Under Fire for Plame Leak, Cheney Builds NSA Stone Wall

by Edward Spannaus

Vice President Dick Cheney, visibly and increasingly in the target zone in the criminal investigation of the Valerie Plame obstruction-of-justice case, is desperately trying to orchestrate the coverup around the National Security Agency domestic spying scandal. Informed sources indicate that it was Cheney, not President Bush, who was behind the illegal surveillance of Americans, and thus it is Cheney who is also most vulnerable in this case, if and when the true scope of the spying operation becomes known.

It is openly acknowledged that it was the Vice President and his legal counsel, now chief of staff, David Addington, who ordered that Attorney General Alberto Gonzales refuse to answer any pertinent questions, during his embarrassing appearance before the Senate Judiciary Committee on Feb. 6.

Lyndon LaRouche pointed out that Gonzales was, in effect, "taking the Fifth" in refusing to testify. "Gonzales is refusing to honor his Constitutional obligations to report to the Senate," LaRouche said, "and it's particularly dangerous at this time," pointing to the British-orchestrated confrontation brewing between the United States and Iran.

Continuing the pattern of stonewalling and concealment which has characterized the Administration's dealings with Congress, especially on national security matters, Cheney and his mouthpiece Gonzales were adamant that the full membership of the Senate and House Intelligence Committees could not be briefed on the NSA program. But within 48 hours, the stone wall that Cheney had built began to crumble; the Administration reversed course, and provided briefings to the full committees.

Cheney's biggest vulnerability, is his exposure in the Valerie Plame case. First, therefore, we review developments there, to provide the necessary backdrop for his role in the NSA scandal.

Who Destroyed the Missing E-mails?

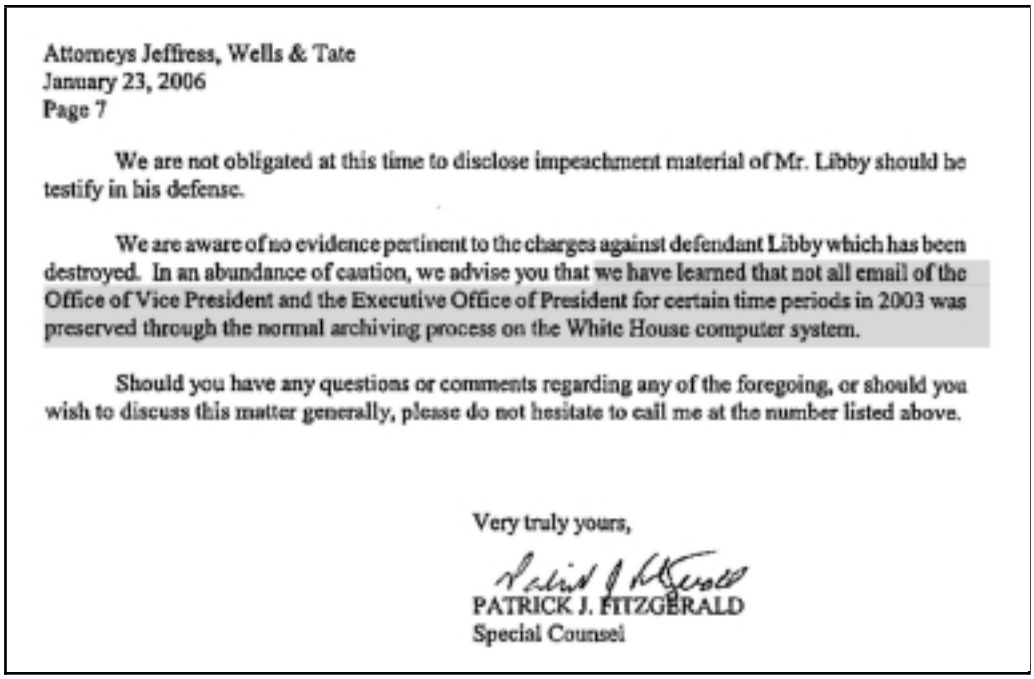
Three new disclosures in the Plame investigation and the prosecution of Cheney's former chief of staff Lewis "Scooter" Libby, highlight Cheney's vulnerability.

