

**U.S. DEPARTMENT OF JUSTICE
SCIENTIFIC AND RESEARCH INTEGRITY POLICY¹**

*If the law has made you a witness,
remain a man of science.
You have no victim to avenge,
no guilty or innocent person to convict or save
— you must bear testimony within
the limits of science.²*

I. INTRODUCTION

The Department of Justice (Department or DOJ) is the Nation's litigator and, as such, is responsible for the fair and efficient administration of justice in both criminal and civil matters. Department personnel – including officials, attorneys, law enforcement agents and employees engaged in scientific disciplines – are entrusted with awesome responsibilities and, in executing DOJ's mission and their respective roles, must pursue, rely upon and present evidence that is well-founded in fact and veracity. This is particularly critical in the scientific arena, where the credibility of the evidence often relies upon the integrity of its handlers, examiners, experts and presenters. Investigations and prosecutions based in whole or in part upon forensic science must be based upon sound science – from the crime scene to the courtroom to post-conviction reviews and each step along the way. When science informs criminal investigations and prosecutions or forms the basis for the Department's litigation position in a civil matter, it is vital that the information relied upon be credible.

In addition to serving as the lead federal law enforcement agency and the People's representative in federal court, the Department is the custodian of pretrial detainees and convicted felons incarcerated in federal prisons. Detention and rehabilitation strategies and policies must flow from valid social science studies.

The Department is also at the forefront of scientific, technological and social science research. The Office of Justice Programs, through the National Institute of Justice, supports social science research on the causes of crime and the operations of the criminal justice system, engages in research in support of law enforcement safety and technological advances, and fosters research on the discovery, testing and advancement of forensic science methodologies and technologies. The Bureau of Justice Statistics and the Federal Bureau of Investigation collect and publish statistics on the level and the change in level of crime and the activities of the criminal justice system at the federal, state and local level that are relevant not only to the

¹ *This policy directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.*

² Dr. P.C.H. Brouardel, 19th Century French Medico-legalism, *quoted in* ASCLD/Lab Guiding Principles of Professional Responsibility for Crime Laboratories and Forensic Scientists, available at http://www.ascl-d-lab.org/about_us/guidingprinciples.html.

Department's activities but to policy formation nationwide. The regulatory components within the Department also conduct research to inform policy and regulatory decisions. The value of this important work similarly relies upon the integrity of researchers, statisticians and scholars who gather data, interpret their results and report their findings.

It is the policy of the Department to implement and uphold the highest standards for ethics and integrity in all scientific, technological, research and scholarly activities. Department personnel engaged in these disciplines must act in accord with the high level of integrity expected by the public we serve. These employees must adhere to professional values and sound scientific and methodological practices when conducting and applying the results of science, technology, research and scholarship activities. This will ensure objectivity, clarity, validity, reproducibility and utility that are insulated from bias, fabrication, plagiarism, outside interference, censorship and inadequate procedural and information security.

II. BACKGROUND

The Presidential Memorandum on Scientific Integrity (Mar. 9, 2009) (Presidential Memorandum),³ and the Office of Science and Technology Policy (OSTP) Memorandum on Scientific Integrity (Dec. 17, 2010) (OSTP Memorandum),⁴ call for ensuring the highest level of integrity in all aspects of the Executive branch's involvement with scientific and technological processes. The OSTP Memorandum further directs each agency to develop and implement scientific and research integrity policies consistent with the Presidential Memorandum.

III. SCOPE

This policy is intended to supplement, and does not supersede, applicable federal laws and rules on scientific, technological, research and scholarly integrity; in particular: the Standards of Ethical Conduct for Employees of the Executive Branch⁵; DOJ's supplemental Standards of Conduct⁶; the criminal conflict of interest statutes⁷; the case law and rules governing law enforcement investigative and intelligence activities, inspections for regulatory compliance and rulemaking for the regulation of industry; and DOJ's Open Government Plan – Version 1.1 (June 25, 2010),⁸ encouraging publication of reports and the underlying data

³ Available at http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09/.

