

# **PROSECUTORS HAVE DISCOVERED THE JOSHUA SCHULTE IS A HACK-AND-LEAK CASE, NOT A PERSONNEL DISPUTE**

While I've been buried in the Mike Flynn beat, on Monday, there was a status hearing in the Joshua Schulte case.

There were three main news items in the hearing.

First, prosecutors revealed unsurprisingly that they're going to retry Schulte. More interesting, they said they planned to supersede the indictment against Schulte, alleging the same charges, but providing more information on them. They cited the notes from jurors, which made it crystal clear that the jurors were confused by the forensic testimony and how the charges related to that testimony. What the limits of Schulte's legal access were seemed to be particularly confusing (something that is not sufficiently clear in the law anyway). At the time of both the initial Espionage indictment and the superseding one, the CIA was still trying to keep secret specifically what had been stolen when and how, but now that's public. I expect the superseding indictment to explain more clearly what was stolen and how Schulte allegedly exceeded his legal accesses to do that.

In discussions around that superseding indictment, prosecutor David Denton said something to the effect that grand juries are only available in emergencies. As far as the public record goes, however, grand juries aren't available at all, so Denton's disclosure was news. That only matters in the Schulte case insofar as he's going to refuse most Speedy Trial exclusions (meaning prosecutors may be

forced to find some way to start a new trial before COVID lockdowns end). But it's an interesting admission more generally.

Finally, prosecutors said they didn't think the retrial will take as long as his initial trial. In my summary of why the prosecution was in a remarkably weak position as the last trial went to the jury, I described how prosecutors had made it look like the Vault 7 breach was just a really nasty personnel dispute to which burning the CIA's hacking abilities to the ground was just a side dispute.

Add that to the pace of the trial, which feels like a nasty employment dispute to which the massive breach of the CIA's hacking tools became just a side-dispute. That's often true of CIA trials – it certainly was for Jeffrey Sterling. But the long parade of CIA witnesses – Schulte's buddy, two other colleagues, his boss, his boss's boss, his boss's boss's boss, her boss, and then yet another boss, plus a CIA SysAdmin and a security guy – all describing a series of disputes escalating from a nerf gun fight to WikiLeaks burning the CIA's hacking capabilities to the ground refocused the trial onto whether Schulte's complaints had merit and not on what the forensic evidence showed.

And Sabrina Shroff did a superb job of defending *not* the forensic case (indeed, defense expert Steve Bellovin did not take the stand to float any of the alternate theories that Schulte has been offering for two years, and in so doing will leave Shroff to claim Michael could have accessed the backup without prosecutors having gotten him to admit that wouldn't have worked), but instead arguing that her client was maligned by the entire CIA. The boss, the boss's boss, the boss's boss's boss, the boss's boss's boss's boss, and then the senior-

most boss are all lined up against Schulte for being an asshole. She even defused utterly damning notes about working with Russia (which I'll return to). From the transcripts, it seemed like Shroff rattled a good many government witnesses, too, and a number of them (one of the FBI agents and the classification expert, especially) seemed to come off as unresponsive as a result.

I expect prosecutors will shorten the trial by limiting this testimony to just the four or so people who have first-hand knowledge of Schulte's actions (and in the retrial, the government won't have to backpedal as they try to fix their late disclosure that Schulte's buddy Michael had been put on paid leave by the CIA). If so, that should make it easier for prosecutors to focus on why the circumstantial forensic evidence strongly supports Schulte's involvement.

All that said, prosecutors also seemed to be fighting jury nullification in Schulte's trial, with at least two jurors who were determined to acquit Schulte no matter what other jurors said. That may be a WikiLeaks thing (one that would be far less likely to happen if this were tried in EDVA, which is why Julian Assange says he can't get a fair trial in EDVA). But it also may be the case that CIA's hacking department doesn't make a very sympathetic hacking victim.