The freeing of Lewis Libby: Government criminality and the class nature of American "justice"

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The decision of the Bush White House to commute the jail sentence of Vice President Dick Cheney's former chief of staff I. Lewis "Scooter" Libby is a telling demonstration of both the criminal character of the US government and the inequality that pervades American society.

Libby was sentenced to 30 months in prison on felony counts of perjury and obstruction of justice for lying to FBI agents and a federal grand jury in an attempt to derail their investigation into the leaking of the identity of CIA operative Valerie Plame. Now he will go scot-free, his sentence rescinded before he served a single day in jail.

While the commutation left in place the conviction, as well as a $250,000 fine and two years of probation, Bush refused on Tuesday to rule out granting Libby of a full pardon before he leaves the White House. "I rule nothing in or nothing out," Bush said when asked about a potential pardon.

So much for Bush's solemn declaration the previous day that he "respected" the jury's verdict and his talk of the serious nature of the crimes of perjury and obstruction of justice.

As for the fine, there is no doubt that it will be more than repaid by Libby's wealthy backers, who have already raised $5 million for his defense fund and mobilized a small army of ex-officials, lawyers, wealthy developers and the leading figures of the Republican right on his behalf.

The reason Libby's prosecution has turned into a *cause célèbre* for this socio-political layer is that the lies he told federal investigators were part of a conspiracy to cover up far bigger lies that were used to drag the American people into a criminal war launched to further the profit interests of the corporate elite.

Plame's identity was leaked to the right-wing columnist Robert Novak and other members of the media in an attempt punish and intimidate her husband, Joseph Wilson, the former ambassador who exposed some of the phony evidence about weapons of mass destruction that was used to justify the Iraq war.

The investigation that culminated in Libby's conviction was launched by the Justice Department, which, at the urging of the CIA, appointed Patrick Fitzgerald, the US attorney in Chicago, as a special counsel. The leaking of Plame's identity angered CIA officials, who said it was a potential violation of a 1982 law making it a felony to reveal the name of a covert agent.

It was clear from the outset that the drive to silence Wilson came from Cheney and the White House itself. In the opening stages of the trial, Libby's lawyer portrayed his client as a "fall guy" for higher-ups, a characterization the jury apparently found apt. It was revealed after the trial that while convicting Libby, jurors openly questioned why others—including key Bush aide Karl Rove—were not also on trial.

Then, in an unanticipated turn of events, the defense abruptly rested its case without calling Cheney, Rove or Libby himself to the witness stand. It was clear that Libby and his lawyers had decided virtually to concede guilt rather than pursue the line of defense they had laid out at the trial's opening.

It was more than an educated guess, widely discussed in the media at the time, that Libby had been given assurances that Bush would intervene to prevent him spending any time in prison. The decision to issue a presidential order wiping out Libby's jail term was the legal equivalent of hush money, designed to buy Libby's silence on the crimes of the Bush White House and Cheney's office, in which Libby himself played a central role.

Bush's decision to commute the sentence was portrayed by the White House as an act of mercy, aimed at ameliorating an "excessive" penalty while upholding the sanctity of the jury's verdict. It was nothing of the kind. Like everything else done by this administration, it was an act of lawlessness aimed at covering up crimes and defending unfettered executive power.

As the *Washington Post* pointed out Tuesday, the sentence was anything but excessive. "Three of every four people convicted of obstruction of justice have been sent to prison over the past two years, a total of 283 people, according to federal judiciary data," the *Post* reported. "The average term was more than five years. The largest group of defendants were sentenced to between 13 and 31 months in prison, exactly where Libby would have fallen on the charts."

The decision to grant clemency—taken without any consultation with either Fitzgerald or the Justice Department's pardon attorney—was aimed at assuring maximum secrecy, since such decisions are subject to no review and even documents relating to them are exempt from the Freedom of Information Act.

The commutation of Libby's sentence provides one more confirmation that this government considers itself entirely above the law and operates more along the lines of a crime family than a democratic and constitutional administration.

The response to the White House's freeing of Libby by both the media and the ostensible political opposition in the Democratic Party has been notably muted.

The various Democratic presidential candidates issued sound bytes for the occasion. Hillary Clinton said that the commutation showed that in the Bush administration "cronyism and ideology trump competence and justice," while Barack Obama said it "cements the

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legacy of an administration characterized by a politics of cynicism and division." The issue has presented some political problems for the latter candidate, as the Obama campaign's general counsel Robert Bauer came out in Libby's defense, drafting an article entitled, "Progressive Case for a Libby Pardon."

In contrast to the response of the politicians, Joseph Wilson delivered a more forthright and angry condemnation of Bush's actions, calling them representative of a government that is "corrupt from top to bottom."

