

# All the Veep's Men

The text of the Libby indictment suggests Fitzgerald isn't finished.

By Justin Raimondo

THE RESPONSE OF the neocon Right to Patrick J. Fitzgerald's indictment of Scooter Libby was predictably bizarre. The same people who are telling us that the real story in Iraq is that our troops are building schools and helping little old ladies cross the street threw their hats in the air and all but claimed vindication. David Frum, writing in the *Daily Telegraph*, could hardly contain his glee. In Frum's alternate universe, what he calls the "big theory" of Fitzgerald's investigation—"a sinister cabal of senior administration officials deceived the United States into fighting an unnecessary war"—has been debunked. This means the "little theory"—"there was no deception, no conspiracy, no punishment, and no compromise of security," except that somebody told a bunch of white lies—is supposedly vindicated. One wonders what indictment he was reading—or if he read it at all. His *National Review* colleague, Jonah Goldberg, declares, with characteristic light-heartedness, "it sure looks to me like this investigation is going nowhere." Five counts of lying: no big deal.

Neocons are tough on crime—except when it concerns their own. R. Emmett Tyrrell, the *American Spectator* editor who has now apparently taken up a second career as a comedian, mocks the outed Valerie Plame. The Democratic leadership, says Tyrrell, "apparently believes the pretty female agent could have been assassinated, presumably while shopping among the foreign agents in nearby cosmopolitan Tysons Corner or right there in the produce section at the Safeway, bashed by a coconut

hurling assassin." Tyrrell doesn't dare aim his disdain at Fitzgerald, but the implication is that the special prosecutor foolishly believes this, too.

The *New York Sun*, the neocons' vanity newspaper of record, hardly waited until Fitzgerald's press conference was over before it demanded a pardon for Libby. Inveighing against "overzealous" prosecutors, the paper opined that Libby "may have been telling the truth," or maybe he "misremembered"—yeah, that's it!—and, in any event, no crime was ever committed, except, of course, by Joe Wilson and perhaps Fitzgerald himself, who has launched "an assault on the Presidency." If only Libby and his friends in the administration had outed a Mossad agent, instead of a covert CIA employee, perhaps then the *Sun* would realize the seriousness of Fitzgerald's investigation. Instead, however, it insists that the president should "shut down the prosecution," a battle cry that has not yet been taken up by the rest of the neoconservative movement. Give them time.

The Scooter Libby Fan Club is taking its cues from a widespread misconception, echoed in the *Sun's* editorial, that nothing in Fitzgerald's indictment implicates Libby, or anybody else, with committing the "underlying crime"—outing Plame. Libby's defenders have resorted to the same tactics they utilized in lying us into war: cherry-picking. They lift isolated sentences out of Fitzgerald's indictment and ignore the overall portrait he draws of what was clearly a conspiracy to expose Plame's identity.

A federal indictment is not exactly *Atlas Shrugged*. It is concise and spare almost to the point of austerity, wasting no words on anything other than informing the defendant of the charges against him. This does not, however, describe the Libby indictment. In a most unusual move, Fitzgerald cites a statute Libby is not charged with violating—Title 18, United States Code, Section 793—the Espionage Act, forbidding disclosure of classified information to persons not authorized to receive it. Furthermore, the indictment is structured as if in preparation for pending charges, noting that Libby had security clearance and had signed a "Classified Information Nondisclosure Agreement," stating in part, "I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government," and "I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation."

Libby's fans are no doubt muttering, "But he wasn't charged with espionage!" No—not yet. The key to understanding what Fitzgerald is up to is contained in the transcript of the press conference.

Frum underscores the misconception that minimizes the indictment when he writes, "Under the little theory, if Mr. Libby had only told the truth about what had happened, there would have been no crime at all." This question—"If Mr. Libby had testified truthfully, would he be being

charged in this crime today?”—was asked at the press conference, and Fitzgerald’s answer directly refuted the “nothing to see here, move along” theory pushed by Frum, Goldberg, and the *New York Sun*. He averred that “if national defense information which is involved because [of Plame’s] affiliation with the CIA, whether or not she was covert, was classified, if that was intentionally transmitted, that would violate the statute known as Section 793, which is the Espionage Act.”

