No Harm No Foul: Time to End the Petraeus Saga

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It is a tenet of our system of justice that the punishment should fit the crime. Since 2012, the U.S. Justice Department has been investigating whether retired US Army four-star General David Petraeus leaked classified information to his biographer Paula Broadwell, with whom he had an affair after retiring from the military to take the position of CIA Director.

The transgression occurred when Petraeus loaned his personal notebooks from Afghanistan to Broadwell in August 2011. The eight 5”x 8” notebooks included no classification markings, but did contain information that arguably could or should have been classified. Broadwell was in possession of the notebooks for a total of four days before Petraeus recovered them, keeping them at his home near Washington, D.C. (1). Also under investigation has been the ancillary question of whether Petraeus lied to the FBI about loaning her the notebooks, and to the CIA about whether he retained any classified information after he left the Agency.

On February 22nd, Petraeus pled guilty in federal court to a single misdemeanor count of unauthorized removal and retention of classified material. The prosecution recommended a punishment of two years’ probation and a $40,000 fine (2). U.S. Magistrate David Kessler will review the plea when he takes up sentencing in late April.

The Petraeus plea deal, announced in early March, formally validates the position that these events were misdemeanors, rather than high crimes calling for harsher punishment. And it found support across the political spectrum. Even before the announcement, Democratic Senator Diane Feinstein had urged the Justice Department not to pursue criminal charges at all against Petraeus. And Republican Senator John McCain had sent a letter to Attorney General Eric Holder “asking for leniency and a quick disposition.” After the deal was announced, both Senators were quick to endorse it (3)(4).

Others, however, were not. The debate over the fairness of the plea bargain has been heated, both within and outside of the military community. Some in Washington claim a disparity between this sentence and those handed down for similar transgressions to lower government officials. Fox News pointed to the case of CIA Officer John Kriakou who got 30 months in prison in 2012 for “intentionally disclosing the identity of a covert agent to a reporter” (5). Swinging for the bleachers, Jeff Stein of Newsweek pointed to Bradley Manning who in 2013 got 35 years for intentionally giving to Wikileaks the largest volume of classified material ever leaked to the public; former CIA operative Jeffrey Sterling, who awaits sentencing for a January conviction of leaking “details of a failed mission against Iraq to New York Times reported
James Risen;” and Edward Snowden, who stole the crown jewels from the NSA, turned them over to media and the Russians, and should be standing in front of a firing squad.

Others say that the sentence is roughly comparable to comparable cases. The Washington Post, for example, reported that in 1996 former CIA Director John Deutch agreed to plead guilty to a misdemeanor and pay a $5,000 fine for storing classified documents on his home computer (7). The New York Times reported that former National Security Advisor Sandy Berger pled guilty in 2005 to a misdemeanor, and paid a $50,000 fine after getting caught slipping classified documents out of the National Archives (8). The Times also reported that Attorney General Alberto Gonzales was not charged at all for keeping information about the NSA’s wiretapping program at his house in 2008.

In examining whether the loan of Petraeus’ personal notebooks to his biographer caused damage to national security, it is first useful to look at how the information was used. The book that Paula Broadwell co-authored with Vernon Loeb (All In; The Education of David Petraeus) was not so much an “adulatory biography” as some media have tried to characterize it, but rather a detailed contextual biography of the man at the center of the evolution of the first US military counterinsurgency doctrine to be articulated in decades. As author Mark Bowden said of Broadwell’s book (9):

> “Anyone seeking to understand the nature of American war-fighting in the twenty-first century, how it is both like and utterly unlike that of any previous one, needs to understand Petraeus, his remarkable career, his thinking, and his character. All In is an excellent place to start.”

Paula Broadwell wasn’t some bimbo writing a cheap novel or, worse, some reporter intent on publishing U.S. secrets. Broadwell was a respected military professional in her own right at the time, with her own high-level security clearance. She graduated with honors from West Point, had more than ten years’ military service in the US Army and Army Reserve, and had over fifteen years’ experience with counterterrorism and counterinsurgency, including with the FBI’s Joint Terrorism Task Force. The FBI itself tried to hire her in 2006, an opportunity she passed up to go to Harvard (10). Federal prosecutors found that no classified information was reported in Broadwell’s book (11), moreover, and President Barack Obama himself said that the leak in no way “would have had a negative impact on our national security” (12).

At the end of the day, the best take on the events is that of an unidentified military officer who was recently quoted by Politico (13):

> “(T)he government’s two-year investigation ultimately came down to this: Petraeus gave his own personal notes, which were not marked as classified, to someone authorized to view such information, who did not release it…”

In short, no harm no foul.

Judge Kessler will hopefully agree to the plea bargain in April, when he decides what level of punishment fits the specifics of this particular crime. His decision will then hopefully put behind both Petraeus and the American people a saga which has kept one of the most critical national security voices of our era under White House control, at a time when the long-term threat to our national security has risen so dramatically.
End Notes


About the Author

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Jeff Goodson is a retired US Foreign Service Officer. He was deployed for 20 of 29 years overseas, and worked boots on the ground in 49 countries in Africa, Asia, eastern Europe, the Middle East and Latin America (1983-2012). Mr. Goodson served 31 months in Afghanistan (2006-2012), including twelve months as Chief of Staff at USAID/Kabul (2006-7) and seventeen months as Director Development at ISAF HQ under both General David Petraeus and General John Allen (2010-2012).

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