Missing e-mails: In a Jan. 23 letter to Libby's attorneys, special counsel Patrick Fitzgerald revealed that certain e-mails in Cheney's office were missing for parts of 2003—the crucial time period in which operations against former Ambassador Joseph Wilson were launched and conducted out of the Vice President's office. Wilson had been sent to Africa in early 2002 by the CIA to investigate claims that Saddam Hussein had attempted to purchase uranium ore from Niger; he found no evidence to support the story.

In March of 2003, Wilson began speaking out and discrediting the bogus claim, which had been included in President Bush's State of the Union Address that January. Wilson did not publicly acknowledge his CIA Africa trip, until he wrote an op-ed which was published in the *New York Times* on July 6, 2003. Even before the op-ed, Libby, operating on Cheney's instructions, was telling reporters that Wilson's wife worked for the CIA—with the implication that Wilson's trip to Africa was just a nepotist junket arranged by his wife.

The disclosure that e-mails were deleted from White House computer systems instead of being maintained "through the normal archiving process" (see graphic on the next page) is potentially very serious, intelligence sources have told *EIR,* because it would involve tampering with or disposing a computer hard drive, which is detectable. It evokes images of the missing 18 minutes on President Nixon's Oval Office tape-recordings, or the shredding of documents at the point of the discovery of the Iran-Contra scandal.

Leaking classified information: The Jan. 23 Fitzgerald letter also says that Libby testified to the grand jury that he had disclosed the content of the classified October 2002 National



Attorneys Jeffress, Wells & Tate
January 23, 2006
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We are not obligated at this time to disclose impeachment material of Mr. Libby should he testify in his defense.

We are aware of no evidence pertinent to the charges against defendant Libby which has been destroyed. In an abundance of caution, we advise you that we have learned that not all email of the Office of Vice President and the Executive Office of President for certain time periods in 2003 was preserved through the normal archiving process on the White House computer system.

Should you have any questions or comments regarding any of the foregoing, or should you wish to discuss this matter generally, please do not hesitate to call me at the number listed above.

Very truly yours,

PATRICK J. FITZGERALD
Special Counsel

Special Counsel Fitzgerald's letter to Libby's lawyers notes that some Cheney e-mails for time periods in 2003 were not "preserved."

Intelligence Estimate to reporters in June and July of 2003, and further, "that Mr. Libby testified that he was authorized to disclose information about the NIE to the press by his superiors." In his capacity as chief of staff to the Vice President, Libby had only one real superior: Dick Cheney.

Libby Covers for Cheney

Writing in the *National Journal* on Feb. 9, investigative reporter Murray Waas says that attorneys involved in the proceedings have told him that Libby had been authorized by Cheney to divulge portions of the highly classified NIE and other classifed information to reporters to build support for the Iraq war. As Waas notes, the fact that Libby admits he was authorized by Cheney to disclose classified information, raises obvious questions as to whether Cheney authorized or directed Libby to disclose the fact of Plame's CIA status.

Perjury on behalf of Cheney: Newly disclosed portions of a February 2005 Court of Appeals decision, written by Judge David Tatel, show in more detail how Libby first was told about Plame's CIA employment by Cheney, and how he then lied to the Federal grand jury to conceal the fact that Cheney had given him this information. Summarizing information supplied to the court by Fitzgerald in classified affidavits, Judge Tatel wrote: "As Libby admits, in mid-June 2003, when reports first appeared about the Niger trip, the vice president informed Libby 'in an off sort of curiosity sort of fashion' that the Niger envoy's wife worked at the CIA's counterproliferation division." Nevertheless, Tatel continued, Libby testified falsely that he first learned about Wilson's wife's identity from NBC reporter Tim Russert a month later.

