

Libby's Defense: 'The Devil Made Me Do It'

by Jeffrey Steinberg

While the "Establishment" media has been asleep at the switch, Special Counsel Patrick Fitzgerald has made a series of devastating filings before Judge Reggie B. Walton, in the United States District Court for the District of Columbia, which have placed a new spotlight on the personal role of Vice President Dick Cheney in the leaking of the identity of Central Intelligence Agency officer Valerie Plame Wilson.

Those filings, from May 12 and May 24, 2006, taken together, provide a clear picture of what motivated defendant I. Lewis "Scooter" Libby to lie before the Federal grand jury. As the Fitzgerald filings show, Libby obstructed justice in order to conceal the fact that Vice President Cheney was obsessed with discrediting Ambassador Joseph Wilson, whose July 6, 2003 *New York Times* op ed accused the Bush Administration of faking crucial evidence that justified the preventive-war invasion of Iraq earlier that year.

In February 2002, former Ambassador Wilson had been dispatched to the African nation of Niger, to probe reports that the Saddam Hussein regime in Iraq had been attempting to acquire large quantities of uranium, for a secret nuclear weapons program. Wilson's CIA-sponsored trip had come in response to queries from Vice President Cheney, who was seeking every ounce of "proof" to justify an invasion of Iraq. Wilson reported back to the Agency that there was no credible basis to believe Iraq had obtained uranium from Niger. Nevertheless, right up to the March 2003 invasion, top Administration officials, including Cheney and President Bush, had repeatedly claimed that Iraq was building a bomb and had been seeking uranium in Africa.

The Handwriting on the Wall

On May 12, 2006, Special Counsel Fitzgerald filed a "Government's Response to Court's Inquiry Regarding

News Articles the Government Intends to Offer as Evidence at Trial," which contained a bombshell exhibit: a copy of Joseph Wilson's July 6, 2003 *New York Times* op ed, "What I Didn't Find in Africa," with handwritten margin notes from Vice President Cheney, and extensive underlinings of the article text. Among the notes on the article in Cheney's handwriting: "Do we ordinarily send people out pro bono to work for us? Or did his wife send him on a junket?"

Cheney's reference to "his wife" confirmed that the Vice President was aware, prior to the July 14, 2003 outing of Valerie Plame as a CIA officer in a syndicated column by Robert Novak, that she was employed by the CIA. Furthermore, as Fitzgerald noted in his filing, "Those annotations support the proposition that publication of the Wilson Op Ed acutely focused the attention of the Vice President and the defendant, his chief of staff, on Mr. Wilson, on the assertions made in his article, and on responding to those assertions. The annotated version of the article reflects the contemporaneous reaction of the Vice President to Mr. Wilson's Op Ed article, and thus is relevant to establishing some of the facts that were viewed as important by the defendant's immediate superior, including whether Mr. Wilson's wife had 'sen[t] him on a junket.'"

In the same section of the filing, Fitzgerald emphasized that, whether or not Libby had personally seen the annotated copy of the Wilson op ed, the document did go to the issue of "motive." Fitzgerald wrote, "The article, and the fact that it contains certain criticisms of the administration, including criticisms regarding issues dealt with by the Office of the Vice President ('OVP'), serve both to explain the context of, and provide a motive, for many of



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PRNewsFoto

I. Lewis "Scooter" Libby: Caught.

Libby's boss: Vice President Dick Cheney (left).

the defendant's statements and actions at issue in this case."

As any first year law student knows, the crucial issue in any criminal prosecution is the ability of the government to show the motive of the accused criminal. In the Libby case, Fitzgerald has zeroed in on Libby's boss, Vice President Dick Cheney. Cheney went berserk when the Wilson op ed appeared. Indeed, according to the same May 12 Fitzgerald filing, Cheney was already spreading the word that Wilson's wife worked for the CIA as early as May-June 2003, when a series of news stories, appearing in the *Washington Post* and the *New York Times*, highlighted the Wilson fact-finding mission to Niger, even though his name was not mentioned.

Grand Jury Testimony Dripped Out

On May 24, 2006, Special Prosecutor Fitzgerald dropped another bomb, filing a "Reply to the Response of I. Lewis Libby to Government's Response to Courts Inquiry Regarding News Articles the Government Intends to Offer at Trial," which further identified Cheney as the architect of the Plame leak. Appended to the filing were redacted portions of the transcripts of two grand jury appearances by Libby, on March 5 and March 24, 2004. In that testimony, Libby

described the Vice President's reaction to the appearance of the Wilson op ed, but claimed that his discussions with Cheney about how to respond to the Wilson story took place *after* the Novak column blowing Mrs. Wilson's cover as a CIA officer. Fitzgerald wrote that he will present witnesses at trial who will confirm that Cheney ordered the "Get Wilson" campaign prior to the Novak leak, and that Libby lied before the grand jury, to cover up Cheney's role.

Nevertheless, as the redacted portions of Libby's grand jury testimony—now out in the public record—make clear, Cheney was the driver of the campaign to discredit Ambassador Wilson. Libby admitted, under oath, that he and other officials in the Office of the Vice President, had numerous conversations with Cheney, about the need to "get the facts out" to counter the devastating impact that the Wilson revelations had.

Whether he likes it or not, Libby has adopted a defense strategy that centers around the central argument: "The Devil made me do it."

As part of *EIR's* role as a publication of record, we publish below the full texts of Special Prosecutor Fitzgerald's May 12, 2006 and May 24, 2006 court submissions, along with the full texts of the portions of the Libby grand jury testimony, appended to the May 24 filing.

