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OIM 00-0359
5 April 2000

MEMORANDUM FOR: Deputy Executive Director

VIA: Deputy Director for Administration
Director of Information Management, DA *GLM SW
D/0200*

FROM: Scott A. Koch, Chairman
Publications Review Board, OIM

SUBJECT: Publications Review Board Standards

1. This memorandum responds to your recent request to the Director of Information Management (OIM), for a review of the standards the Agency's Publications Review Board (PRB) uses for nonofficial publications. I have taken this opportunity to include a discussion of official publications to point out the friction and inconsistency that results from these two programs working without coordination. The final section recommends solutions.

The Publications Review Board and Nonofficial Publication

2. The PRB plays a role only in "nonofficial" publications, which can affect both current and former employees. Former employees and current contractors who were employees submit their material to PRB. Current employees must, under Agency Regulation [redacted] submit material through their supervisory chain of command.¹ The Board relies on voluntary compliance and does not actively review all publications to determine whether the authors have met their prepublication review obligations.

3. The Secrecy Agreement all current employees, former employees, and others with a contractual obligation to CIA voluntarily sign when entering a relationship with the Agency prohibits them from revealing classified information. A fundamental provision of these agreements requires the signer to

¹ "Current employees must submit material intended for nonofficial publication through their supervisory chain of command to their Deputy Director or Head of Independent Office. However, current employees may elect first to make submissions directly to the Chair of the PRB only for determination of the necessity for any Agency review." [redacted]

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submit intelligence-related "nonofficial publications" to the CIA for review before they are published.²

4. The obligation is contractual and arises even if the author thinks the submission is unclassified. The classification decision is the Government's; an author cannot unilaterally decide that his or her material is unclassified and therefore exempt from prepublication review.³

Redaction Standards

5. The PRB can eliminate information from nonofficial publications only if the text is classified and the Agency can articulate the damage to national security that disclosure would cause. Under current regulations [redacted] and federal court decisions, on behalf of the Agency, the Board:

- May deny permission to publish "any information obtained during the course of employment or other service with the CIA that has not been placed in the public domain by the US Government and if disclosure reasonably could be expected to harm the national security interests of the United States." [redacted]
- May not deny permission to publish information that embarrasses or criticizes the Agency. [redacted]
- May require an author to source an otherwise classified statement to an unclassified publication such as a newspaper article, if republication will not damage national security through authoritative confirmation of previous publications. In effect, the author's previous position and duties control what he or she can disclose. Thus, we would not allow an author to make a statement, if by so doing it confirms the truth of the matter asserted. [redacted]

² Agency Regulation [redacted] defines "publication" as "communicating information to one or more persons." A "nonofficial publication" is "a work prepared by the author as a private individual, not as a government employee or contractor acting in an official capacity."

An author has no obligation to submit non-intelligence related material. Thus, books about breeding goldfish, Masonic organization and practices, or the history of origami are not subject to prepublication review.

³ *Snepp v. United States*, 444 U.S. 507 (1980).

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- Moreover, as a government employer, the Agency through component review can prevent current employees from publishing even unclassified material if disclosure adversely affects their ability to perform their duties, interferes with authorized CIA functions, or adversely affects the foreign relations or security of the United States.⁴

6. These standards illustrate two significant differences between PRB's nonofficial publication review and the Agency's official release programs. First, an official release program like that pursuant to the Freedom of Information Act can delete information in government documents for any of nine reasons the Act enumerates. The PRB can redact for only one reason: damage to national security. Second, official release programs deal with government documents in the government's possession. The material PRB receives from authors is proprietary and, with the exception of any classified information, belongs to the author and not the government.

Nonofficial Publication Review Process

7. The process the Agency uses to review nonofficial publications has two defects:

- The standards components use to review current employees' nonofficial publications are not necessarily consistent with that the Board uses for former employees.
- The Board does not see everything approved for nonofficial publication.

