

The False Evidence Against Scooter Libby

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Editor's note: Below is an extensive account of the new evidence in the Libby case and its consequences. A condensed version is available [here](#).

A revelation in journalist Judith Miller's new memoir, "The Story: A Reporter's Journey," exposes unscrupulous conduct by Special Counsel Patrick J. Fitzgerald in the 2007 trial of I. Lewis "Scooter" Libby.

Ms. Miller, a former [New York Times](#) reporter, writes that Mr. Fitzgerald induced her to give what she now realizes was false testimony. By withholding critical information and manipulating her memory as he prepared her to testify, Ms. Miller relates, Mr. Fitzgerald "steered" her "in the wrong direction."

Ms. Miller's inaccurate testimony helped Mr. Fitzgerald persuade a Washington, D.C., jury in 2007 to find Mr. Libby, former chief of staff to Vice President Dick Cheney, guilty of obstruction of justice, making a false statement and perjury.

Mr. Libby's sentence included a \$250,000 fine, 30 months in jail and 400 hours of community service. President George W. Bush commuted the prison sentence but declined to pardon him.

U.S. v. I. Lewis Libby is worth revisiting to set the record straight. It also illustrates the damage that can be done to national security by a special counsel who, finding no crime, generates through his investigations the alleged offenses he seeks to prosecute.

With a virtually unlimited budget, a malleable mandate, a single case and little in the way of oversight or time constraints, the special counsel operates outside the usual system of formal and informal checks on prosecutorial conduct. This gives him the power to transform executive branch slip-ups, oversights and faulty recollections into criminal offenses capable of crippling the White House and wreaking havoc on individuals and their families.

According to the conventional view, in the summer of 2003 Mr. Libby compromised national security by unlawfully outing a covert CIA agent. Mr. Libby's supposed purpose was to punish the agent's husband, who challenged President George W. Bush's assertion in his 2003 State of the Union address that the British government learned that Iraq had sought to

purchase African uranium. According to the standard anti-Bush account, when Mr. Libby became enmeshed in a federal investigation, he lied to conceal his crime and protect Mr. Cheney.

This account is false in all essential respects, as Mr. Fitzgerald—since 2012 a partner in the Chicago office of the Skadden Arps law firm—had reason, as well as an ethical obligation as an officer of the court, to know.

Scooter Libby did not “out” CIA employee Valerie Plame. That was done by then-Deputy Secretary of State Richard Armitage, a critic of the conduct of the Iraq war. Mr. Armitage disclosed to columnist Robert Novak that Ms. Plame, who at the time held a desk job in the CIA’s Counterproliferation Division, urged the agency to send her husband, retired Ambassador Joseph C. Wilson, to Africa in early 2002 to investigate whether Iraq had sought uranium. Presidential aide Karl Rove and then-CIA Director of Public Affairs Bill Harlow confirmed Mr. Armitage’s disclosure for Novak’s July 14, 2003, column. (Novak died in 2009.)

Mr. Fitzgerald didn’t charge anyone with leaking Ms. Plame’s identity or disclosing classified information to reporters. From the moment he took over the FBI leak investigation in December 2003, he knew that Mr. Armitage was the leaker but declined to prosecute him, Mr. Rove or Mr. Harlow because the disclosure of Ms. Plame’s identity wasn’t a crime and didn’t compromise national security.

Having failed to find any underlying crime, Mr. Fitzgerald nonetheless pressed on for someone to prosecute, eventually focusing on Mr. Libby, whose trial became a contest of recollections. The excruciatingly inconsequential question on which his conviction turned was whether, as Mr. Libby recalled, he was surprised to hear NBC’s “Meet the Press” host Tim Russert ask him about Ms. Plame in a phone call on July 10 or 11, 2003.

John Rizzo, former CIA acting general counsel, who retired in 2009 after a 34-year career at the agency, wrote in his 2014 book “Company Man” that he expected the Justice Department “to do little or nothing” regarding the disclosure of Ms. Plame’s CIA job because “there was no evidence indicating that any CIA source or operation—or Plame herself—was placed in jeopardy as a result of the ‘outing’ ” and “dozens if not hundreds of people knew she was an Agency employee.” The entire investigation, Mr. Rizzo concluded, “trivialized and distorted” Justice Department oversight and proved “a colossal waste of time and money.”

Joseph Wilson alleged that the Bush administration twisted intelligence about Iraq’s nuclear weapons program “to exaggerate the Iraqi threat.” The evidence is overwhelming that his accusations of manipulation—first aired by New York Times columnist Nicholas Kristof on May 6, 2003, and elaborated on by Mr. Wilson in a July 6, 2003, New York Times op-ed and on “Meet the Press” the same day—were untrue.

