

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

FEB 23 2006

**NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

_____)
UNITED STATES OF AMERICA,)
)
)
v.)
)
I. LEWIS LIBBY,)
)
Defendant.)
_____)

Criminal No. 05-394 (RBW)

ORDER

On February 24, 2006, the parties will appear before this Court for oral argument on the defendant's pending motions to compel. One of the defendant's discovery requests seeks the following:

All documents relating to inquiries made during or in connection with Mr. Libby's morning intelligence briefing for the period May 6, 2003 through March 24, 2004, and all documents provided to Mr. Libby as a result of those inquiries.

In order to determine whether this request requires disclosure by the government under Federal Rule of Criminal Procedure 16,¹ it will be helpful for the parties to provide the Court additional factual information.² Specifically, the Court seeks responses to the following questions:

- (1) Is it possible to determine what documents would satisfy this request?
- (2) If the documents can be identified, approximately how many documents would

this request include?

¹ The defendant also opines that the request implicates Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, but the Court's review of the parties' submissions leads the Court to the conclusion that the defendant's position in that regard is baseless.

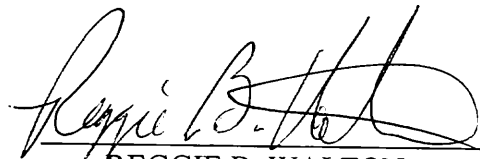
² This Court appreciates that an earlier request would have enhanced the parties' ability to acquire this information. Nonetheless, any additional information that the parties can provided in advance of or during oral argument would be greatly appreciated.

- (3) If the documents can be identified, in what manner are the documents currently stored, who has possession of them, and how much time and resources would be required to retrieve, review, and produce these documents?

In addition to the above inquires, the Court would also find it helpful to know who has possession of the President's Daily Briefs, which were provided to Mr. Libby during his morning intelligence briefings. And, has the Special Counsel's office ever had access to the President's Daily Briefs, and if not, would the Special Counsel be able to acquire access to these documents upon request?

This Court welcomes guidance from either party on these questions.

SO ORDERED this 23rd day of February, 2006.


REGGIE B. WALTON
United States District Judge