

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.	)	
_____	)	

**MEMORANDUM IN SUPPORT OF PLAINTIFF UNITED STATES’  
MOTION FOR SUMMARY JUDGMENT AS TO THE REMEDY**

**INTRODUCTION**

Having obtained summary judgment as to liability and completed discovery on the remedy, the United States now respectfully requests that the Court enter a remedial order and final judgment in this case. There is no genuine issue of material fact regarding the United States’ right to permanent injunctive relief to prevent Jones from committing further breaches of his Secrecy Agreement or benefitting from his past breaches. It is uncontroverted that the United States has been irreparably harmed by Jones’ publication of a book that the CIA denied permission to publish for containing classified information, and the equities clearly favor the entry of permanent injunctive relief here.

The United States is also entitled to a constructive trust over any proceeds Jones derives in the future from the publication of his book in violation of his Secrecy Agreement. The evidence indicates that Jones gave away his proceeds from the book’s publication. The United States is not seeking to impose a constructive trust over proceeds over which Jones lacks

possession or control, but Jones should not be permitted to benefit in the future from his breach of his Secrecy Agreement.

### **BACKGROUND**

The United States sued Ishmael Jones (a pen name), a former CIA officer, for breaching his contractual obligations and fiduciary duties to the United States by publishing a book in violation of the terms of a Secrecy Agreement that he signed with the CIA. The United States moved for partial summary judgment as to liability because Jones admitted the facts material to his breach. Those facts, distilled to their essence, are that Jones entered into a Secrecy Agreement with his employer, the CIA, in which he agreed to not publish intelligence-related information without first obtaining the CIA's written approval; and that Jones published a book containing intelligence-related information, entitled "The Human Factor: Inside the CIA's Dysfunctional Intelligence Culture" ("The Human Factor"), without receiving the CIA's written approval (indeed, he published the book in defiance of the CIA's Publications Review Board's express denial of permission to publish).

The Court found these facts to be undisputed, rejected Jones' arguments in opposition to the Government's motion, and granted the Government summary judgment as to liability. Dkt. No. 45; June 15, 2011 Hearing Transcript (Dkt. No. 53-1). Jones had argued that his book did not contain any classified information; that the CIA could only deny him permission to publish classified, as opposed to unclassified, information; that the CIA breached the Secrecy Agreement first by denying Jones permission to publish unclassified information; and that this "prior breach" prevented the Government from enforcing the Secrecy Agreement against Jones. *See* Def.'s Opp'n to Pl.'s Mot. for Summary Judgment as to Liability and Mot. to Dismiss Counterclaim at

8 (Dkt. No. 35). The Court held that whether Jones' book actually contained classified information was irrelevant to Jones' liability for breaching his contractual and fiduciary duties to the United States, under the controlling authority of *Snepp v. United States*, 444 U.S. 507 (1980) (per curiam) (holding that publication of intelligence-related information by a former CIA employee without first obtaining the Agency's approval violated the former employee's secrecy agreement, regardless of whether the published material was classified). See June 15, 2011 Transcript at 19-20. The Court found that if Jones was dissatisfied with the CIA's decision denying him permission to publish his manuscript, his remedy was to file suit in U.S. District Court challenging the Agency's decision, in order to obtain permission to publish the book. This was Jones' remedy—not to go ahead and publish the book without permission and challenge the Agency's decision as a defense to an action such as this one. *Id.*

Jones also sought the opportunity to "test" the declaration the United States submitted to establish that the CIA was irreparably harmed by Jones' violation of his Secrecy Agreement. Def.'s Opp'n to Pl.'s Mot. for Summary Judgment as to Liability and Mot. to Dismiss Counterclaim at 10-11; see also June 15, 2011 Transcript at 16-17. In that declaration, Mary Ellen Cole, Information Review Officer for the CIA's National Clandestine Service, explained how the Agency is irreparably harmed when individuals such as Jones do not abide by their publication review obligations, whether or not any classified information is publicly disclosed. As she summed up the problem, "[t]he perception that current or former CIA officers are free to bypass the CIA's prepublication review process and can publish whatever information they chose 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." Second Declaration of Mary Ellen Cole, attached as Exhibit B to United States' Mot. for Summary Judgment as to Liability and Mot. to Dismiss Counterclaim at ¶ 10 (Dkt. No. 33-1) ("Second Cole Decl."). The Court found no genuine issue of material fact as to whether the United States was irreparably harmed to preclude summary judgment. *See* June 15, 2011 Transcript at 18-21.<sup>1</sup>

