

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)	
)	
v.)	CR. NO. 05-394 (RBW)
)	
I. LEWIS LIBBY,)	<u>Oral Argument Requested</u>
also known as "Scooter Libby,")	
Defendant.)	

**REPLY MEMORANDUM OF LAW IN SUPPORT OF THIRD MOTION OF
I. LEWIS LIBBY TO COMPEL DISCOVERY**

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Defendant I. Lewis Libby, through his counsel, respectfully submits this memorandum in reply to the Government's Response to Defendant's Third Motion to Compel Discovery ("Gov't Br.").

INTRODUCTION

It is a fundamental tenet of our criminal justice system that as of this moment the government has proven nothing about its case against Mr. Libby. The broad, expansive factual allegations outlined in the indictment are just that – allegations and nothing more. It is necessary to restate these fundamental ideas because, in an effort to deny defendant necessary discovery, the government ignores them. Instead, it proceeds from the flawed premise that the defense must accept the government's version of the facts in crafting its discovery demands. From there, it leaps to the unreasonable conclusion that the defense is not entitled to documents that will assist it in contesting the allegations in the indictment.

But, of course, the opposite is true: the defense has the right to challenge at trial all of the allegations in the indictment. The discovery materials sought by this motion include documents generated, received, or reviewed by key potential trial witnesses about events the government describes in the indictment. These are precisely the documents that will allow the defense to demonstrate to the jury that the government's view of this case is not accurate.

One example illustrates our point. The indictment alleges that in June 2003, Under Secretary of State Marc Grossman told Mr. Libby that Mr. Wilson's wife worked at the CIA. The government assumes that Mr. Grossman's testimony about any such conversation, including that it took place at all, is accurate and that any further discovery concerning Mr. Grossman's knowledge of these issues is not "relevant to preparing for Mr. Grossman's examination." (Gov't Br. at 11.)

During his grand jury appearances, Mr. Libby testified that he did not recall any conversations with Mr. Grossman about Mr. Wilson's wife. The defense is absolutely entitled to investigate whether the conversation alleged by Mr. Grossman actually occurred and to test Mr. Grossman's memory and credibility about what he did or did not say to Mr. Libby at trial. Like every fact alleged in the indictment, the facts surrounding Mr. Grossman's alleged conversation with Mr. Libby have not yet been established – they are in dispute. There is simply no precedent for the government's view that this Court must accept the truth of the government's proffered evidence and the accuracy of its theories in determining relevance and materiality under Rule 16.

The government's cramped view of Rule 16 is at odds with both the law and fundamental principles of fairness. Rule 16 must be interpreted to provide a defendant with "the widest possible opportunity to inspect and receive such materials in the possession of the government as may aid him in presenting his side of the case." *United States v. Poindexter*, 727 F. Supp. 1470, 1473 (D.D.C. 1989). The defense has received nothing close to this kind of "opportunity" thus far based on the six boxes or so of materials produced by the government.

Finally, nearly all of the arguments the government raises to deny discovery to Mr. Libby amount to efforts to have it both ways. When the government is trying to narrow the scope of permissible discovery, the defense's arguments about its need to provide the jury with context are deemed "an irrelevant distraction." (Gov't Br. at 18.) Yet, when the government perceives an advantage in taking a broader view, it does not hesitate to do so. While claiming that the issues in the case are limited to what Mr. Libby said and did, the government offers an elaborate and detailed discussion of the "context" in which the events surrounding the disclosure of the 2002 National Intelligence Estimate ("NIE") took place. Far from focusing on what Mr. Libby said and did, the government's disclosure focused on the role of two other players in the

matter, President Bush and Vice President Cheney, setting off an avalanche of media interest.¹ In other words, the government has effectively conceded that the case extends far beyond Mr. Libby, but refuses to provide defendant with discovery that reflects that fact.

The government does not deny that it has documents in its possession that will help the defense tell the full story of how the government responded to Mr. Wilson's criticism. When the issue of Valerie Wilson's employment is viewed in its proper context, and the full story is revealed, it will be clear that Ms. Wilson's role was a peripheral issue. If the press stories surrounding the government's NIE disclosure illustrate anything, it is that this case is factually complex and that the government's notion that it involves only Mr. Libby and the OVP is a fairy tale. The Court should order the government to turn over what are clearly material documents so that the defense can get on with the work of preparing for trial.

ARGUMENT

I. The Jencks Act Does Not Apply to the Materials Sought by This Motion

As this Court has previously ruled in this case, the starting point for determining what documents are material to the preparation of the defense under Rule 16 is the indictment. That document "delineates the evidence to which the defendant's case must respond."

¹ Perhaps not surprisingly, given the media's overwhelming interest in this case, an erroneous statement in the government's response brief led to stories in the press that falsely accused Mr. Libby of making inaccurate statements – or even lying – to reporter Judith Miller about the contents of the NIE. (*See, e.g.,* Walter Pincus, *Specter Says Bush, Cheney Should Explain Leak*, WASHINGTON POST, April 10, 2006, at A04, attached as Ex. A.) The government has since written a letter to the Court to indicate that, consistent with his grand jury testimony, Mr. Libby did *not* tell Ms. Miller "that a key judgment of the NIE held that Iraq was 'vigorously trying to procure' uranium." (*See* Ltr. from Patrick J. Fitzgerald to Hon. Reggie B. Walton, dated April 11, 2006, attached as Ex. B.) Instead, during his testimony, Mr. Libby drew careful distinctions between the key judgments of the NIE about WMD and its section on uranium. Accordingly, there is no basis for the media reports that accused Mr. Libby of misrepresenting the key judgments of the NIE to Ms. Miller.

Memorandum Opinion dated Mar. 10, 2006 at 7-8. Further, evidence is material where there “is a strong indication that it will play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal.” *Id.* at 8. The government and the defense agree on these fundamental principles, and have stated so repeatedly in their respective briefs. However, the government persists in offering the narrowest possible application of the legal standards to its discovery obligations – an application that is incompatible with the expansive interpretation of Rule 16 adopted by the D.C. Circuit.

Perhaps in an implicit recognition that the law with respect to Rule 16 does not support its position, the government raises a series of arguments under other – inapplicable – legal principles. The government attempts to minimize the scope of its Rule 16 obligation by arguing that the “bulk” of the documents Mr. Libby seeks fall within the scope of the Jencks Act, and that requiring production of those materials now would eviscerate any limitations on Rule 16. The government, however, has never raised this argument in response to any of our discovery requests, and cites no case to support its statement that “correspondence, e-mails, and reports generated by potential witnesses *and those around them*” fall within the scope of the Jencks Act. (Gov’t Br. at 8 (emphasis added).) Contrary to the government’s brief, the Jencks Act certainly does not apply to statements made by persons “around” witnesses.

Further, we explicitly stated in our opening brief that the defense is not seeking true Jencks materials such as grand jury transcripts and FBI 302 reports at this time. (Third Motion of I. Lewis Libby to Compel Discovery (“Def. Mot.”) at 18.) The Jencks Act governs the discovery and production only of certain statements made by government witnesses. *See* 18 U.S.C.A. § 3500(e). Ignoring the plain text of the statute, the government fails to recognize that “not everything a witness has written constitutes his ‘statement’ within § 3500(e)(1).” *United*

States v. Thomas, 97 F.3d 1499, 1501 (D.C. Cir. 1996). The government has not and cannot show how the routine correspondence, memoranda, and emails at issue here fall within the Jencks Act. An email Mr. Grossman received, for example, could not possibly qualify as his statement under the Act.

Moreover, even documents that do qualify as “statements made by Government witnesses” are not covered by the Act if the government does not intend to call those witnesses at trial. The government has made clear that it intends to call one witness from the State Department and two from the CIA, which even under the government’s unsupportable view of the Jencks Act hardly justifies a wholesale withholding of material documents from agencies such as the State Department, the White House and the CIA.²

The government similarly attempts to limit its discovery obligations by drawing a distinction between potential government witnesses and potential defense witnesses. But the government cites no authority to suggest that it is not appropriate to use Rule 16 to obtain documents that relate to potential defense witnesses. More importantly, the government’s focus on which party may call a potential witness as a way of assessing whether Rule 16 discovery is relevant to that witness is a red herring. As we explained in our opening brief, our discussion of how the documents we seek might be relevant to the examination of potential witnesses was a way to provide concrete examples of how documents *otherwise responsive* to our Rule 16 requests could be used to prepare our defense. The witness by witness discussion did not add a new category of requests. The government’s arguments to the contrary are nothing more than an attempt to avoid its basic obligation to comply with our core discovery requests.

² For the purposes of this motion, we use the term “White House” to refer to the Executive Office of the President, including any of its subdivisions.

II. Documents Relating to Mr. Wilson's Trip to Niger Are Material to the Preparation of the Defense

The indictment puts directly at issue Mr. Wilson's trip to Niger and subsequent comment and analysis concerning the trip, including discussions about Mr. Wilson's wife and her role in selecting him for the trip. The government has previously acknowledged that "[t]he relevance of Mr. Wilson's 2002 trip is the fact that it occurred and that it *became a subject of discussion* in spring 2003." (Ltr. from Patrick Fitzgerald to William Jeffress, *et al.*, dated Jan. 23, 2006, at 2 (emphasis added), attached as Ex. C.) Reports, memoranda and other documents relating to the trip itself are relevant because the circumstances and origins of the trip are discussed in the indictment. Further, because the defense may call Mr. Wilson as a hostile witness, we need to prepare to examine him, if necessary, on the details of the trip, including his wife's role in selecting him for the assignment and the findings he reported to the CIA, and later, to the press.

In addition, the government introduced a variety of new factual issues in its response brief. Those issues included, for example, disclosures of the NIE, the role of the President in the Administration's response to Mr. Wilson's criticism, and Mr. Libby's purported fear that he would be fired for disclosing classified information.