Special Counsel Filing On Lewis Libby, May 24

This is the complete filing by Special Counsel Patrick Fitzgerald, submitted to the court in the Lewis Libby case on May 24. We reprint the entire document here, so that readers will have a full and accurate picture of what Fitzgerald states regarding the state of mind of Cheney and Libby, which he presents to show their motivation for the criminal offenses which with Libby is charged. The distinction between this and the May 12 filing by Fitzgerald, is that Libby is trying to exclude evidence, and this is Fitzgerald's reply.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
v.) CR. NO 05-394 (RBW)
)
I. LEWIS LIBBY,)
also known as "Scooter Libby")

Reply to the Response of I. Lewis Libby to Government's Response to Court's Inquiry Regarding News Articles the Government Intends to Offer at Trial

The Government submits the following in reply to the "Response of I. Lewis Libby to Government's Response to Court's Inquiry Regarding News Articles The Government Intends to Offer as Evidence at Trial." ("Response").

Introduction

In his Response, defendant makes only one new argument in support of his claim of entitlement to broad discovery of materials relating to potential witnesses, as well as to others employed by the government agencies that employed those witnesses. Defendant asserts that, by arguing the relevance of the Vice President's handwritten annotations of the July 6, 2003, *New York Times* Op Ed by former Ambassador Joseph Wilson (the "Wilson Op Ed"), the government has broadly acknowledged that the mental state of persons other than the defendant is relevant to defendant's guilt or innocence. Therefore, defendant argues, the government cannot logically resist discovery of documents reflecting the views of other potential witnesses concerning Mr. Wilson and his trip to Niger.

Contrary to defendant's suggestion, the relevance of the

Vice President's annotations of the Wilson Op Ed is not remotely comparable to the purported relevance of the documents defendant seeks in his Third Motion to Compel. As the defendant admitted in his grand jury testimony, he communicated extensively with the Vice President regarding the Wilson Op Ed during the relevant period, and received direction from the Vice President regarding his response to the Wilson Op Ed. The Vice President's handwritten notes on a clipping of the Wilson Op Ed, which reflect his views concerning Mr. Wilson and his wife, are evidence of the views the Vice President communicated during the conversations that the Vice President and his chief of staff had during the period immediately following the publication of the Wilson Op Ed, and corroborate other evidence regarding these communications, which are central to the government's proof that defendant knowingly made false statements to federal agents and the grand jury. Accordingly, the Vice President's annotations of the Wilson Op Ed are uniquely relevant to the issues of this case.¹

No comparable nexus exists with respect to any views concerning Mr. Wilson and his wife that may have been held or expressed to persons other than the defendant by the other individuals concerning whom defendant seeks discovery in the Third Motion to Compel. None of these individuals were defendant's immediate superior. None of them directed defendant's actions with respect to a response to the Wilson Op Ed. In fact, defendant's relevant contacts with former Under Secretary of State Marc Grossman, cited by defendant as illustrating the relevance of the state of mind of others, were limited to defendant's request for, and receipt of, information concerning Mr. Wilson's trip in May and June 2003.

Shorn of its efforts to misconstrue the government's argument concerning the relevancy of the Vice President's annotations to the Wilson Op Ed, defendant's Response amounts to a reiteration of his previously-stated position that he needs broad discovery in order to help him prepare cross-examinations of government witnesses (including by demonstrating bias), show the context of the defendant's alleged crimes, and demonstrate his client's state of mind. As the government previously has argued,² defendant's expansive discovery requests are inconsistent with applicable case law and amount to a demand to conduct a fishing expedition through the government's files. The government has produced to defendant all documents received from any source which relate to conversations, correspondence, or meetings in which defendant was involved, or which relate to the defendant's inquiries

1. The government does not purport to recite here all the reasons why the annotated Wilson Op Ed is admissible at trial as this issue arises in the context of a discovery motion, not a motion *in limine*.

2. The government will not re-argue here the points made in its earlier submissions, and will not argue in advance issues related to admissibility of evidence that are not necessary to a determination of defendant's pending discovery motion.



Fitzgerald's bombshell exhibit: Joseph Wilson's July 6, 2003 New York Times op ed, with margin notes and underlinings by Vice President Dick Cheney. This clipping precedes the "outing" of Wilson's wife as a CIA officer.

regarding former Ambassador Joseph Wilson's trip to Niger, including all documents reflecting relevant communications between defendant and any of the individuals concerning whom defendant seeks discovery in the Third Motion to Compel. The government has gone beyond its obligations under Rule 16 to produce additional materials from the Office of Vice President, Central Intelligence Agency and the State Department that relate generally to Mr. Wilson's trip. Defendant is entitled to no more.

Argument

I. The Annotated Wilson Op Ed is Relevant to Establish that Defendant's Immediate Superior Was Concerned that Mr. Wilson Was Sent on a "Junket" by his Wife, and Communicated His Concern to Defendant.³

3. Any suggestion that defendant would have to have seen the annotated Wilson Op Ed for it to be relevant or admissible is meritless. Whether or not defendant ever saw the annotated Wilson Op Ed, it is relevant and admissible to establish some of the facts noted by defendant's immediate superior, including the suspicion that Mr. Wilson's wife had "sen[t] him on a junket," (handwriting annotated on the Wilson Op Ed), and that his superior communicated these facts to defendant at or near the time the Wilson Op Ed was published.

Evidence that the defendant understood the concern that Mr. Wilson might have been "sen[t] . . . on a junket by his wife" shortly after July 6 would directly contradict defendant's testimony that he did not recall knowing on July 12 that Mr. Wilson had a wife and did not think at that time that the wife might have been involved in sending Mr. Wilson on the trip. See Government's Response to Courts Inquiry Regarding News Articles the Government Intends to Offer as Evidence at Trial at p. 6-7.

