Chairman Waxman and Members of the Committee on Oversight and Government Reform, thank you for inviting me to speak this morning. I am informed that this hearing concerns "White House procedures for safeguarding classified information," and that Valerie Plame has been invited to testify. Special Counsel Patrick Fitzgerald has characterized Plame's employment status as "classified," but conducted a three-year criminal investigation under the auspices of the 1982 Intelligence Identities Protection Act, which criminalizes only the disclosure of a "covert" intelligence officer or agent. Therefore, I must assume that one specific goal of this hearing is to understand the difference between the two terms – classified and covert – and the importance of our intelligence community protecting the identities of covert agents under the 1982 law. In that regard I would like to discuss the Congressional intent and clear mandates and prohibitions of that Act, and how it played a role in the investigation and indictment of Lewis "Scooter" Libby.

INTELLIGENCE IDENTITIES PROTECTION ACT

In late 1981, when I became Chairman Barry Goldwater's chief counsel for the Senate Select Committee on Intelligence, my first assignment was to get the Intelligence Identities Protection Act passed. Chr. Goldwater was the ultimate manager, meaning that I was to come to him if there was a problem only he could resolve. Other than that situation, I was to negotiate whatever issues arose. Thus, I had hands-on everyday involvement with those for and against the bill.

Although there had been hearings and drafts prior to my coming to the Intelligence Committee, there remained throughout my months of negotiations a major

concern that had to be addressed. Opponents of the legislation considered the criminalization of publishing covert names to be unconstitutional. The media hired highly respected counsel, including the late Dick Schmidt, American Society of Newspapers Editors (ASNE), and Bruce Sanford, Baker & Hostetler, who represented a coalition of news organizations. They vigorously voiced the press' specific concern: specifically, that passing a bill that prohibits identifying an employee or agent of the CIA (or some other intelligence gathering agency) would have a "chilling effect" on criticizing the intelligence community. We were then in the wake of Watergate. The ability to criticize intelligence gathering and conduct of intelligence officers and agents was paramount to the media. I assume and hope it remains important.

Those who supported the concept of the law wanted the statute to pass constitutional muster. If a prosecution violated the First Amendment, it was useless as a deterrent to those who had the specific intent to "out" truly secret officers and agents. In reaction to both the strong lobbying by the media and ACLU, and Congressional concern for the First Amendment, two basic categories of persons subject to prosecution were created: 1) journalists and 2) those having authorized access to classified information, the latter being government personnel with clearances.

Congress wanted to make it nearly impossible to prosecute a journalist for criticizing the CIA because it wanted to "exclude the possibility that casual discussion, political debate, the journalistic pursuit of a story on intelligence, or the disclosure of illegality or impropriety in government will be chilled" by the law. S. Rep. 97-201, at 12. Therefore, any publication identifying a covert agent had to be done "in the course of a pattern of activities" with the specific intent to expose that agent, and "with reason to

believe that such activities would impair or impede the foreign intelligence activities of the United States." Additionally, the journalist had to know the information so identified the covert agent and that "the United States was taking affirmative measures to conceal that individual's classified intelligence relationship to the United States…." Under this definition, Robert Novak's July 13, 2003, column does not come close to triggering the Act as to him.

The second category is government employees. In addition to a government employee having authorized access to classified information and disclosing it to a person without clearances (like a journalist), the following factors must be present for a government employee to violate the Act:

- The United States is taking affirmative measures to conceal a covert agent's intelligence relationship to the United States;
- The person disclosing the identity knows that the government is taking affirmative measures to conceal the relationship;
- The person disclosing the identity knows that the information so identifies the covert agent;
- The covert agent whose identity was disclosed is an employee of an intelligence agency;
- The covert agent whose identity was disclosed has a relationship with such agency that is classified;
- At the time of the disclosure, the covert agent whose identity was disclosed was serving outside the United States or had done so within five years of the disclosure; and
- The disclosure is intentional.

In a prosecution, all these factors, which are called elements of the offense, must be proven beyond a reasonable doubt. Two of these factors were particularly important in drafting the law: 1) the definition of "covert agent," including the requirement of

serving outside the country, and 2) the law's requirement that the government take "affirmative measures" to conceal the agent's intelligence relationship to the United States.

Covert Agent

Under the term "covert agent," two types of individuals are covered: an officer and an agent. A person working for the CIA is an "officer." A person who is an informant or source for the CIA is an "agent." The media often err in this distinction. To make the legislation simpler, the term "covert agent" was used by the drafters to refer to both officers and agents. The Senate Report, when relevant, distinguishes how the law applies to each.