Yet, even after injecting additional factual allegations into this case that reconfirm the defense's view that the case extends beyond Mr. Libby and the OVP, the government maintains a constricted view of its discovery obligations under Rule 16. With few exceptions, the government has refused to produce documents from agencies other than the OVP that reflect reactions of the various agencies to Mr. Wilson's criticism of the Administration. In support of its position, the government relies on three general arguments, all of which fall short of the mark.

A. The Government's General Arguments To Restrict Discovery Are Unavailing

First, the government contends that the defense is not entitled to open file discovery. This argument and the cases cited to support it are beside the point, because the defense has not sought unlimited access to the prosecution's files. Consistent with Rule 16 and D.C. Circuit case law, we have made targeted requests for specific categories of documents.

The discovery we seek may constitute a significant number of documents, but we seriously doubt that granting this motion would be tantamount to ordering open file discovery. The government has admitted to the defense that it collected hundreds of thousands of documents. So far, the government has produced or been ordered to produce approximately 14,000 pages of classified and unclassified discovery – only about six boxes. If, for example, the government gathered a total of 200,000 pages of materials, then the defense has received less than 10 percent of the government's file. On the numbers alone, the government's document production has been exceptionally meager, and it appears even more paltry and insufficient in light of all of the complicated factual issues in this case.

Second, the government argues that production of the requested documents is not warranted because Mr. Libby has been charged with perjury, not other crimes. As we discussed in our opening brief, this contention ignores the expansive nature of the factual allegations in the indictment, all of which the defendant has the right to challenge.

Third, the government frequently contends that Mr. Libby's document requests are overbroad. Its brief is punctuated with conclusory assertions that identifying responsive documents would be unduly burdensome. But the government never explains how compliance with our targeted requests would involve any significant burden. For example, it does not estimate the number of responsive documents, the time it would take to find them, or the

resources that would need to be devoted to producing them. In fact, the government admits that many of the documents we seek are already in the possession of the OSC.

Nevertheless, to reduce any burden on the government, with respect to documents responsive to requests A(1) (which asks for documents concerning Mr. Wilson's trip and subsequent discussion of it), B(1) and B(2) (which relate to the NIE), and B(3) (which asks for documents relating to the July 11, 2003 statement by Director of Central Intelligence George Tenet), the defense will agree to limit these requests to documents that are currently in the actual possession of the OSC or which the OSC knows to exist.³

We emphasize that request B(1), which calls for documents relating to the declassification of the NIE, triggers the government's *Brady* obligations. At trial, the government intends to introduce testimony regarding Mr. Libby's disclosures of portions of the contents of the NIE, which appears to be a unique story. Upon hearing about these events, jurors may suspect that Mr. Libby mishandled classified information or did something else wrong when he made these disclosures – even if the government does not argue that Mr. Libby's actions were unauthorized or illegal. The defense has the right to argue at trial that Mr. Libby's actions with respect to the NIE were authorized at the highest levels of the Executive Branch, and would be entitled to bolster such arguments with documents and testimony.

B. The Government Has Failed to Counter the Core Arguments in Mr. Libby's Moving Brief

Our moving brief set forth three reasons why documents from government agencies other than the OVP pertaining to Mr. Wilson's trip that the prosecution has refused to

³ In the event it turns out that the OSC has not sought these documents from other relevant agencies, we reserve the right to renew our request and ask that the OSC obtain them.

produce are material to the defense. Below, we describe how the government's brief distorts all three of these positions and elaborate on why the requested documents are material.

1. The Defense Is Entitled to Documents Necessary To Prepare To Examine Witnesses

To reiterate the document request at the heart of this motion, we seek documents that concern Mr. Wilson's trip to Niger, including reports about the origin and circumstances of the trip, as well as subsequent comment and analysis concerning the trip, such as discussions of the role played by Ms. Wilson and reactions of Administration officials to Mr. Wilson's attacks. The defense is entitled to all such documents from each government agency that has played a significant role in the case: the White House, the State Department and the CIA. At a minimum, we are entitled to documents concerning Mr. Wilson's trip to Niger that were generated, sent or received by officials from these agencies who are likely to testify at trial, so we can prepare to examine them.

The government argues that it does not have to produce documents concerning certain government officials who are "subjects of the ongoing grand jury investigation or 'innocent accused' whose identities are protected from disclosure by Fed. Crim. P. 6(e)." (Gov't Br. at 26.) But Rule 16 makes no exception for documents covered by the secrecy requirements of Rule 6(e). Significantly, the government has cited no case supporting its claim that an ongoing grand jury investigation allows the government to deny an indicted defendant access to documents that are material to the preparation of his defense. Mr. Libby has a firm trial date, and the prosecution has no right to resist providing Rule 16 discovery on the grounds that the investigation is continuing.

On page seven of its brief, in a section addressing Mr. Libby's requests for documents concerning potential trial witnesses, the government identifies two specific categories of documents in the possession of the OSC that it has refused to produce:

- “[D]ocuments related to Mr. Wilson’s trip” from agencies other than the OVP that the government deems “irrelevant to defendant’s knowledge or communications regarding Mr. Wilson, Ms. Wilson, or Mr. Wilson’s trip to Niger”; and
- Certain documents that could be “characterized as reflecting a possible attempt or plan to discredit or punish Mr. Wilson or Ms. Wilson.” (*Id.* at 7.)

With respect to the first category of documents, the key disagreement between the government and the defense is whether Rule 16 authorizes the production of documents even if they do not “relat[e] to conversations, correspondence, or meetings involving [Mr. Libby] in which Mr. Wilson’s trip was discussed.” (*Id.*) The government’s refusal to produce the requested documents is unwarranted because the materiality prong of Rule 16 requires only that a document be helpful for trial preparation, not that it must have been seen by the defendant, as opposed to another witness, to be discoverable.

Significantly, the arguments the government relies on here were resoundingly rejected in another perjury case in this jurisdiction, *United States v. Safavian*, 233 F.R.D. 12 (D.D.C. 2005). In *Safavian*, the defendant sought, pursuant to Rule 16, the production of email messages sent or received by other witnesses, which he had never personally seen. The government opposed Mr. Safavian’s requests on the ground that because he had never seen these documents they could have “no bearing on his state of mind” when he made the allegedly false statements and thus could not be “material to any conceivable defense.” *Id.* at 18. In rejecting the government’s narrow view of discovery, the court held that documents that do not “directly reflect” the defendant’s state of mind may be material to the preparation of a defense to perjury

charges if they “include information helpful to the defendant in finding witnesses or documents that could support his contention.” *Id.*

In this case, Mr. Libby’s need for documents that he may not have seen is exactly the same. The requested documents may, among other things, corroborate Mr. Libby’s grand jury testimony and illuminate potential witness biases. The documents may also permit Mr. Libby to avoid certain “pitfalls” at trial, which is another purpose of Rule 16 discovery. *See United States v. Marshall*, 132 F.3d 63, 67-68 (D.C. Cir. 1998) (evidence must be disclosed pursuant to Rule 16 if it helps the defense prepare to avoid “potential pitfalls” and “minefield[s]” at trial).

United States v. Lloyd, 992 F.2d 348 (D.C. Cir. 1993), is also particularly instructive here. In that case, the D.C. Circuit ordered the government to produce documents pursuant to Rule 16 that the defendant had not generated or reviewed so the defense could evaluate the credibility and conduct of the government’s witnesses. The defendant, Lloyd, a tax preparer, had been charged with preparing false tax returns for numerous individuals. The defense requested that the government produce tax returns of the government’s taxpayer witnesses for years prior to when those witnesses had engaged Lloyd’s services. *Id.* at 349-350. The Court of Appeals ruled that such tax returns were material under Rule 16 because “a similar treatment of a similar issue in a prior year, as to which the indicted tax preparer had played no role, would tend to suggest that the falsity originated with the taxpayer rather than the preparer,” and also held that such a return could be “a promising tool for impeachment.” *Id.* at 351.

Lloyd demonstrates that the government is wrong to claim that “the state of mind of other individuals is of negligible value” to the defense and that the “conduct of others” is not relevant. (Gov’t Br. at 18.) Moreover, what the government describes as attempts by the

defense to put the conduct and state of mind of others on trial are in reality efforts by the defense to investigate whether the allegations in the indictment are accurate. In a case where the jury will be asked to decide whose memory is accurate and whose statements are not trustworthy, it is perfectly appropriate to use Rule 16 to gather evidence that will tend to suggest that the testimony of certain government witnesses about their conversations with Mr. Libby is not believable. The materiality of such documents is not tied to whether the documents were reviewed by Mr. Libby or whether they describe meetings or conversations in which he took part.

Below, we provide further examples of why the documents we seek are necessary to prepare to examine three particular witnesses – Mr. Grossman, Mr. Fleischer, and Mr. Rove.

Marc Grossman. As discussed in the introduction, the government plans to call Under Secretary Grossman to testify that he discussed Ms. Wilson’s CIA employment with Mr. Libby – a conversation that Mr. Libby testified in the grand jury he did not recall and which may not have occurred as alleged in the indictment. For example, the indictment asserts that this conversation occurred “[o]n or about June 11 or 12, 2003.” (Indictment, Count One, at ¶ 6.) Accordingly, Mr. Grossman’s activities in that time period, including any other communications about Ms. Wilson that he may have had, are highly relevant. If, for example, documents indicate that Mr. Grossman confused details of the conversation alleged in the indictment with a conversation with another government official, the defense will use such documents to suggest that his recollection is faulty. In a case where it is already manifest that the memories of many witnesses conflict regarding many different conversations, it is not fair to foreclose the possibility that witnesses other than Mr. Libby may be confused or mistaken about relevant events.

It is unreasonable for the government to contend that because Mr. Grossman's "testimony will not be offered to prove the truth of the matter asserted," it is irrelevant whether his statements are substantively true. (Gov't Br. at 11.) Regardless of the government's limited offer, the defense has a constitutional right to attempt to demonstrate, if it so chooses, that the substance of Mr. Grossman's testimony is incorrect, and that all of his testimony should be rejected, including his allegation that he spoke to Mr. Libby about Ms. Wilson on a particular day. The best way to do that would be to show that some part or all of Mr. Grossman's statements were substantively untrue.

