



UNITED STATES NAVAL INSTITUTE
ANNAPOLIS MARYLAND 21402-1382

9 March 1990

MAR 18 1990

Admiral Elmo R. Zumwalt, Jr., USN (Ret)
Systems Planning Corporation
1500 Wilson Blvd.
Arlington, VA 22209-2404

Handwritten note:
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How can
draft instructions
be made for
JAB

Dear Admiral Zumwalt:

The Naval Institute Board of Control has asked me to alert you to the implications of prepublication review policies now under consideration within the Department of the Navy. I have enclosed a copy of my letter to Admiral Trost on this subject, along with his reply.

Although the proposed instruction would impact adversely on the forum provided by the Naval Institute, the more important issue is that it would be bad for the Navy. It will hurt the Navy to muzzle those who know the most and care the most about the service, while leaving all public discussion of naval issues to less informed and less sympathetic writers. There is also an important question of fairness. It is inexcusable to tell those in the service of their country that they cannot be trusted, and are not entitled to the freedom of speech that is guaranteed to all citizens by the Constitution.

A final decision on prepublication review policy will be made by the Secretary of the Navy, and will be subject to guidance from the Secretary of Defense. Because the Board of Control and I consider this a matter of great importance with a potential for major impact upon both the Navy and the Naval Institute, we ask for your advice on what can be done to arrive at a review policy that protects the security of classified information without discouraging our serving officers and men from being heard on professional issues. I look forward to hearing from you.

Very Respectfully,

Handwritten signature: Jim Barber
James A. Barber, Jr.

JAB/mac

Enclosures

cc: Board of Control

Handwritten note: Call and ask



UNITED STATES NAVAL INSTITUTE
ANNAPOLIS MARYLAND 21402-1382

5 February 1990

Admiral C. A. H. Trost
Chief of Naval Operations
Room 4E800 (OP-0003B)
The Pentagon
Washington, DC 20350

Dear Admiral Trost:

The prepublication review instruction (draft SECNAVINST 5510.25B) now under consideration, if approved, will severely hurt the Navy. The provisions of the draft instruction will discourage anyone to whom it applies from writing for publication about professional topics. The professionals who know the most about the Navy, and who care the most about it, will be silenced. Academics, civilians, politicians and retirees will by default dominate the public discussion of naval issues.

This nation is founded upon the crucial importance of broad public discourse. Since 1873 the Naval Institute has provided a forum for the discussion of professional naval topics that has served the Navy well. The main participants in this discourse have been those who would be the most adversely affected by the proposed instruction: sea-going professionals. These busy individuals have little enough time available to write as it is. Few will undertake writing at all if they have to endure the multi-staged and lengthy review process dictated by the draft instruction. As the Publisher for the Naval Institute I know that the profession's forum will be damaged badly if the draft instruction is implemented. More important, I believe that it would be very harmful to the Navy and to the public's understanding of the Navy. In the present climate it is more important than ever that the Navy's case be made, and that it be made well. If we muzzle our professionals, we all lose.

The Navy's bedrock concept is accountability: the expectation of being held to account for one's acts and omissions. The draft instruction departs radically from this sound and proven concept. Instead of holding to account the rare individual who fails his trust by, for example, leaking classified information, it subjects all Navy men and women to the suspicion that if not censored they will violate their trust. This is wrong.

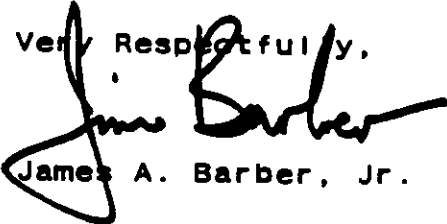
In 1923 a former President of the Naval Institute, addressing the same issue, said it better than I:

"I have verbally and in writing urged various Secretaries of the Navy to remove all restriction on the Institute publications, averring that no officer would abuse the privilege by printing anything confidential in nature.' ... 'If any individual be guilty of personal attacks or of improper language and motive, punish him for conduct unbecoming an officer and gentleman, or whatever the offense may be. But eliminate all censorship, and don't shut up the open discussion of service and naval policy topics."

Enclosure (1) provides some specific critiques of the provisions of the draft instruction. Clearly there is a valid need to protect classified information. But a review process that is more concerned with preventing the possibility of disagreement with current policy than with protecting classified matter, and which puts elaborate bureaucratic hurdles in the path of professional writing, is more harmful than helpful to the long-term health of the naval profession.

I urge that you ask the Secretary of the Navy to scrap the draft instruction. I also recommend that we ask the Secretary to enlist the Naval Academy, the Naval War College, the Naval Postgraduate School, the Naval Institute, and appropriate representatives of the unrestricted line community to participate in the drafting of a new prepublication review instruction.

Thank you for your consideration.

Very Respectfully,

James A. Barber, Jr.

JAB/mac

cc: Naval Institute Board of Control
Vice Chief of Naval Operations
President, Naval War College
Superintendent, U.S. Naval Academy
Superintendent, Naval Postgraduate School
Chief of Naval Information
Commander, U.S. Naval Investigative Service Command

Enclosure

bcc: Dr. D. Allard, Director of Naval History
CAPT H. Sarepara, NPGS
RADM T. Brooks, Director, Naval Intelligence
Dr. Richard Guertin
Dr. Kevin Burne
Mr. T. F. Epley
Mr. F. H. Rainbow
ADM R. F. Dunn, USN (Ret)

The following comments are keyed to the indicated paragraphs of enclosure (1) to draft SECNAVINST 5510.25B circulated by Serial 09N2/9U656701 of 29 December 1989.

