

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	
)	CR. NO 05-394 (RBW)
v.)	
)	
I. LEWIS LIBBY,)	
also known as "Scooter Libby")	

**REPLY TO THE RESPONSE OF I. LEWIS LIBBY TO
GOVERNMENT’S RESPONSE TO COURT’S INQUIRY REGARDING
NEWS ARTICLES THE GOVERNMENT INTENDS TO OFFER AT TRIAL**

The Government submits the following in reply to the “Response of I. Lewis Libby to Government’s Response to Court’s Inquiry Regarding News Articles The Government Intends to Offer as Evidence at Trial.” (“Response”).

INTRODUCTION

In his Response, defendant makes only one new argument in support of his claim of entitlement to broad discovery of materials relating to potential witnesses, as well as to others employed by the government agencies that employed those witnesses. Defendant asserts that, by arguing the relevance of the Vice President’s handwritten annotations of the July 6, 2003, *New York Times* Op Ed by former Ambassador Joseph Wilson (the “Wilson Op Ed”), the government has broadly acknowledged that the mental state of persons other than the defendant is relevant to defendant’s guilt or innocence. Therefore, defendant argues, the government cannot logically resist discovery of documents reflecting the views of other potential witnesses concerning Mr. Wilson and his trip to Niger.

Contrary to defendant’s suggestion, the relevance of the Vice President’s annotations of the Wilson Op Ed is not remotely comparable to the purported relevance of the documents defendant

EXHIBIT A

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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IN RE: JOHN DOE :
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Grand Jury No. 03-3
3rd & Constitution, N.W.
Washington, D.C. 20001

Friday, March 5, 2004

The testimony of I. LEWIS LIBBY was taken in the
presence of a full quorum of the Grand Jury, commencing at
10:40 a.m., before:

RON ROOS
Deputy Special Counsel
United States Department of Justice

PETER ZEIDENBERG
Deputy Special Counsel
United States Department of Justice

KATHLEEN M. KEDIAN
Deputy Special Counsel
United States Department of Justice

PATRICK FITZGERALD
Special Counsel
U.S. Attorney's Office, Chicago

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REDACTED

Q. And was it a discussion of -- that was -- was it a topic that was discussed on a daily basis?

A. Yes, sir.

Q. And it was discussed on multiple occasions each day in fact?

A. Yes, sir.

Q. And during that time did the Vice-President indicate that he was upset that this article was out there which falsely in his view attacked his own credibility?

A. Yes, sir.

Q. And do you recall what it is that the Vice-President said?

A. I recall that he was very keen to get the truth out. He wanted to get all the facts out about what he had or hadn't done, what the facts were or were not, He was very keen on that and said it repeatedly. Let's get everything out. He wanted to get it all that. That, that I recall.

1 Q. Do you recall if you ever discussed a copy of the
2 article with Vice-President Cheney -- in front of you what you
3 talked about?

4 A. Physical copy in front of him? I don't recall that.
5 He often cuts out an article and keeps it on his desk
6 somewhere and thinks about it and I subsequently learned that
7 he had such an article from the FBI agents who talked to me.

8 Q. And had you seen that copy of the article before the
9 FBI showed it to you during the course of the investigation?

10 A. I, I don't recall it. It's possible if it was
11 sitting on his desk that, you know, my eye went across it. I
12 don't, I don't recall him pulling it out and saying something
13 to him, but we talked about the article a fair amount.

14 MR. FITZGERALD. And let me show you a copy of the
15 article with handwritten notes on it.

16 MS. KEDIAN. Grand Jury Exhibit 8.

17 BY MR. FITZGERALD:

18 Q. And in looking at Grand Jury 8, can you tell us if
19 you recognize the handwriting at the top, top of both pages?

20 A. Yes, sir. It looks like the Vice-President's
21 handwriting.

22 Q. Okay. And I take it you're familiar with his
23 handwriting?

24 A. I am. I couldn't necessarily pick it out from
25 similar handwriting, but this looks like his handwriting

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1 | generally.

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3 | Q. Okay. And is it fair to say that there's various
4 | items underlined in this copy?

5 | A. Yes, sir.

6 | Q. Does that include the sentence, I have little choice
7 | but to assume that some of the intelligence related to Iraq's
8 | nuclear weapons program was twisted to exaggerate the Iraqi
9 | threat?