Nor does the annotated Wilson Op Ed present authentication problems. The document could be authenticated through the testimony of the Vice

While defendant testified before the grand jury that he did not recall seeing the copy of the annotated Wilson Op Ed until it was shown to him by the FBI in the fall of 2003, as discussed below, he also testified that he discussed the substance of the Wilson Op Ed with the Vice President and their conversations included discussion of issues reflected in the Vice President's handwritten notes. More specifically, during his first grand jury appearance on March 5, 2005, defendant testified in general terms that he did not remember in any detail his first conversation with the Vice President about the Wilson Op Ed, but he did recall that the Vice President was upset that the column in his view falsely attacked his credibility. (March 5, 2004, Grand Jury Transcript at 79.) Defendant then testified that the Vice President told him repeatedly that he wanted to "get the truth out," including "all the facts about what he had or hadn't done; what the facts were or were not." (March 5, 2004, Grand Jury Transcript at 81; see Exhibit A.) Defendant recalled discussing with the Vice President the issues reflected in the Vice President's handwritten notes but testified that he believed that they did not discuss the specific issue of

President, or under Fed. R. Evid. 902(6) ("printed material[] purporting to be newspaper[. . .] is self-authenticating) and Fed R. Evid. 901(b)(2) ("Non-expert opinion on handwriting"). See generally Fed. R. Evid. 901(a) (all that is required is "evidence sufficient to support a finding that the matter in question is what its proponent claims"). Contrary to defendant's assertion, the government has not represented that it does not intend to call the Vice President as a witness at trial. To the best of government's counsel's recollection, the government has not commented on whether it intends to call the Vice President as a witness, and the representations it has made regarding the identity of potential government witnesses have been limited to responses to the defense assertions in defendant's Third Motion to Compel.

Wilson's wife's employment until after the July 14, 2003, publication of the Novak column, or at least not before the defendant's conversation with Tim Russert on July 10 or 11, 2003. Ex. A at 84-86. Defendant further testified that the Wilson Op Ed was discussed in the White House on a daily basis and on multiple occasions each day during the week following July 6, 2003.⁴ Ex. A at 81.

During his second grand jury appearance on March 24, 2004, defendant reaffirmed that he discussed the issue of Mr. Wilson's wife's employment with the Vice President. (March 24, 2004, Grand Jury Transcript at 83-84 and 86-91, copies of which are annexed as Exhibits B and C.) Specifically, defendant testified that the Vice President "at times" expressed suspicion regarding why Mr. Wilson was selected to go on the mission, in light of Mr. Wilson's marital relationship, and made comments about Mr. Wilson's wife working at the CIA. Ex. B at 83. Defendant placed these conversations in "late July, maybe September," and in any event not before defendant's conversation with Tim Russert. *Id.* at 83-84. Defendant testified that of the issues addressed in the Vice President's annotations of the Wilson Op Ed that were discussed, only the discussion about Mr. Wilson's wife "might not have occurred" during the week of July 7, 2003. Ex. C at 91. Defendant also testified that he was unsure whether he and the Vice President discussed Ms. Wilson's employment aboard Air Force Two on July 12, 2003, although he did not recall doing so. Ex. B at 84.

Defendant's testimony discussed above makes clear that defendant talked to the Vice President multiple times about the Wilson Op Ed and that, during one or more of these conversations, the Vice President discussed with defendant issues noted in the Vice President's handwritten annotations—including the issue of Mr. Wilson's wife's employment at the CIA. Therefore, the annotations corroborate the government's other evidence indicating that these issues were communicated to defendant by his immediate superior, who also directed defendant during the critical week after July 6 to get out into the public "all" the facts in response to the Wilson Op Ed.

The fact that comments regarding Wilson's wife were included among the Vice President's annotations also supports the proposition that defendant's conversation with the Vice President regarding Mr. Wilson's wife more likely than not occurred shortly after the publication of the Wilson Op Ed, rather than later, as defendant claimed.⁵ Evidence placing

4. The President and several other officials traveled to Africa 4 during this period. However, the Vice President and the defendant did not travel with them.

5. To be clear, the government's argument is not (as the defendant claims) that it is more likely that the Vice President discussed these issues with defendant merely because he wrote them down but, rather that, in light of the Vice President's annotation of the Wilson Op Ed with the words, "Did Wilson's wife send him on a junket?," it is unlikely that, as defendant testified,

defendant's conversation with the Vice President shortly after the publication of the Wilson Op Ed also corroborates the accounts of a number of government witnesses who will testify that defendant discussed Mr. Wilson's wife on or before July 8, 2003. Thus, the annotated Wilson Op Ed is highly, and uniquely, relevant to a determination regarding the truthfulness of defendant's testimony that he did not recall information regarding Mr. Wilson's wife's employment prior to his conversation with Tim Russert on July 11, 2003.

II. Documents Related to Other Witnesses Have No Comparable Relevance.

The defense argues:

In the same way that the government finds the views of the Vice President regarding Wilson and his trip relevant to its case, the defense finds the views of other government officials, such as former Under Secretary of State Marc Grossman, regarding Ms. Wilson relevant to its case. . . . Just as Mr. Libby was interacting with the Vice President regarding Mr. Wilson's charges, so was he also interacting with Mr. Grossman and other government officials and their respective agencies.

Response at 5.

This argument ignores the fact that the Vice President was the defendant's immediate superior with whom the defendant worked daily and closely, and from whom defendant received direction regarding the response to be made to the Wilson Op Ed. Understanding what conversations took place between the Vice President and the defendant during the week of July 7, 2003, is critical to determining relevant issues in the case: whether defendant recalled Wilson's wife's employment prior to the conversation with Tim Russert on July 10 or 11, and whether defendant thought it necessary or appropriate to disclose that fact to reporters that week. Understanding what other government officials knew or thought about Mr. Wilson's Op Ed simply is not.

The Vice President—not Mr. Grossman or any of the other potential witnesses concerning whom defendant seeks additional discovery—specifically directed the defendant to speak to reporters during the week following the publication of the Wilson Op Ed. At the time, the Vice President rather—than other potential witnesses—was upset that his personal credibility had been attacked, unfairly in his view.

