

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.)	

REPLY OF I. LEWIS LIBBY IN SUPPORT OF HIS MOTION *IN LIMINE* TO PRECLUDE THE GOVERNMENT FROM OFFERING ANY EVIDENCE OR ARGUMENT THAT HIS DISCLOSURE OF INFORMATION FROM THE OCTOBER 2002 NATIONAL INTELLIGENCE ESTIMATE WAS ILLEGAL OR IMPROPER

The government’s response makes clear that it “has no intention, and has never expressed an intention, of arguing that [Mr. Libby’s] disclosure of the previously-classified October 2002 NIE was illegal or improper.” Government’s Response at 1 (Nov. 15, 2006) (Dkt. 185). The government’s response further provides that, “if any evidence is adduced at trial concerning the *possibility* that [Mr. Libby] engaged in a limited but premature disclosure of the NIE,” it will “refrain from arguing that [Mr. Libby’s] conduct was illegal, and will consent to an appropriate instruction.” *Id.* at 6 (emphasis added).

In light of the government’s response, Mr. Libby’s motion should be granted. In addition, consistent with the government’s response, if there is any suggestion at trial that Mr. Libby’s discussions of the NIE with reporters were in any way improper, the defense respectfully requests that at that time the Court provide the jury with the following curative instruction:

You have heard [testimony/evidence] that Mr. Libby discussed with reporters information from the October 2002 National Intelligence Estimate. None of this [testimony/evidence] is being offered to show, or should be taken as establishing, that Mr. Libby’s discussions of the NIE were improper or illegal. The government is not alleging that Mr. Libby’s discussions with reporters were in any way wrongful, and you should not consider that issue in your deliberations.

For these reasons, and those set forth in his opening memorandum, Mr. Libby's Motion *in Limine* to Preclude the Government from Offering any Evidence or Argument that his Disclosure of Information From the October 2002 National Intelligence Estimate was Illegal or Improper should be granted.

November 17, 2006

Respectfully submitted,

/s/ Theodore V. Wells, Jr. _____

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