

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	Civil Action No.
Plaintiff,)	1:10-cv-00765-GBL-TRJ
)	
v.)	
)	
ISHMAEL JONES, a pen name,)	
)	
Defendant.)	
_____)	

PLAINTIFF UNITED STATES’ PARTIAL MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY AND MOTION TO DISMISS DEFENDANT JONES’ COUNTERCLAIM

INTRODUCTION

It is undisputed that defendant Ishmael Jones, a former Central Intelligence Agency (“CIA” or “Agency”) officer, was bound by a Secrecy Agreement not to publish any intelligence-related information without receiving the CIA’s written approval. It is also undisputed that Jones submitted a manuscript he wrote about his alleged experiences as a CIA officer for prepublication review to the Agency and that the Agency denied him permission to publish it. Finally, it is undisputed that Jones went ahead and published his manuscript anyway, in the face of this denial. These facts establish that Jones breached his contractual and fiduciary duties to the United States. The United States is therefore entitled to summary judgment as to liability as a matter of law.

Jones claims in defense, and as the basis for a counterclaim, that his book did not contain any classified information. But the Supreme Court definitively ruled in *Snepp v. United States*, 444 U.S. 507 (1980) (per curiam), that a former CIA employee’s publication of a book in

violation of the prepublication review requirements of his Secrecy Agreement constituted a breach of the employee's contractual and fiduciary duties regardless of whether the book actually contained classified information. *Snepp* controls this case and compels the conclusions that Jones is liable for his breach of his contractual and fiduciary duties and that his counterclaim should be dismissed for failure to state a claim.

STATEMENT OF UNDISPUTED MATERIAL FACTS AND PROCEDURAL POSTURE

The material facts of this case are undisputed and uncomplicated. Jones is a former employee of the CIA. When he was hired, he signed a Secrecy Agreement, and he signed additional Secrecy Agreements during his employment with the CIA. Counterclaim at ¶¶ 9, 10; Complaint at ¶¶ 8, 14. The Secrecy Agreement prohibited Jones from disclosing classified information, required him to submit to the CIA for prepublication review all intelligence-related writings prepared for public disclosure, and required him to receive written permission from the CIA before publicly disclosing any submitted writings. Ex. A to Complaint; Second Declaration of Mary Ellen Cole, Information Review Officer, National Clandestine Service, Central Intelligence Agency, at ¶ 5, attached hereto as Exhibit A ("Second Cole Decl."). The prepublication review requirement, which is pivotal to this lawsuit, provides as follows:

As a further condition of the special confidence and trust reposed in me by the Central Intelligence Agency, I hereby agree to submit for review by the Central Intelligence Agency all information or materials including works of fiction which contain any mention of intelligence data or activities, or contain data which may be based upon information classified pursuant to Executive Order, which I contemplate disclosing publicly or which I have actually prepared for public disclosure, either during my employment or other service with the Central Intelligence Agency or at any time thereafter, prior to discussing it with or showing it to anyone who is not authorized to have access to it. I further agree that I will not take any steps toward public disclosure until I have received written permission to do so from the Central Intelligence Agency.

Ex. A to Complaint at ¶ 5. The prepublication review requirement to which Jones originally agreed was reinforced by his subsequent agreements and was not superseded by them. Second Cole Decl. at ¶ 6 & Ex. 1 thereto.

After Jones signed his initial Secrecy Agreement, the CIA assigned him to various positions of trust and granted him regular access to classified information, including intelligence sources and methods. Jones served as a covert officer operating overseas for much of his CIA career, clandestinely collecting foreign intelligence. Declaration of Ralph S. DiMaio, submitted in support of the United States' Motion for Immediate Relief to Name Defendant by Pseudonym, at ¶ 8. During this time, Jones lived under his true name and hid his affiliation with the CIA. *Id.* Jones admits that he was exposed to classified information while he was employed by the CIA. He claims that he conducted "highly classified" operations as a "deep-cover officer." Answer at ¶ 16; Counterclaim at ¶¶ 11, 12.

Jones resigned from the CIA and wrote a book about his experiences as a CIA officer. Answer at ¶ 19; Counterclaim at ¶¶ 17, 18. On April 10, 2007, Jones submitted his manuscript to the CIA for prepublication review "pursuant to the terms of the Secrecy Agreements." Answer at ¶ 19; Counterclaim at ¶ 19, 54; Ex. 2 to Second Cole Decl.; *see also id.* at ¶ 8. He submitted it to the CIA's Publications Review Board (the "PRB"), the Agency body charged with reviewing and formally approving in writing all proposed nonofficial, personal publications submitted for prepublication review. Complaint at ¶ 17; Answer at ¶¶ 17, 19. According to the PRB's regulations, the PRB reviews material submitted by former employees "solely to determine whether it contains any classified information. Permission to publish will not be denied solely because the material may be embarrassing to or critical of the Agency."

Prepublication Regulation (f)(2), attached hereto as Exhibit B.

On May 22, 2007, the PRB denied Jones permission to publish any portion of the manuscript he submitted. Complaint at ¶ 20; Answer at ¶ 20; Counterclaim at ¶ 21; Ex. 2 to Second Cole Decl. The PRB informed Jones that publication of his manuscript “[w]ould reveal information that is damaging to the organization [CIA] and its mission because it parallels your association with and work for the organization [CIA].” Counterclaim at ¶ 23. Approximately two months later, Jones submitted a revised version of his manuscript to the PRB for prepublication review. Complaint at ¶ 21; Answer at ¶ 21; Counterclaim at ¶ 35; Ex. 2 to Second Cole Decl. The PRB reviewed Jones’ revised manuscript and on December 7, 2007, notified Jones that it approved publication of certain portions of the manuscript and denied approval of the remainder. Complaint at ¶ 22; Answer at ¶ 22; Counterclaim at ¶ 36. The PRB determined that publication of the denied material would reveal information damaging to the Agency and its mission. Ex. 2 to Second Cole Decl. The PRB explained that publication of the denied portions would “[r]eveal sensitive information about actual cases and methods known by you while you worked for the organization.” Counterclaim at ¶ 40; Ex. 2 to Second Cole Decl.

On January 8, 2008, Jones wrote the PRB again to complain about its decision. Complaint at ¶ 23; Answer at ¶ 23; Ex. 2 to Second Cole Decl. The PRB responded on February 5, 2008, telling Jones that it was treating his January 8, 2008 letter as an appeal. Counterclaim at ¶ 45; Ex. 2 to Second Cole Decl. Under the PRB’s regulations, authors may appeal PRB decisions involving nonofficial publications to the Associate Deputy Director of the CIA within 30 days of the decision. Prepublication Regulation (h)(1). The regulations provide that “[b]est efforts will be made to complete the appeal process within 30 days from the date the appeal is

submitted.” Prepublication Regulation (h)(1). In its February 5, 2008 letter to Jones, the PRB explained that resolution of an appeal could take some time as the issue required review by senior management officials. Counterclaim at ¶ 46. The PRB emphasized that Jones was bound by his Secrecy Agreement not to publish his manuscript unless and until he received approval from the PRB. *See* Ex. 2 to Second Cole Decl. About a month later, on March 8, 2008, in another letter to the PRB, Jones acknowledged that an appeal was pending and might take some time. *Id.*

In the summer of 2008, Jones published his manuscript as “The Human Factor: Inside the CIA’s Dysfunctional Intelligence Culture” (“The Human Factor”). Answer at ¶ 26; Counterclaim at ¶ 49. He did not wait for a decision on his PRB appeal, nor did he seek judicial review of the Agency’s decision. Answer at ¶ 27, 28; Counterclaim at ¶ 48. Thus, Jones published the unapproved portions of his book without approval from the Agency and in direct defiance of the PRB’s express denial of permission to publish.

Additionally, on January 7, 2010, Jones had an article that he wrote published in the Washington Times. Answer at ¶ 29. The title of the article was “World Watch: Intelligence Reform is the President’s Urgent Challenge.” *Id.* Jones failed to submit the article for prepublication review even though it pertained to intelligence activities. *Id.*

On July 9, 2010, the United States filed this case against Jones. The complaint alleges that Jones breached his contractual obligations and fiduciary duties to the United States by publishing his book in defiance of the PRB’s express denial of permission to do so and by publishing his article in the Washington Times without submitting it for prepublication review. The complaint seeks declaratory and injunctive relief and the imposition of a constructive trust.

On July 21, 2010, the Court granted the United States' motion to name defendant by his pen name, Ishmael Jones, in order to protect Jones' true identity and his affiliation with the CIA. Dkt. No. 4.

On December 14, 2010, Jones responded to the complaint by filing a motion to dismiss for lack of personal jurisdiction and improper venue and/or motion to transfer venue under 28 U.S.C. § 1404. After holding a hearing, the Court rejected Jones' motion in its entirety. Jan. 28, 2011 Order (Dkt. No. 18). On February 11, 2011, Jones filed an answer to the complaint in which he alleged as his primary defense that he disclosed no classified information in either his book or newspaper article and that the United States has no contractual or constitutional right to bar the publication of non-classified information. Answer, Affirmative Defenses at ¶ 11. Jones also asserted a counterclaim alleging basically the same thing—that his book did not contain classified information, that the CIA may not deny publication of non-classified information, and that the CIA's denial of permission to publish his non-classified book violated his First Amendment rights. Jones seeks declaratory and other equitable relief for his counterclaim.

ARGUMENT

The United States is entitled to summary judgment on liability and to dismissal of Jones' counterclaim for the same reason: Jones undisputedly violated his Secrecy Agreement regardless of whether his book contained classified information. Whether or not Jones' manuscript contained classified information is simply irrelevant to Jones' liability for violating his Secrecy Agreement, as the Supreme Court squarely held in *Snepp v. United States*, 444 U.S. 507 (1980) (per curiam). Jones had the opportunity to challenge the CIA's determination that the book contained classified information by seeking judicial review of that determination. He

also could have asked a court to require the Agency to resolve his appeal if he believed the Agency was taking an unreasonable amount of time to do so. But Jones availed himself of neither of these options. Instead, he published a book containing information determined by the CIA to be classified. Jones' attempt *now* to claim that the CIA's 2007 denial of permission to publish "The Human Factor" violated his First Amendment rights, in response to the Government's suing him, must fail if the Secrecy Agreement that the Supreme Court upheld is to have any meaning or ability to protect the nation's secrets.

