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3 **AMERICAN BAR ASSOCIATION**
4 **TASK FORCE ON ATTORNEY-CLIENT PRIVILEGE**
5 **REPORT TO THE HOUSE OF DELEGATES**
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8 **RECOMMENDATION**
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10 RESOLVED, that the American Bar Association opposes government
11 policies, practices and procedures that have the effect of eroding employees'
12 constitutional and other legal rights by requiring, encouraging or permitting prosecutors
13 or other enforcement authorities to take into consideration any of the following factors in
14 making a determination of whether an organization has been cooperative in the context of
15 a government investigation:

- 16 (1) that the organization provided counsel to an employee or agreed to pay an
17 employee's legal fees and expenses;
- 18 (2) that the organization entered into or continues to operate under a joint
19 defense, information sharing and common interest agreement with an
20 employee or other represented party with whom the organization believes
21 it has a common interest in defending against the investigation;
- 22 (3) that the organization shared its records or other historical information
23 relating to the matter under investigation with an employee or other
24 represented party; or
- 25 (4) that the organization chose to retain or otherwise declined to sanction an
26 employee who exercised his or her Fifth Amendment right against self-
27 incrimination in response to a government request for an interview,
28 testimony, or other information.