The Espionage Act is not to be treated lightly. It could easily become an American version of Britain’s Official Secrets Act, and clearly that, in Fitzgerald’s view, would not be a desirable result. So you “have to be very careful in applying that law because there are a lot of interests that could be implicated in making sure that you picked the right case to charge that statute.” How do you know which is the right case? It depends on the specific facts. The problem is that Scooter’s lies obscured them, and it was impossible to make a judgement. As Fitzgerald put it at the press conference:

Let’s assume, for the moment, that the allegations in the indictment are true. If that is true, you cannot figure out the right judgment to make, whether or not you should charge someone with a serious national security crime or walk away from it or recommend any other course of action, if you don’t know the truth. ... If he had told the truth, we would have made the judgment based upon those facts ...

In our age of obfuscation, when someone speaks clearly and concisely, as Fitzgerald does, he might as well be talking in a foreign language.

The meaning of the Libby indictment is plain to anyone who cares to examine it. It clearly sketches the outlines of a conspiracy to reveal classified information to unauthorized persons: it nails the vice

president as the original source of the information that Plame worked at the counter-proliferation unit, which means she was a covert operative—not a desk-jockey, as the Libby-ites contend. Also nailed: “Public Official A,” widely believed to be Karl Rove, still under investigation.

The indictment traces the trail of a conspiracy to expose Plame’s identity, detailing Libby’s path as he trolled the highways and byways of the national-security bureaucracy, digging up—with the collusion of others—the details of Wilson’s wife’s employment as an undercover agent and disseminating that information to reporters.

And here’s one aspect of the indictment that is generally overlooked: it describes the genesis of the apparent decision to expose Plame, the point that pushed the vice president’s men over the line into illegality. Fitzgerald highlights the publication of an article in *The New Republic* in which Wilson is quoted as saying “administration officials knew the Niger story was a flat-out lie.” Shortly thereafter, Libby and his then-Principal Deputy, Eric Edelman, discussed how much they could get away with in pushing their story that Wilson’s trip to Niger was a junket procured by his wife. The indictment states: “Libby responded that there would be complications at the CIA in disclosing that information publicly, and that he could not discuss the matter on a non-secure telephone line.” Libby knew the risks he was taking and feared exposure, although it is perhaps too much to expect that he felt guilty doing it.

This isn’t just about Libby the deceiver, although his fabrications are brazen enough. His recollection of his conversation with Tim Russert, for example, appears to be a story invented out of whole cloth. Libby’s talent as a would-be novelist—he is the author of one novel, *The Apprentice*—is on full display in Fitzgerald’s indictment.

However, Libby’s brazen indifference to truth shrinks into insignificance next to the treason concealed by his lies. Fitzgerald’s revelation of the catalyst that set Libby off—Wilson’s remark that the administration “knew the Niger story was a flat-out lie”—touches on the real “underlying crime” at the heart of this matter: the Niger uranium forgeries.

Those documents were crude fakes and yet somehow evaded detection and were integrated into the U.S. intelligence stream, eventually forming the basis of the president’s contention that Iraq sought to buy uranium in “an African country.” The forgers duped the U.S. government—but did they do so with the collusion of U.S. government officials? If the answer is yes, no wonder Wilson’s accusation in *The New Republic* struck a nerve.

“This isn’t over,” said Fitzgerald at his press conference, and the “free Libby” crowd had better brace themselves for an expansion of their defense committee. “Having read the indictment against Libby,” writes John Dean, “I am inclined to believe more will be issued. In fact, I will be stunned if no one else is indicted.”

Hanging over the heads of the vice president and his men is the threat that Fitzgerald will charge them with conspiracy to reveal classified information. Libby’s ability to lie is all that stands between Dick Cheney and an indictment.

David Brooks complained on the Nov. 6 “NewsHour with Jim Lehrer” that to accuse Libby and his cohorts of engaging in a conspiracy to “lie us into war” amounted to “McCarthyism.” But as we now know, thanks to the Venona transcripts and the opening of the Soviet archives, McCarthy was right. Luckily for us, Patrick Fitzgerald is temperamentally and stylistically the exact opposite of good old Tailgunner Joe. ■

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# Halftime Report

The GOP looks toward midterms without presidential coattails.