Tatel also recounted, from evidence obtained by Fitzgerald, that Libby had discussed Plame's employment on several occasions prior to his meeting with Russert, including during a lunch with then-White House press secretary Ari Fleischer.

Had Libby told the truth to the grand jury, he would have had to reveal where he learned about Plame's CIA employment: from Dick Cheney. Instead, he lied.

Gravity of the offense: Judge Tatel had also noted, in the newly disclosed pages, that the charges of perjury and obstruction of justice, already being investigated by that time (late 2004-early 2005), were no less serious than the national-security crimes of leaking classified information originally under investigation. "Insofar as false testimony may have impaired special counsel's identification of the culprits, perjury in this context is itself a crime with national security implications," Tatel wrote. (See *Documentation.*)

This was underscored by Tatel's noting that Plame "worked for the CIA in some unusual capacity relating to counterproliferation." Former CIA officer Larry Johnson, citing Tatel's opinion in a Feb. 7 article, says that Plame "was working on projects to identify terrorists and criminals who were trying to procure weapons of mass destruction," and that human intelligence assets who worked with Plame were damaged, and their lives put at risk.

'Get That S.O.B.!'

Another, unofficial, disclosure, but quite useful nonetheless, is a set of new details about Cheney's campaign against Wilson, which have been provided to investigative reporter Jason Leopold and published in *Truthout* on Feb. 9. Leopold confirms, what *EIR*'s Jeffrey Steinberg first reported in 2004: that Cheney's "get Wilson" campaign began no later than March of 2003, three to four months before the outing of

Valerie Plame in Robert Novak's syndicated column.

Leopold reports that the day after a March 8, 2003 CNN interview with Joe Wilson, there was a meeting in Cheney's office, chaired by the Vice President, at which the decision was made to try to discredit Wilson. "The way I remember it," a former CIA official who was at the meeting said, "is that the Vice President was obsessed with Wilson. He called him an asshole, a son-of-a-bitch. He took his comments very personally. He wanted us to do everything in our power to destroy his reputation and he wanted to be kept up to date about the progress."

By the time of this writing, stories are out everywhere, that Libby is implicitly "gray-mailing" Cheney, by threatening to base his defense in his upcoming trial, on the assertion that he was acting on Cheney's behalf, and that he was ordered by Cheney to disclose classified information.

Obviously, Cheney has much reason to be very nervous, which also bears upon his obstruction of the NSA inquiry.

Gonzales 'Takes the Fifth'

Acting pursuant to Cheney's direct instructions, Attorney General Alberto Gonzales, who as White House Counsel had been directly involved in the launching of the NSA domestic spying operation, refused to answer any questions about the operations of the spy program in his day-long appearance before the Senate Judiciary Committee on Feb. 6. Instead, Gonzales confined himself to merely repeating the Administration's sophistical legal arguments as to why it does not need to comply with the 1978 law which governs such electronic surveillance.

At the outset of the hearing, Senate Judiciary Committee Chairman Arlen Specter (R-Pa.) said that it was not necessary to swear in the Attorney General for his testimony (even though, as has been pointed out, Specter vowed on April 5 of last year: "During my stewardship here, I'm going to put everybody under oath when we have testimony, as we do during confirmation hearings.")

Smelling a rat, Sen. Russ Feingold (D-Wisc.) objected, and insisted that Gonzales should be sworn, because there were serious questions about statements he made during his confirmation hearing last year.

Later, Feingold told Gonzales that his testimony last year was "materially misleading," when Feingold had asked him at that time, whether the President can authorize electronic surveillance in violation of the wiretapping laws. Gonzales had answered that this was a "hypothetical" question, and that "It's not the policy or the agenda of this President to authorize actions that would be in contravention of our criminal statutes."

Feingold bluntly told Gonzales, "Of course, if you had told the truth, maybe that would have jeopardized your confirmation."

