

SCHEDULE I
DISCOVERY

1. Pursuant to §240.20 of the Criminal Procedure Law, Defendant seeks discovery and inspection of the following property and information which is, or with the exercise of due diligence could come within the possession or control of the prosecutor, as being relevant and material to the preparation of the defense:

(a) Any written, recorded or oral statements of Defendant or an alleged co-conspirator or accomplice, except as previously provided to Defendant, made other than in the course of the criminal transaction, to a public servant engaged in law enforcement activity or to a person acting under such public servant's direction or in cooperation with him or her, regardless of whether the prosecution intends to offer such statement at trial and regardless of whether such statement was made under a promise of full or partial immunity;

(b) Any transcript of testimony relating to the criminal action herein, given by Defendant, or by a Co-Defendant to be tried jointly, before any grand jury;

(c) Names and addresses of all witnesses (including government employees, agents or informants) to any events which form the basis for these charges;

(d) If Defendant was viewed or observed by any witness other than law enforcement office at any stage of the proceedings, the name and address of the witness and the circumstances under which the observations took place;

(e) Pursuant to §§240.44 and 240.45 of the Criminal Procedure Law, all statements made by persons the prosecution intends to call as witnesses at any pretrial hearing or at trial that relate to the subject matter of their testimony.

(f) The names and addresses of any uncharged individuals who allegedly participated in the offense(s) charged against Defendant;

(g) The names, shield numbers, and commands of all law enforcement personnel who participated in the investigation, arrest, or any interrogation of Defendant;

(h) Names of all law enforcement personnel present when any statement attributed to the Defendant was made or recorded;

(i) Names of all law enforcement personnel present at any search performed in connection with this case;

(j) Copies of all documents, police reports, complaint reports, notes or memoranda, prepared or maintained by law enforcement personnel in this case, including but not limited to: (i) copies of all search and/or arrest warrants, together with all supporting affidavits and any other documents in support of any warrant that resulted in the arrest of the Defendant or the seizure of any property in this case; (ii) any documents reflecting by whom, the exact date, time, location and manner in which the events underlying the charged offense(s) were reported to the police; (iii) tape recordings, complaint logs and transcripts relating to any "911" call or call to the police relating to the crime charged; (iv) tape recordings, dispatcher logs, transcripts or memoranda recording any police communications during the investigation of the crime charged; (v) any notes made by police officials concerning their investigation, whether or not to be used at trial; (vi) any Grand Jury referral forms; (vii) copies of any written manuals, instructions, operational checklists or test guidelines pertaining to equipment used in this case; (viii) any portion of any police department

manual, directive or policy statement governing the police conduct of this investigation in any respect;

(k) A list of any property obtained from Defendant;

(l) An itemized description of any property recovered or seized during the investigation of the charges, the person or place from which the property was taken, the person effecting such seizure or receiving the property, the date or dates the property was seized or recovered, and whether such seizure was pursuant to a warrant;

(m) A list of all tangible objects, including books, records, photographs and contraband, that the prosecution intends to offer at any pretrial hearing or at trial, and copies thereof;

(n) Any photographs, drawings, diagram, chart or other reproduction made by or at the direction of a police officer, peace officer or prosecutor of any property prior to the release pursuant to the provisions of §450.10 of the Penal Law, irrespective of whether the prosecution intends to introduce at trial the photograph, photocopy, drawing, diagram, chart or other reproduction;

(o) Any photograph or drawing purporting to contain the likeness of a human being that was shown to prospective witnesses or made with the participation of any witnesses (including the names of all persons participating in the preparation of such sketches or compositions, the names and addresses of all persons to whom the photographs or drawings were exhibited, as well as any documents that reflect the date, time and circumstances and result of such exhibition including any questions asked or statements made at any such preparation or exhibition);

(p) Any audio or video tapes or electronic recordings made in the investigation of the charges herein, irrespective of whether such recording was made during the course of the alleged criminal transaction, together with the name of the person who made the recording;

(q) Any physical evidence recovered or seized from the Defendant or any Co-Defendant, whether charged or not (including blood, breath, hair or other samples), as well as any records or documents relating to any test or analysis performed on the physical evidence or sample seized, together with all information, in whatever form, concerning any scientific tests or mental or physical examinations performed on the Defendant or on blood, breath, hair, tissue, clothing or other items or samples seized from the Defendant or any Co-Defendant;

(r) Any written report or document, or portion thereof, concerning a physical or mental examination or scientific test or experiment, relating to the criminal action or proceeding that was made by, or at the request or direction of a public servant engaged in law enforcement activity, or that was made by a person whom the prosecution intends to call as a witness at trial, or that the prosecution intends to introduce at trial;

(s) All information, in whatever form, concerning any scientific tests or mental or physical examinations as to which no written report or document exists;

(t) Documents concerning any chemical testing or analysis associated with this case, including all notes or records relating to: (i) the type, quality or quantity of the substance analyzed; (ii) the preparation and calibration of any analytical instruments used; (iii) the preparation, synthesis, or analysis of any solutions, reagents or other chemicals utilized in the chemical analysis;

(iv) the preparation, synthesis or analysis or any chemical substances used as a standard, control or reference solution in the chemical analysis; (v) the steps followed in performing any chemical analysis; (vi) the number of times each analysis was performed and the results observed or recorded for each; (vii) the output, in whatever form, of any instruments used to perform or assist in each analysis; (viii) any mathematical computations utilized;