The government responds to the defense contention that bias on the part of Mr. Grossman deserves to be explored by stating that "loyalty to Mr. Armitage or to the State Department" would not cause Mr. Grossman to "invent conversations . . . and testify to them under oath." (*Id.* at 14.) Whether the government's statement on this point is true is for the jury to decide, and there is certainly nothing unusual about a defendant arguing that the personal and professional allegiances of a witness may result in false or distorted testimony.

Finally, by arguing that Mr. Grossman's credibility is beyond challenge, the government has once again staked out two hopelessly inconsistent positions. The government asserts that Mr. Libby was motivated to lie under oath to avoid causing "great embarrassment to the administration." (*Id.* at 26.) Yet, at the same time, the government also argues that the defense should not have the opportunity to determine whether Mr. Grossman might be motivated to testify in a manner that would prevent embarrassment to the State Department.

Ari Fleischer. The government states that it intends to call former White House press secretary Ari Fleischer to testify about a conversation with Mr. Libby, during which

Ms. Wilson's identity was allegedly discussed.⁴ Again, as with Mr. Grossman, the defense has the right to challenge this allegation and investigate when and how Mr. Fleischer learned of Ms. Wilson's employment. The government has admitted that "multiple officials in the White House discussed her employment with reporters prior to (and after) July 14," and the defense has the right to explore whether any of these other officials may also have discussed Ms. Wilson with Mr. Fleischer. (*Id.* at 30, n.10.) In addition, Mr. Fleischer may have learned about Ms. Wilson's identity from someone at the State Department or the CIA. The defense therefore needs access to any documents discussing Mr. Wilson, his wife, or his trip to Niger that may be found in the White House or at other agencies. Such documents are needed to investigate properly when and how Mr. Fleischer learned that Ms. Wilson worked for the CIA and when and with whom (other than Mr. Libby) he discussed that fact.

In our moving brief, the defense pointed to an even more specific reason to scrutinize the government's proffered version of Mr. Fleischer's testimony. Press accounts suggest that Mr. Fleischer may have learned about Ms. Wilson during his trip to Africa after seeing it in a classified report sent to Mr. Powell on Air Force One and then disclosed this information to reporters. Yet, the government claims that nothing further is required for Mr. Fleischer's cross-examination than "a copy of the report in question." (*Id.* at 12.) In so arguing, the government is once again attempting to dictate which defenses may be raised and which allegations in the indictment may be challenged. Nothing in Rule 16 or the case law of this Circuit suggests that the defense should be limited to cross-examining Mr. Fleischer with only the one report that the government deigns to disclose.

⁴ Further reasons why documents pertaining to Mr. Fleischer are material to the defense are set forth in the sealed Declaration of Theodore V. Wells, Jr., dated April 12, 2006.

The government's contention that the report is all the defense needs to cross-examine Mr. Fleischer is unpersuasive. Other documents, totally unrelated to the report, may show that Mr. Fleischer learned about Ms. Wilson from someone other than Mr. Libby. Also, the substance of the report is not as important as what Mr. Fleischer did with or said about the report. That information is likely reflected in correspondence, notes, or e-mails in Mr. Fleischer's files, not in the report itself. After reviewing such documents, the defense will be better equipped to examine Mr. Fleischer about whether he saw the report on Air Force One, whether he recognized that it contained classified information, and whether he communicated its contents to anyone else.

Finally, the defense also seeks documents that will shed light on the Administration's response to criticism from Mr. Wilson. The government questioned Mr. Libby about this topic at length in the grand jury, and it put it at issue in the indictment and with its proposed use of the NIE. As the White House press secretary, Mr. Fleischer likely played a key role in orchestrating and implementing the Administration's strategy for rebutting Mr. Wilson's claims. Documents from his files – or from anywhere in the White House – that relate to this subject must be produced pursuant to Rule 16.

Karl Rove. Senior White House advisor Karl Rove figures prominently in the government's indictment. He allegedly spoke both to Mr. Novak and Mr. Libby about Ms. Wilson's affiliation with the CIA. Accordingly, the government's statement that it does not presently intend to call Mr. Rove does not diminish his importance in this case.

The defense is likely to call Mr. Rove to provide testimony regarding Mr. Libby's conversations with Mr. Rove concerning reporters' inquiries about Ms. Wilson, as expressly discussed in the indictment. (Indictment, Count One, at ¶ 21.) Documents from Mr. Rove's files

about the subjects outlined in the indictment are discoverable pursuant to Rule 16 because without them the defense cannot effectively prepare for Mr. Rove's examination. As discussed above, Rule 16 compels disclosure of such documents even if Mr. Rove remains a subject of a continuing grand jury investigation.

2. The Defense Is Entitled to Documents that Will Establish the Proper Context in which To View the Events Described in the Indictment

Our moving brief explained that the prosecution chose to write a wide-ranging indictment. The indictment describes in detail the media controversy over the sixteen words in the President's 2003 State of the Union address, refers to the contents of five newspaper and magazine articles, and portrays the actions of nine witnesses from various offices of the Executive Branch, including the White House, the State Department, and the CIA. Because the indictment's narrative exaggerates the attention that government officials paid to Ms. Wilson's identity prior to July 14, 2003, it is essential for the defense to correct the government's distorted version of events.

The defense intends to show the jury that the controversy over intelligence failures during the spring and summer of 2003 led certain officials within the White House, the State Department, and the CIA to point fingers at each other. This bureaucratic infighting provides necessary context for the testimony of witnesses from different government agencies. In addition, Mr. Libby plans to demonstrate that the indictment is wrong when it suggests that he and other government officials viewed Ms. Wilson's role in sending her husband to Africa as important. We need the requested documents to prepare this crucial aspect of his defense.

The government, in one of the many instances in which it asks the Court to accept the prosecution's view of the case as a basis to deny discovery to the defense, provides a lengthy and highly misleading version of the evidence regarding the importance that Mr. Libby attached

to Ms. Wilson's CIA employment in June and July 2003. (Gov't Br. at 18-21.) The government pretends that Mr. Wilson's wife was a part of the response Mr. Libby was instructed to make to Mr. Wilson's false claims, and even argues that "[d]isclosing the belief that Mr. Wilson's wife sent him on the Niger trip was one way for defendant to contradict the assertion that the Vice President had done so . . ." (*Id.* at 19.) In fact, as the government is well aware, contemporaneous documents reflect the points that Mr. Libby was to make to reporters, and these documents *do not include any information about Wilson's wife*. Further, the government's theory ignores the fact that neither the indictment nor the evidence supports the notion that Mr. Libby told any reporter that "Mr. Wilson's wife sent him on the Niger trip." The only reference to such an idea in the indictment is the allegation in paragraph 23 that Matthew Cooper *asked Mr. Libby* on July 12, 2003 whether he had heard that Wilson's wife was involved in sending him on the trip, and Libby said "he had heard this information too."

The government's argument that Mr. Libby attached importance to "the controversy about Mr. Wilson and/or his wife" (*id.* at 20) cleverly masks the fact that the evidence on which this argument relies – *e.g.*, the involvement of the President and Vice-President, the declassification of the NIE, the Vice President's direction that Mr. Libby speak to the press, the rarity of "on the record" statements by Mr. Libby – *has nothing whatsoever to do with Mr. Wilson's wife*. Mr. Libby must be in a position at trial to show the jury that, consistent with his grand jury testimony, he responded in good faith *on the merits* to Mr. Wilson's allegations, instead of seeking to question his allegiances or motives. For that reason it is vital that Mr. Libby obtain discovery of the truth regarding Mr. Wilson's allegations, including all communications by him with the CIA, the State Department, or anyone else concerning those allegations.

The government's brief suggests that only the OVP's response to Mr. Wilson is relevant to the charges in the indictment. But efforts of Mr. Libby and other officials in the OVP to deflate criticism of the Administration cannot be neatly separated from the actions of officials from other agencies – particularly the CIA, the White House, and the State Department. For example, Mr. Libby worked with the CIA and the NSC to determine how to respond to the controversy over the sixteen words. The indictment itself refers to Mr. Libby's alleged concerns about how the CIA was responding to the controversy. The indictment also describes actions by officials at the White House, including senior advisor Karl Rove and former press secretary Ari Fleischer, who both spoke to reporters about Mr. Wilson. Now, with the government's injection of the NIE story into this case, the government has placed even more emphatically at issue the actions of the White House – including President Bush – in responding to media criticism about the 16 words.

In light of the involvement of high-level officials from these other agencies in responding to Mr. Wilson's attacks on the Administration, the government cannot meet its discovery obligations by focusing solely on the OVP. Moreover, if documents that pertain to the Administration's media strategy for addressing Mr. Wilson's charges do not mention his wife, the defense will inform the jury of this fact. If, on the other hand, Mr. Wilson's wife was indeed mentioned in such documents, pursuant to Rule 16 the defense has the right to discover such information and prepare to avoid it or explain it at trial.

In response to these arguments, the government turns its back on its expansive indictment, and argues that the broader factual context the defense intends to develop at trial is irrelevant because Mr. Libby faces only obstruction charges. These arguments are belied by the sweeping factual background information included in the indictment. Further, it is telling that in

its response, the government does not dispute that its indictment encompasses issues far removed from the three conversations with reporters about which Mr. Libby allegedly lied. Instead, the government argues that Mr. Libby is improperly trying to place the state of mind and conduct of others at issue. The government maintains that only Mr. Libby's state of mind is relevant, and argues that documents that Mr. Libby has not seen cannot provide useful context. (*Id.* at 18.)

