JOSHUA SCHULTE'S THREE LAWYER MONTE

For at least five months, accused Vault 7 leaker Joshua Schulte has been trying one after another ploy to avoid or delay his trial next month. But his latest move isn't even very clever.

The problem, for Schulte, is that after he submitted a *pro se* filing attacking the government's case that included classified information, his lawyers tried to get him to stop by telling him to write his complaints in notebooks instead. He did so and marked the notebooks "Attorney-Client," but included things that could in no way be considered as such (such as passwords to Proton Mail accounts he used to email people outside of jail). So after the government discovered he had a cell phone in jail and searched his cell, they discovered the notebooks, where he had basically confessed to his past and ongoing crimes. As the government wrote in a later motion, that information includes:

> (i) admissions by the defendant relating to his disclosure of classified information to WikiLeaks (such as the identification of information provided to WikiLeaks that has not yet been disclosed by WikiLeaks); (ii) admissions by Schulte with respect to his plan to disseminate additional classified information illegally from the MCC (such as his declaration of a so-called "information war" and notations of plans to, for example, schedule postings on various social media accounts he created from jail); (iii) false exculpatory statements; (iv) evidence connecting Schulte to contraband cellphones and electronic communications accounts (such as notations to install encrypted messaging applications on contraband cellphones or to delete "suspicious emails" from covert accounts used by

> Schulte while at the MCC); and (v) writings prepared for public dissemination that include classified information (such as draft tweets written by the defendant as one of his alleged former CIA colleagues who claimed to be able to exonerate the defendant and who recounted information about CIA activities to "authenticate" the author).

Since then, he has been trying to make that evidence unavailable for trial.

First, last June, he tried to suppress it (and the Proton Mail emails accessed with the passwords he stored in there) on Fourth Amendment grounds, which Judge Paul Crotty denied last October, in part because the FBI's use of a wall team to sort out the non-privileged material demonstrated good faith.

Then, in August, Schulte's lawyers informed the judge they had provided some kind of advice that led him to believe he could write down classified information in his prison notebooks, and asked that the judge sever the charges tied to his attempts to leak classified information from jail from the charges tied to his alleged leak of the Vault 7 documents to WikiLeaks, something that would have made the MCC admissions of guilt unavailable for his main trial. In September, Judge Crotty denied that motion, pointing out that the lawyer who gave the purportedly bad advice is not on Schulte's trial team and so could testify.

Then, in October, his lawyers asked to be relieved of defending Schulte altogether, or at least asked for the judge to appoint a Curcio counsel to determine whether there is a conflict. On November 6, Judge Crotty appointed a Curcio counsel.

Meanwhile, also in October, Schulte's lawyers said they were buried preparing for trial and needed help and asked that he appoint another

lawyer to help them, James Branden, which Judge Crotty immediately did. That soon looked like a ploy, because Branden — who had said he'd be able to handle the schedule — wrote a letter in November asking for a six month adjournment saying he couldn't handle the schedule. In the letter, he said he had not, in the interim month, met with Schulte. He also said he couldn't elaborate on the need for a delay until December 9 because he was on vacation until then. Crotty was none too impressed with that, and denied that motion in December (though extended the trial date by three weeks.

On December 13, Schulte's public defenders wrote the judge and said they decided their advice to Schulte meant they had to be relieved on ineffective assistance of counsel grounds.

On December 18, they held the Curcio hearing, and Judge Crotty (who had previously described ways to get the exculpatory evidence admitted at trial) denied the request to be relieved.

Last week, Schulte's public defenders wrote Judge Crotty saying they could no longer defend Schulte because it would mean providing ineffective counsel, and also noting that they may have engaged in misconduct, meaning that Schulte's decision to present the evidence would reflect badly on his trial lawyers. (Again, the lawyer who gave the bad advice will not be his trial lawyer.) The next day they wrote against stating that, even though to adopt this ineffective assistance of counsel defense, he'd have to waive privilege on the current set of lawyers, he did not waive privilege.

The government responded to this second letter laying out all the case law that says if you're going to argue ineffective counsel, you need to share what the bad advice is. In it, they called bullshit on Schulte's claim that he really relied on his lawyers' counsel.

> For example, the Government has described to the defense how, if the defendant offered his counsel's

> testimony, the Government would likely rely on recorded prison calls in which the defendant criticized defense counsel's advice, including, for example, calls in which the defendant stated that he would "go around" Ms. Shroff to disclose information to the media, despite her objections to this strategy.

They also note that Schulte claims he needs this testimony to prove his innocence but is willing to wait years, under SAMs, to get it.

The Curcio counsel, Sean Maher, wrote as well last week, repeating that he believes the public defenders need to be relieved, because *he* can't advise Schulte on whether or not he should call both lawyers to testify, thereby waiving privilege and necessitating getting new lawyers. He argues Schulte needs new lawyers to decide whether he needs to jettison his current lawyers. He ends his letter by explaining that he doesn't have enough information to advise Schulte on that point.

> Only conflict-free counsel who has a full sense of the case — the classified and unclassified discovery, the complicated forensic information, and knowledge of what other witnesses, including rebuttal witnesses, might say — should advise Mr. Schulte on this matter.

What seems to have dropped out of this conversation is that Schulte has another lawyer who can't fathomably be said to have this conflict, James Branden, who in spite of his December vacation has nevertheless had over two months to get up to speed, the amount of time he originally said it'd take to prepare for trial. Branden is in a position to decide whether Schulte's claim he got bad advice and so did what he said on recorded jail house conversations that he would ignore he wouldn't

do will hold with a jury.

Schulte is pretending he has two sets of lawyers: the ones he claims gave him shitty advice, which led him to try to record what he must be preparing to claim is just an imaginary Information War entirely within the bounds of his prison notebooks, and the Curcio counsel appointed to tell him — absent any context — whether that means they can't represent him anymore.

But he's got a third lawyer who has curiously dropped out of this discussion, Branden, who hasn't signed his name to a filing since he asked for an adjournment (though he attended the Curcio hearing, so would be competent to provide the kind of advice that Maher says no one is available to provide).

Likely, if asked, Branden would note that claiming his lawyers told him to commit everything to his prison notebooks wouldn't much help him (even ignoring his Non-Disclosure Agreements that commit him alone to protecting classified information), because Schulte allegedly shared classified information in public documents outside of his prison notebooks, in defiance of the advice the government says he got and ignored from Shroff.

I guess Schulte is hoping if he moves the three cards in his hand around fast enough, Judge Crotty — who he has attacked in a pro se filing Shroff probably told him not to file — won't see that there are actually three and not two cards in his hand.

Three lawyer monte, with all the lawyers paid for by taxpayers, ostensibly in the name of a fair defense.