

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

I. LEWIS LIBBY

also known as "Scooter Libby,"

Defendant.

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Cr. No. 05-394 (RBW)

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.

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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:

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