By his own account, defendant understood from the Vice President that it was necessary to get out "all" the facts in response to the Wilson Op Ed. The response to the Wilson

the issue was not discussed in defendant's repeated conversations with the Vice President during the week following the Wilson Op Eds publication.

Op Ed was a matter of repeated discussion between the defendant and the Vice President following its publication. The same cannot be said of the other potential witnesses. As to Mr. Grossman, for example—the only witness other than the Vice President to whom defendant refers in his Response—the relevant conversations between defendant and Mr. Grossman took place in late May and early June, when defendant asked questions about the unnamed former ambassador who traveled to Niger, and Mr. Grossman reported information in response to defendant’s inquiry. There is no evidence that defendant and Mr. Grossman had any relevant conversation after that time frame. While in May and June the defendant likely asked the questions of Mr. Grossman in response to the column written by Mr. Kristof, the defendant did not seek Mr. Grossman’s advice, much less direction, as to how to respond to press inquiries either before or after publication of the Wilson Op Ed.

Neither Mr. Grossman nor any other potential witness concerning whom defendant seeks discovery in his Third Motion to Compel had any authority over defendant’s communications with the press. After the Wilson Op Ed was published, defendant’s focus was on what his superior thought were relevant facts and what should be done to respond to the accusations it contained. There is no evidence that defendant had any interest in crafting a public response to the Wilson Op Ed that would protect the interests of any officials or agencies whom he perceived as having interests in conflict with those of the Vice President and his office.

In sum, it is the knowledge and state of mind of defendant that is relevant to the issue of guilt or innocence. The knowledge and state of mind of other government officials is relevant only if probative of defendant’s state of mind. Here, as defendant has acknowledged, the Vice President communicated to defendant the facts he considered notable, and also directed defendant to get out to the public “all” the facts in response to the Wilson Op Ed. Defendant shared the interests of his superior and was subject to his direction. Therefore, the state of mind of the Vice President as communicated to defendant is directly relevant to the issue of whether defendant knowingly made false statements to federal agents and the grand jury regarding when and how he learned about Ms. Wilson’s employment and what he said to reporters regarding this issue.

For the reasons set forth above and in the government’s prior submissions, including the fact that the government has already produced to defendant all documents received from any source relating to relevant conversations, correspondence, or meetings involving defendant, defendant’s Third Motion to Compel should be denied.

Conclusion

For all of the foregoing reasons, the United States respectfully requests that this Court deny the defendant’s motion.

Exhibits Attached To May 24 Filing

These exhibits are unedited transcripts. The redactions are indicated by dashes or for larger sections by the word “redacted.”

Exhibit A

Grand Jury No. 03-3
3rd & Constitution, N.W.
Washington, D.C. 20001
Friday, March 5, 2004

The testimony of I. LEWIS LIBBY was taken in the presence of a full quorum of the Grand Jury. . . .

[Redacted]

Q. And was it a discussion of — that was — was it a topic that was discussed on a daily basis?

A. Yes, sir.

Q. And it was discussed on multiple occasions each day in fact?

A. Yes, sir.

Q. And during that time did the Vice-President indicate that he was upset that this article was out there which falsely in his view attacked his own credibility?

A. Yes, sir.

Q. And do you recall what it is that the Vice-President said?

A. I recall that he was very keen to get the truth out. He wanted to get all the facts out about what he had or hadn’t done, what the facts were or were not. He was very keen on that and said it repeatedly. Let’s get everything out. He wanted to get it all that. That, that I recall.

Q. Do you recall if you ever discussed a copy of the article with Vice-President Cheney — in front of you what you talked about?

A. Physical copy in front of him? I don’t recall that. He often cuts out an article and keeps it on his desk somewhere and thinks about it and I subsequently learned that he had such an article from the FBI agents who talked to me.

Q. And had you seen that copy of the article before the FBI showed it to you during the course of the investigation?

A. I, I don’t recall it. It’s possible if it was sitting on his desk that, you know, my eye went across it. I don’t, I don’t recall him pulling it out and saying something to him, but we talked about the article a fair amount.

MR. FITZGERALD. And let me show you a copy of the article with handwritten notes on it.

MS. KEDIAN. Grand Jury Exhibit 8.



C-Span

Ambassador Joseph Wilson and Mrs. Wilson watching the Stephen Colbert spoof on the President at the White House Correspondents' Association dinner, April 29, 2006.

BY MR. FITZGERALD:

Q. And in looking at Grand Jury 8, can you tell us if you recognize the handwriting at the top, top of both pages?

A. Yes, sir. It looks like the Vice-President's handwriting.

Q. Okay. And I take it you're familiar with his handwriting?

A. I am. I couldn't necessarily pick it out from similar handwriting, but this looks like his handwriting generally.

Q. Okay. And is it fair to say that there's various items underlined in this copy?

A. Yes, sir.

Q. Does that include the sentence, I have little choice but to assume that some of the intelligence related to Iraq's nuclear weapons program was twisted to exaggerate the Iraqi threat?

A. Yes, sir.

Q. And does it also include handwriting at the top of the page that says, that reads, have they done this sort of thing before?

A. I'm sorry, are you asking me if that appears at the top of the page?

Q. Yes.

A. Yes, sir, it does.

Q. And does it say beneath that, send our - - send an ambassador to answer a question?

A. Yes, sir.

Q. And does it say below that, do ordinary send people out pro bono to work for us?

A. It does, sir.

Q. And does the top of the page have a note that continues over to the second page, or did his wife send him on a junket?

A. Yes, sir.

Q. And do you recall ever discussing those issues with Vice-President Cheney?

A. Yes, sir.

Q. And tell us what you recall about those conversations.

A. I recall that along the way he asked, is this normal for them to just send somebody out like this uncompensated, as it says. He was interested in how did those person come to be selected for this mission. And at some point after we were in his — wife worked at the Agency, you know, that was part of the question.

