

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.)	

RESPONSE OF I. LEWIS LIBBY TO THE COURT’S ORDER OF JULY 3, 2007

On July 3, 2007, the Court ordered the parties to submit their “respective positions regarding the application of [18 U.S.C. §] 3583 in light of the President’s commutation of [Mr. Libby’s] prison sentence.” The Court observed that “§ 3583 does not appear to contemplate a situation in which a defendant may be placed under supervised release without first completing a term of incarceration.” Order at 2 (Dkt. 383).

If this matter involved only a question of statutory construction, the Court’s observation would appear to be well-founded based on the plain meaning of the statutory text. See *Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004) (“[W]hen the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.”). As a pure statutory issue, in other words, requiring service of the term of supervised release would appear to be forbidden. As a constitutional matter, however, the President had the power to commute a portion of Mr. Libby’s sentence on the terms prescribed in the President’s July 2, 2007 Grant of Executive Clemency, notwithstanding any statutory provision that might otherwise conflict with the President’s action. See *Schick v. Reed*,

419 U.S. 259 (1974). Mr. Libby does not take issue with the legal analysis contained in the July 6, 2007 letter from Fred F. Fielding, Counsel to the President (attached as Exhibit 1).

Dated: July 9, 2007

Respectfully submitted,

/s/ Theodore V. Wells, Jr.

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
Fax: (212) 373-2217

/s/ William H. Jeffress, Jr.

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, D.C. 20004
Tel: (202) 639-7751
Fax: (202) 585-1087

/s/ John D. Cline

John D. Cline
(D.C. Bar No. 403824)
K.C. Maxwell
(*pro hac vice*)
Jones Day
555 California Street, 26th Floor
San Francisco, CA 94104
Tel: (415) 626-3939
Fax: (415) 875-5700

/s/ Lawrence S. Robbins

Lawrence S. Robbins
(D.C. Bar No. 420260)
Gregory L. Poe
(D.C. Bar No. 426020)
Mark T. Stancil
(D.C. Bar No. 479012)
Robbins, Russell, Englert, Orseck &
Untereiner LLP
1801 K Street, N.W. Suite 411
Washington, D.C. 20006
Tel: 202.775.4500
Fax: 202.775.4510

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July, 2007, I caused true and correct copies of the foregoing to be served by electronic mail upon the following:

Patrick J. Fitzgerald
Special Counsel
U.S. Department of Justice
1400 New York Ave., NW
Washington, D.C. 20530
(202) 514-1187

/s/ Mark T. Stancil

Mark T. Stancil

Counsel for Defendant/Appellant