⁴ Available at <http://www.whitehouse.gov/sites/default/files/microsites/ostp/scientific-integrity-memo-12172010.pdf>.

⁵ See 5 C.F.R. part 2635, available at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=5:3.0.10.10.9&idno=5>.

⁶ See 5 C.F.R. §§ 2635 and 3801, 28 C.F.R. § 45, cited in <http://www.justice.gov/jmd/ethics/>.

⁷ See 18 U.S.C. §§ 201-09.

⁸ See <http://www.justice.gov/open/doj-open-government-plan.pdf>.

whenever possible and consistent with law. Moreover, this policy affirms the applicability to Department personnel of the National Technology Transfer and Advancement Act of 1995⁹ – which established policies on federal use and development of voluntary consensus standards as well as conformity assessment.¹⁰

This policy does not encompass information disseminated by the Department that falls within the scope of OMB’s government-wide Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (Feb. 22, 2002)¹¹ – requiring federal agencies to develop and implement “information quality guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency.”¹² DOJ’s Information Quality Guidelines (Oct. 1, 2002)¹³ represent the Department’s commitment to ensuring that information provided to outside parties has been subjected to quality-control procedures and meets the Department’s information quality standards. DOJ’s Office of Inspector General also has established separate Information Quality Guidelines¹⁴ which are not affected by this policy.

Moreover, in addition to the Department’s Information Quality Guidelines that support the quality of statistical compilations, OMB directs that components releasing statistical data have the independence to ensure that statistical data releases adhere to established quality assurance guidelines through equitable, policy-neutral, transparent and timely release of information to the general public.¹⁵ To this end, DOJ components that produce statistical reports and analyses must be – and must be perceived to be – operating free from political interference and policy advocacy. The government, the nation and its citizenry rely upon objective and credible statistics to support government decisions and the activities of businesses and a host of other organizations and entities.

⁹ See Pub. L. No. 104-113, 110 Stat. 775 (1996) (codified at 15 U.S.C. § 3701 *et seq.*).

¹⁰ See Office of Management and Budget (OMB) Circular No. A-119-revised (Feb. 10, 1998), available at http://www.whitehouse.gov/omb/circulars_a119.

¹¹ See 67 Fed. Reg. 8452, 8458-60 (Feb. 22, 2002), available at <http://www.whitehouse.gov/sites/default/files/omb/fedreg/reproducible2.pdf>.

¹² *Id.* at 8459.

¹³ See <http://www.justice.gov/iqpr/iqpr.html>.

¹⁴ See <http://www.justice.gov/oig/FOIA/guidelines.htm>.

¹⁵ See OMB Statistical Policy Directive No. 4: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies, 73 Fed. Reg. 12622, 12624-26 (Mar. 7, 2008), available at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/2008/030708_directive-4.pdf.

This policy incorporates and supplements OMB's Information Quality Bulletin for Peer Review (Jan. 14, 2005),¹⁶ which applies to disseminations of influential scientific information or scientific assessments (as defined in the bulletin) containing findings or conclusions that represent the official position of one or more agencies of the federal government. The OMB Bulletin establishes minimum standards when peer review is required for scientific information and the types of peer review that should be considered by agencies in different circumstances. This policy adopts OMB's view that peer review is an important procedure used, when appropriate, to ensure that published scientific information meets the standards of the scientific and technological community and supplements the OMB Bulletin.

Original data and formal analytic models used by agencies in Regulatory Impact Analyses (or Regulatory Impact Assessments) pursuant to Executive Order 12866 (Sept. 30, 1993)¹⁷ are covered by OMB's Information Quality Bulletin for Peer Review.¹⁸ Executive Order 12866, as it pertains to the Department, is supplemented by this policy directive.

IV. DEFINITIONS

"Forensic Science Service Providers" include those divisions, bureaus, components, sections, offices, boards, contractors and grantees of the Department with personnel who apply scientific or technical techniques in: examining crime scenes; recovering evidence; conducting analysis, examination or testing; and providing interpretation of findings, conclusions and reports for investigative, intelligence, regulatory and litigation purposes, or for policy development.