Although a "'covert agent' is specifically limited to an individual whose identity as an intelligence agency employee 'is classified information,'" criminality does not turn on whether the information disclosed is classified. *Id.* at 15. There should only be prosecution "when the defendant has knowingly disclosed information that, in terms of its specificity, its sensitivity, and the effort expended to maintain its secrecy, is virtually the equivalent of classified information." *Id.* In other words, the definition of a covert agent is more than classified and less than classified. It clearly is not synonymous with classified. As the Committee stated, "The mere fact that an intelligence relationship appears in a document which is classified does not constitute evidence that the United States is taking affirmative measures to conceal the relationship." *Id.* at 19.

Significantly, the Senate Report makes clear Congressional desire to limit application of the criminal law to disclosure of selected intelligence officers:

[T]he Committee has carefully considered the definition of "covert agent" and has included only those identities which it has determined to be absolutely necessary to

protect for reasons of imminent danger to life or significant interference with vital intelligence activities. Undercover officers and employees overseas may be in special danger when their identities are revealed…. (Emphasis added).

Id. at 15.

Notably, the legislation limited coverage of U.S. citizen informants or sources (agents) also to situations where they "reside and act outside the United States." *Id.* at 16.

This foreign assignment requirement developed from the impetus for the legislation: attacks on CIA personnel serving abroad. Renegade former CIA officer, Philip Agee, exposed over 1000 CIA officers, which was followed by the December 1975 assassination of CIA Athens Station Chief, Richard S. Welch. In 1980, Louis Wolf, co-editor of the Covert Action Information Bulletin, publicly claimed 15 U.S. officials in Jamaica were CIA. He provided addresses and telephone numbers, information not considered "classified." Within a week two of those named were attacked. *Id.* at 8.

Early drafts of the legislation covered only those individuals stationed abroad. During my participation in the negotiations, the CIA brought up the issue that it was not unusual for CIA officers to be rotated back to the United States. Such period of time was for about two to three years. So we agreed to extend coverage for three years after a covert person left a foreign assignment. Then the issue arose that the protection of the Act was not intended just for the CIA officers, but also for their sources. "How long," we asked, "would be a reasonable time to protect sources?" The CIA replied that five years would be sufficient. As a result of that round of negotiation, the criterion of the foreign assignment requirement for an employee to be a "covert agent" was drafted as follows:

[A] present or retired officer or employee of an intelligence agency…who is serving outside the United States or has within the last five years outside the United States.

§ 426 (4)(A).

In other words, the compromise language of "within five years" is intended to prohibit disclosure of the intelligence officer for five years for the purpose of protecting former sources, not protecting the person assigned back to this country.

There is a most recent example of a former covert officer bring named as such in the Washington Post. In John Kelly's March 1, 2007 column, he described Clare Lopez having lost a class ring in the mid-1980's while scuba diving off Mauritius. It was recovered recently by a German diver who returned it to her. Nice story.

However, Kelly also described Lopez as "stationed at the U.S. Embassy in Mauritius" and as a "former CIA officer who is now a private consultant on issues related to the Middle East, terrorism and weapons of mass destruction." [App. A]. That story tells the public not only that Lopez was once covert but also that we have CIA presence in Mauritius. No one made a peep at such revelations. For Lopez, it is clear five years had passed.

In his own words, in an autobiography titled, "Politics of Truth," Joseph Wilson, husband of Plame, reveals the timing of her return from foreign assignment as June 1997, some <u>six</u> years prior to Novak's July 2003 column:

"In June of 1997, I arrived back in Washington to take my new job directing the African Affairs desk at the National Security Council. *** My move back to Washington coincided with the return to D.C. of a woman named Valerie Plame. I had first met her several months earlier at a reception in Washington…." pp.239-40 [App. B. pp1-2]

Affirmative Measures

There was great displeasure by certain Senators, especially Chr. Goldwater, that the CIA had been sloppy protecting its own. Indeed, one of the legislation's seven findings states:

> (7) The policies, arrangements and procedures used by the Executive branch to provide for U.S. intelligence officers, agents and sources must be strengthened and fully supported.
>
> S.Rep at 11.

Such concern was the reason the Act required the government to be "taking affirmative measures to conceal such covert agent's intelligence relationship to the United States" before there could be a prosecution.

Throughout the Senate Report, disappointment is expressed about the Executive branch's failure to provide adequate cover. As the Committee noted, "[P]art of the bill is designed to improve cover." "Without effective cover for U.S. intelligence officers abroad…the United States cannot collect the human intelligence" it needs. *Id.* at 10. (Emphasis added). In this regard, Section 423 of the Act requires the President, "after receiving information from the Director of Central Intelligence," to submit an annual report to both Intelligence Committees on "measures to protect the identities of covert agents, and on any other matter relevant to the protection of the identities of covert agents." Has the CIA done so?

