

# THE BUSH FAIRY TALE ON THE LIBBY PARDON

You need to keep one thing in mind as you read this story about Cheney's campaign to get Bush to pardon Scooter Libby for his conviction related to the CIA Leak case. (h/t MadDog) Judge Emmet Sullivan has strongly suggested he's going to rule in favor of CREW in its FOIA of Dick Cheney's interview with Patrick Fitzgerald. So chances are good that we'll get to see that interview in the foreseeable future. But Congress withdrew its request and CREW has not made any request to get Bush's interview.

In other words, the sources for the story know that Cheney's interview will soon become public, but that Bush's probably won't be.

As a result, the Bush partisans can tell a story about Bush being really miffed at Libby's role in the case, all while claiming that the commutation (which of course was and still is the best way to ensure Libby never talks going forward) had nothing to do with Bush's own knowledge of the leak.

## **Time Ignores that Libby Was Protecting Cheney AND Bush**

This misleading narrative pervades the entire story. For example, Time suggests that Libby lied to the FBI because his job was on the line, and not because he was protecting Cheney and—at least to some degree—Bush. Time claims Cheney "assured Bush" Libby "wasn't involved," when the note Cheney wrote prior to that exoneration implicates Bush himself and may reflect Cheney's recognition that Libby had leaked the CIA trip report.

But Libby had reason to lie: his job was at stake, and his boss's was on the line too. Bush had declared that anyone involved in leaking Plame's identity would be fired. Cheney had personally assured Bush early on that his aide

wasn't involved, even persuading the President to exonerate Libby publicly through a spokesman.

And Time reports Bush officials acknowledging that Libby may well have taken the fall—but in spite of evidence of Bush's personal involvement, portrays that acknowledgment as pertaining only to Cheney, not Bush himself.

As a former Bush senior aide explains, "I'm sure the President and [chief of staff] Josh [Bolten] and Fred had a concern that somewhere, deep in there, there was a cover-up."

[snip]

Some Bush officials wondered whether Libby was covering up for Cheney's involvement in the leak of Plame's identity.

Most humorously, Time doesn't blink at the story that Bush felt the need to consult his own **defense attorney** about whether or not he should pardon Libby!

Meanwhile, Bush was running his own traps. He called Jim Sharp, his personal attorney in the Plame case, who had been present when he was interviewed by Fitzgerald in 2004. Sharp was known in Washington as one of the best lawyers nobody knew.

[snip]

While packing boxes in the upstairs residence, according to his associates, Bush noted that he was again under pressure from Cheney to pardon Libby. He characterized Cheney as a friend and a good Vice President but said his pardon request had little internal support. If the presidential staff were polled, the result would be 100 to 1 against a pardon, Bush joked. Then he turned to

Sharp. "What's the bottom line here? Did this guy lie or not?"

The lawyer, who had followed the case very closely, replied affirmatively.

I'm sure Bush's defense lawyer didn't mention that pardoning Libby would make it impossible for him to invoke the Fifth. Sure. Right.

### **Time Pretends Fielding's Actions Were "Normal"**

Time reports Fred Fielding as considering what was "normal" for pardons (remember—this guy worked for Nixon!), but does not note that the commutation itself violated the norm (which is that someone serves some of his time before a commutation). And it doesn't mention that the commutation served an additional purpose—keeping Libby out of jail with his ability to invoke the Fifth intact, making it almost impossible for Congress to call him to testify on Bush or Cheney's role in the leak.

Fielding's arrival in early 2007 was one of several signs that the balance of power in the Administration had shifted against the Vice President. Fielding reviewed the Libby case before the appellate verdict came down and recommended against a presidential pardon. Cheney's longtime aide hadn't met the criteria: accepting responsibility for the crime, doing time and demonstrating remorse. "Pardons tend to be for the repentant," says a senior Administration official familiar with the 2007 pardon review, "not for those who think the system was politicized or they were unfairly targeted."

The verdict was one thing. Libby's sentence was another matter. Fielding told Bush that the President had wide discretion to determine its fairness. And within hours of the appeals-court ruling, Bush pronounced the jail time "excessive," commuting Libby's prison

term while leaving in place the fine and, most important, the guilty verdict – which meant Libby would probably never practice law again. Fielding's recommendation was widely circulated in the White House before it was announced, and there is no evidence of disagreement. If Cheney and his allies were disappointed with Bush's decision, they did not show it, several former officials say, in part because they were, as one put it, "so happy that [Scooter] wasn't going to jail."

Similarly, Time makes great efforts to make Fred Fielding's recommendation that Bush not pardon Libby appear to be all reasonable, without noting that normally pardons get reviewed by the pardon attorney, not the White House Counsel.

The counsel knew that only one legitimate reason for a pardon remained: if the case against him had been a miscarriage of justice. Because that kind of judgment required a thorough review, Fielding plowed through a thick transcript of the trial himself, examining the evidence supporting each charge. It took Fielding a full week. He prepared his brief for an expected showdown at a pardon meeting in mid-January 2009.

[snip]

For his part, Fielding laid out most of his findings in a document called the pardon book, a compendium of evidence for anyone seeking clemency. The book on Libby lengthened the odds on a pardon. "You might disagree with the fact that the case had been brought and that prosecutorial discretion had been used in this way," says a source familiar with the review. "But the question of whether there had been materially misleading statements made by Scooter –

on the facts, on the evidence, it was pretty clear." As far as Fielding was concerned, Libby had lied under oath.

As a result, Time spins the highly unusual centrality of the White House Counsel in this decision and the outcome as a great, wise judgment rather than the best way to carry out a cover up.

### **Time Creates the Myth of Bush the Protector of the Truth**

And most ridiculously, Time reports Bush's appeal to the truth in his commutation, without noting Bush's earlier flipflops on statements claiming to want the truth.

And there were these two sentences: "Our entire system of justice relies on people telling the truth," Bush said. "And if a person does not tell the truth, particularly if he serves in government and holds the public trust, he must be held accountable." *Particularly if he serves in government.* Bush's allies would say later that the language was intended to send an unmistakable message, internally as well as externally: No one is above the law.

(Of course, if Time were to admit that Bush promised to fire people who leaked Plame's name but did not fire Rove, they would also have to admit that the magazine published claims from Rove they knew to be false during the investigation—so I guess I can see why they like this "truth" fairy tale.)

Which creates, finally, the noble fiction of Bush making this difficult decision alone, and choosing for the truth over his Vice President.

Bush would decide alone. In private, he was bothered by Libby's lack of repentance. But he seemed more riveted by the central issue of the trial:

truthfulness. Did Libby lie to prosecutors? The President had been told by private lawyers in the case that Libby never should have testified before the grand jury and instead should have invoked his Fifth Amendment right not to incriminate himself. Prosecutors can accept that. But lie to them, and it gets personal. "It's the difference between making mistakes, which everybody does, and making up a story," a lawyer told Bush. "That is a sin that prosecutors are not going to forgive."

Ah yes. Making up a story. Not like Bush and his partisans would ever do that!