"Digital Investigative Analysts" include those divisions, bureaus, components, sections, offices, boards, contractors and grantees of the Department with personnel who extract, recover, examine and analyze electronic data and provide interpretation of findings, conclusions and reports for investigative, intelligence, regulatory and litigation purposes, or for policy development. The mere identification and extraction of data from a hard drive – when using non-destructive means – is not intended to fall within this definition.

"Research" includes all basic, applied and demonstration research and validation methodologies involving all fields of science, mathematics, engineering and computer technology, including, but not limited to: forensic science and technology; social sciences; statistics; digital examination and extraction; and regulatory development activity. The term research as used herein does not include activities covered by OMB's Information Quality Guidelines and the Department's Information Quality Guidelines.¹⁹

¹⁶ See 70 Fed. Reg. 2664 (Jan. 14, 2005), available at <http://www.ssa.gov/515/PeerReviewsFedRegNoticeForFinalBulletin.pdf>.

¹⁷ See 58 Fed. Reg. 51,735 (Sept. 30, 1993), available at <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>.

¹⁸ See *supra* note 16.

¹⁹ See *supra* notes 11, 13-14.

“Research Facilities” include any laboratory, research facility or office space within any division, bureau, component, section, office, board, contractor or grantee of the Department that conducts research as defined in the preceding paragraph.

V. COVERAGE

This policy is intended to cover all employees within the Department’s divisions, bureaus, components, sections, offices and boards, all contractors, grantees and detailees working for or on behalf of DOJ, and their supervisors, when these individuals are conducting, overseeing and reviewing scientific and technological examinations and analysis, data extraction and analysis, evidence retrieval, examination and analysis and research, as well as when they are applying, using and overseeing the application and use of the results of these functions for use in investigations and prosecutions, intelligence matters, civil litigation, administrative and judicial proceedings, regulatory functions, policy development and publication and public dissemination. In particular, this policy applies to Forensic Science Service Providers, Digital Investigative Analysts and Research Facilities, as defined herein, to the extent that their work involves the application of scientific principles. This policy also shall apply, where appropriate, to external entities conducting scientific and technological examinations and analyses at the request or on behalf of the Department in the investigation or prosecution of federal criminal matters, in the litigation of civil cases and in the development of DOJ policies.

VI. MAINTAINING A CULTURE OF SCIENTIFIC, TECHNOLOGICAL AND RESEARCH VALIDITY AND RELIABILITY

The implementation of this policy requires the Department to maintain an across-the-board culture of scientific, technological and research validity, reliability, accuracy, objectivity and integrity as follows:

- All scientists, examiners, analysts, experts and researchers within the Forensic Science Service Providers, Digital Investigative Analysts and Research Facilities must have their work technically reviewed, whenever practical, by scientists or technical experts with expertise, experience and education in the discipline for the work being conducted. Management, in turn, must support measures to ensure the highest standards of integrity and competency.
- Selection of candidates for scientific, technical and research positions shall be based on their scientific, technological and research knowledge, training, experience, credentials and integrity, in addition to merit system principles.
- All Forensic Science Service Providers and Digital Investigative Analysts that perform work that involves the application of a scientific principle in order to make a finding or draw a conclusion shall have a documented quality management system – including defined standards of conduct and standard operating procedures – to monitor the reliability and integrity of the discovery, recovery, handling, examination, analysis, recording and reporting of evidence. Periodic external reviews of these quality management systems shall be conducted. The mere identification and extraction of data

from a hard drive – when using non-destructive means – is not intended to fall within this policy directive.