Given this concern and mandate, additional basic managerial questions of good intelligence tradecraft come immediately to mind. I am aware that this Committee does not have oversight of the intelligence community so others, perhaps, must ask these questions:

- Could the CIA produce immediately a list of all foreign assigned personnel it has designated covert under the Act?

- Does the CIA make any such list available to selected few individuals who need to check whether to confirm or deny that person's "intelligence relationship to the United States," as required by the Act? (Think CIA spokesman who often confirms or denies to reporters whether certain people work at the Agency.)

- Has the CIA established guidelines for briefers of its Executive branch clients so they do not reveal names of "covert agents" without a caveat not to repeat the name or relationship?

- Has the CIA devised a tracking plan so that five years after a formerly covert employee returns to the United States, he or she knows the Act no longer applies and, just as importantly, other persons have notice, e.g. a briefer?

No White House can prudently safeguard classified or otherwise non-disclosable intelligence information (such as covert status) unless its own intelligence agency follows the proper procedures to inform it and its Executive branch clients of that classification or status. If Plame was really covert in July 2003 (or within five years of covert), the CIA was required under the statue to take "affirmative measures" to conceal her relationship to the United States, particularly because the criminal law comes into play. If Plame was really covered by the Act in July 2003, why did:

- The CIA briefer who said he discussed the fact of Wilson's wife working at the CIA with Libby and the Vice-president, not tell them Plame's identity was covert or classified;

- Richard Armitage, (who, having seen Plame's name in a State Department memo from which he gave the gossip to Robert Novak and later asserted, "I had never seen a covered agent's name in any memo…in 28 years of government") not know Plame's identity was not to be revealed;

- State Department Undersecretary, Marc Grossman, not know Plame's identity was not to be revealed;

- CIA spokesman Bill Harlow tell Vice-president staffer, Cathie Martin, that Wilson's wife worked at the Agency but not warn her Plame's identity was not to be revealed;

- CIA spokesman Bill Harlow (who, according to Wilson's autobiography, had been "alerted" by Plame about Novak's sniffing around, p. 346 [App. B, p3]) confirm for Novak that Plame worked at the CIA;

- The CIA not send its top personnel, like the Director, to Novak and ask the identity of Plame not be published just as the government does any time it really, really, really does not want something public, e.g. in December 2005 when the New York Times was about to publish the top secret NSA surveillance program;

- The CIA not ask Joe Wilson to sign a confidentiality agreement about his mission to Niger (a document all the rest of us have to sign when performing any task with the CIA) and then permit him to write an OpEd in the NYT about the trip, an act certain to bring press attention, when his Who's Who biography includes his wife's name;

- The CIA allow Plame to attend in May 2003 a Democratic breakfast meeting where Wilson was talking to New York Times columnist Nicholas Kristoff about his trip to Niger;

- The CIA allow Plame to contribute $1000 to Al Gore's campaign and list her CIA cover business, Brewster-Jennings & Associates, as her employer;

- The CIA give Plame a job at its headquarters in Langley when it is mandated by statute "to conceal [a] covert agent's intelligence relationship to the United States";

- The CIA send to the Justice Department a boilerplate 11 questions criminal referral for a classified information violation when its lawyers had to know that merely being classified did not fulfill the required elements for exposing a "covert agent"?

Such questions reveal slip-shod tradecraft, casting doubt on whether Plame's identity was even classified, much less covert.

In fact, in a curious twist, while the CIA was turning a blind eye to Wilson writing about his mission to Niger (Did he go through the pre-publication review process like the rest of us have to do?), it was sending to the Vice-president's office documents about that

same trip and these documents were marked classified. So the very subject Wilson could opine about in the New York Times was off-bounds for the Vice-president to discuss unless the person had a clearance.

CRIMINAL INVESTIGATIONS UNDER THE ACT

Criminal statutes are interpreted precisely. The rationale is that if a person is to be deprived of liberty, he or she should have sufficiently clear notice that specific conduct violates the law. For example, if the law protects a former covert officer for five years after leaving a foreign assignment, a person can be prosecuted for revealing the name within four years, eleven months and 30 days, but not five years and one day later.

