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March 16, 2011

Honorable Jim Webb
United States Senate
248 Russell Office Building
Washington, DC 20510-4605

Dear Senator Webb:

I write on behalf of the American Bar Association and its nearly 400,000 members nationwide to commend you for your strong leadership in introducing S. 306, the National Criminal Justice Commission Act of 2011. We strongly support S. 306, which will establish an independent Commission charged with the responsibility to initiate the first comprehensive examination of America's criminal justice system in 45 years and to make recommendations for responsible and effective reforms.

The need for a comprehensive review is clear. At every stage of the criminal justice process – from the events preceding arrest to the challenges facing those reentering the community after incarceration – serious problems undermine basic tenets of fairness and equity, as well as the public's expectations for safety. The result is an overburdened, expensive, and often ineffective criminal justice system.

Today, the "machinery" responsible for criminal justice is larger and more complex than ever, and the overlap between federal and state law is greater. The United States imprisons 2.3 million of its people, a greater percentage than any other nation in the world. When the number of Americans on probation or parole is included, the total number of people under criminal justice supervision exceeds 7,300,000 -- 1 in every 31 adults -- costing taxpayers over \$57 billion annually. Over-reliance on incarceration and long sentences is expensive, unsafe for inmates and corrections employees alike, and unlikely to achieve the goal of rehabilitation. There are inadequate community resources for the addicted and mentally ill who often end up in jail and prison. And, despite unprecedented numbers of people incarcerated, there are also unprecedented numbers of ex-offenders who, after being incarcerated for lengthy periods, are released without job skills or without treatment for substance abuse, thus facing increased collateral consequences of conviction. It is not surprising that recidivism rates are so high.

The ABA has long called for greater reliance on alternatives to incarceration and also for more careful scrutiny and steps to reform the unchecked growth of federal criminal law and the attendant expansion of the federal criminal justice system. We share this concern for overfederalization with a wide range of organizations. After decades of expansive federal action, experts estimate that there are now more than 4,500 separate federal criminal statutes that are scattered throughout the federal code without any coherent organization. There is widespread recognition that the result of decades of expansion of federal crime has resulted in overcriminalization of behavior that often lacks criminal intent and would better be managed by civil fines or other non-criminal sanctions.

It has been nearly four decades since the last comprehensive study of our nation's criminal justice system, and it is well past time for another re-examination of our criminal justice priorities: to determine accurately the measures that hold the promise of reducing the number of future victims, to assist those who break the law to avoid the downward cycle of recidivism and to become contributing members of their communities, and to assure that taxpayer dollars are spent wisely. This discussion must include state, local, and federal law enforcement officers, prosecutors, defense attorneys, judges, corrections officials, treatment providers, victims, probation and parole officers, academics, victim advocacy groups, other public interest organizations, ex-offenders, and ordinary citizens – all of whom have a tremendous stake in the justice system.

The National Criminal Justice Commission Act of 2011 creates a commission whose members would be appointed by the legislative and executive branch. The Commission would be charged with making findings and recommendations regarding crime prevention and deterrence strategies, improving cost-effectiveness, and ensuring the interests of justice at every step of the criminal justice system. The bill proposes a careful balance in the makeup of the Commission it authorizes, to assure that state and local criminal justice representatives are fully represented. The Commission will make recommendations based on best practices at all levels of government, but will not have any power to audit or direct actions by government at any level.

The ABA joins state and local, law enforcement, criminal justice and other organizations in our strong support for enactment of the National Commission Act. Passage of this legislation is an important first step in developing evidence-based and cost-effective solutions to improve our criminal justice system and increase public safety.

Sincerely,

A handwritten signature in black ink, reading "Thomas M. Susman". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Thomas M. Susman