I. JONES BREACHED HIS CONTRACTUAL AND FIDUCIARY DUTIES WHETHER OR NOT HIS BOOK CONTAINED CLASSIFIED INFORMATION.

As a condition of his employment with the CIA, and as a condition of being granted access to classified information, Jones executed an employment contract with the CIA. The contract, entitled "Secrecy Agreement," specifically provides that in consideration for being employed by the CIA, Jones will never disclose classified information, or information that reveals classified information, to anyone not authorized to receive it. Ex. A to Complaint at ¶ 3. The contract further provides that, as a "condition of the special confidence and trust reposed in [Jones] by the [CIA]," Jones will submit writings containing intelligence-related information to the Agency for prepublication review and will not take any steps toward publication until receiving the Agency's written approval. *Id.* at ¶ 5.

Jones admits signing a Secrecy Agreement when he was hired by the CIA and signing additional Secrecy Agreements during his employment. Counterclaim at ¶¶ 9, 10. He also admits submitting his manuscript to the CIA for prepublication review "pursuant to the terms of the Secrecy Agreements." Counterclaim at ¶ 54. This amounts to an admission that the Secrecy

Agreements he signed contained a prepublication review requirement. Jones admitted as much in the foreword to his book. “The Human Factor” at vii (Author’s Note) (“As a former CIA employee, I was required to submit the book to CIA censors for their approval.”). Moreover, the CIA has submitted a declaration establishing that the Secrecy Agreement attached to the Complaint and quoted herein bears Jones’ signature in his true name. Second Cole Decl. at ¶ 5; *see also id.* at ¶ 8.

Equally significant, Jones admits breaching the terms of his Secrecy Agreement. Jones admits being notified that the CIA denied him permission to publish the “majority” of his manuscript and that he published it anyway. Counterclaim at ¶¶ 36, 37, 39, 40, 48, 49. This unmistakably violated his agreement not to take any steps toward public disclosure of material submitted for prepublication review until he received written permission from the Agency. Ex. A to Complaint at ¶ 5. Jones’ unauthorized publication of his book was clearly a material breach of his contract, as it defeats a central purpose of the Secrecy Agreement: reservation to the Agency of the initial determination as to whether information is classified and thus nondisclosable in order to protect national security and to assure intelligence sources that information provided in confidence will remain so. *See Snapp*, 444 U.S. at 511-13.

Both the United States Supreme Court and the Court of Appeals for the Fourth Circuit have upheld the validity and enforceability of the CIA’s Secrecy Agreement. *Snapp*, 444 U.S. 507; *United States v. Marchetti*, 466 F.2d 1309 (4th Cir. 1972). Because *Snapp* and *Marchetti* control this case, a full understanding of their facts and holdings is important. Frank Snapp served as an agent for the CIA from 1968 to 1976, working on matters related to Vietnam. *See United States v. Snapp*, 595 F.2d 926, 929-30 (4th Cir. 1979). After he resigned, he published a

book about the United States' involvement in Vietnam. Snepp did not submit the book for prepublication review. The United States sued him for violating his Secrecy Agreement, seeking an injunction requiring Snepp to submit future writings for prepublication review and an order imposing a constructive trust on profits earned by Snepp on the book. 444 U.S. at 507-08.

The district court found that Snepp had breached his contractual and fiduciary duties by publishing his book without submitting it for prepublication review. *United States v. Snepp*, 456 F. Supp. 176 (E.D. Va. 1978). The district court also found that publication of the book irreparably harmed the United States, even though the United States did not contend for purposes of the lawsuit that the book contained classified information, because it prevented the United States from guaranteeing the security of information obtained from foreign sources. Snepp's conduct undermined the United States' ability to guarantee the secrecy of information, deterred foreign sources from providing information to the United States, and impaired the United States' ability to gather and protect intelligence. *See Snepp*, 456 F. Supp. at 179-80. The court quoted the Director of the CIA's testimony that Snepp "'flouted the basic system of control that we have. If he is able to get away with this, it will appear to all those other people that we have no control, we have no way of enforcing the guarantee which we attempt to give them when we go to work with them.'" *Id.* at 180. The district court granted the requested injunctive relief and imposed a constructive trust.

On appeal, the Fourth Circuit agreed that Snepp breached a valid contract. It held that the Secrecy Agreement was an "'entirely appropriate'" way to implement the Director's statutory responsibility to protect intelligence sources and methods. *Snepp*, 595 F.2d at 932 (quoting *Marchetti*, 466 F.2d at 1316, and citing 50 U.S.C. § 403(d)(3)). The court firmly

rejected Snepp's argument that he only had to submit for prepublication review materials that were classified, not all intelligence-related information. *Id.* at 934-35. The court affirmed the injunctive relief granted by the district court but held that the Government was not entitled to a constructive trust. The court reasoned that a constructive trust is a remedy for breach of a fiduciary duty, and that while Snepp clearly breached a contractual duty to submit his book for prepublication review, he did not have a fiduciary duty to do so and therefore did not breach such a fiduciary duty. *Id.* at 935-36. Snepp did have a fiduciary duty not to disclose classified information, but the Government did not claim that any classified information had been disclosed. The court held that even though the Government's damages for breach of contract were not quantifiable, Snepp's conduct could support an award of punitive damages, and thus the Government was not without a remedy. *Id.* at 936-37.

The Supreme Court affirmed the grant of injunctive relief and held that Snepp did breach a fiduciary duty for which a constructive trust was an appropriate remedy. 444 U.S. 507. The Court held that Snepp violated his obligation to submit all material for prepublication review, not just classified information. "Whether Snepp violated his trust does not depend upon whether his book actually contained classified information." *Id.* at 511. And it affirmed both lower courts' conclusion that Snepp's breach of his obligation to submit all material, whether classified or not, for prepublication review irreparably harmed the United States. *Id.* at 513. The Court reasoned as follows:

Both the District Court and the Court of Appeals found that a former intelligence agent's publication of unreviewed material relating to intelligence activities can be detrimental to vital national interests *even if the published information is unclassified*. When a former agent relies on his own judgment about what information is detrimental, he may reveal information that the CIA—with its broader understanding of what may expose classified information and confidential

sources—could have identified as harmful. In addition to receiving intelligence from domestically based or controlled sources, the CIA obtains information from the intelligence services of friendly nations and from agents operating in foreign countries. The continued availability of these foreign sources depends upon the CIA’s ability to guarantee the security of information that might compromise them and even endanger the personal safety of foreign agents.

Id. at 511-12 (emphasis added).

The Supreme Court held, however, that the Court of Appeals denied the Government “the most appropriate remedy for Snepp’s acknowledged wrong”—the constructive trust—and reversed the Court of Appeals on this issue. *Id.* at 514. “The Government could not pursue the only remedy that the Court of Appeals left it without losing the benefit of the bargain it seeks to enforce. Proof of the tortious conduct necessary to sustain an award of punitive damages might force the Government to disclose some of the very confidences that Snepp promised to protect.”

Id. The remedy of a constructive trust, on the other hand, did not require the Government to disclose classified or highly confidential information in order to enforce its secrecy agreements.

Id. at 515-16.

The Supreme Court also rejected Snepp’s argument that the Secrecy Agreement’s prepublication review requirement was a prior restraint in violation of his First Amendment rights. The Court found the Secrecy Agreement to be “an entirely appropriate exercise of the CIA Director’s statutory mandate to protect intelligence sources and methods from unauthorized disclosure.” *Id.* at 509 n.3 (internal quotations omitted). The Secrecy Agreement was a reasonable means of protecting the Government’s “compelling interest in protecting both the secrecy of information important to our national security and the appearance of confidentiality so essential to the effective operation of our foreign intelligence service.” *Id.* See also *McGehee v. Casey*, 718 F.2d 1137, 1144 (D.C. Cir. 1983); *Berntsen v. CIA*, 618 F. Supp. 2d 27, 29-30

(D.D.C. 2009); *Stillman v. CIA*, 517 F. Supp. 2d 32, 38 (D.D.C. 2007).

Before *Snepp*, the Fourth Circuit had upheld the validity and enforceability of the CIA's Secrecy Agreement in *Marchetti*, 466 F.2d 1309. Like *Snepp* and the instant case, *Marchetti* was an affirmative case brought by the United States against a former CIA employee to enforce a Secrecy Agreement. The United States sought to prevent Marchetti from publishing a book about his intelligence experiences. The court held that requiring Marchetti to submit all intelligence-related materials intended for publication for prepublication review to protect classified information did not violate his First Amendment rights. 466 F.2d at 1313-17. It further required the CIA to act "promptly" to approve or disapprove any material submitted by Marchetti. *Id.* at 1317. The court held that Marchetti would be entitled to judicial review of any action by the CIA disapproving publication of the material, but that the burden of obtaining judicial review was on Marchetti, not the CIA. *Id.* See also *United States v. Snepp*, 897 F.2d 138, 141-43 (4th Cir. 1990) (confirming that burden is on author to seek judicial review of any action of CIA disapproving publication of material).

