

AND/OR: AN OMINOUS SIGN FOR WIKILEAKS IN THE JOSHUA SCHULTE INDICTMENT

There's been a lot of attention paid to the language in the GRU indictment from Friday showing WikiLeaks asking to receive stolen Hillary emails in time to cause maximal outrage among Bernie supporters.

On or about June 22, 2016, Organization I sent a private message to Guccifer 2.0 to "[s]end any new material [stolen from the DNC] here for us to review and it will have a much higher impact than what you are doing." On or about July 6, 2016, Organization 1 added, "if you have anything hillary related we want it in the next twoo [sic] days prefable [sic] because the DNC [DemocraticNationalConvention] is approaching and she Will solidify bernie supporters behind her after." The Conspirators responded, "Ok . . . i see." Organization I explained, "we think trump has only a 25% chance of winning against hillary . . . so conflict between bernie and hillary is interesting."

But I want to look at a minor—but potentially significant—detail in the Joshua Schulte indictment describing how he provided CIA's hacking tools to WikiLeaks. The description of Count Two, Illegal Transmission of Lawfully Possessed National Defense Information, reads like this:

In or about 2016, in the Eastern District of Virginia and elsewhere, JOSHUA ADAM SCHULTE, the defendant, lawfully having possession of, access to, control over, and being entrusted

with information relating to the national defense, to wit, certain portions of the Classified Information, which information the defendant had reason to believe could be used to the injury of the United States **and** to the advantage of a foreign nation, did knowingly and willfully communicate, deliver and transmit, and cause to be communicated, delivered, and transmitted, that aforesaid information to a person not entitled to receive it, to wit, Schulte caused the Classified information to be transmitted to Organization-1.

(Title 18, United States Code, Sections 793(d) and 2.)

The “and” there was pointed out to me by GDingers on Twitter.

As GDingers noted, the suggestion that Schulte knew a foreign nation (unnamed, but surely Russia if DOJ had any specific one, backed by evidence, in mind) would benefit, along with the US being damaged, is a fairly strong statement, one implicating WikiLeaks as well.

Moreover, that language didn't *have* to be in the indictment. Here's what the statutory language looks like:

Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States **or** to the advantage of any foreign nation, willfully communicates, delivers, transmits or

causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; [my emphasis]

The statutory language uses “or.” DOJ chose, in this indictment, to use “and.” As Secrecy News’ Steven Aftergood suggested via email, asserting both in the indictment sets a higher *mens rea* bar for proving Schulte’s guilt. DOJ didn’t have to do so, but they did.

So along with exposing Schulte to 130 years of potential prison time – a life sentence even accounting for how it will work in sentencing – DOJ wants to prove that Schulte leaked CIA’s hacking tools not just to hurt the United States but to help another nation, possibly Russia by name.

That bodes poorly for Schulte. But it also suggests a different kind of role for WikiLeaks than prior discussions have made out.

Update: Nerdyatty suggested that this is a DOJ practice. Except that Count One, charging a different part of 18 USC 793, maintains the “or” of the statute:

... with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation ... [my emphasis]

Which tracks this language from the statute:

Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to

the injury of the United States, **or** to
the advantage of any foreign nation,

[snip]

Whoever, for the purpose aforesaid, and
with like intent or reason to believe,
[my emphasis]