

Why Bush can't pardon Lewis Libby

by *Lionel_Van_Deerlin*

If there is one public official I don't envy at this moment, it's Lewis "Scooter" Libby. Convicted on four counts of obstructing a federal grand jury investigation, Vice President Cheney's longtime aide has been sentenced to serve 30 months in prison and fined \$250,000.

And talk about a double whammy. Libby's first misfortune was the timing of his troubles. They come at the moment an entire nation is hearing talk of "celebrity justice" occasioned by Paris Hilton's in-and-out jailing in Los Angeles. Although her case and Libby's are very different, both raise the same question: Do we go easy on anyone who's rich and/or famous?

No one would say a court has gone easy on either of these offenders. Yet each has become a centerpiece of controversy. Libby, in particular, is regarded by many as a political victim who, rather than being locked up, merits a presidential pardon. From neoconservative pals such as Paul Wolfowitz, from the old war horse Henry Kissinger - even from the Republican Party's Great Right Hope, Fred Thompson - come demands on President Bush to free the first administration figure convicted on a criminal offense since Watergate.

Add columnist Bob Novak, too - the guy whose unattributed leak led Libby into harm's way. Much of our conservative press has joined the chorus. Indeed, the stately Wall Street Journal's editorial, "Free Scooter Libby," reminded me of similar pleas on behalf of the wrongfully convicted Scottsboro Boys more than seven decades ago.

Free "Scooter" Libby? Under Article II, Section 2 of the Constitution, a president alone has power to grant reprieves and pardons - to overrule judges, juries and prosecutors. Even to absolve someone merely accused or about to be accused of a crime. The power is absolute.

George W. Bush might devoutly wish it were otherwise. Libby must know that although he and the president claim countless mutual friends, sound political reasoning will militate against mercy. Bush hovers at the low 30s in opinion polls. To grant this pardon would mean he has abandoned hope of retaining any claim to leadership - or of salvaging respect for his legacy.

For Libby, it's the second part of that double whammy. Bush cannot possibly order a pardon without going back on his own strong words in support of the man who imposed this sentence. Fifty-eight-year-old U.S. District Judge Reggie B. Walton has worn judicial robes for 26 years. An African-American who grew up in a tough western Pennsylvania neighborhood south of Pittsburgh, he has long been noted for harsh sentences - for punishments applied with equal force to curb crime in the streets or crime in the suites.

Walton happens to have been an early court selection by the Reagan administration. On elevating him to the prestigious U.S. District Court in October 2001, George W. Bush didn't miss a chance to bask in the warmth of Walton's reputation for the judicial firmness Americans now witness. "I want people to know that I appoint tough guys to the bench," the new president was quoted as saying.

In good conscience, or even to make good sense, Bush cannot now consider a pardon for Libby without going back on those stirring words he uttered about Judge Walton six years ago. To do so would tell us the president's penchant for tough sentencing applies to youthful carjackers, but not to top-level government folk who might lie to grand juries.

His father, the first President Bush, may have been one of the least generous pardoners ever. His 77 commutations included perpetrators of the infamous Iran-contra scandal from Ronald Reagan's second term - and incidentally cleared a half-dozen persons who hold jobs in the current administration.

History's most celebrated pardon, of course, came when short-term President Jerry Ford let Richard Nixon off the hook for Watergate just a month after Nixon's resignation. Lesser Watergate conspirators were sent to prison by the late Judge John Sirica, a Reggie Walton judicial predecessor. Although conceding that Ford is perceived to have acted in the national interest, Sirica regretted the Nixon pardon. In a 1979 book, "To Set the Record Straight," the Watergate judge said he thinks Nixon should have been indicted and tried after leaving office. His reasoning:

"A final verdict would have put the president's guilt or innocence beyond dispute - no one, not even Nixon himself, could any longer argue that his fate was the result of politics.

"I would feel better knowing that the final processes of our system of justice had been permitted to function."

Few Americans, I imagine, would look kindly on an exception for "Scooter" Libby.

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