(u) All documents containing observations made during any autopsy performed in relation to this case, together with all documents concerning any microanalysis or other scientific test associated with the post-mortem examination, including photographs, microscopic slides or notes of observations, and all documents concerning any toxicological analysis associated with the post-mortem examination, including all records or notes relating to the preparation and calibration of any analytical instruments used, the preparation, synthesis or analysis of any solutions, reagents or other chemical substances used as a standard, control or reference solution in the toxicological analysis, the steps followed in performing any toxicological analysis, the number of times each analysis was performed and the results observed or recorded for each, the output, in whatever form, of any instruments used to perform or assist in each analysis, and any mathematical computations utilized;

(v) All documents relating to the condition, testing comparison, or identity of any persons firing the weapon in question, or the calculation of trajectories, firing distances, velocity or impact of projectiles, or any physical or scientific tests or examinations performed on any firearms, ammunition, or persons alleged to be involved in this case, or used for comparison purposes including any firearms, bullets, or shell casings tested or used for comparison purposes;

(w) All documents concerning any latent fingerprints, lifts, photographic reproductions or enlargements of lifts, any inked or "known" prints used for comparison purposes, and all documents concerning any comparison methods used, together with all notes, diagrams or other memoranda made or used in an effort to correlate persons with objects or places connected or thought to be connected with the crime charged;

(x) CPL 240.20(2) specifically requires disclosure of the items requested above relating to scientific or physical examination or tests. The People can articulate no prejudice to them in allowing the defense adequate discovery of scientific data and procedures any refusal to provide such information can only be for the purpose of retaining some perceived tactical advantage, at the expense of the defense. The defense requests that this information and data be disclosed so that affiant may have an opportunity to have independent tests performed, a step that is essential to representation of the Defendant;

(y) A written list of the names, addresses and qualifications of all experts the prosecution intends to call as witnesses at trial, as well as the field and subject matter of the expert's expected testimony, a copy of the resume or curriculum vitae of the expert, for each scientific examination or test performed, the name, author and chapter of any reference manual or authoritative text referred to or relied upon, all reports prepared by such experts or, if reports have not been prepared, a brief description of the opinion and subject matter of the opinion to which each will testify, and if this expert has previously testified for the People, the date, case name, Court, Indictment or docket number of the case in which the expert testified, as well as copies of any transcripts of that testimony;

(z) Anything required to be disclosed to Defendant, prior to trial, by the prosecution pursuant to the Constitution of this State or of the United States.

3. Pursuant to the prosecution's obligation under the federal and New York Constitutions, see Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); People v. Vilardi, 76 N.Y.2d 67, 556 N.Y.S.2d 518, 555 N.E.2d 915 (1990), Defendant also seeks disclosure of all exculpatory evidence in the prosecution's possession, custody or control that may be used to impeach any person the prosecution intends to call as a witness at any pretrial hearing or at trial (hereinafter a "prospective witness"), including, without limitation:

(a) All records and information revealing prior criminal convictions or guilty verdicts or juvenile adjudications, including but not limited to relevant "rap sheets," of any prospective witness;

(b) Whether any prospective witness has been incarcerated in a federal, state or local correctional facility, and if so the prison records of such witness;

(c) A full and complete statement of any and all criminal cases currently known by the prosecution to be pending against any prospective witness, regardless of whether such cases are the subject of promise, regard or inducement;

(d) A full and complete statement of any and all regulatory, licensing or other governmental or quasi-governmental proceedings now pending, closed, discontinued, settled or completed against any prospective witness;

(e) A full and complete statement as to any and all considerations or promises of consideration given during the course of the investigation and preparation of this action by any law

enforcement officials, including prosecutors or agents, police or informers, to or on behalf of any prospective witness, or any such consideration or promises expected or hoped for by any such witness. Such "considerations" refer to anything that arguably could be of value or use to the witness, including but not limited to -- formal or informal, direct or indirect -- leniency, favorable treatment or recommendations or other assistance with respect to any past, pending or potential criminal, parole, probation, pardon, clemency, civil, administrative, forfeiture, licensing or other matter involving any local, state or federal government or any other authority or parties; relief from forfeiture, payments of money, rewards or fees, witness fees and special witness fees; provisions of food, clothing, transportation, legal services or other benefits; placement in a "witness protection" program; letters to anyone informing the recipient of the witness's cooperation; recommendations concerning federal or state aid or benefits; recommendations concerning licensing, certification or registration; promises to take affirmative action to help the status of the witness in a profession, business or employment situation or promises not to jeopardize such status; aid or efforts in securing or maintaining the business or employment of a witness; and anything else that arguably could reveal an interest, motive or bias in the witness in favor of the prosecution or against the Defendant or act as an inducement to testify or color the witness's testimony;

(f) A full and complete statement of any and all criminal conduct of which the prosecution has knowledge that has been committed by any prospective witness concerning which there has been no conviction, regardless of whether these crimes are the subject of a promise, reward or inducement and regardless of whether these crimes are the subject of a pending criminal charge;

(g) A statement as to the existence of any and all statements -- formal or informal, oral or written -- by the prosecution, its agents and representatives to a prospective witness (including counsel for witness) pertaining in any way to the possibility, likelihood, course or outcome of any government or quasi-government action -- state or federal, civil or criminal -- or anyone related by blood or marriage to the witness;

(h) A statement as to the existence of any and all threats -- expressed or implied, direct or indirect -- or other coercion directed against any prospective witness; criminal prosecutions, forfeiture actions, investigations, or potential prosecutions pending or that could be brought or re-instituted against any such witness; any probationary, parole, deferred prosecution or custodial status of any such witness; and any civil, tax court, court of claims, administrative, or other pending or potential legal disputes or transactions involving any such witness and the state or federal government or over which the state or federal government has real, apparent or perceived influence;

