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July 31, 2023

The Honorable Kathy Hochul  
Governor of New York State  
NYS Capitol Building  
Albany, NY 12224

*Re: NYSBA supports A152/S939B to enable appellate review of suppression hearings*

Dear Governor Hochul:

The New York State Bar Association (NYSBA) supports A152(Cruz)/S939B(Bailey), which would amend the Criminal Procedure Law (“CPL”), to require appellate review of rulings that implicate issues of public concern. This legislation will promote the quality of representation provided to, and the fair access to justice by, indigent criminal defendants in state courts.

This legislation would amend CPL § 710.70 to enable appellate review of suppression rulings regardless of appeal waivers, and would restore the legislative intent behind CPL § 710.70, allowing for substantive review of police and official misconduct during searches and seizures.

The legislature has specifically granted appellate courts the ability to review suppression rulings notwithstanding the fact that such judgement is entered upon a plea of guilty.<sup>1</sup> Although criminal defendants maintain their right to appeal suppression rulings regardless of the pleas, the intent behind this law is obviated when defendants waive their right to appeal in exchange for a plea deal.

Appeal waivers also serve to shield police and official misconduct. When looking at dispositions of drugs and weapons possession cases, where suppression rulings can make or break a case, the appellate courts reverse the outcome of those cases at a rate of 16% to 19%.<sup>2</sup> Furthermore, when looking at exonerations from 1989 to 2020, official misconduct contributed to 54% of false

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<sup>1</sup> C.P.L. § 710.70(2).

<sup>2</sup> Waters, Gallegos, Green, and Rozsi, *Criminal Appeals in State Courts*, Bureau of Justice Statistics (Sept 2015).

convictions of persons who were later exonerated.<sup>3</sup> By enabling appellate review of suppression rulings, the State can allow appellate courts to serve as a check for law enforcement misconduct.

S939B/A152 is an urgent and necessary clarification of CPL§ 710.70 to restore its original legislative intent and facilitate the Appellate Divisions' ability to review police and official misconduct during searches and seizures.

The New York State Bar Association supports S939B/A152 and urges that it be approved. Please do not hesitate to contact me or NYSBA's General Counsel, David Miranda, who can be reached at [dmiranda@nysba.org](mailto:dmiranda@nysba.org), 518-487-5524, if you would like to discuss.

Respectfully,

A handwritten signature in black ink, appearing to read "Richard C. Lewis". The signature is fluid and cursive, with the first name "Richard" and last name "Lewis" clearly distinguishable.

Richard C. Lewis  
President, NYSBA

cc: Liz Fine, Esq.

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<sup>3</sup> Gross, Possley, Roll, and Stephens, *Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police and Other Law Enforcement*, National Registry of Exonerations, (September 1, 2020).