

DAVID PETRAEUS' DEFENSE ATTORNEY ARGUES MISTRESS- BIOGRAPHERS HAVE MORE LEGAL PRIVILEGE THAN DEFENSE ATTORNEYS

In a letter to the NYT complaining that the paper compared his client, David Petraeus, with Stephen Kim and John Kiriakou, defense attorney David Kendall implicitly makes the argument that mistress-biographers have a better recognized privilege to access classified information than defense attorneys. (h/t Steven Aftergood via Josh Gerstein)

Now, far be it for me to criticize Kendall's lawyering ability. After all, his firm, Williams & Connolly, has developed quite the expertise for getting well-connected Republicans off for leaking covert officers' identities, having done so for Ari Fleischer, Dick Cheney, and now David Petraeus.

But his letter is ridiculous on both the facts and his rebuttal of the comparison, at least as it pertains to John Kiriakou.

First, Kendall omits key facts in his depiction of Petraeus' crimes.

General Petraeus's case is about the unlawful removal and improper storage of classified materials, not the dissemination of such materials to the public. Indeed, a statement of facts filed with the plea agreement and signed by both General Petraeus and the Justice Department makes clear that "no classified information" from his "black books" (personal notebooks) that were

given to his biographer, Paula Broadwell, appeared in the biography.

He notes the plea deal “makes clear that ‘no classified information’ from his ‘black books’ ... appeared in the biography.” That’s a very different thing than claiming that no classified information Petraeus shared with Broadwell appeared in her fawning biography of his client – and the record seems to suggest that it does.

Kendall also neglects to mention that this case is also about his client, just days after applauding Kiriakou’s plea, lying to the FBI. While, through the good grace of Kendall’s lawyering, Petraeus has gotten off scot free for a crime that others do years of prison time for, Petraeus nevertheless admitted that he committed that crime.

Indeed, as Abbe Lowell has made clear, that’s what prevented Kim from getting precisely the sweet deal that Petraeus has gotten, his alleged lies to the FBI.

But I’m even more disgusted by Kendall’s cynical treatment of Kiriakou’s crime.

By contrast, Stephen J. Kim arranged for the publication of highly sensitive classified information from an intelligence report on North Korea’s military capabilities, and John C. Kiriakou revealed the identities of covert C.I.A. agents, a betrayal of colleagues “whose secrecy is their only safety,” in the words of a government attorney.

[snip]

Reporters, like biographers, are frequently given access to sensitive information on the understanding that they will not publicize it, and it is hypocritical for The Times to argue for leniency for Mr. Kim and Mr. Kiriakou

and harshness for General Petraeus.

Note how Kendall doesn't describe to whom Kiriakou "revealed the identities of covert C.I.A. agents" [a factual error – Kiriakou was only accused of leaking one covert officer's identity]? The answer is he revealed the identity of a torturer to a journalist who was working for defense attorneys defending people that torturer had tortured.

Now, clearly, Kendall does defend the right of journalists to receive such classified information if they don't publicly disclose it. That's what he argues Petraeus' mistress has done (the evidence notwithstanding). So according to Kendall's lawyering, providing that covert officer's identity to a reporter who didn't disclose it publicly – which is what happened in Kiriakou's case – should have gotten Kiriakou probation.

Ultimately though, Kendall doesn't even deal with the fact that, whatever scant privilege journalists and mistress-biographers have been granted in this country, defense attorneys have generally been granted more, for good reason. Thus, by all measures, Kiriakou made no worse, and arguably a much more legally defensible disclosure of a CIA officer's identity than the multiple covert officers' identities Petraeus exposed to his mistress and anyone else who decided to peruse his unlocked desk drawer.

I mean, I never really expect people in Petraeus' vicinity to do anything but fluff his reputation; Petraeus has an infallible ability in eliciting that from people he permits to get close (or closer, in the case of Broadwell).

But I am rather surprised that a defense attorney is arguing he should have fewer privileges than a mistress-biographer.