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Libby Sings

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The irony is so thick you can cut it with a knife. Just a few months ago defenders of the Bush administration were lambasting Justice Department prosecutor Patrick J. Fitzgerald for engaging in a fishing expedition that might hurt President George W. Bush. The pundits considered Fitzgerald's indictment for perjury of former vice-presidential aide I. Lewis ("Scooter") Libby to be politically motivated and wrong.

To recap, Libby's alleged perjury occurred during his testimony to a grand jury investigating the blown cover of CIA clandestine officer Valerie Plame Wilson, bound up in a White House bid to neutralize criticism of the Iraq war. The Plame affair started as an effort to discredit Ambassador Joseph Wilson, whom the CIA had sent to Niger to look into charges that Iraq was buying uranium ore there. Wilson found nothing to substantiate the claim and subsequently became a critic of Bush's resort to war. His wife was outed in an attempt to undermine Wilson's charges.

Continued legal filings in the case now reveal Prosecutor Fitzgerald as a guardian of White House secrets and Scooter Libby plus his defense team as assiduously implicating President Bush. For those who questioned George Bush's *modus operandi* in the months leading up to the invasion of Iraq and afterwards these are perhaps not unexpected developments. But the gradual emergence of the contents of the Libby grand jury testimony is important not only because it contradicts the president's public denials of the leaks, but also for potentially placing the president at the center of a smear campaign.

Prosecutor Fitzgerald's April 5 response to the Libby team's latest motion to compel discovery of a vast array of documents discloses that Vice President Dick Cheney told Libby that President Bush had "specifically" authorized officials in the summer of 2003 to reveal certain contents of the secret U.S. National Intelligence Estimate (NIE) on alleged Iraqi weapons of mass destruction. There will be an argument over whether Bush or Cheney actually had that authority (which is vested in the Director of Central Intelligence by a law on the books since 1949) but that is not the concern here. Rather, the disclosure of this deliberate Bush leak—given to Judith Miller of *The New York Times* and others—provides new evidence that the White House regarded the top secret NIE not as an intelligence appreciation but as fodder for political warfare. In fact on July 12 Cheney *ordered* Libby to speak to the press about the NIE.

The new evidence also says something about Bush secrecy. This administration has moved on many levels to restrict public—and even official—access to information. Cutting off flows of data formerly routinely provided to Congress or the public, defenestrating access to the records of former presidents mandated by the Presidential Records Act, curbing the Freedom of Information Act, refusing to describe to Congress its domestic communications interception program and most recently reclassifying documents in the public domain for years. Suddenly we see President Bush, without a care, releasing secret records he felt would bolster his case.

Moreover, the way in which this was done should send shudders down the spine: according to the Fitzgerald filing, Scooter Libby told the grand jury that "he understood that even in the days following his conversation with Ms. Miller, other key officials—including Cabinet level officials—were not made aware of the earlier declassification even as those officials were pressed to carry out a declassification of the NIE, the report about Wilson's trip and another classified document dated January 24, 2003," evidently a reference to the materials assembled by CIA officer Robert Walpole regarding Iraq's weapons programs and used for Secretary of State Colin L. Powell's speech to the United Nations Security Council a couple of weeks later. If Libby's testimony is accurate, documents were to be *simultaneously* deemed secret *and* declassified, depending upon White House whim, convenience, or legal liability.

This is the same administration that is seeking to prosecute those who leaked information considered less favorable to its cause, such as the fact of the National Security Agency's dubious domestic spying program or the existence of the CIA's secret prison network. Under the interpretation of the Espionage Act the Bush Justice Department is using to prosecute two former employees of the American Israel Public Affairs Committee, even reporters who gain access to such

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information, media that inform the public of it, or persons who merely possess the information are currently at risk, although the statute appears to criminalize only the act of leaking. Indeed, the law makes it necessary for the NIE data not to be classified in order for Libby to legally leak it. There may be an argument here that under the Bush interpretation of the statute the act of declassification to abet a leak could amount to a criminal conspiracy, in this case by President George Bush himself.

Those who contend that there was no Bush effort to make political use of intelligence in the months leading up to the war will now have an even harder time of it. At various points during those months there were similarly orchestrated leaks—of claims about aluminum tubes supposedly being used in an Iraqi nuclear weapons program and of alleged ties between Saddam Hussein and Al Qaeda to name just two. And there were carefully prepared occasions where Bush officials took advantage of those leaks to advance the cause of war. The events of July 2003 demonstrate that this was a standard administration tactic, not an aberration. Given the circumstances, the need for a “Phase II” investigation of the political use of intelligence for the Iraq war becomes inescapable.

The most important aspect of the new evidence is that it locates the center of the effort to discredit Ambassador Wilson, and of the actions taken to further that aim, squarely within the Oval Office. If that project rose to the level of a criminal conspiracy, or if anything done to further that goal was in fact illegal, it is George W. Bush who must be called to account. That is a very troubling development indeed. The censure motion introduced by Wisconsin Senator Russell Feingold may turn out to be merely the opening salvo in a very intense political battle.