By W. James Antle III

ONE YEAR BEFORE the 2006 midterm elections, Republicans find themselves in unfamiliar territory. As President Bush's approval ratings—depressed by Iraq, energy prices, and scandal—slide below 40 percent, GOP strategists are contemplating an election cycle in which the man who was their chief asset in the last two campaigns is instead a liability.

If this dire scenario holds, Republicans won't just lose the helpful bounce in the polls that once accompanied a presidential campaign swing. They will lose the benefits that came from Bush being a more tireless party-builder than Ronald Reagan. The White House played a key role in recruiting and encouraging the candidates responsible for most of the GOP's Senate pickups in 2002 and 2004. Republican candidates have rallied in red states by tying themselves to Bush's popularity and casting the Democrats as the party of foreign-policy weakness and cultural weirdness.

But if the president and the Iraq War are both unpopular, the formula doesn't hold. And the congressional Republican leadership isn't faring much better. In an NBC News/*Wall Street Journal* poll, 48 percent of voters wanted the Democrats to control Congress compared to 39 percent who preferred the GOP.

"There is a sense of frustration and failure around the Republican Party," says Democratic consultant Mark Mellman. Republican-leaning libertarian commentator Ryan Sager, writing in TechCentral-Station, warned, "The parallels between 1994 and 2006 keep piling up."

Despite the Republicans' precarious position, it won't be easy for the

Democrats to regain control of Congress. Political analyst Charles Cook estimates that just 28 House races will be competitive, compared to the 106 districts that were in play in 1994. Democrats are defending 18 Senate seats to the Republicans' 15, including three of the four open seats. For Senate Minority Leader Harry Reid (D-Nev.) to become majority leader, Democrats must keep all their seats and claim six held by the GOP.

A tall order, to be sure, but Democrats are optimistic. They have several vulnerable GOP incumbents in their sights while Republicans are rapidly losing pickup opportunities.

One of those missed opportunities was the chance to deprive Sen. Robert Byrd (D-W. Va.) a record ninth term. West Virginia, one of the last Democratic holdouts below the Mason-Dixon Line, was a Karl Rove success story. Bush carried the state twice, winning by 13 points in 2004. Byrd opposed the president on tax cuts and the war. His fiery anti-Bush speeches have made the 87-year-old an unlikely hero to MoveOn.org and a ripe GOP target. Byrd isn't a conventional liberal—he voted to confirm John Roberts and his "A" career rating from the restrictionist Americans for Better Immigration is better than most Republicans'—but he is the kind of Democrat that has been slowly disappearing from the Senate for years. If only Republicans could find a credible candidate. Rep. Shelley Moore Capito (R-W. Va.), the only potential challenger to give Byrd a scare in the polls, said no.

She isn't alone. The GOP has had problems recruiting challengers for other red-state Democratic senators. North Dakota Gov. John Hoeven decided not to run against Sen. Kent Conrad (D-N.D.). Party leaders haven't done any better finding a suitable opponent for Sen. Ben Nelson (D-Neb.), while Rep. Katherine Harris (R-Fla.) badly trails Sen. Bill Nelson (D-Fla.).

Not long ago, Republicans would have been clamoring to enter those races. "Now instead of toss-ups, these will be safe Democratic seats," says Mellman. The Democrats, by contrast, have done remarkably well fielding Senate candidates.

Pennsylvania Treasurer Bob Casey Jr. has already opened up a double-digit lead over Sen. Rick Santorum (R-Pa.). Sen. Charles Schumer (D-N.Y.), from his perch at the Democratic Senatorial Campaign Committee (DSCC), persuaded Missouri Auditor Claire McCaskill to enter the race against freshman Sen. Jim Talent (R-Mo.). The DSCC raised \$32 million as of Sept. 30—actually outperforming its Republican counterpart—and has recruited serious candidates for at least six Republican-held seats in total.

Two high-profile Democrats are vying to challenge Sen. Mike DeWine (R-Ohio), where state GOP leaders have their own problems with scandal and sagging poll numbers. The more colorful challenger is Paul Hackett, who served with the Marines in Iraq and doesn't hold back in his criticism of Bush on the war. Hackett was unafraid to call the president a "chickenhawk" and said things like, "I don't like the son of a bitch that