An October 2002 National Intelligence Estimate, a July 2003 statement by then-CIA director George Tenet, a 2004 Senate Select Committee on Intelligence report, the bipartisan 2005 Robb-Silberman commission report, and the British government's 2004 Butler report all support one conclusion: The Bush administration reasonably relied on intelligence about Saddam Hussein's weapons-of-mass-destruction program—intelligence that turned out to be flawed.

And so the special prosecutor's case came down to parsing who was thinking what, and when, regarding nonsensitive matters.

Tim Russert's memory changed dramatically between his initial FBI interview and Mr. Fitzgerald's questioning of him. In November 2003, Russert (who died in 2008) told lead FBI investigator agent John C. Eckenrode that he didn't recall raising the subject of Mr. Wilson's wife with Mr. Libby, but couldn't rule it out. Nine months later, and more than a year after his telephone conversation with Mr. Libby, Russert changed his story. Under questioning by Mr. Fitzgerald in August 2004, Russert insisted that he couldn't have mentioned Ms. Plame to Mr. Libby. And that is what he told the jury in 2007.

Despite the case turning on conflicting recollections of then four-year-old conversations, Judge Reggie B. Walton denied the request by the defense to present scientific testimony on the fallibility of memory. Jurors knew better: during deliberations, according to juror Denis Collins, they lamented their lack of access to expert guidance on this very subject.

The conflict between Mr. Libby's memory and Russert's shouldn't have mattered and should never have come to trial because then-Deputy Secretary of State Armitage had long since disclosed to the Justice Department that it was he who had revealed Ms. Plame's employment.

Still, Mr. Fitzgerald—who declined to respond to written questions about these matters for this article—sought a conviction, and he went so far as to jail Ms. Miller, at the time a New York Times foreign correspondent, for 85 days to obtain evidence against her sources, one of whom was Mr. Libby.

Ms. Miller's new memoir recounts that after her conditions had been met and Mr. Fitzgerald asked the court to release her from jail in September 2005, she was summoned to testify before the grand jury. While Mr. Fitzgerald prepared her, she recalls, his pointed queries led her to believe that a four-word question regarding Joseph Wilson surrounded by parentheses in her notebook—"(*wife works in Bureau?*)"—proved that Mr. Libby had told her about Ms. Plame's CIA employment in a June 23, 2003, conversation (well before Mr. Libby's phone conversation with Russert). She so testified at trial in 2007.

Three years later, Ms. Miller writes, she was reading Ms. Plame's book, "Fair Game," and was astonished to learn that while on overseas assignment for the CIA Ms. Plame "had worked at the State Department as cover." This threw "a new light" on the June 2003 notebook jotting,

Ms. Miller says, since the State Department has “bureaus,” while the CIA is organized into “divisions.”

Ms. Miller, who had spoken to many State Department sources around the same time she spoke to Mr. Libby, says in her memoir that she then realized she must have begun her conversation with him wondering whether Mr. Wilson’s wife worked at the State Department. Ms. Miller also now understood that “If Libby, a seasoned bureaucrat, had been trying to plant her employer with me at our first meeting in June, he would not have used the word *Bureau* to describe where Plame worked.”

Mr. Libby’s lawyers showed at trial that Ms. Miller’s testimony was suspect because the CIA does not have bureaus, but without the knowledge that Ms. Plame had worked in a State Department bureau, they were unable to clinch the point that the journalist must have received the tip about Mr. Wilson’s wife from someone with information about Ms. Plame’s State Department cover—information that no one suggested Mr. Libby had.

Mr. Fitzgerald, who had the classified file of Ms. Plame’s service, withheld her State Department cover from Ms. Miller—and from Mr. Libby’s lawyers, who had requested Ms. Plame’s employment history. Despite his constitutional and ethical obligation to provide exculpatory evidence, Mr. Fitzgerald encouraged Ms. Miller to misinterpret her ambiguous notes as showing that Mr. Libby brought up Ms. Plame.

Ms. Miller was the only reporter who asserted that Mr. Libby volunteered information about Mr. Wilson’s wife. And Mr. Fitzgerald attached special importance to the journalist’s June conversation with Mr. Libby, declaring, at the 2005 news conference following Mr. Libby’s indictment, that “Mr. Libby was the first official known to have told a reporter when he talked to Judith Miller in June of 2003 about Valerie Wilson.”

If Ms. Miller had testified accurately, she would have dealt a severe blow to Mr. Fitzgerald’s central contention that Mr. Libby was lying when he said he was surprised to hear Russert mention Ms. Plame.

In closing arguments, Mr. Fitzgerald insisted that a “cloud” hung over Vice President Cheney, at whose behest, the prosecutor insinuated, Mr. Libby had compromised national security. Ms. Miller’s revelation—that “it was hard not to conclude that my testimony had been wrong”—erases the cloud that Mr. Fitzgerald’s prosecution, abetted by an enthusiastic media, put over the vice president. At the same time, Ms. Miller’s book casts a dark shadow over Mr. Fitzgerald’s prosecution of Mr. Libby. And it raises troubling questions about what the prosecutor told and did not tell other prosecution witnesses to shape and reshape their memories.

