

THE GROWING WIKILEAKS CONSPIRACY [INDICTMENT]

I want to revisit the superseding Julian Assange indictment with a view to unpacking how the conspiracy charges work in it. Alexa O'Brien and Dell Cameron – both experts on some of the acts described in the indictment – have written really useful pieces on the indictment that don't, however, fully account for the way DOJ built the charges around two conspiracy charges, one a conspiracy to obtain and disclose national defense information (18 USC 793(g)) and one a conspiracy to commit computer intrusions (18 USC 371). While commenters are right to argue that the Espionage Act related charges risk criminalizing journalism, the CFAA conspiracy charge – particularly as expanded in this superseding indictment – does nothing unusual in charging the conspiracy.

As background to what the government has to do to prove a conspiracy, see this Elizabeth de la Vega thread from 2018. As she notes,

- A conspiracy needs not succeed
- Co-conspirators don't have to explicitly agree
- Conspiracies can have more than one object
- But all co-conspirators have to agree on one object of the conspiracy
- Co-conspirators can use multiple means to carry out the conspiracy
- Co-conspirators don't have to know what all the other conspirators are doing

- Once someone is found to have knowingly joined a conspiracy, he is responsible for all acts of other co-conspirators
- Statements of any co-conspirator made to further the conspiracy may be introduced into evidence against any other co-conspirator
- Overt acts taken in furtherance of a conspiracy need not be illegal

Conspiracy charges are a powerful way for the government to charge groups of people (and also a way to charge crimes without showing all the evidence for them). But that's true whenever it is used, not just against Assange. So if this associative kind of guilt bothers you (often with justification), your problem is with the law and precedents, not with the treatment of Assange.

For the moment, there are two key takeaways from de la Vega's list: to prove Assange guilty of conspiring to hack various victims, the government only needs to show that he entered into an agreement to break US law and took overt acts to advance that conspiracy.

Here's how the government presented the elements of this very same hacking conspiracy in Jeremy Hammond's change of plea hearing (though Assange is charged with conspiring to violate four different CFAA charges, so the conspiracy is larger than what Hammond pled guilty to).

The crime of conspiracy, which is what he's charged with, the elements are that there existed an agreement or implicit understanding between two or more people to violate a law of the United States,

that the defendant knowingly and willingly joined that agreement, and that any one member of the conspiracy committed at least one overt act in the Southern District of New York. And the object of the conspiracy here is computer hacking to obtain information in violation of 18 U.S.C. 1030(a)(2)(A).

The elements of that offense are that, without authorization, members of the conspiracy agreed to intentionally access a computer, that they obtained information from a protected computer, and that the value of the information obtained was greater than \$5,000.

With regard to venue, I believe that defendant said that, I believe he did say that information was intentionally uploaded to a server located in the Southern District of New York.

The venue for Assange is different – EDVA rather than SDNY. The venue would be uncontroversial in any case, given that the Chelsea Manning-related leaks tie to the Pentagon and so EDVA. That said, when the US government extradites someone from overseas, they get venue wherever the person first enters the US (which is why EDNY, where JFK is located, has a lot of interesting precedents tied to foreigners violating US law). The indictment against Assange notes repeatedly that Assange “will be first brought to the Eastern District of Virginia,” so they plan on obtaining venue in EDVA, with all its harsh precedents on the Espionage Act, by landing him there if and when they get him, on top of the venue they’d already get via the leaks themselves.

Thus, so long as the government can prove that Assange entered into an agreement with co-conspirators to commit illegal hacks, then the government will have plenty of evidence to prove that the conspiracy happened, not least because co-conspirators Chelsea Manning, Jeremy Hammond,

and Sabu pled guilty to them. Sigurdur Thordarsson (Siggi) is another key co-conspirator; the reason the government refers to him as “Teenager,” is to signal he was part of the conspiracy while explaining why he wasn’t prosecuted for it (because he was a minor). The government also refers to Daniel Domscheit-Berg (WLA-2), Jake Appelbaum (WLA-3), and Sarah Harrison (WLA-4) in a way that treats them as co-conspirators; it’s unclear whether that numbering system starts at 2 because it treats Assange as WLA-1 or whether there’s some unnamed conspirator who will be added in the future.

