

From: "[REDACTED] (USANYS)" <[REDACTED]>
To: "[REDACTED] D. (NY) (FBI)" <[REDACTED]>, "[REDACTED] A. (NY) (FBI)" <[REDACTED]>
Cc: "[REDACTED] y (USANYS)" <[REDACTED]>, "[REDACTED] (USANYS)" <[REDACTED]>

Subject: [EXTERNAL EMAIL] - Fw: [EXTERNAL] Propose Protocols

Date: Thu, 21 Aug 2025 17:49:46 +0000

Importance: Normal

See below. Let's chat.

From: [REDACTED] ABFE <[REDACTED]>
Sent: Thursday, August 21, 2025 1:47:43 PM
To: [REDACTED] (USANYS) <[REDACTED]>
Cc: [REDACTED] (USANYS)
<[REDACTED]>
Subject: Re: [EXTERNAL] Propose Protocols

It doesn't sound like you understand correctly, Dan.

But, we have a much bigger problem. The drive that we were provided last week for work product is gone. It's not here. It was provided by Eric. I'll ask him if he has any idea. But, in the meantime, that drive contained work product. I'll defer to Counsel on how they'd like to handle that with the DOJ.

Jeff Michael Fischbach
Forensic Technologist ■ Litigation Consultant ■ Adviser ■ Lecturer ■ Public Speaker
SecondWave, Inc., Los Angeles, CA
[REDACTED]

On Thu, Aug 21, 2025, 1:41 PM [REDACTED] (USANYS) <[REDACTED]> wrote:
if I understand correctly, you are declining to speak or meet today. That is unfortunate, and what you say below, including apparent accusations, is neither accurate nor productive. We remain available to confer with you and/or counsel anytime, including today, to discuss any concerns or questions, and are also available to return to court.

From: [REDACTED] ABFE <[REDACTED]>
Sent: Thursday, August 21, 2025 1:24 PM
To: [REDACTED] (USANYS) <[REDACTED]>
Subject: Re: [EXTERNAL] Propose Protocols

[REDACTED],

The latter is between you and Robert. I told you previously why I prefer the RCFL. Once I finally got your proposal in writing, it did not meet or exceed my experience with the RCFL. And your insistence on inserting yourself into things, reluctance to have them memorized, and tendency to redefine things only adds to the benefit of the RCFL.

If "written FBI Policies" is an allegation, then we probably have some larger concerns. But, as I said, I signed something the FBI will not let me see. I have been asking for a copy of it since it was signed. And your words - quoted not alleged -- make having that even more important.

If the purpose of this meeting is to assuage anything, then again, you should contact Counsel. Like them, if you're making promises, pitches, or proposals, I'd like to receive them in writing. As I said earlier, we can take notes and bring those to Counsel, but your insurance on circumventing Counsel is inappropriate. And your last sentence below is reason enough to ask that you address ANY questions or assuagion to Counsel.

I cannot have that conversation with you without them. Appologies in advance if that causes you any confusion.

Jeff Michael Fischbach

Forensic Technologist ■ Litigation Consultant ■ Adviser ■ Lecturer ■ Public Speaker
SecondWave, Inc., Los Angeles, CA

On Thu, Aug 21, 2025, 12:36 PM [REDACTED] (USANYS) [REDACTED] wrote:

We will meet you at 2 pm.

As to alleged written "FBI Policies" for you to review and agree to "as a condition to retrieving work product," as we have said for days, we do not understand to what you are referring, and it is not consistent with what we said, wrote, intended, or understand to be the process. We have no such document to provide to you, and do not understand the basis for your continued declination to have the materials reviewed by a taint agent, as they are in every case, and could have been done days ago. At a minimum, therefore, it seems that we should speak regarding this issue, so that we can either assuage your asserted concern or promptly to go the Court.

As to our space, [REDACTED] has not provided us with any questions or concerns, nor have you, and we therefore have no understanding as why it appears to have been rejected, and we will so inform the Court as warranted.