The complaint seeks declaratory and injunctive relief and the imposition of a constructive trust over the proceeds that Jones derived, or will derive in the future, from the publication or republication, in any form, of his book. *See* Complaint at Prayer for Relief. The United States moved for summary judgment only as to liability because it lacked information about the financial arrangements pertaining to Jones' book. In his book, Jones claimed that "[m]y profits from the sale of this book will go to the children of American soldiers killed in action[.]" (Def.'s Opp. to Pl.'s Mot. for Summary Judgment as to Liability and Mot. to Dismiss Counterclaim at 6), but he resisted the Government's informal request for proof that he did not retain any of the proceeds from the sale of the book. *See* United States' Proposed Discovery Plan at ¶ 7B (Dkt. No. 47).

The Government has now completed discovery on Jones' receipt of proceeds from the sale of his book. Accordingly, the case is ripe for summary judgment on the issue of the remedy.

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<sup>1</sup> Ms. Cole is responsible for protecting intelligence sources and methods from unauthorized disclosure with respect to National Clandestine Service ("NCS") information. First Declaration of Mary Ellen Cole, at ¶¶ 3-4 (Dkt. No. 14-1) (incorporated into Second Cole Decl., *see* ¶¶ 1-2 of same). The NCS is responsible for the conduct of foreign intelligence collection activities through clandestine use of human sources. *Id.* at ¶ 2. Ms. Cole's declaration is based on her personal knowledge of the impact of unauthorized disclosures on the operations of the NCS. *Id.* at ¶¶ 1-6.

There is no genuine issue of material fact precluding the issuance of permanent injunctive relief in the United States' favor and the imposition of a constructive trust over any future proceeds Jones derives from the publication of "The Human Factor."

### ARGUMENT

#### I. THE UNITED STATES IS ENTITLED TO PERMANENT INJUNCTIVE RELIEF.

The United States is entitled to permanent injunctive relief as a remedy for Jones' breach of his contractual and fiduciary duties. The United States is simply asking that Jones be permanently enjoined from breaching his Secrecy Agreement in the future by taking any steps toward publicly disclosing any intelligence-related material without first obtaining the CIA's written permission to do so through the prepublication review process, or by further publishing or benefitting from "The Human Factor."

The United States is entitled to permanent injunctive relief because (1) it has suffered an irreparable injury; (2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) considering the balance of hardships between the parties, a remedy in equity is warranted; and (4) the public interest would not be disserved by a permanent injunction. *See, e.g., PBM Products LLC v. Mead Johnson & Co.*, 639 F.3d 111 (4th Cir. 2011) (citing *eBay, Inc. v. MercExchange*, 547 U.S. 388, 391 (2006)); *Snepp*, 595 F.2d 926, 934-35 (4th Cir. 1979).

The United States established that it was irreparably harmed by Jones' breach of his contractual and fiduciary duties through the declaration of Mary Ellen Cole, submitted in support of the United States' motion for summary judgment as to liability. There is no genuine issue of

material fact as to whether the United States is irreparably harmed when a former covert agent publishes a book about his CIA experiences without the agency's approval—indeed, in defiance of the agency's express denial—and then brags in the book that the book is unauthorized. *See* Second Cole decl. at ¶¶ 9-13. At the very forefront of the book, Jones reveals that the CIA denied him permission to publish all but a few paragraphs of his manuscript, but that he considered it his duty to publish the book anyway. “The Human Factor” at Author's Note.

Ms. Cole's testimony that such misconduct damages the CIA's credibility on its promise to protect sensitive information from public disclosure and hinders its ability to gather intelligence is uncontroverted and uncontroversial. It is as common-sensical today as it was over thirty years ago when the Supreme Court credited similar testimony in *Snepp*. *See Snepp*, 444 U.S. at 512 (“The continued availability of . . . foreign sources [of intelligence] 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. Undisputed evidence in this case shows that a CIA agent's violation of his obligation to submit writings about the Agency for prepublication review impairs the CIA's ability to perform its statutory duties.”). Indeed, Jones' conduct was more egregious and harmful than *Snepp's* because Jones was a covert agent whose affiliation with the CIA was, and is, classified; the agency expressly denied Jones permission to publish his book, unlike in *Snepp*; and Jones publicly disclosed the agency's belief that the book contained classified information in the book itself. The fact that in *Snepp*, testimony about the harm was presented at trial, as opposed to at summary judgment, does not entitled Jones to a trial on the undisputed issue of irreparable harm. There is simply no contrary evidence to create a genuine issue of material fact here.

