

HAND-DELIVERED TO CSO
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2:15 PM

JONES DAY

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December 14, 2005

VIA HAND-DELIVERY

Patrick J. Fitzgerald, Esquire
Special Counsel
Office of Special Counsel
Bond Building
1400 New York Avenue, Ninth Floor
Washington, DC NW 20530

Re: United States v. I. Lewis Libby, No. CR 05-394 (RBW);
First Request for Classified Discovery

Dear Mr. Fitzgerald:

As you know, this firm will take the lead on addressing classified information issues for the Libby defense. On behalf of Mr. Libby, we submit this first request for classified discovery. The documents that we request are discoverable under the Fifth and Sixth Amendments to the United States Constitution, Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, and Fed. R. Crim. P. 16. We ask that you provide the discovery requested in this letter (including both classified and unclassified responsive documents) and advise us of any specific requests with which the government declines to comply. To the extent the government has already produced documents responsive to these requests, it is not necessary that those documents be produced again. We will be glad to meet with you to discuss the requests and attempt to resolve any differences we might have. We reserve the right to supplement these requests as the case progresses. These requests do not limit or modify requests already made or to be made in the future.

The documents¹ requested include not only documents in the possession, custody, or control of your office, but also (a) documents in the possession, custody, or control of any agency allied with the prosecution, including without limitation the FBI, the CIA, and the Office of the Vice President ("OVP"), and (b) all other documents of which your office has knowledge

¹ The word "documents" includes all books, papers, letters, correspondence, e-mails, notebooks, reports, memoranda, studies, diaries, notes, messages, computer facilitated or transmitted materials, images, photographs, information in any computer database, audio and video tapes, recordings, transcripts, ledgers, printouts, and all copies or portions thereof, and any other written, recorded, or memorialized material of any nature whatsoever.

As used in this letter, the words "and" and "or" mean "and/or," and the words "includes" and "including" mean "includes (or including) without limitation."

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and to which it has access. See, e.g., Kyles v. Whitley, 514 U.S. 419, 437 (1995); United States v. Santiago, 46 F.3d 885, 893-94 (9th Cir. 1995); United States v. Brooks, 966 F.2d 1500, 1501-05 (D.C. Cir. 1992); United States v. Haldeman, 559 F.2d 31, 74 (D.C. Cir. 1976); United States v. Poindexter, 727 F. Supp. 1470, 1477-78 (D.D.C. 1989).

DISCOVERY REQUESTS

- A. All of Mr. Libby's notes for the period May 6, 2003 through March 24, 2004, to the extent not already produced.
- B. All documents provided to Mr. Libby in connection with his morning intelligence briefing during the period May 6, 2003 through March 24, 2004, including the President's Daily Brief ("PDB"), in its entirety, and additional materials provided for the Vice-President and Mr. Libby with the PDB.
- C. All documents relating to inquiries made during or in connection with Mr. Libby's morning intelligence briefing for the period May 6, 2003 through March 24, 2004, and all documents provided to Mr. Libby as a result of those inquiries.
- D. Any assessment done of the damage (if any) caused by the disclosure of Valerie Wilson's status as a CIA employee.
- E. 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.

These documents are essential to the defense, including, for example, to negate any showing by the government that Mr. Libby acted with the mens rea alleged in the indictment and, in particular, that he knew the statements and testimony at issue were false when given. We would appreciate your response to these requests as soon as possible, so that we can attempt to resolve any disputes informally and timely file any necessary discovery motions.

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Very truly yours,

A handwritten signature in black ink, appearing to be "JDC", written in a cursive style.

John D. Cline

Cc: Theodore V. Wells, Jr., Esquire
William H. Jeffress, Jr., Esquire