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Nation

Pardon talk for Libby begins

BY TOM BRUNE
Newsday Washington Bureau

June 17, 2006, 10:48 PM EDT

WASHINGTON -- Now that top White House aide Karl Rove is off the hook in the CIA leak probe, President George W. Bush must weigh whether to pardon former vice presidential aide I. Lewis "Scooter" Libby, the only one indicted in the three-year investigation.

Speculation about a pardon began in late October, soon after Special Counsel Patrick Fitzgerald unsealed the perjury indictment of Libby, and it continued last week after Fitzgerald chose not to charge Rove.

"I think ultimately, of course, there are going to be pardons," said Joseph diGenova, a former prosecutor and an old Washington hand who shares that view with many pundits.

"These are the kinds of cases in which historically presidents have given pardons," said the veteran Republican attorney.

The White House remains mum on the president's intentions. Spokeswoman Dana Perino declined to comment Friday.

Bush has powerful incentives to pardon Libby, however. They range from rewarding past loyalty to ending the awkward revelations emerging from pretrial motions, a flow that could worsen in his trial next year.

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Libby was indicted for lying in Fitzgerald's probe into who in the administration leaked the identity of covert CIA officer Valerie Plame to reporters in 2003, apparently to undercut her husband's attack on Bush's war-justifying claim that Iraq sought uranium in Niger.

By demanding sensitive, sometimes embarrassing materials, some say, Libby appears to be goading the White House into issuing a pardon. Libby's spokeswoman did not respond to questions about a pardon.

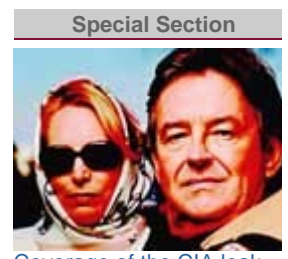
One attorney familiar with the Plame case said Bush might find that it is in his interest to pardon Libby sooner rather than later.

A pardon before the trial could cut off the disclosures and spare Vice President Dick Cheney from testifying as Fitzgerald's witness about Libby, his former chief of staff.

But the timing of a pardon, the attorney suggested, likely would depend on the outcome of the midterm elections.

If Republicans retain control of Congress, Bush could act swiftly. But if Democrats win control of the House or Senate, Bush might wait, and use Libby's trial as an excuse not to cooperate with any congressional investigations into the leak.

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The counterargument to a pardon this year or next, however, is that it would be a political bombshell and distract from Bush's agenda.

DiGenova predicted that Bush, like other presidents, would issue controversial pardons on his last day in office.

As president, Bush has constitutional power to issue a pardon at any time -- even before a crime is charged. And presidents of both parties have pardoned political friends.

In 1974, for example, President Gerald Ford pardoned ex-President Richard Nixon for any crimes he might have committed. In 2001, President Bill Clinton pardoned convicted political friends as he left office.

A few weeks before leaving office in January 1993, President George H.W. Bush granted Christmas Eve pardons to six Reagan-Bush officials charged in the Iran-Contra scandal, including two whose trials were about to start.

To justify the controversial pardons, the elder Bush blamed "the criminalization of policy differences." That "troubling development," he said, was created by an independent counsel probe of how the executive branch evaded a congressional ban on funding Nicaraguan Contras by selling arms to Iran and sending proceeds to Contras.

DiGenova said that similarly, Fitzgerald's prosecution of Libby "is the epitome of the criminalization of the political process." Fitzgerald, he said, has found no evidence of the underlying offense -- the knowing revelation of a covert agent's protected identity.

In filings, Fitzgerald argues Libby's lies obstructed him.

But a pardon for Libby at any time also carries political risk.

Ford lost the 1976 election, for example, and the elder Bush and Clinton were tainted in the controversies over their pardons.

Democrats have already indicated they will go on the attack. Last fall, their congressional leaders wrote Bush urging him to pledge not to pardon Libby. Sen. Charles Schumer (D-N.Y.) said Bush did not respond.

"I think it would be very wrong to pardon Scooter Libby, and I doubt the president would do it," Schumer said Friday. "I would cause him real damage."

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