MORE ON JOSHUA SCHULTE'S ATTEMPTED HACK OF THE JUSTICE SYSTEM

A few weeks ago, I described what I believed was an attempt by Joshua Schulte to hack the judicial system — not by using computer code, but by exploiting legal code. In a status hearing, he claimed that he had informed prosecutors that he wanted to proceed pro se (representing himself). The sole remaining member of the prosecution team, David Denton, said he hadn't heard of it.

A letter submitted by Denton and AUSA Michael Lockard today, who has joined the team, explains why: after they reviewed one of many appeals Schulte had filed (this one a demand for the judge in this case to recuse), he actually informed of his purported decision Judge Paul Crotty ex parte, before he sent a contrary filing, also ex parte. Crotty, having gotten no unequivocal indication that Schulte intended to proceed pro se, did nothing, which is part of the basis for Schulte's mandamus filing.

> On June 9, 2021, the defendant filed a pro se petition for a writ of mandamus in the Second Circuit seeking to recuse the District Court, claiming, among other things, that the defendant "petitioned [the Court] to represent himself in multiple letters throughout November 2020," and that the Court "did not hold a Faretta hearing as required by law." In Re: Joshua Schulte, 21-1445, Dkt. 1 at 10 (2d Cir. 2021). At the status conference in this matter on June 15, 2021, the Government noted that no such request appeared on the docket for this case, and that the Government was not aware of the defendant expressing "an unequivocal intent to forego the

> assistance of counsel." Williams, 44 F.3d at 100. At the conference, defense counsel, at the defendant's apparent request, stated that this was incorrect, and the defendant did wish to proceed pro se. Following the conference, defense counsel forwarded the Government a copy of a letter dated November 6, 2020, in which the defendant indicated his desire to proceed pro se, and informed the Government that the request had been submitted by the defendant to the Court ex parte. Defense counsel further explained that, in subsequent ex parte communication with the Court following the defendant's November 2020 letter, defense counsel had advised the Court that the defendant intended to continue with counsel.

Much of the letter submitted today is routine process for when a defendant claims to want to represent himself. Among the precedents the government cites are two (one in this circuit) holding that a defendant cannot be co-counsel with his defense attorney, which is effectively what Schulte has done.

> (4) a defendant who elects to proceed pro se "has no constitutional or statutory right to represent himself as co-counsel with his own attorney," United States v. Tutino, 883 F.2d 1125, 1141 (2d Cir. 1989); see also Schmidt, 105 F.3d at 90 ("[T]here is no constitutional right to hybrid representation.").

And while at the hearing Sabrina Shroff had suggested she and Deborah Colson serve as stand-by counsel, the government rightly notes that in his mandamus petition, Schulte raised conflicts reviewed before his first trial, which is something amounting to advice from Shroff that Schulte write down everything he wanted to leak in his prison notebook. They're using that to

ask that Crotty appoint someone besides Shroff (though they don't name her) as standby counsel.

> With regard to the appointment of standby counsel, the Government notes that the defendant's recently filed pro se mandamus petition reiterates his prior claims that he wishes to call as witnesses certain of his prior and current counsel from the Federal Defenders of New York, although that claim is framed in the context of arguing that the Court's prior rulings on this issue demonstrate bias that requires the Court's recusal, rather than seeking relief from the Court's orders themselves. See In Re: Joshua Schulte, 21-1445, Dkt. 1 at 4-9 (2d Cir. 2021). Accordingly, in order to avoid later claims alleging any purported conflict-of-interest, the Government respectfully suggests that it would be prudent for the Court to appoint as standby counsel one of the defendant's current or former attorneys not implicated in the defendant's claims asserting conflict or implicating the attorney-witness rule.

So the letter explains what, in a normal court room, is going on. But I maintain that Schulte is (and has been, for some time) attempting to do what he did with CIA's computer systems: send a bunch of conflicting messages to get the machine to operate in a way entirely unexpected. Indeed, one tactic he's using is one he used several times at CIA, the same tactic small children use when one parent gives them a response they don't like: Schulte is bypassing his criminal docket (both through the use of the ex parte letters and the non-associated dockets, to ensure the government didn't learn of this ploy until all the Speedy Time would, if the ploy is successful, have elapsed).

If I were the government I'd have some good hacking investigators review the docket to try

to understand it all from a hacker’s brain. Because, at the very least, I suspect Schulte plans to claim that the government simply forgot to hold his second trial.