The other requirements for permanent injunctive relief are also met. *Snepp* held that money damages are inadequate to compensate for the injury caused by a former CIA officer's unauthorized publication in violation of his Secrecy Agreement. *Snepp*, 444 U.S. at 514 ("No one disputes that the actual damages attributable to a publication such as *Snepp*'s generally are unquantifiable. Nominal damages are a hollow alternative, certain to deter no one. The punitive damages recoverable after a jury trial are speculative and unusual" and could require the disclosure of classified information.). The balance of hardships also favors injunctive relief. The relief sought merely requires Jones to comply with the terms of his Secrecy Agreement that he has already agreed to be bound by for life and to not benefit from his breach in the future. The public interest clearly favors a permanent injunction that has as its ultimate purpose the protection of classified information from unauthorized disclosure. *See Snepp*, 595 F.2d at 935 n.6.

Absent the requested injunctive relief, there is every reason to believe that Jones will breach his Secrecy Agreement in the future. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 108 (1983). Jones published his book in flagrant disregard of his Secrecy Agreement obligations and the CIA's express denial of permission to publish. *See United States' Mot. for Partial Summary Judgment as to Liability at 2-5 (Dkt. No. 33)*. Moreover, in 2010, after his book was published, Jones published an intelligence-related article entitled "World Watch: Intelligence Reform is the President's Urgent Challenge" in the Washington Times without submitting it to the CIA for prepublication review. *See id.* at 5. These facts support a grant of injunctive relief. *Snepp*, 595 F.2d at 934-35.

II. THE UNITED STATES IS ENTITLED TO THE IMPOSITION OF A CONSTRUCTIVE TRUST.

A constructive trust arises by operation of law, independent of the intentions of the parties, in order to prevent a fraud or injustice. *Snepp* held that a constructive trust—“the natural and customary consequence of a breach of trust”—is the appropriate remedy for a former CIA officer’s unauthorized publication of intelligence-related information in violation of his contractual and fiduciary obligations. *Snepp*, 444 U.S. at 514-16. *Snepp* further held that the Government must not be forced to disclose classified or sensitive information in order to enforce its secrecy agreements. That would result in the Government “losing the benefit of the bargain it seeks to enforce.” *Snepp*, 444 U.S. at 514. If a former CIA employee like Snepp or Jones publishes material in violation of his fiduciary and secrecy agreement obligations, “the trust remedy simply requires him to disgorge the benefits of his faithlessness. Since the remedy is swift and sure, it is tailored to deter those who would place sensitive information at risk.” *Id.* at 515.

After the completion of discovery, there is no evidence that Jones retained any proceeds from the sale of “The Human Factor;” instead, he appears to have given his profits away. The United States is not seeking to impose a constructive trust over proceeds over which Jones lacks possession or control. Jones admitted, however, that he “may receive additional payments from future book sales,” although he does not expect such payments to occur. Def.’s Objections and Answers to Pl.’s First Set of Interrogatories, Answer to I’rog. No. 3, attached hereto as Exhibit 1. *See also id.* at Answer to I’rog. No. 1 (“Mr. Jones cannot predict future book sales and, thus, cannot know whether any future profits will be paid to him. However, Jones does not expect any



future payments.”). Jones also disclosed that he has received an inquiry regarding the movie rights to his book. *Id.* at Answer to P’rog. No. 7.

The United States is entitled to a constructive trust over any future revenues, gains, profits, royalties, or other financial advantages from “The Human Factor” that Jones derives. Any such future financial advantages would arise from his breach, just as any past ones would. The fact that the amount of any future financial advantages derived by Jones is presently unknown does not preclude imposing a constructive trust over them. In fact, the order entered by the district court in *Snepp*, ultimately affirmed by the Supreme Court, similarly ordered Snepp to pay the United States any unknown, future financial advantages he derived from the sale of his unauthorized book. *See Snepp Order* at ¶ 3 (August 2, 1978), attached hereto as Exhibit 2.