(i) A statement as to whether the prosecution has requested or authorized payment of any sums of money to any informant, cooperating witness or potential Co-Defendants who have agreed to testify for the prosecution or who participated in the investigation that led to the instant action, or to any other prospective witness;

(j) Any logs, records or other documents relating to the payment of sums of money to any individual described in subparagraph (i) and the source of any such payments;

(k) A list of any and all requests, demands or complaints made to the government by a prospective witness that Defendant arguably could develop on cross-examination to demonstrate

any hope or expectation on the witness's part for favorable governmental action in his or her behalf, regardless of whether the government has agreed to provide any favorable action;

(l) Any material not otherwise listed herein that reflects or evidences the motivation of a prospective witness either to cooperate with the government or of any bias or hostility against Defendant;

(m) The existence and identification of each occasion on which a prospective witness has testified before any court, grand jury or other tribunal or body, or otherwise officially narrated in connection with the investigation of the facts of this case;

(n) Any statement or documents, including but not limited to grand jury testimony and federal, state and local tax returns, made or executed by any prospective witness that the prosecution knows, or through reasonable diligence, should have reason to know is false;

(o) The existence and identification of each occasion on which a prospective witness who is an informant, accomplice, co-conspirator or expert has testified before any court, grand jury or other tribunal or body;

(p) A copy of all medical and psychiatric reports or information known to the prosecution or that can reasonably become known to the prosecution concerning any prospective witness that may arguably affect the witness's credibility, ability to perceive or relate or recall events;

(q) Whether or not any prospective witness has been hospitalized or treated for psychiatric or emotional disorders or alcoholism or drug abuse, and if so the names of any institutions involved and the dates of any hospitalizations, and any and all reports relating to any treatment for such conditions;

(r) Any written or oral statements, whether or not reduced to writing, made by any prospective witness, that in any way contradicts or is inconsistent with or different from other oral or written statements he or she has made, and any such statements made by any person, whether a prospective witness or not, that in any way contradicts or is inconsistent with or different from statements made by a prospective witness;

(s) Any evidence that may be used to impeach or discredit any prospective witness -- particularly, but not exclusively, inconsistent statements of bias or prejudice against Defendant -- by a prospective witness, or admissions of poor memory by a prospective witness;

(t) Any requests prepared by the prosecution for permission to grant immunity or leniency for any prospective witness, whether or not such request was granted, and the identities of any and all such witnesses who have been offered immunity;

(u) Any and all other records or information that arguably could be helpful or useful to the defense in impeaching or otherwise detracting from the probative force of the prosecution's evidence;

(v) The same records and information specified in subparagraphs (a) through (u) with respect to each non-witness declarant whose statements will be offered in evidence at any pretrial hearing or at trial;

(w) The names and addresses of all persons whom the prosecution, its agents and representatives believe to have relevant knowledge or information concerning the charges herein but whom the prosecution does not expect to call as witnesses at any pretrial hearing or at trial;

(x) Copies of any and all records of law enforcement or other governmental agencies reflecting intra-departmental disciplinary action taken against any law enforcement or agency official who will testify in this action, including all such records from any governmental agency for which the witness previously worked; and

(y) Copies of any and all records of law enforcement or other governmental agencies reflecting any commendations, awards or other recognition of any kind received by, or requests for any commendations, awards or recognition of any kind made by, any of the agents or law enforcement officers involved in this case with respect to this case.

SCHEDULE II
BILL OF PARTICULARS

1. In order to properly prepare for trial and to represent the Defendant, JEREMY PERKINS, in this action, it is necessary to have disclosed certain information.

2. The Defendant hereby demands pursuant to CPL §200.95 as made applicable by CPL §100.45, for an order compelling the People to file with this Court and serve upon the Defendant, within FIFTEEN (15) DAYS after date of service hereof, a Bill of Particulars relating to all of the charges against Defendant and particularly setting forth the following:

Regarding the charge of Murder
in the Second Degree:

- (a) The exact substance of the Defendant's conduct encompassed by the charges alleged which the People intend to prove at trial on their direct case;

- (b) Whether the People intend to prove that Defendant acted as a principal or accomplice or both;
- (c) The exact substance of the Defendant's conduct that allegedly substantiates the charge contained in the indictment that the Defendant committed Murder in the Second Degree.
- (d) The date, time and place of the Defendant's conduct which is encompassed in the charge of Murder in the Second Degree.

Regarding the charge of Criminal Possession of a Weapon
in the Fourth Degree:

- (a) The exact substance of the Defendant's conduct encompassed by the charges alleged which the People intend to prove at trial on their direct case;
- (b) Whether the People intend to prove that Defendant acted as a principal or accomplice or both;
- (c) The exact substance of the Defendant's conduct that allegedly substantiates the charge contained in the indictment that the Defendant committed Criminal Possession of a Weapon;
- (d) The date, time and place of the Defendant's conduct which is encompassed in the charge of Criminal Possession of a Weapon.

3. The names and addresses of all individuals who were allegedly present during the commission of the crime.

4. State whether the People intend to offer evidence in the form of a Courtroom identification of the Defendant herein or testimony of pre-trial identification of the Defendant.

5. State with specificity, the date, time and method by which the Defendant was first identified in person to the police as the individual who allegedly committed the crime, which is the subject of the Indictment.

6. The Defendant requires the foregoing items of factual information because without this specific information he cannot adequately prepare or conduct his defense.

7. If any of the requests in the Defendant's requires for bill of particulars are better suited for disclosure under discovery provisions of New York Law, it is respectfully requested that the prosecution construe the request as a request for discovery pursuant to §240.40 of the Criminal Procedure Law.