By switching the topic to issues of state of mind and the conduct of others (which we discussed in subsection II(B)(1) above), the government fails to address our arguments about context on the merits. The government has effectively conceded the importance of context, but it refuses to provide the defense with the documents we need to correct the distorted picture found in the indictment. Rule 16 and basic principles of fairness require that Mr. Libby be granted the documents he needs to show the jury the true and complete story.

3. The Defense Is Entitled to Documents that Will Help Establish that Mr. Libby Had No Motive To Lie

In our moving brief, the defense explained that we intend to demonstrate at trial that Mr. Libby had no motive to lie by showing that he did not participate in a campaign to harm Mr. Wilson and did not cover up efforts by others to do so. The government responds that Mr. Libby has not been charged with conspiracy-based offenses. This is true, but beside the point. Jurors understand that people lie to cover up their own misdeeds or the wrongdoing of others. Mr. Libby is entitled to show jurors that neither motive explains his conduct, which will help them realize that any misstatements he made are in fact innocent mistakes. Again, the government is improperly attempting to dictate what defenses are appropriate to present to a jury. *See Safavian*, 233 F.R.D. at 15 (the government may not “put itself in the shoes of defense counsel in attempting to predict the nature of what the defense may be or what may be material to its preparation”).

A key government witness, Matthew Cooper, and another potential witness, Mr. Wilson, have both contended that Mr. Libby participated in a smear campaign organized by the White House to punish Mr. Wilson by outing his wife as a CIA agent. This idea has also been expressed in news articles that were used as grand jury exhibits and that the government may intend to introduce as trial exhibits.⁵ The government asserts that documents exist that could be characterized as demonstrating that the White House planned to punish Mr. Wilson, and that the plan involved talking to reporters about Mr. Wilson's wife. (Gov't Br. at 29-30.) However, the government says that although it has divulged some of those documents to the defense, it is currently withholding others. Rule 16 entitles the defense to *all* such documents. On this critical issue, the defense needs to know everything the government knows, to avoid getting blindsided with unexpected testimony about such a plot at trial.

Further, in its response, the government articulates for the first time its own theory of Mr. Libby's purported motive to lie. According to the government, Mr. Libby made false statements and committed perjury because he knew "there would be great embarrassment to the administration if it became publicly known that [he] had participated in disseminating information about Ms. Wilson's CIA employment," and because he "would have had every reason to assume he would be fired if his true actions became known." (*Id.* at 26.)

In its response, the government also tells the story regarding the NIE for the first time. The government asserts that the President through the Vice President authorized the disclosure of certain portions of the NIE by Mr. Libby to a reporter. According to the

⁵ Mike Allen and Dana Priest, *Bush Administration Is Focus of Inquiry*, WASHINGTON POST, Sept. 28, 2003 at A01, attached as Ex. D; Allen and Priest, *Probe Focuses on Month Before Leak to Reporters; FBI Agents Tracing Linkage of Envoy to CIA Operative*, WASHINGTON POST, Oct. 12, 2003, attached as Ex. E. See also Matthew Cooper, *A War on Wilson*, Time.com, July 17, 2003, attached as Ex. F.

government, these events were “unique in [Mr. Libby’s] recollection.” (*Id.* at 20.) Yet, after stating that the highest officials in the Executive Branch took unusual steps to counter Mr. Wilson’s criticism, the prosecution argues that information about such events can be used only to further its *own* arguments regarding Mr. Libby’s state of mind and that any additional discovery on these issues is irrelevant. Once again, the prosecution is trying to have it both ways. The government’s discussion of the NIE indicates that at trial all aspects of the government’s response to Mr. Wilson will be relevant – including any actions taken by the President.⁶

To prepare to address the government’s arguments about motive and the NIE at trial, the defense needs additional documents. In particular, the defense needs documents from all the relevant agencies, including the White House, State Department, and CIA that relate to the Administration’s strategies for countering Mr. Wilson’s criticism. Based on the government’s articulated motive theory, the defense is also entitled to investigate the Administration’s response to the leak, such as any alleged threats by the President to fire officials who were involved. For example, if documents indicate that notwithstanding the President’s public statements about the leak investigation, Mr. Libby had no reason to fear losing his job, the defense is entitled to the production of such documents. That is the essence of Rule 16.

Finally, the government’s arguments about motive further underscore that the defense is entitled to discovery about whether Ms. Wilson’s employment status was classified, as the defense has requested in previous motions. The government resists disclosing information regarding the allegedly classified status of Ms. Wilson’s employment, and the knowledge and understanding of others as to whether that employment was classified, on the ground that the

⁶ We emphasize that, consistent with his grand jury testimony, Mr. Libby does not contend that he was instructed to make any disclosures concerning Ms. Wilson by President Bush, Vice President Cheney, or anyone else.

information is not relevant to the defense. Yet, almost in the same breath, the government presents an argument on Mr. Libby's motive to lie that makes this information highly relevant and material to preparation of the defense.

The government states that it will argue Mr. Libby feared losing his job because the President "had vowed to fire anyone involved in leaking classified information" (*id.* at 28), and because Mr. Libby had requested that the White House Press Secretary say that "Libby was not the source of the Novak story. And he did not leak classified information." (*Id.*) Mr. Libby was not, of course, a source for the Novak story. And he testified to the grand jury unequivocally that he did *not* understand Ms. Wilson's employment by the CIA to be classified information. The government's argument puts squarely at issue the credibility of Mr. Libby's position that he did not leak classified information. The government surely cannot, on the one hand, contend that Mr. Libby knew he *had* revealed classified information (and thus felt in jeopardy of being fired), and on the other hand withhold from the defense information that would tend to prove her employment status was *not* classified and that others who knew of that employment had the same understanding.

III. Whether Other Agencies Are Aligned With the Prosecution Is Not At Issue In This Motion

The government ends its brief with a plea that "the Court reconsider its holding that the OVP is 'closely aligned' with the prosecution," and further asks that the Court not rule that the White House, NSC and the State Department are similarly aligned. (*Id.* at 33.)

The government's first request is both unjustified and procedurally improper. The Court's ruling that the OVP was aligned with the prosecution was firmly grounded in the applicable case law, and the decision should stand. If the government wants to challenge the decision, then it should make a procedurally proper motion for reconsideration and allow for full

briefing on the issue. It is inappropriate for the government to seek such relief through its opposition brief to the defense's motion to compel discovery.

The government's second request is moot as it relates to materials covered by this motion. In an effort to alleviate any burden on the government and move as swiftly as possible to trial, the defense has agreed to limit its requests for documents to those documents which are in the Special Counsel's possession or of which the Special Counsel has knowledge. Therefore, the Court need not consider the issue of alignment.

IV. The CIA Referral Documents Are Material to the Preparation of the Defense

Mr. Libby has requested the CIA's criminal referral to the Department of Justice ("DOJ") and all documents referenced or relied upon in preparation of the referral (collectively, the "referral documents"). The government resists this request on the grounds that the referral documents bear no relationship to the perjury charges against Mr. Libby, because the author of the referral will not be a witness and the referral does not summarize statements made by government witnesses. This is not the appropriate standard for assessing materiality under Rule 16. In arguing that these documents have no relevance to perjury charges, the government once again ignores the breadth of the indictment brought against Mr. Libby.

The indictment alleges that Ms. Wilson's employment was classified, and that disclosure of that fact "had the potential to damage the national security." (Indictment, Count One at ¶¶ 1(d), (f).) Ms. Wilson's employment status and any damage caused by the disclosure of her identity are thus directly at issue in this case, and the referral documents are a uniquely valuable source of information about both of these subjects.

As we argue above, a key component of Mr. Libby's defense is that he had no motive to lie to either the FBI or the grand jury because he had no reason to believe, before July

14, 2003, that Ms. Wilson's employment status was classified. In spite of its importance to the case, the government has provided the defense no evidence of this purported fact. Based on published news reports, it appears that the referral documents address this very issue. (*See* Def. Mot. at 32.)

The referral documents are likewise material to defense counsel's ability to prepare for the examination of any CIA official who may offer testimony in support of the indictment's allegations regarding Ms. Wilson's employment status or harm to national security. To the extent that the CIA's documents suggest that the DOJ hesitated to begin its investigation of the disclosure of Ms. Wilson's identity, and that hesitancy was related to the DOJ's uncertainty that any crime had been committed based on the information provided by the CIA, the defense should have the opportunity to use such information to prepare to cross-examine CIA witnesses at trial.

Moreover, the referral documents are relevant to understanding any bias on the part of the CIA as an institution, which may manifest itself in the testimony of CIA witnesses at trial. CIA officials have been openly critical of the OVP – and indeed, according to the indictment, Mr. Libby was critical of the CIA as well. In that context, agency and witness bias are a legitimate concern for the defense. And, to the extent that Director Tenet was involved in the creation of the referral documents, or actively pushed the DOJ to investigate the disclosure of Ms. Wilson's identity, the referral documents would show that the bias against Mr. Libby reached to the highest levels of the CIA and did not simply represent the complaints of lower-ranking employees. Further, Mr. Tenet is a likely witness. If he was personally involved in the referral process, then the referral documents would be important for preparing to examine him on

the issue of bias. To prepare for trial effectively, the defense must have the opportunity to explore all of these issues further.

At the very least, the referral documents should be provided to the Court for an *in camera* review to determine if Mr. Libby has sufficiently established his need for the documents and overcome the qualified privileges asserted by the government. *See In re Sealed Case*, 856 F.2d 268, 272-273 (D.C. Cir. 1988); *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997).

Should the Court determine that the documents are in fact privileged, we respectfully request that the Court make specific findings on this point, which would make the reviewed documents and findings part of the official record and permit appropriate appellate review, if necessary.

CONCLUSION

For the reasons stated herein, and in our Third Motion to Compel Discovery, the requests for disclosure of documents and information should be granted.

