

**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

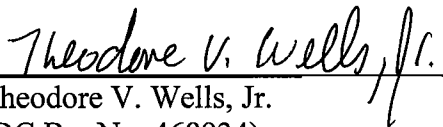
Deputy Special Counsel Kedian's letter during oral argument of this motion on February 24, 2006.

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

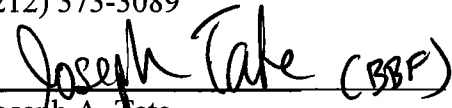
For this reason, the defendant respectfully moves the Court to sign the attached order.

Dated: February 24, 2006

Respectfully submitted,



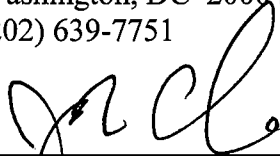
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February 21, 2006

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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
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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

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