

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	Criminal No. 21-CR-278 (BAH)
	:	
v.	:	
	:	
ROBERT SCHORNAK and	:	
DANIEL HERENDEEN,	:	
Defendants.	:	
	:	

NOTICE OF FILING DISCOVERY CORRESPONDENCE

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby files its May 14, 2021 discovery letter in this case, which was served as an attachment via ECF on counsel for the Defendants.

Respectfully submitted,

CHANNING D. PHILLIPS
Acting United States Attorney
D.C. Bar No. 415793

By: _____ /s/ _____
 Amanda Fretto
 Assistant United States Attorney
 D.C. Bar No. 1018284
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 Washington, DC 20530
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 (202) 252-7268

CERTIFICATE OF SERVICE

On this 14th day of May, 2021, a copy of the foregoing was served on counsel of record for the defendants via the Court's Electronic Filing System.

 /s/
 Amanda Fretto
 Assistant United States Attorney



U.S. Department of Justice

Channing D. Phillips
Acting United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530*

May 14, 2021

BY EMAIL

Eugene Ohm
Eugene_Ohm@fd.org
Counsel for Robert Schornak

Colleen Fitzharris
Colleen_Fitzharris@fd.org
Counsel for Daniel Herendeen

Re: *United States v. Robert Schornak and Daniel Herendeen, 21-cr-278*
Discovery Production 1

Dear Counsel:

In response to your request for discovery, and in the hopes of exploring a possible resolution of this matter in the future, we write to memorialize the preliminary discovery that we provided for download off of USAFx. This material is subject to the terms of the Protective Order issued in this case. **Materials in this production are designated Sensitive and Highly Sensitive under the Protective Order.**

Materials Provided to Both Defendants:

The following materials were provided via email and USAfx on April 22, 2021:

- Viewing Letter for counsel to tour the U.S. Capitol;
- U.S. Capitol Floor Plan – First Floor;
- U.S. Capitol Floor Plan – Second Floor;
- U.S. Capitol Floor Plan – Third Floor;

The following materials were provided via USAfx on April 22, 2021:

- Search warrant and affidavit for Herendeen's Residence and Device(s);
- Search warrant and affidavit for Schornak's Residence and Device(s);

- Search warrant and affidavit for Schornak to Apple;
- Search warrant and affidavit for Schornak's Verizon and cell site;

The following materials were provided via USAfx on April 23, 2021:

- Search warrant and affidavit for Herendeen to Apple;
- Search warrant and affidavit for Herendeen to Facebook;

The following materials were provided via USAfx on April 26, 2021:

- Search warrant and affidavit for Schornak's Facebook;

The following materials were provided via USAfx on May 10, 2021:

- USCP CCTV – **Designated Highly Sensitive**;
- Still image from USCP CCTV;

The following materials were provided via USAfx on May 13, 2021:

- FBI 302 Regarding Review of the Facebook Return for Schornak (8 pages) – **Designated Sensitive**;

Materials Provided to Counsel for Robert Schornak:

The following materials were provided via USAfx on May 10, 2021:

- Full Schornak Facebook return;

The following materials were provided via USAfx on May 13, 2021:

- Full Schornak Verizon return;

The following materials were provided via USAfx on May 13, 2021:

- Schornak Apple return – Due to a technical issue, all files in this return could not be uploaded. The government notified counsel and is working on a solution to provide the full return to counsel.

Additional Discovery:

- The government notified counsel that discovery has been compiled for Mr. Herendeen. This material is with our Discovery Team being processed and Bates stamped. We anticipate this production being ready in about two weeks. Additional discovery for Mr. Schornak will follow as well.
- The government has requested an expedited copy of all USCP CCTV identified specific to Mr. Herendeen and Mr. Schornak. As soon as the assigned AUSA receives these videos, we will make them available to counsel.

We received a notification that counsel has already downloaded some of the materials for this case from USAfx. To the extent you have not already done so, please download all of these files as soon as possible from USAfx, as it is not a storage medium; rather, it is a file transfer method. The folder and its contents will expire within 60 days. Please advise me immediately if

you have difficulty downloading the discovery folder. This early discovery is not a complete production, but rather preliminary discovery. We anticipate producing more fulsome discovery in the future. Please contact me if you have any issues accessing the information, and to confer regarding pretrial discovery as provided in Fed. R. Crim. P. 16.1.

Due to the extraordinary nature of the January 6, 2021 Capitol Attack, the government anticipates that a large volume of materials may contain information relevant to this prosecution. These materials may include, but are not limited to, surveillance video, statements of similarly situated defendants, forensic searches of electronic devices and social media accounts of similarly situated defendants, and citizen tips. The government is working to develop a system that will facilitate access to these materials. In the meantime, please let me know if there are any categories of information that you believe are particularly relevant to your client.

I recognize the government's discovery obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), its progeny, and Rule 16. I will provide timely disclosure if any such material comes to light. Consistent with *Giglio, Ruiz*, and 18 U.S.C. § 3500, I will provide information about government witnesses prior to trial and in compliance with the court's trial management order.

I request reciprocal discovery to the fullest extent provided by Rule 16 of the Federal Rules of Criminal Procedure, including results or reports of any physical or mental examinations, or scientific tests or experiments, and any expert witness summaries. I also request that defendant(s) disclose prior statements of any witnesses defendant(s) intends to call to testify at any hearing or trial. *See* Fed. R. Crim. P. 26.2; *United States v. Nobles*, 422 U.S. 255 (1975). I request that such material be provided on the same basis upon which the government will provide defendant(s) with materials relating to government witnesses.

I will forward additional discovery as it becomes available. If you have any questions, please feel free to contact me.

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY
For the District of Columbia

By: _____ /s/
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