Snepp and *Marchetti* establish that Jones breached his contractual and fiduciary duties when he published his book after the CIA denied him permission to do so, "whether his book actually contained classified information." *Snepp*, 444 U.S. at 511. The Supreme Court made this crystal clear in *Snepp* when it affirmed the imposition of injunctive relief and a constructive trust against Snepp for violating his Secrecy Agreement by publishing his book without the CIA's approval, even though the United States did not claim the book contained any classified information, had not made a determination that the book contained classified information, and could only prohibit Snepp's publication of classified information. In the same way, Jones

violated his Secrecy Agreement by publishing his book without receiving the CIA's approval, whether or not it in fact contains classified information. As the Supreme Court held in *Snepp*, the CIA is irreparably harmed by Jones' violation of his Secrecy Agreement, whether or not classified information was actually published, because it simply cannot guarantee the secrecy of information when its officers, especially its covert officers, publish books about their experience as CIA officers in defiance of the Agency's prepublication review determinations. *See Snepp*, 444 U.S. at 511-13; Second Cole Decl. at ¶¶ 9-13. The harm the Supreme Court recognized was not the disclosure of classified information, but rather the erosion of faith in the CIA's ability to protect sensitive information. That harm is as present today as it was over thirty years ago when *Snepp* was decided. Second Cole Decl. at ¶¶ 9-13.

Thus, *Snepp* and *Marchetti* preclude Jones' defense that he did not disclose any classified information and that the Government has no right to bar the publication of nonclassified information. *See Answer, Affirmative Defenses* at ¶ 11. As discussed above, it is also clear as a matter of law that the prepublication review requirements contained in Jones' Secrecy Agreement do not violate the First Amendment. *See id.* at ¶ 12. Jones asserts a laundry list of boiler-plate "affirmative defenses" but fails to provide a factual predicate for them. They are meritless, in any event. For example, Jones' defenses that the complaint fails to state a cause of action and that he failed to breach any agreement between the parties are belied by the facts admitted by Jones. *See id.* at ¶¶ 1, 5. Another example is the defense of "failure of consideration." *Id.* at ¶ 6. There clearly was consideration for Jones' agreement to abide by the terms of the Secrecy Agreement—he received his job and access to classified information as a result of it. The courts in *Snepp* rejected many of these same defenses. *See Snepp*, 595 F.2d at

933-34 (rejecting Snepp's defenses, including defenses that contract was unenforceable because of CIA's alleged selective enforcement of it and because of CIA's alleged breach of another contract provision); *Snepp*, 456 F. Supp. at 180 (rejecting defenses that Secrecy Agreement violated First Amendment; that Secrecy Agreement was superceded by secrecy termination agreement; and that Snepp was released from complying with the prepublication review requirements of his Secrecy Agreement because he did not receive a hearing on a grievance about alleged agency misconduct to which he claimed to be entitled under another provision of the Agreement).

There being no genuine issue of material fact to dispute that Jones breached his contractual and fiduciary duties, the Court should grant summary judgment to the United States as to liability.

II. JONES WAIVED HIS COUNTERCLAIM THAT THE CIA'S 2007 DECISION DENYING HIM PERMISSION TO PUBLISH HIS BOOK VIOLATED HIS FIRST AMENDMENT RIGHTS WHEN HE PUBLISHED HIS BOOK WITHOUT CIA APPROVAL.

Everything about *Snepp*, *Marchetti*, and their progeny compel the conclusion that Jones cannot now claim that the PRB's 2007 decision denying him permission to publish his book violated his First Amendment rights because it did not contain classified information. As discussed above, *Snepp* and *Marchetti* establish that Jones violated his Secrecy Agreement by publishing his book without CIA approval, whether or not it contained classified information. Those cases and their progeny also establish that the way to challenge the Agency's denial of publication approval is for the author to seek judicial review of the decision *before* publishing the submitted material, not to publish the denied material and challenge the Agency's decision after-the-fact, as Jones has done here. Jones waived the claim that the Agency's 2007 decision

violated his First Amendment rights when he published his book without CIA approval.

In an epilogue to *Snepp*, the Fourth Circuit explained, in no uncertain terms, how and when an author is to raise a First Amendment challenge to a CIA prepublication decision. Snepp had sought to amend the injunction against him by shifting the burden of initiating the attempt to seek judicial review to the CIA. In rejecting Snepp's request, the court explained that "[i]n compliance with his contract, Snepp must submit his manuscript to the Agency for clearance prior to publication. *If the Agency denies approval, Snepp may not publish the manuscript.* If Snepp wishes to publish a manuscript in spite of the Agency's denial of approval without violating his secrecy agreement, then he must institute an action for judicial review of the Agency decision." *Snepp*, 897 F.2d at 143 (internal quotations omitted) (emphasis added). "[T]he [Supreme] Court viewed Snepp's duty as an obligation to obtain 'clearance' from the CIA prior to publication. The only substitute for CIA clearance would be a judicial declaration that clearance would be improperly withheld." *Id.*

Authors have consistently followed this procedure and have challenged the CIA's prepublication decisions in court, claiming that the decision violated the author's First Amendment rights. *See, e.g., Wilson v. CIA*, 586 F.3d 171, 182 (2d Cir. 2009); *Pfeiffer v. CIA*, 60 F.3d 861, 863 (D.C. Cir. 1995); *McGehee*, 718 F.2d at 1140; *Alfred A. Knopf, Inc. v. Colby*, 509 F.2d 1362, 1365 (4th Cir. 1975); *Berntsen*, 618 F. Supp. 2d at 28-29; *Stillman*, 517 F. Supp. 2d at 35, 38-39.¹ Even where the author complained about the amount of time the CIA took to

¹ This is true outside the context of CIA prepublication review cases as well. Government employees who seek to speak contrary to their employers' wishes typically sue to enjoin enforcement of the Government's prior restraint policy or decision, rather than simply speaking in violation of it and raising a First Amendment claim later. *See, e.g., Crue v. Aiken*, 370 F.3d 668, 676 (7th Cir. 2004); *Swartzwelder v. McNeilly*, 297 F.3d 228, 233 (3d Cir. 2002);

complete the prepublication review process, the author still, correctly, brought suit in federal court to challenge the agency action rather than simply going ahead with the publication of the material. *See Berntsen*, 618 F. Supp. 2d at 28 & n.2; *Stillman*, 517 F. Supp. 2d at 36.

Importantly, the authors in all of these cases did not simply publish the material that the CIA denied them permission to publish and challenge the CIA's decision after-the-fact when and if they were sued by the Agency. If this were a permissible course of action, one would certainly expect everyone to have taken it, given that it would give the authors the relief they seek—publication—without having to file suit and persuade a judge that the Agency was wrong. *See, e.g., Wilson*, 586 F.3d at 185 (discussing deferential standard of review applicable to challenges of CIA prepublication decisions). There would be no incentive for any current or former CIA employee to seek judicial review of a CIA prepublication decision rather than just publishing his or her material without CIA approval. The incentive to publish now and worry about the consequences later is particularly strong in the case of former employees like Jones because, unlike current employees, the Agency has no ability to effectively discipline former employees for unauthorized publications.

Thus, allowing Jones to raise his First Amendment claim now would eviscerate the policy behind *Snepp* and *Marchetti*. Those cases upheld the Secrecy Agreement as an appropriate means of carrying out the Director's statutory duty to protect intelligence sources and methods from unauthorized disclosure. Permitting current and former employees to simply publish in blatant disregard of the CIA's determination that the material contains classified

Hoover v. Morales, 164 F.3d 221, 224 (5th Cir. 1998); *Sanjour v. EPA*, 56 F.3d 85, 89 (D.C. Cir. 1995). Of course, it is even more important that the employee or former employee not speak in violation of the employer's wishes where potentially classified information may be revealed.

information would allow the very unauthorized disclosures of classified information that the Secrecy Agreement is designed to prevent. It would also force the Government to choose between enforcing its secrecy agreements against violators like Jones and risking the revelation of classified information in defending a counterclaim such as Jones'. This too is barred by *Snepp* and *Marchetti*, where the courts found it critical that the CIA be able to enforce its secrecy agreements without risking the revelation of sensitive, classified information. In *Snepp*, the Supreme Court reversed the Court of Appeals' decision limiting the Government's recovery to nominal damages, which were "certain to deter no one," 444 U.S. at 514, and the possibility of punitive damages, holding that the Government should not be required to disclose, or even risk disclosing, "the very confidences that Snepp promised to protect" in order to enforce Snepp's secrecy agreement. *Id.* at 514-15. The constructive trust remedy was, in contrast, an effective way to "deter those who would place sensitive information at risk." *Id.* at 515.

The proper time and place for Jones to have claimed that the PRB's 2007 decision denying him permission to publish his book violated his First Amendment rights was in an action for judicial review of that decision brought in order to obtain publication approval. The court in such an action would have assessed, based on classified declarations submitted by the Agency, whether the information was properly classified pursuant to Executive Order. That determination is itself one of timing, in that information may become declassified as a result of the passage of time. Thus, there is something inherently anomalous in Jones seeking to obtain such a review now, years after he submitted his manuscripts to the PRB and the PRB made its classification decisions. Judicial review of an agency's decision that information is classified must logically occur proximate in time to the challenged classification decision. Again, *Snepp*

and *Marchetti* contemplated such an action, not the course of action Jones has pursued.

CONCLUSION

For all of the foregoing reasons, plaintiff the United States of America respectfully requests that the Court grant summary judgment in favor of the United States on the issue of liability and dismiss defendant Jones' counterclaim, with prejudice.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2011, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to:

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
v.)	Civil Action No. 1:10-cv-765
)	
ISHMAEL JONES, a pen name)	
)	
Defendant)	
_____)	

**SECOND DECLARATION OF MARY ELLEN COLE
INFORMATION REVIEW OFFICER
NATIONAL CLANDESTINE SERVICE
CENTRAL INTELLIGENCE AGENCY**

I, MARY ELLEN COLE, hereby declare and say:

1. I am the Information Review Officer ("IRO") for the National Clandestine Service ("NCS") of the Central Intelligence Agency ("CIA"). Through the exercise of my official duties, I have become generally familiar with the facts in this civil action. I make the following statements based upon my personal knowledge and information made available to me in my official capacity. I hereby incorporate by reference my prior declaration in this case, dated 5 January 2011.