From: Jeff M. Fischbach, ABFE [REDACTED]
Sent: Thursday, August 21, 2025 12:17 PM
To: [REDACTED] (USANYS) <[REDACTED]>
Comes from: [REDACTED] (USANYS) [REDACTED]; Robert M. Herz [REDACTED]; elizabeth kelley <[REDACTED]>; Samuel M. Braverman [REDACTED]; [REDACTED] (USANYS)
Subject: Re: [EXTERNAL] Propose Protocols

Based on our prior experience speaking directly about your proposed space, I'm going to respectfully decline to have that conversation with you, and defer you to Robert Herz for that. The decision is his. I believe it has been made. As I requested on August 1, please refer to him.

Again, I have no questions for you at this time. If that was your only substantive question, then given the time constraints, I would refer back to my prior request to either provide a copy of the FBI Policies you cited in writing as a condition to retrieving work product, or send a message stating clearly -- in writing -- that [REDACTED] will ONLY be reviewing, per the Walsh Act.

I cannot accept that verbally.

Jeff Michael Fischbach
Forensic Technologist ■ Litigation Consultant ■ Adviser ■ Lecturer ■ Public Speaker
SecondWave, Inc., Los Angeles, CA
[REDACTED]

On Thu, Aug 21, 2025, 11:59 AM [REDACTED] (USANYS) <[REDACTED]> wrote:

I am happy to meet at 2 pm wherever you would like. The agenda for our meeting is, at a minimum, your email below, which appears to raise multiple issues, and we also would like to know what concerns you have about doing the review in our office, since you have expressed concerns about the FBI's space (although we do not understand all such concerns), but not explained what, if any, concerns you have about our space.

From: Jeff M. Fischbach, ABFE [REDACTED] >
Sent: Thursday, August 21, 2025 11:56 AM
To: [REDACTED] >
Cc: [REDACTED]; Robert M. Herz <[REDACTED]>; elizabeth kelley <[REDACTED]>; Samuel M. Braverman <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>
Subject: Re: [EXTERNAL] Propose Protocols

I is a little late for lunch, so let's make it 2PM. We don't have the ability to roam the building without an escort, but we should be back in the Defense Review Room. Again, I have no questions for you at this time. But I am always happy to take your questions and attempt to answer what I can, and convey anything I can't answer, or that requires a decision to Counsel, as I did on August 1st.

Jeff Michael Fischbach
Forensic Technologist ■ Litigation Consultant ■ Adviser ■ Lecturer ■ Public Speaker
SecondWave, Inc., Los Angeles, CA
[REDACTED]

On Thu, Aug 21, 2025, 11:48 AM [REDACTED] (USANYS) <[REDACTED]> wrote:

I could meet you there (or anywhere else) at 1 pm or later.

From: Jeff M. Fischbach, ABFE [REDACTED]
Sent: Thursday, August 21, 2025 11:46 AM
To: [REDACTED] (USANYS) <[REDACTED]>
Cc: [REDACTED] (USANYS) <[REDACTED]>; Robert M. Herz <[REDACTED]>; elizabeth kelley <[REDACTED]>; Samuel M. Braverman <[REDACTED]> (USANYS)
[REDACTED]
Subject: Re: [EXTERNAL] Propose Protocols

Now would be perfect. We're in the Defense Review Room at the FBI. Please let me know if you need help getting in.

Jeff Michael Fischbach
Forensic Technologist ■ Litigation Consultant ■ Adviser ■ Lecturer ■ Public Speaker
SecondWave, Inc., Los Angeles, CA
[REDACTED]

On Thu, Aug 21, 2025, 11:42 AM [REDACTED] (USANYS) <[REDACTED]> wrote:

Please let me know when works to connect, so that we may discuss the below, which is both confusing to us and contains several misstatements. As we have said, email is plainly not a productive medium.

From: Jeff M. Fischbach, ABFE [REDACTED]
Sent: Thursday, August 21, 2025 11:37 AM
To: [REDACTED] (USANYS) <[REDACTED]>
Cc: [REDACTED] (USANYS) <[REDACTED]>; Robert M. Herz <[REDACTED]>; elizabeth kelley <[REDACTED]>; Samuel M. Braverman <[REDACTED]> (USANYS) <[REDACTED]>
Subject: Re: [EXTERNAL] Propose Protocols

[REDACTED]

By the letters/numbers:

(a) I have no questions for you at this time. My offer was in response to your repeated request to speak directly, not in writing. If you would still like that, I am here until 5, or you can join us for lunch if that makes it easier for you. Thus far, in your manner of speaking, it appears as though you have "declined" that option.

