

THE SEXY-TIME EXCEPTION TO RETAINING CLASSIFIED INFORMATION

Last night, WaPo reported that the FBI is still trying to figure out how Paula Broadwell got classified information they found on her computer and—it looks like—in her home.

The FBI is making a new push to determine how a woman who had an affair with retired Gen. David H. Petraeus when he was CIA director obtained classified files, part of an expanding series of investigations in a scandal that also threatens the career of the United States' top military commander in Afghanistan.

Senior law enforcement officials said that a late-night seizure on Monday of boxes of material from the North Carolina home of Paula Broadwell, a Petraeus biographer whose affair with him led to his resignation last week, marks a renewed focus by investigators on sensitive material found in her possession.

"The issue of national security is still on the table," one U.S. law enforcement official said. Both Petraeus and Broadwell have denied to investigators that he was the source of any classified information, officials said.

The surprise move by the FBI follows assertions by U.S. officials that the investigation had turned up no evidence of a security breach – a factor that was cited as a reason the Justice Department did not notify the White House before last week that the CIA director had been ensnared in an e-mail inquiry.

As the WaPo correctly points out, this new investigative push is surprising, because the FBI has already been blabbing for several days that no charges would be filed.

Which is why I find it strange that Matthew Miller made this claim in a column arguing the FBI has handled the Petraeus investigation properly:

In this case, it appears the Department of Justice and Federal Bureau of Investigation handled the matter entirely in keeping with those rules and precedents. And, importantly, they passed the most crucial test faced whenever the department investigates a senior member of the existing administration: They conducted the entire investigation without playing favorites and without a hint of political interference.

While it's not the central thrust of Miller's piece (whether or not Congress should have been informed is), it's too soon to know whether DOJ is playing favorites or not. But up until this latest report from WaPo, it appeared they were playing favorites.

After all, DOJ charged people—like Thomas Drake—for retaining unclassified information, information he had been directed by the Inspector General to retain. DOD charged Bradley Manning with retaining classified information.

Retaining classified information improperly is a crime, even if you have clearance to view the information.

Sure, it's usually used as a proxy for other crimes for which no evidence exists. Or, in the case of Drake, in an effort to get him to plead guilty to other crimes.

But if DOJ is going to use it as a tool to persecute leakers, there is no reason it should exempt General Petraeus' one-time mistress.

I'm not saying I want Broadwell to be charged, nor am I saying I think DOJ's use of such charges in the past is proper. But that's the problem with witch hunts, isn't it? They either stick out as arbitrary political prosecutions, or they set a standard that few in the national security establishment could meet.

Update: Ut oh. Broadwell might get herself in trouble after all.

A computer used by Paula Broadwell, the woman whose affair with CIA director General David Petraeus led to his resignation, contained substantial classified information that should have been stored under more secure conditions, law enforcement and national security officials said on Wednesday.

The contents of the classified material and how Broadwell acquired it remain under investigation, said the officials. They spoke on condition of anonymity because they are not authorized to comment publicly.

But the quantity of classified material found on the computer was significant enough to warrant a continuing investigation, the officials told Reuters.

Though it sounds like they're only contemplating stripping her security clearance.

Law enforcement officials also have said that they believe the continuing FBI probe into the matter is likely to end without criminal charges. If Broadwell is found to have mishandled classified information, she could face action under administrative security regulations.

Which would mean they're striking a middle ground between treating her as they've treated others and retaliating against her for getting

the sainted Petraeus in trouble (because of course grown men never get themselves in trouble).

Update: CNN now reporting that Broadwell has had her security clearance revoked.