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*Affiliations appear only
for purposes of identification.*

**Re: Notice PCLOB 2014-04, Sunshine Act Meeting,
Comments of 25 National News Organizations**

Dear Members of the Privacy and Civil Liberties Oversight Board,

The Reporters Committee for Freedom of the Press appreciates this opportunity to propose topics for PCLOB to address in its current and future agendas. We submit these suggestions on behalf of the coalition of news organizations and media groups set out below.

The coalition comprises media organizations, reporters, and other journalism groups that support legal protections for investigative reporting and actively engage in investigative journalism. As organizations that investigate and report on national security issues, including surveillance, the members are particularly concerned about the impact that national security surveillance is having on the practice of journalism and reporter-source relationships.

While for the purposes of this submission the coalition takes no position on the merits of any of the existing national security surveillance programs, we are aware that due in part to the dearth of information available regarding these programs, investigative journalism and newsgathering related to national security issues are becoming ever more difficult. While the effects of widespread national security surveillance programs have yet to be measured, the best evidence available suggests that sources are increasingly reluctant to share information with reporters because of the risk that those communications are being collected or monitored on an ongoing basis.¹ Indeed, in its January report on telephone record collection under Section 215 of the Patriot Act, PCLOB recognized that this phenomenon of self-censorship in the reporter-source context is “entirely predictable and rational,” and acknowledged that impediments to press freedoms are “detrimental to the nation.”²

¹See, e.g., Jamie Schuman, *The NSA's Shadow*, THE NEWS MEDIA AND THE LAW, Winter 2014, available at <http://rcfp.org/x?yoNu>; Leonard Downie Jr., *The Obama Administration and the Press: Leak Investigations and Surveillance in Post-9/11 America*, COMMITTEE TO PROTECT JOURNALISTS, 10 Oct. 2013, available at <http://cpj.org/reports/2013/10/obama-and-the-press-us-leaks-surveillance-post-911.php>; Human Rights Watch and American Civil Liberties Union, *With Liberty to Monitor All: How Large-Scale US Surveillance is Harming Journalism, Law, and American Democracy*, 28 July 2014, available at <http://bit.ly/1xpi8kQ>.

²Privacy and Civil Liberties Oversight Board, *Report on the Telephone Records Program Conducted Under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court* 164, 23 Jan. 2014, available at <http://bit.ly/1fjSbeJ>.

This understandable hesitation on the part of sources to communicate with journalists makes newsgathering regarding national security stories challenging at the very time that the press is reporting about surveillance programs, which are only now finally receiving the public scrutiny they deserve. National security surveillance programs must not be used to circumvent important substantive and procedural protections belonging to journalists and their sources. And in order not to chill and deter legal information sharing, enough information must be public that journalists as well as their sources are assured of their abilities to communicate confidentially even in the face of ongoing surveillance programs.

Therefore, with respect to PCLOB's current agenda, the Reporters Committee and this coalition encourage PCLOB to investigate the extent to which journalists are being included within the scope of any national security surveillance programs implemented pursuant to Executive Order 12333, as well as the impact of those programs upon newsgathering and reporter-source relationships both in the United States and abroad. In particular, the coalition asks PCLOB to analyze whether journalists' electronic and other communications and travels are targeted, collected, and monitored in a systematized manner in connection with surveillance programs authorized by Executive Order 12333. The coalition would value additional information on any policies or procedures in place to protect journalists and newsgathering more generally from surveillance measures carried out pursuant to Executive Order 12333, whether through minimization procedures, internal guidelines, or otherwise.

In addition, the Reporters Committee urges PCLOB to include the same or similar issues on future agendas in relation to national security surveillance programs more generally, including surveillance performed pursuant to Section 215 of the Patriot Act, Section 702 of the FISA Amendments Act, and the National Security Letter authority encompassed in the Electronic Communications Privacy Act, among other statutory authorities. As there is no protection for newsgathering in FISA, the coalition asks PCLOB to examine whether there are internal guidelines or minimization procedures designed to protect newsgathering and confidential reporter-source relationships. Given the recent proliferation of leak investigations, which members of this coalition have elsewhere pointed out is a deterrent to legal dissemination of even *nonclassified* information, the coalition also asks PCLOB to investigate whether the government is using the business or communications records of journalists gleaned from these surveillance programs to aid criminal or administrative investigations of unauthorized disclosures outside of the procedures in C.F.R. §50.10. Finally, the coalition asks PCLOB to investigate whether and how the Department of Justice's policy regarding obtaining information from, or the records of, the news media affects the use of other investigatory and law enforcement tools not currently covered by the DOJ policy, as well as how these other programs are implemented and codified.³

³ See U.S. Department of Justice, Office of the Inspector General, *A Review of the Federal Bureau of Investigation's Use of National Security Letters: Assessment of Progress in Implementing Recommendations and Examination of Use in 2007 through 2009* 177–179 (Aug. 2014), available at <http://1.usa.gov/1pd8gpe>.

PCLOB is in a unique position to undertake this effort. The public interest demands an empirical assessment of whether national security programs are drawing specifically upon reporter-source communications. As part of this project, we would urge PCLOB to consider the important constitutional rights associated with newsgathering and confidential reporter-source relationships in the context of national security surveillance programs. No governmental body has yet studied the impact of these programs upon vital press freedoms. In order for the press to remain free and autonomous, sufficient details about these programs must be disclosed to the public so that journalists and sources are better informed about the collection and use of their communications. Sufficient safeguards must be implemented to ensure that journalists' communications and travels are not routinely monitored and their relationships with sources remain confidential. With this information, and with a fuller understanding of how information about their movements is also gathered and utilized, journalists can conform their newsgathering activities to better protect their legal rights.

We appreciate PCLOB's commitment to investigating and reviewing the privacy implications of these national security surveillance programs and believe that the particular agenda items we propose today are well-suited to PCLOB's mandate. We are available to assist you with your work in any way moving forward.

Sincerely,

The Reporters Committee for Freedom
of the Press
American Society of News Editors
The Associated Press
Bloomberg L.P.
Committee to Protect Journalists
Courthouse News Service
Dow Jones & Company, Inc.
First Amendment Coalition
First Look Media
Freedom of the Press Foundation
Hearst Corporation
Investigative Reporters and Editors
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American University

The McClatchy Company
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