July 15, 2015

The Honorable Loretta E. Lynch
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Madam Attorney General:

The American Bar Association (ABA) congratulates you on your confirmation as the 83rd Attorney General of the United States and looks forward to your appearance at our Annual Meeting’s Opening Assembly on August 1st in Chicago. I want to offer the experience and expertise of our membership of nearly 400,000 lawyers as your Department confronts the critical issues facing the nation’s justice system.

During your confirmation hearings, you identified your highest priorities as ensuring the safety of all citizens, protecting the most vulnerable among us from crime and abuse, and strengthening the vital relationship between law enforcement officers and the communities they serve. The ABA, which has a long and respected history of working with the Department of Justice, shares these goals, and we look forward to continuing our successful collaboration to meet the challenges ahead.

The ABA is dedicated to improving the criminal justice system. We have focused and worked intensively on systemic reform proposals to address over-incarceration since 2003, when Justice Anthony Kennedy challenged the Association to undertake a comprehensive evaluation of the system. The recommendations of the ABA Justice Kennedy Commission, which were adopted by the Association the next year, laid the groundwork for expanding the ABA’s criminal justice advocacy regarding sentencing, racial disparities, prisoner reentry, and collateral consequences of conviction policy. Many of our policies align with the laudable and bold “Smart on Crime” initiative established by Attorney General Holder in 2013.

Criminal Justice. The ABA’s current efforts to reform the criminal justice system focus on a wide range of issues. There is a nascent, perhaps unprecedented bipartisan interest in addressing these issues that presents a new opportunity for our community and DOJ to work together with leaders of Congress toward reform.

Over-incarceration. The federal prison population has increased nearly 800 percent since 1980 and more than doubled since 1994. Prison costs have risen 1,700 percent, and federal prisons are operating at 131 percent of capacity. The Association supports enactment of broad federal sentencing reform legislation to expand alternatives to incarceration and eliminate or reduce mandatory minimum
sentences. In the current Congress, we support legislation such as the proposed Smarter Sentencing Act to reduce the length of mandatory minimums for nonviolent drug offenders, provide sentencing judges with discretion to sentence below mandatory minimums in certain cases, and retroactively apply the provisions of the Fair Sentencing Act that reduce sentences for certain nonviolent crimes. Senators are working toward reaching a consensus criminal justice “package bill” that will have broad bipartisan support. A similarly bipartisan but broader process is underway in the House Judiciary Committee; the introduction the SAFE Justice Act (H.R. 2944) with bipartisan support in the House is a manifestation of a growing consensus. We believe such legislation must contain serious federal sentencing reform provisions that will significantly impact the crisis in federal over-incarceration.

At DOJ’s request, the ABA and other organizations are participating in Clemency Project 2014, a working group of lawyers and advocates providing pro bono assistance to qualified federal prisoners who would likely have received shorter sentences under current law. More than 1,500 attorneys have volunteered to take on these clients as thousands of prisoners submit applications to be considered for sentence commutations.

**Collateral Consequences of Conviction.** The ABA recently completed the National Inventory of the Collateral Consequences of Conviction, a project spearheaded by the ABA Criminal Justice Section and funded in part by the National Institute of Justice. The open-access database identifies and analyzes collateral consequences of incarceration that often prevent ex-offenders from finding employment and successfully reentering their communities. It includes all state, territorial, and federal laws in an online database for use by defendants, attorneys, judges, and policymakers. The ABA supports the guidance given in the DOJ “Smart on Crime” initiative regarding attention to collateral consequences of conviction. Many states are now considering significant reforms aimed at rationalizing and reducing such revisions in their laws, and we believe that a comprehensive overhaul of federal collateral consequences is needed to better serve public safety needs and reduce unnecessary costs and loss to individuals with criminal records. There are several promising proposals pending in Congress to end specific restrictions against individuals with criminal records, including restrictions on student loan eligibility, employment, and the right to vote in federal elections.

**Juvenile Justice.** There is an urgent need to reauthorize and strengthen the Juvenile Justice and Delinquency Prevention Act (JJDPA), which has supported state programs to prevent and reduce juvenile crime since 1974, but has not been reauthorized since 2002. The Association supports bipartisan legislation, such as the bill recently introduced by Senate Judiciary Committee Chairman Charles E. Grassley (R-IA) and Sen. Sheldon Whitehouse (D-RI), that would end detention or jailing of noncriminal status offenders, reduce racial and ethnic disparities, and improve jail removal and sight-and-sound core requirements. Such legislation also should expand youth access to qualified counsel and promote community-based alternatives to detention.

