



**WORKPLACE CRIMINALISTICS AND DEFENSE
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March 28, 2006

SENT BY EMAIL

United States Sentencing Commission
Attention: Public Affairs
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, DC 20002-8002

Re: Written Public Comment
Chapter Eight - Privilege Waiver

Dear Commission:

Waiver of the attorney-client privilege and work product protections in hopes of reducing a culpability score encourages defendant organizations to completely destroy the relationship between the attorney and client, a relationship that exists solely for the benefit of the client. Commentary language that states "... unless such waiver is necessary in order to provide timely and thorough disclosure of all pertinent information known to the organization" allows privileges that should be stringently guarded for the proper administration of justice in our legal system to be at risk of waiver.

Additionally, such language effectively operates to encourage the defendant organization to produce privileged documents that may or may not demonstrate criminal actions without requiring a showing that the organization actually engaged in or planned to engage in criminal or fraudulent behavior. The attorney-client privilege belonging to the organization and the work product protections belonging to both the organization and the attorney are effectively wiped out, leaving both to defend their confidential relationship. Thus, the completion of an internal investigation as a component of appropriate remedial action, instead of showing the organization's responsible behavior, incriminates the organization and the attorney.

UNITED STATES SENTENCING COMMISSION

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In our last Priorities Comment submitted on August 14, 2005, we recommended the following revisions to the Commentary since it pits employees against management, law enforcement against corporations and in-house/outside counsel against the officers of the organization they represent:

Amendment to the end of Commentary 12 as follows:

"Waiver of attorney-client privilege and of work product protections SHALL NOT be a prerequisite to a reduction in culpability score under subdivisions (1) and (2) of subsection (g) when the organization conducted an internal investigation as a component of appropriate remedial action."

We continue to recommend this language because it truly reflects the goals and incentives for organizations to maintain an effective compliance program. It also effectively safeguards the attorney and client relationship for the benefit of the organization in the event of prosecution and/or in anticipation of litigation.

Thank you very much for the opportunity to have provided the above Public Comment.

Sincerely,

/s/

L.A. Wright
Legal Criminalist/Consulting Expert

/law