

# SABRINA SHROFF REALLY WANTS TO MEET IN PERSON WITH JOSH SCHULTE

Something odd happened in the Josh Schulte case yesterday.

He still has to submit his Rule 29 motion for acquittal and Rule 33 motion for a new trial for his trial. Before the government seized his laptop in a search, they were originally due September 23.

But since the FBI allegedly found Child Sexual Abuse Material on his discovery laptop – the FBI suspects he copied it from the materials allegedly on his home computer via a thumb drive brought into the SCIF storing his discovery – he has been restricted to a typewriter, and so will be given more time to write the filings.

On October 6, Judge Jesse Furman ordered the two sides to come up with a new schedule for those motions by Friday to accommodate that restriction.

The FBI is also investigating Schulte for having contraband on his discovery laptop. Back in September, Schulte insisted that “the only material on the laptop was provided by the government or my attorneys.”

So early yesterday, the government filed a letter, effectively pre-empting one they said that Schulte’s attorney, Sabrina Shroff, had written but not yet docketed. They did so, they said, because hers was inaccurate and did not reflect consultation with Schulte, who is representing himself pro se on the last trial.

Counsel’s letter, which asks the Court to order the means by which the parties carry out their obligation to meet-and-confer about a proposed motions schedule, (i) is materially inaccurate,

(ii) seeks unnecessarily burdensome and delay-laden restrictions on what should be a straightforward conversation about a schedule, and (iii) inappropriately attempts to speak on the defendant's behalf with respect to an issue for which the defendant is pro se. Defense counsel's letter falsely claims, for example, that the Government previously refused to have calls with the defendant while he was in the MDC and has "repudiated" this practice; when, in fact, the Government previously arranged meet-and-confer calls with the defendant during his courthouse SCIF days because doing so was logistically simpler. Here, where the defendant is no longer produced to the SCIF, the Government proposed a telephone call from the MDC, which defense counsel has been invited to join. When counsel objected to the call, the Government noted that the defendant is pro se and entitled to decide for himself whether or not to participate in the call and, if he declined to do so, the Government would attempt to confer through other means. The Government also offered to respond to a proposed schedule from the defendant conveyed by counsel. Rather than pursue either option or allow the defendant to speak for himself on this pro se matter,<sup>1</sup> defense counsel submitted today's letter to the Court.

<sup>1</sup> Counsel's letter does not assert that the defendant is incompetent to act for himself pro se and makes no representation that the defendant was consulted on the letter.

When Shroff's letter was finally docketed (with two redactions describing Schulte's current status, apparently something pertaining to having been moved from his prior cell), it became clear that she's insisting on using the

meet-and-confer as an opportunity to meet with him in person, rather than with her on the call, or barring that, ensuring that anything Schulte say not be used against him.

In the past, the government has fulfilled its meet and confer obligations by calling Mr. Schulte in the SCIF, where one or more of his standby counsel could be physically present and beside Mr. Schulte as he spoke with opposing counsel. During the time Mr. Schulte was entirely pro se, the government refused to have calls with him while he was at MDC-Brooklyn, insisting the calls take place while he was at the SCIF. Each call was recorded by the government and an FBI agent was present for the call.

In repudiation of this prior practice, the government now seeks to meet and confer with Mr. Schulte by arranging a telephone call with him at the MDC, meaning **no defense counsel would be physically present next to Mr. Schulte during the call.**<sup>1</sup> Given (i) the hybrid representation in place; (ii) Mr. Schulte [redacted];<sup>2</sup> and (iii) such a setup is not necessary, it would not be prudent for defense counsel to agree to such a meet and confer.

In lieu of the government's proposal, defense counsel has offered to (i) take the government's proposed briefing schedule to Mr. Schulte to get his sign-off;<sup>3</sup> (ii) allow the meet and confer at the MDC, **provided the government can arrange for Mr. Schulte's counsel to be there physically with him in the same room;** (iii) have Mr. Schulte produced at the 500 Pearl Street pens on the 4th floor for the meet and confer; or (iv) if the Court allows the meet and confer to take place **outside the physical presence of counsel as the government**

**demands**, that the government agree not to use any purported spontaneous statements or questions that may come out during the call against Mr. Schulte at any future legal proceeding. The government has rejected each of these four proposals.

Given this impasse, and **the importance of defense counsel being physically next to Mr. Schulte when the Government speaks with him**, we respectfully ask the Court to Order the government to adopt one of the four proposals, so the meet and confer can proceed in a manner that allows defense counsel to step in and ensure that Mr. Schulte's right against self-incrimination and right to counsel are protected.

1 Defense counsel has apprised the government of her unavailability on the government's chosen date and time of October 19, 2022, and asked at the very least, the call be re-scheduled should the Court not grant the requested relief.

2 Neither the government nor the BOP informed counsel for Mr. Schulte [redacted] The BOP did not provide (for three days in row) the requested emergency legal calls. In person visits were also made unavailable. Counsel was told that the in-person visit could not take place as the room in the SAMs unit was occupied by other counsel, when in fact Mr. Schulte was not on his regular unit.

3 I twice offered to go to the MDC and vet with Mr. Schulte the government's proposed briefing schedule for the Rule 29 and 33 motion. The government declined to provide its proposed timeline/schedule to me.

While Shroff's letter sounds sketchy in light of Schulte's own observation that any contraband had to have come from the government or his lawyers, Shroff is too smart to facilitate Schulte's crimes. That said, the record suggests that he manipulates every single human being he comes into contact with, including his own family. I think the most likely explanation for any contraband is that he made a seemingly reasonable request for something from his lawyers, and then repurposed it.

The government, meanwhile, has used the recent developments to propose a long delay – with briefing to begin two months from now – on Schulte's pretrial motions. Now they're proposing he submit his motions on December 16.

I've been wondering how Schulte would respond to being accused of reaccessing CSAM material, something that, if proven, would make proving his pending charges on that easier to prove and also dramatically increase his potential sentence. He's at the point where he has to be contemplating life in prison.

However he has and will respond, Shroff is worried about him speaking with the government without being present.