

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

**GOVERNMENT'S STATUS REPORT REGARDING EXECUTIVE PRIVILEGE  
WITH RESPECT TO UNCLASSIFIED DOCUMENTS**

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD, Special Counsel, respectfully submits the following status report regarding executive privilege with respect to unclassified documents provided to the defense in discovery.

On April 4, 2006, this Court entered an agreed order setting forth a procedure for the assertion of executive privilege with respect to unclassified documents provided to the defense in discovery which the defense may want to use as exhibits in this case.

Pursuant to the Court's order, on May 15, 2006, the Special Counsel identified the unclassified documents to which the executive branch believes a valid claim of executive privilege could be invoked. On June 15, 2006, defense counsel designated some of the potentially privileged documents identified by the government as documents the defense may wish to use as exhibits at trial or in pretrial proceedings.

Counsel have reached an agreement with respect to the handling of all of the documents designated by the executive branch as potentially privileged and designated by the defense as potential exhibits, which documents fall into four categories. Specifically, counsel have agreed that:

1. The first category of documents may be used without redaction.
2. The parties have agreed that the single document falling into the second category of

documents may be used in redacted form, and the parties have agreed to the specific redactions to be made to the document prior to use.

3. With respect to the third category of documents (which consists of schedules and calendars and a small number of notes), the parties have agreed that the relevant portions of the documents may be used, and that non-relevant portions of the documents will be redacted. The parties have further agreed that it is premature at this juncture to attempt to determine the particular redactions to be made, and that such determinations must be made at a date closer to trial. Therefore, the parties will attempt to finalize agreed redactions with respect to these documents, and will raise with the Court any unresolved disagreements regarding specific redactions on or before the date set by the Court for the filing of motions *in limine*.
4. The defense has agreed not to use documents falling into the fourth and final category of documents unless it determines in good faith that such use is essential to the defendant's defense.
5. The parties agree that, subject to the parties' agreements regarding redactions, all of the documents designated by the executive branch as potentially privileged constitute documents "as to which a motion in limine is not filed" and, in accordance with paragraph 7 of the Supplemental Protective Order, shall no longer be subject to the restrictions set forth in paragraphs 6A through 6D of the Supplemental Protective Order, but shall continue to be included in the definition of "protected materials" and thus subject to the protections of paragraphs 2 through 8 and 10 of the General Protective Order.
6. The foregoing agreements apply only to unclassified documents, as referenced in



**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 24th day of July, 2006, I caused true and correct copies of the foregoing Status Report to be served on the following parties by electronic mail:

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By: \_\_\_\_\_ /s/  
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