10 | A. Yes, sir.

11 | Q. And does it also include handwriting at the top of
12 | the page that says, that reads, have they done this sort of
13 | thing before?

14 | A. I'm sorry, are you asking me if that appears at the
15 | top of the page?

16 | Q. Yes.

17 | A. Yes, sir, it does.

18 | Q. And does it say beneath that, send our -- send an
19 | ambassador to answer a question?

20 | A. Yes, sir.

21 | Q. And does it say below that, do ordinary send people
22 | out pro bono to work for us?

23 | A. It does, sir.

24 | Q. And does the top of the page have a note that
25 | continues over to the second page, or did his wife send him on

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1 a junket?

2 A. Yes, sir.

3 Q. And do you recall ever discussing those issues with
4 Vice-President Cheney?

5 A. Yes, sir.

6 Q. And tell us what you recall about those
7 conversations.

8 A. I recall that along the way he asked, is this normal
9 for them to just send somebody out like this uncompensated, as
10 it says. He was interested in how did those person come to be
11 selected for this mission. And at some point after we were in
12 his -- wife worked at the Agency, you know, that was part of
13 the question.

14 Q. Okay. And is it fair to say that he had told you
15 back in June, June 12th or before, prior to the Pincus
16 article, that his wife worked in the functional office of the
17 Counterproliferation of the CIA. Correct?

18 A. Yes, sir.

19 Q. So when you say, that after we learned that his wife
20 worked at the Agency, that became a question. Isn't it fair
21 to say that you already knew it from June 12th or earlier?

22 A. I believe by, by this week I no longer remembered
23 that. I had forgotten it. And I believe that because when it
24 was told to me on July 10, a few days after this article, it
25 seemed to me as if I was learning it for the first time. When

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1 I knew it when I heard.

2 Q. Okay. So let me back up a moment. We'll get to the
3 July 10 conversation.

4 A. Yes, sir.

5 Q. Do you recall when the Vice-President told you that
6 we ordinarily sent -- or did he send him a junket when you
7 had that conversation? Do you know when that was in relation
8 to the July 6 article?

9 A. I don't recall the conversation until after the
10 Novak piece. I don't recall it during this week of July 6. I
11 recall it after the Novak conver -- after the Novak article
12 appeared I recall it, and I recall being asked by the Vice-
13 President early on, you know, about this envoy, you know, who
14 is it and -- but I don't recall that early on he asked about
15 it in connection with the wife, although he may well have
16 given the note that I took.

17 Q. And so your recollection is that he wrote on July --
18 that you discussed with the Vice-President, did his wife send
19 him on a junket? As a response to the July 14th Novak column
20 that said, he was sent because his wife sent him and she works
21 at the CIA?

22 A. I don't recall discussing it -- yes, I don't recall
23 discussing it in connection when this article first appeared.
24 I recall it later.

25 Q. And are you telling us under oath that from July 6th

1 to July 14th you never discussed with Vice-President Cheney
2 whether Mr. Wilson's wife worked at the CIA?

3 A. No, no, I'm not saying that. On July 10 or 11 I
4 learned, I thought anew, that the wife -- that reporters were
5 telling us that the wife worked at the CIA. And I may have
6 had a conversation then with the Vice-President either late on
7 the 11th or on the 12th in which I relayed that reporters were
8 saying that. When I had that conversation I had forgotten
9 about the earlier conversations in which he told me about --
10 reflected in my notes that we went over this morning, in early
11 June, before the Pincus article, when he had told me that the
12 wife worked at the CIA. I had just forgotten it.

13 Q. And you just affixed the, the person -- who did you
14 speak to on July 10th or 11th that you recalled learning
15 again, thinking it was for the first time, that Wilson's wife
16 worked at the CIA?

17 A. Tim Russert of NBC News, Washington Bureau Chief for
18 NBC News.

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EXHIBIT B

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE: JOHN DOE

~~SECRET~~

Grand Jury No. 03-3
3rd & Constitution, N.W.
Washington, D.C. 20001

Wednesday, March 24, 2004

The testimony of I. LEWIS LIBBY was taken in the presence of a full quorum of the Grand Jury, commencing at 9:29 a.m., before:

RON ROOS
Deputy Special Counsel
United States Department of Justice

PETER R. ZEIDENBERG
Deputy Special Counsel
United States Department of Justice

KATHLEEN M. KEDIAN
Deputy Special Counsel
United States Department of Justice

PATRICK J. FITZGERALD
Special Counsel
U.S. Attorney's Office, Chicago

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Q. And did the Vice-President ever indicate his belief that Ambassador Wilson was selected to go on this mission because of his marital relationship with someone who worked at the CIA?

