 8, 2024

Assassination Archives and Research Center
and James H. Lesar, I,

Appellants

v.

Central Intelligence Agency,

Appellee

BEFORE: Millett, Pillard, and Garcia, Circuit
Judges

ORDER

Upon consideration of the petition for rehearing, it
is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

App. 22

**United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 23-5064

September Term, 2023

1:21-cv-01237-CRC

Filed On: February 8, 2024

Assassination Archives and Research Center
and James H. Lesar, I,

Appellants

v.

Central Intelligence Agency,

Appellee

BEFORE: Srinivasan, Chief Judge, and Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges

ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

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Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

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Microfilmed
May 5, 1966
Doc. Micro. Ser.

SECRET

28 September 1945

SUBJECT: Baron Werner Otto von ALVENSLEBEN

1. The following information is taken from statements reportedly made by subject himself:

a) Born 23 April 1913, Berlin, the son of Baron Werner von ALVENSLEBEN, Captain in the German Imperial Army and former German Ambassador, Czarist Russia.

b) 6'1" tall, slim build, light brown hair, blue eyes, pronounced scar from lobe of left ear to point of chin.

c) Subject joined the Bavarian Military Police at Munich in 1932 at the age of 19 with the rank of Cadet. One statement declares he never was a member of the Nazi Party, but another statement says he joined the Nazi front at about the same time he joined the Bavarian Police. He took an active part as a member of the Bavarian Police in the street fighting that took place in 1932 and 1933 between the Nazis and their adversaries, being wounded on one occasion. He was given the task of sabotaging vital installations in the Tyrol border district by HIMMLER, then the head of the Bavarian Military Police. While subject was in the Austrian Tyrol district an attempt was made to assassinate Dr. STEIDEL, an Austrian official.

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~~SECRET~~

Subject was arrested by the Austrian Police, tried and found guilty on the charges of 1) being an accessory before the fact in the attempt to assassinate Dr. STEIDEL, and 2) being concerned in certain attempts to destroy government property. Subject was sentenced to three years imprisonment in Political Prison [an officer taking one statement from subject says that subject admitted in confidence, but declined to sign the admission that he had been sent to Austria with definite instructions to carry out the assassination of SEIDEL].

d) Subject served some three months of his term being released on exchange 31 December 1933. He was taken into custody by the Bavarian Police the following day at the German border and released after a few days. Subject states that he was in no way connected with an attempt to assassinate Major FEY, Austrian Minister of Police, and was never questioned by Police in this matter. He states that Austrian newspapers unjustifiably connected his name with this case.

e) Subject returned to the Bavarian Police in January 1934, attending a Military Training College at MUNICH. He was commissioned a Lieutenant in the Bavarian Military Police in June 1934.

f) On 30 June 1934 subject was arrested together with his father in the "Blood Purge". He was taken to Berlin and released after a few days. Berlin papers falsely reported that subject and his father had been shot. Subject was arrested again in August 1934

~~SECRET~~

and held without trial until April 1935 when he was again released and ordered to leave Germany. Subject's arrests were caused by his being a follower of STRASSER, and his releases were the result of intervention in his behalf by the German High Command.

g) Subject sailed from BREMEN in April 1935 and arrived at CAPE TOWN 1 May 1935. In the years before the outbreak of war he worked at various jobs in South Africa and Rhodesia, spending most of his time in the employ of various mining concerns. At the outbreak of war he was interned in Rhodesia as an enemy alien, but escaped and made his way into Portuguese East Africa.

2. One report, no evaluation, states subject was once fined in VILA PERY for shooting a native.

3. We have the following information on relations of subject:

a) An unevaluated report states that Werner von ALVENSLEBEN was deputy leader of the Gestapo in Vienna in 1940.

b) At least three reports appearing in public press have stated that Werner von ALVENSLEBEN is involved in plans to organize bands and groups for the systematic sabotaging of the peace terms imposed on Germany. These reports state that ALVENSLEBEN organized similar bands in 1919 and was lately a friend of Hitler. We have no information relative to the source, or the evaluation of these reports.