Q. Okay. And is it fair to say that he had told you back in June, June 12th or before, prior to the Pincus article, that his wife worked in the functional office of the Counterproliferation of the CIA. Correct?

A. Yes, sir.

Q. So when you say, that after we learned that his wife worked at the Agency, that became a question. Isn't it fair to say that you already knew it from June 12th or earlier?

A. I believe by, by this week I no longer remembered that. I had forgotten it. And I believe that because when it was told to me on July 10, a few days after this article, it seemed to me as if I was learning it for the first time. When I knew it when I heard.

Q. Okay. So let me back up a moment. We'll get to the July 10 conversation.

A. Yes, sir.

Q. Do you recall when the Vice-President told you that we ordinarily sent — or did the send him a junket when you had that conversation? Do you know when that was in relation to the July 6 article?

A. I don't recall the conversation until after the Novak piece. I don't recall it during this week of July 6. I recall it after the Novak conver — after the Novak article appeared I recall it, and I recall being asked by the Vice-President early on, you know, about this envoy, you know, who is it and — but I don't recall that early on he asked about it in connection with the wife, although he may well have given the note that I took.

Q. And so your recollection is that he wrote on July — that you discussed with the Vice-President, did his wife send him on a junket? As a response to the July 14th Novak column that said, he was sent because his wife sent him and she works at the CIA?

A. I don't recall discussing it — yes, I don't recall discussing it in connection when this article first appeared. I recall it later.

Q. And are you telling us under oath that from July 6th to July 14th you never discussed with Vice-President Cheney whether Mr. Wilson's wife worked at the CIA?

A. No, no, I'm not saying that. On July 10 or 11 I learned, I thought anew, that the wife — that reporters were telling us that the wife worked at the CIA. And I may have had a conversation then with the Vice-President either late on the

11th or on the 12th in which I relayed that reporters were saying that. When I had that conversation I had forgotten about the earlier conversations in which he told me about — reflected in my notes that we went over this morning, in early June, before the Pincus article, when he had told me that the wife worked at the CIA. I had just forgotten it.

Q. And you just affixed the, the person — who did you speak to on July 10th or 11th that you recalled learning again, thinking it was for the first time, that Wilson's wife worked at the CIA?

A. Tim Russert of NBC News, Washington Bureau Chief for NBC News.

EXHIBIT B

Grand Jury No. 03-3
3rd & Constitution, N.W.
Washington, D.C. 20001
Wednesday March 24, 2004

The testimony of I. LEWIS LIBBY was taken in the presence of a full quorum of the Grand Jury. . . .

[Redacted]

Q. And did the Vice-President ever indicate his belief that Ambassador Wilson was selected to go on this mission because of his marital relationship with someone who worked at the CIA?

A. He — I think he, at times, had suspicions about, you know, is that why he was selected for this mission?

Q. And what makes you say that?

A. You know, I think he made comments about it in connection with, well, his — you know, his wife works there. It wasn't a full sentence, I don't think, but that's the sort of notion I took from it.

Q. An implication that if his wife hadn't worked there, he wouldn't have been the one sent to do the job?

A. Something like that. Yes, sir.

Q. And when did the Vice-President say that?

A. Oh, these were in discussions, July, maybe — late July, maybe September, things like that.

Q. And what was the — why was the Vice-President discussing that in late July, early September?

A. People would come through and talk about different issues and, you know, an issue might come up about the Wilson controversy which was in the news.

Q. And why did the President — Vice-President not discuss this back in June, on or about June 9th, 10th, 11th, when you were preparing for the Pincus column and he noted that his wife works at the CIA? Did you take from that an observation that, oh, his wife works out there, he wouldn't have the job otherwise?

A. No, sir. The only, the only time I recall discussing it just then was that discussion. That's all I recall.

Q. And when you —

A. I'm sorry, when I say that discussion, I want to be clear, the discussion that I took the note about.

Q. And from July 6th, when the Novak — July 6, when the Wilson piece appears, until July 12, when you were talking to reporters after Air Force Two, do you recall any conversation during that week where Vice-President Cheney observed or had it brought to his attention that Wilson's wife worked at the CIA?

A. I certainly don't recall any discussion about that prior to the Russert/Novak conversations when I learned about the wife, what I thought was the first time. And I don't recall, as I told you before, whether we discussed that on the plane that day.

Q. And do you—

A. But I don't, I don't recall, any such discussion.

[Redacted]

EXHIBIT C

Grand Jury No. 03-3
3rd & Constitution, N.W.
Washington, D.C. 20001
Wednesday, March 24, 2004

The testimony of I. LEWIS LIBBY was taken in the presence of a full quorum of the Grand Jury. . . .

[Redacted]

Q. And why don't I show you the copy of the July 6th column with some handwriting on it. And I believe we showed this document to you the last time, or at least discussed it, and you indicated that you had not seen this copy of the article with the handwriting until the FBI showed it to you?

A. That's my recollection, sir.

Q. And showing you what has been already marked as Grand Jury Exhibit 8, is that the copy of the Wilson column with the handwriting that you recall first being shown by the FBI?

A. Yes, it is.

Q. Okay. And have you ever seen the Vice-President with a paper copy of the Wilson column? And by paper copy I mean one not printed off the internet, not printed off a computer, but the actual physical newspaper column?

A. I don't recall.

Q. Did you often see him with the actual newspaper column — actual physical columns from newspapers?

A. Yes, he often will cut out from a newspaper an article using a little pen knife that he has and put it on the edge of his desk or put it in his desk and then pull it out and look at it, think about it. That will often happen.

Q. Okay. And do you recall if he did that on this occasion on July 6th?

A. Evidently he did, but I don't recall.

Q. Okay. And fair to say —

A. Once again, this, this column came out, I believe he got this column when he was in Wyoming, not in Washington, over the July 4 recess. And so it's — I don't think it would have been there the day I walked in the office, for example.

