JOSHUA SCHULTE'S CAREFULLY CRAFTED PLAN TO (METAPHORICALLY) BLOW UP HIS TRIAL

There's an unintentionally ironic footnote in accused Vault 7 leaker Joshua Schulte's response to the government motion in limine that, among other things, seeks to ensure the government can introduce evidence from Schulte's prison notebooks to show he had a plan to conduct Information War from his jail cell.

In it, the defense objects to the government plan to use Schulte's own writings to provide evidence of motive. In the angry tone the motion adopts throughout, the footnote argues that it's not clear how Schulte's "messy, ranting" notes could be evidence of a carefully crafted plan, then goes on to argue that the government's reliance on a ruling in the Chelsea bomber's case finding that the bombs he had planted in New Jersey reflected motive to bomb New York is inapt.

> The government also says that the "MCC Evidence" is admissible of Mr. Schulte's "motive, intent, preparation, and planning" with respect to the MCC counts. Gov. Mot. 45. The government does not define which pieces of evidence fall under this category, a phrase it uses for the first time at Gov. Mot. 38, and may refer to all information that was collected at MCC without limit. For example, the government says his notebooks are a "carefully crafted plan," for an "information war." Gov. Mot. 45. It is far from clear what evidence the government believes is part of this "careful[ ]" plan," or why the government believes that messy, ranting,

> handwritten notes in notebooks labeled privileged could be part of any carefully crafted plan. In any event, the cases it cites, about an uncharged bomb threat being introduced to show intent to threaten a victim, and the planting of bombs in one location to be introduced to prove planning to plant bombs in another case, are nothing like this one. Id. This broad request should be denied.

The footnote appears in a filing that is itself messy, making arguments at one point (for example, that the government shouldn't be able to present evidence Schulte stuck a USB drive that likely had Tails on it into his CIA workstation right before he allegedly stole the CIA's hacking tools) that contradict arguments made elsewhere (that the government shouldn't be able to use Paul Rosenzweig as an expert witness to describe the import of WikiLeaks encouraging its sources to use Tails, because the significance of using Tails is clear).

Over and over again, the filing makes arguments that amount to saying, "you can't argue that our client's weaponization of CIA hacking tools and disinformation are at all akin to bombs, even though WikiLeaks argued those tools were newsworthy precisely because they pose that same kind of proliferation threat," and "you can't argue that WikiLeaks acts like an organized crime outfit," because if you did it would make the gravity of our client's alleged crimes clear.

As I read the manic tone of the argument — the most substantive public argument the defense has made in months, amid an extended period of making one after another process argument about why they can't move to trial next month — I wondered whether Schulte is driving his attorneys nuts. He is, undoubtedly, among the most confounding defendants I've covered — and I've covered plenty who exhibited far more signs that extended incarceration on top of underlying

mental illness had made them unfit to stand trial.

Schulte may well be exhibiting signs of being jailed for an extended period under Special Administration Measures that limit his communication with outsiders. Though, as the government noted in one of their responses to this extended effort to avoid going to trial, Schulte apparently told Judge Paul Crotty last month he's willing to undergo the SAMs he has twice challenged for at least another six months to be able to make the process arguments he claims, unconvincingly, he wants to make.

> If the defendant's strategy works, trial in this case would likely not begin until more than two years after the original national security charges in this case were filed, more than three and a half years from the WikiLeaks disclosure that began this investigation, and more than four years from when the Government alleges the defendant stole and transmitted to WikiLeaks the national defense information at issue in this case.
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> The defendant has claimed that he is willing to remain in prison for this extended period of time—even though he is, according to him, innocent of these charges and the victim of a campaign to frame him conducted by the U.S. Attorney's Office, the Federal Bureau of Investigation, and the CIA—because Ms. Shroff and Mr. Larsen are "necessary" witnesses who would provide testimony that would help to exonerate him. The defendant has further stated, under oath, that he knows that relying on these witnesses' testimony would lead to a potentially broad waiver of his attorney-client privilege. But despite acquiescing to even longer detention under special administrative measures, regardless of his purported innocence

> and the waiver of his privilege, all for the opportunity to present Ms. Shroff's and Mr. Larsen's testimony at trial, the defendant still maintains that his decision as to whether he will call either of these attorneys as witnesses remains so amorphous and theoretical that he should not be required to provide the Government even the most meager information about the substance of this purported testimony just weeks before the current trial date.