Also, again for the record, I participated in your August 1st conference call because you made it a condition to gain access to my work product at the FBI, prior to what I thought at the time was the case being moved to Philadelphia. Other than when that move would happen, I had no questions prior to your conference call. I did have some I thought might be Robert's likely questions as a result of the things you proposed in that call. I believe those were all answered since in a way that remained less desirable than the RCFL.

(2) Again, while I always appreciate your enthusiasm, I don't need your assistance with speaking with the RCFL. I just needed you to allow the Director to speak with me. In an abundance of optimism, I will again try to call him myself, at least to gain calendar information from him.

(3) This is different than you wrote previously: "...[Eric] will not report to the case agents or prosecution team what he sees in reviewing your material, except to the extent it appears that Jeff has taken CSAM (or otherwise violated FBI security protocols)." AJ is observing us. Eric is here now. He just came in. Are you now saying that we will NOT be held accountable to any possible, and currently undefined, violations of FBI Protocols? If you can make it clear in writing that you are retracting that condition, as quoted here, then we can show that to Eric, and ask him to go head and search ONLY for violations of the Walsh Act. Which is written, and known to me. Even better, perhaps you could email that retraction to him, CC'ing this group, so he gets it directly from you.

Though, I have been asking for a copy of the relevant FBI protocols -- possibly in what I was told I had to sign -- since our first day here, I believe that your retraction of any repercussions from possible violations of those protocols would suffice.

Jeff Michael Fischbach
Forensic Technologist ■ Litigation Consultant ■ Adviser ■ Lecturer ■ Public Speaker
SecondWave, Inc., Los Angeles, CA

On Thu, Aug 21, 2025, 10:55 AM [REDACTED] wrote:

Jeff,

We are confused by your email. Without commenting on the rest, (a) we are happy to speak or meet whenever works for you today – so please let us know if you have a preferred time – with a goal to answer

any questions you may have, and to hear from you any concerns you may have, just as we did on August 1 and have suggested for weeks since, so that there is no unnecessary delay in your work; (2) we have informed the Philadelphia RCFL, including the Director, that you would like to speak with them, and will let you know when works; and (3) we never said there were written protocols we had to show you before you could remove your work product, and, rather, you may remove it whenever you would like after the taint agent (Eric) reviews it, as is standard practice, without any other steps.

Please also note that our space remains available, namely, a private, locking conference room, with outlets, a landline, a wall screen, and without any contemporaneous monitoring by a person or equipment, should you wish to work there instead. While you appear to have declined that offer, we will continue to make this available if you would like, upon request and with reasonable notice, and we could also show you the room today if that would be of assistance.

[REDACTED]

From: Jeff M. Fischbach, ABFE <jeff@secondwave.com>
Sent: Thursday, August 21, 2025 10:20 AM
To: [REDACTED] (USANYS) <[REDACTED]>
Cc: [REDACTED] (USANYS) <[REDACTED]>; Robert M. Herz <[REDACTED]>; elizabeth kelley <[REDACTED]>; Samuel M. Braverman <[REDACTED]>; Maxwell, Rita (USANYS) <[REDACTED]>
Subject: Re: [EXTERNAL] Propose Protocols

[REDACTED],

Again, you're ignoring the parts that suit finishing my work, and adding-in parts that suit yours. I did not write anything contrary to Robert. I did not say I'd "like to have [you] set up a call with the Philadelphia RCFL". Nor did I invite you or the FBI to join my communication with the RCFL. The reason for the RCFL was specifically to remove the DOJ from interfering with my work. While I appreciate all your stated good intentions, I don't require your assistance IN my work. So far, it has only served to block and delay my work. I did not hear Judge Engelmayer order that having you involved in my discussions with the RCFL Director was a condition to my speaking and coordinating my work there with him. You are the first AUSA in decades of experience to insist on it.

I was only requesting that you remove the roadblock from my speaking directly with Director Tanzola. That is MY request. Rober's request still stands. Dir. Tanzola is a professional, and a member of law enforcement. Like telling agents that we can no longer text, even just to get in the building without it going through you, (today being a notable exception) your insistance in being a filter between me an the RCFL Director only slows this process.