A. He -- I think he, at times, had suspicions about, you know, is that why he was selected for this mission?

Q. And what makes you say that?

A. You know, I think he made comments about it in connection with, well, his -- you know, his wife works there. It wasn't a full sentence, I don't think, but that's the sort of notion I took from it.

Q. An implication that if his wife hadn't worked there, he wouldn't have been the one sent to do the job?

A. Something like that. Yes, sir.

Q. And when did the Vice-President say that?

A. Oh, these were in discussions, July, maybe -- late July, maybe September, things like that.

Q. And what was the -- why was the Vice-President discussing that in late July, early September?

A. People would come through and talk about different issues and, you know, an issue might come up about the Wilson controversy which was in the news.

Q. And why did the President -- Vice-President not discuss this back in June, on or about June 9th, 10th, 11th,

1 when you were preparing for the Pincus column and he noted
2 that his wife works at the CIA? Did you take from that an
3 observation that, oh, his wife works out there, he wouldn't
4 have the job otherwise?

5 A. No, sir. The only, the only time I recall
6 discussing it just then was that discussion. That's all I
7 recall.

8 Q. And when you --

9 A. I'm sorry, when I say that discussion, I want to be
10 clear, the discussion that I took the note about.

11 Q. And from July 6th, when the Novak -- July 6, when
12 the Wilson piece appears, until July 12, when you were talking
13 to reporters after Air Force Two, do you recall any
14 conversation during that week where Vice-President Cheney
15 observed or had it brought to his attention that Wilson's wife
16 worked at the CIA?

17 A. I certainly don't recall any discussion about that
18 prior to the Russert/Novak conversations when I learned about
19 the wife, what I thought was the first time. And I don't
20 recall, as I told you before, whether we discussed that on the
21 plane that day.

22 Q. And do you --

23 A. But I don't, I don't recall any such discussion.
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REDACTED

EXHIBIT C

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Grand Jury No. 03-3
3rd & Constitution, N.W.
Washington, D.C. 20001

Wednesday, March 24, 2004

The testimony of I. LEWIS LIBBY was taken in the
presence of a full quorum of the Grand Jury, commencing at
9:29 a.m., before:

- RON ROOS
Deputy Special Counsel
United States Department of Justice
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- KATHLEEN M. KEDIAN
Deputy Special Counsel
United States Department of Justice
- PATRICK J. FITZGERALD
Special Counsel
U.S. Attorney's Office, Chicago

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Q. And why don't I show you the copy of the July 6th column with some handwriting on it. And I believe we showed this document to you the last time, or at least discussed it, and you indicated that you had not seen this copy of the article with the handwriting until the FBI showed it to you?

A. That's my recollection, sir.

Q. And showing you what has been already marked as Grand Jury Exhibit 8, is that the copy of the Wilson column with the handwriting that you recall first being shown by the

1 FBI?

2 A. Yes, it is.

3 Q. Okay. And have you ever seen the Vice-President
4 with a paper copy of the Wilson column? And by paper copy I
5 mean one not printed off the internet, not printed off a
6 computer, but the actual physical newspaper column?

7 A. I don't recall.

8 Q. Did you often see him with the actual newspaper
9 column -- actual physical columns from newspapers?

10 A. Yes, he often will cut out from a newspaper an
11 article using a little pen knife that he has and put it on the
12 edge of his desk or put it in his desk and then pull it out
13 and look at it, think about it. That will often happen.

14 Q. Okay. And do you recall if he did that on this
15 occasion on July 6th?

16 A. Evidently he did, but I don't recall.

17 Q. Okay. And fair to say --

18 A. Once again, this, this column came out, I believe he
19 got this column when he was in Wyoming, not in Washington,
20 over the July 4 recess. And so it's -- I don't think it would
21 have been there the day I walked in the office, for example.

22 Q. How long does the Vice-President keep the columns
23 that he cuts out with a pen knife and puts on the corner of
24 his desk?

