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February 7, 2019

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## **MEMORANDUM OF SUPPORT**

### ***A.1431 (Lentol) / S.1716 (Bailey) – The 2019 Discovery for Justice Reform Act***

The Legal Aid Society, the nation's oldest and largest legal services organization and the primary provider of representation to people unable to afford legal counsel who are accused of crimes in New York City, strongly supports enactment of comprehensive criminal discovery reform this session. Specifically, we urge the Legislature to pass and the Governor to sign The Discovery for Justice Reform Act (A.1431/S.1716), which would repeal New York's outdated "Blindfold Law" and would at long last require timely and open discovery in criminal cases.

Under New York State's current criminal discovery statute, Criminal Procedure Law Article 240, people accused of crimes are denied vitally important information that is essential to make informed decisions about their pending cases. In fact, New York is currently one of the handful of states that provides defendants the *least* discovery. The discovery statute does not even require prosecutors to disclose police reports or witness statements until the day of trial.

New York's discovery statute was last revised in 1979. At that time, it was explicitly seen by the legislators who enacted it and the Governor who signed it as the beginning of broader changes. Those changes have not happened. In contrast, nearly every other state has since broadened its discovery. Even Texas and North Carolina – states that we do not normally see as liberal towards defendants – have enacted extremely open discovery statutes that require all police reports and all witness statements to be disclosed early in the case.

Inadequate discovery routinely prevents defense lawyers from fulfilling two of their most important constitutional obligations – investigating the charges, and giving meaningful advice on plea offers. Without discovery, it is often impossible for defense lawyers to find new witnesses, secure any favorable evidence, challenge the plausibility of the accusations

of prosecution witnesses, issue subpoenas, or prepare for a trial. This not only limits counsel's ability to competently represent the client at trial, it also prevents the lawyer from assessing the strength of the case in order to advise the client about a guilty plea offer.

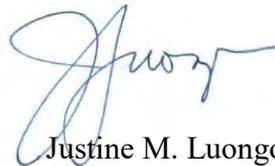
Practitioners in states that require broad and early discovery have consistently reported that they are satisfied with their discovery rules, and that the practices are feasible and fair. District Attorneys in those states report that they have the tools to keep their witnesses safe. The feasibility of these systems is shown by nationwide use (including in states such as New Jersey and Massachusetts), as well as by the openness of the discovery practices that have been used voluntarily for decades by some District Attorneys in New York, such as in Brooklyn.

Not only are New York's current rules fundamentally unfair, but they are also extremely inefficient. They inhibit, at great taxpayer cost, prompt guilty pleas from people who would be willing to resolve their cases if shown the evidence against them.

Discovery rules involving broad access to both parties' evidence at an early stage of criminal cases have been used for decades in large and small states, in states with large rural areas, in states with huge urban concentrations, and in states, like New York, with a combination of both. Significantly, none of these states has later sought to *repeal* or *restrict* broader discovery. Obviously, that is because these rules work – they are practicable, they are more fair, and they result in greater efficiencies in the court system.

New York State has failed to join this nationwide trend, and these changes are long overdue. The Legal Aid Society strongly urges enactment of A.1431/S.1716 this year.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Luongo', with a stylized flourish at the end.

Justine M. Luongo  
Attorney-in-Charge  
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