

JUDGE CROTTY DECLARES A MISTRIAL IN JOSHUA SCHULTE CASE

This morning, Judge Paul Crotty declared a mistrial in the Joshua Schulte case. Jurors found Schulte guilty on the two least serious charges – false statements and contempt – but didn't even find him guilty of obstruction, to say nothing of the Espionage and CFAA charges tied to his alleged theft of the CIA's hacking tools. A sentence on those two charges would not even amount to the time he has already served since being jailed in December 2018.

This is an absolutely stunning rebuke for the government on the most serious Espionage case in years, and an unbelievable success for Schulte's lawyers, especially Sabrina Shroff.

The two sides will have a conference on March 26 to decide what to do. The government will certainly push to retry Schulte; Sabrina Shroff asked for an extended deadline to file motions. She may try to do something further about the government's late notice that Michael, a key witness, got put on paid leave last August (though the government has argued compellingly that Michael's underlying lack of candor has been noticed to the defense throughout). She also may make yet another bid to get more access to the forensics, something I've argued that the government should have permitted in the first place.

That said, I think the government's failure in this case stemmed largely from too much focus on the CIA and too little focus on the (abundant) evidence against Schulte. In addition, they do not appear to have shown – via the abundant evidence available to them – that Schulte is a compulsive liar, and that exhibits that show Schulte offering alternate theories of the theft

all fall flat.

Plus, there were problems with two jurors, problems that I think Judge Crotty did not adequately manage.

That is, I think the government can learn from its failures in this case. I wouldn't be surprised, either, if the vaunted SDNY is forced to add a cybersecurity prosecutor to their team, to ensure that the forensic case is presented more clearly to jurors.

I highly doubt Schulte can pull this off a second time. If he can, it will be a remarkable comment on the government's ability to obtain justice against insider threats.