1.a. Commanding officers are given authority to clear material for release "if such material is not specified in enclosure (2)." Because the list of topics in enclosure (2) covers almost any professional subject of conceivable interest, commanding officers will be able to clear very little that is written for publication.

1.b. It is stated that "materials shall not be denied clearance because their public disclosure might reveal administrative error or inefficiency." Even though as noted in 1.a. above, commanding officers are given little meaningful authority to clear material, they are in an excellent position to deny clearance to anything potentially embarrassing to the command. It would be a brave subordinate who would submit for clearance something the captain would not like.

1.c.--1.f. These requirements, together with the time delays inherent in the review process, make it very difficult for any speech or presentation to be timely and topical. Very few speeches are complete, in full and final form, and supported by graphics, 30-90 days before their scheduled delivery. This provision, if enforced, would probably lead to fewer speeches by Navy representatives, and a reliance on stale canned material.

1.g. The implication here is that the only naval personnel entitled to "academic freedom and the advancement of national defense related concepts" are those who are in a student status. All military personnel should be not only entitled to these rights, but should be encouraged to exercise them, subject only to personal accountability and to security considerations. Censorship of those in the service of their country, on other than security grounds, is inappropriate in America.

1.h. Requiring a published disclaimer is reasonable. It is unlikely, however, that statements by junior personnel in an

unofficial capacity would be construed as "official policy," particularly if accompanied by the required disclaimer. Actually, the draft instruction would make such a disclaimer incorrect, since nothing but official policy would be permitted to be published. It is reasonable to require that any naval person who purports to describe existing policy make every effort to do so accurately. It is not reasonable to require that no one can express personal disagreement with such policy.

1.i. This paragraph appears to state that no person subject to the instruction can express any view that is not "consistent with established DON, DOD, and other U.S. Government policies and programs." Such suppression of potential disagreement not only is inappropriate for an instruction that should be concerned primarily with the protection of classified material, but probably is unconstitutional. To the extent that concern with policy review pulls assets from classification review we will injure our ability to protect classified material.

1.j. The expressed intent of providing prompt and timely processing is desirable, but no standards or sanctions are stated.

1.k. From a publisher's point of view it is unreasonable to demand that personnel cannot "make commitments to furnish manuscripts." How are a potential publisher and a potential author to work together in a timely way?

1.l. The expressed concern for the "public's receipt of prompt and complete information on government activities" seems at complete variance with the thrust of all of the rest of the instruction.

B. PROCESS. The requirement for six copies of material to be reviewed is achievable for someone stationed in a large city. Making these copies can present a considerable problem to the individual on sea-duty, who is prevented by regulation from using Navy copy machines for the purpose. More important, it adds to the appearance of a vast bureaucratic apparatus designed to discourage potential authors.

C. Time Limitations. Throughout this section "timely"

processing is urged, but there are no penalties with teeth for failing to meet the time requirements, and specific escape clauses are provided. The instruction, which is unclear, appears to say that material will first be forwarded through the chain of command (thirty day time limit), then sent to OP-09N2 for review (another thirty day time limit), "before forwarding to OASD (PA) (DFOISR)," for which no time limits are specified. Mailing times are outside these broad guidelines. This is not only a very discouraging set of hurdles for any prospective author, but makes it probable that many current subjects would become outdated before the process is complete.

D. Appeals. Because appeals will be made to the same authorities responsible for administering the original review process, the result is unlikely to be anything other than an agreement with the original decision. Provision should be made to permit appeals to a senior authority outside the original review process.

MAR 2 1990



CHIEF OF NAVAL OPERATIONS

28 February 1990

Dear Captain Barber,

Thank you for your thoughtful comments on the draft prepublication review instruction. As you are aware, the Secretary of the Navy has assigned responsibility for departmental information security matters to Commander, Naval Investigative Service Command (NISCOM). This encompasses responsibility for security review of proposed speeches and publications. Additionally, the prepublication review process must comply with the Department of Defense requirement that an OSD policy review of certain materials be conducted before the material is made public.

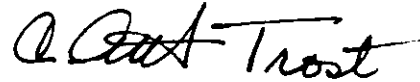
To accommodate NISCOM and DoD concerns, a working group has been set up to examine the requirements and procedures for both security and policy review. Over the next several months, iterative drafts will be circulated to relevant offices until a final draft is prepared for presentation to the Secretary of the Navy. During this period, briefings will also be held for interested parties, as necessary.

Prepublication review requires a balancing of different interests--national security, naval administration, freedom of speech, and academic freedom. The interests of DoN personnel in publishing their views, and of the public in receiving those views in a timely manner, are also of concern.

Because of my position on the Board of Control of USNI, I am precluded from making any

official decisions or recommendations with respect to this matter. However, I am confident that the needs of the Navy and the concerns of all interested parties will be fully taken into account.

Sincerely,



C. A. H. TROST
Admiral, U. S. Navy

Captain James A. Barber, Jr., USN, Retired
Executive Director
U.S. Naval Institute
Annapolis, MD 21402-1382

Copy to:
Vice Chief of Naval Operations
President, Naval War College
Superintendent, United States Naval Academy
Superintendent, Naval Post Graduate School
Judge Advocate General
Chief of Naval Information
Commander, Naval Investigative Service Command