

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

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

MOTION FOR LEAVE TO SUPPLEMENT THE RECORD

Defendant I. Lewis Libby, through his attorneys, respectfully moves this Court for leave to supplement the record in advance of oral argument on February 24, 2006. Defendant wishes to introduce the attached letter from Kathleen M. Kedian, Deputy Special Counsel, to Mr. Libby's lawyers, dated February 21, 2006.

Deputy Special Counsel Kedian's letter sets forth the reasons why the Office of Special Counsel is refusing to produce, upon defendant's request, the 2003 referral letter from the CIA to the Department of Justice. Among other reasons, it states that the referral letter contains "communications between the CIA [] and the Department of Justice" that are protected from disclosure by attorney-client privilege. The defense asserts that such unequivocal recognition of a relationship between the CIA and the Department of Justice is highly probative of the argument set forth in defendant's Motion of I. Lewis Libby to Compel Discovery of Rule 16 and *Brady* Material in the Possession of Other Agencies and, therefore, the defense expects to refer to

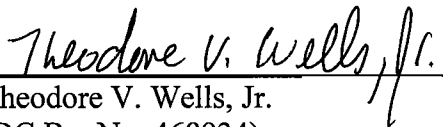
Deputy Special Counsel Kedian's letter during oral argument of this motion on February 24, 2006.

The government has informed the defense that it does not take a position on this motion.

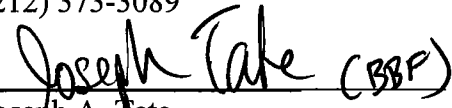
For this reason, the defendant respectfully moves the Court to sign the attached order.

Dated: February 24, 2006

Respectfully submitted,



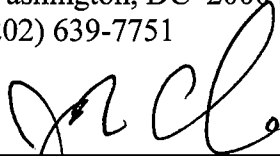
Theodore V. Wells, Jr.
(DC Bar No. 468934)
James L. Brochin
(DC Bar No. 455456)
Paul, Weiss, Rifkind, Wharton
& Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3089



Joseph A. Fata
Dechert LLP
2929 Arch Street
Cira Centre
Philadelphia, PA 19104



William H. Jeffress, Jr.
(DC Bar No. 041152)
Alex Bourelly
(DC Bar No. 441422)
Baker Botts LLP
1299 Pennsylvania Ave., NW
Washington, DC 20004
(202) 639-7751



John D. Cline
(D.C. Bar No. 403824)
Jones Day
555 California Street, 26th Floor
San Francisco, CA 94104
Tel: (415) 626-3939

ATTACHMENT



Office of Special Counsel

Patrick J. Fitzgerald
Special Counsel

Chicago Office: Dirksen Federal Building
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604
(312) 553-5300

Washington Office: Bond Building
1400 New York Avenue, Ninth Floor
Washington, DC 20530
(202) 514-1187

Please address all correspondence to the Washington Office

Via Telefax & Regular Mail

February 21, 2006

John D. Cline, Esq.
JONES DAY
555 California Street
San Francisco, CA 94104

Theodore V. Wells, Esq.
PAUL WEISS LLP
1285 Avenue of the Americas
New York, NY 10019-6064

William Jeffress, Esq.
BAKER BOTTS
The Warner
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2400

Joseph A. Tate, Esq.
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19103

Re: United States v. J. Lewis Libby

Dear Counsel:

The following information is in response to your request for "all documents relating to the CIA's criminal referral to the Department of Justice concerning the disclosure of Mrs. Wilson's affiliation with the CIA." After consultation with the CIA, we advise that we view any such documents in our possession as not discoverable. The documents remain classified and contain information compiled for law enforcement purposes that is neither material to the preparation of the defense, nor exculpatory as to Mr. Libby. In addition, the documents are protected from disclosure because they contain inter-agency, pre-decisional preliminary evaluations and recommendations of government officials covered by the deliberative process privilege. Moreover, the documents also contain legal analysis and opinion prepared by a CIA attorney, as well as communications between the CIA attorney and the Department of Justice, that are protected from disclosure by attorney-client communications privilege and the attorney work product privilege.

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,

Kathleen M. Kedian
Deputy Special Counsel

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)

)

v.)

)

)

CR. NO. 05-394 (RBW)

)

I. LEWIS LIBBY)

also known as "Scooter Libby")

Defendant.)

)

)

)

)

PROPOSED ORDER

Upon consideration of the Defendant's Motion for Leave to Supplement the Record, it is hereby

ORDERED that defendant be permitted to supplement the record and refer to the attached letter, dated February 21, 2006, from Deputy Special Counsel Kathleen M. Kedian to Mr. Libby's lawyers in open court.

Dated: _____

Hon. Reggie B. Walton

Patrick J. Fitzgerald, Esq.
Office of the Special Counsel
Bond Building
1400 New York Avenue, Ninth Floor
Washington, DC NW 20530
(202) 514-1187

William H. Jeffress, Jr., Esq.
Alex J. Bourelly, Esq.
Baker Botts LLP
1299 Pennsylvania Ave., NW
Washington, DC 20004
(202) 639-7700

Theodore V. Wells, Jr., Esq.
James L. Brochin, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000

John D. Cline, Esq.
Jones Day
555 California Street, 26th Floor
San Francisco, CA 94104
(415) 626-3939

Joseph A. Tate, Esq.
Dechert LLP
2929 Arch Street
Cira Centre
Philadelphia, PA 19104
(215) 994-2350