

Is there a Bush pardon in Lewis Libby's future?

## **Cheney aide abruptly ends defense in perjury trial**

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Attorneys for I. Lewis Libby, the former top aide to Vice President Dick Cheney who is facing perjury charges, rested their case Wednesday after declining to call either Cheney or Libby himself as defense witnesses. The result was a nearly uncontested prosecution case demonstrating that Libby repeatedly lied to the grand jury investigating the leak of the name of CIA agent Valerie Plame Wilson.

The decision not to have Libby take the stand in his own defense and not to call Cheney as a character witness represents an abrupt abandonment of the trial strategy which Libby's attorneys had made public over the past year. They had repeatedly suggested that Libby's defense—given the overwhelming evidence that he had given false testimony to the grand jury—was that he had forgotten the details of the Wilson affair because of the press of high-level national security work in which he was engaged.

Cheney's testimony was critical both as a character witness and to support the portrayal of Libby as an overburdened aide with many more important concerns than whether Valerie Wilson, wife of Iraq war critic Joseph Wilson, was employed at the CIA. Libby himself would have to take the stand to substantiate the "forgetfulness" defense, as Judge Reggie Walton made clear in a series of rulings before the start of the trial.

In pretrial motions and discussions with both the judge and prosecutor Patrick Fitzgerald, Libby's attorneys had pressed for the use of classified government documents that would show Libby's busy schedule and document his preoccupation with possible terrorist attacks and other security matters that supposedly outweighed the defense of the Bush administration against Joseph Wilson, a former

diplomat who had gone to the press with an inside story of Bush's use of false charges of weapons of mass destruction to justify the invasion of Iraq.

It is possible, although it seems highly unlikely, that the defense attorneys rested their case because they believed the prosecution had failed to provide convincing evidence against their client. Perhaps they were making the best of a bad situation, concluding that a character reference from Cheney would cut little ice with a Washington jury, and that Libby would only damage his own cause if he took the stand and faced cross-examination by prosecutor Fitzgerald.

There is, however, a more plausible explanation for this sudden reversal: that Libby has been promised a presidential pardon in return for his agreement to take the fall in the perjury case. By essentially shutting down his defense case—calling only a handful of journalists and lower-level officials—Libby allows the White House to avoid the danger of an unprecedented cross-examination of the vice president, under oath, on the administration's efforts to punish and suppress criticism of the Iraq war.

In return—a possibility suggested in press coverage last year, but unmentioned in the media since the trial began—Libby is likely to receive a presidential pardon before Bush leaves office in January 2009. With appeals, it is unlikely that the former vice presidential chief of staff would see the inside of a jail cell before Bush could act.

Bush's father took similar action on behalf of many of the convicted Iran-Contra conspirators before he left office in January 1993, pardoning former national security adviser John Poindexter, former State Department official Elliott Abrams and others

convicted of perjury before Congress or other felonies.

Despite its narrow focus on Libby's contacts with several journalists and his subsequent lies about these contacts while testifying before the grand jury, the prosecution case did provide a glimpse of the frenzied efforts by top Bush administration officials, led by Cheney, to retaliate against the criticism by Wilson, a former US diplomat who had served in Iraq at the onset of the first Persian Gulf war and received a medal from Bush's father.

The vice president was the leading advocate in administration circles of the claim that Saddam Hussein was pursuing nuclear weapons, and he had pressed the issue of alleged Iraqi attempts to purchase uranium in West Africa. His repeated demands, relayed through Libby, finally pushed the CIA to send Wilson to Niger in 2002, where Wilson found nothing to confirm the charge.

After reporting his findings to the agency, Wilson was surprised when nine months later Bush included the claim in his January 2003 State of the Union speech. Wilson began voicing his concerns to the media, finally writing an op-ed column in the *New York Times*. Eight days later, syndicated right-wing columnist Robert Novak published the name of Wilson's wife and revealed that she worked as an analyst at the CIA, blowing her cover and effectively ending her undercover career.

Libby's defense attorney Theodore Wells suggested in his opening argument that Libby was being made a scapegoat to protect more powerful officials in the administration—a clear reference to chief White House political operative Karl Rove, one of the two sources for Novak's column, if not to Cheney and Bush themselves. But Rove was not called as a witness, despite being identified by several journalists, including Novak, as one of the officials who was circulating information about Wilson's wife and her role at the CIA.

One intriguing piece of evidence introduced by the prosecution was a note in Cheney's handwriting declaring that he would not allow Libby to be sacrificed to save other White House aides (an apparent reference to Rove). The note contained the words "the pres" which were then struck out. Cheney on the witness stand could well have been asked whether the president had played a role in deciding that the leak of Valerie

Plame Wilson's identity should be attributed to Libby rather than Rove.

Press coverage of the defense reversal made it clear that it took both the prosecution and the judge by surprise. The *Los Angeles Times* reported that Cheney "had been scheduled to testify Thursday."

The *Washington Post* noted, "From the start, the defense repeatedly said that Libby and Cheney probably would take the stand. Potential jurors were asked their opinion of Cheney, and those with strongly negative views of him were not chosen. Before the trial, defense lawyers had told Walton that Libby would testify, and that persuaded the judge to let the defense note during the trial the crush of national security issues Libby was handling."

The decision not to call Libby undermines the core of his defense, the claim of forgetfulness, since Judge Walton has ruled that no witnesses can testify about Libby's own state of mind unless Libby himself does so. Walton had agreed to admit a slew of classified documents into evidence to support Libby's testimony, but after the defense reversal, Walton ruled Wednesday that nearly all the documents would be barred. "My absolute understanding was that Mr. Libby was going to testify," the judge said. "My ruling was based on the fact that he was going to testify."

Prosecutor Fitzgerald, in arguing that the documents should not be introduced, accused the defense of a "bait-and-switch" tactic, using Libby's proffered testimony as the basis for admitting the documents, than deciding not to testify but seeking admission of the documents anyway. The documents could be used only if Libby was available to testify and be cross-examined on their significance, he said



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