2. My qualifications and responsibilities remain as they were described in my 5 January 2011 declaration. In addition, pursuant to the authority delegated to the Director of the



Information Management Services by the Associate Deputy Director of the CIA, I have been designated the CIA Records Validation Officer ("RVO") for any litigation or legal matter where NCS equities are involved with full RVO authority over all information relevant to such litigation or legal matter, regardless of the directorate or independent office of origination.

3. I understand that the Defendant has filed a counterclaim against the United States Government. I further understand that the Government plans on filing a partial motion for summary judgment as to liability and a motion to dismiss Defendant's counterclaim. The purpose of this declaration is to address, to the extent possible on the public record, certain facts that I understand are relevant to this litigation.

4. Defendant is a former CIA employee. As a covert officer, Defendant lived under his true name while hiding his true affiliation with the CIA. Accordingly, the Government requested, and this Court granted, permission for the Government to sue Defendant under his pen name (Ishmael Jones) and to redact Defendant's true name and any identifying information from all documents filed on the public record.

5. One document that was filed in this case on the public record in redacted form is Exhibit A to the Government's Complaint, which is a Secrecy Agreement dated 19 July 1989. I

have reviewed the unredacted version of the 19 July 1989 Secrecy Agreement that was attached to the Government's Complaint and can attest to the fact that the name and signature on the Secrecy Agreement are Defendant's true name.

6. After entering into his Secrecy Agreement, Defendant also signed Nondisclosure Agreements in at least December 1997 and October 2006 when he left the CIA. These Nondisclosure Agreements did not supersede his Secrecy Agreement. Rather, Defendant entered into the Nondisclosure Agreements as a condition of being granted access to specific categories of sensitive compartmented information ("SCI") protected within Special Access Programs. True and correct redacted copies of the December 1997 and October 2006 Nondisclosure Agreements are attached hereto as Exhibit 1. I have reviewed unredacted versions of these two Nondisclosure Agreements and can attest to the fact that the name and signature on the Nondisclosure Agreements are another name used by Defendant.

7. Like his Secrecy Agreement, the Nondisclosure Agreements contained a prepublication review requirement, which states, in part, "I hereby agree to submit for security review . . . any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI."

8. Attached hereto as Exhibit 2 are true and correct redacted copies of the following correspondence between the PRB and Defendant: (a) 10 April 2007 e-mail from Defendant; (b) 22 May 2007 letter from the PRB; (c) 27 July 2007 letter from Defendant; (d) 7 December 2007 letter from the PRB; (e) 8 January 2008 letter from Defendant; (f) 5 February 2008 letter from the PRB; and (g) 8 March 2008 letter from Defendant. I have reviewed unredacted versions of these documents and can attest to the fact that the names and signatures on the correspondence are Defendant's true name or another name used by Defendant.

9. It is critical that current and former CIA officers abide by their prepublication review obligations. Beyond the obvious fact that officers may inadvertently disclose information damaging to the national security, the willingness of CIA officers to flaunt their noncompliance with the prepublication process undermines the trust other CIA officers, current and future intelligence sources, and foreign intelligence services have in the CIA's ability to control and protect its secrets.

10. Human intelligence sources provide information to the CIA often without the knowledge or approval of their governments, running a great risk of bringing danger upon themselves, their families, and their associates. Thus, human

intelligence sources can be expected to furnish information to the CIA only when they are confident that the CIA can and will protect their cooperation from public disclosure. As a result, the CIA's relationship with a clandestine source rests first and foremost on the source's perception that the CIA will do everything in its power to maintain the secrecy of the relationship. The perception that current or former CIA officers are free to bypass the CIA's prepublication review process and can publish whatever information they choose to damages the CIA's credibility with human intelligence sources who might conclude that the CIA is unwilling or unable to protect sensitive information, including possibly their cooperation with the United States, from public disclosure. This perception hampers the CIA's ability to retain present sources and recruit new sources.

11. A "liaison relationship" is a cooperative and secret relationship between the CIA and a government unit of a foreign country. Most CIA liaison relationships are with another country's intelligence or security services. Because the CIA has finite resources to conduct its intelligence mission, including a limited number of case officers, facilities, and budget, these liaison relationships with foreign intelligence services offer the United States a force-multiplier for its intelligence collection activities.

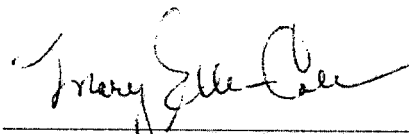
12. Liaison relationships are extremely sensitive. An intelligence service with which the CIA has a close or robust liaison relationship may provide the CIA with the intelligence reported by its own intelligence sources or may task their own clandestine sources to collect intelligence at the request of the CIA. Some services with which the CIA maintains a liaison relationship are hostile towards, or maintain political agendas at odds with, other services with which the CIA has a liaison relationship. Other services require secrecy because cooperation with the United States has little or no public support in their countries. Publicly disclosing the existence of an intelligence relationship or the extent of intelligence sharing as part of the liaison relationship could embarrass a foreign government or aggravate internal political dissent in that country. This could have negative consequences for the foreign government and adversely impact its diplomatic relations with the United States.

13. Because of their sensitive and secretive nature, liaison relationships between the CIA and other foreign intelligence services are initiated and continued on the basis of a mutual understanding that the existence and details of such liaison arrangements will be kept in the utmost secrecy. If the CIA appears unable or unwilling to control the public release of its information, the CIA's liaison relationships can be damaged

or destroyed. The publication of an unauthorized manuscript by a former CIA officer contributes to the erosion of faith foreign intelligence services have in the CIA's ability to protect sensitive information. This is particularly true when the publication brazenly boasts that the author has chosen to ignore the so-called "CIA censors" who disapproved his manuscript.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of April, 2011.

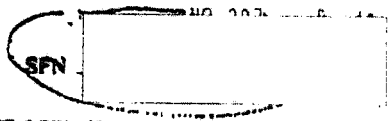


Mary Ellen Cole
Information Review Officer
National Clandestine Service
Central Intelligence Agency

Exhibit 1

C05533304

FEB. 3. 2010 9:41AM



SENSITIVE COMPARTMENTED INFORMATION NONDISCLOSURE AGREEMENT

An Agreement Between _____ and the United States
(Name - Printed as Typed)

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to information or material protected within Special Access Programs, hereinafter referred to in this Agreement as Sensitive Compartmented Information (SCI). I have been advised that SCI involves or derives from intelligence sources or methods and is classified or is in the process of a classification determination under the standards of Executive Order 12356 or other Executive Order or statute. I understand and accept that by being granted access to SCI, special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of SCI, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information or material have been approved for access to it, and I understand these procedures. I understand that I may be required to sign subsequent agreements upon being granted access to different categories of SCI. I further understand that all my obligations under this Agreement continue to exist whether or not I am required to sign such subsequent agreements.

3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. I hereby agree that I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization from the United States Government department or agency (hereinafter Department or Agency) that last authorized my access to SCI. I understand that it is my responsibility to consult with appropriate management authorities in the Department or Agency that last authorized my access to SCI, whether or not I am still employed by or associated with that Department or Agency or a contractor thereof, in order to ensure that I know whether information or material within my knowledge or control that I have reason to believe might be SCI, or related to or derived from SCI, is considered by each Department or Agency to be SCI. I further understand that I am also obligated by law and regulation not to disclose any classified information or material in an unauthorized fashion.

4. In consideration of being granted access to SCI and of being assigned or retained in a position of special confidence and trust requiring access to SCI, I hereby agree to submit for security review by the Department or Agency that last authorized my access to such information or material, any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure. I understand and agree that my obligation to submit such preparations for review applies during the course of my access to SCI and thereafter, and I agree to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI. I further agree that I will not disclose the contents of such preparation to any person not authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted.

5. I understand that the purpose of the review described in paragraph 4 is to give the United States a reasonable opportunity to determine whether the preparation submitted pursuant to paragraph 4 sets forth any SCI. I further understand that the Department or Agency to which I have made a submission will act upon it, coordinating within the Intelligence Community when appropriate, and make a response to me within a reasonable time, not to exceed 30 working days from date of receipt.

6. I have been advised that any breach of this Agreement may result in the termination of my access to SCI and removal from a position of special confidence and trust requiring such access, as well as the termination of my employment or other relationships with any Department or Agency that provides me with access to SCI. In addition, I have been advised that any unauthorized disclosure of SCI by me may constitute violations of United States criminal laws, including the provisions of Sections 793, 794, 796, and 952, Title 18, United States Code, and of Section 783(b), Title 50, United States Code. Nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

7. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. I have been advised that the action can be brought against me in any of the several appropriate United States District Courts where the United States Government may elect to file the action. Court costs and reasonable attorneys fees incurred by the United States Government may be assessed against me if I lose such action.

8. I understand that all information to which I may obtain access by signing this Agreement is now and will remain the property of the United States Government unless and until otherwise determined by an appropriate official or final ruling of a court of law. Subject to such determination, I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all materials that may have come into my possession or for which I am responsible because of such access, upon demand by an authorized representative of the United States Government or upon the conclusion of my employment or other relationship with the United States Government entity providing me access to such materials. If I do not return such materials upon request, I understand this may be a violation of Section 793, Title 18, United States Code.

9. Unless and until I am released in writing by an authorized representative of the Department or Agency that last provided me with access to SCI, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to SCI, and at all times thereafter.

10. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect. This Agreement concerns SCI and does not set forth such other conditions and obligations not related to SCI as may now or hereafter pertain to my employment by or assignment or relationship with the Department or Agency.

11. I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction. I acknowledge that the briefing officer has made available Sections 793, 794, 796, and 952 of Title 18, United States Code, and Section 783(b) of Title 50, United States Code, and Executive Order 12356, as amended, so that I may read them at this time, if I so choose.

C05533304

REC'D. 3. 2010 9:40AM
FEB. 2. 2010 10:37AM

12. I hereby assign to the United States Government all rights, title, and interest, and all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation not consistent with the terms of this Agreement.

