AGENCY POLICIES ON PREPUBLICATION REVIEW PROVISIONS OF SECRECY AGREEMENTS

A. POLICY ON ENFORCEMENT OF SECRECY AGREEMENTS RELATED TO PREPUBLICATION REVIEW

1. Subsequent to the Supreme Court's decision in *U.S.* v. *Snepp*, numerous inquiries have been received concerning the Agency's policy on enforcement of its secrecy agreement. The purpose of this notice is to set forth information concerning the Agency's policy, for purposes of assisting persons subject to secrecy agreements to comply in good faith with the requirements of those agreements.

2. The purpose of the prior review requirement in the secrecy agreement is to determine whether material contemplated for public disclosure contains classified or classifiable information and, if so, to give the Agency an opportunity to prevent the public disclosure of such information. Prior review means that written materials are submitted to the Agency before being circulated at each stage of their development to publishers, reviewers, or to the public. The reason for this prior review requirement is to prevent comparison of the material which would then reveal which items had been deleted by the Agency. For this reason, post-review of the materials, i.e., after they have been submitted to the publishers, reviewers, etc., does not comply with this policy. However, the Agency reserves the right to review any such material for purposes of taking necessary protective action to mitigate damage caused by disclosure of classified information it may contain, but such review and action shall be entirely without prejudice to the legal rights of the United States Government and the Agency under the secrecy agreement.

3. Persons bound by the secrecy agreement should understand that the Agency cannot determine unilaterally what action in court will be taken in the case of a breach of the agreement. The Agency's recommendations in this regard are subject to the decision of the Attorney General. The Agency Office of General Counsel will be notified in all cases when a known breach occurs. The expressed or presumed attitude of a person toward the United States Government or the Agency is not a factor in determining what recommendation may be made by the Agency to the Department of Justice.

4. The authors of material submitted to the Agency are expected to cooperate with and assist the review process. In particular, they may be called upon to identify any public sources of information which, in the Agency's judgment, appear to originate from classified sources and to cite the source when their confirmation of the information would, in the eyes of the Agency, cause damage. Failure or refusal to identify such public sources by itself may result in refusal of authorization to publish the information in question.

5. Persons subject to a secrecy agreement are invited at any stage to discuss their plans for disclosures covered by the agreement. The views of the Agency can only be given by an authorized representative specifically designated for this purpose by the Director in regulation or otherwise. No one should act in reliance on any position or views expressed by any person other than such authorized Agency representative.

B. POLICY ON MATERIAL TO BE SUBMITTED FOR PREPUBLICATION REVIEW

1. It is not possible to anticipate each and every question that may arise. It is the policy of the Agency to respond, as rapidly as possible, to specific inquiries raised by persons subject to an Agency secrecy agreement as to whether specific materials require submission for review. Procedures for submission are contained in HR 6-2. Further questions should be referred to the Publications Review Board. Former employees should address all questions concerning secrecy agreements to the Office of General Counsel.

2. The Agency considers the prior review requirement to be applicable whenever a person bound by the secrecy agreement, express or implied, actually has prepared material for public disclosure which contains any mention of intelligence data or activities or which may be classified or classifiable pursuant to law or Executive order. The Agency views it to be that

person's duty to submit such material for review in accordance with the secrecy agreement. A person's obligation under the agreement remains identical whether such a person prepares the material himself or herself or causes another person, such as a ghost writer, spouse, friend or associate to prepare the material.

3. The provisions of the secrecy agreement requiring submission of information or materials for review are not limited to any particular category of materials or methods of disclosure. In the view of the Agency, these provisions apply to both oral and written materials. With respect to written materials, the provisions apply not only to books but to all other forms of written materials intended for public disclosure, such as (but not limited to) newspaper columns, magazine articles, letters to the editor, book reviews, pamphlets, and scholarly papers. Because alleged fictional treatment can be used as a subterfuge to convey factual information, fiction about the CIA or about intelligence activities is covered by the agreements.

4. Oral statements constitute one of the most difficult areas in application of the secrecy agreement. The agreement applies to material that the person contemplates disclosing publicly or actually has prepared for public disclosure. It does not, in the Agency's view, require the preparation of such material. Thus, a person bound by the agreement is not in breach of the agreement if that person participates extemporaneously and without prior preparation in an oral expression of information (e.g., news interview, panel discussions, extemporaneous speech) and does not submit material for review in advance. This does not, of course, exempt such person from liability for any unauthorized disclosure of classified or classifiable information that may occur in the course of such extemporaneous oral expression.

5. The requirement under the secrecy agreement is only to submit materials on the subject matter of intelligence or the Agency and its activities or material which may be based upon information classified or classifiable pursuant to law or Executive order. Current employees must submit information which reasonably could be expected to impair the employee's performance of duties or interfere with the authorized functions of the Central Intelligence Agency, including information which could have an impact on foreign relations. The prepublication review requirement does not apply to topics that are totally unrelated to intelligence matters, such as a manuscript of a cookbook, a treatise on gardening, or writings on domestic political matters. Nor does the prepublication review requirement extend to discussion of foreign relations not purporting to contain or be based upon intelligence information.

6. Material that consists solely of personal views, opinions, or judgments on matters of public concern and does not contain or purport to contain any mention of intelligence data or activities or contain or purport to contain data which may be based upon information classified or classifiable pursuant to law or Executive order is not subject to the prepublication review requirement. For example, a person bound by the secrecy agreement is free, without prior review, to submit testimony to the Congress or make public speeches or publish articles on such topics as proposed legislation as long as the material prepared by such person does not directly or by implication constitute a statement of an informational nature about intelligence activities or substantive intelligence information, or in the case of current employees, impair the employee's performance or the authorized function of the Central Intelligence Agency, including information which could have an impact on foreign relations. It should be obvious that in some circumstances the expression of what purports to be an opinion may in fact convey information subject to prior review under the secrecy agreement. For example, a former intelligence analyst's opinion that the U.S. can or cannot verify SALT compliance is an implied statement of fact about Agency activities and substantive intelligence information, and would be subject to prior review. This does not mean that such a statement necessarily would be classified and require deletion, but merely that the subject matter required review by the Agency before publication. A discussion of the desirability of the SALT treaty based on analysis of its provisions and without discussion of intelligence information or activities would not. It should be clear that descriptions of an employee's Agency activities can be expected always to require prior review under these principles. At the other extreme, it is clear that a person subject to the secrecy agreement, who writes or speaks about areas of national policy from the perspective of an observer outside the Government and without purporting to rely on classified or classifiable information, intelligence information, or information on intelligence activities, does not have to submit such materials for prior review. While some "gray areas" may exist, persons subject to the secrecy agreement are expected to err on the side of voluntary prepublication review in keeping with the spirit and intent of the agreement.