As for your request to speak directly with me, because you have insisted on receiving a message every time we enter the building, you should know exactly when I am here. Because you yourself brought issue to the court over cameras in the workspace here or anywhere else, you should also be well aware that it would be a violation of the Walsh Act, and likely FBI protocols, for me to video conference here. Beside that, your last conference call took somewhere around 24 hours for you to coordinate.

I don't even know what you want to chat about, but we are here now, to answer any questions, or clear up any confusion you may have. I believe you said, in the same building as you. And I am still waiting for you to provide me a copy of the FBI protocols you cited as a condition to remove work product from here. So, please don't forget to bring the protocols when you come.

Jeff Michael Fischbach
Forensic Technologist ■ Litigation Consultant ■ Adviser ■ Lecturer ■ Public Speaker
SecondWave, Inc., Los Angeles, CA
[REDACTED]

On Thu, Aug 21, 2025, 9:40 AM [REDACTED] (USANYS) <[REDACTED]> wrote:

Jeff,

Without commenting on your other assertions:

With respect to meeting, neither I nor others on our team were available to meet with you in person earlier, but we are happy to do so later, at your convenience, just as we have offered a videoconference or call for weeks. If you would indeed like to meet, please let us know when works, or we can jump on a videoconference or call.

With respect to the Philadelphia RCFL, if, contrary to what Robert said yesterday, you would indeed like to have us set up a call with the Philadelphia RCFL, we will do so. It will not be solely with the Director, but others with the FBI also (and we would join too). Please let us know when works for you and we'll work to get the call set up.

[REDACTED]

From: Jeff M. Fischbach, ABFE <[REDACTED]>
Sent: Thursday, August 21, 2025 9:24 AM
To: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; Robert M. Herz <[REDACTED]>; elizabeth kelley <[REDACTED]>; Samuel M. Braverman <[REDACTED]> (USANYS) <[REDACTED]>
Subject: Fwd: [EXTERNAL] Propose Protocols

Good morning!

Appologies everyone. In my rush to reply on my way to the FBI to transcribe work product, I hit Reply, instead of Reply All on the last message. It is below. TL/DR: I'm still hoping that today [REDACTED] will get me a copy of the FBI protocols we need to meet in order to remove our complete work product, I invited him to speak directly with me while I am here, per his request, and again, asked that he accurately convey to RCFL Director [REDACTED] that I'd like to speak with him and get a written copy of the RCFL's calendar availability and site-specific protocols, per Robert Herz's prior request.

Also, I wanted to mention that, once again, the FBI Defense workstation WAS rebooted (confirmed), and the docked drives removed, and placed on the table. We did, again, leave things open, and working for work product removal when we last left. I don't know yet the status of that. I'm hopeful that it completed before the machine was reset, and drives removed.

----- Forwarded message -----

From: Jeff M. Fischbach, ABFE <[REDACTED]>
Date: Thu, Aug 21, 2025, 8:10 AM
Subject: Re: [EXTERNAL] Propose Protocols
To: [REDACTED] (USANYS) <[REDACTED]>

[REDACTED]

I find the repeated misrepresentation of written words to be unproductive. So, I won't respond to any of them, but to say that -- as has always been the case -- I am waiting for you to allow the director to speak directly with me. That, as I requested, can be done by email to him, CC'ing me.

No one is declining a call with the RCFL. Much as you gave us "options" -- other than the one we requested and received from the Court -- Robert gave you an option to expedite getting a calendar and any location-specific protocols from the RCFL, which has been my stated reason

for calling the Director. (My experience has been that the Director is generally who I am asked to contact for my examinations.)

Instead of miscommunicating to him that anything has been "declined", please tell Jeff that I would very much like to speak with him, and that I remain available to him at [REDACTED] - the number he has previously used to reach me. Please use those exact words, rather than what my words may suggest to you.

Per your repeated suggestion to speak without written or recorded evidence, I'm offering you the option to come down and let us into the building this morning -- as [REDACTED] has done -- and speak with me at the FBI, so that I can answer anything that may still confuse you. I will be there in an hour, at 9AM, transcribing our work product, absent the protocols you have declined to provide.