### III. JONES’ UNCLEAN HANDS DEFENSE FAILS AS A MATTER OF LAW.

Jones has previously sought to assert an “unclean hands” defense against the United States. He raised this defense during the remedy phase of the case in an effort to conduct discovery from the Government into whether his book contained classified information and into the CIA’s prepublication review process. The magistrate judge correctly barred this discovery, reasoning that “the arguments advanced by the government are correct in the circumstances of this case, including the unavailability of the unclean hands doctrine against the government in the circumstances presented.” Nov. 4, 2011 Order (Dkt. No. 57). This Court affirmed the magistrate judge’s decision. Dec. 16, 2011 Order (Dkt. No. 64). To the extent that Jones relies on this defense in opposition to the instant motion, that effort should fail at this juncture as well.

Numerous courts have held that when the Government acts in the public interest, the unclean hands doctrine is unavailable against the Government as a matter of law. *See, e.g.,*

*United States v. Manhattan-Westchester Medical Services, P.C.*, 2008 WL 241079, at \* 4 (S.D.N.Y., Jan. 28, 2008); *Sonowo v. United States*, 2006 WL 3313799, at \* 3 (D. Del. Nov. 13, 2006); *United States v. Philip Morris Inc.*, 300 F. Supp. 2d 61, 75 (D.D.C. 2004) (collecting cases); *SEC v. Gulf & Western Industries, Inc.*, 502 F. Supp. 343, 348 (D.D.C. 1980); *United States v. Southern Motor Carriers Rate Conference*, 439 F. Supp. 29, 52 (N.D. Ga. 1977). *See also Pan American Petroleum & Transport Co. v. United States*, 273 U.S. 456, 506 (1927) (while general principles of equity are applicable in a suit by the United States to enforce a contract, “they will not be applied to frustrate the purpose of its laws or to thwart public policy.”).<sup>2</sup>

The Government is clearly acting in the public interest here by seeking to enforce Jones’ obligations under his Secrecy Agreement—“a contract made by the Director of the CIA in conformity with his statutory obligation to protect intelligence sources and methods from unauthorized disclosure.” *Snepp*, 444 U.S. at 513 n.9 (internal quotations omitted). This Court previously recognized that the fact that the central purpose of the Secrecy Agreement is to protect national security information makes this case unlike the ordinary private contract case. June 15, 2011 Hearing Transcript at 10 (“This is not like [a contract to hire someone to] paint[] your house.”). *See also Snepp*, 444 U.S. at 513 n. 9 (“A body of private law intended to preserve competition . . . simply has no bearing on a contract made by the Director of the CIA in conformity with his statutory obligation to protect intelligence sources and methods from

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<sup>2</sup> Jones has previously relied upon *Jacobs v. United States*, 239 F.2d 459 (4th Cir. 1957), but that case did not involve an unclean hands defense. Rather, the court applied the principle that “he who seeks equity must do equity” to require the Government to pay the balance due under the contract it sought to enforce. *Id.* at 461-62.

unauthorized disclosure.”) (internal quotations and citation omitted).

Even where courts have recognized the defense of unclean hands against the Government when it is acting to protect the public interest, it has been in “strictly limited circumstances.” *SEC v. Cuban*, 798 F. Supp. 2d 783, 794 (N.D. Tex. 2011). The Government’s misconduct must be egregious, and the misconduct must result in prejudice to the defendant’s defense of the enforcement action that rises to a constitutional level and is established through a direct nexus between the misconduct and the constitutional injury. *Id.*; see also, e.g., *EEOC v. Lexus of Serramonte*, 2006 WL 2619367, at \* 3 (N.D. Cal. Sept. 12, 2006).

Jones cannot begin to meet this standard. Even if Jones’ allegations about the Government denying him permission to publish his book for an improper purpose or delaying the prepublication review process were true, which they are not, this alleged misconduct did not interfere with Jones’ ability to pursue the judicial remedy available to him and challenge the Government’s conduct in that forum. In other words, even if the CIA wrongly denied Jones permission to publish his book and “slow-rolled” his administrative appeal, as he claims, he could have filed suit in U.S. District Court to remedy these wrongs and to seek to establish the right to publish his book. As this Court held, if Jones wanted to challenge the CIA’s prepublication review decisions, or lack thereof, the proper time and place for him to have done so was in a proceeding for judicial review brought to seek to establish the right to publish his book—not after he published his book without the CIA’s approval. See June 15, 2011 Hearing Transcript at 19-20. Because this judicial remedy was fully available to Jones, he cannot now claim that the Government’s alleged misconduct prejudiced him in the defense of this case.

