

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*