

# THE TESTIMONY DANCE

Understand this. Libby's team is playing a big game with their witnesses, throwing a bunch of names out there—Cheney, Bartlett, Rove, Libby, Wilson, Woodward, and about 12 journalists to be named later. I really have no idea who will testify—remember that, even if Libby's subpoenas someone, they don't have to call that person as a witness. They may have subpoenaed these people just in case, for publicity reasons, to pressure the WH for a pardon—any number of reasons that may or may not mean they'll testify. But here are some thoughts on the big four: Libby, Cheney, Rove, and Bartlett.

## Libby

I love when I voice a speculation and Fitzgerald comes along a day later and agrees with me. I speculated on Wednesday that Libby's team was trying to introduce all of the CIPA material without making Libby take the stand. Later in the week, Fitzgerald validated my suspicions by expressing the same concern.

Here's why this is important. The two sides wrangled for four months to find appropriate substitutions for the classified information in the Daily Briefs which, Libby claimed, he wanted so he could demonstrate how busy he was which therefore made him forget all the leaking he was doing that week. Wells was fairly generous in his interpretation of CIPA, arguing that Libby needed anything he wanted to mount a defense. But the entire CIPA process was premised on the claim that Libby would take the stand and present it. Walton has only ruled this classified information admissible in the context of Libby explaining what the events depicted therein did to his state of mind. Throughout the rulings—such as one from November 15 that Typepad won't let me link—Walton emphasizes the centrality of Libby's testimony to the Very Important Defense.

However, the defense has affirmatively stated that the defendant intends to

testify in his own behalf. It will therefore be the defendants testimony about what he was focused on and that his workday was consumed by the information [redacted—probably references Morning Daily Briefings] that makes the classified information revealed in this documents admissible under Rule 401.

This stuff is only supposed to be admissible if Libby testifies. Wells has already made it a central part of his opening statement. But, as Fitzgerald noted, they did not mention that Libby would testify, and they seem to be speaking for Libby.

As you learned a few days ago, my name is Ted Wells. And I speak for Scooter Libby. Scooter Libby is innocent. Totally innocent.

Their tactics suggest that either something has come up that has made it problematic to put Libby on the stand—or they never intended to put him on the stand, and only claimed they would to justify their graymail attempt. If Walton—who hates when people waste his time or the government's money—learns it's the latter, he will not be happy.