April 12, 2006

Respectfully submitted,

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EXHIBIT A

1 of 1 DOCUMENT

Copyright 2006 The Washington Post
The Washington PostApril 10, 2006 Monday
Final Edition**SECTION:** A Section; A04**LENGTH:** 664 words**HEADLINE:** Specter Says Bush, Cheney Should Explain Leak**BYLINE:** Walter Pincus, Washington Post Staff Writer**BODY:**

President Bush and Vice President Cheney need to explain what classified information was authorized to be leaked to reporters in July 2003 and why, the Republican chairman of the Senate Judiciary Committee said yesterday.

"I think that there has to be a detailed explanation precisely as to what Vice President Cheney did, what the president said to him, and an explanation from the president as to what he said so that it can be evaluated," Sen. Arlen Specter (Pa.) said. He was referring to last week's revelation in a court document that Cheney's former chief of staff, I. Lewis "Scooter" Libby, testified that Cheney told him Bush approved leaking parts of a classified document about intelligence estimates of Iraq's weapons of mass destruction.

Specter said on "Fox News Sunday" that he had heard yesterday morning about a report, first published by the Associated Press, that a lawyer close to the case said Bush "didn't tell the vice president specifically what to do, but just said get it out."

Bush approved providing information from the then-classified October 2002 National Intelligence Estimate (NIE) on Iraq's nuclear, chemical and biological weapons, Special Counsel Patrick J. Fitzgerald said in a memorandum filed in federal court Wednesday. The prosecutor cited Libby's testimony to a grand jury investigating the leak of a CIA operative's name.

There has been no confirmation of Bush's role, nor of what exactly Libby was authorized to disclose from the 90-page NIE. Fitzgerald's memo, which provided new information on several aspects of the CIA leak case, came as a result of a request by Libby's lawyers for a range of classified documents to defend their client against charges of obstruction of justice, perjury and making false statements to the FBI.

Libby, according to the memo, told the grand jury that Cheney "specifically had authorized" him to disclose "certain information" from the classified NIE.

Libby also testified that he was "directed" by the vice president to speak to reporters about the NIE and to provide information from a "cable authored by [retired ambassador Joseph C.] Wilson." The latter apparently referred to a classified March 2002 CIA summary of Wilson's report on his trip to Niger in February 2002 to find out whether Iraq was trying to buy uranium.

Some of Libby's comments about the NIE that he made to reporter Judith Miller, then of the New York Times, on July 8, 2003, were inaccurate. Libby said one "key judgment of the NIE held that Iraq was 'vigorously trying to procure' uranium." That was not an NIE key judgment, and the CIA officials who wrote the document disputed that statement.

Libby also inaccurately described the CIA report on Wilson's trip, saying the former ambassador reported information about an Iraqi delegation visiting Niger in 1999 that was "understood to be a reference to a desire to obtain uranium." In fact, Wilson said he was told that a Niger official was contacted at a meeting outside the country by a businessman who said an Iraqi economic delegation wanted to meet with him. The Niger official guessed that the

Specter Says Bush, Cheney Should Explain Leak The Washington Post April

Iraqis might want to talk about uranium because Iraq had purchased uranium from Niger in the mid-1980s. But when they met, no talk of uranium took place.

Sen. John F. Kerry (D-Mass.) said that although Bush has the right to declassify information, it was wrong to do it for political purposes. "This was a declassification in order to mislead America . . . and in order to buttress their phony argument about the war," Kerry said on NBC's "Meet the Press."

Appearing on CNN's "Late Edition," Sen. Jon Kyl (R-Ariz.) said Bush was correct in declassifying the information because the administration believed that Wilson, in his statements in July 2003, had "gone public with half of the story." Kyl, who believes Britain had intelligence about Iraq seeking uranium from Niger that the United States could not confirm, said the administration had mishandled the matter.

LOAD-DATE: April 10, 2006



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EXHIBIT B



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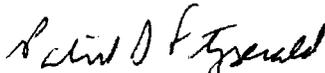
Honorable Reggie B. Walton
United States District Court
333 Constitution Avenue, N.W.
Washington, DC 20001

Re: United States v. I. Lewis Libby, Cr. No. 05-394 (RBW)

Dear Judge Walton:

We are writing to correct a sentence from the Government's Response to Defendant's Third Motion to Compel Discovery, filed on April 5, 2006. The sentence, which is the second sentence of the second paragraph on page 23, reads, "Defendant understood that he was to tell Miller, among other things, that a key judgment of the NIE held that Iraq was 'vigorously trying to procure' uranium." That sentence should read, "Defendant understood that he was to tell Miller, among other things, some of the key judgments of the NIE, and that the NIE stated that Iraq was 'vigorously trying to procure' uranium."

Respectfully Submitted,


PATRICK J. FITZGERALD
Special Counsel

cc: William Jeffress, Esquire
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EXHIBIT C



RECEIVED

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Re: United States v. I. Lewis Libby

Dear Counsel:

This letter is in response to your letter of January 5, 2006. We incorporate the prior responses in our letters of December 3, 2005, and January 9, 2006. This follows our telephone conference of January 18, 2006.

As a preliminary matter, your letter indicates a belief that it is "very common" in the District of Columbia to engage in "open file" discovery, but my understanding is to the contrary. To my understanding, "open file" discovery is not common in that district, nor in the Department of Justice more broadly. That is particularly the case where the matter involves extensive classified and national security materials. Moreover, it is not the ordinary practice for federal prosecutors to provide discovery in a perjury/obstruction of justice prosecution as to all matters that were considered but not charged in the overarching grand jury investigation, particularly one that is ongoing. As you are aware, your client has not been charged with a substantive violation of Title 18, United States Code, Section 793. Accordingly, your client is not entitled to discovery of sensitive national security materials pertinent only to a prosecution of a substantive violation of that statute.

In any event, the fact that we have not elected to provide you with everything the defense has requested should not obscure the fact that the defense is being given far more discovery than is required by the language of Rule 16 of the Federal Rules of Criminal Procedure. To cite but one example, we are making available to you all material obtained from the Office of Vice President: in essence, "open file" discovery regarding the office where your client was employed. We have endeavored to draw a line that expedites resolution of this matter while at the same time safeguarding other governmental interests and the ongoing investigation. In making discovery

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determinations, we have endeavored to provide no preferential treatment of Mr. Libby solely on account of his former official position.

I note that our January 18, 2006, telephone conference was productive in achieving a clearer understanding of the areas where we disagree which will lend itself to presentation to the court for resolution. We also agreed during the telephone conference that if we decided to produce any items to you despite our belief that we were not required to do so that you would not view such production as a waiver of our position that such discovery was not required or argue that such a production was a concession that we were obligated to produce any additional documents that may be in the possession of other government agencies.

In your requests, you greatly expand the sweep of subsection 16(a)(1)(E) which governs "documents and objects" by making requests for "information," rather than "documents and objects," and by defining documents "material to preparing the defense" to include memos, recordings and transcripts in a manner which would sweep in grand jury minutes and reports of interview (most commonly reports of interview in the form of FBI form 302's). That is flatly inconsistent with the narrower category of "documents and objects" set forth in subsection 16(a)(1)(E) and is contrary to both subsection 16(a)(2) which says that reports and government memoranda (prepared by an attorney or agent) are not discoverable, and to subsection 16(a)(3) which limits grand jury transcript discovery to the defendant's grand jury testimony. To define "documents" to include grand jury transcripts and debriefing reports would contravene the Jencks Act and the enumerated provisions of Rule 16. Thus, in reviewing our response, you should understand that, unless specified otherwise below, we are not producing such grand jury transcripts or FBI 302's or other reports, as they are not required to be produced pursuant to Rule 16.

We respond in greater detail to your enumerated requests as follows:

(1): You demand access to all documents referencing Mr. Wilson's 2002 trip to Iraq. The relevance of Mr. Wilson's 2002 trip is the fact that it occurred and that it became a subject of discussion in spring 2003. What took place during that trip is not relevant to the issue of whether Mr. Libby lied about his spring 2003 conversations with various reporters and government officials about Mr. Wilson's wife's employment at the Central Intelligence Agency ("CIA"). Thus, a request for every document which in any way relates to Mr. Wilson's trip and any communications Mr. Wilson had with anybody at any time about the trip is over broad and any attempt to comply with such a request would significantly delay, not expedite, resolution of this matter. Nonetheless, all documents in our possession reflecting conversations involving defendant Libby about Wilson's trip, or meetings Mr. Libby attended during which Mr. Wilson's trip was discussed, have been produced or will be produced prior to February 3. Moreover, when you review the materials in our possession which we have produced or will be producing to you, specifically including the copies of all documents obtained from the Office of Vice President and the materials from our set of

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documents obtained from the Central Intelligence Agency ("CIA"), you will note that they include substantial materials which concern or reflect Mr. Wilson's trip.

(2): We do not have any responsive materials other than material that would be produced pursuant to the Jencks Act if the Government were to call Mr. Wilson to testify at trial, which we do not expect to do. You are obviously aware that Mr. Wilson has made public speeches, written an Op Ed in the *New York Times*, published a book and has been interviewed by media.

(3): As set forth in our prior correspondence, we will not produce every document related in any way to Ms. Wilson's employment, nor is Mr. Libby entitled to every document that might reflect on the damage to national security from disclosure of her employment. However, as we discussed during our telephone conference call on January 18, we intend to address the matter of the use, relevance and admissibility of information concerning Ms. Wilson's employment at the CIA in the context of the Classified Information Procedures Act ("CIPA").

(4): While we do not believe we are required to do so, we will advise you of certain information responsive to your request by letter on or before February 3.

(5): As we previously advised you, we have no formal damage assessment in our possession but, as we discussed during our telephone conference call on January 18, we intend to address the matter of the relevance and admissibility of Ms. Wilson's employment at the CIA in the context of CIPA.

(6) (7) and (8): Aside from any Jencks Act material which will not be produced as discovery, all responsive documents have been produced to you or will be produced to you on or before February 3. As we noted during our conference call, we do not agree that you are entitled to all such materials or that the scope of your request is proper but you are receiving all responsive documents in our possession. We also advised you that when gathering materials during the investigation we did not focus our searches on a topic as broad as that set forth in the request in 7(e).