8. Should the People refuse to comply with this request for a Bill of Particulars, or any portion of it, such a refusal shall be made in writing, which shall set for the grounds of such refusal as fully as possible, consistent with the reason for the refusal, and shall be served upon the Defendant and filed with the Court within FIFTEEN (15) DAYS of this request.

9. All of the items specified in the above-numbered paragraphs under Bill of Particulars are requested with respect to property and information within the possession and control of the prosecution. Defendant also demands that the prosecution, pursuant to §240.20(2) of the Criminal Procedure Law, make a diligent, good faith effort to ascertain the existence of demanded property and information and to cause such property and information to be made available for discovery and inspection if it exists but is not within the prosecution's possession, custody or control. To the extent that any item is known by the prosecution to exist but is not within the prosecution's possession or is claimed not to be within its control but is available to Defendant by subpoena, Defendant respectfully requests disclosure of such information necessary to form the basis for a subpoena directed to the custodian or person possessed of such item.

10. Pursuant to §240.60 of the Criminal Procedure Law, Defendant hereby demands that the prosecution abide by the continuing duty to disclose all additional property and information sought herein that the prosecution learns or comes into possession of subsequent to this demand.

SCHEDULE III
DISCLOSURE OF BRADY MATERIAL

1. Pursuant to Brady v. Maryland, 373 U.S. 82, the People are obligated to disclose to the Defendant favorable or exculpatory evidence whether such evidence is material to the Defendant's guilt or the mitigation of his punishment.

2. The Defendant hereby requests that the People disclose any information, whether admissible at trial or not, whether regarding facts or occurrences or the absence of factors or occurrences, known to the People or which could become known upon diligent inquiry to those under the People's direction or control, which is in any way favorable to the Defendant, whether by detracting from the People's case or the credibility of the People's witnesses, or supportive of the positions urged, or likely to be urged, by the Defendant at any stage of the proceedings.

3. Without limiting the People's duty to disclose favorable material, the defense suggests that the following, if existent, should be disclosed:

(a) Any information to the effect that the instant prosecution is based on or derived from evidence acquired as a result of Governmental action violative of Constitutional standards. This request expressly encompasses any information, which might affect the Court's decision on a suppression issue in a fashion favorable to the Defendant.

(b) Any records of previous arrests or convictions or any other evidence or information demonstrating participation in criminal, vicious, or immoral behavior on the party of any persons intended to be called as witnesses by the People.

(c) Any statements known to be false or erroneous or conflicting made to a public servant engaged in law enforcement activity or a grand jury or court by persons intended to be called as witnesses.

(d) Any statements, records or information indicating that any prospective witness has given contradictory or deceitful information in this case.

(e) Any information indicating that any prospective witness has given information inconsistent or materially different from information received from any more reliable source.

(f) Names and addresses and statements of persons interviewed by or on behalf of the People who are known to have been witnesses to the events underlying the charge whom the People do not intend to call as witnesses.

(g) The existence of any government agents, informants or cooperating individuals in this case and any representation, offer, agreement or understanding regarding any past, present or future benefit to such persons as a result of or in relation to their cooperation with the prosecutor.

(h) Any records or information revealing prior convictions or juvenile adjudications attributed to each witness to be called by the People, including but not limited to relevant "rap sheets".

(i) Any records, including police personnel records, or information revealing prior misconduct or bad, vicious or immoral acts on the part of the witness.

(j) Any threats, express or implied, direct, indirect or other coercive measures directed against any witnesses such as threats of criminal prosecution or investigation or potential prosecution, any probationary, parole, deferred prosecution or custodial status of the witnesses or any civil, tax court, court of claims, administrative, or other pending or potential legal disputes or transactions in which the prosecution has a real, apparent or perceived influence.

(k) Any information as to any prospective prosecution witness having a history of mental or emotional disturbance.

(l) The existence and identification of each occasion on which any witness has testified before any court, grand jury or other tribunal or body or otherwise officially narrated in relation to the Defendant, the investigation, or the facts of this case.

SCHEDULE IV **SUPPRESSION OF STATEMENTS**

1. Pursuant to CPL §710.30(1)(a) the prosecution has notified defense counsel of verbal statements made by my client to Lieutenant Gravelle, Patrolman Fecher, Patrolman Trabert and Detective Edward Monan. All said statements allegedly were given on March 13, 2003.

2. Pursuant to CPL §710.30(1)(a) the prosecution has notified defense counsel of a written statement made by my client to law enforcement officials and intended to be introduced as evidence at trial: a written statement signed by JEREMY PERKINS on March 13, 2003. A copy of the written statement has been given to defense counsel.

3. Having been given no notice of any other statements within the mandatory 15 day period [CPL §710.30(2)], we move to suppress JEREMY PERKINS' written and/or verbal statements.

4. The defense further moves to suppress from use directly or indirectly as evidence against the accused a trial, all statements, whether verbal or written, attributed to the accused that are not set forth in CPL 710.30 Notice served on the accused within 15 days of the arraignment on the accusatory instrument herein, on the grounds that there is no good cause for the late service of notice of any additional statements.