While transcribing work product may be a form of "work", it is not the work we wish to do at the RCFL, or the work we have been trying to do at the FBI. It is simply a never-before-required-task -- in ANY case, anywhere in the nation -- because everywhere else, including multiple RCFL's, we have been provided the written policies and protocols we need to follow, both to complete work and remove work product. Similarly, we generally have a Protective Order to follow.

Please accept my offer. I would like to help you understand what we are doing today, what we have been attempting to complete, and why your expressed and written protocols fall short of the RCFL.

I hope to see you there, and I hope that you will bring a copy of the FBI protocols I need to fillow in order to get [REDACTED] started, so we can remove work product.

Jeff Michael Fischbach
Forensic Technologist ■ Litigation Consultant ■ Adviser ■ Lecturer ■ Public Speaker
SecondWave, Inc., Los Angeles, CA
[REDACTED]

On Wed, Aug 20, 2025, 9:53 PM [REDACTED] (USANYS)
[REDACTED] > wrote:

Robert,

Your email, like many others in the past three weeks, is unfortunately inaccurate in multiple ways, both to the extent it appears to repeat prior assertions and accusations, and to the extent it appears to make new ones. In any event, these types of emails plainly are not a productive manner of working through any asserted issues. We remain available to confer, but as we stated weeks ago, we cannot consent to recording (nor has anyone else demanded that as a condition to conferring in our collective decades with this office, although we will continue to consider all requests on the merits and in good faith, regardless of whether they are or are not typical). We also understand that you are declining to speak with the Philadelphia RCFL, which surprises us and is a change from what you requested previously, including in your email below of yesterday. We will continue to be available to set up such a call, but in the meanwhile, we will inform the Philadelphia RCFL that you decline to have such a call.

As we understand the present state of affairs, you are declining to confer with us unless it is recorded; you are declining to speak with the Philadelphia RCFL; while Jeff has been using the FBI space, and has plans to do so again tomorrow, he has expressed concern about alleged written, but unidentified, protocols, but he too will not confer with us unless it is recorded; and you are declining to utilize our space, which would involve, as we stated in writing a number of days ago, a locking and private room, without any form of contemporaneous monitoring, thereby meeting or exceeding what you said you wanted (and we also offered to consider any other requests you might make about that space, and you made none). Absent a change in the foregoing by tomorrow afternoon, we plan to ask the Court to schedule a conference.

[REDACTED]

From: Law Office Of Robert Herz <[REDACTED]>
Sent: Wednesday, August 20, 2025 10:50 AM
To: [REDACTED] (USANYS) <[REDACTED]>
Cc: 'ELIZABETH KELLEY' <[REDACTED]>; 'Samuel M. Braverman' <[REDACTED]>; 'Jeff M. Fischbach, ABFE' <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>
Subject: RE: [EXTERNAL] Propose Protocols

[REDACTED]

I won't waste time responding to your comments regarding the government's view of what it refers to as a media exam report. But your comment does miss the point. I specifically referred to the spreadsheet of files for Evidence item 1B2. It is the disclosure of these 80,000+ files that represents potential new evidence, since up to that time the government had not been able to access that drive to create any kind of forensic copy, and still hasn't. And without waiving any argument about the reliability of any data derived from 1B2 or 1B15, or the spoliation of those drives, presumably the government intends to rely on those 80,000+ files in whole or in part in prosecuting Mr. Smith. Conducting a forensic exam of 1B2 and 1B15 given the volume of files will take quite some time.

We are ready to have [REDACTED] the government's taint agent, to review our work product, as soon as you provide Jeff a copy of the FBI security protocols you referenced. Please respond to the request to provide the protocols. It is an entirely reasonable request. I do not understand why the government has not responded to the request and has not yet provided the FBI Security Protocols. BTW please check your reference to a July 26 date I have no such email referring to a taint agent on that date.

As for RCFL scheduling, I think having the RCFL provide a calendar with available dates and times will be more expedient than any call; they should be able to do that today. You reference RCFL procedures, if the Philadelphia RCFL has established and written procedures please forward those to me; to the extent they already exist, they should be available today.

