

*Morley v. Joannides*

## THE NEED FOR JFK RECORDS ACT OVERSIGHT HEARINGS

By Jim Lesar

In publishing Scott Shane's story, "C.I.A. Is Cagey About '63 Files Tied to Oswald," the New York Times has rendered a significant public service shedding light onto one of the black holes which pock mark recent American history. Immediately at issue is whether CIA records should be kept secret from Washington journalist Jefferson Morley even though they are nearly a half-century old and relate to a subject, the assassination of President Kennedy, which Congress has found to be of such utmost public interest that it enacted a law that all JFK assassination-related records should be disclosed as soon as possible. But there are other issues, equally if not more important, which relate to Morley's Freedom of Information ("FOIA") case. To understand them, a bit of background is needed.

In 1984, a collaborative effort by some very strange bedfellows—the CIA and the American Civil Liberties Union—resulted in the passage of the CIA Information Act. With a fitting irony that only George Orwell could have appreciated, this law, passed in his year, was intended to eliminate, not enhance, public access to information about the CIA. However, there was a narrow loophole, and Morley has

attempted to exploit that loophole to gain access to the CIA's operational records pertaining to George Joannides, a former CIA case officer who was in charge of a CIA-funded Cuban exile organization, the D.R.E., whose leaders had contact with alleged presidential assassin Lee Harvey Oswald in the weeks before President Kennedy was assassinated.

That Morley is using the FOIA to seek secret JFK assassination-related documents may be perplexing to many for two reasons. First, in 1992, in the aftermath of Oliver Stone's movie "JFK," which painted a picture of CIA operatives having assassinated Kennedy, Congress enacted the President Kennedy Assassination Records Collection Act ("JFK Records Act"). It was enacted in large part because the public's efforts to obtain Kennedy assassination records under the FOIA had been thwarted for decades by government agencies, including the CIA. The JFK Act was intended to make the FOIA unnecessary where Kennedy assassination records are concerned. Second, the JFK Act was intended to make all Kennedy assassination records publicly available as soon as possible. Disclosure could be postponed only exceptional circumstances, so that all but a few documents would be released by the year 2017.

But Act's enforcement arm, the Assassination Records Review Board ("Review Board") went out of existence in 1998, with the result that FOIA requesters are back to Square One when it comes to Kennedy assassination records. And it has come to light during the course of Morley's lawsuit that rather than immediately releasing all but a very few highly sensitive documents as required by Congress, the CIA has withheld 1,100 documents in their entirety. Worse still, fragmentary evidence provided by the CIA indicates that these 1,100 documents may comprise tens of thousands of entirely withheld pages.

When Congress passed the JFK Records Act, it provided that House and Senate committees would have continuing oversight over its implementation. That has not occurred. A little over a year ago, acting on behalf of the Assassination Archives and /Research Center, a nonprofit organization I head, I submitted a detailed request that the appropriate congressional committees hold oversight hearings into a number of flaws in the implementation of the JFK Act. Others interested in the subject have done likewise. These entreaties have fallen on deaf ears.

Such hearings are badly needed and abundantly justified. Assassination researchers cannot now obtain the records they need

because the Review Board did not obtain them, because new sources of relevant records have come to light, or because agencies use FOIA rather than the JFK Records Act in determining whether information should be released, even though they once committed to do otherwise. On the latter point, for example, the day before the Review Board's demise the CIA, the Review Board, and the National Archives and Records Administration signed a Memorandum of Understanding which require the CIA to process any previously unprocessed JFK assassination-related records under the liberal terms of the JFK Records Act. The CIA and NARA refuse to enforce this agreement, thus leaving researchers adrift without any viable recourse.

The CIA's contention that secrecy until the year 2017 is justified should be subjected to strict congressional scrutiny, particularly in light of the fact that on the subject matter currently in litigation—Oswald's pre-assassination contacts with the D.R.E.—it withheld information from the Warren Commission, misrepresented to the Church Committee, corrupted the investigation by the House Select Committee on Assassinations, and mislead the Review Board. There must at some point be some sanctions for such misbehavior, and at a minimum, depriving the CIA of its ability to withhold the information about

Joannides is one appropriate course of action, and another would be to move the ending date for postponement of records from 2017 to the present.