



## Office of Special Counsel

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**Via Telefax & Express Mail**

January 9, 2006

John D. Cline, Esquire  
JONES DAY  
555 California Street, 26<sup>th</sup> Floor  
San Francisco, CA 94104

Re: United States v. J. Lewis Libby  
No. CR 05-394 (RBW)

Dear Mr. Cline:

In response to your letter of December 14, 2005, requesting discovery both classified and unclassified, we adopt and incorporate as appropriate our responses to the prior discovery requests by other law firms representing Mr. Libby. In particular, we maintain the position expressed in our December 3, 2005 letter to counsel for Mr. Libby, that for purposes of Rule 16, we are not aligned with the various delineated government agencies other than the Federal Bureau of Investigation.

Moreover, we view the discovery request in the context of a criminal indictment which charges perjury, false statements and obstruction of justice but does not charge substantive violations of statutes premised on the wrongful disclosure of classified information.

With regard to your five specific requests, we respond as follows:

Request A: There are numerous documents which either have been provided to Mr. Libby and his counsel (hereafter collectively referred to as "Mr. Libby") or are in the process of being provided consistent with the process of a declassification review. We have previously advised counsel that it was our intention to provide copies of all documents produced to us by the Office of Vice President, which includes all copies of Mr. Libby's notes that we have in our possession. The documents obtained from the Office of Vice President number approximately 10,000 pages. In making such production, we are exceeding the scope of what is required to be produced pursuant to Rule 16. We will also commit that, if during the review of the documents received by us from the Office of Vice President we determine that it is not appropriate to produce a particular document to Mr. Libby, we will not withhold any such document without presenting an application to Judge Walton for a protective order pursuant to Rule 16 of the Federal Rules of Criminal Procedure or pursuant to the Classified Information Procedures Act ("CIPA").

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Your request, however, seeks copies of all notes of Mr. Libby for the time period of the eleven (11) months from May 6, 2003, through March 24, 2004. We did not seek (and thus did not obtain) all of Mr. Libby's notes from that time period. Instead, we have sought (and thus presumably obtained) from the Office of Vice President all of Mr. Libby's notes for the time periods May 6 through May 10, 2003, June 1 through July 25, 2003, July 28, 2003 and July 29, 2003, and September 27 through October 13, 2003. We have also requested more generally from the Office of Vice President all documents from February 1, 2002 through January 23, 2004 relating to Ambassador Joseph Wilson or his wife; Valerie Plame Wilson (or "Valerie Wilson" or "Valerie Plame"); and the trip undertaken by former Ambassador Joseph Wilson to Niger in 2002 (even if the items/documents themselves did not refer to Wilson by name). It is our assumption that all of Mr. Libby's notes that are responsive to our requests within that two-year time frame have been produced to us, and are thus in the set of materials being produced to you. We do not have any other notes of Mr. Libby and therefore cannot produce them to you.

Requests B and C: As you are no doubt aware, the documents referred to as Presidential Daily Briefs ("PDBs") are extraordinarily sensitive documents which are usually highly classified. We have never requested copies of any PDBs. However, we did ask for relevant documents relating to Ambassador Joseph Wilson or his wife; Valerie Plame Wilson (or "Valerie Wilson" or "Valerie Plame"); and the trip undertaken by former Ambassador Joseph Wilson to Niger in 2002 (even if the items/documents themselves did not refer to Wilson by name) from the Executive Office of the President and the Office of Vice President. We also sought from the Central Intelligence Agency documents relating to the same items, with the exception that the CIA was not requested to produce documents in its files regarding Valerie Plame Wilson that were not related directly or indirectly to Ambassador Wilson's travel to Niger in February 2002. In response to our requests, we have received a very discrete amount of material relating to PDBs and discussions involving Mr. Libby and/or Vice President Cheney concerning or related to the PDBs. We have provided to Mr. Libby and his counsel (or are in the process of providing such documents consistent with the process of a declassification review) copies of any pages in our possession reflecting discussions of Joseph Wilson, Valerie Wilson and/or Wilson's trip to Niger contained in (or written on) copies of the President's Daily Brief ("PDB") in the redacted form in which we received them. We have also included any writings in or on documents reflecting inquiries by Mr. Libby and any responses to him which concern Ambassador Wilson, his wife or the trip to Niger.

Your request seeks copies of all PDBs (and any additional materials provided to the Vice President and any documents reflecting any inquiries or responses, presumably about any topic) for the time period of approximately eleven (11) months from May 6, 2003, through March 24, 2004, and without regard to whether the content is relevant to the subject matter of this case. We do not have such materials in our possession other than to the very limited extent discussed above.

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Request D: A formal assessment has not been done of the damage caused by the disclosure of Valerie Wilson's status as a CIA employee, and thus we possess no such document. In any event, we would not view an assessment of the damage caused by the disclosure as relevant to the issue of whether or nor Mr. Libby intentionally lied when he made the statements and gave the grand jury testimony which the grand jury alleged was false.

Request E: We have neither sought, much less obtained, "all documents, regardless of when created, relating to whether Valerie Wilson's status as a CIA employee, or any aspect of that status, was classified at any time between May 6, 2003, and July 14, 2003." We will review all documents we received from the CIA for any discussion concerning whether Valerie Wilson's status as a CIA employee, or any aspect of that status, was classified at any time between May 6, 2003, and July 14, 2003. Although we do not concede that all such documents in our possession are required to be produced by Rule 16, if we locate any such documents, we will either produce them to you or seek an appropriate protective order pursuant to either Rule 16 or CIPA. In our view, documentation regarding Ms. Wilson's then classified job status is not relevant to the issue of whether or nor Mr. Libby intentionally lied when he made the statements and gave the grand jury testimony that the grand jury alleged was false. That Ms. Wilson's employment status was classified may generally be relevant for the limited purpose of placing the investigation in context does not mean that all documents discussing that fact become discoverable in a perjury prosecution.

I should also add that we have discussed with counsel for Mr. Libby on a prior occasion a proposal that we seek permission of the Court for both parties to obtain early return of trial subpoenas and suggested that we consider an agreement that both parties promptly would provide reciprocal production of all documents obtained. If counsel for Mr. Libby is agreeable to such a proposal, we can make such an application jointly at the time of our February 3, 2006 conference, or by motion prior to such time if necessary.

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,

  
PATRICK J. FITZGERALD  
Special Counsel

cc: Theodore V. Wells, Jr., Esquire  
William H. Jeffress, Jr., Esquire  
Joseph A. Tate, Esquire