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December 5, 2008

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Hon. Phyllis Bamberger  
New York State Bar Association  
Task Force on Wrongful Convictions  
One Elk Street  
Albany, New York 12207

Dear Justice Bamberger:

I write on behalf of the state's 62 elected district attorneys in response to the recent inquiry of the New York State Bar Association's Task Force on Wrongful Convictions. You express concern as to whether there exists adequate internal discipline within our offices for assistant district attorneys who have knowingly violated or willfully ignored their Brady obligations or have knowingly educed false testimony, regardless of whether there is a judicial finding of such violation.

You can be assured that each of us is mindful of his or her obligations as a prosecutor and we do not endorse or wish to sustain a prosecution that is the product of the type of misconduct about which you have expressed concern. Fortunately, this type of misconduct is rare and each case in which it occurs presents a unique factual framework. When such misconduct does occur, the unique facts underlying the case are carefully examined and, following such examination, my colleagues and I impose appropriate discipline, including but not limited to dismissal of the assistant or assistants responsible, in any case in which it is warranted. The District Attorneys Association, both through its own training committee and its training arm, the New York Prosecutors Training Institute, provides comprehensive training in all areas of the law, including those about which you express concern.

In closing, let me emphasize that a prosecutor's worst nightmare is the discovery that he or she has been responsible for the conviction of an individual who is actually innocent. We share the Task Force's goal in eliminating the risk of such convictions and look forward to working with you to reach that shared goal.

Very truly yours,

A handwritten signature in black ink that reads "Daniel M. Donovan, Jr." with a stylized flourish at the end.

Daniel M. Donovan, Jr.  
President, District Attorneys Association  
of the State of New York/  
Richmond County District Attorney