~~SECRET~~

c) We have one report from a source designated as usually well informed, which verifies the plans for [post-]hostility activities, and says that they are modelled after activities of Werner von ALVENSLEBEN, a specialist in political assassinations after World War I. No statement is made in this report about any connection of Werner von ALVENSLEBEN with the present plans.

d) We are unable to identify positively the Werner von ALVENSLEBEN, mentioned in the three reports above, but he may be the father of subject. According to subject's statement, his father had been released from arrest at the same time subject was released.

e) Rudolf von ALVENSLEBEN-SCHOCHWITZ, [cit-Germany] SS Gruppenfuehrer and Generalleutnant de Polizei, has been a prominent figure during the War. A former member of the Prussian Diet and Saxon Diet, a member of the Reichstag since 1933, a member of the Landtag, and a former Kreisleiter of the NSDAP, this man has recently been arrested for complicity in systematic terrorism and other crimes. The exact relationship of this man to subject is not known. [(1944) May be related to Baron Werner Otto von Alvensleben (Western S.S. Agent)]

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SECRET

DECLASSIFIED Authority <u>NND D09005</u> By <u>LJ NAHA</u> , Date <u>10-1-14</u>
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MEMORANDUM

14 October 1944

TO: Lt. Luther, Africa Desk, SI

FROM: Captain J. R. Baine, X-2

SUBJECT: Personnel Information

Pursuant to your request, I am sending you information on the persons listed below. It is understood that this is X-2 information and not to be disseminated without prior consultation with X-2.

*1. Ferriera, Ernesto Santos.

Member of PVDE, resigned and later readmitted. Cousin of Captain Santos Costa, sub-S.of S. for War. Arrived 3 October 1943 (presumably from Portugal) on "Colonial". Passed through Beira November, 1943, on way to the north of Colony.

[@ DRAM] 2. Alvensleben, [cit-Portugal(?)] (Baron) Werner Otto von. [Agent of Western Intelligence & double Agent]

Son of Count Werner von Alvensleben, former German Ambassador to Czarist Russia. Prussian junker, reported ardent Nazi. Slim, 6'1", light brown hair, blue eyes, scar on left cheek from ear lobe to chin. Speaks Spanish, English, German. Born Berlin 23

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April 1913. Joined Bavarian Military Police [(SS)] at Munich, February, 1932. Went to Austria 1933. Found guilty of implication in attempt to assassinate Dr. Steidle, sentenced to three year term. Released 31 December 1933. Rejoined Bavarian Police January, 1934, attended Military Training College, commissioned Lieutenant in Bavarian Police. Arrested during blood purge of 1934, taken to Berlin. Released, rearrested, held until April, 1935. Arrived at Capetown May, 1934 (?). Worked Blue Bird Transport Company and German Auto Union in Johannesburg. Returned to Capetown, went to Rhodesia October, 1934 (?). Employed for several years at various mines in Rhodesia. Reported engaged to daughter of Guest, Minister of Colony. Interned at Salisbury, 1939. Made his way with German Emil Rohe into Portuguese East Africa. Arrived Laureco Marques 3/4/41 [(Portuguese East Africa) from internment in Salisbury]

According to Olaf Waldemar Andressen, he, subject, Palu Bartig, and Hans Georg Dedek are on Nazi proscribed list.

* Subject and Dedek reportedly circulated among Germans in Laureco Marques a manifesto on recent attempt on Hitler's life. Aroused opposition of Werz and Trompke.

Employed a sub-agent, Masser, [FNU cit-German] on behalf of Allies. Messer recently deported to Germany. [(1944) Worked for (Baron) Werner Otto von Alvensleben for Western Intelligence in Laureco Marques, Portuguese East Africa]

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3. Leidenberg, Maria Andriana Sousa Costa.

Divorced wife of Justus Christian Leidenberg; daughter of lawyer Sousa Costa; sister of Maria de Lourdes Sousa Costa, Wertz' mistress. Reported engaged to Werner von Alvensleben.

Reported talking concerning Brigadier Joel Vieira.

Received letter from Mrs. Ingber sent by courier on "Quanza" and delivered by an intermediary. Courier may be an agent of German Consulate.

4. Dedek, Hans George [Ernest Arnold at-Germany? German Expatriate]

Quiet, keeps to himself, seldom goes out. Reported on Nazi proscribed list with von Alvensleben and others. Reported refused repatriation to Germany fearing Nazi wrath. Savagely attacked by one Kraizizek, described as a truculent henchman of the German Consulate.

5. Lieber.

No record. [Δ Laurencio Marques, Portuguese East Africa (1944)]

Double Agent for Western Intelligence, worked with (Baron) Werner Otto von Alvensleben]



—Dallas News Staff Photo by Doris Jacoby.

