

PUTTING THE TORTURE BACK IN THE TORTURE WHISTLEBLOWING CASE

Kevin Gosztola has suggested and Josh Gerstein has confirmed that, along with Matthew Cole and Scott Shane, John Kiriakou has subpoenaed the Washington Post's Julie Tate to give a deposition in his leak case.

The Shane subpoena is unsurprising. After all, it's pretty clearly DOJ found Kiriakou through Shane's June 22, 2008 story for which he claims to have 24 sources. Meaning any of the 23 other sources may be possible sources for Deuce Martinez' identity, one of the charged leaks in the indictment. What's interesting, however, is that Jesselyn Radack suggested to me on Twitter that Kiriakou might not subpoena Shane.

Matthew Cole is a more interesting subpoena, though also not surprising. After all, this investigation started not by investigating Shane's story, but investigating the name of torturers submitted in a Gitmo filing. Presumably, then, DOJ first grilled the lawyers and their investigators about how they had learned the identities of the torturers they had included in that filing (note, Covert Officer A was not named there, because he was still covert), and from there they ultimately found Kiriakou.

Which brings us to Tate, who previously hasn't been mentioned in this case. Gerstein writes,

Tate, a Post researcher who worked on stories about the Guantanamo prisoners and helped develop a Post databased of the inmates, was not mentioned in the indictment. However, Kiriakou's lawyers said in a court filing "information developed by Mr. Kiriakou's defense indicates that Researcher 1 [Tate] participated with Journalist A [Cole] in certain activities alleged in the

Indictment.”

Cole wasn't actually alleged to have done anything in the indictment (though the complaint gets closer to suggesting he was investigating the torturers for the Gitmo defendants). But the suggestion is he was in a chain of information that ultimately led back to a bunch of lawyers unjustly accused of improperly treating classified information in a bid to defend their clients. Radack suggested Tate had a similar role.

What do @matthewacole & @JulieATate have in common?

I'm guessing this suggests Tate was somewhere in that same chain of information.

Consider for a moment how this complaint and indictment were structured by the now-retired Patrick Fitzgerald: Covert Officer A was not named in the original Gitmo filing, because he was covert. And Deuce Martinez may have been named, but he did not do the torturing; he did the questioning.

So Fitzgerald structured this case so as to avoid mentioning—much less admitting—that at its root lies a bunch of men guilty of torture. At its root lies the effort to hide the identity of torturers, and CIA's efforts to punish those who brought that to light. If I'm right, and Tate is in that chain of people who exposed the identity of some torturers, then that's part of what Kiriakou's after: to show that he was simply involved in an effort to expose torturers. A whistleblower.

But there's one other element. Radack also notes the irony here: the government is in a pickle, because they've been working very hard in the Jeffrey Sterling case to establish a precedent saying journalists can be subpoenaed in the same District as the Kiriakou case, EDVA, CIA's home District. So they can't very well turn around and say these journalists can't be subpoenaed

here. All the more so given that Kiriakou doesn't have the luxury of just dropping the case to avoid subpoenaing the journalists, as the government does in Sterling.

I'm not sure it'll work, but the Tate and Cole subpoenas sure seem like an effort to put the real lawbreakers—the torturers—back in the forefront of this case.