As we have expressed in earlier emails, Jeff did not accept any offer or agree to anything, your understanding to the contrary. As I have observed a recording of that call would easily resolve this issue. And as also expressed in prior emails, the only "multiple options" the government has offered have consisted of the FBI space which we noted to the court and the government was deficient for a host of reasons. The space in the DOJ space was deficient for multiple reasons as well, including but not limited to, the space was an unlocked room putting our equipment and work product at risk, and the government's insistence to remove the FBI evidence from the room each evening, which would interfere with data processing of drives and seriously delay our work. Our consideration of the DOJ SDNY space was conditional on the exam room conditions and protocols being at least what is offered by an RCFL. The government never reduced to writing what the exam room conditions and protocols would be, and so I made clear in an email August 7, that since adequate conditions at the DOJ space apparently did not exist, our request to conduct the exam at the RCFL stood. We have never wavered on that request since July 30, notwithstanding our willingness to hear the government's proposal on August 1.

We would be happy to confer by telephone, Zoom, or Teams when the government consents to recording the meeting.

Regards,

Robert M. Herz

Law Offices of Robert Herz, P.C.

The Seventh & E Building

[431 West Seventh Avenue, Suite 107](#)

[Anchorage, Alaska 99501](#)

[REDACTED]

Denver Place Building

999 18th Street, Suite 300

Denver, Colorado 80202



Web: www.robertherzlaw.com

From: [REDACTED] (USANYS) <[REDACTED]>
Sent: Tuesday, August 19, 2025 2:28 PM
To: Law Office Of Robert Herz <[REDACTED]>
Cc: 'ELIZABETH KELLEY' <[REDACTED]>; 'Samuel M. Braverman' <[REDACTED]>; 'Jeff M. Fischbach, ABFE' <[REDACTED]>; Grosbard, Remy (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>
Subject: RE: [EXTERNAL] Propose Protocols

Robert,

Without commenting on your assertions below (other than to note that the media exam report to which you refer was provided as a courtesy, at your request, as we stated at the time, and was not "new evidence" or material to which the defendant is entitled under Rule 16):

We understand from Jeff that a necessary, or at least desirable in his view, step for the review to re-commence at the Philadelphia RCFL, should it have availability and should you agree to its procedures, is for a taint agent to review the work done so far in New York so that that work product may be moved by Jeff, which review Jeff has declined to have done so far this week, canceling the previously-arranged meeting on Monday and also not returning today.

The FBI remains available to have that taint agent (Eric) do such a review at your convenience, as is standard, and as we understood you agreed to on July 26. Jeff may arrange with [REDACTED] through email, copying us, to come to [26 Federal Plaza](#) to have that work done.

In any event, while we continue to understand the Philadelphia RCFL to have limited, if any, near term availability and flexibility, and continue not to understand why you have declined the offer we understood Jeff accepted on August 1 to have the continued review performed here with far greater availability and flexibility, as we stated repeatedly in recent days, we have re-explored the Philadelphia option at your request, and the Philadelphia RCFL, including a pertinent supervisor, is willing to have a call with you and/or Jeff regarding its availability and procedures, which call we would join. We can arrange for such a call, in the same effort we have undertaken for weeks, namely, providing reasonable, multiple options for you to continue review, at your convenience. Please let us know if that is something you would like to do, and if so, when you and/or Jeff are available.

[REDACTED]

From: Law Office Of Robert Herz [REDACTED]
Sent: Tuesday, August 19, 2025 4:00 PM
To: [REDACTED] (USANYS) <[REDACTED]>
Cc: 'ELIZABETH KELLEY' <[REDACTED]>; 'Samuel M. Braverman' <[REDACTED]>; 'Jeff M. Fischbach, ABFE' <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>
Subject: RE: [EXTERNAL] Propose Protocols

[REDACTED]

We would like to begin the defense forensic exam as soon as the forensic digital copies of the devices are delivered to the RCFL.

Our process has consistently involved a continuing investigation from when the defense forensic computer exam begins up to and including trial, especially where the government continues to disclose new evidence. For instance, on July 29, when the government disclosed what the government referred to as a media exam report, accompanying it was a spreadsheet regarding 1B2. That spreadsheet references 84,554 new files that are undifferentiated and do not distinguish what files among the 80,000+ are alleged CSAM. That kind of disclosure with that much new data demands a substantial amount of time during the defense exam to process that volume of data. Since the government is filtering the scheduling process through the SDNY, it would be more productive for the government to tell us what full days are available, and what partial days and times are available from now through October 30, 2025. Of course we are capable of scheduling our own sessions with the RCFL which we have been able to do in all previous cases where defense exams have been conducted at RCFLs, and we would be happy to relieve the government of that burden.

