FIVE YEARS AFTER WIKILEAKS EXPOSED CIA IDENTITIES IN VAULT 7, UK MOVES CLOSER TO ASSANGE EXTRADITION

Last November, in response to an order from Judge Jesse Furman, DOJ said that they were fine with accused Vault 7 leaker Joshua Schulte's request for a delay before his retrial. In fact, they didn't think a Schulte retrial could start before March 21.

> Although the Government is available for trial at any time in the first or second quarters of 2022, the Government does not believe it would be practical to schedule the trial prior to March 2022. In particular, although the Government believes that the Court's prior rulings pursuant to Section 6 of CIPA address the vast majority of questions concerning the use of classified information at trial in this matter, it appears likely that the defendant will seek to use additional classified information beyond that previously authorized by the Court. The process for pretrial consideration of that application pursuant to Section 6 is necessarily complex, entailing both briefing and hearings in a classified setting. To the extent the Court authorizes the defendant to use additional classified information, implementation of the Court's rulings can also take time, such as through either declassification of information or supplemental briefing regarding the application of Section 8 of CIPA (authorizing the admission of classified evidence without change in classification status). The proposed

> trial date also takes into consideration matters discussed in the Government's *ex parte* letter submitted on August 4, 2021. Accordingly, in order to afford sufficient time both for the likely upcoming CIPA litigation and for the parties to prepare for trial with the benefit of any supplemental CIPA rulings, the Government believes that the earliest practical trial date for this matter would be March 21, 2022.

Part of this delay was to revisit the Classified Information Procedures Act decisions from the first trial because, now that he's defending himself, Schulte likely wanted to use more classified information than Sabrina Shroff had used in the first trial. It turns out March 21 was overly optimistic for CIPA to be done. Because of an extended debate over how to alter the protective order, the government will only file its CIPA motion tomorrow (it just asked to submit a much longer filing than originally permitted, and got permission to file a somewhat longer one).

It's the other part of the government's interest in delay — its references to "matters discussed" in a sealed letter from August 4 — that I've been tracking with interest, particularly as the Assange extradition proceeded. As I noted earlier, that August 4 letter would have been sent five years to the day after Schulte started searching on WikiLeaks, Edward Snowden, and Shadow Brokers (according to the government theory of the case, Schulte stole and leaked the CIA's hacking tools earlier, in late April and early May 2016).

Since those mentions of a sealed letter last year, the government has asked for and gotten two meetings to discuss classified information with Judge Fruman under section 2 of CIPA, first for February 8 (after which a sealed document was lodged in Chambers), and the second one for March 9.

> Section 2 provides that "[a]t any time after the filing of the indictment or information, any party may move for a pretrial conference to consider matters relating to classified information that may arise in connection with the prosecution." Following such a motion, the district court "shall promptly hold a pretrial conference to establish the timing of requests for discovery, the provision of notice required by Section 5 of this Act, and the initiation of the procedure established by Section 6 (to determine the use, relevance, or admissibility of classified information) of this Act."

That second CIPA Section 2 meeting, on March 9, would have taken place days after the five year anniversary for the first Vault 7 publication, and with it the publication of the names or pseudonyms and a picture of several colleagues Schulte had vendettas against.

Schulte acknowledged that publication in a recently-released self-justification he wrote to an associate after the Vault 7 release (it's unclear when in 2017 or 2018 he wrote it), one he's making a renewed attempt to suppress.

> The names that were allegedly un-redacted were pseudonyms – fake names used internally in case a leak happened. Those of us who were overt never used last names anyway; This was an unwritten rule at the agency – NEVER use/write true last names for anyone. So I was convinced that there was little personal information revealed besides a picture of an old boss of mine that was mistakenly released with the memes.

Not long after he acknowledged the rule against using people's names in that self-justification, Schulte used the names of the three colleagues he was most angry at: His boss Karen, his

colleague “Jeremy Weber,” and another colleague, Amol, names that were also central to his efforts to leak from jail. If the FBI could ever develop evidence that Weber’s name was *deliberately* left in WikiLeaks’ Vault 7 publication, both Schulte and anyone else involved would be exposed to legal liability for violating the Intelligence Identities Protection Act, among other crimes.

On Monday, one week short of the day DOJ thought might be a realistic start day for the retrial, the British Supreme Court refused Assange’s bid to appeal a High Court decision accepting (flimsy) US assurances that Assange would not be held under Special Administrative Measures, finding that the appeal “does not raise an arguable point of law.”

Given the timing of the sealed filings in the Schulte case and the way the 2020 superseding indictment accuses Assange of “exhort[ing a Chaos Computer Club] audience to join the CIA in order to steal and provide information to WikiLeaks,” effectively teeing up Schulte’s alleged theft, I would be unsurprised if one of the things DOJ was delaying for weren’t this moment, some resolution to the Assange extradition.