(9): This request in effect seeks discovery concerning any other subjects of the ongoing investigation. We have not produced, and do not intend to produce, all documents regarding contacts between government officials other than Mr. Libby and reporters prior to July 14, 2003, but have produced (or will produce before February 3) all documents reflecting contact between Mr. Libby and reporters responsive to this request. Lest there be any doubt, we do have some documents responsive to your request which we are electing not to produce because we do not agree that we are obligated to provide them.

(10) and (11): Aside from any Jencks Act material which will not be produced as discovery, all responsive documents have been produced to you or will be produced to you on or before February 3.

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In your section entitled "Information Relating to the Government's Investigation of the Media," you assert that the government takes the position that the defense is not entitled to receive in discovery the contemporaneous notes made by the reporters who spoke to Libby, but do not note that you have been provided with all notes in the government's possession that were made by reporters when speaking to Mr. Libby. (As discussed above, the Government has declined to provide notes of conversations between reporters and other government officials.) You elsewhere stated that we declined to provide "any" information about reporters when in fact we have produced documents obtained from media entities as you elsewhere acknowledge.

(12) - (16): While we do not intend to provide discovery in this regard, and while not required to do so, in order to expedite litigation of this matter we advised you during the January 18 conference call that we were not aware of any reporters who knew prior to July 14, 2003, that Valerie Plame, Ambassador Wilson's wife, worked at the CIA, other than: Bob Woodward, Judith Miller, Bob Novak, Walter Pincus and Matthew Cooper.¹ There are published accounts of when Ms. Miller and Mr. Cooper first learned about Mr. Wilson's wife and from whom. Mr. Woodward has publicly described his conversation with Mr. Libby on June 27, 2003, as well as the general timing ("mid-June") of his conversation with another unnamed government official with whom he then spoke about Mr. Wilson's wife. Mr. Woodward has also described his conversations in 2003 and later with Mr. Pincus on the subject. Mr. Pincus has published his account of when he first learned information about Wilson's wife from a source he does not name. Mr. Novak has published his account of when he learned about Wilson's wife (some time after July 6) without naming his sources in the account.

We also advise you that we understand that reporter John Dickerson of *Time* magazine discussed the trip by Mr. Wilson with government officials at some time on July 11 or after, subsequent to Mr. Cooper learning about Mr. Wilson's wife. Any conversations involving Mr. Dickerson likely took place in Africa and occurred after July 11.

We note that we understand from our January 18 telephone conference that the requests numbered 13 and 14 were intended to be requests limited to the time frame prior to July 14, 2003.

We otherwise are not producing documents responsive to your request concerning other officials who were in contact with other reporters, as outlined above.

In addition, you seek miscellaneous items for discovery in an effort to prepare motions. While we do not agree that there is a separate entitlement to discovery in order to facilitate motions which may or may not be well grounded, we advise you of the following in response to your enumerated requests:

¹ This statement is not meant to imply that each and every reporter named knew her name prior to July 14, 2003.

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(17): We are reviewing the CIA referral document and will either produce the same to you or advise you otherwise shortly. We do not intend to produce "all documents relating to" that referral document as that could potentially implicate all documents in this investigation.

(18): We are seeking to obtain a copy of the order empaneling the grand jury public which we did not have in our possession and will either produce the same to you or advise you otherwise shortly.

(19)-(22): We will be providing to you prior to February 3 copies of subpoenas and pertinent correspondence relating to reporters referenced in the Indictment and/or whom we expect to call at trial.² We are specifically withholding subpoenas (and correspondence) which were addressed to reporters whose testimony was directed towards government officials other than Mr. Libby.

The Requests for Asserted "Brady" Material

We recognize that your requests for discovery seek the categories of items requested both pursuant to Rule 16 as well as pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972). We do not agree, however, that each of your requests is appropriate under the governing standards nor, as discussed in prior correspondence, do we agree with your implicit view that we are aligned with all government agencies for purposes of discovery.

(A): We are aware of our *Brady* and *Giglio* obligations regarding witnesses and will comply with those obligations.

(B) and (C): We do not agree that if there were any documents indicating that Ms. Wilson's employment was not classified during the relevant times that any such documents would constitute *Brady* material in a case where Mr. Libby is not charged with a violation of statutes prohibiting the disclosure of classified information.³

(C): We do not agree that if there were any documents indicating that Ms. Wilson did not act in an undercover capacity or did not act covertly in the five years prior to July 2003 (which we neither confirm nor deny) that any such documents would constitute *Brady* material in a case where

² We are not providing correspondence such as transmittal letters, legal briefs filed, appellate briefs filed and various correspondence concerning scheduling, filing, sealing, redacting and unsealing of briefs and other court documents regarding litigation.

³ I note that Ms. Wilson's employment status was classified but has since been declassified so that we may now confirm such status. In any event, we are not aware of any documents in our possession stating that Ms. Wilson's affiliation with the CIA was not classified at the relevant times.

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Mr. Libby is not charged with a violation of statutes prohibiting the disclosure of classified information.

(D) and (E): We do not agree that any documents indicating that any reporter heard or suspected prior to July 14, 2003, that Ms. Wilson worked at the CIA constitutes *Brady* material but in any event incorporate our earlier response on this issue.

(F): We do not agree that any time witnesses disagree on facts that you are entitled to all documents so indicating in advance. We are aware of our *Brady* and *Giglio* obligations regarding witnesses and will comply with those obligations.

(G): We do not agree that all documents reflecting favorably on Mr. Libby's character or reputation for truthfulness or reflecting his propensity to comply with laws, regulations and nondisclosure agreements or of assuring that others complied with those regulations constitute *Brady* material (nor that such documents could be easily defined) as prior instances of non-criminal conduct are not considered exculpatory.

(H): Your request for *Giglio* impeachment material is premature and over broad. You will receive such material for Government witnesses, not for "potential" Government witnesses (however that term is defined). Moreover, the scope of records you seek is far beyond the scope of what is required. By way of illustrative (but not exhaustive) example, you seek all documents relating to any juvenile arrest of any potential government witness in a case where there will be no witnesses where any such arrest would be remotely recent or relevant to the trial.

Other requests:

There have been no search warrants executed and no communications intercepted pursuant to Title III at the direction of the prosecution team during the course of this investigation.

At this time we do not intend to offer any evidence of "other crimes" pursuant to Rule 404(b). As we discussed during our telephone conversation, Mr. Libby testified in the grand jury that he had contact with reporters in which he disclosed the content of the National Intelligence Estimate ("NIE") to such reporters in the course of his interaction with reporters in June and July 2003 (and caused at least one other government official to discuss the NIE with the media in July 2003). We also note that it is our understanding that Mr. Libby testified that he was authorized to disclose information about the NIE to the press by his superiors. We expect that such conduct will be the subject of proof at trial in that we intend to introduce Libby's grand jury transcript in evidence and Mr. Libby has testified that the purpose of his July 8 meeting with Ms. Miller was to transmit information concerning the NIE. Our anticipated basis for offering such evidence is that such facts are inextricably intertwined with the narrative of the events of spring 2003, as Libby's testimony itself makes plain. At this time, we do not intend to offer the evidence pursuant to Rule 404(b).

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We are not obligated at this time to disclose impeachment material of Mr. Libby should he testify in his defense.

We are aware of no evidence pertinent to the charges against defendant Libby which has been destroyed. In an abundance of caution, we advise you that we have learned that not all email of the Office of Vice President and the Executive Office of President for certain time periods in 2003 was preserved through the normal archiving process on the White House computer system.

Should you have any questions or comments regarding any of the foregoing, or should you wish to discuss this matter generally, please do not hesitate to call me at the number listed above.

Very truly yours,

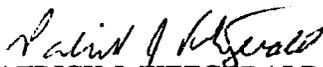

PATRICK J. FITZGERALD
Special Counsel

EXHIBIT D

1 of 6 DOCUMENTS

Copyright 2003 The Washington Post
The Washington PostSeptember 28, 2003 Sunday
Final Edition**SECTION:** A SECTION; Pg. A01**LENGTH:** 1354 words**HEADLINE:** Bush Administration Is Focus of Inquiry;
CIA Agent's Identity Was Leaked to Media**BYLINE:** Mike Allen and Dana Priest, Washington Post Staff Writers**BODY:**

At CIA Director George J. Tenet's request, the Justice Department is looking into an allegation that administration officials leaked the name of an undercover CIA officer to a journalist, government sources said yesterday.

The operative's identity was published in July after her husband, former U.S. ambassador Joseph C. Wilson IV, publicly challenged President Bush's claim that Iraq had tried to buy "yellowcake" uranium ore from Africa for possible use in nuclear weapons. Bush later backed away from the claim.

The intentional disclosure of a covert operative's identity is a violation of federal law.

The officer's name was disclosed on July 14 in a syndicated column by Robert D. Novak, who said his sources were two senior administration officials.

Yesterday, a senior administration official said that before Novak's column ran, two top White House officials called at least six Washington journalists and disclosed the identity and occupation of Wilson's wife. Wilson had just revealed that the CIA had sent him to Niger last year to look into the uranium claim and that he had found no evidence to back up the charge. Wilson's account touched off a political fracas over Bush's use of intelligence as he made the case for attacking Iraq.

"Clearly, it was meant purely and simply for revenge," the senior official said of the alleged leak.

Sources familiar with the conversations said the leakers were seeking to undercut Wilson's credibility. They alleged that Wilson, who was not a CIA employee, was selected for the Niger mission partly because his wife had recommended him. Wilson said in an interview yesterday that a reporter had told him that the leaker said, "The real issue is Wilson and his wife."

A source said reporters quoted a leaker as describing Wilson's wife as "fair game."

The official would not name the leakers for the record and would not name the journalists. The official said there was no indication that Bush knew about the calls.