Thank you.

Regards.

Robert M. Herz

Law Offices of Robert Herz, P.C.

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[431 West Seventh Avenue, Suite 107](#)

[Anchorage, Alaska 99501](#)

[REDACTED]

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999 18th Street, Suite 300

Denver, Colorado 80202

[REDACTED]

[REDACTED]

Web: www.robertherzlaw.com

From: [REDACTED] (USANYS) <[REDACTED]>

Sent: Monday, August 18, 2025 6:09 PM

To: Law Office Of Robert Herz <[REDACTED]>

Cc: 'ELIZABETH KELLEY' <[REDACTED]>; 'Samuel M. Braverman'

<[REDACTED]>; 'Jeff M. Fischbach, ABFE' <[REDACTED]>; [REDACTED]

[REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>
Subject: RE: [EXTERNAL] Propose Protocols

Robert,

Jeff may indeed communicate directly with [REDACTED] regarding that he has arrived and needs to be escorted up, or similar day-of purely logistical communications, provided that those communications are limited to non-substantive matters, and that he copies us on all emails. However, we continue to ask that arrangements for a review on particular days be made through us ahead of time, through email, for multiple reasons, including so that the record is clear, and any issues may be discussed by counsel, given the past few weeks. That said, he certainly may include [REDACTED] on such requests, through email, and we will continue to ensure that all requests are handled as quickly as reasonably possible.

As to the Philadelphia RCFL, as we said last night, (1) we are re-exploring this avenue, given your apparent preference, and will circle back as soon as we can, and (2) it would assist in this regard if you could provide us an estimation of how many days, and approximately when, you would like to do the review there.

As always, we are available to confer.

[REDACTED]

From: Law Office Of Robert Herz <[REDACTED]>
Sent: Monday, August 18, 2025 1:50 PM
To: Richenthal, Daniel (USANYS) <[REDACTED]>
Cc: 'ELIZABETH KELLEY' <[REDACTED]> 'Samuel M. Braverman' <[REDACTED]> 'Jeff M. Fischbach, ABFE' <[REDACTED]> Grosbard, Remy (USANYS) <[REDACTED]>; Maxwell, Rita (USANYS) <[REDACTED]>
Subject: RE: [EXTERNAL] Propose Protocols

[REDACTED],

Please clarify whether you now are authorizing Jeff to communicate directly with [REDACTED] regarding meeting Jeff and making arrangements. If so we appreciate the government's change in this regard.

Will you also please authorize Director [REDACTED] at the RCFL that he too can communicate directly with Jeff for purposes of making arrangements.

Thank you.

Robert M. Herz

Law Offices of Robert Herz, P.C.

The Seventh & E Building

[431 West Seventh Avenue, Suite 107](#)

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[REDACTED]

Web: www.robertherzlaw.com

From [REDACTED] <[REDACTED]>

Sent: Sunday, August 17, 2025 7:35 PM

To: Law Office Of Robert Herz <[REDACTED]>

Cc: 'ELIZABETH KELLEY' <[REDACTED]>; 'Samuel M. Braverman'

<[REDACTED]>; 'Jeff M. Fischbach, ABFE' <[REDACTED]>; [REDACTED]

[REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>

Subject: RE: [EXTERNAL] Propose Protocols

Robert,

We have checked with the FBI, and Jeff may access the material/do review at [26 Federal Plaza](#), as you requested, starting at 9 am tomorrow. Special Agent [REDACTED] is not available tomorrow (or, to our knowledge, the rest of the week), so Special Agent [REDACTED], [REDACTED] will handle meeting Jeff and making arrangements.

