GOVERNMENT CONFIRMS THAT WIKILEAKS DIDN'T RELEASE ALL THE VAULT 7 FILES

Accused Vault 7 hacker Joshua Schulte's lawyers seem really intent on preventing the government from using evidence obtained while he was using a contraband phone at MCC in his trial for the main leak of CIA's hacking tools to WikiLeaks.

They've already challenged warrants obtained using evidence found in notebooks marked as attorney-client privileged information but then released after a wall team review; in my NAL opinion, that challenge is the most likely of any of his motions to succeed. Last week, they also moved to sever the two MCC charges from the main Espionage ones (they've already severed the child porn and copyright violation charges from the Espionage ones), explaining that two of his attorneys, including his lead attorney Sabrina Shroff, would testify to something about discussions from May and June 2018 that would address his state of mind when he leaked and tried to leak CIA materials later in 2018.

> To defend against the government's allegations, Mr. Schulte would call two of his attorneys—Matthew B. Larsen and Sabrina P. Shroff—to present favorable testimony bearing on his state of mind.

This pertains, in some way, to the government's claim that Schulte wrote classified information in his prison notebooks as part of a plan to leak it.

> The government has indicated that its evidence on the MCC Counts will include portions of notebooks seized from Mr. Schulte's cell, in which he allegedly

> documented his plans to transmit classified information.
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> [snip]
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> Defense counsel expects that at trial, the government will seek to introduce excerpts of Mr. Schulte's writings in his notebooks as evidence of his specific intent to violate the law.

If they succeed at severing count four from the main Espionage charges, it might make it harder to link what Schulte was doing in jail with what he was allegedly doing over two years earlier. As I noted when Schulte's team first challenged the MCC warrants, it's clear why they're doing this: the MCC evidence indicates he had an ongoing relationship with WikiLeaks.

> The FBI investigation proceeded from those notebooks to the WordPress site showing him claiming something identical to disinformation he was packaging up to share with WikiLeaks. They also got from those notebooks to ProtonMail accounts where Schulte offered to share what may or may not be classified information with a journalist. The reason why the defense is pushing to suppress this – one of the only challenges they're making in his prosecution thus far – is because the stuff Schulte did in prison is utterly damning and seems to confirm both his familiarity with WikiLeaks and his belief that he needed to create disinformation to claim to be innocent.

The government, in a fairly scathing response to Schulte's motion to sever the trials, confirms that it believes the MCC charges include evidence that help support the main charges on leaking the files to WikiLeaks (what the government calls CIA counts). The government had a "reverse proffer" on December 18, 2018 and laid out all the evidence against Schulte,

including pointing out that (as I described) the material seized from MCC helped prove the CIA charges.

> About six weeks later, on December 18, 2018, the Government met with defense counsel (the "Reverse Attorney Proffer"). At this meeting, the Government described for defense counsel the theory of the Government's case with respect to the charges in the Second Superseding Indictment, and answered defense counsel's questions about the charged counts, including the new counts. The Government also explicitly noted during the Reverse Attorney Proffer that it believed that the material recovered pursuant to the MCC Warrants was relevant evidence with respect to not only the MCC Counts, but also the CIA Counts.

Having laid out the interconnectedness of these charges, the government then explains at some length why having different attorneys defend Schulte in the CIA and MCC counts would cause delays in both, because replacement counsel would need to familiarize themselves with both sets of charges. Now, as I noted, there's unclassified information that Schulte clearly shared with WikiLeaks both before and while he was in jail. But right there in the middle of this passage is the revelation that Schulte identified classified information in his prison notebooks that he shared with WikiLeaks but that WikiLeaks has not yet published.