"The fact that the president short-circuited our system of justice by giving Scooter Libby a get-out-of-jail-free card, thereby eliminating any incentive that he would tell the truth to the prosecutor, guarantees that there is a cloud of suspicion put over the office of the president and makes him potentially a suspect in an ongoing obstruction of justice case," declared Wilson, adding, "This was a coverup."

As for the media, the most strident note was sounded by the *Wall Street Journal*, which published an editorial describing Libby's predicament as a "personal tragedy" and declaring Bush's failure to issue an outright pardon "a dark moment in this administration's history."

The *Washington Post*, which had been highly critical of the prosecution of Libby, agreed with a commutation of Libby's sentence, but said Bush had gone a bit far in relieving the former aide of all jail time. The *Post* echoed the argument of the Republican right, comparing Libby's case to that of President Bill Clinton, "who lied under oath but was not removed from office or put in jail."

That Clinton was essentially entrapped into lying about an entirely personal matter which had no intrinsic significance for anyone outside of himself and his family, while Libby's lies were part of a political conspiracy to carry out an illegal war of aggression that has claimed the lives of hundreds of thousands of Iraqis and killed or maimed tens of thousands of US troops, was apparently lost on the newspaper's editors.

The *New York Times* went so far as to suggest that the commutation was aimed at buying Libby's silence. "Presidents have the power to grant clemency and pardons," the *Times* noted. "But in this case, Mr. Bush did not sound like a leader making tough decisions about justice. He sounded like a man worried about what a former loyalist might say when actually staring into a prison cell." Yet, having suggested that Bush himself is guilty of obstruction of justice, the newspaper did not even broach the question of Bush or anyone else being held accountable.

There can be little doubt that Bush took into account this tepid response from the media and the Democrats—compared with the fulminations of the Republican right—in determining that, a day after commuting Libby's sentence, he could get away with suggesting that he may yet grant him a blanket pardon.

What is to account for the lack of genuine outrage within what once passed for the liberal establishment centered in the Democratic Party and sections of the press? It is all the more striking given the overwhelming popular hostility to Bush's commutation, with polls showing at least 70 percent disapproval.

In the final analysis, Libby's real crime is not that he lied about matters related to the exposure of a single CIA operative, though leading Democrats have welcomed this issue as a chance to portray Republicans as "traitors" and enemies of national security. Rather, the crime Libby, Cheney and the rest committed and then sought to defend in the Plame-Wilson matter was the promotion of an illegal war based upon lies.

Behind the muted response is undoubtedly an element of "there but for the grace of God go I" from co-participants in the corrupt and criminal activities of the US government. They, after all, work in the same protected and privileged bubble as Libby and his associates.

While a few Democratic members of the House have suggested hearings on the commutation, even if they are held they will inevitably become an exercise in damage control, under conditions in which the entire political establishment is up to its necks in deceit and corruption.

There is an additional social and political dynamic at work here. Within the entire political and media establishment there is a firm conviction that the savage "criminal justice" system in the US is not meant for possessors of wealth and purveyors of power such as Libby. Prisons and harsh sentences are in place to suppress and control the masses of poor and working people.

The number of prisoners in America has reached a record 2,245,000, the largest for any nation on earth and nearly 40 percent higher than its closest competitor, China. Last year, the US prison system recorded the biggest increase in the number of inmates since 2000, the Justice Department reported last week. The rise was attributed largely to mandatory sentencing laws, which the administration has sought to toughen still further, while overriding just such a statute in the Libby case.

In a statement defending his decision to commute Libby's sentence, Bush lamented the fact that the vice presidential aide's "wife and young children have also suffered immensely" and that "the consequences of his felony conviction on his former life... will be long-lasting."

No such consideration is given to the millions who are forced into American jails—many on minor offenses, some who are mentally incompetent to stand trial, others who are juveniles but tried as adults. Without the money and power of a Libby, they are caught up in a merciless legal system that continues to send people to their deaths.

In his previous political capacity as governor of Texas, Bush showed none of those on the state's death row the compassion reserved for Cheney's underling. He sent to their deaths 150 men and two women—executing the first female in Texas in 100 years, Karla Faye Tucker, and publicly mocking her plea that he spare her life.

This ruthless legal system is a reflection of the brutality visited upon working people in general. Millions are deprived of jobs and pensions, have their wages cut or lose their homes through foreclosures, without an ounce of compassion from the government or the corporate elite that it represents.

The crime of which Libby is guilty—as are Bush, Cheney and others in the military and political establishment—is the same one which formed the principal charge against the Nazi defendants at Nuremberg 60 years ago: conspiracy to wage a war of aggression.

That Libby cannot be punished, even for the tangential offenses of obstructing justice and lying under oath, demonstrates that the entire political establishment, including the Democrats and the media, is implicated in the same underlying crime.

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