Thus, Jones’ “unclean hands” defense fails as a matter of law. The Government is

entitled to summary judgment as to the remedy and to the relief requested.

**CONCLUSION**

For all of the foregoing reasons, the United States respectfully requests that the Court grant the United States summary judgment as to the remedy and enter its proposed order.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of March, 2012, 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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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(ALEXANDRIA DIVISION)

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:10CV765
	)	
ISHMAEL JONES, a pen name,	)	
	)	
Defendant.	)	
_____	)	

**DEFENDANT'S OBJECTIONS AND ANSWERS TO PLAINTIFF UNITED STATES' FIRST SET OF INTERROGATORIES**

Defendant, Ishmael Jones ("Mr. Jones"), by counsel, states as follows for his Answers and Objections to Plaintiff United States' (the "Government") First Set of Interrogatories.

**GENERAL OBJECTION**

These general objections form a part of the response to each and every Discovery Request and are set forth below to avoid the duplication and repetition of restating them within each individual response.

**A. Privilege**

Mr. Jones objects to these Discovery Requests to the extent that they call for disclosure of information protected by the attorney-client privilege, work-product doctrine, and/or other applicable privileges. Mr. Jones will not disclose such privileged information absent a Court order.



**INTERROGATORIES**

**Interrogatory No. 1:** Describe in detail the terms and conditions of any and all agreements, whether written or oral, between you and Encounter Books concerning publication of "The Human Factor: Inside the CIA's Dysfunctional Intelligence Culture," including any monetary or other consideration or compensation to be paid to you.

**ANSWER:** Encounter Books ("Encounter") published "The Human Factor: Inside the CIA's Dysfunctional Intelligence Culture." Mr. Jones and Encounter had a written agreement which granted Encounter the right to publish the book in exchange for a \$35,000 advance plus profits from book sales. For security purposes, Mr. Jones does not have a copy of this agreement, but both Writers' Representatives and Encounter Books have copies. The agreement is a standard author/publisher agreement.

Encounter Books provided payment directly to Mr. Jones' literary agents and then to Mr. Jones after Writers' Representatives deducted their 15% commission. So far, this has consisted of two payments totaling \$29,750 (collectively, the "Payments"). The \$35,000 advance from Encounter, minus Writers' Representatives' fees of \$5,250, resulted in Payments to Mr. Jones totalling \$29,750.

Mr. Jones cannot predict future book sales and, thus, cannot know whether any future profits will be paid to him. However, Jones does not expect any future payments.

To obtain a copy of the contract between Encounter and Mr. Jones, contact Richard Kimball. Richard Kimball is the editor of Encounter. Encounter's address is 900 Broadway, Ste. 601, New York, NY 10003, telephone number (800) 786-3839. His email address is: [Kimball@newcriterion.com](mailto:Kimball@newcriterion.com)

**Interrogatory No. 2:** Describe in detail the terms and conditions of any and all agreements, whether written or oral, between you and any literary agent or agency concerning representation of you in connection with the publication of "The Human Factor: Inside the CIA's Dysfunctional Intelligence Culture."

**ANSWER:** Mr. Jones was represented by literary agent Lynn Chu of Writers' Representatives in New York. Mr. Jones entered into an agreement with Writers' Representatives in which Writers' Representatives would find a publisher for the book, and Writers' Representatives would take a 15% commission, as is typical in the industry. Ishmael Jones signed a written copy of the agreement during a visit to New York but for security purposes did not retain a copy of the contract.

To obtain a copy of the contract between Writers' Representatives and Mr. Jones, contact Lynn Chu. Her address is Writers' Representatives, LLC, 116 W. 14<sup>th</sup> St., 11<sup>th</sup> Floor, New York, NY 10011-7305. Her telephone number is (212) 620-0023. Her e-mail address is: [lynn@writersreps.com](mailto:lynn@writersreps.com).



**Interrogatory No. 3:** Describe in detail any ownership interest you have in any monetary or other consideration or compensation from the past, present, or future sale or publication of "The Human Factor: Inside the CIA's Dysfunctional Intelligence Culture," including, but not limited to, any payments for media appearances, discussions, or presentations (e.g., television, radio, internet bloggers, print media), past, present, or future, in connection with the sale or publication of "The Human Factor: Inside the CIA's Dysfunctional Intelligence Culture." Describe the form, amount, and current location of the ownership interest.