5. The defense contends JEREMY PERKINS' written and/or verbal statements were involuntarily made pursuant to CPL §60.45 because they were obtained:

- (a) in violation of JEREMY PERKINS' privilege against self-incrimination;
- (b) in the absence of a voluntary, intelligent and known waiver of the privilege against self-incrimination and counsel under the State and Federal Constitutions;
- (c) during a period of extended and unlawful detention;
- (d) by the use of trickery and deceit;
- (e) by the use and threatened use of physical force on the Defendant;
- (f) by means of improper conduct and undue pressure undermining the Defendant's ability to make a choice whether or not to make such statements;
- (g) by means of promises and statements of fact, which promises or statements created a substantial risk that the Defendant might falsely incriminate himself;

(h) in violation of the Defendant's right to counsel and his right to the effective assistance of counsel at the particular time or times the Defendant was questioned and interrogated by law enforcement authorities or their agents;

(i) taken involuntarily within the meaning of CPL 60.45;

(j) taken while the Defendant was detained without probable cause to arrest;

(k) subsequent and pursuant to a warrantless arrest of the Defendant inside his home;

(l) taken without adequately advising the Defendant of his "Miranda" rights prior to questioning.

6. At the very least, a hearing pursuant to CPL §710.60(4) is required. The law is clear that sworn allegations of fact need not be submitted to support a Motion to Suppress Statements if the Motion is made pursuant to CPL §7120.20(3), which is the case here. In People vs. Weaver, 49 N.Y.2d 1012 at pg. 1013 (1980), a Court of Appeals held:

"Thus, in the latter case [where there is a claim of an involuntarily made statement] there must be a hearing whenever Defendant claims his statement was involuntary no matter what facts he puts forth in support of that claim."
(emphasis in original)

SCHEDULE V **SUPPRESSION OF SEARCH**

1. Upon information and belief, the People intend to offer at trial property seized from the Defendant by law enforcement personnel, namely, the body of the victim; Defendant's fingernail

clippings; other samples from Defendant's body, including various items of personal property and other informations that would be made known through the discovery process.

2. The Defendant further moves to suppress from use directly or indirectly as evidence against him at trial, pursuant to CPL §710.20(1), any and all evidence seized and obtained in violation of the rights of the accused under the New York Constitution and the Fourth Amendment of the United States Constitution.

3. Accordingly, a motion is hereby made pursuant to Article 710 of the Criminal Procedure Law.

4. More particularly, the evidence was obtained unlawfully because, on March 13, 2003 at approximately 17:30 hours, the Defendant allegedly signed a Search and Seizure Waiver. Defense counsel has been provided with three (3) such waivers signed at 17:30, 17:30 and 13:25 hours authorizing a search of Defendant's clothing, Defendant's body and the bedroom.

One of the major exceptions to the warrant requirement is a voluntary consent to search. It has repeatedly been held that, in dealings with a consent to search, The People have a heavy burden of proving voluntariness. People v. Whitehurst, 25 NY2d 389. The Court of Appeals has defined a consent to search as voluntary "when it is a true act of the will, unequivocal product of an essentially free and unconstrained choice." People v. Gonzalez, 39 NY2d 122. Whether a consent to search is voluntary, is a question of fact which must be determined from the totality of the circumstances in any particular case. There is no "bright line" test of voluntariness and no one factor, in and of itself, will be determinative. The form of the consent is not determinative, as a valid consent can be either oral, written or implied by specific conduct. In determining this issue, the

Court must assess the presence or absence of various factors which bear on an individual's ability to give a valid consent to search.

It is true that there are certain factors which usually come into play and are considered by the Courts, including whether or not a Defendant is in custody, threats or coercive techniques by the police, the background of a suspect, deception by the police, etc. Voluntariness certainly does go to state of mind. The Defendant does reside at the residence searched and had every expectation of privacy. He has standing. This is apparently the reason why the consent form was requested of the Defendant.

Because of the Defendant's mental state, he was unable to make a knowing and/or intelligent waiver of his rights and signed the consent to search.

On April 3, 2003, JEREMY PERKINS was examined by Joseph W. Liebergall, Ph.D. The doctor points out that JEREMY PERKINS' behavior of the past year has become increasingly odd, eccentric and driven by an underlying psychotic process. Dr. Liebergall writes that, "It is clear at this point that Mr. Perkins still is in the throes of an active psychotic mental illness."

It must be pointed out that JEREMY PERKINS was never prescribed medication for his mental illness until he was arrested. Upon information and belief, at the time that he was examined by Dr. Liebergall, JEREMY PERKINS he was receiving anti-psychotropic medication.

Also, the Defendant was examined by Dr. Brian Joseph. Dr. Joseph reports that, in effect, JEREMY PERKINS presented himself in April of 2003 in a much better light than he did during his initial presentation of March 27, 2003, which was in time much closer to the event. The doctor writes: "He was much more perplexed and had been responding to auditory hallucinations

and was obviously grossly psychotic. At this point, he seems to have responded quite well to the use of anti-psychotropic medication in the form of Risperdal 2 mg. twice a day.”

Copies of these reports are attached hereto.

Accordingly, the Defendant was not in a position to have made any kind of knowing, intelligent or voluntary waiver of any rights that he may have had with respect to the search of his person and the dwelling in which he resided.

5. Defendant is, under Criminal Procedure Law §710.20, a person who is aggrieved by an illegal search and seizure and is authorized to moved to suppress any evidence seized as a result of the illegality. The house that was searched was Defendant’s parents’ home in which Defendant had resided, as a practical matter, for as long as the parents have resided there. Clearly, Defendant had a personal, legitimate expectation of privacy as regards to the entire house.

6. Defendant has standing to contest a search of premises. Courts have ruled that a person has standing even if he occasionally resides in the premises leaving a change of clothes there and using a dresses to keep his clothes. People v. Telfer, 175 AD2d 638 (4th Dept. 1991). It is Defendant’s assertion that the Police were not authorized and were not granted permission by anyone to enter his premises. Clearly, Defendant’s apartment/house is an area in which he has a reasonable expectation of privacy and the invasion of that privacy constitutes a search within the meaning of the 4th Amendment. People v. Mercado, 68 NY2d 874. A search can take a variety of forms and it includes a visual inspection into an enclosed area, even without physical entry. People v. Mercado, *ibid.* Once the Court determines that a search has been conducted it must then be ascertained

whether the search was reasonable. The 4th Amendment clearly bars all unreasonable searches. People v. Peters, 18 NY2d 238.