**Prisoner Reentry.** The Second Chance Act, enacted on a broad bipartisan basis in 2008, represents an important federal investment in strategies to increase public safety and reduce recidivism. It authorizes enhanced corrections and supervision practices and the development and coordination of reentry services, including employment training, family support, substance abuse treatment, mentoring, and intervention for juveniles. The ABA strongly supports reauthorization of the Second Chance Act, which was introduced recently in the Senate and is expected to move forward later this year.
Racial Justice. Recent high-profile incidents have intensified the need to address racial justice in our country and the relationship between law enforcement officials and the communities they serve. The ABA was heartened by DOJ’s release of its revised profiling guidance in December 2014. The Racial Justice Project, launched by the ABA Criminal Justice Section in 2010 with support from the Bureau of Justice Assistance, is designed to identify and reform policies and practices that produce racial disparities in local criminal justice systems and create a model for jurisdictions to implement. The project includes reform efforts in Delaware, Louisiana, North Carolina, Pennsylvania, Wisconsin, New York, and Minnesota. The ABA also supports enactment of federal legislation, the End Racial Profiling Act. Additionally, the ABA and NAACP Legal Defense and Educational Fund, Inc. recently released a joint statement, developed in collaboration with a number of prosecutors, setting out steps that should be considered by prosecutors’ offices to address the challenge of implicit bias in the criminal justice system.

Death Penalty. The ABA also offers support and expertise to help DOJ analyze the current use of the death penalty, including state-level protocols and policies. Although the ABA has no position on the death penalty per se, the Association urges every jurisdiction that imposes capital punishment to implement policies and procedures to ensure that death penalty cases are administered fairly, impartially, and in accordance with due process. There are two ABA projects devoted to this area of the law. The ABA Death Penalty Due Process Review Project has assessed the death penalty systems in twelve states and made recommendations that may provide starting points for DOJ’s analysis in those states and in the twenty other death penalty states. The ABA Death Penalty Representation Project is comprised of experts on issues related to legal representation in death penalty cases. These experts educate the public, train defenders, recruit volunteers, and reform counsel systems.

Access to Justice. The ABA commends DOJ for establishing the Access to Justice Initiative in 2010 and shares the initiative’s goal to increase access to counsel and legal assistance and to improve the justice delivery systems that serve people who are unable to afford lawyers. A centerpiece of the Association’s efforts this year has been closing the justice gap. We created a Commission on the Future of Legal Services to develop new strategies and innovative platforms to meet the needs of the poor and underserved in our country. In this regard, we have worked closely with Director Lisa Foster to identify programs that are proven to be effective. Director Foster was a major contributor to and speaker at our Stanford conference in May on access to justice and the future of legal services. We are confident that this strong collaboration will continue during the term of ABA President-Elect Paulette Brown, who recently met with Director Foster and other staff to discuss ways that the ABA and DOJ can work together on projects to address the access-to-justice crisis. The ABA has been a longstanding supporter of the Legal Services Corporation (LSC) and indigent defense programs. Director Foster will also highlight these issues on a panel before our House of Delegates on August 3rd in Chicago.

LSC. The ABA was instrumental in the creation of and continued funding for LSC, the largest provider of civil legal assistance to low-income Americans. LSC grantees—which include legal aid programs in each of the 50 states, the District of Columbia, and Puerto Rico—assist a variety of clients, including veterans, domestic violence victims, seniors, those with disabilities, low-income military families, and those coping with the after-effects of natural disasters. While the ABA supported the President’s budget request of $452 million, the Association is now focused on encouraging Congress to adopt the Senate number of $385 million, an increase of $10 million over the House figure.
**Indigent Defense.** Another area of great concern to the ABA is indigent defense, which is in crisis more than 50 years after the Supreme Court ruled in *Gideon v. Wainwright* that states are required to provide defense attorneys for indigent criminal justice defendants. Throughout his tenure, Attorney General Holder gave this problem area significant attention, fostering an ongoing, productive dialogue between DOJ and the indigent defense community, including the ABA, through high-level regular substantive meetings.