To be sure: the Assange extradition is not over, not by a long shot. As a letter from his attorneys explains, this decision will go back to Vanessa Baraitser, who will then refer the extradition to Home Secretary Priti Patel. Assange will have four weeks to try to persuade Patel not to extradite him.

And, as the same letter notes in classically British use of the passive voice, Assange could still appeal Baraitser’s original ruling.

> It will be recollected that Mr Assange succeeded in Westminster Magistrates’ Court on the issue subsequently appealed by the US to the High Court. No appeal to the High Court has yet been filed by him in respect of the other important

> issues he raised previously in Westminster Magistrates' Court. That separate process of appeal has, of course, has yet to be initiated.

But an appeal on these issues would be decidedly more difficult now than they would have been two years ago.

That's true, in part, because the Biden Administration's continuation of Assange's prosecution has debunked all the bullshit claims Assange made about being politically targeted by Donald Trump.

I also expect at least one of the purportedly exculpatory stories WikiLeaks has been spamming in recent months to be exposed as a complete set-up by WikiLeaks — basically an enormous hoax on WikiLeaks' boosters and far too many journalist organizations. WikiLeaks has become little more than a propaganda shop, and I expect that to become clearer in the months ahead.

Finally, if the US supersedes[d] the existing indictment against Assange or obtains[ed] a second one in the last seven months, it will badly undermine any remaining claim Assange has to doing journalism. That's true for a slew of reasons.

As I laid out here, the part of the Baraitser ruling that distinguished Assange's actions from journalism based on his solicitation of hacks relied heavily on the language that directly teed up the hack-and-leak Schulte is accused of.

> Mr. Assange, it is alleged, had been engaged in recruiting others to obtain information for him for some time. For example, in August 2009 he spoke to an audience of hackers at a "Hacking at Random" conference and told them that unless they were a serving member of the US military they would have no legal liability for stealing classified information and giving it to Wikileaks. At the same conference he told the

> audience that there was a small vulnerability within the US Congress document distribution system stating, "*this is what any one of you would find if you were actually looking*". In October 2009 also to an audience of hackers at the "Hack in the Box Security Conference" he told the audience, "*I was a famous teenage hacker in Australia, and I've been reading generals' emails since I was 17*" and referred to the Wikileaks list of "flags" that it wanted captured. After Ms. Manning made her disclosures to him he continued to encourage people to take information. For example, in December 2013 he attended a Chaos computer club conference and told the audience to join the CIA in order to steal information stating "*I'm not saying don't join the CIA; no, go and join the CIA. Go in there, go into the ballpark and get the ball and bring it out*". [emphasis Baraitser's]

If the government proves what is publicly alleged, Schulte's actions have nothing to do with whistleblowing and everything to do with vindictive hacking to damage the CIA, precisely what Assange was eliciting. Plus, even if such a hypothetical superseding indictment added just Vault 7/Vault 8 charges against Assange, it could put extortion and IIPA on the table (the latter of which would be a direct analogue to the UK's Official Secrets Act), to say nothing of the still unexplained fate of the CIA source code which — as Schulte himself acknowledged — would have provided an unbelievable benefit had Russia had received it.

And that assumes that Vault 7/Vault 8 would be the only thing the US wanted to supersede with. When Jeremy Hammond asked prosecutors why they hadn't charged Assange for helping Russia tamper in US elections, they appeared to respond by describing the long time it would take to

extradite Assange, implying that they still had time to charge Assange. To be sure, Mueller concluded that he "did not have admissible evidence that was probably sufficient to obtain and sustain a Section 1030 conspiracy conviction of WikiLeaks [or] Assange." But the implication was that Mueller *had* evidence, just not stuff that could be submitted at trial. The extradition of Vladislav Klyushin — whose lawyer believed the US was particularly interested in his knowledge of the 2016 operation — might change that. (Like Assange, Klyushin's extradition was also pending when DOJ submitted that first sealed filing; Klyushin's case has been continued to share more discovery.)

There are several other operations WikiLeaks was involved in in 2015 and afterwards that would undermine any claim of being a journalistic outlet — and would add to the evidence that Assange had, at least by those years, been working closely to advance the interests of the Russian government.

It would be very hard to argue that Assange was being prosecuted for doing journalism if the US unveiled more credible allegations about the multiple ways Assange did Russia's bidding in 2016 and 2017, even in normal times. All the more so as Russia is continuing its attack on democracy with its invasion of Ukraine.

And that's what Assange faces as he attempts to stay out of the US.