

**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.)

**I. LEWIS LIBBY'S REVISED PROPOSED THEORY
OF THE DEFENSE INSTRUCTION**

Mr. Libby contends that the government has not proven beyond a reasonable doubt that he intended to or did obstruct justice, make intentionally false statements to the FBI, or make intentionally false statements to the grand jury. Mr. Libby contends that he told the FBI and the grand jury his honest recollections at the time, and to the extent any of those recollections were incorrect, his mistakes were innocent. He contends that he lacked any notes of the conversations about which he was questioned, and that he was unable to refresh his recollection by reviewing the notes of other people and discussing with them their recollections of events. He further contends that the amount and scope of vital national security issues and information confronting him on a daily basis during June and July 2003 may have affected his memory of any brief conversations about the employment of Mr. Wilson's wife when he talked to FBI investigators in October and November 2003, three or more months after the conversation are alleged to have happened, and when he testified to the grand jury the following March. Mr. Libby further contends that when the investigation began, he knew that he had not provided any information about Ms. Wilson to Robert Novak. He also contends that he did not know that Ms. Wilson's employment status was covert or classified and that he did not knowingly disclose classified

information about Ms. Wilson to any reporters. Further, Mr. Libby was well aware when he was first interviewed by the FBI and when he testified to the grand jury that the investigators could and likely would talk to government officials and the journalists he spoke with concerning Ambassador Wilson and that those officials and journalists would truthfully recount their recollections of the conversations he had with them. Mr. Libby submits he had no reason to lie to the FBI or the grand jury, and did not do so.

Dated: February 15, 2007

Respectfully Submitted,

<p><u>/s/ Theodore V. Wells, Jr.</u> Theodore V. Wells, Jr. (D.C. Bar No. 468934) James L. Brochin (D.C. Bar No. 455456) Paul, Weiss, Rifkind, Wharton & Garrison LLP 1285 Avenue of the Americas New York, NY 10019-6064 Tel: (212) 373-3089</p>	<p><u>/s/ William H. Jeffress, Jr.</u> William H. Jeffress, Jr. (D.C. Bar No. 041152) Alex J. Bourelly (D.C. Bar No. 441422) Baker Botts LLP 1299 Pennsylvania Avenue, NW Washington, DC 20004 Tel: (202) 639-7551</p>
<p><u>/s/ John D. Cline</u> John D. Cline (D.C. Bar No. 403824) Jones Day 555 California Street, 26th Floor San Francisco, CA 94104 Tel: (415) 626-3939</p>	