For public policy reasons, it is important for the CIA to take "affirmative measures" to protect the identity of a covert agent because it appears that even the accidental mention of a name or relationship is sufficient to trigger a full-scale years long criminal investigation. (Two other statutes, 18 USC § 793 and 18 USC § 798, criminalize disclosing classified information, but not the names of employees or agents else we would not have needed the 1982 law.) Although Libby suffered the most severely, numerous other persons were negatively affected. They had to hire lawyers. Several had to endure the angst of being threatened with indictment or jail. Judith Miller, New York Times reporter, did go to jail. If Plame was covert and the CIA had been fulfilling its obligations, all involved would have had sufficient notice from the CIA. If she was not covert, there should not have been a CIA referral for Novak's column because publishing a merely "classified" employee's name is not covered by the 1982 Act or the other two criminal statutes.

APP A

Washington Post

A Sunken Treasure, Lost and Found

By John Kelly

Thursday, March 1, 2007; Page B03

I can imagine what it looked like when the class ring slipped from *Clare Lopez*'s finger and sank to the bottom of the Indian Ocean. Clare was off the island of Mauritius, scuba diving near a famed coral formation called La Cathédrale, when the gold ring -- its blue stone glinting in the gin-clear water -- tumbled down, down, down.

"Wearing jewelry to go scuba diving was just dumb altogether," Clare, of Woodbridge, told me yesterday. "In the cold water, the hands kind of shrink a little bit. The jewelry just slipped off."

Slipped off, sank and then came to rest undisturbed on the ocean floor. For more than 20 years, from that day in the mid-'80s -- when Clare was stationed at the U.S. Embassy in Mauritius -- to about a month ago, the ring was just another human artifact claimed by the sea, like the Titanic, countless Spanish galleons and a pair of prescription sunglasses I lost in Rehoboth.

Then in early February, a German diver named *Wilfried Thiesen* spotted something while diving on La Cathédrale. A professional diver who runs trips out of his diving club near Stuttgart, Wilfried retrieved a gold class ring. The name of a college -- Notre Dame of Ohio -- was still legible. He contacted the school and asked if anyone had lost a ring or been to Mauritius. As a matter of fact . . .

That's how on Tuesday Clare came to open a package from Germany and hold the ring she first got back in 1976. The thin part of the band is missing, and the gold is a little tarnished. Other than that it's in fine shape, the blue stone shinier than the one on the replacement ring she bought, the ring that hasn't spent two decades immersed in salt water.

"It just renews your faith in your fellow human being and happy endings," said Clare of her experience.

And talk about a coincidence.

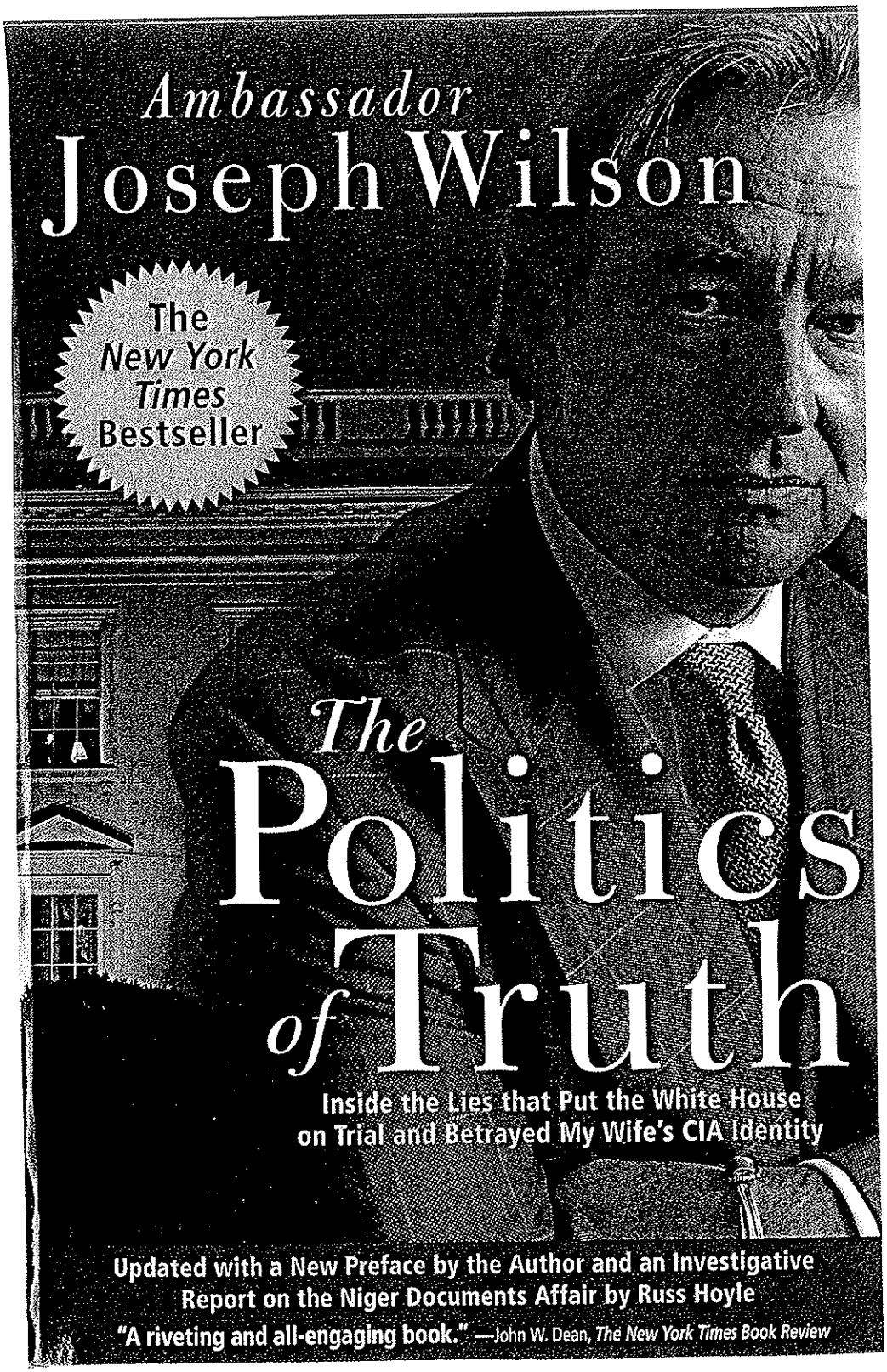
"It's just a huge area," Clare said of the coral formation. "You think about sand and currents and waves. I thought the ring was gone for good. I never thought there was any way I would ever get it back. It's just amazing."