13. These restrictions are consistent with and do not supersede conflict with or otherwise alter the employee obligations rights or liabilities created by Executive Order 12356; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the Military); section 3302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identifier Protection Act of 1982 (50 USC 421 et seq.) (governing disclosures that would expose confidential Government agents), and the statutes which protect against disclosure that may compromise the national security, including section 641, 791, 794, 795, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

14. This Agreement shall be interpreted under and in conformance with the law of the United States.

15. I make this Agreement without any mental reservation or purpose of evasion.

[Signature] 11 Dec 97
Date

The execution of this Agreement was witnessed by the undersigned [Signature] on behalf of the United States Government as a prior condition of access to Sensitive Compartmented Information

WITNESS and ACCEPTANCE: [Signature] 14/1/97
Date

SECURITY BRIEFING / DEBRIEFING ACKNOWLEDGMENT		
(Special Access Programs by Initials Only)		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SSN (See Notice Below)	Printed or Typed Name	Organization
BRIEF DATE <u>11 DEC 97</u> I hereby acknowledge that I was briefed on the above SCI Special Access Programs(s): <u>[Signature]</u> Signature of Individual Briefed	DEBRIEF DATE _____ Having been reminded of my continuing obligation to comply with the terms of this Agreement, I hereby acknowledge that I was debriefed on the above SCI Special Access Programs(s): <u>[Signature]</u> Signature of Individual Debriefed	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Printed or Typed Name	Organization (Name and Address)	

NOTICE: The Privacy Act, 5 U.S.C. 522s, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above, 2) determine that your access to the information indicated has terminated, or 3) certify that you have witnessed a briefing or debriefing. Although disclosure of your SSN is not mandatory, your failure to do so may impede such certifications or determinations.

C05533305

APR 29 2010 3:08PM

NO. 294 P.P. 2

SFN

SENSITIVE COMPARTMENTED INFORMATION NONDISCLOSURE AGREEMENT

An Agreement Between _____ and the United States
(Name - Printed or Typed)

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to information or material protected within Special Access Programs, hereinafter referred to in this Agreement as Sensitive Compartmented Information (SCI). I have been advised that SCI involves or derives from intelligence sources or methods and is classified or is in the process of a classification determination under the standards of Executive Order 12958 or other Executive order or statute. I understand and accept that by being granted access to SCI, special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of SCI, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information or material have been approved for access to it, and I understand these procedures. I understand that I may be required to sign subsequent agreements upon being granted access to different categories of SCI. I further understand that all my obligations under this Agreement continue to exist whether or not I am required to sign such subsequent agreements.

3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. I hereby agree that I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization from the United States Government department or agency (hereinafter Department or Agency) that last authorized my access to SCI. I understand that it is my responsibility to consult with appropriate management authorities in the Department or Agency that last authorized my access to SCI, whether or not I am still employed by or associated with that Department or Agency or a contractor thereof, in order to ensure that I know whether information or material within my knowledge or control that I have reason to believe might be SCI, or related to or derived from SCI, is considered by such Department or Agency to be SCI. I further understand that I am also obligated by law and regulation not to disclose any classified information or material in an unauthorized fashion.

4. In consideration of being granted access to SCI and of being assigned or retained in a position of special confidence and trust requiring access to SCI, I hereby agree to submit for security review by the Department or Agency that last authorized my access to such information or material, any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure. I understand and agree that my obligation to submit such preparations for review applies during the course of my access to SCI and thereafter, and I agree to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI. I further agree that I will not disclose the contents of such preparation to any person not authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted.

5. I understand that the purpose of the review described in paragraph 4 is to give the United States a reasonable opportunity to determine whether the preparation submitted pursuant to paragraph 4 sets forth any SCI. I further understand that the Department or Agency to which I have made a submission will act upon it, coordinating within the Intelligence Community when appropriate, and make a response to me within a reasonable time, not to exceed 30 working days from date of receipt.

6. I have been advised that any breach of this Agreement may result in the termination of my access to SCI and removal from a position of special confidence and trust requiring such access, as well as the termination of my employment or other relationships with any Department or Agency that provides me with access to SCI. In addition, I have been advised that any unauthorized disclosure of SCI by me may constitute violations of United States criminal laws, including the provisions of Sections 793, 794, 798, and 952, Title 18, United States Code, and of Section 783(b), Title 50, United States Code. Nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

7. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. I have been advised that the action can be brought against me in any of the several appropriate United States District Courts where the United States Government may elect to file the action. Court costs and reasonable attorneys fees incurred by the United States Government may be assessed against me if I lose such action.

8. I understand that all information to which I may obtain access by signing this Agreement is now and will remain the property of the United States Government unless and until otherwise determined by an appropriate official or final ruling of a court of law. Subject to such determination, I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all materials that may have come into my possession or for which I am responsible because of such access, upon demand by an authorized representative of the United States Government or upon the conclusion of my employment or other relationship with the United States Government entity providing me access to such materials. If I do not return such materials upon request, I understand this may be a violation of Section 793, Title 18, United States Code.

9. Unless and until I am released in writing by an authorized representative of the Department or Agency that last provided me with access to SCI, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to SCI, and at all times thereafter.

10. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect. This Agreement concerns SCI and does not set forth such other conditions and obligations not related to SCI as may now or hereafter pertain to my employment by or assignment or relationship with the Department or Agency.

11. I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction. I acknowledge that the briefing officer has made available Sections 793, 794, 798, and 952 of Title 18, United States Code, and Section 783(b) of Title 50, United States Code, and Executive Order 12958, as amended, so that I may read them at this time, if I so choose.

C05533305

APR JAN. 29. 2010 3:12PM

NO. 294 P. 3

12 I hereby assign to the United States Government all rights, title and interest, and all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation not consistent with the terms of this Agreement.

13. These restrictions are consistent with and do not supersede conflict with or otherwise alter the employee obligations rights or liabilities created by Executive Order 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 103e of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosures to Congress by members of the Military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 USC 421 et seq.) (governing disclosures that could expose confidential Government agents), and the statutes which protect against disclosure that may compromise the national security, including section 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

14 This Agreement shall be interpreted under and in conformance with the law of the United States.

15 I make this Agreement without any mental reservation or purpose of evasion.

X [Signature] 11/04/06 Date

The execution of this Agreement was witnessed by the undersigned who accepted it on behalf of the United States Government as a prior condition of access to Sensitive Compartmented Information.

WITNESS and ACCEPTANCE: [Signature] 10/11/06 Date

SECURITY BRIEFING / DEBRIEFING ACKNOWLEDGMENT

(Special Access Programs by Initials Only)

SSN (See Notice Below) _____ Printed or Typed Name _____ Organization _____

<p>BRIEF DATE _____</p> <p>I hereby acknowledge that I was briefed on the above SCI Special Access Programs(s).</p> <p>_____ Signature of Individual Briefed</p>	<p>DEBRIEF DATE <u>11/04/06</u></p> <p>Having been reminded of my continuing obligation to comply with the terms of this Agreement, I hereby acknowledge that I was debriefed on the above SCI Special Access Programs(s):</p> <p>X _____ Signature of Individual Debriefed</p>
---	--

I certify _____ date was in accordance with _____ procedures.

Organization (Name and Address) _____

NOTICE: The Privacy Act, 5 U.S.C. 522a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary; by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9387. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above, 2) determine that your access to the information indicated has terminated, or 3) certify that you have witnessed a briefing or debriefing. Although disclosure of your SSN is not mandatory, your failure to do so may impede such certifications or determinations.

Exhibit 2

UNCLASSIFIED

[Redacted]

To prb@ucia.gov
cc
bcc

04/10/2007 11:28 AM

Subject [AIN] manuscript for PRB review

Please respond to [Redacted]

1 attachment



document for Publications Review Board.doc

CLASSIFICATION: UNCLASSIFIED

[Large redacted area]

10 April 2007

Dear Publications Review Board,

Please review the attached document at your earliest convenience. I am a former employee.

The document contains no classified information and, except for public figures, all names, places, events, and dates are completely fictionalized.

Yours sincerely,

[Redacted signature]
[Redacted name]

UNCLASSIFIED

[Redacted]

22 May 2007

[Redacted]

Dear [Redacted]

We have completed our review of your manuscript entitled *Bureaucratic Obstacles to national Security*. I am sorry to report that, after careful review, we cannot approve any portion of your manuscript. We determined that publication of this manuscript would reveal information that is damaging to the organization and its mission because it parallels your association with and work for the organization. That said, we believe that your manuscript could be rewritten in such a way that would not cause harm and we are available to discuss such an option.

As you may know, our procedures allow you to request our reconsideration of this decision. If you wish to do so, please send a letter with your reconsideration request along with any additional information for consideration.

Please feel free to contact me at [Redacted] if you have any questions.

Sincerely,

[Redacted]

[Redacted]

27 July 2007

[Redacted]

[Redacted]

AUG 3 8:48A

References: originally submitted on 10 April 2007 as *Bureaucratic Obstacles to National Security*

PRB reply by letter on 22 May 2007

Phone conversation with Dave on 20 July 2007

Dear Publications Review Board,

Please review the following manuscript and advise which parts you would like deleted or rewritten.

Per my telephone conversation with Dave at the Publications Review Board on 20 July 2007, the manuscript has been rewritten in order to be in accordance with PRB instructions.

Also per PRB instructions, the author's name and the main character's name are fictitious. All other names are fictitious, unless they are public figures. All characters are fictitious or composite.

All dates and places have been changed, except where these dates and places are used to describe widely-known events.

Yours sincerely,

[Redacted]

I CAN SEND A COPY BY EMAIL IF
YOU WOULD FIND THAT MORE CONVENIENT.