It is rare for one Bush administration official to turn on another. Asked about the motive for describing the leaks, the senior official said the leaks were "wrong and a huge miscalculation, because they were irrelevant and did nothing to diminish Wilson's credibility."

Wilson, while refusing to confirm his wife's occupation, has suggested publicly that he believes Bush's senior adviser, Karl C. Rove, broke her cover. Wilson said Aug. 21 at a public forum in suburban Seattle that it is of keen interest to him "to see whether or not we can get Karl Rove frog-marched out of the White House in handcuffs."

White House press secretary Scott McClellan said yesterday that he knows of no leaks about Wilson's wife. "That is not the way this White House operates, and no one would be authorized to do such a thing," McClellan said. "I don't have any information beyond an anonymous source in a media report to suggest there is anything to this. If

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someone has information of this nature, then he or she should report it to the Department of Justice."

McClellan, who Rove had speak for him, said of Wilson's comments: "It is a ridiculous suggestion, and it is simply not true." McClellan was asked about Wilson's charge at a White House briefing Sept. 16 and said the accusation is "totally ridiculous."

Administration officials said Tenet sent a memo to the Justice Department raising a series of questions about whether a leaker had broken federal law by disclosing the identity of an undercover officer. The CIA request was reported Friday night by MSNBC.com. Administration sources familiar with the matter said the Justice Department is determining whether a formal investigation is warranted.

An intelligence official said Tenet "doesn't like leaks."

The CIA request could reopen the rift between the White House and the intelligence community that emerged this summer when Bush and his senior aides blamed Tenet for the inclusion of the now-discredited uranium claim — the so-called "16 words" — in the State of the Union address in January.

Tenet issued a statement taking responsibility for the CIA's approval of the address before it was delivered, but made clear the CIA had earlier warned the White House not to use the allegations about uranium ore. After an ensuing rush of leaks over White House handling of intelligence, Bush's aides said they believed in retrospect it had been a political mistake to blame Tenet.

The Intelligence Protection Act, passed in 1982, imposes maximum penalties of 10 years in prison and \$50,000 in fines for unauthorized disclosure by government employees with access to classified information.

Members of the administration, especially Vice President Cheney and Defense Secretary Donald H. Rumsfeld, have been harshly critical of unauthorized leakers, and White House spokesmen are often dismissive of questions about news reports based on unnamed sources. The FBI is investigating senators for possibly leaking intercept information about Osama bin Laden.

The only recipient of a leak about the identity of Wilson's wife who went public with it was Novak, the conservative columnist, who wrote in The Washington Post and other newspapers that Wilson's wife, Valerie Plame, "is an agency operative on weapons of mass destruction." He added, "Two senior administration officials told me that Wilson's wife suggested sending him to Niger."

When Novak told a CIA spokesman he was going to write a column about Wilson's wife, the spokesman urged him not to print her name "for security reasons," according to one CIA official. Intelligence officials said they believed Novak understood there were reasons other than Plame's personal security not to use her name, even though the CIA has declined to confirm whether she was undercover.

Novak said in an interview last night that the request came at the end of a conversation about Wilson's trip to Niger and his wife's role in it. "They said it's doubtful she'll ever again have a foreign assignment," he said. "They said if her name was printed, it might be difficult if she was traveling abroad, and they said they would prefer I didn't use her name. It was a very weak request. If it was put on a stronger basis, I would have considered it."

After the column ran, the CIA began a damage assessment of whether any foreign contacts Plame had made over the years could be in danger. The assessment continues, sources said.

The CIA occasionally asks news organizations to withhold the names of undercover agents, and news organizations usually comply. An intelligence official told The Post yesterday that no further harm would come from repeating Plame's name.

Wilson was acting U.S. ambassador to Iraq during the run-up to the Persian Gulf War of 1991. He was in the diplomatic service from 1976 until 1998, and was the Clinton administration's senior director of African affairs on the National Security Council. He is now an international business consultant. Wilson said the mission to Niger was unpaid except for expenses.

Wilson said he believes an inquiry from Cheney's office launched his eight-day mission to Niger in February 2002 to check the uranium claim, which turned out to be based at least partly on forged documents. "The way it was briefed to me was that the office of the vice president had expressed an interest in a report covering uranium purchases by Iraq from Niger," Wilson said in a telephone interview yesterday.



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He said that if Novak's account is accurate, the leak was part of "a deliberate attempt on the part of the White House to intimidate others and make them think twice about coming forward."

Sources said that some of the other journalists who received the leak did not use the information because they were uncomfortable with unmasking an undercover agent or because they did not consider the information relevant to Wilson's report about Niger.

Sen. Charles E. Schumer (D-N.Y.), who has been pushing the FBI to investigate the disclosure since July, said yesterday that it "not only put an agent's life in danger, but many of that agent's sources and contacts."

Staff writer Richard Leiby contributed to this report.

LOAD-DATE: September 28, 2003

EXHIBIT E

1 of 8 DOCUMENTS

Copyright 2003 The Washington Post
The Washington PostOctober 12, 2003 Sunday
Final Edition**SECTION:** A Section; A01**LENGTH:** 1773 words**HEADLINE:** Probe Focuses on Month Before Leak to Reporters;
FBI Agents Tracing Linkage of Envoy to CIA Operative**BYLINE:** Walter Pincus and Mike Allen, Washington Post Staff Writers**BODY:**

FBI agents investigating the **disclosure** of a CIA officer's identity have begun by examining events in the month before the leak, when the CIA, the White House and Vice President Cheney's office first were asked about former ambassador Joseph C. Wilson IV's CIA-sponsored trip to Niger, according to sources familiar with the probe.

The name of Wilson's wife, Valerie Plame, a clandestine case officer, was revealed in a July 14 column by Robert D. Novak that quoted two unidentified senior administration officials.

In their interviews, FBI agents are asking questions about events going back to at least early June, the sources said. That indicates investigators are examining not just who passed the information to Novak and other reporters but also how Plame's name may have first become linked with Wilson and his mission, who did it and how the information made its way around the government.

Administration sources said they believe that the officials who discussed Plame were not trying to expose her, but were using the information as a tool to try to persuade reporters to ignore Wilson. The officials wanted to convince the reporters that he had benefited from nepotism in being chosen for the mission.

What started as political gossip and damage control has become a major criminal investigation that has already harmed the administration and could be a problem for President Bush for months to come.

One reason investigators are looking back is that even before Novak's column appeared, government officials had been trying for more than a month to convince journalists that Wilson's mission was not as important as it was being portrayed. Wilson concluded during the 2002 mission that there was no solid evidence for the administration's assertion that Iraq was trying to acquire uranium in Niger to develop nuclear weapons, and he angered the White House when he became an outspoken critic of the war.

The FBI is trying to determine when White House officials and members of the vice president's staff first focused on Wilson and learned about his wife's employment at the agency. One group that may have known of the connection before that time is the handful of CIA officers detailed to the White House, where they work primarily on the National Security Council staff. A former NSC staff member said one or more of those officers may have been aware of the Plame-Wilson relationship.

White House press secretary Scott McClellan said in response to a query for this article: "I think it would be counterproductive during an ongoing investigation for me to chase rumors and speculation. The president has directed the White House to cooperate fully, and that is exactly what we are doing."

Investigators are trying to establish the chain of events leading to the leak because, for a successful prosecution under the law prohibiting unauthorized disclosure of a covert U.S. officer's name, the disclosure must have been intentional, the accused must have known the person was a covert officer and the identity must not have been disclosed earlier.

Probe Focuses on Month Before Leak to Reporters; FBI Agents Tracing Link

The first public mention of Wilson's mission to Niger, albeit without identifying him by name, was in the New York Times on May 6, in a column by Nicholas D. Kristof. Kristof had been on a panel with Wilson four days earlier, when the former ambassador said State Department officials should know better than to say the United States had been duped by forged documents that allegedly had proved a deal for the uranium had been in the works between Iraq and Niger.

Wilson said he told Kristof about his trip to Niger on the condition that Kristof must keep his name out of the column. When the column appeared, it created little public stir, though it set a number of reporters on the trail of the anonymous former ambassador. Kristof confirmed that account.

The column mentioned the alleged role of the vice president's office for the first time. That was when Cheney aides became aware of Wilson's mission and they began asking questions about him within the government, according to an administration official.

In the meantime, Wilson was pressing his case. He briefed two congressional committees conducting inquiries into why the president had mentioned the uranium allegation in his Jan. 28 State of the Union address. He also began making frequent television appearances.

In early June, Wilson told his story to The Washington Post on the condition that his name be withheld. On June 12, The Post published a more complete account than Kristof's of Wilson's trip. Wilson has now given permission to The Post to identify him as one source for that article.

By that time, officials in the White House, Cheney's office, the CIA and the State Department were familiar with Wilson and his mission to Niger.

Starting that week, the officials repeatedly played down the importance of Wilson's trip and its findings, saying it had been authorized within the CIA's nonproliferation section at a low level without requiring the approval of senior agency officials. No one brought up Wilson's wife, and her employment at the agency was not known at the time the article was published.

Wilson's oral report to a CIA officer had been turned into a routine one-and-a-half page CIA intelligence memo to the White House and other agencies. By tradition, his identity as the source, even though he went under the auspices of the CIA, was not disclosed.

"This gent made a visit to the region and chatted up his friends," a senior intelligence official said last June in describing the agency's view of the mission. Regarding the allegation about Iraq seeking uranium, the official said: "He relayed back to us that they said it was not true and that he believed them."

The Post article generated little public response. But behind the scenes, Bush officials were concerned. "After the June story, a lot of people in government were scurrying around asking who is this envoy and why is he saying these things," a senior administration official said.

Wilson said he attempted to increase pressure on the White House the day after the June 12 article was published by calling some present and former senior administration officials who know national security adviser Condoleezza Rice. He wanted them to tell Rice that she was wrong in her comment on NBC's "Meet the Press" on June 8 that there may be some intelligence "in the bowels of the agency," but that no one around her had any doubts about the uranium story.