Sen. Dianne Feinstein (D-Calif.), a few minutes earlier, had also pointed out that President Bush had falsely stated, in 2004, that any time the government is talking about wiretaps, "a wiretap requires a court order," even when chasing down terrorists.

"Let me ask you this," Feinstein said to Gonzales. "If the President determined that a truthful answer to questions posed by the Congress to you, including the questions I ask here today, would hinder his ability to function as commander in chief, does the authorization for use of military force, or his asserted plenary powers, authorize you to provide false or misleading answers to such questions?"

Gonzales of course denied this, and then Feinstein continued, zeroing in on, without mentioning it by name, the "unitary executive" theory. "You have advanced what I think is a radical legal theory here today. The theory compels the conclusion that the President's power to defend the nation is unchecked by law, that he acts alone and according to his own discretion, and that the Congress's role, at best, is advisory."

Feinstein then asked Gonzales a series of questions, all of which he refused to answer, whether the President has authorized any other actions, besides electronic surveillance, which would violate U.S. laws—such as mail-openings, suspending the *Posse Comitatus* law, or carrying out covert actions to influence U.S. politics or public opinion.

In written questions sent to Gonzales before the hearing, Feinstein had asked whether any terrorist operatives have been identified within the United States, and "have these individuals been detained. . . . Have any been killed?"

Gonzales's evasions were so obvious that, at one point, Sen. Charles Schumer (D-N.Y.) referred to "all that bobbing and weaving" being done by Gonzales.

Three Republican members of the Senate Judiciary Committee joined in criticizing the Bush Administration's handling of the NSA spying operation.

- Sen. Lindsey Graham (R-S.C.) pressed Gonzales on whether the President could order the military to torture a prisoner. Graham told Gonzales that "the inherent authority argument"—referring to claims of the President's inherent authority to conduct war—"seems to have no boundaries when it comes to executive decisions in a time of war," adding that "it deals the Congress out, it deals the courts out." Graham hit hard on the President's "signing statement" and the Administration's claim that it can override the anti-torture laws under the President's commander-in-chief powers.

* Sen. Mike DeWine (R-Ohio) repeatedly said that the Administration and the whole country would have been better off, if the Administration had come to Congress and asked for statutory authority to carry out its program; and he urged the Administration to come to Congress even today, and give the relevant committees a full briefing on the program.

- Sen. Arlen Specter (R-Pa.), who has previously said that he thinks the NSA program violates the Foreign Intelligence Surveillance Act (FISA), expressed his skepticism about the Administation's arguments, and its failure to ask Congress to amend the FISA law if it thinks that is needed.
- Sen. Sam Brownback (R-Kan.) was also mildly critical of the Administration's handling of the matter.

What Are They Hiding?

The question raised by many Senators, was why the Administration had not come to Congress for authorization for its program, if the program is as narrow and limited as the Administration says it is.

Senator Feinstein said what probably many others were thinking, when she suggested that the program is much bigger than the Administration lets on. She listed the number of changes that the Congress has already made to the FISA law to accommodate the war on terrorism, and then she continued:

"Now, in view of the changes that we have made, I cannot understand why you didn't come to the committee, unless the program was much broader and you believed it would not be authorized. That's the only reason I can figure you didn't come to the committee.

"Because if the program is as the President has said and you have said, to this date you haven't briefed the Intelligence Committee, you haven't let us ask the question, 'What is a link? What is an affiliate? How many people are covered? What are the precise numbers? What happens to the data? How long is it retained in a database? When are innocent people taken out of the database?' And I can only believe—and this is my honest view—that this program is much bigger and much broader than you want anyone to know."

Administration Backs Off—Slightly

That Cheney and his legal mouthpiece David Addington were the ones giving Gonzales his orders, was an open secret. Senior *Washington Post* editor and columnist David Ignatius wrote on Feb. 8, that "Gonzales mouthed the no-compromise rhetoric before the Senate Judiciary Committee Monday, but policy decisions on this issue are made in the bunker occupied by Vice President Cheney and his chief of staff David Addington." Ignatius also took note of "a lawyers' revolt brewing in Justice, State, and the CIA against Addington's diktats," as was described in a recent *Newsweek* article.