**ANSWER:** Mr. Jones objects to Interrogatory No. 3 because it is overly broad and seeks information that is not relevant to the Government's claimed damages or relief in this action. Specifically, any ancillary income that Mr. Jones may have received from media appearances, discussions, or presentations is not relevant to the damages that may be recovered by the Government through this action. Subject to and without waiving his objections, Mr. Jones states as follows:

The \$29,750 received from Writers' Representatives is the entire amount received by Mr. Jones from publication of "The Human Factor: Inside the CIA's Dysfunctional Intelligence Culture." Mr. Jones retains no interest in the Payments. Once Mr. Jones received the Payments, he placed them in accounts that he manages but does not own. Mr. Jones may receive additional payments from future book sales, but not expect such payments to occur.

**Interrogatory No. 4:** (a) Describe in detail each instance in which you or anyone acting on your behalf disbursed any monetary or other consideration or compensation received by you, or in which you had an ownership interest, in connection with the publication of "The Human Factor: Inside the CIA's Dysfunctional Intelligence Culture."

(b) For each instance identified in (a), describe the amount of the disbursement, all persons or entities involved in making or receiving the disbursement, and the method used to make the disbursement.

**ANSWER:** Mr. Jones objects to Interrogatory No. 4 because it is overly broad and seeks information that is not relevant to the Government's claimed damages or relief in this action. Specifically, the scope of this Request is not limited to disbursements concerning only those gains, profits, or royalties that may have been directly obtained from the publication of his novel. Subject to and without waiving his objections, Mr. Jones states as follows:

The Payments were disbursed to Mr. Jones as outlined in Interrogatory No.1. Once Mr. Jones received the Payments, he created accounts (the "Accounts") that he manages but does not own. Mr. Jones placed the Payments into the Accounts. All Accounts are located at Vanguard. The accounts are Uniform Gift to Minors Accounts ("UGMA") at Vanguard for four children and in a Vanguard LLC jointly owned by five children. Of the total of nine children, eight are children of American soldiers killed in action. The ninth is not a U.S. citizen and is the daughter of an Iraqi agent with whom Ishmael Jones worked and was later murdered. The amount of author profits deposited into these accounts is 100%. The children that own these accounts will be able to take possession of them when they reach the age of 18.

**Interrogatory No. 5:** If any of the monetary or other consideration or compensation earned by you from the publication of "The Human Factor: Inside the CIA's Dysfunctional Intelligence Culture" reside in educational accounts belonging to children of American soldiers killed in action, describe those accounts, to whom they belong, the financial institutions where they are located, the amount of your profits that were deposited into them, and whether you maintain any ownership interest in those accounts or in the funds in those accounts.

**ANSWER:** See Answer to Interrogatory No. 4.

**Interrogatory No. 6:** State how much money has been raised in donations to pay for your defense of this action, and whether any of those funds have been withdrawn or used by anyone other than your attorneys or anyone working on their behalf.

**ANSWER:** Mr. Jones objects to Interrogatory No. 6 because it seeks information that is not relevant to the claims in this action. Specifically, whether Mr. Jones has received donations to pay for his defense in this action and how those funds may have been dispersed has absolutely no relevance the breach of contract claim brought by the Government. Mr. Jones further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege or work product doctrine. Subject to and without waiving his objections, Mr. Jones states as follows:

Mr. Jones stands on his objections.

**Interrogatory No. 7:** (a) Describe by date, time, place, and names of participants all meetings, conversations, and exchanges of correspondence, by any means, between you, your agent(s), or any individual acting on your behalf, and any individual or entity regarding the television or movie rights for “The Human Factor: Inside the CIA’s Dysfunctional Intelligence Culture” or the television, motion picture/film, or documentary potential of “The Human Factor: Inside the CIA’s Dysfunctional Intelligence Culture.”

(b) Describe in detail the substance of each meeting, conversation, and exchange of correspondence listed in (a).

**ANSWER:** Mr. Jones objects to Interrogatory No. 7 because it seeks information that is not relevant to the claims in this action. Specifically, whether Mr. Jones has engaged in any meetings, conversations, and exchanges regarding television or movie rights for his novel is not relevant to the claims in this action. Mr. Jones’ prospective conduct is not relevant to this breach of contract action. Subject to and without waiving his objections, Mr. Jones states as follows:

Mr. Jones is aware of only one inquiry regarding the movie rights to his novel. The inquiry was received in the early summer of 2011. The person making the inquiry did not have any connection to the movie or TV industry and asked only about the status of the movie rights. Mr. Jones is aware of no other inquiries regarding the movie rights to his novel.