With respect to the taint agent [REDACTED] he is not available until the afternoon, but then can perform his review. And of course he will not report to the case agents or prosecution team what he sees in reviewing your material, except to the extent it appears that Jeff has taken CSAM (or otherwise violated FBI security protocols). That is the whole point of a taint agent, as you know, to serve as a wall between defense material and the team, and thus we surprised you are asking this to be confirmed, much less weeks Jeff started his work with Eric serving in that role (and given your confirmation on July 26 of our standard use of a taint agent).

With respect to the Philadelphia RCFL, as we have said repeatedly, starting on August 1 and continuing, we understand it to have limited availability, flexibility, and resources (which is why we offered you the use of a private space in our office, as explained on August 1 and since). It sounds, however, like you nevertheless want the FBI to move the materials there. We accordingly have reached out to the FBI to seek to get the latest information on the feasibility of using the Philadelphia RCFL, including its availability, and will circle back as soon as we can. It would assist in this regard if you could provide us an estimation of how many days, and approximately when, you would like to do the review there.

Hope you had a good weekend.

From: Law Office Of Robert Herz [REDACTED]

Sent: Friday, August 15, 2025 1:20 PM

To: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>

[REDACTED] (USANYS) <[REDACTED]>

Cc: 'ELIZABETH KELLEY' <[REDACTED]>; 'Samuel M. Braverman'

[REDACTED] 'Jeff M. Fischbach, ABFE' <[REDACTED]>

Subject: RE: [EXTERNAL] Propose Protocols

[REDACTED]

I have seen several OOO messages for [REDACTED] come across my feed, and understand he's out of the office until Monday. I want to alert the government that Jeff will need additional access to the FBI workstation on Monday to secure our work product and data. The FBI workstation "crashed" multiple times this week and slowed our ability to download our non-contraband data from the FBI workstation. So we still have not yet finished securing our work product and data. Jeff will want access on Monday beginning at 9 a.m. If there are no further issues with the workstation we believe that we should be able to complete securing our data by Monday. If that is the case we will want to remove our defense privileged media which will only contain non-contraband work product and data from the FBI offices which we understand will be reviewed by the government for compliance with the Walsh Act before leaving the building.

Will the government agree in writing that [REDACTED] will have no direct or indirect contact with and will not report or communicate in writing or orally to any of the involved case agents in this case or the prosecution team regarding what he observes when reviewing privileged defense work product and data the only exception being if he believes he has identified a CSAM image on the defense media device he is reviewing to assure compliance with the Walsh Act? Assuming the answer is in the affirmative, then we will be prepared to resume our forensic exam at the RCFL in Philadelphia. We trust the government can have all the digital evidence in this case transferred to the RCFL within 24 to 48 hours as previously indicated to the court was possible.

Since the government has articulated that it does not want to slow us down, please instruct Director Tanzola that he can communicate directly with Jeff so that scheduling can be done efficiently. That would be quite helpful.

Regards,

Robert M. Herz

Law Offices of Robert Herz, P.C.

The Seventh & E Building

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From: Jeff M. Fischbach, ABFE [REDACTED]
Sent: Friday, August 15, 2025 2:47 AM
To: Richenthal, Daniel (USANYS) <[REDACTED]>
Cc: Law Office Of Robert Herz [REDACTED]; ELIZABETH KELLEY <[REDACTED]>; Samuel M. Braverman [REDACTED]; Grosbard, Remy (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>
Subject: Re: [EXTERNAL] Propose Protocols

[REDACTED] as I have said before, I believe without ambiguity, these are matters you need to address to counsel. Having me CC'd is useful for continuity. But, I cannot, have not intended, and will not be a party to circumventing [REDACTED]'s counsel or their knowledge of the law and his rights as a Defendant.

I was simply conveying to you that the use of [REDACTED] as a taint agent was rejected by counsel, because -- unlike ALL of my prior post-Walsh cases, and those Mr. Herz has been involved in -- he is an individual who works closely with the case agent in this case, in the same office, and seemingly with all of the agents involved in the case.

Again, because it is a space shared by various agencies, the RCFL, in my experience, has always had an individual on-site sufficiently trained and removed from a case being examined there to be an appropriate taint agent.

The request for a taint agent was made to SA [REDACTED] by me early in the week, and discussed with him previously. I seem to recall it was discussed with the AUSA as well, but I could be mistaken. Removal of work product was why I was requesting access when it became contingent on speaking with you on August 1. That should not have been a