25 A. Sometimes a long time.

1 Q. And if you walk in the Vice-President's office,
2 would you see a stack of old newspaper articles on the corner
3 of his desk?

4 A. He doesn't necessarily always keep it on the corner
5 of his desk. He keeps it underneath papers or in a briefcase
6 or something. I've seen him produce them from different
7 places. And since the FBI showed me this, I have on occasion,
8 noticed him still -- you know, having a document on his desk
9 which is a cut out newspaper article.

10 Q. Just to paint a picture for people who haven't been
11 to the office of the Vice-President, if any of us would walk
12 into his office would we, would we see a stack of newspaper
13 clippings or are we talking about one or two columns that
14 might be on the desk if someone were to look?

15 A. Oh, one or two. I mean, you'd see stacks of paper
16 and you wouldn't know what was in the stack of paper. I --
17 I'd never seen bunches of them, but I have seen two or three.

18 Q. And the handwriting at the top, is it fair to say
19 that that appears to be the Vice-President's handwriting?

20 A. Yes, sir. As I told you last time --

21 Q. Right.

22 A. -- I think that's right.

23 Q. And does one of the questions indicate at the top
24 here say, had they done this sort of thing before?

25 A. Yes, sir.

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1 Q. And do you recall the Vice-President ever asking you
2 whether or not the CIA had ever done this sort of thing
3 before?

4 A. I think he did at one point.

5 Q. And do you know when that would have been?

6 A. No, sir.

7 Q. And it says here, underneath that, says, send an
8 ambassador to answer a question? Did, did he ever express to
9 you his disbelief that they would send an ambassador to answer
10 a question?

11 A. I don't recall him asking that specific question.

12 Q. Knowing the Vice-President the way you do with daily
13 contact, would the question, send an ambassador to answer a
14 question, indicate some sort of belief on his part that it
15 seems sort of silly to send an ambassador overseas to answer a
16 question?

17 A. It certainly seems like he thought it was an issue,
18 yes.

19 Q. And the next question written is, do we ordinarily
20 send people out pro bono to work for us? Do you recall the
21 Vice-President asking you a question to the effect of, do we,
22 the United States government, send people unpaid to go work
23 for us?

24 A. Yes, sir. I think he asked something like that.

25 Q. And do you recall when he asked about that?

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1 A. I, I don't.

2 Q. And lastly, it says, or did his wife send him on a
3 junket? Do you recall the Vice-President indicating or asking
4 you or anyone in your presence whether or not Ambassador
5 Wilson's wife had arranged to have him sent on a junket?

6 A. I think I recall him -- I don't recall him asking me
7 that particular question, but I think I recall him musing
8 about that.

9 Q. Okay. And do you recall when it was that he mused
10 about that?

11 A. I think it was after the Wilson column.

12 Q. Okay, and obviously --

13 A. I don't mean the Wilson column, I'm sorry, I mis-
14 spoke. I think it was after the Novak column.

15 Q. Okay. And you mentioned last time that you thought
16 he had written, handwritten here, may have been discussed at a
17 later date, like August or September by the Vice-President?

18 A. Yes, sir.

19 Q. And --

20 A. I don't know, later. I don't know when, but yes.

21 Q. Okay. And can you tell us why it would be that the
22 Vice-President read the Novak column and had questions some of
23 which apparently seem to be answered by the Novak column,
24 would go back and pull out an original July 6th op-ed piece
25 and write on that?

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1 A. I -- I'm not sure I --

2 Q. Well, the Novak column --

3 A. -- followed your -- he, he often kept these columns
4 for awhile and keeps columns and will think on them. And I
5 think what may have happened here is he may have -- I don't
6 know if he wrote, he wrote the points down. He might have
7 pulled out the column to think about the problem and written
8 on it, but I don't know. You'll have to ask him.

9 Q. As you sit here today are you telling us that his
10 concerns about Ambassador Wilson, his concern that he's
11 working pro bono, his concerns that he's an ambassador being
12 sent to answer a single question, his concern that his wife
13 may have sent him on a junket, would not have occurred between
14 July 6th and July 12th when you were focusing on responding to
15 the Wilson column but instead would have occurred much later?