[Redacted]

7 December 2007

[Redacted]

Dear [Redacted]

We completed our review of your rewritten manuscript entitled *Human Sources* (formerly entitled *Bureaucratic Obstacles to National Security*). After careful review, we cannot approve any portion of your manuscript except for those portions included within the enclosed pages. All remaining material must be deleted. (One exception is that all footnotes on the pages not enclosed are also approved for publication). We determined that publication of the remaining material would reveal information that is damaging to the organization and its mission. This remaining material reveals your affiliation with the organization or it reveals sensitive information about actual cases and methods known to you while you worked for the organization.

We realize you put much effort into writing both the original manuscript and its rewritten version. We also realize that it is virtually impossible to take a manuscript written with your original intent and attempt to modify it into a true fictional novel.

As you know, our procedures allow you to request our reconsideration of this decision. If you wish to do so, please send a letter with your reconsideration request along with any additional information for consideration.

Please feel free to contact me at [Redacted] if you have any questions.

Sincerely,

[Redacted]

[Redacted]

SECRET

8 January 2008

[Redacted]

[Redacted]

Reference: *Human Sources* manuscript first sent to PRB in April 2007/PRB letter of 7 December 2007

Dear Publications Review Board,

Regarding the *Human Sources* manuscript, I repeat my request for Publications Review Board (PRB) review of the manuscript. I intend to publish this manuscript, and if the PRB can identify any classified information in the manuscript then I will take it out.

I've carefully studied the manuscript to make sure that it contains no classified or secret information and to make sure it reveals no sources or methods. The PRB seems unwilling to review the manuscript for classified information, instead preferring to state that all of it is disapproved. I believe the PRB recognizes that the manuscript contains no classified information and seeks to block the manuscript solely because the manuscript is highly critical of the organization.

In April 2007 I sent a copy of the manuscript to the PRB. In May 2007 the PRB replied that no portions were approved. In subsequent telephone conversations, the PRB said they did not object to any specific elements of the manuscript but were concerned about the possibility that the manuscript can be connected to my true name.

Therefore, in July the PRB suggested that if the book were re-written into the third person, thus apparently giving an additional degree of separation, they would approve it. I sent the PRB the manuscript re-written in the third person.

In November 2007 the PRB determined that the change in tense would be insufficient and invited me to meet in the Washington, DC area. A few days later the PRB changed its mind and advised that the meeting was unnecessary and that the PRB would go ahead and review the manuscript for classified information as I had originally requested. The PRB stated that less than 10 percent of the manuscript would need to be rewritten.

However, in a letter I received on 31 December 2007 (dated 7 December 2007) the PRB disapproved all of the manuscript but a few random paragraphs, and sent me a stack of blank pages.

My requests for PRB review have been repeated sincerely and in good faith.

I've read all of the books published by former employees and approved by the PRB. Some of them reveal a startling amount of classified information, especially the recent Tenet and Drumheller books. These books criticize the President, however, and not the organization. While the PRB's mission is ostensibly to censor classified information, I cannot avoid the conclusion that the PRB's true mission is to censor information critical of the organization.

My manuscript is highly critical of the organization. The organization's corruption and willful mismanagement are extraordinary and place Americans at great risk. Important intelligence programs designed to protect Americans simply do not exist. The purpose of my manuscript is to add to the criticism and debate about reform of the organization. Criticism and debate is how we solve things in America. It is my duty as an American to publish this manuscript.

All names, dates, places, and times have been obscured or fictionalized in the manuscript. The manuscript is designed to be read as a story instead of as an academic essay because the story form is a more powerful way to deliver the message to a wider audience. This may have been a source of misunderstanding - the purpose of this book is to add to the criticism and debate about reform of the organization, not to write a novel.

Before deciding to write this book, I exhausted all other avenues. I aggressively confronted all levels of my chain of command without result. I met with the Inspector General's office, but found it a broken system - the IG was not up to the task and was under investigation by the FBI for leaks. The Director, Porter Goss, supported me, but he was removed and replaced by managers who represent the status quo. No anti-corruption or whistleblower systems exist in the organization. Only open, public debate will lead to reform. I will not profit from this book, and have given up a pension in order to write it.

Members of the PRB live and work in the Washington DC area, a prime target for terrorist and WMD attack. They are not protected by important intelligence programs because these programs do not exist. Funds being spent to protect Americans, including PRB members and their families, are being stolen or wasted on phony or nonexistent intelligence programs. By censoring this manuscript, the PRB puts Americans at risk.

Yours sincerely,

[Redacted signature box]

[Redacted]

5 February 2008

[Redacted]

Dear [Redacted]

We received your letter dated 8 January 2008 in which you request appeal of the organization's required deletions regarding your rewritten manuscript entitled *Human Sources* (formerly entitled *Bureaucratic Obstacles to National Security*). Your appeal is in progress but please understand that a thorough and fair appeal may take some time as this must be reviewed by the organization's senior management. We will contact you immediately once a decision has been reached. Please also note that, per the legally binding agreement you signed with the organization, you may not publish the manuscript (share it with others) until and unless it is approved.

I can be contacted at [Redacted] if you have any questions.

Sincerely,

[Redacted]

MAR 25 7:45 AM

8 March 2008

Dear Manuscript Review Board,

Following disapproval of the publication of the *Human Sources* manuscript, the Board's 5 February 2008 letter states that the appeal process involves forwarding the manuscript to senior management for their review.

Shortly after I submitted the manuscript for the Board's review back in April 2007, I received several calls from colleagues in different parts of the organization advising me that the manuscript had been delivered to senior management. Therefore, it appears the manuscript is not going to senior management for the first time, but rather has been in their hands already for nearly a year.

During this period of nearly one year during which the manuscript has been both in the Board's hands and presumably in the hands of senior management, I've repeatedly asked the Board to identify any classified information in the manuscript, which I would then remove. Show me the classified information and I will take it out. The response has simply been: All of it is classified.

There is in fact no classified information in this book and I can only conclude that the Board's disapproval is because the book is highly critical of the organization. I have read all memoirs published by former officers and the only consistent standard of censorship is that former members of senior management seem to be able to publish anything they want. As an officer who served his country exclusively in overseas field assignments, I have little political power within the organization, and believe this to be an important factor in the Board's decision to disapprove the manuscript.

Americans abhor censorship because it is used to hide misdeeds. The Board has been granted very special powers of censorship in order to protect the identities of agents and officers, sources and methods. When censorship is used, instead, to hide fraud and willful mismanagement, this power is being abused.

Writing a book was not my original intention, but was rather my default option; the only option available to bring attention to the need for reform of the organization. The Inspector General system was a dead end; the chain of command led nowhere. The organization appears to understand that it need not have a functioning system of

accountability, because in the end it will be protected from criticism through the exercise of censorship.

When an officer of the organization, with an unblemished 18 year record, charges the organization with committing fraud in the billions of dollars and willfully mismanaging programs vital to the defense of the United States, someone in senior management should at least ask a few questions. I believe the Board recognizes the truth of these charges, and its goal is merely to stonewall. I agree with the Board's 5 February 2008 statement that the appeal process "may take some time".

Yours sincerely,

[Redacted signature box]

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(b) (2)
(b) (3)

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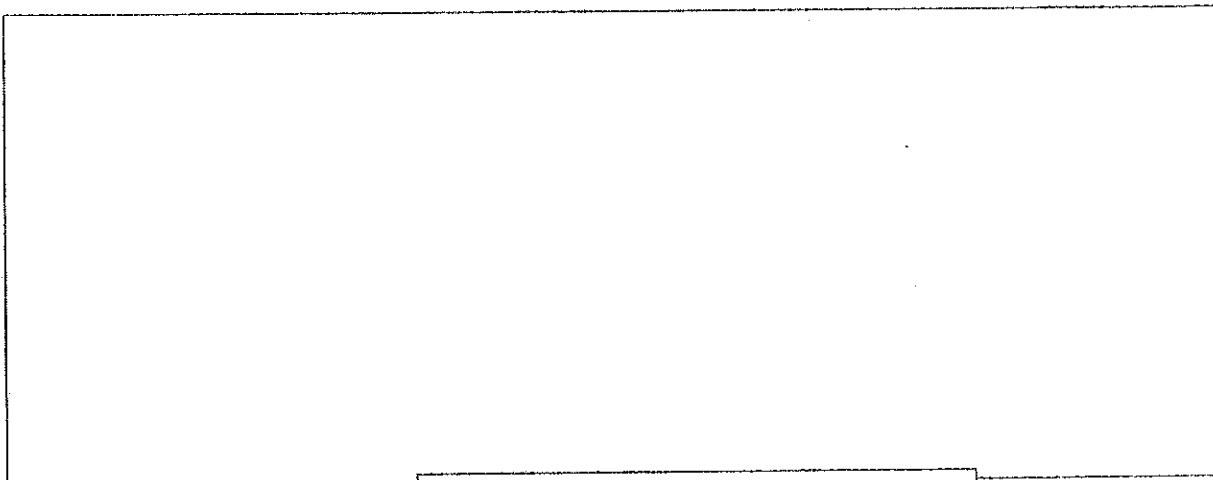
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Date: 12/04/2006 (Regulations may contain various dates)

Category: - Public Affairs

OPR:

Title: (U) AGENCY PREPUBLICATION REVIEW OF CERTAIN MATERIAL PREPARED FOR PUBLIC DISSEMINATION



This regulation was written by

2. (U) AGENCY PREPUBLICATION REVIEW OF CERTAIN MATERIAL PREPARED FOR PUBLIC DISSEMINATION

(U) SYNOPSIS: This regulation sets forth CIA policies and procedures for the submission and review of material proposed for publication or public dissemination by current and former employees and contractors and other individuals obligated by a CIA secrecy agreement to protect from unauthorized disclosure certain information they obtain as a result of their contact with the CIA. This regulation applies to all forms of dissemination, whether in written, oral, electronic, or other forms, and whether intended to be an official or nonofficial (that is, personal) publication.