- All covered components performing work that involves the application of a scientific principle in order to make a finding or draw a conclusion shall develop policies for the technical and administrative review, or peer review, by qualified subject matter experts of practices and protocols employed and relied upon in conducting examinations, analyses and research, and providing findings, conclusions, analysis, expert opinion and testimony.
- All research, instrumentation and software (other than software used to locate or analyze data previously extracted from a computer storage medium) used to support evidence discovery, extraction and examination, case examination and evaluation and method development shall be technically reviewed by qualified experts and validated prior to use. In those instances where validation tools are not known to exist or cannot be obtained, internal or inter-laboratory validation tests should be conducted in accordance with the quality management system in place.
- All Forensic Science Service Providers and Digital Investigative Analysts performing work that involves the application of a scientific principle in order to make a finding or draw a conclusion shall engage in annual internal and external proficiency testing programs as a further demonstration of the technical competence and proficiency of the analysts.
- In issuing final reports of findings, conclusions or opinions, all Forensic Science Service Providers, Digital Investigative Analysts and Research Facilities shall clearly set forth all significant underlying assumptions and accurately convey uncertainties of measurement, probability ratios, limitation in the degree of individualization that can be achieved and any contrary findings and conclusions made in the course of the investigation. Covered components must maintain policies and practices regarding the accurate presentation of scientific and technological findings and practices, using well-defined terminology. These policies and practices include the presentation of the underlying techniques used to conduct the scientific or technological analyses, the methods used in the examination or recovery of the evidence, the results obtained and their significance (including any uncertainties of measurement and limitations) and, when appropriate, any statistical analyses (including use of controls) used to convey the significance of the result. This information shall be added to all reports and publications to clarify the reported values, providing information necessary for the accurate interpretation of results while adding transparency to the reporting process.
- All scientific research shall be conducted using the scientific method. Each component conducting scientific research shall have written protocols for conducting research and maintaining records supporting the research and its results.
- When a specific expertise is required that is not within the capability of a covered Forensic Science Service Provider, Digital Investigative Analyst or Research Facility, the covered component shall seek, as soon as it is practical, qualified external scientific

reviews of research and methodologies that the covered component plans to conduct or use, or conducted or used, in support of casework or research.

- The Director of the National Institute of Justice shall have final authority over all grants, cooperative agreements and contracts awarded by the institute pursuant to the authority vested in the Director by 42 U.S.C. § 3722(b).
- The Director of the Bureau of Justice Statistics shall have final authority for all grants, cooperative agreements and contracts awarded by the bureau and shall be responsible for the integrity of data and statistics and shall protect against improper or illegal use or disclosure pursuant to the authority vested in the Director by 42 U.S.C. § 3732(b).

VII. STRENGTHENING SCIENTIFIC, TECHNOLOGICAL AND RESEARCH INTEGRITY AND CREDIBILITY

Scientific and technological information is often a significant contributor to the development of sound policies, regulations, litigation positions and investigative and intelligence decision making. It is important, therefore, that Department decision makers involve subject matter experts in the underlying discipline where appropriate, and that the information and processes relied upon be of the highest integrity, imbued with stringent scientific methodology and principles. Requiring transparency and rigor in the scientific, technological, research and data analysis activities engenders public trust in the Government. To that end, all Department components covered by this policy shall abide by the following directives:

- Activities covered by this policy shall be shielded from inappropriate political and other external or internal influences, and no Department employee, contractor or detailee shall inappropriately suppress or alter scientific, technological or research findings or condone such activities.
- Public affairs officers shall not direct any personnel covered by this policy – including personnel in Forensic Science Service Providers, Digital Investigative Analysts or Research Facilities – to alter, omit or misstate their scientific, technological or research findings, opinions or conclusions.
- All Forensic Science Service Providers, Digital Investigative Analysts, Research Facilities and other covered components shall implement and maintain clear standards governing conflicts of interest, professional conduct and ethics, and provide procedures for corrective action for violations of those standards. These procedures shall specify steps and requirements to ensure that a conflict of interest or nonconformity with the standards is corrected, that any effect on prior work products or records is remedied, and that the possibility of recurrence is minimized.
- All Forensic Science Service Providers, Digital Investigative Analysts and Research Facilities, and their respective managers and supervisors, shall execute annual certifications acknowledging the standards for ethical and professional conduct as

tailored to their respective disciplines and adopted by their components.²⁰ These guiding principles are to be developed and maintained to promote integrity among scientific and technological practitioners and to instill public confidence in both the quality and results of the work performed.