Wilson said those officials told him Rice was not interested and he should publish his story in his own name if he wanted to attract attention.

On July 6, Wilson went public. In an interview published in The Post, Wilson accused the administration of "misrepresenting the facts on an issue that was a fundamental justification for going to war." In an opinion article the same day in the New York Times, he wrote that "some of the intelligence related to Iraq's nuclear weapons program was twisted to exaggerate the Iraqi threat."

On "Meet the Press" that day, Wilson said: "Either the administration has some information that it has not shared with the public or, yes, they were using the selective use of facts and intelligence to bolster a decision in the case that had already been made, a decision that had been made to go war."

On July 7, the White House admitted it had been a mistake to include the 16 words about uranium in Bush's State

Probe Focuses on Month Before Leak to Reporters; FBI Agents Tracing Link

of the Union speech. Four days later, with the controversy dominating the airwaves and drowning out the messages Bush intended to send during his trip in Africa, CIA Director George J. Tenet took public blame for failing to have the sentence removed.

That same week, two top White House officials disclosed Plame's identity to at least six Washington journalists, an administration official told The Post for an article published Sept. 28. The source elaborated on the conversations last week, saying that officials brought up Plame as part of their broader case against Wilson.

"It was unsolicited," the source said. "They were pushing back. They used everything they had."

Novak has said he began interviewing Bush officials about Wilson shortly after July 6, asking why such an outspoken Bush policy critic was picked for the Niger mission. Novak reported that Wilson's wife worked at the CIA on weapons of mass destruction and that she was the person who suggested Wilson for the job.

Officials have said Wilson, a former ambassador to Gabon and National Security Council senior director for African affairs, was not chosen because of his wife.

On July 12, two days before Novak's column, a Post reporter was told by an administration official that the White House had not paid attention to the former ambassador's CIA-sponsored trip to Niger because it was set up as a boondoggle by his wife, an analyst with the agency working on weapons of mass destruction. Plame's name was never mentioned and the purpose of the disclosure did not appear to be to generate an article, but rather to undermine Wilson's report.

After Novak's column appeared, several high-profile reporters told Wilson that they had received calls from White House officials drawing attention to his wife's role. Andrea Mitchell of NBC News said she received one of those calls.

Wilson said another reporter called him on July 21 and said he had just hung up with Bush's senior adviser, Karl Rove. The reporter quoted Rove as describing Wilson's wife as "fair game," Wilson said. Newsweek has identified that reporter as MSNBC television host Chris Matthews. Spokespeople said Matthews was unavailable for comment.

McClellan, the White House spokesman, has denied that Rove was involved in leaking classified material but has refused to discuss the possibility of a campaign to call attention to the revelations in Novak's column.

On July 17, the Time magazine Web site reported that "some government officials have noted to Time in interviews, (as well as to syndicated columnist Robert Novak) that Wilson's wife, Valerie Plame, is a CIA official who monitors the proliferation of weapons of mass destruction." On July 22, Wilson appeared on NBC's "Today" show and said that disclosing the name of a U.S. intelligence officer would be "a breach of national security," could compromise that officer's entire network of contacts and could be a violation of federal law.

Wilson said that brought an immediate halt to the reports he had been getting of anonymous attacks on him by White House officials.

An administration source said, "One of the greatest mysteries in all this is what was really the rationale for doing it and doing it this way."

LOAD-DATE: October 12, 2003



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TIME

NATION POLITICS

Thursday, Jul. 17, 2003

A War on Wilson?

Inside the Bush Administration's feud with the diplomat who poured cold water on the Iraq-uranium connection

By MATTHEW COOPER, MASSIMO CALABRESI AND JOHN F. DICKERSON

Has the Bush Administration declared war on a former ambassador who conducted a fact-finding mission to probe possible Iraqi interest in African uranium? Perhaps.

Former Ambassador Joseph C. Wilson raised the Administration's ire with an op-ed piece in *The New York Times* on July 6 saying that the Administration had "twisted" intelligence to "exaggerate" the Iraqi threat. Since then Administration officials have taken public and private whacks at Wilson, charging that his 2002 report, made at the behest of U.S. intelligence, was faulty and that his mission was a scheme cooked up by mid-level operatives. George Tenet, the director of the Central Intelligence Agency, took a shot at Wilson last week as did ex-White House Press Secretary Ari Fleischer. Both contended that Wilson's report on an alleged Iraqi effort to purchase uranium from Niger, far from undermining the president's claim in his State of the Union address that Iraq sought uranium in Africa, as Wilson had said, actually strengthened it. And some government officials have noted to *TIME* in interviews, (as well as to syndicated columnist Robert Novak) that Wilson's wife, Valerie Plame, is a CIA official who monitors the proliferation of weapons of mass destruction. These officials have suggested that she was involved in her husband's being dispatched Niger to investigate reports that Saddam Hussein's government had sought to purchase large quantities of uranium ore, sometimes referred to as yellow cake, which is used to build nuclear devices.

In an interview with *TIME*, Wilson, who served as an ambassador to Gabon and as a senior American diplomat in Baghdad under the current president's father, angrily said that his wife had nothing to do with his trip to Africa. "That is bulls__t. That is absolutely not the case," Wilson told *TIME*. "I met with between six and eight analysts and operators from CIA and elsewhere [before the Feb 2002 trip]. None of the people in that meeting did I know, and they took the decision to send me. This is a smear job."

Government officials are not only privately disputing the genesis of Wilson's trip, but publicly contesting what he found. Last week Bush Administration officials said that Wilson's report reinforced the president's claim that Iraq had sought uranium from Africa. They say that when Wilson returned from Africa in Feb. 2002, he included in his report to the CIA an encounter with a former Nigerien government official who told him that Iraq had approached him in June 1999, expressing interest in expanding commercial relations between Iraq and Niger. The Administration claims Wilson reported that the former Nigerien official interpreted the overture as an attempt to discuss uranium sales.

"This is in Wilson's report back to the CIA," White House Press Secretary Ari Fleischer told reporters last week, a few days before he left his post to join the private sector. "Wilson's own report, the very man who was on television saying Niger denies it...reports himself that officials in Niger said that Iraq was seeking to contact officials in Niger about sales."

Wilson tells the story differently and in a crucial respect. He says the official in question was contacted by an Algerian-Nigerien intermediary who inquired if the official would meet with an Iraqi about "commercial" sales — an offer he declined. Wilson dismisses CIA Director George Tenet's suggestion in his own mea culpa last week that the meeting validates the President's State of the Union claim: "That then translates into an Iraqi effort to import a significant quantity of uranium as the president alleged? These guys really need to get serious."

Government officials also chide Wilson for not delving into the details of the now infamous forged papers that pointed to a sale of uranium to Iraq. When Tenet issued his I-take-the-blame statement on the alleged Iraq-Niger uranium connection last week, he took a none-too-subtle jab at Wilson's report. "There was no mention in the report of forged documents — or any suggestion of the existence of documents at all," Tenet wrote. For his part Wilson says he did not deal with the forgeries explicitly in his report because he never saw them. However, Wilson says he refuted the forgeries' central allegation that Niger had been negotiating a sale of uranium to Iraq. Wilson says he explained in the report that several Nigerien government signatures would be required to permit such a sale — signatures that were either absent or clearly botched in the forged documents.

Administration officials also claim that Wilson took at face value the claims of Nigerien officials that they had not sold uranium ore to Saddam Hussein. (Such sales would have been forbidden under then-existing United Nations sanctions on Iraq.) "He spent eight days in Niger and he concluded that Niger denied the allegation," Fleischer told reporters last week. "Well, typically nations don't admit to going around nuclear nonproliferation,"

For his part, Wilson says that the Administration conflated the prior report of the American ambassador to Niger with his own. Wilson says a report by Barbro Owens-Kirkpatrick, the American ambassador to Niger, addresses the issue of Nigerien government officials disputing the allegation. Wilson says that he never made the naïve argument that if Nigerien officials denied

the sales, then their claims must be believed.

A source close to the matter says that Wilson was dispatched to Niger because Vice President Dick Cheney had questions about an intelligence report about Iraq seeking uranium and that he asked that the CIA get back to him with answers. Cheney's staff has adamantly denied and Tenet has reinforced the claim that the Vice President had anything to do with initiating the Wilson mission. They say the Vice President merely asked routine questions at an intelligence briefing and that mid-level CIA officials, on their own, chose to dispatch Wilson.

In an exclusive interview Lewis Libby, the Vice President's Chief of Staff, told TIME: "The Vice President heard about the possibility of Iraq trying to acquire uranium from Niger in February 2002. As part of his regular intelligence briefing, the Vice President asked a question about the implication of the report. During the course of a year, the Vice President asked many such questions and the agency responded within a day or two saying that they had reporting suggesting the possibility of such a transaction. But the agency noted that the reporting lacked detail. The agency pointed out that Iraq already had 500 tons of uranium, portions of which came from Niger, according to the International Atomic Energy Administration (IAEA). The Vice President was unaware of the trip by Ambassador Wilson and didn't know about it until this year when it became public in the last month or so. " Other senior Administration officials, including National Security Adviser Condoleezza Rice, have also claimed that they had not heard of Wilson's report until recently.

After he submitted his report in March 2002, Wilson says, his interest in the topic lay dormant until the State of the Union address in January 2003. In his speech, the President cited a British report claiming that Hussein's government had sought uranium in Africa. Afterward, Wilson says, he called a friend at the Africa bureau of the State Department and asked if the reference had been to Niger. The friend said that he didn't know but, says Wilson, allowed the possibility that Bush was referring to some other country on the continent. Wilson says he let the matter drop until he saw State Department spokesman Richard Boucher say a few months later that the U.S. had been fooled by bad intelligence. It was then that Wilson says he realized that his report had been overlooked, ignored, or buried. Wilson told TIME that he considers the matter settled now that the White House has admitted the Bush reference to Iraq and African uranium should not have been in the State of the Union address.