Clare, 53, is a former undercover CIA officer who is now a private consultant on issues related to the Middle East, terrorism and weapons of mass destruction. She's also on the advisory board of her alma mater's intelligence research and analysis degree program.

I asked if she'd ever found anything cool while scuba diving.

No, she said. "I brought back shells."

APP B


Ambassador
Joseph Wilson
The New York Times Bestseller
The Politics of Truth
Inside the Lies that Put the White House on Trial and Betrayed My Wife's CIA Identity
Updated with a New Preface by the Author and an Investigative Report on the Niger Documents Affair by Russ Hoyle
"A riveting and all-engaging book." —John W. Dean, The New York Times Book Review

Chapter Twelve
Coming Home for Good

In June of 1997, I arrived back in Washington to take my new job directing the African Affairs desk at the National Security Council. It would be my first assignment in the city since 1978. I had spent only three years of the previous twenty-one in the nation's capital, and eighteen months of that had been in training or on my 1985 Congressional Fellowship. I was not an expert in the bureaucratic politics that dominate Washington policy making, nor was I politically well connected at the working level despite knowing Vice President Al Gore, one of my sponsors during the fellowship. I had only once met the national security adviser, Sandy Berger, and that was when he interviewed me for the post, and I had not yet met Bill Clinton. (While I generally voted for the Democratic candidate for president, President Bush had received my vote in the 1992 election that brought Clinton into office. Not surprisingly, my votes generally reflected the political agenda most important to me: foreign policy and national security.)

I was introduced to President Clinton when I was called in to the Oval Office to participate in a meeting in advance of a visit by the president of Mali, Alpha Oumar Konare. Sandy Berger, who clearly did not know my career well, did the honors, referring to me as the former ambassador to Ghana rather than Gabon. It did not matter, as I knew

he had a lot on his mind, but as he was fumbling my career history, Gore strode in, listened for the briefest of instants, and interrupted, saying to the president: "But the most important job Joe ever had was on my staff in the Senate." That settled it for Clinton; he smiled and welcomed me. Once again, Al Gore had reached out to me and shown a personal touch.

Bill Clinton was an imposing figure who had clearly grown into the office and into his international responsibilities. He was legendary for his ability to do several things at once, keeping different thoughts and issues at the forefront of his mind simultaneously. While I was briefing him for his meeting with the president of Mali—hardly the center of Washington's foreign policy universe—I stood in front of his desk while he was seated behind it. As I looked down at him, describing Mali, President Konare, and the points my office wanted Clinton to make in their meeting, Clinton was working a crossword puzzle. It was disconcerting and added to my own nervousness at being in his presence—you never get over the butterflies the first time in the Oval Office with a president you have just met. The power of the office and, by extension, of the person occupying it is intimidating.