TIME OUT FROM SAFARIS

Baroness W. V. Alvensleben is a native of Africa married to a German who leads safaris in Mozambique. The slender brunette, of Portuguese descent, and her husband are guests in Dallas. (See story on Page 5.)

YOUNG HUNTRESS

Storybook Adventure's Real

By ANN DONALDSON

Society Editor of The News

Hollywood could have picked the script: A German baron who leads safaris on a concession larger than the country of Belgium; his beautiful wife, a native African with the background of a famous old Portuguese family.

But Baron and Baroness W. V. Alvensleben of Lourenco Marques, Mozambique, are for real, and are in Dallas as guests of Col. D. Harold Byrd.

Col. Byrd returned to Dallas three weeks ago from a hunt on the huge concession 1,000 kilometers north of the seaport city of Lourenco Marques.

THE CONCESSION, rented from the Portuguese government, can be reached by "bumpy roads that are agony to travel," or "charter plane—there are two airstrips," says the olive skinned baroness.

Clients are mostly American and have included Dr. Vander Davidson of Dallas and two Wichita Falls couples, Mr. and Mrs. Jerry Vincent and Mr. and Mrs. Steve Gose.

The baroness' father arrived in Mozambique in 1914 to practice law. He was married by proxy, and his wife came to Mozambique later. "My mother's parents had a fit," says the former de Sousa Costa. "Going to

Africa was like going to the end of the world in those days.”

Educated in Lourenco Marques and in Portugal, the baroness speaks perfect English she learned at a Portuguese convent and from tutors at her grandparents’ estate.

She married Baron Alvensleben, former manager of a gold

Picture on Page 1

mine in Rhodesia, 18 years ago, often accompanies him on safaris.

THE FIRST ANIMAL she shot was the “sweet, harmless impala,” and she has gotten to the stage where “I shoot but feel sorry to kill. To satisfy a caprice of mine, I’d still like to shoot an elephant.”

To hunt, the baroness takes khaki clothes “so the animals won’t see,” khaki hats, comfortable boots and sweaters for mornings and evenings during the cool months of June, July and August.

“Even though it’s a sport, it’s hard work,” explains the tall slender brunette. “We rise at 4 a.m. because my husband likes it that way.

“It’s a beauty to see the sun rise and the animals come out from under the trees. The fauna is the wealth of our nation.”

BARON ALVENSLEBEN has also reached the stage where he prefers looking to shooting. The only animal they have mounted is the buffalo. "You can't put those heads just anywhere. Anyway, when you are in contact with the animals, you don't care about mounting them."

The concession is closed during the hot rainy months from Dec. 1 to April 1, and the Alvenslebens have been in the United States since the close of the season.

Baroness Alvensleben, who speaks six languages (German, French, English, Italian, Spanish and Portuguese), has traveled all over the world, but claims that "here in the United States are the biggest quantity of beautiful girls and women."

THE BARONESS AND her husband accompanied Col. and Mrs. Byrd to the ball Mr. and Mrs. N. J. DeSanders gave Saturday night for his debutante granddaughters Sue and Janet DeSanders. "Above all, I am a woman," says the chic baroness, "and I enjoyed seeing the elegant decorations and beautiful gowns."

From Dallas, they will go to Wichita Falls. They were also in Las Vegas for the presentation of the Weatherby Trophy to the best hunter of the year, awarded Dec. 7. "We are enchanted with our American friends and the kind hospitality they have shown us," says the baroness. "We have been to so many parties that I have gained several pounds and lost much sleep."

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When the baron and baroness return to Môzambique at the end of January, she will “rest and restore my energies.”

OUTDOORS



★

**Baron Takes Look
At Texas Hunters**

By Kenneth Foree

Outdoor Editor of The News

HE WAS TALL enough to have been a basketball player, he had a scar on the left side of his face that ran from his mouth to his ear and about which he volunteered nothing, but he furnished a view of American hunters from the other side of the fence.

From the white hunter's side of the fence that is, the men who take the Americans hunting, who live with them for weeks, who often face death with them when they go up against mighty beasts.

He was Baron Werner von Alvensleben and although he used the broad A of the English and last was lost and grass was gross, that von indicated Prussian descent and that long wicked scar could have come from a saber in a schoolboy fight. "Did that scar come from an African spear?" he was asked by this columnist.

