AMERICAN BAR ASSOCIATION

TASK FORCE ON ATTORNEY-CLIENT PRIVILEGE
NEW YORK STATE BAR ASSOCIATION
SECTION OF BUSINESS LAW
SECTION OF CRIMINAL JUSTICE
SECTION OF LITIGATION
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
GENERAL PRACTICE, SOLO AND SMALL FIRM DIVISION
SECTION OF LABOR AND EMPLOYMENT LAW
SECTION OF HEALTH LAW
SECTION OF INTELLECTUAL PROPERTY LAW
SECTION OF TORT TRIAL AND INSURANCE PRACTICE
SECTION OF STATE AND LOCAL GOVERNMENT LAW
SECTION OF ANTITRUST LAW
YOUNG LAWYERS DIVISION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association opposes government policies, practices and procedures that have the effect of eroding the constitutional and other legal rights of current or former employees, officers, directors or agents ("Employees") by requiring, encouraging or permitting prosecutors or other enforcement authorities to take into consideration any of the following factors in making a determination of whether an organization has been cooperative in the context of a government investigation:

(1) that the organization provided counsel to, or advanced, reimbursed or indemnified the legal fees and expenses of, an Employee;

(2) that the organization entered into or continues to operate under a joint defense, information sharing and common interest agreement with an Employee or other represented party with whom the organization believes it has a common interest in defending against the investigation;

(3) that the organization shared its records or other historical information relating to the matter under investigation with an Employee; or

(4) that the organization chose to retain or otherwise declined to sanction an Employee who exercised his or her Fifth Amendment right against self-incrimination in response to a government request for an interview, testimony, or other information.