



Program Statement

OPI: IPD
NUMBER: 1411.01
DATE: 1/28/99
SUBJECT: Employee Speeches and
Publications Review
Process Policy

1. PURPOSE AND SCOPE. To establish procedures for Bureau staff to obtain guidance and approval to make public speeches or publish material developed as a personal or independent project by the employee. This Program Statement does not cover publication activities undertaken as official, assigned duties.

This Program Statement does not impose any restrictions on employees who wish to speak about or publish materials not related to the policies, procedures, and practices of the Bureau or the Department of Justice (DOJ), and it does not supplant any statutory or regulatory provisions on Federal employee speech or publications.

This policy shall not restrict the union's role in representing bargaining unit employees in their day-to-day, labor-management relations as outlined by law, the Hatch Act, and Federal Labor Relations Authority decisions. Union officials will be allowed to represent the Bargaining Unit in their official capacity (e.g., providing interviews with the print or broadcast media, placing advertisements in newspapers, appearing on public talk shows and radio stations, and speaking at conferences and conventions) without fear of reprisal from the employer or representatives of the employer.

2. PROGRAM OBJECTIVES. The expected results of this program are:

a. The knowledge and information available about criminal justice and corrections will be enhanced.

b. Any public speeches or publications by Bureau employees will not make public any "privileged information."

3. DIRECTIVES AFFECTED

a. Directives Rescinded. None.

b. Directives Referenced

P.S. 3420.08 Standards of Employee Conduct (03/07/96)

4. STANDARDS REFERENCED. None.

5. DEFINITIONS

a. "Publish", "publication", and "publication activity" refer to all forms of public expression, including speeches, articles, books, and other publications that are developed by staff members independently, in their off-duty hours.

b. "Employee" refers to any full- or part-time Bureau employee.

c. "Privileged information" refers to any type of information that may not be made available to the general public because it is restricted under the Freedom of Information Act or the Privacy Act, is otherwise categorized as "sensitive," or would, if released, cause a risk to the orderly operation of institutions or the security of institutions, staff, or inmates. If there is any question regarding the propriety of releasing information contained in a proposed publication, the author should submit a Freedom of Information Act request to the Office of General Counsel, requesting access to the Bureau records from which that information was derived. Statutory guidelines for what is releasable and what is not releasable are contained in the Freedom of Information Act and the Privacy Act.

6. POLICY AND OVERVIEW

a. It is Bureau policy to permit employees to engage in any independent, off-duty publication activity without management review or approval, unless:

- The publication activity is part of the employee's assigned duties or official responsibilities.

- The publication activity addresses or focuses on the employee's official duties or the responsibilities, programs, operations, and policies of the Bureau.

- The invitation to participate in a publication activity was extended because of the employee's official Bureau position.

- The person extending the invitation has direct or indirect interests affected by the employee's performance in their official Bureau capacity.

- The publication activity draws on privileged information.

- The views contained in the publication activity, or the manner in which they are expressed, would likely leave the impression that the employee is representing or speaking on behalf of the Department of Justice or the Bureau of Prisons.

- The employee is identified in connection with the publication activity as a Bureau of Prisons or Department of Justice employee. See Section 10 for information on disclaimers.

An employee must obtain prior Bureau approval for publication activities when any of the above circumstances may exist. See Section 7 for information pertaining to the mandatory review process.

b. Employees do not need to obtain management review and approval of any independent, off-duty publication activity that:

- Relates to corrections, correctional practices, or other criminal justice issues in a general manner (does not focus specifically on the Bureau or the employee's official duties and responsibilities) and are based on the employee's general experiences and/or education.

- Does not contain privileged information or information that would cause a risk to the security of Bureau institutions or the safety of staff or inmates.

- Does not relate to corrections or correctional practices.

If an employee is unsure as to whether a publication activity requires a mandatory review, they may request a voluntary advisory review. Refer to Section 8 for further information on the voluntary review process.

c. This policy does not restrict publication activities that are specifically assigned as official Bureau duties. It is assumed that officially-assigned publication activities will be reviewed by the employee's supervisor, as would be the case with any other work product.

- Staff do not own or have intellectual control of reports, studies, or other documents that they produce on the job. Staff are prohibited from publishing any work product without specific authorization from their supervisors, unless they obtain a copy of that work product through a Freedom of Information request.

d. Impromptu, informal, or unprepared presentations -- such as classroom discussions or panel discussions -- are not subject to review under this Program Statement, because it would not be feasible to attempt to review them. Nonetheless, employees are still prohibited from improperly releasing privileged information, in those or any other forums, or from giving the false impression of speaking officially on behalf of the Bureau of Prisons or the Department of Justice.

7. MANDATORY REVIEW AND APPROVAL PROCESS. When an employee determines that a publication activity requires a mandatory review in accordance with the provisions of this Program Statement, the following review and approval process shall be followed:

- a. The employee shall submit the manuscript of the proposed publication or speech to the Assistant Director for Information, Policy, and Public Affairs.