"NO," HE ANSWERED and began talking about American hunters. And the man was qualified for such, for Baron von Alvensleben ("Just call me Werner," he said when Col. D. Harold Byrd introduced him) arranged Byrd's recent African safari as director of Safarilandia, had arranged many more and had watched many an American hunter.

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From a distant little or big corner, depending upon how you look at it, of the world he came, from Portuguese East Africa, also curiously-named Mozambique and from a beautiful and very modern city with the intriguing name of Lourenco Marques (Lo RAN soo Mer KASH in case your Portuguese ain't grade A).

MOZAMBIQUE ISN'T a little corner of the world, being longer than Texas, 1,300 miles, though only 400 miles wide, and in it there is an area, the Save Hunting Concession leased to Mozambique Safarilandia, Lda., of 34,000 square miles, or as big as Switzerland, said red-faced, sandy-haired Baron Just-Call-Me-Werner. To spot Mozambique it is that eastern coast of Africa just opposite the island of Madagascar, which is longer than Texas, too.

In that Save Hunting Concession, where less than 10 per cent of the game is shot annually, being considerably under the natural increase and all meat must be given the natives, Colonel Byrd and Dr. V. A. Davidson of Dallas shot 21 different species in a couple of weeks.

Dr. Davidson got a 62-inch kudu, near the world's record, and Byrd a 60-incher, which is quite high, plus a 43-inch buffalo and a 41-inch sable, which is in the record class.

Most of Mozambique Hunters Texans

BUT DOWN TO the interesting comments on how the tall Mozambique Baron, who married a Portuguese

lady of the first family, sees the men from this country who come wagging cannons.

Firstly, the Baron seemed quite qualified to speak of the Texas variety of Americans, for, he said, “80 per cent of our hunters are Texans. Fifteen per cent come from California and five per cent from the rest of the world.”

Then the Baron added a slant. “One of my hunters, George Gedek, speaks with a Texan drawl. He doesn’t know anything else. He’s only hunted with Texans, you see.”

Then he got onto the Americans: “Americans who come to our place are all sportsmen. All save one mon. There must be one bad egg everywhere, it seems. But the great majority of Americans are good sportsmen.

“THEN THEY ARE different from the hunters of other nations. They are much tougher. Most are used to rugged conditions. They have hunted Colorado, Wyoming, Montana, British Columbia, Alaska, where you have got to be able to take it. Such people find Africa comparatively easy.”

Then the man from Mozambique, where a three-week safari costs \$3,500 and a 4-week safari \$4,100 in addition to transportation there, got onto guns.

“Americans believe in high-powered rifles. Your American rifle, the Weatherby and the Winchester, are fine rifles. Europeans cawnt do as well. They don’t have the rifles, they don’t have time or opportunity to

practice. So Americans are much better shots. Your Herb Klein is a grand example.”

And what do these American hunters want to shoot? “Texans want a lion and leopard first,” replied the Baron. “Then they want a buffalo, then a kudu, lastly the elephont.

“THERE IS A tremendous argument as to the most dangerous onimal in Africa. No, not the buff,” he said to Byrd. “You can see him. The wounded lion or leopard is on you like lightning. The wounded leopard is the more dangerous of the two. Invariably it will attack.

“But I count the elephont as the most dangerous. An elephont is able to reason. My greatest friend and co-hunter Horst Rohe was killed by an elephont in 1952. Quite a few of my friends have been killed by them. Mechanized man in the only enemy the elephont has.

“Wally Johnson, Harold’s white hunter, who has killed over 1,000 elephonts, shot one six times last year and it escaped into the bush. He was back there six months ago. That elephont attacked him. The wound scars proved it.”

It was but natural to ask a man who has lived in Mozambique for 17 years, or since World War II, what his closest call has been.

“MY NARROWEST escape,” he replied, “was at Elm and St. Paul yesterday in front of the Athletic Club. This town is much more dangerous than the bush. Onimals don’t do you any harm unless you or someone

has wounded them. You cawn't say thot for Dallas drivers."

Then he got back to American hunters. "American women are great sports and good shots. Mrs. Marty Gose of Wichita Falls killed everything with one shot. Mrs. Jack O'Connor, wife of the Outdoor Life gun editor, mostly did the same. I have seen American women outshoot their husbands.

"But there is one thing we do note. The only things Americans are afraid of are bugs. But by God they disinfect themselves with the amount of whisky they drink. No mosquito would have a chance with them. They swerve off from them."