- All Research Facilities and other covered research components shall implement and maintain clear written policies defining research misconduct – including fabrication, falsification and plagiarism. When applicable, covered components shall follow OSTP’s Federal Research Misconduct Policy (Dec. 6, 2000).²¹
- Each Forensic Science Service Provider, Digital Investigative Analyst and Research Facility shall implement and maintain a policy for independent assessments, inquiries and investigations into allegations of serious negligence or misconduct substantially affecting the integrity of forensic science and technological results, statistical compilations and research activities committed by employees or contractors of the Department. This policy directive can be achieved through the development of standard operating procedures whereby such allegations are referred to the Department’s Office of Inspector General or another DOJ component qualified to investigate the allegation.
- The Department shall continue to support and enforce whistleblower protections as provided in the Whistleblower Protection Act of 1989,²² and its expanded protections,²³ which cover most DOJ employees, as well as the Whistleblower Protection for Federal Bureau of Investigation Employees.²⁴

VIII. PUBLIC COMMUNICATIONS

Department policy regarding public communications recognizes three principal interests that must be balanced: (a) the right of the public to know; (b) an individual’s right to a fair trial; and (c) DOJ’s ability to ensure the fair and efficient administration of justice. DOJ policy recognizes the need for confidentiality in much of the work of the Department, including: ongoing operations and investigations; grand jury and tax matters; investigative techniques; and

²⁰ See, e.g., ASCLD/Lab Guiding Principles of Professional Responsibility for Crime Laboratories and Forensic Scientists, *available at* http://www.asclcd-lab.org/about_us/guiding_principles.html.

²¹ See 65 Fed. Reg. 76,260 (Dec. 6, 2000), *available at* <http://www.federalregister.gov/articles/2000/12/06/00-30852/executive-office-of-the-president-federal-policy-on-research-misconduct-preamble-for-research>.

²² See Pub. L. No. 101-12, 103 Stat. 16 (codified in scattered sections of 5 U.S.C.).

²³ See Pub. L. No. 103-424, 108 Stat 4361 (codified in scattered sections of 5 U.S.C.).

²⁴ See 28 C.F.R. part 27; see Justice Management Division; No FEAR Act, 71 Fed. Reg. 64562 (Nov. 2, 2006), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2006-11-02/pdf/06-9022.pdf>.

other matters protected by law, including individuals' privacy rights. Some findings and reports cannot be made public, while others are disclosed to the public during the course, or at the conclusion, of judicial proceedings. Given these constraints and limitations, as outlined below, it is the firm policy of DOJ not to interfere with questions directed to scientific inquiries, but to encourage the free flow of scientific, technological and research information and data analyses:

- Openness and transparency shall be promoted wherever practicable, while ensuring full compliance with the limits on disclosure of classified, law enforcement sensitive (unclassified but sensitive) and statutorily protected information.
- Covered components shall act consistently with the Department's Open Government Plan – Version 1.1 (June 25, 2010),²⁵ encouraging publication of reports and the underlying data whenever possible and consistent with law. All media requests shall be dealt with on a case-by-case basis, in coordination with the supervisors for the relevant scientific, technology and research experts, as well as public affairs officers. The role of the public affairs officer is to ensure that scientific, technological and research issues are plainly and clearly communicated for the intended audience in a timely fashion.
- Public affairs officers shall coordinate all interactions with the media and ensure that questions remain within the agreed-upon boundaries.
- When interviews are granted, personnel involved with the report, the case or the research in question shall be offered as spokespersons for the information being disseminated. Scientific, technical and research personnel and managers shall interact with representatives from the media directly – answering questions and providing briefings regarding the analytical work performed by those individuals or components.
- Each of the Department's covered components shall develop and maintain a policy to resolve disputes that arise from decisions to proceed or not to proceed with proposed interviews or other public information related activities.
- Final responsibility for all press matters – including any disputes involving the media and the Department or any of its covered components – is largely vested in the Director of the Office of Public Affairs. A notable exception to this policy is with respect to statistical and research reports and related press releases. In keeping with National Research Council's Principles and Practices for a Federal Statistical Agency,²⁶ the Bureau of

²⁵ See *supra* note 8.