Quite apart from Ms. Miller’s revelation about Mr. Fitzgerald’s withholding from her—and from the defense—exculpatory evidence, and his manipulation of her memory, the result in *U.S. v. I. Lewis Libby* subverted the prosecutor’s claims about Mr. Libby’s motive to lie. In

fact, Mr. Fitzgerald's theory of the case never made sense on its own terms.

Mr. Fitzgerald argued that Mr. Libby falsely claimed that he had learned about Ms. Plame from Tim Russert in a July 10 or 11 telephone call to excuse his confirmation of Ms. Plame's identity for Ms. Miller and Time magazine writer Matt Cooper on July 12. By concocting a story about Russert, Mr. Fitzgerald argued, Mr. Libby could say that he was merely passing along to the journalists something that Russert had said, not information from government officials that he might have had reason to believe was classified.

One devastating problem for Mr. Fitzgerald's theory is that the prosecution failed to prove that Mr. Libby made false statements about his July 12 conversations with Ms. Miller and Mr. Cooper. Judge Walton threw out the charge involving Ms. Miller, ruling that there was no evidence Mr. Libby lied about what he told her on July 12, and the jury acquitted Mr. Libby on the charge of lying about what he told Mr. Cooper.

The Time magazine writer conceded under oath that his "memory of the precise words" used by Mr. Libby was "cloudy." He testified that after he had asked Mr. Libby about Ms. Plame's CIA employment, Mr. Libby had responded with words along the lines of, "yes, I have heard something like that, too." In a dramatic courtroom moment, the defense showed that Mr. Cooper's own notes taken during the call supported Mr. Libby's account that he hadn't confirmed anything about Ms. Plame.

Since, according to the outcome of the trial, Mr. Libby didn't raise the subject of Ms. Plame or confirm her employment after his telephone conversation with Russert, Mr. Libby had no motive—according to the prosecutor's own theory—to fabricate a story that Russert told him about Ms. Plame.

In addition, the trial revealed that Mr. Libby wasn't aware that Ms. Plame had any special secret status. (Judge Walton barred discussion at trial of whether she actually did have such status.) So, under the relevant law, the Intelligence Identities Protection Act, Mr. Libby could have spoken to reporters about her without any repercussions, as Mr. Armitage did.

There was another reason that Mr. Libby had no need to invent a story regarding having heard about Ms. Plame from Russert. Mr. Libby testified to the grand jury—testimony that was introduced at trial and was uncontradicted by prosecution witnesses—that on July 11, he learned from Karl Rove that columnist Robert Novak was asking the White House about Ms. Plame. Accordingly, quite apart from what Russert did or didn't say, Mr. Libby could truthfully tell Mr. Cooper on July 12 that he had heard that reporters were saying that Mr. Wilson's wife worked at the CIA, but that he wasn't sure whether it was true.

Other ruinous problems for Mr. Fitzgerald's theory of the case go directly to the Russert-Libby telephone conversation. Why would Mr. Libby attempt to use Russert, a journalist with a high-profile TV news platform and with whom Mr. Libby had a strictly professional relationship, as a cover? Why would Mr. Libby lie about a conversation for which he

immediately waived any privilege of confidentiality? Why would Mr. Libby name Russert at all, rather than say he couldn't remember from which journalist he had heard about Ms. Plame? Indeed, if Mr. Libby's intention in June and July 2003 had been to "out" Ms. Plame, why didn't he tell Russert, who was in as good a position as any journalist in the country to publicize the story?

For that matter, if Mr. Libby's objective had been to out Ms. Plame, why didn't he mention her to Washington Post reporters Walter Pincus, Bob Woodward and Glenn Kessler; David Sanger of the New York Times; syndicated columnist Novak; and Newsweek's Evan Thomas? All these prominent journalists testified that Mr. Libby spoke with them during the period when, Mr. Fitzgerald argued, he was seeking to out Ms. Plame. Yet Mr. Libby raised the subject of Valerie Plame with none of them.

It wasn't necessary to wait for the jury's verdict in *U.S. v. I. Lewis Libby* to know that Mr. Fitzgerald's fundamentally incoherent case should never have proceeded to trial. One of the nation's best-known criminal defense attorneys, David Boies, a Democrat who served as President Clinton's lawyer during his impeachment, saw clearly the abuse of the legal process. After Mr. Libby's conviction, Mr. Boies said on the "Hannity & Colmes" Fox News program that Mr. Fitzgerald's entire investigation was improper because, as the prosecutor knew from the beginning, there was no underlying crime. "To go forward and try to get people maybe to slip up, make a mistake, so you can bring a perjury or obstruction charge," Mr. Boies said, "is what is troubling here." It was tantamount, according to Mr. Boies, to "criminalizing the political process."

