



U. S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

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MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: JAMES M. COLE 
DEPUTY ATTORNEY GENERAL

SUBJECT: Implementation of Policies and Procedures for the
News Media Review Committee

This memorandum sets forth the practices and protocols to implement the policies and procedures regarding the News Media Review Committee.

1. News Media Review Committee

A News Media Review Committee will provide recommendations to the Attorney General and the Deputy Attorney General in certain cases involving a member of the news media, to assist in balancing investigative imperatives with the protection of the public's interest in the freedom of the press.

The Committee shall be consulted when Department attorneys request authorization to seek the use of subpoenas, or, in civil matters, other similar compulsory process such as a civil investigative demand (collectively "subpoenas"), search warrants, § 3123 orders, or § 2703(d) orders to obtain communication or business records of members of the news media, in investigations into the unauthorized disclosure of information; when Department attorneys request authorization to seek the use of subpoenas, search warrants, § 3123 orders, or § 2703(d) orders to obtain communication or business records, without providing prior notice to the relevant member of the media; when Department attorneys request authorization to seek testimony from a member of the news media that would disclose the identity of a confidential source; or when the Attorney General or Deputy Attorney General requests a Committee recommendation.

2. Membership

The News Media Review Committee shall consist of the Department's Chief Privacy and Civil Liberties Officer, the Director of the Office of Public Affairs, an Associate Deputy Attorney General; and two senior career Assistant U.S. Attorneys (AUSAs) with relevant expertise and experience but no involvement (supervisory or otherwise) in the case under consideration. The two AUSAs will be selected from a standing panel on a case-by-case basis. The Deputy Attorney General will approve the AUSAs selected for the standing panel.

The Criminal Division will be responsible for providing staffing and logistical support to the News Media Review Committee. The Criminal Division Deputy Assistant Attorney General (DAAG) who oversees the Office of Enforcement Operations (OEO), or, in that person's absence, the DAAG who oversees the Computer Crimes and Intellectual Property Section (CCIPS), shall advise the Committee and provide perspective on how the Department has handled similar cases in the past. The Criminal Division DAAG will not be a member of the News Media Review Committee.

3. Procedures & Timing

The Committee shall receive the recommendation package prepared by the Assistant Attorney General of the Criminal Division before the package is reviewed by the Deputy Attorney General and Attorney General. After reviewing the materials and consulting with attorneys familiar with the investigation as necessary, the Committee shall communicate to the Attorney General and the Deputy Attorney General its recommendation in a concise, written form.

Members of the Committee will have the opportunity to provide both individual and collective assessments of the merits of requests and to raise relevant issues for consideration by the Deputy Attorney General and Attorney General. If any member of the Committee non-concurs in the underlying recommendation, the reasons for the non-concurrence shall be provided in writing.

The Committee shall conduct its review as expeditiously as possible, consistent with the requirements of the underlying investigation. The Committee shall make a recommendation in a timely manner to ensure that the Attorney General and the Deputy Attorney General have adequate time to give meaningful consideration to such recommendations.

4. Exceptions to Committee Review

Members of the Department may issue a subpoena to a member of the news media; or use a subpoena, § 2703(d) order, or warrant to obtain communication or business records of a member of the news media if a Deputy Assistant Attorney General for the Criminal Division determines that the exigent use of such law enforcement tool or technique is necessary to prevent or mitigate an act of terrorism; other acts that are reasonably likely to cause significant and articulable harm to national security; death; kidnapping; substantial bodily harm; conduct that constitutes a criminal offense that is a specified offense against a minor, as defined by 42 U.S.C. § 16911(7); or incapacitation or destruction of critical infrastructure, as defined by 42 U.S.C. § 5195c(e). In addition, while it is expected that the Attorney General will make use of the Committee for cases that fall within the scope defined in Section 1, the Attorney General may choose to bypass the Committee review process upon a finding that the time required to conduct the review will cause significant harm to the investigation.