DOJ SAYS IT NEVER OFFERED ACCUSED VAULT 7 LEAKER JOSHUA SCHULTE A PLEA DEAL

As the Joshua Schulte prosecution has inched along against the backdrop of the Julian Assange indictment, I've heard chatter about his plans: that the two sides might prosecute the child porn charges and leave the leak untried; that the government was trying to get him to cooperate against Assange.

In the former case, the opposite now seems more likely. Last week, Judge Paul Crotty granted Schulte's motion to sever his child porn and copyright charges from his Espionage ones. But the minute order states that the Espionage charges will be tried first, in November, with the child porn charges tried some time after that. That's true, even though the Espionage charges are far more complex to try than the child porn ones. If the government wanted to use the child porn charges to put Schulte away indefinitely and avoid the difficulties of an Espionage trial, they'd try those first. (Update: at the hearing where this was decided, the defense said they wanted the Espionage trial to go first, and all other parties agreed.)

As to the latter, Schulte himself has sown the belief he was being offered a plea deal. In one version of his "Presumption of Innocence" blog, for example, he claimed (falsely, given the warrants he himself released) the government never obtained any evidence implicating him in the leak, and was just pursuing the child pornography charges to "break" him so he'll cooperate against WikiLeaks.

> I'm arrested and charged with a crime that had nothing to do with the initial search warrant and that I was completely innocent. The U.S. Attorney unethically

> and immorally misleads the court regarding what the initial investigation was about, when they found the illicit materials, and the fact that they did not think I was involved for 5 months until their initial investigation came up empty. I'm denied bail and thrown into prison immediately and they use the situation as leverage telling my attorney every day that he can make this huge embarrassment and misunderstanding all go away if only I would agree to cooperate on the WikiLeaks investigation and admit to it. They admit, unabashedly that these entire charges are nothing more than a ruse, an attempt at leverage to break me.

A version of this claim was repeated in a piece the Intercept did yesterday claiming to track how (a select group of) leakers got identified by the FBI.

> Of the four Espionage Act cases based on alleged leaks in the Trump era, the most unusual concerned Joshua Schulte, a former CIA software developer accused of leaking CIA documents and hacking tools known as the Vault 7 disclosures to WikiLeaks. Schulte's case is different from the others because, after the FBI confiscated his desktop computer, phone, and other devices in a March 2017 raid, the government allegedly discovered over 10,000 images depicting child sexual abuse on his computer, as well as a file and chat server he ran that included logs of him discussing child sexual abuse images and screenshots of him using racist slurs. Prosecutors initially charged Schulte with several counts related to child pornography and later with sexual assault in a separate case, based on evidence from his phone. Only in June 2018, in a superseding indictment, did the government finally

> charge him under the Espionage Act for leaking the hacking tools. He has pleaded not guilty to all charges.

Schulte was identified as the suspect just like all the other people profiled in the story were: because he was one of the few people who had access to the files that got leaked and his Google searches mapped out a damning pattern of research involving the leak, among other things. In his case, WikiLeaks itself did several things to add to the evidence he was the source. It is true that Schulte was *charged* with the porn charges first and that it took 15 months for the government to ultimately charge the leak, but the theory of Schulte's role in the leak has remained largely unchanged since a week after the first files were dropped.

Schulte again suggested he might get a plea deal in his lawsuit against then Attorney General Jeff Sessions for imposing Special Administrative Measures against him when he raised 5K1 letters that might allow someone to avoid mandatory minimum sentencing.

> The mandatory minimums make it extremely risky for defendants to go to trial—do you try trail, when, if convicted, you MUST go to jail for 10 years mandatory? Or do you plead guilty even if you're innocent? 5K1 letters and the prosecutor's ability to suspend mandatory minimums give them extraordinary leverage and coercive power over the defendants—the innocent always plead guilty and take 2-3 years in lieu of the risk of an entire decade. Risk management and basic statistical analysis indicate that the logical choice is to ALWAYS plead guilty and avoid the risk regardless of innocence, and this is exactly what counsel advises the defendant—in clear violation of due process and the entire concept of justice.

But in last week's opposition to Schulte's motion to suppress most of the warrants against him — including some on the grounds that they relied on poisonous fruit of attorney-client privileged material — the government denies ever offering a plea deal.

> Schulte claims that the FBI read his thoughts on severance (which the Government has consented to) or a plea offer (which the Government has not made), but none of those "thoughts" are referenced in any subsequent search

> warrant.

The claim that the government left unredacted a reference to Schulte's views on a plea deal does not appear in the unredacted version of Schulte's motion to suppress, but given his lawyers' claim that his journals were intended to be a discussion of his legal remedies, it may be an attempt to suppress the Presumption of Innocence notes cited above (even though Schulte made the same notes public).

> Mr. Schulte's narrative writings and diary entries contain information he "considered to be relevant to his potential legal remedies."

There's lot of room for a discussion short of a plea offer that might be true even given the government claim that "the Government has not made" any offer (such as that one of the series of attorneys who have represented Schulte has recommended that he seek a deal).

But the detail is particularly interesting given the timing of his trial and something the government claimed the last time Chelsea Manning and her lawyers tried to get her out of jail. It insisted they want Manning's testimony for subjects and charges not included in Assange's current indictment, and said the submission of the extradition request against Assange does not preclude future charges based on those offenses.

> As the government's ex parte submissions reflect, Manning's testimony remains relevant and essential to an ongoing investigation into charges or targets that are not included in the superseding indictment. See Gov't's Ex Parte Mem. (**May 23, 2019**). The offenses that remain under investigation are not time barred, see id., and the submission of the government's extradition request in the Assange case does not preclude future charges based on those offenses, see

> Gov't's Supplement to Ex Parte Mem. (**June 14, 2019**).

Barring a delay because of Classified Intelligence Protect Act proceedings, Schulte will face trial on the Espionage charges in November, three months before the next hearing in Assange's extradition. And while there's no hint in Schulte's case that WikiLeaks played a role in the front end of Schulte's alleged leak, there's abundant evidence that they continued to cooperate with him in the aftermath and even in the initial release itself. Indeed, that's some of the most damning evidence against Schulte.

Schulte seems to think he could cooperate against Assange and face lesser charges. If the government told the truth last week, he may have little prospect to diminish what would amount to a life sentence if he's found guilty.