Perhaps Mr. Fitzgerald persisted because Mr. Libby never was his prime target. In Ms. Miller's memoir, she reports that Mr. Libby's lawyer, Joseph Tate, told her that, as she writes, "Fitzgerald had twice offered to drop all charges against Libby if his client would agree to 'deliver' Cheney to him."

Most of Mr. Fitzgerald's case focused on Mr. Libby's supposed lies about the telephone conversation with Russert—a conversation, it must be emphasized, in which Mr. Fitzgerald contended Ms. Plame was not mentioned. Russert's conflicting statements to federal investigators about the conversation, the first of which was consistent with Mr. Libby's recollection and close in time to the disputed exchange, created the reasonable doubt that should have acquitted Mr. Libby on all counts related to Russert.

Nevertheless, Mr. Fitzgerald maintained that Mr. Libby not only lied that Russert told him about Ms. Plame but also that Mr. Libby committed perjury by testifying to the grand jury that he was surprised to hear Russert mention Mr. Wilson's wife. Nine months after the event, Mr. Libby said he was surprised for three reasons: that Russert knew about Ms. Plame; that Russert thought it important; and that Russert knew something that Mr. Libby did not.

No witness contested that Mr. Libby might have been surprised for the first two reasons. Mr. Fitzgerald concentrated on proving that the third reason Mr. Libby gave for his surprise—because he didn't know about Ms. Plame— was a lie, not an innocent error.

Of course, Mr. Libby months later could have simply mixed his genuine surprise on the first two points with the third. Memory research shows such confusion is common. But Mr. Fitzgerald successfully fought the introduction at trial of expert testimony about memory.

Instead, he summoned a series of government officials and Ms. Miller to the witness stand to show that Mr. Libby couldn't have committed an innocent error of memory because he had heard or spoken with people about Mr. Wilson's wife on several occasions before his telephone conversation with Russert.

None of these witnesses claimed to know what Mr. Libby was thinking when he testified months later. Rather, all these other prosecution witnesses testified—months, and in some cases years, after the events—about what they recalled had happened in a single sentence of some other conversation in the late spring and summer of 2003. From this, Mr. Fitzgerald wanted the jury to infer that Mr. Libby couldn't possibly have misremembered when he was testifying months after his own mid-July telephone conversation with Russert—and that Russert couldn't have misremembered it either.

Ironically, several of these government witnesses admitted that at times they hadn't remembered the wife coming up, either. And Ms. Miller appears to have been tricked into thinking she did.

In other words, "recollection problems," as Mr. Libby's attorney, Theodore Wells, called them in his opening argument in January 2007, afflicted every prosecution witness whose testimony involved allegations about Mr. Libby's learning about or discussing Ms. Plame. All misremembered or substantially changed their stories between fall 2003 and early 2004 FBI investigations, grand jury testimony after Mr. Fitzgerald entered the case in December 2003, and trial testimony during the first two months of 2007. More disturbingly, the trial suggests that Mr. Fitzgerald may have, as he did with Ms. Miller, withheld information from other witnesses to distort their recollections too.

Mr. Libby's attorneys presented a defense that should have prevailed, even with Ms. Miller's false testimony. Without it, Mr. Fitzgerald's pretense to have proven that Mr. Libby had heard multiple times about Ms. Plame falls apart. For Mr. Libby's lawyers brought into focus significant, and in many instances acute, doubts about the testimony of every government official Mr. Fitzgerald put on the stand.

Nevertheless, jurors, who were obligated to presume defendant Libby's innocence and convict him only if the government proved its case beyond a reasonable doubt, found him guilty. One explanation is that the climate of opinion in Washington may have prevented Mr. Libby from getting a fair trial.

Mr. Fitzgerald's multiyear prosecution took place while Bush hatred—stoked by the widespread but refuted allegation that the president lied the country into war, and fanned by a partisan press's coverage of Mr. Fitzgerald's prolonged investigation—was burning fiercely.

Based on a review of public records made available to Mr. Libby's legal team, the jury comprised 11 Democrats and a member of the Green Party. Given the severe flaws marking the testimony of Mr. Fitzgerald's prosecution witnesses, the verdict raises the possibility that the jurors were incapable of evaluating the evidence in a dispassionate and impartial manner.

Because the heart of Mr. Fitzgerald's case—focused solely on indirect evidence of what Mr. Libby was thinking when he spoke to Russert—is so poorly understood, it is worth reviewing government witnesses' testimony to show how weak it was. Even as Ms. Miller's mistaken testimony taints the jury verdict, the government officials put on the stand by the prosecution exhibited equal or greater recollection errors and in several cases disturbing signs that they too might have testified differently if the prosecution had provided them evidence in its possession that was highly relevant to their recollections.

