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June 21, 2013

The Honorable Sheldon Silver
Speaker, New York State Assembly
Legislative Office Building, Room 932
Albany, NY 12248

The Honorable Dean G. Skelos
Majority Coalition Leader, New York State Senate
Legislative Office Building, Room 909
Albany, NY 12247

The Honorable Jeffrey D. Klein
Majority Coalition Leader, New York State Senate
Legislative Office Building, Room 913
Albany, NY 12247

Re: S4484-A / A6800-A Identifications By Witnesses and the Recording of Interrogations

Dear Speaker Silver, Majority Leader Skelos, and Majority Leader Klein:

The District Attorneys Association of New York State (DAASNY) is committed to preserving public safety, while at the same time protecting the rights of the accused and eliminating wrongful convictions. As such, DAASNY supports the two principal provisions in S4484-A/A6800-A regarding the admissibility of a photographic identification conducted in a manner to prevent a police officer from inadvertently influencing the witness and the mandatory video recording of custodial interrogations in certain homicide and rape cases.

These two proposals, which reflect the work of Chief Judge Lippman's New York State Justice Task Force (the Task Force), are in harmony with DAASNY's dedication to developing best practices for law enforcement, and do not create suppression remedies for otherwise reliable evidence. The Task Force, convened in 2009, is made up of judges, legislators, defense attorneys, academics, bar associations, prosecutors and police. Following months of study and discussion, the Task Force issued recommendations reflected in its 2011 report entitled "Recommendations for Improving Eyewitness Identification." In light of the growing and evolving study of eyewitness memory and identifications, and the resulting need for flexibility to accommodate new findings, the Task Force voted not to legislate identification procedures, except for the proposal requiring the admissibility of photo array identifications.

DAASNY is committed to these proposals, and would support the bill in its entirety if one minor change were to be made. The bills also contain a third proposal, an amendment to Section 840 of the Executive Law which mandates that the Municipal Police Training Council (MPTC) adopt, as a mandatory minimum set of requirements for all New York

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State police departments, all of the recommendations of the Task Force regarding eyewitness identification procedures. The MPTC was created to recommend rules and regulations to the governor with respect such matters as the approval of police training schools, the minimum courses of study for training schools and the minimum qualifications for various types of police training.

In the past, the MPTC has used its discretion to review these matters and to make recommendations based on their knowledge and experience. The current proposal would remove this discretion and would instead dictate minimum standards based on the findings of the Justice Task Force. This proposal undermines the MPTC's ability to provide input based on its members' in-depth knowledge of policing matters and the implications of regional difference within the state. As such, DAASNY's positive recommendation of S4484-A/A6800-A is contingent on its amendment in a way that requires the MPTC to strongly consider the Justice Task Force proposals, rather than mandatorily adopt them as a minimum standard. This will assure that the discretion of the MPTC remains intact and that the criminal justice community can receive the benefit of its input and experience. We have drafted proposed language in this regard, which is attached.

To be clear, DAASNY fully supports a legislative requirement that law enforcement agencies adopt written policies and procedures for conducting photo arrays and live lineups and that continued training on best practices for identification procedures be conducted. We object only to tying the hands of law enforcement experts with legislatively-mandated procedures.

We note that DAASNY and its law enforcement partners have made great progress in improving the criminal justice system and have a strong commitment to continuing these initiatives in the future. In May of 2010, DAASNY stood together with the New York City Police Department (NYPD), the New York State Police, the New York State Sheriff's Association (the Sheriffs) and the New York State Association of Chiefs of Police (the Chiefs) to announce statewide guidelines for identification procedures that had been spearheaded by DAASNY's Best Practices Committee. Through the hard work of New York's police agencies, these robust, fair and neutral identification procedures have been implemented in the NYPD, the New York State Police, and in police departments around the state. Training on the procedures has been on-going since the procedures were announced. The Justice Task Force reviewed these law enforcement identification procedures and approved them in large measure. The Task Force made some additional recommendation reflected in its 2011 report entitled "Recommendations for Improving Eyewitness Identification."

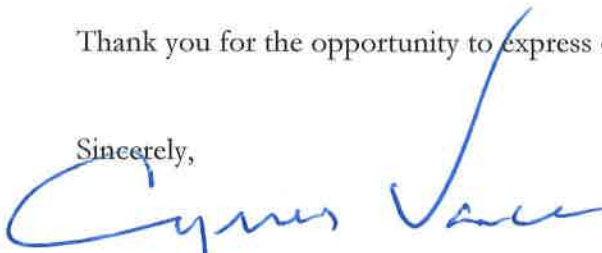
Similarly, in 2012, the Justice Task Force recommended video recording of custodial interrogations, which is also supported by DAASNY. Once again, DAASNY, together with the NYPD, the New York State Police, the Sheriffs and the Chiefs, had already endorsed the practice of video recording custodial interrogations, in December 2011. Since that time, police departments around the state, from small departments with 25 officers to the NYPD with 35,000 officers, have worked diligently to build video recording facilities for the recording of interrogations with the finite funding available. To date, more than 380 video recording facilities have been established in counties all across the state. With additional funding, the hope is that every police department in the state will be able to video record custodial interrogations.

