

ON JOSHUA SCHULTE AND JULIAN ASSANGE'S 10 YEAR OLD CHARGES

The WaPo has confirmed what Natasha Bertrand earlier reported: the extradition package for Julian Assange will *only* include the 10 year old charges related to the publication of Chelsea Manning's leaks, not any of WikiLeaks more controversially handled charges. I've been meaning to write a post on how this is the stupidest available approach, which will satisfy neither those who regard him as a villain, will expose other journalists to similarly dangerous charges, and possibly even fuck up the security establishment's entire effort to exact some revenge against Assange. I hope to return to that when I get some deadlines and travel done, but suffice it to say this is a big hot mess.

To be clear, I actually think it's not eleven-dimensional chess on the part of Bill Barr to save Trump some embarrassment once Roger Stone's trial reveals the extent to which Trump's campaign tried to "collude" with WikiLeaks (though it will not only have that effect, but make it harder for DNC to sustain its lawsuit against the GOP and WikiLeaks for their actions in the 2016 election). Rather, I think this is an attempt to prosecute Assange with the least cost on the security establishment, being run by people who are utterly tone deaf to the costs it will incur elsewhere.

But I do want to say several things about why and how DOJ is not charging Assange in the Vault 7 leak.

Bertrand noted that I thought that the EDVA charges would be related to Vault 7.

Still, just several months ago, numerous experts felt confident that prosecutors would also hit Assange with charges over Vault 7. Prominent national security journalist Marcy Wheeler predicted in

February that DOJ would “very clearly go after Assange” for the Vault 7 disclosure, and that a sealed indictment against him in the Eastern District of Virginia was likely related to that leak – the CIA is, after all, headquartered in Virginia, as ABC noted. Assange himself reportedly expressed concern that prosecutors would charge him with crimes related to Vault 7.

She didn’t provide even the full context of my tweet, much less my post, arguing that Assange’s efforts to extort a pardon using the Vault 7 files would be something obviously unconnected to journalism. The superseding indictment does mention Assange’s use of “insurance files” to ensure his ability to publish documents in his possession, but no charges were attached to that, which later uses of the tactic and the Vault 7 pardon effort would have supported.

Which is to say the government could have charged Assange for something specifically excluded from Bartnicki’s protection of the publication of stolen materials, but did not. Again, the government has chosen to go about this in the stupidest way possible.

That said, I’m not surprised they’re not going after Assange for the Vault 7 leak itself.

As it is, the CIA has been inexcusably uncooperative with Joshua Schulte’s discovery efforts. At times, some pretty aggressive prosecutors have seemed almost apologetic about it. Schulte has staked a lot on trying to expose details of his initial warrants, and while his later behavior seems to suggest there was something to their targeting of him (or, at the very least, his post-indictment behavior has been self-destructive), at the very least the CIA may have participated in some epically bad parallel construction. They may be trying to hide that as much as the actual details of CIA’s hacking program.

Meanwhile, the government and Schulte have been discussing severing his charges from last year – which include one charge of contempt and a charge of attempted leak of classified information – from everything else.

As the Court is aware, trial in this matter is currently set for April 8, 2019. (See Minute Entry for August 8, 2018 Conference). To afford the parties sufficient time to prepare the necessary pretrial motions, including suppression motions and motions pursuant to the Classified Information Procedures Act (“CIPA”), the parties respectfully request that the Court adjourn the trial until November 4, 2019. The parties are also discussing a potential agreement concerning severance, as well as the order of the potentially severed trials. The parties will update the Court on severance and a pretrial motion schedule at or before the conference scheduled for April 10, 2019.

That might be something they tried to base a plea off of: they’d have video evidence to back their case, so it might avoid the CIPA process CIA is unwilling to engage in.

Back in May, Schulte’s team submitted a motion to vacate his SAMs (Special Administrative Measures limit a prisoner’s communication with others). It was based off the case the government made prior to his superseding indictment and left out all the allegations the government made about the 13 email and social media accounts Schulte was allegedly running from his jail cell, and as such deliberately understated why the government wanted the SAMs. The government asked for and got an extension to respond until Monday – notably, after all decisions about Assange would have had to have been made. Any response (unless it’s sealed) will have to provide more details about what happened last fall, so if they’re trying to get a plea deal, it might come this week in lieu of

that SAMs response.

But the question would be what that plea agreement would look like.

Finally, the government is going to have to provide some explanation for why Chelsea Manning remains in jail for contempt. Unless they can claim they're going after other people related to WikiLeaks, they should not be able to keep her jailed.