Marc Grossman was the first government official that Mr. Fitzgerald called to establish that Mr. Libby had learned about Valerie Plame in June 2003—and therefore that he couldn't have been surprised to learn of her from Russert. Mr. Grossman, the undersecretary of state for political affairs at the time, was the third-ranking official in the State Department. Mr. Grossman also was, according to his testimony, a “very close” friend of Deputy Secretary of State Armitage, as well as a former colleague of Mr. Wilson's, whom he would see occasionally at college alumni events.

On the witness stand, Mr. Grossman affirmed that he had no direct recollection of the events about which he was testifying but rather was “reconstructing” them on the basis of his calendar and other documents. His reconstruction, however, was contradicted in multiple ways by his own prior statements to the FBI and by the testimony of Carl Ford Jr., assistant secretary of state for intelligence and research, who played a key role in Mr. Grossman's reconstruction.

At trial in January 2007, more than three-and-a-half years after the events in question, Mr. Grossman stated that Mr. Libby had asked him in late May 2003 what he knew about the then-unnamed ambassador who had traveled to Africa to investigate claims that Iraq had sought uranium. Mr. Grossman testified that he promptly emailed the Intelligence and Research Bureau and the Africa Bureau in the State Department for information on the ambassador's trip. Not fully satisfied with the responses, he put in a request (he could not recall to whom) for a memorandum “with everything we knew at the State Department about this issue.” On June 10 or 11, according to Mr. Grossman, he received Mr. Ford's memo, which indicated that Mr. Wilson's wife worked in the CIA and had organized the trip. On June 11 or 12, Mr. Grossman told the jury, he informed Mr. Libby in a 30-second face-to-face conversation that Mr. Wilson's wife worked at the CIA.

Not a single document backs up Mr. Grossman's contention that he sought a report about Mr. Wilson's trip because Mr. Libby had requested that information, or that he told Mr. Libby about Mr. Wilson's wife on June 11 or 12.

In cross-examination, Mr. Libby's lawyers showed that Mr. Grossman's 2007 trial testimony departed dramatically from what he originally told the FBI in October 2003, three to four months after the events, and what, in February 2004, he again told the FBI. Mr. Fitzgerald's colleague, government attorney Peter Zeidenberg, admitted on the record—but out of hearing of the jury—that the prosecution had selectively withheld from Mr. Grossman the official memorandum of his FBI interview.

Contrary to his trial testimony, Mr. Grossman told the FBI that he had notified Mr. Libby about Ms. Plame over the telephone; he said nothing to the FBI about a face-to-face conversation. Also in conflict with his trial testimony, Mr. Grossman told the FBI that he had not told Secretary of State Colin Powell about Ms. Plame, that he had learned about her before reading the Ford memo, and that he had no knowledge of whether Mr. Armitage had received a copy of the Ford memo.

Defense witness Ford's testimony dealt the final blow to Mr. Grossman's courtroom testimony. Mr. Ford stated under oath that there had been no email correspondence about a report in late May. He also testified that if Mr. Grossman had said the information was requested by Mr. Libby, he, Mr. Ford, definitely would have remembered it and he didn't; that Mr. Grossman first asked him on June 9 in a face-to-face conversation for information about the ambassador's trip; and that he, Mr. Ford, presented a memo within 24 hours.

Mr. Grossman was followed on the stand by Robert Grenier, associate deputy director for operations and Iraq mission manager at the CIA. Under cross-examination, Mr. Grenier acknowledged that he spoke on three occasions to officials investigating the Plame leak: in July 2003 as part of an internal CIA probe; in December 2003 to FBI agents; and in January 2004 to the grand jury. Cross-examination further revealed that Mr. Grenier didn't mention in any of these three interviews telling Mr. Libby about Mr. Wilson's wife in a June 11, 2003, telephone conversation.

But in July 2005, two years after the telephone call, Mr. Grenier—who stated on cross-examination that he believed there “was an attempt on the part of someone in the White House, perhaps the office of the vice president, to place blame on the CIA”—reappeared before Mr. Fitzgerald's grand jury and recalled things differently.

He testified that while he still didn't remember what he said in his June 2003 telephone conversation with Mr. Libby, he had experienced a “growing conviction” that he “must have” raised Mr. Wilson's wife's CIA employment, if only “in passing,” because he recalled a “guilty” feeling following the call—a feeling he didn't recall until sometime after his 2004

grand jury appearance. At trial, he reiterated that “My recollection of a lot of conversations from that time is pretty vague. I will say that, in fact, my recollection of the conversation with Mr. Libby has a fair amount of vagueness attached to it.”

But there were concrete reasons for Mr. Grenier to feel guilty about his communications with Mr. Libby that had nothing to do with Mr. Wilson’s wife: Mr. Grenier had repeatedly transmitted mistaken intelligence about Iraq to Mr. Libby and the White House. Mr. Fitzgerald, however, denied the defense access to any of Mr. Grenier’s intelligence reports, which could have established an alternate—and quite understandable—source of his feelings of guilt.