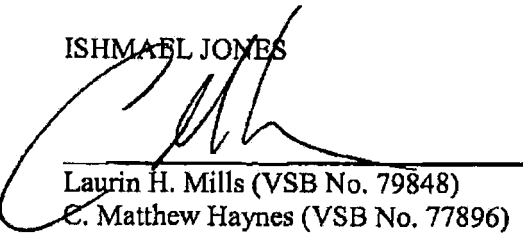
Mr. Jones sold the television rights to Michael Ross, a documentary producer in Vancouver, BC, Canada, for the token amount of \$1. By agreement, Ross will retain 15% of revenue from the sale of any rights and will send the remainder, less expenses, to the individual owners of the accounts that Jones has established. Michael Ross contacted Mr. Jones in July 2008 by telephone. While there is a written contract, Mr. Jones did not retain a copy of that contract for security purposes.

**Interrogatory No. 8:** State whether you, or anyone acting on your behalf, have claimed any type of tax deduction from the sale or publication of "The Human Factor: Inside the CIA's Dysfunctional Intelligence Culture." Identify the year in which the deduction was claimed, whether the deduction was to federal or state tax liability, the amount and nature of the claimed deduction, and whether you received the claimed deduction.

**ANSWER:** Neither Ishmael Jones nor anyone acting on his behalf have taken any type of tax deduction for anything related to the sale or publication of the book. Mr. Jones reported the Payments as ordinary income and paid taxes on it. The accounts set up for minor children are taxable accounts and therefore contributions to them are not eligible for tax deductions. Mr. Jones pays the taxes on those accounts.

Respectfully submitted,

ISHMAEL JONES



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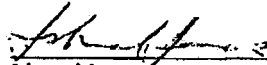
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*Counsel for Defendant Ishmael Jones*

**VERIFICATION**

Ishmael Jones, being duly sworn, affirms that the foregoing Answers are true and correct to the best of his knowledge, information and belief.

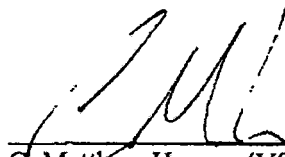
  
Ishmael Jones ✓

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21st day of November 2011, the foregoing was served via

hand delivery upon the following:

Kevin J. Mikolashek  
United States Attorney's Office  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
*Counsel for Plaintiff United States  
of America*

  
\_\_\_\_\_  
Matthew Haynes (VSB No. 77896)  
LECLAIRRYAN, A Professional Corporation  
2318 Mill Road, Suite 1100  
Alexandria, Virginia 22314  
Telephone: (703) 647-5919  
Facsimile: (703) 647-5989  
matthew.haynes@leclairryan.com  
*Counsel for Defendant Ishmael Jones*



ALEXANDRIA DIVISION **FILED**

AUG 2 1978

UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

FRANK W. SNEPP III, :

Defendant. :

CLERK, U. S. DISTRICT COURT  
ALEXANDRIA, VIRGINIA  
CIVIL ACTION NO.

78-92-A

ORDER

In accordance with the Memorandum Opinion and Order entered by this Court on July 7, 1978, it is hereby ORDERED, ADJUDGED and DECREED:

(1) that a constructive trust for the benefit of the United States is hereby imposed over any and all revenues, gains, profits, royalties and other financial advantages derived by the defendant, Frank W. Snapp III, from the sale, serialization, republication rights in any form, movie rights and other distribution for profit of the work entitled Decent Interval in the possession or control of the defendant, his assigns, agents servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order through personal service or otherwise,

(2) that the defendant, Frank W. Snapp III, file with this Court on or before August 28, 1978 an accounting of any and all revenues, gains, profits, royalties and other financial advantages derived by the defendant from the sale, serialization, republication rights in any form, movie rights or other distribution

**GOVERNMENT  
EXHIBIT**  
2

for profit of the work entitled Decent Interval which have heretofore been paid to the defendant, his assigns, agents, servants, employees and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order through personal service or otherwise, together with his check payable to the Treasurer of the United States, for the monies thus accounted for.