But when his African guest entered, Clinton was brilliant. He demonstrated an understanding of Mali and a keen interest in his visitor and the issues being raised; it was a virtuoso performance. I decided then and there to take up crossword puzzles!

My move back to Washington coincided with the return to D.C. of a woman named Valerie Plame. I had first met her several months earlier at a reception in Washington I was attending with General Jim Jamerson at the residence of the Turkish ambassador. We were there to accept an award from the American Turkish Council, on behalf of the American troops of the European Command who were working in close collaboration with their Turkish counterparts in Iraq and Bosnia. I had been circulating, talking to friends from the State Department,

increasingly concerned over what else might be put out about her. I assumed, though, that the CIA would itself quash any article that made reference to Valerie. While not yet familiar with the specifics of the Intelligence Identities Protection Act, I knew that protection of the identity of agents in our clandestine service was the highest priority, and well understood by the experienced press corps in Washington. Novak had still been trolling for sources when we spoke on the telephone, so I assumed that he did not have the confirmations he would need from the CIA to publish the story. I told Valerie, who alerted the press liaison at the CIA, and we were left with the reasonable expectation that any reference to her would be dropped, since he would have no way of confirming the information—unless, of course, he got confirmations from another part of the government, such as the White House.

Quite apart from the matter of her employment, the assertion that Valerie had played any substantive role in the decision to ask me to go to Niger was false on the face of it. Anyone who knows anything about the government bureaucracy knows that public servants go to great lengths to avoid nepotism or any appearance of it. Family members are expressly forbidden from accepting employment that places them in any direct professional relationship, even once or twice removed. Absurd as these lengths may seem, a supervisor literally cannot even supervise the supervisor of the supervisor of another family member without high-level approval. Valerie could not have stood in the chain of command had she tried to. Dick Cheney might be able to find a way to appoint one of his daughters to a key decision-making position in the State Department's Middle East Bureau, as he did; but Valerie could not—and would not if she could—have had anything to do with the CIA decision to ask me to travel to Niamey.

The publication of the article marked a turning point in our lives. There was no possibility of Valerie recovering her former life. She would never be able to regain the anonymity and secrecy that her professional life had required; she would not be able to return to her

washingtonpost.com

Trial in Error

If You're Going to Charge Scooter, Then What About These Guys?

By Victoria Toensing
Sunday, February 18, 2007; B01

Could someone please explain to me why Scooter Libby is the only person on trial in the Valerie Plame leak investigation?

Special Counsel Patrick J. Fitzgerald charged Vice President Cheney's former chief of staff with perjury on the theory that Libby had a nefarious reason for lying to a grand jury about what he told reporters regarding CIA officer Plame: He was trying to cover up a White House conspiracy to retaliate against Plame's husband, Joseph C. Wilson IV. Wilson had infuriated Vice President Cheney by accusing the Bush administration of lying about intelligence in the run-up to the Iraq war.

Fitzgerald apparently concluded that a purported cover-up was sufficient motive for Libby to trim his recollections in a criminal way. So when Libby's testimony differed from that of others, it was Libby who got indicted.

There's a reason why responsible prosecutors don't bring perjury cases on mere "he said, he said" evidence. Without an underlying crime or tangible evidence of obstruction (think Martha Stewart trying to destroy phone logs), the trial becomes a mishmash of faulty memories in which witnesses can seem as guilty as the defendant. Any prosecutor knows that memories differ, even vividly, and each party can be convinced that his or her version is the truthful one.

If we accept Fitzgerald's low threshold for bringing a criminal case, then why stop at Libby? This investigation has enough questionable motives and shadowy half-truths and flawed recollections to fill a court docket for months. So here are my own personal bills of indictment:

* * *

THIS GRAND JURY CHARGES PATRICK J. FITZERALD with ignoring the fact that there was no basis for a criminal investigation from the day he was appointed, with handling some witnesses with kid gloves and banging on others with a mallet, with engaging in past contretemps with certain individuals that might have influenced his pursuit of their liberty, and with misleading the public in a news conference because . . . well, just because. To wit:

· On Dec. 30, 2003, the day Fitzgerald was appointed special counsel, he should have known (all he had to do was ask the CIA) that Plame was not covert, knowledge that should have stopped the investigation right there. The law prohibiting disclosure of a covert agent's identity requires that the person have a foreign assignment at the time or have had one within five years of the disclosure, that the government be taking affirmative steps to conceal the government relationship, and for the discloser to have actual knowledge of the covert status.

From FBI interviews conducted after Oct. 1, 2003, Fitzgerald also knew that then-Deputy Secretary of State Richard L. Armitage had identified Plame as a CIA officer to columnist Robert D. Novak, who first published Plame's name on July 14, 2003.