Mr. Fitzgerald also called to the witness stand Craig Schmall, a director of intelligence at the CIA and Mr. Libby’s morning intelligence briefer. Questioned by federal investigators in January and April 2004, Mr. Schmall said the first he heard about Mr. Wilson’s trip was around the time of Robert Novak’s July 14 article. Shortly after his April 2004 interview, Mr. Schmall found the cover page of materials he used to brief Mr. Libby on June 14, 2003. The words “Joe Wilson Valerie Wilson” were scrawled at the top of the page.

At trial, Mr. Schmall testified that he did not “have any specific recollection of ever hearing the name Joe Wilson or Valerie Wilson before” briefing Libby on June 14. He also acknowledged that he had no “independent memory” of discussing Ms. Plame with Mr. Libby at the briefing—which included 27 intelligence items and 14 terrorism items. The prosecution nevertheless contended that Mr. Libby must have mentioned Ms. Plame to Mr. Schmall because of the “Joe Wilson Valerie Wilson” notation on the briefing cover page.

This was decisive, argued Mr. Fitzgerald, since, according to Mr. Schmall, “generally” it was his practice to write questions posed by the person whom he was briefing on his briefing materials, and Mr. Schmall testified that he couldn’t recall knowing the names Joe Wilson or Valerie Wilson before June 14. But under cross-examination Mr. Schmall admitted that he didn’t remember why or when he had written the note and he had no recollection of Mr. Libby having mentioned Mr. Wilson or his wife.

As Mr. Fitzgerald knew, or should have known, Mr. Schmall’s trial testimony obscured the facts about whether he had heard of the Wilsons before his June 14 Libby briefing. Eric Edelman, deputy national security adviser to the vice president and a career foreign-service officer, gave information to government investigators suggesting that Mr. Schmall did have independent knowledge of the Wilsons.

Though this testimony was not introduced at trial, Mr. Fitzgerald knew, or should have known, that Mr. Edelman confirms that he told federal investigators that after Mr. Wilson’s charges were first aired in early May 2003 by Times columnist Nicholas Kristof, he asked Mr. Schmall about the CIA’s role in organizing the Africa trip. Eventually, Mr. Schmall searched CIA emails about the trip’s origins, printed them out, hand-carried them over to the White

House and reviewed them with Mr. Edelman. A number of CIA emails on the origins of Mr. Wilson's trip, brought to light in subsequent congressional investigations, show Valerie Plame's involvement. Notably, Ms. Plame sent the first email suggesting that Mr. Wilson be sent to Niger because of his contacts there, and then she convened the interagency meeting on the trip.

Moreover, as Mr. Fitzgerald should have known it would, the trial showed that no one ever claimed to have told Mr. Libby the name of Mr. Wilson's wife, so Mr. Libby could hardly have mentioned "Valerie Wilson" to Mr. Schmall on June 14, as Mr. Schmall assumed and as Mr. Fitzgerald wanted the jury to infer from Mr. Schmall's note.

In short, the prosecution provided no compelling reason to conclude that Mr. Schmall's note stemmed from or made its way into his June 14 conversation with Mr. Libby. It is more likely that Mr. Schmall combined a remark of Mr. Libby's—for example, about a June 12 Washington Post article on Mr. Wilson's trip—with information that Mr. Schmall learned independently concerning the ambassador and his wife.

Mr. Fitzgerald put Cathie Martin, the vice president's spokesperson, on the stand to testify that just after speaking to the CIA by telephone, she had reported back to Mr. Libby and the vice president on what the CIA would say to the press about Mr. Wilson's trip. She told the jury that in an aside to the vice president and Mr. Libby in relaying the contents of that conversation, she said that the CIA had told her that the ambassador's wife worked at the CIA. She testified that neither Mr. Libby nor the vice president reacted to this. Neither Mr. Libby, according to grand jury testimony, nor Mr. Cheney, according to his lawyers, recalled her mentioning Mr. Wilson's wife.

Mr. Fitzgerald's indictment alleged that Ms. Martin's telephone conversation with the CIA took place "on or before July 8." Ms. Martin told the grand jury that the phone conversation occurred between Mr. Wilson's July 6 Times op-ed and Novak's July 14 column. The dates are important because Mr. Fitzgerald needed to place Ms. Martin's phone conversation as close as possible to the Russert telephone conversation on July 10 or 11 to argue that Mr. Libby would have heard about Ms. Plame soon before talking to Russert and therefore couldn't have been surprised in hearing Russert mention her.

But Mr. Fitzgerald knew, or should have known, that Ms. Martin's telephone call didn't take place in the week before Mr. Libby's telephone conversation with Russert. Testimony from an earlier witness, documentary evidence and the fact—which Mr. Fitzgerald knew or should have known—that Ms. Martin's telephone conversation with the CIA was in response to questions from the Washington Post for a June 12 article, clearly established that the phone call had occurred a month earlier, on June 11.

