

Fitzgerald Previews Government's Case Against Libby

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The criminal trial against I. Lewis "Scooter" Libby, Vice President Dick Cheney's former chief of staff, may still be nearly a year away, but the special counsel prosecuting the case has already provided a preview into the government's criminal case against the ex-White House official, who is accused of lying to the FBI and a grand jury about his role in the leak of a covert CIA operative.

During a recent federal court hearing, Special Prosecutor Patrick Fitzgerald said he plans to focus on the week of July 7 to 14, 2003, in which Libby allegedly told several reporters that Valerie Plame Wilson worked for the CIA and was responsible for convincing the agency to send her husband, former Ambassador Joseph Wilson, to Niger in 2002 to investigate claims that Iraq sought 500 tons of uranium from the African country.

"I'm not going to argue it was the most important issue consuming the Bush administration," Fitzgerald told US District Court Judge Reggie Walton during a February 24 federal court hearing, a transcript of which was obtained by this reporter.

"I will argue during that week Mr. Libby was consumed with [Wilson] to an extent more than he should have been but he was and you can look at the time he spent with people," Fitzgerald added. "When talking about Mr. Wilson for the first time, he described himself as a former Hill staffer. He meets with people off premises. There were some unusual things I won't get into about that week. At the end of the day we're talking about someone who spent a lot of time during the week of July 7 to July 14 focused on the issue of Wilson and Wilson's wife."

Libby told FBI investigators and testified before a grand jury that he found out about Plame Wilson's CIA employment from reporters on July 9 or 10, 2003. But Fitzgerald said Libby discussed Plame Wilson with former White House press secretary Ari Fleischer on July 7, 2003, and Fleischer testified that Libby said the information was "hush, hush" on the "QT" and was not widely known ...

Libby's defense team responded to Fitzgerald's comments, saying that Plame Wilson was a blip on Libby's radar screen and that Libby was too busy dealing with terrorism, the Iraq war and national security issues to pay any attention to her.

If Libby did not provide accurate answers to the FBI or the grand jury, his attorneys said, it's only because he was dealing with national security matters and therefore forgot about how and when he found out about Plame Wilson. He did not intentionally lie, Libby's attorneys William Jeffress and Theodore Wells said during the court hearing.

But Fitzgerald said the evidence he has collected speaks for itself and proves Libby knowingly lied about his involvement in the leak.

On July 7, 2003, Libby “had a lunch where he imparted that information in what was described as a weird situation,” Fitzgerald said at the hearing. “He had a private meeting with a reporter outside the White House with this meeting. He was quoted in a very rare interview on a Saturday on the record in an interview with Time magazine, a very weird circumstance. There are a lot of markers I won’t get into that show that this was a very important focus, the Wilson controversy from July 7 to 14 because it was a direct attack on the credibility of the administration, whether accurate or not, and upon the vice president and people were attacking Mr. Libby. So it was a focus.”

Additionally, Fitzgerald said that during Libby’s trial he will argue that because Libby tiptoed around Washington when meeting with reporters, Fleischer, and others to discuss Plame Wilson’s CIA work, he must have known that her status was classified.

“We will argue that [Libby] knew or should have known it was classified and that he was being investigated for disclosing classified information,” Fitzgerald told Judge Walton. “We will argue that he committed the crime of lying.”

Ambassador Wilson emerged in February 2003 as a vocal critic of the administration’s pre-war Iraq intelligence. He accused the White House of ignoring his March 2002 oral report to the CIA, in which he told a CIA analyst that there was no truth to intelligence reports about Iraq’s attempts to acquire uranium from Niger. It would later be revealed that the intelligence documents on Niger were forgeries.

Despite Wilson’s findings, and warnings from the State Department and the CIA that the Niger intelligence was suspect, President Bush cited Iraq’s attempt to purchase uranium in his January 2003 State of the Union address, which helped convince the public and Congress to back the war. Wilson exposed the administration’s flawed Niger intelligence in a July 6, 2003, New York Times op-ed column.

