

## **EXECUTIVE SUMMARY**

### 1. Summary of the Resolution

This Resolution encourages the Federal Bureau of Prisons (“BOP”) to voluntarily end its policy and practice of monitoring all email communications between attorneys and their incarcerated clients to permit attorneys and their incarcerated clients to communicate confidentially via email.

### 2. Summary of the Issue that the Resolution Addresses

The BOP provides all inmates with email access through the Trust Fund Limited Communication Systems (“TRULINCS”). Inmates naturally communicate with their attorneys via email. The BOP, however, maintains a policy of monitoring all emails, including emails between attorneys and their inmate clients. Further, the BOP does not provide any alternative form of unmonitored email communication for attorneys to communicate with their incarcerated clients. There is no meaningful difference between email and traditional letter mail. Letter mail between attorneys and their incarcerated clients has been provided constitutional protection for decades, preventing prison officials and prosecutors from reading such communications. Because there is no meaningful difference between emails and traditional letter mail, and because the benefits of unmonitored emails to inmates, their attorneys, and the BOP is substantial, the BOP’s policy obstructs inmates’ access to counsel and is ripe for constitutional challenge.

### 3. Please Explain How the Proposed Policy Position will Address the Issue

By adopting the proposed Resolution, the ABA will play a leading role in urging the United States government and other governmental bodies to amend or supplement existing policies in order to prevent the monitoring and reading of emails between attorneys and their incarcerated clients, which should be provided the same constitutional protection as traditional letter mail.

### 4. Summary of Minority Views

The minority view is that since attorneys and their incarcerated clients are forced to sign an acknowledgment that their email communications are subject to monitoring prior to using TRULINCS, attorneys and their incarcerated clients waive any claim that their email communications are protected by the attorney-client privilege. Since such mandatory waivers have been upheld in the context of telephone calls between attorneys and their incarcerated clients, the minority argues that such mandatory waivers are constitutional in the context of emails between attorneys and their inmate-clients as well.