Even on the eve of trial, Mr. Fitzgerald withheld these facts from Ms. Martin. Once shown the truth by the defense, however, Ms. Martin made clear under cross-examination that the brief comment she recalled making to Mr. Cheney and Mr. Libby about Mr. Wilson's wife must have taken place on June 11, a month before Mr. Libby's telephone conversation with Russert.

In response to Mr. Fitzgerald's questioning, Ms. Martin also testified that on July 12, 2003, she sat next to Mr. Libby as he spoke by telephone to Time magazine reporter Matthew Cooper. She had no recollection, she stated, of hearing Mr. Libby say to Mr. Cooper—as Mr. Libby had told federal investigators he had (and Mr. Cooper's notes would confirm)—that Mr. Libby had heard from reporters that Mr. Wilson's wife worked for the CIA but didn't know whether it was true.

Under cross-examination, however, Ms. Martin revealed that she was in no position to recall everything Mr. Libby said, since she had taken another telephone call when Mr. Libby was speaking with Mr. Cooper. In fact, while Ms. Martin recalled stepping away from the Libby call only briefly, the defense showed Ms. Martin phone records establishing that her call was considerably longer than she had thought.

Mr. Fitzgerald also called to the witness stand Ari Fleischer, the White House press secretary. The prosecutor granted immunity to Mr. Fleischer, without which—having knowingly disclosed Ms. Plame's CIA employment to NBC's David Gregory and a small group of other reporters on July 11—Mr. Fleischer would have invoked his Fifth Amendment right against self-incrimination to avoid testifying. Mr. Fleischer stated on the witness stand that Mr. Libby told him about Ms. Plame over a July 7 lunch at the White House.

Under cross-examination, however, Mr. Fleischer could not explain why, although he departed on Air Force One later that day on a presidential trip to Africa with a press contingent on board and was surrounded by reporters for the next four days, he said nothing to any of them about Mr. Wilson's wife.

It was only on July 11—shortly after he heard his supervisor, White House Communications Director Dan Bartlett, exclaim aloud on Air Force One that Mr. Wilson's wife had sent him to Niger and after reading about Ms. Plame in a classified memo—that Mr. Fleischer delivered the scoop to David Gregory and others. Mr. Fleischer further testified that he had no recollection of telling the Washington Post's Walter Pincus about Ms. Plame in a July 12 telephone conversation. Summoned by the defense, Mr. Pincus testified that Mr. Fleischer did, indeed, tell him about Ms. Plame.

The final government official Mr. Fitzgerald called was David Addington who in 2003 served as Vice President Cheney's legal counsel and, after Mr. Libby's resignation in October 2005, took over as Mr. Cheney's chief of staff.

At trial, Mr. Addington testified that in a two-minute meeting in July 2003, Mr. Libby asked him whether the CIA would have records if the spouse of a CIA employee were sent on a trip for the agency. Mr. Libby's lawyers brought out under cross-examination that federal investigators' notes summarizing a meeting in February 2004 with Mr. Addington make no mention of that exchange. And, under cross-examination, Mr. Addington acknowledged that he couldn't recall having told the FBI that Mr. Libby had asked him anything about a CIA spouse during their two-minute conversation.

Given the vague, evolving and contradictory recollections of the government officials called as prosecution witnesses, it is reasonable to doubt that Mr. Libby discussed Mr. Wilson's wife with most or even any of them. The government officials' confused and inaccurate testimony, combined with Judith Miller's erroneous testimony, undercuts Mr. Fitzgerald's theory that Mr. Libby had heard about Ms. Plame so many times that he could not have honestly believed that he had been surprised to learn about Ms. Plame from Russert.

When Mr. Fitzgerald subsequently called the journalists Cooper, Russert and Miller to establish that Mr. Libby lied about his conversations with them, one thing was proved beyond a reasonable doubt: Their memories were as woefully unreliable as those of the government officials who had testified.

What was the cause of the memory failures and the constantly changing stories so amply documented in the trial? A powerful explanation is the one that Mr. Libby's defense sought to present at trial by means of scientific experts about the fallibility of human memory.

At Mr. Fitzgerald's urging, however, Judge Walton barred the defense from calling such expert witnesses to testify. The judge defended his decision on the grounds that everybody knows that memory can be faulty. That is beside the point. Everybody knows that bones can break, but it doesn't follow that a jury wouldn't benefit from the testimony of a medical expert about whether a particular blow could have produced a specific fracture.

At issue in the Libby case was more than forgetting—a common problem with which most people are familiar. Also highly relevant was the much less well-understood but nevertheless equally widespread phenomenon of remembering, and sometimes vividly, things that did not actually happen. Yet in giving instructions to the jury about the evaluation of memory, Judge Walton mentioned eight factors concerning forgetting, but said nothing about the common phenomenon of remembering clearly and firmly that which did not occur.