Q. How long does the Vice-President keep the columns that he cuts out with a pen knife and puts on the corner of his desk?

A. Sometimes a long time.

Q. And if you walk in the Vice-President's office, would you see a stack of old newspaper articles on the corner of his desk?

A. He doesn't necessarily always keep it on the corner of his desk. He keeps it underneath papers or in a briefcase or something. I've seen him produce them from different places. And since the FBI showed me this, I have on occasion, noticed him still — you know, having a document on his desk which is a cut out newspaper article.

Q. Just to paint a picture for people who haven't been to the office of the Vice-President, if any of us would walk into his office would we, would we see a stack of newspaper clippings or are we talking about one or two columns that might be on the desk if someone were to look?

A. Oh, one or two. I mean, you'd see stacks of paper and you wouldn't know what was in the stack of paper. I — I'd never seen bunches of them, but I have seen two or three.

Q. And the handwriting at the top, is it fair to say that that appears to be the Vice-President's handwriting?

A. Yes, sir. As I told you last time

Q. Right.

A. — I think that's right.

Q. And does one of the questions indicate at the top here say, had they done this sort of thing before?

A. Yes, sir.

Q. And do you recall the Vice-President ever asking you whether or not the CIA had ever done this sort of thing before?

A. I think he did at one point.

Q. And do you know when that would have been?

A. No, sir.

Q. And it says here, underneath that, says, send an ambassador to answer a question? Did, did he ever express to you his disbelief that they would send an ambassador to answer a question?

A. I don't recall him asking that specific question.

Q. Knowing the Vice-President the way you do with daily contact, would the question, send an ambassador to answer a question, indicate some sort of belief on his part that it seems sort of silly to send an ambassador overseas to answer a question?

A. It certainly seems like he thought it was an issue, yes.

Q. And the next question written is, do we ordinarily send people out pro bono to work for us? Do you recall the Vice-President asking you a question to the effect of, do we, the United States government, send people unpaid to go work

for us?

A. Yes, sir. I think he asked something like that.

Q. And do you recall when he asked about that?

A. I, I don't.

Q. And lastly, it says, or did his wife send him on a junket? Do you recall the Vice-President indicating or asking you or anyone in your presence whether or not Ambassador Wilson's wife had arranged to have him sent on a junket?

A. I think I recall him — I don't recall him asking me that particular question, but I think I recall him musing about that.

Q. Okay. And do you recall when it was that he mused about that?

A. I think it was after the Wilson column.

Q. Okay, and obviously —

A. I don't mean the Wilson column, I'm sorry; I misspoke. I think it was after the Novak column.

Q. Okay. And you mentioned last time that you thought he had written, handwritten here, may have been discussed at a later date, like August or September by the Vice-President?

A. Yes, sir.

Q. And —

A. I don't know, later. I don't know when, but yes.

Q. Okay. And can you tell us why it would be that the Vice-President read the Novak column and had questions some of which apparently seem to be answered by the Novak column, would go back and pull out an original July 6th op-ed piece and write on that?

A. I — I'm not sure I —

Q. Well, the Novak column —

A. — followed your — he, he often kept these columns for awhile and keeps columns and will think on them. And I think what may have happened here is he may have — I don't know if he wrote, he wrote the points down. He might have pulled out the column to think about the problem and written on it, but I don't know. You'll have to ask him.

Q. As you sit here today are you telling us that his concerns about Ambassador Wilson, his concern that he's working pro bono, his concerns that he's an ambassador being sent to answer a single question, his concern that his wife may have sent him on a junket, would not have occurred between July 6th and July 12th when you were focusing on responding to the Wilson column but instead would have occurred much later?

A. The only part about the wife, sir, I think might not have occurred in that week. The rest of it, I think, could have occurred in that week because, you know, it's all there. You say it's all in the column. The part about the wife I don't recall discussing with him. It might have occurred to him but I don't recall discussing it with him prior to learning, again, about the wife.

Q. And when you say learning again, you mean your conversation with Mr. Russert —

A. Yes.

Special Counsel Filing On Lewis Libby, May 12

This is the complete filing by Special Counsel Patrick Fitzgerald, submitted to the court in the Lewis Libby case on May 12. We print the entire document here, so that readers will have a full and accurate picture of what Fitzgerald states regarding the state of mind of Cheney and Libby, which he presents to show their motivation for the criminal offenses which with Libby is charged. Thus, readers do not have to rely on simplistic press reports.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
 v.) CR. NO 05-394 (RBW)
)
 I. LEWIS LIBBY,)
 also known as "Scooter Libby")

Government's Response to Court's Inquiry Regarding News Articles the Government Intends to Offer As Evidence at Trial

The UNITED STATES OF AMERICA, by PATRICK J. FITZGERALD, SPECIAL COUNSEL, respectfully submits the following in response to the Court's direction, during the May 5, 2006 oral argument on defendant's Third Motion to Compel Discovery, that the government identify any exhibits consisting of news articles that it anticipates offering in its case in chief at trial.¹

As set forth more fully below, the Government currently intends to offer in evidence one news article in its entirety (a copy of the July 6, 2003, "Op Ed" article by Joseph Wilson bearing handwritten annotations) subject to a limiting instruction advising the jury that the statements in that article are not

1. In preparing this response, the government notes that, because many months remain before trial, many issues, including issues concerning classified discovery, remain to be decided. Moreover, the issues that will be disputed at trial have not been fully framed, and the specific arguments of the defense have not been brought into focus to the extent that they will be following opening statements. In addition, the government has not received any defense discovery to date. As a result, the government's description of its intentions regarding the offering of news articles necessarily is tentative, but the government sets forth its intentions as accurately as it can in good faith at this time.

offered for the truth of the matter asserted. The government also intends to offer several other news articles in redacted form, similarly subject to a limiting instruction. Finally, the government anticipates that testimony at trial, as well as portions of the defendant's grand jury testimony to be offered in evidence, may refer to certain other news articles; however, the government does not intend to offer those articles in evidence even in redacted form.

