

WITH ONE DROPPED CHARGE AND A MAJOR SCREW-UP, GOVERNMENT IN REMARKABLY WEAK POSITION AGAINST JOSHUA SCHULTE

The outcome of the Joshua Schulte trial will be unresolved until closing arguments Monday and deliberation next week.

While parts of the case are circumstantial – because Schulte allegedly used TAILS, there’s no smoking gun showing him sharing stolen files with WikiLeaks – in my opinion the case against him is quite strong, particularly given really damning details from his prison notebooks talking about leaking to WikiLeaks.

But the government, having rested and rebutted the scant defense case, is in remarkably weak position right now.

That’s true, first of all, because the government has spent over two weeks trying to recover from an own goal, prosecutors’ failure to provide Schulte with advance notice that one of his closest buddies at the CIA, Michael, got put on paid leave last August because the CIA no longer trusts the developer because of his closeness to and lack of candor about Schulte. In reality, Michael should have been a key witness for prosecutors, providing proof that Schulte was at his computer and logged in when the reversion and copy of the files likely shared with WikiLeaks was accomplished. But because prosecutors didn’t fully disclose the report in real time, Schulte has flipped that on its head. The trial ended with the guy who wrote that report testifying on rebuttal about how this is still all about Schulte – effectively

providing emphasis that the CIA maintains that Schulte is the culprit – but it interrupted the narrative arch of the government case.

Add that to the pace of the trial, which feels like a nasty employment dispute to which the massive breach of the CIA's hacking tools became just a side-dispute. That's often true of CIA trials – it certainly was for Jeffrey Sterling. But the long parade of CIA witnesses – Schulte's buddy, two other colleagues, his boss, his boss's boss, his boss's boss's boss, her boss, and then yet another boss, plus a CIA SysAdmin and a security guy – all describing a series of disputes escalating from a nerf gun fight to WikiLeaks burning the CIA's hacking capabilities to the ground refocused the trial onto whether Schulte's complaints had merit and not on what the forensic evidence showed.

And Sabrina Shroff did a superb job of defending *not* the forensic case (indeed, defense expert Steve Bellovin did not take the stand to float any of the alternate theories that Schulte has been offering for two years, and in so doing will leave Shroff to claim Michael could have accessed the backup without prosecutors having gotten him to admit that wouldn't have worked), but instead arguing that her client was maligned by the entire CIA. The boss, the boss's boss, the boss's boss's boss, the boss's boss's boss's boss, and then the senior-most boss are all lined up against Schulte for being an asshole. She even defused utterly damning notes about working with Russia (which I'll return to). From the transcripts, it seemed like Shroff rattled a good many government witnesses, too, and a number of them (one of the FBI agents and the classification expert, especially) seemed to come off as unresponsive as a result.

And on a potentially significant point, FBI Agent Evan James Schlessinger's unresponsiveness deprived the government of an opportunity to rebut something the defense will do in its close. The defense entered a stipulation that Schulte had been thrown into the SHU on October

1, 2018, before the Bureau of Prisons found the phone he allegedly used to leak classified information to Shane Harris. The phone continued to be used, probably by Schulte's roommate Omar Amanat, for whom Schulte was writing an expert report. Somebody—again, probably Amanat—sent a Signal text to Harris on October 2, saying “Hi Shane, the anon email is down since Sunday evening Can you resend your questions to psalms100@protonmail.com. thanks.” That text seems to be proof that no one besides Schulte had the password to the other email account, Annon1204@protonmail.com, but the FBI Agent didn't take this point head on when he could have.

Two weeks ago, one juror apparently complained about another, suggesting she was already making up her mind. Whatever the complaint, the defense seemed to welcome it, which given the focus on the employment dispute may mean the juror sees *that* dispute as contested.

Finally, the government dropped one of its charges today, eliminating the Illegal Transmission of Lawfully Possessed National Defense Information (Count Two in the superseding indictment). The government dropped it to avoid confusing the jury about whether Schulte had *legal* access to the files that he stole. But the discussion about it leads me to think the defense could argue that Schulte had legal access to some of the files he sent to WikiLeaks, thereby getting off on that charge. If the jury convicts, that dropped charge won't much matter in the grand scheme of things. And even an acquittal would not spring Schulte from jail, because he still faces child porn charges.

Still, I have to applaud the job that Shroff and Schulte's other attorneys did, because she did a remarkable job with one of the most nightmarish clients. She certainly put a lot out there that might lead jurors to find there is a reasonable doubt about this.

And much of that comes from the government being dickish.