The indictment alleges Assange entered into an agreement to commit CFAA in a number of ways:

- Agreeing to help Manning crack a password on the same day Manning said the Gitmo detainee briefs were “all [she] really have got left” and Assange said, “curious eyes never run dry in my experience” (¶¶18-21)
- Asking Siggi to hack Iceland (¶36)
- Asking David House to decrypt a file stolen from Iceland before going on to hire him (¶44)
- Agreeing that Siggi should meet with Gnosis, which included getting Laurelei and Kayla to agree to hack for WikiLeaks (¶¶48-49)
- Publicly stating a link with LulzSec in June 2011 (¶62)
- Validating Siggi’s outreach to Topiary, in which Siggi said, “WikiLeaks cannot

publicly be taking down websites, but we might give a suggestion of something or something similar, if that's acceptable to LulzSec" (¶¶63-64)

- Cooperating with Jeremy Hammond, as reflected in Hammond's statements to Sabu (¶¶70)
- Providing Hammond a script to search the emails hacked from Stratfor (¶¶72)
- Responding to a Sabu request for targets first by saying they could not do that "for the obvious legal reasons" but then suggesting a target (¶¶73)
- Providing Sabu a script for searching emails (¶¶75)

The reason (one reason, anyway, I suspect there are a bunch more) that – as Cameron notes – the indictment doesn't describe the earlier parts of the Stratfor hack is because they don't matter at all to proving Assange was part of the conspiracy. The indictment provides evidence Assange agreed to enter into a conspiracy with LulzSec long before the hack and further evidence he remained actively involved as Hammond tried to exploit it.

Cameron's piece is inconsistent, as well, when it attributes the hack to Hyrriiya but then claims that Sabu initiated the crime. Neither ultimately matters in the Assange conspiracy indictment, because – to the extent that Hyrriiya's letter taking credit can be believed without corroboration – he laid out the basis for a conspiracy in the letter in any case, and

he, too, would be a member of the conspiracy and that letter, if it could be validated, would be admissible.

As de la Vega described, once someone joins a conspiracy, that person becomes implicated in the acts of all the others in the conspiracy, whether or not one knows about those other acts. Assange agreed to enter into a conspiracy before and after the actual hack of Stratfor, so he's on the hook for it.

Finally, given that the contemporaneous statements of all the co-conspirators would be admissible, concerns about the credibility of Siggie or any lack of cooperation from Manning and Hammond are less serious than they might otherwise be.

That principle of conspiracies – that once someone joins the conspiracy he is on the hook for everything else – is why (as O'Brien notes), the Espionage abetting charges all take place after the March 8 agreement to help hack a password. Before that, DOJ might be thinking, Assange might be playing a typical role of a publisher, publishing classified information provided to him, but after that, they seem to be arguing, he was part of the crime. An awful lot hangs on that agreement to crack a password (remember, a conspiracy doesn't need to be successful to be charged), which is the main thing that distinguishes the Manning-related charges from journalism. But the government may be planning to tie WikiLeaks' targeting of Iceland – which was not charged as a Manning-related crime but which involves conspiring to hack materials related to materials that Manning provided – with the Espionage charges.

As I've repeatedly argued, though, this dual structure – one conspiracy to hack, and another to steal National Defense Information from the US – sets up the Vault 7 leak perfectly, the charge that for some reason WikiLeaks associates want no tie to. The government will show, among other things, that even after WikiLeaks published the Vault 7 files, WikiLeaks published

Joshua Schulte's blogs, in which he attempted to provide details of the skills he deployed at CIA. The government will likewise show that Schulte, in attempting, from prison, to convince others to leak, fits into their theory that WikiLeaks was recruiting others to leak.

That's one of many reasons why I expect Vault 7 to eventually be added to this indictment. Thus far, the government has obtained two indictments just as statutes of limitation might toll on the overt acts (the first being the agreement to crack a password, and the second to be the recruiting efforts five years ago). So I wouldn't be surprised if, in April of next year, the government supersedes this again to include Vault 7, including some of the same charges (such as exposing the identities of covert officers) we already see in this indictment.

The real question, however, is if the government includes Russians as co-conspirators in a future superseding indictment. There were Russians in the chat rooms behind the Stratfor hack. And the existing conspiracy to hack charge is the same charge (though with slightly different counts) as two of the charges against the GRU officers who hacked the Democrats in 2016. Plus, there are repeated references in the Schulte trial about outreach to Russia (these references are quite ambiguous, but I hope to explain why that might be in the nearish future); I had heard about that outreach before it was publicly disclosed.

When the government made its last ditch attempt to get Hammond to testify before the grand jury, according to Hammond's account, they twice claimed to Hammond that Assange was a Russian spy. And when he asked why Assange wasn't charged in the 2016 hack-and-leak, the prosecutor appears to have suggested the extradition would take a long time, which might mean they could add those charges in a superseding indictment.

If the government eventually argues that Russians were part of this conspiracy from very

early on, then the charges will look very different if and when Assange gets extradited.