The Wilson Op Ed Article

The Government intends to offer as evidence in its case in chief a copy of the July 6, 2003, New York Times "Op Ed" article authored by former Ambassador Joseph Wilson (the "Wilson Op Ed"), and bearing handwritten annotations by the Vice President. A copy of the annotated Wilson Op Ed is annexed to this response as Exhibit A.

The annotated Wilson Op Ed is relevant and admissible for two principal reasons. First, the article itself lies at the center of the sequence of events leading to the defendant's alleged criminal conduct. The article, and the fact that it contained certain criticisms of the administration, including criticisms regarding issues dealt with by the Office of the Vice President ("OVP"), serve both to explain the context of, and provide a motive for, many of the defendant's statements and actions at issue in this case. In particular, admission of the Wilson Op Ed is necessary to assist jurors in understanding how, beginning on July 6, 2003, and continuing through the following week, the attention of the defendant, his colleagues, and the media was heavily focused on responding to the issues raised in that article. Although the substance of the Wilson Op Ed is relevant and admissible to establish the issues to which the defendant and others with whom he worked believed a response was required, and to provide context for the defendant's statements and actions, the government will propose an instruction to the jury that the statements made in the Wilson Op Ed may not be considered as proof of the truth of the matters asserted but, rather, may be considered solely as evidence that the statements in the article were made and published, and may have caused others to take action in response.

The second principal reason for the admissibility of the annotated Wilson Op Ed lies in the annotations placed on a copy of the article by the defendant's immediate superior, the Vice President. Those annotations support the proposition that publication of the Wilson Op Ed acutely focused the attention of the Vice President and the defendant—his chief of staff—on Mr. Wilson, on the assertions made in his article, and on responding to those assertions. The annotated version of the article reflects the contemporaneous reaction of the Vice President to Mr. Wilson's Op Ed article, and thus is relevant to establishing some of the facts that were viewed as important by the defendant's immediate superior, including whether Mr. Wilson's wife had "sen[t] him on a junket."

News Articles to be Offered in Redacted Form

The Government also intends to adduce proof concerning certain other news articles, which it will seek to offer in redacted form, including the following:

- May 6, 2003, *New York Times* article by Nicholas Kristof;
- June 12, 2003, *Washington Post* article by Walter Pincus;
- June 30, 2003, *New Republic* article by John B. Judis and Spencer Ackerman;
- July 14, 2003, *Chicago Sun Times* column by Robert Novak; and
- July 17, 2003, *Time.com* article by Matthew Cooper and others.

(Copies of these articles are annexed hereto as Exhibits B through F.) The relevance of each of these articles is briefly outlined below. Prior to trial, the government will submit proposed redacted versions of each article.

The May 6, 2003 article by Mr. Kristof is relevant to establish when press reporting relating to Mr. Wilson's trip began, although the article did not refer to Mr. Wilson by name. The Kristof article caused inquiry to be made within the OVP, and eventually by the defendant, about Mr. Wilson's trip, and this led to relevant conversations between the defendant and other witnesses, including Marc Grossman (then Under Secretary of State for Political Affairs), certain CIA officials, and other persons in the OVP, during which the defendant was advised of the CIA employment of Mr. Wilson's wife. The article thus provides context for the evidence of conversations concerning Mr. Wilson's wife about which the defendant is alleged to have made false statements and provided false testimony.

The June 12, 2003, *Washington Post* article by Mr. Pincus (to whom both Mr. Wilson and the defendant spoke prior to publication of the article) is relevant because Mr. Pincus' questions to the OVP sparked discussion within the OVP, including conversations between the defendant and the Vice President regarding how Mr. Pincus' questions should be answered. It was during a conversation concerning Mr. Pincus' inquiries that the Vice President advised the defendant that Mr. Wilson's wife worked at the CIA. (To be clear, the government does *not* contend that the defendant disclosed the employment of Ms. Plame to Mr. Pincus, and Mr. Pincus's article contains no reference to her or her employment.) The article by Mr. Pincus thus explains the context in which the defendant discussed Mr. Wilson's wife's employment with the Vice President. The article also served to increase media attention concerning the then-unnamed ambassador's trip and further motivated the defendant to counter Mr. Wilson's assertions, making it more likely that the defendant's disclosures to the press concerning Mr. Wilson's wife were not casual disclosures that he had forgotten by the time he was asked about them by the Federal

Bureau of Investigation and before the grand jury.

The June 2003 *New Republic* article is relevant because it caused the defendant to speak with Ambassador Eric Edelman (who had just left his position as defendant's Principal Deputy) in late June 2003 and discuss the fact that they could not talk about the former ambassador's trip because of "complications" at the CIA which could not be further discussed on an open telephone line. Additionally, like the June 12, 2003, article by Mr. Pincus, this article increased media attention concerning Mr. Wilson's trip and further motivated the defendant to counter Mr. Wilson's assertions, making it more likely that the defendant's disclosures to the press concerning Mr. Wilson's wife were not casual disclosures that he had forgotten by the time he was asked about them by the Federal Bureau of Investigation and before the grand jury. Only two paragraphs of the lengthy article address Ambassador Wilson's trip, and thus the government anticipates proposing a heavily redacted version of the article, perhaps limited to those two paragraphs.