7. The Police had no search warrant. It is a basic tenant of search and seizure law that absent a warrant, a search is per se unconstitutional. Coolidge v. New Hampshire, 403 US 443. It is only in a few, specific, exceptional circumstances where a warrantless search will be held as reasonable. Katz v. United States, 389 US 347. The New York Court of Appeals has often reiterated its strong preference for search warrants. People v. Hanlon, 36 NY2d 549.

8. A warrantless search of an individual's home or personal effects is per se unreasonable and, therefore, there is a presumption that such searches are unconstitutional. People v. Hodge, 44 NY2d 553. The Courts have defined certain specific and carefully delineated exceptions to these rules which permit a search of an individual's premises or personal effects without a warrant. A search is "good or bad when it starts and does not change character from its success". United States v. DiRe, 332 US 581. The burden of proving the existence of these exceptions is strictly on the prosecution and that burden is even greater when there is ample opportunity to obtain a warrant. People v. Knapp, 52 NY2d 689. The general exceptions to obtaining a warrant for search of premises need not be outlined at this point since it is clear that the basis for the search was the consent signed by the Defendant. If The People set forth a second or other basis for authorization of this unreasonable search, the defense would like an opportunity to respond.

SCHEDULE VI
TIME FOR HEARINGS

1. Pursuant to People v. Sanders, 31 NY2d 463, I request that any hearing ordered and had in this case, with the exception of a Sandoval hearing, be held at least TWENTY (20) DAYS prior to the commencement of trial in order to allow sufficient time for the transcript of the minutes of such hearings.

SCHEDULE VII
INSPECTION OF GRAND JURY MINUTES
AND DISMISSAL OF INDICTMENT

1. Under §190.65(1)(a) of the Criminal Procedure Law, a grand jury is authorized to indict a person for an offense when the evidence presented to it is legally sufficient to establish the Defendant's commission of that offense. "Legally sufficient evidence" is defined in §70.10(2) of the Criminal Procedure Law as "competent evidence which, if accepted as true, would establish every element of an offense charged and the Defendant's commission thereof; except that such evidence is not legally sufficient when corroboration required by law is absent." Upon information and belief, the evidence presented to the grand jury was legally insufficient to establish that Defendant committed the offense(s) charged in the Indictment. The Defendant moves that the Indictment against him be dismissed pursuant to CPL Article 210 based on the grounds that the evidence before the Grand Jury was not legally sufficient to establish the offense(s) charged, or any lesser included offense.

2. Under §210.30(3) of the Criminal Procedure Law, the Court is authorized to release to the Defendant the grand jury minutes, or portions thereof, if such release is necessary to assist the court in making its determination of whether the evidence before the grand jury was legally sufficient.

3. When inspecting the grand jury minutes, Defendant respectfully requests that the Court, at a minimum, make the following determinations:

(a) Was the indictment "repugnant," i.e., did the grand jury vote No True Bill on a lesser included offense yet indict on the higher charge? People v. Cummings, 155 Misc2d 970, 590 NYS2d 1016 (1992).

(b) Was evidence presented of crimes committed by other persons or on other dates, or by Defendant without any limiting instructions? People v. Placencia, 157 Misc2d 397, 597 NYS2d 572; People v. Raynor, 154 Misc2d 576, 585 NYS2d 668.

(c) Was there any unsworn testimony? If so, was it sufficiently corroborated? People v. Groff, 71 NY2d 101, 524 NYS2d 13 (1987), CPL 60.20, PL 130.16.

(d) Did Defendant appear alone before the grand jury and execute a waiver without consultation with counsel? People v. Kirk, 275 AD2d 983, 713 NYS2d 620.

(e) Did the D.A. interfere with the right of Defendant to confer with his attorney? People v. Scluunachi, 262 AD2d 1021, 691 NYS2d 838.

(f) Did the D.A. foreclose questioning by a grand juror or bar a witness from

answering a grand juror's question? People v. Placencia, 157 Misc2d 397, 597 NYS2d 572; People v. Dukes, 156 Misc2d 386, 592 NYS2d 220 (1992).

(g) Did the D.A. decline to have any testimony read back to the grand jury? People v. Jackson, 148 Misc2d 886, 561 NYS2d 398 (1990).

(h) Did the D.A. decline to call a witness whom the grand jury asked to hear? People v. McCann, 169 Misc2d 253, 645 NYS2d 409; CPL 190.50(3); People v. Stanton, 241 AD2d 687, 660 NYS2d 169.

(i) Did the D.A. communicate to the grand jury in a timely fashion the Defendant's request that his witness be heard? People v. Butterfield, 267 AD2d 870, 702 NYS2d 140.

(j) Did the D.A. ever apply to have a witness declared a 'special witness,' CPL 190.32? People v. Rich, 137 Misc2d 474, 520 NYS2d 911 (1987); People v. Gaskins, 171 AD2d 272, 575 NYS2d 564 (2d Dept., 1991).

(k) Was an unauthorized person present during the videotaping of a 'special' witness's testimony? CPL 190.25, 190.32; People v. DiFalco, 44 NY2d 482 (1978); People v. Gilbert, 149 Misc2d 411, 565 NYS2d 690 (1991); People v. Sayavong, 83 NY2d 702.

