[redacted]

HON. [redacted]
Erie County Court
25 Delaware Avenue
Buffalo, NY 14202

Re: [redacted] **LETTER MEMORANDUM**

Dear Judge [redacted]

This letter memorandum supplements the omnibus motion filed by the Defense on or about [redacted] pecifically with regard to the demand for search warrant application discovery pursuant to CPL 245.20(1)(n).

Prior to the enactment of the CPL Article 245 discovery reforms, defense attorneys had to practice in the dark when it came to challenging the validity of search warrants. For the most part, we had to be content with the Court reviewing materials *in camera* without making any arguments or having any meaningful input as to what the Court should look for. And, when the trial court denied suppression, we were totally unable to determine the likelihood that the decision would ultimately be reversed by the appellate division. This greatly impacted a defendant's ability to make a "knowing and intelligent" decision as to whether to plead guilty.

Clearly, in enacting CPL 245.20(1)(n), the legislature saw the value in having a defense attorney review the materials and make a specific argument. CPL 245.20(1)(n) provides that the prosecuition shall **automatically** disclose to the defendant, "[w]hether a search warant has been executed and all documents relating thereto, including but not limited to the warrant, the warrant application, supporting affidavits, a police inventory or all property seized under the warrant, **and a**

transcript of all testimony or other oral communications offered in support of the warrant application." The legislature would not have put the *in camera* testimony into the discovery statue if it did not intend the Defense to have it. There is no authority to deny the Defense access to materials that are discoverable under CPL 245.

These materials are especially important in [redacted] case, which stems from the search of [redacted] residence on [redacted], pursuant to a search warrant. Perhaps the only issue in the case is the validity of the search warrant - both whether probable cause was provided, and whether there was an adequate showing that the source of the information was reliable and credible. Such information cannot be determined based on the search warrant application alone. The search warrant application states that a confidential source was brought before the issuing judge ([redacted] City Court Judge [redacted]) and testified as to his/her knowledge concerning the subject matter of the search warrant, and that a record of the in camera testimony of said cooperating witness was made and preserved.

Because this case rises or falls based on the validity of the search warrant, the Defense must analyze what was said by and about the confidential source before forming an opinion as to the strength of the case. Mr. [redacted] is unable to make a knowing decision as to whether or not to plead guilty if the Defense is not provided with the subject discovery. And, if Mr. [redacted] chooses not to plead guilty and instead to litigate the search, then the Defense needs the subject discovery in order to articulate why the search warrant never should have been issued.

I expect the prosecution to argue that it cannot turn over the materials because the materials are not in its possession. Rather, the materials are possessed *under seal* by the issuing Court (Lackawanna). However, CPL 245(2) mandates that the prosecutor make a diligent, good faith effort to ascertain the existence of material or information discoverable and to cause such material or information to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control. This is exactly what the prosecution does with regard to so called "50-A" material involving law enforcement disciplinary records. This is no different. The prosecution is absolutely aware of this discovery's existence. It is *under seal* with the [redacted] Court. The prosecution would need to show "good cause" for the issuing court to provide the materials. An Order from Your Honor directing the prosecution to obtain and turn over the materials pursuant to their CPL 245 obligations would provide that "good cause".

The Defense would agree to any reasonable restrictions, including redaction of the names of informants and also directions not to disclose any of the information contained in the *in camera* to [redacted] or anyone else (attorney eyes only).

I also bring to the Court's attention CPL 245.20(k)(vi), which mandates discovery of information known to law enforcement which may provide a basis for a motion to suppress evidence. Further, CPL 245.20(7) provides that there shall be a presumption in favor of disclosure when interpreting the statute. And finally, CPL 245.25(2) mandates that this discovery be provided before the defendant accepts or rejects a plea offer, and that a plea offer **cannot** be conditioned on waiving the discovery. The legislature could not be any more clear that it wanted guilty pleas to be more "knowing" than they have been.

The disclosure of the subject discovery is necessary to protect a Constitutional Right, to wit: the prohibition against unreasonable searches and seizures (US Const, 4th Amend, NY Const., Art. I, Section 12).

For all of these reasons, the Defense demands full compliane with CPL 245, and asks that the Court order the prosecution to obtain and turn over the requested material.

Thank you.

Very truly yours,

[redacted]

cc: [redacted], ADA