The July 14 *Chicago Sun Times* column by Mr. Novak is relevant because on the day the article was published, a CIA official was asked in the defendant's presence, by another person in the OVP, whether that CIA official had read that column. (The CIA official had not.) At some time thereafter, as discussed briefly at the March 5 oral argument, the CIA official discussed in the defendant's presence the dangers posed by disclosure of the CIA affiliation of one of its employees as had occurred in the Novak column. This evidence directly contradicts the defense position that the defendant had no motive to lie because at the time of his interview and testimony the defendant thought that neither he nor anyone else had done anything wrong. Moreover, the evidence rebuts the defense assertion that the defendant could have easily forgotten his conversations with reporters Cooper and Miller on July 12 if he learned of the potential consequences of such disclosure as a result of the publication of the Novak column on July 14. Instead, the evidence about the conversation concerning the Novak column provides a strong motive for the defendant to provide false information and testimony about his disclosures to reporters. In addition, there will be evidence that the defendant discussed aspects of the Novak article at other relevant times after July 14 but prior to his FBI interview and grand jury testimony.

The July 17, 2003, article on *Time.com* by Mr. Cooper and others is relevant because it contains a statement that:

Some government officials, noting that Wilson's wife, Valerie Plame, is a CIA official who monitors the proliferation of weapons of mass destruction, intimate that she was involved in his being dispatched Niger [*sic*] to investigate reports that Saddam Hussein's government had sought to purchase large quantities of uranium ore,

sometimes referred to as yellow cake, for the purposes of building nuclear devices.

The article also reflects an “on the record” quote by the defendant regarding the Vice President’s lack of knowledge of Mr. Wilson’s trip until “it became public in the last month or so.” The evidence will show that an earlier *Time* magazine article published on July 14, 2003, only contained part of defendant’s quote. After the OVP contacted *Time* magazine to complain that the defendant’s full “on the record” quote was not contained in the article, *Time* published the fuller version of the quote in the July 17, 2003, online column. The statements to Mr. Cooper—an exceedingly rare “on the record” comment by the defendant—as well as OVP’s desire to correct the article to include the full quote, are relevant to demonstrating the attention paid to the defendant’s statements to Mr. Cooper. The effort to include the defendant’s full quote, while at the same time offering no dispute as to the characterization of anonymous government officials concerning Ms. Plame, is important because the Cooper article asserts that government officials had intimated that Ms. Plame was involved in sending Mr. Wilson on the trip. The defendant testified to the contrary—that he did not think that Ms. Plame played any role in sending Mr. Wilson on the trip prior to reading the Novak article. The defendant testified that he thought Mr. Wilson to be fully qualified for what he did. The defendant’s grand jury testimony indicates that he did not express any belief to Mr. Cooper on July 12 that Mr. Wilson was sent on the trip because of his wife and had not thought about that possibility until he read Novak’s July 14 column. Rather, the defendant claims that he told reporters that he was not sure Mr. Wilson even had a wife. Mr. Cooper, to the contrary, testified that the defendant had advised him on July 12 that the defendant had heard that Mr. Wilson’s wife was involved in sending Mr. Wilson on the trip to Niger. (This conflict in testimony heightens the relevance of the annotations on Exhibit A concerning whether Mr. Wilson’s wife had sent him on a “junket.”) Whether the defendant lied about his conversation with Mr. Cooper is a core issue in the case. As with the *New Republic* article, the government anticipates offering a heavily redacted version of the online article, perhaps limited to the defendant’s on-the-record quote and the discussion of Ms. Plame.

Articles About Which the Government Expects to Offer Evidence, but Which the Government Does Not Presently Expect to Offer in Evidence Themselves

In addition to the Wilson Op Ed and the articles described above that the government anticipates offering in redacted form, the government expects its evidence in its case-in-chief to include testimony referring to several additional news articles, as well as passages from the defendant’s grand jury testimony that will refer to certain news articles.

Two of these news articles are associated with the Wilson Op Ed. The government expects that witness testimony and portions of the defendant’s grand jury testimony will contain references to the fact that an article concerning Mr. Wilson was published in the *Washington Post* on July 6, 2003 (the same day that the Wilson Op Ed appeared in the *New York Times*), and that Mr. Wilson appeared on *Meet the Press* on that same day and made statements during that appearance consistent with those made in the Wilson Op Ed. While the government intends to make reference to the *Washington Post* article and the *Meet the Press* appearance as proof of the level of attention being paid to Mr. Wilson, and the level of attention being paid by the defendant and others to responding to Mr. Wilson at that time, the government does not intend to offer the text of the *Washington Post* article or the transcript of Mr. Wilson’s *Meet the Press* appearance, or otherwise to describe any specific statements contained in either of them.

In addition, the government’s evidence at trial (including the defendant’s grand jury transcript) will refer to a July 17, 2003, *Wall Street Journal* editorial entitled “Yellowcake Remix,” which contained quotations from the 2002 National Intelligence Estimate (“NIE”). This editorial resulted from the defendant’s transmittal, through another government official, of a copy of portions of the NIE to the *Wall Street Journal* shortly before the editorial was published. This evidence is relevant to establish that during the relevant time frame in July 2003, the defendant, notwithstanding other pressing government business, was heavily focused on shaping media coverage of the controversy concerning Iraqi efforts to obtain uranium from Niger. The government does not intend to offer in evidence a copy of the editorial itself, and will not contend that the defendant’s actions in this regard were criminal or otherwise unauthorized.

Finally, the government notes in the interest of completeness that it *may* offer annotated copies of an October 2003 article by Seymour Hersh in *The New Yorker* if it appears that the defendant will pursue the defense that he was too focused on other urgent national security matters to remember accurately what took place during his conversations with reporters. The government received from the OVP multiple copies of the same article bearing handwritten annotations, apparently by the defendant and others in his office. However, it is not the government’s present intention to offer those annotated copies.

In conclusion, the government wishes to emphasize that with respect to each of the above articles other than the annotated version of the Wilson Op Ed, the government is willing to consider offering any appropriate redactions, or alternatively a stipulated summary of the relevant assertions in the article, and will also agree to an instruction that the articles are not offered to prove the truth of the matters asserted in the articles, but instead are offered to prove that the statements were made and published and to explain any actions the defendant took in response.