



American Bar Association
Division for Media Relations and Communication Services
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**STATEMENT OF KAREN J. MATHIS,
PRESIDENT, AMERICAN BAR ASSOCIATION,
DEC. 12, 2006
RE: REVISIONS TO THE JUSTICE DEPARTMENT'S THOMPSON MEMORANDUM**

The Justice Department's new corporate charging guidelines for federal prosecutors fall far short of what is needed to prevent further erosion of fundamental attorney-client privilege, work product, and employee protections during government investigations. They are but a modest improvement over the Department's previous policy as outlined in the Thompson Memorandum. Instead of eliminating the improper Department practice of requiring companies to waive their privileges in return for cooperation credit—the approach advocated by Sen. Arlen Specter in his Dec. 7 legislation and by numerous former senior Justice Department officials in their Sept. 5 letter to Attorney General Gonzales—the new policy announced today by Deputy Attorney General McNulty merely requires high level Department approval before waiver requests can be made. As such, the McNulty Memorandum threatens to further erode the ability of corporate leaders to seek and obtain the legal guidance they need to effectively comply with the law. In addition, the new policy does not fully protect employees' legal rights in that it continues to allow prosecutors to force companies to take punitive actions against their employees in some cases in return for cooperation credit, long before any guilt is established. While the ABA appreciates the Department's recognition of the growing problems resulting from the Thompson Memorandum and its willingness to modify that policy, the McNulty Memorandum falls short of the comprehensive and effective remedies outlined in Sen. Specter's bill. Accordingly, the ABA urges Congress to promptly consider and pass the Specter bill once it reconvenes in January.

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