(l) Was the Defendant provided with the videotaped grand jury testimony taken under CPL 190.32? People v. Kanani, 226 AD2d 226, 641 NYS2d 26.

(m) Did the D.A. present any hearsay? People v. Placencia, 157 Misc2d 397, 597

NYS2d 572 (1993); People v. Hansen, 95 NY2d 227 (2000).

(n) If the indictment was the result of a re-presentation, was leave required and sought? People v. Keith Morris, 93 NY2d 908.

(o) If No True Bill was voted, and the grand jury, sua sponte, reconsidered its vote before filing, was such action coerced by words or physical gestures of the D.A.? People v. Montanez, 90 NY2d 690 (1997).

(p) Were originally indicted charges re-submitted along with new charges resulting in a No True Bill? People v. Alvarez. 86 NY2d 493 (original offenses must then also fall).

(q) Were counts defective as duplicitous or multiplicitous? CPL 200.30(1); People v. Morev. 224 AD2d 730, 637 NYS2d 500; People v. Ivan Jintinez. 239 AD2d 360, 657 NYS2d 735.

(r) Did the trial court improperly amend the indictment by adding a count voted but omitted due to a clerical error? People v. Perez, 83 NY2d 269.

(s) Did a witness testify as an expert and give improper testimony? People v. Richard. 148 Misc2d 573, 561 NYS2d 351 (1990); People v. Thomas, 150 Misc2d 752, 570 NYS2d 436 (1991); People v. Placencia, 157 Misc2d 397, 597 NYS2d 572 (1993); CPL 190.25(6); People v. Vizzini, 183 AD2d 302 (police testified as expert on narcotics without first being qualified).

(t) Did the D.A. fail to supply a qualified interpreter for the hearing-impaired, or for a witness who did not sufficiently understand English? CPL 190.25(3)(d); People v. Rodriguez,

145 Misc2d 105, 546 NYS2d 769 (1989); CPL 190.25 (3-a).

(u) Did a witness who understood only English seek to interpret a foreign language allegedly used by the Defendant? People v. Romero, 78 NY2d 355 (1991); People v. Lo, 150 Misc2d 980.

(v) Did the D.A. use a pre-printed or 'proposed' indictment which was referred to by the D.A. before a vote was taken? People v. Richard, 148 Misc2d 573, 561 NYS2d 351 (1990).

(w) Did any grand juror indicate that he/she knew the Defendant or was familiar with the facts of the case? CPL 190.20(2)(b), (6); People v. Cheeseman, 149 Misc2d 276, 564 NYS2d 676 (1990).

(x) Was the witness intimidated prior to testifying by being detained with police in a small room and 'interviewed'? People v. Michael Donofrio, 199 AD2d 124.

(y) Was the indictment and/or bill of particulars specific as to dates, times and places, and did it relate the names of the victims as to each count? People v. Victor Sanchez, 84 NY 2d 440.

(z) Was the Defendant precluded from testifying after serving notice because he was undergoing an Article 730 mental examination? People v. Bulukas, 95 AD2d 812.

(aa) If lab or ballistics reports were received by the grand jury, were they properly certified by the same person who conducted the analysis? Matter of Rodney J., 83 NY2d 503; Matter of Wesley M., 83 NY2d 898; CPL 190.30(2).

(bb) If electronically transmitted (faxed) documents were received, did they comport with the requirements of the statute, CPL 190.30(2-a)?

(cc) Was a quorum of grand jurors present prior to hearing evidence and prior to voting? CPL §190.25(1); People v. Collier, 72 N.Y.2d 298, 532 N.Y.S.2d 718, 528 N.E.2d 1191 (1988);

(dd) Was the indictment voted by an extended term of the grand jury? People v. Williams, 73 N.Y.2d 84, 538 N.Y.S.2d 222, 535 N.E.2d 275 (1989)(extended term may not consider new matters that were not pending during original term);

(ee) Was the presentation of evidence withdrawn prior to a vote being taken and then re-submitted? People v. Wilkins, 68 N.Y.2d 269, 508 N.Y.S.2d 893, 501 N.E.2d 542 (1986) (withdrawal tantamount to a dismissal; leave of court is required to re-submit);

(ff) Was the grand jury properly instructed with regard to who decides the legal sufficiency of the evidence? People v. Batashure, 75 N.Y.2d 306, 552 N.Y.S.2d 896, 552 N.E.2d 144 (1990)(grand jurors, not prosecutor, decide sufficiency of evidence; improper for prosecutor to inform grand jurors that prosecutor has already determined that enough evidence exists to warrant an indictment);

(gg) Did the prosecutor properly answer any questions raised by the grand jurors? CPL §190.25(6);

(hh) Were the prosecutor's legal instructions too confusing to be understood by the grand jury in considering the charges? People v. Caracciola, 164 A.D.2d 755, 560 N.Y.S.2d 133 (1st Dep't 1990), *aff'd* 78 N.Y.2d 1021, 576 N.Y.S.2d 74, 581 N.E.2d 1329 (1991);

(ii) Did the prosecutor inject his or her personal opinions or beliefs or vouch for the credibility of prosecution witnesses? People v. Bartolomeo, 126 A.D.2d 375, 513 N.Y.S.2d 981 (2d Dep't 1987); and

(jj) Was there excessive delay between the instructions at the beginning of the term and the legal instructions in Defendant's case made at the close of the presentation of the evidence? People v. Augustine, 172 A.D.2d 843, 569 N.Y.S.2d 207 (2d Dept. 1991).

4. The Defendant moves to dismiss the charges contained in this Indictment based on a lengthy and unjustifiable delay between the arrest of Defendant and Indictment.