16 A. The only part about the wife, sir, I think might not
17 have occurred in that week. The rest of it, I think, could
18 have occurred in that week because, you know, it's all there.
19 You say it's all in the column. The part about the wife I
20 don't recall discussing with him. It might have occurred to
21 him but I don't recall discussing it with him prior to
22 learning, again, about the wife.

23 Q. And when you say learning again, you mean your
24 conversation with Mr. Russert --

25 A. Yes.

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seeks in his Third Motion to Compel. As the defendant admitted in his grand jury testimony, he communicated extensively with the Vice President regarding the Wilson Op Ed during the relevant period, and received direction from the Vice President regarding his response to the Wilson Op Ed. The Vice President's handwritten notes on a clipping of the Wilson Op Ed, which reflect his views concerning Mr. Wilson and his wife, are evidence of the views the Vice President communicated during the conversations that the Vice President and his chief of staff had during the period immediately following the publication of the Wilson Op Ed, and corroborate other evidence regarding these communications, which are central to the government's proof that defendant knowingly made false statements to federal agents and the grand jury. Accordingly, the Vice President's annotations of the Wilson Op Ed are uniquely relevant to the issues of this case.¹

No comparable nexus exists with respect to any views concerning Mr. Wilson and his wife that may have been held or expressed to persons other than the defendant by the other individuals concerning whom defendant seeks discovery in the Third Motion to Compel. None of these individuals were defendant's immediate superior. None of them directed defendant's actions with respect to a response to the Wilson Op Ed. In fact, defendant's relevant contacts with former Under Secretary of State Marc Grossman, cited by defendant as illustrating the relevance of the state of mind of others, were limited to defendant's request for, and receipt of, information concerning Mr. Wilson's trip in May and June 2003.

Shorn of its efforts to misconstrue the government's argument concerning the relevancy of the Vice President's annotations to the Wilson Op Ed, defendant's Response amounts to a reiteration

¹ The government does not purport to recite here all the reasons why the annotated Wilson Op Ed is admissible at trial as this issue arises in the context of a discovery motion, not a motion *in limine*.

of his previously-stated position that he needs broad discovery in order to help him prepare cross-examinations of government witnesses (including by demonstrating bias), show the context of the defendant's alleged crimes, and demonstrate his client's state of mind. As the government previously has argued,² defendant's expansive discovery requests are inconsistent with applicable case law and amount to a demand to conduct a fishing expedition through the government's files. The government has produced to defendant all documents received from any source which relate to conversations, correspondence, or meetings in which defendant was involved, or which relate to the defendant's inquiries regarding former Ambassador Joseph Wilson's trip to Niger, including all documents reflecting relevant communications between defendant and any of the individuals concerning whom defendant seeks discovery in the Third Motion to Compel. The government has gone beyond its obligations under Rule 16 to produce additional materials from the Office of Vice President, Central Intelligence Agency and the State Department that relate generally to Mr. Wilson's trip. Defendant is entitled to no more.

² The government will not re-argue here the points made in its earlier submissions, and will not argue in advance issues related to admissibility of evidence that are not necessary to a determination of defendant's pending discovery motion.

ARGUMENT

I. The Annotated Wilson Op Ed is Relevant to Establish that Defendant's Immediate Superior Was Concerned that Mr. Wilson Was Sent on a "Junket" by his Wife, and Communicated His Concern to Defendant.³

While defendant testified before the grand jury that he did not recall seeing the copy of the annotated Wilson Op Ed until it was shown to him by the FBI in the fall of 2003, as discussed below, he also testified that he discussed the substance of the Wilson Op Ed with the Vice President and their conversations included discussion of issues reflected in the Vice President's handwritten notes. More specifically, during his first grand jury appearance on March 5, 2005, defendant testified in general terms that he did not remember in any detail his first conversation with the Vice President about the Wilson Op Ed, but he did recall that the Vice President was upset that the column in his

³ Any suggestion that defendant would have to have seen the annotated Wilson Op Ed for it to be relevant or admissible is meritless. Whether or not defendant ever saw the annotated Wilson Op Ed, it is relevant and admissible to establish some of the facts noted by defendant's immediate superior, including the suspicion that Mr. Wilson's wife had "sen[t] him on a junket," (handwriting annotated on the Wilson Op Ed), and that his superior communicated these facts to defendant at or near the time the Wilson Op Ed was published.

