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# NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

January 30, 2008

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington D.C., 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington D.C., 20510

Re: S. 2450 to Amend the Federal Rules of Evidence

Dear Mr. Chairman and Senator Specter:

The National Association of Criminal Defense Lawyers fully supports S. 2450, which would approve and enact Federal Rule of Evidence 502 to safeguard the attorney-client privilege. The privilege and work-product protections, some of modern law's oldest bulwarks against abuses of government power, have suffered serious erosion over the past decade. Changes in technology and the overall justice climate have complicated and muddled the privilege's scope. The Holder, Thompson, and McNulty memoranda each seriously altered the way the government treats this bulwark privilege. The lack of clarity about the scope of privilege in discovery, and the resulting opportunity for catastrophic consequences stemming from an inadvertent waiver, have created the need for complex privilege reviews during discovery that are astronomically expensive, laborious, and ultimately delaying to the judicial process.

Proposed Rule 502 has already passed the extremely thorough review and approval process for new federal rules of procedure. The Advisory Committee on Evidence Rules, the Standing Committee on Rules of Practice and Procedure, and the Judicial Conference of the United States all approved the potential rule after accepting comments, holding hearings, and taking testimony from judges and practitioners. We join the American Bar Association, the American Academy of Trial Lawyers, the Chamber of Commerce of the United States, and, as mentioned, the Judicial Conference of the United States in supporting this new rule. Thank you for considering our views.

Sincerely,

Carmen D. Hernandez  
President

cc: Senate Judiciary Committee

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1150 18<sup>th</sup> St. NW, Suite 950 Washington, DC 20036  
(202) 872-8600 - Fax (202) 872-8690  
[www.nacdl.org](http://www.nacdl.org) - [assist@nacdl.org](mailto:assist@nacdl.org)