5. The Indictment fails to substantially conform to the requirements set forth in CPL Article 200.

6. The Indictment includes duplicitous counts in violation of CPL 200.30.

7. The arrest of the Defendant was wholly without probable cause.

8. The prosecution is barred by reason of a previous prosecution, pursuant to CPL 40.20.

9. The Defendant has received immunity from prosecution for the offense charged, pursuant to CPL 50.20 or CPL 190.40.

10. The allegations demonstrate that this Court does not have jurisdiction of the offense(s) charged.

11. The Grand Jury proceeding was defective within the meaning of CPL 210.35.
12. The statute defining the offense charged is unconstitutional or otherwise invalid.

SCHEDULE VIII
DISCLOSURE PURSUANT TO CPL §240.43

1. Pursuant to CPL §240.43, People v. Betts, 70 NY2d 289, and People v. Ventimiglia, 52 NY2d 350, the Defendant hereby requests notification of all specific instances of his alleged prior uncharged criminal, vicious, or immoral conduct of which the People have knowledge and which the People intend to introduce as direct evidence at trial, or upon cross-examination, to impeach the credibility of the Defendant, should he chose to testify at trial.

2. Pursuant to CPL 240.43, the defense requests that the Court order the prosecution to provide this information with THREE (3) DAYS, excluding Saturdays, Sundays and holidays, prior to the commencement of jury selection.

3. To the extent that the prosecution introduces evidence of uncharged crimes on its direct case, the defense requests that it be provided with all Rosario material of the witness relating to such uncharged crimes. People v. Lineszy, 212 AD2d 548.

4. Deponent is not aware of any prior convictions of the Defendant, which the People would be able to use for impeachment purposes at trial.

5. Prior to trial, however, the Defendant respectfully requests that this Court grant a hearing pursuant to People v. Sandoval, 34 N.Y. 371 (1974), in order to determine which, if any, of his prior criminal convictions and/or arrests, together with any other acts requested to be disclosed

pursuant to CPL §240.43 will be allowed by the Court to be used for cross-examination purposes. The defense will wait until the District Attorney supplies the Defendant's criminal record, as well as a list of any of the Defendant's prior uncharged criminal, vicious or immoral conduct sought to be used for purposes of cross-examination pursuant to CPL 240.43 before asking for preclusion of specific crimes or acts.

6. It is the defense's contention that the presentation of such information to the jury in this case would greatly prejudice the Defendant, far outweighing any probative value such information may have.

7. Pursuant to CPL 160.40, deponent requests that the Court provide Defendant with a copy of Defendant's Division of Criminal Justice Services report to enable Defendant to prepare for a Sandoval hearing.

SCHEDULE IX WITNESSES

1. Pursuant to People v. Rivera, 119 A.D.2d 517 (1st Dept. 1986), the Defendant requests disclosure of the names and addresses of any witnesses to be called by the People in this action.

2. Deponent knows of no compelling circumstances, which should preclude this Court from granting this request.

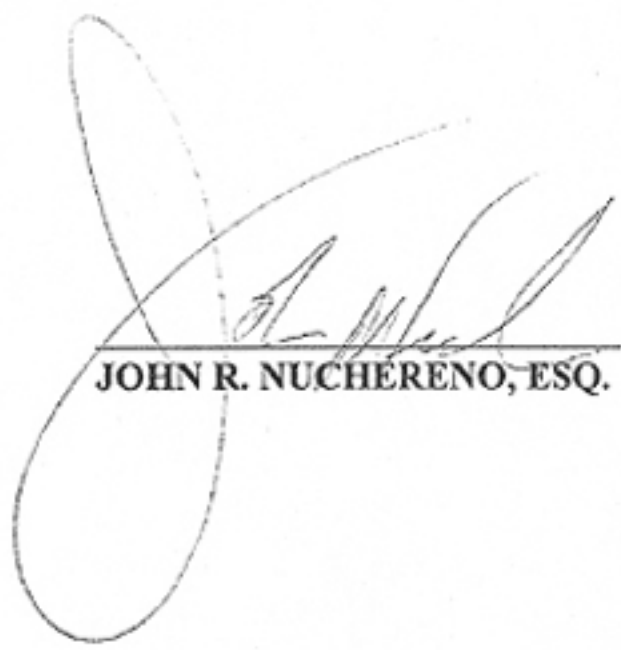
SCHEDULE X
ROSARIO MATERIAL

1. Pursuant to CPL §245.45, the People must disclose material pursuant to People v. Rosario, 9 N.Y.2d 286 (1961), after a jury is selected.
2. At the very least, Defendant requests that the Court order the prosecution to provide any discovery to which the Defendant is entitled pursuant to People v. Rosario, 9 NY2d 286 and CPL 240.45 to the Defendant within THREE (3) DAYS, excluding Saturdays, Sundays and holidays, prior to the commencement of any hearing and or trial relating to this matter.
3. However, in order to avoid problems and delay during trial, it is submitted that early disclosure of Rosario material should be directed in the Court's discretion.
4. To avoid trial problems of failure to exercise adequate care in preserving Rosario material and the prejudice to the defense if that should happen, to avoid the necessity of "adverse inference" instructions at trial and to avoid delaying trial disputes regarding "work product" exceptions during trial, early disclosure is requested.

SCHEDULE XI
OTHER MOTIONS

1. The Defendant reserves the right to make any further motions, which may become necessary as a result of disclosure pursuant to the above motions and/or any hearings conducted by the Court as a result of the motions.

DATED: June 19, 2003
Buffalo, New York



Handwritten signature of John R. Nucherenno in cursive script, written over a horizontal line.

JOHN R. NUCHERENO, ESQ.