The employee is responsible for providing all information including name and identification of the forum for publication, the intended audience, and other factors necessary for an accurate management review.

- b. The Assistant Director for Information, Policy, and Public Affairs may refer the manuscript to the Office of General Counsel, Assistant Directors in the relevant program areas, or other subject matter specialists to assist in determining if: (1) it contains any information that may not be released under the Freedom of Information Act (FOIA), the Privacy Act (PA), or other statutes or regulations; (2) whether the manuscript should be approved for publication, based on the assessment of such factors as FOIA/PA issues, whether information has been included that could compromise institution security, or whether the author has inappropriately given the impression of speaking on behalf of the Bureau, either through explicit statements in the body of the manuscript, or by failing to include a disclaimer (see item 10) as an addendum to the manuscript; and (3) what restrictions/changes should be made to the manuscript before publication may be approved.

c. In addition to reviewing the proposed manuscript for improper release of information, information that could compromise institution security, and other issues outlined in Item 7-b, above, the Assistant Director for Information, Policy, and Public Affairs, and the other offices asked to review the document, may note inaccuracies contained in the document -- such as factual mistakes or misrepresentations of Bureau policy. Such inaccuracies, if identified, may be grounds for denying permission to publish a manuscript. The Bureau may require authors to correct such inaccuracies before publishing a manuscript. The Bureau, however, may not cite statements of opinion as grounds for denying authorization to publish.

d. After the manuscript has been reviewed, as appropriate, by the Office of General Counsel, Assistant Directors in the relevant program areas, or other subject matter specialists, the Assistant Director for Information, Policy, and Public Affairs will issue the decision on whether or not it is approved for publication.

e. The employee will be notified in writing of the final decision, normally within 90 days after submitting the manuscript for review. Notification will also be provided to the Warden, Regional Director, or Assistant Director in the employee's chain of command.

- If authority to publish is not granted, the proposed publication shall be returned to the employee with the reasons for withholding approval clearly stated in writing. The employee may still proceed to develop the publication, using information obtained from the review process to amend the final product. If this is done, however, the employee must submit the revised manuscript for another review.

8. VOLUNTARY ADVISORY REVIEW PROCESS. An employee may request a voluntary advisory review of a proposed publication activity at any time. This voluntary advisory review is to assist the employee in determining if information contained in the proposed publication activity requires mandatory review and to identify potential problems in advance of a mandatory review.

The voluntary review process shall be as follows:

a. The employee submits a memorandum outlining the proposed publication to the Assistant Director for Information, Policy, and Public Affairs. The memorandum should include the topic of the proposed publication, the sources of information to be used

in the publication, the journal or book in which the article will appear or the audience to whom the speech will be delivered, and whether the author will be identified as a Bureau or DOJ employee.

b. The Assistant Director for Information, Policy, and Public Affairs may consult with the Office of General Counsel, Assistant Directors in the relevant program areas, or other subject matter experts, to formulate advisory opinions.

c. Normally, the Assistant Director for Information, Policy, and Public Affairs will notify the employee in writing of any questions or concerns related to the publication activity no more than 45 days after the employee has submitted the publication activity for review.

d. The advisory review process is voluntary; therefore the employee is free to accept or disregard the advice. In any event, if the publication activity meets restrictions described in Section 6 of this Program Statement, employees shall be responsible for complying with all provisions of mandatory review.

e. The advisory opinion is non-binding; therefore any opinions generated as a result of this review shall not be considered a final approval or disapproval of a publication activity.

9. LIMITATIONS ON COMPENSATION. Acceptance of compensation for speaking and publishing are governed by 5 Code of Federal Regulations 2635, paragraph 807, "Teaching, Speaking, and Writing."

Employees seeking to publish materials shall comply with this provision and all Bureau regulations concerning outside employment. Questions on the subject of employment and compensation relating to publication activities shall be referred to the Bureau's Ethics Officer for clarification.

It is the employee's responsibility to obtain clarification on all issues prior to entering into an employment agreement and before accepting compensation.

10. DISCLAIMERS. No disclaimer is necessary if the topic of the publication activity is non-correctional in nature.

There is also no need for a disclaimer if the material clearly represents the views, policies, or procedures of the Bureau or DOJ, and the material was approved through the appropriate chain of command as an official work product.

A disclaimer shall be required if the topic is corrections or criminal justice, and if the employee will be identified as a Bureau or DOJ employee or there is a likelihood that the publication's content could be construed as representing the views, policies, or practices of the Bureau or DOJ.

Disclaimers shall read:

"Opinions expressed in this article are those of the author and do not necessarily represent the opinions of the Federal Bureau of Prisons or the Department of Justice."

/s/
Kathleen Hawk Sawyer
Director