The next day, syndicated columnist Robert Novak, who is more sympathetic to Cheney's hard-line stance, reported that when the chairman of the Senate Intelligence Committee, Sen. Pat Roberts, had brought up with Cheney the need to brief Congress on the program, Cheney replied: "There is no upside for us in that." Novak reported that a conflict seemed to be developing within the Administration, and he also identified the "dominant hard line against sharing information with Congress" as being pressed by Cheney and Addington.

The next evening, Feb. 7, Cheney himself was interviewed on the PBS "NewsHour" with Jim Lehrer. He insisted that it would be unwise and dangerous to get Congress involved, and "if we're going to proceed legislatively . . . it might well in fact do irreparable damage to our ability to collect this information." Cheney opposed even briefing the full House and Senate Intelligence Committees. "If we had briefed all of the members of the Intelligence Committee, both Houses as some have suggested, we would have had to brief 70 members of Congress into this program because that's how many people have served on those two committees over the intervening four years," Cheney asserted. "That's not a good way to keep a secret."

wilson.house.gov

"The President has his duty to do, but I have mine too, and I feel strongly about that," said Rep. Heather Wilson, who called for a "painstaking" review of the surveillance program by the House Intelligence Committee.

Also on Feb. 7, the chairwoman of the House Intelligence subcommittee which oversees the NSA, called for a full Congressional inquiry into the NSA surveillance program. Rep. Heather Wilson (R-N.M.), a former Air Force officer, said that she had "serious concerns" about the spying program, which were being deepened by the Administration's withholding of information from Congress. Wilson said that the limited Congressional briefings by the White House are "increasingly untenable," and she called for a "painstaking" review of the surveillance program by the House Intelligence Committee. She added that "the President has his duty to do, but I have mine too, and I feel strongly about that."

Additionally, Specter announced that he is drafting legislation that would require the FISA court to determine whether the program is constitutional. And the Republican Chairman of the House Judiciary Committee, Rep. James Sensenbrenner (R-Wisc.), sent a letter to Gonzales containing 51 detailed questions on the NSA program, giving Gonzales a March 2 deadline to respond.

'The Stones Are Smaller. . . .'

In response to this pressure, the White House suddenly shifted course on Wednesday, Feb. 8, and agreed to do what Cheney had said it would never do: brief the full House and Senate Intelligence Committees on the NSA program. Gonzales and Gen. Michael Hayden, the Deputy Director of National Intelligence, gave a closed-door briefing to the full House Intelligence Committee on Feb. 8, and then to the full Senate Intelligence Committee the next day. Said Representative Wilson, "I don't think the White House would have made the decision that it did, had I not stood up and said, 'You must brief the Intelligence Committee.' "

Nevertheless, the briefings were largely on the legal justifications for the spy program, not its operations. "Most of the questions that were asked were not answered," said Senate Intelligence Committee vice-chairman Jay Rockefeller (D-

W.V.), adding pointedly that Gonzales and Hayden could only go so far in answering questions, "by order of the Vice President and the President."

When Sen. Dianne Feinstein was asked if she still felt that they were being stonewalled, she replied: "The stones are smaller, but they're still there; that's for sure."

There is still much more to come in the Senate Judiciary Committee as well. Senator Specter obtained an agreement from Gonzales to have former Attorney General John Ashcroft appear and testify. Sen. Charles Schumer wants to go much further, and have former Justice Department officials who reportedly disputed the legality of the NSA spying program. These include former Deputy Attorney General James Comey, and former head of the Office of Legal Counsel Jack Goldsmith. And on the eve of the Feb. 6 hearing, all eight Democrats on the Judiciary Committee asked that Cheney's legal counsel David Addington, "who reportedly played a lead role in advocating for the program," be summoned to testify.