But ultimately, it's clear that this *is* his defense strategy, as messy and stupid and self-destructive as it is.

In another of the government's responses to this process defense — one that lays out what I did in a post arguing that Schulte is engaged in a con game of three card monte with his legal representation — they take three pages to lay out the timeline of Schulte's efforts to prevent his virtual confessions in his prison notebooks from being used in the case against him. In my own similar timeline, I had missed that Sabrina Shroff had left the Public Defender's office in sometime before December 3, rendering one of the claims about an institutional conflict she continues to make moot.

More importantly, there are several new details to that timeline. James Branden, who was appointed in October based on representations he could be ready for trial in January, who then made a request for a six month delay in November because he couldn't be ready even while admitting he had a week vacation scheduled when he first took on the case, has only met Schulte twice (which must be two court hearings, including the Curcio hearing last month). That's revealed in both a Schulte request to fire Branden and a Branden response saying he's happy to be fired, neither of which have been docketed yet.

> January 2, 2020: The defendant—despite

> not having raised any such concerns at the Curcio Hearing—submitted the Schulte Letter to the Court, in which the defendant claimed that he had only seen Mr. Branden twice and that the defendant has "no relationship or confidence in his ability to assist in my defense at trial next month." The defendant asked that the Court to appoint the defendant a new attorney.
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> [snip]
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> January 7, 2019: Mr. Branden submitted a response to the Schulte Letter, in which Mr. Branden confirmed the defendant's factual representations in the Schulte Letter and stated that Mr. Branden would not oppose being replaced as counsel—notwithstanding his prior representations to the Court regarding his availability to prepare for and participate in the trial as counsel appointed pursuant to the Criminal Justice Act.

I had been wondering whether Schulte's team asked for Branden to be appointed to make it easier for them to quit, as they've tried to do in about three different ways since. I wonder, too, whether Branden hasn't begun to worry the same thing (not least because he hasn't signed any of the defense briefs since he was brought on), and he wants off now before — like Wile E. Coyote in virtually every Loony Tunes episode ever — he's left holding an exploding bomb he set himself.

Basically, what happened over eighteen months ago is that Schulte's lawyers told him to stop publishing attacks on the government's case himself, as he kept including classified information that made his situation worse. So instead he wrote plans to publicly rebut the charges against him in a notebook — plans that (according to Schulte's own recorded jail phone calls) Shroff opposed.

> [T]he 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.

In addition to this evidence that Schulte was ignoring Shroff's warnings about going public, the stuff in his prison notebooks — including passwords for ProtonMail accounts — is in no way consistent with a public rebuttal that any defense attorney could legally agree to.

So instead, Schulte has just gotten his lawyers to claim they gave bad advice, have a conflict, and now might face criminal exposure for trying to get their client to stop breaking the law from an MCC jail cell. Which might be true, but only because his lawyers were trying to represent his desires, and ultimately his desire seems to be to blow the CIA up, using means that are illegal.

All this appears to be an effort to forestall being tried, indefinitely, out of a presumed recognition that the government already has what amounts to a written confession, and he's willing to rot at MCC rather than go to trial with that apparent written confession.

In a filing from last month, the government catalogued thirteen different attorneys who have represented Schulte over the course of this prosecution.

> Finally, it is also a case in which the defendant—over the course of those three adjournment requests—has cycled through at least 13 attorneys,1 including the instant defense team, which includes at least three attorneys who have

> represented the defendant for more than a year and a half.
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> Those 13 attorneys who have represented the defendant are Sabrina Shroff, Edward Zas, Allegra Glashausser, James Branden (all of whom currently represent the defendant, and three of whom have security clearances), Matthew Larsen, Lauren Dolecki, Jacob Kaplan, Mark Baker, Alex Spiro, Taylor Koss, Kenneth Smith, Sean Maher (who was recently appointed as Curcio counsel), and at least one attorney who has not filed a notice of appearance but who appears to be advising Schulte about constitutional arguments to make with respect to the Classified Information Procedures Act ("CIPA").

There are a lot of reasons why Schulte has gone through so many lawyers, money and clearance, among others.

But at this point, Schulte's strategy seems to be avoiding trial by ensuring he has no lawyers.

Schulte seems convinced he can't win on the merits. So to avoid losing, he's going to hack the legal system in an effort to ensure he never loses.