APPROVED FOR RELEASE
DATE: APR 2008

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a. (U) AUTHORITY

The National Security Act of 1947, as amended, the Central Intelligence Agency (CIA) Act of 1949, as amended, and Executive Order 12333 require the protection of intelligence sources and methods from unauthorized disclosure. Executive Order 12958, as amended, requires protection of classified information from unauthorized disclosure. 18 U.S.C. section 209 prohibits a federal employee from supplementation of salary from any source other than the U.S. Government as compensation for activities related to the employee's service as a Government employee. The *Standards of Ethical Conduct for Employees of the Executive Branch* (5 C.F.R. 2635) are the Government-wide ethics regulations that govern Federal employees. Those regulations include restrictions on outside activities and compensation for teaching, speaking, and writing related to official duties. In *Snepp v. U.S.*, 444 U.S. 507 (1980), the Supreme Court held that individuals who have been authorized access to CIA information the public disclosure of which could harm the national security hold positions of special trust and have fiduciary obligations to protect such information. These obligations are reflected in this regulation and in CIA secrecy agreements.

b. (U) GENERAL REQUIREMENTS AND DEFINITIONS

- (1) The CIA requires all current and former Agency employees and contractors, and others who are obligated by CIA secrecy agreement, to submit for prepublication review to the CIA's Publications Review Board (PRB) all intelligence-related materials intended for publication or public dissemination, whether they will be communicated in writing, speeches, or any other method; and whether they are officially sanctioned or represent personal expressions, except as noted below.
- (2) The purpose of prepublication review is to ensure that information damaging to the national security is not disclosed inadvertently; and, for current employees and contractors, to ensure that neither the author's performance of duties, the Agency's mission, nor the foreign relations or security of the U.S. are adversely affected by publication.
- (3) The prepublication review requirement does not apply to material that is unrelated to intelligence, foreign relations, or CIA employment or contract matters (for example, material that relates to cooking, stamp collecting, sports, fraternal organizations, and so forth).
- (4) Agency approval for publication of nonofficial, personal works (including those of current and former employees and contractors and covered non-Agency personnel) does not represent Agency endorsement or verification of, or agreement with, such works. Therefore, consistent with cover status, authors are required, unless waived in writing by the PRB, to publish the following disclaimer:

"All statements of fact, opinion, or analysis expressed are those of the author and do not

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reflect the official positions or views of the Central Intelligence Agency (CIA) or any other U.S. Government agency. Nothing in the contents should be construed as asserting or implying U.S. Government authentication of information or CIA endorsement of the author's views. This material has been reviewed by the CIA to prevent the disclosure of classified information."

- (5) Those who are speaking in a nonofficial capacity must state at the beginning of their remarks or interview that their views do not necessarily reflect the official views of the CIA.
- (6) A nonofficial or personal publication is a work by anyone who has signed a CIA secrecy agreement (including a current or former employee or contractor), who has prepared the work as a private individual and who is not acting in an official capacity for the Government.
- (7) An official publication is a work by anyone who has signed a CIA secrecy agreement, (including a current employee or contractor), such as an article, monograph, or speech, that is intended to be unclassified and is prepared as part of their official duties as a Government employee or contractor acting in an official capacity.
- (8) "Publication" or "public dissemination" in this context means:
 - (a) for nonofficial (that is, personal) works -- communicating information to one or more persons; and
 - (b) for official works - communicating information in an unclassified manner where that information is intended, or is likely to be, disseminated to the public or the media.
- (9) Covered non-Agency personnel means individuals who are obligated by a CIA secrecy agreement to protect from unauthorized disclosure certain information they obtain as a result of their contact with the CIA.

c. (U) **THE PUBLICATIONS REVIEW BOARD**

- (1) The PRB is the Agency body charged with reviewing, coordinating, and formally approving in writing all proposed nonofficial, personal publications that are submitted for prepublication. It is also responsible for coordinating the official release of certain unclassified Agency information to the public. The Board consists of a Chair and an Executive Secretary -- designated by and reporting directly to the Chief, Information Management Services (IMS) -- with the rest of the Board membership composed of senior representatives from the Director of CIA Area, the **National Clandestine Service (NCS)**, the Directorate of Support, the Directorate of Science and Technology, the Directorate of Intelligence, the Security Center, and the NCS's Global Deployment Center, who are designated by the appropriate **Director**, or Operating Official with C/IMS concurrence. The Office of General Counsel (OGC) provides a nonvoting legal advisor.
- (2) The PRB shall adopt and implement all lawful measures to prevent the publication of

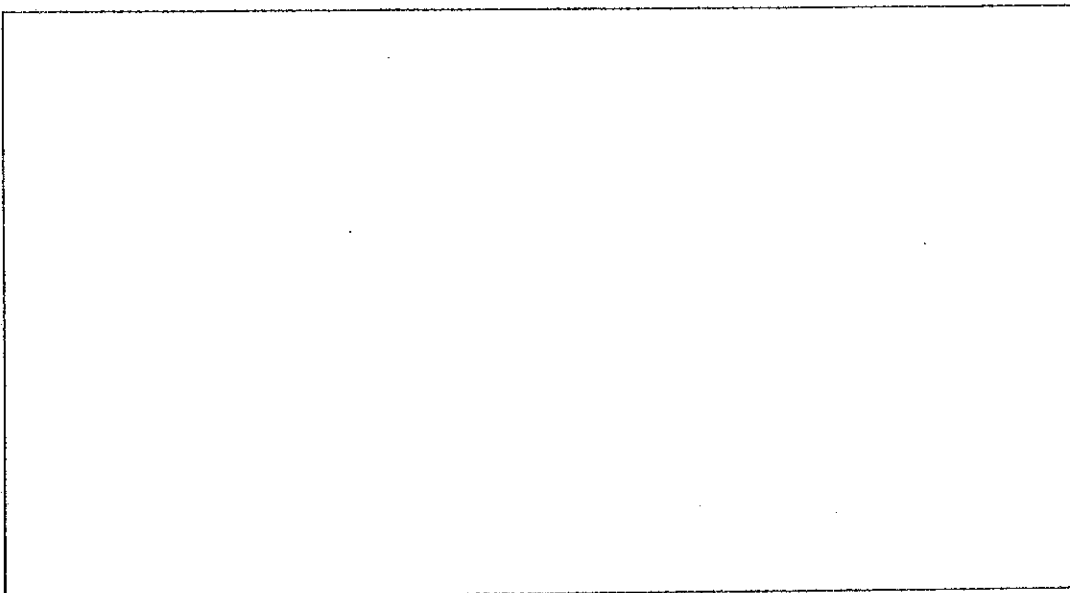
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information that could damage the national security or foreign relations of the U.S. or adversely affect the CIA's functions or the author's performance of duties, and to ensure that individuals given access to classified information understand and comply with their contractual obligations not to disclose it. When the PRB reviews submissions that involve the equities of any other agency, the PRB shall coordinate its review with the equity owning agency.

- (3) The PRB Chair is authorized unilaterally to represent the Board when disclosure of submitted material so clearly would not harm national security that additional review is unnecessary or when time constraints or other unusual circumstances make it impractical or impossible to convene or consult with the Board. The Chair may also determine that the subject of the material is so narrow or technical that only certain Board members need to be consulted.

(4)

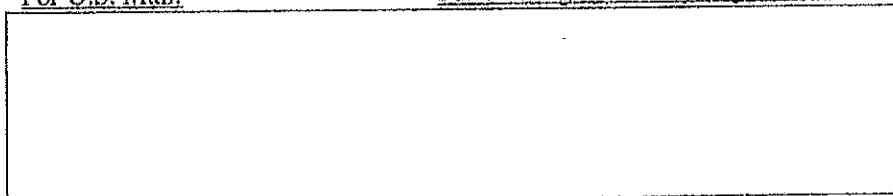


d. (U) CONTACTING THE PRB

- (1) Former employees and contractors and other covered non-Agency personnel must submit covered nonofficial (personal) materials intended for publication or public dissemination to the PRB by mail, fax, or electronically as follows:

For U.S. Mail:

For Overnight Delivery (e.g., FedEx, UPS, etc.):



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Email:
Phone:

- (2) Current employees and contractors must submit covered nonofficial and official materials intended for publication or public dissemination to the PRB by mail, fax, or electronically as follows:

Internal Mail:
Classified Facsimile:
Email: Lotus Note to:
Secure Phone:

- (3) Current employees and contractors intending to publish or speak on a nonofficial, personal basis must also complete and submit to the PRB an electronic cover memorandum identifying their immediate supervisor or contracting officer. The PRB will notify the appropriate Agency manager or contracting officer, whose concurrence is necessary for publication.
- (4) Review Timelines. As a general rule, the PRB will complete prepublication review for nonofficial publications within 30 days of receipt of the material. Relatively short, time-sensitive submissions (for example, op-ed pieces, letters to the editor, and so forth) will be handled as expeditiously as practicable. Lengthy or complex submissions may require a longer period of time for review, especially if they involve intelligence sources and methods issues. Authors are strongly encouraged to submit drafts of completed works, rather than chapters or portions of such works.

e. (U) **WHAT IS COVERED**

- (1) Types of Materials. The prepublication review obligation applies to any written, oral, electronic, or other presentation intended for publication or public dissemination, whether personal or official, that mentions CIA or intelligence data or activities or material on any subject about which the author has had access to classified information in the course of his employment or other contact with the Agency. The obligation includes, but is not limited to, works of fiction; books; newspaper columns; academic journal articles; magazine articles; resumes or biographical information on Agency employees (submission to the PRB is the exclusive procedure for obtaining approval of proposed resume text); draft *Studies in Intelligence* submissions (whenever the author is informed by the *Studies* editor that the draft article is suitable for *Studies* Editorial Board review); letters to the editor; book reviews; pamphlets; scholarly papers; scripts; screenplays; Internet blogs, e-mails, or other writings; outlines of oral presentations; speeches; or testimony prepared for a Federal or state or local executive, legislative, judicial, or administrative entity; and Officers in Residence speeches and publications (although oral

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and written materials prepared by OIRs exclusively for their classroom instructional purposes are not covered, OIRs must take particular care to ensure that any anecdotes or other classroom discussions of their Agency experiences do not inadvertently reveal classified information). Materials created for submission to the Inspector General and/or the Congress under the Whistleblower Protection Act and CIA implementing regulations are nonofficial, personal documents when they are initially created and the author is entitled to seek a review by the PRB to determine if the materials contain classified information and, if so, the appropriate level of classification of the information. If, at any point during or after the whistleblower process, the author wishes to disseminate his whistleblower complaint to the public, the author must submit his complaint to the PRB for full prepublication review under this regulation. If the author is a current employee or contractor who intends to disseminate his whistleblower complaint to the public, the author must also obtain PRB review of his materials under paragraph g below.