Plame Wilson’s identity was unmasked by high-ranking White House officials, including Libby and Deputy White House Chief of Staff Karl Rove, according to several reporters who testified before the grand jury. Rove remains under investigation for his role in the leak. Wilson has charged that the leak was in retaliation for his criticism of the Bush administration.

Libby and numerous other White House officials were questioned by investigators about their role in the leak and whether they were involved in a campaign to discredit Wilson. Libby told the FBI in October and November 2003 that he first learned from NBC News correspondent Tim Russert that Plame Wilson worked at the CIA and that she was Ambassador Wilson’s wife.

Russert vehemently denied Libby’s account, and it has since been reported that Libby had actually been a source for at least two reporters who wrote about Plame Wilson in July 2003.

Fitzgerald secured a five-count indictment against Libby in late October, charging him with perjury, obstruction of justice, and lying to investigators about the Plame Wilson leak.

The two-and-a-half hour courtroom hearing also shed light on the defense strategy that will

be employed in an attempt to prove Libby's innocence. Instead of focusing on the obstruction of justice and perjury charges their client is charged with, Libby's attorneys have attempted to downplay the importance of Plame Wilson's CIA status and work with the agency.

By devaluing Plame Wilson's work and status with the agency, Libby's attorneys said they hope to prove to a jury that their client had no incentive to lie to investigators and the grand jury about how and when he found out that she was a CIA employee as well as Ambassador Wilson's wife.

Proving how adept the defense can be in circumventing the facts related to the perjury and obstruction of justice charges filed against Libby, at one point during the hearing, Wells suggested that Plame Wilson's undercover status should have been declassified five years ago, but wasn't because of a bureaucratic error.

"I need to understand is she covert or not," Wells said. "If she's classified, is she really classified or is just classified because some bureaucracy didn't unclassify her five years ago when they should have. I just want to know the facts. I want to know when [Fitzgerald] stands up is there nothing to it because maybe she, even if she was classified based on a piece of paper, it was some bureaucracy."

Furthermore, Libby's attorneys have once again argued that Fitzgerald should be required to provide the defense with a so-called damage assessment on the Plame Wilson leak. The defense has argued that since no damage was done to national security by leaking Plame Wilson's identity the case has no merit.

But Fitzgerald said he does not intend to offer any proof at trial of "actual damage" as a result of the leak because the case is about perjury and obstruction of justice.

"We don't intend to offer any proof of actual damage," Fitzgerald told Judge Walton in response to Wells' comments. "We're not going to get into whether that would occur or not. It's not part of the perjury statute. It's not part of the underlying statutes."

Wells fired back.

"Mr. Fitzgerald has indicated correctly that under the perjury or obstruction statutes that showing actual damage is not an essential element of the offense," Wells said. "We both agree with that. But there's no question, he is going to stand up in front of that jury and he's going to convey to that jury that Mr. Libby has engaged in a very serious crime involving disclosing the identity of a CIA agent. It's in the indictment. I don't even understand how the government can draft the indictment, put these issues in play and then act like it's not an issue at trial.

Walton indicated that he would likely determine that if Fitzgerald made that argument during the trial it would not be admissible.

But Fitzgerald told the judge that Wells has confused the issue and has continued to ignore the facts surrounding the charges against Libby.

"The argument they are making is Mr. Libby had no motive to lie to the grand jury," Fitzgerald said. "Since nothing bad happened, there is no actual damage. There is no showing, not even an attempt or proffer that Mr. Libby had any idea what the damage was.

We would never intend to put in actual damage” that took place by leaking Plame Wilson’s CIA employment.

“Our only view would be the materiality of the perjury is that, you know, it’s a serious matter if he lied about whether or not he talked about a CIA employee’s association and we believe that there will be evidence at the trial that at times he talked about it with other people as if he couldn’t talk about it on an open telephone line or told someone else it was hush, hush or QT,” Fitzgerald said.

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