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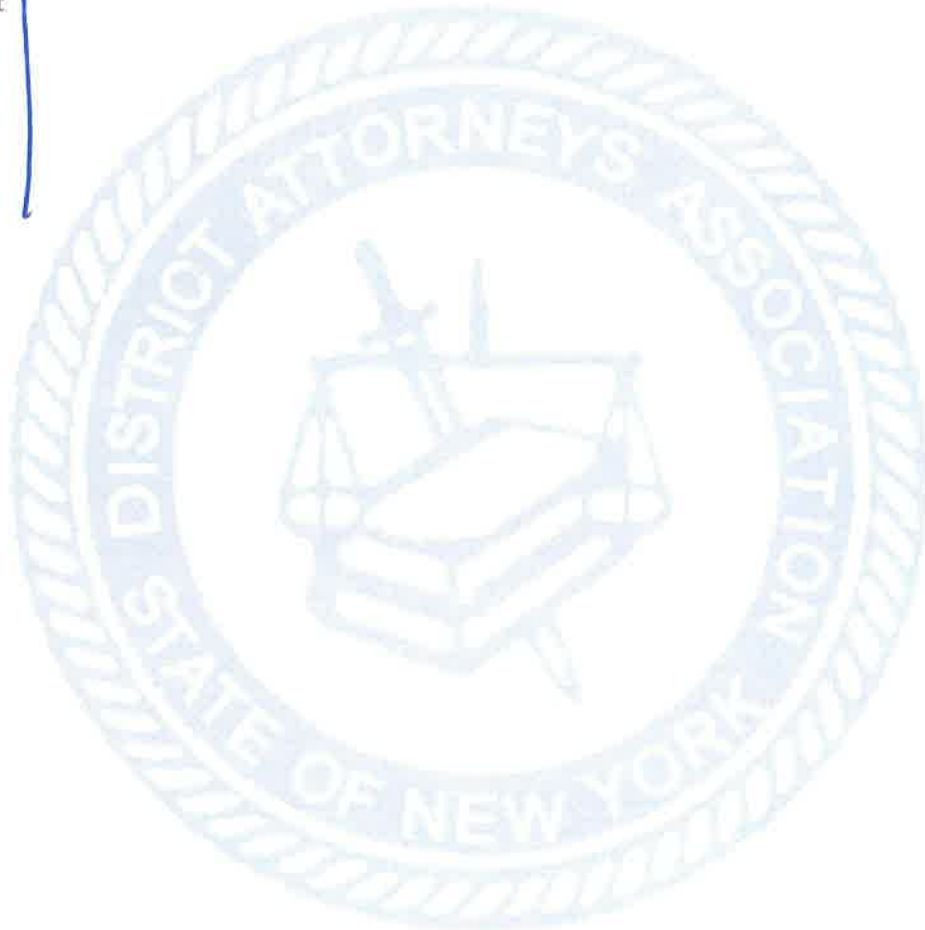
DAASNY is dedicated to continuing its efforts to improve the criminal justice system and to work with all members of the criminal justice community. We look forward to working with you on the proposed amendment to S4484-A/A6800-A in the hope of making it a reality.

Thank you for the opportunity to express our views on this important legislation.

Sincerely,

A handwritten signature in blue ink that reads "Cyrus Vance". The signature is fluid and cursive, with a long, sweeping underline that extends downwards.

Cyrus R. Vance, Jr.
President



5. (a) The council shall, in addition, in consultation with scientific experts in eyewitness memory research and the criminal justice community, develop and, following a period of public comment, maintain and disseminate to all police and prosecutorial agencies in the state a model policy for the personnel of such agencies involved in criminal investigations that embodies current best practices for conducting photographic and live lineups. In developing such model policy, the council should strongly consider the ~~These best practices must be consistent with recommendations~~ incorporated in “Best Practices for the Administration of Identification Procedures” published in 2011 by the Justice Task Force established by the chief judge of the state in May, 2009, ~~and must~~ which include ~~but need not be limited to those practices described therein~~ as “I. Instructions to Witness,” “II. Witness Confidence Statements,” “III. Documentation of Identification Procedures,” and “V. Live Lineups.” For purposes of this subdivision, the “criminal justice community” shall include police and prosecutorial agencies of the state and representatives of the criminal defense bar.

(b) Each police and prosecutorial agency in the state shall adopt written policies relating to the conduct of photographic and live lineups that conform with the model policy prescribed by paragraph (a) of this subdivision.