- (2) Review of Draft Documents. Written materials of a nonofficial, personal nature covered by the regulation must be submitted to the PRB at each stage of their development before being circulated to publishers, editors, literary agents, co-authors, ghost writers, reviewers, or the public (that is, anyone who does not have the requisite clearance and need-to-know to see information that has not yet been reviewed, but may be classified). This prepublication review requirement is intended to prevent comparison of different versions of such material, which would reveal the items that the Agency has deleted. For this reason, PRB review of the material only after it has been submitted to publishers, reviewers, or other outside parties violates the author's prepublication review obligation. The Agency reserves the right to conduct a post-publication review of any such material in order to take necessary protective action to mitigate damage caused by such a disclosure. Such post-publication review and action does not preclude the U.S. Government or the CIA from exercising any other legal rights otherwise available as a result of this prepublication violation. Additionally, the Agency reserves the right to require the destruction or return to CIA of classified information found to have been included in earlier versions of a work regardless of the form of the media involved (for example, paper, floppy disk, hard disk, or other electronic storage methods).

(3) Public Presentations:

- (a) With respect to current and former employees and contractors and covered non-Agency personnel making intelligence-related speeches, media interviews, or testimony, they must submit all notes, outlines, or any tangible preparatory material to the PRB for review. Where no written material has been prepared specifically in contemplation of the speech, interview, or oral testimony, the individual must contact the PRB Chair or his representative to provide a summary of any and all topics that it is reasonable to assume may be discussed, and points that will or may be made. Unprepared or unrehearsed oral statements do not exempt an individual from possible criminal liability in the event they involve an unauthorized disclosure of classified information.
- (b) In addition, with respect to current employees and contractors making official or

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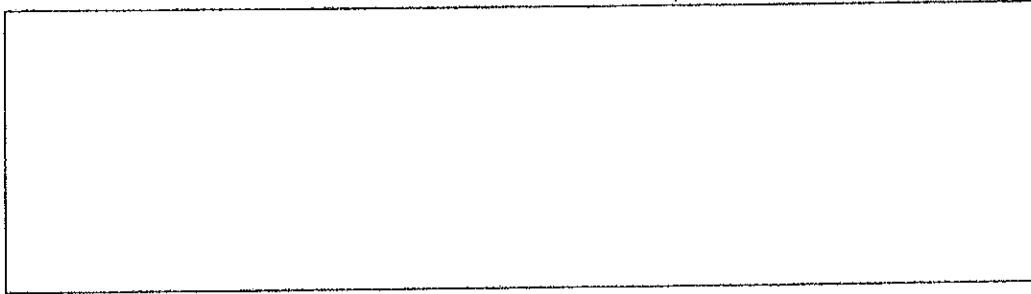
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nonofficial oral intelligence-related statements to the media or to groups where the media will likely be in attendance, prior to granting interviews or making public appearances, the speaker shall contact the PRB for guidance. The PRB will coordinate the review of proposed speeches or media interviews with the component involved, the Office of Public Affairs for guidance regarding media or press relations, and other offices as necessary.

(c) Current employees who must make court appearances or respond to subpoenas must contact OGC for guidance.

(4) Official Publications. The publication or public dissemination of official Agency information by any means, including electronic transmissions, such as Internet and unclassified facsimile, is subject to prepublication review. In addition to the types of materials listed in paragraph e(1) above, official publications subject to this review include unclassified monographs; organizational charts; brochures; booklets; flyers; posters; advertisements; films; slides; videotapes; or other issuances, irrespective of physical media such as paper, film, magnetic, optical, or electronic, that mention CIA or intelligence data or activities or material on any subject about which the author has had access to classified information in the course of his employment or other association with the Agency.

(5)



(6) Additional PRB Guidance. It is not possible to anticipate all questions that may arise about which materials require prepublication review. Therefore, it is the author's obligation to seek guidance from the PRB on all prepublication review issues not explicitly covered by this regulation.

f. **(U) PREPUBLICATION REVIEW GUIDELINES FOR FORMER EMPLOYEES AND CONTRACTORS, AND COVERED NON-AGENCY PERSONNEL**

(1) All material proposed for publication or public dissemination must be submitted to the PRB Chair, as described in paragraph d(1) above. The PRB Chair will have the responsibility for the review, coordination, and formal approval in writing of submissions in coordination with appropriate Board members. The PRB Chair will provide copies of submitted material to all components with equities in such material, and will also provide copies to all Board members and, upon request, to any Directorate-level Information Review Officer.

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- (2) The PRB will review material proposed for publication or public dissemination solely to determine whether it contains any classified information. Permission to publish will not be denied solely because the material may be embarrassing to or critical of the Agency. Former employees, contractors, or non-Agency personnel must obtain the written approval of the PRB prior to publication.
 - (3) When it is contemplated that a co-author who has not signed a CIA secrecy agreement will contribute to a publication subject to prepublication review, the final version of the publication must clearly identify those portions of the publication that were authored by the individual subject to the secrecy agreement. Where there is any ambiguity concerning which individual wrote a section, and the section was not submitted for review, the Agency reserves the right to consider the section to be entirely written by the individual subject to the secrecy agreement and therefore in violation of the individual's prepublication review obligations.
 - (4) When otherwise classified information is also available independently in open sources and can be cited by the author, the PRB will consider that fact in making its determination on whether that information may be published with the appropriate citations. Nevertheless, the Agency retains the right to disallow certain open-source information or citations where, because of the author's Agency affiliation or position, the reference might confirm the classified content.
- g. (U) PREPUBLICATION REVIEW GUIDELINES FOR CURRENT EMPLOYEES AND CONTRACTORS**
- (1) All proposed unclassified material must be submitted to the PRB Chair, as described in paragraph d(2) above. The PRB Chair will have the responsibility for the review, coordination, and formal approval in writing of submissions in coordination with the author's supervisor and other offices as necessary. The PRB Chair will provide copies of submitted material to all components with equities in such material, and will also provide copies to all Board members and, upon request, to any Directorate-level Information Review Officer.
 - (2) Additional Review Criteria. For current employees and contractors, in addition to the prohibition on revealing classified information, the Agency is also legally authorized to deny permission to publish any official or nonofficial materials on intelligence-related matters set forth in paragraph e(1) and e(4) above that could:
 - (a) reasonably be expected to impair the author's performance of his or her job duties,
 - (b) interfere with the authorized functions of the CIA, or
 - (c) have an adverse effect on the foreign relations or security of the U.S.
 - (3) Outside Activities Approval Request. Current employees and contractors must also

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complete a [] (Outside Activity Approval Request) before undertaking any unclassified publication not officially sanctioned by the CIA []

(4) Management Review Process:

- (a) Nonofficial publications. For all nonofficial publications, current employees must complete and submit to the PRB a cover memorandum identifying their immediate supervisor or contracting officer. The PRB will notify these individuals, whose concurrence is necessary for publication.
- (b) Unclassified official publications. For all unclassified official publications (official documents whose dissemination is likely to be broader than the initial, intended Federal Government entity recipient – for example, unclassified Congressional “constituent replies”) that are covered by this regulation, current employees or contractors must first coordinate the document or speech with their management chain. Once initial management acceptance has been made, the employee must then submit the publication to the PRB for final review and approval. (*Classified* official publications are not covered by this regulation and, therefore, are not required to be submitted to the PRB for review.)

(c) []

(5) []

h. (U) APPEALS

- (1) If the PRB denies all or part of a proposed nonofficial publication, the author may submit additional material in support of publication and request reconsideration by the PRB. In

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the event the PRB denies the request for reconsideration, the author may appeal. PRB decisions involving nonofficial publications may be appealed to the ADD/CIA within 30 days of the decision. Such an appeal must be in writing and must be sent to the PRB Chair. Appeal documentation must include the material intended for publication and any supporting materials the appealing party wishes the ADD/CIA to consider. The PRB Chair will forward the appeal and relevant documentation through the components that objected to publication of the writing or other product at issue. The Director or Head of Independent Office will affirm or recommend revision of the decision affecting his or her component's equities and will forward that recommendation to OGC. OGC will review the recommendations for legal sufficiency and will make a recommendation to the ADD/CIA for a final Agency decision. The PRB Chair is responsible for staff support to the ADD/CIA. The ADD/CIA will render a written final decision on the appeal. Best efforts will be made to complete the appeal process within 30 days from the date the appeal is submitted.

- (2) This regulation is intended to provide direction and guidance for those persons who have prepublication review obligations and those who review material submitted for nonofficial or official publication. Nothing contained in this regulation or in any practice or procedure that implements this regulation is intended to confer, or does confer, any substantive or procedural right or privilege on any person or organization beyond that expressly stated herein.

i. (U) BREACH OF SECRECY AGREEMENT

Failure to comply with prepublication review obligations can result in the imposition of civil penalties or damages. When the PRB becomes aware of a potential violation of a CIA secrecy agreement, it will notify OGC and the Security Center. After Security Center review and investigation of the case is completed, if further action is deemed warranted, the Security Center will refer the matter to OGC, which will report all potentially criminal conduct to the Department of Justice (DoJ) and consult with DoJ regarding any civil remedies that may be pursued.

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