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ONE HUNDRED ELEVENTH CONGRESS

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December 16, 2009

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The Honorable Eric H. Holder, Jr.
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

We write with regard to the critically important issues of attorney-client privilege and the work-product doctrine. These protections are fundamental to our nation's system of justice and must not be eroded.

For a number of years, the Department of Justice adopted and implemented policies that placed corporate defendants at greater risk of prosecution if they sought to rely upon these protections. Fortunately, on August 28, 2008, the Department issued new guidelines on corporate prosecutions addressing many of the prior concerns. While these changes to the U.S. Attorneys' Manual are laudable, we remain concerned that the guidelines do not govern agencies outside the Department.

In your speech on May 8, 2009 to the American Bar Association's National Institute on Corporate Investigations and In-House Counsel, you reaffirmed the Department's respect for the right to counsel of all persons subject to criminal investigation, including corporations. You then stated, that "[w]e are engaged in ongoing efforts outside the Department to inform investigators and attorneys at other government agencies about these guidelines and are suggesting them as best practices for investigations of corporate entities." While these efforts are commendable, we are concerned that they do not go far enough to assure compliance with the standards.

We believe that the Executive Branch should adopt a uniform policy in this area, respecting and protecting the attorney-client privilege and the work product doctrine, optimally through an executive order at least as protective as the Department's current policy. We hope you will strongly advocate this approach to the President. While we realize that the Department itself cannot promulgate such an order, we believe the Department should make clear to other

The Honorable Eric H. Holder, Jr.

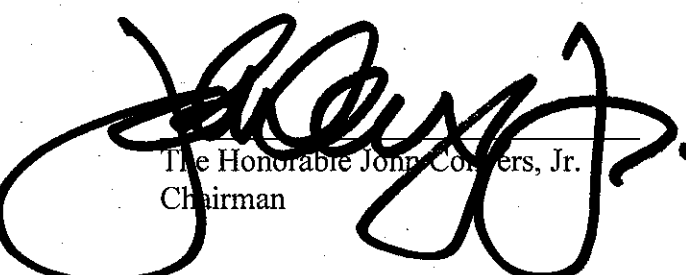
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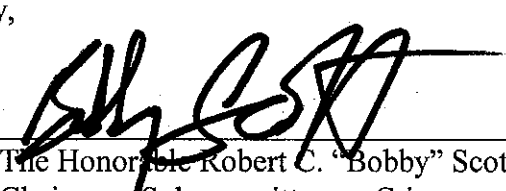
agencies that it will not conduct joint investigations with them or bring enforcement actions on their behalf unless they have and enforce policies similar to those of the Department in these issues.

As you may know, last Congress, we sponsored the "Attorney-Client Privilege Protection Act," a bill to address these issues which had broad bipartisan support and which the House adopted by voice vote. We believe the House is no less committed to this issue and we have reintroduced this bill (H.R. 4326) as a way to address the issues legislatively if it is necessary. Thank you for your consideration of this matter.

Sincerely,



The Honorable John Conyers, Jr.
Chairman



The Honorable Robert C. "Bobby" Scott
Chairman, Subcommittee on Crime,
Terrorism and Homeland Security

cc: The Honorable Lamar Smith
The Honorable Louie Gohmert