

Recommendations - Chapter 7 - Final Report

1. The key attribute of the Assassination Records Review Board, established by the Congress to oversee a vigorous declassification program, was the independence conferred on the Board, in various ways, by the legislation. Future declassification initiatives concerning controversial events should adopt this attribute as the essential aspect necessary for success. Future declassification initiatives concerning controversial events must rest on a genuinely independent Board.
2. Serious, sustained effort to declassify federal documents will require congressional legislation with clear standards of access, an enforceable review and appeals process, and a budget appropriate to implement the legislation.
3. Future legislation concerned with the declassification of federal records should follow the admirable standard in the Assassination Records Collection Act that asserts a “presumption to disclosure” in reviewing all classified documents, and stipulates the presence of an evidentiary standard that obliges those who would maintain classified records to establish “clear and convincing” evidence of harm in attempting to sustain restricted access to documents.
4. The Review Board “common law” of decisions, formed in the context of a presumption of disclosure” and the “clear and convincing” evidence of harm criteria,

should be applied in the course of future declassification efforts. Perhaps parts of this “common law” might be codified to provide further guidance for declassifying federal records.

5. It is important that a solution to the problem of referrals for “third party equities” (classified information of one agency appearing in a document of another) be identified so that costly and inefficient referrals do not have to be made or can be dramatically reduced. One proactive means of addressing this problem is to convene representatives of all agencies with interests in selected groups of important documents. These representatives might discuss all the documents and refer information to one another all at once. A second approach would be to create uniform substitute language as a means of dealing with certain categories of recurring sensitive information.

6. Future declassification efforts, particularly those entailing a search for records, should incorporate a compliance program as an effective means of eliciting full cooperation. The Review Board compliance program was established to insure that all federal agencies holding assassination records would warrant under oath that every reasonable effort had been made to identify assassination records, following the definition of records as defined by the Board and published in the *Federal Register*, and that such records had been made available for review by the Board.

7. It is important that the provisions of the JFK Act be exercised after the Review Board ceases operations on September 30, 1998, so that the decisions of the Board can continue to be implemented. The National Archives must have the authority and means to continue to implement Board decisions after the Board has ceased to exist. Equally important, an appeals procedure must be developed that puts the burden for preventing openings on the agencies through a type of appeals process similar to that provided by the Act.

8. The Review Board model could be applied in certain extraordinary circumstances (such as, for example, the U.S. entry into World War II or perhaps in the war in Vietnam) where continuing controversy concerning government actions has been most acute and where an aggressive effort to release all "reasonably related" federal records would serve usefully to enhance our understanding of this event.

9. Both the Freedom of Information Act (FOIA) and Executive Order 12958 should be strengthened, the former to narrow the categories of information automatically excluded from disclosure, the latter to add "release" to the process of "review" of federal records, and to try to limit to the maximum possible extent the period of time for which records might be classified, and in both cases for there to be substitute language for all sustained restrictions.

10. A federal classification policy that substantially:

limits the number of those in government who can actually classify federal documents,
restricts the number of categories by which documents might be classified,
reduces the time period for which the document(s) might be classified, and
increases the resources available to the agencies and NARA for declassifying federal records

is what is needed. Moreover, the most effective means of declassifying already restricted documents is the systematic declassification program, though it surely needs far more resources and enforceable sanctions to be a truly successful effort.