Evidence that the defendant understood the concern that Mr. Wilson might have been "sen[t] . . . on a junket" by his wife shortly after July 6 would directly contradict defendant's testimony that he did not recall knowing on July 12 that Mr. Wilson had a wife and did not think at that time that the wife might have been involved in sending Mr. Wilson on the trip. *See* "Government's Response to Court's Inquiry Regarding News Articles the Government Intends to Offer as Evidence at Trial" at p. 6-7.

Nor does the annotated Wilson Op Ed present authentication problems. The document could be authenticated through the testimony of the Vice President, or under Fed. R. Evid. 902(6) ("printed material[] purporting to be newspaper[] . . ." is self-authenticating) and Fed R. Evid. 901(b)(2) ("Nonexpert opinion on handwriting"). *See* generally Fed. R. Evid. 901(a) (all that is required is "evidence sufficient to support a finding that the matter in question is what its proponent claims"). Contrary to defendant's assertion, the government has not represented that it does not intend to call the Vice President as a witness at trial. To the best of government's counsel's recollection, the government has not commented on whether it intends to call the Vice President as a witness, and the representations it has made regarding the identity of potential government witnesses have been limited to responses to the defense assertions in defendant's Third Motion to Compel.

view falsely attacked his credibility. (March 5, 2004, Grand Jury Transcript at 79.) Defendant then testified that the Vice President told him repeatedly that he wanted to “get the truth out,” including “all the facts about what he had or hadn’t done; what the facts were or were not.” (March 5, 2004, Grand Jury Transcript at 81; see Exhibit A.) Defendant recalled discussing with the Vice President the issues reflected in the Vice President’s handwritten notes but testified that he believed that they did not discuss the specific issue of Wilson’s wife’s employment until after the July 14, 2003, publication of the Novak column, or at least not before the defendant’s conversation with Tim Russert on July 10 or 11, 2003. Ex. A at 84-86. Defendant further testified that the Wilson Op Ed was discussed in the White House on a daily basis and on multiple occasions each day during the week following July 6, 2003.⁴ Ex. A at 81.

During his second grand jury appearance on March 24, 2004, defendant reaffirmed that he discussed the issue of Mr. Wilson’s wife’s employment with the Vice President. (March 24, 2004, Grand Jury Transcript at 83-84 and 86-91, copies of which are annexed as Exhibits B and C.) Specifically, defendant testified that the Vice President “at times” expressed suspicion regarding why Mr. Wilson was selected to go on the mission, in light of Mr. Wilson’s marital relationship, and made comments about Mr. Wilson’s wife working at the CIA. Ex. B at 83. Defendant placed these conversations in “late July, maybe September,” and in any event not before defendant’s conversation with Tim Russert. *Id.* at 83-84. Defendant testified that of the issues addressed in the Vice President’s annotations of the Wilson Op Ed that were discussed, only the discussion about Mr. Wilson’s wife “might not have occurred” during the week of July 7, 2003. Ex. C at 91. Defendant

⁴ The President and several other officials traveled to Africa during this period. However, the Vice President and the defendant did not travel with them.

also testified that he was unsure whether he and the Vice President discussed Ms. Wilson's employment aboard Air Force Two on July 12, 2003, although he did not recall doing so. Ex. B at 84.

Defendant's testimony discussed above makes clear that defendant talked to the Vice President multiple times about the Wilson Op Ed and that, during one or more of these conversations, the Vice President discussed with defendant issues noted in the Vice President's handwritten annotations – including the issue of Mr. Wilson's wife's employment at the CIA. Therefore, the annotations corroborate the government's other evidence indicating that these issues were communicated to defendant by his immediate superior, who also directed defendant during the critical week after July 6 to get out into the public "all" the facts in response to the Wilson Op Ed.

The fact that comments regarding Wilson's wife were included among the Vice President's annotations also supports the proposition that defendant's conversation with the Vice President regarding Mr. Wilson's wife more likely than not occurred shortly after the publication of the Wilson Op Ed, rather than later, as defendant claimed.⁵ Evidence placing defendant's conversation with the Vice President shortly after the publication of the Wilson Op Ed also corroborates the accounts of a number of government witnesses who will testify that defendant discussed Mr. Wilson's wife on or before July 8, 2003. Thus, the annotated Wilson Op Ed is highly, and uniquely, relevant to a determination regarding the truthfulness of defendant's testimony that he did not recall information

⁵ To be clear, the government's argument is not (as the defendant claims) that it is more likely that the Vice President discussed these issues with defendant merely because he wrote them down but, rather that, in light of the Vice President's annotation of the Wilson Op Ed with the words, "Did Wilson's wife send him on a junket?," it is unlikely that, as defendant testified, the issue was not discussed in defendant's repeated conversations with the Vice President during the week following the Wilson Op Ed's publication.

regarding Mr. Wilson's wife's employment prior to his conversation with Tim Russert on July 11, 2003.

