

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

NOV 16 2006

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

v.

I. LEWIS LIBBY,

Defendant.

Criminal No. 05-394 (RBW)

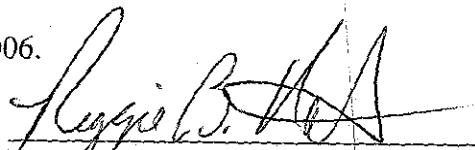
ORDER

On November 13, 2006, this Court issued a memorandum opinion addressing the standard the Court employed during the Section 6(c) hearings it held pursuant to the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. III, § 6(c). United States v. Libby, ___ F. Supp. 2d ___, 2006 WL 3262446 (D.D.C. Nov. 13, 2006). Upon further reflection, this Court believes that this opinion may not clearly articulate the standard this Court actually employed and must employ under Section 6(c) of the CIPA. Specifically, the Court's opinion discusses the Section 6(c) standard in the terms of a balancing test, which might be misleading. What this Court intended to express is that the government's challenge to the defendant's use of classified information remains a consideration during the Section 6(c) proceedings, but only to the extent that the assertion affords it the opportunity to propose redactions or substitutions for the classified information the defendant desires to use. At that point, the assertion drops out of the Section 6(c) picture and the Court must exclusively focus on whether the redacted or substituted version of the classified information the defendant desires to use provides the defendant with substantially the defense he desires to present. The Court will therefore issue an amended

opinion clarifying the legal basis it will employ for its ultimate holding.¹ Accordingly, it is hereby

ORDERED that this Court's November 13, 2006 Memorandum Opinion is **VACATED**.

SO ORDERED this 16th day of November, 2006.


REGGIE B. WALTON
United States District Judge

¹ The Court will likely defer issuing this amended opinion until after the conclusion of the CIPA Section 6(c) hearings.