> Regardless, Schulte's proposal—further severed trials and new counsel for the MCC Counts—would neither prevent trial delay nor resolve the ethical issue. Rather, it is likely to exacerbate both. First, appointing new counsel on the MCC Counts is likely to cause, rather than prevent, further trial delay and would complicate Schulte's defense across all counts. Because of the

interconnectedness of the MCC Counts and the CIA Counts, as well as the child pornography and copyright counts, new counsel would need to become familiar with the evidence as to all counts in order to appropriately advise and defend Schulte. Indeed, new counsel might determine that the best course with respect to the MCC Counts would be to seek to negotiate a plea that resolves those charges along with some combination of the CIA Counts, child pornography counts, and/or copyright count. Those negotiations could not occur until new counsel was fully familiar with all aspects of the case. This would take a substantial amount of time given that new counsel would have to be cleared and that a substantial portion of the evidence is classified and, thus, must be reviewed in sensitive compartmented information facilities. Moreover, even after new counsel became familiar with the case, it is possible that new counsel might have different views than current counsel concerning a variety of trial strategy decisions, including, among others, the desirability of Schulte testifying, which could impact one or all of the severed trials and would need to be coordinated among all of Schulte's attorneys. As a result, trial on the CIA Counts could not proceed until new counsel for the MCC Counts was familiar with the entire case. In short, the appointment of new counsel would likely further complicate this case and lead to substantial delays.

Second, severing the CIA Counts from the MCC Counts also would not resolve the purported ethical issue. Even if the trials were severed, evidence of Schulte's prison conduct, including the Schulte Cell Documents, would still be admissible at the trial addressing the

> CIA Counts as both direct evidence and Rule 404(b) evidence of those crimes. For example, in the Schulte Cell Documents, Schulte specifically identifies certain classified information that was provided to WikiLeaks but which WikiLeaks has not yet published, which is direct evidence that Schulte transmitted classified information to WikiLeaks as charged in the WikiLeaks Counts. Similarly, Schulte's prison conduct is also admissible as to the WikiLeaks Counts for a variety of Rule 404(b) purposes including to show, among other things, consciousness of guilt, motive, opportunity, intent, absence of mistake, and modus operandi.5
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> 5 Similarly, during a trial addressing the MCC Counts, the Government would introduce evidence relating to the CIA Counts as direct evidence to complete the story of the crime and, in the alternative, as Rule 404(b) evidence. For example, evidence related to the CIA Counts would establish Schulte's motive for committing and ability to commit the MCC Counts, as well as his knowledge that the information he unlawfully transmitted was classified national defense information. As a result, even a trial on the MCC Counts would entail introduction of much of the evidence from the Espionage Trial. [my emphasis]

The government doesn't say whether it knows that WikiLeaks received this information because it found it after seizing Julian Assange's computers or some other way.

The detail that Schulte referred to information that the government apparently knows WikiLeaks received — but that WikiLeaks has never published — is interesting for an entirely different reason.

On top of asking to sever two more charges, Schulte is also asking for a delay in trial, from November to January. The government says it's cool with that delay, so long as there won't be any further delay.

> The Government understands that the defendant is seeking to adjourn the Espionage Trial until January 13, 2020. Although the Government is prepared to start trial as scheduled on November 4, 2019, the Government does not oppose the defendant's adjournment request with the understanding that the defendant will not seek another adjournment of the Espionage Trial absent exceptional and unforeseen circumstances[.]

This story on Jeremy Hammond's subpoena in EDVA clarifies something about which there has been a great deal of confusion. The US can still add charges against Julian Assange at least until his extradition hearing, which starts on February 25.

> Nick Vamos, former head of extradition at the Crown Prosecution Service in England, said the treaty between the two countries still allows for the U.S. to add charges to the Assange case, but that will become more difficult and problematic for the American prosecutors as they get closer to the scheduled extradition hearing in February.

The discussion *today* has focused on the Stratfor hacks that Hammond is serving time for. Because the five year statute of limitations for CFAA would normally have tolled by now, they are likely pursuing some kind of conspiracy charges, for a conspiracy that continued past 2012.

But given the seeming cooperation while Schulte was in jail and the knowledge that WikiLeaks sat on — or used — one of the other files provided by Schulte, if the government is planning on

more conspiracy charges, chances are good that
Vault 7 will eventually be included in them.