²⁶ See National Academies Press, Washington, D.C. (4th ed. 2009) at 6, *available at* http://www.nap.edu/openbook.php?record_id=12564&page=6.

Justice Statistics and the National Institute of Justice retain control over the timing and content of statistical and research reports and the press releases associated with them.²⁷

IX. FEDERAL ADVISORY COMMITTEES

*The Department has a unique responsibility to the public, but in almost all of its work, it collaborates with and could not be successful without innumerable partners, including state, local and tribal law enforcement, prosecutors, defense attorneys, courts, social service agencies, researchers and others. . . .*²⁸

The use of Federal Advisory Committees (FACs) is an important means of inclusion, transparency, openness and collaboration. To this end, the Justice Management Division, in coordination with the General Services Administration, shall develop and maintain a policy – consistent with the Presidential Memorandum on Lobbyists on Agency Boards and Commissions (June 18, 2010)²⁹ and OMB’s Final Guidance on Appointment of Lobbyists to Federal Boards and Commissions (Oct. 5, 2011)³⁰ – for convening FACs tasked with giving scientific and technical advice.

- The recruitment process for new FAC members shall be open and transparent. When practical, the Department shall announce FAC member vacancies widely, including notification in the Federal Register with an invitation for the public to recommend individuals for consideration and for self-nominations to be submitted. Nothing herein shall limit the designation of membership on a FAC to particular subject matter experience and expertise.
- Professional biographical information – including current and past professional affiliations – for appointed committee members shall be made widely available to the public, subject to Privacy Act and other statutory, regulatory and policy considerations. Such information must clearly illustrate the individuals’ qualifications for serving on the committee.

²⁷ See OMB Statistical Policy Directive No. 4: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies, 73 Fed. Reg. 12622, 12624-25 (Mar. 7, 2008), available at <http://www.gpo.gov/fdsys/pkg/FR-2008-03-07/pdf/E8-4570.pdf>.

²⁸ See <http://www.justice.gov/open/doj-open-government-plan.pdf> (Engaging Stakeholders and Collaborating with Partners at page 2).

²⁹ Available at <http://www.whitehouse.gov/the-press-office/presidential-memorandum-lobbyists-agency-boards-and-commissions>.

³⁰ See 76 Fed. Reg. 61756 (Oct. 5, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-10-05/pdf/2011-25736.pdf>.

- The selection of members to serve on a scientific or technical FAC shall be based on expertise, knowledge and contribution to the relevant subject matter area. Additional factors that may be considered are: availability of the member to serve; geographic and organizational diversity among members of the FAC; and the ability to work effectively on advisory committees. Committee membership must be fairly balanced in terms of points of view represented with respect to the functions to be performed by the FAC.
- Except when prohibited by law, the Department shall make all conflict of interest waivers granted to committee members publicly available.
- Except when explicitly stated in a prior agreement between the Department and an existing FAC, all reports, recommendations and products produced by FACs shall be treated as solely the findings of such committees rather than of the U.S. Government and, thus, are not subject to intra- or inter-agency revision.

X. PROFESSIONAL DEVELOPMENT OF GOVERNMENT SCIENTISTS

Covered components shall develop and implement, when practical, policies that promote and facilitate, as permitted by law, the professional development of Department scientists, technology experts and researchers to maintain the highest levels of competency, proficiency, integrity and credibility within their disciplines. Such policies shall, consistent with federal ethics rules, job responsibilities and existing DOJ policies regarding political appointees:

- Encourage publication of research findings in peer-reviewed, professional or scholarly journals.
- Encourage presentation of scientific developments, research findings and standards development at professional meetings.
- Allow government scientists, engineers and researchers to become editors or editorial board members of professional or scholarly journals.
- Allow full participation in professional or scholarly societies, committees, task forces and other specialized bodies of professional societies – including, where appropriate, removing barriers for service as officers or on governing boards on such societies.
- Allow government scientists, engineers, statisticians and researchers to receive honors and awards for their research and discoveries with the goal of minimizing, to the extent practicable, disparities in the potential for private-sector and public-sector scientists and researchers to accrue the professional benefits of such honors or awards.