

## The right thing to do

by Jack\_Kemp

"I would like him to get one (a pardon)."

"We didn't vote to put him away."

"I don't want him to go to jail."

Ann Redington, juror on Libby trial, on "Hardball", March 7

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Ann Redington, a juror in the I. Lewis 'Scooter' Libby trial has weighed in for a pardon for Libby. Another juror, Denis Collins, expressed similar sentiments when he was interviewed by friend and liberal columnist Maureen Dowd. "I asked him how he would feel if W. pardons Scooter," Dowd wrote, "I would really not care," he replied."

If even two jurors are endorsing a pardon, the president should not hesitate to take them up on their recommendation and pardon Libby immediately. It's the right thing to do and it's the right thing to do now - anything less makes a travesty of our system of justice.

As columnist Mark Steyn said about Special Prosecutor Patrick Fitzgerald's closing argument: "When a prosecutor speaks about 'a cloud over the vice president's office' and 'a cloud over the White House,' he is speaking politically." The criminalization of this political fight should end. Democrat super lawyer David Boies has joined the bipartisan chorus of those saying that Fitzgerald never should have prosecuted Libby when there was no underlying criminal violation at issue.

Presidents of both parties have used the pardon power to grant clemency to former government officials who were prosecuted - most often by independent counsels - for conduct that most likely would not have been criminalized but for political considerations. President Bush can look to the history of both his father and President Bill Clinton for examples of similar pardons.

When President George H.W. Bush pardoned Caspar Weinberger and a number of other individuals in

connection with Iran-Contra matters, he wrote: "The prosecutions of the individuals I am pardoning represent what I believe is a profoundly troubling development in the political and legal climate of our country: the criminalization of policy differences. These differences should be addressed in the political arena, without the Damocles sword of criminality hanging over the heads of some of the combatants. The proper target is the President, not his subordinates; the proper forum is the voting booth, not the courtroom. In recent years, the use of criminal processes in policy disputes has become all too common. It is my hope that the action I am taking today will begin to restore these disputes to the battleground where they properly belong."

Similarly, President Clinton pardoned his CIA director, John Deutch. The pardon of Deutch spared the former CIA director any criminal charges for mishandling secret information on his home computer. Deutch, had resigned in 1996 and had his security clearance stripped. He had been considering a deal with the Justice Department in which he would plead guilty to a misdemeanor charge of keeping classified data on home computers when President Clinton provided a pardon.

President Clinton pardoned each and every person convicted of anything in the investigation of former Secretary of Agriculture Mike Espy by independent counsel Donald Smaltz. Those persons included Tyson Foods official Archie Schaffer, whose conviction was pending on appeal at the time of the pardon. These pardons didn't go through the "normal" process at the Justice Department. In fact President Clinton had 47 pardons that did not go through the Justice Department process.

The record in the trial was clear that Libby had no knowledge about whether Valerie Plame's status was in any way sensitive, classified or covert. (Parenthetically, Plame's status as a partisan Democrat who contributed to Al Gore's 2000 campaign is treated as covert information by the mainstream media).

Further, the trial showed that the CIA did not treat the information as sensitive. The CIA spokesperson, Bill Harlow, confirmed her employment for Novak and passed the information on to the vice president's press aide without any warning that the information could not be shared with the press. Another CIA official testified he told Libby that "Wilson's wife" worked at the CIA without any warning regarding disclosure. And Joe Wilson, himself, wrote in his book that his wife told the CIA press office before Novak's column was released, but the CIA did nothing to halt the disclosure. Most importantly, Libby was not a source for Robert Novak.

Many witnesses had accounts that were refuted by other witnesses; yet their faulty memories were not criminalized. Just one example: Ari Fleischer testified with immunity that he did not tell Washington Post reporter Walter Pincus, about Plame. Walter Pincus had notes that he had.

Most prosecutors would walk away from such a case - a case based on a faulty premise and focused on faulty memories months after the fact. President Bush would be well within presidential authority and past presidential practice if he were to rectify this travesty in the near future.

My hope is he pardons Libby now!

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