**Federal Judiciary.** The Association also has a long history of working to ensure that the federal judiciary has the best-qualified judges on the bench and is appropriately funded.

**Federal Judicial Resources.** As you know, at the request of the Administration, the ABA Standing Committee on the Federal Judiciary, acting independently from the rest of the ABA, conducts extensive confidential peer review of the professional qualifications of all potential nominees to the lower U.S. courts (Supreme Court nominees are evaluated on a post-nomination basis). In furtherance of this service, the Standing Committee has developed a productive relationship with DOJ’s Office of Legal Policy and looks forward to continuing to work together.

The ABA has long worked to ensure that Congress appropriates sufficient funds for the courts to carry out their constitutional and statutory duties. This includes urging Congress to provide concomitant funding for the judiciary when enacting legislation that will impact its workload. Absent adequate court funding, even the best criminal justice reforms that rely on court services or judicial implementation will face unnecessary obstacles.

**Additional Issues.** There are numerous other areas of mutual concern that the ABA is working with DOJ to address.

**Human Trafficking.** The ABA supports DOJ’s efforts to end human trafficking. The ABA Task Force on Human Trafficking focuses on the treatment of survivors of human trafficking as victims rather than defendants in the criminal justice system and on bringing perpetrators to justice through training of police, prosecutors, defense lawyers, civil attorneys, and judges. In addition, the ABA is encouraging corporations to adopt and implement business and supplier policies to prevent labor trafficking and child labor – or to revisit their existing policies – consistent with the *Model Principles of the ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor*. The ABA’s Rule of Law Initiative also works around the globe to stem the tide of human trafficking.

**Cybercrime.** You also have emphasized your belief that cybersecurity must be among the highest DOJ priorities and indicated, during an April 29 Cybersecurity Industry Roundtable sponsored by the DOJ Criminal Division, the importance of collaboration between law enforcement and private companies. During the roundtable, DOJ unveiled guidance for best practices to address the risk of data breaches. The ABA also considers cybersecurity a top priority and has adopted policies outlining principles to be considered by the executive and legislative branches when making policy determinations in this area. The ABA condemns unauthorized, illegal governmental, organizational, and individual intrusions in the computer systems and networks utilized by law firms and lawyers. The ABA Task Force on Cybersecurity, comprised of experts in the field, is ready to assist DOJ and Congress as proposals move through the legislative process. We are pleased to learn that a representative from the DOJ Computer Crime and Intellectual Property Section will be participating in the ABA Annual
Meeting this August. Finally, the ABA Committee on Law and National Security continues to collaborate with key government officials to provide guidance on the proper balance between privacy and security.

_Violence Against Women Act (VAWA)._ VAWA and the ABA Commission on Domestic & Sexual Violence both marked twenty-year anniversaries last year, recognizing ongoing efforts to prevent domestic violence and to protect victims and their families. Reauthorization of the act in 2013 was an ABA priority. The ABA strongly supported new provisions to ensure that victims seeking assistance cannot be denied services based on gender identity or sexual orientation and the strengthening of tribal criminal jurisdiction over non-Native Americans who assault their spouses and dating partners in Indian country. Efforts continue to ensure appropriations for this important act, including funding for clinical assistance and reducing the backlog of untested rape kits.

**Immigration.** The ABA supports the Administration’s proposed increase in funding for the Executive Office of Immigration Review, which would improve the efficiency of the immigration court system by providing for additional immigration judge teams and Board of Immigration Appeals attorneys, expanding the Legal Orientation Program, and allowing for additional legal representation for unaccompanied children. The ABA, through its Commission on Immigration and its ProBar project in Texas, has for the past twenty-five years provided pro bono legal assistance to adults and unaccompanied children throughout the Rio Grande Valley in Texas. Recently, the ABA established the Working Group on Unaccompanied Minor Immigrants to provide pro bono legal assistance to the unprecedented influx of unaccompanied children coming into the United States from Mexico and Central American countries.

As you begin your work as attorney general, the ABA is ready and willing to assist you in tackling the numerous demands that come with the position. If we can assist you in any way, please contact me or Tom Susman, Director of the ABA Governmental Affairs Office (202-662-1765 or Thomas.Susman@americanbar.org).

Sincerely,

William C. Hubbard