8. As a general rule, PRB does not review the nonofficial publications of current employees.⁵ The PRB has no control over the component and Information Review Officer (IRO) review process and in many instances does not know why a component redacted or failed to redact specific information. This may result in

⁴ Thus, a DI analyst working on Chinese issues would not be allowed to publish an unclassified editorial criticizing or supporting Chinese policy or officials.

⁵ The one exception is for current employees in the DCI area. Under 26 March 1999, DCI employees with nonofficial publications can submit to either the head of their independent office, the Executive Director, or PRB for review.

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component or IRO decisions that differ from those the PRB would have made.

9. Not all former employees recognize that the PRB is the proper vehicle for prepublication review. Former senior agency officials, up to and including former DCIs, have tried to clear their articles informally through other senior Agency officials. This practice can only raise charges of inconsistency against the Agency should litigation arise with other authors. A representative on the Board from the DCI area would mitigate this and help ensure that all requests for review went to PRB.

10. The process the Agency uses for nonofficial publication is important and must be consistent. The Board relies on precedent, much as does the common law legal system. Past Board decisions and the procedures the Agency follows for reviewing nonofficial publications are not necessarily binding, but Agency actions and decisions through the PRB are subject to judicial review. A federal court would likely find Agency procedural and decisional precedent persuasive and would find it difficult to ignore or distinguish such precedent without legitimate factual differences.⁶

The Publications Review Board and Official Publication: Confusion and Inconsistency

11. The Publications Review Board currently has no authority or mandate to review official publications to ensure they are unclassified. These official publications include:

- Presentations Agency officials make in their official capacities. These include Congressional testimony as well as presentations to conferences, symposia, or scholarly conventions (e.g. the American Bar Association, the American Political Science Association, the American Historical Association, etc.).

⁶ Decisions PRB made before it became part of OIM are part of this precedent. The Board now seeks to be consistent, but some previous decisions permitted former senior officials to make statements, sourced to unclassified publications, that seemed to confirm the truth of the matter asserted. The Board Chairman currently refers all submissions from former senior officials, or submissions involving sensitive issues, to the full Board for review. Board members routinely send the material to the most knowledgeable components, consult with the appropriate Information Review Officers, and, where necessary, senior directorate managers.

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- Articles Agency officials write in their official capacities and publish in official journals, (e.g., Studies in Intelligence).
- Articles Agency officials write in their official capacities and publish in popular or scholarly—but nonofficial—journals.
- Interviews Agency officials give in their official capacities. The resulting article may contain quotations from the official.

12. In the first three instances, the proper review is through the officer's chain of command. In the fourth instance, the Office of Public Affairs is involved and usually has an officer present. That officer, however, may not have declassification expertise. OIM is officially involved in none of these cases.

13. The magnitude of the problem is apparent when one considers all the official representational activity—speeches, conference participation, interviews, etc.—that takes place within any given year.

[Redacted]

[Redacted]

14. [Redacted]

[Redacted]

15. Recommended Solutions:

- All requests for "informal" prepublication review of material intended for nonofficial publication should be referred to PRB for appropriate action.
- A representative from the DCI area should join the Board or at least be available to provide a corporate

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perspective and provide insight into matters involving high-profile or politically sensitive issues.

- OIM should be designated as the office with the sole responsibility to coordinate, document, and preserve the record of all official releases in addition to its current role in nonofficial publications. The benefits are obvious. OIM's repository (most likely an electronic database) would provide guidelines for future official releases and would assist in writing "after action" reports to improve the Agency's release processes.
- OIM should play a role in all Agency disclosures. That role could be as limited or broad as you deem appropriate, ranging from review of all disclosures, to being informed of all impending official releases and reviewing only those deemed particularly important or sensitive.


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Distribution:

- Orig - D/EXDIR
- 1 - DAC
- 1 - DDA
- 2 - D/OIM
- 1 - C/IRG/OIM
- 1 - Scott Koch, PRB

1. The PRB standards are being reviewed and revised to reflect the current state of the industry and to ensure that they are consistent with the requirements of the law.

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