· In January 2001, Libby was the lawyer for millionaire financier Marc Rich, whom President Bill Clinton pardoned shortly before leaving office. Fitzgerald, who was then an assistant U.S. attorney in the southern district of New York, and U.S. Attorney James Comey spearheaded the criminal investigation of that pardon.

· Fitzgerald jailed former New York Times reporter Judith Miller for almost 90 days for not providing evidence in a matter that involved no crime. Yet the two were engaged in another dispute: Fitzgerald wanted Miller's phone records, contending that by contacting an Islamic charity, she had alerted it to a government search the day before it happened.

· Fitzgerald granted immunity to former White House press secretary Ari Fleischer without ever asking what he would testify to; he permitted NBC News bureau chief Tim Russert to be interviewed in a law firm office with his lawyer present, while Novak was forced to testify before the grand jury without counsel present.

· Armitage, like Bush adviser Karl Rove, forgot one conversation with a reporter. Fitzgerald threatened Rove with prosecution; Armitage bragged that he didn't even need a lawyer.

· In violating prosecutorial ethics by discussing facts outside the indictment during his Oct. 28, 2005, news conference, Fitzgerald made one factual assertion that turned out to be flat wrong: Libby was not "the first official" to reveal Plame's identity.

* * *

THIS GRAND JURY CHARGES THE CIA for making a boilerplate criminal referral to cover its derrière.

The CIA is well aware of the requirements of the law protecting the identity of covert officers and agents. I know, because in 1982, as chief counsel to the Senate intelligence committee, I negotiated the terms of that legislation between the media and the intelligence community. Even if Plame's status were "classified"--Fitzgerald never introduced one piece of evidence to support such status -- no law would be violated.

There is no better evidence that the CIA was only covering its rear by requesting a Justice Department criminal investigation than the fact that it sent a boiler-plate referral regarding a classified leak and not one addressing the elements of a covert officer's disclosure.

* * *

THIS GRAND JURY CHARGES JOSEPH C. WILSON IV with misleading the public about how he was sent to Niger, about the thrust of his March 2003 oral report of that trip, and about his wife's CIA status, perhaps for the purpose of getting book and movie contracts.

· On July 6, 2003, Wilson appeared on "Meet the Press" hours after the New York Times published his op-ed "What I Didn't Find in Africa," which accused the administration of twisting intelligence to exaggerate the Iraq threat. The piece suggested that Wilson had been sent to Niger at the vice president's request to look into foreign intelligence reports of Iraqi efforts to obtain yellowcake uranium. Wilson

told Andrea Mitchell, "The office of the vice president, I am absolutely convinced, received a very specific response to the question it asked and that response was based upon my trip there." But Cheney said he had no knowledge of Wilson's trip and was never briefed on his oral report to the CIA.

· Wilson has claimed repeatedly -- including on MSNBC's "Countdown" on July 22, 2005 and at the National Press Club on Oct. 31, 2005 -- that he was sent to Niger because of his "specific skill set" and not because of his wife. But Senate intelligence committee documents indicate that Plame suggested his name for the trip, as did a State Department report and a CIA official who briefed the vice president's office.

· Although Wilson has repeatedly claimed that neither his trip nor his oral report was classified, the CIA sent documents about the trip marked "classified" to the vice president's office and to date has not released the essence of the oral report. A source later identified as Wilson claimed in a Washington Post article on June 12, 2003, that documents related to an alleged Iraq-Niger uranium deal were forged because "the dates were wrong and the names were wrong." When Senate intelligence committee staff questioned that, as Wilson had never seen the documents, he responded that he may have "misspoken."

· Wilson has continually played coy about his wife's status. On July 16, 2003, David Corn wrote in the Nation: "Did senior Bush officials blow the cover of a U.S. intelligence officer working covertly in a field of vital importance to national security -- and break the law -- in order to strike at a Bush administration critic and intimidate others?" Corn acknowledged talking to Wilson but said that Wilson refused to talk about his wife. Yet Corn also published Wilson's rather unsubtle suggestion: "Naming her this way would have compromised every operation, every relationship, every network with which she had been associated in her entire career."

Plame was not covert. She worked at CIA headquarters and had not been stationed abroad within five years of the date of Novak's column.

* * *

THIS GRAND JURY CHARGES THE MEDIA with hypocrisy in asserting that criminal law was applicable to this "leak" and with misreporting facts to wage a political attack on an increasingly unpopular White House. To wit:

· Notwithstanding the fact that major newspapers have highfalutin', well-paid in-house and outside counsel who can find the disclosure law and even interpret it, the following publications called for a criminal investigation:

· The Atlanta Journal-Constitution called the appointment of a special independent counsel "absolutely necessary" because the allegations "come perilously close to treason" -- even though treason is a constitutional crime requiring two witnesses and the levying of war against the United States.

