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May 5, 2011

Hon. Eric Holder  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Holder:

On behalf of the National Association of Criminal Defense Lawyers (NACDL), I urge the Department of Justice to recruit from a national talent pool as it considers the appointment of a new director for the Federal Bureau of Prisons. Since 1964, BOP's director has been promoted from within its career ranks, with no evident attempt to recruit outside candidates. We believe that developments in the past two decades, notably changes in BOP's size and correctional mandate, argue for a broader search.

NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional association founded in 1958, NACDL's 10,000-plus direct members in 28 countries – and 90 state, provincial and local affiliate organizations totaling more than 40,000 attorneys – include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system.

For the half century after BOP's establishment in 1930, the federal prison population was stable at about 20,000 prisoners. Since 1985, BOP's population has grown exponentially, so that the agency is now responsible for more than 212,000 prisoners in more than 120 institutions. In addition, BOP's population is now quite different than it was thirty years ago, presenting a wider variety of

correctional challenges. But the dramatic change in BOP's size and population profile has not been accompanied by corresponding changes in management philosophy and institutional culture.

BOP's rapid expansion has been accompanied by many changes in the legal and policy environment, particularly in the last decade with the new emphasis on reentry. Rather than developing these opportunities with vision and imagination, BOP's response has been slow and grudging. It has lagged behind many state systems in developing innovative programs for women prisoners and those with families, imposed unnecessary restrictions on admission to beneficial drug treatment programs, and been haphazard in preparing prisoners for release. It has made little effort to respond to the needs of the growing population of mentally ill and non-citizen prisoners. The Justice Department regulations implementing the Prison Rape Elimination Act reflect BOP's rejection of the National Prison Rape Elimination Commission recommendations that reflect prevailing state policy on cross-gender searches and supervision.

At the same time BOP laments its dangerously overcrowded facilities and budget shortfalls, it also chooses to implement policies that prolong prison terms, fails to use ameliorative tools given it by Congress, and otherwise shows little interest in replicating the downsizing measures that have been adopted in many state systems. Over the years, concerns have been raised to no avail about BOP's policy in administering the sentence modification authority under 18 U.S.C. § 3582(c)(1)(A)(i), including its stated refusal to implement guidelines promulgated by the United States Sentencing Commission. Despite the rising cost of caring for prisoners who are aged and infirm, it has even turned down requests from federal judges to send terminally ill prisoners home to die. Where most state systems are working hard to downsize, BOP projects population increases into an indefinite future.

If agency size alone were the measure of importance, the search for a new BOP director would be as rigorous as the search for a new FBI director. Quite apart from their comparable size, however, these two organizations are equally responsible in their respective spheres for keeping the American public safe and secure. Commendably, you have declared your commitment to lowering recidivism rates through correctional improvements. The BOP leadership vacancy presents an opportunity to effectively test this progressive message in the federal system by recruiting a director who can bring a broad range of experiences to bear on the job, particularly since reduction of both correctional populations and recidivism rates are almost certain to be the next decade's two greatest challenges.

In order to ensure that BOP has the strongest and most creative leadership in this challenging period, and to restore its position as the preeminent correctional system in the world, we urge you to cast a wide net in choosing a new director, and to make clear that professional independence will be the central and prized qualification. If the search for a

new BOP director goes no further than BOP's own career ranks, the Department may lose an important opportunity to reinvigorate the agency and restore it to its flagship status. We hope you will choose a correctional professional who has an established record as a reformer, who has been successful in dealing with both unions and politicians, and who has both the vision and leadership skills to make BOP once again the gold standard in the field of corrections.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim E. Lavine". The signature is fluid and cursive, with a prominent initial "J" and "L".

Jim E. Lavine  
President, NACDL