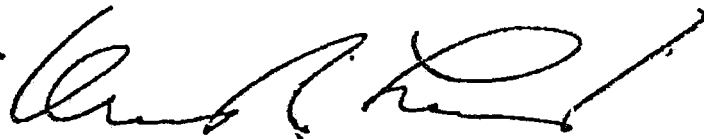
(3) that the said Frank W. Snapp III is further directed to forthwith pay to the Treasurer of the United States any and all revenues, gains, profits, royalties and other financial advantages derived by him after his first accounting from the sale, serialization, republication rights in any form, movie rights or other distribution for profit of the work entitled Decent Interval, said monies to be paid by check or money order payable to the Treasurer of the United States and forwarded to the United States Department of Justice, and

(4) it is further ORDERED, ADJUDGED and DECREED that the defendant, Frank W. Snapp III, his assigns, agents, servants, employees and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order through personal service or otherwise, and each of them, be and they hereby are permanently enjoined from further breaching the terms and conditions of the defendant's Secrecy Agreement and fiduciary duty with the Central Intelligence Agency by failing to submit any manuscript or other writing containing information which relates to the Central Intelligence Agency, its activities, intelligence activities generally

or intelligence sources and methods, which information the defendant gained during the course of or as a result of his employment with the Central Intelligence Agency, for Agency review prior to publication; Provided, however, that Agency review shall be made within thirty (30) days after receipt of such writing, and Provided, further, that the only material for which approval for publication may be withheld by the Agency is that material which the Agency determines to be classified.

The United States Marshal is hereby directed to serve a copy of this Order on the defendant, Frank W. Snepp III, and such other persons and/or corporations as the Department of Justice deems appropriate and so directs.

The Clerk is directed to send copies of this Order to all counsel of record.



August 2, 1978.

United States Senior District Judge

A True Copy. Teste:  
W. Farley Powers, Jr., Clerk

By Paula Newton  
Deputy Clerk

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

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

**[PROPOSED] ORDER**

In accordance with the Order entered by this Court on June 20, 2011 (Dkt. No. 45), in which the Court granted the United States’ Motion for Partial Summary Judgment as to Liability, and in consideration of the United States’ Motion for Summary Judgment as to the remedy, and any response and reply thereto, the Court concludes that permanent injunctive relief and the imposition of a constructive trust is warranted and necessary to prevent defendant Ishmael Jones or any of his aliases, including his true name (hereafter the “defendant”), from continuing to breach his Secrecy Agreement and fiduciary duty with the Central Intelligence Agency (“CIA”). Accordingly, it is hereby ORDERED that the United States’ Motion is GRANTED. IT IS FURTHER ORDERED that:

- (1) a constructive trust for the benefit of the United States is hereby imposed over any and all revenues, gains, profits, royalties, and other financial advantages derived by the defendant and in his possession or control, or derived by the defendant in the future, from the sale, serialization, republication rights in any form, television or movie rights, and other distribution for profit, of the work entitled “The Human

Factor: Inside the CIA's Dysfunctional Intelligence Culture" ("The Human Factor").

- (2) the defendant pay to the United States any and all revenues, gains, profits, royalties, and other financial advantages derived by the defendant and in his possession or control, or derived by the defendant in the future, from the sale, serialization, republication rights in any form, television or movie rights, and other distribution for profit of "The Human Factor."
- (3) the defendant, his assigns, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order through personal service or otherwise, are hereby permanently enjoined from further breaching the terms and conditions of the defendant's Secrecy Agreement and fiduciary duty with the CIA by taking any steps toward publicly disclosing any intelligence-related material without first obtaining the CIA's written permission to do so through the prepublication review process; by further publishing "The Human Factor" in any form or media, or from otherwise exercising any and all rights in and to "The Human Factor"; or by otherwise breaching Jones' Secrecy Agreement and fiduciary duty.
- (4) the defendant, his assigns, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order through personal service or otherwise, are hereby permanently enjoined from disbursing or agreeing to disburse any and all revenues, gains, profits, royalties, and other financial advantages derived in the future from the sale,

serialization, republication rights in any form, television or movie rights, and other distribution for profit of “The Human Factor” to anyone other than the United States. Any and all such revenues, gains, profits, royalties, and other financial advantages derived in the future from the sale, serialization, republication rights in any form, television or movie rights, and other distribution for profit of “The Human Factor” shall be paid to the United States.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gerald Bruce Lee  
United States District Judge