

PATRICK FITZGERALD REBUTS JUDY MILLER IN STATEMENT ON LIBBY PARDON

Update: I've got an op-ed in the NYT on the pardon this morning. It starts and ends this way:

"There is a cloud over the White House as to what happened. Don't you think the F.B.I., the grand jury, the American people are entitled to a straight answer?"

With those words, uttered over a decade ago, Patrick Fitzgerald, a prosecutor appointed as special counsel to investigate whether the president and his closest aides had broken the rules of espionage for their own political gain, sealed the conviction of I. Lewis Libby Jr., known as Scooter, for obstructing his investigation into the White House.

[snip]

Mr. Trump's pardon of Mr. Libby makes it crystal clear that he thinks even the crime of making the country less safe can be excused if done in the service of protecting the president. But it doesn't mean the pardon will protect him.

In his statement on Scooter Libby's pardon, Trump pointed to a purported retraction from Judy Miller to justify the pardon.

In 2015, one of the key witnesses against Mr. Libby recanted her testimony, stating publicly that she believes the prosecutor withheld relevant information from her during interviews that would have altered

significantly what she said. The next year, the District of Columbia Court of Appeals unanimously reinstated Mr. Libby to the bar, reauthorizing him to practice law. The Court agreed with the District of Columbia Disciplinary Counsel, who stated that Mr. Libby had presented “credible evidence” in support of his innocence, including evidence that a key prosecution witness had “changed her recollection of the events in question.”

Fitz released his own statement on the pardon, which I’ve reproduced in full below. In it, he debunks both the substance of Judy’s claims about her retraction (basically, that Armitage leaked the information and no damage was done) and that her testimony was that central to the guilty verdict.

While the President has the constitutional power to pardon, the decision to do so in this case purports to be premised on the notion that Libby was an innocent man convicted on the basis of inaccurate testimony caused by the prosecution. That is false. There was no impropriety in the preparation of any witness, and we did not tell witnesses what to say or withhold any information that should have been disclosed. Mr. Libby’s conviction was based upon the testimony of multiple witnesses, including the grand jury testimony of Mr. Libby himself, as well as numerous documents.

Years ago I pointed out that Libby could have been convicted based solely on his own notes and David Addington’s testimony. What Judy’s testimony added was confirmation that Libby repeatedly provided details about Plame’s CIA status, which her retraction doesn’t affect.

And I’d add that Judy protected some of her

other sources, and Cheney protected any journalists he spoke with. That's the trick with obstruction – it prevents people from learning what really happened.

Fitzgerald statement

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I considered it an honor to work with the agents and prosecutors who conducted the investigation and trial with integrity and professionalism. Mr. Libby, represented by able counsel, received a fair trial before an exacting trial judge and a jury who found the facts clearly established that Libby committed the crimes he was charged with. That was true yesterday. It remains true today.

The issues at stake in this case were important. As was stated in a government sentencing memo more than a decade ago:

Mr. Libby, a high-ranking public official and experienced lawyer, lied repeatedly and blatantly about matters at the heart of a criminal investigation concerning the disclosure of a covert intelligence officer's identity. He has shown no regret for his actions, which significantly impeded the investigation. Mr. Libby's prosecution was based not upon politics but upon his own conduct,

as well as upon a principle fundamental to preserving our judicial system's independence from politics: that any witness, whatever his political affiliation, whatever his views on any policy or national issue, whether he works in the White House or drives a truck to earn a living, must tell the truth when he raises his hand and takes an oath in a judicial proceeding, or gives a statement to federal law enforcement officers. The judicial system has not corruptly mistreated Mr. Libby; Mr. Libby has been found by a jury of his peers to have corrupted the judicial system.

That statement rings true to this day. The President has the right to pardon Mr. Libby and Mr. Libby has been pardoned. But the facts have not changed.

I have made this statement in my personal capacity.