· The Boston Globe wrote: "This is a case that clearly calls for the appointment of an independent counsel."

· The New York Times naively approved the investigation if it "focused on the White House, not on journalists." It later applauded Fitzgerald's appointment, declaring that he must be allowed "to use the full powers of a special counsel."

· The Washington Post refrained from expressing shock at a "leak." But The Post had contributed to the

fray by reporting on Sept. 28, 2003, that "two White House officials called at least six Washington journalists and disclosed the identity and occupation of Wilson's wife . . . to undercut Wilson's credibility." This article was the likely impetus for the other papers' editorials.

As recently as a week ago, the media were displaying their prejudice in this case. On "Meet the Press," journalists lamented that the Libby trial was revealing how government officials can use their relationships with reporters to plant stories that hurt their political enemies. Where was the voice at the table asking, "Didn't Wilson also use the media with his assertions in the New York Times and The Post?"

* * *

THIS GRAND JURY CHARGES ARI FLEISCHER because his testimony about conversations differs from reporters' testimony, just as Libby's does. To wit:

· The former White House press secretary testified before the grand jury and at the trial that he had revealed Plame's identity to two reporters -- John Dickerson, then of Time magazine, and NBC News's David Gregory. Dickerson denied it. Gregory won't comment.

· On cross-examination, Fleischer testified that it was "absolutely correct" that he did *not* tell The Post's Walter Pincus on July 12, 2003, that Wilson's wife worked at the CIA. Pincus emphatically contradicted this, swearing that in the middle of a discussion, Fleischer "swerved off," asking, "Why do you keep writing about Joe Wilson and Joe Wilson's trip? Don't you know his wife worked for the CIA as an analyst for weapons of mass destruction and arranged for it?"

So indict Fleischer. He contradicted Pincus as materially as Libby contradicted Russert or Time's Matthew Cooper, the two witnesses who were the basis for the Libby indictment. Whoops! Can't do that. Fitzgerald gave Fleischer "pig in a poke" immunity. That's an old prosecutor's phrase meaning that Fitzgerald granted Fleischer immunity from prosecution without knowing what Fleischer would say. No problem -- indict Pincus. His testimony differed from Fleischer's and he didn't ask for immunity.

* * *

THIS GRAND JURY CHARGES RICHARD L. ARMITAGE with intentionally keeping silent about being the first person to reveal Plame's identity to reporters and with falsely telling the public that he did so at Fitzgerald's request because he did not want to be publicly embarrassed. To wit:

· Novak testified that Armitage told him on July 8, 2003, that it was Wilson's wife, "Valerie," who sent him on the Niger trip. Not until September 2006 did Armitage release Novak to reveal publicly that he had been the columnist's source.

· The Post's Bob Woodward testified that Armitage told him on June 13, 2003, rather colorfully: Wilson's "wife's a [expletive] analyst at the agency." When the FBI interviewed Armitage on Oct. 2, 2003, he apparently forgot about his taped interview with perhaps the most famous journalist of this generation. In November 2005 Armitage released Woodward from their confidentiality agreement -- but only to tell Fitzgerald, not the rest of us, how he had learned of Plame's identity.

· Armitage attributed his more than three years of silence to Fitzgerald's request that he not discuss the matter with anyone. But Fitzgerald was not appointed until Dec. 30, 2003, three months after Armitage now says he realized that he was Novak's source.

· Despite Armitage's claim as to why he kept silent, he yakked to his subordinate Marc Grossman about what he had said in his FBI interview -- conveniently, the night before Grossman's own FBI interview.

THIS GRAND JURY CHARGES THE U.S. JUSTICE DEPARTMENT with abdicating its legal and professional responsibility by passing the investigation off to a special counsel out of personal pique and reasons of ambition.

· Both then-Attorney General John D. Ashcroft and Deputy Attorney General James Comey not only had access to the law books but also the clout and clearances to demand that the CIA tell them whether Plame was covert.

· In the fall of 2003, Ashcroft, having learned that he would probably be replaced after the 2004 elections, had grown weary of taking flak for the president and threw the Libby investigation hot potato to Comey.

· In the fall of 2003, Comey, who hoped to replace Ashcroft as attorney general, in turn passed the hot potato to Fitzgerald, a former colleague and one of his best friends.

I rest my cases.

dt@digenovatoensing.com

Victoria Toensing, a deputy assistant attorney general in the Reagan administration, is a Washington lawyer.