December 20, 2013

James Comey
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Dear Director Comey:

I write to you on behalf of the National Association of Criminal Defense Lawyers (NACDL) and the undersigned affiliate organizations to congratulate you on your appointment as director and to raise an issue of mutual concern and interest.

Preliminarily, as you may recall, we originally met during your tenure as United States Attorney in Manhattan, where I practiced criminal defense for 30 years before coming to NACDL in 2006. NACDL, in cooperation with the Innocence Project, has been working with the FBI and the Department of Justice to review over 2,000 criminal cases in which the use of microscopic hair comparison evidence may have resulted in wrongful convictions. The Hair Microscopy Review Project commenced in July 2013 and is ongoing. NACDL hopes that this collaboration and exchange of ideas will continue regarding other issues affecting the integrity of criminal investigations and proceedings. One such issue is the electronic recording of interrogations.

NACDL and the undersigned affiliate organizations are concerned about the Federal Bureau of Investigation’s long standing policy of not electronically recording custodial interrogations, specifically of individuals suspected of a felony offense. We firmly believe that a videotape recording from beginning to end provides the most objective means for evaluating what occurred during an interrogation, what the suspect and law enforcement agents said and did, any
alleged waiver of a suspect's rights to remain silent and to the presence of an attorney, and the accuracy of any statement. We urge the FBI to adopt a policy that all custodial interrogations of felony suspects be recorded electronically.

The FBI's continued policy of not electronically recording interrogations is outdated and is increasingly being abandoned by other law enforcement groups across the country. Seventeen states, the District of Columbia, and hundreds of state and local law enforcement agencies have made electronically recording interrogations an integral part of their investigative procedure. Parts of the federal government also require that investigators record interviews under specific circumstances; these include the Air Force Office of Special Investigations, the Naval Criminal Investigative Service, and the entire Department of Defense. As the number of jurisdictions requiring interrogations be recorded increases, these localities may be unable to use FBI agent testimony pertaining to interrogations due to state law or local policy.

Many law enforcement officials who now voluntarily record interrogations initially resisted the practice, citing reasons such as a suspects refusal to talk, hindrance of rapport building between interrogator(s) and suspect, possibly offending juries by exposing them to sometimes aggressive interview techniques, equipment malfunction, the cost of purchasing and maintaining recording equipment, and the costs associated with transcribing, storing, and cataloguing recorded evidence. Law enforcement groups throughout the country have found that these objections have not borne out in practice. In fact, these agencies have found that the benefits of electronically recording interrogations far outweigh the possible negatives and have embraced the technique as an invaluable tool in their investigations and prosecutions.

The benefits of electronically recording interrogations are being felt and praised by an ever increasing number of law enforcement groups. An electronically recorded interrogation has been repeatedly described as an objective instant replay that protects the integrity of the criminal justice system. This instant replay protects against false confessions and false confession claims, and allegations of coercion, abuse, and/or Miranda violations. The practice not only negates the need for a judge to hear and evaluate differing versions of what occurred during the
interrogation process, but facilitates efficient case resolution and dramatically reduces the risk of wrongful convictions.

Additional benefits exist for the agency recording the interrogations. By recording the interrogation, agent(s) are free to focus entirely on the suspect and his or her statements, demeanor, body language, etc., rather than being distracted with note taking. Having a record also allows investigators to review the tape for inconsistencies, and other comments or statements that did not seem important at the time or perhaps were overlooked. Finally, a library of taped interrogations is a treasure-trove of information that can be used to: (1) Evaluate the effectiveness of agents, investigations, and interrogation techniques; and (2) create real-world training materials to train and re-train agents in the most effective interrogation techniques in any given circumstance.

As Deputy Attorney General, you yourself established a working group in 2005 to formally consider the merits of an FBI policy to electronically record interrogations. Unfortunately, the working group dissolved shortly after your departure from the Department of Justice, effectively leaving the status quo in place. Another Justice Department review of the no-taping policy was undertaken in 2011, with no outcome reported to the public. NACDL, and all undersigned groups, strongly encourage you to continue the work you started in 2005 and issue a new FBI policy that requires all custodial interrogations of felony suspects be electronically recorded, and that provide clear standards for all agents and field offices to follow.

Sincerely,

[Signature]
Norman L. Reimer
on behalf of the undersigned

CC: Patrick W. Kelley, General Counsel (Acting)
Alabama Criminal Defense Lawyers Association
Amber Ladner, President

Arizona Attorneys for Criminal Justice
Kelly A. Smith, President

Arkansas Association of Criminal Defense Lawyers
Virginia Kulpanowski, Executive Director

California Attorneys for Criminal Justice
Robert M. Sanger, President

District of Columbia Association of Criminal Defense Lawyers
Pat Cresta Savage, President

Florida Association of Criminal Defense Lawyers
James S. Benjamin, President

Florida Public Defender Association
Julianne Holt, President

Georgia Association of Criminal Defense Lawyers
Marcia Shein, President

Hawaii Association of Criminal Defense Lawyers
Myles Breiner, President

Idaho Association of Criminal Defense Lawyers
Debi Presher, Executive Director

Illinois Association of Criminal Defense Lawyers
Charles Beach, President

Kentucky Association of Criminal Defense Lawyers
Larry Simon, President

Louisiana Association of Criminal Defense Lawyers
Robert S. Toale, President

Maryland Criminal Defense Lawyers Association
Mary Pizzo, President
Massachusetts Association of Criminal Defense Lawyers
Elizabeth A. Lunt, President

Criminal Defense Attorneys of Michigan
Ramona L. Sain, Executive Director

Minnesota Association of Criminal Defense Lawyers
Faison Sessoms, President

Missouri Association of Criminal Defense Lawyers
Randy Scherr, Executive Director

Nevada Attorneys for Criminal Justice
Robert Arroyo, President

New Hampshire Association of Criminal Defense Lawyers
Katherine Cooper, Executive Director

New Mexico Criminal Defense Lawyers Association
Barbara Mandel, President

New York Criminal Bar Association
Stacey Richman, President

New York State Association of Criminal Defense Lawyers
Benjamin Ostrer, President

North Carolina Advocates for Justice
David Teddy, President

Ohio Association of Criminal Defense Lawyers
Susan Carr, Executive Director

Oklahoma Criminal Defense Lawyers Association
D. Michael Haggerty, II, President

Oregon Criminal Defense Lawyers Association
John Potter, Executive Director

Pennsylvania Association of Criminal Defense Lawyers
James A. Swetz, President
Rhode Island Association of Criminal Defense Lawyers
Mary McElroy, President

South Carolina Association of Criminal Defense Lawyers
Kitty Sutton, Executive Director

South Dakota Association of Criminal Defense Lawyers
Ryan Kolbeck, President

Tennessee Association of Criminal Defense Lawyers
Suanne Bone, Executive Director

Texas Criminal Defense Lawyers Association
Joseph A. Martinez, Executive Director

Utah Association of Criminal Defense Lawyers
Kent Hart, Executive Director

Vermont Association of Criminal Defense Lawyers
Kathy Finnie, Executive Director

Virginia Association of Criminal Defense Lawyers
K. Danielle Payne, Executive Director

Washington Association of Criminal Defense Lawyers
Teresa Mathis, Executive Director

Eastern Panhandle Criminal Defense Lawyers Association
Kevin Mills, Past President

Wisconsin Association of Criminal Defense Lawyers
Peter McKeever, Executive Director