II. Documents Related to Other Witnesses Have No Comparable Relevance.

The defense argues:

In the same way that the government finds the views of the Vice President regarding Wilson and his trip relevant to its case, the defense finds the views of other government officials, such as former Under Secretary of State Marc Grossman, regarding Ms. Wilson relevant to its case Just as Mr. Libby was interacting with the Vice President regarding Mr. Wilson's charges, so was he also interacting with Mr. Grossman and other government officials and their respective agencies.

Response at 5.

This argument ignores the fact that the Vice President was the defendant's immediate superior with whom the defendant worked daily and closely, and from whom defendant received direction regarding the response to be made to the Wilson Op Ed. Understanding what conversations took place between the Vice President and the defendant during the week of July 7, 2003, is critical to determining relevant issues in the case: whether defendant recalled Wilson's wife's employment prior to the conversation with Tim Russert on July 10 or 11, and whether defendant thought it necessary or appropriate to disclose that fact to reporters that week. Understanding what other government officials knew or thought about Mr. Wilson's Op Ed simply is not.

The Vice President – not Mr. Grossman or any of the other potential witnesses concerning whom defendant seeks additional discovery – specifically directed the defendant to speak to reporters during the week following the publication of the Wilson Op Ed. At the time, the Vice President – rather than other potential witnesses – was upset that his personal credibility had been attacked, unfairly in his view.

By his own account, defendant understood from the Vice President that it was necessary to get out “all” the facts in response to the Wilson Op Ed. The response to the Wilson Op Ed was a matter of repeated discussion between the defendant and the Vice President following its publication. The same cannot be said of the other potential witnesses. As to Mr. Grossman, for example – the only witness other than the Vice President to whom defendant refers in his Response – the relevant conversations between defendant and Mr. Grossman took place in late May and early June, when defendant asked questions about the unnamed former ambassador who traveled to Niger, and Mr. Grossman reported information in response to defendant’s inquiry. There is no evidence that defendant and Mr. Grossman had any relevant conversation after that time frame. While in May and June the defendant likely asked the questions of Mr. Grossman in response to the column written by Mr. Kristof, the defendant did not seek Mr. Grossman’s advice, much less direction, as to how to respond to press inquiries either before or after publication of the Wilson Op Ed.

Neither Mr. Grossman nor any other potential witness concerning whom defendant seeks discovery in his Third Motion to Compel had any authority over defendant’s communications with the press. After the Wilson Op Ed was published, defendant’s focus was on what his superior thought were relevant facts and what should be done to respond to the accusations it contained. There is no evidence that defendant had any interest in crafting a public response to the Wilson Op Ed that would protect the interests of any officials or agencies whom he perceived as having interests in conflict with those of the Vice President and his office.

In sum, it is the knowledge and state of mind of defendant that is relevant to the issue of guilt or innocence. The knowledge and state of mind of other government officials is relevant only if probative of defendant’s state of mind. Here, as defendant has acknowledged, the Vice President

communicated to defendant the facts he considered notable, and also directed defendant to get out to the public “all” the facts in response to the Wilson Op Ed. Defendant shared the interests of his superior and was subject to his direction. Therefore, the state of mind of the Vice President as communicated to defendant is directly relevant to the issue of whether defendant knowingly made false statements to federal agents and the grand jury regarding when and how he learned about Ms. Wilson’s employment and what he said to reporters regarding this issue.

For the reasons set forth above and in the government’s prior submissions, including the fact that the government has already produced to defendant all documents received from any source relating to relevant conversations, correspondence, or meetings involving defendant, defendant’s Third Motion to Compel should be denied.

CONCLUSION

For all of the foregoing reasons, the United States respectfully requests that this Court deny the defendant’s motion.

Respectfully submitted,

/s/
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CERTIFICATE OF SERVICE

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