Harvard professor of psychology Daniel L. Schacter—former chairman of the department, author of “The Seven Sins of Memory” and one of the nation's leading memory experts—told Ms. Miller in an interview for her book that “the jury lacked the information it needed about memory failure” to assess the case against Mr. Libby fairly.

While the case turned on memory, for Mr. Fitzgerald larger issues were at stake. Prosecuting Mr. Libby was vital, Mr. Fitzgerald said in announcing the indictment, because of the national-security interests that Mr. Libby's conduct threatened. Yet the only harm to national security arising out of the Plame affair stemmed from Mr. Fitzgerald's subjection of the executive branch to a needless and prolonged legal fishing expedition while the nation was at war on two fronts.

In a 2013 interview for Ms. Miller's book, Vice President Cheney told her that in the summer of 2003—as the Plame controversy erupted, criticism of the White House mounted and post-invasion Iraq deteriorated—Mr. Libby had taken the lead within the Bush administration in arguing for a counterinsurgency strategy.

Three-and-a-half years later, President Bush embraced counterinsurgency. In 2007, Gen. David Petraeus successfully implemented the surge. It is painful to contemplate how many lives—American and Iraqi—might have been spared had Mr. Libby, the foremost champion within the White House in 2003 of stabilizing Iraq through counterinsurgency operations, not been sidelined and eventually forced to resign because of Mr. Fitzgerald's multiyear investigation and relentless federal prosecution.

The implacable pursuit of Mr. Libby led other high-level public officials to put the nation's security at risk. Almost three months after the publication of Robert Novak's column, Mr. Armitage told his boss, Secretary of State Colin Powell, that he had been Novak's source. A few days later, while taking questions from the press at a cabinet meeting, President Bush said he wanted to know who leaked Ms. Plame's identity. Mr. Powell remained silent.

Mr. Armitage did later tell federal investigators that he was the leaker, but despite the absence of any legal obligation to remain silent, neither he nor Mr. Powell told the president. According to Mr. Armitage, after Mr. Fitzgerald took over the investigation in December 2003, the special counsel asked him not to disclose his role in leaking Ms. Plame's identity. In honoring Mr. Fitzgerald's request, not merely for weeks or months but for years, Mr. Armitage placed the investigation of a nonexistent crime ahead of the president's ability to do his job.

Indeed, by remaining silent, the top two State Department officials allowed a firestorm of criticism to engulf the White House. Although they could have extinguished the blaze with the briefest of announcements, they allowed the flames to rage. The fact that Mr. Armitage leaked Ms. Plame's identity would not emerge publicly until the summer of 2006 with the publication of the book "Hubris" by Newsweek's Michael Isikoff and the Nation's David Corn.

Meanwhile, the media and the Democratic leadership led American civilians and soldiers to believe that the president and his White House staff had cynically outed a covert CIA agent to punish her husband for having purportedly revealed that the president had lied about Iraqi weapons of mass destruction. In all too many quarters, that falsehood persists to this day.

The Justice Department investigation of who leaked information about Valerie Plame's CIA job to Robert Novak should have ended shortly after it began in autumn 2003, when Mr. Armitage told federal investigators that he was the source. Instead, in December 2003, then-Deputy Attorney General James Comey (acting in place of Attorney General John Ashcroft, who had recused himself) appointed as special counsel Patrick Fitzgerald, then U.S. attorney for the Northern District of Illinois. After examining the matter for nearly two additional years, Mr. Fitzgerald found no leaking, no disclosing of classified information or any other underlying crime to prosecute. The only allegations of wrongdoing that Mr. Fitzgerald prosecuted were those that his investigation itself created.

At a news conference on Oct. 28, 2005, the day the grand jury returned a five-count indictment, Mr. Fitzgerald accused Mr. Libby of obstructing justice, which he likened to when "the umpire gets sand thrown his eyes." The allegations against Mr. Libby were grave, argued Mr. Fitzgerald, because "the truth is the engine of our judicial system. And if you compromise the truth, the whole process is lost." In closing arguments on Feb. 20, 2007, Mr. Fitzgerald repeated the "sand" accusation and proclaimed that as a result, Mr. Libby "stole the truth from the judicial system." At Mr. Libby's June 5, 2007, sentencing hearing, Mr. Fitzgerald urged Judge Walton to impose a stiff punishment "to make a clear statement that truth matters, and that truth matters above all else in the judicial system."

Special Counsel Fitzgerald's brazen inversion could hardly have been more complete. It was Patrick J. Fitzgerald, serving as an officer of the Justice Department and backed by vast federal power, who threw sand in the eyes of Judith Miller and the other prosecution witnesses, in the eyes of the American people and in the apparatus of the American legal system. Mr. Fitzgerald appears to have placed the quest for a conviction above the search for the truth and the pursuit of justice.

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