Documentation

Appeals Court Opinion On Valerie Plame Leak

These are excerpts from previously redacted pages of the Feb. 15, 2005 concurring opinion written by Judge David Tatel of the U.S. Court of Appeals for the District of Columbia Circuit. At issue was whether New York Times *reporter Judith Miller and other reporters could be held in contempt of court for refusing to testify to the grand jury investigating the illegal disclosure of the identity of CIA covert operative Valerie Plame. We have omitted citations to the court record, which largely pertain to submissions to the Federal District Court by special counsel Patrick Fitzgerald.*

[With respect to Miller,] the special counsel seeks evidence regarding two exchanges with I. Lewis "Scooter" Libby, Vice President Cheney's Chief of Staff and National Security Adviser: first, an in-person meeting in Washington, D.C. on July 8, 2003, and second, a telephone conversation on July 12, 2003. Before the grand jury, Libby testified that although he had previously learned about Wilson's wife's employment, he had forgotten it by July 8, and recalled no discussion of Wilson during his meeting with Miller. As to the July 12 conversation, Libby stated, "I said to her that, that I didn't know if it was true, but that reporters had told us that the ambassador's wife works at the CIA, that I didn't know anything about it." Because other testimony and evidence raises doubts about Libby's claims, the special counsel believes Miller's testimony is "essential to determining whether Libby is guilty of crimes, including perjury, false statements and the improper disclosure of national defense information."

The special counsel's argument is persuasive. As Libby admits, in mid-June 2003, when reports first appeared about the Niger trip, the Vice President informed Libby "in an off sort of curiosity sort of fashion" that the Niger envoy's wife worked at the CIA's counterproliferation division. In addition, handwritten notes by Libby's CIA briefer indicate that Libby referred to "Joe Wilson" and "Valerie Wilson" in a conversation on June 14. Nevertheless, Libby maintains that he believed he was learning about Wilson's wife's identity for the first time when he spoke with NBC Washington Bureau Chief Tim Russert on July 10 or 11 regarding coverage of the Niger issue by MSNBC correspondent Chris Matthews. . . .

Also contrary to Libby's testimony, it appears that Libby discussed Plame's employment on several occasions before July 10. For example, then-White House Press Secretary Ari Fleischer recalls that over lunch on July 7, the day before Libby's meeting with Miller, Libby told him, "[T]he Vice-President did not send Ambassador Wilson to Niger . . . the CIA sent Ambassador Wilson to Niger. . . . [H]e was sent by his wife. . . . [S]he works in . . . the Counterproliferation area of the CIA." Describing the lunch as "kind of weird" and noting that Libby typically "operated in a very closed-lip fashion," Fleischer recalled that Libby "added something along the lines of, you know, this is hush-hush, nobody knows about this. This is on the q.t." Though Libby remembers the lunch meeting, and even says he thanked Fleischer for making a statement about the Niger issue, he denies discussing Wilson's wife. . . .

As to the leaks' harmfulness, although the record omits specifics about Plame's work, it appears to confirm, as alleged in the public record and reported in the press, that she worked for the CIA in some unusual capacity relating to counterproliferation. . . . [T]he special counsel refers to Plame as "a person whose identity the CIA was making specific efforts to conceal and who had carried out covert work overseas within the last 5 years"—representations I trust the special counsel would not make without support. In addition, Libby said that Plame worked in the CIA's counterproliferation division. . . .

Most telling of all, Harlow, the CIA spokesperson, though confirming Plame's employment, asked Novak to withhold her name, stating that "although it is very unlikely that she will ever be on another overseas mission . . . it might be embarrassing if she goes on foreign travel on her own," a statement that strongly implies Plame was covert at least at some point. . . .

Insofar as false testimony may have impaired the special counsel's identification of culprits, perjury in this context is itself a crime with national security implications. . . .